

ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA



Regular Session, 1983
Second Extraordinary Session, 1982
First Extraordinary Session, 1983

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FOREWORD

This volume contains the Acts of the First Regular and First Extraordinary Sessions of the 66th Legislature, 1983, and the Second Extraordinary Session of the 65th Legislature, 1982.

First Regular Session, 1983

The first regular session of the 66th Legislature convened on January 12, 1983, and following the certification of the election of members, held at the general election on the 2nd day of November, 1982, the election of officers of the two houses, the adoption of rules to govern the proceedings of the two houses and separately and concurrently acting on matters incident to organization, proceeded to the business of the session

The constitutional expiration date of the session was midnight, March 12, 1983. However, the session was extended by proclamations of the Governor for consideration of the annual budget bill up to and including March 16, 1983. The Legislature passed the budget on March 16, 1983, and adjourned *sine die* on that date.

Bills totaling 1,798 were introduced in the two houses during the session (1044 House and 754 Senate). The Legislature passed 203 bills, 111 House and 92 Senate. The Governor approved 195 bills and vetoed 8 (S. B. Nos. 515, 634, 738, H. B. Nos. 1255, 1314, 1398, 1471 and 1709).

One bill (H. B. 1709) was amended and repassed by the Legislature and subsequently approved by the Governor. S. B. 515, permitting local option elections for the sale of liquor within magisterial districts, was vetoed by the Governor but was repassed by both houses of the Legislature, notwithstanding his objections, leaving a net total of six bills lost through veto. H. B. 1150, Budget Bill, was passed by the Legislature and approved by the Governor following certain deletions and reductions.

There were 77 concurrent resolutions introduced during the session, 41 House and 36 Senate, of which eight House and nine Senate were adopted. A total of 42 Joint Resolutions were introduced proposing amendments to the Constitution of the State, 39 House and 13 Senate, of which two were adopted (H. J. R. 28 and S. J. R. 3). The House had 25 House resolutions and the Senate had 49 Senate resolutions, of which 17 House and 41 Senate were adopted.

The Senate failed to pass 54 House bills passed by the House and 106 Senate bills failed passage by the House. Five bills died in conference, three House and two Senate.

Second Extraordinary Session, 1982

The Second Extraordinary Session of the Legislature convened on July 22, 1982, and concluded on July 27, 1982.

The proclamation of the Governor convening the session contained three items of business for consideration.

A total of 24 joint resolutions were introduced, 12 House and 12 Senate, of which one was adopted, H. J. R. 1, Property Tax Limitation and Homestead Exemption Amendment of 1982.

There were two house concurrent resolutions introduced of which one was adopted. Three House resolutions and five Senate resolutions were introduced and adopted during the session.

First Extraordinary Session, 1983

The First Extraordinary Session of the Legislature convened on May 17, 1983, recessed on June 2, 1983, until August 17, 1983, and adjourned *sine die* on that date.

The proclamation of the Governor convening the session contained twelve items of business for consideration.

A total of 47 bills were introduced during the session (24 House and 23 Senate). The Legislature passed 18 bills, 13 House and five Senate, the Governor approved all bills.

There were 15 concurrent resolutions offered during the session, seven House and eight Senate, of which two House and six Senate were adopted. The House had three Joint Resolutions offered during the session of which none were adopted. The House had seven House resolutions of which six were adopted, and the Senate had six Senate Resolutions, all were adopted.

Two Senate bills passed by the Senate failed passage by the House and one House bill passed by the House failed passage by the Senate.

This volume will be distributed as provided by sections thirteen

and nineteen, article one, chapter four of the code of West Virginia. These acts may be purchased from the Division of Purchases, Department of Finance and Administration, State Capitol, Charleston, West Virginia.

DONALD L. KOPP, Clerk
House of Delegates

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ERRATA

Page 477, Chapter 102, Com. Sub. for S. B. 320, should read "in effect ninety days from passage."

Page 975, Chapter 183, H. B. 1343, line 51, after the word "item" insert "listed. The sum of the taxes, interest to the date of sale,".

MEMBERS OF THE SENATE

REGULAR SESSION, 1983

OFFICERS

President—Warren R. McGraw, Pineville

President Pro Tem—James L. Davis, Fairmont

Clerk—Todd C. Willis, Logan

Sergeant at Arms—Emery Woodall, Hamlin

Doorkeeper—Aubrey R. Grizzell, St. Albans

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

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

² Appointed a member of the Senate December 15, 1982, to fill the vacancy created by the resignation of the Honorable Harley O. Staggers, Jr.

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

* Elected in 1980. All others elected in 1982.

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

MEMBERS OF THE HOUSE OF DELEGATES

REGULAR SESSION, 1983

OFFICERS

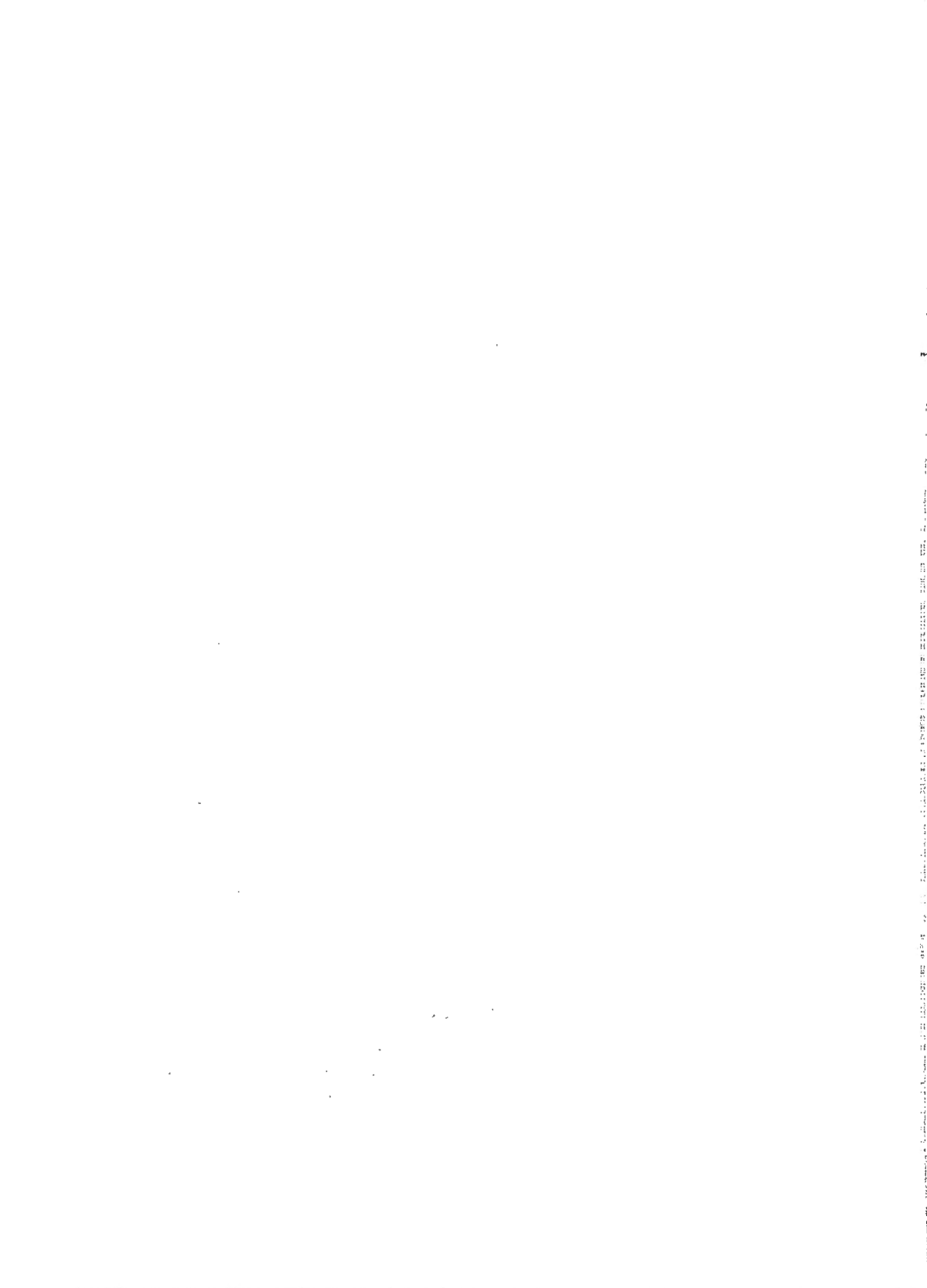
Speaker—Clyde M. See, Jr., Moorefield*Speaker Pro Tem*—Larry E. Schifano, Morgantown*Clerk*—Donald L. Kopp, Clarksburg*Sergeant at Arms*—Oce W. Smith, Jr., Fairmont*Doorkeeper*—Dannie Wingo, Yukon

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

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

* Appointed a member of the House of Delegates January 10, 1983, to fill the vacancy created by the resignation of the Honorable Donald L. Kopp.

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



STANDING COMMITTEES OF THE SENATE

Regular Session, 1983

Agriculture

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

Banking and Insurance

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

Confirmations

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

Education

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

Elections

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

Energy, Industry and Mining

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

Finance

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

Government Operations

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

Health

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

Interstate Cooperation

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

Judiciary

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

Labor

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

Local Government

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

Military

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

Natural Resources

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

Public Institutions

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

Rules

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

Small Business

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

Transportation

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

JOINT COMMITTEES

Enrolled Bills

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

Government and Finance

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

Legislative Rule-Making Review

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

Rules

McGraw (Chairman ex officio), Tonkovich and Harman.

COMMISSION ON SPECIAL INVESTIGATIONS

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

**STANDING COMMITTEES OF THE
HOUSE OF DELEGATES
1983**

Agriculture and Natural Resources

Neal (Chairman of Agriculture), Burke (Vice Chairman), Ballouz (Chairman of Natural Resources), Steptoe (Vice Chairman), Artrip, Bailey, Damron (15th Dist.), Doyle, Ferrell, Hutchinson, Jordan, Leary, Manchin, Meadows, McCallister, Moore, Murphy, Sluss, Starcher, Stewart, Toler, Whitlow, Harman, Shaffer and Springston.

Banking and Insurance

Gilliam (Chairman of Banking), McCormick (Vice Chairman), Riffle (Chairman of Insurance), Goff (Vice Chairman), Anello, Bird, Blatnik, Crookshanks, Damron (12th Dist.), Farley, Flanigan, Hamilton, Hartman, Love, Miller, Murensky, Roop, Schifano, Smith, Toney, Underwood (13th Dist.), Williams, Faircloth, McKinley and Shanholtz.

Constitutional Revision

Wehrle (Chairman), Dalton (Vice Chairman), Brown (23rd Dist.), Brown (33rd Dist.), Casey, Chambers, Cipriani, Damron (12th Dist.), Farley, Feinberg, Flanigan, Fullen, Hamilton, Hatcher, Humphreys, Johnson, Knight, Love, MacCorkle, Martin (27th Dist.), Martin (32nd Dist.), Neal, Harman, Otte and Rogers.

Education

Sattes (Chairman), Hartman (Vice Chairman), Ashcraft, Bailey, Brown (23rd Dist.), Cipriani, Givens, Hagedorn, Johnson, Kidd, Lewis, Meadows, McCallister, McCormick, Miller, Minard, Mullett, Murphy, Sergeant, Spencer, Toler, Yanni, Conley, Rogers and Shanholtz.

Finance

Polan (Chairman), Farley (Vice Chairman), Anello, Artrip, Blatnik, Bledsoe, Burke, Childers, Dalton, Goff, Hutchinson, Jordan, Martin (32nd Dist.), Murensky, Neal, Riffle, Seacrist, Simpkins, Smith, Starcher, Toney, Wehrle, Faircloth, Nicely and Teets.

Government Organization

Wiedebusch (Chairman), Knight (Vice Chairman), Ashcraft, Ballouz, Crabtree, Doyle, Ferrell, Flanigan, Hamilton, Holt, Kelly, Leary, Love, Manchin, McCormick, Minard, Roop, Stewart, Theiling Underwood (13th Dist.), Underwood (23rd Dist.), Harman, McKinley and Otte.

Health and Welfare

Givens (Chairman), Theiling (Vice Chairman), Artrip, Ballouz, Bird, Blatnik, Brown (23rd Dist.), Crookshanks, Davis, Flanigan, Goff, Hagedorn, Hartman, Kelly, Knight, Leary, Manchin, McCallister, Sergeant, Smith, Steptoe, Toney, Conley, Otte and Rogers.

Industry and Labor

Starcher (Chairman), Moore (Vice Chairman), Ashcraft, Bledsoe, Crabtree, Damron (15th Dist.), Davis, Fullen, Gilliam, Hatcher, Holt, Kidd, Lewis, Mullett, Murphy, Riffle, Simpkins, Sluss, Spencer, Stewart, Williams, Yanni, Carmichael, Nicely and Otte.

Interstate Cooperation

Whitlow (Chairman), Damron (12th Dist.), Gilliam, Neal,, Otte and Rogers.

Judiciary

Albright (Chairman), Damron (15th Dist.), (Vice Chairman), Bird, Brown (33rd Dist.), Casey, Chambers, Crookshanks, Davis, Feinberg, Fullen, Gilliam, Hatcher, Humphreys, MacCorkle, Martin (27th Dist.), Moore, Schifano, Sluss, Steptoe, Whitlow, Williams, Wooton, Carmichael, Shaffer and Springston.

Political Subdivisions

Martin (27th Dist.) (Chairman), Murensky (Vice Chairman), Bailey, Brown (33rd Dist.), Casey, Childers, Cipriani, Doyle, Humphreys, Hutchinson, Kelly, Kidd, MacCorkle, Martin (32nd Dist.), McCormick, Miller, Minard, Seacrist, Theiling, Toler, Underwood (23rd Dist.), Wooton, Carmichael, Harman and McKinley.

Roads and Transportation

Yanni (Chairman), Simpkins (Vice Chairman), Ashcraft, Bledsoe, Burke, Crabtree, Dalton, Feinberg, Ferrell, Hagedorn, Holt, Johnson, Jordan, Lewis, Meadows, Mullett, Roop, Seacrist, Sergeant, Spencer, Underwood (13th Dist.), Underwood (23rd Dist.), Conley, McKinley and Shanholtz.

Rules

See (Chairman), Albright, Damron (15th Dist.), Polan, Sattes, Schifano, Shiflet, Wehrle, Wiedebusch, Wooton, Swann and Teets.

JOINT COMMITTEES

Enrolled Bills

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

Government and Finance

See (Co-chairman), Albright, Polan, Sattes, Shiflet, Swann and Teets.

Legislative Rule-Making Review

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

Rules

See (Chairman ex officio), Shiflet and Swann.

COMMISSION ON SPECIAL INVESTIGATIONS

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

LEGISLATURE OF WEST VIRGINIA

ACTS

REGULAR SESSION, 1983

CHAPTER 1

(Com. Sub. for H. B. 1454—By Mrs. Spencer and Mr. Gilliam)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, four, five, seven, eight, nine, eleven and seventeen, article eight, chapter thirty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto two new sections, designated sections twelve-a and twenty-three-a, all relating to establishing a fifteen or seven year period as the time necessary for property to be presumed abandoned; providing for fifteen-year period for interest bearing accounts and travelers checks; prohibiting a holder from charging a fee or ceasing payment of interest on abandoned property without a written contract between the holder and the owner allowing such charges; allowing for a presumption of abandonment of tangible personal property; requiring reports of abandoned property; requiring necessary information in such reports; establishing certain time periods for filing such reports; granting the state treasurer the authority to examine records of persons upon reasonable belief such person has failed to report property that should have been reported; granting the treasurer the authority to charge the person examined for the cost of the examination in certain instances; providing that records of abandoned property are confidential, and exceptions; providing for the sale of abandoned property; granting the treasurer the authority to enter into reciprocal agreements with other states.

Be it enacted by the Legislature of West Virginia:

That sections two, four, five, seven, eight, nine, eleven and

seventeen, article eight, chapter thirty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article eight be further amended by adding thereto two new sections, designated sections twelve-a and twenty-three-a, all to read as follows:

ARTICLE 8. UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT.

- §36-8-2. Property held by banking or financial organizations.
- §36-8-4. Deposits and refunds held by utilities.
- §36-8-5. Undistributed dividends and distributions of business associations.
- §36-8-7. Property held by fiduciaries.
- §36-8-8. Property held by courts and public officers and agencies.
- §36-8-9. Miscellaneous personal property held for another person.
- §36-8-11. Report of abandoned property.
- §36-8-12a. Records of abandoned property confidential except as to persons with claim.
- §36-8-17. Sale of abandoned property.
- §36-8-23a. Interstate agreements and cooperation; joint and reciprocal actions with other states.

§36-8-2. Property held by banking or financial organizations.

1 The following property held or owing by a banking or fi-
2 nancial organization is presumed abandoned:

3 (a) Any noninterest bearing demand, savings or matured
4 time deposit made in this state with a banking organization, or
5 other financial organization, excluding any charges which may
6 lawfully be withheld, if the owner has not within the im-
7 mediately preceding seven years increased or decreased the
8 amount of the deposit: *Provided*, That notwithstanding the
9 fact that there has been no increase or decrease in the amount
10 of the deposit within the seven-year period, there shall be no
11 presumption of abandonment if the owner has within the im-
12 mediately preceding year:

13 (1) Corresponded in writing with the organization con-
14 cerning the deposit; or

15 (2) Otherwise indicated an interest in the deposit as
16 evidenced by a memorandum on file with the organization.

17 In any case where the owner has taken any of the actions
18 specified in (1) or (2) of this subdivision (a) there shall

19 thereafter be no presumption of abandonment unless and
20 until another seven years have passed without any increase
21 or decrease in the amount of the deposit and without any of
22 such actions having been taken in the last year of such
23 further seven-year period.

24 (b) Any interest bearing demand, savings or matured time
25 deposit made in this state with a banking organization or other
26 financial organization, together with any interest or dividend
27 thereon, excluding any charges which may lawfully be with-
28 held, if the owner has not within the immediately preceding
29 fifteen years increased or decreased the amount of the de-
30 posit: *Provided*, That notwithstanding the fact that there
31 has been no increase or decrease in the amount of the deposit
32 within the fifteen-year period, there shall be no presump-
33 tion of abandonment if the owner has within the immediately
34 preceding year:

35 (1) Presented the passbook or other similar evidence of
36 deposit for the crediting of interest; or

37 (2) Corresponded in writing with the organization con-
38 cerning the deposit; or

39 (3) Otherwise indicated an interest in the deposit as
40 evidenced by a memorandum on file with the organiza-
41 tion.

42 In any case where the owner has taken any of the actions
43 specified in (1), (2) or (3) of this subdivision (b) there
44 shall thereafter be no presumption of abandonment unless
45 and until another fifteen years have passed without any
46 increase or decrease in the amount of the deposit and with-
47 out any of such actions having been taken in the last year
48 of such further fifteen-year period.

49 (c) Any noninterest bearing funds paid in this state to-
50 ward the purchase of shares or other interest in a financial
51 organization or any deposit made therewith in this state,
52 excluding any charges that may lawfully be withheld, if the
53 owner has not within the immediately preceding seven years
54 increased or decreased the amount of the funds or deposit:
55 *Provided*, That notwithstanding the fact that there has been no

56 increase or decrease in the amount of the funds or deposit
57 within said seven-year period, there shall be no presumption
58 of abandonment if the owner has within the immediately pre-
59 ceding year:

60 (1) Corresponded in writing with the financial organization
61 concerning the funds or deposit; or

62 (2) Otherwise indicated an interest in the funds or deposit as
63 evidenced by a memorandum on file with the financial or-
64 ganization.

65 In any case where the owner has taken any of the actions
66 specified in (1) or (2) of this subdivision (c), there shall
67 thereafter be no presumption of abandonment unless and un-
68 til another seven years have passed without any increase or de-
69 crease in the amount of the funds or deposit and without any
70 of such actions having been taken in the last year of such
71 further seven-year period.

72 (d) Any interest bearing funds paid in this state toward
73 the purchase of shares or other interest in a financial or-
74 ganization or any deposit made therewith in this state, and any
75 interest or dividends thereon, excluding any charges that may
76 lawfully be withheld, if the owner has not within the im-
77 mediately preceding fifteen years increased or decreased the
78 amount of the funds or deposit: *Provided*, That notwith-
79 standing the fact that there has been no increase or decrease in
80 the amount of the funds or deposit within said fifteen-year
81 period, there shall be no presumption of abandonment if the
82 owner has within the immediately preceding year:

83 (1) Presented an appropriate record for the crediting of
84 interest or dividends; or

85 (2) Corresponded in writing with the financial organization
86 concerning the funds or deposit; or

87 (3) Otherwise indicated an interest in the funds or deposit
88 as evidenced by a memorandum on file with the financial
89 organization.

90 In any case where the owner has taken any of the actions
91 specified in (1), (2) or (3) of this subdivision (d), there
92 shall thereafter be no presumption of abandonment unless and

93 until another fifteen years have passed without any increase or
94 decrease in the amount of the funds or deposit and without
95 any of such actions having been taken in the last year of such
96 further fifteen-year period.

97 (e) Any sum payable on any check certified in this state
98 or on any written instrument issued in this state on which a
99 banking or financial organization is directly liable, including,
100 by way of illustration but not of limitation, a certificate of de-
101 posit and draft, that has been outstanding for more than
102 seven years from the date it was payable, or from the date of
103 its issuance if payable on demand, unless the owner has within
104 the preceding year corresponded in writing with the banking
105 or financial organization concerning it, or otherwise indicated
106 an interest as evidenced by a memorandum on file with the
107 banking or financial organization.

108 (f) Any funds or other personal property, tangible or in-
109 tangible, removed from a safe-deposit box or any other safe-
110 keeping repository in this state on which the lease or rental
111 period has expired due to nonpayment of rental charges or
112 other reason, or any surplus amounts arising from the sale
113 thereof pursuant to law, that have been unclaimed by the
114 owner for more than seven years from the date on which the
115 lease or rental period expired.

116 (g) No holder may impose with respect to property de-
117 scribed in this section any charges due to dormancy or inac-
118 tivity or cease payment of interest unless there is an enforce-
119 able written contract between the holder and the owner of the
120 property pursuant to which the holder may impose those
121 charges or cease payment of interest.

122 (h) Any amount held or owing by any organization for the
123 payment of a travelers check on which such organization is
124 directly liable shall be presumed abandoned if such amount is
125 held or owing for payment of a travelers check which shall
126 have been outstanding for more than fifteen years from the
127 date of its sale.

§36-8-4. Deposits and refunds held by utilities.

1 The following funds held or owing by any utility are pre-
2 sumed abandoned:

3 (a) Any deposit made subsequent to one thousand nine
4 hundred fifty-seven, by a subscriber with a utility to secure pay-
5 ment for, or any sum paid in advance for, utility services to
6 be furnished in this state, less any lawful deductions, that has
7 remained unclaimed by the person appearing on the records
8 of the utility entitled thereto for more than seven years after
9 the termination of the services for which the deposit or ad-
10 vance payment was made.

11 (b) Any sum which a utility has been ordered to refund and
12 which was received subsequent to one thousand nine hundred
13 fifty-seven, for utility services rendered in this state, together
14 with any interest thereon, less any lawful deductions, that
15 has remained unclaimed by the person appearing on the rec-
16 ords of the utility entitled thereto for more than seven years
17 after the date it became payable in accordance with the final
18 determination or order providing for the refund.

**§36-8-5. Undistributed dividends and distributions of business as-
sociations.**

1 Any stock or other certificate of ownership, or any divi-
2 dend, profit, distribution, interest, payment on principal, or
3 other sum held or owing by a business association for or to
4 a shareholder, certificate holder, member, bondholder, or
5 other security holder, or a participating patron of a coopera-
6 tive, who has not claimed it, or corresponded in writing with
7 the business association concerning it, within seven years after
8 the date prescribed for payment or delivery, is presumed aban-
9 doned if:

10 (a) It is held or owing by a business association organized
11 under the laws of or created in this state; or

12 (b) It is held or owing by a business association doing busi-
13 ness in this state, but not organized under the laws of or
14 created in this state, and the records of the business associa-
15 tion indicate that the last-known address of the person en-
16 titled thereto is in this state.

§36-8-7. Property held by fiduciaries.

1 All intangible personal property and any income or incre-
2 ment thereon, held in a fiduciary capacity for the benefit

3 of another person is presumed abandoned unless the owner
4 has, within seven years after the final date for distribution
5 of such property and the cessation of all active fiduciary
6 duties as required by law or the instrument under which
7 the fiduciary is acting, increased or decreased the principal,
8 accepted payment of principal or income, corresponded in
9 writing with the fiduciary concerning the property, or other-
10 wise indicated an interest as evidenced by a memorandum on
11 file with the fiduciary:

12 (a) If the property is held by a banking organization or
13 a financial organization, or by a business association or-
14 ganized under the laws of or created in this state; or

15 (b) If it is held by a business association, doing busi-
16 ness in this state, but not organized under the laws of or
17 created in this state, and the records of the business association
18 indicate that the last-known address of the person entitled
19 thereto is in this state; or

20 (c) If it is held in this state by any other person.

§36-8-8. Property held by courts and public officers and agencies.

1 (a) All intangible personal property held for the owner
2 by any state or federal court, public corporation, public
3 authority, or public officer in this state, or a political sub-
4 division thereof, that has remained unclaimed by the owner
5 for more than seven years is presumed abandoned: *Pro-*
6 *vided*, That this provision shall in no way affect such property
7 in the custody or control of any state or federal court in any
8 pending action: *Provided, however*, That if any federal statute
9 provides for the distribution of any unclaimed property subject
10 to the jurisdiction of a federal court, this statute shall not apply.

11 (b) Notwithstanding the provisions of subsection (a) of
12 this section, all intangible personal property in the custody
13 or control of a general receiver of a state court of record
14 appointed pursuant to the provisions of article six, chapter
15 fifty-one of this code, that has remained unclaimed by the owner
16 for more than seven years is presumed abandoned: *Provided*,
17 That any such property in the custody or control of any such
18 general receiver in which there is any contingent remainder

19 interest, or any vested remainder interest which is subject to
20 open to let in persons not yet in being or to open to let in
21 members of any class, or any executory interest, or executory
22 devise interest, or any base, qualified, conditional, or limited
23 fee estate or interest, or any other qualified, conditional,
24 limited or determinable estate or interest, shall not be
25 presumed abandoned until such property has remained un-
26 claimed for more than seven years after such estate or in-
27 terest has vested or any such class has closed and the per-
28 sons entitled to such property have been determined.

§36-8-9. Miscellaneous personal property held for another person.

1 All personal property not otherwise covered by this article,
2 including any income or increment thereon and after deduct-
3 ing any lawful charges, that is held or owing in this state
4 in the ordinary course of the holder's business and has re-
5 mained unclaimed by the owner for more than seven years
6 after it became payable or distributable is presumed aban-
7 doned: *Provided*, That this section shall not apply to such
8 property held or owing by a utility prior to one thousand
9 nine hundred fifty-seven: *Provided, however*, That no banking
10 organization or other financial organization shall levy any
11 charge or fee against any citizen of this state who owns
12 any savings account or any interest therein when said account
13 has been without activity for any period of time.

§36-8-11. Report of abandoned property.

1 (a) Every person holding funds or other property, tangible
2 or intangible, presumed abandoned under this article shall
3 report to the state treasurer with respect to the property as
4 hereinafter provided.

5 (b) The report shall be verified and shall include:

6 (1) The name, if known, and last-known address, if any,
7 of each person appearing from the records of the holder to
8 be the owner of any property of the value of fifty dollars or
9 more presumed abandoned under this article;

10 (2) In case of unclaimed funds of life insurance corpora-
11 tions, the full name of the insured or annuitant and his last-

12 known address according to the life insurance corporation's
13 records;

14 (3) The nature and identifying number, if any, or descrip-
15 tion of the property and the amount appearing from the records
16 to be due, except that items of value under fifty dollars
17 each may be reported in aggregate;

18 (4) The date when the property became payable, demand-
19 able, or returnable, and the date of the last transaction with
20 the owner with respect to the property; and

21 (5) Other information which the state treasurer prescribes
22 by rule as necessary for the administration of this article.

23 (c) If the person holding property presumed abandoned is
24 a successor to other persons who previously held the property
25 for the owner, or if the holder has changed his name while
26 holding the property, he shall file with his report all prior
27 known names and addresses of each holder of the property.

28 (d) The report shall be filed before November first of
29 each year as of June thirtieth next preceding, but the report
30 of life insurance corporations shall be filed before May first
31 of each year as of December thirty-first next preceding. The
32 state treasurer may postpone the reporting date upon written
33 request by any person required to file a report.

34 (e) If the holder of property presumed abandoned under
35 this article knows the whereabouts of the owner and if the
36 owner's claim has not been barred by the statute of limita-
37 tions, the holder shall, before filing the annual report, attempt
38 to communicate with the owner so that the owner may take
39 necessary steps to prevent abandonment from being presumed.
40 A notice from the holder to the owner sent to the owner's
41 last-known address by United States mail, postage prepaid,
42 shall satisfy the requirements of this subsection (e).

43 (f) Verification, if made by a partnership, shall be executed
44 by a partner; if made by an unincorporated association or
45 private corporation, by an officer, and if made by a public
46 corporation, by its chief fiscal officer.

47 (g) The initial report filed under this article shall include

48 all items of property which, under the provisions hereof,
49 would have been presumed abandoned on the effective date
50 of this article had this article been in effect on July one, one
51 thousand nine hundred fifty-two.

52 (h) The state treasurer may at reasonable times and upon
53 reasonable notice examine the records of any person if he
54 has reason to believe that the person has failed to report
55 property that should have been reported pursuant to this
56 section.

57 If an examination of the records of a person results in
58 disclosure of property reportable and deliverable under this
59 section, the treasurer may assess the cost of the examination
60 against the holder at a rate established by administrative
61 regulation promulgated pursuant to chapter twenty-nine-a of
62 this code, but in no case may the charges exceed the value
63 of the property found to be reportable and deliverable.

§36-8-12a. Records of abandoned property confidential except as to persons with claim.

1 Records of abandoned property kept by the state treasurer
2 are available for inspection and copying only by an owner of
3 such property as to the particular property he owns, or by his
4 personal representative, next of kin, attorney at law, or such
5 persons entitled to inherit from the owner conducting a legal
6 audit thereof. These records are exempt from the provisions
7 of chapter twenty-nine-b of the code.

§36-8-17. Sale of abandoned property.

1 (a) All abandoned property other than money delivered to
2 the state treasurer under this article shall as soon as practic-
3 able after the delivery be sold by him to the highest bidder at
4 public sale in whatever city in the state affords in his judg-
5 ment the most favorable market for the property involved. The
6 state treasurer may decline the highest bid and reoffer the
7 property for sale if he considers the price bid insufficient. He
8 need not offer any property for sale if, in his opinion, the prob-
9 able cost of sale exceeds the value of the property.

10 (b) Any sale held under this section shall be preceded by
11 a publication of notice thereof as a Class I legal advertisement
12 in compliance with the provisions of article three, chapter

13 fifty-nine of this code, and the publication area for such publi-
14 cation shall be the county where the property is to be sold. The
15 publication shall be at least three weeks in advance of sale.

16 (c) The purchaser at any sale conducted by the state trea-
17 surer pursuant to this article shall receive title to the property
18 purchased, free from all claims of the owner or prior holder
19 thereof and of all persons claiming through or under them.
20 The state treasurer shall execute all documents necessary to
21 complete the transfer of title.

**§36-8-23a. Interstate agreements and cooperation; joint and recip-
rocal actions with other states.**

1 (a) The treasurer may enter into agreements with other
2 states to exchange information needed to enable this or another
3 state to audit or otherwise determine unclaimed property
4 that it or another state may be entitled to subject to a claim
5 of custody. The treasurer by rule may require the reporting of
6 information needed to enable compliance with agreements
7 made pursuant to this section and prescribe the form.

8 (b) To avoid conflicts between the treasurer's procedures
9 and the procedures of administrators in other jurisdictions the
10 treasurer shall, so far as is consistent with the purposes, policies
11 and provisions of this article before adopting, amending or
12 repealing rules, advise and consult with administrators in
13 other jurisdictions and take into consideration the rules of
14 those other administrators in other jurisdictions.

15 (c) The treasurer may join with other states to seek en-
16 forcement of this article against any person who is or may be
17 holding property reportable under this article.

CHAPTER 2

(Com. Sub. for S. B. 149—By Mr. Wright and Mr. Heck)

[Passed March 1, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section six-a, relating to the limitation of actions and

suits seeking recovery for deficiencies, injuries or wrongful death resulting from any improvements to real property.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. LIMITATION OF ACTIONS AND SUITS.

§55-2-6a. Deficiencies, injuries or wrongful death resulting from any improvements to real property; limitation of actions and suits.

1 No action, whether in contract or in tort, for indemnity
2 or otherwise, nor any action for contribution or indem-
3 nity to recover damages for any deficiency in the plan-
4 ning, design, surveying, observation or supervision of any
5 construction or the actual construction of any improve-
6 ment to real property, or, to recover damages for any
7 injury to real or personal property, or, for an injury to a
8 person or for bodily injury or wrongful death arising out
9 of the defective or unsafe condition of any improvement
10 to real property, may be brought more than ten years
11 after the performance or furnishing of such services or
12 construction: *Provided*, That the above period shall be
13 tolled according to the provisions of section twenty-one
14 of this article. The period of limitation provided in this
15 section shall not commence until the improvement to the
16 real property in question has been occupied or accepted
17 by the owner of real property, whichever occurs first.

CHAPTER 3

(Com. Sub. for H. B. 1209—By Mr. Whitlow)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding

thereto a new article, designated article three-a, relating to terminating a tenancy for wrongful occupation of residential property; petition for relief; defenses available; and proceedings in court.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3A. REMEDIES FOR WRONGFUL OCCUPATION OF RESIDENTIAL RENTAL PROPERTY.

§55-3A-1. Petition for summary relief for wrongful occupation of residential rental property.

§55-3A-2. Defenses available.

§55-3A-3. Proceedings in court; final order.

§55-3A-1. Petition for summary relief for wrongful occupation of residential rental property.

1 (a) A person desiring to remove a tenant from residential
2 rental property may apply for such relief to the magistrate
3 court or the circuit court of the county in which such property
4 is located, by verified petition, setting forth the following:

5 (1) That he is the owner or agent of the owner and as such
6 has a right to recover possession of the property;

7 (2) A brief description of the property sufficient to identify
8 it;

9 (3) That the tenant is wrongfully occupying such property
10 in that the tenant is in arrears in the payment of rent, has
11 breached a warranty or a leasehold covenant, or has deliber-
12 ately or negligently damaged the property or knowingly per-
13 mitted another person to do so, and describing such arrearage,
14 breach, or act or omission; and

15 (4) A prayer for possession of the property.

16 (b) Previous to the filing of the petition the person shall
17 request from the court the time and place at which the peti-
18 tioner shall be heard. The court shall fix a time for such
19 hearing, which time shall not be less than five nor more than
20 ten judicial days following such request.

21 (c) Immediately upon being apprised of the time and
22 place for hearing the petitioner shall cause a notice of the
23 same to be served upon the tenant in accordance with the
24 provisions of Rule 4 of the West Virginia Rules of Civil
25 Procedure or by certified mail, return receipt requested.
26 Such notice shall inform the tenant that any defense to the
27 petition must be submitted in writing to the petitioner within
28 five days of the receipt by the tenant of the notice, and in
29 no case later than the fifth day next preceding the date of
30 hearing. Upon receipt of the return of service or the return
31 receipt as the case may be, evidencing service upon the tenant,
32 the petitioner shall file with the court his petition and such
33 proof of service.

§55-3A-2. Defenses available.

1 In a proceeding under the provisions of this article, a
2 tenant against whom a petition has been brought may assert
3 any and all defenses which might be raised in an action for
4 ejectment or an action for unlawful detainer.

§55-3A-3. Proceedings in court; final order.

1 (a) If at the time of the hearing there has been no appear-
2 ance, answer or other responsive pleading filed by the tenant,
3 the court shall make and enter an order granting immediate
4 possession of the property to the petitioner.

5 (b) In the case of a petition alleging arrearage in rent,
6 if the tenant shall file an answer raising the defense of breach
7 by the landlord of a material covenant upon which the duty to
8 pay rent depends, the court shall proceed to a hearing on such
9 issues.

10 (c) In the case of a petition alleging a breach by the
11 tenant or damage to the property, if the defendant shall file
12 an answer raising defenses to the claim or claims set forth
13 in the petition the court shall proceed to a hearing on such
14 issues.

15 (d) Continuances of the hearing provided for in this sec-
16 tion shall be for cause only and the judge or magistrate

17 shall not grant a continuance to either party as a matter of
18 right. If a continuance is granted upon request by a tenant,
19 the tenant shall be required to pay into court any periodic
20 rent becoming due during the period of such continuance.

21 (e) At the conclusion of a hearing held under the pro-
22 visions of subsection (b) or (c) of this section if the court
23 shall find that the tenant is in wrongful occupation of the
24 rental property the court shall make and enter an order grant-
25 ing immediate possession of the property to the petitioner.
26 In the case of a proceeding under subsection (a) of this section
27 the court may also make a written finding and include in its
28 order such relief on the issue of arrearage in the payment of
29 rent as the evidence may require. Any moneys paid into court
30 by the tenant in accordance with the provisions of this section
31 may be ordered to be disbursed to the parties as may be
32 appropriate under the findings of the court.

33 (f) Taking into consideration such factors as the nature
34 of the property (i.e., furnished or unfurnished) the possibility
35 of relative harm to the parties and other material facts deemed
36 relevant by the court in considering the time in which the
37 tenant might reasonably be expected to vacate the premises,
38 the court shall in its order specify the time by which the
39 tenant must remove himself from the property. The order
40 shall further provide that if the tenant still wrongfully oc-
41 cupies the property beyond such time the sheriff shall forth-
42 with remove him, taking such precautions as are necessary to
43 guard against damage to the property of the landlord and the
44 tenant.

45 (g) Absent an issue of title, retaliation, or breach of warran-
46 ty, and in the event of an appeal wherein the tenant prevails,
47 if the term of the lease has expired the relief ordered by the
48 appellate court shall be for monetary damages only and shall
49 not restore the tenant to possession. During the pendency of
50 any such appeal no tenant shall be entitled to remain in pos-
51 session of the leasehold if the period of the tenancy has other-
52 wise expired.

CHAPTER 4

(Com. Sub. for S. B. 146—By Mr. Boettner and Mr. Jones)

[Passed March 1, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article seven, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section sixteen, relating to limitation on liability of food donor; providing exemption from civil liability for food donors who donate food to nonprofit, religious or charitable organizations in certain cases; providing for exceptions thereto; and providing that authority to inspect is not limited.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. ACTIONS FOR INJURIES.

§55-7-16. Limiting liability of food donors; exemption from civil liability in certain cases; exceptions; authority to inspect not limited.

1 Any farmer, processor, distributor, wholesaler or re-
2 tailer of food or other person who donates food in good
3 faith to any nonprofit, religious or charitable organiza-
4 tion which is exempt from taxation under 26 U.S.C.
5 §501(c)(3) or (4), which maintains a food storage ware-
6 house or facility regulated by the state department of
7 agriculture, the state department of health and, where
8 required, by local ordinance, and which receives and
9 utilizes such donated food for free use or free distribution
10 to the ultimate consumer thereof, is exempt from civil
11 liability arising from any injury or death resulting from
12 the nature, age, condition or packaging of the donated
13 food: *Provided*, That the exemption of this section does not
14 apply in the event that the injury or death is the direct

15 and proximate result of the gross negligence, or the will-
16 ful, wanton or reckless misconduct or the intentional act
17 of the donor. Nothing contained herein limits liability
18 on the part of any donee nonprofit or charitable or re-
19 ligious organization which accepts items of donated
20 food under this section nor restricts the authority of the
21 state department of agriculture, the state department of
22 health or any county or municipal health officer to regu-
23 late, inspect or ban the use of such donated food for
24 human consumption.

CHAPTER 5

(S. B. 585—By Mrs. Chace, Mr. Kaufman, Mr. White, Mr. Tonkovich,
Mr. Boettner and Mr. Tucker)

[Passed March 11, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twenty-eight, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section ten, relating to the limitation of actions and suits for damages resulting from exposure to chemical defoliants and herbicides.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 28. ASSISTANCE TO KOREAN AND VIETNAM VETERANS EXPOSED TO CERTAIN CHEMICAL DEFOLIANTS OR HERBICIDES OR OTHER CAUSATIVE AGENTS, INCLUDING AGENT ORANGE.

§16-28-10. Limitation of actions and suits.

1 An action to recover damages under the provisions of
2 this article for personal injury caused by contact with or
3 exposure to chemical defoliants or herbicides, including

4 agent orange, during either the Korean or Vietnam con-
5 flict, may be commenced within two years from the date
6 of discovery of such injury, or within two years from the
7 date when through the exercise of reasonable diligence
8 the cause of such injury should have been discovered,
9 whichever is later.

10 Every cause of action for an injury or death caused by
11 contact with or exposure to chemical defoliants or her-
12 bicides, including agent orange, during either the Korean
13 or Vietnam conflict, which is barred as of the effective
14 date of this section because the applicable period of
15 limitation has expired is hereby revived and an action
16 thereon may be commenced and prosecuted provided such
17 action is commenced within two years of the effective
18 date of this section.

CHAPTER 6

(S. B. 542—By Mr. Tucker)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article thirteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section thirteen, article sixteen, chapter eleven of said code; to amend and reenact sections eight and twelve, article two, chapter seventeen-b of said code; to amend and reenact section one, article four of said chapter seventeen-b; to amend and reenact sections nine-d, thirteen, twenty, twenty-one and twenty-two, article three, chapter sixty of said code; to amend and reenact section three, article four of said chapter sixty; to amend and reenact sections six and nine, article six of said chapter sixty; to amend and reenact section twelve, article seven of said chapter sixty; and to amend and reenact sections three, twenty, twenty-three and thirty-four, article eight of said chapter sixty, all relating to the sale of nonintoxicating beer, wine and intoxicating liquors; authorizing municipalities to collect the tax on

intoxicating liquors and imposing such tax on distributors licensed to sell or distribute wine; describing unlawful acts by licensees of nonintoxicating beer and prohibiting the sale of nonintoxicating beer to persons under the age of nineteen with certain exceptions and establishing a penalty therefor; requiring the use of specific identification of persons under the age of twenty-one years when purchasing nonintoxicating beer; permitting brewers to sponsor amateur athletic events and provide prizes therefor; providing for the issuance and contents of licenses and nonoperator's identification by the department of motor vehicles, and describing how such licenses and identifications may be renewed; defining unlawful uses of licenses and nonoperator's identifications and making such uses misdemeanors punishable by penalty of law; authorizing a tax on intoxicating liquors and wine sold outside the corporate limits of municipalities for the use and benefit of counties and municipalities; providing for restrictions on the display or distribution of advertising matter in stores or agencies of the alcohol beverage control commissioner and removing the restriction on the display of alcoholic liquor; providing for sales of alcoholic liquors to be by cash and other modes of payment; increasing the limitation on the amount of alcoholic liquor which can be sold to a person at one time; prohibiting the sales of alcoholic liquors to certain persons and specifically prohibiting the sale of alcoholic liquors to persons less than nineteen years of age with certain exceptions; requiring the use of specific identification for persons under the age of twenty-one years who purchase alcoholic liquors; describing those persons to whom manufacturers of alcoholic liquors may sell such liquors to and providing an exception for farm wineries; restricting the alcohol beverage control commissioner from prohibiting a farm winery licensee from advertising a particular brand of wine and the price thereof; increasing the quantity of alcoholic liquor which may be brought into or transported in this state; describing offenses relating to intoxication, drinking in public places and illegally possessing alcoholic liquor and specifically defining an offense for a person under the age of nineteen to purchase or attempt to purchase alcoholic liquor, wine or nonintoxicating beer and prescribing penalties for such offenses; establishing that for the crime of public

intoxication only, a diagnosis of alcoholism shall be proof of lack of criminal responsibility and shall result in a finding of not guilty by reason of addiction and the initiation of involuntary commitment proceedings; providing prohibitions regarding intoxication or drinking in public places; providing for the crime of public intoxication, various actions by a law-enforcement officer after an arrest without a warrant, presentment before a judicial officer, options available to such officer concerning detention of incapacitated persons; providing for minimum fines, imprisonment or counseling for various offenses; providing for the licensing of private clubs, and defining unlawful acts for such licensees and establishing penalties therefor; specifically prohibiting the sale, giving away or procurement of alcoholic liquors by a person under the age of nineteen years, with certain exceptions; establishing a penalty therefor; specifically prohibiting a licensee from permitting consumption by or serving of alcoholic liquors to a person under the age of nineteen years with certain exceptions; prescribing a penalty therefor; providing for the sale of wines and the license fees and general restrictions applicable to distributors and retailers of wine; providing for the issuance of a wine tasting license by the commissioner; authorizing certain Class A retailer dealers in nonintoxicating beer to also be licensed as a wine retailer under certain limited circumstances; authorizing wine retailers to hold a wine tasting license and to serve complimentary samples of wine in moderate quantities at times and places where the general public is excluded; defining unlawful acts for distributors and retailers of wine and prescribing penalties therefor; specifically defining the offense of selling, furnishing or giving wine to a person less than nineteen years of age with certain exceptions; prescribing a penalty therefor; requiring the display of specific identification by persons under the age of twenty-one when purchasing wine; describing the duties and powers of the commissioner with respect to the sale of wine; specifically authorizing the commissioner to restrict the content of wine advertising; providing that the commissioner shall not prohibit the advertising of a particular brand or brands of wine and the price thereof; describing the conditions under which retail sales of wine

are prohibited; defining the unlawful offenses of selling or delivering wine on certain election days or between certain hours, which such unlawful acts are subject to penalties.

Be it enacted by the Legislature of West Virginia:

That section seven, article thirteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section thirteen, article sixteen, chapter eleven of said code be amended and reenacted; that sections eight and twelve, article two, chapter seventeen-b of said code be amended and reenacted; that section one, article four of said chapter seventeen-b be amended and reenacted; that sections nine-d, thirteen, twenty, twenty-one and twenty-two, article three, chapter sixty of said code be amended and reenacted; that section three, article four of said chapter sixty be amended and reenacted; that sections six and nine, article six of said chapter sixty be amended and reenacted; that section twelve, article seven of said chapter sixty be amended and reenacted; and that sections three, twenty, twenty-three and thirty-four, article eight of said chapter sixty be amended and reenacted, all to read as follows:

Chapter

8. Municipal Corporations.

11. Taxation.

17B. Motor Vehicle Operators' and Chauffeurs' Licenses.

60. State Control of Alcoholic Liquors.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 13. TAXATION AND FINANCE.

§8-13-7. Tax on purchases of intoxicating liquors in municipalities; private club fees.

1 Every municipality shall have plenary power and
 2 authority to levy and collect a tax upon all purchases within
 3 such municipality of intoxicating liquors from the alcohol
 4 beverage control commissioner, from any person licensed to
 5 sell wine at retail to the public under the provisions of
 6 article eight, chapter sixty of this code, or from distributors
 7 licensed to sell or distribute wine pursuant to said article
 8 eight: *Provided*, That no municipality shall have authority
 9 to levy or collect any such tax on the intoxicating liquors
 10 sold by or purchased from holders of a license issued under

11 the provisions of article seven, chapter sixty of this code.
12 The tax shall be levied upon the purchaser and shall be
13 added to and collected with the price of purchase. The tax
14 shall not exceed five percent of the purchase price.

15 A copy of any ordinance imposing the tax authorized by
16 this section shall be certified by the mayor of the
17 municipality to the West Virginia alcohol beverage control
18 commissioner and to the tax commissioner. The West
19 Virginia alcohol beverage control commissioner by
20 appropriate rules and regulations shall provide for the
21 collection of such tax upon all purchases within such
22 municipality of intoxicating liquors from the alcohol
23 beverage control commissioner, from any person licensed to
24 sell wine at retail pursuant to the provisions of article eight,
25 chapter sixty of this code, or from distributors licensed to
26 sell or distribute wine pursuant to said article eight, and for
27 distribution thereof to the respective municipalities for
28 which the same shall be collected. Such rules and
29 regulations shall provide that all such taxes shall be
30 deposited with the state treasurer and distributed quarterly
31 by the treasurer upon warrants of the auditor payable to the
32 municipality.

33 Every municipality shall have plenary power and
34 authority to levy and collect a fee from any private club
35 licensee whose premises are situate therein as authorized in
36 section seven, article seven, chapter sixty of this code.

CHAPTER 11. TAXATION.

ARTICLE 16. NONINTOXICATING BEER.

§11-16-13. Unlawful acts of licensees; penalties.

1 It shall be unlawful:

2 (a) For any licensee, his, its or their servants, agents or
3 employees to sell, give or dispense, or any individual to
4 drink or consume, in or on any licensed premises or in any
5 rooms directly connected therewith, nonintoxicating beer
6 on weekdays between the hours of two o'clock a.m., and
7 seven o'clock a.m., or between the hours of two o'clock a.m.,
8 and one o'clock p.m., on any Sunday, except in private clubs
9 licensed under the provisions of article seven, chapter sixty
10 of this code, where the hours shall conform with the hours of
11 sale of alcoholic liquors;

12 (b) For any licensee, his, its or their servants, agents or
13 employees, to sell, furnish or give any nonintoxicating beer
14 to any person under the age of nineteen unless the person is
15 at least eighteen years of age as of the first day of July, one
16 thousand nine hundred eighty-three, or to any person
17 visibly or noticeably intoxicated, or to any insane person, or
18 to any habitual drunkard;

19 (c) On and after the first day of October, one thousand
20 nine hundred eighty-three, for any licensee, his, its or their
21 servants, agents or employees, to sell, furnish or give any
22 nonintoxicating beer to any person who is less than twenty-
23 one years of age unless such person under the age of twenty-
24 one years first displays a valid operator's license,
25 chauffeur's license or nonoperator's identification, issued
26 to such person under the provisions of section eight, article
27 two, chapter seventeen-b of this code;

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

38 (e) For any brewer or distributor or his, its or their
39 agents, to transport or deliver nonintoxicating beer to any
40 retail licensee on Sunday;

41 (f) For any brewer or distributor to give, furnish, rent or
42 sell any equipment, fixtures, signs or supplies directly or
43 indirectly or through a subsidiary or affiliate to any licensee
44 engaged in selling products of the brewing industry at
45 retail, or to offer any prize, premium, gift, or other similar
46 inducement, except advertising matter of nominal value, to
47 either trade or consumer buyers: *Provided*, That a
48 distributor may offer, for sale or rent, tanks of carbonic gas.
49 Nothing herein contained shall prohibit a brewer from
50 sponsoring any amateur athletic event or from providing
51 prizes or awards for participants and winners in any such
52 events: *Provided, however*, That no such event shall be

53 sponsored which permits actual participation by athletes or
54 other persons who are minors;

55 (g) For any licensee to transport, sell, deliver or
56 purchase any nonintoxicating beer or product of the
57 brewing industry upon which there shall appear a label or
58 other informative data which in any manner refers to the
59 alcoholic content of such beer or product of the brewing
60 industry, or upon the label of which there appears the word
61 or words "strong," "full strength," "extra strength,"
62 "prewar strength," "high test" or other similar expressions
63 bearing upon the alcoholic content of such product of the
64 brewing industry, or which refers in any manner to the
65 original alcoholic strength, extract or balling proof from
66 which such beverage was produced, except that such label
67 shall state the alcoholic content thereof;

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

70 (i) For any licensee except the holder of a license to
71 operate a private club issued under the provisions of article
72 seven, chapter sixty of this code, to possess a federal license,
73 tax receipt or other permit entitling, authorizing or
74 allowing such licensee to sell liquor or alcoholic drinks;

75 (j) For any licensee to obstruct the view of the interior of
76 his premises by enclosure, lattice, drapes or any means
77 which would prevent plain view of the patrons occupying
78 such premises. The interior of all licensed premises shall be
79 adequately lighted at all times: *Provided*, That provisions
80 of this subdivision shall not apply to the premises of a Class
81 B retailer or to the premises of a private club licensed under
82 the provisions of article seven, chapter sixty of this code;

83 (k) For any licensee to manufacture, import, sell, trade,
84 barter, possess or acquiesce in the sale, possession or
85 consumption of any alcoholic liquors on the premises
86 covered by such license or on premises directly or indirectly
87 used in connection therewith: *Provided*, That the
88 prohibitions contained in this subdivision with respect to
89 the selling or possessing or to the acquiescence in the sale,
90 possession or consumption of alcoholic liquors shall not be
91 applicable with respect to the holder of a license to operate
92 a private club issued under the provisions of article seven,
93 chapter sixty of this code;

94 (l) For any licensee to print, paint or place upon the
95 door, window, or in any other public place in or about the
96 premises, the word "saloon" or word of similar character or
97 nature, or for the word "saloon" or similar words to be used
98 in any advertisement by the licensee;

99 (m) For any retail licensee to sell or dispense
100 nonintoxicating beer purchased or acquired from any
101 source other than a licensed distributor or brewer under the
102 laws of this state;

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

112 (o) For any person whose license has been revoked, as in
113 this article provided, to obtain employment with any
114 retailer within the period of one year from the date of such
115 revocation, or for any retailer to employ knowingly any
116 such person within such time;

117 (p) For any distributor to sell, possess for sale, transport
118 or distribute nonintoxicating beer except in the original
119 container;

120 (q) For any licensee to permit any act to be done upon
121 the licensed premises, the commission of which constitutes
122 a crime under the laws of this state;

123 (r) For any Class B retailer to permit the consumption of
124 nonintoxicating beer upon his licensed premises;

125 (s) For any licensee, his, its or their servants, agents or
126 employees, or for any licensee by or through such servants,
127 agents or employees, to allow, suffer or permit any person
128 under the age of eighteen years to loiter in or upon any
129 licensed premises; except, however, that the provisions of
130 this subdivision shall not apply where such person under
131 the age of eighteen years, is in, or upon such premises in the
132 immediate company of his or her parent or parents, or

133 where and while such person under the age of eighteen
 134 years is in, on or upon such premises for the purpose of and
 135 actually making a lawful purchase of any items or
 136 commodities therein sold, or for the purchase of and
 137 actually receiving any lawful service therein rendered,
 138 including the consumption of any item of food, drink or soft
 139 drink therein lawfully prepared and served or sold for
 140 consumption on such premises.

141 Any person who violates any provision of this article or
 142 who makes any false statement concerning any material
 143 fact in submitting application for license or for a renewal of
 144 a license or in any hearing concerning the revocation
 145 thereof, or who commits any of the acts herein declared to
 146 be unlawful, shall be guilty of a misdemeanor, and shall be
 147 punished for each offense by a fine of not less than twenty-
 148 five nor more than five hundred dollars, or imprisoned in
 149 the county jail for not less than thirty days or more than six
 150 months, or by both fine and imprisonment in the discretion
 151 of the court. Magistrates shall have concurrent jurisdiction
 152 with the circuit court, and any other courts having criminal
 153 jurisdiction in their county, for the trial of all
 154 misdemeanors arising under this article.

CHAPTER 17B. MOTOR VEHICLE OPERATORS' AND CHAUFFEURS' LICENSES.

Article

2. Issuance of License, Expiration and Renewal.

4. Violation of License Provisions.

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-8. Issuance and contents of licenses and nonoperator's identification;
 fees.

§17B-2-12. Expiration of licenses and nonoperator's identification; renewal;
 renewal fees.

§17B-2-8. Issuance and contents of licenses and nonoperator's identification; fees.

1 (a) (1) The department shall, upon payment of the
 2 required fee, issue to every applicant qualifying therefor an
 3 operator's or chauffeur's license which license shall contain
 4 a coded number assigned to the licensee, the full name, date
 5 of birth, residence address, a brief description and a color
 6 photograph of the licensee and either a facsimile of the
 7 signature of the licensee or a space upon which the

8 signature of the licensee shall be written with pen and ink
9 immediately upon receipt of the license. No license shall be
10 valid until it has been so signed by the licensee. The
11 department shall use such process or processes in the
12 issuance of licenses that will, insofar as possible, prevent
13 any alteration, counterfeiting, duplication, reproduction,
14 forging or modification of, or the superimposition of a
15 photograph on, such license.

16 (2) The fee for the issuance of an operator's license shall
17 be ten dollars. The fee for the issuance of a chauffeur's
18 license shall be fifteen dollars.

19 (3) The department of motor vehicles shall mark any
20 license which is reissued following a suspension of a
21 person's license to operate a motor vehicle in this state with
22 the type of violation for which the original license was
23 suspended and shall indicate the date of the violation. For
24 purposes of this section, any conviction under the
25 provisions of subsections (a) and (b) of the prior enactment
26 of section two, article five, chapter seventeen-c of this code
27 which offense was committed within a period of five years
28 immediately preceding the effective date of the present
29 section two, article five, chapter seventeen-c, shall be
30 treated as a violation to which this section is applicable and
31 suspensions based on such convictions shall be marked on
32 licenses which are hereafter issued.

33 (b) (1) For the purposes of this subsection, a "qualified
34 nonoperator" shall mean any citizen of this state who has
35 not had issued to him a current operator's or chauffeur's
36 license, or any person enrolled as a full-time student at an
37 institution of higher education or an accredited vocational
38 or trade school in this state who (A) is under the age of
39 twenty-one years, (B) is residing in this state but is
40 domiciled in another state, and (C) who may or may not hold
41 a valid operator's or chauffeur's license from such other
42 state.

43 (2) On and after the first day of August, one thousand
44 nine hundred eighty-three, the department shall, upon
45 payment of the same fee required for the issuance of an
46 operator's license, issue to any qualified nonoperator
47 applying therefor a nonoperator's identification which
48 shall be in a similar form to, and shall contain the same

49 information as contained in, a license issued under
50 subsection (a) of this section: *Provided*, That in addition to
51 having printed thereon the words "West Virginia Non-
52 operator's Identification," the identification shall be coded
53 by color or otherwise to make it clearly distinguishable
54 from an operator's or chauffeur's license. The department
55 shall use such process or processes in the issuance of
56 identifications that will, insofar as possible, prevent any
57 alteration, counterfeiting, duplication, reproduction,
58 forging or modification of, or the superimposition of a
59 photograph on, such identifications.

**§17B-2-12. Expiration of licenses and nonoperator's identifica-
tion; renewal; renewal fees.**

1 (a) (1) Every operator's license and every chauffeur's
2 license shall expire four years from the date of its issuance,
3 except that the operator's or chauffeur's license of any
4 person in the armed forces shall be extended for a period of
5 six months from the date the person is separated under
6 honorable circumstances from active duty in the armed
7 forces.

8 (2) A person who allows his operator's or chauffeur's
9 license to expire may apply to the department for renewal
10 thereof. Application shall be made upon a form furnished
11 by the department and shall be accompanied by payment of
12 the fee required by section eight of this article plus an
13 additional fee of one dollar and fifty cents. The
14 commissioner shall determine whether such person
15 qualifies for a renewed license and may, in his discretion,
16 renew any expired license without examination of the
17 applicant.

18 (3) Each renewal of an operator's or chauffeur's license
19 shall contain a new color photograph of the licensee. By
20 first class mail to the address last known to the department,
21 the commissioner shall notify each person who holds a valid
22 operator's or chauffeur's license of the expiration date of
23 the license. The notice shall be mailed at least thirty days
24 prior to the expiration date of the license and shall include a
25 renewal application form.

26 (b) Every nonoperator's identification shall expire
27 four years from the date of its issuance, except that an
28 identification issued to a person not domiciled in this state

29 who is a full-time student shall expire four years from the
30 date of its issuance or upon such person's attaining the age
31 of twenty-one years, whichever is sooner. A nonoperator's
32 identification may be renewed in the same manner and for
33 the same fees as an operator's license.

ARTICLE 4. VIOLATION OF LICENSE PROVISIONS.

§17B-4-1. Unlawful use of license or nonoperator's identification; license and nonoperator's identification violations generally.

1 It is a misdemeanor for any person to commit any one of
2 the following acts:

3 (1) To display or cause or permit to be displayed or have
4 in his possession any canceled, revoked, suspended,
5 fictitious, or fraudulently altered operator's or chauffeur's
6 license or nonoperator's identification;

7 (2) To lend his operator's or chauffeur's license or non-
8 operator's identification to any other person or knowingly
9 permit the use thereof by another;

10 (3) To display or represent as one's own any operator's
11 or chauffeur's license or nonoperator's identification not
12 issued to him;

13 (4) To fail or refuse to surrender to the department upon
14 its lawful demand any operator's or chauffeur's license or
15 nonoperator's identification which has been suspended,
16 revoked or canceled;

17 (5) To use a false or fictitious name in any application
18 for an operator's or chauffeur's license or nonoperator's
19 identification or to knowingly make a false statement or to
20 knowingly conceal a material fact or otherwise commit a
21 fraud in any such application;

22 (6) To permit any unlawful use of an operator's or
23 chauffeur's license or nonoperator's identification issued
24 to him; or

25 (7) To do any act forbidden or fail to perform any act
26 required by this chapter.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

Article

3. Sales by Commissioner.
4. Licenses.
6. Miscellaneous Provisions.
7. Licenses to Private Clubs.
8. Sale of Wines.

ARTICLE 3. SALES BY COMMISSIONER.

- §60-3-9d. Tax on purchases of intoxicating liquors outside corporate limits of municipalities.
- §60-3-13. Advertising or recommendation of brands prohibited.
- §60-3-20. Sales; mode of payment.
- §60-3-21. Limitation of amount to be sold.
- §60-3-22. Sales to certain persons prohibited.

§60-3-9d. Tax on purchases of intoxicating liquors outside corporate limits of municipalities.

1 For the purpose of providing financial assistance to and
2 for the use and benefit of the various counties and
3 municipalities of this state, there is hereby levied a tax upon
4 all purchases outside the corporate limits of any
5 municipality of intoxicating liquor from state stores or
6 other agencies of the alcohol beverage control
7 commissioner, of wine from any person licensed to sell wine
8 at retail under the provisions of article eight, chapter sixty
9 of this code, and of wine from distributors licensed to sell or
10 distribute wine under the provisions of said article eight.
11 The tax shall be five percent of the purchase price and shall
12 be added to and collected with the purchase price by the
13 commissioner, by the person licensed to sell wine at retail,
14 or by the distributor licensed to sell or distribute wine, as
15 the case may be: *Provided*, That no such tax shall be
16 collected on the intoxicating liquors sold by or purchased
17 from holders of a license issued under the provisions of
18 article seven of this chapter.

19 All such tax collected within one mile of the corporate
20 limits of any municipality within the state shall be remitted
21 to such municipality; all other tax so collected shall be
22 remitted to the county wherein collected: *Provided*, That
23 where the corporate limits of more than one municipality be
24 within one mile of the place of collection of such tax, all
25 such tax collected shall be divided equally among each of

26 said municipalities: *Provided, however,* That such mile is
27 measured by the most direct hard surface road or access
28 way usually and customarily used as ingress and egress to
29 the place of tax collection.

30 The West Virginia alcohol beverage control commissioner
31 by appropriate rules and regulations shall provide for the
32 collection of such tax upon all purchases outside the
33 corporate limits of any municipality of intoxicating liquor
34 from state stores or other agencies of the alcohol beverage
35 control commissioner, separation or proration of the same
36 and distribution thereof to the respective counties and
37 municipalities for which the same shall be collected. The
38 tax commissioner by appropriate rules and regulations
39 shall provide for the collection of such tax upon all
40 purchases outside the corporate limits of any municipality
41 of wine from any person licensed to sell wine at retail under
42 the provisions of article eight, chapter sixty of this code, or
43 from distributors licensed to sell or distribute wine under
44 the provisions of said article eight, and shall also provide
45 for separation or proration of the same and distribution
46 thereof to the respective counties and municipalities for
47 which the same shall be collected. Such rules and
48 regulations shall provide that all such taxes shall be
49 deposited with the state treasurer and distributed quarterly
50 by the treasurer upon warrants of the auditor payable to the
51 counties and municipalities.

§60-3-13. Advertising or recommendation of brands prohibited.

1 A store or agency shall not display or distribute any
2 advertising matter, nor shall a person employed in a state
3 store or agency advertise or recommend any type, class or
4 brand of alcoholic liquors.

§60-3-20. Sales; mode of payment.

1 The sale of alcoholic liquors in state stores and in state
2 agencies shall be for cash, money order, certified check,
3 cashier's check or traveler's check only. In the case of
4 private clubs as defined in article seven of this chapter,
5 letters of credit from banks guaranteeing payment of
6 checks may be filed with the commissioner. Filing of such

7 letters may permit the commissioner to accept the club's
8 check.

§60-3-21. Limitation on amount to be sold.

1 Not more than ten gallons of alcoholic liquor shall be sold
2 to a person at one time without the approval of the
3 commissioner or his representative; but a sale in excess of
4 ten gallons may be made to a religious organization
5 purchasing wine for sacramental purposes, and sales in case
6 lots may be made in the discretion of the commissioner:
7 *Provided*, That this section shall not apply to private clubs
8 as defined in article seven of this chapter.

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

1 (a) Alcoholic liquors shall not be sold to a person who is:
2 (1) Less than nineteen years of age, unless the person is
3 at least eighteen years of age as of the first day of July, one
4 thousand nine hundred eighty-three;
5 (2) An habitual drunkard;
6 (3) Intoxicated;
7 (4) Addicted to the use of narcotic drugs;
8 (5) Mentally incompetent.
9 (b) On and after the first day of October, one thousand
10 nine hundred eighty-three, alcoholic liquors shall not be
11 sold to any person who is less than twenty-one years of age
12 unless such person under the age of twenty-one years first
13 displays a valid operator's license, chauffeur's license or
14 nonoperator's identification, issued to such person under
15 the provisions of section eight, article two, chapter
16 seventeen-b of this code.

ARTICLE 4. LICENSES.

§60-4-3. To whom licensed manufacturer may sell.

1 A person who is licensed to manufacture alcoholic liquors
2 in this state may sell such liquors in this state only to the
3 West Virginia alcohol beverage control commissioner, and
4 to wholesalers and retailers licensed as provided in this
5 chapter: *Provided*, That a holder of a farm winery license
6 may sell wines manufactured by it in this state in
7 accordance with the provisions of section two, article six of
8 this chapter. Hours of retail sale by a farm winery shall be

9 subject to regulation by the commissioner. The
10 commissioner shall not promulgate any rule or regulation
11 which prohibits the holder of a farm winery license from the
12 advertising of a particular brand or brands of wine
13 produced by it, and the price thereof: *Provided, however,*
14 That price shall not be advertised in a medium of electronic
15 communication subject to the jurisdiction of the federal
16 communications commission. A manufacturer may sell
17 alcoholic liquors outside of the state.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

§60-6-6. Transporting alcoholic liquor in excess of ten gallons.

§60-6-9. Intoxication or drinking in public places; illegal possession of alcoholic liquor; arrests by sheriffs or their deputies for violation in their presence.

§60-6-6. Transporting alcoholic liquor in excess of ten gallons.

1 The provisions of this chapter shall not prevent a person
2 from bringing into or transporting in this state, in his
3 possession or in his baggage, and not for resale, alcoholic
4 liquor in a quantity not to exceed ten gallons: *Provided,*
5 That upon written permission of the commissioner,
6 quantities of alcoholic liquor in excess of ten gallons may be
7 transported within this state.

***§60-6-9. Intoxication or drinking in public places; illegal possession of alcoholic liquor; arrests by sheriffs or their deputies for violation in their presence.**

- 1 (a) A person shall not:
- 2 (1) Appear in a public place in an intoxicated condition;
- 3 (2) Drink alcoholic liquor in a public place;
- 4 (3) Drink alcoholic liquor in a motor vehicle on any
5 highway, street, alley or in a public garage;
- 6 (4) Tender a drink of alcoholic liquor to another person
7 in a public place;
- 8 (5) Possess alcoholic liquor in the amount in excess of
9 ten gallons, in containers not bearing stamps or seals of the

*Clerk's Note: This section was also amended by H. B. 1540 which passed subsequent to S. B. 542.

10 commissioner, without having first obtained written
11 authority from the said commissioner therefor;

12 (6) Possess any alcoholic liquor which was
13 manufactured or acquired in violation of the provisions of
14 this chapter;

15 (7) Purchase or attempt to purchase alcoholic liquor,
16 wine or nonintoxicating beer if such person at the time of
17 the purchase or attempted purchase is under the age of
18 nineteen unless the person is at least eighteen years of age as
19 of the first day of July, one thousand nine hundred eighty-
20 three.

21 (b) Any law-enforcement officer may arrest without a
22 warrant and take the following actions against a person
23 who, in his presence, violates subdivision (1), subsection
24 (a) of this section: (1) If there is some nonintoxicated
25 person who will accept responsibility for the intoxicated
26 person, the officer may issue the intoxicated person a
27 citation specifying a date for appearance before a judicial
28 officer and release him to the custody of the individual
29 accepting responsibility: *Provided*, That the issuance of a
30 citation shall be used whenever feasible; (2) if it does not
31 impose an undue burden on the officer he may, after
32 issuance of such a citation transport the individual to the
33 individual's present residence or arrange for such
34 transportation; (3) if the individual is incapacitated or the
35 alternatives provided in subdivisions (1) and (2) of this
36 subsection are not possible, the officer shall transport or
37 arrange for transportation to the appropriate judicial
38 officer as defined by section seventeen, article eleven,
39 chapter twenty-seven of the code; or (4) if the individual is
40 incapacitated and, in the law-enforcement officer's
41 judgment, is in need of acute medical attention, that officer
42 shall arrange for transportation by ambulance or otherwise
43 to a hospital emergency room. The officer shall accompany
44 the individual until he is discharged from the emergency
45 room or admitted to the hospital. If the individual is
46 released from the emergency room, the officer may proceed
47 as described in subdivisions (1), (2) and (3) of this
48 subsection. If the individual is admitted to the hospital, the
49 officer shall issue a citation to the individual specifying a
50 date for appearance before a judicial officer.

51 (c) Upon presentment before the proper judicial officer
52 the law-enforcement officer shall serve as the chief
53 complaining witness. The judicial officer must make a
54 finding that there is probative evidence that the individual
55 may be guilty of the charge of public intoxication. If such
56 evidence is not presented, the charge shall be dismissed and
57 the individual released. If sufficient evidence is presented,
58 the judicial officer shall issue a warrant and establish bail
59 or issue a summons to the individual. Once a warrant or
60 summons has been issued, the following actions may be
61 taken: (1) If the individual is no longer incapacitated, he
62 may be released; (2) if the individual is still incapacitated
63 but a nonintoxicated person is available to accept
64 responsibility for him, he may be released to the responsible
65 person; or (3) if the individual is still incapacitated and no
66 responsible person is available, the judicial officer shall
67 proceed under the provisions of article five or six-a, chapter
68 twenty-seven of this code.

69 (d) Any law-enforcement officer is hereby authorized
70 and empowered to arrest and hold in custody, without a
71 warrant, until complaint may be made before a judicial
72 officer and a warrant or summons issued, any person who in
73 the presence of the law-enforcement officer violates any
74 one or more of subdivisions (1) through (6), subsection (a)
75 of this section: *Provided*, That the law-enforcement officer
76 may use reasonable force to prevent harm to himself, the
77 individual arrested or others in carrying out the provisions
78 of this section.

79 (e) Any person who violates subdivision (1), subsection
80 (a) of this section shall be guilty of a misdemeanor, and,
81 upon conviction thereof, shall be sentenced by a judicial
82 officer in accordance with the following options: (1) Upon
83 first offense, a fine of not less than five dollars nor more
84 than one hundred dollars and not more than sixty days in
85 jail or completion of an alcohol education program of not
86 more than six hours' duration at the nearest community
87 mental health—mental retardation center. If the
88 individual, prior to conviction, agrees to voluntarily attend
89 the alcohol education program, the judicial officer may
90 delay sentencing until the program is completed and upon
91 completion may dismiss the charges; (2) upon conviction for
92 a second offense, a fine of not less than five dollars nor more

93 than one hundred dollars and not more than sixty days in
94 jail or completion of not less than five hours of alcoholism
95 counseling at the nearest community mental health—
96 mental retardation center; (3) upon third and subsequent
97 convictions, a fine of not less than five dollars nor more than
98 one hundred dollars and not less than five nor more than
99 sixty days in jail or a fine of not less than five dollars nor
100 more than one hundred dollars and completion of not less
101 than five hours of alcoholism counseling at the nearest
102 community mental health—mental retardation center:
103 *Provided*, That three convictions for public intoxication
104 within the preceding six months shall be considered
105 evidence of alcoholism: *Provided, however*, That for the
106 educational counseling programs described in this
107 subsection the community mental health—mental
108 retardation center may charge each participant its usual
109 and customary fee and shall certify in writing to the
110 referring judicial officer the completion or failure to
111 complete the prescribed program for each individual.

112 (f) A person charged with a violation of subdivision (1),
113 subsection (a) of this section who is an alcoholic shall be
114 found not guilty by reason of addiction and proper
115 disposition made pursuant to articles five and six-a,
116 chapter twenty-seven of this code.

117 (g) Any person who violates subdivision (2), (3) or (4),
118 subsection (a) of this section shall be guilty of a mis-
119 demeanor, and, upon conviction thereof, shall be fined
120 not less than five nor more than one hundred dollars, or
121 confined in jail not more than sixty days, or both such fine
122 and imprisonment. Any person who violates subdivision (5)
123 or (6), subsection (a) of this section shall be guilty of a
124 misdemeanor, and, upon conviction, shall be fined not less
125 than one hundred dollars nor more than five hundred
126 dollars, or confined in jail not less than sixty days nor more
127 than twelve months, or both such fine and imprisonment,
128 and, upon conviction of a second or subsequent offense, he
129 shall be guilty of a felony and shall be confined in the
130 penitentiary of this state for a period of not less than one
131 year nor more than three years.

132 (h) Any person who violates subdivision seven of this
133 section is guilty of a misdemeanor, and, upon conviction

134 thereof, shall be fined not less than twenty-five dollars nor
135 more than one hundred dollars, and persons under the age
136 of eighteen years shall be liable for punishment for
137 violation of the offense described in subdivision (7),
138 subsection (a) of this section in the same manner as adults
139 inasmuch as said section does not authorize the imposition
140 of a sentence of confinement, the provisions of section one,
141 article five, chapter forty-nine of this code
142 notwithstanding.

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

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

- 1 (a) It shall be unlawful for any licensee, or agent,
2 employee or member thereof, on such licensee's premises to:
 - 3 (1) Sell or offer for sale any alcoholic liquors other than
4 from the original package or container;
 - 5 (2) Authorize or permit any disturbance of the peace;
6 obscene, lewd, immoral or improper entertainment,
7 conduct or practice; gambling or any slot machine, multiple
8 coin console machine, multiple coin console slot machine or
9 device in the nature of a slot machine;
 - 10 (3) Sell, give away, or permit the sale of, gift to, or the
11 procurement of any alcoholic liquors, for any person under
12 the age of nineteen years, unless the person is at least
13 eighteen years of age as of the first day of July, one thousand
14 nine hundred eighty-three; for any mental incompetent, or
15 for a person who is physically incapacitated due to the
16 consumption of alcoholic liquor or the use of drugs;
 - 17 (4) Sell, give or dispense alcoholic liquors in or on any
18 licensed premises or in any rooms directly connected
19 therewith, between the hours of three o'clock a.m. and one
20 o'clock p.m. on any Sunday;
 - 21 (5) Permit the consumption by, or serve to, on the
22 licensed premises any alcoholic liquors, covered by this
23 article, to any person under the age of nineteen years, unless
24 the person is at least eighteen years of age as of the first day
25 of July, one thousand nine hundred eighty-three;
 - 26 (6) On and after the first day of October, one thousand
27 nine hundred eighty-three, permit the consumption by, or
28 serve to, on the licensed premises any alcoholic liquors,

29 covered by this article, to any person who is less than
30 twenty-one years of age unless such person under the age of
31 twenty-one years first displays a valid operator's license,
32 chauffeur's license or non-operator's identification, issued
33 to such person under the provisions of section eight, article
34 two, chapter seventeen-b of this code;

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

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

42 (9) Permit any minor to sell, furnish or give alcoholic
43 liquors to any person; or

44 (10) Violate any reasonable rule or regulation of the
45 commissioner.

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

50 (c) Any person who violates any of the foregoing
51 provisions shall be guilty of a misdemeanor, and, upon
52 conviction thereof, shall be punished by a fine of not less
53 than one hundred dollars nor more than five hundred
54 dollars, or by imprisonment in the county jail for a period
55 not to exceed one year, or by both fine and imprisonment.

ARTICLE 8. SALE OF WINES.

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

§60-8-20. Unlawful acts generally.

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

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

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

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

7 may be licensed simultaneously as a distributor and a
8 retailer.

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

11 (1) Twenty-five hundred dollars per year for a
12 distributor's license.

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

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

16 (c) The license period shall begin on the first day of July
17 of each year and end on the thirtieth day of June of the
18 following year, and if the initial license is granted for less
19 than a year, the fee shall be computed in proportion to the
20 number of quarters remaining in the fiscal year, including
21 the quarter in which application is made.

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

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

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

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

§60-8-20. Unlawful acts generally.

1 It shall be unlawful:

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

9 (b) For a licensee under this article to acquire,
10 transport, possess for sale, or sell wine other than in the
11 original package;

12 (c) For a licensee, his servants, agents or employees to
13 sell, furnish or give wine to any person less than nineteen
14 years of age, unless the person is at least eighteen years of
15 age as of the first day of July, one thousand nine hundred
16 eighty-three, or to a mental incompetent, or person who is
17 physically incapacitated due to the consumption of
18 alcoholic liquor or the use of drugs;

19 (d) On and after the first day of October, one thousand
20 nine hundred eighty-three, wine shall not be sold to any
21 person who is less than twenty-one years of age unless such
22 person under the age of twenty-one years first displays a
23 valid operator's license, chauffeur's license or non-
24 operator's identification, issued to such person under the
25 provisions of section eight, article two, chapter seventeen-b
26 of this code;

27 (e) For a licensee to permit a minor to sell, furnish or give
28 wine to any person;

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

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

1 The commissioner is hereby authorized:

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

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

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

13 (1) The transport, use, handling, service and sale of
14 wine;

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

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

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

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

42 All rules and regulations promulgated by the
43 commissioner pursuant to this article shall be so
44 promulgated in accordance with the provisions of chapter
45 twenty-nine-a of this code. The rules and regulations
46 promulgated pursuant to the prior enactment of this article
47 during the regular session of the Legislature for the year
48 one thousand nine hundred eighty-one, and not disap-
49 proved by the Legislature shall remain in full force and
50 effect to the extent that such rules and regulations are not
51 abrogated and made null and void by the enactment of this
52 section.

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

1 It shall be unlawful for a retailer, his servants, agents or
2 employees to sell or deliver wine on any general or primary
3 election day, or on any special election day in the locality
4 where such special election is held, or prior to one o'clock
5 p.m., or after midnight on Sundays, or between the hours of
6 midnight and nine o'clock a.m. on weekdays and Saturdays.

CHAPTER 7

(Com. Sub. for H. B. 1540—By Mr. Williams and Mr. Springston)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article one, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one as amended; to amend and reenact sections eleven and twelve, article one, chapter twenty-seven of said code; to further amend said article one by adding thereto two new sections, designated sections sixteen and seventeen; to amend and reenact section eleven, article one-a, section two, article five and section one, article six-a, all of said chapter twenty-seven; and to amend and reenact section five, article one

and section nine, article six of said chapter sixty, all relating to alternatives to incarceration or criminal penalties for persons charged with the crime of public intoxication; providing for the establishment of a comprehensive program for the care, treatment and rehabilitation of alcoholics and drug abusers by the director of the department of health and educating the public in regard thereto; definitions provided; providing for acceptance by the director of persons voluntarily seeking hospitalization, treatment or rehabilitation and for persons committed by mental hygiene commissioners or judicial officers for such purposes to the director; authorizing the director to contract with public or private entities or persons to implement or administer this comprehensive program; providing for the involuntary hospitalization of individuals believed to be or determined to be addicted without allegations or findings of the likelihood to cause harm; to provide for all examinations relative to involuntary custody for examination to be provided or arranged by a community mental health center designated by the director of health to serve the area in which the application is filed; exception; testimony by community mental health center representative in probable cause hearing; providing for a determination of competency of a person charged with the crime of public intoxication and the detention of such person in the appropriate facility for such purposes; authorizing the transportation of such person by a sheriff to another facility in the event that such person is in need of acute medical care or additional security which cannot be provided by the facility in which he was originally detained; providing immunity from criminal liability or civil liability in damages to any incapacitated person for a person who is carrying out certain responsibilities or procedures related to the commitment of persons charged with the crime of public intoxication and providing exceptions to that immunity in the event of gross negligence or willful or wanton injury; providing for liability in implied contract for costs incurred by such incapacitated persons and prohibitions concerning methods of collection; establishing that for the crime of public intoxication only, a diagnosis of alcoholism shall be proof of lack of criminal responsibility and shall result in a finding of not guilty by reason of addiction and the initiation of involuntary commitment proceedings; providing prohibitions regarding in-

toxication or drinking in public places and illegal possession of alcoholic liquors; providing for the crime of public intoxication; various actions by a law-enforcement officer after an arrest without a warrant; presentment before a judicial officer; options available to such officer concerning detention of incapacitated persons; and providing for minimum fines, imprisonment or counseling for various offenses.

Be it enacted by the Legislature of West Virginia:

That section ten, article one, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections eleven and twelve, article one, chapter twenty-seven of said code be amended and reenacted; that said article one be further amended by adding thereto two new sections, designated sections sixteen and seventeen; that section eleven, article one-a; section two, article five and section one article six-a, all of said chapter twenty-seven, be amended and reenacted; and that section five, article one and section nine, article six, chapter sixty of said code be amended and reenacted, all to read as follows:

Chapter

- 16. Public Health.**
- 27. Mentally Ill Persons.**
- 60. State Control of Alcoholic Liquors.**

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 1. STATE DEPARTMENT OF HEALTH.

§16-1-10. Powers and duties of the director of health.

1 The director shall be the chief executive, administrative, and
2 fiscal officer of the department of health and shall have the
3 following powers and duties:

- 4 (1) To supervise and control the business, fiscal, adminis-
5 trative and health affairs of the department of health, and in
6 that regard and in accordance with law, employ, fix the com-
7 pensation of, and discharge all persons necessary for the
8 proper execution of the laws of this state relating to health
9 and mental health, and the efficient and proper discharge of
10 the duties imposed upon, and execution of powers vested in

11 the director by law; to that end the director may promulgate
12 such written rules as are necessary and proper to delegate
13 functions, establish divisions, specify duties and responsibilities,
14 prescribe qualifications of division directors and otherwise ad-
15 minister or supervise the department, subject to the safe-
16 guards of the state civil service system as it now exists;

17 (2) To enforce all laws of this state concerning public
18 health, health and mental health; to that end, the director
19 shall make, or cause to be made, sanitary investigations and
20 inquiries respecting the cause of disease, especially of epi-
21 demics and endemic conditions, and the means of prevention.
22 suppression or control of such conditions; the source of sick-
23 ness and mortality, and the effects of environment, employ-
24 ment, habits and circumstances of life on the public health.
25 The director shall further make, or cause to be made, inspec-
26 tions and examinations of food, drink and drugs offered for
27 sale or public consumption; in such manner as he shall deem
28 necessary to protect the public health and shall report all
29 violations of laws and regulations relating thereto to the prose-
30 cuting attorney of the county in which such violations occur;

31 (3) To make complaint or cause proceedings to be institut-
32 ed against any person, corporation or other entity for the
33 violation of any health law before any court or agency, with-
34 out being required to give security for costs; such action may
35 be taken without the sanction of the prosecuting attorney of
36 the county in which the proceedings are instituted or to which
37 the proceedings relate;

38 (4) To supervise and coordinate the administration and
39 operation of the state hospitals named in article two, chapter
40 twenty-seven of this code, and any other state facility here-
41 after created for the mentally ill, mentally retarded or addicted;

42 (5) To supervise and coordinate the administration and
43 operation of the health and other facilities named in chapter
44 twenty-six of this code, except as otherwise therein provided,
45 and any other state facility hereafter created relating to health,
46 not otherwise provided for;

47 (6) To supervise and coordinate the administration and

48 operation of the county and municipal boards of health and
49 health officers;

50 (7) To develop and maintain a state plan of operation
51 which sets forth the needs of the state in the areas of health
52 and mental health; goals and objectives for meeting those
53 needs; methods for achieving the stated goals and objectives;
54 and needed personnel, funds and authority for achieving the
55 goals and objectives;

56 (8) To collect data as may be required to foster knowledge
57 on the citizenry's health status, the health system and costs of
58 health care;

59 (9) To delegate to any appointee, assistant or employee any
60 and all powers and duties vested in the director, including, but
61 not limited to, the power to execute contracts and agreements
62 in the name of the department: *Provided*, That the director
63 shall be responsible for the acts of such appointees, assistants
64 and employees;

65 (10) To transfer any patient or resident between hospitals
66 and facilities under the control of the director and, by agree-
67 ment with the state commissioner of public institutions or his
68 successor and otherwise in accord with law, accept a transfer
69 of a resident of a facility under the jurisdiction of the state
70 commissioner of public institutions or his successor;

71 (11) To make periodic reports to the governor and to the
72 Legislature relative to specific subject areas of public health
73 or mental health, the state facilities under the supervision of
74 the director, or other matters affecting the health or mental
75 health of the people of the state;

76 (12) To accept and use for the benefit of the state, for the
77 benefit of the health of the people of this state, any gift or
78 devise of any property or thing which is lawfully given:
79 *Provided*, That if any gift is for a specific purpose or for a
80 particular state hospital or facility, it shall be used as specified.
81 Any profit which may arise from any such gift or devise of
82 any property or thing shall be deposited in a special revenue
83 fund with the state treasurer and shall be used only as speci-
84 fied by the donor or donors;

85 (13) To acquire by condemnation or otherwise any interest,
86 right, privilege, land or improvement and hold title thereto, for
87 the use or benefit of the state or a state hospital or facility,
88 and, by and with the consent of the governor, to sell, exchange,
89 or otherwise convey any interest, right, privilege, land or im-
90 provement acquired or held by the state, state hospital or
91 state facility; which condemnation proceedings shall be con-
92 ducted pursuant to chapter fifty-four of this code;

93 (14) To inspect and enforce rules and regulations to con-
94 trol the sanitary conditions of and license all institutions and
95 health care facilities as set forth in this chapter, including, but
96 not limited to, schools, whether public or private, public con-
97 veyances, dairies, slaughterhouses, workshops, factories, labor
98 camps, places of entertainment, hotels, motels, tourist camps,
99 all other places open to the general public and inviting public
100 patronage or public assembly, or tendering to the public any
101 item for human consumption and places where trades or
102 industries are conducted;

103 (15) To make inspections, conduct hearings, and to enforce
104 the rules and regulations of the board concerning occupational
105 and industrial health hazards, the sanitary condition of streams,
106 sources of water supply, sewerage facilities and plumbing sys-
107 tems, and the qualifications of personnel connected with such
108 supplies, facilities or systems without regard to whether they
109 are publicly or privately owned; and to make inspections, con-
110 duct hearings and enforce the rules and regulations of the
111 board concerning the design of chlorination and filtration fa-
112 cilities and swimming pools;

113 (16) To reorganize the functions and divisions of the de-
114 partment of health, structuring all functions previously assign-
115 ed to the board of health, department of health, department
116 of mental health, and otherwise assigned to the department of
117 health by this chapter, to the end of establishing the most
118 efficient and economic delivery of health services in accord
119 with the purposes of this chapter; to achieve such goal the
120 director shall establish such divisions and delegate and assign
121 such responsibilities and functions as he deems necessary to
122 accomplish such reorganization. On or before the first day of
123 February, one thousand nine hundred seventy-eight, the direc-

124 tor shall submit to the Legislature a report on the reorganiza-
125 tion of such department and the effect thereof, including, but
126 not limited to, the cost, the administrative results and the effect
127 on the delivery of health services;

128 (17) To direct and supervise the provision of dental services
129 in all state institutions;

130 (18) To provide for, except as otherwise specified herein,
131 a comprehensive system of community mental health and
132 mental retardation supportive services to the end of preventing
133 the unnecessary institutionalization of persons and promoting
134 the community placement of persons presently residing in
135 mental health and mental retardation facilities and other in-
136 stitutions and for the planning of the provisions of comprehen-
137 sive mental health and mental retardation services throughout
138 the state;

139 (19) To provide in accordance with this subdivision and
140 the definitions and other provisions of article one-a, chapter
141 twenty-seven of the code, for a comprehensive program for the
142 care, treatment and rehabilitation of alcoholics and drug
143 abusers; for research into the cause and prevention of alco-
144 holism and drug abuse; for the training and employment of
145 personnel to provide the requisite rehabilitation of alcoholics
146 and drug abusers; and for the education of the public con-
147 cerning alcoholism and drug abuse; and

148 (20) To exercise all other powers delegated to the depart-
149 ment by this chapter or otherwise in this code, to enforce all
150 health laws and the rules and regulations promulgated by the
151 board, and to pursue all other activities necessary and incident
152 to the authority and area of concern entrusted to the depart-
153 ment or director.

CHAPTER 27. MENTALLY ILL PERSONS.

Article

1. Words and Phrases Defined.
- 1A. Department of Mental Health.
5. Involuntary Hospitalization.
- 6A. Commitment of Persons Charged or Convicted of a Crime.

ARTICLE 1. WORDS AND PHRASES DEFINED.

§27-1-11. Addiction.

§27-1-12. Likely to cause serious harm.

§27-1-16. Incapacitated.

§27-1-17. Judicial officer.

§27-1-11. Addiction.

- 1 "Addiction" means the periodic, frequent or constant use
- 2 of alcohol, narcotic or other intoxicating or stupefying sub-
- 3 stance to the point of being incapacitated.

§27-1-12. Likely to cause serious harm.

- 1 "Likely to cause serious harm" refers to a person who has:
- 2 (1) A substantial tendency to physically harm himself
- 3 which is manifested by threats of or attempts at suicide or
- 4 serious bodily harm or other conduct, either active or passive,
- 5 which demonstrates that he is dangerous to himself; or
- 6 (2) A substantial tendency to physically harm other per-
- 7 sons which is manifested by homicidal or other violent be-
- 8 havior which places others in reasonable fear of serious phy-
- 9 sical harm; or
- 10 (3) A complete inability to care for himself by reason of
- 11 mental retardation; or
- 12 (4) Become incapacitated as defined in section sixteen of
- 13 this article.

§27-1-16. Incapacitated.

- 1 "Incapacitated" means a level of intoxication at which an
- 2 individual is incapable of physical or mental control of him-
- 3 self, thus rendering him dangerous to himself or others or un-
- 4 able to protect himself from hazard.

§27-1-17. Judicial officer.

- 1 "Judicial officer" in the context of the provisions of this
- 2 and other chapters of this code dealing with disposition of a
- 3 charge of public intoxication, means a municipal judge, a
- 4 magistrate or any judge of a court of record in this state.

ARTICLE 1A. DEPARTMENT OF MENTAL HEALTH.**§27-1A-11. Division on alcoholism and drug abuse; powers and duties; definitions.**

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

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

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

25 (3) Neither the department of mental health nor the divis-
26 ion on alcoholism and drug abuse shall be required to accept
27 any alcoholic or drug abuser voluntarily seeking hospitalization
28 for clinical or hospital care, treatment or rehabilitation;
29 but the department may accept, pursuant to its adopted and
30 promulgated rules and regulations, responsibility for clinical
31 or hospital care, treatment or rehabilitation of any alcoholic
32 or drug abuser through arrangements made voluntarily with
33 the department by him or some person acting in his behalf:
34 *Provided*, That any such person accepted by the department
35 on a voluntary basis shall be charged a minimum fee unless

36 he shows, to the satisfaction of the department, that he is
37 unable to pay the fee: *Provided, however,* That the depart-
38 ment shall accept all alcoholics and drug abusers committed
39 by a mental hygiene commissioner or judicial officer in ac-
40 cordance with the procedures established by article six-a of
41 this chapter: *Provided further,* That notwithstanding any
42 provision in article five of this chapter which may be to the
43 contrary, the supervisor of the division on alcoholism and
44 drug abuse may specify the clinic or hospital to which the
45 alcoholic or drug abuser shall be committed after a final
46 commitment hearing provided in section four, article five
47 of this chapter.

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

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

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

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

66 (1) "Alcoholic" means a person who suffers from
67 alcoholism as defined in subdivision (2) of this sub-
68 section.

69 (2) "Alcoholism" means a disease or illness characterized
70 by psychological or physiological addiction to alcoholic bev-
71 erages as manifested by: (A) The inability to control one's
72 consumption of alcoholic beverages except through total

73 abstinence, or (B) the inability to control one's behavior when
74 consuming alcoholic beverages, or (C) both.

75 (3) "Alcoholic abuser" means a person whose use of alco-
76 hol has produced any of the effects described in subdivision
77 (4) of this subsection.

78 (4) "Alcohol abuse" means the periodic, frequent or con-
79 stant consumption of alcoholic beverages to the extent that
80 one's health is substantially impaired or endangered or one's
81 social or economic functioning is substantially disrupted.

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

86 (6) "Drug abuse" means the use of any controlled sub-
87 stance as that term is defined in said chapter sixty-a, until
88 such time as the user has become dependent upon or addicted
89 to the same.

ARTICLE 5. INVOLUNTARY HOSPITALIZATION.

§27-5-2. Institution of proceedings for involuntary custody for examination; custody; probable cause hearing; examination of individual.

1 (a) *When application for involuntary custody for examina-*
2 *tion may be made.*

3 Any adult person may make application for involuntary
4 hospitalization for examination of an individual when said
5 person has reason to believe that:

6 (1) The individual is addicted as defined by section eleven,
7 article one of this chapter: *Provided*, That for purposes of
8 this subdivision and the involuntary commitment procedures
9 specified in this article, the sole issue to be determined is
10 whether the individual is addicted, which by definition in-
11 cludes the notion of being incapacitated, causing harm to
12 others or being unable to prevent harm to himself: *Provided*,
13 *however*, That whenever a provision of this article refers to or
14 requires a finding of likelihood to cause serious harm, a find-

15 ing that an individual is addicted shall be deemed to satisfy
16 such reference or requirement; or

17 (2) The individual is mentally ill or mentally retarded and,
18 because of his mental illness or mental retardation, the indi-
19 vidual is likely to cause serious harm to himself or others if
20 allowed to remain at liberty while awaiting an examination and
21 certification by a physician or psychologist.

22 (b) *Oath; to whom application for involuntary custody for*
23 *examination is made; contents of application; custody; probable*
24 *cause hearing; examination.*

25 (1) The person making such application shall do so under
26 oath.

27 (2) Application for involuntary custody for examination
28 may be made to the circuit court or mental hygiene commis-
29 sioner of the county in which the individual resides, or of the
30 county in which he may be found.

31 (3) The person making such application shall give such in-
32 formation and state such facts therein as may be required, up-
33 on the form provided for this purpose by the department of
34 health.

35 (4) The circuit court or mental hygiene commissioner may
36 thereupon enter an order for the individual named in such
37 action to be detained and taken into custody, for the purpose
38 of holding a probable cause hearing described in subdivision
39 (5) of this subsection and for the purpose of an examination of
40 the individual by a physician or a psychologist. Such examina-
41 tion shall be provided or arranged by a community mental
42 health center designated by the director of health to
43 serve the county in which the action takes place. The said order
44 shall specify that such hearing be held forthwith and shall ap-
45 point counsel for the individual: *Provided*, That where a physi-
46 cian or psychologist has performed such examination, the com-
47 munity mental health center may waive this requirement upon
48 approving such examination. Notwithstanding the provisions
49 of this subsection, subsection (r), section four of this article
50 shall apply regarding payment by the county commission for
51 examinations at hearings.

52 In the event immediate detention is believed to be neces-
53 sary for the protection of the individual or others at a time
54 when no circuit court judge or mental hygiene commissioner is
55 available for immediate presentation of the application, a
56 magistrate may accept the application and, upon a finding that
57 such immediate detention is necessary pending presentation of
58 the application to the circuit court or mental hygiene com-
59 missioner, may order the individual to be temporarily de-
60 tained in custody until the earliest reasonable time that the
61 application can be presented to the circuit court or mental
62 hygiene commissioner, which temporary period of detention
63 shall not exceed twenty-four hours.

64 (5) A probable cause hearing shall be held before a
65 magistrate, the mental hygiene commissioner or circuit judge
66 of the county of which the individual is a resident or where
67 he was found. If requested by the individual or his counsel,
68 the hearing may be postponed for a period not to exceed
69 forty-eight hours.

70 The individual must be present at the hearing and shall
71 have the right to present evidence, confront all witnesses and
72 other evidence against him, and to examine testimony offered,
73 including testimony by representatives of the community mental
74 health center serving the area. The individual shall have the
75 right to remain silent and to be proceeded against in accord
76 with the rules of evidence. At the conclusion of the hearing the
77 magistrate, mental hygiene commissioner or circuit court shall
78 find and enter an order stating whether or not there is probable
79 cause to believe that such individual as a result of mental
80 illness, mental retardation or addiction is likely to cause serious
81 harm to himself or others.

**ARTICLE 6A. COMMITMENT OF PERSONS CHARGED OR CON-
VICTED OF A CRIME.**

**§27-6A-1. Determination of competency of defendant to stand trial
and of criminal responsibility; examination; com-
mitment.**

- 1 (a) Whenever a court of record, or in the instance of a
- 2 defendant charged with public intoxication a magistrate or
- 3 other judicial officer, believes that a defendant in a felony

4 case or a defendant in a misdemeanor case in which an in-
5 dictment has been returned, or a warrant or summons issued,
6 may be incompetent to stand trial or is not criminally
7 responsible by reason of mental illness, mental retardation
8 or addiction, it may at any stage of the proceedings after
9 the return of an indictment or the issuance of a warrant or
10 summons against the defendant, order an examination of such
11 defendant to be conducted by one or more psychiatrists, or a
12 psychiatrist and a psychologist, or in the instance of an in-
13 dividual charged with public intoxication, an alcoholism coun-
14 selor: *Provided*, That with the exception of subsections (a)
15 and (g) of this section, no other subsection in this section nor
16 any other provision of this article shall apply to individuals
17 charged with public intoxication pursuant to section nine,
18 article six, chapter sixty of this code.

19 (b) After the examination described in subsection (a) of
20 this section, the court of record may order that the person be
21 admitted to a mental health facility designated by the director
22 of health for a period not to exceed twenty days for observation
23 and further examination if the court has reason to believe that
24 such further observation and examination are necessary in
25 order to determine whether mental illness, mental retarda-
26 tion or addiction have so affected a person that he is not
27 competent to stand trial or not criminally responsible for the
28 crime or crimes with which he has been charged. If, before
29 the expiration of such twenty-day period, the examining phy-
30 sician believes that observation for more than twenty days is
31 necessary, he shall make a written request to the court of
32 record for an extension of the twenty-day period specifying
33 the reason or reasons for which such further observation is
34 necessary. Upon the receipt of such request, the court of record
35 may by order extend said observation period, but in no event
36 shall the period exceed forty days from the date of the initial
37 court order of observation.

38 (c) At the conclusion of each examination or observation
39 period provided for herein, the examining psychiatrists, or
40 psychiatrist and psychologist, shall forthwith give to the
41 court of record a written signed report of their findings on
42 the issue of competence to stand trial or criminal respon-

43 sibility. Such report shall contain an opinion, supported by
44 clinical findings, as to whether the defendant is in need of
45 care and treatment.

46 (d) Within five days after the receipt of the report on
47 the issue of competency to stand trial, or if no observation
48 pursuant to subsection (b) of this section has been ordered,
49 within five days after the report on said issue following an
50 examination under subsection (a) of this section, the court
51 of record shall make a finding on the issue of whether the
52 defendant is competent for trial. A finding of incompetence
53 for trial shall require proof by a preponderance of the evi-
54 dence. Notice of such findings shall be sent to the prosecut-
55 ing attorney, the defendant and his counsel. If the court
56 of record orders or if the defendant or his counsel on his
57 behalf within a reasonable time requests a hearing on such
58 findings, a hearing in accordance with section two of this
59 article shall be held by the court of record within ten days
60 of the date such finding or such request has been made.

61 (e) After a conviction and prior to sentencing, the court
62 of record may order a psychiatric or other clinical examina-
63 tion and, after such examination, may further order a period
64 of observation in a mental health facility designated by the
65 director of health. Such a period of observation or examina-
66 tion shall not exceed forty days.

67 If after hearing conducted pursuant to the procedures
68 prescribed in subsection (c), section four, article five of this
69 chapter, the court of record makes the findings specified in
70 section four, article five of this chapter or finds that the con-
71 victed individual would benefit from treatment in a mental
72 health facility, the court may enter an order of commitment
73 in accord with section four, article five for treatment in a
74 mental health facility designated by the director of health.

75 (f) In like manner, in accordance with procedures set
76 forth in subsections (a), (b) and (c) of this section, a juvenile
77 court may order a psychiatric examination or a period of
78 observation for an alleged delinquent or neglected juvenile
79 in a mental health facility to aid the court in its disposition.
80 The period of observation shall not exceed forty days.

81 (g) On and after midnight on the last day of June, one
82 thousand nine hundred eighty-three, if a person charged with
83 public intoxication is incapacitated at the time a warrant or
84 summons is issued, the court, magistrate or other judicial
85 officer may as provided by article six, chapter sixty of this
86 code, order the individual detained in the nearest mental
87 health facility providing appropriate care, or other detention
88 facility as defined in section fourteen, article one of this
89 chapter, to determine the individual's competence to stand
90 trial and criminal responsibility and require the preparation
91 and submission by that facility of a report which shall in
92 addition to determining the individual's competence and crim-
93 inal responsibility shall also describe any suggested or pro-
94 posed methods of care or treatment which may be appro-
95 priate. Such order shall stipulate the return of the individual
96 to the court, magistrate or other judicial officer or his release
97 if bond has been posted or a summons issued in lieu of a
98 warrant, when the individual is no longer incapacitated. But
99 in no case may the individual be kept longer than forty-eight
100 hours unless during the forty-eight hours, civil commitment
101 proceedings pursuant to article five of this chapter are ini-
102 tiated by qualified personnel at the mental health facility
103 or other facility in which the individual is detained and
104 detention is ordered pursuant to article five of this chapter:
105 *Provided*, That whenever the director of the facility initiates
106 civil proceedings within forty-eight hours, he shall immediately
107 notify the judicial officer who ordered the individual detained
108 that such proceedings have commenced: *Provided, however*,
109 That the judicial officer may then modify his order and may
110 continue the criminal proceedings in his court until a diagnosis
111 of alcoholism has been made: *Provided further*, That once a
112 diagnosis is made, the judicial officer shall find the individual
113 not guilty by reason of addiction as provided by section nine,
114 article six, chapter sixty of the code and shall immediately
115 initiate civil commitment proceedings unless such proceedings
116 have already begun and are proceeding:

117 (1) If at any time during the forty-eight hours the in-
118 dividual requires acute medical care or because of overtly
119 dangerous behavior needs security beyond the capability of the
120 mental health facility where he is being detained, the sheriff

121 of the county in which the facility is located shall at the
 122 request of the facility director transport the individual to a
 123 more appropriate facility such as a general hospital, or a state
 124 hospital or detention facility selected by said director.

125 (2) No law-enforcement officer, physician, mobile inten-
 126 sive care paramedic, emergency medical service attendant or
 127 staff member or employee of any mental health facility, hos-
 128 pital or detention facility may be held criminally liable for
 129 carrying out any provision set forth in this subsection or any
 130 procedure specified therein or be held civilly liable in damages
 131 to an incapacitated person because of carrying out any pro-
 132 vision set forth in this subsection or any procedure specified
 133 herein for dealing with an individual charged with public in-
 134 toxication unless for gross negligence or willful or wanton
 135 injury.

136 (3) Any person who is given transportation to or from,
 137 or who is examined or treated at, a mental health facility,
 138 hospital or detention facility in accordance with, and because
 139 of, the provisions of this section, whether such person was
 140 incapacitated or not or whether he gave his consent or not,
 141 shall be liable in implied contract to the person who, or men-
 142 tal health facility, hospital or detention facility or other ap-
 143 propriate agency which, provided such transportation, examin-
 144 ation or treatment, for the reasonable cost thereof. No person
 145 may be denied such services because of inability or failure
 146 to pay such costs nor shall any effort be made to obtain pre-
 147 payment of such costs or any portion thereof.

CHAPTER 60.

STATE CONTROL OF ALCOHOLIC LIQUORS.

Article

1. General Provisions.
6. Miscellaneous Provisions.

ARTICLE 1. GENERAL PROVISIONS.

§60-1-5. Definitions.

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

4 "Beer" shall mean any beverage obtained by the fermenta-
5 tion of barley, malt, hops, or any other similar product or
6 substitute, and containing more alcohol than that of non-
7 intoxicating beer.

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

12 "Wine" shall mean any alcoholic beverage obtained by the
13 fermentation of the natural content of fruits, or other agricul-
14 tural products, containing sugar.

15 "Spirits" shall mean any alcoholic beverage obtained by
16 distillation and mixed with potable water and other sub-
17 stances in solution, and includes brandy, rum, whiskey, cor-
18 dials and gin.

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

22 "Original package" shall mean any closed or sealed con-
23 tainer or receptacle used for holding alcoholic liquor.

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

28 "Selling" shall include solicitation or receipt of orders; pos-
29 session for sale; and possession with intent to sell.

30 "Person" shall mean an individual, firm, partnership, cor-
31 poration or voluntary association.

32 "Manufacture" means to distill, rectify, ferment, brew, make,
33 mix, concoct, process, blend, bottle or fill an original pack-
34 age with any alcoholic liquor.

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

38 "Brewery" shall mean an establishment where beer is man-
39 ufactured or in any way prepared.

40 "Winery" shall mean an establishment where wine is manu-
41 factured or in any way prepared.

42 "Distillery" shall mean an establishment where alcoholic
43 liquor other than wine or beer is manufactured or in any way
44 prepared.

45 "Public place" shall mean any place, building or con-
46 veyance to which the public has or is permitted to have
47 access, including restaurants, soda fountains, hotel dining
48 rooms, lobbies and corridors of hotels and any highway,
49 street, lane, park or place of public resort or amusement.

50 "State liquor store" shall mean a store established and
51 operated by the commission under this chapter for the sale
52 of alcoholic liquor in the original package for consumption off
53 the premises.

54 "An agency" shall mean a drugstore, grocery store or gen-
55 eral store designated by the commission as a retail distributor
56 of alcoholic liquor for the West Virginia alcohol beverage
57 control commissioner.

58 "Department" shall mean the organization through which
59 the commission exercises powers imposed upon it by this
60 chapter.

61 "Commission" shall mean the West Virginia alcohol bever-
62 age control commissioner.

63 "Intoxicated" shall mean having one's faculties impaired
64 by alcohol or other drugs to the point where physical or
65 mental control or both are markedly diminished.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

***§60-6-9. Intoxication or drinking in public places; illegal possession of alcoholic liquor; arrests by sheriffs or their deputies for violation in their presence.**

1 (a) A person shall not:

*Clerk's Note: This section was also amended by S.B. 542 which passed prior to H.B. 1540.

- 2 (1) Appear in a public place in an intoxicated condition;
 - 3 (2) Drink alcoholic liquor in a public place;
 - 4 (3) Drink alcoholic liquor in a motor vehicle on any high-
 - 5 way, street, alley or in a public garage;
 - 6 (4) Tender a drink of alcoholic liquor to another person in
 - 7 a public place;
 - 8 (5) Possess alcoholic liquor in the amount in excess of
 - 9 one gallon, in containers not bearing stamps or seals of the
 - 10 commission, without having first obtained written authority
 - 11 from the said commission therefor;
 - 12 (6) Possess any alcoholic liquor which was manufactured
 - 13 or acquired in violation of the provisions of this chapter.
- 14 (b) Any law-enforcement officer may arrest without a war-
- 15 rant and take the following actions against a person who, in
- 16 his presence, violates subdivision (1), subsection (a) of this
- 17 section: (1) If there is some nonintoxicated person who will
- 18 accept responsibility for the intoxicated person, the officer
- 19 may issue the intoxicated person a citation specifying a date
- 20 for appearance before a judicial officer and release him to
- 21 the custody of the individual accepting responsibility: *Pro-*
- 22 *vided*, That the issuance of a citation shall be used whenever
- 23 feasible; (2) if it does not impose an undue burden on the
- 24 officer he may, after issuance of such a citation transport the
- 25 individual, to the individual's present residence or arrange for
- 26 such transportation; (3) if the individual is incapacitated or
- 27 the alternatives provided in subdivisions (1) and (2) of this sub-
- 28 section are not possible, the officer shall transport or arrange
- 29 for transportation to the appropriate judicial officer as defined
- 30 by section seventeen, article eleven, chapter twenty-seven of
- 31 the code; or (4) if the individual is incapacitated and, in the
- 32 law-enforcement officer's judgment, is in need of acute medical
- 33 attention, that officer shall arrange for transportation by am-
- 34 bulance or otherwise to a hospital emergency room. The offi-
- 35 cer shall accompany the individual until he is discharged from
- 36 the emergency room or admitted to the hospital. If the indi-
- 37 vidual is released from the emergency room, the officer may
- 38 proceed as described in subdivisions (1), (2) and (3) of this

39 subsection. If the individual is admitted to the hospital, the
40 officer shall issue a citation to the individual specifying a
41 date for appearance before a judicial officer.

42 (c) Upon presentment before the proper judicial officer the
43 law-enforcement officer shall serve as the chief complaining
44 witness. The judicial officer must make a finding that there is
45 probative evidence that the individual may be guilty of the
46 charge of public intoxication. If such evidence is not pre-
47 sented, the charge shall be dismissed and the individual re-
48 leased. If sufficient evidence is presented, the judicial officer
49 shall issue a warrant and establish bail or issue a summons to
50 the individual. Once a warrant or summons has been issued,
51 the following actions may be taken: (1) If the individual is
52 no longer incapacitated, he may be released; (2) if the indi-
53 vidual is still incapacitated but a nonintoxicated person is
54 available to accept responsibility for him, he may be released
55 to the responsible person; or (3) if the individual is still in-
56 capacitated and no responsible person is available, the judi-
57 cial officer shall proceed under the provisions of article five
58 or six-a, chapter twenty-seven of this code.

59 (d) Any law-enforcement officer is hereby authorized and
60 empowered to arrest and hold in custody, without a warrant,
61 until complaint may be made before a judicial officer and a
62 warrant or summons issued, any person who in the presence
63 of the law-enforcement officer violates any one or more of
64 subdivisions (1) through (6), subsection (a) of this section:
65 *Provided*, That the law-enforcement officer may use reasonable
66 force to prevent harm to himself, the individual arrested or
67 others in carrying out the provisions of this section.

68 (e) Any person who violates subdivision (1), subsection (a)
69 of this section shall be guilty of a misdemeanor, and, upon
70 conviction thereof, shall be sentenced by a judicial officer in
71 accordance with the following options: (1) Upon first offense,
72 a fine of not less than five dollars nor more than one hundred
73 dollars and not more than sixty days in jail or completion of
74 an alcohol education program of not more than six hours'
75 duration at the nearest community mental health-mental re-
76 tardation center. If the individual, prior to conviction, agrees to
77 voluntarily attend the alcohol education program, the judicial

78 officer may delay sentencing until the program is completed
79 and upon completion may dismiss the charges; (2) upon con-
80 viction for a second offense, a fine of not less than five dollars
81 nor more than one hundred dollars and not more than sixty
82 days in jail or completion of not less than five hours of alco-
83 holism counseling at the nearest community mental health-
84 mental retardation center; (3) upon third and subsequent con-
85 victions, a fine of not less than five dollars nor more than one
86 hundred dollars and not less than five nor more than sixty
87 days in jail or a fine of not less than five dollars nor more than
88 one hundred dollars and completion of not less than five hours
89 of alcoholism counseling at the nearest community mental
90 health-mental retardation center: *Provided*, That three con-
91 victions for public intoxication within the preceding six months
92 shall be considered evidence of alcoholism: *Provided, how-*
93 *ever*, That for the educational counseling programs described
94 in this subsection the community mental health-mental retar-
95 dation center may charge each participant its usual and custo-
96 mary fee and shall certify in writing to the referring judicial
97 officer the completion or failure to complete the prescribed pro-
98 gram for each individual.

99 (f) A person charged with a violation of subdivision (1),
100 subsection (a) of this section who is an alcoholic shall be
101 found not guilty by reason of addiction and proper disposition
102 made pursuant to articles five and six-a, chapter twenty-seven
103 of this code.

104 (g) Any person who violates subdivision (2), (3) or (4),
105 subsection (a) of this section shall be guilty of a misdemeanor,
106 and, upon conviction, shall be fined not less than five nor more
107 than one hundred dollars, or confined in jail not more than
108 sixty days, or both such fine and imprisonment. Any person
109 who violates subdivision (5) or (6), subsection (a) of this sub-
110 section shall be guilty of a misdemeanor, and, upon conviction,
111 shall be fined not less than one hundred dollars nor more than
112 five hundred dollars, or confined in jail not less than sixty days
113 nor more than twelve months, or both such fine and imprison-
114 ment, and upon conviction of a second or subsequent offense
115 he shall be guilty of a felony and shall be confined in the

116 penitentiary of this state for a period of not less than one year
117 nor more than three years.

CHAPTER 8

(Com. Sub. for S. B. 515—By Mr. Tomblin)

[Passed March 3, 1983; in effect ninety days from passage. Disapproved
by the Governor and repassed notwithstanding his objections.]

AN ACT to amend and reenact sections one, two, three, seven and eight, article five, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to local option election for the sale of alcoholic liquors within a county, magisterial district or municipality.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. LOCAL OPTION ELECTIONS.

§60-5-1. Election in county, magisterial district or municipality

§60-5-2. Election called on petition of five percent of qualified voters.

§60-5-3. Form of petition.

§60-5-7. Discontinuance of state stores and agencies in local option territory.

§60-5-8. When another election may be held.

§60-5-1. Election in county, magisterial district or municipality.

1 A county, magisterial district or any municipality may
2 in an election held especially for the purpose, determine
3 whether the sale of alcoholic liquors for beverage pur-
4 poses shall be permitted within that county, magisterial
5 district or municipality.

6 A local option election shall not be held within sixty
7 days of a general or municipal election.

§60-5-2. Election called on petition of five percent of qualified voters.

1 The county commission, or the governing body of the
2 municipality, as the case may be, shall call a special
3 "local option election" upon the filing of a petition signed
4 by not less than five percent of the qualified voters
5 within the county, a magisterial district or municipality.

§60-5-3. Form of petition.

1 The petition shall be in the following form:

2 Petition for Local Option Election

3 We, the undersigned legally qualified voters, resident
4 within the county (magisterial district) (municipality)
5 of, do hereby petition that a special election
6 be held within the county (city, town) of
7 on the day of, 19....., upon the
8 following question:

9 Shall the sale of alcoholic beverages under the West
10 Virginia alcohol beverage control commissioner be per-
11 mitted in?

12 Name Address Date
13 (Post office or street and number)

§60-5-7. Discontinuance of state stores and agencies in local option territory.

1 Within thirty days after a "local option election" in
2 which a majority has voted "No," the commission shall
3 close all state stores and discontinue all agencies situated
4 within the county, the magisterial district or municipality.

§60-5-8. When another election may be held.

1 When a "local option election" has been held in a
2 county, a magisterial district or municipality, another
3 such election shall not be held for a period of two years;
4 except that an election may be held within a municipality
5 without regard to an election held in or the time limit
6 applicable to the county within which the municipality,
7 or a part thereof, is located.

CHAPTER 9

(Com. Sub. for S. B. 668—By Mr. Tucker and Mr. Heck)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section fourteen, article eight, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one, two, four, six, eleven, fifteen, twenty-six and twenty-nine of said article, relating to the sale of wines and relating to providing that part III of this article shall apply to suppliers and distributors of wine; definition of supplier; changing the gallonage tax to liter tax; changing point of taxation from distributor to supplier; eliminating reports from those who supply distributors; requiring notice of assessment by certified mail; eliminating section on collection by distraint; providing for collection of taxes; forfeiture of bond by suppliers; and requiring bond of distributors.

Be it enacted by the Legislature of West Virginia:

That section fourteen, article eight, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections one, two, four, six, eleven, fifteen, twenty-six and twenty-nine of said article be amended and reenacted to read as follows:

ARTICLE 8. SALE OF WINES.

PART I. CONSTRUCTION AND APPLICATION OF ARTICLE.

§60-8-1. Construction and application of article.

PART II. SALE OF WINE GENERALLY.

§60-8-2. Definitions.

§60-8-4. Liter tax.

§60-8-6. License or registration required for sale or shipment of wine.

§60-8-11. Notice of assessment; petition for reassessment.

§60-8-15. Collection by action or suit.

§60-8-26. Forfeiture of bond.

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

PART I. CONSTRUCTION AND APPLICATION OF ARTICLE.

§60-8-1. Construction and application of article.

- 1 (a) The provisions of part II of this article shall have
- 2 general application to the distribution and retail sale of
- 3 wine in this state. The provisions of part III of this article

4 shall relate solely to the distribution and the regulation of
5 suppliers and distributors of such wines as may be
6 permitted to be sold at retail pursuant to the provisions of
7 this article. The provisions of part IV of this article shall
8 relate solely to the retail sale of wine in grocery stores as the
9 term "grocery store" is defined in this article and the retail
10 sale of wine in wine specialty shops as defined in this
11 article. In the event of any inconsistency of any provisions
12 of part II and the provisions of either part III or part IV of
13 this article, the provisions of either part III or part IV shall
14 prevail to the extent of such inconsistency.

15 (b) In the event of any inconsistency between any of the
16 provisions of this article and provisions of any other article
17 of this chapter or of this code, the provisions of this article
18 shall prevail to the extent of any such inconsistency.

19 (c) To the extent the provisions of this chapter exclusive
20 of this article may be given application without creating an
21 inconsistency with the provisions of this article, the
22 provisions of this chapter, exclusive of this article, shall
23 apply to the same extent as if this article did not exist.

PART II. SALE OF WINE GENERALLY.

§60-8-2. Definitions.

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

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

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

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

13 "Grocery store" means any retail establishment,
14 commonly known as a grocery store, supermarket or
15 delicatessen, where food, food products and supplies for the
16 table are sold for consumption off the premises with
17 average monthly sales (exclusive of sales of wine) of not less

18 than three thousand dollars and an average monthly
19 inventory (exclusive of inventory of wine) of not less than
20 three thousand dollars. The term "grocery store" shall also
21 include and mean a separate and segregated portion of any
22 other retail store which is dedicated solely to the sale of
23 food, food products and supplies for the table for
24 consumption off the premises with average monthly sales
25 with respect to such separate or segregated portion
26 (exclusive of sales of wine) of not less than three thousand
27 dollars and an average monthly inventory (exclusive of
28 inventory of wine) of not less than three thousand dollars.

29 "Licensee" means the holder of a license granted under
30 the provisions of this article.

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

35 "Supplier" means any manufacturer, producer,
36 processor, distributor or supplier of wine who sells or offers
37 to sell or solicits or negotiates the sale of wine to any
38 licensed West Virginia distributor.

39 "Tax" includes within its meaning interest, additions to
40 tax and penalties.

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

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

46 "Vintage wine" or "vintage-dated wine" means wines
47 from which the grapes used to produce such wine are
48 harvested during a particular year or wines produced from
49 the grapes of a particular harvest in a particular region of
50 production.

51 "Wine" means any alcoholic beverage obtained by the
52 natural fermentation of the natural content of grapes, other
53 fruits or honey or other agricultural products containing
54 sugar and to which no alcohol has been added and shall
55 include table wine, and shall exclude fortified wine.

56 "Wine specialty shop" means a retailer who shall deal.
57 principally in the sale of table wine, wine accessories and
58 food or foodstuffs normally associated with wine and who
59 shall maintain a representative number of such wines for
60 sale in his inventory which are designated by label as
61 varietal wine, vintage, generic and/or according to region of
62 production and the inventory shall contain not less than
63 fifteen percent vintage or vintage-dated wine by actual
64 bottle count.

§60-8-4. Liter tax.

1 The tax of one dollar per gallon and in like ratio on other
2 volumes heretofore levied and imposed on all wine sold by
3 distributors to retailers is continued through the thirtieth
4 day of April, one thousand nine hundred eighty-three.
5 There is also hereby levied and imposed on all wine in the
6 inventory of distributors at the end of business on the
7 thirtieth day of April, one thousand nine hundred eighty-
8 three, a tax of twenty-six and four hundred six-
9 thousandths cents per liter.

10 Before the sixteenth day of May, one thousand nine
11 hundred eighty-three, every distributor shall make a
12 written report under oath to the commissioner showing the
13 quantity, label and alcoholic content of wine sold or
14 purchased by the distributor during the preceding month,
15 and shall report the quantity of liters in inventory at the end
16 of business on the thirtieth day of April, one thousand nine
17 hundred eighty-three, and at that time shall either fully pay
18 the tax thereon imposed by this article on the wine sold
19 prior to the first day of May, one thousand nine hundred
20 eighty-three, and the wine in inventory at the end of
21 business on the thirtieth day of April, one thousand nine
22 hundred eighty-three, or shall pay such tax in three equal
23 consecutive payments due respectively on the sixteenth day
24 of May, the sixteenth day of June and the sixteenth day of
25 July, one thousand nine hundred eighty-three.

26 There is further hereby levied and imposed on all wine
27 sold after the thirtieth day of April, one thousand nine
28 hundred eighty-three, by suppliers to distributors, except
29 wine sold to the commissioner, a tax of twenty-six and four
30 hundred six-thousandths cents per liter.

31 Before the sixteenth day of June, one thousand nine
32 hundred eighty-three, and the sixteenth day of each month
33 thereafter, every supplier shall make a written report under
34 oath to the commissioner showing the identity of the
35 purchaser, the quantity, label and alcoholic content of wine
36 sold by the supplier to West Virginia distributors during the
37 preceding month, and at the same time shall pay the tax
38 imposed by this article on the wine sold to the distributor
39 during the preceding month.

40 The reports shall contain other information and be in the
41 form the commissioner may require. For purposes of this
42 article, the reports required by this section shall be
43 considered tax returns.

44 No wine imported, sold or distributed in this state shall be
45 subject to more than one gallonage or liter tax.

46 This section is to be effective upon date of passage.

**§60-8-6. License or registration required for sale or shipment
of wine.**

1 Except as to the commissioner, no person may offer for
2 sale or sell wine in this state, or offer wine for shipment into
3 this state, except to a distributor who is duly licensed under
4 this article. Every person, whether resident or nonresident
5 in this state, who is engaged in or desires to engage in the
6 sale or shipment of wine to a distributor for resale under
7 this article shall, prior to engaging in such activities,
8 register with the commissioner. If any such person violates
9 the provisions of this article, he shall not be permitted to
10 sell, ship or deliver any wine to a distributor or to the
11 commissioner, or otherwise engage in the wine business in
12 this state for a period of one year from the date a notice is
13 mailed to such person by the commissioner of the fact that
14 such person has violated the provisions of this article.
15 During such one-year period, it shall be unlawful for any
16 distributor within this state to buy or receive wine from
17 such person or to have any dealings with such person with
18 respect thereto. Hearings and appeals on such notices may
19 be had in the same manner as in the case of revocations of
20 licenses under this article.

§60-8-11. Notice of assessment; petition for reassessment.

1 The commissioner shall give by certified mail to the

2 taxpayer written notice of any assessment made pursuant
3 to this article. Unless the taxpayer to whom a notice of
4 assessment is directed shall, within thirty days after service
5 thereof (twenty days in the case of jeopardy assessments),
6 either personally or by certified mail, file with the
7 commissioner a petition in writing, verified under oath by
8 said taxpayer or his duly authorized agent having
9 knowledge of the facts, setting forth with particularity the
10 items of the assessment objected to, together with the
11 reasons for objections, said assessment shall become final
12 and conclusive, not subject to administrative or judicial
13 review, and the amount thereof shall be payable at the end
14 of the thirty-day period (twenty days in the case of a
15 jeopardy assessment). A petition for reassessment shall be
16 deemed to be timely filed if the postmark date thereon is
17 clearly within said thirty days (twenty days in case of
18 jeopardy assessment) of receipt of said assessment by the
19 taxpayer or is received within such period.

§60-8-15. Collection by action or suit.

1 The commissioner may collect any tax due and unpaid
2 under the provisions of this article either by appropriate
3 legal proceedings in Kanawha County or by actions at law
4 or other appropriate remedy resulting in the forfeiture of
5 bond for failure to pay taxes and fees prescribed by section
6 four of this article.

§60-8-26. Forfeiture of bond.

1 On conviction of a violation of any provision of this
2 article, upon the revocation of a license in accordance with
3 section eighteen of this article or upon finding of failure of a
4 taxpayer to pay all taxes prescribed by section four of this
5 article, which conviction, revocation or finding has become
6 final, the licensee, former licensee or company registered as
7 a supplier, as the case may be, shall forfeit any bond
8 required by section twenty-nine of this article. The penal
9 sum of any bond forfeited shall forthwith be paid to the
10 state treasurer and credited to the general revenue fund of
11 this state. Such sum may be collected by an action at law or
12 other appropriate remedy.

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

1 Each applicant for a distributors license or each company
2 registered as a supplier shall furnish at the time of

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

8 The penal sum of the bond for distributors shall be ten
9 thousand dollars, and the penal sum of the bond for
10 suppliers shall be twenty-five thousand dollars.

CHAPTER 10

(S. B. 15—By Mrs. Spears)

[Passed March 2, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal sections twelve, thirteen, fourteen, fifteen, sixteen, seventeen and eighteen, article eleven, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections three and four, article nineteen, chapter sixteen of said code; and to amend article twenty-six of said chapter eighteen by adding thereto a new section, designated section eight-d, all relating to transferring the powers and duties of the West Virginia anatomical board to the board of regents; authorizing the appointment of a board by the board of regents to perform the duties formerly performed by the West Virginia anatomical board; and specifying offenses and civil and criminal penalties.

Be it enacted by the Legislature of West Virginia:

That sections twelve, thirteen, fourteen, fifteen, sixteen, seventeen and eighteen, article eleven, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections three and four, article nineteen, chapter sixteen of said code be amended and reenacted; and that said article twenty-six of said chapter eighteen be amended by adding thereto a new section, designated section eight-d, all to read as follows:

Chapter

16. **Public Health.**

18. **Education.**

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 19. UNIFORM ANATOMICAL GIFT ACT.

§16-19-3. Persons who may become donees; purposes for which anatomical gifts may be made; compliance with rules and regulations of board.

§16-19-4. Manner of executing anatomical gifts.

§16-19-3. Persons who may become donees; purposes for which anatomical gifts may be made; compliance with rules and regulations of board.

1 The following persons may become donees of gifts of
2 bodies or parts thereof for the purposes stated:

3 (1) The West Virginia board of regents for the scien-
4 tific purposes of educational institutions for which it may
5 receive or requisition dead bodies; or

6 (2) Any hospital, surgeon or physician, for medical or
7 dental education, research, advancement of medical or
8 dental science, therapy or transplantation; or

9 (3) Any accredited medical or dental school, college
10 or university for education, research, advancement of
11 medical or dental science or therapy; or

12 (4) Any person operating a bank or storage facility
13 for blood, arterics, eyes, pituitaries, or other human parts,
14 for use in medical or dental education, advancement of
15 medical or dental science, research, therapy or trans-
16 plantation to individuals; or

17 (5) Any specified individual for therapy or trans-
18 plantation needed by him.

19 The use, disposition and control of any such donated
20 bodies or parts thereof by any such donee shall be in
21 accordance with rules and regulations prescribed by the
22 West Virginia board of regents.

§16-19-4. Manner of executing anatomical gifts.

1 (a) A gift of all or part of the body under subsection

2 (a), section two of this article may be made by will. The
3 gift becomes effective upon certification of death of the
4 testator without waiting for probate. If the will is not
5 probated, or if it is declared invalid for testamentary
6 purposes, the gift, to the extent that it has been acted
7 upon in good faith, is nevertheless valid and effective.

8 (b) A gift of all or part of the body under subsection
9 (a), section two of this article may also be made by
10 document other than a will. The gift becomes effective
11 upon certification of death of the donor. The document,
12 which may be a card designed to be carried on the
13 person, must be signed by the donor in the presence of
14 two witnesses who must sign the document in his pres-
15 ence. If the donor cannot sign, the document may be
16 signed for him at his direction and in his presence in the
17 presence of two witnesses who must sign the document
18 in his presence. Delivery of the document of gift during
19 the donor's lifetime is not necessary to make the gift
20 valid.

21 (c) The gift may be made to a specified donee or with-
22 out specifying a donee. If the latter, the West Virginia
23 board of regents will be considered to be the donee unless
24 it declines to accept the gift, or unless there is urgent
25 immediate need for a part of the body for transplant or
26 other purposes in which case the gift may be accepted
27 by the attending physician as donee upon or following
28 certification of death. In case the board of regents is
29 considered the donee it shall be the duty of the person
30 who has charge or control of the body, if he or she has
31 knowledge of the gift, to give notice thereof to the board
32 of regents within twenty-four hours after such body
33 comes under his or her control. Thereafter, he or
34 she shall hold the body subject to the order of the
35 board of regents for at least twenty-four hours after
36 the sending of such notice. If the board of regents
37 makes a requisition for the body within the twenty-
38 four-hour period, it shall be delivered, pursuant to the
39 order of the board, to the board or its authorized
40 agent for transportation to an educational institu-
41 tion which the board deems to be in bona fide need

42 thereof and able to adequately control, use and dispose of
43 the body. If the board of regents shall not so act within
44 the twenty-four-hour period, the gift may be accepted by
45 the attending physician as donee upon or following cer-
46 tification of death. If the gift is made to a specified donee
47 who is not available at the time and place of death, the
48 attending physician upon or following certification of
49 death, in the absence of any expressed indication that the
50 donor desired otherwise, may accept the gift as donee.
51 The physician who becomes a donee under this subsec-
52 tion shall not participate in the procedures for removing
53 or transplanting a part, except that this prohibition shall
54 not apply to the removing or transplanting of an eye or
55 eyes.

56 (d) Notwithstanding subsection (b), section seven of
57 this article, the donor may designate in his will, card or
58 other document of gift, the surgeon or physician to carry
59 out the appropriate procedures, or in the case of a gift of
60 an eye or eyes, the surgeon or physician or the technician
61 properly trained in the surgical removal of eyes to carry
62 out the appropriate procedures. In the event of the non-
63 availability of such designee, or in the absence of a
64 designation, the donee or other person authorized to ac-
65 cept the gift may employ or authorize for the purpose
66 any surgeon or physician or in the case of a gift of an eye
67 or eyes, any surgeon or physician or technician properly
68 trained in the surgical removal of eyes or also in case of
69 a gift of an eye or eyes, the donee or other person au-
70 thorized to accept the gift may employ or authorize a
71 licensed funeral director or embalmer licensed pursuant
72 to article six, chapter thirty of this code who has suc-
73 cessfully completed a course in enucleation approved by
74 the medical licensing board of West Virginia to enucleate
75 the eye or eyes for the gift after certification of death by
76 a physician. The qualified funeral director or embalmer
77 shall properly care for the enucleated eye or eyes and
78 promptly deliver the eye or eyes to the donee or other
79 person authorized to accept the gift. A qualified funeral
80 director or embalmer acting in accordance with the terms

81 of this subsection shall not be liable, civilly or criminally
82 for the eye enucleation.

83 (e) Any gift by a person designated in subsection (b),
84 section two of this article shall be made by a document
85 signed by him or made by his telegraphic, recorded tele-
86 phonic or other recorded message.

87 (f) No particular words shall be necessary for donation
88 of all or part of a body, but the following words, in
89 substance, properly signed and witnessed, shall be legally
90 valid for donations made pursuant to subsection (b) of
91 this section:

92 "UNIFORM DONOR CARD
93 of

94 -----
95 Print or type name of donor

96 In the hope that I may help others, I hereby make this
97 anatomical gift, if medically acceptable, to take effect
98 upon certification of my death. The words and marks
99 below indicate my desires.

100 I give: (a) -----any needed organs or parts;
101 (b) -----only the following organs or parts

102 -----
103 Specify the organ(s) or part(s)
104 for the purposes of transplantation, therapy, medical
105 research or education;

106 (c) ----- my body for anatomical study if needed.
107 Limitation or special wishes, if any: -----
108 Signed by the donor and the following two witnesses in
109 the presence of each other:

| | |
|------------------------|------------------------|
| 110 ----- | ----- |
| 111 Signature of Donor | Date of Birth of Donor |
| 112 ----- | ----- |
| 113 Date Signed | City and State |
| 114 ----- | ----- |
| 115 Witness | Witness |

116 This is a legal document under the Uniform Anatomical
117 Gift Act or similar laws."

CHAPTER 18. EDUCATION.**ARTICLE 26. WEST VIRGINIA BOARD OF REGENTS.****§18-26-8d. Powers and duties relating to anatomical gifts; requisition of body; autopsies; transportation of bodies; expenses of preservation; bond required; offenses and penalties.**

1 (a) The board of regents may appoint one dean of a
2 school of medicine, one dean of a school of dentistry and
3 two chairmen of departments of anatomy of schools of
4 medicine, all of whom shall constitute a board for
5 the purpose of performing the duties of the board, which
6 is hereby abolished, formerly known as the "West Vir-
7 ginia Anatomical Board." This new board shall be known
8 as the "Board of Regents Anatomical Board," and shall
9 hereinafter be referred to as the "board" for the purposes
10 of this section. No more than one member of this board
11 shall be from the same school. The board shall be respon-
12 sible for making requisition for, receiving, and making
13 disposition of the dead human bodies for the scientific
14 uses and purposes of reputable educational institutions,
15 within the state and elsewhere, having medical, osteop-
16 athy, dentistry or nursing schools. The board shall have
17 full power to establish rules and regulations for its own
18 government, and for the requisition, use, disposition and
19 control of such bodies as may come under its authority
20 by way of gift, pursuant to this article or pursuant to
21 section four, article nineteen, chapter sixteen of this code.
22 The board shall have authority to appoint such officers,
23 employees and agents as may be necessary to carry out
24 the purposes for which the board is organized. It shall
25 keep a full and complete record of its transactions, show-
26 ing, among other things, every dead human body coming
27 under its authority, giving name, sex, age, date of death,
28 place from which received, when and from whom re-
29 ceived, which record shall be open at all times to the in-
30 spection of the attorney general and any prosecuting
31 attorney in the state.

32 If the board of regents does not appoint a "board
33 of regents anatomical board" as herein authorized,

34 then the board of regents itself shall perform
35 the duties of the anatomical board as set forth
36 herein.

37 (b) All dead human bodies which may come under the
38 charge or control of any mortician, any officer or agent of
39 the department of welfare or of any county commission
40 or municipality, or any superintendent, officer or agent
41 having the supervision of any prison, morgue, hospital,
42 or other public institution in this state, and which may
43 be required to be buried at public expense, shall be sub-
44 ject to the requisition of the board as provided in this
45 section. No such body shall be delivered to the board if
46 any person related to the deceased by blood or marriage
47 shall make a statement in writing to that effect, and shall
48 claim such body for burial, or shall make affidavit that he
49 is unable to bear the expense of burial and desires that
50 the deceased be buried at public expense. This statement
51 and affidavit may be filed by any such relative with the
52 person having charge and control of the body of the
53 person so claimed, either before or after the death of
54 such person.

55 No autopsy shall be performed on any unclaimed body
56 without the written permission of the board, except upon
57 the proper order of a duly authorized law-enforcement
58 officer.

59 (c) It shall be the duty of any person who has charge
60 or control of any unclaimed body, subject to requisition
61 by the board, to give notice to the board of that fact by
62 telephone or telegraph within twenty-four hours after such
63 body comes under his control. Thereafter he shall hold the
64 body subject to the order of the board for at least twenty-
65 four hours after the sending of such notice. If
66 the board makes requisition for the body within
67 the twenty-four-hour period, it shall be delivered,
68 pursuant to the order of the board, to the board
69 or its authorized agent for transportation to any
70 educational institution described in section twelve
71 of this article which the board deems to be in bona fide
72 need thereof and able to adequately control, use and dis-
73 pose of the body.

74 (d) The board shall make suitable arrangements
75 for the transportation of any body, or part or
76 parts thereof, which may come under its authority
77 to any educational institution as described in sub-
78 section (c).

79 (e) All expenses incurred in connection with the
80 preservation, delivery and transportation of any such
81 body delivered pursuant to the order of the board shall be
82 paid by the educational institution receiving the body.

83 (f) No dead body shall be received or requisitioned by
84 the board until the members of the board have filed a
85 bond with the clerk of the circuit court of Kanawha
86 County in a penalty of one thousand dollars, with good
87 security, signed by a responsible person or persons, or by
88 some surety company authorized to do business in this
89 state, or have proved to such clerk that they are covered
90 by a suitable bond in at least that amount, conditioned
91 for the faithful performance of their duties.

92 (g) Any person who shall neglect, refuse or fail to
93 perform any duty required of him by this section relating
94 to the board shall be guilty of a misdemeanor, and, upon
95 conviction thereof, shall be punished by a fine of not more
96 than one hundred dollars or by imprisonment in the
97 county jail for not more than ten days, or by both such
98 fine and imprisonment. Any person who fails to give the
99 required notice that he has charge of an unclaimed body,
100 subject to requisition by the board, shall also be person-
101 ally liable for all burial expenses, if such body was
102 buried at public expense, to the public agency that paid
103 for the burial.

CHAPTER 11

(S. B. 56—By Mr. Davis)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

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

as amended, by adding thereto a new section, designated section three-a, relating to authorizing the chief medical examiner or other authorized personnel to provide corneas from the body of a deceased person under his jurisdiction to the medical eye bank of West Virginia under certain conditions; and providing for immunity from civil liability in certain instances.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 19. UNIFORM ANATOMICAL GIFT ACT.

§16-19-3a. Recovery of corneas; conditions; liability of medical examiner.

1 (a) In any case where a patient is in need of corneal
2 tissue for a transplant, the chief medical examiner,
3 assistant medical examiner, regional pathologist or any
4 other persons designated to perform an autopsy in accor-
5 dance with article twelve, chapter sixty-one of this code,
6 may provide a cornea for transplant, under rules, regu-
7 lations and procedures established by the chief medical
8 examiner, upon the request of the medical eye bank of
9 West Virginia, incorporated, under the following condi-
10 tions:

11 (1) The body of the decedent having a suitable cornea
12 for the transplant is under the jurisdiction of the chief
13 medical examiner and an autopsy is required, in accor-
14 dance with article twelve, chapter sixty-one of this code;

15 (2) The decedent's next of kin makes no objections; and

16 (3) Transplanting of the cornea will not interfere with
17 the course of any subsequent investigation or autopsy or
18 alter the postmortem facial appearance.

19 (b) Neither the chief medical examiner, any assistant
20 medical examiner, regional pathologist nor any other per-
21 son designated to perform an autopsy in accordance with

22 section ten, article twelve, chapter sixty-one of this code
23 and who provides a cornea in accordance with the pro-
24 visions of this section, nor the medical eye bank of West
25 Virginia, incorporated, shall be liable for any civil dam-
26 ages if the decedent's next of kin subsequently contends
27 that his authorization was required.

CHAPTER 12

(Com. Sub. for H. B. 1054—By Mr. Farley)

[Passed February 23, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections twelve and seventeen, article three, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to public moneys and the state general revenue appropriations and expenditures; providing for enlarging the period within which warrants may be drawn after the close of a fiscal year for payment of bills for such fiscal year; expiration of unexpended appropriations; liabilities incurred by state boards, officers or employees which cannot be paid out of current appropriations; deletion of authority to pay any account or bill incurred during one fiscal year out of the appropriation for the following year; and exceptions.

Be it enacted by the Legislature of West Virginia:

That sections twelve and seventeen, article three, 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 3. APPROPRIATIONS, EXPENDITURES AND DEDUCTIONS.

§12-3-12. Expiration of unexpended appropriations.

§12-3-17. Liabilities incurred by state boards, commissions, officers or employees which cannot be paid out of current appropriations; long-term leasing.

§12-3-12. Expiration of unexpended appropriations.

1 Every appropriation which is payable out of the general
2 revenue, or so much thereof as may remain undrawn at the end

3 of the year for which made, shall be deemed to have expired
4 at the end of the year for which it is made, and no warrant
5 shall thereafter be issued upon it: *Provided*, That warrants
6 may be drawn through the thirtieth day of September after
7 the end of the year for which the appropriation is made
8 if the warrants are in payment of bills for such year and have
9 been encumbered by the budget office prior to July first; but
10 appropriations for buildings and land shall remain in effect,
11 and shall not be deemed to have expired until the end of three
12 years after the passage of the act by which such appropriations
13 are made.

**§12-3-17. Liabilities incurred by state boards, commissions, officers
or employees which cannot be paid out of current
appropriations; long-term leasing.**

1 Except as provided in this section, it shall be unlawful
2 for any state board, commission, officer or employee: (1)
3 To incur any liability during any fiscal year which cannot
4 be paid out of the then current appropriation for such year
5 or out of funds received from an emergency appropriation;
6 or (2) to authorize or to pay any account or bill incurred
7 during any fiscal year out of the appropriation for the
8 following year: *Provided*, That nothing contained herein
9 shall prohibit entering into a contract or lease for
10 buildings, land and space, the cost of which exceeds the
11 current year's appropriation, even though the amount is not
12 available during the then current year, if the aggregate
13 cost does not exceed the amount then authorized by the
14 Legislature. Nothing contained herein shall repeal the provi-
15 sions of the general law relating to the expiration of appropria-
16 tions for buildings and land.

17 Subject to the provisions of chapter five-a, article five of
18 the code of West Virginia, one thousand nine hundred thirty-
19 one, as amended, the department of finance and administration
20 is hereby authorized to enter into long-term lease agreements
21 for buildings, land and space for periods longer than one
22 fiscal year. Such long-term lease agreements shall not be for
23 periods in excess of forty years and shall contain, in substance,
24 all the following provisions:

25 (1) That the department of finance and administration,
26 as lessee, shall have the right to cancel the lease without further
27 obligation on the part of the lessee upon giving thirty days'
28 written notice to the lessor, such notice being given at least
29 thirty days prior to the last day of the succeeding month;

30 (2) That the lease shall be considered canceled without
31 further obligation on the part of the lessee if the state
32 Legislature or the federal government should subsequently
33 fail to appropriate sufficient funds therefor or should other-
34 wise act to impair the lease or cause it to be canceled; and

35 (3) That the lease shall be considered renewed for each
36 ensuing fiscal year during the term of the lease unless it
37 is canceled by the department of finance and administration
38 before the end of the then current fiscal year.

39 Any member of a state board or commission or any officer
40 or employee violating any provision of this section shall be
41 personally liable for any debt unlawfully incurred or for any
42 payment unlawfully made.

CHAPTER 13

(S. B. 322—By Mr. McGraw, Mr. President)

[Passed January 31, 1983; 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 funds remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-three, to the Governor's Office — Transfer Repayments, Account No. 1250, supplementing chapter twenty, acts of the Legislature, one thousand nine hundred eighty-two, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 12, 1983, which included a statement of the state fund, general revenue; and

WHEREAS, The Governor submitted to the Legislature an Executive Message, dated January 31, 1983, which contained revisions of the revenue estimates for the general revenue fund, of his recommended supplemental appropriations and of the general revenue fund statement; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the general revenue fund available for further appropriation during fiscal year 1982-1983, 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. 1250, chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill, be established and supplemented by adding the following sum to the designated line item:

| | | |
|----|---|-----------------------------------|
| 1 | TITLE 2. APPROPRIATIONS. | |
| 2 | Section 1. Appropriations from general revenue. | |
| 3 | EXECUTIVE | |
| 4 | <i>8a—Governor's Office—Board of Investments</i> | |
| 5 | <i>Transfer Repayments</i> | |
| 6 | Acct. No. 1250 | |
| 7 | 1 | Repayment of Board of Investments |
| 8 | 8 | Transfers \$52,000,000 |
| 9 | The purpose of this supplementary appropriation bill is | |
| 10 | to establish and supplement the aforesaid account and item | |
| 11 | therein for expenditure in the current fiscal year of | |
| 12 | 1982-1983. Such amount shall be available for expenditure | |
| 13 | immediately upon the effective date of this bill, but only as | |
| 14 | may be required to repay the Board of Investments for | |
| 15 | principal and interest on transfers to the state of West | |
| 16 | Virginia which shall be deposited in the general revenue | |
| 17 | fund as authorized by West Virginia Code §12-6-9a. | |

CHAPTER 14

(S. B. 234—By Mr. McGraw, Mr. President)

[Passed February 11, 1983; 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 funds remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-three, to the Department of Finance and Administration, Account No. 2100, supplementing chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 12, 1983, which included a statement of the state fund, general revenue, and as the same was revised by the Governor by Executive Message No. 4, dated January 31, 1983; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the general revenue fund available for further appropriation during fiscal year 1982-1983, 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. 2100, chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill, be supplemented by adding the following sum to the designated line item:

| | | |
|---|---|-----------|
| 1 | TITLE 2. APPROPRIATIONS. | |
| 2 | Section 1. Appropriations from general revenue. | |
| 3 | FISCAL | |
| 4 | 19— <i>Department of Finance and Administration</i> | |
| 5 | Acct. No. 2100 | |
| 6 | 1 Personal Services | \$360,000 |

7 The purpose of this supplementary appropriation bill
8 is to supplement the aforesaid account and item therein
9 for expenditure in the current fiscal year of 1982-1983.
10 Such amount shall be available for expenditure imme-
11 diately upon the effective date of the bill.

CHAPTER 15

(H. B. 1787—By Mr. Polan)

[Passed March 3, 1983; 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 funds remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-three, to the West Virginia Board of Regents (Control), Account No. 2790, supplementing chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 12, 1983, which included a statement of the state fund, general revenue, and as the same was revised by the Governor by Executive Message No. 4, dated January 31, 1983; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the general revenue fund available for further appropriation during fiscal year 1982-83, 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. 2790, chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill, be supplemented by adding the following sum to the designated item:

1 TITLE 2. APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 EDUCATIONAL

4 25—*West Virginia Board of Regents (Control)*

5 Acct. No. 2790

6 1 Personal Services \$ 6,335,168

7 The purpose of this supplementary appropriation bill is to
 8 supplement the item in the aforesaid account by providing addi-
 9 tional "Personal Services" moneys, with such moneys to be ex-
 10 pended and distributed by the State Board of Regents, in its
 11 discretion and solely to institutions of higher education, as
 12 determined necessary to mitigate and alleviate the detrimental
 13 effects of compliance with the reserve requirements currently
 14 imposed on expenditures for such institutions. Such moneys
 15 shall be expendable immediately upon the effective date of the
 16 bill and in the current fiscal year 1982-83.

17 If the actions of the chief executive of the state in placing
 18 reserves on a portion of the funds available for expenditure
 19 in the last six months of fiscal year 1982-83, are released by
 20 the chief executive prior to the distribution or expenditure of
 21 all or any part of this appropriation, then the distribution or
 22 expenditure under this authority shall be pro rata reduced,
 23 dollar for dollar, according to the amount of funds authorized
 24 for release by the chief executive.

CHAPTER 16

(S. B. 236—By Mr. McGraw, Mr. President)

[Passed February 11, 1983; 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 funds remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-three, to the Teachers Retirement Board, Account No. 2980, supplementing chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 12, 1983, which included a statement of the state fund, general revenue, and as the same was revised by the Governor by Executive Message No. 4, dated January 31, 1983; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the general revenue fund available for further appropriation during fiscal year 1982-1983, 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. 2980, chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill, be supplemented by adding the following sum to the designated line item:

- 1 **TITLE 2. APPROPRIATIONS.**
- 2 **Section 1. Appropriations from general revenue.**
- 3 **EDUCATIONAL**
- 4 **37—Teachers Retirement Board**
- 5 **Acct. No. 2980**
- 6 2 Supplemental Benefits for Annuitants \$ 78,000
- 7 The purpose of this supplementary appropriation bill
- 8 is to supplement the aforesaid account and item therein
- 9 for expenditure in the current fiscal year of 1982-1983.
- 10 Such amount shall be available for expenditure imme-
- 11 diately upon the effective date of the bill.

CHAPTER 17

(S. B. 251—Originating in the Committee on Finance)

[Passed February 17, 1983; 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-three, to the Department of Welfare, Account No. 4050, supplementing chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 12, 1983, wherein is set forth the revenues and expenditures of the state fund, general revenue, including fiscal year 1982-83, and as the same was revised by the Governor by Executive Message No. 4, dated January 31, 1983; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the General Revenue Fund available for further appropriation during fiscal year 1982-83, 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. 4050, chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill, be supplemented by adding the following sums to the designated line items:

| | | |
|---|---|--------------|
| 1 | TITLE 2. APPROPRIATIONS. | |
| 2 | Section 1. Appropriations from general revenue. | |
| 3 | HEALTH AND WELFARE | |
| 4 | 57—Department of Welfare | |
| 5 | Acct. No. 4050 | |
| 6 | 7 Social Services | \$ 1,837,000 |
| 7 | 10 Medical Services | 2,700,000 |

8 The purpose of this supplementary appropriation bill
9 is to supplement the aforesaid account and items therein
10 for expenditure in the current fiscal year 1982-83. Such
11 amounts shall be available for expenditure upon the
12 effective date of this bill.

CHAPTER 18

(S. B. 252—Originating in the Committee on Finance)

[Passed March 4, 1983; 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-three, to the State Health Department—Mental Hospitals, Account No. 4160, supplementing chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 12, 1983, wherein is set forth the revenues and expenditures of the state fund, general revenue, including fiscal year 1982-83, and as the same was revised by the Governor by Executive Message No. 4, dated January 31, 1983; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the General Revenue Fund available for further appropriation during fiscal year 1982-83, 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. 4160, chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill, be supplemented by adding the following sums to the designated line items:

| | | |
|----|---|--------------|
| 1 | TITLE 2. APPROPRIATIONS. | |
| 2 | Section 1. Appropriations from general revenue. | |
| 3 | HEALTH AND WELFARE | |
| 4 | 60— <i>State Health Department—Mental Hospitals</i> | |
| 5 | Acct. No. 4160 | |
| 6 | 1 Personal Services | \$ 1,063,675 |
| 7 | 2 Current Expenses .. | 409,225 |
| 8 | 3 Repairs and Alterations | 16,700 |
| 9 | 4 Equipment | 10,400 |
| 10 | Total | \$ 1,500,000 |

11 The purpose of this supplementary appropriation bill
 12 is to supplement the aforesaid account and items therein
 13 for expenditure in the current fiscal year 1982-83. Such
 14 amounts shall be available for expenditure upon the ef-
 15 fective date of this bill.

CHAPTER 19

(Com. Sub. for H. B. 1724—By Mr. Steptoe and Mr. Murphy)

[Passed March 3, 1983; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenues remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-three, to the Department of Agriculture, Account No. 5100, supplementing chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 12, 1983, which included a statement of the state fund, general revenue, and as the same was revised by the Governor by Executive Message No. 4, dated January 31, 1983; and

WHEREAS, It appears from such budget that there now remains a balance in the general revenue fund available for further appropriation during the fiscal year 1982-83, 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. 5100, chapter twenty, acts of the legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill, be supplemented by adding the following new item and sum:

- 1 TITLE 2. APPROPRIATIONS.
- 2 Section 1. Appropriations from General Revenue.
- 3 AGRICULTURE
- 4 80—*Department of Agriculture*
- 5 Acct. No. 5100
- 6 5a Gypsy Moth Spray Program \$216,000
- 7 The purpose of the bill is to supplement the aforesaid
- 8 account and new item therein, with such amount being avail-
- 9 able for expenditure upon the effective date of this bill and in
- 10 the current fiscal year 1982-83.

CHAPTER 20

(Com. Sub. for H. B. 1507—By Mr. Speaker, Mr. See, by request of the Executive)

[Passed March 5, 1983; 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 funds remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-three, to the West Virginia Public Legal Services Council, Account No. 5900, supplementing chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 12, 1983, which included a statement of the state fund, general revenue, and as the same was revised by the Governor by Executive Message No. 4, dated January 31, 1983; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the general revenue fund available for further appropriation during fiscal year 1982-83, 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. 5900, chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill, be supplemented by adding the following new item and sum:

- 1 **TITLE 2. APPROPRIATIONS.**
- 2 **Section 1. Appropriations for general revenue.**
- 3 **MISCELLANEOUS BOARDS AND COMMISSIONS**
- 4 **94—*West Virginia Public Legal Services Council***
- 5 **Acct. No. 5900**
- 6 11a. Appointed Counsel \$600,000
- 7 The purpose of this supplementary appropriation bill is to
- 8 supplement the aforesaid account and new item therein for ex-
- 9 penditure in the current fiscal year of 1982-83. Such amount
- 10 shall be available for expenditure immediately upon the effec-
- 11 tive date of the bill.

CHAPTER 21

(H. B. 1658—By Mr. Polan)

[Passed February 18, 1983; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of the Department of Fi-

nance and Administration, Account No. 2100, for the fiscal year ending the thirtieth day of June, one thousand nine hundred eighty-three, as appropriated by chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That items of the total appropriation of Account No. 2100, as appropriated by chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, be supplemented, amended and transferred to read as follows:

| | | |
|---|---|--------------|
| 1 | TITLE 2. APPROPRIATIONS. | |
| 2 | Section 1. Appropriations from general revenue. | |
| 3 | 19— <i>Department of Finance and Administration</i> | |
| 4 | Acct. No. 2100 | |
| 5 | 1 Personal Services | \$ 2,069,845 |
| 6 | 2 Current Expenses | 1,101,445 |

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

CHAPTER 22

(S. B. 635—Originating in the Committee on Finance)

[Passed March 2, 1983; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts of the total appropriations made from the state road fund to the state Department of Highways, Account No. 6700, for the fiscal year ending June thirtieth, one thousand

nine hundred eighty-three, as appropriated by chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That the total appropriations made 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-three, as appropriated by chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill, be supplemented, amended and transferred to read as follows:

1 TITLE 2. APPROPRIATIONS.

2 Section 2. Appropriations from other funds.

3 102—State Department of Highways

4 Acct. No. 6700

TO BE PAID FROM STATE ROAD FUND

| | | | |
|----|----|---|---------------|
| 6 | 1 | Maintenance, Expressway, Trunkline and | |
| 7 | 2 | Feeder | \$ 45,080,000 |
| 8 | 3 | Maintenance, State Local Services | 58,049,000 |
| 9 | 4 | Maintenance, Contract Paving | |
| 10 | 5 | and Secondary Road Maintenance | 9,520,000 |
| 11 | 6 | Inventory Revolving | 1,282,000 |
| 12 | 7 | Equipment Revolving | 3,800,000 |
| 13 | 8 | General Operations | 16,272,000 |
| 14 | 9 | Debt Service | 85,200,000 |
| 15 | 10 | Interstate Construction | 129,700,000 |
| 16 | 11 | Other Federal Aid Programs | 92,843,000 |
| 17 | 12 | Appalachian Program | 22,300,000 |
| 18 | 13 | Nonfederal Aid Construction | 6,016,000 |
| 19 | 14 | Total | \$470,062,000 |

20 The purpose of this bill is to supplement, amend and
 21 transfer certain moneys from items of existing ap-
 22 propriations to other items of such appropriations for
 23 the designated spending unit, and to reflect the total

24 spending authority of the spending unit for the 1982-
 25 1983 fiscal year, with no new moneys being appropriated
 26 hereby. The amounts as newly itemized for expenditure
 27 in such fiscal year shall be available for expenditure
 28 upon the effective date of this bill.

CHAPTER 23

(S. B. 636—Originating in the Committee on Finance)

[Passed March 3, 1983; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts of the total appropriations made from the state road fund to the Department of Motor Vehicles, Account No. 6710, for the fiscal year ending June thirtieth, one thousand nine hundred eighty-three, as appropriated by chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That the total appropriations made from the state road fund to the Department of Motor Vehicles, Account No. 6710, for the fiscal year ending June thirtieth, one thousand nine hundred eighty-three, as appropriated by chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill, be supplemented, amended and transferred to read as follows:

1 TITLE 2. APPROPRIATIONS.

2 Section 2. Appropriations from other funds.

3 103—*Department of Motor Vehicles*

4 Acct. No. 6710

TO BE PAID FROM STATE ROAD FUND

| | | | |
|---|---|--------------------------------------|-------------|
| 6 | 2 | Current Expenses | \$3,364,185 |
| 7 | 7 | Public Employees Health Insurance .. | 187,010 |

8 The purpose of this supplementary appropriation bill
 9 is to supplement, amend and transfer certain moneys
 10 from one item of the existing appropriation to another
 11 item of such appropriation for the designated spending
 12 unit, with no new moneys being appropriated hereby.
 13 The amounts, as newly itemized for expenditure during
 14 the fiscal year 1982-83, shall be available for expenditure
 15 immediately upon the effective date of the bill.

CHAPTER 24

(H. B. 1785—By Mr. Polan)

[Passed February 22, 1983; in effect from passage. Approved by the Governor.]

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

Be it enacted by the Legislature of West Virginia:

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

| | | |
|---|--|-------------|
| 1 | TITLE 2. APPROPRIATIONS. | |
| 2 | Section 2. Appropriations from other funds. | |
| 3 | 110— <i>Department of Finance and Administration</i> | |
| 4 | <i>Information Systems Services Division Fund</i> | |
| 5 | Acct. No. 8151 | |
| 6 | TO BE PAID FROM SPECIAL REVENUE FUND | |
| 7 | 1 Personal Services | \$2,574,691 |
| 8 | 6 Public Employees Health Insurance | 185,980 |

9 The purpose of this supplementary appropriation bill is to
10 supplement, amend and transfer certain moneys from one item
11 of the existing appropriation to another item of such appro-
12 priation for the designated spending unit, with no new moneys
13 being appropriated hereby. The amounts, as newly itemized
14 for expenditure during the fiscal year 1982-83, shall be avail-
15 able for expenditure immediately upon the effective date of
16 the bill.

CHAPTER 25

(H. B. 1372—By Mr. Polan)

[Passed February 23, 1983; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and causing to expire into the state fund, general revenue, of the state certain unexpended and unencumbered amounts of the items and total existing appropriation of the Legislature-Joint Expenses, Account No. 1030, as appropriated by chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That the total appropriation of Account No. 1030, items one through four thereof and including the balances reappropriated from fiscal year 1981-82 which were transferred, forwarded and credited to such items on July 1, 1982, for expenditure in the current fiscal year 1982-83, as appropriated by chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill, be supplemented, amended, reduced and the sum of three million five hundred thousand dollars be caused to expire into the state fund, general revenue, of the state, thereby reducing the total amounts in all such line items, with the amounts of such line items reductions to be as follows:

| | | |
|----|---|---|
| 1 | TITLE 2. APPROPRIATIONS. | |
| 2 | Section 1. Appropriations from general revenue. | |
| 3 | LEGISLATIVE | |
| 4 | 3— <i>Joint Expenses</i> | |
| 5 | Acct. No. 1030 | |
| 6 | 1 | Joint Committee on Government and Finance . \$2,772,905 |
| 7 | 2 | To pay cost of Legislative Printing 168,143 |
| 8 | 3 | Other Legislative Committees 293,227 |
| 9 | 4 | Commission on Interstate Cooperation 265,725 |
| 10 | | Total <u>\$3,500,000</u> |

11 The purpose of this supplementary appropriation bill is to
 12 supplement, amend, reduce and cause to expire into the state
 13 fund, general revenue, of the state the sum of three million
 14 five hundred thousand dollars of the unexpended and unen-
 15 cumbered moneys in the existing legislative appropriation of
 16 this account, line items one through four thereof and the total
 17 amounts in such line items as the same were increased through
 18 transfer, forwarding and crediting thereto of the reappropriat-
 19 ed balances from fiscal year 1981-82, for expenditure in the
 20 current fiscal year 1982-83. The amount by which each exist-
 21 ing line item is to be reduced, totaling a reduction of three
 22 million five hundred thousand dollars, is set forth in this bill.
 23 Such amount shall be immediately expired into the state fund,
 24 general revenue, and available for other and further appropria-
 25 tion upon the effective date of the bill.

CHAPTER 26

(H. B. 2041—By Mr. Polan)

[Passed March 12, 1983: in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and causing to expire into the state fund, general revenue of the state, certain unexpended and unencumbered amounts of the special fund, the

oil and gas reclamation fund, Account No. 8093-16, as appropriated by chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That the sum of four hundred thousand dollars of the balances in Account No. 8093-16, including any balances carried forward to such special fund on the first day of July, one thousand nine hundred eighty-two, available for expenditure in the current fiscal year 1982-83, as appropriated by chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill, be supplemented, amended, reduced and caused to expire from such special revenue fund and into the state fund, general revenue of the state, and with such amount to be thereafter available for other and further appropriation upon the effective date of this bill.

- 1 The purpose of this supplementary appropriation bill is
- 2 to supplement, amend, reduce and cause to expire out of the
- 3 unexpended and unencumbered amounts of the special reve-
- 4 nue fund, the oil and gas reclamation fund, and into the state
- 5 fund, general revenue of the state, the sum of four hundred
- 6 thousand dollars, such moneys being formerly appropriated
- 7 by the language of "Sec. 9. Special revenue appropriations."
- 8 section in the budget bill for the current fiscal year 1982-83.

CHAPTER 27

(H. B. 2042—By Mr. Polan)

[Passed March 12, 1983; in effect from passage. Approved by the Governor.]

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

Be it enacted by the Legislature of West Virginia:

That the sum of five hundred thousand dollars of the balances in Account No. 8421-09, including balances carried forward on the first day of July, one thousand nine hundred eighty-two, available for expenditure in the current fiscal year 1982-83, as appropriated by chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill, be supplemented, amended, reduced and caused to expire into the state fund, general revenue of the state, and with such amount to be available for other and further appropriation upon the effective date of this bill.

1 The purpose of this supplementary appropriation bill is to
2 supplement, amend, reduce and cause to expire out of the
3 special revolving revenue fund and into the state fund, general
4 revenue of the state, the sum of five hundred thousand dollars,
5 such moneys being formerly appropriated by the language of
6 “Sec. 9. Special revenue appropriations.” section in the budget
7 bill for the current fiscal year 1982-83.

CHAPTER 28

(H. B. 2043—By Mr. Polan)

[Passed March 12, 1983; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and causing to expire into the state fund, general revenue of the state, certain unexpended and unencumbered amounts of the special oil and gas conservation fund, Account No. 8096-06, as appropriated by chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That the sum of eight hundred thousand dollars of the balances in Account No. 8096-06, including any balances carried forward to such fund on the first day of July, one thousand nine hundred eighty-two, available for expenditure in the current fiscal year

1982-83, as appropriated by chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill, be supplemented, amended, reduced and caused to expire from such special revenue fund and into the state fund, general revenue of the state, and with such amount to be thereafter available for other and further appropriation upon the effective date of this bill.

- 1 The purpose of this supplementary appropriation bill is
- 2 to supplement, amend, reduce and cause to expire out of the
- 3 unexpended and unencumbered amounts of the special oil and
- 4 gas conservation fund and into the state fund, general revenue
- 5 of the state, eight hundred thousand dollars of the moneys
- 6 formerly appropriated by the language of "Sec. 9. Special
- 7 revenue appropriations." section in the budget bill for the cur-
- 8 rent fiscal year 1982-83.

CHAPTER 29

(Com. Sub. for H. B. 1150—By Mr. Speaker, Mr. See)

[Passed March 16, 1983; in effect from passage. Approved by the Governor with deletions and reductions, March 21, 1983. Subsequently, in mandamus proceedings in the Supreme Court of Appeals, the Court commanded and directed the Clerk of the House of Delegates to publish Acct. Nos. 4160 and 4900 as passed by the Legislature. See Clerk's Notes on pages 136 and 139.]

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

Be it enacted by the Legislature of West Virginia:

Title

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

TITLE 1. GENERAL PROVISIONS.

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

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

1 **Sec. 2. Definitions.**—For the purpose of this act: “Gov-
2 ernor” shall mean the Governor of the State of West Vir-
3 ginia.

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

6 The “fiscal year one thousand nine hundred eighty-four”
7 shall mean the period from July first, one thousand nine hun-
8 dred eighty-three through June thirtieth, one thousand nine
9 hundred eighty-four.

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

1 **Sec. 3. Classification of appropriations.**—An appropria-
2 tion for:

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

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

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

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

17 “Equipment” shall mean equipment items which have an
18 appreciable and calculable period of usefulness in excess of
19 one year.

20 “Repairs and alterations” shall mean repairs to structures
21 and improvements to property which do not increase the
22 capital assets.

23 “Buildings” shall include construction and alteration of
24 structures and the improvement of lands and shall include
25 shelter, support, storage, protection or the improvement of
26 a natural condition.

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

29 “Capital Outlay” shall mean and include buildings, lands,
30 or buildings and lands, with such category or item of appro-
31 priation to remain in effect as provided by Chapter 12, Article
32 3, Section 12 of the Code of West Virginia.

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

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

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

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

TITLE 2. APPROPRIATIONS.

§1. Appropriations from general revenue.

§2. Appropriations of federal funds.

AGRICULTURE

| | |
|--|-----|
| Department of agriculture—Acct. No. 5100 | 139 |
| Department of agriculture (agricultural awards)—Acct. No. 5150 | 141 |
| Department of agriculture (division of rural resources)—Acct. No. 5130 | 141 |
| Department of agriculture (meat inspection)—Acct. No. 5140 | 141 |
| Department of agriculture (soil conservation committee)—Acct. No. 5120 | 140 |
| Farm management commission—Acct. No. 5110 | 140 |

BUSINESS AND INDUSTRIAL RELATIONS

| | |
|---|-----|
| Bureau of labor and department of weights and measures—Acct. No. 4500 | 137 |
| Department of mines—Acct. No. 4600 | 138 |
| Interstate commission on Potomac river basin—Acct. No. 4730 | 138 |
| Ohio river valley water sanitation commission—Acct. No. 4740 | 138 |
| State athletic commission—Acct. No. 4790 | 139 |
| West Virginia air pollution control commission—Acct. No. 4760 | 138 |
| West Virginia nonintoxicating beer commissioner—Acct. No. 4900 | 139 |
| West Virginia racing commissios—Acct. No. 4950 | 139 |
| West Virginia state aeronautics commission—Acct. No. 4850 | 139 |

CORRECTIONS

| | |
|---|-----|
| Department of corrections—(central office)—Acct. No. 3680 | 130 |
| Department of corrections—(correctional units)—Acct. No. 3770 | 131 |
| Department of corrections—(probation and parole board)—Acct. No. 3650 | 130 |
| West Virginia penitentiary—Acct. No. 3750 | 130 |

CONSERVATION AND DEVELOPMENT

| | |
|---|-----|
| Department of natural resources—Acct. No. 5650 | 142 |
| Geological and economic survey—Acct. No. 5200 | 142 |
| Public land corporation—Acct. No. 5660 | 143 |
| Water development authority—Acct. No. 5670 | 143 |
| West Virginia railroad maintenance authority—Acct. No. 5690 | 144 |

EDUCATIONAL

| | |
|---|-----|
| Department of culture and history—Acct. No. 3510 | 129 |
| Educational broadcasting authority—Acct. No. 2910 | 125 |
| Marshall University (medical school)—Acct. No. 2840 | 122 |
| State board of education (vocational division)—Acct. No. 2890 | 124 |
| State department of education—Acct. No. 2860 | 123 |
| State Department of education (aid for exceptional children)—Acct. No. 2960 | 126 |
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1 **Section 1. Appropriations from general revenue.**—From
 2 the state fund, General Revenue, there is hereby appro-
 3 priated conditionally upon the fulfillment of the provisions
 4 set forth in Chapter 5A, Article 2 of the Code of West Vir-
 5 ginia, the following amounts, as itemized, for expenditure
 6 during the fiscal year one thousand nine hundred eighty-four.

1 **Sec. 2. Appropriations of federal funds.**—In accordance
 2 with Chapter 4, Article 11, Federal Funds are hereby ap-
 3 propriated conditionally upon the fulfillment of the provisions
 4 set forth in Chapter 5A, Article 2 of the Code of West
 5 Virginia, the following amounts, as itemized, for expendi-

6 ture during the fiscal year one thousand nine hundred eighty-
7 four.

| | LEGISLATIVE | | State |
|---|-------------------------------|-------------|--------------|
| | 1— <i>Senate</i> | Federal | General |
| | Acct. No. 1010 | Funds | Revenue |
| | | Fiscal Year | Fiscal Year |
| | | 1983-84 | 1983-84 |
| 1 | Compensation of Members | \$ — | \$ 130,000 |
| 2 | Compensation and Per Diem of | | |
| 3 | Officers and Employees | — | 500,000 |
| 4 | Expenses of Members | — | 100,000 |
| 5 | Current Expenses and | | |
| 6 | Contingent Fund | — | 200,000 |
| 7 | Printing Blue Book | — | 110,000 |
| 8 | Total | \$ — | \$ 1,040,000 |

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

14 The appropriations for the Senate for the fiscal year 1982-
15 83 are to remain in full force and effect, and are hereby reap-
16 propriated to June 30, 1984.

17 Any balances so reappropriated may be transferred and
18 credited to the 1983-84 accounts.

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

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

29 paration for the opening, the conduct of the business and
 30 after adjournment of any regular or extraordinary session, and
 31 for the necessary operation of the Senate offices, the requi-
 32 sition for same to be accompanied by the bills to be filed with
 33 the Auditor.

34 The Clerk of the Senate, with written approval of the
 35 President, or the President of the Senate shall have authority
 36 to employ such staff personnel during any session of the
 37 Legislature as shall be needed in addition to staff personnel
 38 authorized by the Senate resolution adopted during any such
 39 session. The Clerk of the Senate, with written approval of the
 40 President, or the President of the Senate shall have authority
 41 to employ such staff personnel between sessions of the Legis-
 42 lature as shall be needed, the compensation of all staff per-
 43 sonnel during and between sessions of the Legislature, notwith-
 44 standing any such Senate resolution, to be fixed by the Presi-
 45 dent of the Senate. The Clerk is hereby authorized to draw
 46 his requisition for the payment of all such staff personnel upon
 47 the State Auditor, payable out of the appropriation for Com-
 48 pensation and per diem of Officers and Employees or Current
 49 Expenses and Contingent Fund of the Senate for such ser-
 50 vices.

51 For duties imposed by law and the Senate, the Clerk of the
 52 Senate shall be paid a monthly salary as provided in Senate
 53 resolution adopted January 1983, and payable out of the
 54 amount appropriated for Compensation and per diem of
 55 Officers and Employees.

2—*House of Delegates*

Acct. No. 1020

| | | | |
|---|-------------------------------|------|--------------|
| 1 | Compensation of Members | \$ — | \$ 699,000 |
| 2 | Compensation and Per Diem of | | |
| 3 | Officers and Employees | — | 460,000 |
| 4 | Expenses of Members | — | 475,000 |
| 5 | Current Expenses and Contin- | | |
| 6 | gent Fund | — | 667,000 |
| 7 | Total | \$ — | \$ 2,301,000 |

8 The appropriations for the House of Delegates for the
9 fiscal year 1982-83 are to remain in full force and effect,
10 and are hereby reappropriated to June 30, 1984.

11 Any balance so reappropriated may be transferred and
12 credited to the 1983-84 accounts.

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

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

27 The Speaker of the House of Delegates, upon approval
28 of the House Committee on Rules, shall have authority to
29 employ such staff personnel during and between sessions of
30 the Legislature as shall be needed, in addition to personnel
31 designated in the House resolution, and the compensation of
32 all personnel shall be as fixed in such House resolution, for
33 the session, or fixed by the Speaker, with the approval of the
34 House Committee on Rules, during and between sessions of
35 the Legislature, notwithstanding such House resolution. The
36 Clerk of the House is hereby authorized to draw requisitions
37 upon the State Auditor, payable from the Compensation and
38 per diem of Officers and Employees Fund or the Current Ex-
39 penses and Contingent Fund of the House of Delegates, for
40 such services.

41 For duties imposed by law and by the House of Delegates,
42 including salary allowed by law as keeper of the rolls, the
43 Clerk of the House of Delegates shall be paid a monthly salary
44 as provided in the House resolution, unless increased between

45 sessions under the authority of the Speaker, with approval of
 46 the House Committee on Rules, and payable from the Com-
 47 pensation and per diem of officers and employees item or the
 48 Current Expenses and Contingent Fund item of the House of
 49 Delegates.

3—*Joint Expenses*

Acct. No. 1030

| | | | |
|-------|-------------------------------------|------|--------------|
| 1 | Joint Committee on Government | | |
| 2 | and Finance | \$ — | \$ 3,471,425 |
| 3 | To pay cost of Legislative Printing | — | 740,000 |
| 4 | Rule Making Review Committee | — | 50,000 |
| <hr/> | | | |
| 5 | Total | \$ — | \$ 4,261,425 |

6 The appropriation for Joint Expenses for the fiscal year
 7 1982-83 are to remain in full force and effect and are here-
 8 by reappropriated to June 30, 1984. Any balances so re-
 9 appropriated may be transferred and credited to the 1983-84
 10 accounts.

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

JUDICIAL

4—*Supreme Court—General Judicial*

Acct. No. 1110

| | | | |
|-------|---------------------------------|------|---------------|
| 1 | Personal Services | \$ — | \$ 14,008,620 |
| 2 | Other Expenses | — | 2,692,058 |
| 3 | Judges Retirement System | — | 994,830 |
| 4 | Other Court Costs | — | 2,011,700 |
| 5 | Judicial Training Program | — | 100,000 |
| 6 | Mental Hygiene Fund | — | 250,000 |
| <hr/> | | | |
| 7 | Total | \$ — | \$ 20,057,208 |

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

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

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

18 Any unexpended balance remaining in this appropriation
 19 at the close of the fiscal year 1982-83 is hereby reappropriated
 20 for expenditure during the fiscal year 1983-84.

EXECUTIVE

5—*Governor's Office*

Acct. No. 1200

| | | | |
|---|-------------------------------|------|--------------|
| 1 | Salary of Governor | \$ — | \$ 60,000 |
| 2 | Other Personal Services | — | 927,160 |
| 3 | Current Expenses | — | 386,405 |
| 4 | Equipment | — | 4,340 |
| 5 | Total | \$ — | \$ 1,377,905 |

6—*Office of Economic and Community Development*

Acct. No. 1210

| | | | |
|----|-------------------------------|--------------|--------------|
| 1 | Personal Services | \$ 1,636,976 | \$ 2,009,377 |
| 2 | Current Expenses | 22,389,989 | 2,490,427 |
| 3 | Equipment | 14,890 | 13,106 |
| 4 | The Economic Development Loan | | |
| 5 | Fund | — | 1,250,000 |
| 6 | Regional Council | — | 220,000 |
| 7 | A.R.C. Assessment | — | 320,000 |
| 8 | Partnership Grants | — | 1,500,000 |
| 9 | Fire Departments | — | 1,000,000 |
| 10 | Civil Air Patrol | — | 89,000 |
| 11 | Emergency Assistance | — | 250,000 |
| 12 | Coal Development | — | 277,279 |
| 13 | Jobs Program | — | —0— |
| 14 | To Local Entities | 18,336,885 | —0— |

| | | | |
|------|----------------------------------|---------------|--------------|
| 15 | Transfer to State Spending Units | 295,374 | —0— |
| 16 * | | — | |
| 17 | *Total | \$ 42,674,114 | \$ 9,419,189 |

18 Any unexpended balance remaining in accounts "Federal
19 State Coordination," "Office of Criminal Justice and Highway
20 Safety," "Coal Development Authority" and "Regional Coun-
21 cil" at the close of the fiscal year 1982-83 is hereby reappro-
22 priated for expenditure during the fiscal year 1983-84.

23 Any unexpended balance remaining in the account "Com-
24 munity Water Development Grant and Partnership Grants" at
25 the close of the fiscal year 1982-83 is hereby reappropriated
26 for expenditure during the fiscal year 1983-84.

27 Any unexpended balance remaining in accounts "Fire De-
28 partments," "Milton Volunteer Fire Department", "Emergency
29 Assistance to Small Municipal and Public Service Districts
30 Water and Sewage Systems" and "Flood" at the close of the
31 fiscal year 1982-83 is hereby reappropriated for expenditure
32 during the fiscal year 1983-84.

33 The amount appropriated for "Coal Development" shall not
34 be used regarding any matter affecting health and safety.

7—Governor's Office—Custodial Fund

Acct. No. 1230

1 Unclassified—Total \$ — \$ 321,912

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

8—Governor's Office—Civil Contingent Fund

Acct. No. 1240

1 Unclassified—Total \$ — \$ 1,150,000

2 Of the appropriation there may be expended, at the discre-

*Clerk's Note: "National Youth Science Camp . . . 150,000" on line six-
teen, Acct. 1210, was deleted by the Governor and the total on line seven-
teen was reduced from "9,569,189" to "9,419,189" to reflect the deletion.

3 tion of the Governor, an amount not to exceed \$1,000 as
 4 West Virginia's contribution to the Interstate Oil Compact
 5 Commission.

6 Any unexpended balance remaining in this appropriation
 7 at the close of the fiscal year 1982-83 is hereby reappropriated
 8 for expenditure during the fiscal year 1983-84.

9 The unexpended and unencumbered current balances in
 10 Account No. 1240-08 and appropriation item "Southern West
 11 Virginia Flood Disaster-Housing Program" is hereby re-
 12 designated, as to purpose, as follows: "Governor's Office—
 13 Civil Contingent Fund—Jobs, McDowell and Mingo Counties."
 14 Any unexpended balance remaining in this appropriation
 15 item, as redesignated, is hereby reappropriated for expenditure
 16 during the fiscal year 1983-84.

9—*Office of Emergency Services*

Acct. No. 1300

| | | | |
|---|-------------------------------|------------|------------|
| 1 | Personal Services | \$ 120,179 | \$ 227,970 |
| 2 | Current Expenses | 111,592 | 41,437 |
| 3 | Repairs and Alterations | — | 20,000 |
| 4 | To Local Entities | 280,000 | —0— |
| 5 | Transfer to State Spending | | |
| 6 | Units | 390,000 | —0— |
| | | <hr/> | <hr/> |
| 7 | Total | \$ 901,771 | \$ 289,407 |

FISCAL

10—*Auditor's Office—General Administration*

Acct. No. 1500

| | | | |
|---|-------------------------------|-------|--------------|
| 1 | Salary of State Auditor | \$ — | \$ 39,000 |
| 2 | Other Personal Services | — | 1,369,378 |
| 3 | Current Expenses | — | 595,167 |
| 4 | Equipment | — | 203,000 |
| 5 | Microfilm | — | 20,000 |
| | | <hr/> | <hr/> |
| 6 | Total | \$ — | \$ 2,226,545 |

11—*Auditor's Office—Social Security*

Acct. No. 1510

1 To match contributions of
 2 state employees for
 3 Social Security—Total \$ — \$ 18,229,000

4 The above appropriation is intended to cover the state's
 5 share of social security cost for those spending units operating
 6 from General Revenue Fund. The State Department of High-
 7 ways, Department of Motor Vehicles, Workers' Compensa-
 8 tion Commission, Public Service Commission, and other de-
 9 partments operating from Special Revenue Funds and/or
 10 Federal Funds shall pay their proportionate share of the
 11 social security cost for their respective divisions.

12 Any unexpended balance remaining in the appropriation
 13 for "Auditor's Office—Social Security" at the close of the
 14 fiscal year 1982-83 is hereby reappropriated for expenditure
 15 during the fiscal year 1983-84.

12—*Auditor's Office—Unemployment Compensation*

Acct. No. 1520

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

2 The above appropriation is intended to cover the state's
 3 share of unemployment compensation costs for those spend-
 4 ing units operating from General Revenue Fund. The State
 5 Department of Highways, Department of Motor Vehicles,
 6 Workers' Compensation Commission and other departments
 7 operating from Special Revenue Funds and/or Federal Funds
 8 shall pay their proportionate share of the unemployment com-
 9 pensation cost for their respective divisions.

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

13—*Treasurer's Office*

Acct. No. 1600

| | | | |
|---|---------------------------------|------|--------------|
| 1 | Salary of State Treasurer | \$ — | \$ 42,000 |
| 2 | Other Personal Services | — | 677,422 |
| 3 | Current Expenses | — | 308,368 |
| 4 | Equipment | — | 30,000 |
| 5 | Microfilm Program | — | 10,000 |
| 6 | Total | \$ — | \$ 1,067,790 |

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

Acct. No. 1650

| | | | |
|---|---|------|---------------|
| 1 | Total | \$ — | \$ 16,316,500 |
| 2 | Any unexpended balance remaining in the appropriation for | | |
| 3 | "Treasurer's Office—School Building Sinking Fund" at the | | |
| 4 | close of the fiscal year 1982-83 is hereby reappropriated for | | |
| 5 | expenditure during the fiscal year 1983-84. | | |

15—*Municipal Bond Commission*

Acct. No. 1700

| | | | |
|---|-------------------------|------|------------|
| 1 | Personal Services | \$ — | \$ 74,687 |
| 2 | Current Expenses | — | 31,307 |
| 3 | Equipment | — | 1,050 |
| 4 | Total | \$ — | \$ 107,044 |

16—*State Tax Department*

Acct. No. 1800

| | | | |
|---|-------------------------------------|------|---------------|
| 1 | *Personal Services | \$ — | \$ 7,617,080 |
| 2 | *Current Expenses | — | 3,968,027 |
| 3 | Repairs and Alterations | — | 23,000 |
| 4 | Equipment | — | 121,488 |
| 5 | Circuit Breaker Reimbursement | — | 15,000 |
| 6 | Multi-State Tax Compact | — | 57,500 |
| 7 | Property Reappraisal Program | — | 15,925,281 |
| 8 | *Total | \$ — | \$ 27,727,376 |

*Clerk's Note: "Personal Services 7,977,080" was reduced by the Governor to "7,617,080" on line one and "Current Expenses 4,347,827" was reduced by the Governor to "3,968,027" on line two. Acct. No. 1800 and the total on line eight was reduced from "\$28,467,176" to "\$27,727,376" to reflect the reductions.

9 Any unexpended balance remaining in the appropriation
 10 for "Other Expenses" at the close of the fiscal year 1982-83
 11 is hereby reappropriated for expenditure during the fiscal
 12 year 1983-84.

13 The above appropriation item "Property Reappraisal Pro-
 14 gram" is to be expended by the tax commissioner pursuant to
 15 general law and Article X, Section 1b of the Constitution of
 16 West Virginia for the conduct of the first statewide reap-
 17 praisal of property subject to ad valorem taxation, as required
 18 by such constitutional amendment.

17—*Department of Finance and Administration*

Acct. No. 2100

| | | | |
|----|---------------------------------|--------------|--------------|
| 1 | Personal Services | \$ 109,812 | \$ 2,314,125 |
| 2 | Current Expenses | 1,323,876 | 1,009,070 |
| 3 | Repairs and Alterations | 1,000 | 200,000 |
| 4 | Equipment | 799,000 | 44,042 |
| 5 | Postage and Presort Mailing | | |
| 6 | Expenses | — | 1,600,000 |
| 7 | Utilities | — | 700,000 |
| 8 | Public Transportation | — | 375,000 |
| 9 | Fire Service Fee | — | 227,675 |
| 10 | Building Equipment and Supplies | — | 12,200 |
| 11 | Southern Regional | | |
| 12 | Education Board | — | 80,000 |
| 13 | Council of State Governments | — | 37,300 |
| 14 | National Governors Association | — | 37,200 |
| 15 | * | — | |
| 16 | * | — | |
| 17 | *Total | \$ 2,233,688 | \$ 6,636,612 |

18 The Workers' Compensation Commission, Department of
 19 Human Services, Public Service Commission, Department of
 20 Natural Resources, Department of Motor Vehicles, State De-
 21 partment of Highways, State Health Department and State Tax
 22 Department—Income Tax Division shall reimburse the Post-
 23 age appropriation of the Department of Finance and Adminis-

*Clerk's Note: Line fifteen, "Southern States Energy Board \$19,171" and line sixteen, "Capitol Building Improvements \$500" were both deleted by the Governor and the total on line seventeen was changed from "\$6,656,283" to "\$6,636,612" to reflect the deletion.

24 tration monthly for all meter service. Any spending unit oper-
 25 ating from Special Revenue or receiving reimbursement for
 26 postage costs from the federal government shall refund to the
 27 Postage account of the Department of Finance and Adminis-
 28 tration such amounts. Should this appropriation for postage be
 29 insufficient to meet the mailing requirements of the State spend-
 30 ing units as set out above, any excess postage meter service re-
 31 quirements shall be a proper charge against the units, and each
 32 spending unit shall refund to the Postage appropriation of the
 33 Department of Finance and Administration any amounts re-
 34 quired for the department for postage in excess of this appro-
 35 priation.

36 Any unexpended balance remaining in the "Postage Ac-
 37 count" at the close of the fiscal year 1982-83 is hereby reap-
 38 propriated for expenditure during the fiscal year 1983-84.

39 State Department of Highways shall reimburse the appro-
 40 priation of the Department of Finance and Administration
 41 monthly for all actual expenses incurred pursuant to the pro-
 42 visions of Chapter 17, Article 2A, Section 13 of the Code of
 43 West Virginia.

18—*State Board of Insurance*

Acct. No. 2250

| | | | |
|---|----------------------|------|--------------|
| 1 | Personal Services | \$ — | \$ 77,335 |
| 2 | Current Expenses | — | 29,930 |
| 3 | Equipment | — | 2,000 |
| 4 | Premiums, Claims and | | |
| 5 | Other Expenses | — | 4,629,000 |
| 6 | Total | \$ — | \$ 4,738,265 |

7 The above appropriation on lines 4 and 5 is for the purpose
 8 of paying premiums, self-insurance losses, loss adjustment
 9 expenses and loss prevention engineering fees for property,
 10 casualty and fidelity insurance for the various state agencies.
 11 Should this appropriation be insufficient to meet the require-
 12 ments of the state spending units, any excess costs shall be
 13 a proper charge against the units and each spending unit shall
 14 reimburse to the Board of Insurance any amounts required
 15 for that department for costs in excess of this appropriation.

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

20 Any or all of the funds appropriated for "Premiums,
21 Claims and Other Expenses" may be transferred to a special
22 account for disbursement for payment of premiums and
23 insurance losses.

LEGAL

19—Attorney General

Acct. No. 2400

| | | | |
|----|----------------------------------|---------|--------------|
| 1 | Salary of Attorney General | \$ — | \$ 42,000 |
| 2 | Other Personal Services | — | 1,637,453 |
| 3 | Current Expenses | — | 383,919 |
| 4 | Equipment | — | 63,815 |
| 5 | Publication of Reports | | |
| 6 | and Opinions | — | 20,000 |
| 7 | To Protect the Resources or Tax | | |
| 8 | Structure of the State in Con- | | |
| 9 | troversies or Legal Proceedings | | |
| 10 | Affecting Same | — | 3,250 |
| 11 | Consumer Protection | — | 269,277 |
| | Personal Services — | 205,036 | |
| | Current Expenses — | 55,801 | |
| | Equipment | 8,440 | |
| 12 | Total | \$ — | \$ 2,419,714 |

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

18 Any unexpended balance remaining in the appropriation
19 for "Publication of Reports and Opinions" at the close of the
20 fiscal year 1982-83 is hereby reappropriated for expenditure
21 during the fiscal year 1983-84.

20—*Commission on Uniform State Laws*

Acct. No. 2450

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

INCORPORATING AND RECORDING

21—*Secretary of State*

Acct. No. 2500

| | | | |
|----|--|------|------------|
| 1 | Salary of Secretary of State..... | \$ — | \$ 36,000 |
| 2 | Other Personal Services | — | 428,590 |
| 3 | Current Expenses | — | 163,975 |
| 4 | Equipment | — | 25,505 |
| 5 | Certification of Primary and Gen- | | |
| 6 | eral Elections | — | 5,000 |
| 7 | Publication of State Register | — | 88,975 |
| 8 | Election Training Presentation | — | 15,000 |
| 9 | Total | \$ — | \$ 763,045 |
| 10 | The Secretary of State shall fully utilize the above appropria- | | |
| 11 | tion for "Publication of State Register" to undertake his man- | | |
| 12 | datory duty to publish a state register of rules and regulations | | |
| 13 | in conformity with chapter twenty-nine-a of the code of West | | |
| 14 | Virginia, one thousand nine hundred thirty-one, as amended. | | |

EDUCATIONAL

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

Acct. No. 2790

| | | | |
|---|-----------------------------------|------|---------------|
| 1 | Personal Services | \$ — | \$108,470,000 |
| 2 | *Current Expenses | — | 22,945,000 |
| 3 | Repairs and Alterations | — | 1,100,000 |
| 4 | Equipment | — | 1,100,000 |
| 5 | Bureau of Coal Research | — | 1,000,000 |
| 6 | National Research Center for Coal | | |
| 7 | and Energy | — | 1,500,000 |

*Clerk's Note: The figure on line two, Acct. No. 2790, was reduced by the Governor from "\$23,582,932" to "\$22,945,000".

| | | | |
|----|--------------------------|------|----------------|
| 8 | Transportation Services— | | |
| 9 | W.V.U. | — | 1,344,000 |
| 10 | Doctoral Research | — | 100,000 |
| 11 | *Total | \$ — | \$ 137,559,000 |

23—*West Virginia Board of Regents*

Acct. No. 2800

| | | | |
|---|---------------------------------|------|--------------|
| 1 | Personal Services | \$ — | \$ 767,000 |
| 2 | Current Expenses | — | 312,000 |
| 3 | Equipment | — | 7,000 |
| 4 | Scholarship Program | — | 3,200,000 |
| 5 | Tuition Contract Programs | — | 760,000 |
| 6 | Total | \$ — | \$ 5,046,000 |

24—*West Virginia College of Osteopathic Medicine*

**Acct. No. 2810

| | | | |
|---|-------------------------------|------|--------------|
| 1 | Personal Services | \$ — | \$ 1,860,000 |
| 2 | Current Expenses | — | 803,000 |
| 3 | Repairs and Alterations | — | 37,000 |
| 4 | Equipment | — | 56,000 |
| 5 | Total | \$ — | \$ 2,756,000 |

25—*Marshall University—Medical School*

Acct. No. 2840

| | | | |
|---|-------------------------------|------|--------------|
| 1 | Personal Services | \$ — | \$ 4,438,000 |
| 2 | Current Expenses | — | 1,145,000 |
| 3 | Repairs and Alterations | — | 54,000 |
| 4 | Equipment | — | 130,000 |
| 5 | Total | \$ — | \$ 5,767,000 |

*Clerk's Note: The total on line eleven, Acct. No. 2790, was reduced by the Governor from "\$138,196,932" to "\$137,559,000" to reflect the reduction on line two of the account.

**Clerk's Note: All of Acct. No. 2810 was reduced by the Governor as follows:

| | | From | To |
|---|-------------------------------|--------------|--------------|
| 1 | Personal Services | \$ 2,535,000 | \$ 1,860,000 |
| 2 | Current Expenses | 1,094,000 | 803,000 |
| 3 | Repairs and Alterations | 50,000 | 37,000 |
| 4 | Equipment | 77,000 | 56,000 |
| 5 | Total | \$ 3,756,000 | \$ 2,756,000 |

26—*West Virginia University—Medical School*

Acct. No. 2850

| | | | |
|----|---|------|---------------|
| 1 | Personal Services | \$ — | \$ 14,253,000 |
| 2 | Current Expenses | — | 6,566,000 |
| 3 | Repairs and Alterations | — | 300,000 |
| 4 | Equipment | — | 375,000 |
| 5 | Family Practice Residency Sup- | | |
| 6 | port Program | — | 458,000 |
| 7 | Intern and Residency Support | | |
| 8 | Programs for Community Hos- | | |
| 9 | pitals | — | 945,000 |
| 10 | Capital Outlay | — | —0— |
| 11 | Total | \$ — | \$ 22,897,000 |
| 12 | To be transferred to the West Virginia University—Medical | | |
| 13 | School Fund upon the requisition of the Governor. | | |

27—*State Department of Education*

Acct. No. 2860

| | | | |
|----|--|----------|--------------|
| 1 | Personal Services | \$ — | \$ 1,942,064 |
| 2 | Current Expenses | 5,800 | 1,007,686 |
| 3 | Repairs and Alterations | — | 1,100 |
| 4 | Equipment | — | 17,400 |
| 5 | Statewide Testing Program | — | 774,999 |
| | Personal Services | 66,124 | |
| | Other Expenses | 398,875 | |
| | Professional Competency | | |
| | Testing | 310,000 | |
| 6 | Aid to Children's Home | — | 50,000 |
| 7 | Regional Education Service | | |
| 8 | Agencies | — | 424,460 |
| 9 | Child Development Programs ... | — | 486,561 |
| 10 | Tuition Waiver | — | 350,000 |
| 11 | Total | \$ 5,800 | \$ 5,054,270 |
| 12 | The above appropriation includes the State Board of Edu- | | |
| 13 | cation and their executive office. | | |

28—State Department of Education—School Lunch Program

Acct. No. 2870

| | | | |
|---|-------------------------------|---------------------|---------------------|
| 1 | Personal Services | \$ 316,122 | \$ 142,951 |
| 2 | Current Expenses | 560,883 | 15,512 |
| 3 | Repairs and Alterations | 2,000 | — |
| 4 | Equipment | 8,000 | — |
| 5 | Aid to Counties—Includes hot | | |
| 6 | lunches and canning for | | |
| 7 | hot lunches | — | 1,950,000 |
| 8 | To Local Entities | 27,098,055 | — |
| 9 | Total | <u>\$27,985,060</u> | <u>\$ 2,108,463</u> |

29—State Board of Education—Vocational Division

Acct. No. 2890

| | | | |
|----|---------------------------------|---------------------|----------------------|
| 1 | Personal Services | \$ 867,112 | \$ 375,057 |
| 2 | Current Expenses | 485,479 | 152,426 |
| 3 | Repairs and Alterations | 2,500 | — |
| 4 | Equipment | 7,000 | 6,780 |
| 5 | Vocational Aid | — | 9,215,980 |
| 6 | Adult Basic Education | — | 776,100 |
| 7 | Start Up Funds and Equipment | | |
| 8 | for New and Existing Facilities | — | 1,250,000 |
| 9 | New and Expanding Industries .. | — | 159,405 |
| 10 | * | — | |
| 11 | * | — | |
| 12 | Brooke County Equipment | — | 113,000 |
| 13 | To Local Entities | 5,813,248 | — |
| 14 | * | | |
| 15 | * | — | |
| 16 | * | — | |
| 17 | *Total | <u>\$ 7,175,339</u> | <u>\$ 12,048,748</u> |

18 Any unexpended balance remaining in the appropriation for
 19 "New and Expanding Industries" at the close of the fiscal year

*Clerk's Note: Lines ten and eleven, "Programs for Unemployed Adults 1,000,800", lines fourteen and fifteen, "Hampshire County Vocational School 247,500", line sixteen, "Hardy County Vocational School 106,106", Acct. No. 2890, were deleted by the Governor and the total on line seventeen was changed from "\$13,403,154" to "\$12,048,748" to reflect the deletion.

20 1982-83 is hereby reappropriated for expenditure during the
21 fiscal year 1983-84.

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30—*Educational Broadcasting Authority*

Acct. No. 2910

| | | | |
|---|---------------------------|------------|--------------|
| 1 | Personal Services | \$ — | \$ 81,297 |
| 2 | Current Expenses | 55,000 | 37,701 |
| 3 | Equipment | 541,466 | 15,000 |
| 4 | Regional ETV | — | 2,602,425 |
| 5 | WVU-TV | — | 1,029,168 |
| 6 | WSWP—Capital Outlay | — | 600,000 |
| 7 | Total | \$ 596,466 | \$ 4,365,591 |

8 "Regional ETV" is for participation in the construction
9 and operation of Regional ETV stations by Marshall Uni-
10 versity, Concord College, Bluefield State College, West
11 Virginia Institute of Technology and West Virginia State
12 College, and the acquisition of a new FM radio station
13 to serve the northern panhandle, and such funds may be trans-

*Clerk's Note: Lines twenty-two through thirty-two were deleted by the Governor and prior thereto read as follows:

"The appropriation item "Programs for Unemployed Adults" above, may be expended for conducting vocational training programs and providing related services such as career assessment and counseling, remediation and job seeking skills for unemployed adults. Allowable costs may include salaries for instructors and counselors, fixed costs, administration, instructional supplies, transportation of students and purchase, rental, maintenance and repair of instructional equipment where necessary to offer such program; however, no more than \$200,000 may be expended for the purchase, rental, maintenance and repair of instructional equipment."

- 14 ferred to Special Revenue Accounts for matching County and/
15 or Federal Funds.

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

Acct. No. 2950

| | | | |
|----|-----------------------------------|------|---------------|
| 1 | Professional Educators | \$ — | \$381,065,351 |
| 2 | Service Personnel | — | 134,683,348 |
| 3 | Fixed Charges | — | 58,176,453 |
| 4 | Transportation | — | 25,900,909 |
| 5 | Administration | — | 2,667,445 |
| 6 | Other Current Expenses | — | 33,523,665 |
| 7 | Improve Instructional Programs .. | — | 22,379,473 |
| | | | <hr/> |
| 8 | Basic Foundation Allowances | — | 658,396,644 |
| 9 | Less Local Share | — | 98,907,647 |
| | | | <hr/> |
| 10 | Total Basic State Aid | — | 559,488,997 |
| 11 | Loss Reduction | — | 2,699,443 |
| 12 | Staffing Improvement | — | 2,068,543 |
| | Professional Edu- | | |
| | cators | — | 1,339,765 |
| | Service Personnel ... | — | 728,778 |
| 13 | Increased Enrollment | — | 800,000 |
| | | | <hr/> |
| 14 | Total | \$ — | \$565,056,983 |

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

Acct. No. 2960

| | | | |
|---|--------------------------------|------------|------------|
| 1 | Personal Services | \$ 280,842 | \$ 260,790 |
| 2 | Current Expenses | 362,062 | 118,980 |
| 3 | Equipment | 9,000 | 6,500 |
| 4 | Out-of-State Instruction | — | 428,000 |
| 5 | Aid to Counties | — | 6,475,670 |
| | County Grant Awards | — | 6,054,303 |
| | Regional Education Service | | |
| | Agency Grants | — | 212,000 |
| | Special State Projects | — | 209,367 |
| 6 | To Local Entities | 7,567,680 | — |

7 *

| | | |
|----------------|--------------|--------------|
| 8 *Total | \$ 8,219,584 | \$ 7,289,940 |
|----------------|--------------|--------------|

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

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

23 The appropriation for "Special State Projects" may be ex-
 24 pended to support (1) an instructional materials center for
 25 visually handicapped children at the West Virginia Schools for
 26 the Deaf and the Blind, (2) the State Special Olympics pro-
 27 gram, (3) the West Virginia Advisory Council for the Edu-
 28 cation of Exceptional Children at the West Virginia College of
 29 Graduate Studies, and (4) statewide training activities or pro-
 30 grams benefiting exceptional children.

33—*Teachers' Retirement Board*

Acct. No. 2980

| | | |
|----------------------------------|------|---------------|
| 1 Teachers' Retirement Fund | \$ — | \$ 42,050,000 |
| 2 Supplemental Benefits for | | |
| 3 Annuitants | — | 4,650,000 |
| 4 Total | \$ — | \$ 46,700,000 |

5 The line item "Supplemental Benefits for Annuitants" may
 6 be transferred as required and shall be expended in accordance
 7 with the provisions of Chapter 115, Acts of the Legislature,
 8 Regular Session, 1982.

*Clerk's Note: Line seven, Acct. No. 2960, "Construction 200,000" was deleted by the Governor and the total on line eight was changed from "\$7,489,940" to "\$7,289,940" to reflect the deletion.

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

Acct. No. 3330

| | | | |
|---|-------------------------------|------|--------------|
| 1 | Personal Services | \$ — | \$ 3,010,164 |
| 2 | Current Expenses | — | 790,462 |
| 3 | Repairs and Alterations | — | 109,327 |
| 4 | Equipment | — | 109,335 |
| 5 | Capital Outlay | — | 131,000 |
| 6 | Total | \$ — | \$ 4,150,288 |

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

Acct. No. 3360

| | | | |
|---|-------------------------------|------|------------|
| 1 | Personal Services | \$ — | \$ 118,900 |
| 2 | Current Expenses | — | 66,691 |
| 3 | Repairs and Alterations | — | 19,000 |
| 4 | Equipment | — | 15,000 |
| 5 | Total | \$ — | \$ 219,591 |

36—*West Virginia Library Commission*

Acct. No. 3500

| | | | |
|----|------------------------------------|------------|--------------|
| 1 | Personal Services | \$ 80,418 | \$ 924,742 |
| 2 | Current Expenses | 34,215 | 206,567 |
| 3 | Repairs and Alterations | — | 3,920 |
| 4 | Equipment | — | 10,000 |
| 5 | Per-Capita Grants | — | 5,115,707 |
| 6 | Books, Periodicals and Films | — | 195,120 |
| 7 | Library Matching Fund | | |
| 8 | *(Construction) | — | 50,000 |
| 9 | Films | — | —0— |
| 10 | *Total | \$ 114,633 | \$ 6,506,056 |

11 Any unexpended balances remaining in the appropriation for
 12 "Library Matching Fund (Construction)" at the close of the
 13 fiscal year 1982-83 is hereby reappropriated for expenditure
 14 during the fiscal year 1983-84.

*Clerk's Note: The figure on line eight, Acct. No. 3500, was reduced by the Governor from "\$80,000" to "\$50,000" and the total on line ten was changed from "\$6,536,056" to "\$6,506,056" to reflect the reduction.

37—*Department of Culture and History*

Acct. No. 3510

| | | | |
|----|---------------------------------------|------------|--------------|
| 1 | Personal Services | \$ 40,000 | \$ 933,939 |
| 2 | Current Expenses | 407,500 | 282,231 |
| 3 | Repairs and Alterations | — | 32,500 |
| 4 | Equipment | 2,500 | 59,500 |
| 5 | Arts and Humanities Fund | — | 653,722 |
| | Personal Services.. .. | 165,147 | |
| | Current Expenses.. .. | 601 | |
| | Grants and Contractual Services | 487,974 | |
| 6 | Department Program- | | |
| 7 | ming Funds | — | 495,387 |
| | Outreach and Educa- | | |
| | tion | 97,564 | |
| | Technical | | |
| | Assistance | 97,823 | |
| | Cultural Center | | |
| | Programs | 300,000 | |
| 8 | Historical Preservation | — | 184,776 |
| 9 | Washington Carver Camp | — | 140,000 |
| 10 | *Grants, Fairs and Festivals | — | 374,250 |
| 11 | Independence Hall | — | —0— |
| 12 | *Total | \$ 450,000 | \$ 3,156,305 |

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

19 All federal moneys received as reimbursement to the De-
 20 partment of Culture and History for moneys expended from
 21 the General Revenue Fund for Arts and Humanities are here-
 22 by reappropriated for the purposes as originally made, includ-
 23 ing Personal Services, Current Expenses and Equipment.

*Clerk's Note: The figure on line ten, Acct. No. 3510, was reduced by the Governor from "\$501,375" to "\$374,250" and the total on line twelve was changed from "\$3,283,430" to "\$3,156,305" to reflect the reduction.

24 Any unexpended balance remaining in the appropriation
 25 "Washington Carver Camp" at the close of the fiscal year
 26 1982-83 is hereby reappropriated for expenditure during the
 27 fiscal year 1983-84.

CORRECTIONS

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

Acct. No. 3650

| | | | | |
|---|------------------------------|----|---|------------|
| 1 | Salaries of Members of Board | | | |
| 2 | of Probation and Parole | \$ | — | \$ 75,000 |
| 3 | Other Personal Services | | — | 45,902 |
| 4 | Current Expenses | | — | 24,746 |
| 5 | Repairs and Alterations | | — | 300 |
| 6 | Equipment | | — | 700 |
| | | | | <hr/> |
| 7 | Total | \$ | — | \$ 146,648 |

39—*Department of Corrections—Central Office*

Acct. No. 3680

| | | | | |
|---|---------------------------------|----|---|--------------|
| 1 | Personal Services | \$ | — | \$ 438,906 |
| 2 | Current Expenses | | — | 244,709 |
| 3 | Repairs and Alterations | | — | 1,500 |
| 4 | Equipment | | — | 160,270 |
| 5 | Adult Female Offenders Contract | | — | 1,028,750 |
| | Personal Services | | — | 25,000 |
| | Current Expenses | | — | 1,003,750 |
| | | | | <hr/> |
| 6 | Total | \$ | — | \$ 1,874,135 |

40—*West Virginia Penitentiary*

Acct. No. 3750

1 Any unexpended balance remaining in the appropriation
 2 for "Capital Outlay" at the close of the fiscal year 1982-83 is
 3 hereby reappropriated for expenditure during the fiscal year
 4 1983-84.

41—*Department of Corrections—Correctional Units*

Acct. No. 3770

| | | | |
|---|-------------------------------|------|---------------|
| 1 | Personal Services | \$ — | \$ 9,768,561 |
| 2 | Current Expenses | — | 5,524,940 |
| 3 | Repairs and Alterations | — | 212,380 |
| 4 | Equipment | — | 45,088 |
| 5 | *Capital Outlay | — | 3,000,000 |
| 6 | *Total | \$ — | \$ 18,550,969 |

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

HEALTH AND HUMAN SERVICES

42—*State Health Department*

Acct. No. 4000

| | | | |
|----|-----------------------------------|--------------|--------------|
| 1 | Personal Services | \$ 1,818,176 | \$ 5,956,546 |
| 2 | Current Expenses | 13,831,267 | 3,910,905 |
| 3 | Repairs and Alterations | 1,500 | — |
| 4 | Equipment | 19,830 | 134,374 |
| 5 | Reimbursement to Community | | |
| 6 | Mental Health and Mental Re- | | |
| 7 | tardation Centers | — | 17,062,796 |
| 8 | Reimbursement to Community | | |
| 9 | Behavioral Health Programs | | |
| 10 | for Social Services | — | 1,613,632 |
| 11 | Special Olympics | — | 28,000 |
| 12 | State Aid to Local Agencies | — | 5,002,520 |

*Clerk's Note: Line five, Acct. No. 3370, "Capital Outlay \$4,000,000" was reduced by the Governor to "\$3,000,000". The total on line six was reduced from "\$19,550,969" to "\$18,550,969" to reflect the reduction.

| | | | |
|----|----------------------------------|--------------|---------------|
| 13 | Grants to Counties and EMS | | |
| 14 | Entities | — | 1,900,000 |
| 15 | Maternal and Child Health Clin- | | |
| 16 | ics, Clinicians and Medical Con- | | |
| 17 | tracts and Fees | — | 1,430,000 |
| 18 | Foster Grandparents Stipends/ | | |
| 19 | Travel | — | 62,370 |
| 20 | Office of Chief Medical Examiner | — | 971,886 |
| | Personal Services | — | 398,555 |
| | Current Expenses | — | 548,601 |
| | Repairs and | | |
| | Alterations | — | 4,000 |
| | Equipment | — | 20,730 |
| 21 | Hemophiliac Assistance Program | — | 120,052 |
| 22 | Placement Programs for the | | |
| 23 | Developmentally Disabled | — | 2,289,800 |
| 24 | Primary Care Contracts to Com- | | |
| 25 | munity Health Centers | — | 1,403,090 |
| 26 | Agent Orange | — | 300,000 |
| 27 | Alcohol, Drug Abuse and D. D. .. | — | 2,136,000 |
| 28 | Corporate Nonprofit Commu- | | |
| 29 | nity Health Center F.M.H.A. | | |
| 30 | Mortgage Finance | — | 75,000 |
| 31 | Total | \$15,670,773 | \$ 44,396,971 |

43—Department of Veterans Affairs—Veterans Home

Acct. No. 4010

| | | | |
|---|-------------------------------|--------------|--------------|
| 1 | Personal Services | \$ — | \$ 1,345,012 |
| 2 | Current Expenses | 582,247 | — |
| 3 | Repairs and Alterations | 200,000 | — |
| 4 | Equipment | 225,000 | — |
| 5 | Total | \$ 1,007,247 | \$ 1,345,012 |

6 Any unexpended balance remaining in the appropriation
7 for "Repairs and Alterations" and "Equipment" at the close
8 of the fiscal year 1982-83 is hereby reappropriated for ex-
9 penditure during the fiscal year 1983-84.

44—*Solid Waste Disposal*

Acct. No. 4020

| | | | |
|---|-------------------------|------|------------|
| 1 | Personal Services | \$ — | \$ 86,570 |
| 2 | Current Expenses | — | 37,764 |
| 3 | Equipment | — | 500 |
| 4 | Total | \$ — | \$ 124,834 |

45—*Department of Veterans Affairs*

Acct. No. 4040

| | | | |
|----|----------------------------------|------|------------|
| 1 | Personal Services | \$ — | \$ 624,410 |
| 2 | Current Expenses | — | 120,321 |
| 3 | Equipment | — | 9,500 |
| 4 | Educational Opportunities for | | |
| 5 | Children of War Veterans | — | 14,000 |
| 6 | In Aid of Veterans Day Patriotic | | |
| 7 | Exercises | — | 7,000 |
| 8 | National Cemetery— | | |
| 9 | Study and Legal Fees | — | 5,000 |
| 10 | Total | \$ — | \$ 780,231 |

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

46—*Department of Human Services*

Acct. No. 4050

| | | | |
|---|-------------------------------|--------------|--------------|
| 1 | Personal Services | \$12,215,420 | \$ 9,228,567 |
| 2 | Current Expenses | 3,173,890 | 3,719,856 |
| 3 | Repairs and Alterations | — | 17,000 |
| 4 | Equipment | 51,036 | 41,757 |

| | | | |
|----|----------------------------------|---------------|---------------|
| 5 | *Assistance Payments | 41,390,268 | 18,922,000 |
| 6 | Social Security Matching Fund .. | 763,780 | 664,633 |
| 7 | Indigent Burials | — | 620,000 |
| 8 | Social Services | 1,200,000 | 20,200,465 |
| 9 | Emergency Assistance | 500,737 | 1,000,000 |
| 10 | Medical Services | 116,015,056 | 52,640,000 |
| 11 | T. R. I. P. | — | 642,000 |
| 12 | Food Stamp (Value) | 105,688,320★ | — |
| 13 | Government Donated Food | | |
| 14 | (Value) | 4,562,162★ | — |
| 15 | Public Employees Retirement | | |
| 16 | Matching | 508,393 | 399,452 |
| 17 | Public Employees Health | | |
| 18 | Insurance | 484,517 | 380,692 |
| 19 | Handicapped Children | — | —0— |
| 20 | *Total | \$176,303,097 | \$108,476,422 |
| 21 | ** | | |
| 22 | | | |
| 23 | | | |
| 24 | | | |
| 25 | | | |
| 26 | | | |
| 27 | | | |
| 28 | | | |
| 29 | | | |
| 30 | | | |
| 31 | | | |

★For Information Only—Not included in Total

*Clerk's Note: The second figure on line five, Acct. No. 4050, "Assistance Payments 19,662,000" was reduced by the Governor to "\$18,922,000". The total on line twenty was also reduced from "\$109,216,422" to "\$108,476,422" to reflect the reduction.

**Clerk's Note: All of lines twenty-one through thirty-one were deleted by the Governor and prior thereto read as follows:

"The additional appropriation of one million two hundred thousand dollars in assistance payments line items over and above the Executive Budget recommendation is to be used for expansion of the Aid to Families with Dependent Children program exclusively to increase participation in the Community Work Experience Program. Highest priority for CWEP placements will be given to counties with unemployment statistics higher than the state average. This appropriation of one million two hundred thousand dollars will be matched by approximately two million five hundred thousand dollars in federal funds which will be used for the same purposes."

47—*State Commission on Aging*

Acct. No. 4060

| | | | |
|---|---------------------------------|--------------|--------------|
| 1 | Personal Services | \$ 279,721 | \$ 95,985 |
| 2 | Current Expenses | 146,542 | 60,300 |
| 3 | Equipment | 554 | — |
| 4 | Programs for Elderly | —0— | 2,866,614 |
| 5 | Golden Mountaineer Program ... | —0— | 35,000 |
| | Personal Services.. — | —0— | |
| | Other Expenses .. — | —0— | |
| 6 | Silver Haired Legislature | —0— | 20,000 |
| 7 | To Local Entities | 6,872,288 | — |
| 8 | Senior Citizens Centers | — | 200,000 |
| 9 | Total | \$ 7,299,105 | \$ 3,277,899 |

10 Any unexpended balance remaining in the appropriation
 11 for "Senior Citizens Centers" at the close of the fiscal year
 12 1982-83 is hereby reappropriated for expenditure during the
 13 fiscal year 1983-84, with the purpose of such items to be
 14 redesignated: "Senior Citizens Centers—land acquisition, con-
 15 struction, repairs or alterations."

48—*State Health Department—Retardation Centers*

Acct. No. 4150

| | | | |
|---|-------------------------------|------|---------------|
| 1 | Personal Services | \$ — | \$ 8,569,136 |
| 2 | Current Expenses | — | 1,490,071 |
| 3 | Repairs and Alterations | — | 195,000 |
| 4 | Equipment | — | 69,700 |
| 5 | Total | \$ — | \$ 10,323,907 |

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

49—State Health Department—Mental Hospitals

*Acct. No. 4160

| | | | | | |
|---|-------------------------------|----|---|-----------|------------|
| 1 | Personal Services | \$ | — | \$ | 18,503,471 |
| 2 | Current Expenses | — | — | 5,984,063 | |
| 3 | Repairs and Alterations | — | — | 276,220 | |
| 4 | Equipment | — | — | 247,240 | |
| 5 | Student Nurse Affiliation | | | | |
| 6 | Program (Huntington) | — | — | 71,782 | |
| 7 | Psychiatric Training Center— | | | | |
| 8 | Student Nurses (Weston) | — | — | 219,971 | |
| 9 | Total | \$ | — | \$ | 25,302,747 |

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

*Clerk's Note: Portions of Acct. No. 4160 were reduced by the Governor as follows:

| | | From | To |
|---|-------------------------------|---------------|---------------|
| 1 | Personal Services | \$ 18,503,471 | \$ 17,772,599 |
| 2 | Current Expenses | 5,984,063 | 5,569,828 |
| 3 | Repairs and Alterations | 276,220 | 241,220 |
| 4 | Equipment | 247,240 | 208,005 |
| 5 | Student Nurse Affiliation | | |
| 6 | Program (Huntington) | 71,782 | 71,782 |
| 7 | Psychiatric Training Center— | | |
| 8 | Student Nurses (Weston) | 219,971 | 219,971 |
| 9 | Total | \$ 25,302,747 | \$ 24,083,405 |

In mandamus proceedings numbered 15863, 15864 and 15865, the Clerk of the House of Delegates was commanded and directed to publish Acct. No. 4160 as passed by the Legislature, as set out above.

50—*State Health Department—Public Hospitals*

Acct. No. 4170

| | | | |
|---|-------------------------------|------|---------------|
| 1 | Personal Services | \$ — | \$ 11,619,287 |
| 2 | Current Expenses | — | 4,030,393 |
| 3 | Repairs and Alterations | — | 191,930 |
| 4 | Equipment | — | 68,653 |
| 5 | Total | \$ — | \$ 15,910,263 |

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

51—*State Board of Education—Rehabilitation Division*

Acct. No. 4400

| | | | |
|----|----------------------------------|--------------|--------------|
| 1 | Personal Services | \$ 9,642,896 | \$ 4,101,072 |
| 2 | Current Expenses | 4,220,523 | 1,035,262 |
| 3 | Repairs and Alterations | 129,836 | 1,423 |
| 4 | Equipment | 186,565 | 51,616 |
| 5 | Case Services | 9,196,404 | 2,302,479 |
| 6 | Social Security Matching Fund .. | 425,128 | 273,542 |
| 7 | WVU—Reimbursement | 594,000 | 50,872 |
| 8 | Workshop Development | 527,000 | 1,181,361 |
| 9 | Blind Services Coordinating Unit | — | 37,000 |
| 10 | Total | \$24,922,352 | \$ 9,034,627 |

52—*Commission for the Blind*

Acct. No. 4450

| | | | |
|---|--------------------------|------|------|
| 1 | Unclassified—Total | \$ — | \$ — |
|---|--------------------------|------|------|

BUSINESS AND INDUSTRIAL RELATIONS

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

Acct. No. 4500

| | | | |
|---|-------------------------|------------|------------|
| 1 | Personal Services | \$ 188,359 | \$ 968,590 |
|---|-------------------------|------------|------------|

APPROPRIATIONS

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| | | | |
|---|-------------------------------|------------|--------------|
| 2 | Current Expenses | 137,200 | 293,426 |
| 3 | Repairs and Alterations | — | 24,900 |
| 4 | Equipment | 36,700 | 8,635 |
| 5 | Labor Management Advisory | | |
| 6 | Council | — | 28,695 |
| 7 | Total | \$ 362,259 | \$ 1,324,246 |

54—Department of Mines

Acct. No. 4600

| | | | |
|----|-------------------------------|------------|--------------|
| 1 | Personal Services | \$ — | \$ 3,383,255 |
| 2 | Current Expenses | 180,000 | 1,502,646 |
| 3 | Equipment | 125,000 | 70,657 |
| 4 | Miner Training Education and | | |
| 5 | Certification | — | 130,000 |
| 6 | Board of Coal Mine Health and | | |
| 7 | Safety | — | 90,000 |
| 8 | Gas Well Certification | — | 240,000 |
| 9 | Development of Mine Safety | | |
| 10 | Program | — | 202,516 |
| 11 | Total | \$ 305,000 | \$ 5,619,074 |

55—Interstate Commission on Potomac River Basin

Acct. No. 4730

| | | | |
|---|---|------|-----------|
| 1 | West Virginia's contribution to Potomac River | | |
| 2 | Basin Interstate Commission | \$ — | \$ 30,350 |

56—Ohio River Valley Water Sanitation Commission

Acct. No. 4740

| | | | |
|---|--|------|-----------|
| 1 | West Virginia's contribution to the Ohio River | | |
| 2 | Valley Water Sanitation | | |
| 3 | Commission | \$ — | \$ 64,920 |

57—West Virginia Air Pollution Control Commission

Acct. No. 4760

| | | | |
|---|-------------------------|--------------|------------|
| 1 | Personal Services | \$ 737,404 | \$ 565,310 |
| 2 | Current Expenses | 307,679 | 164,836 |
| 3 | Equipment | — | 1,000 |
| 4 | Total | \$ 1,045,083 | \$ 731,146 |

58—*State Athletic Commission*

Acct. No. 4790

| | | | |
|---|--------------------------|------|----------|
| 1 | Unclassified—Total | \$ — | \$ 5,500 |
|---|--------------------------|------|----------|

59—*West Virginia State Aeronautics Commission*

Acct. No. 4850

1 Any unexpended balance remaining in the appropriation
 2 "Airport Matching" at the close of the fiscal year 1982-83
 3 is hereby reappropriated for expenditure during fiscal year
 4 1983-84.

60—*West Virginia Nonintoxicating Beer Commissioner*

*Acct. No. 4900

| | | | |
|---|-------------------------|------|------------|
| 1 | Personal Services | \$ — | \$ 305,777 |
| 2 | Current Expenses | — | 86,217 |
| 3 | Equipment | — | 300 |
| 4 | Total | \$ — | \$ 392,294 |

61—*West Virginia Racing Commission*

Acct. No. 4950

| | | | |
|---|-------------------------|------|------------|
| 1 | Personal Services | \$ — | \$ 842,148 |
| 2 | Current Expenses | — | 85,716 |
| 3 | Equipment | — | 5,000 |
| 4 | Total | \$ — | \$ 932,864 |

AGRICULTURE

62—*Department of Agriculture*

Acct. No. 5100

| | | | |
|---|------------------------------|------|-----------|
| 1 | Salary of Commissioner | \$ — | \$ 39,000 |
|---|------------------------------|------|-----------|

*Clerk's Note: All of Acct. No. 4900 was reduced by the Governor and line three thereof was completely deleted as follows:

| | | From | To |
|---|-------------------------|------|------------|
| 1 | Personal Services | \$ — | \$ 305,777 |
| 2 | Current Expenses | — | 86,217 |
| 3 | Equipment | — | 300 |
| 4 | Total | \$ — | \$ 392,294 |
| | | | \$ 78,125 |

In a mandamus proceeding numbered 15907, the Clerk of the House of Delegates was instructed to publish Acct. No. 4900 as enacted by the Legislature, as set out above.

| | | | |
|---|-------------------------------|------------|--------------|
| 2 | Other Personal Services | 212,280 | 1,882,367 |
| 3 | Current Expenses | 127,906 | 990,665 |
| 4 | Equipment | — | 32,250 |
| 5 | Multiflora Rose Eradication | | |
| 6 | Program | — | 165,000 |
| 7 | Gypsy Moth Program | — | 300,000 |
| 8 | Total | \$ 340,186 | \$ 3,409,282 |

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

63—*Farm Management Commission*

Acct. No. 5110

| | | | |
|---|-------------------------------|------|--------------|
| 1 | Personal Services | \$ — | \$ 1,008,331 |
| 2 | Current Expenses | — | 888,577 |
| 3 | Repairs and Alterations | — | 262,000 |
| 4 | Equipment | — | 167,323 |
| 5 | Livestock Purchase | — | 273,000 |
| 6 | Total | \$ — | \$ 2,599,231 |

64—*Department of Agriculture—
Soil Conservation Committee*

Acct. No. 5120

| | | | |
|---|-------------------------|------|------------|
| 1 | Personal Services | \$ — | \$ 319,083 |
| 2 | Current Expenses | — | 113,847 |
| 3 | Watershed Program | — | 250,000 |
| 4 | Total | \$ — | \$ 682,930 |

5 Any unexpended balance remaining in the appropriation
6 for "Watershed Program" and "Mud River Flood Control
7 Project," at the close of the fiscal year 1982-83 is hereby re-
8 appropriated for expenditure during the fiscal year 1983-84.

65—*Department of Agriculture—Division of Rural Resources
(Matching Fund)*

Acct. No. 5130

| | | | |
|---|-------------------------|------|------------|
| 1 | Personal Services | \$ — | \$ 733,980 |
| 2 | Current Expenses | — | 191,043 |
| 3 | Equipment | — | 41,200 |
| 4 | Total | \$ — | \$ 966,223 |

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

66—*Department of Agriculture—Meat Inspection*

Acct. No. 5140

| | | | |
|---|-------------------------|------------|------------|
| 1 | Personal Services | \$ 372,136 | \$ 367,000 |
| 2 | Current Expenses | 255,036 | 154,547 |
| 3 | Total | \$ 627,172 | \$ 521,547 |

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

67—*Department of Agriculture—Agricultural Awards*

*Acct. No. 5150

| | | | |
|---|---------------------------|------|------------|
| 1 | Agriculture Awards | \$ — | \$ 36,800 |
| 2 | Fairs and Festivals | — | 78,200 |
| 3 | Total | \$ — | \$ 115,000 |

*Clerk's Note: Acct. No. 5150 was reduced by the Governor as follows:

| | | | From | To |
|---|---------------------------|------|------------|------------|
| 1 | Agriculture Awards | \$ — | \$ 52,500 | \$ 36,800 |
| 2 | Fairs and Festivals | — | 111,338 | 78,200 |
| 3 | Total | \$ — | \$ 163,838 | \$ 115,000 |

CONSERVATION AND DEVELOPMENT

68—*Geological and Economic Survey*

*Acct. No. 5200

| | | | |
|---|-------------------------------|------------|--------------|
| 1 | Personal Services | \$ 55,464 | \$ 1,247,699 |
| 2 | Current Expenses | 38,486 | 302,464 |
| 3 | Repairs and Alterations | — | 33,488 |
| 4 | Equipment | 6,500 | 37,658 |
| 5 | Special Studies | — | 60,000 |
| 6 | Total | \$ 100,450 | \$ 1,681,309 |

69—*Department of Natural Resources*

Acct. No. 5650

| | | | |
|---|-----------------------------------|--------------|--------------|
| 1 | Personal Services | \$ 5,286,602 | \$ 8,747,539 |
| 2 | Current Expenses | 7,284,709 | 3,030,574 |
| 3 | Repairs and Alterations | 20,221,730 | 552,811 |
| 4 | Equipment | 562,195 | 346,276 |
| 5 | Fire Prevention Control | — | 651,533 |
| | Personal Services | — | 589,143 |
| | Other Expenses | — | 62,390 |
| 6 | Water Resources Board and | | |
| 7 | Reclamation Board of Review | — | 108,650 |
| 8 | Debt Service | — | 1,137,350 |
| 9 | To Local Entities | 29,800 | — |

*Clerk's Note: The Governor reduced portions of Acct. No. 5200 as follows:

| | | From | To |
|---|-------------------------------|------------|--------------|
| 1 | Personal Services | \$ 55,464 | \$ 1,430,749 |
| 2 | Current Expenses | 38,486 | 325,164 |
| 3 | Repairs and Alterations | — | 33,488 |
| 4 | Equipment | 6,500 | 141,908 |
| 5 | Special Studies | — | 60,000 |
| 6 | Total | \$ 100,450 | \$ 1,991,309 |
| | | | \$ 1,681,309 |

| | | |
|---------------------------------|--------------|---------------|
| 10 * | — | |
| 11 * | — | |
| 12 Chief Logan State Park | — | 200,000 |
| 13 *Total | \$33,385,036 | \$ 14,774,733 |

14 Any unexpended balance remaining in the appropriation for
 15 "Reeds Creek Hatchery" and "Castleman's Run Lake" at the
 16 close of the fiscal year 1982-83 is hereby reappropriated for
 17 expenditure during the fiscal year 1983-84.

18 Any or all funds appropriated for "Fire Prevention Control"
 19 may be transferred to Special Revenue Fund to match and
 20 aid Federal Funds.

70—*Public Land Corporation*

Acct. No. 5660

1 Any unexpended balance remaining in the appropriations for
 2 "Public Land Corporation" and "Blennerhassett Island" at the
 3 close of the fiscal year 1982-83 is hereby reappropriated for
 4 expenditure during the fiscal year 1983-84.

71—*Water Development Authority*

Acct. No. 5670

| | | |
|--------------------------------|------|--------------|
| 1 Loan and Grant Program | \$ — | \$ 397,000 |
| 2**Capital Outlay—Sewer | — | 8,500,000 |
| 3**Capital Outlay—Water | — | 168,000 |
| 4 **Total | \$ — | \$ 9,065,000 |

5 Any unexpended balance remaining in the appropriation
 6 for "Capital Outlay," "Phase III Hardship Grants," "Lubeck

*Clerk's Note: The Governor deleted lines ten and eleven. Acct. No. 5650. prior to their deletion they were as follows:

| | | |
|-----------------------------------|---|---------|
| 10 Wells Lock and Dam | — | 500,000 |
| 11 Canaan Valley State Park | — | 150,000 |

The Governor also reduced the total on line thirteen from "\$15,424,733" to "\$14,774,733" to reflect deletions.

**Clerk's Note: The Governor reduced line two, Acct. No. 5670, from "\$9,647,894" to "\$8,500,000" and line three from "\$685,500" to "\$168,000". The total on line four was also reduced from "\$10,730,394" to "\$9,065,000" to reflect the reductions.

7 Public Service District," "Bolair Public Service District" and
 8 "McMechen Water Project" at the close of the fiscal year
 9 1982-83 is hereby reappropriated for expenditure during the
 10 fiscal year 1983-84.

72—*West Virginia Railroad Maintenance Authority*

Acct. No. 5690

| | | | |
|---|-------------------------------|------------|------------|
| 1 | Personal Services | \$ — | \$ 673,131 |
| 2 | Current Expenses | 93,500 | 136,500 |
| 3 | Repairs and Alterations | 106,500 | —0— |
| 4 | Baltimore and Ohio— | | |
| 5 | Passenger Service | — | —0— |
| | | <hr/> | <hr/> |
| 6 | Total | \$ 200,000 | \$ 809,631 |

PROTECTION

73—*Department of Public Safety*

Acct. No. 5700

| | | | |
|---|-------------------------------|-----------|---------------|
| 1 | Personal Services | \$ 12,684 | \$ 14,090,943 |
| 2 | Current Expenses | 8,354 | 6,752,161 |
| 3 | Repairs and Alterations | — | 268,400 |
| 4 | Equipment | — | 2,097,033 |
| 5 | Emergency Fund | — | 10,000 |
| | | <hr/> | <hr/> |
| 6 | Total | \$ 21,038 | \$ 23,218,537 |

74—*Adjutant General—State Militia*

Acct. No. 5800

| | | | |
|---|-------------------------------|------------|------------|
| 1 | Personal Services | \$ 157,482 | \$ 236,382 |
| 2 | Current Expenses | 279,775 | 710,000 |
| 3 | Repairs and Alterations | 105,700 | 62,000 |
| 4 | Equipment | — | 27,500 |
| 5 | Compensation of Commanding | | |
| 6 | Officers, Clerical Allowances | | |
| 7 | and Uniform Allowances | — | 123,035 |
| 8 | Property Maintenance | — | 1,025,950 |
| 9 | State Armory Board | — | 2,500,000 |

| | | | |
|----|------------------------------|------------|--------------|
| 10 | College Education Fund | — | 200,000 |
| 11 | Total | \$ 542,957 | \$ 4,884,867 |

MISCELLANEOUS BOARDS AND COMMISSIONS

75—*West Virginia Civil Service System*

Acct. No. 5840

| | | | |
|---|-------------------------|------|--------------|
| 1 | Personal Services | \$ — | \$ 833,167 |
| 2 | Current Expenses | — | 235,470 |
| 3 | Equipment | — | 4,000 |
| 4 | Total | \$ — | \$ 1,072,637 |

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

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

76—*West Virginia Public Legal Services Council*

Acct. No. 5900

| | | | |
|---|----------------------------------|------|--------------|
| 1 | Council and Central Office | \$ — | \$ 179,888 |
| 2 | Appointed Counsel Fees | — | 3,082,218 |
| 3 | Public Defender Operations | — | 352,300 |
| 4 | Criminal Law Research Center | | |
| 5 | Appellate Division | — | 125,717 |
| 6 | Total | \$ — | \$ 3,740,123 |

7 Any unexpended balance remaining in the appropriation at
 8 the close of the fiscal year 1982-83 is hereby reappropriated
 9 for expenditure during the fiscal year 1983-84.

77—*Human Rights Commission*

Acct. No. 5980

| | | | |
|---|-------------------------|------------|------------|
| 1 | Personal Services | \$ 172,302 | \$ 325,951 |
| 2 | Current Expenses | 64,404 | 142,515 |
| 3 | Equipment | — | 4,882 |
| 4 | Total | \$ 236,706 | \$ 473,348 |

78—*Women's Commission*

Acct. No. 6000

| | | | |
|---|-------------------------|------|-----------|
| 1 | Personal Services | \$ — | \$ 32,846 |
| 2 | Current Expenses | — | 15,309 |
| 3 | Total | \$ — | \$ 48,155 |

79—*West Virginia Public Employees Retirement Board*

Acct. No. 6140

| | | | |
|---|--------------------------------|------|---------------|
| 1 | Employers Accumulation Fund .. | \$ — | \$ 12,226,000 |
| 2 | Expense Fund | — | 70,000 |
| 3 | Supplemental Benefits for | | |
| 4 | Annuitants | — | 1,550,000 |
| 5 | Total | \$ — | \$ 13,846,000 |

6 The above appropriation is intended to cover the state's
 7 share of West Virginia Public Employees Retirement cover-
 8 age for those departments operating from General Revenue
 9 Fund. The State Department of Highways, Department of
 10 Motor Vehicles, Workers' Compensation Commission, Pub-
 11 lic Service Commission and other departments operating from
 12 Special Revenue Funds and/or Federal Funds shall pay their
 13 proportionate share of the retirement costs for their respective
 14 divisions. When specific appropriations are not made, such
 15 payments may be made from the balance in the various Special
 16 Revenue funds in excess of specific appropriations.

17 The line item "Supplemental Benefits for Annuitants" may
 18 be transferred as required and shall be expended in accordance
 19 with the provisions of Chapter 115, Acts of the Legislature,
 20 Regular Session, 1982.

80—*West Virginia Public Employees Insurance Board*

Acct. No. 6150

| | | | |
|---|----------------------------------|------|---------------|
| 1 | Expense Fund | \$ — | \$ 311,322 |
| 2 | Public Employees Health | | |
| 3 | Insurance—State Contributions .. | — | 81,188,678 |
| 4 | Total | \$ — | \$ 81,500,000 |

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

81—*Insurance Commissioner*

Acct. No. 6160

| | | | |
|---|-------------------------|------|------------|
| 1 | Personal Services | \$ — | \$ 611,155 |
| 2 | Current Expenses | — | 201,114 |
| 3 | Equipment | — | 17,500 |
| 4 | Total | \$ — | \$ 829,769 |

82—*State Fire Commission*

Acct. No. 6170

| | | | |
|---|-------------------------------|------|------------|
| 1 | Personal Services | \$ — | \$ 555,500 |
| 2 | Current Expenses | — | 229,225 |
| 3 | Repairs and Alterations | — | 3,048 |

| | | | |
|---|-----------------|------|------------|
| 4 | Equipment | — | 31,845 |
| 5 | Total | \$ — | \$ 819,618 |

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

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

83—*State Department of Highways*

Acct. No. 6700

TO BE PAID FROM STATE ROAD FUND

| | Federal Revenue Fiscal Year 1983-84 | Other Revenue Fiscal Year 1983-84 |
|--------------------------------------|--|--|
| 1 Maintenance Expressway, | | |
| 2 Trunkline and Feeder | \$ — | \$ 46,850,000 |
| 3 Maintenance, State Local Services | — | 60,547,000 |
| 4 Maintenance, Contract Paving and | | |
| 5 Secondary Road Maintenance | — | 23,000,000 |
| 6 Inventory Revolving | — | 1,500,000 |
| 7 Equipment Revolving | — | 3,950,000 |
| 8 General Operations | — | 16,400,000 |
| 9 Debt Service | — | 87,187,000 |
| 10 Interstate Construction | — | 167,700,000 |
| 11 Other Federal Aid Programs ... | — | 94,100,000 |
| 12 Appalachian Program | — | 24,000,000 |
| 13 Nonfederal Aid Construction | — | 9,446,000 |
| 14 Total | \$ — | \$534,680,000 |

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

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

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

84—*Department of Motor Vehicles*

Acct. No. 6710

TO BE PAID FROM STATE ROAD FUND

| | | | |
|----|----------------------------------|------|--------------|
| 1 | Personal Services | \$ — | \$ 2,150,838 |
| 2 | Current Expenses | — | 3,502,829 |
| 3 | Equipment | — | 41,000 |
| 4 | Purchase of License Plates | — | 582,550 |
| 5 | Social Security Matching | — | 144,107 |
| 6 | Public Employees Retirement | | |
| 7 | Matching | — | 204,330 |
| 8 | Public Employees Health | | |
| 9 | Insurance | — | 286,980 |
| 10 | Total | \$ — | \$ 6,912,634 |

85—*Department of Education—Veterans Education*

Acct. No. 7020

TO BE PAID FROM GENERAL SCHOOL FUND

| | | | |
|---|-------------------------|-----------|------|
| 1 | Personal Services | \$ 60,430 | \$ — |
|---|-------------------------|-----------|------|

| | | | |
|---|----------------------|-----------|------|
| 2 | Other Expenses | 28,474 | — |
| 3 | Total | \$ 88,904 | \$ — |

4 Expenditures from this appropriation shall not exceed the
5 amount to be reimbursed by the federal government.

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

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

Acct. No. 8000

TO BE PAID FROM SPECIAL REVENUE FUND

| | | | |
|---|-------------------------|------|-----------|
| 1 | Personal Services | \$ — | \$ 52,112 |
| 2 | Other Expenses | — | 46,471 |
| 3 | Total | \$ — | \$ 98,583 |

87—*Real Estate Commission*

Acct. No. 8010

TO BE PAID FROM SPECIAL REVENUE FUND

| | | | |
|---|-------------------------|------|------------|
| 1 | Personal Services | \$ — | \$ 113,592 |
| 2 | Current Expenses | — | 92,846 |
| 3 | Equipment | — | 7,000 |
| 4 | Total | \$ — | \$ 213,438 |

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

88—*West Virginia Racing Commission*

Acct. No. 8080

TO BE PAID FROM SPECIAL REVENUE FUND

| | | | |
|---|------------------------|------|----------|
| 1 | Medical Expenses | \$ — | \$ 5,000 |
|---|------------------------|------|----------|

2 The total amount of this appropriation shall be paid from

3 Special Revenue Fund out of collections of license fees and
4 fines as provided by law.

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

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

Acct. No. 8120

TO BE PAID FROM SPECIAL REVENUE FUND

1 Unclassified—Total \$ — \$ 12,000

2 The total amount of this appropriation shall be paid from
3 Special Revenue Fund out of fees and collections as provided
4 by law.

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

Acct. No. 8140

TO BE PAID FROM SPECIAL REVENUE FUND

| | | | |
|---|--------------------------|------|--------------|
| 1 | Personal Services | \$ — | \$ 741,588 |
| 2 | Current Expenses | — | 454,041 |
| 3 | Equipment | — | 65,000 |
| 4 | Social Security Matching | — | 49,686 |
| 5 | Public Employee | | |
| 6 | Retirement Matching | — | 70,785 |
| 7 | Public Employees Health | | |
| 8 | Insurance | — | 81,396 |
| 9 | Total | \$ — | \$ 1,462,496 |

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

13 The above appropriation includes salaries and operating ex-
14 penses.

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

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

Acct. No. 8151

TO BE PAID FROM SPECIAL REVENUE FUND

| | | | |
|---|--------------------------------|------|--------------|
| 1 | Personal Services | \$ — | \$ 2,609,691 |
| 2 | Current Expenses | — | 5,556,477 |
| 3 | Equipment | — | 189,184 |
| 4 | Social Security Matching | — | 174,850 |
| 5 | Public Employees Retirement | | |
| 6 | Matching | — | 247,921 |
| 7 | Public Employees Health | | |
| 8 | Insurance | — | 167,784 |
| 9 | Total | \$ — | \$ 8,945,907 |

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

92—*Department of Agriculture*

Acct. No. 8180

TO BE PAID FROM SPECIAL REVENUE FUND

| | | | |
|---|--------------------------------|------|------------|
| 1 | Personal Services | \$ — | \$ 383,724 |
| 2 | Current Expenses | — | 20,375 |
| 3 | Social Security Matching | — | 25,709 |
| 4 | Public Employees Retirement | | |
| 5 | Matching | — | 36,000 |
| 6 | Public Employees Health | | |
| 7 | Insurance | — | 22,000 |
| 8 | Total | \$ — | \$ 487,808 |

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

93—*General John McCausland Memorial Farm*

Acct. No. 8194

TO BE PAID FROM SPECIAL REVENUE FUND

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

94—*State Committee of Barbers and Beauticians*

Acct. No. 8220

TO BE PAID FROM SPECIAL REVENUE FUND

| | | | |
|---|-------------------------|------|------------|
| 1 | Personal Services | \$ — | \$ 116,854 |
| 2 | Current Expenses | — | 97,860 |
| 3 | Equipment | — | 2,000 |
| 4 | Total | \$ — | \$ 216,714 |

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

95—*Consumer Advocate*

Acct. No. 8270

TO BE PAID FROM SPECIAL REVENUE FUND

| | | | |
|----|---|------|------------|
| 1 | Personal Services | \$ — | \$ 219,000 |
| 2 | Current Expenses | — | 239,816 |
| 3 | Equipment | — | 6,000 |
| 4 | Social Security Matching | — | 14,673 |
| 5 | Public Employees Retirement | | |
| 6 | Matching | — | 20,805 |
| 7 | Public Employees Health | | |
| 8 | Insurance | — | 10,432 |
| 9 | Total | \$ — | \$ 510,726 |
| 10 | The total amount of this appropriation shall be paid from | | |

- 11 Special Revenue Fund out of collections made by the Public
12 Service Commission.

96—*Public Service Commission*

Acct. No. 8280

TO BE PAID FROM SPECIAL REVENUE FUND

| | | | |
|---|--------------------------------|-----------|--------------|
| 1 | Personal Services | \$ 48,000 | \$ 2,992,950 |
| 2 | Current Expenses | 21,376 | 1,227,435 |
| 3 | Equipment | — | 119,600 |
| 4 | Social Security Matching | — | 201,672 |
| 5 | Public Employees Retirement | | |
| 6 | Matching | — | 284,415 |
| 7 | Public Employees Health | | |
| 8 | Insurance | — | 272,516 |
| 9 | Total | \$ 69,376 | \$ 5,098,588 |

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

97—*Public Service Commission—Gas Pipeline Division*

Acct. No. 8285

TO BE PAID FROM SPECIAL REVENUE FUND

| | | | |
|---|--------------------------------|-----------|------------|
| 1 | Personal Services | \$ 25,000 | \$ 144,297 |
| 2 | Current Expenses | 15,450 | 65,960 |
| 3 | Equipment | — | 1,500 |
| 4 | Social Security Matching | — | 10,519 |
| 5 | Public Employees Retirement | | |
| 6 | Matching | — | 14,914 |
| 7 | Public Employees Health | | |
| 8 | Insurance | — | 8,915 |
| 9 | Total | \$ 40,450 | \$ 246,105 |

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

- 12 the Public Service Commission pursuant to and in the exercise
13 of regulatory authority over pipeline companies.

98—*Public Service Commission—Motor Carrier Division*

Acct. No. 8290

TO BE PAID FROM SPECIAL REVENUE FUND

| | | | |
|---|--------------------------------|------|--------------|
| 1 | Personal Services | \$ — | \$ 943,874 |
| 2 | Current Expenses | — | 351,900 |
| 3 | Equipment | — | 5,000 |
| 4 | Social Security Matching | — | 64,900 |
| 5 | Public Employees Retirement | | |
| 6 | Matching | — | 89,700 |
| 7 | Public Employees Health | | |
| 8 | Insurance | — | 78,600 |
| 9 | Total | \$ — | \$ 1,533,974 |

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

99—*Department of Natural Resources*

Acct. No. 8300

TO BE PAID FROM SPECIAL REVENUE FUND

| | | | |
|---|---------------------------------|------|--------------|
| 1 | Personal Services | \$ — | \$ 3,346,622 |
| 2 | Current Expenses | — | 2,649,490 |
| 3 | Repairs and Alterations | — | 264,462 |
| 4 | Equipment | — | 526,061 |
| 5 | Land Purchase and Buildings ... | — | 688,000 |
| 6 | Black Fly Program | — | 40,000 |
| 7 | Total | \$ — | \$ 7,514,635 |

- 8 The total amount of this appropriation shall be paid from
9 Special Revenue Fund out of fees collected by the Depart-
10 ment of Natural Resources. Expenditures shall be limited to

11 the amounts appropriated except for federal funds received
 12 and special funds collected at state parks. Any unexpended
 13 balances remaining in the prior appropriation item "Land
 14 Purchase and Buildings" at the close of fiscal year 1982-83
 15 and available for capital improvement and land purchase pur-
 16 poses are hereby reappropriated for expenditure in fiscal year
 17 1983-84, all in accordance with Chapter 20, Article 2, Section
 18 34, Code of West Virginia.

100—*Geological and Economic Survey*

Acct. No. 8340

TO BE PAID FROM SPECIAL REVENUE FUND

1 Unclassified \$ 40,000

2 The above appropriation shall be expended in accordance
 3 with Enrolled Senate Bill No. 28, Acts, Legislature, Regular
 4 Session, 1983.

101—*Department of Public Safety—Inspection Fees*

Acct. No. 8350

TO BE PAID FROM SPECIAL REVENUE FUND

| | | | |
|---|-------------------------------|-------|------------|
| 1 | Personal Services | \$ — | \$ 430,522 |
| 2 | Current Expenses | — | 220,664 |
| 3 | Repairs and Alterations | — | 8,700 |
| 4 | Equipment | — | 21,000 |
| | | <hr/> | <hr/> |
| 5 | Total | \$ — | \$ 680,886 |

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

102—*Department of Banking*

Acct. No. 8392

TO BE PAID FROM SPECIAL REVENUE FUND

| | | | |
|---|-------------------------|------|------------|
| 1 | Personal Services | \$ — | \$ 571,754 |
| 2 | Current Expenses | — | 554,521 |

| | | | |
|---|-----------------|------|--------------|
| 3 | Equipment | — | 11,000 |
| 4 | Total | \$ — | \$ 1,137,275 |

103—*Crime Victim Reparation*

Acct. No. 8412

TO BE PAID FROM SPECIAL REVENUE FUND

| | | | |
|---|--------------------------------|----|---------|
| 1 | Court of Claims—Administrative | | |
| 2 | Costs—Total | \$ | 156,576 |

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

Acct. No. 8420

TO BE PAID FROM SPECIAL REVENUE FUND

| | | | |
|---|--------------------|----|---------|
| 1 | Unclassified | \$ | 300,000 |
|---|--------------------|----|---------|

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

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

Acct. No. 8500

TO BE PAID FROM SPECIAL REVENUE FUND

| | | | |
|---|--------------------------|------|-----------|
| 1 | Unclassified—Total | \$ — | \$ 94,640 |
|---|--------------------------|------|-----------|

2 The total amount of this appropriation shall be paid from
3 the Hospital Services Revenue Account special fund in ac-
4 cordance with the provisions of Chapter 120, Acts of the
5 Legislature, Regular Session, 1981.

6 Any unexpended balances remaining in prior years and
7 1982-83 appropriations are hereby reappropriated for expendi-
8 ture during fiscal year 1983-84.

106—*State Health Department*

Acct. No. 8510

TO BE PAID FROM SPECIAL REVENUE FUND

| | | | |
|---|--------------------|----|---------|
| 1 | Unclassified | \$ | 500,000 |
|---|--------------------|----|---------|

2 The above appropriation item is to be expended in accordance
 3 with and pursuant to the provisions of Enrolled S. B. 320,
 4 Acts, Legislature, Regular Session, 1983, and from the special
 5 revolving fund designated "Health Care Cost Review Fund."

107—*Board of Regents—West Virginia University*
Special Capital Improvement Fund

Acct. No. 8830

TO BE PAID FROM SPECIAL REVENUE FUND

| | | | | | |
|---|--------------------|----|---|----|---------|
| 1 | Debt Service | \$ | — | \$ | 543,000 |
|---|--------------------|----|---|----|---------|

2 The total amount of this appropriation shall be paid from
 3 the nonrevolving Capital Improvement Fund created by the
 4 1959 Legislature, as amended.

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

Acct. No. 8835

TO BE PAID FROM SPECIAL REVENUE FUND

| | | | | | |
|----|--|----|---|----|-----------|
| 1 | Debt Service | \$ | — | \$ | 2,371,000 |
| 2 | Capital Building Repairs and Alterations | | | | 4,000,000 |
| 3 | (Supplements Operating Budget at | | | | |
| 4 | Colleges and Universities) | | | | |
| 5 | Miscellaneous Campus | | | | |
| 6 | Development Projects | — | | | 1,300,000 |
| 7 | Fairmont State College | | | | |
| 8 | Campus Development | | | | |
| 9 | (Building Renewal/Renovation) .. | — | | | 2,000,000 |
| 10 | West Liberty State College Campus | | | | |
| 11 | Development | | | | |
| 12 | (Building Renewal/Renovation) .. | — | | | 100,000 |

13 The total amount of this appropriation shall be paid from

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

17 Any unexpended balances remaining in prior years and
 18 1982-83 appropriations are hereby reappropriated for ex-
 19 penditure during fiscal year 1983-84.

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

Acct. No. 8840

TO BE PAID FROM SPECIAL REVENUE FUND

1 Debt Service \$ — \$ 1,670,000

2 The total amount of this appropriation shall be paid from
 3 the nonrevolving Capital Improvement Fund created by the
 4 1959 Legislature, as amended.

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

Acct. No. 8845

TO BE PAID FROM SPECIAL REVENUE FUND

1 Any unexpended balances remaining in prior years and
 2 1982-83 appropriations are hereby reappropriated for ex-
 3 penditure during fiscal year 1983-84.

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

Acct. No. 8855

TO BE PAID FROM SPECIAL REVENUE FUND

| | | | |
|---|---------------------------------|------|--------------|
| 1 | Debt Service and Reserve | \$ — | \$ 9,829,000 |
| 2 | WV Network for Educational | | |
| 3 | Telecomputing (Computer Sys- | | |
| 4 | tem Upgrade and Acquisitions) | — | 1,700,000 |
| 5 | Marshall University Campus | | |
| 6 | Development (Building Equip- | | |
| 7 | ment, Science Hall Renovations, | | |
| 8 | *Land Acquisitions) | — | 1,700,000 |

*Clerk's Note: Line eight, Acct. No. 8855, was reduced by the Governor from "\$3,700,000" to "\$1,700,000" and the reference in the line to the "Purchase of Keith-Albee Theatre" was deleted.

| | | | |
|----|-------------------------------------|---|-----------|
| 9 | West Virginia University Campus | | |
| 10 | Development | — | 5,250,000 |
| 11 | (West Virginia University Hospital, | | |
| 12 | Demolish Old Mountaineer Field, | | |
| 13 | Building Renewal/Renovation) | | |
| 14 | Bluefield State College Campus | | |
| 15 | Development | — | 250,000 |
| 16 | (Building Renewal/Renovation) | | |
| 17 | Concord College Campus | | |
| 18 | Development | — | 500,000 |
| 19 | (Building Renewal/Renovation) | | |
| 20 | Glenville State College | | |
| 21 | Campus Development | — | 550,000 |
| 22 | (Gas Well Drilling, Building | | |
| 23 | Renewal/Renovation) | | |
| 24 | WV Institute of Technology | | |
| 25 | Campus Development | — | 700,000 |
| 26 | (Building Renewal/Renovation) | | |
| 27 | West Virginia State College | | |
| 28 | Campus Development | — | 850,000 |
| 29 | (Building and Grounds | | |
| 30 | Renewal/Renovation) | | |
| 31 | Parkersburg Community College | | |
| 32 | Campus Development | — | 200,000 |
| 33 | (Equipment for Jackson | | |
| 34 | County Center) | | |
| 35 | Potomac State College | | |
| 36 | Campus Development | — | 250,000 |
| 37 | (Building Renewal/Renovation) | | |
| 38 | West Virginia University | | |
| 39 | (Engineering Science Building— | | |
| 40 | Phase I) | — | 3,850,000 |
| 41 | Potomac State College | | |
| 42 | (Science Building) | — | 400,000 |
| 43 | Marshall University | | |
| 44 | (Smith Hall Elevator) | — | 600,000 |
| 45 | Fairmont State College | | |
| 46 | (Maintenance Building) | — | 250,000 |
| 47 | Shepherd College | | |
| 48 | (McMuren-Reynolds Hall) .. | — | 500,000 |

| | | | |
|----|--------------------------------|---|-----------|
| 49 | Southern West Virginia Commu- | | |
| 50 | ity College Campus Development | | |
| 51 | (Acquisition and Renovation of | | |
| 52 | Boone County Center) | — | 400,000 |
| 53 | * | | |
| 54 | | | |
| 55 | | | |
| 56 | | | |
| 57 | West Virginia Northern | | |
| 58 | Community College | | |
| 59 | (College Square and New | | |
| 60 | Martinsville) | — | 600,000 |
| 61 | West Virginia University | | |
| 62 | Hospital and Medical Center | | |
| 63 | (Fire and Life Safety | | |
| 64 | Improvements) | — | 3,000,000 |

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

69 Any unexpended balances remaining in prior years and in
 70 the 1982-83 appropriations are hereby reappropriated for ex-
 71 penditure in fiscal year 1983-84.

112—*Workers' Compensation Commissioner*

Acct. No. 9000

TO BE PAID FROM WORKERS' COMPENSATION FUND

| | | | |
|---|--------------------------------|------|--------------|
| 1 | Personal Services | \$ — | \$ 4,754,069 |
| 2 | Current Expenses | — | 4,023,027 |
| 3 | Equipment | — | 158,850 |
| 4 | Social Security Matching | — | 318,523 |
| 5 | Public Employees Retirement | | |
| 6 | Matching | — | 451,638 |

*Clerk's Note: All of lines fifty-three through fifty-six, Acct. No. 8855, were deleted by the Governor. Prior to their deletion, they read as follows:

| | | | |
|-----|----------------------------------|---|------------|
| "53 | Southern West Virginia Community | | |
| 54 | College Campus Development | | |
| 55 | Acquisition and Renovation of | | |
| 56 | Pineville Center | — | 1,500,000" |

| | | | |
|----|--|---------|---------------|
| 7 | Public Employees Health | | |
| 8 | Insurance | — | 484,004 |
| 9 | Employees Excess Liability Fund | — | 543,500 |
| | Personal Services | 111,000 | |
| | Current Expenses | 350,000 | |
| | Equipment | 50,000 | |
| | Social Security Matching | 7,500 | |
| | Public Employees Retirement Matching | 10,000 | |
| | Public Employees Health Insurance | 15,000 | |
| 10 | Total | \$ — | \$ 10,733,611 |

11 There is hereby authorized to be paid out of the above ap-
 12 propriation for Current Expenses the amount necessary for
 13 the premiums on bonds given by the State Treasurer as Bond
 14 Custodian for the protection of the Workers' Compensation
 15 Fund. This sum shall be transferred to the Board of Insurance.

113—*West Virginia Alcohol Beverage Control Commissioner*

Acct. No. 9270

TO BE PAID FROM SPECIAL REVENUE FUND

| | | | |
|----|--------------------------------|------|---------------|
| 1 | Personal Services | \$ — | \$ 8,385,324 |
| 2 | Current Expenses | — | 6,126,303 |
| 3 | Repairs and Alterations | — | 66,508 |
| 4 | Equipment | — | 171,000 |
| 5 | Social Security Matching | — | 567,094 |
| 6 | Public Employees Retirement | | |
| 7 | Matching | — | 804,400 |
| 8 | Public Employees Health | | |
| 9 | Insurance | — | 1,097,923 |
| 10 | Total | \$ — | \$ 17,218,552 |

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

13 The above appropriations include the salary of the com-
 14 missioner, salaries of store personnel, store inspectors, store

15 operating expenses and equipment; and salaries, expenses and
16 equipment of administration offices.

17 There is hereby appropriated from liquor revenues, in addi-
18 tion to the appropriation, the necessary amount for the pur-
19 chase of liquor as provided by law.

114—*West Virginia University—Medical Center*

Acct. No. 9280

TO BE PAID FROM MEDICAL SCHOOL FUND

| | | | |
|----|-------------------------------|------|---------------|
| 1 | Personal Services | \$ — | \$ 46,467,000 |
| 2 | Current Expenses | — | 33,500,000 |
| 3 | Repairs and Alterations | — | 1,700,000 |
| 4 | Equipment | — | 2,400,000 |
| 5 | Intern and Residency Support | | |
| 6 | Program for Community | | |
| 7 | Hospitals | — | 945,000 |
| 8 | Family Practice Residency | | |
| 9 | Support Program | — | 828,000 |
| 10 | Capital Outlay | — | 500,000 |
| 11 | Total | \$ — | \$ 86,340,000 |

12 Any unexpended balance remaining in the appropriation
13 for "Capital Outlay" at the close of the fiscal year 1982-83 is
14 hereby reappropriated for expenditure during the fiscal year
15 1983-84.

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

Acct. No. 9285

TO BE PAID FROM SPECIAL REVENUE FUND

| | | | |
|---|--|--|---------------|
| 1 | West Virginia University Hospital—Fire and | | |
| 2 | Life Safety Requirements, HVAC and Me- | | |
| 3 | chanical/Electrical Upgrade, and Program | | |
| 4 | Requirements | | \$ 26,250,000 |

1 **Sec. 5. Awards for claims against the state.**—There are
2 hereby appropriated, for the remainder of the fiscal year
3 1982-83 and to remain in effect until June 30, 1984, from the

4 funds as designated, in the amounts as specified, and for the
 5 claimants as named in Enrolled House Bill Nos. 1271, 1272
 6 and 1985, Acts, Legislature, Regular Session, 1983, total gen-
 7 eral revenue funds of \$716,723; state road funds of \$654,029;
 8 special revenue funds of \$29,182; workers' compensa-
 9 tion funds of \$6,829; and crime reparations funds of \$78,192
 10 for payment of claims against the state. The total of general
 11 revenue funds above, does not include payment from the Su-
 12 preme Court—General Judicial, Account No. 1110, specifi-
 13 cally made payable from the appropriation for the current
 14 fiscal year 1982-83.

1 **Sec. 6. Supplemental and deficiency appropriations.—**
 2 From the state fund, General Revenue and other designated
 3 fund, except as otherwise provided, there are hereby appro-
 4 priated conditionally upon the fulfillment of the provisions set
 5 forth in Chapter 5A, Article 2 of the Code of West Virginia,
 6 the following amounts, as itemized, for expenditure during the
 7 fiscal year one thousand nine hundred eighty-three, to supple-
 8 ment the 1982-83 appropriations and to be available for ex-
 9 penditure upon date of passage.

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

Acct. No. 1240

1 Buffalo Creek and Gilbert Creek \$ 4,341,790

2 Funds appropriated in the above line item may be trans-
 3 ferred to a special account, so that these funds plus interest
 4 earned may be available for payment of the judgment plus
 5 post-judgment interest awarded by the court in the case of
 6 *United States of America vs. State of West Virginia*, Civil
 7 Action No. 78-2049, (S.D. W.Va.), pursuant to guidelines
 8 set forth in Executive Message No. 5 of March 10, 1983.

9 Any unexpended balance remaining in this appropriation
 10 at the close of the fiscal year 1982-83 is hereby reappropriated
 11 for expenditure during the fiscal year 1983-84.

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

Acct. No. 2790

1 Personal Services \$ 375,000

118—*Adjutant General—State Militia*

Acct. No. 5800

| | | | |
|---|------------------------------|----|--------|
| 1 | College Education Fund | \$ | 35,000 |
|---|------------------------------|----|--------|

119—*West Virginia Public Employees Insurance Board*

Acct. No. 6150

| | | | |
|---|------------------------------------|----|-----------|
| 1 | Public Employees Health Insurance— | | |
| 2 | State Contributions | \$ | 5,500,000 |

120—*Crime Victim Reparation*

Acct. No. 8412

TO BE PAID FROM SPECIAL REVENUE FUND

| | | | |
|---|---|----|--------|
| 1 | Administrative Costs—Attorney General | \$ | 87,000 |
|---|---|----|--------|

1 **Sec. 7. Reappropriations.**—Any unexpended balance of
 2 Item V in the appropriation made by and under the authority
 3 of Sec. 4, Title II of the 1972 Budget Act, and amended
 4 under Sec. 4, Title II of the 1977 Budget Act, are hereby
 5 reappropriated for expenditure during the fiscal year 1983-
 6 84 with the exception of the following accounts: Item V,
 7 Account No. 4191-16 and Item IX, Account No. 4102-15.

8 Any unexpended balance of Item XV in the appropriation
 9 made by and under the authority of Sec. 4, Title II of the
 10 1973 Budget Act and amended under Sec. 4, Title II of the
 11 1977 Budget Act, are hereby reappropriated for expenditure
 12 during the fiscal year 1983-84 with exception of the following
 13 accounts: Item XIII, Account No. 4311-17.

14 Any unexpended balances of Item IX, in the appropriation
 15 made by and under Sec. 4, Title II of the 1976 Budget Act
 16 are hereby reappropriated for expenditure during the fiscal
 17 year 1983-84.

1 **Sec. 8. Appropriations from federal block grants.**—The
 2 following items are hereby appropriated from Federal Block
 3 Grants and are to be available for expenditure during the fiscal
 4 year 1983-84.

121—*Department of Human Services—Energy Assistance*

Acct. No. 9150

TO BE PAID FROM FEDERAL FUNDS

| | | |
|---|--|----------------------|
| 1 | Personal Services | \$ 350,000 |
| 2 | Current Expenses | 13,362,149 |
| 3 | Transfer to State Spending Units | 2,400,000 |
| 4 | Total | <u>\$ 16,112,149</u> |

122—*Department of Human Services—Social Services*

Acct. No. 9151

TO BE PAID FROM FEDERAL FUNDS

| | | |
|---|-------------------------|----------------------|
| 1 | Personal Services | \$ 6,376,207 |
| 2 | Current Expenses | 14,761,802 |
| 3 | Total | <u>\$ 21,138,009</u> |

123—*State Department of Education—Education Grant*

Acct. No. 8240

TO BE PAID FROM FEDERAL FUNDS

| | | |
|---|-------------------------------|----------------------|
| 1 | Personal Services | \$ 654,850 |
| 2 | Current Expenses | 355,977 |
| 3 | Repairs and Alterations | 100 |
| 4 | To Local Entities | 34,923,915 |
| 5 | Total | <u>\$ 35,934,842</u> |

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

Acct. No. 8034

TO BE PAID FROM FEDERAL FUNDS

| | | |
|---|-------------------------|------------|
| 1 | Personal Services | \$ 110,206 |
| 2 | Current Expenses | 206,180 |

| | | |
|---|-------------------------|---------------|
| 3 | Equipment | 1,699 |
| 4 | To Local Entities | 18,339,720 |
| | | <hr/> |
| 5 | Total | \$ 18,657,805 |

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

Acct. No. 8028

TO BE PAID FROM FEDERAL FUNDS

| | | |
|---|-------------------------|--------------|
| 1 | Personal Services | \$ 81,630 |
| 2 | Current Expenses | 3,589,800 |
| 3 | Equipment | 2,000 |
| | | <hr/> |
| 4 | Total | \$ 3,673,430 |

126—*State Health Department—Primary Care*

Acct. No. 8218

TO BE PAID FROM FEDERAL FUNDS

| | | |
|---|-------------------------------|--------------|
| 1 | To Local Entities—Total | \$ 5,000,000 |
|---|-------------------------------|--------------|

127—*State Health Department—Maternal and Child Health*

Acct. No. 8217

TO BE PAID FROM FEDERAL FUNDS

| | | |
|---|-------------------------|--------------|
| 1 | Personal Services | \$ 214,548 |
| 2 | Current Expenses | 4,383,831 |
| | | <hr/> |
| 3 | Total | \$ 4,598,379 |

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

Acct. No. 8216

TO BE PAID FROM FEDERAL FUNDS

| | | |
|---|-------------------------|------------|
| 1 | Personal Services | \$ 170,802 |
| 2 | Current Expenses | 3,491,198 |

| | | |
|---|-----------------|--------------|
| 3 | Equipment | 9,000 |
| 4 | Total | \$ 3,671,000 |

129—*State Health Department—Preventive Health*

Acct. No. 8219

TO BE PAID FROM FEDERAL FUNDS

| | | |
|---|-------------------------|------------|
| 1 | Personal Services | \$ 198,180 |
| 2 | Current Expensees | 602,540 |
| 3 | Equipment | 2,855 |
| 4 | Total | \$ 803,575 |

1 **Sec. 9. Appropriations from Surplus Revenue.**—The fol-
 2 lowing item is hereby appropriated from the state fund, general
 3 revenue, and is to be available for expenditure during the fiscal
 4 year 1983-84 out of surplus funds only, subject to the terms
 5 and conditions set forth in this section.

6 It is the intent and mandate of this Legislature that the
 7 following appropriation made by this section shall be payable
 8 only from the surplus accrued as of June 30, 1983.

9 In the event that the surplus revenues as of June 30, 1983
 10 are not sufficient to meet all of the appropriation made by
 11 this section, then the appropriation shall be available, only to
 12 the extent of the total actual surplus accrued as of June 30,
 13 1983.

130—*West Virginia Public Employees Insurance Board*

Acct. No. 6150

| | | |
|---|------------------------------------|---------------|
| 1 | Public Employees Health Insurance— | |
| 2 | State Contributions | \$ 13,000,000 |

1 **Sec. 10. Supplemental and Deficiency Appropriations**
 2 **from Revenue Sharing Trust Fund.**—The following item is
 3 hereby appropriated from the Revenue Sharing Trust Fund to
 4 be available for expenditure from date of passage.

131—*Revenue Sharing Trust Fund*
State Tax Department

Acct. No. 9750

1 Property Reappraisal Program \$ 2,473,311

2 The above appropriation is to be expended by the tax com-
3 missioner pursuant to general law and Article X, Section 1b
4 of the Constitution of West Virginia for the conduct of the first
5 statewide reappraisal of property subject to ad valorem taxa-
6 tion, as required by such constitutional amendment.

1 **Sec. 11. Reappropriations—Revenue Sharing Trust Fund.**
2 —Any unexpended balances to the appropriations made by
3 and under Sec. 8 of the 1973 Budget Act and Supplementary
4 Acts to Chapter 10, Acts of the Legislature, Regular Session,
5 1973, under Sec. 5 of the 1974 Budget Act, and Supplementary
6 Acts to Chapter Two, Acts of the Legislature, Regular Session,
7 1975, under Sec. 7, Acts of the Legislature, Regular Session,
8 1976 and Supplementary Acts of Chapter 7, Acts of the Leg-
9 islation, Regular Session, 1976, and as amended in Sec. 7 of
10 the 1977 Budget Act, 1978 Budget Act, 1979 Budget Act,
11 1980 Budget Act, 1981 Budget Act and the 1982 Budget Act,
12 at the close of the fiscal year 1982-83 are hereby reappro-
13 priated for expenditure during the fiscal year 1983-84.

1 **Sec. 12. Appropriations from countercyclical fiscal assistance**
2 **trust fund.**—Moneys received by the State of West Virginia
3 pursuant to the provisions of the “Public Works Employment
4 Act of 1976; Title II of Public Law 94-369,” as amended by
5 the “Intergovernmental Antirecession Assistance Act of 1977;
6 Public Law 95-30,” enacted by the Congress of the United
7 States, shall be deposited in the state treasury and kept in a
8 separate account entitled “Countercyclical Fiscal Assistance
9 Trust Fund.”

10 Any part of or all such amounts as deposited, including
11 deposits through fiscal year one thousand nine hundred eighty-
12 four, are hereby appropriated and may be transferred to any
13 other accounts in the Governor’s Office or to any other de-
14 partments of state government for disbursement or expendi-
15 ture.

1 **Sec. 13. Special revenue appropriations.**—There is here-
2 by appropriated for expenditure during the fiscal year one
3 thousand nine hundred eighty-four, appropriations made by
4 general law from special revenue which are not paid into the
5 state fund as general revenue under the provisions of Chapter
6 12, Article 2, Section 2 of the Code of West Virginia, one
7 thousand nine hundred thirty-one: *Provided*, That none
8 of the moneys so appropriated by this section shall be
9 available for expenditure except in compliance with and in
10 conformity to the provisions of Chapter 12, Articles 2 and 3,
11 and Chapter 5A, Article 2 of the Code of West Virginia, unless
12 the spending unit has filed with the state director of the budget,
13 the state auditor and the legislative auditor prior to the be-
14 ginning of each fiscal year:

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

17 (b) A detailed expenditure schedule showing for what pur-
18 poses the fund is to be expended.

1 **Sec. 14. State improvement fund appropriations.**—Bequests
2 or donations of nonpublic funds, received by the Governor
3 on behalf of the State during the fiscal year one thousand nine
4 hundred eighty-four, for the purpose of making studies and
5 recommendations relative to improvements of the administra-
6 tion and management of spending units in the executive
7 branch of state government, shall be deposited in the state
8 treasury in a separate account therein designated "State Im-
9 provement Fund."

10 There is hereby appropriated all moneys so deposited
11 during the fiscal year one thousand nine hundred eighty-four,
12 to be expended as authorized by the Governor, for such
13 studies and recommendations which may encompass any
14 problems of organization, procedures, systems, functions, pow-
15 ers or duties of a state spending unit in the executive branch,
16 or the betterment of the economic, social, educational, health
17 and general welfare of the State or its citizens.

1 **Sec. 15. Specific funds and collection accounts.**—A fund
2 or collection account, which by law is dedicated to a specific
3 use, is hereby appropriated in sufficient amount to meet all

4 lawful demands upon the fund or collection account, and
5 shall be expended according to the provisions of Chapter 12,
6 Article 3 of the Code of West Virginia.

1 **Sec. 16. Appropriations for refunding erroneous payment.**

2 —Money that has been erroneously paid into the state
3 treasury is hereby appropriated out of the fund into which
4 it was paid, for refund to the proper person.

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

1 **Sec. 17. Municipal bond commission deficiencies.**—There
2 is hereby appropriated to the Governor a sufficient amount
3 to meet any deficiencies that may arise in the mortgage finance
4 bond insurance fund of the West Virginia Housing Develop-
5 ment Fund which is under the supervision and control of the
6 West Virginia state municipal bond commission, formerly the
7 sinking fund commission, as provided by Chapter 31, Article
8 18, Section 20b of the Code of West Virginia, one thousand
9 nine hundred thirty-one, as amended, or in the funds of the
10 state municipal bond commission because of the failure of any
11 state agency for either general obligations or revenue bonds
12 of any local taxing district for general obligations bonds to
13 remit funds necessary for the payment of interest and sinking
14 fund requirements. The Governor is authorized to transfer
15 from time to time such amounts to the state municipal bond
16 commission as may be necessary for these purposes.

17 The state municipal bond commission shall reimburse the
18 State of West Virginia through the Governor from the first
19 remittance collected from the West Virginia Housing Deve-
20 lopment Fund or from any state agency or local taxing dis-
21 trict for which the Governor advanced funds, with interest at
22 the rate carried by the bonds for the security or payment of
23 which the advance was made.

1 **Sec. 18. Appropriations to pay costs of publication of de-**
2 **linquent corporations.**—There is hereby appropriated out of

3 state fund, General Revenue, out of funds not otherwise ap-
4 propriated, to be paid upon requisition of the Auditor and/or
5 the Governor, as the case may be, a sum sufficient to pay
6 the cost of publication of delinquent corporations as provided
7 by Chapter 11, Article 12, Sections 84 and 86 of the Code
8 of West Virginia.

1 **Sec. 19. Appropriations for local governments.**—There is
2 hereby appropriated for payment to counties, districts and
3 municipal corporations such amounts as will be necessary to
4 pay taxes due counties, districts and municipal corporations
5 and which have been paid into the treasury:

- 6 (a) For redemption of lands;
7 (b) By public service corporations;
8 (c) For tax forfeitures.

1 **Sec. 20. Total appropriations.**—Where only a total sum is
2 appropriated to a spending unit, that total sum shall include
3 personal services, current expenses and capital outlay, except
4 as otherwise provided in Title I, Sec. 3.

1 **Sec. 21. General school fund.**—The balance of the pro-
2 ceeds of the general school fund remaining after the pay-
3 ment of the appropriations made by this act is appropriated
4 for expenditure in accordance with Chapter 18, Article 9A,
5 Section 16 of the Code of West Virginia.

TITLE 3. ADMINISTRATION.

- §1. Appropriations conditional.
§2. Constitutionality.

1 **Section 1. Appropriations conditional.**—The expenditure
2 of the appropriations made by this act, except those appro-
3 priations made to the legislative and judicial branches of the
4 state government are conditioned upon the compliance by
5 the spending unit with the requirements of Chapter 5A,
6 Article 2 of the Code of West Virginia.

7 Where former spending units have been absorbed by or
8 combined with other spending units by acts of this Legislature,

9 it is the intent of this act that reappropriation shall be to the
10 succeeding or later spending unit created unless otherwise
11 indicated.

1 **Sec. 2. Constitutionality.**—If any part of this act is de-
2 clared unconstitutional by a court of competent jurisdiction,
3 its decision shall not affect any portion of this act which
4 remains, but the remaining portion shall be in full force and
5 effect as if the portion declared unconstitutional had never
6 been a part of the act.

CHAPTER 30

(Com. Sub. for S. B. 99—By Mr. Tucker, Mr. Colombo and Mrs. Spears)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, three, four, five and six, article two-c, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend article two-c by adding thereto five new sections, designated sections five-a, six-a, nine, ten and eleven, relating to auctioneers; procedures and requirements for license; examinations; providing fees and bond amounts to be established; creating a special fees account; providing for rules and regulations; procedures for obtaining nonresident auctioneer's license; providing for written contracts and exceptions; providing for advertising; and making provisions for persons currently licensed.

Be it enacted by the Legislature of West Virginia:

That sections one, three, four, five and six, article two-c, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that article two-c be further amended by adding thereto five new sections, designated sections five-a, six-a, nine, ten and eleven to read as follows:

ARTICLE 2C. AUCTIONEERS.

- §19-2C-1. Definitions.
- §19-2C-3. Procedure for license; department of agriculture as statutory agent for licensees; fee.
- §19-2C-4. Bond required.
- §19-2C-5. Requirements for license; rules and regulations; duties of licensee; revocation or suspension of license.
- §19-2C-5a. Examinations of applicants; excuse for illness; fee renewal.
- §19-2C-6. Apprentice licenses; fees.
- §19-2C-6a. Procedure for nonresident auctioneer's license.
- §19-2C-9. Written contracts; exception.
- §19-2C-10. Advertising.
- §19-2C-11. Persons currently licensed.

ARTICLE 2C. AUCTIONEERS.**§19-2C-1. Definitions.**

1 For the purpose of this article the following definitions
2 shall prevail:

3 (a) The term "auctioneer" means and includes a person
4 who sells goods or real estate at public auction for another
5 on commission or for other compensation. The term
6 "auctioneer" shall not include (1) persons conducting sales
7 at auctions conducted by or under the direction of any
8 public authority or pursuant to any judicial order or
9 direction or to any sale required by law to be at auction, (2)
10 the owner of any real or personal property when personally
11 sold at auction by such owner and such owner has not
12 personally conducted an auction within the previous
13 twelve-month period, (3) persons conducting sales
14 pursuant to a deed of trust or other security agreement, (4)
15 fiduciaries of estates when selling real or personal property
16 of such estate, and (5) persons conducting sales on behalf of
17 charitable, religious, fraternal or other nonprofit
18 organizations: *Provided*, That nothing contained in this
19 article shall exempt persons conducting sales at public
20 markets from the provisions of article two-a, chapter
21 nineteen where the sale is confined solely to livestock,
22 poultry and other agriculture and horticulture products.

23 (b) The term "public auction" means any public sale of
24 real or personal property when offers or bids are made by
25 prospective purchasers and the property sold to the highest
26 bidder.

27 (c) The term "commissioner" means the commissioner
28 of agriculture of West Virginia.

§19-2C-3. Procedure for license; department of agriculture as statutory agent for licensees; fee.

1 Any person who wishes to conduct an auction as an
2 auctioneer may apply therefor on forms prescribed by the
3 commissioner and containing such information as the
4 commissioner may by rule or regulation require. A
5 nonreturnable application fee of fifty dollars shall
6 accompany each application as well as an annual license fee
7 of fifty dollars. All such fees collected shall be paid into the
8 general revenue fund in the state treasury.

9 In addition to the payment of fees, an applicant shall file
10 with his application, a bond as required in section four of
11 this article.

12 The commissioner shall, within thirty days after the
13 receipt of an application, notify, by certified mail, the
14 applicant of his eligibility to be tested at the next regularly
15 scheduled test, as well as the date of such test.

16 In the event the license is denied, the applicant shall be
17 refunded any annual license fee submitted with the
18 application.

19 Licenses issued shall expire on the thirtieth day of June of
20 each year but shall be renewable upon the payment of the
21 annual license fee so long as other requirements of this
22 article are complied with.

23 The state department of agriculture shall be deemed to be
24 agent for the purpose of service of process on any licensed
25 auctioneer for any action occasioned by the performance of
26 the duties of such auctioneer. Every licensed auctioneer, by
27 virtue of his application for license, shall be deemed to have
28 consented to such statutory agency.

§19-2C-4. Bond required.

1 Every person applying for a license as an auctioneer or
2 continuing to act as a licensed auctioneer, shall file with the
3 commissioner and maintain in full effect a property or
4 corporate surety bond satisfactory to the commissioner and
5 in form and amount as prescribed by the commissioner
6 pursuant to the rules and regulations promulgated in

7 accordance with this article: *Provided*, That in no event
8 shall the amount of such bond be less than ten thousand
9 dollars. Such bond shall be conditioned upon the faithful
10 compliance by the auctioneer with the provisions of this
11 article and the payment of all required taxes, fees and
12 penalties imposed by this state and its political subdivisions
13 as well as the payment by any auctioneer of any final
14 judgment obtained for damages arising out of his conduct
15 or duties as an auctioneer. Such bond shall be open to public
16 inspection.

**§19-2C-5. Requirements for license; rules and regulations; duties
of licensee; revocation or suspension of license.**

1 (1) Each person seeking a license hereunder after the
2 effective date of this section shall submit satisfactory
3 evidence to the commissioner showing:

4 (a) That he has successfully completed the written and
5 oral examinations provided for in this article;

6 (b) That he has a good reputation;

7 (c) That he is of trustworthy character;

8 (d) That he has met the apprenticeship requirements set
9 forth in this article, if applicable;

10 (e) That he is a citizen of the United States; and

11 (f) That he has a general knowledge of the auctioneering
12 profession and the principles involved in conducting an
13 auction.

14 (2) The commissioner shall promulgate such reasonable
15 rules and regulations as he shall deem necessary to carry out
16 the intent and the administration and enforcement of this
17 article, which said rules and regulations shall be
18 promulgated in accordance with the applicable provisions
19 of chapter twenty-nine-a of this code as if the same were set
20 forth herein in extenso.

21 (3) Each licensee shall promptly produce for inspection such
22 license at all sales conducted by or participated in by such
23 licensee when requested to do so by any person and shall
24 keep complete and accurate records of all transactions
25 engaged in for a period of six months which records shall be

26 open to inspection by the commissioner or his authorized
27 representative.

28 (4) The commissioner may, by order, suspend or revoke any
29 license granted hereunder for any violation of this article or
30 the rules and regulations promulgated hereunder or for any
31 of the following reasons:

32 (a) Obtaining a license through false or fraudulent
33 representation;

34 (b) Making any substantial misrepresentation in any
35 application for an auctioneer's or apprentice auctioneer's
36 license;

37 (c) Engaging in a continued and flagrant course of
38 misrepresentation or for making false promises through an
39 agent, advertisement or otherwise;

40 (d) Failing to account for or remit within a reasonable
41 time any money belonging to others that comes into his
42 possession;

43 (e) Being convicted in any court of competent
44 jurisdiction of this state or any other state of a criminal
45 offense involving moral turpitude or a felony; or for failing
46 to notify the department of any such conviction within
47 fifteen days of conviction;

48 (f) Engaging in any conduct of an auctioneer which
49 demonstrates dishonesty or incompetency;

50 (g) Engaging in any other conduct that constitutes
51 fraudulent or dishonest dealing; and

52 (h) Acting as an attorney for a client.

53 (5) Any auctioneer or apprentice auctioneer who has had
54 his license revoked shall not be issued another such license
55 until a period of two years has elapsed from the date of
56 revocation and then only upon successful completion of the
57 examinations required for an auctioneer's license or an
58 apprentice auctioneer's license.

**§19-2C-5a. Examinations of applicants; excuse for illness; fee
renewal.**

1 Examinations shall be held in April and October of each
2 year, at a time and place to be designated by the
3 commissioner or his authorized representative.

4 Any individual auctioneer applicant may take the
5 examination for auctioneer and apprentice at the regularly
6 scheduled time and place. The examination shall consist of
7 a written and an oral portion. The apprentice will be
8 excused from the oral portion of the examination. The
9 passing grade shall be seventy out of one hundred. The oral
10 portion will be scored by the commissioner or his
11 authorized representative. If the applicant fails either the
12 written or oral portion of the examination no license will be
13 issued and he or she shall not be administered the
14 examination again until the next regularly scheduled
15 examination date.

16 One notice only of the examination shall be sent to the
17 applicant by certified mail, return receipt requested. If the
18 applicant fails to appear for such examination, except as
19 provided herein, a new application and a new fee shall be
20 required. No fee shall be returned except when the
21 applicant fails to take the examination because of illness
22 evidenced by a doctor's certificate sent to the commissioner
23 by certified mail, return receipt requested. If excused
24 because of illness the applicant shall be admitted to the next
25 scheduled examination without additional fee. No
26 applicant shall be excused from taking the scheduled
27 examination for any reason other than illness unless in the
28 judgment of the commissioner, the applicant would suffer
29 undue hardship thereby.

30 A fee, of fifty dollars in addition to any other fees required
31 by this article, shall be collected from each person taking
32 such examination.

33 If the commissioner determines that an applicant does
34 not qualify for a license, he shall so notify the applicant by
35 certified mail. The notice shall state the reason for refusal to
36 grant a license and the applicant's right of appeal.

37 An examination shall not be required for the renewal of
38 any license unless such license has been revoked or
39 suspended, in which case the applicant shall take and pass
40 any written examination offered by the department.

§19-2C-6. Apprentice licenses; fees.

1 The department of agriculture may grant apprentice
2 auctioneers' licenses to those persons deemed qualified by

3 the commissioner. Every applicant for an apprentice
4 auctioneer's license must take and pass an examination
5 relating to the skills and knowledge, and statutes and
6 regulations governing auctioneers. Every applicant shall
7 furnish to the commissioner on forms provided by the
8 department, satisfactory proof of the following:

- 9 (a) That he has a good reputation;
- 10 (b) That he is a trustworthy character; and
- 11 (c) That he is a citizen of the United States.

12 Any apprentice auctioneer may take the examination to
13 become an auctioneer after serving a two-year
14 apprenticeship under a licensed auctioneer: *Provided*, That
15 if the apprentice has attended a nationally accredited
16 graduate school of auctioneering, approved by the
17 commissioner, he shall serve an apprenticeship of only six
18 months. Before an apprentice may take the auctioneer's
19 examination, the apprentice shall conduct at least six
20 auction sales under the direct supervision of the sponsoring
21 auctioneer.

22 When any apprentice is discharged or terminates his
23 employment with an auctioneer for any reason, the
24 auctioneer shall immediately deliver or mail, by certified
25 mail, to the commissioner the license of such apprentice
26 auctioneer. No apprentice auctioneer shall thereafter
27 perform any acts under the authority of his license until
28 such apprentice auctioneer receives a new license bearing
29 the name and address of his new employer. No more than
30 one license shall be issued to any apprentice auctioneer for
31 the same period of time. The fee for the transfer of the
32 license of an apprentice auctioneer to a new employer
33 auctioneer shall be fifteen dollars.

34 The amount of the apprentice auctioneer's annual
35 renewal license shall be fifty dollars and bond requirements
36 shall be established by reasonable rules and regulations
37 promulgated by the commissioner, and both must be filed
38 with the department of agriculture: *Provided*, That the
39 bond required by this section shall not be less than five
40 thousand dollars. The department shall not issue an
41 apprentice auctioneer's license until bond has been filed in
42 accordance with this article. Such permits shall expire on

43 the thirtieth day of June of each year but shall be renewable
44 upon the payment of the annual fee. An apprentice license
45 shall entitle the holder thereof to assist in or conduct a
46 public auction under the immediate supervision of a
47 licensed auctioneer.

§19-2C-6a. Procedure for nonresident auctioneer's license.

1 To qualify for a nonresident license by reciprocity the
2 applicant must show evidence of licensing in another state
3 for a period of one year preceding the date of application.
4 The licensing may have been as an apprentice or as an
5 auctioneer. Provided this qualification is met and the
6 applicant meets all the other requirements as required by
7 this article and by regulation, he shall be licensed either as
8 an apprentice or as an auctioneer, based on a nonresident
9 license, as the case may be.

10 When an applicant's resident state has no licensing law
11 for auctioneers or the applicant's resident state has no
12 written or oral examination associated with its licensing
13 requirements the department of agriculture shall require
14 proof that the applicant has been a practicing auctioneer
15 for a period of two years preceding the date of application.
16 Said proof shall be in the form of sale bills, contracts, sale
17 permits and other such evidence acceptable to the
18 commissioner. Provided this qualification is met, and the
19 applicant meets other requirements for licensing as
20 required by the statutes and regulations, the applicant will
21 be seated at the next scheduled written and oral
22 examination for auctioneers without being required to first
23 serve an apprenticeship.

§19-2C-9. Written contracts; exception.

1 No person shall act as auctioneer on the sale at public
2 auction of any goods, wares, merchandise or of any other
3 property, real or personal, until he or she has, at the request
4 of the owner or consignor, first entered into a written
5 contract in duplicate with the owner or consignor of any
6 property to be sold, containing the terms and conditions
7 upon which the licensee receives or accepts the property for
8 sale at auction. No apprentice auctioneer shall be
9 authorized to enter such contract without the written
10 consent of his or her employer auctioneer. All contracts

11 shall be in the name of and on behalf of the employing
12 auctioneer.

13 In instances where contracts are used, the commissioner
14 may require the following:

15 (a) That written contracts between the auctioneer and
16 the seller be made in duplicate;

17 (b) That the original contract is to be retained by the
18 auctioneer for a period of six months;

19 (c) That one copy of the contract is to be furnished to
20 each person that entered into the contract;

21 (d) That an apprentice may not contract directly with a
22 client, but only through the auctioneer under whom he is
23 licensed;

24 (e) That an apprentice may not engage in a sale with an
25 auctioneer under whom he is not licensed without first
26 obtaining the written consent of the auctioneer under
27 whom he is licensed; and

28 (f) That on all contracts between an auctioneer and a
29 seller there shall be a prominent statement indicating that
30 the auctioneer is licensed by the department of agriculture
31 and bonded in favor of the state of West Virginia.

§19-2C-10. Advertising.

1 In advertising an auction sale by any licensed auctioneer
2 or auction house the principal auctioneer or auctioneers
3 who physically conduct the sale shall be listed prominently
4 in such advertising as used by said auctioneer or
5 auctioneers. The individual auctioneer or auctioneers who
6 conduct the sale shall be the person or persons who call for,
7 accept and close bids on the majority of items offered for
8 sale.

9 Any apprentice auctioneer who advertises, as provided in
10 this section, shall indicate in his advertisement the name of
11 the auctioneer under whom he or she is licensed.

12 The auctioneer's name shall be displayed in equal
13 prominence with the name of the apprentice auctioneer in
14 such advertisement.

15 Nothing in the provisions of this article, shall be
16 construed so as to prohibit any other auctioneer, licensed

17 pursuant to this article, from assisting with any auction,
18 notwithstanding the failure to list the name of the other
19 auctioneer in any advertising associated with such auction.

§19-2C-11. Persons currently licensed.

1 Any person who holds a valid auctioneer's license as of
2 the effective date of this section shall not be required to take
3 the examinations required by this article.

CHAPTER 31

(H. B. 1688—By Mr. Gilliam)

[Passed February 24, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections thirteen and twenty-six, article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to powers of state banking institutions generally; limitations on loans and extensions of credit; limitations on investments; loans to officers and employees of banks and banking department; valuation of securities.

Be it enacted by the Legislature of West Virginia:

That sections thirteen and twenty-six, 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.

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

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

1 Any state-chartered banking institution shall have and exer-
2 cise all of the powers necessary for, or incidental to, the busi-
3 ness of banking, and, without limiting or restricting such gen-
4 eral powers, it shall have the right to buy or discount promis-

5 sory notes and bonds, negotiate drafts, bills of exchange and
6 other evidences of indebtedness, borrow money, receive de-
7 posits on such terms and conditions as its officers may pre-
8 scribe, buy and sell exchange, bank notes, bullion or coin,
9 loan money on personal or other security, rent safe-deposit
10 boxes and receive on deposit, for safekeeping, jewelry, plate,
11 stocks, bonds and personal property of whatsoever description
12 and provide customer services incidental to the business of
13 banking, including, but not limited to, the insurance and ser-
14 vicing of and lending money by means of credit cards as letters
15 of credit or otherwise. Any state-chartered banking institution
16 may accept, for payment at a future date, not to exceed one
17 year, drafts drawn upon it by its customers. Any state-chartered
18 banking institution may issue letters of credit, with a specified
19 expiration date or for a definite term, authorizing the holders
20 thereof to draw drafts upon it or its correspondents, at sight or
21 on time, but no such letters of credit shall authorize the draw-
22 ing of drafts beyond one year. Any such banking institution
23 may organize, acquire, own, operate, dispose of, and otherwise
24 manage wholly owned subsidiary corporations for purposes
25 incident to the banking powers and services authorized by
26 this chapter.

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

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

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

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

41 (d) Such as it shall purchase at sales under judgments, de-
42 crees, trust deeds or mortgages in its favor, or shall purchase

43 at private sale, to secure and effectuate the payment of debts
44 due to it; and

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

49 Any real estate acquired by any such banking institution
50 under subdivisions (c) and (d) shall be disposed of by the
51 banking institution at the earliest practicable date, but the
52 officers thereof shall have a reasonable discretion in the mat-
53 ter of the time to dispose of such property in order to save
54 the banking institution from unnecessary losses. In every case
55 such property shall be disposed of within five years from the
56 time it is acquired by the banking institution, unless an ex-
57 tension of time is given in writing by the commissioner of
58 banking.

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

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

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

9 (2) The total loans and extensions of credit by a state-
10 chartered banking institution to a person outstanding at one
11 time and fully secured by readily marketable collateral having

12 a market value, as determined by reliable and continuously
13 available price quotations, at least equal to the amount of the
14 funds outstanding shall not exceed ten percent of the unim-
15 paired capital and unimpaired surplus of that state-chartered
16 banking institution. This limitation shall be separate from
17 and in addition to the limitation contained in subdivision (1)
18 of this subsection.

19 (3) For the purposes of this subsection:

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

29 (B) The term "person" shall include an individual, part-
30 nership, society, association, firm, institution, company,
31 public or private corporation, state, governmental agency,
32 bureau, department, division or instrumentality, political sub-
33 division, county commission, municipality, trust, syndicate,
34 estate or any other legal entity whatsoever, formed, created
35 or existing under the laws of this state or any other juris-
36 diction.

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

39 (A) Loans or extensions of credit arising from the dis-
40 count of commercial or business paper evidencing an obliga-
41 tion to the person negotiating it with recourse shall not be
42 subject to any limitation based on capital and surplus;

43 (B) The purchase of bankers' acceptances of the kind
44 described in section thirteen of the federal reserve act and
45 issued by other banks shall not be subject to any limitation
46 based on capital and surplus;

47 (C) Loans and extensions of credit secured by bills
48 of lading, warehouse receipts, or similar documents

49 transferring or securing title to readily marketable staples
50 shall be subject to a limitation of thirty-five percent of
51 capital and surplus in addition to the general limitations
52 if the market value of the staples securing each additional
53 loan or extension of credit at all times equals or exceeds
54 one hundred fifteen percent of the outstanding amount of
55 such loan or extension of credit. The staples shall be
56 fully covered by insurance whenever it is customary to
57 insure such staples;

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

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

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

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

84 (H) (i) Loans and extensions of credit arising from the
85 discount of negotiable or nonnegotiable installment consumer
86 paper which carries a full recourse endorsement or un-

87 conditional guarantee by the person transferring the paper
88 shall be subject under this section to a maximum limitation
89 equal to twenty-five percent of such capital and surplus, not-
90 withstanding the collateral requirements set forth in subdivision
91 (2) of this subsection.

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

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

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

121 (J) Loans or extensions of credit to the student loan mark-
122 eting association shall not be subject to any limitation based
123 on capital and surplus;

124 (K) Loans or extensions of credit to a corporation own-

125 ing the property in which that state-chartered banking insti-
126 tution is located, when that state-chartered banking institu-
127 tion has an unimpaired capital and surplus of not less than
128 one million dollars or when approved in writing by the com-
129 missioner of banking, shall not be subject to any limitation
130 based on capital and surplus.

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

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

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

147 (b) (1) Except as hereinafter provided or otherwise per-
148 mitted by law, nothing herein contained shall authorize the pur-
149 chase by a state-chartered banking institution for its own ac-
150 count of any shares of stock of any corporation: *Provided,*
151 That a state-chartered banking institution may purchase and
152 sell securities and stock without recourse, solely upon the
153 order and for the account of customers.

154 (2) In no event shall the total amount of investment
155 securities of any one obligor or maker held by a state-
156 chartered banking institution for its own account, exceed fif-
157 teen percent of the unimpaired capital and unimpaired sur-
158 plus of that state-chartered banking institution.

159 (3) For purposes of this subsection:

160 (A) The term "investment securities" shall include mark-
161 etable obligations, evidencing indebtedness of any person in

162 the form of stocks, bonds, notes and/or debentures;
163 "investment securities" may be further defined by regula-
164 tion of the commissioner of banking; and

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

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

175 (A) Obligations of the United States;

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

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

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

185 (E) Obligations which are insured by the secretary of
186 housing and urban development hereafter in this sentence re-
187 ferred to as the "secretary" pursuant to section 207 of the
188 National Housing Act (12 USC §1713), if the debentures to be
189 issued in payment of such insured obligations are guaranteed as
190 to principal and interest by the United States;

191 (F) Obligations, participations or other instruments of
192 or issued by the federal national mortgage association or
193 the government national mortgage association, or mortgages,
194 obligations or other securities which are or ever have been
195 sold by the federal home loan mortgage corporation pursuant
196 to Section 305 or Section 306 of the Federal Home Loan
197 Mortgage Corporation Act (12 USC §1454 or §1455);

- 198 (G) Obligations of the federal financing bank;
- 199 (H) Obligations or other instruments or securities of the
200 student loan marketing association;
- 201 (I) Obligations of the environmental financing author-
202 ity;
- 203 (J) Such obligations of any local public agency (as de-
204 fined in Section 110(h) of the Housing Act of 1949 (42 USC
205 §1460 (h)) as are secured by an agreement between the local
206 public agency and the secretary of housing and urban de-
207 velopment in which the local public agency agrees to bor-
208 row from said secretary and said secretary agrees to lend
209 to said local public agency, moneys in an aggregate amount
210 which (together with any other moneys irrevocably committed
211 to the payment of interest on such obligations) will suffice
212 to pay, when due, the interest on and all installments (in-
213 cluding the final installment) of the principal of such obli-
214 gations, which moneys under the terms of said agreement are
215 required to be used for such payments;
- 216 (K) Obligations of a public housing agency as that term
217 is defined in the United States Housing Act of 1937, as amend-
218 ed, (42 USC §§ 1401 et. seq.) as are secured.
- 219 (i) By an agreement between the public housing agency
220 and the secretary in which the public housing agency agrees
221 to borrow from the secretary, and the secretary agrees to
222 lend to the public housing agency, prior to the maturity of
223 such obligations, moneys in an amount which, together with
224 any other moneys irrevocably committed to the payment of
225 interest on such obligations, will suffice to pay the prin-
226 cipal of such obligations with interest to maturity thereon,
227 which moneys under the terms of said agreement are required
228 to be used for the purpose of paying the principal of and
229 the interest on such obligations at their maturity;
- 230 (ii) By a pledge of annual contributions under an annual
231 contributions contract between such public housing agency
232 and the secretary if such contract shall contain the
233 covenant by the secretary which is authorized by subsection
234 (b) of Section 22 (Section 6 (g) (42 USC §1421a(b)) of

235 the United States Housing Act of 1937, as amended, and if the
236 maximum sum and the maximum period specified in such
237 contract pursuant to said subsection 22(b) shall not be less
238 than the annual amount and the period for payment which are
239 requisite to provide for the payment when due of all install-
240 ments of principal and interest on such obligations; or

241 (iii) By a pledge of both annual contributions under an
242 annual contributions contract containing the covenant by the
243 secretary which is authorized by Section 6 (g) of the United
244 States Housing Act of 1937 (42 USC §1437d (g)) and a loan
245 under an agreement between the local public housing agency
246 and the secretary in which the public housing agency agrees to
247 borrow from the secretary, and the secretary agrees to lend to
248 the public housing agency, prior to the maturity of the obliga-
249 tions involved, moneys in an amount which, together with any
250 other moneys irrevocably committed under the annual contri-
251 butions contract to the payment of principal and interest on
252 such obligations will suffice to provide for the payment when
253 due of all installments of principal and interest on such ob-
254 ligations, which moneys under the terms of the agreement are
255 required to be used for the purpose of paying the principal
256 and interest on such obligations at their maturity;

257 (L) Obligations of a corporation owning the property in
258 which that state-chartered banking institution is located
259 when that state-chartered banking institution has an
260 unimpaired capital and surplus of not less than one million
261 dollars or when approved in writing by the commissioner of
262 banking;

263 (5) Notwithstanding any other provision in this sub-
264 section, a state-chartered banking institution may pur-
265 chase for its own account shares of stock issued by a
266 corporation authorized to be created pursuant to Title IX of
267 the Housing and Urban Development Act of 1968 (42 USC
268 §§3931 et. seq.) and may make investments in a partnership,
269 limited partnership, or joint venture formed pursuant to sec-
270 tion 907 (a) or 907 (c) of that act (42 USC §3937 (a) or (c))
271 and may purchase shares of stock issued by any West Virginia
272 housing corporation and may make investments in loans
273 and commitments for loans to any such corporation: *Provided,*

274 That in no event shall the total amount of such stock held
275 for its own account and such investments in loans and
276 commitments made by the state-chartered banking insti-
277 tution exceed at any time five percent of the unimpaired
278 capital and unimpaired surplus of that state-chartered
279 banking institution.

280 (6) Notwithstanding any other provision in this sub-
281 section, a state-chartered banking institution may pur-
282 chase, for its own account, shares of stock of small
283 business investment companies chartered under the laws of
284 this state, which are licensed under the act of Congress
285 known as the "Small Business Investment Act of 1958," as
286 amended, and of business development corporations created and
287 organized under the act of the Legislature known as the
288 "West Virginia Business Development Corporation Act," as
289 amended: *Provided*, That in no event shall any such state-
290 chartered banking institution hold shares of stock in small
291 business investment companies and/or business development
292 corporations in any amount aggregating more than five per-
293 cent of the unimpaired capital and unimpaired surplus of that
294 state-chartered banking institution.

295 (7) The commissioner of banking may prescribe rules and
296 regulations to administer and carry out the purposes of this
297 subsection, including rules and regulations to define or fur-
298 ther define terms used in this subsection and to establish
299 limits or requirements other than those specified in this
300 subsection for particular classes or categories of investment
301 securities.

302 (c) No officer, director, clerk or other employee of any
303 banking institution or the commissioner of banking or any
304 employee of the department of banking shall borrow, directly
305 or indirectly, from the banking institution with which he is
306 connected, or which is subject to examination by the com-
307 missioner of banking, any sum of money without the
308 approval of a majority of the board of directors or discount
309 committee of the banking institution, or of any duly con-
310 stituted committee whose duties include those usually
311 performed by a discount committee, embodied in a resolution
312 adopted by a majority vote of such board or committee,

313 exclusive of the director to whom the loan is made. If any
314 officer, clerk or other employee of any bank shall own or
315 control a majority of the stock of any other corporation, a
316 loan to such corporation shall, for the purpose of this sec-
317 tion, constitute a loan to such officer, clerk or other em-
318 ployee.

319 (d) Securities purchased by a banking institution shall
320 be entered upon the books of the bank at actual cost. For
321 the purpose of calculating the undivided profits applicable
322 to the payment of dividends, securities shall not be valued
323 at a valuation exceeding their present cost as determined by
324 amortization, that is, by deducting from the cost of a security
325 purchased at a premium, and charging to profit and loss a
326 sum sufficient to bring it to par at maturity.

CHAPTER 32

(H. B. 1194—By Mr. Gilliam)

[Passed February 24, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article eight, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to certain limitations and restrictions imposed on branch banks; procedures for authorization of branch banks; authorization of limited off-premises banking facilities; penalties.

Be it enacted by the Legislature of West Virginia:

That section twelve, article eight, 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 8. HEARINGS; ADMINISTRATIVE PROCEDURES; JUDICIAL REVIEW; UNLAWFUL ACTS; PENALTIES.

§31A-8-12. Certain limitations and restrictions imposed on branch banks; procedure for authorization of branch banks; authorization of limited off-premises banking facilities; penalties for violation of section.

1 (a) No banking institution shall:

2 (1) Establish or maintain any branch bank, except as
3 otherwise permitted by this section; or

4 (2) Engage in business at any place other than at its
5 principal office in this state, at a branch bank in this state
6 permitted by this section or at a customer bank com-
7 munication terminal permitted by section twelve-b of this
8 article: *Provided*, That at any time each such banking in-
9 stitution and each branch bank established by the purchase
10 of the business and assets and assumption of the liabilities
11 of, or merger or consolidation with, another banking in-
12 stitution, may operate no more than two off-premises walk-in
13 or drive-in banking facility, on or in conjunction with or entire-
14 ly separate from a parking lot for the customers of such banking
15 institution, for the purpose of receiving bank deposits of all
16 kinds, cashing checks, making change, selling and issuing
17 money orders and travelers checks and receiving payments on
18 loans, savings and rental accounts, and for no other purposes,
19 provided any such off-premises banking facility is located
20 within five thousand feet of the banking house premises or
21 branch bank premises of the banking institution operating such
22 off-premises facility measured between the nearest points of
23 the banking house premises and the premises on which such
24 off-premises banking facility is located. Such off-premises
25 banking facility shall be in addition to any branch bank
26 permitted by this section.

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

36 (c) A branch bank may be established in accordance with
37 subsection (d) of this section either by:

38 (1) The construction, lease or acquisition of branch bank
39 facilities in an unbanked area; or

40 (2) The purchase of the business and assets and assump-
41 tion of the liabilities of, or merger or consolidation with,
42 another banking institution.

43 Notwithstanding any other provision of this chapter to the
44 contrary, subject to and in furtherance of the board's authority
45 under the provisions of subdivision (6), subsection (b),
46 section two, article three of this chapter, and subsection (k)
47 of this section, the board may approve or disapprove the
48 application of any state banking institution to establish a
49 branch bank.

50 (d) During the five-year period beginning ninety days
51 from the effective date of this article, a banking institution
52 may establish:

53 (1) Not more than three branch banks by the purchase of
54 the business and assets and assumption of the liabilities
55 of, or merger or consolidation with, another banking institu-
56 tion; and

57 (2) In addition to the foregoing, a banking institution
58 may establish one branch by the construction, lease or acquisi-
59 tion of a facility in an unbanked area within the county
60 in which is situate its principal office. Not more than two
61 branches may be established in this manner in each unbanked
62 area. For purposes of this section an area is an "unbanked
63 area" if no banking institution or branch bank created by
64 merger and consolidation exists within the limits of an incor-
65 porated municipality.

66 (e) The principal office of a banking institution on the
67 effective date of this article shall continue to be the principal
68 office of such banking institution for purposes of establishing
69 branch banks under this section, notwithstanding any subse-
70 quent change in the location of such banking institution's
71 principal office.

72 (f) It shall be unlawful for any banking institution to
73 establish any branch bank by the purchase of the business
74 and assets and assumption of the liabilities of, or merger
75 or consolidation with, another banking institution if such
76 establishment would cause the combined deposits of the re-

77 sulting banking institution to exceed ten percent of the total
78 deposits of all banking institutions in this state as determined
79 by the latest available reports of condition as compiled by the
80 federal deposit insurance corporation.

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

86 (h) The board shall, upon receipt of any application to
87 establish a branch bank provide notice of such application
88 to all banking institutions. A banking institution may, with-
89 in ten days after receipt of such notice, file a petition to
90 intervene and shall, if it so files such petition, thereupon
91 become a party to any hearing relating thereto before the
92 board.

93 (i) The commissioner shall prescribe the form of the
94 application for a branch bank and shall collect an examina-
95 tion and investigation fee of one thousand dollars for each
96 filed application for a branch bank that is to be established
97 by the construction, lease or acquisition of a branch bank
98 facility in an unbanked area and two thousand five hundred
99 dollars for a branch bank that is to be established by the
100 purchase of the business and assets and assumption of the
101 liabilities of, or merger or consolidation with another banking
102 institution. The board shall complete the examination and in-
103 vestigation within ninety days from the date on which such
104 application and fee are received, unless the board requests in
105 writing additional information and disclosures concerning the
106 proposed branch bank from the applicant banking institution,
107 in which event such ninety-day period shall be extended for
108 an additional period of thirty days plus the number of days
109 between the date of such request and the date such additional
110 information and disclosures are received.

111 (j) Upon completion of the examination and investigation
112 with respect to such application, the board shall, if a hearing
113 be required pursuant to subsection (k) of this section, forth-
114 with give notice and hold a hearing pursuant to the following
115 provisions:

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

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

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

136 (k) No state banking institution may establish a branch
137 bank until the board, following an examination, investigation,
138 notice and hearing, enters an order approving an application
139 for that branch bank: *Provided*, That no such hearing shall be
140 required with respect to any application to establish a branch
141 bank which is approved by the board unless a banking institu-
142 tion has timely filed a petition to intervene pursuant to
143 subsection (h) of this section. The order shall be accompanied
144 by findings of fact that:

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

147 (2) Local conditions assure reasonable promise of suc-
148 cessful operation of the proposed branch bank and of those
149 banks and branches thereof already established in the com-
150 munity;

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

153 (4) The applicant state banking institution satisfies such
154 reasonable and appropriate requirements as to sound financial
155 condition as the commissioner or board may from time to time
156 establish by regulation.

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

165 (m) Pursuant to the resolution of its board of directors
166 and with the prior approval of the commissioner, a state
167 banking institution may discontinue the operation of a branch
168 bank upon at least thirty days' prior public notice given in
169 such form and manner as the commissioner prescribes.

170 (n) Any violation of any provision of this section shall
171 constitute a misdemeanor offense punishable by applicable
172 penalties as provided in section fifteen, article eight of this
173 chapter.

CHAPTER 33

(Com. Sub. for H. B. 1461—By Mr. Albright and Mr. Chambers)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article twenty-seven, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to barbers and beauticians generally; providing for obtaining a license to operate a school of barbering or beauty culture; prescribing the method of application and the qualifications for applicants; providing for the inspection of proposed schools; authorizing the board of health to promulgate rules and regulations; empowering the board of health to suspend, revoke

or refuse to renew licenses of the schools; establishing fees for initial license and renewal; authorizing the board of barbers and beauticians to promulgate rules and regulations governing the licensure of instructors; establishing minimum qualifications for instructors; prescribing license fees for instructors; and providing that all rules and regulations promulgated in compliance with the provisions of chapter twenty-nine-a of said code of West Virginia.

Be it enacted by the Legislature of West Virginia:

That section eight, article twenty-seven, 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 27. BOARD OF BARBERS AND BEAUTICIANS.

§30-27-8. License to own or operate schools of barbering or beauty culture; application for license; qualifications; inspection; license fee; rules and regulations; suspension, etc., of license; qualifications and registration of instructors; registration fees; administrative procedures.

1 No person, firm or corporation, whether public or private,
2 and whether organized for profit or not, shall own or operate a
3 school of barbering or beauty culture in this state without first
4 obtaining a license so to do from the board. The application for
5 such license shall be made in writing on forms prescribed and
6 furnished by the board and shall be signed and verified by the
7 applicant. The applicant shall, in addition to such other in-
8 formation as may be reasonably required by the board, furnish
9 evidence that (a) the applicant is professionally competent and
10 financially responsible, (b) adequate physical facilities will be
11 available for the school, and (c) persons teaching or in-
12 structing therein are licensed by the board as fully qualified
13 instructors. If an applicant desires to own or operate more than
14 one school of barbering or beauty culture, a separate applica-
15 tion shall be made and a separate license shall be issued for
16 each.

17 All applicants for a license to own or operate a school of
18 barbering or beauty culture shall permit an inspection of such
19 proposed school by the inspectors appointed pursuant to sub-

20 section (d), section one, article fourteen, chapter sixteen of
21 this code to determine whether it is properly fitted and equipped
22 for instruction in barbering or beauty culture. The board of
23 health shall promulgate reasonable rules and regulations to
24 implement and make effective the powers, duties and respon-
25 sibilities vested in such board in connection with the licensing
26 of schools of barbering and beauty culture. If the applicant
27 has met all of the standards and qualifications prescribed
28 herein by the board of health and has complied with the rules
29 and regulations pertaining to the issuance of the license applied
30 for, the board shall issue such license to the applicant. There-
31 after, the board may suspend, revoke or refuse to renew the
32 license of a school whenever it fails to meet the minimum
33 standards and qualifications required for the issuance of an
34 original license. The director of health or his designees shall
35 administer and enforce such actions of the board.

36 The initial license fee for each school of barbering and for
37 each school of beauty culture shall be five hundred dollars and
38 the annual renewal fee shall be two hundred fifty dollars to be
39 paid in such manner as the board may prescribe, on or before
40 January first of each year. The license shall be permanently
41 displayed in the school, and a suitable sign shall be kept on
42 the front of the school which shall plainly indicate that a school
43 of barbering or beauty culture is operated therein.

44 The board of barbers and beauticians shall promulgate rea-
45 sonable rules and regulations prescribing the standards and
46 requirements to be met by applicants for licensure of duly
47 qualified instructors in schools of barbering or beauty culture.
48 Such rules and regulations may provide for the issuance of cer-
49 tificates for instructors, including temporary certificates, and
50 shall prescribe minimum qualifications as to age, education and
51 training for applicants for such certificates. Minimum qualifi-
52 cations to become applicants as student instructors shall in-
53 clude one year's experience as a licensed full-time practicing
54 barber or beautician and two hundred fifty hours of ad-
55 vanced instruction beyond the normal licensure requirements.
56 Each licensed instructor in barbering and beauty culture shall
57 pay an initial registration fee of fifty dollars, and shall renew
58 his certificate annually and pay a renewal fee of fifty dollars

59 on or before the first day of January of each year. An expired
60 certificate may be reinstated only upon the payment of all
61 lapsed renewal fees, unless such instructor shall have notified
62 the board that he or she desires to be placed on an inactive
63 status during which time he or she shall not be liable for any
64 renewal fees. The applicant for reinstatement shall also be
65 required to meet the qualifications for registration in effect at
66 the time application for reinstatement is made. A licensed
67 instructor shall not also be required to be licensed for active
68 practice or service as provided for in section four of this
69 article, unless such instructor is in fact acting as a barber,
70 beautician, aesthetician or manicurist outside the scope of his
71 employment as an instructor: *Provided*, That the term "aesthe-
72 tician," used in this section, shall have no effect until and
73 unless the provisions of section one of this article are amended
74 to authorize issuance of rules and regulations relating to
75 aestheticians.

76 Recognizing that all of the provisions of chapter twenty-
77 nine-a of this code are fully applicable to any and all admini-
78 strative procedures, and the right of judicial review, in con-
79 nection with the provisions of this article, but also recognizing
80 that the question has been raised as to whether rules and
81 regulations adopted under the provisions of this section must
82 be promulgated in accordance with the provisions of said
83 chapter twenty-nine-a, it is hereby expressly provided that all
84 such rules and regulations shall be promulgated in compliance
85 with the provisions of said chapter twenty-nine-a.

CHAPTER 34

(Com. Sub. for H. B. 1294—By Mrs. Burke)

[Passed February 24, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-f, all relating to title; declaration of purpose; definitions; authorization of pro-

gram by referendum; termination of program by referendum; beef industry self-improvement assessment board; administration by board; report to Legislature; rules and regulations; assessment on sales; dairy cattle exempt; reimbursement for collecting; refunds; penalties; separability; and sunset provision.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2F. BEEF INDUSTRY SELF-IMPROVEMENT ASSESSMENT PROGRAM.

- §19-2F-1. Title.
- §19-2F-2. Declaration of purpose.
- §19-2F-3. Definitions.
- §19-2F-4. Authorization of program by referendum.
- §19-2F-5. Termination of program by referendum.
- §19-2F-6. Beef industry self-improvement assessment board; administration of article by board; report to the Legislature; rules and regulations.
- §19-2F-7. Assessment on sales; dairy cattle exempt; reimbursement for collecting.
- §19-2F-8. Refunds.
- §19-2F-9. Penalties.
- §19-2F-10. Separability.
- §19-2F-11. Termination of program by law.

§19-2F-1. Title.

- 1 This article shall be known by the short title of the "Beef
- 2 Check-off Act of 1983."

§19-2F-2. Declaration of purpose.

- 1 The purpose of this article is to enhance the sale and
- 2 thus the profit potential of the state's beef industry by
- 3 supporting efforts to solve problems in livestock health, pro-
- 4 duction, marketing and breeding; by supporting the research
- 5 and educational activities of the national livestock and meat
- 6 board and its beef industry council; and by informing and
- 7 educating the public about the value of beef and beef pro-
- 8 ducts.

§19-2F-3. Definitions.

1 As used in this article:

2 (a) "Beef industry self-improvement assessment board"
3 or "board" means those persons appointed by the governor
4 from nominations submitted by the incorporated beef pro-
5 ducer associations in the state.

6 (b) "Commissioner" means the commissioner of agriculture
7 of the state of West Virginia and his duly authorized agent.

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

11 (d) "Producer" means any person in the business of pro-
12 ducing beef cattle or causing beef cattle to be produced.

§19-2F-4. Authorization of program by referendum.

1 (a) None of the provisions of this article shall be authorized
2 until sixty days after being ratified through referendum by a
3 majority of the beef producers participating in the referendum.
4 If a referendum is proposed and defeated, a subsequent
5 referendum shall not be held for a period of at least two
6 years.

7 (b) The commissioner, when petitioned by no less than
8 fifty producers, shall call a public hearing in accordance with
9 the provisions of chapter twenty-nine-a of the code of West
10 Virginia as to whether a referendum should be held and the
11 amount of the assessment and if a majority of those present are
12 in favor, shall notify producers of the date of a pending
13 referendum by publishing a notice three times in two news-
14 papers of general circulation and such other places as the
15 commissioner may deem necessary.

16 (c) Producers shall vote at polling places provided in each
17 county for that purpose on ballots furnished by the commis-
18 sioner. The ballots shall be furnished to producers for voting
19 upon their presentation of proof, such as tax assessment
20 records, sales receipts or income tax records, no more than
21 one year old, showing them to be bona fide producers. The
22 commissioner shall announce the results in two newspapers of

23 general circulation within seventy-two hours and shall pre-
24 serve all ballots for one year after the date of the referendum.

§19-2F-5. Termination of program by referendum.

1 The commissioner shall provide for a referendum on con-
2 tinuation or cessation of the program within sixty days after
3 receiving notification in writing signifying by signatures that
4 thirty-three and one-third percent or more of the producers
5 request that the program be terminated. A majority of the
6 producers voting in said referendum must vote for con-
7 tinuation of the program or it shall be terminated ninety
8 days after said referendum. If such a referendum is held and
9 if the program is continued, a subsequent referendum shall not
10 be held for at least two years. Unencumbered money left in the
11 fund upon termination of the program shall be deposited in the
12 general fund of the state of West Virginia.

**§19-2F-6. Beef industry self-improvement assessment board; ad-
ministration of article by board; report to Legislature;
rules and regulations.**

1 (a) There is hereby created a West Virginia beef industry
2 self-improvement assessment board consisting of nine persons
3 who are residents of the state and citizens of the United States
4 and who shall be and have been actually engaged in that phase
5 of the cattle industry he represents for the preceding five years.
6 Six members of the board shall be beef producers, one a dairy
7 producer, one a public livestock market representative and
8 one a meat packer. The nine members shall be appointed by
9 the governor for terms of three years and may serve succes-
10 sive terms: *Provided*, That at the inception, three shall be ap-
11 pointed for one year, three for two years and three for three
12 years and that appointments to fill a vacancy shall be only for
13 the unexpired term. In making the appointments, the governor
14 shall take into consideration the recommendations made to
15 him by incorporated organizations in West Virginia who repre-
16 sent or who are engaged in the same type of production as the
17 proposed member of the board. If the governor fails to make
18 an appointment within ninety days after expiration of any
19 term, the board shall make the necessary appointment. Each

20 member shall hold office until the expiration of the term for
21 which such member is appointed and until a successor shall
22 have been duly appointed and qualified. The board shall elect
23 a chairman, a secretary and a treasurer and shall meet at such
24 time and place as called by the chairman or by majority of
25 the board. All meetings shall be held in accordance with the
26 open meetings law. The board shall pay each member a sti-
27 pend from board collections not to exceed thirty-five dollars
28 per meeting attended and expenses for room, meals and mile-
29 age in the same amount and manner as stipulated in the rules
30 and regulations promulgated by the governor for state officials
31 and employees of the state. No member shall receive any other
32 salary or compensation for his services. The board may contract
33 for services, may employ and discharge employees and may
34 provide such facilities and equipment as are necessary for
35 the employees to perform their duties and may cooperate with
36 other state or federal agencies or other organizations whose
37 activities may be beneficial to the purpose of this article. The
38 board shall not expend funds to influence legislation or any
39 political campaign.

40 (b) The board shall administer the beef industry self-im-
41 provement assessment program including, but not limited to,
42 receiving assessment funds, disbursing such funds for research
43 on beef production and beef marketing practices and for edu-
44 cational purposes. The board may accept grants and gifts from
45 any private source for expenditure consistent with the pro-
46 visions of this article: *Provided*, That all such activity shall be
47 directed towards increasing the sale of beef and/or beef cattle
48 without reference to any particular firm, individual, brand or
49 trade name.

50 (c) The board shall submit a report, including a complete
51 fiscal accounting, of activities to the Legislature at the begin-
52 ning of each annual legislative session.

53 (d) The board, in order to carry out the provisions of this
54 article, shall have authority to issue rules and regulations after
55 a public hearing following due notice to all interested persons
56 in conformance with the provisions of the state administrative
57 procedure set forth in chapter twenty-nine-a of this code.

§19-2F-7. Assessment on sales; dairy cattle exempt; reimbursement for collecting.

1 (a) All livestock markets, packers, buying stations, order
2 buyers, livestock dealers or other persons purchasing cattle,
3 including direct shipments from farms and other private treaty
4 sales, shall be authorized to deduct the assessment stipulated
5 in the authorizing referendum from the settlement of such cattle
6 and forward it within thirty days to the treasurer of the board.
7 Dairy cattle for milk production purposes are not subject to
8 this assessment. Dairy cattle sold for slaughter or feeding pur-
9 poses shall be subject to assessment. Five percent of the funds
10 collected shall be retained by the person remitting the funds
11 as reimbursement for their added problems and costs.

12 (b) The board shall keep accurate records of the amount of
13 assessments and the date on which they were received, the ex-
14 penditures and the date they were made, and shall preserve
15 such records for at least five years.

§19-2F-8. Refunds.

1 (a) Any producer of cattle from whom an assessment has
2 been collected, shall have the right to demand and receive a
3 refund of the total amount of assessment. The demand must
4 be made in writing to the board within thirty days of the as-
5 sessment and shall contain the name and address of the pro-
6 ducer, the amount of the assessment, the name and address
7 of the collecting agent, the date of sale and the invoice number.
8 The board, or its administrative staff, upon determination that
9 the assessment was paid by the producer, shall then make the
10 refund.

§19-2F-9. Penalties.

1 (a) When a person who should collect the assessment in
2 section seven of this article fails to do so, or when a person
3 collecting the assessment fails to forward it within thirty days,
4 the board shall certify same to the commissioner who shall
5 write the person giving him fifteen days to begin the collection
6 or forwarding of the assessment: *Provided*, That the person
7 may submit to the board justification for nonpayment and
8 thereupon, the board may extend said payment period. If

9 payment is not made within the fifteen-day period or the ex-
10 tension thereof, the commissioner shall revoke such person's
11 license to engage in cattle purchasing activities in the state.
12 Persons having their license revoked under provisions of this
13 section shall not be eligible for relicensing for a period of three
14 years.

§19-2F-10. Separability.

1 If any of the provisions of this article or the application
2 thereof to any person or circumstances is held invalid, such
3 invalidity shall not affect other provisions or applications of
4 the article which can be given effect without the invalid pro-
5 vision or application and to this end the provisions of the
6 article are declared to be separable.

§19-2F-11. Termination of program by law.

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

CHAPTER 35

(Com. Sub. for H. B. 1709—By Mr. Wiedebusch and Mr. Knight)

[Passed March 15, 1983: in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section twelve-a, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend chapter five of said code by adding thereto a new article, designated article twenty-two, relating to requiring the state and its subdivisions to solicit bids for all construction projects exceeding twenty-five thousand dollars in cost; allowing rejection of all bids and re-solicitation of bids; permitting the use of regular full-time employees in construction projects; providing exceptions to bidding requirements for projects constructed by vocational education students and volunteers; and for emergency repairs.

Be it enacted by the Legislature of West Virginia:

That section twelve-a, article five, chapter eighteen, of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that chapter five of said code be amended by adding thereto a new article, designated article twenty-two, all to read as follows:

ARTICLE 22. GOVERNMENT CONSTRUCTION CONTRACTS.

§5-22-1. Bidding required; government construction contracts to go to qualified responsible bidder; exceptions.

1 As used in this section, "the state and its subdivisions"
2 means the state of West Virginia, every political subdivision
3 thereof, every administrative entity that includes such a sub-
4 division, all municipalities and all county boards of educa-
5 tion.

6 The state and its subdivisions shall except as provided
7 in this section solicit competitive bids for every construction
8 project exceeding twenty-five thousand dollars in total cost.
9 Following the solicitation of such bids, the construction con-
10 tract shall be awarded to the lowest qualified responsible
11 bidder, who shall furnish a sufficient performance and pay-
12 ment bond: *Provided*, That the state and its subdivisions may
13 reject all bids and solicit new bids on said project.

14 Nothing in this section shall apply to work performed on
15 construction or repair projects by regular full-time employees
16 of the state or its subdivisions, nor shall anything in this
17 section prevent students enrolled in vocational educational
18 schools from being utilized in construction or repair projects
19 when such use is a part of the students training program.

20 Nothing herein shall apply to emergency repairs to building
21 components and systems. For the purpose of this paragraph,
22 emergency repairs means repairs that if not made immediately
23 will seriously impair the use of such building components and
24 systems, or cause danger to those persons using such building
25 components and systems.

26 Nothing herein shall apply to any situation where the state
27 or a subdivision thereof shall come to an agreement with

28 volunteers, or a volunteer group, whereby the governmental
29 body will provide construction or repair materials, architec-
30 tural, engineering, technical or any other professional services
31 and the volunteers will provide the necessary labor without
32 charge to, or liability upon, the governmental body.

CHAPTER 36

(Com. Sub. for H. B. 1156—By Mr. Love)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article twenty, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the limits on prizes awarded by a bingo licensee.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 20. CHARITABLE BINGO.

§47-20-10. Limits on prizes awarded—General provisions.

1 Except as provided otherwise in section twenty-two of this
2 article, during the period of a license, the total value of all
3 prizes awarded by a licensee, shall not exceed in value sixty-
4 five percent of the gross proceeds collected during such period
5 or the sum of one hundred thousand dollars as determined and
6 assigned under this section whichever amount shall be less:
7 *Provided*, That notwithstanding the foregoing limitation, the
8 total prizes awarded by a licensee, or in the aggregate by two
9 or more limited occasion licensees holding a joint bingo occa-
10 sion, for any bingo occasion held pursuant to an annual or
11 limited occasion license may not exceed in value seven thou-
12 sand five hundred dollars.

13 Prizes may be money or merchandise other than beer, non-

- 14 intoxicating beer, wine, spirits or alcoholic liquor as defined in
15 section five, article one, chapter sixty of this code. If the prizes
16 are merchandise, the value assigned to them is their fair market
17 value at the time of purchase.

CHAPTER 37

(Com. Sub. for H. B. 1394—By Mr. Albright)

[Passed March 7, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, three, four, seven, eight, nine, twenty and twenty-four, article five-a, chapter twenty-nine 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 twenty-five-a, all relating to renaming the state boxing commission as the state athletic commission; requiring the commission to follow the current United States amateur boxing authority rules and requirements in the sanctioning of amateur boxing events; requiring the commission to promulgate different sets of rules for specified boxing events; and exempting amateur wrestling and boxing events conducted by universities, colleges and high schools from the jurisdiction of the commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5A. STATE ATHLETIC COMMISSION.

- §29-5A-1. Creation of commission.
§29-5A-3. Commission to have sole control of boxing, etc., matches; municipality not to tax boxing, etc., club.
§29-5A-4. Licenses to be in lieu of all other licenses.
§29-5A-7. Interference with or restraining of professional boxing or exhibitions.

- §29-5A-8. Issuance of license; qualification for licenses; application of other provisions of chapter; hearings.
- §29-5A-9. Sanction or permit from commission.
- §29-5A-20. Licenses for contestants, referees and managers.
- §29-5A-24. Rules and regulations governing contestants and matches.
- §29-5A-25a. Certain amateur matches exempt.

§29-5A-1. Creation of commission; members; officers; seal and rules.

1 The state boxing commission, heretofore created, is hereby
2 continued and renamed the state athletic commission. The com-
3 mission shall consist of three persons appointed by the gover-
4 nor, by and with the consent of the Senate, no more than two
5 of whom shall belong to the same political party and no two
6 of whom shall be residents of the same county at the same time.
7 The members shall serve without pay. The present members
8 and terms of the members of the state boxing commission shall
9 continue as the state athletic commission. At the expiration
10 of the term of each member, his successor shall be appointed
11 by the governor for a term of four years. In the event of a
12 vacancy in said board, said vacancy shall likewise be filled by
13 appointment by the governor and the governor shall likewise
14 have the power to remove any commissioner at his pleasure.
15 Any two members of the commission shall constitute a quorum
16 for the exercise of the power or authority conferred upon it.
17 The members of the commission shall at the first meeting
18 after their appointment elect one of their number chairman of
19 the commission, and another of their number secretary of the
20 commission, shall adopt a seal for the commission, and shall
21 make such rules for the administration of their office, not in-
22 consistent herewith, as they may deem expedient; and they
23 may hereafter amend or abrogate such rules. The concurrence
24 of at least two commissioners shall be necessary to render a
25 choice or decision of the commission.

§29-5A-3. Commission to have sole control of boxing, etc., matches; licenses; municipality not to tax boxing, etc., club.

1 (a) The commission shall have and hereby is vested with
2 the sole direction, management and control of the jurisdiction
3 over all amateur and professional boxing, sparring matches
4 and exhibitions, or any form thereof, to be conducted, held or
5 given within the state by any club, individual, corporation or

6 association; and no boxing, sparring or exhibition shall be con-
7 ducted, held or given within the state except pursuant to its
8 authority and held in accordance with this article. The com-
9 mission may, in its discretion, issue and, at its pleasure, revoke
10 the license to conduct, hold or give boxing or sparring matches
11 or exhibitions to any club, corporation, association or indi-
12 vidual. Every license shall be subject to such rules and regu-
13 lations and amendments thereto as the commission may pre-
14 scribe. Every application for a license, as herein provided for,
15 shall be on a blank form provided by the commission. No pro-
16 moter's license shall be granted to any club, corporation, asso-
17 ciation or individual, unless the signer of the application be a
18 bona fide resident of the state of West Virginia. Upon appli-
19 cation of such promoter's license, the promoter shall pay a
20 state license fee of one hundred twenty-five dollars for one
21 year. Such fee shall be in the form of a certified check or
22 money order and shall be issued to the treasurer of the state
23 of West Virginia to be deposited in the general fund. Should
24 such license not be granted, the treasurer shall refund the full
25 amount. Nonprofit chartered and charitable organizations shall
26 be exempt from this license fee for all amateur events. No
27 municipal corporation shall impose any license tax on such
28 boxing, sparring or exhibition clubs, notwithstanding the pro-
29 visions of any section of the code respecting municipal taxes
30 and licenses. The granting of such license to such club by the
31 commission, or the holding of such license by such club, indi-
32 vidual, corporation or association, shall not prevent the com-
33 mission from canceling or revoking the license to conduct such
34 an event, as hereinbefore provided.

35 (b) In exercising its jurisdiction over amateur boxing, sparr-
36 ing matches and exhibitions, the commission shall follow the
37 current United States boxing authority rules and requirements
38 to enable the proper sanctioning of all participants, referees,
39 judges and matches or exhibitions conducted under the rules
40 described in subdivision (1), subsection (c), section twenty-four
41 of this article and shall cooperate fully with said boxing author-
42 ity in order that said sanctioning be extended to state boxers.

§29-5A-4. Licenses to be in lieu of all other licenses.

1 The licenses herein imposed shall be in lieu of all other

2 licenses or license taxes of the state of West Virginia, and no
3 county, city, town or other municipality or other political sub-
4 division of the state of West Virginia shall be empowered to levy
5 or impose any license or license tax on any such person engaged
6 in the business of conducting boxing or sparring matches and
7 exhibitions under the jurisdiction of and being licensed by the
8 commission.

**§29-5A-7. Interference with or restraining of professional boxing
or exhibitions.**

1 No person or persons, club, organization or corporation
2 shall, except in accordance with law, interfere with or re-
3 strain, or attempt to interfere with or restrain, by any act,
4 threat or otherwise, either within or without this state, the
5 putting on or the conducting of any professional boxing
6 match or exhibition of this state.

**§29-5A-8. Issuance of license; qualification for licenses; application
of other provisions of chapter; hearings.**

1 The commission, at its discretion, may issue a license to
2 promote, conduct or hold professional boxing, sparring matches
3 and exhibitions to any person, corporation, association, club or
4 organization eligible for a license under this chapter.

5 Before being granted a license, or the renewal of such
6 license, the applicant must establish to the satisfaction of the
7 commission that he:

8 (a) Is skilled, or has knowledge, in the profession of
9 boxing;

10 (b) Is of good moral character;

11 (c) Is physically fit and mentally sound;

12 (d) Will conduct his business in the best interest and
13 welfare of the public, preserving the safety and health of
14 participants and the best interests of professional boxing
15 generally;

16 (e) Will adhere to and comply with all the rules and regu-
17 lations of the commission pertaining to such license.

18 In the case of a corporate applicant, these factors shall

19 pertain to its officers, directors, principal stockholders and
20 employees.

21 Every license and licensee shall be subject to such rules
22 and regulations, and amendments thereof, as the commission
23 may prescribe.

§29-5A-9. Sanction or permit from commission.

1 No boxing, sparring matches or exhibitions shall be con-
2 ducted by any individual, club, organization or corporation
3 having a license to conduct any such exhibitions in this state
4 except by a sanction or permit from the commission.

§29-5A-20. Licenses for contestants, referees and managers.

1 No professional contestant, referee or professional manager
2 shall be permitted to take part in any boxing contest or exhibi-
3 tion unless holding a license from the state, said license to be
4 issued by the commission upon payment of five dollars a year
5 for contestants and referees and three dollars a year for a man-
6 ager. Such fees shall accompany the application and shall be
7 in the form of a certified check or money order and shall be
8 issued to the treasurer of the state of West Virginia to be de-
9 posited in the general fund. Should such license not be granted,
10 the treasurer shall refund the full amount.

§29-5A-24. Rules and regulations governing contestants and matches.

1 (a) The commission shall promulgate its rules in com-
2 pliance with the provisions of article three of chapter twenty-
3 nine-a of this code.

4 (b) The commission shall promulgate such rules as it deter-
5 mines to be necessary to regulate professional boxers, pro-
6 fessional boxing matches and exhibitions.

7 (c) The commission shall promulgate separate rules for
8 amateur boxers and amateur boxing, sparring matches and
9 exhibitions as follows:

10 (1) Rules which comply with the requirements of the rules
11 of the current United States amateur boxing authority to the
12 extent that any boxer complying with them will be eligible to

13 participate in any state, national or international boxing match
14 sanctioned by the current United States amateur boxing
15 authority or the international amateur boxing association.

16 (2) Rules which may differ from the rules of the current
17 United States amateur boxing authority but which ade-
18 quately guarantee the safety of the participants and the fair
19 and honest conducting of the matches or exhibitions. As a part
20 of these rules, the commission shall include a requirement that
21 all boxers participating in matches or exhibitions conducted
22 under these rules be informed prior to such participation that
23 such participation will disqualify them from participating in
24 state, national or international matches and exhibitions sanc-
25 tioned by the current United States amateur boxing authority
26 or the international amateur boxing association.

§29-5A-25a. Certain amateur matches exempt.

1 The provisions of this article do not apply to amateur
2 wrestling, amateur boxing, or amateur sparring matches or
3 exhibitions conducted by any university, college or high school.

CHAPTER 38

(S. B. 458—By Mrs. Spears)

[Passed March 11, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article six, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the civil service system; definitions; date of termination of the Vietnam conflict.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. CIVIL SERVICE SYSTEM.**§29-6-2. Definition of terms.**

1 As used in this article unless the context clearly indi-
2 cates otherwise:

3 (1) "Agency" means any administrative unit of state
4 government, including any authority, board, bureau, com-
5 mission, committee, council, department or office.

6 (2) "Appointing authority" means a person or group
7 of persons authorized by an agency to make appoint-
8 ments to positions in the classified or classified-exempt
9 service.

10 (3) "Class" or "class of positions" means a group of
11 positions sufficiently similar in duties, training, experi-
12 ence and responsibilities, as determined by specifications,
13 that the same qualifications, the same title, and the same
14 schedule of compensation and benefits may be equitably
15 applied to each position in the group.

16 (4) "Classification plan" means the plan by which
17 positions in the classified service and classified-exempt
18 service have been allocated by class.

19 (5) "Classified-exempt service" means an employee
20 whose position satisfies the definitions for "class" and
21 "classify" but who is not covered under the civil service
22 system or employed by the board of regents.

23 (6) "Classified service" means an employee whose job
24 satisfies the definitions for "class" and "classify" and who
25 is covered under the civil service system.

26 (7) "Classify" means to group all positions in classes
27 and to allocate every position to the appropriate class in
28 the classification plan.

29 (8) "Policymaking position" means a position in which
30 the person occupying it (a) acts as an adviser to, or for-
31 mulates plans for the implementation of broad goals for,
32 the executive or administrative head of the agency, (b) is
33 in charge of a major administrative component of the
34 agency and (c) reports directly and is directly account-

35 able to the administrative or executive head of the agen-
36 cy.

37 (9) "Position" means a particular job which has been
38 classified based on specifications.

39 (10) "Specification" means a description of a class of
40 position which defines the class, provides examples of
41 work performed and the minimum qualifications required
42 for employment.

43 (11) "Veteran" means any person who has served in the
44 armed forces of the United States of America during
45 World War I (April 6, 1917—November 11, 1918), World
46 War II (December 7, 1941—December 31, 1946), the Ko-
47 rean Conflict (June 27, 1950—January 31, 1955), or the
48 Vietnam Conflict (August 5, 1964—May 7, 1975), and who
49 has received a discharge under honorable conditions from
50 such service.

CHAPTER 39

(H. B. 1271—By Mr. Starcher and Mr. Faircloth)

[Passed March 10, 1983; 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 department of corrections; the farm management commission; the secretary of state; and the railroad maintenance authority to be moral obligations of the state and directing payment thereof.**

1 The Legislature has heretofore made findings of fact that the
2 state has received the benefit of the commodities and services
3 rendered by certain claimants herein and has considered claims

4 against the state, the department of corrections, the farm
 5 management commission, the secretary of state and the rail-
 6 road maintenance authority, agencies thereof, which have
 7 arisen due to overexpenditures of the departmental appropria-
 8 tions by officers of such state spending unit, such claims having
 9 been previously considered by the court of claims which also
 10 found that the state has received the benefit of the commodities
 11 and services rendered by each claimant, but were denied by
 12 the court of claims on the purely statutory grounds that to
 13 allow such claims would be condoning illegal acts contrary to
 14 the laws of the state. The Legislature pursuant to its findings of
 15 fact and also by the adoption of the findings of fact by the court
 16 of claims as its own, and, while not condoning such illegal
 17 acts, hereby declares it to be the moral obligation of the state to
 18 pay each such claim in the amount specified below, and directs
 19 the auditor to issue warrants upon receipt of a properly ex-
 20 ecuted requisition supported by an itemized invoice, statement
 21 or other satisfactory document as required by section ten,
 22 article three, chapter twelve of the code of West Virginia, one
 23 thousand nine hundred thirty-one, as amended, for the pay-
 24 ment thereof out of any fund appropriated and available for
 25 the purpose.

26 (a) *Claims against the Department of Corrections:*

27 (TO BE PAID FROM GENERAL REVENUE FUND)

| | | |
|----|---|-------------|
| 28 | (1) Ace Adjustment Service, Inc., Agent | |
| 29 | for United Hospital Center, Inc. | \$ 325.00 |
| 30 | (2) C. K. Agarwal | \$ 1,235.00 |
| 31 | (3) Jett S. Andrick | \$ 843.00 |
| 32 | (4) Beckley Medical Arts, Inc. | \$ 60.00 |
| 33 | (5) Gordon A. Bobbitt | \$ 265.25 |
| 34 | (6) Bowlings, Inc. | \$ 407.74 |
| 35 | (7) Butler's Pharmacy | \$ 2,466.18 |
| 36 | (8) Chandra P. Sharma, M.D., Inc. | \$ 250.00 |
| 37 | (9) FMRS Mental Health Council, Inc. .. | \$ 96.00 |
| 38 | (10) Grafton City Hospital | \$ 108.00 |
| 39 | (11) Greenbrier Physicians, Inc. | \$ 550.00 |
| 40 | (12) Harold E. Harvey, M.D., Inc. | \$ 75.00 |
| 41 | (13) Lois McElwee Memorial Clinic | \$ 140.00 |

| | | |
|----|--|--------------|
| 42 | (14) Matthew Bender & Company, Inc. .. | \$ 95.00 |
| 43 | (15) William D. McLean | \$ 64.00 |
| 44 | (16) Memorial General Hospital | |
| 45 | Association, Inc. | \$165,695.32 |
| 46 | (17) F. M. Mingo | \$ 99.00 |
| 47 | (18) Monongahela Power Company | \$ 66,033.70 |
| 48 | (19) Ohio Valley Medical Center, Inc. .. | \$ 22,614.68 |
| 49 | (20) B. Payman | \$ 1,199.00 |
| 50 | (21) Peters Fuel Corporation | \$ 30,097.20 |
| 51 | (22) Physicians Fee Office | \$ 2,773.00 |
| 52 | (23) Professional Laboratory & X-Ray .. | \$ 32.00 |
| 53 | (24) Mario C. Ramas | \$ 110.00 |
| 54 | (25) D. L. Rasmussen | \$ 665.00 |
| 55 | (26) Reynolds Memorial Hospital, Inc. .. | \$ 95,180.94 |
| 56 | (27) Charles H. Simmons, | |
| 57 | d/b/a Simmons' Hauling | \$ 1,926.80 |
| 58 | (28) Steven Richman, DO, Inc. | \$ 495.00 |
| 59 | (29) Summers Community | |
| 60 | Clinic Pharmacy | \$ 29.90 |
| 61 | (30) Summers County Hospital | \$ 13,456.65 |
| 62 | (31) Utah Valley Hospital | \$ 1,825.16 |
| 63 | (32) Alfredo C. Velasquez | \$ 1,430.00 |
| 64 | (33) Westinghouse Electric | |
| 65 | Supply Company | \$ 732.76 |
| 66 | (34) A. H. Robins Co. | \$ 259.54 |
| 67 | (35) C. H. James & Co. | \$ 2,332.18 |
| 68 | (36) West Virginia School of Osteopathic | |
| 69 | Medicine Clinic, Inc. | \$ 14,709.50 |
| 70 | (b) <i>Claims against the Farm</i> | |
| 71 | <i>Management Commission:</i> | |
| 72 | (TO BE PAID FROM GENERAL REVENUE FUND) | |
| 73 | (1) Exxon Co., U.S.A. | \$ 219.71 |
| 74 | (2) Mountaineer Motor Sales, Inc. | \$ 86.87 |
| 75 | (3) Scott Saw Sales & Services | \$ 42.44 |
| 76 | (4) Boso Agri-Center, Inc. | \$ 2,288.94 |
| 77 | (c) <i>Claim against the Secretary of State:</i> | |
| 78 | (TO BE PAID FROM GENERAL REVENUE FUND) | |
| 79 | (1) J. P. Currence | \$ 143.00 |

| | | |
|----|--|--------------------|
| 80 | (d) <i>Claim against the Railroad</i> | |
| 81 | <i>Maintenance Authority:</i> | |
| 82 | (TO BE PAID FROM GENERAL REVENUE FUND) | |
| 83 | (1) Wilson Welding Supply Company | --- \$ 340.00 |
| 84 | Total | ----- \$431,798.46 |

CHAPTER 40

(H. B. 1272—By Mr. Starcher and Mr. Faircloth)

(Passed March 10, 1983; 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 payments thereof.

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the attorney general; board of regents; the farm management commission; department of corrections; department of culture and history; department of education; department of finance and administration; department of health; department of highways; department of motor vehicles; department of natural resources; department of public safety; division of vocational rehabilitation; human rights commission; insurance commissioner; municipal bond commission; public legal services; secretary of state; state tax department; supreme court of appeals; and workmen's compensation fund, to be moral obligations of the state and directing payment thereof.

1 The Legislature has considered the findings of fact and rec-
 2 ommendations reported to it by the court of claims concerning
 3 various claims against the state and agencies thereof, and in re-
 4 spect to each of the following claims the Legislature adopts
 5 those findings of fact as its own, and hereby declares it to be

6 the moral obligation of the state to pay each such claim in the
 7 amount specified below, and directs the auditor to issue war-
 8 rants for the payment thereof out of any fund appropriated
 9 and available for the purpose.

10 (a) *Claim against the Attorney General:*

11 (TO BE PAID FROM GENERAL REVENUE FUND)

12 (1) Angela Preston \$ 110.00

13 (b) *Claims against the Board of Regents:*

14 (TO BE PAID FROM SPECIAL REVENUE FUND)

15 (1) Raymond L. Maynard
 16 from Acct. No. 8632-06 \$ 1,061.74

17 (TO BE PAID FROM SPECIAL REVENUE FUND)

18 (1) Susan L. Cale
 19 from Acct. No. 9280 \$ 530.00
 20 (2) Margaret Graff
 21 from Acct. No. 9280 \$ 1,096.50
 22 (3) Mr. and Mrs. Stephen Kent Hill
 23 from Acct. No. 8610-31 \$ 93.35
 24 (4) McAnallen Brothers, Inc.
 25 from Acct. No. 8835 \$ 20,228.00
 26 (5) William B. McGinley
 27 from Acct. No. 8610-41 \$ 500.00
 28 (6) Shane Meat Company
 29 from Acct. No. 8610-31 \$ 1,412.52

30 (c) *Claim against the Farm*

31 *Management Commission:*

32 (TO BE PAID FROM GENERAL REVENUE FUND)

33 (1) Department of Employment Security \$ 5,308.35

34 (d) *Claims against the Department*
 35 *of Corrections:*

36 (TO BE PAID FROM GENERAL REVENUE FUND)

37 (1) Silbern D. Goddard and
 38 Metta Goddard \$ 2,723.00

| | | |
|----|---|--------------|
| 39 | (2) Green Tab Publishing | \$ 3,856.47 |
| 40 | (3) Reynolds Memorial Hospital, Inc. | \$ 53,321.95 |
| 41 | (4) Weslakin Corporation | \$ 95.67 |
| 42 | (5) Department of Employment Security | \$156,267.00 |
| 43 | (6) Donald A. Harman | \$ 497.45 |
| 44 | (e) <i>Claim against the Department of</i> | |
| 45 | <i>Culture and History:</i> | |
| 46 | (TO BE PAID FROM GENERAL REVENUE FUND) | |
| 47 | (1) Department of Employment Security | \$ 2,822.00 |
| 48 | (f) <i>Claim against the Department of Education:</i> | |
| 49 | (TO BE PAID FROM GENERAL REVENUE FUND) | |
| 50 | (1) Moore Business Forms, Inc. | \$ 60.97 |
| 51 | (g) <i>Claims against the Department of Finance</i> | |
| 52 | <i>and Administration:</i> | |
| 53 | (TO BE PAID FROM GENERAL REVENUE FUND) | |
| 54 | (1) Swain Window Cleaning Service | \$ 2,332.00 |
| 55 | (2) Appalachian Engineers, Inc. | \$ 1,076.16 |
| 56 | (3) Johnson Controls, Inc. | \$ 2,856.20 |
| 57 | (h) <i>Claims against the Department of Health:</i> | |
| 58 | (TO BE PAID FROM GENERAL REVENUE FUND) | |
| 59 | (1) American Hospital Supply | \$ 1,140.00 |
| 60 | (2) Narendra Bora | \$ 157.00 |
| 61 | (3) Carol Jo Brown | \$ 546.13 |
| 62 | (4) Larry Greathouse | \$ 204.00 |
| 63 | (5) Lester A. Kubski | \$ 88.07 |
| 64 | (6) The Michie Company | \$ 163.31 |
| 65 | (7) William E. Coy | \$ 90.14 |
| 66 | (8) Chad Cunningham | \$ 7.34 |
| 67 | (9) Department of Employment Security | \$ 8,835.93 |
| 68 | (10) Donald R. Hogsett | \$ 60.00 |
| 69 | (11) Janet T. Surface | \$ 132.00 |
| 70 | (i) <i>Claims against the Department of Highways:</i> | |
| 71 | (TO BE PAID FROM STATE ROAD FUND) | |
| 72 | (1) Jimmie G. Adams | \$ 96.43 |

| | | |
|-----|---|--------------|
| 73 | (2) Shirley R. Adams and Billie Adams .. | \$ 91.68 |
| 74 | (3) Larry L. Bennett | \$ 192.42 |
| 75 | (4) Frank Bonacci | \$ 531.30 |
| 76 | (5) Jack E. Brown | \$ 152.09 |
| 77 | (6) John R. Coffman | \$ 131.24 |
| 78 | (7) Geneva Conley | \$ 10,000.00 |
| 79 | (8) Michael Conley | \$ 1,500.00 |
| 80 | (9) Robert Conley | \$ 2,995.00 |
| 81 | (10) Michael Crouch | \$ 1,350.00 |
| 82 | (11) Edward E. Dilling and | |
| 83 | Jennifer Dilling | \$ 75.00 |
| 84 | (12) Paul Gyke and Joe Ann Gyke | \$ 83.97 |
| 85 | (13) Patricia Ann Hall and Lacy Hall ... | \$ 1,846.78 |
| 86 | (14) Glenn E. Hiller | \$ 155.76 |
| 87 | (15) Mark A. Hissam and Julia A. Hissam | \$ 3,395.37 |
| 88 | (16) Ricky S. Howerton | \$ 20,000.00 |
| 89 | (17) Industrial Gas & Supply Company . | \$ 2,389.42 |
| 90 | (18) Waitman D. Jett and Marilyn Jett ... | \$ 935.00 |
| 91 | (19) Chester Jones | \$ 9,000.00 |
| 92 | (20) Teddy Keiffer | \$ 3,557.14 |
| 93 | (21) Robert Howard Latta | \$ 150.00 |
| 94 | (22) John T. May | \$ 303.40 |
| 95 | (23) Monongahela Power Company | \$ 38.38 |
| 96 | (24) Irlant E. Moore and Robert L. Moore | \$ 43.15 |
| 97 | (25) Novo Corporation | \$162,929.00 |
| 98 | (26) John Orndoff | \$ 104.16 |
| 99 | (27) Sidney Pozell and Lillian Pozell ... | \$ 144.00 |
| 100 | (28) Frank E. Redd | \$ 51.00 |
| 101 | (29) Stanley T. Ruckman | \$ 78.75 |
| 102 | (30) Savage Construction Company, Inc. . | \$ 4,488.75 |
| 103 | (31) Ethea M. Scott | \$ 38.00 |
| 104 | (32) Harry R. Sellards and | |
| 105 | Francis A. Sellards | \$ 122.00 |
| 106 | (33) Stark Electric, Inc. | \$ 10,800.00 |
| 107 | (34) Charles W. W. Stultz and | |
| 108 | Mary N. Stultz | \$ 5,126.91 |
| 109 | (35) Velma Sutton | \$ 2,969.36 |
| 110 | (36) Terra Aqua Conservation | \$ 854.78 |
| 111 | (37) Thomas R. Treadway | \$ 140.28 |
| 112 | (38) Tri-City Welding Supply Company | \$ 1,831.00 |

| | | |
|-----|---|--------------|
| 113 | (39) Wayne Concrete Co. | \$ 2,642.84 |
| 114 | (40) Jesse C. Anderson | \$ 1,132.95 |
| 115 | (41) Gene Brady Beegle | \$ 1,778.00 |
| 116 | (42) Black Rock Contracting, Inc. | \$312,741.46 |
| 117 | (43) Browning-Ferris Industries, | |
| 118 | Chemical Service, Inc. | \$ 601.71 |
| 119 | (44) Fibair, Inc. | \$ 29,482.48 |
| 120 | (45) Benjamin C. Henry | \$ 4,500.00 |
| 121 | (46) Holly, Kenney, Schott, Inc. | \$ 13,755.00 |
| 122 | (47) Kanawha County Commission | \$ 2,362.08 |
| 123 | (48) Ruth A. Krippene | \$ 3,152.65 |
| 124 | (49) Thomas E. Layton, II | \$ 235.36 |
| 125 | (50) Doris Leslie | \$ 146.47 |
| 126 | (51) Lucas Tire, Inc. | \$ 1,804.07 |
| 127 | (52) James C. Martin, Jr. and | |
| 128 | Shirley B. Martin | \$ 6,846.00 |
| 129 | (53) Roy G. Shawver | \$ 833.49 |
| 130 | (54) Ruby E. Shrader | \$ 18,310.00 |
| 131 | (55) C. O. Smith, Jr. | \$ 630.00 |
| 132 | (56) St. Paul's Protestant | |
| 133 | Episcopal Church | \$ 122.00 |
| 134 | (j) <i>Claims against the Department of</i> | |
| 135 | <i>Motor Vehicles:</i> | |
| 136 | (TO BE PAID FROM STATE ROAD FUND) | |
| 137 | (1) General Motors | |
| 138 | Acceptance Corporation | \$ 4,245.98 |
| 139 | (2) Harold E. Wiley | \$ 14.00 |
| 140 | (k) <i>Claims against the Department of</i> | |
| 141 | <i>Natural Resources:</i> | |
| 142 | (TO BE PAID FROM SPECIAL REVENUE FUND) | |
| 143 | (1) Henry A. Kay and | |
| 144 | Charles E. Kay | |
| 145 | from Acct. No. 8300 | \$ 3,800.00 |
| 146 | (TO BE PAID FROM GENERAL REVENUE FUND) | |
| 147 | (2) The Chesapeake & Potomac | |
| 148 | Telephone Company | \$ 7,591.93 |
| 149 | (3) Victor Frisco and Janet Frisco | \$ 500.00 |

- 150 (l) *Claims against the Department of*
 151 *Public Safety:*
- 152 (TO BE PAID FROM GENERAL REVENUE FUND)
- 153 (1) The Hertz Corporation \$ 600.00
 154 (2) Moore Business Forms, Inc. \$ 2,586.61
 155 (3) Department of Employment Security \$ 1,341.64
- 156 (m) *Claim against the Division of*
 157 *Vocational Rehabilitation:*
- 158 (TO BE PAID FROM SPECIAL REVENUE FUND)
- 159 (1) Evans Lumber Company \$ 458.97
- 160 (n) *Claim against the Human*
 161 *Rights Commission:*
- 162 (TO BE PAID FROM GENERAL REVENUE FUND)
- 163 (1) Department of Employment Security \$ 13,577.00
- 164 (o) *Claim against the Insurance Commissioner:*
- 165 (TO BE PAID FROM GENERAL REVENUE FUND)
- 166 (1) Department of Employment Security \$ 5,511.92
- 167 (p) *Claim against the Municipal*
 168 *Bond Commission:*
- 169 (TO BE PAID FROM GENERAL REVENUE FUND)
- 170 (1) City of Oak Hill \$ 531.49
- 171 (q) *Claims against Public Legal Services:*
- 172 (TO BE PAID FROM GENERAL REVENUE FUND)
- 173 (1) David R. Gold and Louis H.
 174 Khourey, d/b/a Gold & Khourey ... \$ 1,563.00
 175 (2) James D. Terry \$ 345.00
- 176 (r) *Claims against the Secretary of State:*
- 177 (TO BE PAID FROM GENERAL REVENUE FUND)
- 178 (1) Department of Employment Security \$ 2,279.12
 179 (2) Chicago Embroidery Company \$ 3,468.07

| | | | |
|-----|--|----|----------|
| 180 | (3) Mountaineer Office Supply, a | | |
| 181 | division of F & M Supply Co., Inc. | \$ | 1,860.00 |
| 182 | (s) <i>Claim against the State Tax Department:</i> | | |
| 183 | (TO BE PAID FROM GENERAL REVENUE FUND) | | |
| 184 | (1) Charleston Business Machines | \$ | 95.00 |
| 185 | (t) <i>Claims against the Supreme</i> | | |
| 186 | <i>Court of Appeals:</i> | | |
| 187 | (TO BE PAID FROM GENERAL REVENUE FUND) | | |
| 188 | (1) C. Elaine Friend | \$ | 165.00 |
| 189 | (2) David Lee Closson | \$ | 50.00 |
| 190 | (3) David R. Gold and Louis H. | | |
| 191 | Khourey, d/b/a Gold & Khourey ... | \$ | 107.50 |
| 192 | (TO BE PAID FROM SUPREME COURT GENERAL | | |
| 193 | JUDICIAL FUND, ACCOUNT NO. 1110-00, FROM | | |
| 194 | APPROPRIATION FOR CURRENT FISCAL YEAR 1982-83) | | |
| 195 | (1) Arthur U. Browning | \$ | 4,500.00 |
| 196 | (2) Harold E. Darlington | \$ | 4,500.00 |
| 197 | (3) E. W. Day | \$ | 4,500.00 |
| 198 | (4) C. P. Dingler | \$ | 4,500.00 |
| 199 | (5) Ruth A. Donaldson | \$ | 4,500.00 |
| 200 | (6) Peter H. Dougherty | \$ | 4,500.00 |
| 201 | (7) Glen Greene | \$ | 4,500.00 |
| 202 | (8) Garry Osburn | \$ | 4,500.00 |
| 203 | (9) Sharrell Stickler | \$ | 3,375.00 |
| 204 | (10) Eugene C. Suder | \$ | 3,375.00 |
| 205 | (11) D. M. VandeLinde .. | \$ | 3,375.00 |
| 206 | (12) Lester Warner | \$ | 3,375.00 |
| 207 | (13) Wetzal K. Workman .. | \$ | 4,500.00 |
| 208 | (14) Nat Marino .. | \$ | 4,500.00 |
| 209 | (15) Norma Tarr | \$ | 4,500.00 |
| 210 | (16) Richard D. Graham, Jr. | \$ | 4,500.00 |
| 211 | (17) Robert A. Isner .. | \$ | 4,500.00 |
| 212 | (18) Howard R. Nordeck .. | \$ | 4,500.00 |

213 (u) *Claim against the Workmen's*
 214 *Compensation Fund:*

215 (TO BE PAID FROM SPECIAL REVENUE FUND)

216 (1) Janet T. Surface \$ 6,828.33

217 The Legislature finds that the above moral obligations and
 218 the appropriations made in satisfaction thereof shall be the full
 219 compensation for all claimants, and that prior to the payments
 220 to any claimant provided for in this bill, the court of claims shall
 221 receive a release from said claimant releasing any and all claims
 222 for moral obligations arising from the matters considered by
 223 the Legislature in the finding of the moral obligations and the
 224 making of the appropriations for said claimant. The court of
 225 claims shall deliver all releases obtained from claimants to the
 226 department against which the claim was allowed.

CHAPTER 41

(H. B. 1985—By Mr. Starcher and Mr. Faircloth)

[Passed March 5, 1983; in effect from passage. Approved by the Governor.]

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

Be it enacted by the Legislature of West Virginia:

REPARATION AWARDS TO VICTIMS OF CRIMES.

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

1 The Legislature has duly considered the findings of fact and
 2 recommendations for awards reported to it by the court of
 3 claims in respect to the following named claimants, citizens of
 4 West Virginia, who were innocent victims of crime within this
 5 state and entitled to reparations; and in respect to each of
 6 such named claims the Legislature adopts those findings of

7 fact as its own, hereby declares it to be the moral obligation
 8 of the state to pay each such claimant in the amount specified
 9 below, and directs the auditor to issue warrants for the pay-
 10 ment thereof out of any fund appropriated and available for
 11 the purpose.

12 *Claims for crime victims reparation awards:*

13 (TO BE PAID FROM CRIME VICTIMS REPARATION FUND)

| | | |
|----|--|--------------------|
| 14 | (1) Jeffery Kim Williams | \$ 4,161.74 |
| 15 | (2) Ruth A. Greene | \$ 214.50 |
| 16 | (3) Wanda Lee Damron | \$ 6,666.66 |
| 17 | (4) Wanda Lee Damron, next friend of | |
| 18 | Alanda Sue Damron | \$13,333.34 |
| 19 | (5) Donald R. Steiner | \$ 7,804.13 |
| 20 | (6) James E. Combs | \$ 560.00 |
| 21 | (7) Hazel C. Campbell | \$ 489.19 |
| 22 | (8) Thelma P. Shaw | \$ 2,672.40 |
| 23 | (9) Lora L. White | \$ 6,593.29 |
| 24 | (10) Betty L. White, next friend of | |
| 25 | Gary D. White | \$ 85.50 |
| 26 | (11) Jane A. Elkins | \$ 96.00 |
| 27 | (12) Charles L. Whited | \$ 983.00 |
| 28 | (13) Marvin H. Dill | \$20,000.00 |
| 29 | (14) Agnes M. Vaughan | \$ 9,148.51 |
| 30 | (15) Jeffrey W. Gunter | \$ 4,800.00 |
| 31 | (16) Virginia P. Keene, next friend of | |
| 32 | Audrey L. Keene | \$ 583.40 |
| 33 | Total | <u>\$78,191.66</u> |

34 The Legislature finds that the above moral obligations and
 35 the appropriations made in satisfaction thereof shall be the full
 36 compensation for all claimants herein; provided that any
 37 claimant herein who, subsequent to the payment of an award,
 38 receives or recovers benefits or advantages for the economic
 39 loss not prior considered by the court of claims in the course
 40 of and in reduction of the award of reparations, shall inform
 41 the court of claims and crime victims reparation division of
 42 such recovery for determination of the amounts thereof and
 43 requirement for the deposit thereof in the crime victims re-
 44 paration fund.

CHAPTER 42

(Com. Sub. for H. B. 1028—By Mr. Steptoe and Mr. Doyle)

[Passed March 12, 1983; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one hundred twenty-eight, article two, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to permitting the recovery of attorney's fees, court costs and collection costs and charges on delinquent student loan obligations; and providing limitations on any such recovery.

Be it enacted by the Legislature of West Virginia:

That section one hundred twenty-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-2-128. Unfair or unconscionable means.

1 No debt collector shall use unfair or unconscionable means
2 to collect or attempt to collect any claim. Without limiting
3 the general application of the foregoing, the following conduct
4 is deemed to violate this section:

5 (a) The seeking or obtaining of any written statement or
6 acknowledgment in any form that specifies that a consumer's
7 obligation is one incurred for necessities of life where the
8 original obligation was not in fact incurred for such neces-
9 saries;

10 (b) The seeking or obtaining of any written statement or
11 acknowledgment in any form containing an affirmation of any
12 obligation by a consumer who has been declared bankrupt,
13 without clearly disclosing the nature and consequences of such
14 affirmation and the fact that the consumer is not legally ob-
15 ligated to make such affirmation;

16 (c) The collection or the attempt to collect from the con-
17 sumer all or any part of the debt collector's fee or charge for
18 services rendered: *Provided*, That attorney's fees, court costs

19 and other reasonable collection costs and charges necessary
20 for the collection of any amount due upon delinquent edu-
21 cational loans made by any institution of higher education
22 within this state may be recovered when the terms of the obli-
23 gation so provide. Recovery of attorney's fees and collection
24 costs may not exceed twenty percent of the amount due and
25 owing to any such institution: *Provided, however,* That no-
26 thing contained in this subsection shall be construed to limit
27 or prohibit any institution of higher education from paying
28 additional attorney fees and collection costs as long as such
29 additional attorney fees and collection costs do not exceed an
30 amount equal to five percent of the amount of the debt ac-
31 tually recovered and such additional attorney fees and col-
32 lection costs are deducted or paid from the amount of the
33 debt recovered for the institution or paid from other funds
34 available to the institution;

35 (d) The collection of or the attempt to collect any interest
36 or other charge, fee or expense incidental to the principal obli-
37 gation unless such interest or incidental fee, charge or expense
38 is expressly authorized by the agreement creating the obliga-
39 tion and by statute; and

40 (e) Any communication with a consumer whenever it ap-
41 pears that the consumer is represented by an attorney and the
42 attorney's name and address are known, or could be easily
43 ascertained, unless the attorney fails to answer correspondence,
44 return phone calls or discuss the obligation in question or un-
45 less the attorney consents to direct communication.

CHAPTER 43

(S. B. 145—By Mr. McGraw, Mr. President)

[Passed February 25, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one hundred one, article one, chapter sixty-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections two hundred four and two

hundred twelve, article two, and section four hundred one, article four of said chapter, relating to controlled substances generally; defining certain terms; adding to the uniformed controlled substances act definitions of the terms "imitation controlled substance" and "placebo"; redefining the terms "deliver" and "distribute"; updating the uniform controlled substances act; adding the drugs N-ethylamphetamine and parahexyl to Schedule I; deleting the drug loperamide from Schedule V; making it unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance and prescribing penalties therefor; making it unlawful for any person to create, deliver, or possess with intent to deliver, a counterfeit substance and prescribing penalties therefor; making it unlawful for a person to knowingly or intentionally possess a controlled substance and prescribing penalties therefor; making it unlawful for a person to knowingly or intentionally create, distribute or deliver, or possess with intent to distribute or deliver, an imitation controlled substance, or to create, possess, or sell or otherwise transfer equipment with the intent that such equipment shall be used to apply a trademark, trade name or other identification upon a counterfeit substance, an imitation controlled substance, or the container or label of such substance; and prescribing penalties for such offenses.

Be it enacted by the Legislature of West Virginia:

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

Article

1. **Definitions.**
2. **Standards and Schedules.**
4. **Offenses and Penalties.**

ARTICLE 1. DEFINITIONS.

§60A-1-101. Definitions.

- 1 As used in this act:
- 2 (a) "Administer" means the direct application of a
- 3 controlled substance whether by injection, inhalation,
- 4 ingestion, or any other means, to the body of a patient or
- 5 research subject by:

6 (1) A practitioner (or, in his presence, by his authorized
7 agent), or

8 (2) The patient or research subject at the direction and
9 in the presence of the practitioner.

10 (b) "Agent" means an authorized person who acts on
11 behalf of or at the direction of a manufacturer, distributor
12 or dispenser. It does not include a common or contract
13 carrier, public warehouseman, or employee of the carrier or
14 warehouseman.

15 (c) "Bureau" means the "Bureau of Narcotics and
16 Dangerous Drugs, United States Department of Justice," or
17 its successor agency.

18 (d) "Controlled substance" means a drug, substance or
19 immediate precursor in Schedules I through V of article
20 two.

21 (e) "Counterfeit substance" means a controlled
22 substance which, or the container or labeling of which,
23 without authorization, bears the trademark, trade name, or
24 other identifying mark, imprint, number or device, or any
25 likeness thereof, of a manufacturer, distributor or dispenser
26 other than the person who in fact manufactured, distributed
27 or dispensed the substance.

28 (f) "Imitation controlled substance" means (1) a
29 controlled substance which is falsely represented to be a
30 different controlled substance, or (2) a drug or substance
31 which is not a controlled substance but which is falsely
32 represented to be a controlled substance, or (3) a controlled
33 substance or other drug or substance or a combination
34 thereof which is shaped, sized, colored, marked, imprinted,
35 numbered, labeled, packaged, distributed or priced so as to
36 cause a reasonable person to believe that it is a controlled
37 substance.

38 (g) "Deliver" or "delivery" means the actual,
39 constructive, or attempted transfer from one person to
40 another of (1) a controlled substance, whether or not there is
41 an agency relationship, (2) a counterfeit substance, or (3) an
42 imitation controlled substance.

43 (h) "Dispense" means to deliver a controlled substance
44 to an ultimate user or research subject by or pursuant to the

45 lawful order of a practitioner, including the prescribing,
46 administering, packaging, labeling or compounding
47 necessary to prepare the substance for that delivery.

48 (i) "Dispenser" means a practitioner who dispenses.

49 (j) "Distribute" means to deliver, other than by adminis-
50 tering or dispensing, a controlled substance, a counterfeit
51 substance or an imitation controlled substance.

52 (k) "Distributor" means a person who distributes.

53 (l) "Drug" means (1) substances recognized as drugs in
54 the official "United States Pharmacopoeia, official
55 Homeopathic Pharmacopoeia of the United States, or
56 official National Formulary," or any supplement to any of
57 them; (2) substances intended for use in the diagnosis, cure,
58 mitigation, treatment or prevention of disease in man or
59 animals; (3) substances (other than food) intended to affect
60 the structure or any function of the body of man or animals;
61 and (4) substances intended for use as a component of any
62 article specified in clause (1), (2) or (3) of this subdivision. It
63 does not include devices or their components, parts or
64 accessories.

65 (m) "Immediate precursor" means a substance which
66 the "West Virginia Board of Pharmacy" (hereinafter in this
67 act referred to as the state board of pharmacy) has found to
68 be and by rule designates as being the principal compound
69 commonly used or produced primarily for use, and which is
70 an immediate chemical intermediary used or likely to be
71 used in the manufacture of a controlled substance, the
72 control of which is necessary to prevent, curtail or limit
73 manufacture.

74 (n) "Manufacture" means the production, preparation,
75 propagation, compounding, conversion or processing of a
76 controlled substance, either directly or indirectly or by
77 extraction from substances of natural origin, or
78 independently by means of chemical synthesis, or by a
79 combination of extraction and chemical synthesis, and
80 includes any packaging or repackaging of the substance or
81 labeling or relabeling of its container, except that this term
82 does not include the preparation or compounding of a
83 controlled substance by an individual for his own use or the

84 preparation, compounding, packaging or labeling of a
85 controlled substance:

86 (1) By a practitioner as an incident to his administering
87 or dispensing of a controlled substance in the course of his
88 professional practice, or

89 (2) By a practitioner, or by his authorized agent under
90 his supervision, for the purpose of, or as an incident to,
91 research, teaching, or chemical analysis and not for sale.

92 (o) "Marihuana" means all parts of the plant "Cannabis
93 sativa L.," whether growing or not; the seeds thereof; the
94 resin extracted from any part of the plant; and every
95 compound, manufacture, salt, derivative, mixture or
96 preparation of the plant, its seeds, or resin. It does not
97 include the mature stalks of the plant, fiber produced from
98 the stalks, oil or cake made from the seeds of the plant, any
99 other compound, manufacture, salt, derivative, mixture, or
100 preparation of the mature stalks (except the resin extracted
101 therefrom), fiber, oil or cake, or the sterilized seed of the
102 plant which is incapable of germination.

103 (p) "Narcotic drug" means any of the following,
104 whether produced directly or indirectly by extraction from
105 substances of vegetable origin, or independently by means
106 of chemical synthesis, or by a combination of extraction and
107 chemical synthesis:

108 (1) Opium and opiate, and any salt, compound, deriva-
109 tive, or preparation of opium or opiate.

110 (2) Any salt, compound, isomer, derivative or pre-
111 paration thereof which is chemically equivalent or identi-
112 cal with any of the substances referred to in clause (1) of
113 this subdivision, but not including the isoquinoline alka-
114 loids of opium.

115 (3) Opium poppy and poppy straw.

116 (4) Coca leaves and any salt, compound, derivative or
117 preparation of coca leaves, and any salt, compound, isomer,
118 derivative or preparation thereof which is chemically equi-
119 valent or identical with any of these substances, but not
120 including decocainized coca leaves or extractions of coca
121 leaves which do not contain cocaine or ecgonine.

122 (q) "Opiate" means any substance having an addiction-
123 forming or addiction-sustaining liability similar to
124 morphine or being capable of conversion into a drug having
125 addiction-forming or addiction-sustaining liability. It does
126 not include, unless specifically designated as controlled
127 under section 201, article two of this chapter, the
128 dextrorotatory isomer of 3-methoxy-n-methylmorphinan
129 and its salts (dextromethorphan). It does not include its
130 racemic and levorotatory forms.

131 (r) "Opium poppy" means the plant of the species
132 "Papaver somniferum L.," except its seeds.

133 (s) "Person" means individual, corporation,
134 government or governmental subdivision or agency,
135 business trust, estate, trust, partnership or association, or
136 any other legal entity.

137 (t) "Placebo" means an inert medicament or preparation
138 administered or dispensed for its psychological effect, to
139 satisfy a patient or research subject or to act as a control in
140 experimental series.

141 (u) "Poppy straw" means all parts, except the seeds, of
142 the opium poppy, after mowing.

143 (v) "Practitioner" means:

144 (1) A physician, dentist, veterinarian, scientific investi-
145 gator, or other person licensed, registered or other-
146 wise permitted to distribute, dispense, conduct research
147 with respect to, or to administer a controlled substance
148 in the course of professional practice or research in this
149 state.

150 (2) A pharmacy, hospital, or other institution licensed,
151 registered, or otherwise permitted to distribute, dispense,
152 conduct research with respect to, or to administer a
153 controlled substance in the course of professional practice
154 or research in this state.

155 (w) "Production" includes the manufacture, planting,
156 cultivation, growing or harvesting of a controlled
157 substance.

158 (x) "State," when applied to a part of the United States,
159 includes any state, district, commonwealth, territory,

160 insular possession thereof, and any area subject to the legal
161 authority of the United States of America.

162 (y) "Ultimate user" means a person who lawfully
163 possesses a controlled substance for his own use or for the
164 use of a member of his household or for administering to an
165 animal owned by him or by a member of his household.

ARTICLE 2. STANDARDS AND SCHEDULES.

§60A-2-204. Schedule I.

§60A-2-212. Schedule V.

§60A-2-204. Schedule I.

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

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

- 9 (1) Acetylmethadol;
- 10 (2) Allylprodine;
- 11 (3) Alphacetylmethadol;
- 12 (4) Alphameprodine;
- 13 (5) Alphamethadol;
- 14 (6) Alpha-methylfentanyl;
- 15 (7) Benzethidine;
- 16 (8) Betacetylmethadol;
- 17 (9) Betameprodine;
- 18 (10) Betamethadol;
- 19 (11) Betaprodine;
- 20 (12) Clonitazene;
- 21 (13) Dextromoramide;
- 22 (14) Diampromide;
- 23 (15) Diethylthiambutene;
- 24 (16) Difenoxyin;
- 25 (17) Dimenoxadol;
- 26 (18) Dimepheptanol;
- 27 (19) Dimethylthiambutene;
- 28 (20) Dioxaphetyl butyrate;
- 29 (21) Dipipanone;
- 30 (22) Ethylmethylthiambutene;

- 31 (23) Etonitazene;
- 32 (24) Etoxidine;
- 33 (25) Fenethylamine;
- 34 (26) Furethidine;
- 35 (27) Hydroxypethidine;
- 36 (28) Ketobemidone;
- 37 (29) Levomoramide;
- 38 (30) Levophenacymorphan;
- 39 (31) Morpheridine;
- 40 (32) Noracymethadol;
- 41 (33) Norlevorphanol;
- 42 (34) Normethadone;
- 43 (35) Norpipanone;
- 44 (36) Phenadoxone;
- 45 (37) Phenampromide;
- 46 (38) Phenomorphan;
- 47 (39) Phenoperidine;
- 48 (40) Piritramide;
- 49 (41) Proheptazine;
- 50 (42) Properidine;
- 51 (43) Propiram;
- 52 (44) Racemoramide;
- 53 (45) Sufentanil;
- 54 (46) Tilidine;
- 55 (47) Trimeperidine.

56 (c) Unless specifically excepted or unless listed in
57 another schedule, any of the following opium derivatives,
58 its salts, isomers and salts of isomers whenever the
59 existence of such salts, isomers and salts of isomers is
60 possible within the specific chemical designation:

- 61 (1) Acetorphine;
- 62 (2) Acetyldihydrocodeine;
- 63 (3) Benzylmorphine;
- 64 (4) Codeine methylbromide;
- 65 (5) Codeine-N-Oxide;
- 66 (6) Cyprenorphine;
- 67 (7) Desomorphine;
- 68 (8) Dihydromorphine;
- 69 (9) Drotebanol;
- 70 (10) Etorphine (except HCl Salt);
- 71 (11) Heroin;
- 72 (12) Hydromorphanol;

- 73 (13) Methyldesorphine;
- 74 (14) Methyldihydromorphine;
- 75 (15) Morphine methylbromide;
- 76 (16) Morphine methylsulfonate;
- 77 (17) Morphine-N-Oxide;
- 78 (18) Myrophine;
- 79 (19) Nicocodeine;
- 80 (20) Nicomorphine;
- 81 (21) Normorphine;
- 82 (22) Phoclodine;
- 83 (23) Thebacon.

84 (d) Unless specifically excepted or unless listed in
85 another schedule, any material, compound, mixture or
86 preparation, which contains any quantity of the following
87 hallucinogenic substances, or which contains any of the
88 salts, isomers and salts of isomers of any thereof whenever
89 the existence of such salts, isomers and salts of isomers is
90 possible within the specific chemical designation and for
91 the purposes of this subsection only, "isomer" includes the
92 optical position and geometric isomers:

93 (1) 2,5-dimethoxyamphetamine; also known by these
94 trade or other names: 2,5-dimethoxy-*a*-methylphenethyl-
95 amine; 2,5-DMA;

96 (2) 3,4-methylenedioxy amphetamine;

97 (3) 4-bromo-2, 5-dimethoxyamphetamine or
98 4-bromo-2,5-dimethoxy-*a*-methylphenethylamine, or
99 4-bromo-2,5-DMA;

100 (4) 5-methoxy-3,4-methylenedioxy amphetamine;

101 (5) 4-methoxyamphetamine; also known by these trade or
102 other names: 4-methoxy-*a*-methylphenethylamine; paramenthox-
103 yamphetamine; PMA;

104 (6) 3,4,5-trimethoxy amphetamine;

105 (7) Bufotenine; known also by these trade and other
106 names: 3-(*B*-Dimethylaminoethyl)-5-hydroxyindole;
107 3-(2-dimethylamino-ethyl)-5 indolol; *N-N*-
108 dimethylserotonin; 5-hydroxy-*N*-dimethyltryptamine;
109 mappine;

110 (8) Diethyltryptamine; known also by these trade and
111 other names: *N-N*-Diethyltryptamine; "DET";

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

147 Cis or trans tetrahydrocannabinil tetrahy-
148 drocannabinol, and their optical isomers;

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

152 (22) Ethylamine analog of phencyclidine...Some trade
153 or other names: N-ethyl-1-phenylcyclohexylamine,
154 (1-phenylcyclohexyl)ethylamine, N-(1-phenylcyclohexyl)
155 ethylamine, cyclohexamine, PCE;

156 (23) Pyrrolidine analog of phencyclidine...Some trade
157 or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy,
158 PHP;

159 (24) N-ethylamphetamine;

160 (25) Parahexyl.

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

166 (1) Mecloqualone.

§60A-2-212. Schedule V.

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

3 (b) Narcotic drugs containing nonnarcotic active
4 medicinal ingredients. Any compound, mixture or
5 preparation containing any of the following limited
6 quantities of narcotic drugs or salts thereof, which shall
7 include one or more nonnarcotic active medicinal
8 ingredients in sufficient proportion to confer upon the
9 compound, mixture or preparation valuable medicinal
10 qualities other than those possessed by the narcotic drug
11 alone:

12 (1) Not more than 200 milligrams of codeine per 100
13 milliliters or per 100 grams and not more than 10 milligrams
14 per dosage unit;

15 (2) Not more than 100 milligrams of dihydrocodeine per
16 100 milliliters or per 100 grams and not more than 5
17 milligrams per dosage unit;

18 (3) Not more than 100 milligrams of ethylmorphine per
19 100 milliliters or per 100 grams and not more than 5
20 milligrams per dosage unit;

21 (4) Not more than 2.5 milligrams of diphenoxylate and
22 not less than 25 micrograms of atropine sulfate per dosage
23 unit;

24 (5) Not more than 100 milligrams of opium per 100
25 milliliters or per 100 grams;

26 (6) Not more than 0.5 milligram of difenoxin and not
27 less than 25 micrograms of atropine sulfate per dosage unit.

28 (c) Amyl nitrite, isobutyl nitrite and the other organic
29 nitrites are controlled substances and no product
30 containing these compounds as a significant component
31 shall be possessed, bought or sold other than pursuant to a
32 bona fide prescription, or for industrial or manufacturing
33 purposes.

ARTICLE 4. OFFENSES AND PENALTIES.

§60A-4-401. Prohibited acts A; penalties.

1 (a) Except as authorized by this act, it is unlawful for
2 any person to manufacture, deliver, or possess with intent
3 to manufacture or deliver, a controlled substance.

4 Any person who violates this subsection with respect
5 to:

6 (i) A controlled substance classified in Schedule I or II
7 which is a narcotic drug, is guilty of a felony, and, upon
8 conviction, may be imprisoned in the penitentiary for not
9 less than one year nor more than fifteen years, or fined not
10 more than twenty-five thousand dollars, or both;

11 (ii) Any other controlled substance classified in
12 Schedule I, II or III, is guilty of a felony, and, upon
13 conviction, may be imprisoned in the penitentiary for not
14 less than one year nor more than five years, or fined not
15 more than fifteen thousand dollars, or both;

16 (iii) A substance classified in Schedule IV, is guilty of a
17 felony, and, upon conviction, may be imprisoned in the
18 penitentiary for not less than one year nor more than three
19 years, or fined not more than ten thousand dollars, or both;

20 (iv) A substance classified in Schedule V, is guilty of a
21 misdemeanor, and, upon conviction, may be confined in the
22 county jail for not less than six months nor more than one
23 year, or fined not more than five thousand dollars, or both.

24 (b) Except as authorized by this act, it is unlawful for
25 any person to create, deliver, or possess with intent to
26 deliver, a counterfeit substance.

27 Any person who violates this subsection with respect
28 to:

29 (i) A counterfeit substance classified in Schedule I or II
30 which is a narcotic drug, is guilty of a felony, and, upon
31 conviction, may be imprisoned in the penitentiary for not
32 less than one year nor more than fifteen years, or fined not
33 more than twenty-five thousand dollars, or both;

34 (ii) Any other counterfeit substance classified in
35 Schedule I, II, or III, is guilty of a felony, and, upon
36 conviction, may be imprisoned in the penitentiary for not
37 less than one year nor more than five years, or fined not
38 more than fifteen thousand dollars, or both;

39 (iii) A counterfeit substance classified in Schedule IV, is
40 guilty of a felony, and, upon conviction, may be imprisoned
41 in the penitentiary for not less than one year nor more than
42 three years, or fined not more than ten thousand dollars, or
43 both;

44 (iv) A counterfeit substance classified in Schedule V, is
45 guilty of a misdemeanor, and, upon conviction, may be
46 confined in the county jail for not less than six months nor
47 more than one year, or fined not more than five thousand
48 dollars, or both.

49 (c) It is unlawful for any person knowingly or
50 intentionally to possess a controlled substance unless the
51 substance was obtained directly from, or pursuant to, a
52 valid prescription or order of a practitioner while acting in
53 the course of his professional practice, or except as
54 otherwise authorized by this act. Any person who violates
55 this subsection is guilty of a misdemeanor, and disposition
56 may be made under section 407, subject to the limitations
57 specified in said section 407, or upon conviction, such
58 person may be confined in the county jail not less than

59 ninety days nor more than six months, or fined not more
60 than one thousand dollars, or both: *Provided*, That
61 notwithstanding any other provision of this act to the
62 contrary, any first offense for possession of less than 15
63 grams of marihuana shall be disposed of under said section
64 407.

65 (d) It is unlawful for any person knowingly or
66 intentionally:

67 (1) To create, distribute or deliver, or possess with
68 intent to distribute or deliver, an imitation controlled
69 substance; or

70 (2) To create, possess or sell or otherwise transfer any equip-
71 ment with the intent that such equipment shall be used to apply a
72 trademark, trade name, or other identifying mark, imprint,
73 number or device, or any likeness thereof, upon a counterfeit
74 substance, an imitation controlled substance, or the container or
75 label of a counterfeit substance or an imitation controlled
76 substance.

77 (Any person who violates this subsection is guilty of a misde-
78 meanor, and, upon conviction, may be imprisoned in the county
79 jail for not less than six months nor more than one year, or fined
80 not more than five thousand dollars, or both. Any person being
81 eighteen years old or more, who violates subdivision (1) of this
82 subsection, and, in so doing distributes or delivers an imitation
83 controlled substance to a minor child who is at least three years
84 younger than such person, is guilty of a felony, and, upon convic-
85 tion, may be imprisoned in the penitentiary for not less than one
86 year nor more than three years, or fined not more than ten thou-
87 sand dollars, or both.

88 The provisions of subdivision (1) of this subsection shall not
89 apply to a practitioner who administers or dispenses a placebo.

CHAPTER 44

(S. B. 190—By Mr. Heck)

[Passed February 16, 1983; in effect ninety days from passage. Approved by the Governor.]

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

and reenact section ten, article seven, chapter thirty-one of said code; to amend and reenact section four, article ten of said chapter thirty-one; and to amend and reenact section forty-three, article four, chapter thirty-one-a of said code, all relating to allowing building and loan associations, industrial banks, credit unions and banking institutions to offer negotiable order of withdrawal accounts to any officer, employee or agent of the United States, any state, county, municipality or political subdivision thereof who is depositing public funds.

Be it enacted by the Legislature of West Virginia:

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

Chapter

31. Corporations.

31A. Banks and Banking.

CHAPTER 31. CORPORATIONS.

ARTICLE 6. BUILDING AND LOAN ASSOCIATIONS.

§31-6-44. Negotiable order of withdrawal accounts allowed.

1 Building and loan associations may permit the owner of a
 2 deposit or account on which interest or dividends are paid
 3 to make withdrawals by negotiable or transferable
 4 instruments for the purpose of making transfers to third
 5 parties if such deposit or account consists solely of funds in
 6 which the entire beneficial interest is held by one or more
 7 individuals or by an organization which is operated
 8 primarily for religious, philanthropic, charitable,
 9 educational or similar purposes and which is not operated
 10 for a profit or if such deposit or account consists of public
 11 funds deposited by an officer, employee or agent of the
 12 United States, any state, county, municipality or political
 13 subdivision thereof.

Article

7. Industrial Banks and Industrial Loan Companies.

10. Credit Unions.

ARTICLE 7. INDUSTRIAL BANKS AND INDUSTRIAL LOAN COMPANIES.

§31-7-10. Powers of industrial banks; limitation of powers.

1 (a) The provisions of sections thirteen and fourteen,
2 article four, chapter thirty-one-a to the contrary
3 notwithstanding, and subject to the provisions of
4 subsection (b) of this section, in addition to the general
5 powers conferred upon corporations by the laws of this
6 state and subject to the restrictions, rules and regulations of
7 the federal deposit insurance corporation and the
8 provisions of chapter sixteen, Title 12 of the United States
9 Code, each industrial bank organized pursuant to this
10 article shall have power to exercise by its board of directors
11 or duly authorized officers or agents only those powers
12 conferred upon industrial loan companies under the
13 provisions of section eleven of this article and in addition
14 thereto shall have the power to receive deposits from the
15 general public only as long as such deposits are insured by
16 the federal deposit insurance corporation. An industrial
17 bank may permit the owner of a deposit or account on which
18 interest or dividends are paid to make withdrawals by
19 negotiable or transferable instruments for the purpose of
20 making transfers to third parties if such deposit or account
21 consists solely of funds in which the entire beneficial
22 interest is held by one or more individuals or by an
23 organization which is operated primarily for religious,
24 philanthropic, charitable, educational or similar purposes
25 and which is not operated for a profit or if such deposit or
26 account consists of public funds deposited by an officer,
27 employee or agent of the United States, any state, county,
28 municipality or political subdivision thereof.

29 (b) Notwithstanding the provisions of subsection (a) of
30 this section, an industrial bank under the provisions of this
31 article shall not:

32 (1) Make any loan under the provisions of this article for
33 a longer period than two years from the date thereof, except
34 upon express authorization of the board of directors of such
35 industrial bank;

36 (2) Hold at any one time the primary obligation or
37 obligations of any one person, firm or corporation, for more
38 than ten percent of the amount of the paid-up capital and
39 surplus of such industrial bank;

40 (3) Hold at any one time the obligation or obligations of
41 persons, firms or corporations purchased from any person,
42 firm or corporation in excess of twenty percent of the
43 aggregate paid-up capital and surplus of such industrial
44 bank;

45 (4) Make any loan or discount on the security of its own
46 capital stock unless such security or purchase shall be
47 necessary to prevent loss upon a debt previously contracted
48 in good faith. Stock so purchased or acquired shall be sold
49 at public or private sale or otherwise disposed of within
50 ninety days from the time of its purchase or acquisition;

51 (5) Have deposited with it deposits in an aggregate sum
52 in excess of ten times the aggregate amount of its paid-up
53 capital and surplus;

54 (6) Deposit any of its funds except with a national or
55 state bank doing business in this state or with solvent
56 banking institutions in other states which are federally
57 insured;

58 (7) Pledge or hypothecate any of its securities or notes
59 owned by it to any of its creditors except in the same manner
60 as other banking institutions are permitted to do so under
61 either the provisions of chapter thirty-one-a of this code,
62 the rules and regulations of the commissioner of banking or
63 the rules and regulations of the federal deposit insurance
64 corporation and the provisions of chapter sixteen, Title 12
65 of the United States Code;

66 (8) Pay any fees, bonuses, commissions, rewards or
67 other consideration to any person, firm or corporation for
68 the privilege of using any plan of operation, scheme or
69 device for the organization or carrying on of business under
70 this article, or the use of any name, trademark or copyright
71 to be so used; nor shall any industrial bank organized under
72 this article enter into any contract for such purpose or
73 purposes, or for the purpose of giving to or vesting in any
74 other corporation any power or authority over the

75 organization or management of such industrial bank
76 organized under this article;

77 (9) Pay greater rates of interest on its deposits than are
78 permitted to be paid by other banking institutions;

79 (10) Sell or offer for sale evidences or certificates of
80 indebtedness; or

81 (11) Receive checking accounts or demand deposits.

ARTICLE 10. CREDIT UNIONS.

§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 to
4 conduct Christmas clubs, vacation clubs and other such
5 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 banks;

12 (f) To borrow money as hereinafter indicated;

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

CHAPTER 31A. BANKS AND BANKING.**ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.****§31A-4-43. Negotiable order of withdrawal accounts allowed.**

1 A banking institution may permit the owner of a deposit
2 or account on which interest or dividends are paid to make
3 withdrawals by negotiable or transferable instruments for
4 the purpose of making transfers to third parties if such
5 deposit or account consists solely of funds in which the
6 entire beneficial interest is held by one or more individuals
7 or by an organization which is operated primarily for
8 religious, philanthropic, charitable, educational or similar
9 purposes and which is not operated for a profit or if such
10 deposit or account consists of public funds deposited by an
11 officer, employee or agent of the United States, any state,
12 county, municipality or political subdivision thereof.

CHAPTER 45

(S. B. 315—By Mr. Heck and Mr. Tomblin)

[Passed March 4, 1983; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, four, nine, eleven, fourteen, sixteen and seventeen, article seven, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to industrial loan companies; definitions; incorporation requirements; investment limitations; certificate of indebtedness insurance; loan and certificate of indebtedness limitations; branching limitations; penalties; qualifications of board of directors.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. INDUSTRIAL BANKS AND INDUSTRIAL LOAN COMPANIES.

- §31-7-3. Definitions.
- §31-7-4. Incorporators; name; minimum capital stock; voting rights of classes of stock; common stock to be paid in before business commenced; use of certain words in corporate name prohibited.
- §31-7-9. Industrial loan companies; agreement of incorporation; issuance of certificate of incorporation; recordation; application for and issuance of certificate or license to engage in business.
- §31-7-11. Powers of industrial loan companies; limitation of powers.
- §31-7-14. Branch industrial banks forbidden; limited off-premises industrial bank facility permitted; branch industrial loan company permitted; limitation on purchases of industrial bank stock; penalties.
- §31-7-16. Annual and special meetings of stockholders; quorum; annual report; voting; proxies.
- §31-7-17. Directors; officers.

§31-7-3. Definitions.

1 As used in this article, unless the context otherwise
2 requires a different meaning, the term:

3 (a) "Board" means the West Virginia board of banking
4 and financial institutions;

5 (b) "Commissioner" or "commissioner of banking"
6 means the commissioner of banking of West Virginia and
7 includes the department of banking of West Virginia;

8 (c) "Deposit" or "deposits" means the unpaid balance of
9 money or its equivalent received or held in the usual course
10 of business and for which there is given or there is obligated
11 to give credit, either conditionally or unconditionally, to a
12 checking, savings, time or thrift account, or which is
13 evidenced by a certificate of deposit;

14 (d) "Industrial bank" means any corporation formed
15 under the provisions of this article with the approval of the
16 board and which is authorized to receive deposits from the
17 general public, and such corporations are hereby declared
18 to be banking institutions within the meaning of section
19 two, article one, chapter thirty-one-a, subject to the
20 limitations contained in this article; and

21 (e) "Industrial loan company" means any corporation
22 formed under the provisions of this article with the
23 approval of the commissioner of banking of this state and

24 which is authorized to sell or offer for sale its secured or
25 unsecured evidences or certificates of indebtedness as
26 hereinafter prescribed, but shall not be authorized to accept
27 deposits.

§31-7-4. Incorporators; name; minimum capital stock; voting rights of classes of stock; common stock to be paid in before business commenced; use of certain words in corporate name prohibited.

1 (a) In the case of an industrial loan company, any number
2 of persons may become an industrial loan company on the
3 terms and conditions and subject to the liabilities
4 prescribed in this article. The name of any industrial loan
5 company formed under this article shall not contain the
6 words "savings" or "savings and loan" and shall not be that
7 of any other existing corporation of this state: *Provided*,
8 That any such corporation heretofore organized which uses
9 the words "savings and loan" as a part of its corporate name
10 shall be authorized to continue to use such words. The
11 capital stock of any such corporation shall not be less than
12 twenty-five thousand dollars, and shall consist of shares of
13 common stock. The voting power and control of the
14 corporation during its life shall be vested in the common
15 stock only if more than one class of stock is to be issued.
16 Such common stock, with which it will commence business,
17 shall be paid in before such corporation shall be authorized
18 to engage in business, except such business as is incidental
19 and necessarily preliminary to its organization.

20 (b) In the case of an industrial bank, any number of
21 persons, not fewer than five, citizens of this state, may
22 become an industrial bank on the terms and conditions and
23 subject to the liabilities prescribed by this article and the
24 provisions of article four, chapter thirty-one-a of this code
25 subject to such exceptions contained in this article. The
26 name of any industrial bank formed under the provisions of
27 this subsection (b), section four, shall be, "Industrial
28 Financing Corporation," and shall include no other words
29 except a trading area, community, city, county or other
30 local identity approved by the board. The capital stock
31 requirements of any such industrial bank shall be the same
32 as those prescribed in subsections (a) and (c), section
33 three, article four, chapter thirty-one-a of this code. The

34 voting power and control of any industrial bank shall be
35 vested in the common stock only and such corporations
36 shall issue but one class of stock. Such common stock with
37 which it will commence business shall be paid in before
38 such corporation shall be authorized to engage in business
39 as an industrial bank except such business as is incidental
40 and necessarily preliminary to its organization.

**§31-7-9. Industrial loan companies; agreement of
incorporation; issuance of certificate of
incorporation; recordation; application for and
issuance of certificate or license to engage in
business.**

1 Persons desiring to form an industrial loan company shall
2 sign and acknowledge an agreement of incorporation, as
3 provided in article one of this chapter.

4 The agreement shall be delivered to the secretary of state,
5 who, after the agreement has been approved in writing by
6 the commissioner of banking, shall issue to the
7 incorporators his certificate under the great seal of the state
8 as provided in article one of this chapter: *Provided*, That
9 hereafter no charter or branch office certificate shall be
10 issued to any industrial loan company under the provisions
11 of this article, nor shall any amendment under general law
12 or under the provisions of this article be made to the charter
13 of any existing industrial loan company coming within the
14 terms of this article, whether heretofore or hereafter
15 organized, until the application for such charter or for an
16 amendment to such already existing charter or a branch
17 office certificate has been approved in writing by the
18 commissioner of banking. Application for a new charter or
19 new branch office certificate shall be filed in duplicate with
20 the commissioner of banking, accompanied by an
21 examination and investigation fee of one thousand dollars
22 payable to the commissioner. A charter, when issued, shall
23 be filed and recorded as provided by law for general
24 corporations organized under the laws of this state. The
25 provisions of section five, article two, chapter thirty-one-a,
26 insofar as the same relates to financial institutions, other
27 than banking institutions, shall apply to the application
28 and issuance of a certificate or license by the commissioner

29 to an industrial loan company or any of its branch offices in
30 this state.

§31-7-11. Powers of industrial loan companies; limitation of powers.

1 (a) In addition to the general powers conferred upon
2 corporations by the laws of this state, each industrial loan
3 company shall have power to exercise by its board of
4 directors or duly authorized officers or agents, subject to
5 law, all such powers as shall be necessary to:

6 (1) Lend money to any person, firm or corporation,
7 secured by the obligation of such person, firm or
8 corporation, or otherwise;

9 (2) Notwithstanding the provisions of subdivision (1),
10 subsection (b) of this section, sell or offer for sale, with prior
11 written approval of the commissioner, its secured or
12 unsecured evidences or certificates of indebtedness, and
13 such secured or unsecured evidences or certificates of
14 indebtedness are hereby defined as money for the purpose
15 of taxation, but every such evidence or certificate of
16 indebtedness shall state, on its face, in a clearly visible
17 manner approved by the commissioner, that such evidence
18 or certificate of indebtedness is not federally insured.

19 Not later than the thirty-first day of December, one
20 thousand nine hundred eighty-four, every industrial loan
21 company selling or offering for sale its secured or unsecured
22 evidences or certificates of indebtedness, pursuant to this
23 subdivision, shall obtain insurance for or a guarantee of
24 those evidences or certificates of indebtedness by or
25 through an insurance company or guarantee fund
26 acceptable to and approved by the commissioner. The
27 insurance or guarantee shall provide for the redemption of
28 the investment of the evidence or certificate holder in the
29 event of liquidation, insolvency or bankruptcy of the
30 industrial loan company. The amount of insurance or
31 guarantee benefit to each holder of an evidence or
32 certificate, as an individual or multi-party account, shall at
33 all times be in full force and be equal to the industrial loan
34 company's liability under the evidence or certificate or
35 one hundred thousand dollars, whichever is less.
36 Notwithstanding the provisions of subdivision (1),

37 subsection (b), section four, article two, chapter thirty-one-
38 a of this code, the commissioner may make available to any
39 accepted and approved insurance company or guarantee
40 fund the reports of examination and other examination
41 findings of any industrial loan company, the evidences or
42 certificates of indebtedness of which that insurance
43 company or guarantee fund is insuring or guaranteeing. For
44 purposes of this subdivision, an insurance company or
45 guarantee fund includes any insurance company
46 authorized to do business in this state, an insurance or
47 guarantee fund organized under the laws of the United
48 States, this state or any other state with the express purpose
49 or authority to guarantee the accounts of industrial loan
50 companies or any other person who contracts with
51 industrial loan companies to insure or guarantee accounts:
52 *Provided*, That no insurance company or guarantee fund
53 shall be deemed to be providing insurance within the
54 meaning of section one, article one, chapter thirty-three of
55 this code merely because such company or fund insures or
56 guarantees evidences or certificates under the provisions of
57 this subdivision, nor shall any person be deemed to be
58 offering insurance insofar as his activities involve the
59 offering of insurance or guarantees under the provisions of
60 this subdivision;

61 (3) Buy and sell bonds, obligations of any person, firm or
62 corporation, the United States, and any department, board,
63 bureau or agency of the United States and buy and sell any
64 general obligations of the state of West Virginia;

65 (4) Demand and receive for loans or for notes, bills or
66 evidences of debt discounted or purchased, such rate of
67 interest as may be agreed upon by the parties, not exceeding
68 the lawful rate of interest, and it shall be lawful to receive
69 such interest in advance. This section does not limit or
70 restrict the manner of calculating the loan finance charge,
71 whether by way of add-on, discount or otherwise, so long as
72 the rate of loan finance charge does not exceed that
73 permitted by this section;

74 (5) Charge for a loan made pursuant to this section, one
75 dollar for each fifty dollars, or fraction thereof, loaned, for
76 expenses including any examination or investigation of the
77 character and circumstances of the borrower, comaker or

78 surety, and the drawing and taking the acknowledgment of
79 necessary papers, or other expenses, incurred in making the
80 loan. No additional charge shall be made except to
81 reimburse the corporation for money actually expended for
82 additional service actually rendered the borrower. No
83 charge shall be collected unless a loan shall have been made
84 as the result of such examination or investigation;

85 (6) Purchase, hold and convey real estate as follows:

86 (A) Such as shall be necessary for the convenient
87 transaction of its business, including with its office other
88 apartments or offices to rent as a source of income, which
89 investment shall not exceed sixty-five percent of its paid-in
90 capital stock and surplus;

91 (B) Such as is mortgaged to it in good faith by way of
92 security for loans made by or money due to such industrial
93 loan company;

94 (C) Such as is conveyed to it in satisfaction of debts
95 previously contracted in the course of its dealings;

96 (D) Such as is acquired by sale on execution or judgment
97 or decree of any court in its favor.

98 Industrial loan companies shall not purchase, hold or
99 convey any real estate in any other case or for any other
100 purpose whatever. Real estate shall be conveyed only by
101 authority of the board of directors of any such industrial
102 loan company. No real estate acquired in the cases
103 contemplated in paragraphs (B), (C) and (D), subdivision (6)
104 of this subsection shall be held for a longer time than five
105 years, unless such period shall be extended by the
106 commissioner of banking.

107 (b) An industrial loan company shall not:

108 (1) Accept or receive deposits;

109 (2) Hold at any one time the primary obligation or
110 obligations of any one person, firm or corporation, for more
111 than ten percent of the amount of the paid-up capital and
112 surplus of such industrial loan company except the
113 obligations of the United States or any department, board,
114 bureau or agency of the United States or any general
115 obligations of the state of West Virginia shall not be subject
116 to such limitation;

117 (3) Hold at any one time the obligation or obligations of
118 persons, firms or corporations purchased from any person,
119 firm or corporation in excess of twenty percent of the
120 aggregate paid-up capital and surplus of such industrial
121 loan company;

122 (4) Make any loan or discount on the security of its own
123 capital stock (controlling and voting stock, if there be more
124 than one class), unless such security or purchase shall be
125 necessary to prevent loss upon a debt previously contracted
126 in good faith. Stock so purchased or acquired shall be sold
127 at public or private sale or otherwise disposed of within
128 ninety days from the time of its purchase or acquisition;

129 (5) Have outstanding at any time its evidences or
130 certificates of indebtedness and any other debt, in an
131 aggregate sum in excess of ten times the aggregate amount
132 of its paid-up capital (voting and controlling stock) and
133 surplus;

134 (6) Deposit any of its funds with any other corporation
135 unless such corporation is insured by the federal deposit
136 insurance corporation or the federal savings and loan
137 insurance corporation or is approved, in writing, by the
138 commissioner;

139 (7) Pledge or hypothecate any of its securities or notes
140 owned by it to any creditor, except that such companies
141 shall have the power to rediscount or to borrow money from
142 any source in addition to selling its evidences or certificates
143 of indebtedness, but the aggregate amount of such
144 rediscounting and borrowing that is not subordinated to its
145 evidences or certificates of indebtedness shall at no time
146 exceed the sum total of the capital, surplus and reserve
147 funds of such company, and the security so pledged therefor
148 shall not exceed two times the amount borrowed and
149 rediscounted;

150 (8) Pay any fees, bonuses, commissions, rewards or other
151 consideration to any person, firm or corporation for the
152 privilege of using any plan of operation, scheme or device
153 for the organization or carrying on of business under this
154 article, or the use of any name, trademark or copyright to be
155 so used.

156 (c) An industrial loan company, when not exercising the
157 power granted under subdivision (2), subsection (a) of this
158 section, shall not be subject to subdivisions two, three, four,
159 five, six and seven, subsection (b) of this section.

**§31-7-14. Branch industrial banks forbidden; limited off-
premises industrial bank facility permitted;
branch industrial loan company permitted;
limitation on purchases of industrial bank stock;
penalties.**

1 (a) No industrial bank shall:

2 (1) Install or maintain any branch industrial bank; or

3 (2) Engage in business at any place other than at its
4 principal office in this state: *Provided*, That at any time any
5 such industrial bank may operate one and only one off-
6 premises walk-in or drive-in industrial banking facility, on
7 or in conjunction with or entirely separate from a parking
8 lot for the customers of such industrial bank, for the
9 purpose of receiving deposits, cashing checks, making
10 change, selling and issuing money orders and travelers
11 checks and receiving payments on installment accounts,
12 and for no other purposes, provided such off-premises
13 banking facility is located within two thousand feet of the
14 banking-house premises of the industrial bank operating
15 such off-premises facility measured between the nearest
16 points of the banking-house premises and the premises on
17 which such off-premises banking facility is located.

18 (b) It shall be unlawful for any individual, partnership,
19 society, association, firm, institution, trust, syndicate,
20 public or private corporation, or any other legal entity, or
21 combination of entities acting in concert, to directly or
22 indirectly own, control or hold with power to vote, twenty-
23 five percent or more of the voting shares of more than seven
24 industrial banks, or to control in any manner the election of
25 a majority of the directors of more than seven industrial
26 banks, and the provisions of this subsection shall govern
27 and control irrespective of any other provision of this code
28 restricting or limiting the ownership or control of voting
29 shares of industrial banks or the control of the election of
30 directors thereof, whether such other provision was enacted
31 before or after the enactment of this article.

32 (c) No industrial loan company shall install or maintain
33 any branch industrial loan company, unless it has applied
34 for and received a branch office certificate from the
35 commissioner. Application for a branch office certificate
36 shall be filed in duplicate with the commissioner, on forms
37 prescribed by the commissioner, accompanied by an
38 examination and investigation fee of one thousand dollars
39 payable to the commissioner. The provision of section five,
40 article two, chapter thirty-one-a of this code, insofar as the
41 same relates to financial institutions, other than banking
42 institutions, shall apply to the application and issuance of a
43 branch office certificate or license by the commissioner to
44 an industrial loan company.

45 (d) Any violation of any provision of this section shall
46 constitute a misdemeanor offense punishable by applicable
47 penalties as provided in section fifteen, article eight,
48 chapter thirty-one-a of this code.

**§31-7-16. Annual and special meetings of stockholders;
quorum; annual report; voting; proxies.**

1 The stockholders of each industrial loan company shall
2 meet annually, a majority of the outstanding voting stock to
3 constitute a quorum; and it shall be the duty of the secretary
4 to prepare and submit to the stockholders a clear and
5 concise statement of the financial condition of the
6 corporation as of the close of business on the last day of the
7 year next preceding. At such meeting the stockholders shall
8 elect a board of directors of not less than five nor more than
9 twenty-five. Special meetings may be called by order of the
10 board of directors or by request in writing of ten percent of
11 the stockholders.

12 In all elections of directors of the corporation each
13 stockholder shall have the right to cast one vote for each
14 share of stock owned by him and entitled to vote, and he
15 may cast the same in person or by proxy, for as many
16 persons as there are directors to be elected, or he may
17 cumulate such votes and give one candidate as many votes
18 as the number of directors to be elected multiplied by the
19 number of his shares of stock shall equal; or he may
20 distribute them on the same principle among as many

21 candidates and in such manner as he may desire, and the
22 directors shall not be elected in any other manner, and on
23 any other question to be determined by a vote of shares at
24 any meeting of stockholders each stockholder shall be
25 entitled to one vote for each share of stock owned by him
26 and entitled to vote, and he may exercise this right in person
27 or by proxy, but if by proxy, in no instance can it be voted in
28 any meeting other than which it was first intended.

29 The provisions of section twenty, article four, chapter
30 thirty-one-a shall govern and control stockholders'
31 meetings of industrial banks.

§31-7-17. Directors; officers.

1 The affairs of every industrial bank shall be managed by a
2 board of not less than five nor more than twenty-five
3 directors who shall meet at least once each month, a
4 majority of whom shall at all times be bona fide residents of
5 this state, and shall own and hold in his own name at least
6 five hundred dollars par value in unpledged shares of the
7 capital stock or voting stock of such industrial bank.

8 Immediately upon the adjournment of the stockholders'
9 meeting or as soon thereafter as convenient, the newly
10 elected directors shall meet and every such director elected
11 shall take an oath that he will, so far as duty devolves on
12 him, diligently and honestly administer the affairs of such
13 industrial bank or industrial loan company, and will not
14 knowingly and willingly violate, or permit to be violated,
15 any of the provisions of this article. Such oath, when
16 subscribed by the director making it, and certified by the
17 officer before whom it was taken, shall immediately be
18 transmitted to the commissioner of banking, and shall be
19 filed and preserved in his office. Should a director fail to
20 subscribe to the oath herein provided for within sixty days
21 after notice of his election, thereupon the remaining
22 directors shall elect another director in his stead.

23 It shall be the duty of the board at their organization
24 meeting or as soon thereafter as convenient to elect a
25 president who shall be a director, one or more vice
26 presidents, a secretary or manager, treasurer and such other
27 officers necessary for the conduct of business as may be
28 designated in the bylaws.

CHAPTER 46

(H. B. 1359—By Mr. Farley)

[Passed February 25, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article seven, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section six, article ten of said chapter thirty-one; to amend and reenact section eight, article two, chapter thirty-one-a of said code; to amend and reenact section five, article four of said chapter thirty-one-a; to amend and reenact section five, article eight-a of said chapter thirty-one-a; and to amend and reenact section one hundred five, article four, chapter forty-six-a of said code, all relating to financial institutions; department of banking; banks and banking; state banking institutions and services generally; bank holding companies; industrial banks and industrial loan companies; credit unions; supervised lenders; creating a special revenue account for the deposit of assessments, fees and expenses; authorizing the commissioner to assess certain financial institutions and bank holding companies; providing the commissioner with the authority to establish the assessments not to exceed certain maximums; and increasing certain fees.

Be it enacted by the Legislature of West Virginia:

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

Chapter

31. Corporations.

31A. Banks and Banking.

46A. West Virginia Consumer Credit and Protection Act.

CHAPTER 31. CORPORATIONS.**Article**

- 7. Industrial Banks and Industrial Loan Companies.**
- 10. Credit Unions.**

ARTICLE 7. INDUSTRIAL BANKS AND INDUSTRIAL LOAN COMPANIES.**§31-7-13. Supervision and control.**

1 (a) Every industrial loan company shall be subject to the
2 inspection, examination, supervision, jurisdiction and control
3 of the commissioner and the board in the same manner and
4 to the same extent as is the case of banking institutions or-
5 ganized under the laws of this state under the provisions of
6 chapter thirty-one-a of this code insofar as the same are ap-
7 plicable thereto. Where forty percent or more of the common
8 stock of any industrial loan company is owned or is held in
9 trust for the benefit of or by any other single firm, corporation,
10 partnership or association, such other firm, corporation, part-
11 nership or association shall also be subject to the same juris-
12 diction and powers of inspection, examination, supervision and
13 control of the commissioner and of the board in the same man-
14 ner and to the same extent as if such other firm, corporation,
15 partnership or association were an industrial loan company.

16 (b) The commissioner of banking shall charge and collect
17 from each industrial loan company and pay into a special
18 revenue account for the department of banking an annual as-
19 sessment payable on the first day of July, computed upon the
20 total assets of the industrial loan company shown on the report
21 of condition of the industrial loan company as of the last
22 business day in December of the previous year as is set out in
23 section eight, article two, chapter thirty-one-a of this code.

24 (c) Every industrial bank shall be subject to the inspection,
25 examination, assessment, supervision, jurisdiction and control
26 of the commissioner and of the board in the manner provided
27 in chapter thirty-one-a of this code and to the same extent as
28 is the case of other banking institutions organized under the
29 laws of this state and in addition, shall be subject to all of the
30 provisions, regulations and requirements of the federal deposit
31 insurance corporation including the right of inspection, exami-

32 nation, supervision and control as may be required by the
33 federal deposit insurance corporation.

ARTICLE 10. CREDIT UNIONS.

§31-10-6. Supervision by and reports to commissioner of banking; examinations; assessment; penalty for failure to report; revocation of certificates of approval.

1 (a) Credit unions shall be under the supervision of the com-
2 missioner of banking. They shall report to him at least semi-
3 annually on or before the first day of January and the first day
4 of July of each calendar year, on blanks supplied by the said
5 commissioner for that purpose. Additional reports may be
6 required by said commissioner. Credit unions shall be exam-
7 ined annually by the commissioner of banking, except that, if
8 a credit union has assets of less than twenty-five thousand
9 dollars, he may accept the audit of a certified public account-
10 ant in place of such examination.

11 (b) The commissioner of banking shall charge and collect
12 from each credit union and pay into a special revenue account
13 in the state treasury for the department of banking an annual
14 assessment payable on the first day of July computed upon
15 the total assets of the credit union shown on the report of
16 condition of the credit union as of the last business day in
17 December of the previous year as is set out in section eight,
18 article two, chapter thirty-one-a of this code.

19 (c) For failure to file reports when due, unless excused
20 for cause, the credit union shall pay to the treasurer of the
21 state five dollars for each day of delinquency. If the com-
22 missioner of banking determines that a credit union is vio-
23 lating any provision of this article, or is insolvent, said com-
24 missioner may serve notice on such credit union of his inten-
25 tion to revoke the certificate of approval. If, for a period of
26 fifteen days after such notice, such violation continues, the
27 commissioner of banking may revoke such certificate and take
28 possession of the business and property of such credit union
29 and maintain possession until such time as he shall permit it
30 to continue business or its affairs are finally liquidated. He may
31 take similar action if such report remains in arrears for more
32 than fifteen days.

CHAPTER 31A. BANKS AND BANKING.**Article**

- 2. Department of Banking.**
- 4. Banking Institutions and Services Generally.**
- 8A. Acquisition of Bank Shares.**

ARTICLE 2. DEPARTMENT OF BANKING.**§31A-2-8. Commissioner's assessments and examination fund; assessments, costs and expenses of examinations; collection.**

1 (a) All moneys collected by the commissioner from financial
2 institutions and bank holding companies for assessments, exam-
3 ination fees, investigation fees or other necessary expenses in-
4 curred by the commissioner in administering such duties shall
5 be paid to the commissioner and paid by the commissioner to
6 the treasurer of the state to the credit of a special revenue ac-
7 count to be known as the "Commissioner's Assessment and
8 Examination Fund" which is hereby established. The assess-
9 ments and fees paid into this account shall be appropriated by
10 law and used to pay the costs and expenses of the department of
11 banking and all incidental costs and expenses necessary for its
12 operations. At the end of each fiscal year, after the first day of
13 July, one thousand nine hundred eighty-three, if the fund con-
14 tains a sum of money in excess of twenty percent of the appro-
15 priated budget of the department of banking, the amount of the
16 excess shall be transferred to the general revenue fund of the
17 state. The Legislature may appropriate money to start the
18 special revenue account.

19 (b) The commissioner of banking shall charge and collect
20 from each state banking institution or other financial institu-
21 tion or bank holding company and pay into a special revenue
22 account in the state treasury for the department of banking
23 assessments as follows:

24 (1) For each state banking institution, a semiannual assess-
25 ment payable on the first day of January and the first day of
26 July, each year, computed upon the total assets of the banking
27 institution shown on the report of condition of the banking in-
28 stitution filed as of the preceding thirtieth day of June and
29 thirty-first day of December respectively as follows:

| Total Assets | | | | | |
|--------------|-----------------|----------------------------|----------------|---------|------------------------------|
| | Over Million | But Not Over Million | This Amount | Plus | Of Excess Over Million |
| 30 | \$ 0 | \$ 1 | \$ 0 | .001000 | 0 |
| 31 | 1 | 10 | 1,000 | .000125 | 1 |
| 32 | 10 | 50 | 2,125 | .000095 | 10 |
| 33 | 50 | 100 | 5,925 | .000060 | 50 |
| 34 | 100 | 500 | 8,925 | .000050 | 100 |
| 35 | 500 | 1,000 | 28,925 | .000045 | 500 |

36 (2) For each industrial loan company an annual assessment
 37 as provided for in section thirteen, article seven, chapter
 38 thirty-one of this code, as follows:

| Total Assets | | | | | |
|--------------|------------|-----------------|----------------|---------|-------------------|
| | Over | But Not Over | This Amount | Plus | Of Excess Over |
| 39 | \$ 0 | \$ 1,000,000 | 800 | — | — |
| 40 | 1,000,000 | 5,000,000 | 800 | .000400 | 1,000,000 |
| 41 | 5,000,000 | 10,000,000 | 2,400 | .000200 | 5,000,000 |
| 42 | 10,000,000 | — | 4,200 | .000100 | 10,000,000 |

43 If an industrial loan company's records or documents are
 44 maintained in more than one location in this state, then eight
 45 hundred dollars may be added to the assesment for each ad-
 46 ditional location.

47 (3) For each credit union, an annual assessment as provid-
 48 ed for in section six, article ten, chapter thirty-one of this
 49 code as follows:

| Total Assets | | | | | |
|--------------|------------|-----------------|----------------|---------|-------------------|
| | Over | But Not Over | This Amount | Plus | Of Excess Over |
| 50 | \$ 0 | \$ 100,000 | 100 | — | — |
| 51 | 100,000 | 500,000 | 300 | — | — |
| 52 | 500,000 | 1,000,000 | 500 | — | — |
| 53 | 1,000,000 | 5,000,000 | 500 | .000400 | 1,000,000 |
| 54 | 5,000,000 | 10,000,000 | 2,100 | .000200 | 5,000,000 |
| 55 | 10,000,000 | — | 3,100 | .000100 | 10,000,000 |

56 (4) For each bank holding company, an annual assessment
57 shall be made as provided for in section five, article eight-a,
58 chapter thirty-one-a of this code. Such annual assessment shall
59 not exceed ten dollars per million dollars in deposits rounded
60 off to the nearest million dollars.

61 (5) For each supervised lender, an annual assessment as
62 provided for in section one hundred five, article four, chapter
63 forty-six-a of this code. Such annual assessment shall not ex-
64 ceed one hundred dollars on the first twenty-five thousand
65 dollars of total outstanding loan balances and installment sales
66 contract balances less unearned finance charges plus forty
67 cents per thousand dollars on the remaining outstanding bal-
68 ances as of the preceding calendar year-end.

69 (6) The commissioner shall, during the month of June, one
70 thousand nine hundred eighty-three, and each December and
71 each June thereafter, prepare and send to each state banking in-
72 stitution a statement of the amount of the assessment due. The
73 commissioner shall, further, during the month of June, one
74 thousand nine hundred eighty-three, and each June thereafter,
75 prepare and send to each industrial loan company, each state
76 credit union and each supervised lender a statement of the
77 amount of the assessment due. Such assessments shall be charg-
78 ed for the first day of July, one thousand nine hundred eighty-
79 three, at the amounts as scheduled. The commissioner shall, fur-
80 ther, during the month of January, one thousand nine hundred
81 eighty-four, and each January thereafter, prepare and send to
82 each bank holding company a statement of the amount of the
83 assessment due. Such bank holding company assessments shall
84 be charged for the last day of January, one thousand nine hun-
85 dred eighty-four, at the amounts as scheduled in this subsection.

86 Subsequent assessments shall be prescribed annually, not
87 later than the fifteenth day of June, by written order of the
88 commissioner, but shall not exceed the maximums as set forth
89 in this subsection. In setting such assessments the primary con-
90 sideration shall be the amount appropriated by the Legislature
91 for the department of banking for the corresponding annual
92 period. Reasonable notice of such assessments shall be made
93 to all interested parties. All orders of the commissioner for

94 the purpose of setting assessments shall not be subject to the
95 provisions of the West Virginia Administrative Procedures
96 Act, chapter twenty-nine-a of this code.

97 (c) For making an examination within the state of any other
98 financial institution for which assessments are not provided by
99 this code, the commissioner of banking shall charge and col-
100 lect from such other financial institution and pay into the
101 special revenue account for the department of banking the
102 actual and necessary costs and expenses incurred in connec-
103 tion therewith, as fixed and determined by the commissioner.

104 (d) If the records of an institution are located outside this
105 state, the institution at its option shall make them available to
106 the commissioner at a convenient location within this state, or
107 pay the reasonable and necessary expenses for the commis-
108 sioner or his representatives to examine them at the place where
109 they are maintained. The commissioner may designate repre-
110 sentatives, including comparable officials of the state in which
111 the records are located, to inspect them on his behalf.

112 (e) The commissioner of banking may maintain an action for
113 the recovery of all such assessments, costs and expenses in any
114 court of competent jurisdiction.

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-5. Requirements and procedure for incorporation of state banks.

1 A state bank may be organized by five or more incorpora-
2 tors, a majority of whom shall be residents of the state of
3 West Virginia. Such banking institution shall have as a part
4 of its corporate name or title one or more of the following
5 words indicative of the business which it is authorized to
6 conduct, namely, "bank," "banking company," "banking asso-
7 ciation," "trust company," "banking and trust company" or
8 "bank and trust company."

9 The incorporators shall file with the board an agreement
10 of incorporation, in duplicate, following generally the form
11 prescribed by the secretary of state for chartering corporations
12 under provisions of article one, chapter thirty-one of this

13 code. The information set forth in the agreement shall include
14 the following:

15 (1) The name of the proposed bank;

16 (2) The community and county in which the bank is to be
17 located, together with the post-office address of the place
18 of business of the bank;

19 (3) Whether such bank proposes also to engage in the
20 trust business;

21 (4) The name, residence and occupation of each incor-
22 porator, and the amount of capital stock subscribed and paid
23 for by each;

24 (5) The names of the persons who are to serve as officers
25 and directors of the banking institution and the official position
26 proposed to be held by each; and

27 (6) The total authorized capital stock of the institution.

28 The agreement of incorporation shall be signed and ac-
29 knowledged by each of the incorporators and, when filed
30 with the board, shall be accompanied by the statutory cor-
31 poration charter fees, and an examination and investigation
32 fee of two thousand five hundred dollars payable to the
33 board. When transmitting the agreement to the board, the
34 incorporators shall designate by name and give the address
35 of the attorney, agent or other responsible party with whom
36 the board may communicate, on whom the board may call
37 for further information, and to whom the board may officially
38 report as to action on the agreement so filed with him. The
39 agreement shall constitute and may be considered and treated
40 by the board as an application for the board's approval to
41 incorporate and organize a banking institution in this state.

ARTICLE 8A. ACQUISITION OF BANK SHARES.

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

1 (a) For the purposes of this section, other than subsection
2 (f), a "bank holding company" shall include, in addition
3 to a bank holding company defined in subdivision (1), sub-

4 section (a), section three of this article, any other bank
5 holding company subject to regulation under Title 12 United
6 States Code, §§1841-1850 (being the act of Congress entitled
7 the Bank Holding Company Act of 1956, as amended),
8 which has acquired or established a place of business in this
9 state or a subsidiary which has a place of business in this
10 state.

11 (b) On the first day of July, one thousand nine hundred
12 eighty-two, and annually thereafter on dates established by
13 the commissioner, each bank holding company shall register
14 with the commissioner on forms provided or prescribed by
15 him, which shall include such information with respect to
16 the financial condition, operation, management and inter-
17 company relationships of the bank holding company and its
18 subsidiaries and related matters as the commissioner may
19 deem necessary or appropriate to carry out the purposes of
20 this article.

21 (c) The commissioner is authorized to issue such regula-
22 tions and orders as may be necessary to enable him or
23 the board to administer and carry out the purposes of this
24 article and prevent evasions thereof.

25 (d) The commissioner from time to time may require
26 reports under oath to keep him informed as to whether the
27 provisions of this article and such regulations and orders
28 thereunder issued by him have been complied with, may make
29 examinations of each bank holding company and each sub-
30 sidiary thereof, and shall, as far as possible, use the reports
31 of examination made by the comptroller of the currency,
32 federal deposit insurance corporation, or the board of govern-
33 ors of the federal reserve system for the purposes of this
34 section.

35 (e) Bank holding companies and subsidiaries or affiliates
36 thereof shall be regulated, controlled and examined by the
37 commissioner to the same extent that he regulates, controls
38 and examines state banks and other financial institutions under
39 his jurisdiction. The commissioner is hereby authorized to
40 promulgate rules and regulations and registration procedures

41 for the regulation, examination and control of bank holding
42 companies doing business in this state.

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

CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT AND PROTECTION ACT.

ARTICLE 4. SUPERVISED LENDERS.

§46A-4-105. Examinations; assessments and investigations.

1 (1) The commissioner shall examine annually the loans,
2 business and records of every licensee. In addition, for the
3 purpose of discovering violations of this article or securing in-
4 formation lawfully required, the attorney general or the com-
5 missioner may at any time investigate the loans, business and
6 records of any supervised lender. For these purposes he shall
7 have free and reasonable access to the offices, places of business
8 and records of the lender.

9 (2) If the lender's records are located outside this state,
10 the lender at his option shall make them available to the com-
11 missioner at a convenient location within this state, or pay the
12 reasonable and necessary expenses for the commissioner or
13 his representatives to examine them at the place where they
14 are maintained. The commissioner may designate representa-
15 tives, including comparable officials of the state in which the
16 records are located, to inspect them on his behalf.

17 (3) For the purposes of this section, the commissioner may
18 administer oaths or affirmations, and upon his own motion or
19 upon request of any party, may subpoena witnesses, compel

20 their attendance, adduce evidence, and require the production
21 of any matter which is relevant to the investigation, including
22 the existence, description, nature, custody, condition and lo-
23 cation of any books, documents or other tangible things and
24 the identity and location of persons having knowledge of rele-
25 vant facts, or any other matter reasonably calculated to lead to
26 the discovery of admissible evidence.

27 (4) Upon failure without lawful excuse to obey a subpoena
28 or to give testimony and upon reasonable notice to all persons
29 affected thereby, the commissioner may apply to any circuit
30 court of this state for an order compelling compliance.

31 (5) The commissioner of banking shall charge and collect
32 from each supervised lender and pay into a special revenue
33 account in the state treasury for the department of banking an
34 annual assessment payable on the first day of July computed
35 upon the total outstanding loan balances and installment sales
36 contract balances less unearned finance charges as of the pre-
37 ceding calendar year-end as is set out in section eight, article
38 two, chapter thirty-one-a of this code.

CHAPTER 47

(Com. Sub. for S. B. 580—By Mr. Boettner)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article fourteen-b, relating to mandatory civil service coverage for certain correctional officers in certain counties and permissive civil service coverage for certain correctional officers in other counties on or after the effective date of said article fourteen-b, relating to appointment, promotion, reinstatement, removal, discharge, suspension and reduction of correctional officers covered by civil service; providing definitions; relating to population determination; relating to a county civil service commission for civil service for

correctional officers, the appointment of its members and the removal of such members; relating to the clerk of and an office and supplies for any such civil service commission; requiring appropriations to carry out provisions of said article; relating to the powers and duties of any such civil service commission; relating to rules and regulations of any such civil service commission and notice and distribution of such rules and regulations; providing for probationary appointments of correctional officers covered by civil service; relating to application for competitive examination, age requirements and exceptions; relating to competitive and medical examinations for appointment or promotion as a correctional officer, and notice of competitive examinations; requiring the state civil service commission to prepare and prescribe competitive examinations for correctional officers; specifying circumstances under which competitive and medical examination shall not be required; relating to training, examination and age of persons employed as correctional officers on the effective date of this article; relating to the refusal to examine or certify and review of such refusal; relating to eligibility lists from which appointments are made; specifying procedures for appointments from an eligibility list and procedures for objecting to and removing any name from any such list; relating to filling a vacancy when there is no eligibility list; relating to filling vacancies by promotion, and eligibility for promotion; prohibiting any inquiry as to political or religious opinion or affiliation and prohibiting discrimination on the basis thereof; prohibiting certain political activity of correctional officers and authorizing a petition for vacating an appointment because of political activity; relating to action on such petition and judicial review with respect thereto; requiring training and retraining programs for and satisfactory completion thereof by correctional officers; relating to the removal, discharge, suspension or reduction in rank or pay of correctional officers and judicial review with respect thereto; relating to reduction in number of correctional officers; specifying that correctional officers subject to this article may not serve as correctional officers after attaining age sixty-five; vacations and sick leave for correctional officers; establishing various criminal offenses and providing criminal penalties;

establishing procedures for optional civil service coverage of correctional officers; providing a repealer clause; and providing a severability clause.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14B. CIVIL SERVICE FOR CORRECTIONAL OFFICERS.

- §7-14B-1. Appointments and promotions of correctional officers.
- §7-14B-2. Definitions; population.
- §7-14B-3. Civil service commission.
- §7-14B-4. Clerk of commission.
- §7-14B-5. Office and supplies for commission; appropriations required.
- §7-14B-6. Powers and duties of commission.
- §7-14B-7. Rules and regulations of commission; notice and distribution thereof; probationary period for appointees.
- §7-14B-8. Form of application; age requirements; exceptions.
- §7-14B-9. Character and notice of competitive examinations; qualifications of applicants; competitive examinations to be prescribed by state civil service commission; press representatives; posting eligible list; medical examinations; exceptions as to and training of correctional officers serving on effective date of article.
- §7-14B-10. Refusal to examine or certify; review thereof.
- §7-14B-11. Appointments from eligible list.
- §7-14B-12. Noncompetitive examination for filling vacancy; provisional appointment.
- §7-14B-13. Vacancies filled by promotions; eligibility for promotion.
- §7-14B-14. No inquiry shall be made concerning political or religious opinions or affiliations of applicants, etc.
- §7-14B-15. Political activity of correctional officers prohibited; petition for vacating appointment; action on petition; appeal.
- §7-14B-16. Training and retraining programs for all correctional officers required.
- §7-14B-17. Removal, discharge, suspension or reduction in rank or pay; appeal; reduction in force; mandatory retirement age.
- §7-14B-18. Vacations for correctional officers.
- §7-14B-19. Sick leave.
- §7-14B-20. Offenses and penalties.
- §7-14B-21. County commission of counties with a population of less than twenty-five thousand may place correctional officers under civil service; protest and election with respect thereto.
- §7-14B-22. Inconsistent acts repealed; once established civil service remains mandatory.
- §7-14B-23. Severability.

§7-14B-1. Appointments and promotions of correctional officers.

1 Notwithstanding the provisions of article three, chapter
2 six, and article seven, chapter seven of this code, all
3 appointments and promotions of full-time correctional
4 officers, as defined in section two of this article, in the
5 offices of sheriffs of counties of twenty-five thousand
6 population or more, shall be made only according to
7 qualifications and fitness to be ascertained by
8 examinations, which, so far as practicable, shall be
9 competitive, as hereinafter provided. On and after the
10 effective date of this article, no person shall be appointed,
11 promoted, reinstated, removed, discharged, suspended or
12 reduced in rank or pay as a full-time correctional officer, as
13 defined in said section two, of any county in the state of
14 West Virginia subject to the provisions hereof, in any
15 manner or by any means other than those prescribed in this
16 article.

§7-14B-2. Definitions; population.

- 1 (a) For the purpose of this article:
- 2 (1) "Appointing officer" or "appointing sheriff" shall
3 mean the sheriff of the county in which the appointment of a
4 correctional officer shall be made pursuant to this article;
5 and
- 6 (2) "Correctional officer" shall mean persons appointed
7 by a sheriff whose sole duties as such correctional officer
8 are within the scope of active operation and management of
9 the county jail.
- 10 (b) For the purpose of this article, population shall be
11 determined by reference to the last preceding census taken
12 under the authority of the United States or of the
13 Legislature of West Virginia.

§7-14B-3. Civil service commission.

1 There shall be a civil service commission in each county
2 having a population of twenty-five thousand or more. Each
3 such civil service commission shall consist of five
4 commissioners, two of whom shall be appointed by the bar
5 association of such county, one of whom shall be appointed
6 by the correctional officer association of such county, and
7 two of whom shall be appointed by the county commission

8 of such county. In the event the bar association or
9 correctional officer association shall fail to make an
10 appointment within the time prescribed in this section
11 therefor, then such appointment shall be made by the
12 county commission. The persons appointed commissioners
13 shall be qualified voters of the county for which they are
14 appointed, and at least three of the commissioners shall be
15 persons in full sympathy with the purposes of this article.
16 Not more than three of the commissioners, at any one time,
17 shall be members of the same political party. The
18 commissioners in each county shall be appointed as follows:
19 Within sixty days from the effective date of this article, the
20 authorities having the power to appoint members to the
21 civil service commission shall appoint the five
22 commissioners, the first two to be appointed by the bar
23 association of the county shall serve for six years from the
24 date of his appointment, the one to be appointed by the
25 correctional officer association of the county shall serve for
26 four years from the date of his appointment, and the two to
27 be appointed by the county commission of the county shall
28 serve for a term of two years from the date of his
29 appointment. All subsequent appointments shall be made
30 for terms of six years. In the event that any commissioner of
31 the civil service commission shall cease to be a member
32 thereof by virtue of death, final removal or other cause, a
33 new commissioner shall be appointed to fill the unexpired
34 term of that commissioner within ten days after said ex-
35 commissioner shall have ceased to be a member of the
36 commission. Such appointment shall be made by the
37 authority who appointed the commissioner who is no longer
38 a member of the commission. Each year the members of the
39 commission shall, together, elect one of their number to act
40 as president of the commission for a term of one year. The
41 county commission may at any time remove a commissioner
42 for good cause, which shall be stated in writing and made a
43 part of the records of the commission: *Provided*, That once
44 the county commission has removed any commissioner,
45 such county commission shall within ten days thereafter
46 file in the office of the clerk of the circuit court of the county
47 a petition setting forth in full the reason for the removal and
48 praying for the confirmation of the circuit court of the
49 action of the county commission in removing the said

50 commissioner. A copy of the petition shall be served upon
51 the commissioner so removed simultaneously with its filing
52 in the office of the clerk of the circuit court and shall have
53 precedence on the docket of the circuit court and shall be
54 heard by the court as soon as practicable upon the request of
55 the removed commissioner. All rights hereby vested in the
56 circuit court may be exercised by the judge thereof in
57 vacation. In the event that no term of the circuit court is
58 being held at the time of the filing of the petition, and the
59 judge thereof cannot be reached in the county wherein the
60 petition was filed, the petition shall be heard at the next
61 succeeding term of the circuit court, whether regular or
62 special, and the commissioner so removed shall remain
63 removed until a hearing is had upon the petition of the
64 county commission. The circuit court, or the judge thereof
65 in vacation, shall hear and decide the issues presented by
66 the petition. The county commission or commissioner, as
67 the case may be, against whom the decision of the circuit
68 court or judge thereof in vacation shall be rendered shall
69 have the right to petition the supreme court of appeals for a
70 review of the decision of the circuit court or the judge
71 thereof in vacation as in other civil cases. In the event that
72 the county commission shall fail to file its petition in the
73 office of the clerk of the circuit court, as hereinbefore
74 provided, within ten days after the removal of the
75 commissioner, such commissioner shall immediately
76 resume his position as a member of the civil service
77 commission.

78 Any resident of the county shall have the right at any time
79 to file charges against and seek the removal of any member
80 of the civil service commission. The charges shall be filed in
81 the form of a petition in the office of the clerk of the circuit
82 court of the county. A copy of the petition shall be served
83 upon the commissioner sought to be removed. The petition
84 shall be matured for hearing and heard as a civil action by
85 the circuit court of the county for which the commissioner
86 serves as a member of the civil service commission or by the
87 judge thereof in vacation. The party against whom the
88 decision of the circuit court or judge thereof in vacation
89 shall be rendered shall have the right to petition the
90 supreme court of appeals for a review of the decision of the

91 circuit court or judge thereof in vacation as in other civil
92 cases.

93 No commissioner shall hold any other office (other than
94 the office of notary public) under the United States, this
95 state, or any municipality, county or other political
96 subdivision thereof; nor shall any commissioner serve on
97 any political party committee or take any active part in the
98 management of any political campaign.

§7-14B-4. Clerk of commission.

1 The clerk of the county commission shall be ex officio
2 clerk of the civil service commission and shall supply to the
3 commission all necessary clerical and stenographic services
4 for the work of the civil service commission.

§7-14B-5. Office and supplies for commission; appropriations required.

1 It shall be the duty of the county commission of every such
2 county to cause suitable and convenient rooms and
3 accommodations to be assigned and provided, furnished,
4 heated and lighted for carrying on the work and
5 examinations of the civil service commission. The civil
6 service commission may order from the proper authorities
7 the necessary stationery, postage stamps, official seal and
8 other articles to be supplied, and the necessary printing to
9 be done, for its official use. It shall be the duty of the county
10 commission and other county officials of every such county
11 to aid the civil service commission in all proper ways in
12 carrying out the provisions of this article, and to allow the
13 reasonable use of public buildings, and to heat and light the
14 same, for holding examinations and investigations and in
15 all proper ways to facilitate the same.

16 The county commission of each such county is hereby
17 required to appropriate sufficient funds for the purpose of
18 carrying out the provisions of this article.

§7-14B-6. Powers and duties of commission.

1 The civil service commission in each such county shall:
2 (1) Promulgate and enforce rules and regulations for
3 carrying into effect the provisions of this article. All rules
4 and regulations so prescribed may, from time to time, be
5 added to, amended or rescinded.

6 (2) Keep minutes of its own proceedings and records of
7 its examinations and other official actions. All
8 recommendations of applicants for the position of
9 correctional officer received by the commission or by the
10 sheriff shall be kept and preserved for a period of ten years,
11 and all such records, recommendations of former employees
12 excepted, and all written causes of removal, filed with the
13 commission, shall, subject to reasonable rule and
14 regulation, be open to public inspection.

15 (3) Make investigations, either sitting as a body or
16 through a single commissioner, concerning all matters
17 touching the enforcement and effect of the provisions of this
18 article and the rules and regulations promulgated
19 hereunder or concerning the action of any examiner or
20 subordinate of the commission or any person in the public
21 service with respect to the execution of this article; and, in
22 the course of such investigations, each commissioner shall
23 have the power to administer oaths and affirmations and to
24 take testimony.

25 (4) Have power to subpoena and require the attendance
26 of witnesses and the production of books and papers
27 pertinent to the investigations and inquiries herein
28 authorized, and examine them and such public records as it
29 shall require in relation to any matter which it has the
30 authority to investigate. The fee of such witness for
31 attendance and travel shall be the same as for witnesses
32 before the circuit courts of this state and shall be paid from
33 the appropriation for the incidental expenses of the
34 commission. All officers in the public service and their
35 deputies, clerks, subordinates and employees shall attend
36 and testify when required to do so by the commission. Any
37 disobedience to, or neglect of, any subpoena issued by the
38 commissioners, or any one of them, to any person, shall be
39 held a contempt of court, and shall be punished by the
40 circuit court of the county in which the civil service
41 commission is located, or the judge thereof in vacation, as if
42 such subpoena has been issued by the court. The judge of the
43 circuit court shall, upon the application of any one
44 commissioner, in any such case, cause the process of that
45 court to issue to compel any person or persons disobeying or
46 neglecting any such subpoena to appear and to give

47 testimony and produce evidence before the commissioner,
48 or any one of them, and shall have power to punish any such
49 contempt.

50 (5) Prepare a position classification and promotion
51 plan.

52 (6) Make an annual report to the county commission and
53 sheriff showing its own actions, its rules and regulations,
54 including all exceptions thereto in force, and the practical
55 effects thereof, and any suggestions it may have for the
56 more effectual accomplishment of the purposes of this
57 article. Such report shall be available for public inspection
58 five days after it shall have been delivered to the county
59 commission and sheriff.

**§7-14B-7. Rules and regulations of commission; notice and
distribution thereof; probationary period for
appointees.**

1 The civil service commission in each such county shall
2 promulgate rules and regulations providing for both
3 competitive and medical examinations for the position of
4 correctional officer in each such county subject to the
5 provisions of this article, for appointments to the position of
6 correctional officer and for promotions and for such other
7 matters as are necessary to carry out the purposes of this
8 article. Any such commission shall have the power and
9 authority to require by rules and regulations a physical
10 fitness examination as part of its competitive examination
11 or as a part of its medical examination. Due notice of the
12 contents of all rules and regulations and of any
13 modifications thereof shall be given, by mail, in due season
14 to the appointing officer, and said rules and regulations and
15 any modifications thereof shall also be printed for public
16 distribution. All original appointments on and after the
17 effective date of this article, to any position of correctional
18 officer in any county subject to the provisions of this article
19 shall be for a probationary period of one year: *Provided,*
20 That at any time during the probationary period the
21 probationer may be discharged for just cause in the manner
22 provided in section seventeen of this article. If, at the close
23 of this probationary period, the conduct or capacity of the
24 probationer has not been satisfactory to the appointing
25 sheriff, the probationer shall be notified, in writing, that he

26 will not receive absolute appointment, whereupon his
27 employment shall cease; otherwise, his retention in the
28 position of correctional officer beyond the probationary
29 term shall be equivalent to his absolute appointment.

§7-14B-8. Form of application; age requirements; exceptions.

1 The civil service commission in each such county shall
2 require persons applying for admission to any competitive
3 examination provided for under this article or under the
4 rules and regulations of the commission to file in its office,
5 within a reasonable time prior to the proposed competitive
6 examination a formal application in which the applicant
7 shall state under oath or affirmation:

8 (1) His full name, residence and post-office address;

9 (2) His United States citizenship, age and the place and
10 date of his birth;

11 (3) His health and his physical capacity for the position
12 of correctional officer;

13 (4) His business, employments and residences for at
14 least three previous years; and

15 (5) Such other information as may reasonably be
16 required, relative to the applicant's qualifications and
17 fitness for the position of correctional officer.

18 Blank forms for such applications shall be furnished by
19 the commission, without charge, to all persons requesting
20 the same. The commission may require, in connection with
21 the application, such certificates of citizens, physicians or
22 others, having pertinent knowledge concerning the
23 applicant, as the good of the service may require.

24 No application for original appointment shall be received
25 on and after the effective date of this article, if the person
26 applying is less than eighteen years of age or more than
27 forty-five years of age at the date of his application:
28 *Provided*, That in the event any applicant formerly served
29 as a correctional officer for a period of more than one year in
30 the county to which he makes application, and resigned as a
31 correctional officer at a time when there were no charges of
32 misconduct or other misfeasance pending against him,
33 within a period of two years preceding the date of his

34 application, and at the time of his application resides
35 within the county in which he seeks appointment by
36 reinstatement, then such applicant shall be eligible for
37 appointment by reinstatement in the discretion of the civil
38 service commission, even though such applicant shall be
39 over the age of forty-five years, provided he is not sixty-five
40 years of age or over, and such applicant, providing his
41 former term of service as a correctional officer so justifies,
42 may be reappointed by reinstatement without a competitive
43 examination, but such applicant shall undergo a medical
44 examination; and if such applicant shall be so appointed by
45 reinstatement as aforesaid, he shall be the lowest in rank in
46 the jail next above the probationers of the office.

**§7-14B-9. Character and notice of competitive examinations;
qualifications of applicants; competitive
examinations to be prescribed by state civil
service commission; press representatives;
posting eligible list; medical examinations;
exceptions as to and training of correctional
officers serving on effective date of article.**

1 All competitive examinations for appointments or
2 promotions to all positions of correctional officer shall be
3 practical in their character, and shall relate to such matters,
4 and include such inquiries, as will fairly and fully test the
5 comparative merit and fitness of the person or persons
6 examined to discharge the duties of the position sought by
7 him or them. The state civil service commission shall
8 prepare and prescribe, from time to time, the competitive
9 examination to be given by the civil service commission of
10 each such county. All competitive examinations shall be
11 open to all applicants who have fulfilled the preliminary
12 requirements specified in other sections of this article.

13 Adequate public notice of the date, time and place of
14 every competitive examination held under the provisions of
15 this article, together with information as to the position to
16 be filled, shall be given at least two weeks prior to such
17 competitive examination. The civil service commission in
18 each county shall adopt reasonable rules and regulations
19 for permitting the presence of representatives of the press at
20 any such competitive examinations. Such commission shall
21 post, in a public place at its office, the eligible list,

22 containing the names and grades of those who have passed
23 such competitive examinations for positions as correctional
24 officer, under this article, and shall indicate thereon such
25 appointments as may be made from said list.

26 All applicants for appointment or promotion to any
27 position as a correctional officer in any such county who
28 have passed the competitive examination specified above
29 shall, before being appointed or promoted, undergo a
30 medical examination which shall be conducted under the
31 supervision of a board composed of two doctors of medicine
32 appointed for such purpose by the sheriff of the county.
33 Such board must certify that an applicant is free from any
34 bodily or mental defects, deformity or diseases which might
35 incapacitate him from the performance of the duties of the
36 position desired and is physically fit to perform such duties
37 before said applicant shall be appointed or promoted to any
38 position. Notwithstanding the first sentence of this
39 paragraph, in the event the commission deems it expedient,
40 the medical examination may be given prior to the
41 competitive examination, and if the medical examination is
42 not passed as aforesaid, the applicant shall not be admitted
43 to the competitive examination.

44 All correctional officers who are employed as
45 correctional officers on the effective date of this article,
46 shall be considered to have been appointed under the
47 provisions of this article without regard to their age, and
48 without competitive examination or medical examination,
49 and shall hold their positions in accordance therewith for
50 one year from the effective date of this article. The civil
51 service commission shall, however, establish or prescribe a
52 training program for correctional officers who are
53 employed as such on the effective date of this article, giving
54 due consideration to available training personnel and
55 programs. Such correctional officers shall complete a two-
56 hundred-hour basic correctional officer's training course as
57 certified by the West Virginia department of corrections
58 within a twelve-month period following appointment.

59 However, persons who have (1) completed a basic
60 correctional officers training course or equivalent within
61 the past three years prior to appointment or (2) who have
62 been employed as a correctional officer in a jail for three

63 years out of the last five years prior to appointment may be
64 certified as correctional officers without basic training if in
65 the judgment of the commission such persons are otherwise
66 qualified. A correctional officer failing to qualify under the
67 provisions of this paragraph may be continued in his
68 position at the discretion of the sheriff but in no event for a
69 period of more than one year. Such person may be
70 reexamined at the discretion of the civil service commission
71 of the county and may qualify as provided in this
72 paragraph.

§7-14B-10. Refusal to examine or certify; review thereof.

1 The commission may refuse to examine an applicant, or
2 after examination to certify as eligible one, who is found to
3 lack any of the established preliminary requirements for
4 the examination or position of correctional officer for
5 which he applies; or who is physically so disabled as to be
6 rendered unfit for the performance of the duties of the
7 position of correctional officer desired; or who is addicted
8 to the habitual use of intoxicating liquors or drugs; or who
9 has been convicted of a felony; or who has been guilty of
10 infamous or notoriously disgraceful conduct; or who has
11 been dismissed from public service for delinquency or
12 misconduct; or who has made a false statement of any
13 material fact, or practiced or attempted to practice any
14 deception or fraud in his application, in any such
15 examination, or in securing his eligibility; or who refuses to
16 comply with the rules and regulations of the commission.

17 If any applicant feels aggrieved by the action of the
18 commission in refusing to examine him, or after
19 examination in refusing to certify him as eligible, the
20 commission shall, at the request of such applicant, appoint
21 a date, time and place for a public hearing, at which time the
22 applicant may appear, by himself or by counsel or in person
23 and with counsel, and the commission shall then review its
24 refusal to make such examination or certification, and
25 testimony shall be taken. The commission shall subpoena,
26 at the expense of the applicant, any competent witnesses
27 requested by him. After such review, the commission shall
28 file in its records the testimony taken and shall make a
29 decision, which decision shall be final and not subject to
30 judicial review, but under no circumstances shall the

31 provisions of this article be construed, in the case of a
32 refusal to examine an applicant for promotion or to certify
33 an applicant as eligible for promotion, as depriving such
34 applicant of his right to seek a writ of mandamus, if the
35 application for such writ is made within twenty days from
36 the date of the decision (made after hearing as aforesaid)
37 refusing to examine or to certify him as eligible for
38 promotion.

§7-14B-11. Appointments from eligible list.

1 On and after the effective date of this article, every
2 position of correctional officer, unless filled by promotion,
3 reinstatement or reduction, shall be filled only in the
4 manner specified in this section. The appointing sheriff
5 shall notify the civil service commission of any vacancy in a
6 position of correctional officer which he desires to fill, and
7 shall request the certification of eligibles. The commission
8 shall forthwith certify, from the eligible list, the names of
9 the three persons thereon who received the highest averages
10 at preceding competitive examinations held under the
11 provisions of this article within a period of three years next
12 preceding the date of the prospective appointment. The
13 appointing sheriff shall, thereupon, with sole reference to
14 the relative merit and fitness of the candidates, make an
15 appointment from the three names so certified: *Provided,*
16 *That should he make objection to the commission to one or*
17 *more of these persons for any of the reasons stated in section*
18 *ten of this article, and should such objection be sustained by*
19 *the commission after a public hearing along the lines of the*
20 *hearing provided for in said section ten, if any such hearing*
21 *is requested, the commission shall thereupon strike the*
22 *name of that person from the eligible list, and certify the*
23 *next highest name for each person so stricken. As each*
24 *subsequent vacancy occurs, in the same or another position,*
25 *precisely the same procedure shall be followed: *Provided,**
26 *however, That after any name has been three times rejected*
27 *for the same or another position in favor of a name or names*
28 *below it on the same list, the name shall be stricken from the*
29 *list. When there are a number of positions of the same kind*
30 *to be filled at the same time, each appointment shall,*
31 *nevertheless, be made separately and in accordance with*
32 *the foregoing provisions. When an appointment is made*
33 *under the provisions of this section, it shall be, in the first*

34 instance, for the probationary period of twelve months, as
35 provided in section seven of this article.

**§7-14B-12. Noncompetitive examination for filling vacancy;
provisional appointment.**

1 Whenever there are urgent reasons for filling a vacancy in
2 any position of correctional officer and there is no list of
3 persons eligible for appointment after a competitive
4 examination, the appointing sheriff may nominate a person
5 to the civil service commission for noncompetitive
6 examination; and if such nominee shall be certified by the
7 commission as qualified, after such noncompetitive
8 examination and a medical examination, he may be
9 appointed provisionally to fill such vacancy until a
10 selection and appointment can be made after competitive
11 examination in the manner prescribed in section eleven of
12 this article; but the provisional appointment shall not
13 continue for a longer period than three months, nor shall
14 successive provisional appointments be made to the same
15 position, under the provisions of this section.

**§7-14B-13. Vacancies filled by promotions; eligibility for
promotion.**

1 Vacancies in positions of correctional officer on and after
2 the effective date of this article, shall be filled, so far as
3 practicable by promotion from among persons holding
4 positions in the next lower grade. Promotions shall be based
5 upon merit and fitness to be ascertained by competitive
6 examinations to be provided by the civil service commission
7 and upon the superior qualifications of the persons
8 promoted, as shown by their previous service and
9 experience: *Provided*, That no person shall be eligible for
10 promotion from the lower grade to the next higher grade
11 until such person shall have completed at least two years'
12 service in the next lower grade.

**§7-14B-14. No inquiry shall be made concerning political or
religious opinions or affiliations of applicants,
etc.**

1 No question in any form of application or in or during any
2 examination shall be so framed as to elicit information
3 concerning the political or religious opinions or affiliations
4 of any applicant; nor shall inquiry be made concerning such

5 opinions or affiliations; and all disclosures thereof shall be
6 discountenanced. No discrimination shall be exercised,
7 threatened, or promised by any person in the sheriff's office
8 against, or in favor of, an applicant, eligible or correctional
9 officer in the office of any sheriff of any county subject to
10 the provisions of this article because of his political or
11 religious opinions or affiliations.

**§7-14B-15. Political activity of correctional officers
prohibited; petition for vacating appointment;
action on petition; appeal.**

1 (a) On and after the effective date of this article, no
2 correctional officer covered by the provisions of this article
3 shall engage in any political activity of any kind, character
4 or nature whatsoever, except to cast his vote at any election
5 or shall act as an election official in any municipal, county
6 or state election. Any correctional officer violating the
7 provisions of this section shall have his appointment
8 vacated and he shall be removed, in accordance with the
9 pertinent provisions of this section.

10 (b) Any three residents of the county may file their
11 written petition with the civil service commission thereof
12 setting out therein the grounds upon which a correctional
13 officer of such county should be removed for a violation of
14 subsection (a) of this section. Notice of the filing of such
15 petition shall be given by the commission to the accused
16 correctional officer, which notice shall require him to file a
17 written answer to the charges set out in the petition within
18 thirty days of the date of such notice. The petition and
19 answer thereto, if any, shall be entered upon the records of
20 the civil service commission. If the answer is not filed
21 within the time stated, or any extension thereof for cause
22 which in the discretion of the civil service commission may
23 be granted, an order shall be entered by the commission
24 declaring the appointment of the correctional officer
25 vacated. If such answer is filed within the time stated, or
26 any extension thereof for cause which in the discretion of
27 the civil service commission may be granted, the accused
28 correctional officer may demand within such period a
29 public hearing on the charges, or the civil service
30 commission may, in its discretion and without demand
31 therefor, set a date and time for a public hearing on the

32 charges which hearing shall be within thirty days of the
33 filing of said answer, subject, however, to any continuances
34 which may in the discretion of the civil service commission
35 be granted. A written record of all testimony taken at such
36 hearing shall be kept and preserved by the civil service
37 commission, which record shall be sealed and not be open to
38 public inspection if no appeal be taken from the action of
39 the commission. The commission at the conclusion of the
40 hearing, or as soon thereafter as possible, shall enter an
41 order sustaining in whole or in part the charges made, or
42 shall dismiss the charges as unfounded. In the event the
43 charges are sustained in whole or in part, the order shall
44 also declare the appointment of such correctional officer to
45 be vacated and thereupon the sheriff shall immediately
46 remove the correctional officer from his office and from the
47 payroll of the county. Notice of the action of the commission
48 shall be given by registered letter to the county commission
49 and the sheriff. If the sheriff fails to immediately comply
50 with the order of the commission, he shall be punished for
51 contempt, upon application of the commission to the circuit
52 court of the county.

53 (c) An appeal from the ruling of the commission may be
54 had in the same manner and within the same time as
55 specified in section seventeen of this article for an appeal
56 from a ruling of a commission after hearing held in
57 accordance with the provisions of said section seventeen.

**§7-14B-16. Training and retraining programs for all
correctional officers required.**

1 (a) The civil service commission of any such county shall
2 establish or prescribe a training program which every
3 correctional officer first appointed a correctional officer of
4 such county on or after the effective date of this article,
5 must satisfactorily complete during his probationary
6 period.

7 (b) The civil service commission of any such county
8 shall also establish or prescribe annual retraining programs
9 of at least forty hours which every correctional officer,
10 whether first appointed such correctional officer before or
11 after the effective date of this article, must satisfactorily
12 complete from time to time after the effective date of this

13 article, in order to continue as a correctional officer of such
14 county or to be eligible for promotion.

§7-14B-17. Removal, discharge, suspension or reduction in rank or pay; appeal; reduction in force; mandatory retirement age.

1 (a) On and after the effective date of this article, no
2 correctional officer of any county shall be removed,
3 discharged, suspended or reduced in rank or pay except for
4 just cause, which shall not be religious or political, except
5 as provided in section fifteen of this article; and no such
6 correctional officer shall on and after the effective date of
7 this article, be removed, discharged, suspended or reduced
8 except as provided in this article and in no event until he
9 shall have been furnished with a written statement of the
10 reasons for such action. In every case of such removal,
11 discharge, suspension or reduction, a copy of the statement
12 of reasons therefor and of the written answer thereto, if the
13 correctional officer sought to be removed, discharged,
14 suspended or reduced desires to file such written answer,
15 shall be furnished to the civil service commission and
16 entered upon its records. If the correctional officer sought
17 to be removed, discharged, suspended or reduced shall
18 demand it, the civil service commission shall grant him a
19 public hearing, which hearing shall be held within a period
20 of ten days from the filing of the charges in writing or the
21 written answer thereto, whichever shall last occur. At such
22 hearing the burden shall be upon the removing,
23 discharging, suspending or reducing sheriff, hereinafter in
24 this section referred to as "removing sheriff," to justify his
25 action, and in the event the removing sheriff fails to justify
26 his action before the commission, then the correctional
27 officer removed, discharged, suspended or reduced shall be
28 reinstated with full pay, forthwith and without any
29 additional order, for the entire period during which he may
30 have been prevented from performing his usual
31 employment, and no charges shall be officially recorded
32 against his record. The correctional officer, if reinstated or
33 exonerated, shall, if represented by legal counsel, be
34 awarded an attorney fee of no more than two hundred fifty
35 dollars and such fee shall be determined by the commission
36 and paid by the removing sheriff from county funds. A

37 written record of all testimony taken at such hearing shall
38 be kept and preserved by the civil service commission,
39 which record shall be sealed and not be open to public
40 inspection, if no appeal be taken from the action of the
41 commission.

42 (b) In the event that the civil service commission shall
43 sustain the action of the removing sheriff, the correctional
44 officer removed, discharged, suspended or reduced on or
45 after the effective date of this article, shall have an
46 immediate right of appeal to the circuit court of the county.
47 In the event that the commission shall reinstate the
48 correctional officer removed, discharged, suspended or
49 reduced, the removing sheriff shall have an immediate right
50 of appeal to said circuit court. Any appeal must be taken
51 within ninety days from the date of entry by the civil service
52 commission of its final order. Upon an appeal being taken
53 and docketed with the clerk of the circuit court of said
54 county, the circuit court shall proceed to hear the appeal
55 upon the original record made before the commission and
56 no additional proof shall be permitted to be introduced. The
57 circuit court's decision shall be final, but the correctional
58 officer or removing sheriff, as the case may be, against
59 whom the decision of the circuit court is rendered shall have
60 the right to petition the supreme court of appeals for a
61 review of the circuit court's decision as in other civil cases.
62 Such correctional officer or removing sheriff shall also have
63 the right, where appropriate, to seek in lieu of an appeal, a
64 writ of mandamus. The correctional officer, if reinstated or
65 exonerated by the circuit court shall, if represented by legal
66 counsel, be awarded an attorney fee not to exceed five
67 hundred dollars, and if reinstated or exonerated by the
68 supreme court of appeals, shall be awarded an attorney fee
69 not to exceed five hundred dollars, and such fees shall be
70 paid by the removing sheriff from county funds: *Provided*,
71 That the aggregate amount of attorney fees awarded by the
72 commission, the circuit court and the supreme court of
73 appeals, shall not exceed one thousand dollars for any
74 member litigant.

75 (c) The removing sheriff and the correctional officer
76 sought to be removed, discharged, suspended or reduced
77 shall at all times, both before the civil service commission

78 and upon appeal, be given the right to employ counsel to
79 represent them.

80 (d) If for reasons of economy or other reasons it shall, on
81 and after the effective date of this article, be deemed
82 necessary by any appointing sheriff to reduce the number of
83 his correctional officers, he shall follow the procedure set
84 forth in this subsection. The reduction in the numbers of the
85 correctional officers of the county shall be effected by
86 suspending the last man or men, including probationers,
87 who have been appointed as correctional officers:
88 *Provided*, That in the event the number of correctional
89 officers shall again be increased in numbers to the strength
90 existing prior to such reduction of correctional officers, the
91 correctional officers suspended under the terms of this
92 subsection shall be reinstated in the inverse order of their
93 suspension before any new appointments of correctional
94 officers in the county shall be made.

95 (e) Notwithstanding any other provision of this article,
96 no correctional officer in any county subject to the
97 provisions of this article shall, on or after the effective date
98 of this article, serve as a correctional officer in any county
99 subject to the provisions of this article after he attains the
100 age of sixty-five.

§7-14B-18. Vacations for correctional officers.

1 The county commission of each county shall allow the
2 correctional officer in its employ vacation time accrued in
3 the following manner: For correctional officers with less
4 than five years of service, vacation time shall be accrued at
5 the rate of one and one-quarter days for each calendar
6 month of service; for correctional officers with five to ten
7 years of service, vacation time shall be accrued at the rate of
8 one and one-half days for each calendar month of service;
9 for correctional officers with ten to fifteen years of service,
10 vacation time shall be accrued at the rate of one and three-
11 quarters days for each calendar month of service; and for
12 correctional officers with fifteen or more years of service,
13 vacation time shall be accrued at the rate of two days for
14 each calendar month of service.

15 Each correctional officer shall only receive vacation time
16 for each month in which he shall have worked one hour

17 more than one half the normal working hours in a given
18 month as prescribed by the sheriff.

19 Accrued vacation time may be carried forward from one
20 calendar year to the next, in accordance with county policy.

§7-14B-19. Sick leave.

1 (a) The county commission of each county shall allow
2 the correctional officer sick leave with pay to be computed
3 as follows: Correctional officers shall be entitled to one and
4 one-half days sick leave for each calendar month worked, or
5 greater part thereof.

6 (b) Sick leave shall be granted only when illness on the
7 part of or injury to the correctional officer incapacitates
8 him for duty: *Provided*, That the sheriff of the county in
9 which the correctional officer is employed shall have the
10 authority to require the correctional officer to produce a
11 statement from an attending physician for each day of sick
12 leave beyond two days. This statement shall include dates of
13 treatment and also state that the correctional officer was
14 unable to work. In the absence of the required physician's
15 statement, annual leave shall be charged for the entire
16 period.

17 (c) Correctional officers may accumulate yearly sick
18 leave in accordance with policy to be established by the
19 county commission.

20 (d) In the event of illness, a correctional officer may take
21 emergency sick leave without pay after all accrued sick
22 leave, annual leave and compensatory time available to
23 such full-time correctional officer has been exhausted:
24 *Provided*, That the total number of days sick leave and
25 emergency sick leave used during such illness shall not
26 exceed the total number of days of sick leave which may be
27 accumulated under the provisions of subsection (c) of this
28 section by any correctional officer with the same number of
29 years of service.

§7-14B-20. Offenses and penalties.

1 Any person who makes an appointment or promotion to
2 any position, or selects a person for employment, contrary
3 to the provisions of this article, or willfully refuses or
4 neglects otherwise to comply with, or to conform to, any of

5 the provisions of this article, or violates any of such
6 provisions, shall be deemed guilty of a misdemeanor.

7 Any commissioner or examiner, or any other person, who
8 shall willfully, by himself or in cooperation with one or
9 more persons, defeat, deceive or obstruct any person with
10 respect to his right of examination or registration according
11 to this article, or to any rules and regulations promulgated
12 pursuant thereto, or who shall willfully or corruptly, falsely
13 mark, grade, estimate or report upon such examination or
14 proper standing of any person so examined, registered, or
15 certified, pursuant to the provisions of this article, or aid in
16 so doing, or who shall willfully or corruptly furnish to any
17 person any special or secret information, for the purpose of
18 either improving or injuring the prospects or chances of
19 appointment or promotion to any position of any person so
20 examined, registered or certified, or to be so examined,
21 registered or certified; or who shall impersonate any other
22 person, or permit or aid in any manner any other person to
23 impersonate him, in connection with any examination or
24 registration, or application or request to be examined or
25 registered, shall, for each offense, be deemed guilty of a
26 misdemeanor.

27 Any person convicted of any such misdemeanor offense
28 shall be fined not less than fifty nor more than one thousand
29 dollars, or imprisoned in the county jail not more than one
30 year, or both fined and imprisoned, in the discretion of the
31 court.

**§7-14B-21. County commission of counties with a population
of less than twenty-five thousand may place
correctional officers under civil service; protest
and election with respect thereto.**

1 The county commission of any county having a
2 population of less than twenty-five thousand may by order
3 entered of record provide that the provisions of this article
4 providing civil service for correctional officers shall apply
5 to such county on and after the effective date of this article.
6 A copy of such order, together with a notice advising the
7 qualified voters of such county of their right to protest the
8 placing of correctional officers of such county under civil
9 service, shall be published as a Class II-0 legal

10 advertisement in compliance with the provisions of article
11 three, chapter fifty-nine of this code, and the publication
12 area for such publication shall be the county.

13 In the event fifteen percent of the qualified voters of such
14 county protest such order, by petition duly signed by them
15 in their own handwriting (which petition may be signed in
16 any number of counterparts) and filed with the county clerk
17 of such county within sixty days after publication of such
18 copy and notice, such order shall not become effective
19 unless and until it is ratified by a majority of the legal votes
20 cast with respect to the question of civil service coverage for
21 the correctional officers of such county by the qualified
22 voters of such county at a regular or special election. Any
23 such election shall be conducted and superintended and the
24 results thereof ascertained as provided by law for regular or
25 special elections, as the case may be.

26 Whenever the correctional officers of any county are
27 placed under civil service pursuant to the provisions of this
28 section, such civil service system for the correctional
29 officers of such county shall thereupon become mandatory
30 and all of the provisions of this article shall apply to the
31 correctional officers of such county with like effect as if said
32 county had a population of twenty-five thousand or more.

§7-14B-22. Inconsistent acts repealed; once established civil service remains mandatory.

1 All acts and parts of acts of the Legislature, whether
2 general, special or local, in relation to correctional officers
3 inconsistent with the provisions of this article shall be, and
4 the same are, hereby repealed to the extent of such
5 inconsistency.

6 Any civil service system for correctional officers in any
7 county with a population of twenty-five thousand or more
8 shall remain mandatory and shall be governed by the
9 provisions of this article even if the population of such
10 county shall at any time decrease below twenty-five
11 thousand.

§7-14B-23. Severability.

1 If any provision of this article or its application to any
2 person or circumstance is held unconstitutional or invalid,
3 such unconstitutionality or invalidity shall not affect other

4 provisions or applications of this article, and to this end the
5 provisions of this article are hereby declared to be
6 severable.

CHAPTER 48

(H. B. 1635—By Mr. Speaker, Mr. See, by request of the Executive)

[Passed March 12, 1983; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact article five-c, chapter twenty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section one-a, article eleven, chapter sixty-one of said code, all relating to the closing of the West Virginia state prison for women; disposition of property; and the incarceration of female felons.

Be it enacted by the Legislature of West Virginia:

That article five-c, chapter twenty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section one-a, article eleven, chapter sixty-one of said code be amended and reenacted, all to read as follows:

Chapter

28. State Correctional and Penal Institutions.

61. Crimes and Their Punishment.

CHAPTER 28. STATE CORRECTIONAL AND PENAL INSTITUTIONS.

ARTICLE 5C. IMPRISONMENT OF FEMALE FELONS.

§28-5C-1. Closure of West Virginia prison for women.

§28-5C-2. Commitment of female felons.

§28-5C-1. Closure of West Virginia prison for women.

1 The West Virginia prison for women, a penal institution
2 exclusively for female prisoners, located at Pence Springs,
3 Summers County, West Virginia is hereby closed. The title to
4 all real property at the West Virginia prison for women is

5 hereby transferred to and vested in the public land corpora-
6 tion of West Virginia: *Provided*, That the public land corpora-
7 tion shall promptly cause an inventory and an appraisal to be
8 made of the real property and shall offer said real property
9 for sale at public auction to be sold for not less than the ap-
10 praised value, or the land corporation shall lease the real
11 property upon such terms and conditions as it shall deem
12 appropriate. The title to all personal property at the West
13 Virginia prison for women remains vested in the state depart-
14 ment of corrections.

§28-5C-2. Commitment of female felons.

1 Any adult female found guilty of committing a felony as
2 defined in section one, article eleven, chapter sixty-one, who
3 is not placed on probation in accordance with the provisions
4 of article twelve, chapter sixty-two, shall be committed to the
5 custody of the state department of corrections for the dura-
6 tion of her sentence. The commissioner of the state depart-
7 ment of corrections shall, as he deems appropriate, either
8 place female felons in state correctional institutions or contract
9 with any person, corporation, governmental agency or other
10 entity for their incarceration and care.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.

§61-11-1a. Sentence of female felons.

1 Upon conviction of a female for a felony and subsequent
2 sentence of confinement, the trial court shall sentence her to
3 the custody of the state department of corrections.

CHAPTER 49

(Com. Sub. for H. B. 1210—By Mr. Doyle)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three-i, article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section five,

article twelve, chapter eight of said code, relating to the authority of county commissions and municipalities to enter into reciprocal agreements for fire protection and emergency medical services with nonresident governmental entities.

Be it enacted by the Legislature of West Virginia:

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

Chapter

7. County Commissions and Officers.

8. Municipal Corporations.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3i. County commission may cooperate with other governmental units.

1 Any county commission may join together in the exercise of
2 any of its powers, duties and responsibilities, or otherwise
3 cooperate with any other county or counties, municipality or
4 municipalities, the government of this state or of the United
5 States in carrying out any lawful purpose not in conflict with the
6 constitution of West Virginia: *Provided*, That the county com-
7 mission of any county sharing a common border with any
8 other state is hereby empowered to enter into reciprocal
9 agreements with governmental subdivisions or agencies of such
10 other state for the protection of people and property from
11 fire and for emergency medical services and for the reciprocal
12 use of county equipment and personnel for such purpose.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND MUNICIPAL OFFICERS AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES.

§8-12-5. General powers of every municipality and the governing body thereof.

1 In addition to the powers and authority granted by (i) the

2 constitution of this state, (ii) other provisions of this chapter,
3 (iii) other general law, and (iv) any charter, and to the extent
4 not inconsistent or in conflict with any of the foregoing except
5 special legislative charters, every municipality and the govern-
6 ing body thereof shall have plenary power and authority therein
7 by ordinance or resolution, as the case may require, and by ap-
8 appropriate action based thereon:

9 (1) To lay off, establish, construct, open, alter, curb,
10 recurb, pave or repave and keep in good repair, or vacate,
11 discontinue and close, streets, avenues, roads, alleys, ways,
12 sidewalks, drains and gutters, for the use of the public, and to
13 improve and light the same, and have them kept free from
14 obstructions on or over them which have not been authorized
15 pursuant to the succeeding provisions of this subdivision (1);
16 and, subject to such terms and conditions as the governing body
17 shall prescribe, to permit, without in any way limiting the power
18 and authority granted by the provisions of article sixteen of this
19 chapter, any person to construct and maintain a passageway,
20 building or other structure overhanging or crossing the airspace
21 above a public street, avenue, road, alley, way, sidewalk or
22 crosswalk, but before any such permission for any person to
23 construct and maintain a passageway, building or other struc-
24 ture overhanging or crossing any such airspace is granted, a
25 public hearing thereon shall be held by the governing body after
26 publication of a notice of the date, time, place and purpose of
27 such public hearing has been published as a Class I legal ad-
28 vertisement in compliance with the provisions of article three,
29 chapter fifty-nine of this code, and the publication area for
30 such publication shall be the municipality: *Provided*, That any
31 such permit so granted, shall automatically cease and ter-
32 minate in the event of abandonment and nonuse thereof for
33 the purposes intended for a period of ninety days, and all
34 rights therein or thereto shall revert to such municipality for
35 its use and benefit;

36 (2) To provide for the opening and excavation of streets,
37 avenues, roads, alleys, ways, sidewalks, crosswalks and public
38 places belonging to the municipality and regulate the conditions
39 under which any such opening may be made;

40 (3) To prevent by proper penalties the throwing, depositing

41 or permitting to remain on any street, avenue, road, alley, way,
42 sidewalk, square or other public place any glass, scrap iron,
43 nails, tacks, wire, other litter, or any offensive matter or
44 anything likely to injure the feet of individuals or animals or
45 the tires of vehicles;

46 (4) To regulate the use of streets, avenues, roads, alleys,
47 ways, sidewalks, crosswalks and public places belonging to the
48 municipality;

49 (5) To regulate the width of streets, avenues and roads, and,
50 subject to the provisions of article eighteen of this chapter, to
51 order the sidewalks, footways and crosswalks to be paved, re-
52 paved, curbed or recurbed and kept in good order, free and
53 clean, by the owners or occupants thereof or of the real pro-
54 perty next adjacent thereto;

55 (6) To establish, construct, alter, operate and maintain, or
56 discontinue, bridges, tunnels and ferries and approaches there-
57 to;

58 (7) To provide for the construction and maintenance of
59 water drains, the drainage of swamps or marshlands and
60 drainage systems;

61 (8) To provide for the construction, maintenance and
62 covering over of watercourses;

63 (9) To control and administer the waterfront and water-
64 ways of the municipality, and to acquire, establish, construct,
65 operate and maintain and regulate flood control works, wharves
66 and public landings, warehouses and all adjuncts and facilities
67 for navigation and commerce and the utilization of the water-
68 front and waterways and adjacent property;

69 (10) To prohibit the accumulation and require the disposal
70 of garbage, refuse, wastes, ashes, trash and other similar
71 matters;

72 (11) To construct, establish, acquire, equip, maintain and
73 operate incinerator plants and equipment and all other facilities
74 for the efficient removal and destruction of garbage, refuse,
75 wastes, ashes, trash and other similar matters;

76 (12) To regulate or prohibit the purchase or sale of articles

77 intended for human use or consumption which are unfit for
78 such use or consumption, or which may be contaminated or
79 otherwise unsanitary;

80 (13) To prevent injury or annoyance to the public or in-
81 dividuals from anything dangerous, offensive or unwholesome;

82 (14) To regulate the keeping of gunpowder and other
83 combustibles;

84 (15) To make regulations guarding against danger or
85 damage by fire;

86 (16) To arrest, convict and punish any individual for
87 carrying about his person any revolver or other pistol, dirk,
88 bowie knife, razor, slungshot, billy, metallic or other false
89 knuckles, or any other dangerous or other deadly weapon of
90 like kind or character;

91 (17) To arrest, convict and punish any person for im-
92 porting, printing, publishing, selling or distributing any por-
93 nographic publications;

94 (18) To arrest, convict and punish any person for keeping
95 a house of ill fame, or for letting to another person any house
96 or other building for the purpose of being used or kept as a
97 house of ill fame, or for knowingly permitting any house owned
98 by him or under his control to be kept or used as a house of ill
99 fame, or for loafing, boarding or loitering in a house of ill
100 fame, or frequenting same;

101 (19) To prevent and suppress conduct and practices which
102 are immoral, disorderly, lewd, obscene and indecent;

103 (20) To prevent the illegal sale of intoxicating liquors,
104 drinks, mixtures and preparations;

105 (21) To arrest, convict and punish any individual for
106 driving or operating a motor vehicle while intoxicated or under
107 the influence of liquor, drugs or narcotics;

108 (22) To arrest, convict and punish any person for gambling
109 or keeping any gaming tables, commonly called "A,B,C," or
110 "E,O," table or faro bank or keno table, or table of like kind,
111 under any denomination, whether the gaming table be played

112 with cards, dice or otherwise, or any person who shall be a
113 partner or concerned in interest, in keeping or exhibiting such
114 table or bank, or keeping or maintaining any gaming house
115 or place, or betting or gambling for money or anything of
116 value;

117 (23) To provide for the elimination of hazards to public
118 health and safety and to abate or cause to be abated anything
119 which in the opinion of a majority of the governing body is a
120 public nuisance;

121 (24) To license, or for good cause to refuse to license in
122 a particular case, or in its discretion to prohibit in all cases,
123 the operation of pool and billiard rooms and the maintaining
124 for hire of pool and billiard tables notwithstanding the general
125 law as to state licenses for any such business and the pro-
126 visions of section four, article thirteen of this chapter; and when
127 the municipality, in the exercise of its discretion, shall have
128 refused to grant a license to operate a pool or billiard room,
129 mandamus shall not lie to compel such municipality to grant
130 such license unless it shall clearly appear that the refusal of the
131 municipality to grant such license is discriminatory or arbitrary;
132 and in the event that the municipality determines to license any
133 such business, the municipality shall have plenary power and
134 authority, and it shall be the duty of its governing body, to
135 make and enforce reasonable ordinances regulating the licensing
136 and operation of such businesses;

137 (25) To protect places of divine worship and to preserve
138 peace and order in and about the premises where held;

139 (26) To regulate or prohibit the keeping of animals or
140 fowls and to provide for impounding, sale or destruction of
141 animals or fowls kept contrary to law or found running at
142 large;

143 (27) To arrest, convict and punish any person for cruelly,
144 unnecessarily or needlessly beating, torturing, mutilating, killing
145 or overloading or overdriving, or willfully depriving of neces-
146 sary sustenance, any domestic animal;

147 (28) To provide for the regular building of houses or other
148 structures, for the making of division fences by the owners of

149 adjacent premises and for the drainage of lots by proper drains
150 and ditches;

151 (29) To provide for the protection and conservation of
152 shade or ornamental trees, whether on public or private
153 property, and for the removal of trees or limbs of trees in a
154 dangerous condition;

155 (30) To prohibit with or without zoning the location of
156 occupied house trailers or mobile homes in certain residential
157 areas;

158 (31) To regulate the location and placing of signs, bill-
159 boards, posters and similar advertising;

160 (32) To erect, establish, construct, acquire, improve, main-
161 tain and operate a gas system, a waterworks system, an electric
162 system or sewer system and sewage treatment and disposal sys-
163 tem, or any combination of the foregoing (subject to all of the
164 pertinent provisions of articles nineteen and twenty of this chap-
165 ter and particularly to the limitations or qualifications on the
166 right of eminent domain set forth in said articles nineteen and
167 twenty), within or without the corporate limits of the municipali-
168 ty, except that the municipality shall not erect any such system
169 partly without the corporate limits of the municipality to serve
170 persons already obtaining service from an existing system
171 of the character proposed, and where such system is by the
172 municipality erected, or has heretofore been so erected, partly
173 within and partly without the corporate limits of the municipali-
174 ty, the municipality shall have the right to lay and collect
175 charges for service rendered to those served within and those
176 served without the corporate limits of the municipality, and to
177 prevent injury to such system or the pollution of the water
178 thereof and its maintenance in a healthful condition for public
179 use within the corporate limits of the municipality;

180 (33) To acquire watersheds, water and riparian rights,
181 plant sites, rights-of-way and any and all other property and ap-
182 purtenances necessary, appropriate, useful, convenient or in-
183 cidental to any such system, waterworks or sewage treatment
184 and disposal works, as aforesaid, subject to all of the pertinent
185 provisions of articles nineteen and twenty of this chapter;

- 186 (34) To establish, construct, acquire, maintain and operate
187 and regulate markets, and prescribe the time of holding the
188 same;
- 189 (35) To regulate and provide for the weighing of articles
190 sold or for sale;
- 191 (36) To establish, construct, acquire, maintain and operate
192 public building, municipal buildings or city halls, auditoriums,
193 arenas, jails, juvenile detention centers or homes, motor vehicle
194 parking lots, or any other public works;
- 195 (37) To establish, construct, acquire, provide, equip,
196 maintain and operate recreational parks, playgrounds and other
197 recreational facilities for public use, and in this connection
198 also to proceed in accordance with the provisions of article
199 two, chapter ten of this code;
- 200 (38) To establish, construct, acquire, maintain and operate
201 a public library or museum or both for public use;
- 202 (39) To provide for the appointment and financial support
203 of a library board in accordance with the provisions of article
204 one, chapter ten of this code;
- 205 (40) To establish and maintain a public health unit in
206 accordance with the provisions of section two, article two,
207 chapter sixteen of this code, which unit shall exercise its
208 powers and perform its duties subject to the supervision and
209 control of the West Virginia board of health and state depart-
210 ment of health;
- 211 (41) To establish, construct, acquire, maintain and operate
212 hospitals, sanitarium and dispensaries;
- 213 (42) To acquire, by purchase, condemnation or otherwise,
214 land within or near the corporate limits of the municipality for
215 providing and maintaining proper places for the burial of the
216 dead and to maintain and operate the same and regulate in-
217 terments therein upon such terms and conditions as to price and
218 otherwise as may be determined by the governing body, and, in
219 order to carry into effect such authority the governing body
220 may acquire any cemetery or cemeteries already established;
- 221 (43) To exercise general police jurisdiction over any terri-

- 222 tory without the corporate limits owned by the municipality or
223 over which it has a right-of-way;
- 224 (44) To protect and promote the public morals, safety,
225 health, welfare and good order;
- 226 (45) To adopt rules for the transaction of business and the
227 government and regulation of its governing body;
- 228 (46) Except as otherwise provided, to require and take such
229 bonds from such officers, when deemed necessary, payable to
230 the municipality, in its corporate name, with such sureties and
231 in such penalty as the governing body may see fit, conditioned
232 upon the faithful discharge of their duties;
- 233 (47) To require and take from such employees and con-
234 tractors such bonds in such penalty, with such sureties and with
235 such conditions, as the governing body may see fit;
- 236 (48) To investigate and inquire into all matters of concern
237 to the municipality or its inhabitants;
- 238 (49) To establish, construct, require, maintain and operate
239 such instrumentalities, other than free public schools, for the
240 instruction, enlightenment, improvement, entertainment, recrea-
241 tion and welfare of the municipality's inhabitants as the
242 governing body may deem necessary or appropriate for the
243 public interest;
- 244 (50) To create, maintain and operate a system for the
245 enumeration, identification and registration, or either, of the
246 inhabitants of the municipality and visitors thereto, or such
247 classes thereof as may be deemed advisable;
- 248 (51) To appropriate and expend not exceeding twenty-five
249 cents per capita per annum for advertising the municipality
250 and the entertainment of visitors;
- 251 (52) To conduct programs to improve community relations
252 and public relations generally and to expend municipal revenue
253 for such purposes;
- 254 (53) To reimburse applicants for employment by the
255 municipality for travel and other reasonable and necessary
256 expenses actually incurred by such applicants in traveling to
257 and from such municipality to be interviewed;

- 258 (54) To provide revenue for the municipality and appro-
259 priate the same to its expenses;
- 260 (55) To create and maintain an employee benefits fund,
261 which shall not exceed one tenth of one percent of the annual
262 payroll budget for general employee benefits and which shall
263 be set up for the purpose of stimulating and encouraging
264 employees to develop and implement cost-saving ideas and
265 programs, and to expend moneys from such fund for such
266 purposes;
- 267 (56) To enter into reciprocal agreements with govern-
268 mental subdivisions or agencies of any state sharing a common
269 border for the protection of people and property from fire
270 and for emergency medical services and for the reciprocal
271 use of equipment and personnel for such purpose; and
- 272 (57) To provide penalties for the offenses and violations
273 of law mentioned in this section, subject to the provisions
274 of section one, article eleven of this chapter, and such penalties
275 shall not exceed any penalties provided in this chapter, and
276 chapter sixty-one of this code for like offenses and violations.

CHAPTER 50

(Com. Sub. for H. B. 1411—By Mr. McKinley and Mr. Kelly)

[Passed March 11, 1983; 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 four; and to amend article twelve, chapter eight of said code, by adding thereto a new section, designated section five-b, authorizing county commissions and municipalities to adopt an ordinance relating to obscene matter; defining terms; injunctive relief; restricting certain activities in relation to obscene matter; establishing penalties for violations; and exempting certain employees from prosecution.

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 four; and that article twelve, chapter eight of said code be amended by adding thereto a new section, designated section five-b, all to read as follows:

Chapter

7. County Commissions and Officers.

8. Municipal Corporations.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-4. County commission authority to enact ordinance; ordinance provisions defining terms; restricting certain activities in relation to obscene matter; and establishing penalties for violations.

1 (a) In addition to all other powers which county commis-
2 sions now possess by law, county commissions may adopt the
3 ordinance provided in subsection (b) of this section.

4 A county commission when adopting this ordinance may
5 delete therefrom such portions of paragraph (A), subdivision
6 (4), subsection (b) of this section that it deems appropriate.

7 (b) The ordinance which county commissions may adopt
8 pursuant to the power granted them under subsection (a) of
9 this section shall be:

Section 1. Definitions.

1 For purposes of this ordinance:

2 (1) "Knowingly" means to have knowledge of or to be
3 aware of the content or character of obscene matter.

4 (2) "Matter" means any book, magazine, newspaper or
5 other printed or written material, or any picture, drawing or
6 photograph, motion picture, or other visual representation, or
7 live conduct, or any recording, transcription or mechanical,
8 chemical or electrical reproduction, or any other articles,
9 equipment, machines or materials.

10 (3) "Individual" means any human being regardless of age.

11 (4) "Obscene" means matter which the average individual
12 applying contemporary community standards would find (i)
13 taken as a whole, appeals to the prurient interest; (ii) depicts or
14 describes in a patently offensive way ultimate sexual acts,
15 normal or perverted, actual or simulated; and (iii) the matter,
16 taken as a whole, lacks serious literary, artistic, political or
17 scientific value, and which either:

18 (A) Depicts or describes patently offensive representation
19 of masturbation, excretory functions, lewd exhibition of the
20 genitals, sodomy, fellatio, cunnilingus, bestiality, sadism,
21 masochism; or

22 (B) Depicts or describes nudity or sexual acts of persons,
23 male or female, below the age of eighteen years.

24 (5) "Person" means any individual, partnership, firm, asso-
25 ciation, corporation or other legal entity.

26 (6) "Prepare" means to produce, publish or print.

27 (7) "Public display" means the placing of material on or
28 in a billboard, viewing screen, theatre, marquee, newsstand,
29 display rack, window, showcase, display case or similar pub-
30 lic place so that material can be purchased or viewed by indi-
31 viduals.

Section 1a. Injunctive relief.

1 The circuit court shall have jurisdiction to issue an injunc-
2 tion to enforce the purposes of this ordinance upon petition by
3 the prosecuting attorney or any citizen of the county who can
4 show a good faith and valid reason for making such applica-
5 tion. No bond shall be required unless for good cause shown.

Section 2. Activities prohibited; penalties.

1 Any person who knowingly sends or causes to be sent or
2 causes to be brought into the county of (name of county) for
3 sale or public display, or prepares, sells or makes a public
4 display, or in the county of (name of county) offers to prepare,
5 sell or make a public display, or has in his possession with
6 the intent to sell or make a public display of any obscene mat-

7 ter to any individual, is guilty of a misdemeanor, and, upon
8 conviction thereof, shall be fined not more than five hundred
9 dollars or imprisoned in the county jail not more than thirty
10 days or both fined and imprisoned. A person convicted of a
11 second or subsequent offense under this ordinance is guilty
12 of a misdemeanor, and, upon conviction thereof, shall be fined
13 not more than one thousand dollars or imprisoned in the
14 county jail not more than six months or both fined and im-
15 prisoned.

Section 3. Prosecution by presentment or indictment.

1 No person may be prosecuted for an offense under this
2 ordinance except by indictment or information.

Section 4. Employees acting within scope of employment shall not be prosecuted.

1 No employee shall be guilty of a violation of this ordinance
2 when such employee is a projectionist, ticket taker, usher, or
3 when such employee prepares, sells or makes a public dis-
4 play of obscene matter while acting within the scope of his
5 regular employment, unless such employee has a proprietary
6 interest in such obscene matter or is a shareholder or officer
7 of a corporation which has a proprietary interest in such ob-
8 scene matter.

Section 5. Exceptions.

1 Nothing in this ordinance shall be construed so as to apply
2 to any person exercising a right secured by the constitution or
3 laws of this state or of these United States.

CHAPTER 8. MUNICIPAL CORPORATIONS.

**ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND AL-
LIED RELATIONS OF MUNICIPALITIES, GOVERN-
ING BODIES AND MUNICIPAL OFFICERS AND EM-
PLOYEES; SUITS AGAINST MUNICIPALITIES.**

**§8-12-5b. Municipal authority to enact ordinance; ordinance provi-
sions defining terms; restricting certain activities in
relation to obscene matter; and establishing penalties
for violations.**

1 (a) Notwithstanding the provisions of section one, article
2 eleven, chapter eight of this code, in addition to all other pow-

3 ers which municipalities now possess by law, every municipal-
4 ity and the governing body thereof may adopt the ordinance
5 provided in subsection (b) of this section.

6 A municipality when adopting this ordinance, may delete
7 therefrom such portions of paragraph (A), subdivision (4), sub-
8 section (b) of this section that it deems appropriate.

9 (b) The ordinance which municipalities may adopt pursuant
10 to the power granted them under subsection (a) of this section
11 shall be:

Section 1. Definitions.

1 For purposes of this ordinance:

2 (1) "Knowingly" means to have knowledge of or to be
3 aware of the content or character of obscene matter.

4 (2) "Matter" means any book, magazine, newspaper or
5 other printed or written material, or any picture, drawing or
6 photograph, motion picture, or other visual representation, or
7 live conduct, or any recording, transcription or mechanical,
8 chemical or electrical reproduction, or any other articles,
9 equipment, machines or materials.

10 (3) "Individual" means any human being regardless of age.

11 (4) "Obscene" means matter which the average individual
12 applying contemporary community standards would find (i)
13 taken as a whole, appeals to the prurient interest; (ii) depicts or
14 describes in a patently offensive way ultimate sexual acts,
15 normal or perverted, actual or simulated; and (iii) the matter,
16 taken as a whole, lacks serious literary, artistic, political or
17 scientific value, and which either:

18 (A) Depicts or describes patently offensive representation
19 of masturbation, excretory functions, lewd exhibition of the
20 genitals, sodomy, fellatio, cunnilingus, bestiality, sadism,
21 masochism; or

22 (B) Depicts or describes nudity or sexual acts of persons,
23 male or female, below the age of eighteen years.

24 (5) "Person" means any individual, partnership, firm, asso-
25 ciation, corporation or other legal entity.

26 (6) "Prepare" means to produce, publish or print.

27 (7) "Public display" means the placing of material on or
28 in a billboard, viewing screen, theatre, marquee, newsstand,
29 display rack, window, showcase, display case or similar pub-
30 lic place so that material can be purchased or viewed by in-
31 dividuals.

Section 1a. Injunctive relief.

1 The circuit court shall have jurisdiction to issue an injunc-
2 tion to enforce the purposes of this ordinance upon petition
3 by the attorney for the municipality or a representative there-
4 of or any citizen of the municipality who can show a good
5 faith and valid reason for making such application. No bond
6 shall be required unless for good cause shown.

Section 2. Activities prohibited; penalties.

1 Any person who knowingly sends or causes to be sent or
2 causes to be brought into the municipality of (name of munic-
3 ipality) for sale or public display, or prepares, sells or makes
4 a public display, or in the municipality of (name of munici-
5 pality) offers to prepare, sell or make a public display, or has
6 in his possession with the intent to sell or make a public dis-
7 play of any obscene matter to any individual, is guilty of a mis-
8 demeanor, and, upon conviction thereof, shall be fined not
9 more than five hundred dollars or imprisoned not more than
10 thirty days or both fined and imprisoned. A person convicted
11 of a second or subsequent offense under this ordinance is
12 guilty of a misdemeanor, and, upon conviction thereof, shall be
13 fined not more than one thousand dollars or imprisoned not
14 more than six months or both fined and imprisoned.

Section 3. Employees acting within scope of employment shall not be prosecuted.

1 No employee shall be guilty of a violation of this ordinance
2 when such employee is a projectionist, ticket taker, usher,
3 or when such employee prepares, sells or makes a public
4 display of obscene matter while acting within the scope of his
5 regular employment, unless such employee has a proprietary
6 interest in such obscene matter or is a shareholder or officer

7 of a corporation which has a proprietary interest in such ob-
8 scene matter.

Section 4. Exceptions.

1 Nothing in this ordinance shall be construed so as to apply
2 to any person exercising a right secured by the constitution or
3 laws of this state or of these United States.

CHAPTER 51

(S. B. 449—By Mr. Sacco)

[Passed March 3, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article four, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to employment of counsel by the county commission; counties in which employment is authorized.

Be it enacted by the Legislature of West Virginia:

That section three, article four, 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 4. PROSECUTING ATTORNEY, REWARDS AND LEGAL ADVICE.

§7-4-3. Employment of counsel for civil matters; compensation of counsel.

1 The county commission of any county shall have
2 authority to employ such legal counsel as it may deem
3 necessary for the purpose of advising such county com-
4 mission on matters of a civil nature and to conduct any
5 litigation of a civil nature to which the county is a party.
6 The county commission shall also have the authority to
7 fix the compensation of any such counsel so employed,
8 and to pay the same out of the county treasury. Any
9 counsel so employed may be removed at the pleasure of
10 the county commission.

CHAPTER 52

(H. B. 1319—By Mr. Murensky)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five, chapter seven 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 county commissions granting annual and sick leave benefits for all county employees.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. FISCAL AFFAIRS.

§7-5-21. Annual and sick leave for county employees.

- 1 The county commission of any county is hereby authorized
- 2 to grant county employees annual and sick leave benefits.

CHAPTER 53

(Com. Sub. for S. B. 397—By Mr. Burdette)

[Passed February 18, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article eleven, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section two-a, relating to the authorization of county parks and recreation commissions to sell and lease property for fire training schools.

Be it enacted by the Legislature of West Virginia:

That article eleven, 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 two-a, to read as follows:

ARTICLE 11. COUNTY PARKS AND RECREATION COMMISSIONS.

§7-11-2a. Authority to lease property for educational instruction in fire prevention and protection.

1 In addition to the powers and duties set forth in this
2 article, any county parks and recreation commission orga-
3 nized pursuant to the provision of this article is hereby
4 empowered and authorized: (1) To sell and convey any
5 real estate owned by it which is not contiguous to any
6 tract of land which forms a part of a park owned or
7 operated by the commission: *Provided*, That such real
8 estate shall be sold at public auction for a fair and ade-
9 quate consideration. The public auction shall be held at
10 a place designated by the commission, but before making
11 any such sale, notices of the time, terms and place of sale,
12 together with a brief description of the property to be
13 sold, shall be published as a Class II legal advertisement
14 in compliance with the provisions of article three, chapter
15 fifty-nine of the code of West Virginia, and the publica-
16 tion area for such publication shall be the county wherein
17 the commission is located,

18 And,

19 (2) To lease any of its real estate or any part thereof
20 or any of its personal property or any part thereof or any
21 interest in any of the foregoing to any governmental
22 entity or nonprofit corporation for the purpose of estab-
23 lishing a fire prevention and protection or fire-fighting
24 school or educational institution. Every such lease shall
25 be for a term not to exceed forty years and shall be
26 authorized by a resolution of the commission, which reso-
27 lution shall specify the terms and conditions to be con-
28 tained in such lease: *Provided*, That before any such
29 resolution is adopted, a public hearing on such proposed
30 lease shall be held by the commission after notice of the
31 date, time, place and purpose of such public hearing has
32 been published as a Class I legal advertisement in com-
33 pliance with the provisions of article three, chapter fifty-

34 nine of the code of West Virginia, and the publication
35 area for such publication shall be the county wherein the
36 commission is located.

CHAPTER 54

(H. B. 1811—By Mr. Albright)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-seven, article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the publication of the reports of the supreme court of appeals; the duties of the attorney general as official reporter with respect thereto; and providing for procedures for corrections and modifications to be made with respect to the proof sheets preparatory to the publication of such reports.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. PURCHASING DIVISION.

§5A-3-27. Publication of reports of supreme court of appeals.

1 Notwithstanding any of the provisions of this article, the
2 official reporter of the supreme court of appeals shall have
3 charge and supervision of the printing and binding of the re-
4 ports of the decisions of the supreme court of appeals of the
5 state, and shall contract for their publication in the same man-
6 ner that the director of the purchasing division contracts under
7 sections eleven through twenty-one of this article. Such contract
8 shall provide for the publication of such number of copies as
9 the reporter and the supreme court of appeals may jointly di-
10 rect. If the reporter and the supreme court of appeals do not
11 agree on the number of copies for which the publication con-
12 tract shall provide, the contract shall provide for the publication

13 of the greater number of copies directed by either the reporter
14 or the supreme court of appeals. In no event shall the number of
15 copies published exceed one thousand five hundred. Copies of
16 the reports of the decisions of the supreme court of appeals
17 shall be on such paper and be bound in accordance with
18 directions and specifications specified by the reporter by and
19 with the concurrence of the court. The size of type and page
20 shall be prescribed by the reporter with the concurrence of
21 the court. A volume shall be published according to the terms
22 of the contract whenever ordered by the court. The reporter
23 shall secure the copyright of each volume for the benefit
24 of the state. The reports shall be styled "West Virginia
25 Reports."

26 The printing and binding of the reports shall be done under
27 the direction of and in the manner prescribed by the re-
28 porter, subject to the control of the court. The reporter shall
29 prefix to the printed report of each case the dates when
30 the same was submitted and decided. Each volume shall, if
31 practicable, contain the reports of at least eighty cases decided
32 by the court, and shall contain approximately one thousand
33 pages unless otherwise ordered by the court, exclusive of the
34 index and table of cases reported and cited. Galley sheets or
35 proof sheets shall be furnished by the printer to the reporter
36 in such number as may be required by the reporter for the pur-
37 poses of this section. It shall be the duty of the reporter to
38 proof such galley sheets or proof sheets against the various
39 cases, including the court's syllabi, as such cases and the
40 court's syllabi appear in the most recent bound volume of the
41 appropriate regional reporter in which such cases are reported.
42 Neither galley sheets nor proof sheets need be submitted to the
43 court or the clerk thereof for any purpose. Thereafter the re-
44 porter shall make such corrections and modifications as he
45 shall deem appropriate and all such corrections and modifica-
46 tions shall be made by the printer as the reporter may direct.
47 If the work is not done in the manner required by law, the
48 reporter shall not approve the volume and shall not accept it.

49 The reports of the decisions of the supreme court of appeals
50 may be published in pamphlet form in advance of the publica-
51 tion of the bound volumes of the "West Virginia Reports,"

52 periodically, or at such times as may be directed by the report-
53 er and the supreme court of appeals. The reporter shall secure
54 the copyright of each pamphlet of opinions so published in
55 advance. Each pamphlet shall contain the report of such num-
56 ber of cases as the supreme court of appeals and the reporter
57 shall deem advisable.

58 The contract for the publication of such advance sheets
59 shall be made in the manner provided for the publication of
60 bound volumes of the "West Virginia Reports."

61 A charge of not less than the actual cost of printing and
62 distribution shall be made for such advance sheets.

CHAPTER 55

(H. B. 1317—By Mr. Damron, 15th Dist., and Mr. Chambers)

[Passed March 11, 1983; in effect July 1, 1983. Approved by the Governor.]

AN ACT to amend and reenact section thirty-nine-h, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article three by adding thereto four new sections, designated sections thirty-nine-i, thirty-nine-j, thirty-nine-k and thirty-nine-l, relating to crimes against property generally; obtaining property in return for worthless checks; making and issuing worthless checks; providing for the payment of costs in worthless check cases; creating a fund designated the "Worthless Check Fund"; describing the disposition of costs paid into said fund; providing for the preparation of a list of worthless check warrants; establishing a procedure for the use of worthless check lists upon receipt of a complaint for warrant; setting forth a form for a notice of multiple worthless check warrants; describing the duties of the prosecuting attorney upon receipt of said notices; requiring the magistrate court clerk to advise the complainant of the prosecuting attorney's recommendation; requiring checks on consumer deposit accounts to show the date the account was opened; defining the term consumer deposit account and

authorizing and empowering the commissioner of banking to order compliance.

Be it enacted by the Legislature of West Virginia:

That section thirty-nine-h, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article three be further amended by adding thereto four new sections, designated sections thirty-nine-i, thirty-nine-j, thirty-nine-k and thirty-nine-l, all to read as follows:

ARTICLE 3. CRIMES AGAINST PROPERTY.

- §61-3-39h. Payment of costs in worthless check cases; disposition of certain costs.
- §61-3-39i. Preparation of list of worthless check warrants.
- §61-3-39j. Use of worthless check list upon receipt of complaint for warrant.
- §61-3-39k. Duties of prosecuting attorney upon receipt of notice of multiple worthless check warrants; magistrate court clerk to advise complainant.
- §61-3-39l. Checks on consumer deposit accounts to show date account was opened; consumer deposit account defined.

§61-3-39h. Payment of costs in worthless check cases; disposition of certain costs.

1 In any prosecution under sections thirty-nine or thirty-nine-a
 2 of this article such costs as may otherwise be imposed against
 3 the drawer of any such check, draft or order shall be imposed
 4 on the person initiating the prosecution if payment of the
 5 check, draft or order is accepted by the payee or holder thereof
 6 after the filing of a complaint for warrant; if the payee or
 7 holder had reason to believe that the check, draft or order
 8 would be dishonored or if the same was postdated; or if the
 9 matter is dismissed for failure to prosecute.

10 Costs collected by magistrate court for issuance of notice as
 11 authorized by section thirty-nine-g of this article shall not be
 12 paid into the special county fund created by the provisions of
 13 section four, article three, chapter fifty of this code, but shall
 14 be accounted for separately and retained by the county in a
 15 fund designated the "worthless check fund," until the sheriff
 16 shall issue warrants in furtherance of the allowable expenses
 17 specifically provided for by this section. Such costs shall not

18 be included in any calculation of the amount of funds to be
19 retained by the county under the provisions of section four,
20 article three, chapter fifty of this code.

21 A county may, after agreement with the court administrator's
22 office of the supreme court of appeals, appropriate and spend
23 from the worthless check fund herein established such sums as
24 shall be necessary to pay or defray the expenses of providing
25 a deputy sheriff to serve warrants for worthless check offenses
26 and to pay or defray the expenses of providing additional de-
27 puty clerks in the office of the magistrate court clerk to pro-
28 cess cases involving worthless checks: *Provided*, That
29 sums agreed to be appropriated for such deputy sheriffs or
30 deputy clerks shall be proportionate to the time such employees
31 devote to worthless check cases. After payment of such ex-
32 penses, or after a determination that such services are not
33 necessary, a county may appropriate and spend from such fund
34 such sums as shall be necessary to defray the expenses of pro-
35 viding bailiff and service of process services by the sheriff, to
36 defray the cost of acquiring or renting magistrate court offices
37 and providing utilities and telephones therefor to defray the
38 cost of complying with section thirty-nine-i herein and to de-
39 fray the expenses of such other services which are to be
40 provided to magistrate courts by the county.

§61-3-39i. Preparation of list of worthless check warrants.

1 Beginning on the first day of July, one thousand nine hun-
2 dred eighty-three, the magistrate court clerk of every county
3 shall, between the first and fifth day of each month thereafter,
4 prepare a cumulative list of all check warrants issued by the
5 magistrates of the county during the preceding twelve calendar
6 months and after the effective date of this section: *Provided*,
7 That upon completion of each cumulative list, the list which
8 was completed for the next preceding month and any copy
9 thereof shall be destroyed by the magistrate court clerk. The
10 persons charged in such warrants shall be listed alphabetically.
11 Such list shall also contain the total number of warrants issued
12 against each named person for the period covered by the re-
13 port, the number assigned to each warrant, and the date each
14 such warrant was issued. A copy of such cumulative list of
15 worthless check warrants shall be forthwith forwarded to each

16 magistrate in the county and to the prosecuting attorney
17 thereof. Upon the request of magistrates or prosecutors in
18 other counties of this state, such lists shall be regularly for-
19 warded to them.

**§61-3-39j. Use of worthless check list upon receipt of complaint
for warrant.**

1 On and after the first day of July, one thousand nine hun-
2 dred eighty-three, when a complaint for worthless check war-
3 rant is received by a magistrate court, the person receiving the
4 complaint shall consult the current list of worthless check war-
5 rants for the county and any current lists of other counties in
6 his possession to determine whether the defendant named in the
7 complaint for warrant is also named on the list or lists as a
8 person who has had worthless check warrants issued against
9 him during the period covered by the lists. If the list or lists
10 consulted indicate that the person named in the complaint has
11 had not more than one worthless check warrant issued against
12 him within the time period covered by the lists, the person
13 receiving the complaint for warrant shall proceed to have a
14 warrant issued or a notice served, as may be appropriate, in
15 accordance with the provisions of section thirty-nine-g of this
16 article. If the list or lists consulted indicate that the person
17 named in the complaint has had two or more worthless check
18 warrants issued against him within the time period covered by
19 the lists, the person receiving the complaint for warrant shall
20 not cause a warrant to be issued, but shall instead forthwith
21 prepare a "Notice of Multiple Worthless Check Warrants,"
22 which shall be in a form substantially as follows:

23 "NOTICE OF MULTIPLE WORTHLESS
24 CHECK WARRANTS

25 THIS NOTICE IS TO BE ISSUED ONLY WHEN AN INDI-
26 VIDUAL HAS HAD TWO OR MORE WORTHLESS
27 CHECK WARRANTS ISSUED IN THE PRECEDING
28 TWELVE MONTHS

29 To: Prosecuting Attorney ofCounty

30 From: Magistrate Court of County

31 This is to notify you that

32 who resides at -----
33 has issued worthless checks during the preceding twelve months
34 for which warrants have been issued.

35 In accordance with the provisions of section thirty-nine-i,
36 article three, chapter sixty-one of the code of West Virginia
37 you have ten days to advise this court on how to proceed in
38 this matter.”

39 A list of the worthless check warrants shall be attached to
40 said notice, along with information concerning the check which
41 is the subject of the pending complaint for worthless check
42 warrant. Warrant numbers, check numbers, dates of checks,
43 amounts of checks, payees, and drawee financial institutions
44 for the checks listed shall be set forth.

45 Immediately upon preparation of the said notice, a copy
46 thereof shall be forwarded to the prosecuting attorney of each
47 county upon whose list of worthless check warrants the de-
48 fendant’s name appears.

**§61-3-39k. Duties of prosecuting attorney upon receipt of notice of
multiple worthless check warrants; magistrate court
clerk to advise complainant.**

1 (a) Within ten days after receiving a notice of multiple
2 worthless check warrants forwarded in accordance with the
3 provisions of the preceding section, a prosecuting attorney
4 shall review the information contained therein, may consult
5 additional current lists of worthless check warrants and make
6 other investigation, and shall make a written recommendation
7 to the magistrate court which forwarded the notice:

8 (1) That a warrant should be issued or a notice should
9 be forwarded, as may be appropriate, in accordance with the
10 provisions of section thirty-nine-g of this article, or

11 (2) That a warrant should be issued for an offense de-
12 fined under section twenty-four of this article, or

13 (3) That no action should be taken by the magistrate
14 court pending a presentation to the appropriate grand jury of
15 a bill seeking an indictment for an offense defined under section
16 twenty-four of this article.

17 (b) Upon receipt of the recommendation of the prosecuting
18 attorney, the magistrate court clerk of the magistrate court
19 holding the pending complaint for worthless check warrant
20 shall forward a copy of the prosecuting attorney's recom-
21 mendation to the complainant, shall inform the complainant
22 that the prosecuting attorney's recommendation is advisory
23 only, and shall request the complainant to advise the court in
24 what manner he desires to proceed.

**§61-3-391. Checks on consumer deposit accounts to show date ac-
count was opened; consumer deposit account defined.**

1 (a) Beginning on the first day of July, one thousand nine
2 hundred eighty-three, all checks, drafts, or similar negotiable
3 or nonnegotiable instruments or orders of withdrawal which are
4 thereafter printed to be used for drawing against funds held
5 in a consumer deposit account by a supervised financial or-
6 ganization located in the state of West Virginia shall have
7 clearly printed on the face thereof the words "Account
8 opened" and a six-digit combination of numbers and letters as
9 follows:

10 (1) In the case of a consumer deposit account which
11 has been open for less than one year, the first two digits,
12 running from 01 through 12, shall numerically identify the
13 month the account was opened, the third and fourth digits,
14 running from 01 through 31, shall identify the day of the
15 month the account was opened, and the fifth and sixth digits
16 shall be the last two numbers of the year in which the account
17 was opened.

18 (2) In the case of a consumer deposit account which has
19 been open for one year or more, the six digits shall be
20 "OneYr+": *Provided*, That a new account or an account
21 which has been open for less than one year may be treated
22 as an account which has been open for one year or more
23 when a person authorized to draw against funds in the account
24 shall demonstrate to the supervised financial organization
25 through the production of account statements that he has
26 had a demand or other similar deposit account or share
27 account at the same or another financial institution for twelve
28 months immediately preceding his request for printed checks.

29 (b) For purposes of this section the term “consumer
30 deposit account” means a demand or other similar deposit
31 account or share account established and maintained by a
32 natural person with a supervised financial organization and
33 operated primarily for personal, family or household purposes.
34 The term “supervised financial organization” shall have the
35 same meaning as is ascribed to such term in section one
36 hundred two, article one, chapter forty-six-a of this code.

37 (c) The commissioner of banking is authorized and em-
38 powered to order any supervised financial institution to comply
39 with the provisions of this section and may apply to any state
40 or federal court of competent jurisdiction for appropriate
41 orders, writs, processes and remedies in aid of enforcement.

CHAPTER 56

(H. B. 1781—By Mr. Shiflet and Mr. Harman)

[Passed March 4, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections forty-eight and forty-eight-a, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requiring written permission from owner before damaging or carrying away trees, shrubbery or flowers from land of another; requiring display of the written permission at the request of a law-enforcement officer; providing criminal penalties; and providing civil damages in an amount triple the value of the trees, shrubs, flowers, etc., damaged or carried away.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-48. Damaging or carrying away, without written permission, shrubbery, flowers, etc., growing within one hundred yards of public roads or trees growing on lands of another; limitation of section; penalty.

§61-3-48a. Cutting, damaging or carrying away without written permission, timber, trees, growing plants or the products thereof; treble damages provided.

§61-3-48. Damaging or carrying away, without written permission, shrubbery, flowers, etc., growing within one hundred yards of public road or trees growing on lands of another; limitation of section; penalty.

1 (a) It is unlawful to break, cut, take or carry away, or
2 in any manner to damage any of the shrubbery or flowers,
3 including everything under the title of flora, whether wild or
4 cultivated, growing within one hundred yards on either side of
5 any public road in this state, without the permission in writing
6 of the owner or tenant, of the land upon which the shrubbery
7 or flowers, including everything under the title of flora, are
8 growing.

9 (b) It is unlawful for any person to enter upon the lands
10 or premises of another without written permission of the
11 owner of the lands or premises, in order to break, cut,
12 take or carry away or in any manner to damage or cause to be
13 broken, cut, taken or carried away or in any manner damaged,
14 any trees or timber on the land.

15 (c) It is unlawful for any person willfully or knowingly to
16 have in his possession, or to haul along any public road in
17 this state, any trees, shrubbery or flowers, including every-
18 thing under the title of flora, which are protected by this
19 section, unless the person so having in his possession or hauling
20 the trees, shrubbery or flowers, and any other plant, has per-
21 mission in writing so to do from the owner or tenant of the
22 land from which they have been taken.

23 (d) At the request of a law-enforcement officer, a person
24 on the lands or premises of another engaged in any act speci-
25 fied in subsections (a), (b) and (c) of this section shall display
26 the written permission of the owner.

27 (e) Notwithstanding the provisions of this section, the fol-
28 lowing shall obtain the permission of an owner before en-
29 gaging in any act specified in subsection (a) or (b) of this
30 section, but are not required to obtain the permission in
31 writing or to display the written permission as provided in
32 subsection (d) of this section:

33 (A) An employee of a public utility as defined in section
34 two, article one, chapter twenty-four of this code, which ob-
35 tained such permission when acquiring a right-of-way upon
36 such premises; or

37 (B) An employee of the department of highways or of a
38 county or municipality performing roadside maintenance.

39 (f) Any person who violates the provisions of subsection
40 (a) or (c) of this section shall be guilty of a misdemeanor,
41 and, upon conviction thereof, for the first offense shall be fined
42 not more than fifty dollars, and for subsequent offenses shall
43 be confined in the county jail for not more than three months,
44 or fined not more than fifty dollars, or both, for each offense.
45 Magistrates shall have concurrent jurisdiction with circuit
46 courts for offenses under this section.

47 (g) Any person who violates the provision of subsection
48 (b) of this section shall be guilty of a misdemeanor, and,
49 upon conviction thereof, for the first offense shall be fined
50 not less than fifty dollars, and for subsequent offenses shall
51 be confined in the county jail for not less than three months
52 or fined not less than fifty dollars or both for each offense.

§61-3-48a. Cutting, damaging or carrying away without written permission, timber, trees, growing plants or the products thereof; treble damages provided.

1 Any person who enters upon the land or premises of an-
2 other without written permission from the owner of the
3 land or premises in order to cut, damage or carry away or
4 cause to be cut, damaged or carried away, any timber, trees,
5 logs, posts, fruit, nuts, growing plant or product of any grow-
6 ing plant, shall be liable to the owner in the amount of three
7 times the value of the timber, trees, growing plants or products
8 thereof, which shall be in addition to and notwithstanding
9 any other penalties by law provided.

CHAPTER 57

(H. B. 1905—By Mr. Wooton)

[Passed March 12, 1983; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections six, nine, ten, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen and twenty-five, article two-a, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to crime victims reparations generally; providing for the appointment and compensation of commissioners and judges to hear claims for reparation; and eliminating the requirement that the court of claims appoint at least three such commissioners; establishing the position of reparations investigator and transferring to such officer the duties heretofore carried out by the attorney general; authorizing the court of claims to fix the compensation of the reparations investigator; providing that such compensation and other expenses shall be payable by appropriation by the Legislature; providing for the filing of applications for reparation awards; setting forth the required contents of applications; requiring a filing fee for such applications; establishing procedures for the investigation of reparation claims and subsequent recommendations to be made by the reparations investigator; providing for the discontinuance of an investigation where such investigation may interfere with or jeopardize a law-enforcement investigation; providing for notice of the reparations investigator's recommendation and the evaluation of the claim by a judge of the court of claims or a commissioner thereof; describing the grounds for denial or reduction of an award and providing for a hearing before a judge or commissioner in the event of disagreement with the approval of an award or the denial of the claim; prescribing evidentiary rules to be applicable at hearings and describing procedures for the gathering of certain evidence; denying the contempt sanction to the court of claims in reparations cases; describing the effect of the prosecution or conviction of an offender upon a claim for reparation; and setting forth measures to be taken by the clerk of the court of claims and law-enforcement agencies to publicize the rights of claimants under the provisions governing crime victims reparations.

Be it enacted by the Legislature of West Virginia:

That sections six, nine, ten, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen and twenty-five, article two-a, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2A. CLAIMS DUE AND AGAINST THE STATE.

- §14-2A-6. Appointment and compensation of commissioners and judges serving under this article.
- §14-2A-9. Position of reparations investigator established; transfer of duties from attorney general; compensation and expenses.
- §14-2A-10. Filing of application for reparation award; filing fee; contents.
- §14-2A-12. Investigation and recommendations by reparations investigator.
- §14-2A-13. Notice to claimant of reparations investigator's recommendation; evaluation of claim by judge or commissioner.
- §14-2A-14. Grounds for denial of claim or reduction of award.
- §14-2A-15. Hearings.
- §14-2A-16. Evidence.
- §14-2A-17. Contempt sanction not available.
- §14-2A-18. Effect of prosecution or conviction of offender.
- §14-2A-25. Publicity.

§14-2A-6. Appointment and compensation of commissioners and judges serving under this article.

1 (a) The court of claims, with the approval of the president
2 of the Senate and the speaker of the House of Delegates, may
3 appoint court of claims commissioners to hear claims for
4 awards of reparations and to approve awards of reparations
5 pursuant to the provisions of this article. Each commissioner
6 shall serve at the pleasure of the court of claims and under
7 the administrative supervision of the clerk of the court of
8 claims.

9 (b) The court of claims shall fix the compensation of the
10 court of claims commissioners in an amount not exceeding the
11 compensation for judges of the court of claims. Compensation
12 of judges and commissioners for services performed under this
13 article, and actual expenses incurred in the performance of
14 duties as judges and commissioners under this article shall be
15 paid out of the crime victims reparation fund.

16 (c) The limitation period of one hundred days in section
17 eight, article two of this chapter pertaining to time served by

18 the judges of the court of claims shall not apply to the pro-
19 visions of this article.

§14-2A-9. Position of reparations investigator established; transfer of duties from attorney general; compensation and expenses.

1 There is hereby established within the office of the clerk of
2 the court of claims the position of reparations investigator,
3 who shall carry out the functions and duties set forth in sec-
4 tion twelve of this article. The duties of the attorney general
5 under the prior enactment of section twelve of this article are
6 hereby transferred to the reparations investigator. The repara-
7 tions investigator shall serve at the pleasure of the court of
8 claims and under the administrative supervision of the clerk
9 of the court of claims. The compensation of the reparations
10 investigator shall be fixed by the court, and such compensation,
11 together with travel, clerical and other expenses of the clerk of
12 the court of claims relating to the reparations investigator car-
13 rying out his duties under this article, shall be payable from
14 the crime victims reparation fund as appropriated for such
15 purpose by the legislature.

§14-2A-10. Filing of application for reparation award; filing fee; contents.

1 (a) A claim for an award of reparations shall be commenced
2 by filing an application for an award of reparations with the
3 clerk of the court of claims. Each application shall be accom-
4 panied by a filing fee of ten dollars unless waived pursuant to
5 subsection (b), section eleven of this article. The application
6 shall be in a form prescribed by the clerk of the court of
7 claims, and shall contain the following information:

8 (1) The name and address of the victim of the criminally
9 injurious conduct, the name and address of the claimant, and
10 the relationship of the claimant to the victim;

11 (2) If the victim is deceased, the name and address of each
12 dependent of the victim and the extent to which each is de-
13 pendent upon the victim for care and support;

14 (3) The nature of the criminally injurious conduct that is

15 the basis for the claim and the date on which the conduct oc-
16 curred;

17 (4) The law-enforcement agency or officer to whom the
18 criminally injurious conduct was reported and the date on
19 which it was reported;

20 (5) The nature and extent of the injuries that the victim
21 sustained from the criminally injurious conduct for which
22 reparations are sought, the name and address of any person
23 who gave medical treatment to the victim for the injuries, the
24 name and address of any hospital or similar institution where
25 the victim received medical treatment for the injuries, and
26 whether the victim died as a result of the injuries;

27 (6) The total amount of the economic loss that the victim,
28 a dependent or the claimant sustained as a result of the crimi-
29 nally injurious conduct, without regard to the financial limita-
30 tion set forth in subsection (g), section fourteen of this article.

31 (7) The amount of benefits or advantages that the victim,
32 a dependent or other claimant has received or is entitled to
33 receive from any collateral source for economic loss that re-
34 sulted from the criminally injurious conduct, and the name of
35 each collateral source;

36 (8) Whether the claimant is the spouse, parent, child, broth-
37 er or sister of the offender, or is similarly related to an accom-
38 plice of the offender who committed the criminally injurious
39 conduct;

40 (9) A release authorizing the court of claims, the court of
41 claims commissioners and the reparations investigator to ob-
42 tain any report, document or information that relates to the
43 determination of the claim for an award of reparations;

44 (10) Any additional relevant information that the court of
45 claims may require. The court of claims may require the claim-
46 ant to submit, with the application, materials to substantiate
47 the facts that are stated in the application.

48 (b) All applications for an award of reparations shall be
49 filed within two years after the occurrence of the criminally
50 injurious conduct that is the basis of the application.

51 (c) A person who knowingly and willfully presents or at-
52 tempts to present a false or fraudulent application, or a state
53 officer or employee who knowingly and willfully participates
54 or assists in the preparation or presentation of a false or fraud-
55 ulent application, shall be guilty of a misdemeanor. A person
56 convicted, in a court of competent jurisdiction, of violation
57 of this section shall be fined not more than one thousand dol-
58 lars or imprisoned for not more than one year, or both, in the
59 discretion of such court. If the convicted person is a state of-
60 ficer or employee, he shall, in addition, forfeit his office or
61 position of employment, as the case may be.

**§14-2A-12. Investigation and recommendations by reparations in-
vestigator.**

1 (a) The clerk of the court of claims shall transmit a copy
2 of the application to the reparations investigator within seven
3 days after the filing of the application.

4 (b) The reparations investigator, upon receipt of an appli-
5 cation for an award of reparations from the clerk of the court
6 of claims, shall investigate the claim. After completing the in-
7 vestigation, the reparations investigator shall make a written
8 finding of fact and recommendation concerning an award of
9 reparations. He shall file with the clerk the finding of fact
10 and recommendation and all information or documents that he
11 used in his investigation.

12 (c) The reparations investigator while investigating the
13 claim, may require the claimant to supplement the application
14 for an award of reparations with any further information or
15 documentary materials, including any medical report readily
16 available, which may lead to any relevant facts aiding in the
17 determination of whether, and the extent to which, a claimant
18 qualifies for an award of reparations. The reparations investi-
19 gator may depose any witness, including the claimant, in
20 the same manner as witnesses are deposed under the rules of
21 civil procedure for trial courts of record.

22 In any case wherein the reparations investigator has reason
23 to believe that his investigation may interfere with or jeopardize
24 an investigation of a crime by law-enforcement officers, he

25 may apply to the court of claims or a judge or commissioner
26 thereof for an order granting leave to discontinue his investi-
27 gation for a reasonable time in order to avoid such interference
28 or jeopardization.

29 (d) The finding of fact that is issued by the reparations in-
30 vestigator pursuant to subsection (b) of this section shall
31 contain the following:

32 (1) Whether the criminally injurious conduct that is the
33 basis for the application did occur, the date on which the
34 conduct occurred, and the exact nature of the conduct;

35 (2) If the criminally injurious conduct was reported to a
36 law-enforcement officer or agency, the date on which the
37 conduct was reported and the name of the person who reported
38 the conduct; or, the reasons why the conduct was not reported
39 to a law-enforcement officer or agency; or, the reasons why
40 the conduct was not reported to a law-enforcement officer or
41 agency within seventy-two hours after the conduct occurred;

42 (3) The exact nature of the injuries that the victim sustained
43 as a result of the criminally injurious conduct;

44 (4) A specific itemization of the economic loss that was
45 sustained by the victim, the claimant or a dependent as a
46 result of the criminally injurious conduct;

47 (5) A specific itemization of any benefits or advantages that
48 the victim, the claimant or a dependent has received or is
49 entitled to receive from any collateral source for economic
50 loss that resulted from the conduct;

51 (6) Whether the claimant is the spouse, parent, child, broth-
52 er or sister of the offender, or is similarly related to an ac-
53 complice of the offender who committed the criminally in-
54 jurious conduct;

55 (7) Any additional information that the reparations investi-
56 gator deems to be relevant to the evaluation of the claim.

57 (e) The recommendation that is issued by the reparations
58 investigator pursuant to subsection (b) of this section shall
59 contain the following:

60 (1) Whether an award of reparations should be made to
61 the claimant and the amount of the award.

62 (2) If the reparations investigator recommends that an award
63 not be made to the claimant, the reason for his decision.

64 (f) The reparations investigator shall file his finding of fact
65 and recommendation with the clerk within sixty days after the
66 filing of the application, or within such additional time period
67 as may be provided by order of any court of claims judge or
68 commissioner upon good cause shown, but in no event later
69 than six months after such filing.

§14-2A-13. Notice to claimant of reparations investigator's recommendation; evaluation of claim by judge or commissioner.

1 (a) The clerk of the court of claims, upon receipt of
2 the reparations investigator's finding of fact and recommenda-
3 tion, shall forward a copy of the finding of fact and recom-
4 mendation to the claimant with a notice informing the claimant
5 that any response, in the form of objections or comments
6 directed to the finding of fact and recommendation, must
7 be filed with the clerk within thirty days of the date of
8 the notice. After the expiration of such thirty-day period,
9 the clerk shall assign the claim to a judge or commissioner of
10 the court.

11 (b) The judge or commissioner to whom the claim is
12 assigned shall review the finding of fact and recommendation
13 and any response submitted by the claimant and, if deemed
14 appropriate, may request the reparations investigator to com-
15 ment in writing on the claimant's response. The judge or com-
16 missioner shall, within forty-five days after assignment by the
17 clerk, evaluate the claim without a hearing and either deny the
18 claim or approve an award of reparations to the claimant.

§14-2A-14. Grounds for denial of claim or reduction of award.

1 (a) The judge or commissioner shall not approve an award
2 of reparations to a claimant who did not file his application
3 for an award of reparations within two years after the date of
4 the occurrence of the criminally injurious conduct that caused

5 the injury or death for which he is seeking an award of repara-
6 tions.

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

13 (c) The judge or commissioner shall not approve an award
14 of reparations to a claimant who is the offender or an accom-
15 plice of the offender who committed the criminally injurious
16 conduct, nor to any claimant if the award would unjustly bene-
17 fit the offender or his accomplice. Unless a determination is
18 made that the interests of justice require that an award be ap-
19 proved in a particular case, an award of reparations shall not
20 be made to the spouse of, or to a person living in the same
21 household with, the offender or accomplice of the offender,
22 or to the parent, child, brother or sister of the offender or his
23 accomplice.

24 (d) A judge or commissioner, upon a finding that the
25 claimant or victim has not fully cooperated with appropriate
26 law-enforcement agencies, may deny a claim, reduce an award
27 of reparations, and may reconsider a claim already approved.

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

31 (f) After reaching a decision to approve an award of repara-
32 tion, but prior to announcing such approval, the judge or
33 commissioner shall require the claimant to submit current in-
34 formation as to collateral sources on forms prescribed by the
35 clerk of the court of claims. The judge or commissioner shall
36 reduce an award of reparations or deny a claim for an award
37 of reparations that is otherwise payable to a claimant to the
38 extent that the economic loss upon which the claim is based is
39 or will be recouped from other persons, including collateral
40 sources, or if such reduction or denial is determined to be
41 reasonable because of the contributory misconduct of the claim-

42 ant or of a victim through whom he claims. If an award is re-
43 duced or a claim is denied because of the expected recoup-
44 ment of all or part of the economic loss of the claimant from a
45 collateral source, the amount of the award or the denial of the
46 claim shall be conditioned upon the claimant's economic loss
47 being recouped by the collateral source: *Provided*, That if it
48 is thereafter determined that the claimant will not receive all
49 or part of the expected recoupment, the claim shall be reopen-
50 ed and an award shall be approved in an amount equal to the
51 amount of expected recoupment that it is determined the
52 claimant will not receive from the collateral source, subject
53 to the limitation set forth in subsection (g) of this section.

54 (g) Reparations payable to a victim and to all other claim-
55 ants sustaining economic loss because of injury to or the
56 death of that victim shall not exceed twenty thousand dollars
57 in the aggregate.

§14-2A-15. Hearings.

1 (a) If either the reparations investigator or the claimant
2 disagrees with the approval of an award or the denial of a
3 claim in the summary manner set forth in the preceding
4 sections of this article, the reparations investigator or the
5 claimant, or both, shall file with the clerk a request for hearing.
6 Such request shall be filed within twenty-one days after noti-
7 fication by the judge or commissioner of his decision.

8 (b) Upon receipt of a request for hearing, the clerk shall
9 place the claim upon the regular docket of the court for hear-
10 ing, shall advise the reparations investigator and the claimant
11 of the receipt of the request and docketing of the claim, and
12 shall request the reparations investigator to commence negotia-
13 tions with the claimant.

14 (c) During the period of negotiations and pending hearing,
15 the reparations investigator, shall, if possible, reach an agree-
16 ment with the claimant regarding the facts upon which the
17 claim is based so as to avoid the necessity for the introduc-
18 tion of evidence at the hearing. If the parties are unable to
19 agree upon the facts an attempt shall be made to stipulate the
20 questions of fact in issue.

21 (d) The hearing held in accordance with this section shall
22 be before a single judge or commissioner to whom the claim
23 has not been previously assigned. Hearings before a judge or
24 commissioner may, in the discretion of such hearing officer, be
25 held at such locations throughout the state as will facilitate
26 the appearance of the claimant and witnesses.

27 (e) The hearing shall be conducted so as to disclose all
28 material facts and issues. Judges and commissioners may
29 examine or cross-examine witnesses. The judges and com-
30 missioners may call witnesses or require evidence not produced
31 by the parties; may stipulate the questions to be argued by the
32 parties; and may continue the hearing until some subsequent
33 time to permit a more complete presentation of the claim.

34 (f) After the close of the hearing the court, judge or com-
35 missioner, as the case may be, shall consider the claim and
36 shall conclude its determination, if possible, within thirty days.

37 (g) The court shall adopt and may from time to time amend
38 rules of procedure, in accordance with the provisions of this
39 article, governing proceedings before the court. Rules shall be
40 designed to assure a simple, expeditious and inexpensive con-
41 sideration of claims. Rules shall permit a claimant to appear in
42 his own behalf or be represented by counsel.

43 Under its rules, the court shall not be bound by the usual
44 common law or statutory rules of evidence. The court may ac-
45 cept and weigh, in accordance with its evidential value, any
46 information that will assist the court in determining the factual
47 basis of a claim.

§14-2A-16. Evidence.

1 (a) There is no privilege, except the privilege arising
2 from the attorney-client relationship, as to communications
3 or records that are relevant to the physical, mental or
4 emotional condition of the claimant or victim in a proceeding
5 under this article in which that condition is an element.

6 (b) If the mental, physical or emotional condition of a
7 victim or claimant is material to a claim for an award of repa-
8 rations, the court, judge or commissioner may order the victim
9 or claimant to submit to a mental or physical examination by

10 a physician or psychologist, and may order an autopsy of a
11 deceased victim. The order may be made for good cause shown
12 and upon notice to the person to be examined and to the claim-
13 ant and the reparations investigator. The order shall specify
14 the time, place, manner, conditions and scope of the examina-
15 tion or autopsy and the person by whom it is to be made, and
16 shall require the person who performs the examination or au-
17 topy to file with the clerk of the court of claims a detailed
18 written report of the examination or autopsy. The report shall
19 set out the findings, including the results of all tests made,
20 diagnosis, prognosis, and other conclusions and reports of
21 earlier examinations of the same conditions. On request of
22 the person examined, the clerk of the court of claims shall fur-
23 nish him a copy of the report. If the victim is deceased, the
24 clerk of the court of claims, on request, shall furnish the claim-
25 ant a copy of the report.

26 (c) The court, or a judge or commissioner thereof, may
27 order law-enforcement officers employed by the state or any
28 political subdivision thereof to provide it or the reparations
29 investigator with copies of any information or data gathered in
30 the investigation of the criminally injurious conduct that is
31 the basis of any claim to enable it to determine whether, and
32 the extent to which, a claimant qualifies for an award of
33 reparations.

34 (d) The court, or a judge or commissioner thereof, may re-
35 quire the claimant to supplement the application for an award
36 of reparations with any reasonably available medical or psy-
37 chological reports relating to the injury for which the award
38 of reparations is claimed.

39 (e) The court, a judge, a commissioner or the reparations
40 investigator, in a claim arising out of a violation of article
41 eight-b, chapter sixty-one of this code, shall not request the
42 victim or the claimant to supply any evidence of specific in-
43 stances of the victim's activity, or reputation evidence of the
44 victim's sexual activity unless it involves evidence of the vic-
45 tim's past sexual activity with the offender and then only to
46 the extent that the court, the commissioner or the reparations
47 investigator finds that the evidence is relevant to a fact at
48 issue in the claim.

49 (f) Notwithstanding any provision of this code to the con-
50 trary relating to the confidentiality of juvenile records, the
51 court of claims, a judge or commissioner thereof or the repa-
52 rations investigator shall have access to the records of juvenile
53 proceedings which bear upon an application for reparations
54 under this article. The court of claims, the judges and commis-
55 sioners thereof and the reparations investigator, shall, to the
56 extent possible, maintain the confidentiality of juvenile records.

§14-2A-17. Contempt sanction not available.

1 If a person refuses to comply with an order under this
2 article, or asserts a privilege, except privileges arising from
3 the attorney-client relationship, so as to withhold or suppress
4 evidence relevant to a claim for an award of reparations, the
5 court, judge or commissioner may make any just order, in-
6 cluding denial of the claim, but shall not find the person in
7 contempt. If necessary to carry out any of his powers and
8 duties, the reparations investigator may petition the court of
9 claims for an appropriate order, but the court of claims shall
10 not find a person in contempt for refusal to submit to a mental
11 or physical examination.

§14-2A-18. Effect of prosecution or conviction of offender.

1 The court, or a judge or commissioner thereof, may approve
2 an award of reparations whether or not any person is prose-
3 cuted or convicted for committing the conduct that is the basis
4 of the award. Proof of conviction of a person whose conduct
5 gave rise to a claim is conclusive evidence that the crime was
6 committed, unless an application for rehearing, an appeal of the
7 conviction, or certiorari is pending, or a rehearing or new
8 trial has been ordered.

9 The court, or a judge or commissioner thereof, shall sus-
10 pend, upon a request of the reparations investigator, the pro-
11 ceedings in any claim for an award of reparations pending
12 disposition of a criminal prosecution that has been commenced
13 or is imminent.

§14-2A-25. Publicity.

1 (a) The clerk of the court of claims shall prepare an infor-
2 mation brochure for the benefit of the general public, outlining

3 the rights of claimants and procedures to be followed under
4 this article. Copies of such brochure shall be distributed to
5 law-enforcement agencies in the state, and be made available
6 to other interested persons.

7 (b) Any law-enforcement agency that investigates an offense
8 committed in this state involving personal injury, shall make
9 reasonable efforts to provide information to the victim of the
10 offense and his dependents concerning the availability of an
11 award of reparations and advise such persons that an appli-
12 cation for an award of reparations may be obtained from the
13 clerk of the court of claims.

CHAPTER 58

(Com. Sub. for S. B. 586—By Mr. Boettner)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article one-c, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to right to bail; providing that bail may not be granted for certain offenses; and judicial review.

Be it enacted by the Legislature of West Virginia:

That section one, article one-c, 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 1C. BAIL.

§62-1C-1. Right to bail; exceptions; review.

1 (a) A person arrested for an offense not punishable by
2 life imprisonment shall be admitted to bail by the court or
3 magistrate. A person arrested for an offense punishable by
4 life imprisonment may, in the discretion of the court that
5 will have jurisdiction to try the offense, be admitted to
6 bail.

7 (b) Bail may be allowed pending appeal from a convic-
8 tion, except that bail shall not be granted where the of-
9 fense is punishable by life imprisonment or where the
10 court has determined from the evidence at the trial or up-
11 on a plea of guilty or nolo contendere that the offense was
12 committed or attempted to be committed with the use,
13 presentment or brandishing of a firearm or other deadly
14 weapon, or by the use of violence to a person: *Provided*,
15 That the denial of bail under one of these exceptions may
16 be reviewed by summary petition to the supreme court
17 of appeals or any justice thereof, and the petition for bail
18 may be granted where there is a likelihood that the de-
19 fendant will prevail upon the appeal. The court or judge
20 allowing bail pending appeal may at any time revoke the
21 order admitting the defendant to bail.

22 (c) The amount of bail or the discretionary denial of
23 bail at any stage of the proceedings may be reviewed by
24 summary petition first to the lower appellate court, if
25 any, and thereafter by summary petition to the supreme
26 court of appeals or any judge thereof.

CHAPTER 59

(Com. Sub. for H. B. 1114—By Mr. Steptoe)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article twelve, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to probation and parole; authorizing courts to impose a period of confinement in the county jail as a condition of probation; and authorizing periods of release for such purposes as the court may direct.

Be it enacted by the Legislature of West Virginia:

That section nine, 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.**§62-12-9. Conditions of release on probation.**

1 Release on probation shall be upon the following condi-
2 tions:

3 (1) That the probationer shall not, during the term of
4 his probation, violate any criminal law of this or any other
5 state, or of the United States.

6 (2) That he shall not, during the term of his probation,
7 leave the state without the consent of the court which
8 placed him on probation.

9 (3) That he shall comply with the rules and regulations
10 prescribed by the court or by the board of probation and
11 parole, as the case may be, for his supervision by the proba-
12 tion officer.

13 In addition, the court may impose, subject to modification
14 at any time, any other conditions which it may deem ad-
15 visable, including, but not limited to, any of the following:

16 (1) That he shall make restitution or reparation, in whole
17 or in part, immediately or within the period of probation, to
18 any party injured by the crime for which he has been con-
19 victed.

20 (2) That he shall pay any fine assessed and the costs of
21 the proceeding in such installments as the court may direct.

22 (3) That he shall make contribution from his earnings,
23 in such sums as the court may direct, for the support of his
24 dependents.

25 (4) That he shall, in the discretion of the court, be
26 required to serve a period of confinement in the county jail
27 of the county in which he was convicted for a period not to
28 exceed one third of the minimum sentence established by law
29 or one third of the least possible period of confinement in
30 an indeterminate sentence, but in no case shall such period of
31 confinement exceed six consecutive months. The court shall
32 have authority to sentence the defendant within such six-
33 months period to intermittent periods of confinement in-
34 cluding, but not limited to, weekends or holidays and may

35 grant unto the defendant intermittent periods of release in
36 order that he may work at his employment or for such other
37 reasons or purposes as the court may deem appropriate:
38 *Provided*, That the provisions of article eleven-a of this chap-
39 ter shall not apply to such intermittent periods of confinement
40 and release except to the extent that the court may direct. If
41 a period of confinement is required as a condition of proba-
42 tion, the court shall make special findings that other con-
43 ditions of probation are inadequate and that a period of con-
44 finement is necessary. The clerk of each circuit court shall
45 report by the fifteenth day of January each year to the
46 administrator of the supreme court of appeals of West Vir-
47 ginia, the number of cases in which a period of confinement
48 was made a condition of probation and the period of con-
49 finement ordered in each such case during the preceding
50 calendar year. Before the thirtieth day of the regular session
51 of the Legislature each year, the administrator shall collate
52 the reports submitted by the circuit clerks and file such
53 collation with the clerk of each house of the Legislature.

CHAPTER 60

(Com. Sub. for S. B. 300—By Mrs. Chace)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact articles seven and eight, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section one, article two, chapter fifty of said code, all relating to civil procedures for determining the duty and amount of support of a child or spouse; venue; establishing duty of support; setting forth *pari materia* construction; establishing civil action for support; providing for forms; establishing civil action for the establishment of paternity; when blood tests required; admissibility of blood tests; costs; modification of support order; setting forth procedures for enforcement of support orders in magistrate or circuit court; forms to be supplied; penalties; appeals

from orders of enforcement; when earnings may be assigned to the department of welfare; procedure for assignment; requiring department to promulgate rules and regulations; when state income tax setoff allowed department of welfare; procedures for income tax setoff; providing for confidentiality; establishing criminal penalties for violation thereof; and increasing the jurisdiction of magistrate courts.

Be it enacted by the Legislature of West Virginia:

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

Chapter

48. Domestic Relations.

50. Magistrate Courts.

CHAPTER 48. DOMESTIC RELATIONS.

Article

7. Intrastate Support Act.

8. Enforcement of Support Obligations.

ARTICLE 7. INTRASTATE SUPPORT ACT.

§48-7-1. Duty of support.

§48-7-2. *Pari materia* construction.

§48-7-3. Civil action for support of obligee.

§48-7-4. Civil action for establishment of paternity; when blood tests required; admissability of tests; costs.

§48-7-5. Modification of support order.

§48-7-1. Duty of support.

1 (a) Every parent in this state shall continue to have the
2 duty to support his infant or unemancipated child whether
3 such child is a resident of this state or elsewhere, and every
4 infant and unemancipated child shall be entitled to the
5 support of his parent, to the same extent and in the same
6 manner as heretofore provided by law.

7 (b) Every married person shall continue to be entitled to
8 the support of his spouse, and be obligated to support his
9 spouse, to the same extent and in the same manner as
10 heretofore provided by law.

11 (c) Other duties of support of a parent to a child or of a
12 child to a parent shall not be altered or abrogated by the
13 enactment of this article and may be enforced under its
14 provisions when and only when the court shall specifically
15 find sufficient circumstances under otherwise applicable
16 law to require the enforcement thereof.

§48-7-2. Pari materia construction.

1 This article shall be construed in pari materia and applied
2 whenever possible to aid in the enforcement of the
3 provisions of article two of this chapter relating to pendente
4 lite decrees in divorce or separate maintenance, final
5 decrees and modification of any such decrees, and the
6 provisions of article nine of this chapter, relating to
7 reciprocal proceedings in other states: *Provided*, That the
8 remedies established by this article shall be cumulative to
9 and not in lieu of other remedies provided by law, except as
10 otherwise expressly set forth in this article.

§48-7-3. Civil action for support of oblige.

1 (a) Whenever any person is owed a duty of support from
2 a spouse, such person or any public agency assigned the
3 right to support, shall have a right to institute action for
4 support in the circuit court or magistrate court before a
5 magistrate designated by the judge of the circuit court, or
6 chief judge thereof, of the county wherein the plaintiff
7 resides, the defendant resides, or, if the plaintiff and
8 defendant are married, in which the divorce action between
9 them could be brought. Whenever any infant or
10 unemancipated child is owed a duty of support from any
11 person, the parent or other person having legal custody, the
12 legal guardian, the committee of the child, the child by his
13 next friend, or any public agency assigned the right to
14 support, shall have a right to institute a civil action for
15 support in the circuit court or magistrate court before a
16 magistrate designated by the judge of the circuit court, or
17 chief judge thereof, of the county wherein the named child
18 resides, in which the defendant resides, in which the
19 defendant last lived with a named child or, if the plaintiff
20 and defendant are married, in which a divorce action
21 between them could be brought: *Provided*, That this
22 subsection shall not limit the right of the department of
23 welfare to pursue funds as set out in section four, article

24 three, chapter nine of this code, and Title IV of the Federal
25 Social Security Act of one thousand nine hundred sixty-
26 five, as amended.

27 (b) An action for support shall be commenced by the
28 filing of a verified complaint wherein the names of the
29 parties and the basis of the alleged duty of support shall be
30 specifically set forth. Such complaint shall be served on the
31 defendant in the manner prescribed by law for the service of
32 original process in a civil action.

33 (c) If the defendant, by verified responsive pleading,
34 shall admit, or if he has previously admitted in writing that
35 he owes a duty of support, or if after a trial on the merits, the
36 court or jury shall find, by a preponderance of the evidence,
37 that the defendant owes a duty of support, the court shall
38 order the defendant to provide support in accordance with
39 the provisions of subsection (d) of this section.

40 (d) In setting the amount of support in an order, the
41 court shall consider the income, the assets, the earning
42 ability and other obligations of the person owing the duty of
43 support, and the needs, other income and any other
44 circumstances relevant to the needs of the obligee. The
45 court shall order any support for an infant or
46 unemancipated child be paid until such child reaches the
47 age of eighteen, marries or is otherwise emancipated.

48 (e) The clerk of the supreme court of appeals shall
49 prepare complaint forms which may be utilized by any
50 eligible party desiring to file a complaint pursuant to the
51 provisions of this section. The administrator of the supreme
52 court of appeals shall distribute such forms to the clerk of
53 the circuit court in each county of this state.

**§48-7-4. Civil action for establishment of paternity; when
blood tests required; admissibility of tests; costs.**

1 (a) Any unmarried woman with custody of her child, or
2 any person who has physical or legal custody of such child,
3 the guardian or committee of such child, or such child by his
4 next friend, may institute a civil action to establish the
5 paternity of the child and to seek support of such child:
6 *Provided*, That if a married woman live separate and apart
7 from her husband for a period of one year or more, and shall
8 not at any time during such separation, cohabit with such

9 husband, she may, if she be delivered of a child at any time
10 after such one year, and while such separation continues,
11 accuse any person, other than her husband, of being the
12 father of such child, in a like manner, and the same
13 proceedings shall thereupon be had, as if she were an
14 unmarried woman. Such action shall be instituted in the
15 circuit court of the county wherein the mother, the child or
16 the defendant resides and shall be commenced within ten
17 years of the birth of the child by a verified complaint alleging
18 that the defendant is the father of the named child and
19 therefore owes a duty to support the child.

20 (b) The court may, on its own motion, or upon the
21 motion of any party, order the mother, her child and the
22 defendant to submit to blood tests. If a blood test is ordered,
23 the court shall direct that the inherited characteristics,
24 including, but not limited to, blood types, be determined by
25 appropriate testing procedures at a hospital, independent
26 medical institution or independent medical laboratory,
27 duly licensed under the laws of this state, or any other state,
28 and shall appoint an expert qualified as an examiner of
29 genetic markers to analyze and interpret the results and to
30 report to the court. The court shall consider the results as
31 follows:

32 (1) Blood test results which exclude the defendant as the
33 father of the child are admissible and shall be clear and
34 convincing evidence of nonpaternity and the court shall,
35 upon considering such evidence dismiss the action.

36 (2) Blood tests results which show a statistical
37 probability of paternity of more than seventy-five percent
38 are admissible and shall be weighed along with other
39 evidence of the defendant's paternity.

40 (3) If the results of the blood tests or the expert's
41 analysis of inherited characteristics is disputed, the court,
42 upon reasonable request of a party, shall order that an
43 additional test be made by the same laboratory or another
44 laboratory at the expense of the party requesting additional
45 testing.

46 Verified documentation of the chain of custody of the
47 blood specimens is competent evidence to establish such
48 chain of custody. A verified expert's report shall be
49 admitted at trial unless a challenge to the testing

50 procedures or a challenge to the results of blood analysis
51 has been made before trial. The costs and expenses of mak-
52 ing such tests shall be paid by the parties in proportions and
53 at times determined by the court.

54 (c) If the defendant, by verified responsive pleading
55 shall admit that he owes a duty of support, or if after a trial
56 on the merits, the court or jury shall find, by clear and
57 convincing evidence that the defendant is the father of the
58 child, the court shall order the defendant to provide support
59 in accordance with the provisions of subsection (d), section
60 three of this article.

61 The prosecutor of the county where the action under this
62 section is brought shall represent the plaintiff. The
63 defendant shall be advised of his right to counsel. In the
64 event he files an affidavit that he is a poor person within the
65 meaning of section one, article two, chapter fifty-nine of
66 this code, counsel shall be appointed to represent him. The
67 service and expenses of counsel shall be paid in accordance
68 with the provisions of article twenty-one, chapter twenty-
69 nine of this code: *Provided*, That the court shall make a
70 finding of eligibility for appointed counsel in accordance
71 with the requirements of said article and, if the person
72 qualifies, any blood tests ordered to be taken shall be paid
73 as part of the costs of the proceeding.

§48-7-5. Modification of support order.

1 Any person ordered to pay support in accordance with the
2 provisions of this article or its predecessors, any obligee of
3 such support, or any persons eligible to be a party under the
4 provisions of sections three and four of this article, may
5 apply to the circuit court or magistrate court wherein such
6 order was entered for a modification of such order. Such
7 action shall be commenced by verified petition wherein the
8 specific reasons for the modification sought shall be set
9 forth. If the court, upon hearing, finds that there has been a
10 material change in any circumstances relevant to the
11 support or amount of support, then the court shall make
12 specific findings and order a modification of the prior
13 order.

14 The clerk of the supreme court of appeals shall prepare
15 motion forms which may be utilized by any eligible party

16 desiring to file a motion pursuant to the provisions of this
17 section. The administrator of the supreme court of appeals
18 shall distribute such forms to the clerk of the circuit court
19 and magistrate court in each county of this state.

ARTICLE 8. ENFORCEMENT OF SUPPORT OBLIGATIONS.

§48-8-1. Proceedings to enforce order of support; penalties.

§48-8-2. Appeals from order of enforcement; procedure.

§48-8-3. Child support arrearage; when earnings may be assigned to the department of welfare; procedure of assignment.

§48-8-4. Child support arrearage; income tax setoff allowed department of welfare; procedure therefor; penalties.

§48-8-5. Civil judgments; enforcement; procedures.

§48-8-1. Proceedings to enforce order of support; penalties.

1 (a) If at any time a party is in arrears in the payment of
2 support ordered under the provisions of article seven of this
3 chapter, any person to whom such support is due and owing,
4 or any persons eligible to be a party under the provisions of
5 sections three and four of this article, shall be entitled to
6 seek enforcement of the order of support by filing a verified
7 petition in the magistrate court or circuit court of the
8 county wherein the original proceedings were had.

9 (b) The clerk of the supreme court of appeals shall
10 prepare complaint forms which may be utilized by any
11 eligible party desiring to file a complaint pursuant to the
12 provisions of subsection (a) of this section. The
13 administrator of the supreme court of appeals shall
14 distribute such forms to the clerks of every magistrate court
15 and circuit court in this state.

16 (c) After a hearing on the allegations raised in the
17 petition the magistrate court or circuit court shall, in order
18 to effect payment of arrearage:

19 (1) Enter judgment for such arrearage; and

20 (2) Award interest on such arrearage from the due date
21 of each unpaid installment.

22 (d) The court may, in addition to the remedies provided
23 in subsection (c) of this section:

24 (1) Require security to ensure the timely payment of
25 future installments;

26 (2) Upon finding a person in contempt for willfully
27 failing to comply with its order, and upon finding that the
28 person has the ability to purge himself but refuses so to do,
29 then the court may confine the defendant to the county jail
30 for a term not to exceed six months or until such time as the
31 defendant has purged himself, whichever shall first occur;
32 or

33 (3) Enter an order to attach forthwith any person who
34 refuses or fails to respond to the lawful process of court or to
35 the court's order.

36 (e) Any party who shall without good cause quit
37 employment or cause himself to be terminated from
38 employment, refuse to seek employment, or transfer or
39 otherwise dispose of assets or income for the purpose of
40 avoiding his duty to pay support or for the purpose of
41 avoiding the present ability to pay support, or who
42 knowingly and intentionally fails to provide support when
43 he has the ability to do so, shall be guilty of a misdemeanor,
44 and, upon conviction thereof, shall be confined in the
45 county jail for not less than forty-eight hours nor more than
46 thirty days.

§48-8-2. Appeals from order of enforcement; procedure.

1 (a) Any party seeking an appeal from the entry of an
2 order of a circuit court entered pursuant to the provisions of
3 section one of this article shall seek such appeal in
4 accordance with the general law relating to civil appeals.

5 (b) Any party seeking an appeal from the entry of an
6 order of a magistrate court entered pursuant to the
7 provisions of section one of this article shall proceed in
8 accordance with the provisions of section thirteen, article
9 five, chapter fifty of this code.

§48-8-3. Child support arrearage; when earnings may be assigned to the department of welfare; procedure of assignment.

1 (a) Any person, firm, corporation, political subdivision
2 or agency of the state employing a person with an obligation
3 of support for a child, and the rights to such support have
4 been assigned to the department of welfare in accordance
5 with the provisions of section four, article three, chapter

6 nine of this code and Title IV of the Federal Social Security
7 Act of one thousand nine hundred sixty-five, as amended,
8 shall honor, according to its terms, an assignment of
9 earnings executed by the responsible parent and presented
10 by the department of welfare as a plan to satisfy or retire an
11 obligation for support of a child. This requirement to honor
12 the assignment of earnings and the assignment document
13 itself, shall be applicable where the earnings are to be paid
14 presently or in the future and shall continue in force and
15 effect until released in writing by the department:
16 *Provided*, That any such assignment shall be subject to the
17 limitations on the amount which may be paid to the
18 assignee as provided in section three, article five-a, chapter
19 thirty-eight of this code. Payment of moneys pursuant to an
20 assignment of earnings presented by the department shall
21 serve as full acquittance of the employer's obligation under
22 any contract of employment, and the state warrants and
23 represents that it shall defend and hold harmless such
24 action taken pursuant to said assignment of earnings. The
25 department shall be released from liability for improper
26 receipt of moneys under an assignment of earnings, upon
27 return of any moneys so received. Any person who fails to
28 honor a duly executed assignment of earnings is liable to the
29 department in an amount equal to one hundred percent of
30 the amount of the assignment of earnings, plus costs,
31 interest and reasonable attorney fees.

32 (b) Any such assignment of earnings shall be in addition
33 to, and not in lieu of, any and all existing remedies allowed
34 the department to enforce child support obligations.

35 (c) An employer shall not discharge or otherwise
36 discipline an employee as a direct or indirect result of an
37 assignment of earnings authorized by this section.

38 (d) The person, firm, corporation, political subdivision
39 or agency of the state required to honor an assignment of
40 earnings pursuant to this section shall be entitled to receive
41 from the debtor a fee of two dollars for each answer or
42 remittance on account of such debtor.

43 (e) The assignment of earnings provided for in this
44 section shall be on a form prescribed by the supreme court
45 of appeals and supplied to the department of welfare.

46 (f) The assignment of earnings may only be executed
47 and made available for such purpose to the person owing
48 the duty of support when the department notifies such
49 person that he is in arrearage of support payments for at
50 least two months. The notice shall further provide that the
51 department has been assigned the right to receive such
52 payments, the date of such assignment and the amount paid
53 to date by the department for the support of the obligee's
54 child. The notice shall provide that the obligee may pay to
55 the department such moneys that the department is
56 entitled, by law, to receive, and shall further provide that,
57 alternatively, the obligee may execute the attached
58 assignment of earnings and return the same to the
59 department. The notice shall also specify that the
60 assignment of earnings, upon receipt by the department,
61 shall entitle the department to offer the same to the
62 obligee's employer so that the department may receive a
63 portion of the wages, as may be allowed by law. The obligee
64 shall also be informed that his employer, upon receipt of the
65 executed assignment from the department shall have no
66 right to discharge or otherwise discipline him as a direct or
67 indirect result of such assignment.

68 (g) The department shall promulgate rules and
69 regulations to administer the provisions of this article.

**§48-8-4. Child support arrearage; income tax setoff allowed
department of welfare; procedure therefor;
penalties.**

1 (a) Whenever any person owes an obligation of support
2 for a child and the rights to such support have been assigned
3 to the department of welfare in accordance with the
4 provisions of section four, article three, chapter nine of this
5 code and Title IV of the Federal Social Security Act of one
6 thousand nine hundred sixty-five, as amended, the state tax
7 department shall upon request by the commissioner of
8 welfare, assist in the collection of the obligation of support:
9 *Provided*, That the commissioner of welfare shall only be
10 entitled to make such request whenever the obligation of
11 support is in arrearage in an amount exceeding one hundred
12 fifty dollars.

13 (b) The tax department shall assist by setting off any
14 amount of the debtor's tax refund sufficient to satisfy the

15 debt certified by the commissioner of welfare. If the refund
16 is insufficient to satisfy the debt, the entire amount may be
17 applied to the debt.

18 (c) The tax department and the department of welfare
19 shall promulgate rules and regulations to implement the
20 provisions of this section. Such rules and regulations shall
21 provide for the confidentiality of records reviewed for
22 purposes of this section. Adequate notice and right to a
23 hearing shall be afforded the debtor as well as the right to
24 an administrative and judicial appeal. Any person who fails
25 to comply with the confidentiality requirements prescribed
26 by such rules and regulations shall be guilty of a
27 misdemeanor, and, upon conviction thereof, shall be fined
28 not more than one thousand dollars or confined in the
29 county jail for not more than six months, or both fined and
30 imprisoned.

§48-8-5. Civil judgments; enforcement; procedures.

1 In any proceeding under article seven or eight of this
2 chapter, where a court has ordered that a person shall make
3 payments of child support, any person or agency authorized
4 to bring an action under this article may file an affidavit
5 with the clerk of the circuit court in the county in which the
6 order was entered stating the terms and date of the original
7 order and the amount of money which has not been paid by
8 the person owing a duty of support and which is due and
9 owing. Upon receipt of such affidavit, the clerk shall issue a
10 writ of execution, suggestion or suggestee execution. The
11 clerk of the circuit court shall prepare a form affidavit to be
12 used under this section.

CHAPTER 50. MAGISTRATE COURTS.

ARTICLE 2. JURISDICTION AND AUTHORITY.

***§50-2-1. Civil jurisdiction.**

1 Except as limited herein and in addition to jurisdiction
2 granted elsewhere to magistrate courts or justices of the
3 peace, magistrate courts shall have jurisdiction of all civil
4 actions wherein the value or amount in controversy or the
5 value of property sought, exclusive of interest and cost, is

*Clerk's Note: This section was also amended by H. B. 1113, which passed prior to this act.

6 not more than two thousand dollars. Notwithstanding the
7 provisions of section eleven, article five of this chapter, or
8 any other limitations to the contrary, magistrate courts
9 shall have jurisdiction to enter an order for support and to
10 enforce said orders as provided in articles seven and eight,
11 chapter forty-eight of this code. Magistrate courts shall
12 have jurisdiction of matters involving unlawful entry or
13 detainer of real estate so long as the title to such real estate
14 is not in dispute. Except as the same may be in conflict with
15 the provisions of this chapter, the provisions of article
16 three, chapter fifty-five of this code, regarding unlawful
17 entry and detainer, shall apply to such actions in magistrate
18 court. Magistrate courts shall have jurisdiction of actions
19 on bonds given pursuant to the provisions of this chapter.
20 Magistrate courts shall have continuing jurisdiction to
21 entertain motions in regard to post-judgment process
22 issued from magistrate court and decisions thereon may be
23 appealed in the same manner as judgments.

24 Magistrate courts shall not have jurisdiction of actions in
25 equity, of matters in eminent domain, of matters in which
26 the title to real estate is in issue, of proceedings seeking
27 satisfaction of liens through the sale of real estate, of
28 actions for false imprisonment, of actions for malicious
29 prosecution or of actions for slander or libel or of any of the
30 extraordinary remedies set forth in chapter fifty-three of
31 this code.

32 Magistrates, magistrate court clerks, magistrate court
33 deputy clerks and magistrate assistants shall have the
34 authority to administer any oath or affirmation, to take any
35 affidavit or deposition, unless otherwise expressly provided
36 by law, and to take, under such regulations as are prescribed
37 by law, the acknowledgment of deeds and other writings.

CHAPTER 61

(S. B. 365—By Mr. Heck and Mr. Palumbo)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

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

hundred thirty-one, as amended; to amend and reenact section eighteen, article five of said chapter; and to amend article eight of said chapter by adding thereto a new section, designated section one-a, all relating to minimum age for kindergarten and public school attendance; changing the eligibility date from November one to September one; adding special provisions for Montessori kindergartens; providing that certain determinations of the board relating to kindergarten be final; changing compulsory school attendance from seven to six years old; providing that certain kindergarten attendance full-fills compulsory school requirements; requiring kindergarten for entrance into public schools; providing for exceptions thereto; and providing for advanced entrance or placement.

Be it enacted by the Legislature of West Virginia:

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

Article

2. **State Board of Education.**
5. **County Board of Education.**
6. **Compulsory School Attendance.**

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-5. Powers and duties generally; public school entrance age; "public schools" not to include kindergartens.

- 1 Subject to and in conformity with the constitution and
- 2 laws of this state, the state board of education shall
- 3 determine the educational policies of the state and shall
- 4 make rules for carrying into effect the laws and policies
- 5 of the state relating to education, including rules relating
- 6 to the physical welfare of pupils, the education of feeble-
- 7 minded and physically disabled or crippled children of
- 8 school age, school attendance, evening and continuation
- 9 or part-time day schools, school extension work, the

10 classification of schools, the issuing of certificates
11 upon credentials, the distribution and care of free text-
12 books by the county boards of education, the general
13 powers and duties of county boards of education, and
14 of teachers, principals, supervisors and superintendents,
15 and such other matters pertaining to the public schools
16 of the state as may seem to the state board to be necessary
17 and expedient.

18 Notwithstanding any other provision of law which
19 may be to the contrary, and notwithstanding the rule-
20 making powers given to the state board of education by
21 this section, a child shall not be permitted to enter the
22 public schools of this state in any school year, beginning
23 with the school year one thousand nine hundred eighty-
24 three—eighty-four, unless such child be six years of age
25 prior to September one of such school year or is attending
26 public school in accordance with article twenty of this
27 chapter: *Provided*, That children who have successfully
28 completed a kindergarten program in the school year one
29 thousand nine hundred eighty-two—eighty-three, may
30 enter the public schools notwithstanding the provisions
31 of this section. The term “public schools” as used in the
32 preceding sentence shall not be deemed to include public
33 kindergartens, but nothing herein shall prevent a county
34 board from permitting a child enrolled in kindergarten
35 from entering public schools for attendance in particular
36 curriculum areas.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-18. Kindergarten programs.

1 County boards of education shall provide by the school
2 year one thousand nine hundred eighty-three—eighty-
3 four, and continue thereafter kindergarten programs for
4 all children who shall have attained the age of five prior
5 to September first of the school year in which the pupil
6 enters such kindergarten program and may establish
7 kindergarten programs designed for children below the
8 age of five: *Provided*, That nothing herein shall prohibit
9 children who shall have attained the age of five prior to
10 November first of the school year one thousand nine

11 hundred eighty-three—eighty-four from entering such
12 kindergarten program.

13 Persons employed as kindergarten teachers, as distin-
14 guished from paraprofessional personnel, shall be requir-
15 ed to hold a certificate valid for teaching at the assigned
16 level as prescribed by regulations established by the state
17 board of education. The state board of education shall
18 establish and prescribe guidelines and criteria setting
19 forth the minimum requirements for all paraprofessional
20 personnel employed in kindergarten programs established
21 pursuant to the provisions of this section and no such
22 paraprofessional personnel shall be employed in any
23 kindergarten program unless he meets such minimum
24 requirements.

25 The state board of education with the advice of the
26 state superintendent of free schools shall establish and
27 prescribe guidelines and criteria relating to the establish-
28 ment, operation and successful completion of kinder-
29 garten programs in accordance with the other provisions
30 of this section. Guidelines and criteria so established and
31 prescribed are also intended to serve for the establish-
32 ment and operation of nonpublic kindergarten programs
33 and shall be used for the evaluation and approval of such
34 programs, provided application for such evaluation and
35 approval is made in writing to the state board by proper
36 authorities in control of such programs. The state super-
37 intendent of free schools at intervals not to exceed two
38 years shall publish a list of nonpublic kindergarten pro-
39 grams that have been approved in accordance with the
40 provisions of this section and a list of Montessori kinder-
41 gartens established and operated in accordance with
42 usual and customary practices for the use of the Mon-
43 tessori method. Teachers who have training or experience
44 in the use of the Montessori method of instruction for
45 kindergartens shall be deemed to be approved to teach
46 in such kindergartens using the Montessori method with-
47 out additional certification.

48 Pursuant to such guidelines and criteria, and only
49 pursuant to such guidelines and criteria, the county boards

50 may establish programs taking kindergarten to the
51 homes of the children involved, using educational tele-
52 vision, paraprofessional personnel in addition to and to
53 supplement regularly certified teachers, mobile or perm-
54 anent classrooms and other means developed to best
55 carry kindergarten to the child in its home and enlist
56 the aid and involvement of its parent or parents in
57 presenting the program to the child; or may develop
58 programs of a more formal kindergarten type, in existing
59 school buildings, or both, as such county board may
60 determine, taking into consideration the cost, the terrain,
61 the existing available facilities, the distances each child
62 may be required to travel, the time each child may be
63 required to be away from home, the child's health, the
64 involvement of parents and such other factors as each
65 county board may find pertinent. Such determinations by
66 any county board shall be final and conclusive.

67 Funds for implementing the kindergarten programs
68 during the fiscal year one thousand nine hundred seventy-
69 two, and thereafter, shall be allocated to counties from a
70 special appropriation to the state department of education
71 from the general revenue fund: *Provided*, That except
72 for expenditures from the general revenue funds for
73 regional kindergarten demonstration centers, in no event
74 shall any state money from the general fund be expended
75 under the provisions of this section unless federal funds
76 are available for the purpose of this section.

77 Allocations to counties will be made on the basis of
78 approved kindergarten programs. The West Virginia
79 board of education shall establish criteria and standards
80 necessary to guide counties in developing approvable
81 kindergarten programs and shall determine funding
82 levels of said programs on local operating costs.

83 An additional appropriation shall be made to the state
84 department of education from the general revenue fund
85 to establish and operate during the fiscal year one thou-
86 sand nine hundred seventy-two, regional kindergarten
87 demonstration centers in educational regions three, four,
88 five, six and seven, and thereafter in regions one through

89 seven. Said funds shall be allocated to said regions for
90 establishing and operating regional demonstration centers
91 in accordance with criteria and standards established by
92 the West Virginia board of education. Said regional cen-
93 ters shall be established to provide exemplary and inno-
94 vative kindergarten programs, to provide laboratory ex-
95 periences for preservice and in-service education for pro-
96 fessional personnel and staff development programs for
97 training paraprofessional personnel, to establish organiza-
98 tional and administrative machinery designed to promote
99 cooperation between and among all agencies involved in
100 the education and development of young children, and to
101 promote cooperation between counties in providing high
102 cost supervisory, developmental, research and evaluative
103 services not currently available to individual counties.

ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

§18-8-1a. Compulsory school attendance; public school en- trance requirements; exceptions thereto.

1 Notwithstanding the provisions of section one of this
2 article, compulsory school attendance shall begin with
3 the school year in which the sixth birthday is reached
4 prior to September one of such year and continue to the
5 sixteenth birthday. Attendance at a state-approved or
6 Montessori kindergarten, as provided for in section
7 eighteen, article five of this chapter, shall be deemed
8 school attendance for purposes of this section. Prior to
9 entrance into the first grade in accordance with section
10 five, article two of this chapter, each child must have
11 either (1) successfully completed such publicly or private-
12 ly supported, state-approved kindergarten program or
13 Montessori kindergarten program, or (2) successfully
14 completed an entrance test of basic readiness skills ap-
15 proved by the county in which the school is located:
16 *Provided*, That such test be administered in lieu of
17 kindergarten attendance only under extraordinary cir-
18 cumstances to be determined by the board. Notwith-
19 standing the provisions of this section and of section five,
20 article two of this chapter and section eighteen, article
21 five of this chapter, a county board may provide for ad-

22 vanced entrance or placement under policies adopted by
23 said board for any child who has demonstrated sufficient
24 mental and physical competency for such entrance or
25 placement. Nothing herein shall prevent a student from
26 another state from enrolling in a public school in West
27 Virginia in such grade as the student was enrolled at the
28 school from which he transferred.

CHAPTER 62

(Com. Sub. for S. B. 444—Mr. McGraw, Mr. President, and Mr. Heck)

[Passed March 7, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to permits required for correspondence, business, occupational and trade schools; providing for the application for, purpose, issuance, renewal and revocation of permits; increasing the surety bond and providing a fee for solicitors; requiring certain reports; authorizing rules and regulations including evaluations; providing for enforcement; and increasing the penalty.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. BOARD OF EDUCATION.

§18-2-10. Permits required for correspondence, business, occupational and trade schools; surety bonds and fees; issuance, renewal and revocation of permit; reports; rules and regulations; penalty and enforcement.

1 It shall be unlawful for any person representing a
2 correspondence, business, occupational or trade school

3 inside or outside this state to solicit, sell or offer to sell
4 courses of instruction to any resident of this state for
5 consideration or remuneration unless the school first
6 obtains a permit from the West Virginia board of educa-
7 tion in the manner and on the terms herein prescribed.

8 The application for a permit shall be made on forms to
9 be furnished by the board. The application shall be ac-
10 companied by a surety bond in the penal sum of twenty-
11 five thousand dollars and by a fee of ten dollars. The
12 bond may be continuous and shall be conditioned to
13 provide indemnification to any student suffering loss as
14 a result of any fraud or misrepresentation used in pro-
15 curing his enrollment or failure of the school to meet
16 contractual obligations. The bond shall be given by the
17 school itself as a blanket bond covering all of its represen-
18 tatives. The surety on any such bond may cancel the
19 same upon giving thirty days' notice in writing to the
20 principal on said bond and to the state board of education
21 and thereafter shall be relieved of liability for any breach
22 of condition occurring after the effective date of said
23 cancellation. The ten dollar fee will entitle a school to
24 register up to two individual solicitors. Additional solici-
25 tors may be registered by paying a five dollar fee for
26 each registration submitted.

27 A permit shall be valid for one year corresponding to
28 the effective date of the bond and, upon application,
29 accompanied by the required fee and the surety bond
30 as herein required, may be renewed. All fees collected
31 for the issuance or renewal of such permit shall be de-
32 posited in the state treasury to the credit of the general
33 school fund.

34 The board may refuse a permit to any school if the
35 board finds that the school engages in practices which
36 are inconsistent with this section or with rules and
37 regulations issued pursuant thereto. A permit issued
38 hereunder, upon fifteen days' notice and after a hearing,
39 if a hearing is requested by the school, may be suspended
40 or revoked by the board of education for fraud or mis-
41 representation in soliciting or enrolling students, for

42 failure of the school to fulfill its contract with one or
43 more students who are residents of West Virginia, or
44 for violation of or failure to comply with any provision
45 of this section or with any regulation of the state board
46 of education pertinent thereto. Any refusal, suspension
47 or revocation of a permit, or any other adverse action
48 against a school, shall comply with all constitutional pro-
49 visions, including due process, relating to the protection
50 of property rights.

51 All correspondence, business, occupational or trade
52 schools which have been issued a permit shall make an-
53 nual reports to the state board of education, on forms
54 furnished by the board, providing such appropriate in-
55 formation as the board reasonably may require. All cor-
56 respondence, business, occupational or trade schools which
57 have been issued a permit shall furnish to the West Vir-
58 ginia board of education a list of its official representa-
59 tives. Each school shall be issued a certificate of identi-
60 fication by the state board of education for each of its
61 official representatives.

62 The issuance of a permit pursuant to this section does
63 not constitute approval or accreditation of any course or
64 school. No school nor any representative of a school shall
65 make any representation stating, asserting or implying
66 that a permit issued pursuant to this section constitutes
67 approval or accreditation by the state of West Virginia,
68 state board of education or any other department or
69 agency of the state.

70 The state board of education is hereby authorized to
71 adopt rules and regulations for evaluation of schools,
72 for the administration and enforcement of the provisions
73 of this section, and to establish an advisory committee
74 of not less than five owners or other representatives of
75 privately owned correspondence, business, occupational
76 and trade schools. Correspondence, business, occupational
77 and trade schools which have their home office in West
78 Virginia and which are fully accredited members of
79 nationally recognized accrediting associations approved by
80 the West Virginia board of education shall be exempted

81 from any rules and regulations for evaluation of schools
82 by the state board as authorized by this section.

83 A representative of any school violating any provision
84 of this section shall be guilty of a misdemeanor, and, upon
85 conviction thereof, shall be fined not more than two
86 hundred dollars per day of violation, not to exceed a
87 maximum of two thousand dollars per violation, or im-
88 prisoned in the county jail not more than sixty days, or
89 both fined and imprisoned. No correspondence, business,
90 occupational or trade school shall maintain an action in
91 any court of this state to recover for services rendered
92 pursuant to a contract solicited by the school if the school
93 did not hold a valid permit at the time the contract was
94 signed by any of the parties thereto. The attorney general
95 or any county prosecuting attorney, at the request of the
96 state board of education or upon his own motion, may
97 bring any appropriate action or proceeding in any court
98 of competent jurisdiction for the enforcement of the pro-
99 visions of this section relating to permits, bonds and
100 sureties.

CHAPTER 63

(Com. Sub. for H. B. 1546—By Mrs. Martin and Mr. Conley)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section thirteen-h, article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article twenty-six of said chapter by adding thereto a new section, designated section twenty-six, relating to the acquisition and operation of college or university parking facilities or areas; removing the provisions from the article relating to the state board of education and placing them in the article relating to the board of regents; authorizing the board of regents to promulgate rules and regulations governing the speed flow and parking of vehicles on campus roads, driveways and parking facilities or areas; establishing civil penalties payable to a designated official of the college or university

under certain circumstances for each violation of the rules and regulations; granting jurisdiction over violations to magistrates and municipal police court judges in certain instances; establishing criminal penalties for each finding of a violation by a magistrate or municipal police court judge; providing for the removal of vehicles from campus roads, driveways and parking facilities or areas under certain circumstances; providing that the college or university shall pay for the removal of a vehicle and have a right to reimbursement and storage costs from the owner thereof; and empowering the college or university to enforce a lien against the owner of a vehicle for the costs of removing and storing the vehicle.

Be it enacted by the Legislature of West Virginia:

That section thirteen-h, article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that article twenty-six of said chapter be amended by adding thereto a new section, designated section twenty-six, to read as follows:

ARTICLE 26. WEST VIRGINIA BOARD OF REGENTS.

§18-26-26. Acquisition, operation and regulation of parking areas and facilities at state institutions of higher education; regulation of parking, speed and flow of traffic on campus roads and driveways; civil and criminal penalties; disposition of revenue.

1 The West Virginia board of regents is hereby authorized
 2 to construct, maintain and operate automobile parking fa-
 3 cilities or areas upon any premises owned or leased at any
 4 college or university under its jurisdiction for use by students,
 5 faculty, staff and visitors. The board may charge fees for use
 6 of the parking facilities or areas under its control. All moneys
 7 collected for the use of the parking facilities or areas shall be
 8 paid to the credit of the college or university at which the
 9 fees were charged into a special fund which is hereby created
 10 in the state treasury. The moneys in the fund shall be used
 11 first to pay the cost of maintaining and operating the parking
 12 facilities or areas, but any excess not needed for this purpose
 13 may be used for the acquisition of property by lease or pur-

14 chase and the construction thereon of additional parking fa-
15 cilities or areas. Any money in the fund not needed immediately
16 for the acquisition, construction, maintenance or operation of
17 the parking facilities or areas may be temporarily invested by
18 the board of regents with the state board of investments to
19 the credit of the college or university at which the fees were
20 charged.

21 Notwithstanding any other motor vehicle or traffic law or
22 regulation to the contrary, the board of regents is hereby
23 authorized to regulate and control at any college or univer-
24 sity under its jurisdiction the speed, flow and parking of ve-
25 hicles on campus roads, driveways and parking facilities or
26 areas. Rules and regulations for this purpose shall be promul-
27 gated by the board in the manner prescribed in chapter twenty-
28 nine-a of this code and when so promulgated shall have the
29 force and effect of law. In each parking facility or area a
30 summary of the rules and regulations governing the use of
31 the facility or area and of the penalties which may be imposed
32 for violations of the rules and regulations shall be conspic-
33 uously posted. Along each campus road and driveway, notice
34 signs pertaining to the speed of vehicles, spaces available for
35 parking, directional flow of traffic and penalties which may
36 be imposed for violations of the rules and regulations shall be
37 conspicuously posted.

38 Any person parking any vehicle or operating any vehicle
39 in violation of the rules and regulations shall be issued a
40 citation describing the offense charged and ordering an ap-
41 pearance within five days, excluding Saturdays, Sundays and
42 holidays observed by the college or university, before a desig-
43 nated official of the college or university and, if the person
44 cited fails to appear within said five days, ordering an appear-
45 ance before a magistrate located in the county in which the
46 college or university is located or before the judge of the
47 municipal court, if the college or university is located within
48 a municipality having such an official.

49 The designated official of the college or university shall have
50 exclusive jurisdiction of the offense during the five-day per-
51 iod, and any person so cited may plead no contest to the of-
52 fense and, by so pleading, shall be subject to a civil penalty of

53 ten dollars for each offense as partial reimbursement to the
54 college or university for the cost of regulating traffic and park-
55 ing. Moneys derived from civil penalties imposed herein shall
56 be deposited in the special fund in the state treasury created
57 by this section and credited to the college or university at
58 which the penalty was paid.

59 Upon the expiration of the five days, or upon a pleading of
60 not guilty before the designated official of the college or uni-
61 versity within the five days, the magistrate or judge of the
62 municipal court shall have jurisdiction of the offense and any
63 person cited under the provisions of this section, upon a find-
64 ing of guilty by the magistrate or municipal judge, shall be
65 subject to a fine of not less than ten dollars nor more than
66 twenty dollars for each offense.

67 Each designated official of the college or university pre-
68 siding over a case under the provisions of this section shall
69 keep or cause to be kept a record of every citation which al-
70 leges a violation of such provisions, or the rules and regula-
71 tions promulgated in accordance therewith, and shall keep a
72 record of every official action in reference thereto including,
73 but not limited to, a record of every plea of no contest, con-
74 viction or acquittal of the offense charged and the amount of
75 the fine or of the civil penalty resulting from each citation.

76 Whenever a vehicle is parked on any college or university
77 campus road, driveway or parking facility or area in a manner
78 which violates posted regulations and substantially impedes the
79 flow of traffic or endangers the health and safety, the institu-
80 tion may, in addition to the issuing of a citation and subse-
81 quent procedures set forth herein, remove the vehicle, by tow-
82 ing or otherwise, to an area or areas designated for this pur-
83 pose. The vehicle, having been towed to the designated area
84 or areas, may be rendered immovable by use of locking wheel
85 blocks or other device not damaging to the vehicle. The col-
86 lege or university shall not be liable for any damage to a
87 vehicle towed to, or kept in, a designated area pursuant to
88 the provisions of this section. The college or university shall
89 pay for the cost of removing the vehicle and shall have a right
90 to reimbursement from the owner for this cost and for the
91 reasonable cost of keeping the vehicle in the designated area.

92 Until payment of these costs, the college or university may
93 retain possession of the vehicle, and the college or university
94 shall have a lien on the vehicle for the amount due. The col-
95 lege or university may enforce this lien in the manner provided
96 in section fourteen, article eleven, chapter thirty-eight of this
97 code for the enforcement of other liens.

CHAPTER 64

(Com. Sub. for H. B. 1009—By Mr. Murphy)

[Passed March 12, 1983; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, four, five and eight, article two-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the classification of school subjects into adoption groups; extending the adoption schedule to six years; creating a new adoption group; and authorizing the state board of education to grant permission to county boards of education to continue use for a period not to exceed six years.

Be it enacted by the Legislature of West Virginia:

That sections one, four, five and eight, article two-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 2A. TEXTBOOK ADOPTION.

§18-2A-1. Classification of school subjects into adoption groups; adoption schedule.

§18-2A-4. Execution of contracts; bond.

§18-2A-5. Selection by county boards.

§18-2A-8. Textbooks must be approved and listed; when changes of textbooks may be effected; rules and regulations.

§18-2A-1. Classification of school subjects into adoption groups; adoption schedule.

1 On or before the first day of July, one thousand nine hun-
2 dred eighty-three, the state board of education shall classify
3 the elementary and secondary school subjects now required to

4 be taught in the schools of our state into six adoption groups.
5 The six adoption groups shall be grouped by related subject
6 fields as nearly as possible.

7 The schedule for the periods of adoption shall be as follows:

8 (a) Adoptions in Group I shall be made in one thousand
9 nine hundred eighty-nine for a period of six years.

10 (b) Adoptions in Group II shall be made in one thousand
11 nine hundred eighty-four for a period of six years.

12 (c) Adoptions in Group III shall be made in one thousand
13 nine hundred eighty-five for a period of six years.

14 (d) Adoptions in Group IV shall be made in one thousand
15 nine hundred eighty-six for a period of six years.

16 (e) Adoptions in Group V shall be made in one thousand
17 nine hundred eighty-seven for a period of six years.

18 (f) Adoptions in Group VI shall be made in one thousand
19 nine hundred eighty-eight for a period of six years.

20 Upon the expiration of the periods of adoption, as set out
21 in the aforesaid adoption schedule, the period of adoption
22 and contract of each adoption group in which textbooks for
23 all the subjects are adopted shall be for a period of six years.

§18-2A-4. Execution of contracts; bond.

1 When the selection and approval of the multiple list have
2 been properly made, it shall be the duty of the state board
3 to execute contracts for the selected books with the publishers
4 within thirty days of the approval and adoption of the multiple
5 list, prepare a list of the adopted books on the multiple list
6 and publish same, and send a copy to each county superin-
7 tendent not later than January first of the year of the
8 county adoption. Such contracts for adoption by the state
9 board of education shall run for six years.

10 Each publisher awarded a textbook contract by the state
11 shall enter into a bond payable to the state of West Virginia
12 in the penal sum of not less than two thousand dollars and
13 not more than five thousand dollars to be approved by the
14 state board of public works, such bond to be executed as

15 surety by some responsible surety company authorized to
16 carry on its business in West Virginia. Such contract shall
17 be prepared by the attorney general in accordance with the
18 terms and provisions of this article. Such contract shall be
19 executed in duplicate, one copy to be held by the publisher
20 and one by the state board of education.

21 Bonds required of successful publishers shall provide that:

22 (a) The publisher will furnish any of the books on the
23 multiple list which he publishes for a period of the adoption,
24 from the date of the bond, to any county school unit, or to
25 a dealer appointed by the county, at the lowest wholesale price
26 contained in the bid, f.o.b. publisher's nearest shipping point;

27 (b) The publisher will automatically reduce such prices in
28 West Virginia when prices are reduced anywhere in the United
29 States, so that no such book shall at any time be sold in
30 West Virginia at a higher wholesale price than received for
31 that book elsewhere in the United States, like conditions pre-
32 vailing;

33 (c) All books sold in West Virginia will be identical with
34 the official samples filed with the state board of education as
35 regards size, paper, binding, print, illustrations, subject matter,
36 and other particulars which may affect the value of the books.
37 The state board of education may, however, during the period
38 of the contract approve revised editions of an adopted book
39 or series, which will authorize a publisher to furnish such
40 revisions.

§18-2A-5. Selection by county boards.

1 Textbook publishers, upon requests of county superin-
2 tendents, shall furnish to county boards of education the re-
3 quested sample copies of books that were selected and placed
4 on the state multiple list of textbooks by the state board of
5 education. The textbook publishers shall ship and bill to the
6 county boards of education at the lowest wholesale prices
7 with shipping charges prepaid. After the counties have made
8 their textbook adoptions and certified them to the state board
9 of education, all sample copies of books may be returned to
10 the publishers from whom obtained, shipping charges to be

11 paid by the publisher. County boards may, if they elect to
12 do so, retain the sample books, but shall pay the publishers
13 the lowest wholesale prices for them.

14 The county board of education shall, upon recommendation
15 of the county superintendent with the aid of a committee of
16 teachers not to exceed fifteen members and not later than the
17 first day of May of the year following that in which the
18 multiple list for the group was made and approved, have the
19 option to select from the state multiple list one or more
20 book(s) or series of books for each subject and grade to be
21 used as exclusive basal textbooks in the county for a period
22 of six years unless as provided for elsewhere in this article.

23 After the county board of education has adopted the basal
24 textbooks for use in the county, and not later than the fifteenth
25 day of May, the county superintendent shall send to the state
26 board of education and the respective publishers a complete
27 list of books adopted, properly certified by the president of
28 the county board of education, in such form as the state board
29 of education shall prescribe.

**§18-2A-8. Textbooks must be approved and listed; when changes
of textbooks may be effected; rules and regulations.**

1 No textbook shall be used in any public elementary or sec-
2 ondary school in West Virginia as a basal textbook for state
3 required courses unless it has been approved and listed on
4 the state multiple list of textbooks by the state board of
5 education. Any changes of textbooks made by the state board
6 of education shall not become effective until grades and
7 classes of the respective county school districts have completed
8 work for which the adopted book then in use was originally
9 intended. The state board of education may upon request by
10 a county board of education and upon justification of that
11 request, and subsequent to the adoption by a county board
12 of education, approve the adoption of additional books to
13 meet the needs of specific children which were not provided
14 for in the original adoption. Nothing in this section shall apply
15 to the supplementary books that are needed from time to time.

16 The state board of education is authorized to grant permis-
17 sion to county boards of education for the continued use of pre-

18 viously adopted textbooks that are listed on the most recently
19 expired multiple list appropriate for the subject category under
20 consideration. The continued use shall not exceed a period of
21 six years. The state board may make such rules and regula-
22 tions as it may deem necessary and expedient to carry out the
23 provisions of this article.

CHAPTER 65

(H. B. 1623—By Mr. Speaker, Mr. See)

[Passed February 22, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article four, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to election and term of the county superintendent of schools; appointment of an interim superintendent.

Be it enacted by the Legislature of West Virginia:

That section one, 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.

§18-4-1. Election and term; interim superintendent.

1 The superintendent shall be elected by the board to serve
2 for a term of not less than one, nor more than four years. At
3 the expiration of the term or terms for which he shall have
4 been elected, each superintendent shall be eligible for reelection
5 for additional terms of not less than one, nor more than four
6 years: *Provided*, That at the expiration of his term or terms
7 of service he shall be given the status of teacher in the system
8 unless dismissed for statutory reasons. Such election shall be
9 held on or before the first day of May and the person so
10 elected shall take office on the first day of July following. A
11 superintendent who fills a vacancy caused by an incomplete
12 term shall be appointed to serve until the following first day
13 of July: *Provided, however*, That the board may appoint an

14 interim superintendent to serve for a period not to exceed one
 15 hundred twenty days from the occurrence of the vacancy. The
 16 president of the board, immediately upon the election of the
 17 superintendent, or the appointment of an interim superinten-
 18 dent, shall certify the election or appointment to the state
 19 superintendent of schools. The superintendent in office on the
 20 effective date of this section shall continue in office until the
 21 expiration of his term.

CHAPTER 66

(Com. Sub. for H. B. 1760—By Mr. Mullett)

[Passed March 3, 1983; in effect 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 authorizing county boards of education to lease school buses and provide drivers to public and private nonprofit organizations or private corporations to transport school-age children to and from camps or educational activities; and requiring that lessee bear all costs and expenses of transportation.

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 and
 2 the rules and regulations of the state board, shall have
 3 authority:

4 (1) To control and manage all of the schools and school
 5 interests for all school activities and upon all school property,
 6 whether owned or leased by the county, including the author-
 7 ity to require that records be kept of all receipts and disburse-

8 ments of all funds collected or received by any principal,
9 teacher, student or other person in connection therewith, any
10 programs, activities or other endeavors of any nature operated
11 or carried on by or in the name of the school, or any organi-
12 zation or body directly connected with the school, to audit such
13 records and to conserve such funds, which shall be deemed
14 quasi-public moneys, including securing surety bonds by ex-
15 penditure of board moneys;

16 (2) To establish schools, from preschool through high
17 school, inclusive of vocational schools; and to establish schools
18 and programs, or both, for post high school instruction, sub-
19 ject to approval of the state board of education;

20 (3) To close any school which is unnecessary and to assign
21 the pupils thereof to other schools: *Provided*, That such clos-
22 ing shall be officially acted upon and teachers and service per-
23 sonnel involved notified on or before the first Monday in May,
24 in the same manner as provided in section four of this article,
25 except in an emergency, subject to the approval of the state
26 superintendent, or under subdivision (5) of this section;

27 (4) To consolidate schools;

28 (5) To close any elementary school whose average daily
29 attendance falls below twenty pupils for two months in succes-
30 sion and send the pupils to other schools in the district or to
31 schools in adjoining districts. If the teachers in the school so
32 closed are not transferred or reassigned to other schools, they
33 shall receive one month's salary;

34 (6) (a) To provide at public expense adequate means of
35 transportation, including transportation across county lines,
36 for all children of school age who live more than two miles
37 distance from school by the nearest available road; to provide
38 at public expense and according to such regulations as the
39 board may establish, adequate means of transportation for
40 school children participating in board-approved curricular and
41 extracurricular activities; and to provide in addition thereto, at
42 public expense, by rules and regulations and within the avail-
43 able revenues, transportation for those within two miles dis-
44 tance; to provide in addition thereto, at no cost to the board and
45 according to rules and regulations established by the board,

46 transportation for participants in projects operated, financed,
47 sponsored or approved by the commission on aging: *Provided*,
48 That all costs and expenses incident in any way to transporta-
49 tion for projects connected with the commission on aging shall
50 be borne by such commission, or the local or county chapter
51 thereof: *Provided, however*, That in all cases the buses or
52 other transportation facilities owned by the board of educa-
53 tion shall be driven or operated only by drivers regularly em-
54 ployed by the board of education: *Provided further*, That buses
55 shall be used for extracurricular activities as herein provided
56 only when the insurance provided for by this section shall have
57 been effected;

58 (b) To enter into agreements with one another to provide,
59 on a cooperative basis, adequate means of transportation across
60 county lines for children of school age subject to the conditions
61 and restrictions of subdivisions (6) and (8) of this section;

62 (7) To lease school buses operated only by drivers regularly
63 employed by the board to public and private non-profit or-
64 ganizations or private corporations to transport school-age
65 children to and from camps or educational activities in ac-
66 cordance with rules and regulations established by the board.
67 All costs and expenses incurred by or incidental to the trans-
68 portation of such children shall be borne by the lessee;

69 (8) To provide at public expense for insurance against the
70 negligence of the drivers of school buses, trucks or other
71 vehicles operated by the board; and if the transportation of
72 pupils be contracted, then the contract therefor shall provide
73 that the contractor shall carry insurance against negligence
74 in such an amount as the board shall specify;

75 (9) To provide solely from county funds for all regular full-
76 time employees of the board all or any part of the cost of a
77 group plan or plans of insurance coverage not provided or
78 available under the West Virginia public employees insur-
79 ance act;

80 (10) To employ and to provide in-service training for
81 teacher aides, the training to be in accordance with rules and
82 regulations of the state board;

83 (11) To establish and conduct a self-supporting dormitory
84 for the accommodation of the pupils attending a high school
85 or participating in a post high school program and of persons
86 employed to teach therein;

87 (12) To employ legal counsel;

88 (13) To provide appropriate uniforms for school service
89 personnel;

90 (14) To provide at public expense and under regulations as
91 established by any county board of education for the payment
92 of traveling expenses incurred by any person invited to appear
93 to be interviewed concerning possible employment by such
94 county board of education;

95 (15) To allow or disallow their designated employees to
96 use publicly provided carriage to travel from their residences
97 to their workplace and return: *Provided*, That such usage is
98 subject to the supervision of such board and is directly con-
99 nected with and required by the nature and in the performance
100 of such employee's duties and responsibilities; and

101 (16) To provide, at public expense, adequate public lia-
102 bility insurance, including professional liability insurance for
103 board employees.

104 No policy or contract of public liability insurance provid-
105 ing coverage for public liability shall be purchased as pro-
106 vided herein, unless it shall contain a provision or endorsement
107 whereby the company issuing such policy waives, or agrees
108 not to assert as a defense to any claim covered by the terms
109 of such policy, the defense of governmental immunity. In any
110 action against the board, its officers, agents or employees, in
111 which there is in effect liability insurance coverage in an
112 amount equal to or greater than the amount sued for, the at-
113 torney for such board, the attorney for such insurance carrier,
114 or any other attorney who may appear on behalf of the board,
115 its agents, officers or employees shall not set up the defense
116 of governmental immunity in any such action.

117 "Quasi-public funds" as used herein means any money re-
118 ceived by any principal, teacher, student or other person for

119 the benefit of the school system as a result of curricular or
120 noncurricular activities.

121 The board of each county shall expend under such regula-
122 tions as it establishes for each child an amount not to exceed
123 the proportion of all school funds of the district that each child
124 would be entitled to receive if all the funds were distributed
125 equally among all the children of school age in the district
126 upon a per capita basis.

CHAPTER 67

(Com. Sub. for S. B. 591—By Mr. Tonkovich and Mr. Nelson)

[Passed March 12, 1983; in effect July 1, 1983. Approved by the Governor.]

AN ACT to amend and reenact section eighteen-a, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to maximum teacher-pupil ratio; delaying by one year the ratio limit for grades three through six; limiting the number of classrooms with two or more grades; and providing for exceptions to the teacher-pupil ratio and limitations thereto.

Be it enacted by the Legislature of West Virginia:

That section eighteen-a, 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 BOARDS OF EDUCATION.

§18-5-18a. Maximum teacher-pupil ratio.

1 County boards of education shall provide, by the school
2 year one thousand nine hundred eighty-three—eighty-
3 four, and continue thereafter, sufficient personnel, equip-
4 ment and facilities as will ensure that each first and
5 second grade classroom, or classrooms having two or
6 more grades that include either the first or second grades,
7 shall not have more than twenty-five pupils for each

8 teacher of the grade or grades and shall not have more
9 than twenty pupils for each kindergarten teacher per
10 session, unless the state superintendent has excepted a
11 specific classroom upon application therefor by a county
12 board of education.

13 County boards of education shall provide by the school
14 year one thousand nine hundred eighty-four—eighty-
15 five, and continue thereafter, sufficient personnel, equip-
16 ment and facilities as will ensure that each third, fourth,
17 fifth and sixth grade classroom, or classrooms having
18 two or more grades that include one or more of the
19 third, fourth, fifth and sixth grades, shall not have more
20 than twenty-five pupils for each teacher of the grade or
21 grades.

22 Beginning with the school year one thousand nine
23 hundred eighty-six—eighty-seven, and thereafter, no
24 county shall maintain a greater number of classrooms
25 having two or more grades that include one or more of
26 the grade levels referred to in this section than were in
27 existence in said county as of the first day of January,
28 one thousand nine hundred eighty-three: *Provided*, That
29 for the prior school years, and only if there is insufficient
30 classroom space available in the school or county, a
31 county may maintain one hundred ten percent of such
32 number of classrooms.

33 During the school year one thousand nine hundred
34 eighty-four—eighty-five, and thereafter, the state super-
35 intendent is authorized, consistent with sound educational
36 policy, (a) to permit on a statewide basis in grades four
37 through six, more than twenty-five pupils per teacher
38 in a classroom for the purposes of instruction in music
39 and physical education, and (b) to permit more than
40 twenty pupils per teacher in a specific kindergarten
41 classroom and twenty-five pupils per teacher in a specific
42 classroom in grades one through six during a school year
43 in the event of extraordinary circumstances as determined
44 by the state superintendent after application by a county
45 board of education.

46 The state board of education shall establish guidelines

47 for the exceptions authorized in this section, but in no
 48 event shall the superintendent except classrooms having
 49 more than three pupils above the teacher-pupil ratio as
 50 set forth in this section.

CHAPTER 68

(S. B. 445—By Mr. McGraw, Mr. President, Mr. Heck and Mrs. Lucht)

[Passed March 11, 1983; in effect July 1, 1983. Approved by the Governor.]

AN ACT to amend and reenact section nineteen-b, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to adult education classes and programs; removing the entrance-age requirement; providing general authority to each county board of education to contract for instruction for classes or programs; and requiring that tuition money be credited to the account for adult education.

Be it enacted by the Legislature of West Virginia:

That section nineteen-b, 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.

§18-5-19b. Adult education classes and programs; tuitions; authority of county boards to contract with federal agencies, etc.

1 The board of education of any county shall have author-
 2 ity to provide classes and programs for adult education
 3 and to charge tuition for members of such classes and/or
 4 programs, such tuitions not to exceed in any case the
 5 actual cost of operation of such classes and/or programs.
 6 The county board of education shall also have authority
 7 to enter into contracts of agreement with authorized
 8 agencies of the federal government for the education of
 9 adults and to provide, assemble and house materials and

10 equipment for efficient instruction in any and all such
11 classes and/or programs, contract for instruction for the
12 term of the class and/or program to be offered, and to
13 use school facilities by way of buildings and equipment
14 under the control of said board. Any funds accruing from
15 such tuitions shall be credited to adult education in the
16 current expense fund of the county board of education
17 and reported each year as of June thirtieth in the manner
18 required for other financial reports of the board.

CHAPTER 69

(Com. Sub. for H. B. 1075—By Mr. Manchin)

[Passed February 2, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-one-e, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to rules and regulations for the care, distribution and use of free textbooks; and deleting the reference to racial segregation.

Be it enacted by the Legislature of West Virginia:

That section twenty-one-e, 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.

§18-5-21e. Rules and regulations for care, distribution and use of free textbooks; reports by county boards; funds may be withheld from county for violation of rules.

1 The state board of education shall have authority to
2 prescribe rules and regulations governing the care, distribution
3 and use of free textbooks including their rebinding, recondi-
4 tioning, replacement, return and storage, and such other
5 measures as may be necessary for efficient and economical
6 administration.

7 The state board of education is further authorized to
8 prescribe and require reports to be made by the various
9 county boards of education concerning the expenditures and
10 distributions and conditions of inventories at such time and
11 in such form as the board may require.

12 The state superintendent of schools is authorized to with-
13 hold the state allotment of free textbook money from any
14 county for violation of the rules and regulations herein
15 authorized.

CHAPTER 70

(Com. Sub. for S. B. 563—By Mr. Heck, Mr. Holliday and Mr. Tucker)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section thirty-one, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections eight-b and fifteen, article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the seniority rights for school personnel and substitute school service personnel; providing for how professional personnel seniority shall be determined; requiring the county board to give reasons in writing to the professional applicant with the most seniority who is not hired to a classroom teacher's position; providing for professional reduction in force and right to recall; providing for posting and filling of professional positions; defining qualifications of service personnel; allowing professional personnel who held temporary service personnel jobs or positions prior to the ninth day of June, one thousand nine hundred eighty-two, to be considered for such jobs or positions after service personnel whose employment has been discontinued; requiring boards to substantiate reasons for failure to observe seniority in promotions or hiring, if the employee so requests; providing continuing protection for those employed at the time of original enactment of the provisions for seniority rights; providing

for the acceptance of extra-duty assignments and allowing an alternate procedure if approved by two thirds of the employees; defining extra-duty assignments; requiring boards to post notices of job vacancies; providing that vacancies must be filled within twenty days; providing for reductions in force and preferred recall list; allowing mandamus to compel compliance; making boards liable for certain costs, reasonable attorney's fees; and retroactive wages and benefits from local funds when not prevailing in mandamus suit; requiring that substitute school service personnel be assigned on basis of seniority; allowing such substitutes to be assigned to temporarily fill vacancies created by transfers; requiring that substitutes working for service employee suspended for more than thirty days be accorded all rights, privileges and benefits of the position filled; allowing substitutes to be assigned temporarily to newly created positions; providing for assignment of substitutes on rotating basis in order of seniority; requiring that regular employee be given opportunity to temporarily fill position at his same work station or building during temporary absence of fellow employee; and granting certain substitute school service personnel the same rights pertaining to suspension, dismissal and contract renewal as afforded to regularly employed service personnel.

Be it enacted by the Legislature of West Virginia:

That section thirty-one, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections eight-b and fifteen, article four, chapter eighteen-a of said code, be amended and reenacted, all to read as follows:

ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.

§18A-4-8b. Seniority rights for professional and school service personnel.

§18A-4-15. Employment of service personnel substitutes.

§18A-4-8b. Seniority rights for professional and school service personnel.

- 1 (a) The seniority of professional personnel shall be
- 2 determined on the basis of the length of time the employee
- 3 has been professionally employed by the county board of
- 4 education. For purposes of establishing seniority as
- 5 hereinafter provided, when an employee holds valid

6 certification or licensure in one or more areas, the seniority
7 shall accrue in each area. Employment for a full
8 employment term shall equal one year of seniority, but no
9 employee may accrue more than one year of seniority
10 during any given fiscal year. Employment for less than the
11 full employment term shall be prorated. A random selection
12 system established by the employees and approved by the
13 board shall be used to determine the priority if two or more
14 employees accumulate identical seniority.

15 A county board of education shall make decisions
16 affecting promotion and filling of any classroom teacher's
17 position occurring on the basis of qualifications. If the
18 applicant with the most seniority is not selected for the
19 position a written statement of reasons shall be given to the
20 applicant with the most seniority with suggestions for
21 improving the applicant's qualifications.

22 Whenever a county board is required to reduce the
23 number of professional personnel in its employment, the
24 employee with the least amount of seniority shall be
25 properly notified and released from employment pursuant
26 to the provisions of section two, article two of this chapter:
27 *Provided*, That such employee shall be employed in any
28 other professional position where he had previously been
29 employed or to any lateral area for which he is certified
30 and/or licensed if his seniority is greater than the seniority
31 of any other employee in that area of certification and/or
32 licensure.

33 All professional personnel whose seniority with the
34 county board is insufficient to allow their retention by the
35 county board during a reduction in work force shall be
36 placed upon a preferred recall list. As to any professional
37 position opening within the area where they had previously
38 been employed or to any lateral area for which they have
39 certification and/or licensure, such employee shall be
40 recalled on the basis of seniority if no regular full-time
41 professional personnel, or those returning from leaves of
42 absence with greater seniority, are qualified, apply for and
43 accept such position. Before position openings that are
44 known or expected to extend for twenty consecutive
45 employment days or longer for professional personnel may
46 be filled by the board, the board shall be required to notify

47 all qualified professional personnel on the preferred list
48 and give them an opportunity to apply, but failure to apply
49 shall not cause such employee to forfeit any right to recall.
50 The notice shall be sent by certified mail to the last known
51 address of the employee, and it shall be the duty of each
52 professional personnel to notify the board of continued
53 availability annually, of any change in address or of any
54 change in certification and/or licensure.

55 Boards shall be required to post and date notices of all
56 openings in established, existing or newly created positions
57 in conspicuous working places for all professional
58 personnel to observe for at least five working days. The
59 notice of such position openings shall include the job
60 description. No vacancy shall be filled until after the five-
61 day minimum posting period.

62 (b) A county board of education shall make decisions
63 affecting promotion and filling of any service personnel
64 positions of employment or jobs occurring throughout the
65 school year that are to be performed by service personnel as
66 provided in section eight, article four of this chapter, on the
67 basis of seniority, qualifications and evaluation of past
68 service.

69 Qualifications shall mean that the applicant holds a
70 classification title in his category of employment as
71 provided in this section and must be given first opportunity
72 for promotion and filling vacancies. Other employees then
73 must be considered and shall qualify by meeting the
74 definition of the job title as defined in section eight, article
75 four of this section, that relates to the promotion or
76 vacancy. If the employee so requests, the board must show
77 valid cause why an employee with the most seniority is not
78 promoted or employed in the position for which he applies.
79 Applicants shall be considered in the following order:

- 80 (1) Regularly employed service personnel;
- 81 (2) Service personnel whose employment has been
82 discontinued in accordance with this section;
- 83 (3) Professional personnel who held temporary service
84 personnel jobs or positions prior to the ninth day of June,
85 one thousand nine hundred eighty-two, and who apply only
86 for such temporary jobs or positions;

87 (4) Substitute service personnel; and

88 (5) New service personnel.

89 The county board of education may not prohibit a service
90 employee from retaining or continuing his employment in
91 any positions or jobs held prior to the effective date of this
92 section and thereafter.

93 A promotion shall be defined as any change in his
94 employment that the employee deems to improve his
95 working circumstance within his classification category of
96 employment and shall include a transfer to another
97 classification category or place of employment if the
98 position is not filled by an employee who holds a title within
99 that classification category of employment. Each class title
100 listed in section eight, article four of this chapter shall be
101 considered a separate classification category of
102 employment for service personnel, except for those class
103 titles having Roman numeral designations, which shall be
104 considered a single classification of employment. The
105 cafeteria manager class title shall be included in the same
106 classification category as cooks. The executive secretary
107 class title shall be included in the same classification
108 category as secretaries.

109 For purposes of determining seniority under this section,
110 an employee's seniority begins on the date that he enters
111 into his assigned duties.

112 Notwithstanding any other provisions of this chapter to
113 the contrary, decisions affecting such personnel with
114 respect to extra-duty assignments shall be made in the
115 following manner: An employee with the greatest length of
116 service time in a particular category of employment shall be
117 given priority in accepting such assignments, followed by
118 other fellow employees on a rotating basis according to the
119 length of their service time until all such employees have
120 had an opportunity to perform similar assignments. The
121 cycle then shall be repeated: *Provided*, That an alternative
122 procedure for making extra-duty assignments within a
123 particular classification category of employment may be
124 utilized if the alternative procedure is approved both by the
125 county board of education and by an affirmative vote of two
126 thirds of the employees within that classification category

127 of employment. For the purpose of this section, extra-duty
128 assignments are defined as irregular jobs that occur
129 periodically or occasionally such as, but not limited to, field
130 trips, athletic events, proms, banquets and band festival
131 trips.

132 Boards shall be required to post and date notices of all job
133 vacancies of established existing or newly created positions
134 in conspicuous working places for all school service
135 employees to observe for at least five working days. The
136 notice of such job vacancies shall include the job
137 description, the period of employment, the amount of pay
138 and any benefits and other information that is helpful to the
139 employees to understand the particulars of the job. After
140 the five day minimum posting period all vacancies shall be
141 filled within twenty working days from the posting date
142 notice of any job vacancies of established existing or newly
143 created positions.

144 All decisions by county boards of education concerning
145 reduction in work force of service personnel shall be made
146 on the basis of seniority, as hereinafter provided.

147 The seniority of any such service personnel shall be
148 determined on the basis of the length of time the employee
149 has been employed by the county board of education within
150 a particular job classification. For the purpose of
151 establishing seniority for a preferred recall list as
152 hereinafter provided, when an employee has been employed
153 in one or more classifications, the seniority accrued in each
154 previous classification shall be retained by the employee.

155 Should a county board of education be required to reduce
156 the number of employees within a particular job
157 classification, the employee with the least amount of
158 seniority within that classification or grades of
159 classification shall be properly released and employed in a
160 different grade of that classification if there is a job
161 vacancy: *Provided*, That if there is no job vacancy for
162 employment within such classification or grades of
163 classification, he shall be employed in any other job
164 classification which he previously held with the county
165 board if there is a vacancy and shall retain any seniority
166 accrued in such job classification or grade of classification.

167 If two or more employees accumulate identical seniority,
168 the priority shall be determined by a random selection
169 system established by the employees and approved by the
170 county board.

171 All employees whose seniority with the county board is
172 insufficient to allow their retention by the county board
173 during a reduction in work force shall be placed upon a
174 preferred recall list and shall be recalled to employment by
175 the county board on the basis of seniority.

176 Employees placed upon the preferred list shall be recalled
177 to any position openings by the county board within the
178 classification(s), where they had previously been employed,
179 or to any lateral position for which the employee is qualified
180 or to a lateral area for which an employee has certification
181 and/or licensure.

182 Employees on the preferred recall list shall not forfeit
183 their right to recall by the county board if compelling
184 reasons require an employee to refuse an offer of
185 reemployment by the county board.

186 The county board shall be required to notify all
187 employees on the preferred recall list of all position
188 openings that from time to time exist. Such notice shall be
189 sent by certified mail to the last known address of the
190 employee; it shall be the duty of each such employee to
191 notify the county board of any change in the address of such
192 employee.

193 No position openings may be filled by the county board,
194 whether temporary or permanent, until all employees on
195 the preferred recall list have been properly notified of
196 existing vacancies and have been given an opportunity to
197 accept reemployment.

198 Any board failing to comply with the provisions of this
199 article may be compelled to do so by mandamus and shall be
200 liable to any party prevailing against the board for court
201 costs and his reasonable attorney fee, as determined and
202 established by the court. Further, employees denied
203 promotion or employment in violation of this section shall
204 be awarded the job, pay and any applicable benefits
205 retroactively to the date of the violation and payable
206 entirely from local funds. Further, the board shall be liable

207 to any party prevailing against the board for any court
208 reporter costs including copies of transcripts.

§18A-4-15. Employment of service personnel substitutes.

1 The county board shall employ and the county
2 superintendent, subject to the approval of the county board
3 of education, shall assign substitute service personnel on
4 the basis of seniority to perform any of the following duties:

5 (1) To fill the temporary absence of another service
6 employee;

7 (2) To fill the position of a regular service employee on
8 leave of absence: *Provided*, That if such leave of absence is
9 to extend beyond thirty days, the board, within twenty
10 working days from the commencement of the leave of
11 absence, shall give regular employee status to a person
12 hired to fill such position. The person employed on a regular
13 basis shall be selected under the procedure set forth in
14 section eight-b of this article. The substitute shall hold such
15 position and regular employee status only until the regular
16 employee shall be returned to such position and the
17 substitute shall have and shall be accorded all rights,
18 privileges and benefits pertaining to such position;

19 (3) To perform the service of a service employee who is
20 authorized to be absent from duties without loss of pay;

21 (4) To temporarily fill a vacancy in a permanent
22 position caused by severance of employment by the
23 resignation, transfer, retirement, permanent disability or
24 death of the regular service employee who had been
25 assigned to fill such position: *Provided*, That within twenty
26 working days from the commencement of the vacancy, the
27 board shall fill such vacancy under the procedures set out in
28 section eight-b of this article and section five, article two of
29 this chapter and such person hired to fill the vacancy shall
30 have and shall be accorded all rights, privileges and
31 benefits pertaining to such position;

32 (5) To fill the vacancy created by a regular employee's
33 suspension: *Provided*, That if the suspension is for more
34 than thirty working days the substitute service employee
35 shall be assigned to fill the vacancy on a regular basis and
36 shall have and be accorded all rights, privileges and

37 benefits pertaining to such position until such termination
38 by the county board of education becomes final. If the
39 suspended employee is not returned to his job, the board
40 shall fill the vacancy under the procedures set out in section
41 eight-b of this article and section five, article two of this
42 chapter; and

43 (6) To temporarily fill a vacancy in a newly created
44 position prior to employment of a service personnel on a
45 regular basis under the procedure set forth in section eight-
46 b of this article.

47 Substitutes shall be assigned in the following manner: A
48 substitute with the greatest length of service time, that is,
49 from the date he began his assigned duties as a substitute in
50 that particular category of employment, shall be given
51 priority in accepting the assignment throughout the period
52 of the regular employee's absence or until the vacancy is
53 filled on a regular basis under the procedures set out in
54 section eight-b of this article. All substitutes shall be
55 employed on a rotating basis according to the length of their
56 service time until each substitute has had an opportunity to
57 perform similar assignments: *Provided*, That if there are
58 regular service employees employed in the same building or
59 working station as the absent employee and who are
60 employed in the same classification category of
61 employment, such regular employees shall be first offered
62 the opportunity to fill the position of the absent employee
63 on a rotating and seniority basis with the substitute then
64 filling the regular employee's position. A regular employee
65 assigned to fill the position of an absent employee shall be
66 given the opportunity to hold that position throughout such
67 absence.

68 The salary of a substitute service employee shall be based
69 upon his years of employment as defined in section eight of
70 this article and as provided in the state minimum pay scale
71 set forth in section eight-a of this article and shall be in
72 accordance with the salary schedule of persons regularly
73 employed in the same position in the county in which he is
74 employed.

75 Before any substitute service employee enters upon his
76 duties, he shall execute with the county board of education

77 a written contract as provided in section five, article two of
78 this chapter.

79 Substitute service employees who have worked thirty
80 days for a school system shall have all rights pertaining to
81 suspension, dismissal and contract renewal as is granted to
82 regular service personnel in sections six, seven, eight and
83 eight-a, article two of this chapter.

CHAPTER 71

(Com. Sub. for S. B. 184—By Mr. Davis, Mr. Holliday and Mr. Heck)

[Passed March 5, 1983; in effect ninety days from passage. 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; and to further amend said chapter by adding thereto a new article, designated article twenty-eight, relating to private, parochial or church schools, or schools of a religious order; policy; attendance; health and safety regulations; standardized testing requirements; participation in state programs; notice of intent to operate and terminate; requirements exclusive.

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; and that said chapter eighteen be further amended by adding thereto a new article, designated article twenty-eight, all to read as follows:

CHAPTER 18. EDUCATION.

Article

8. Compulsory School Attendance.

28. Private, Parochial or Church Schools, or Schools of Religious Order.

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 confirmation
7 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 for a
11 time equal to the school term of the county for the year. In
12 all such schools it shall be the duty of the principal or other
13 person in control, upon the request of the county
14 superintendent of schools, to furnish to the county board of
15 education such information and records as may be required
16 with respect to attendance, instruction and progress of
17 pupils enrolled between the ages of seven and sixteen years;

18 *Exemption B. Instruction in home or other approved*
19 *place.*—Such instruction shall be in the home of such child
20 or children or at some other place approved by the county
21 board of education and for a time equal to the school term of
22 the county. The instruction in such cases shall be conducted
23 by a person or persons who, in the judgment of the county
24 superintendent and county board of education, are
25 qualified to give instruction in subjects required to be
26 taught in the free elementary schools of the state. It shall be
27 the duty of the person or persons giving the instruction,
28 upon request of the county superintendent, to furnish to the
29 county board of education, such information and records as
30 may be required from time to time with respect to
31 attendance, instruction and progress of pupils enrolled
32 between the ages of seven and sixteen years receiving such
33 instruction;

34 *Exemption C. Physical or mental incapacity.*—Physical
35 or mental incapacity shall consist of incapacity for school
36 attendance and the performance of school work. In all cases
37 of prolonged absence from school due to incapacity of the
38 child to attend, the written statement of a licensed
39 physician or authorized school nurse shall be required
40 under the provisions of this article: *Provided*, That in all
41 cases incapacity shall be narrowly defined and in no case
42 shall the provisions of this article allow for the exclusion of
43 the mentally, physically, emotionally or behaviorally
44 handicapped child otherwise entitled to a free appropriate
45 education;

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

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

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

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

73 *Exemption H. Serious illness or death in the immediate*
74 *family of the pupil.*—It is expected that the county
75 attendance director will ascertain the facts in all cases of
76 such absences about which information is inadequate and
77 report same to the county superintendent of schools;

78 *Exemption I. Destitution in the home.*—Exemption
79 based on a condition of extreme destitution in the home may
80 be granted only upon the written recommendation of the
81 county attendance director to the county superintendent
82 following careful investigation of the case. A copy of the
83 report confirming such condition and school exemption
84 shall be placed with the county director of public
85 assistance. This enactment contemplates every reasonable

86 effort that may properly be taken on the part of both school
87 and public assistance authorities for the relief of home
88 condition officially recognized as being so destitute as to
89 deprive children of the privilege of school attendance.
90 Exemption for this cause shall not be allowed when such
91 destitution is relieved through public or private means;

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

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

108 The completion of the eighth grade shall not exempt any
109 child under sixteen years of age from the compulsory
110 attendance provision of this article: *Provided*, That there is
111 a public high school or other public school of advanced
112 grades or a school bus providing free transportation to any
113 such school the route of which is within two miles of the
114 child's home by the shortest practicable route or path as
115 hereinbefore specified under Exemption D of this section.

ARTICLE 28. PRIVATE, PAROCHIAL OR CHURCH SCHOOLS, OR SCHOOLS OF A RELIGIOUS ORDER.

- §18-28-1. Policy.
- §18-28-2. Attendance; health and safety regulations.
- §18-28-3. Standardized testing requirements.
- §18-28-4. Voluntary participation in state programs.
- §18-28-5. New school notice requirements; termination.
- §18-28-6. Requirements exclusive.

§18-28-1. Policy.

1 In conformity with the constitutions of the United States

2 and of West Virginia, it is the public policy of the state in
3 matters of education that no human authority shall, in any
4 case whatever, control or interfere with the rights of
5 conscience or with religious liberty and that no person shall
6 be enforced, restrained, molested or burdened, in body or
7 goods, or otherwise suffer, on account of his or her religious
8 opinions or belief, but all people shall be free to profess, and
9 by argument, to maintain their opinions in matters of
10 religion; and further be free to select their religious
11 instructor, and to make for his or her support, such private
12 contract as they shall please, and that religion, morality and
13 knowledge being necessary to good government and the
14 happiness of humankind, the means of education shall
15 forever be encouraged.

§18-28-2. Attendance; health and safety regulations.

1 Each private, parochial or church school or school of a
2 religious order shall observe a minimum instructional term
3 of one hundred eighty days, with an average of five hours of
4 instruction per day, and shall make and maintain annual
5 attendance and disease immunization records for each
6 pupil enrolled and regularly attending classes. Such
7 attendance records shall be made available to the parents or
8 legal guardians. Upon the request of the county
9 superintendent of schools, any school to which this applies
10 (or a parents organization composed of the parents or
11 guardians of children enrolled in said school) shall furnish
12 to the county board of education a list of the names and
13 addresses of all children enrolled in such school between
14 the ages of seven and sixteen years. Attendance by a child at
15 any school to which this article relates and which complies
16 with this article shall satisfy the requirements of
17 compulsory school attendance. Each such school shall be
18 subject to reasonable fire, health and safety inspections by
19 state, county and municipal authorities as required by law,
20 and shall further be required to comply with the West
21 Virginia school bus safety regulations.

§18-28-3. Standardized testing requirements.

1 Each private, parochial or church school or school of a
2 religious order or other nonpublic school electing to operate
3 under this statute in lieu of the approval requirements set
4 forth as part of section one, article eight, chapter eighteen,

5 Exemption A shall administer on an annual basis during
6 each school year to every child enrolled therein between the
7 ages of seven and sixteen years either the Comprehensive
8 Test of Basic Skills, the California Achievement Test or the
9 Stanford Achievement Test, which test will be selected by
10 the chief administrative officer of each school in the
11 subjects of English, grammar, reading, social studies,
12 science and mathematics; and shall be administered under
13 standardized conditions as set forth by the published
14 instructions of the selected test.

15 Each child's testing results and the school composite test
16 results shall be made available to such child's parents or
17 legal guardians. Upon request of a duly authorized
18 representative of the West Virginia department of
19 education, the school composite test results shall be
20 furnished by the school or by a parents organization
21 composed of the parents or guardians of children enrolled
22 in said school to the state superintendent of schools.

23 Each school to which this article applies shall:

24 (a) Establish curriculum objectives, the attainment of
25 which will enable students to develop the potential for
26 becoming literate citizens.

27 (b) Provide an instructional program that will make
28 possible the acquisition of competencies necessary to
29 become a literate citizen.

30 If such school composite test results for any single year
31 for English, grammar, reading, social studies, science and
32 mathematics fall below the fortieth percentile on the
33 selected tests, the school as herein described shall initiate a
34 remedial program to foster achievement above that level. If
35 after two consecutive calendar years, school composite test
36 results are not above the fortieth percentile level,
37 attendance at the school may no longer satisfy the
38 compulsory school attendance requirement exemption of
39 Exemption K, section one, article eight, chapter eighteen,
40 until such time as the percentile standards herein set forth
41 are met.

§18-28-4. Voluntary participation in state programs.

1 Any private, parochial or church school or school of a
2 religious order or other nonpublic school complying with

3 the provisions of this article may, on a voluntary basis,
4 participate in any state operated or state sponsored
5 program otherwise made available to such schools by law.

§18-28-5. New school notice requirements; termination.

1 Any new school to which this article relates shall send
2 to the state superintendent of schools of the state of
3 West Virginia a notice of intent to operate, name and
4 address of the school, and name of the school's chief
5 administrator.

6 Any school to which this article applies shall notify the
7 state superintendent of schools of the state of West Virginia
8 upon termination.

§18-28-6. Requirements exclusive.

1 No private, parochial or church school or school operated
2 by any other religious group or body as part of its religious
3 ministry or other nonpublic school which complies with the
4 requirements of this article shall be subject to any other
5 provision of law relating to education except requirements
6 of law respecting fire, safety, sanitation and immunization.

CHAPTER 72

(S. B. 20—By Mr. Palumbo)

[Passed March 11, 1983; in effect July 1, 1983. Approved by the Governor.]

AN ACT to amend and reenact sections two, four and nine, article eight, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to compulsory school attendance; increasing the minimum fine from three to five dollars and the maximum fine from twenty to fifty dollars for persons convicted of violations; providing for the duties of county school attendance director and assistants; providing for initial notice which allows a ten-day period in which a parent, guardian or custodian is required to attend a personal conference with a school official concerning a child's absenteeism; providing for issuance and execution of warrants when violation

continues after initial notice; setting maximum time period for assignment of the case to a magistrate and for holding hearing; providing for advance notice of hearing to the defendant; and changing the term "justice of the peace" to "magistrate."

Be it enacted by the Legislature of West Virginia:

That sections two, four and nine, 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.

§ 18-8-2. Offenses; penalties; cost of prosecution.

§ 18-8-4. Duties of attendance director and assistant directors; complaints, warrants and hearings.

§ 18-8-9. Report and disposition of fines collected.

§ 18-8-2. Offenses; penalties; cost of prosecution.

1 Any person who, after due notice has been served upon
2 him as hereinafter provided, shall fail to cause a child or
3 children in his legal or actual charge to attend school as
4 hereinbefore provided, shall be guilty of a misdemeanor,
5 and shall, upon conviction thereof, be fined not less than
6 five nor more than fifty dollars together with the costs of
7 prosecution, or confined in jail not less than five nor more
8 than twenty days. Every day a child is out of school contrary
9 to the provisions of this article shall constitute a separate
10 offense. Magistrates shall have jurisdiction of offenses
11 under this section.

12 Whenever a person accused of violating any of the
13 provisions of this article has been tried and acquitted, the
14 cost of prosecution shall be paid by the county board of
15 education out of the maintenance fund of the county.

§ 18-8-4. Duties of attendance director and assistant directors; complaints, warrants and hearings.

1 The county attendance director and his assistants shall
2 diligently promote regular school attendance. They shall
3 ascertain reasons for inexcusable absences from school of
4 pupils of compulsory school age as defined under this
5 article, and shall take such steps as are, in their discretion,
6 best calculated to correct attitudes of parents and pupils

7 which result in absences from school even though not
8 clearly in violation of law.

9 If it is found that absence from school is in violation of
10 law, the attendance director or assistant, in the case of first
11 offense that school year, shall serve written notice to the
12 parent, guardian or custodian of such child that the
13 attendance of such child at school is required and that
14 within ten days of receipt of such notice the parent,
15 guardian or custodian, accompanied by the child if
16 possible, shall report in person to the school the child
17 attends for a conference with the principal or other
18 designated representative of the school in order to discuss
19 and correct the circumstances causing the inexcusable
20 absences of the child; and if the parent, guardian or
21 custodian does not comply with the provisions of this
22 article, then the attendance director or assistant shall make
23 complaint against such parent, guardian or custodian
24 before a magistrate of the county: *Provided*, That for a
25 subsequent offense in any school year no such notice shall
26 be required. If it appears from the complaint that there is
27 probable cause to believe that an offense has been
28 committed and that the accused has committed it, a warrant
29 for the arrest of the accused shall issue to any officer
30 authorized by law to arrest persons charged with offenses
31 against the state. More than one warrant may be issued on
32 the same complaint. The warrant shall be executed within
33 ten days of its issuance or as soon thereafter as the accused
34 can be found.

35 The magistrate court clerk, or the clerk of the circuit
36 court performing the duties of the magistrate court clerk as
37 authorized in section eight, article one, chapter fifty of this
38 code, shall assign the case to a magistrate within ten days of
39 execution of the warrant. The hearing shall be held within
40 twenty days of the assignment to the magistrate, subject to
41 lawful continuance. The magistrate shall provide to the
42 accused at least ten days' advance notice of the date, time
43 and place of the hearing.

44 When any doubt exists as to the age of a child absent from
45 school, the attendance director shall have authority to
46 require a properly attested birth certificate or an affidavit
47 from the parent, guardian or custodian of such child,

48 stating age of such child. The county attendance director or
49 assistant shall, in the performance of his duties, have
50 authority to take without warrant any child absent from
51 school in violation of the provisions of this article and to
52 place such child in the school in which such child is or
53 should be enrolled.

54 The county attendance director shall devote full time to
55 his duties as a school official and shall be responsible under
56 direction of the county superintendent for the efficient
57 administration of school attendance in his county. In
58 addition to those duties directly relating to the
59 administration of attendance, the county attendance
60 director and assistant directors shall also perform the
61 following duties:

62 (a) Assist in directing the taking of the school census to
63 see that it is taken at the time and in the manner provided by
64 law;

65 (b) Advise with principals and teachers on the
66 comparison of school census and enrollment for the
67 detection of possible nonenrollees;

68 (c) Cooperate with existing state and federal agencies
69 charged with enforcement of child labor laws;

70 (d) Prepare a report for submission by the county
71 superintendent to the state superintendent of schools on
72 school attendance, at such times and in such detail as may
73 be required; also, file with the county superintendent and
74 county board of education at the close of each month a
75 report showing activities of the school attendance office
76 and the status of attendance in the county at the time;

77 (e) Promote attendance in the county by the compilation
78 of data for schools and by furnishing suggestions and
79 recommendations for publication through school bulletins
80 and the press, or for such purposes as the county
81 superintendent may direct;

82 (f) Participate in school functions such as parent-
83 teacher associations, civic meetings, club meetings, and
84 teachers' conferences;

85 (g) Assist in such other ways as the county
86 superintendent may direct for improving school
87 attendance.

§18-8-9. Report and disposition of fines collected.

1 All fines collected under the provisions of this article
2 shall be paid on or before the last day of each calendar
3 month by the magistrate, or other proper official having
4 jurisdiction in the case, to the sheriff and by him credited to
5 the county school fund; and the magistrate shall file with
6 the county superintendent on the last day of each month an
7 itemized statement of all fines paid over to the sheriff.

CHAPTER 73

(Com. Sub. for H. B. 1875—By Mr. Givens)

[Passed March 12, 1983; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four-b and four-c, article eleven, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend said article by adding thereto eighteen new sections, designated sections twenty-six through forty-three, all relating to the creation of and deposit into a medical center revenue fund of certain fees, charges and rentals collected at the West Virginia University medical center; authorizing leasing activities for public educational and patient services purposes; authorizing issuance of revenue bonds and notes by the West Virginia board of regents to finance the cost of acquiring, constructing, reconstructing, remodeling, repairing, improving, extending, equipping and furnishing the buildings and other physical facilities of the West Virginia University medical center, with the proceeds of any bond or note issuance to be expendable after appropriation by the Legislature; authorizing payment of principal of and premium, if any, and interest on said revenue bonds and notes from all or any portion of the moneys from time to time on deposit in said medical center revenue fund and of any other gross revenues, excluding tuition fees, derived from

said medical center; authorizing acceptance of federal and private assistance; specifying that bonds and notes issued are not a debt of nor pledge of faith and credit of the state, any county, municipality or political subdivision; providing for bonds and notes, after issuance, to be negotiable instruments and to be exempt from taxation by the state, any county, municipality, political subdivision or agency thereof, with exception; providing for severability and interpretation of sections of the act; and effective date.

Be it enacted by the Legislature of West Virginia:

That sections four-b and four-c, article eleven, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto eighteen new sections, designated sections twenty-six through forty-three, inclusive, all to read as follows:

ARTICLE 11. WEST VIRGINIA UNIVERSITY.

- §18-11-4b. Authority to fix and collect fees and charges at medical center; disposition thereof.
- §18-11-4c. Authority to lease portions of medical center to operate supply rooms at medical center; fixing, collection and disposition of charges.
- §18-11-26. Definition of board; cost of acquiring, constructing, reconstructing, remodeling, repairing, improving, extending, equipping or furnishing the West Virginia University medical center to be financed by revenue bonds or notes.
- §18-11-27. Trustee for bondholders or noteholders, contents of trust agreement.
- §18-11-28. Operation and control of fiscal affairs of West Virginia University medical center.
- §18-11-29. Payment of principal of and premium, if any, and interest on bonds and notes from medical center revenue fund and other gross revenues derived from West Virginia University medical center; gross revenues not to include tuition fees.
- §18-11-30. Enforcement of payment and validity of bonds and notes.
- §18-11-31. Pledges, time, liens, recordation.
- §18-11-32. Refunding bonds.
- §18-11-33. Purchase and cancellation of bonds or notes.
- §18-11-34. Federal and private assistance.
- §18-11-35. Vested rights; impairment.
- §18-11-36. Bonds and notes not debt of state, county, municipality or any political subdivision; expenses incurred pursuant to article.

- §18-11-37. Negotiability of bonds and notes.
- §18-11-38. Bonds and notes legal investments.
- §18-11-39. Exemption from taxation.
- §18-11-40. Sections and provisions severable.
- §18-11-41. Sections regarded as supplementary.
- §18-11-42. Liberal construction.
- §18-11-43. Effective date.

§18-11-4b. Authority to fix and collect fees and charges at medical center; disposition thereof.

1 The West Virginia board of regents shall have authority to
2 collect from patients at the West Virginia University medical
3 center such hospital, clinic, laboratory and other fees and
4 charges as may be fixed by the board of regents from time to
5 time. All such fees and charges collected at the medical center
6 exclusive of physician and dentist fees shall be paid into a
7 medical center revenue fund, which is hereby created in the
8 state treasury, and shall be used solely for the construction,
9 maintenance and operation of the medical center, including
10 the payment of the principal of and premium, if any, and
11 interest on revenue bonds and notes issued by the board of
12 regents for the purpose of financing the cost of acquiring, con-
13 structing, reconstructing, remodeling, repairing, improving, ex-
14 tending, equipping or furnishing the buildings and other phys-
15 ical facilities of said medical center.

§18-11-4c. Authority to lease portions of medical center to operate supply rooms at medical center; fixing, collection and disposition of charges.

1 The West Virginia board of regents shall have authority to
2 lease, as lessor, to any person for purposes directly associated
3 with public educational or patient services, any portion of the
4 West Virginia University medical center and to operate at the
5 medical center supply rooms for the sale or rental of equip-
6 ment to patients, students, faculty and university departments
7 and for the furnishing to patients, students, faculty and uni-
8 versity departments, medical, dental and pharmaceutical sup-
9 plies and laundry and other services. The board of regents
10 shall have authority to fix the terms of any such lease or rental
11 agreements and the prices and charges to be collected for such
12 lease of any such portion of the medical center or the sale,

13 rental or furnishing of any such equipment, supplies and ser-
14 vices. All moneys collected under the authority of this section
15 shall be paid into the medical center revenue fund heretofore
16 created in the state treasury under the provisions of section
17 four-b of this article and shall be used solely for the construc-
18 tion, maintenance and operation of the medical center, includ-
19 ing the payment of the principal of and premium, if any, and
20 interest on revenue bonds and notes issued by the board of
21 regents for the purpose of financing the cost of acquiring, con-
22 structing, reconstructing, remodeling, repairing, improving,
23 extending, equipping or furnishing the buildings and other
24 physical facilities of said medical center.

**§18-11-26. Definition of board; cost of acquiring, constructing, re-
constructing, remodeling, repairing, improving, ex-
tending, equipping or furnishing the West Virginia
University medical center to be financed by revenue
bonds or notes.**

1 (1) Notwithstanding the provisions of section one, article
2 one of this chapter, the word "board," when used in sections
3 twenty-six through forty-two, inclusive, of this article, means
4 the West Virginia board of regents.

5 (2) For the purpose of financing the cost of acquiring, con-
6 structing, reconstructing, remodeling, repairing, improving, ex-
7 tending, equipping or furnishing the buildings or other physical
8 facilities of the West Virginia University medical center, the
9 board periodically may issue negotiable bonds or notes of the
10 state in a principal amount which, in the opinion of the board,
11 shall be necessary to finance said costs, and the proceeds of
12 the issuance of any such bonds or notes shall be expendable
13 after appropriation thereof by the Legislature. Such cost shall
14 include, but not be limited to, the following: The cost of such
15 acquisition, construction, reconstruction, remodeling, repair,
16 improvement, extension, equipment or furnishing; studies and
17 surveys; plans, specifications, architectural and engineering
18 services; legal, organization, marketing or other special ser-
19 vices; interest and carrying charges prior to, during and for
20 six months after completion of such acquisition, construction,
21 reconstruction, remodeling, repair, improvement, extension,

22 equipment or furnishing; the costs of issuing the bonds or
23 notes; and a reasonable reserve for payment of the principal
24 of and interest on the bonds or notes.

25 (3) The board periodically may issue renewal notes of
26 the state, may issue revenue bonds of the state to pay notes
27 and, if it considers refunding expedient, may refund or re-
28 fund in advance bonds issued by the board by the issuance of
29 new bonds of the state, pursuant to the requirements of sec-
30 tion thirty-two of this article.

31 (4) Except as may otherwise be expressly provided by the
32 board, every issue of bonds or notes by it shall be special
33 obligations of the state, payable solely from the revenues or
34 other moneys pledged therefor.

35 (5) The bonds and the notes shall be authorized by resolu-
36 tion of the board, shall bear such date and shall mature at such
37 time or times, in the case of any such note or any renewals
38 thereof not exceeding five years from the date of issue of such
39 original note, and in the case of any such bond not exceeding
40 forty years from the date of issue, as such resolution may pro-
41 vide. The bonds and notes shall bear interest at such rate or
42 rates, be in such denominations, be in such form either coupon
43 or registered, carry such registration privileges, be payable in
44 such medium of payment and at such place and be subject to
45 such terms of redemption as the board may authorize. The
46 bonds and notes may be sold by the board in the manner and
47 at or not less than the price the board determines. The bonds
48 and notes shall be executed by the governor and the president
49 of the board, both of whom may use facsimile signatures. The
50 great seal of the state or a facsimile thereof shall be affixed
51 thereto or printed thereon and attested, manually or by fac-
52 simile signature, by the secretary of state, and any coupons at-
53 tached thereto shall bear the manual or facsimile signature of
54 the president of the board. In case any officer whose signature,
55 or a facsimile of whose signature, appears on any bonds, notes
56 or coupons ceases to be such officer before delivery of such
57 bonds or notes, such signature or facsimile is nevertheless
58 sufficient for all purposes the same as if he had remained in
59 office until such delivery; and, in case the seal of the state

60 has been changed after a facsimile has been imprinted on
61 such bonds or notes, such facsimile seal will continue to be
62 sufficient for all purposes.

63 (6) A resolution authorizing bonds or notes or an issue of
64 bonds or notes under sections twenty-six through forty-two,
65 inclusive, of this article, may contain provisions, which shall
66 be a part of the contract with the holders of the bonds or
67 notes, as to any or all of the following:

68 (a) Pledging and creating a lien on all or any portion of
69 the moneys from time to time on deposit in the medical center
70 revenue fund, heretofore created by section four-b of this
71 article, to secure the payment of the bonds or notes or of any
72 issue of bonds or notes, subject to those agreements with
73 bondholders or noteholders which then exist;

74 (b) Pledging and creating a lien on any loan, grant or con-
75 tribution to be received from the federal, state or local govern-
76 ment or other source;

77 (c) The use and disposition of the moneys on deposit in
78 the medical center revenue fund and any other gross revenues
79 derived from the medical center;

80 (d) The setting aside of reserves or sinking funds and the
81 regulation and disposition thereof;

82 (e) Limitations on the purpose to which the proceeds of
83 sale of bonds or notes may be applied and pledging the pro-
84 ceeds to secure the payment of the bonds or notes or of any
85 issue of the bonds or notes;

86 (f) Limitations on the issuance of additional bonds or notes
87 and the terms upon which additional bonds or notes may be
88 issued and secured;

89 (g) The procedure by which the terms of a contract with
90 the bondholders or noteholders may be amended or abrogated,
91 the amount of bonds or notes the holders of which must con-
92 sent thereto and the manner in which the consent may be
93 given; and

94 (h) Vesting in a trustee or trustees the property, rights,

95 powers, remedies and duties which the board considers neces-
96 sary or convenient.

97 (7) Prior to the preparation of definitive bonds or notes,
98 the board may under like restrictions issue temporary bonds
99 or notes, with or without coupons, exchangeable for definitive
100 bonds or notes, as the case may be, upon the issuance of the
101 latter.

§18-11-27. Trustee for bondholders or noteholders; contents of trust agreement.

1 In the discretion of the board, any bonds, refunding bonds
2 or notes issued by the board may be secured by a trust agree-
3 ment between the board and a corporate trustee, which trustee
4 may be any trust company or banking institution having the
5 powers of a trust company within or without the state. Any
6 such trust agreement may contain provisions as set forth in
7 section twenty-six of this article with respect to the resolution.
8 All expenses incurred in carrying out such agreement may be
9 treated as a part of the cost of acquiring, constructing, recon-
10 structing, remodeling, repairing, improving, extending, equip-
11 ping or furnishing the buildings or other physical facilities of
12 the West Virginia University medical center affected by the
13 agreement.

§18-11-28. Operation and control of fiscal affairs of West Virginia University medical center.

1 The board shall properly maintain, repair, operate, manage
2 and control the fiscal affairs of the West Virginia University
3 medical center, fix the rates of rents, fees or charges and es-
4 tablish rules and regulations for the use and operation of the
5 medical center, as provided by sections four-b through four-
6 d, inclusive, of this article, and as otherwise required by this
7 code or determined necessary by the board, and may make and
8 enter into all contracts or agreements necessary and incidental
9 to the performance of its duties and the execution of its pow-
10 ers under sections twenty-six through forty-two, inclusive, of
11 this article.

§18-11-29. Payment of principal of and premium, if any, and interest on bonds and notes from medical center revenue fund and other gross revenues derived from West Virginia University medical center; gross revenues not to include tuition fees.

1 Whenever bonds or notes are issued for acquiring, construct-
2 ing, reconstructing, remodeling, repairing, improving, extend-
3 ing, equipping or furnishing the buildings or other physical
4 facilities of the West Virginia University medical center, the
5 board may pledge to the payment of the principal of and
6 premium, if any, and interest on said bonds or notes all or any
7 portion of the moneys from time to time on deposit in the
8 medical center revenue fund heretofore created by section
9 four-b of this article or of any other gross revenues derived
10 from the medical center. For the purposes of sections twenty-
11 six through forty-two, inclusive, of this article, gross revenues
12 shall not include tuition fees collected at the West Virginia
13 University medical center and disposed of pursuant to section
14 four-d of this article.

§18-11-30. Enforcement of payment and validity of bonds and notes.

1 (1) The provisions of sections twenty-six through forty-
2 two, inclusive, of this article and any resolution or trust agree-
3 ment shall continue in effect until the principal of and inter-
4 est on the bonds or notes of the state issued by the board have
5 been fully paid, and the duties of the board under said sections
6 and any resolution or trust agreement shall be enforceable by
7 any bondholder or noteholder by mandamus or other appro-
8 priate action in any court of competent jurisdiction.

9 (2) The resolution authorizing the bonds or notes shall pro-
10 vide that such bonds or notes shall contain a recital that they
11 are issued pursuant to sections twenty-six through forty-two,
12 inclusive, of this article, which recital shall be conclusive evi-
13 dence of their validity and of the regularity of their issuance.

§18-11-31. Pledges, time, liens, recordation.

1 Any pledge made by the board shall be valid and binding
2 from the time the pledge is made. The moneys so pledged and

3 thereafter paid into the medical center revenue fund or other-
4 wise received by the board shall immediately be subject to the
5 lien of the pledge without any physical delivery thereof or
6 further act. The lien of any such pledge shall be valid and
7 binding as against all parties having claims of any kind in tort,
8 contract or otherwise against the board, irrespective of whether
9 such parties have notice thereof.

§18-11-32. Refunding bonds.

1 Any bonds issued under the provisions of sections twenty-
2 six through forty-two, inclusive, of this article and at any
3 time outstanding may at any time and from time to time be
4 refunded by the board by the issuance of refunding bonds of
5 the state in such amount as it may deem necessary to refund
6 the principal of the bonds so to be refunded, together with any
7 unpaid interest thereon; to provide additional funds for the
8 purposes authorized by said sections; and to pay any premiums
9 and commissions necessary to be paid in connection therewith.
10 Any such refunding may be effected whether the bonds to be
11 refunded shall have then matured or shall thereafter mature,
12 either by sale of the refunding bonds and the application of
13 the proceeds thereof for the redemption of the bonds to be re-
14 funded thereby, or by exchange of the refunding bonds for
15 the bonds to be refunded thereby: *Provided*, That the holders
16 of any bonds to be refunded shall not be compelled without
17 their consent to surrender their bonds for payment or ex-
18 change prior to the date on which they are payable or, if
19 they are called for redemption, prior to the date on which
20 they are by their terms subject to redemption. Any refunding
21 bonds issued under the authority of this section shall be pay-
22 able from the revenues out of which the bonds to be refunded
23 thereby were payable, from other moneys or from the prin-
24 cipal of and interest on or other investment yield from invest-
25 ments or proceeds of bonds or other applicable funds and
26 moneys, including investments of proceeds of any refunding
27 bonds, and shall be subject to the provisions contained in and
28 shall be secured in accordance with sections twenty-six through
29 forty-two, inclusive, of this article.

§18-11-33. Purchase and cancellation of bonds or notes.

1 The board, subject to such agreements with bondholders

2 or noteholders as may then exist, shall have the power, out
3 of any funds available therefor, to purchase bonds, including
4 refunding bonds, or notes of the state issued by the board.
5 If the bonds or notes are then redeemable, the price of such
6 purchase shall not exceed the redemption price then applicable
7 plus accrued interest to the next interest payment date thereon.
8 If the bonds or notes are not then redeemable, the price of
9 such purchase shall not exceed the redemption price applica-
10 ble on the first date after such purchase upon which the
11 bonds or notes become subject to redemption plus accrued
12 interest to such date. Upon such purchase, such bonds or notes
13 shall be canceled.

§18-11-34. Federal and private assistance.

1 The board is authorized and empowered to accept loans or
2 grants or temporary advances for the purpose of paying part or
3 all of the cost of acquiring, constructing, reconstructing, re-
4 modeling, repairing, improving, extending, equipping or fur-
5 nishing the buildings or other physical facilities of the West
6 Virginia University medical center and the other purposes here-
7 in authorized from the United States of America or such
8 federal or public agency or department of the United States or
9 any private agency, corporation or individual, which temporary
10 advances may be repaid out of the proceeds of the bonds au-
11 thorized to be issued under the provisions of sections twenty-
12 six through forty-two, inclusive, of this article, and to enter
13 into the necessary contracts and agreements to carry out the
14 purposes hereof with the United States of America or such
15 federal or public agency or department of the United States or
16 with any private agency, corporation or individual.

§18-11-35. Vested rights; impairment.

1 The state pledges and agrees with the holders of any bonds
2 or notes issued under sections twenty-six through forty-two,
3 inclusive, of this article that the state will not limit or alter
4 the rights vested in the board to fulfill the terms of any agree-
5 ments made with the holders thereof, or in any way impair the
6 rights and remedies of the holders, until the bonds or notes,
7 together with the interest thereon, and all costs and expenses in
8 connection with any action or proceeding by or on behalf of

9 such holders, are fully met and discharged. The board is
10 authorized to include this pledge and agreement of the state
11 in any agreement with the holders of such bonds or notes.

**§18-11-36. Bonds and notes not debt of state, county, municipality
or any political subdivision; expenses incurred pur-
suant to article.**

1 Bonds, refunding bonds and notes issued under the author-
2 ity of sections twenty-six through forty-two, inclusive, of this
3 article and any coupons in connection therewith shall not con-
4 stitute a debt or a pledge of the faith and credit or taxing
5 power of this state or of any county, municipality or any other
6 political subdivision of the state, and the holders and owners
7 thereof shall have no right to have taxes levied by the Legis-
8 lature or the taxing authority of any county, municipality or
9 any other political subdivision of this state for the payment of
10 the principal thereof or interest thereon, but such bonds and
11 notes shall be payable solely from the revenues and funds
12 pledged for their payment as authorized by said sections, un-
13 less the notes are issued in anticipation of the issuance of
14 bonds or the bonds are refunded by refunding bonds issued
15 under the authority of said sections, which bonds or refunding
16 bonds shall be payable solely from revenues and funds pledged
17 for their payment as authorized by said sections. All such
18 bonds and notes shall contain on the face thereof a statement
19 to the effect that the bonds or notes, as to both principal and
20 interest, are not debts of the state or any county, municipality
21 or political subdivision thereof, but are payable solely from
22 revenues and funds pledged for their payment.

23 All expenses incurred in carrying out the provisions of sec-
24 tions twenty-six through forty-two, inclusive, of this article
25 shall be payable solely from funds provided under the author-
26 ity of said sections. Said sections do not authorize the board
27 to incur indebtedness or liability on behalf of or payable by
28 the state or any county, municipality or any other political
29 subdivision thereof.

§18-11-37. Negotiability of bonds and notes.

1 Whether or not the bonds or notes are of such form or
2 character as to be negotiable instruments under the uniform

3 commercial code, the bonds or notes authorized to be issued
4 by sections twenty-six through forty-two, inclusive, of this
5 article are negotiable instruments within the meaning of and
6 for all the purposes of the uniform commercial code, subject
7 only to the provisions of the bonds or notes for registration.

§18-11-38. Bonds and notes legal investments.

1 The provisions of sections nine and ten, article six, chapter
2 twelve of this code to the contrary notwithstanding, the bonds
3 and notes of the state issued by the board are securities in
4 which all public officers and bodies of this state, including the
5 West Virginia state board of investments, all municipalities
6 and other political subdivisions of this state, all insurance com-
7 panies and associations and other persons carrying on an in-
8 surance business (including domestic for life and domestic not
9 for life insurance companies), all banks, trust companies,
10 societies for savings, building and loan associations, savings
11 and loan associations, deposit guarantee associations and in-
12 vestment companies, all administrators, guardians, executors,
13 trustees and other fiduciaries and all other persons whatso-
14 ever who are authorized to invest in bonds or other obligations
15 of the state may properly and legally invest funds, including
16 capital, in their control or belonging to them.

§18-11-39. Exemption from taxation.

1 The exercise of the powers granted to the board by sections
2 twenty-six through forty-two, inclusive, of this article will be
3 in all respects for the benefit of the students and teachers of
4 and patients at the West Virginia University medical center
5 and the other people of the state, for the improvement of their
6 health, safety, convenience and welfare, and is a public pur-
7 pose. As the operation and maintenance of the West Virginia
8 University medical center constitutes the performance of es-
9 sential governmental functions, the board shall not be re-
10 quired to pay any taxes or assessments upon any property ac-
11 quired or used by the board or upon the income therefrom.
12 All bonds and notes of the state issued by the board, and all
13 interest and income thereon, shall be exempt from all tax-
14 ation by this state and any county, municipality, political sub-
15 division or agency thereof, except inheritance taxes.

§18-11-40. Sections and provisions severable.

1 Sections twenty-six through forty-two, inclusive, of this
2 article, and the provisions and parts of said sections, are sev-
3 erable, and it is the intention to confer the whole or any part
4 of the powers provided for in said sections, and if any of said
5 sections or the provisions or parts of any of said sections, or
6 the application thereof to any person or circumstance, are for
7 any reason held unconstitutional or invalid, it is the intention
8 that the remaining sections and provisions or parts thereof shall
9 remain in full force and effect.

§18-11-41. Sections regarded as supplementary.

1 Sections twenty-six through forty-two, inclusive, of this
2 article shall be deemed to provide an additional and alternative
3 method for the doing of the things authorized hereby and shall
4 be regarded as supplementary and additional to powers con-
5 ferred by other laws.

§18-11-42. Liberal construction.

1 Sections twenty-six through forty-two, inclusive, of this
2 article, being necessary for the health, safety, convenience and
3 welfare of the students and teachers of and the patients at the
4 West Virginia University medical center and the other people
5 of this state, shall be liberally construed to effectuate the pur-
6 poses thereof.

§18-11-43. Effective date.

1 The provisions of sections four-b, four-c and sections
2 twenty-six through forty-three of this article shall take effect
3 as of the date of passage.

CHAPTER 74

(Com. Sub. for H. B. 1758—By Mrs. Spencer)

[Passed March 10, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article twenty, chapter eighteen of the code of West Virginia, one thousand nine

hundred thirty-one, as amended, relating to requiring county boards of education to establish and maintain special education programs for all exceptional children and including in that requirement all children who, due to injury or other reason, are homebound for a period of three weeks or more.

Be it enacted by the Legislature of West Virginia:

That section one, article twenty, 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 20. EDUCATION OF EXCEPTIONAL CHILDREN.

§18-20-1. Establishment of special programs and teaching services for exceptional children.

1 In accordance with the following provisions, county
2 boards of education throughout the state shall establish and
3 maintain for all exceptional children between five and twenty-
4 three years of age special educational programs, including,
5 but not limited to, special schools, classes, regular classroom
6 programs, home-teaching or visiting-teacher services for any
7 type or classification as the state board of education shall
8 approve. Provisions shall be made for educating excep-
9 tional children (including the handicapped and the gifted)
10 who differ from the average or normal in physical, mental or
11 emotional characteristics, or in communicative or intellectual
12 deviation characteristics, or in both communicative and in-
13 tellectual deviation characteristics, to the extent that they
14 cannot be educated safely or profitably in the regular classes
15 of the public schools or to the extent that they need special
16 educational provisions within the regular classroom in order
17 to educate them in accordance with their capacities, limitations
18 and needs. In addition, county boards of education may
19 establish and maintain other educational services for excep-
20 tional children as the state superintendent of schools may
21 approve.

22 By the school year beginning on the first day of July,
23 one thousand nine hundred seventy-four, county boards
24 of education shall establish and maintain these special
25 educational programs, including, but not limited to, special

26 schools, classes, regular class programs, home-teaching or
27 visiting-teacher services. After the first day of July, one
28 thousand nine hundred eighty-three, the special education
29 programs shall include home-teaching or visiting-teacher ser-
30 vices for children who are homebound due to injury or who for
31 any other reason as certified by a licensed physician are home-
32 bound for a period that has lasted or will last more than three
33 weeks: *Provided*, That pupils receiving such homebound or
34 visiting-teacher services shall not be included when computing
35 adjusted enrollment as defined in section two, article nine-a,
36 chapter eighteen of this code. The state board of education
37 shall adopt rules and regulations to advance and accomplish
38 this program and to assure that all exceptional children in the
39 state, including children in mental health facilities, residential
40 institutions and private schools, will receive an education in
41 accordance with the mandates of state and federal laws.

42 Nothing in this section shall be construed to prevent
43 county boards of education from providing special educa-
44 tional programs, including, but not limited to, special schools,
45 classes, regular class programs, home-teaching or visiting-
46 teacher services for such exceptional children who are three
47 years of age or older.

CHAPTER 75

(Com. Sub. for S. B. 301—By Mr. Palumbo)

[Passed February 21, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twenty-four, chapter eighteen 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 establishing faculty improvement fee; assessing fee against students; providing for collection and disposition of fees; and establishing guidelines for fee use.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 24. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.

§18-24-1b. Faculty improvement fee.

1 In addition to the fees specifically provided for in
2 sections one and one-a of this article, all students enrolled
3 for credit at the state's public colleges and universities
4 shall pay a faculty improvement fee. The West Virginia
5 board of regents shall fix the fee rates for the various
6 institutions and classes of students and may from time to
7 time change these rates: *Provided*, That the fee for each
8 class of students shall be uniform throughout the state
9 and shall be no less than fifteen dollars per semester for
10 residents and no less than fifty dollars per semester for
11 out of state students. The amount of the fee charged at
12 each institution shall be prorated for part-time students.
13 The fee imposed by this section is in addition to the
14 maximum fees allowed to be collected under the provi-
15 sions of section one of this article and is not limited there-
16 by. Refunds of the fee may be made in the same manner
17 as any other fee collected at state institutions of higher
18 education.

19 All faculty improvement fees collected shall be de-
20 posited in a special fund in the state treasury and shall
21 be used as a faculty salary supplement. One half of the
22 moneys shall be apportioned annually on an equitable
23 basis to each full-time instructional faculty member, and
24 the remaining one half of such moneys shall be used
25 for merit raises exclusively for full-time instructional
26 faculty members.

27 The board of regents shall, before the first day of July
28 of each year, provide the legislative auditor with a report
29 of the projected fee collections for each of its institutions.

CHAPTER 76

(H. B. 1629—By Mr. Smith)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and three, article twenty-four, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to fee waivers for undergraduate, graduate and professional students; transferring the power to establish such fee waivers to the West Virginia board of regents; limiting the number thereof; setting forth their terms and conditions; and requiring that rules be promulgated and reports be submitted to legislative auditor.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 24. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.

§18-24-2. Fee waivers—Undergraduate schools.

§18-24-3. Same—Professional and graduate schools.

§18-24-2. Fee waivers—Undergraduate schools.

1 The West Virginia board of regents may establish, from
2 time to time, fee waivers for students in undergraduate studies
3 entitling recipients to waiver of enrollment, tuition, registration,
4 higher education resource and other fees subject to the fol-
5 lowing conditions and limitations:

6 (1) No state educational institution may have in effect at
7 any time undergraduate fee waivers in a number which exceeds
8 five percent of the number of full-time equivalent undergrad-
9 uate students registered during the fall semester of the immedi-
10 ately preceding academic year.

11 (2) Each undergraduate fee waiver shall entitle the recipient
12 thereof to attend a designated state educational institution
13 without payment of the enrollment, tuition, registration, higher
14 education resource and other fees as may be prescribed by the

15 board and be for a period of time not to exceed eight semesters
16 of undergraduate study.

17 (3) The board shall make rules governing the award of
18 undergraduate fee waivers, the issuance and cancellation of
19 certificates entitling the recipients to the benefits thereof, the
20 use of the fee waivers by the recipients and the rights and
21 duties of the recipients in respect to the fee waivers. These
22 rules may not be inconsistent with the provisions of this sec-
23 tion.

24 (4) The awarding of undergraduate fee waivers shall be
25 entered in the minutes of the meetings of the board, and the
26 board shall file with the legislative auditor a copy of the rules
27 governing the award of the fee waivers and a list of the names
28 of the recipients thereof.

§18-24-3. Same—Professional and graduate schools.

1 In addition to the fee waivers heretofore authorized for un-
2 dergraduate study by the provisions of section two of this
3 article, the West Virginia board of regents may establish from
4 time to time fee waivers for study in graduate and professional
5 schools, including medicine and dentistry, entitling the recip-
6 ients to waiver of enrollment, tuition, registration, higher edu-
7 cation resource and other fees, subject to the following con-
8 ditions and limitations:

9 (1) West Virginia University may not have in effect at any
10 time graduate and professional school fee waivers in a number
11 which exceeds ten percent of the number of full-time equiva-
12 lent graduate and professional students registered during the
13 corresponding fall semester, spring semester and summer term
14 of the immediately preceding academic year. In addition to
15 the above ten percent, all graduate assistants employed by West
16 Virginia University shall be granted a fee waiver. All other
17 institutions of higher education may not have in effect at any
18 time graduate and professional school fee waivers in a number
19 which exceeds five percent of the number of full-time equiva-
20 lent graduate and professional students registered during the
21 corresponding fall semester, spring semester and summer term
22 of the immediately preceding academic year. In addition to the

23 above five percent, all graduate assistants employed by the
24 other institutions shall be granted a fee waiver.

25 (2) Each graduate or professional school fee waiver shall
26 entitle the recipient to waiver of the enrollment, tuition, regis-
27 tration, higher education resource and other fees as may be
28 prescribed by the board and be for a period of time not to
29 exceed the number of semesters normally required in the re-
30 cipient's academic discipline.

31 (3) The board shall make rules governing the award of
32 graduate and professional school fee waivers, the issuance and
33 cancellation of certificates entitling the recipients to the bene-
34 fits thereof, the use of the fee waivers by the recipients and the
35 rights and duties of the recipients in respect to the fee waivers.
36 These rules may not be inconsistent with the provisions of this
37 section.

38 (4) The awarding of graduate and professional school fee
39 waivers shall be entered in the minutes of the meeting of the
40 board, and the board shall file with the legislative auditor a
41 copy of the rules governing the award of the fee waiver and a
42 list of the names of the recipients thereof.

CHAPTER 77

(Com. Sub. for H. B. 1097—By Mrs. Hartman)

[Passed March 4, 1983; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four, five, six and nine-c, article twenty-six, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the advisory council of classified employees; providing that the chairman of such council be an ex officio, voting member of the West Virginia board of regents; amending sections relating to the board of regents to incorporate the new voting member; and providing for at least one separate meeting between the board and the advisory council of classified employees.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 26. WEST VIRGINIA BOARD OF REGENTS.

§18-26-4. Composition of board; terms of members; qualifications of members.

§18-26-5. Commencement of terms of members; vacancies; eligibility for reappointment; oath of office; removal from office.

§18-26-6. Meetings; compensation of members.

§18-26-9c. Advisory council of classified employees.

§18-26-4. Composition of board; terms of members; qualifications of members.

1 The board shall consist of thirteen members, of whom one
2 shall be the state superintendent of schools, ex officio, who
3 shall not be entitled to vote, one shall be the chairman of the
4 advisory council of students, ex officio, who shall be entitled
5 to vote, one shall be the chairman of the advisory council of
6 faculty, ex officio, who shall be entitled to vote, and one shall
7 be the chairman of the advisory council of classified em-
8 ployees, ex officio, who shall be entitled to vote. The other
9 nine members shall be citizens of the state, appointed by the
10 governor, by and with the advice and consent of the Senate,
11 for overlapping terms of six years, except that three of the
12 original appointments shall be for terms of two years, three
13 of the original appointments shall be for terms of four years
14 and three of the original appointments shall be for terms of
15 six years.

16 Each of the members appointed to the board by the gover-
17 nor shall be especially qualified in the field of higher educa-
18 tion by virtue of his knowledge, learning, experience or inter-
19 est in the field.

20 Except for the ex officio members no person shall be eligible
21 for appointment to membership on the board who is an officer,
22 employee or member of an advisory board of any state college
23 or university, or any officer or member of any political party
24 executive committee, or the holder of any other public office
25 or public employment under the federal government or under

26 the government of this state or any of its political subdivisions,
27 or any appointee or employee of the board. Of the nine
28 members appointed by the governor from the public at large,
29 not more than five thereof shall belong to the same political
30 party and at least two members of the board shall be appointed
31 from each congressional district.

32 Except as provided in this section, no other person may
33 be appointed to the board.

**§18-26-5. Commencement of terms of members; vacancies; eligi-
bility for reappointment; oath of office; removal from
office.**

1 The governor shall appoint nine members of the board to be
2 appointed by him as soon after the effective date of this
3 article as is practicable, and the original terms of the nine
4 members appointed by the governor and of the one member,
5 who is such by virtue of being the state superintendent of
6 schools, shall commence on July one, one thousand nine hun-
7 dred sixty-nine. The chairman of the advisory council of
8 students, ex officio, the chairman of the advisory council of
9 faculty, ex officio, and the chairman of the advisory council
10 of classified employees, ex officio, shall serve the terms for
11 which they were elected by their respective advisory councils;
12 these members shall be eligible to succeed themselves. All
13 members of the board of regents serving as of the effective
14 date of this enactment shall continue to serve until the end of
15 their term as provided for above.

16 The governor shall appoint a member to fill any vacancy
17 among the nine members of the board appointed by the gov-
18 ernor, by and with the advice and consent of the Senate, which
19 member appointed to fill such vacancy shall serve for the
20 unexpired term of the vacating member. The governor shall
21 fill the vacancy within sixty days of the occurrence of the
22 vacancy.

23 All members of the board appointed by the governor shall
24 be eligible for reappointment. A person who has served as a
25 member during all or any part of two consecutive terms
26 shall be ineligible to serve as a member for a period of three

27 years immediately following the second of the two consecutive
28 terms.

29 Before exercising any authority or performing any duties as
30 a member of the board, each member shall qualify as such by
31 taking and subscribing to the oath of office prescribed by
32 section 5, article IV of the state constitution, the certificate
33 whereof shall be filed with the secretary of state.

34 No member of the board appointed by the governor may be
35 removed from office by the governor except for official mis-
36 conduct, incompetence, neglect of duty or gross immorality,
37 and then only in the manner prescribed by law for the re-
38 moval by the governor of the state elective officers.

§18-26-6. Meetings; compensation of members.

1 The board shall hold at least ten meetings in every fiscal
2 year commencing July one and ending the following June
3 thirty, one of which meetings, to be known as the annual meet-
4 ing, shall be held in June. At least four meetings shall be held
5 on the campuses of different state colleges and universities
6 each year, at which meetings the board shall set aside time to
7 afford administrators, faculty, students and classified staff an
8 opportunity to discuss issues affecting those groups. At least
9 one meeting each year shall be held with the advisory council
10 of faculty, the advisory council of students, and the advisory
11 council of classified employees, each of these bodies to be
12 met with separately. Except as otherwise provided in this
13 section, meetings shall be held on such dates and at such places
14 as the board may prescribe. In addition to the statutorily re-
15 quired meetings, the board may meet at such other times as
16 may be necessary, such meetings to be held upon its own reso-
17 lution or at the request of at least five appointed members of
18 the board.

19 Of the thirteen members, seven members of the board shall
20 constitute a quorum, and a majority vote of the quorum shall
21 be necessary to pass upon matters before the board.

22 The members of the board shall be paid one hundred dol-
23 lars per diem for actual time spent in the performance of duties
24 under this article and shall be reimbursed for actual and

25 necessary expenses incident to the performance of their duties,
26 upon presentation of an itemized sworn statement thereof. The
27 foregoing per diem and reimbursement for actual and necessary
28 expenses shall be paid from appropriations made by the
29 Legislature to the board.

§18-26-9c. Advisory council of classified employees.

1 During the month of April, one thousand nine hundred
2 eighty-two, and annually thereafter, each state college, com-
3 munity college, including Potomac state college of West Vir-
4 ginia University, and university president or other administra-
5 tive head shall convene a meeting for all classified employees
6 of his institution. At these meetings, the classified employees
7 of each such college and university shall elect one classified
8 employee to serve on the advisory council of classified em-
9 ployees, which is hereby created, consisting of one classified
10 employee, so elected, from each such college and university:
11 *Provided*, That beginning with the month of April, one
12 thousand nine hundred eighty-three, and annually thereafter,
13 the president or administrative head, at the direction of the
14 council and in accordance with procedures and policies estab-
15 lished by them, shall convene a meeting or otherwise institute
16 a balloting process to elect one classified employee to serve
17 on the advisory council. Terms of the members of such
18 council shall be for one year and shall begin on the first
19 day of May of each year.

20 The advisory council of classified employees shall meet
21 at least once each quarter, and shall meet during the month
22 of June each year at which meeting the council shall elect a
23 chairman, who shall be by virtue of his office a voting member
24 of the West Virginia board of regents. No member may vote
25 by proxy at such election. In the event of a tie in the last
26 vote taken for such election, a member authorized by the
27 council shall select the chairman by lot from the names of
28 those persons tied. Immediately following the election of a
29 chairman, the council shall elect, in the manner prescribed by
30 this section for the election of a chairman, a member of the
31 council to preside over meetings of the council in the chair-
32 man's absence. Should the chairman vacate the position, the

33 council shall meet and elect a new chairman to fill the
34 unexpired term within thirty days following such vacancy.

35 The advisory council of classified employees, through its
36 chairman and in any other appropriate manner, shall consult
37 and advise the board of regents in matters of higher education
38 in which the classified employees of this state's colleges and
39 universities may have an interest.

40 Members of the advisory council shall be eligible to succeed
41 themselves. Members of the advisory council shall serve
42 without compensation, but shall be entitled to reimbursement
43 for actual and necessary expenses incurred in the performance
44 of the duties of their office to be paid by the state college or
45 university served.

46 The board of regents shall furnish a secretarial service to
47 the advisory council, and the advisory council shall cause to
48 be prepared minutes of its meetings, which minutes shall be
49 available, upon request, to any classified employee of the
50 state's colleges and universities.

51 As used in this section the term "classified employees"
52 means those employees designated by the board of regents as
53 classified and does not include faculty and executive personnel.

CHAPTER 78

(S. B. 368—By Mr. Holliday)

[Passed March 12, 1983; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine-b, article twenty-six, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the advisory council of students; removing the requirement that a student must be a West Virginia resident to be eligible to be the chairman of the advisory council of students; and providing that the student must be entitled to vote in the state of West Virginia prior to being elected chairman.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 26. WEST VIRGINIA BOARD OF REGENTS.

§18-26-9b. Advisory council of students.

1 The student government organization at each state
2 college, community college, including Potomac State
3 College of West Virginia University, and university shall
4 elect a student who may be the elected head, or president,
5 of such organization, to serve on the advisory council of
6 students which is hereby created, consisting of the elected
7 representatives of each such college or university. Terms
8 of the members of such council shall be for one year and
9 shall begin on the first day of May of each year.

10 The advisory council of students shall meet at least
11 once each quarter, and shall meet during each month of
12 June, at which meeting the council shall elect a chair-
13 man, who prior to such election must be entitled to vote
14 in the state of West Virginia. By virtue of the office, the
15 chairman shall be a voting member of the West Virginia
16 board of regents. No member may vote by proxy at such
17 election. In the event of a tie in the last vote taken for such
18 election, a member authorized by the council shall select
19 the chairman by lot from the names of those persons tied.
20 Immediately following the election of a chairman, the
21 council shall elect, in the manner prescribed by this sec-
22 tion for the election of a chairman, a member of the coun-
23 cil to preside over meetings of the council in the chair-
24 man's absence. Should the chairman vacate the position,
25 the council shall meet and elect a new chairman to fill the
26 unexpired term within thirty days following such vacancy.

27 The advisory council of students, through its chairman
28 and in any other appropriate manner, shall consult and
29 advise the board of regents in matters of higher educa-
30 tion in which the students of the state's colleges and
31 universities may have an interest.

32 Members of the advisory council shall be eligible to
33 succeed themselves. Members of the advisory council
34 shall serve without compensation, but shall be entitled
35 to reimbursement for actual and necessary expenses in-
36 curred in the performance of the duties of their office to
37 be paid by the state college or university served.

38 The board of regents shall furnish a secretarial service
39 to the advisory council, and the advisory council shall
40 cause to be prepared minutes of its meetings, which
41 minutes shall be available, upon request, to any student
42 in this state's colleges and universities.

CHAPTER 79

(Com. Sub. for S. B. 520—By Mr. Cook)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twenty-six, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-seven, relating to seniority rights for full-time nonprofessional classified personnel employed by the board of regents; defining certain terms; specifying requirements for determining seniority; requiring that seniority be observed in temporary furloughs and permanent terminations; requiring that a recall list be kept by each institution controlled by the board of regents; providing that listings be renewed annually; and requiring notification of all listed persons prior to filling vacancies.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 26. WEST VIRGINIA BOARD OF REGENTS.**§18-26-27. Definitions; requirements for determining seniority for full-time nonprofessional classified personnel; seniority to be observed in reducing work force; preferred recall list; renewal of listing; notice of vacancies.**

1 All decisions by the board of regents or its agents in
2 institutions of higher learning concerning reductions in
3 work force of full-time nonprofessional classified person-
4 nel, whether by temporary furlough or permanent termi-
5 nation, shall be made on the basis of seniority, as here-
6 inafter provided:

7 (a) As used in this section:

8 (1) "Employee" means any full-time nonprofessional
9 classified employee.

10 (2) "Full-time nonprofessional classified employee"
11 means an employee of the board of regents at any institu-
12 tion under its control:

13 (i) Who holds a job title that, under the rules and
14 regulations of the board of regents, is considered classi-
15 fied and is subject to the minimum wage and maximum
16 hours standards of article five-c, chapter twenty-one of
17 this code;

18 (ii) Whose job title or position is delineated in a cur-
19 rent, authorized state expenditure schedule; and

20 (iii) Whose employment is on a regular basis and if
21 continued shall accumulate to a minimum total of one
22 thousand forty hours during a calendar year and extend
23 over at least nine months of a calendar year.

24 (3) "Job title" means the name of a position or job
25 held by an employee.

26 (4) "Job classification" means a grouping of job titles
27 with the same name without regard to their numerical
28 designations, or any job title for which there is no related
29 title of the same name.

30 (5) "Grade of classification" means a job title or posi-
31 tion with its numerical designation which distinguishes it
32 from other titles in the same classification.

33 (b) The seniority of any full-time nonprofessional
34 classified employee shall be determined on the basis of
35 the length of time the employee has been employed by
36 the board of regents or its agents in institutions of higher
37 learning within a particular job classification. For the
38 purpose of establishing seniority for a preferred recall
39 list as hereinafter provided, when an employee has been
40 employed in one or more classifications, the seniority
41 accrued in each previous classification shall be retained
42 by the employee. If an institution is required to reduce
43 the number of employees within a particular job classi-
44 fication, the employee with the least amount of seniority
45 within that classification or grades of classifications shall
46 be properly released and employed in a different grade
47 of that classification if there is a job vacancy: *Provided*,
48 That if there is no job vacancy for employment within
49 such classification or grades of classification, he shall be
50 employed in any other job classification which he pre-
51 viously held with the institution if there is a vacancy and
52 shall retain any seniority accrued in such job classifica-
53 tion or grade of classification.

54 (c) If two or more employees accumulate identical
55 seniority, the priority shall be determined by a random
56 selection system established by the employees and ap-
57 proved by the institution.

58 (d) Any employee whose seniority with the institution
59 is insufficient to allow his retention by the institution
60 during a furlough or reduction in work force shall be
61 placed upon a preferred recall list and shall be recalled to
62 employment by the institution on the basis of seniority.
63 An employee's listing with an institution shall remain
64 active for a period of one calendar year from the date of
65 his termination or furlough, or from the date of his most
66 recent renewal. If an employee fails to renew his listing
67 with the institution, his name may be removed from the
68 list. An employee placed upon the preferred list shall be

69 recalled to any position opening by the institution within
70 the classification (s) in which he had previously been
71 employed, or to any lateral position for which the em-
72 ployee is qualified.

73 (e) An employee on the preferred recall list shall not
74 forfeit his right to recall by the institution if compelling
75 reasons require such employee to refuse an offer of re-
76 employment by the institution.

77 (f) The institution shall be required to notify all em-
78 ployees maintaining active listings on the preferred recall
79 list of all position openings that from time to time exist.
80 Such notice shall be sent by certified mail to the last
81 known address of the employee. It shall be the duty of
82 each employee listed to notify the institution of any
83 change in his address and to timely renew his listing
84 with the institution.

85 (g) No position openings may be filled by the institu-
86 tion, whether temporary or permanent, until all employ-
87 ees on the preferred recall list have been properly notified
88 of existing vacancies and have been given an opportunity
89 to accept reemployment.

CHAPTER 80

(Com. Sub. for S. B. 172—By Mr. Nelson, Mr. Holliday, Mrs. Spears,
Mr. Boettner, Mr. Heck, Mr. Pafumbo, Mr. Burdette, Mr. Jones and Mr. Tonkovich)

[Passed March 12, 1983; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-six-a, relating to the establishment and operation by the board of regents of a state autism training center; purpose; definitions; powers and duties of board of regents; rules and regulations; advisory board; trainee team fees and expenses.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 26A. STATE AUTISM TRAINING CENTER.

§18-26A-1. Purpose.

§18-26A-2. Definitions.

§18-26A-3. Powers and duties of board of regents.

§18-26A-4. Responsibilities of center.

§18-26A-5. Rules and regulations.

§18-26A-6. Advisory board.

§18-26A-7. Trainee team; expense.

§18-26A-1. Purpose.

1 The purpose of the Legislature in the enactment of this
2 article is to establish and develop an autism training
3 center in the state of West Virginia with a highly skilled,
4 interdisciplinary, appropriately experienced staff which
5 will train teachers, parents, guardians and others im-
6 portant to the autistic person's education and training.
7 The center shall be established and operated by the West
8 Virginia board of regents or its designees.

§18-26A-2. Definitions.

1 For the purpose of this article:

2 "Board" means the West Virginia board of regents; and

3 "Center" means the autism training center.

§18-26A-3. Powers and duties of board of regents.

1 The West Virginia board of regents is authorized to
2 operate a state autism training center, including either
3 the acquisition by purchase, lease, gift or otherwise of
4 necessary lands, and the construction of necessary build-
5 ings; the expansion, remodeling, altering or equipping of
6 necessary buildings; or the making of contracts by the
7 board of regents with any state, county or municipal
8 agency, or nonprofit institution, providing for the equip-
9 ment, compensation of personnel, operation and main-

10 tenance of any facility of such agency or institution
11 utilized for the purposes of this article. The board may
12 make and enter into all contracts and agreements neces-
13 sary and incidental to the performance of its powers and
14 duties under this section, and may cooperate with other
15 agencies of the state, county and federal governments.

§18-26A-4. Responsibilities of center.

1 This center is required to work with trainee teams
2 consisting of the autistic or autistic-like individual, a
3 parent or guardian and a teacher or related professional,
4 preferably one who is already involved in the autistic
5 person's education and training, who have been accepted
6 by the center. The training shall be specific to the autis-
7 tic individual and shall occur during an intensive three-
8 week training course. The trainee team shall live at a
9 special residence with trained house parents and go daily
10 to the center. After the team has returned to its commu-
11 nity, the center shall offer intensive follow-up services
12 including toll-free telephone and consultation services.
13 The center shall offer appropriate educational programs
14 for autistic persons and appropriate training for profes-
15 sional personnel and parents.

§18-26A-5. Rules and regulations.

1 The board shall make and adopt rules, regulations and
2 standards for the establishment, operation, maintenance
3 and government control of the center established pur-
4 suant to this article including such rules, regulations and
5 standards as may be necessary for cooperation under and
6 compliance with any existing or future federal statutes
7 pertaining to grants-in-aid for autistic training or facili-
8 ties and such other rules and regulations as may be
9 necessary to effectuate the purposes of this article.

§18-26A-6. Advisory board.

1 The board of regents shall appoint a board of West
2 Virginia citizens to advise the center director on matters
3 of policy. The board shall be composed of fifty percent
4 parents or guardians of persons eligible for the center's
5 program; forty percent persons from professional fields

6 related to autism, such as special education, psychology,
7 hearing and speech, neurology and pediatrics; and ten
8 percent knowledgeable lay citizens such as legislators or
9 other lay community leaders. The director of the center
10 shall be a voting member of the advisory board.

§18-26A-7. Trainee team; expense.

1 A trainee team eligible to attend the center consists of
2 a diagnosed autistic or autistic-like individual, a profes-
3 sional chosen by the primary local service agency and the
4 individual's parent or guardian.

5 The center shall charge agencies sending trainee teams
6 such fees as are established by the board of regents.

7 For the first five years of the existence of the center,
8 the center shall provide for all expenses in excess of fees
9 charged sending agencies for each trainee team including
10 child care for other children of attending parents, guard-
11 ians, teachers or other professionals not regularly em-
12 ployed at the center. After this five-year development
13 period, expenses of the trainee team will be charged to
14 the sending agencies.

CHAPTER 81

(Com. Sub. for S. B. 256—By Mr. Heck, Mr. Rogers and Mr. Holliday)

[Passed March 11, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article two, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the employment of school service personnel by county boards of education; and establishing a form for a written contract of employment for school personnel.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. SCHOOL PERSONNEL.**§18A-2-5. Employment of service personnel.**

1 The board is authorized to employ such service per-
2 sonnel, including substitutes, as is deemed necessary for
3 meeting the needs of the county school system. Before
4 entering upon their duties such personnel shall execute
5 with the board a written contract which shall be in the
6 following form:

7 COUNTY BOARD OF EDUCATION
8 SERVICE PERSONNEL CONTRACT OF EMPLOYMENT

9 THIS (Probationary or Continuing) CONTRACT OF EM-
10 PLOYMENT, made and entered into this day of.....,
11 19....., by and between THE BOARD OF EDUCATION OF
12 THE COUNTY OF, a corporation, hereinafter
13 called the "Board," and (Name of Employee), of (Mailing
14 Address), hereinafter called the "Employee."

15 WITNESSETH, that whereas, at a lawful meeting of the
16 Board of Education of the County of held at the
17 offices of said Board, in the City of,
18County, West Virginia, on theday of
19, 19... , the Employee was duly hired and
20 appointed for employment as a (Job Classification) at
21 (Place of Assignment) for the school year commencing
22 for the employment term and at the
23 salary and upon the terms hereinafter set out.

24 Now, THEREFORE, pursuant to said employment, Board
25 and Employee mutually agree as follows:

26 (1) The Employee is employed by the Board as a (Job
27 Classification) at (Place of Assignment) for the school
28 year or remaining part thereof commencing,
29 19... . The period of employment is days at an
30 annual salary of \$..... at the rate of \$.....per
31 month.

32 (2) The Board hereby certifies that the Employee's
33 employment has been duly approved by the Board and
34 will be a matter of the Board's minute records.

35 (3) The services to be performed by the Employee shall
36 be such services as are prescribed for the job classifica-
37 tion set out above in paragraph (1) and as defined in
38 Section 8, Article 4, Chapter 18A of the Code of West
39 Virginia, as amended.

40 (4) The Employee may be dismissed at any time for
41 immorality, incompetency, cruelty, insubordination, in-
42 temperance or willful neglect of duty pursuant to the
43 provisions of Section 8, Article 2, Chapter 18A of the Code
44 of West Virginia, as amended.

45 (5) The Superintendent of the County
46 Board of Education, subject to the approval of the Board,
47 may transfer and assign the Employee in the manner
48 provided by Section 7, Article 2, Chapter 18A of the Code
49 of West Virginia, as amended.

50 (6) This contract shall at all times be subject to any
51 and all existing laws, or such laws as may hereafter be
52 lawfully enacted, and such laws shall be a part of this
53 contract.

54 (7) This contract may be terminated or modified at
55 any time by the mutual consent of the Board and the
56 Employee.

57 (8) This contract must be signed and returned to the
58 Board at its address of
59 within thirty days after being received by the Employee.

60 (9) By signing this contract the Employee accepts
61 employment upon the terms herein set out.

62 WITNESS the following signatures as of the day, month
63 and year first above written:

64, (President,County Board of Education)

65, (Secretary,County Board of Education)

66, (Employee)

67 The use of this form shall not be interpreted to autho-
68 rize boards to discontinue any employee's contract status
69 with the board or rescind any rights, privileges or bene-
70 fits held under contract or otherwise by any employee
71 prior to the effective date of this section.

72 Each contract of employment shall be designated as a
73 probationary or continuing contract. The employment of
74 service personnel shall be made a matter of minute record.
75 The employee shall return the contract of employment to
76 the county board of education within thirty days after
77 receipt or otherwise he shall forfeit his right to employ-
78 ment.

79 Under such regulation and policy as may be established
80 by the county board, service personnel selected and
81 trained for teacher-aide classifications, such as monitor
82 aide, clerical aide, classroom aide and general aide, shall
83 work under the direction of the principal and teachers to
84 whom assigned.

CHAPTER 82

(Com. Sub. for H. B. 1204—By Mr. Faircloth)

[Passed March 10, 1983; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eight-c, relating to seniority rights for professional and service personnel employed by multi-county vocational centers.

Be it enacted by the Legislature of West Virginia:

That article four, chapter eighteen-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 eight-c, to read as follows:

ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.

§18A-4-8c. Seniority rights for personnel employed by multi-county vocational centers.

1 Professional and service personnel employed by a multi-
2 county vocational center shall establish seniority on the basis

3 of the length of time the employee has been employed by
4 the multi-county vocational center, except that any pro-
5 fessional or service personnel whose employment with the
6 multi-county vocational center was immediately preceded by
7 employment with one of the county boards participating in
8 the operation of the center or whose employment contract
9 was with one of the county boards participating in the
10 operation of the center (1) shall retain any seniority accrued
11 during employment by said county board; (2) shall accrue
12 seniority as a regular employee with said county board
13 during employment with the center; (3) shall attain con-
14 tinuing contract status with both the county and the center
15 if the sum of the years employed by the county and the center
16 equals the statutory number required for continuing contract
17 status; and (4) shall retain and continue to accrue county
18 and center seniority in the event of reemployment by said
19 participating county as a result of direct transfer from the
20 center or recall from the preferred list.

21 Reductions in work force in the center or employment
22 by the center or county board shall be made on the basis
23 of seniority in accordance with section eight-b of this article:
24 *Provided*, That only years of employment within the multi-
25 county vocational center shall be considered for purposes of
26 reduction in force within the center.

27 The seniority conferred herein shall apply retroactively to
28 all affected professional and service personnel, but the rights
29 incidental thereto shall commence as of the effective date of
30 this section.

CHAPTER 83

(Com. Sub. for H. B. 1039—By Mrs. Rogers and Mr. Whitlow)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article five, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authority, rights

and responsibilities of school personnel; authority of school principals to administer corporal punishment; requiring the state board of education and county boards of education to adopt rules and regulations regarding corporal punishment; governing and permitting the administration of corporal punishment by open hand and paddle; and limiting imposition of corporal punishment.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.

§18A-5-1. Authority of teachers and other school personnel; exclusion of pupils having infectious diseases; suspension or expulsion of disorderly pupils; authority of principals to administer corporal punishment.

1 The teacher shall stand in the place of the parent or
2 guardian in exercising authority over the school, and shall
3 have control of all pupils enrolled in the school from the
4 time they reach the school until they have returned to their
5 respective homes, except that where transportation of pupils
6 is provided, the driver in charge of the school bus or other
7 mode of transportation shall exercise such authority and
8 control over the children while they are in transit to and
9 from the school. Subject to the rules of the state board of
10 education, the teacher shall exclude from the school any
11 pupil or pupils known to have or suspected of having any
12 infectious disease, or any pupil or pupils who have been
13 exposed to such disease, and shall immediately notify the
14 proper health officer, or medical inspector, of such exclu-
15 sion. Any pupil so excluded shall not be readmitted to
16 the school until such pupil has complied with all the require-
17 ments of the rules governing such cases, or has presented
18 a certificate of health signed by the medical inspector or
19 other proper health officer. The teacher shall have authority
20 to suspend any pupil guilty of disorderly, refractory, indecent
21 or immoral conduct, and the district board of education may

22 expel or exclude any such pupil if, on investigation, the
23 conduct of such pupil is found to be detrimental to the
24 progress and the general conduct of the school.

25 The principal shall have the authority to administer moder-
26 ate corporal punishment by means of the open hand or a pad-
27 dle subject to the following restrictions:

28 (1) Corporal punishment should be administered only as a
29 last resort after use of alternative methods of discipline have
30 failed to correct the inappropriate pupil behavior;

31 (2) Pupils are informed of the rules and regulations that
32 govern the school;

33 (3) The pupil is informed of the school rule or rules al-
34 legedly violated and is given an opportunity to explain his or
35 her behavior prior to the administration of corporal punish-
36 ment;

37 (4) Punishment is administered without anger or malice.
38 The amount of physical force used is not wanton or in excess
39 of the offense, is suitable to the pupil's age and mental and
40 physical conditions and is applied without discrimination;

41 (5) The punishment is administered by the school principal
42 or by a specific designee authorized by the principal to ad-
43 minister such punishment and in either case in the presence of
44 another adult professional employee and not in the presence of
45 another pupil;

46 (6) The punishment is administered by use of the open
47 hand or a paddle to the buttocks;

48 (7) A report which includes a description of the pupil's
49 conduct prompting the use of corporal punishment and the
50 name of the witness is attempted to be made informally by
51 telephone or notice sent with the child to the parent or guard-
52 ian at least twelve hours prior to administration of the cor-
53 poral punishment and is made orally in the school office by
54 the end of the school day and a written report is filed in the
55 school office within twenty-four hours of the incident;

56 (8) The parent or guardian of the pupil is notified in writ-
57 ing of each instance of corporal punishment within three
58 school days;

59 (9) Each school principal shall be responsible for the main-
60 tenance of discipline in his school;

61 (10) Corporal punishment shall not be administered to a
62 pupil: (a) Identified as handicapped, learning, hearing, men-
63 tally or behaviorally disabled; or (b) whose parent has peti-
64 tioned in writing to the school principal that corporal punish-
65 ment not be administered to the pupil and attached a certifi-
66 cate from a physician that by reason of a physical or emotional
67 condition the pupil should not be subjected to corporal pun-
68 ishment; or (c) if medical information available to school
69 authorities indicates that the pupil should not be subjected to
70 corporal punishment.

71 The West Virginia board of education and county boards
72 of education shall adopt policies consistent with the provisions
73 of this section encouraging the use of alternatives to corporal
74 punishment, providing for the training of school personnel in
75 alternatives to corporal punishment and for the involvement of
76 parents and guardians in the maintenance of school discipline.

77 For the purpose of this section: (1) "Pupil" shall include
78 any child, youth or adult who is enrolled in any instructional
79 program or activity conducted under board authorization and
80 within the facilities of or in connection with any program
81 under public school direction: *Provided*, That in the case of
82 adults the pupil-teacher relationship shall terminate when the
83 pupil leaves the school or other place of instruction or activity;
84 (2) "teacher" shall mean all professional educators as defined
85 in section one, article one, chapter eighteen-a of this code and
86 shall include the driver of a school bus or other mode of
87 transportation.

88 Teachers shall exercise such other authority and perform
89 such other duties as may be prescribed for them by law or by
90 the rules of the state board of education not inconsistent with
91 the provisions of this chapter and chapter eighteen.

CHAPTER 84

(Com. Sub. for H. B. 1189—By Mr. Givens and Mr. Yanni)

[Passed March 12, 1983; in effect July 1, 1983. Approved by the Governor.]

AN ACT to amend article five, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-a, relating to the payment of salary to school board employees who are subpoenaed as witnesses in any criminal proceeding in any court of law.

Be it enacted by the Legislature of West Virginia:

That article five, chapter eighteen-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 three-a, to read as follows:

ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.

§18A-5-3a. Answering witness subpoenas.

1 Any teacher, principal, supervisor, service personnel or
 2 other person employed by a board of education who is sub-
 3 poenaed to appear as a witness but not as a defendant in any
 4 criminal proceeding in any court of law may make such ap-
 5 pearance without any loss of pay. The board shall pay to such
 6 employee the difference between the witness fee, exclusive of
 7 travel allowances, payable for such appearance by the court
 8 and the amount of salary due to the person for the time such
 9 employee is absent from his employment by reason of answer-
 10 ing such subpoena.

CHAPTER 85

(Com. Sub. for H. B. 1034—By Mrs. Hartman and Mr. Sattes)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article three-b, 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 four, relating to the offense of trespass on student residence premises or student facility premises of an institution of higher education; defining certain terms; describing circumstances under which a person may be asked to leave a residence hall or student facility; describing the misdemeanor offense of remaining in a residence hall or student facility and establishing a penalty therefor; and prescribing a rule of construction.

Be it enacted by the Legislature of West Virginia:

That article three-b, 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 four, to read as follows:

ARTICLE 3B. TRESPASS.

§61-3B-4. Trespass on student residence premises or student facility premises of an institution of higher education.

1 (a) For the purposes of this section:

2 (1) "Residence hall" means housing or a unit of housing
3 provided primarily for students as a temporary or permanent
4 dwelling place or abode and owned, operated or controlled
5 by an institution of higher education.

6 (2) "Student facility" means a facility owned, operated or
7 controlled by an institution of higher education at which
8 alcoholic liquor or nonintoxicating beer is purchased, sold or
9 served to students enrolled at such institution, but shall not
10 include facilities at which athletic events are regularly schedul-
11 ed and an admission fee is generally charged.

12 (3) "Institution of higher education" means any state uni-
13 versity, state college or state community college under the
14 control, supervision and management of the West Virginia
15 board of regents, or any other university, college or any other
16 institution of higher education in the state subject to rules and
17 regulations for accreditation under the provisions of section
18 thirteen-a, article twenty-six, chapter eighteen of this code.

19 (4) "Person authorized to have access to a residence hall
20 or student facility" means:

21 (A) A student who resides or dwells in the residence hall;
22 or

23 (B) An invited guest of a student who resides or dwells in
24 the residence hall; or

25 (C) A parent, guardian or person who has legal custody of
26 a student who resides or dwells in the residence hall; or

27 (D) An employee of the institution of higher education
28 who is required by his employment by such institution to be
29 in the residence hall or student facility and who is acting with-
30 in the scope of his employment; or

31 (E) A delivery man, repairman or other such person who
32 is not an employee of the institution of higher education but
33 who nonetheless has a legitimate commercial reason to be in
34 the residence hall or student facility and who is acting pur-
35 suant to such legitimate commercial reason.

36 (b) If a person authorized to have access to a residence hall
37 or a student facility enters such residence hall or student fa-
38 cility and by his presence or acts interferes with the peaceful
39 or orderly operation of such residence hall or student facility
40 he may be asked to leave such residence hall or student facil-
41 ity. If a person other than a person authorized to have access
42 to a residence hall or student facility enters such a residence
43 hall or student facility, he may be asked to leave such resi-
44 dence hall or student facility notwithstanding the fact that he
45 has not interfered with the peaceful or orderly operation of
46 such residence hall or student facility or otherwise committed
47 a breach of the peace or violated any statute or ordinance.
48 Such request to leave may be made by the president of the
49 institution of higher education, an employee designated by the
50 president to maintain order in the residence hall or student
51 facility, a security officer appointed pursuant to the provisions
52 of section eight-a, article twenty-six, chapter eighteen of this
53 code, or a municipal police officer, a sheriff or deputy sheriff,
54 or a member of the department of public safety.

55 (c) It shall be unlawful for a person to remain in a residence
56 hall or student facility after being asked to leave as provided
57 for in subsection (b) of this section.

58 (d) Any person who violates the provisions of subsection
59 (c) of this section shall be guilty of a misdemeanor, and, upon
60 conviction thereof, shall be fined fifteen dollars. For any sec-
61 ond or subsequent conviction for a violation occurring within
62 one year after a previous violation for similar conduct, such
63 person shall be fined an amount not to exceed one hundred
64 dollars.

65 (e) This section shall not be construed to be in derogation
66 of the common law, nor shall the provisions of this section
67 contravene or infringe upon existing statutes related to the
68 same subject.

CHAPTER 86

(Com. Sub. for S. B. 127—By Mr. Nelson)

[Passel February 17, 1983; in effect July 1, 1983. Approved by the Governor.]

AN ACT to amend and reenact sections two, three and five, article five, chapter ten of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia educational broadcasting authority; increasing the number of members; staggering the terms of appointees; prohibiting appointment of noncommercial broadcasting employees; requiring that at least one appointee be chosen from each congressional district; allowing annual meeting to be held other than in July and deleting requirement for additional meetings; changing "executive secretary" to "executive director" and "chairman" to "chairperson"; allowing the chairperson to request resignation of member absent under certain circumstances; providing for use of audio-video microwave network; and allowing proceeds from contracts with commercial entities to be used for noncommercial purposes.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. EDUCATIONAL BROADCASTING AUTHORITY.

§10-5-2. West Virginia educational broadcasting authority; members; organization; officers; employees; meetings; expenses.

§10-5-3. Powers of authority.

§10-5-5. Advisory councils.

§10-5-2. West Virginia educational broadcasting authority; members; organization; officers; employees; meetings; expenses.

1 The West Virginia educational broadcasting authority,
2 heretofore created, is hereby continued as a public benefit
3 corporation. It shall consist of eleven voting members, who
4 shall be residents of the state, of whom one shall be the state
5 superintendent of schools, one shall be a member of the
6 West Virginia board of education to be selected by it
7 annually, one shall be the chancellor of the West Virginia
8 board of regents and one shall be a member of the West
9 Virginia board of regents to be selected by it annually. The
10 other seven members shall be appointed by the governor by
11 and with the advice and consent of the Senate for
12 overlapping terms of seven years, one term expiring each
13 year, except that the appointment to fill the membership
14 position for the term expiring in the year one thousand nine
15 hundred eighty-three, shall be for a term of six years. Not
16 less than one appointive member shall come from each
17 congressional district. Employees of noncommercial
18 broadcasting stations in West Virginia are not eligible for
19 appointment to the authority. The present members of the
20 authority shall continue to serve out the terms to which they
21 were appointed. Any vacancy among the appointive
22 members shall be filled by the governor by appointment for
23 the unexpired term.

24 The chairperson and vice chairperson of the authority as
25 of the effective date of this section shall continue in their
26 respective offices until their successors are elected.
27 Thereafter, at its annual meeting in each year the authority
28 shall elect one of its members as chairperson and one as vice
29 chairperson. The authority is authorized to select an
30 executive director and such other personnel as may be
31 necessary to perform its duties and to fix the compensation
32 of such personnel to be paid out of moneys appropriated for
33 this purpose. The executive director shall keep a record of
34 the proceedings of the authority and shall perform such

35 other duties as it may prescribe. The authority is authorized
36 to establish such office or offices as may be necessary for the
37 proper performance of its duties.

38 The authority shall hold an annual meeting and may meet
39 at such other times and places as may be necessary, such
40 meetings to be held upon its own resolution or at the call of
41 the chairperson of the authority. The members shall serve
42 without compensation but may be reimbursed for actual
43 expenses incident to the performance of their duties upon
44 presentation to the chairperson of an itemized sworn
45 statement thereof.

§10-5-3. Powers of authority.

The authority shall have the power:

- 1 (1) To act as advisor and consultant to television and
2 radio stations concerning noncommercial educational
3 programs supported by federal, state, county, city or
4 private funds.
- 5 (2) To cooperate with and assist all local and state
6 educational institutions in planning and development of
7 the use of educational radio, television and related media.
- 8 (3) To promote and coordinate the use of these media for
9 noncommercial educational purposes.
- 10 (4) To construct, maintain and operate educational
11 broadcasting, closed circuit or related facilities located at a
12 suitable site or sites within this state including, without
13 limitation thereby, production centers, broadcasting
14 stations and an audio-video microwave system for a
15 statewide broadcasting network connecting such
16 communities or stations as may be designated by the
17 authority.
- 18 (5) To acquire in the name of the state for the use and
19 benefit of the authority by purchase, lease or agreement,
20 any property, both real and personal, and any interest in
21 such property necessary to carry out the provisions of this
22 article.
- 23 (6) To apply for and receive any license from the
24 appropriate federal agency necessary to operate any
25 educational broadcasting, closed circuit or related facility.

26 (7) To supervise and approve the origination and
27 transmission of all noncommercial educational radio,
28 television and related media programs in this state which
29 would be carried through the facilities of a state network.

30 (8) To employ such personnel as may be necessary to
31 operate and maintain any facility created under the
32 provisions of this article.

33 (9) To lease from communications common carriers and
34 use such transmission channels as may be necessary or, if it
35 determines it could more economically construct and
36 maintain such transmission channels, it may design,
37 construct, maintain and operate the same, including an
38 audio-video microwave network.

39 (10) To sue and be sued, plead and be impleaded.

40 (11) To contract and be contracted with, including the
41 power to enter into contracts with any person, firm or
42 corporation, including any like authority of neighboring
43 states; and shall have the authority, within state
44 regulations, to enter into program royalty and distribution
45 contracts and receive moneys for these purposes: *Provided*,
46 That any proceeds from such contracts shall be used by the
47 authority for noncommercial purposes only.

48 (12) To have and use a corporate seal.

49 (13) To promulgate reasonable rules and regulations to
50 carry out the provisions of this article in accordance with
51 the provisions of article three, chapter twenty-nine-a of the
52 code.

53 (14) To perform such other services in behalf of
54 noncommercial educational radio, television and related
55 media as it may consider to be in the best interest of the
56 state

§10-5-5. Advisory councils.

1 The authority may also create one or more advisory
2 councils. Each council so created shall consist of not more
3 than nine members to be appointed by and serve at the will
4 and pleasure of the authority. Each council shall annually
5 elect a chairperson, vice chairperson and secretary.
6 Members so appointed shall serve without compensation,

7 but may be reimbursed for actual expenses incident to the
8 performance of their duties as provided in this article for
9 members of the authority.

10 Any such council shall serve in an advisory manner to one
11 or more facilities established under the provisions of this
12 article as directed by the authority and shall meet at least
13 twice a year.

CHAPTER 87

(H. B. 1882—By Mr. Wooten and Mr. Feinberg)

[Passed March 10, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, twenty-three and twenty-eight, article two, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article two by adding thereto four new sections, designated sections forty-one, forty-two, forty-three and forty-four, relating to the registration of voters generally; setting forth voter registration requirements; establishing a permanent registration system and making provisions for the cancellation and reinstatement of voter registration; authorizing absentee registration by mail under certain circumstances; providing a procedure for changing a registered voter's name; creating an additional procedure for registration and transfer of registration by mail; providing for the processing of applications by the county clerk; requiring the use and distribution of a uniform statewide application for voter registration; requiring certain notice and instructions to be provided on application to persons seeking to register, reregister or transfer registration; requirement of acknowledgement on application; requirements as to voting in person at next election succeeding filing of application; defining certain felony offenses relating to applications for registration, reregistration or change of registration and prescribing penalties therefor; setting forth a procedure to be followed for recording information on a registration application; and authorizing county clerk to reject suspicious applications and to make inquiry in reference thereto.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. REGISTRATION OF VOTERS.

§3-2-2. Voter registration requirements.

§3-2-3. Registration, cancellation and reinstatement.

§3-2-23. Absentee registration.

§3-2-28. Procedure on change of registered voter's name.

§3-2-41. Registration and transfer of registration by mail; form to be required and distribution thereof; must be received by county clerk thirty days prior to election before applicant entitled to vote therein; clerk to forward application if applicant outside jurisdiction, but resident of state; application forms to be made widely available by county clerk; form of application and information required.

§3-2-42. Crimes and offenses relating to applications for registration, re-registration, or change of registration; penalties.

§3-2-43. Recording of registration or transfer by the county clerk; transfer of registration by mail.

§3-2-44. Rejection and investigation authorized by county clerk when applicant not entitled to registration or transfer.

§3-2-2. Voter registration requirements.

1 No voter otherwise qualified shall be permitted to vote at
 2 any election unless he shall have been duly registered or shall
 3 have placed himself within the "challenged voters" provision
 4 of this chapter, and only those persons who possess the con-
 5 stitutional and statutory qualifications for voting shall be
 6 permitted to register, except that minors, otherwise qualified,
 7 who shall have attained the age of eighteen years by the time
 8 of the next ensuing election, may be permitted to register.

§3-2-3. Registration, cancellation and reinstatement.

1 A permanent registration system shall hereby be established
 2 which shall be uniform throughout the state and all of its
 3 subdivisions. No voter so registered shall be required to
 4 register again for any election while he continues to reside at
 5 the same address, or, having moved from such address, is

6 properly transferred according to the provisions of section
7 twenty-seven or forty-one of this article, unless his registration
8 is canceled as provided in this article.

9 Within one hundred and twenty days following any election,
10 the clerk of the county commission shall, as evidenced by the
11 presence or absence of signatures on the pollbooks for such
12 election, correct any errors or omissions on the voter registra-
13 tion records appertaining to such election resulting from the
14 poll clerks erroneously checking or failing to check the regis-
15 tration records as required by the provisions of section thirty-
16 four, article one of this chapter; and, within the same time pe-
17 riod following each statewide primary and general election and
18 at the same time that such checkup is made as is by this para-
19 graph required, the clerk shall cancel the registration of each
20 person who has failed to vote at least once during a period
21 covering two statewide primary and two general elections as
22 indicated by his registration record. Any person who has had
23 his registration for that reason canceled shall, by letter, be given
24 proper notice thereof by the clerk of the county commission,
25 to the effect that in order to vote he must register again or
26 execute and file, not later than thirty days before the next
27 primary or general election, with the clerk, a uniform state-
28 wide application as described in section forty-one of this
29 article, stating that he desires to be reinstated as a qualified
30 voter at the same address and the clerk shall replace the regis-
31 tration card of the voter in the registration records. A blank
32 copy of such form shall be included with and accompany the
33 aforesaid notice to the voter.

§3-2-23. Absentee registration.

1 Any person who possesses the qualifications for registration,
2 but who is absent from the state or county on account of occu-
3 pation, or for any other necessary cause, including service in
4 the armed forces of the United States, may at any time register
5 by mail according to the procedure prescribed by section forty-
6 one of this article.

§3-2-28. Procedure on change of registered voter's name.

1 Whenever a voter, previously registered, shall change his
2 name, such person shall be required to register again. For

3 this purpose such person may register by mail in the same
4 manner prescribed in section forty-one of this article. Upon
5 such registration, the clerk of the county commission shall
6 cancel the registration record bearing the voter's former
7 name. When such a change of name is made during the thirty
8 days immediately preceding any election, such voter, if duly
9 registered, may vote at the election under his former name.

§3-2-41. Registration and transfer of registration by mail; form to be required and distribution thereof; must be received by county clerk thirty days prior to election before applicant entitled to vote therein; clerk to forward application if applicant outside jurisdiction, but resident of state; application forms to be made widely available by county clerk; form of application and information required.

1 (a) In addition to any procedures which may be used in
2 effecting the biennial checkup as provided under section
3 twenty-one of this article, central registration and transfer
4 as provided under sections twenty-two and twenty-seven of this
5 article, and the provisions with respect to registration of
6 absentee voters under section twenty-three of this article, any
7 qualified person may register or transfer his registration by
8 mail.

9 (b) Completed applications, when received by any county
10 clerk not later than the fortieth day before the following
11 primary, general or special election, entitle the applicant
12 to vote in such election if he is otherwise qualified. Any
13 county clerk receiving an application from a person who does
14 not reside in his county but who does reside elsewhere in
15 the state shall forthwith forward such application to the proper
16 county clerk. Each county clerk shall make an entry on such
17 application of the date it is received by such clerk, and the
18 application shall remain on file in the office of the clerk for at
19 least two years from the date it was received.

20 (c) Applications for use pursuant to this section shall be
21 made available by the county clerk to every adult person of
22 the county, not registered, and to any registered voter of the
23 county upon request. The application for use pursuant to this

24 section shall be a uniform statewide application in a form to
25 be prescribed by the secretary of state and shall include the
26 information required under the form provisions of section nine-
27 teen of this article. The form, which shall be self-addressed, is
28 to be as widely and freely distributed as possible and shall be
29 a bifold self-mailer which shall be compatible with local sys-
30 tems of voter registration data collection and storage.

31 (d) In addition to the information required under the form
32 provisions of section nineteen of this article the form shall
33 contain such other information as the secretary of state may
34 reasonably require and shall also include the following in-
35 formation:

36 (1) Notice that those currently registered do not need to
37 reregister unless they have moved or failed to vote at least once
38 during a period covering two statewide primary and two gen-
39 eral elections as indicated by their registration records;

40 (2) Instructions on how to fill out and submit the form and
41 that the form must be received by the appropriate county clerk
42 at least thirty days prior to the election at which the appli-
43 cant may vote;

44 (3) Notice that registration or transfer is not complete
45 until the form is received by the appropriate county clerk;

46 (4) Notice of a voter's right to register centrally;

47 (5) A warning to the voter that it is a crime to procure
48 a false registration and notice of the felony offenses provided
49 for in section forty-two of this article;

50 (6) Notice that political party enrollment is optional but,
51 in order to vote in a primary election of a political party,
52 a voter must enroll in that political party;

53 (7) Notice that the applicant must be a citizen of the
54 United States, at least seventeen years old and will be eighteen
55 years old on or before the next general election, and a resident
56 of the county to which application is made;

57 (8) Notice that a voter notification form will be mailed
58 to those applicants whose complete form is received;

59 (9) The telephone number of the county clerk;

60 (10) A space for the applicant to indicate whether or not
61 he has ever been registered before and, if so, his name and
62 address at the time of prior registration;

63 (11) A space for the applicant to indicate his choice of
64 party, if any, in which space the names of all parties are
65 provided so that the applicant can check one with a clear
66 alternative provided for an applicant to decline to affiliate
67 with any party;

68 (12) A place for the applicant to execute the application
69 on a line which is clearly labeled "signature of applicant"
70 and contained in the following specific form of oath or
71 affirmation:

72 "I do solemnly swear or affirm that the information pro-
73 vided in the preceding uniform statewide application is true
74 to the best of my knowledge, information and belief, and I
75 understand that if I willingly provide false information con-
76 cerning a material matter or thing therein, I shall be deemed
77 guilty of the felony offense of perjury and shall be subject
78 to the penalties for perjury.

79

80

Signature of applicant

81 Subscribed and sworn (or affirmed) to before me, this -----
82 day of -----, 19-----.

83

84 which oath or affirmation shall be administered by a person
85 authorized to perform notarial acts under the provisions of
86 article one or one-a, chapter thirty-nine of this code. The
87 person administering the oath or affirmation shall not charge
88 a fee for such act, and the uniform statewide application shall
89 inform the person administering such oath or affirmation that
90 no fee is to be charged; and

91 (13) Any person who has registered, reregistered or trans-
92 ferred registration pursuant to this section shall, in order that
93 such registration be valid, be required to vote in person at the
94 poll or appear in person at the office of the clerk of the cir-

95 cuit court to vote an absentee ballot in the first election next
96 succeeding the filing of the application.

97 (e) The uniform statewide application prescribed by this
98 section may refer to various public officials by title or official
99 position (e.g., clerk of the county commission, secretary of
100 state), but in no case shall the actual name of the officeholder
101 be printed or otherwise appear on such form: *Provided*, That
102 nothing contained in this subsection shall prohibit a public
103 official, otherwise qualified, from administering the oath or
104 affirmation in accordance with the provisions of subdivision
105 (12), subsection (d) of this section, and affixing his signature
106 thereto.

107 (f) It shall be the duty of the secretary of state to create and
108 commence distribution of the forms for the uniform statewide
109 application within six months following the effective date of
110 this section.

**§3-2-42. Crimes and offenses relating to applications for registra-
tion, reregistration, or change of registration; penalties.**

1 (a) A person who willfully provides false information con-
2 cerning a material matter or thing in a uniform statewide ap-
3 plication for registration, reregistration or change of regis-
4 tration, under oath or affirmation lawfully administered, shall
5 be deemed guilty of perjury; one who induces or procures
6 another person to do so shall be deemed guilty of subordina-
7 tion of perjury.

8 (b) A person who knowingly offers any application for
9 registration, reregistration or transfer of registration when
10 the applicant therein is not qualified to register or transfer
11 his registration, or any person who knowingly administers
12 an oath or affirmation to an applicant for registration, re-
13 registration or change of registration when the application
14 contains false information concerning a material matter or
15 thing, or any person who falsely represents that an oath or
16 affirmation was executed by an applicant for registration,
17 reregistration or change of registration, shall be guilty of
18 a felony, and, upon conviction thereof, shall be imprisoned in
19 the penitentiary not less than one year nor more than three
20 years, or fined not less than five hundred dollars nor more

21 than five thousand dollars, or both fined and imprisoned, or,
22 in the discretion of the court, be confined in the county jail
23 for not more than one year, or fined not less than five
24 hundred dollars nor more than five thousand dollars, or both
25 fined and imprisoned.

**§3-2-43. Recording of registration or transfer by the county clerk;
transfer of registration by mail.**

1 (a) If the application contains substantially all the required
2 information indicating that the applicant is legally qualified
3 to register or transfer registration as stated in his application,
4 the county clerk shall transfer all information on such applica-
5 tion to the appropriate registration records. Perforated por-
6 tions of the application containing the applicant's signature,
7 or in lieu thereof, a photostatic copy of the applicant's signa-
8 ture, shall be pasted in each space provided on the registration
9 records for the insertion of the registrant's signature.

10 (b) If the application is one for transfer of registration
11 and contains substantially all of the required information and
12 the applicant is legally qualified to transfer his registration
13 as stated in his application, the county clerk shall do so as
14 provided in section twenty-seven of this article.

**§3-2-44. Rejection and investigation authorized by county clerk
when applicant not entitled to registration or transfer.**

1 (a) If the county clerk suspects or believes that for any
2 reason the applicant is not entitled to registration or to trans-
3 fer his registration, he shall make inquiry in reference thereto.
4 If the county clerk finds that the applicant is not qualified to
5 register or transfer his registration, the application shall be
6 rejected and the applicant notified of such rejection with the
7 reason therefor, no later than ten days before the first election
8 day next succeeding the filing of the application.

9 (b) The county clerk, whenever not satisfied from an
10 examination of an application for registration or transfer that
11 the applicant is entitled to such registration or transfer, may
12 order an investigation through any authorized officer or em-
13 ployee of the state or county commission, police officer, sheriff
14 or deputy sheriff.

CHAPTER 88

(H. B. 1883—By Mr. Hatcher and Mr. Chambers)

[Passed March 5, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article four-a, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nineteen-a, relating to the form of ballot cards in an electronic voting election; the duty of poll clerks to sign ballot cards; and prohibiting the counting of votes cast on ballot cards without such signatures.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-19a. Form of ballot cards; requiring the signatures of poll clerks; prohibiting the counting of votes cast on ballot cards without such signatures.

1 Every ballot card utilized during the course of any electronic
2 voting system election conducted under the provisions of this
3 article shall provide two lines for the signatures of the poll
4 clerks. Both of the signature lines shall be printed on a
5 portion of the ballot card where votes are not recorded by
6 perforation or other marking, but which portion is an actual
7 part of the ballot card deposited in the ballot box after the
8 voter has perforated or marked his ballot and after the ballot
9 stub has been removed.

10 Each of the two poll clerks shall sign his name on one of the
11 designated lines provided on each ballot card before any ballot
12 card is distributed to a voter. After a voter has signed the
13 pollbook, as required in section nineteen of this article, the two
14 poll clerks shall deliver a ballot card to the voter, which ballot
15 card has been signed by each of the two poll clerks as provided
16 herein.

17 In the course of an election contest, if it is established
18 that a ballot card does not contain the two signatures required
19 by this section, such ballot card shall be null, void and of
20 no effect, and shall not be counted.

CHAPTER 89

(H. B. 1958—By Mr. Wiedebusch)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article one-a, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to allowing certain designees to be appointed to the employee suggestion award board.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1A. EMPLOYEE SUGGESTION AWARD BOARD.

§5A-1A-2. Board created.

1 There is hereby established an employee suggestion award
2 board which shall be composed of the commissioner of finance
3 and administration, the commissioner of the department of
4 labor, the president of the Senate or his designee, the speaker
5 of the House of Delegates or his designee, one member of the
6 House of Delegates to be appointed by the speaker of the
7 House, one member of the Senate to be appointed by the
8 president of the Senate, and the commissioner of the department
9 of employment security. The terms of the members of the
10 board shall be consistent with the terms of the offices to which
11 they have been elected or appointed.

CHAPTER 90

(S B. 91—By Mr. Huffman)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-nine; and to amend and reenact section forty-two, article three-a of said chapter, all relating to the administration of estates generally; providing that a final settlement of an estate may be waived if an inheritance tax release has been filed with the clerk of the county commission through a waiver signed by all heirs and distributees, or their personal representatives, containing an affidavit that there are no known claims against the estate; and increasing certain fees to be charged by fiduciary supervisor at the time of qualification of the fiduciary.

Be it enacted by the Legislature of West Virginia:

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

Article

2. Proof and Allowance of Claims Against Estates of Decedents.

3A. Optional Procedure for Proof and Allowance of Claims Against Estates of Decedents; County Option.

ARTICLE 2. PROOF AND ALLOWANCE OF CLAIMS AGAINST ESTATES OF DECEDENTS.

§44-2-29. Waiver of final settlement if inheritance tax release filed; signed waiver and affidavit stating no claims.

1 Notwithstanding any other provision of this code to
2 the contrary, in all estates where an inheritance tax re-
3 lease has been filed with the clerk of the county com-
4 mission and more than ninety days has elapsed since
5 the filing of any notice required by section one of this

6 article, a final settlement may be waived by a waiver
7 which is signed by the personal representative and all
8 heirs and distributees, or their personal representatives, if
9 any such heir be under disability, and which contains an
10 affidavit stating that the time for the filing of claims has
11 expired and averring that there are no known claims
12 against the estate.

**ARTICLE 3A. OPTIONAL PROCEDURE FOR PROOF AND AL-
LOWANCE OF CLAIMS AGAINST ESTATES OF
DECEDENTS; COUNTY OPTION.**

**§44-3A-42. Fees to be charged by fiduciary supervisor or
fiduciary commissioner; disposition of fees.**

1 (a) When necessary solely for the purpose of financing
2 the cost of settling estates the county commission may
3 authorize the fiduciary supervisor to charge and collect
4 at the time of qualification of the fiduciary of a decedent's
5 estate, a fee not to exceed seventy-five dollars for all
6 estates where probate assets do not exceed ten thousand
7 dollars in value and a fee not to exceed one hundred dol-
8 lars where probate assets exceed ten thousand dollars in
9 value, of which sums, five dollars shall be forwarded to the
10 state tax commissioner. The moneys so forwarded to the
11 state tax commissioner shall be deposited in the office
12 of the treasurer of the state in a special fund, designated
13 "The Inheritance Tax Administration Fund," to be used
14 to defray, in whole or in part, the costs of administration
15 of taxes imposed by article eleven, chapter eleven of this
16 code in order to facilitate the prompt administration of
17 the provisions imposed by said article. The remaining
18 amounts shall be deposited in the county fiduciary fund
19 as provided in section forty-three of this article. Such fee
20 shall be paid to include all services of the fiduciary super-
21 visor for the settlement of every such decedent's estate
22 which is settled pursuant to the provisions of section
23 nineteen, article three-a of this chapter. All such fees
24 shall also include the cost of publication of the notice
25 required by section four, article three-a of this chapter
26 and the notice required by section nineteen, article three-a
27 of this chapter, but shall not include the cost of any

28 mailings or of the cost of recording any documents re-
29 quired to be recorded in the office of the clerk of the
30 county commission by the provisions of this chapter.

31 In the event the fiduciary supervisor is required to
32 examine and prepare a statement of deficiencies, in-
33 cluding reasons for disapproving any of the documents
34 required to be filed by the personal representative of any
35 decedent's estate, he shall charge and collect from such
36 personal representative a fee of ten dollars.

37 (b) In addition to the fees set forth in subsection (a)
38 of this section, the fiduciary supervisor shall charge a
39 fee to be fixed by the county commission in the manner
40 provided in subsection (c) of this section for conducting
41 hearings, granting continuances of hearings, considering
42 evidence, for drafting recommendations with respect to
43 such hearings and for appearing before the county com-
44 mission with respect thereto and any other matters of an
45 extraordinary nature not normally included within a
46 summary settlement as contemplated by section nineteen,
47 article three-a of this chapter. Such fee shall be used to
48 defray the costs imposed by or incidental to any extra-
49 ordinary demands by or conditions imposed by a fiduciary
50 or imposed by the circumstances of the estate.

51 (c) The fiduciary supervisor or fiduciary commissioner
52 shall prepare a voucher for the county commission, which
53 voucher shall be itemized and shall set forth in detail all
54 of the services performed and the amount charged for
55 such service or services. Such voucher shall also indicate
56 in each instance if the service was actually performed by
57 the fiduciary supervisor or fiduciary commissioner or
58 whether such service was performed by an employee or
59 deputy of such supervisor or commissioner. All vouchers
60 shall reflect the services rendered pursuant to the initial
61 fee charged and collected as provided in subsection (a) of
62 this section and, in addition thereto, shall indicate those
63 services for which charges are to be made over and above
64 that amount. In the case of any service for which a fee
65 is not fixed by this section, or the fee fixed is based on
66 time expended, the voucher shall show the actual time

67 personally expended by the supervisor or commissioner,
68 to the nearest tenth of an hour. All such vouchers shall
69 be verified prior to submission to the county commission
70 for approval. Upon approval of any such voucher, the
71 same shall be charged against the estate to which the
72 same applies. In reviewing any fee charged by either
73 the fiduciary supervisor or a fiduciary commissioner the
74 county commission shall consider the following:

75 (1) The time and effort expended;

76 (2) The difficulty of the questions raised;

77 (3) The skill required to perform properly the services
78 rendered;

79 (4) The reasonableness of the fee;

80 (5) Any time limitations imposed by the personal
81 representative, any beneficiary or claimant, or by the
82 attendant circumstances; and

83 (6) Any unusual or extraordinary circumstances or
84 demands or conditions imposed by the personal repre-
85 sentative, any beneficiary or claimant or by the attendant
86 circumstances. The county commission may approve any
87 such voucher or may reduce the same, as it deems proper,
88 after considering those matters set forth in this subsec-
89 tion. Any such approval shall be by order of the com-
90 mission and be entered of record by the clerk of the
91 county commission in the fiduciary record book and the
92 general order books of the commission. In no event shall
93 any fee for any service, whether performed by the fidu-
94 ciary supervisor or the fiduciary commissioner, be fixed,
95 charged or approved which is based upon or with refer-
96 ence to the monetary value of the estate or of the amount
97 in controversy upon any disputed issue or fact of law.

98 (d) For every estate other than a decedent's estate,
99 there shall be charged by the fiduciary supervisor at the
100 time of qualification, a fee of twenty-five dollars, which
101 fee shall include all services performed by the fiduciary
102 supervisor with respect to such estate from the time of
103 qualification of the personal representative thereof until

104 and including the filing of the first annual settlement.
105 For each additional or subsequent annual or triennial
106 settlement, the fiduciary supervisor shall charge and
107 collect a fee of ten dollars.

108 (e) The county commission or other tribunal in lieu
109 thereof, shall, by order, establish or fix a schedule of
110 suggested fees or rates of compensation for the guidance
111 of the fiduciary supervisor and any fiduciary commis-
112 sioner in preparing their respective vouchers for fees
113 other than those fees fixed by any provision of this sec-
114 tion or of this chapter. A copy of these fees or rates shall
115 be posted in a conspicuous place in the county courthouse.

CHAPTER 91

(Com. Sub. for H. B. 1943—By Mr. Williams)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, 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 two-c, relating to the authority and duty of security officers appointed by the commissioner of the department of finance and administration; creating the crime of killing or molesting animals, birds or fowls upon the grounds of the capitol buildings or governor's mansion or knowingly allowing a dog or other animal to do so; creating the crime of knowingly allowing a dog to be upon the grounds of the capitol buildings or governor's mansion except under control by leash; creating the crime of knowingly allowing a dog or other animal to defecate upon said ground and subsequently failing to remove said defecation; and proving criminal penalties.

Be it enacted by the Legislature of West Virginia:

That article one, 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 two-c, to read as follows:

ARTICLE 1. DEPARTMENT OF FINANCE AND ADMINISTRATION.**§5A-1-2c. Unlawful to kill or molest animals, birds or fowls upon grounds of capitol; powers and duties of security officers; penalties.**

1 In addition to the duties of persons appointed and quali-
2 fied as security officers pursuant to section two-b of this
3 article, to preserve law and order on any premises under the
4 jurisdiction of the commissioner to which he may be assigned
5 by the commissioner, such security officers shall have authority
6 and it shall be the duty of such security officers to enforce
7 the provisions of this section. This authority and duty of
8 security officers shall not be deemed to supersede in any way
9 the authority or duty of other peace officers to enforce the
10 provisions of this section.

11 It shall be unlawful at any time to kill or molest in any
12 manner, any animals, birds or fowls on the grounds of the
13 capitol buildings or governor's mansion, except as may be
14 deemed necessary by the commissioner for the control or ex-
15 termination of animals, birds or fowls deemed by him to be
16 pests or a danger to the health and safety. Any person who
17 kills or molests in any manner, or knowingly allows a dog or
18 other animal owned by him to kill or molest in any manner any
19 animals, birds or fowls on the grounds of the capitol buildings
20 or governor's mansion shall be guilty of a misdemeanor, and,
21 upon conviction thereof, be fined not less than fifty dollars
22 nor more than five hundred dollars or, in the discretion of the
23 court, be imprisoned in the county jail for not more than six
24 months, or both such fine and imprisonment.

25 It shall be unlawful for any person to knowingly allow a
26 dog owned by him to be upon the grounds of the capitol build-
27 ings or governor's mansion unless such dog is under control by
28 leash. Any person who knowingly allows a dog owned by him
29 to be upon the grounds of the capitol buildings or governor's
30 mansion while not under control by leash shall be guilty of
31 a misdemeanor, and, upon conviction thereof, be fined not less
32 than twenty-five nor more than one hundred dollars.

33 It shall further be unlawful for any person to knowingly
34 allow a dog or other animal owned by him or under his control

35 to defecate upon the grounds of the capitol buildings or
36 governor's mansion. In the event that a dog or other animal
37 owned by or under the control of a person defecates upon the
38 grounds of the capitol buildings or governor's mansion, the
39 person shall remove such defecation. Any person who know-
40 ingly allows a dog or other animal owned by him or under his
41 control to defecate upon the grounds of the capitol buildings
42 or governor's mansion, and who subsequently fails to remove
43 said defecation, shall be guilty of a misdemeanor, and, upon
44 conviction thereof, shall be fined not less than twenty-five nor
45 more than one hundred dollars.

CHAPTER 92

(Com. Sub. for H. B. 1750—By Mr. Schifano and Mrs. Martin)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article twenty-six, chapter eighteen of said code by adding thereto four new sections, designated sections ten-c, ten-d, ten-e and ten-f, relating to excluding certain contracts entered into by the West Virginia board of regents from review and approval of director of purchasing unless the board requests otherwise; authorizing the West Virginia board of regents to purchase or acquire materials, supplies, equipment and printing required by the state colleges and universities; adopting rules and regulations; rejecting and awarding bids; preferring resident vendors; maintaining purchase file; requiring qualified buyers by rules and regulations and bond; limiting purchases; providing advance allowance account; providing for contracts and requiring performance bond; making director of purchases available; providing for disposition of obsolete and unusable equipment, surplus supplies and other unneeded materials; making other code provisions relating to purchasing not controlling as to purchase, acquisition or disposition of equipment, materials, supplies and printing by the West

Virginia board of regents; exceptions; providing for application of criminal provisions and penalties for certain violations; requiring prequalification disclosure by vendors and registration of vendors and exceptions; making certain persons ineligible to sell or offer to sell commodities or printing; and providing for suspension and review of suspension.

Be it enacted by the Legislature of West Virginia:

That section three, article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that article twenty-six, chapter eighteen of said code be amended by adding thereto four new sections, designated sections ten-c, ten-d, ten-e and ten-f, all to read as follows:

Chapter

5A. Department of Finance and Administration.

18. Education.

CHAPTER 5A. DEPARTMENT OF FINANCE AND ADMINISTRATION.

ARTICLE 3. PURCHASING DIVISION.

§5A-3-3. Powers and duties of director of purchasing.

1 The director, under the direction and supervision of the
2 commissioner, shall be the executive officer of the purchasing
3 division and shall have the power and duty to:

4 (1) Purchase or contract for, in the name of the state,
5 the commodities and printing required by the departments of
6 the state government;

7 (2) Apply and enforce standard specifications established
8 in accordance with section five of this article as hereinafter
9 provided;

10 (3) Transfer to or between departments or sell commodities
11 that are surplus, obsolete or unused as hereinafter provided;

12 (4) Have charge of central storerooms for the supply of
13 departments;

14 (5) Establish and maintain a laboratory for the testing

15 of commodities and make use of existing facilities in state
16 institutions for that purpose as hereinafter provided;

17 (6) Direct the state agency for surplus property as pro-
18 vided in sections forty-four and forty-five of this article;

19 (7) Recommend to the commissioner that the right and
20 privilege of a person to bid on state purchases be suspended
21 when the director has evidence that such person has violated
22 any of the provisions of the purchasing law or the rules and
23 regulations of the director;

24 (8) Examine the provisions and terms of every contract
25 entered into for and on behalf of the state of West Virginia
26 that impose any obligation upon the state to pay any sums of
27 money or perform any particular service or do any act or deed
28 and approve each such contract as to such provisions and terms;
29 and the duty of examination and approval herein set forth does
30 not supersede the responsibility and duty of the attorney gen-
31 eral to approve such contracts as to form: *Provided*, That the
32 provisions of this subdivision do not apply in any respect
33 whatever to construction or repair contracts entered into by
34 the state commissioner of highways: *Provided, however*, That
35 the provisions of this subdivision do not apply in any respect
36 whatever to contracts entered into by the West Virginia
37 board of regents for the purchase or acquisition of materials,
38 supplies, equipment and printing except to the extent that the
39 board of regents requests the facilities and services of the
40 director under the provisions of this subdivision; and

41 (9) Assure that the specifications and product descriptions
42 in all "requests for quotations" are prepared so as to permit
43 all potential suppliers-vendors who can meet the requirements
44 of the state an opportunity to bid. If a state department or
45 agency other than the purchasing division prepared the speci-
46 fications or descriptions, the director of the purchasing division
47 shall review such specifications and descriptions before solicit-
48 ing bids to assure that the specifications and descriptions do
49 not favor a particular brand of product or vendor. If he de-
50 termines that any such specifications or descriptions as written
51 favor a particular brand of product or vendor or if it is de-
52 cided, either before or after the bids are opened, that a product

53 having different specifications or quality or in different quan-
54 tity will be bought, the director shall rewrite the "requests
55 for quotations" and the matter shall be rebid.

CHAPTER 18. EDUCATION.

ARTICLE 26. WEST VIRGINIA BOARD OF REGENTS.

- §18-26-10c. Purchase or acquisition of materials, supplies, equipment and printing.
- §18-26-10d. Disposition of obsolete and unusable equipment, surplus supplies and other unneeded materials; inventories.
- §18-26-10e. Other code provisions relating to purchasing not controlling; exceptions; criminal provisions and penalties; financial interest of board, etc.; receiving anything of value from interested party and penalties therefor; application of bribery statute.
- §18-26-10f. Prequalification disclosure by vendors; register of vendors; exceptions; suspension of vendors.

§18-26-10c. Purchase or acquisition of materials, supplies, equipment and printing.

1 · All materials, supplies, equipment and printing required for
2 the board, the state universities and the state colleges shall
3 be purchased or acquired by the board. The board shall adopt
4 rules and regulations governing and controlling acquisitions
5 and purchases in accordance with the provisions of this sec-
6 tion. Such rules and regulations shall assure that the board:
7 Shall not preclude any person from participating and making
8 sales thereof to the board except as otherwise provided in
9 section ten-f of this article; shall establish and prescribe speci-
10 fications, in all proper cases, for materials, supplies, equip-
11 ment and printing to be purchased; shall adopt and prescribe
12 such purchase order, requisition or other forms as may be re-
13 quired; shall negotiate for and make purchases and acquisi-
14 tions in such quantities, at such times and under contract, in
15 the open market or through other accepted methods of
16 governmental purchasing as may be practicable in accordance
17 with general law; shall advertise for bids on all purchases ex-
18 ceeding five thousand dollars, to purchase by means of sealed
19 bids and competitive bidding or to effect advantageous pur-
20 chases through other accepted governmental methods and
21 practices; and shall post in a public place in the central office
22 of the board, in the purchasing office of the specific institu-

23 tion involved in the purchase and in the office of the depart-
24 ment of purchases, available to the public during all business
25 hours, notices of all acquisitions and purchases for which com-
26 petitive bids are being solicited, at least two weeks prior to
27 making such purchases.

28 The board shall further adopt rules and regulations relating
29 to purchasing in the open market pursuant to section thirteen,
30 article three, chapter five-a of this code, and shall further
31 make provision for vendor notification of bid solicitation and
32 emergency purchasing.

33 Any or all bids may be rejected. However, all purchases
34 based on advertised bid requests shall be awarded to the
35 lowest responsible bidder taking into consideration the quali-
36 ties of the articles to be supplied, their conformity with speci-
37 fications, their suitability to the requirements of the board
38 and delivery terms: *Provided*, That the preference for resi-
39 dent vendors as provided in section forty-four, article three of
40 said chapter five-a shall apply to the competitive bids made
41 pursuant to this section.

42 The board of regents shall maintain a purchase file, which
43 shall be a public record and open for public inspection. After
44 the award of the order or contract, the board of regents shall
45 indicate upon the successful bid that it was the successful bid,
46 and shall further indicate why bids are rejected and, if the
47 mathematical low vendor is not awarded the order or contract,
48 the reason therefor. No records in the purchase file shall be
49 destroyed without the written consent of the legislative auditor.

50 The board shall also adopt rules and regulations to prescribe
51 qualifications to be met by any person who, on and after the
52 effective date of this section, is to be employed as a buyer
53 pursuant to this section. Such rules and regulations shall pro-
54 vide that no person shall be employed as a buyer unless such
55 person, at the time of employment, either is (1) a graduate of
56 an accredited college or university or (2) has at least four
57 years' experience in purchasing for any unit of government or
58 for any business, commercial or industrial enterprise. Any per-
59 son making purchases and acquisitions pursuant to this section
60 shall execute a bond in the penalty of fifty thousand dollars,

61 payable to the state of West Virginia, with a corporate bond-
62 ing or surety company authorized to do business in this state
63 as surety thereon, in form prescribed by the attorney general
64 and conditioned upon the faithful performance of all duties
65 in accordance with sections ten-c through ten-f of this article
66 and the rules and regulations of the board of regents. In
67 lieu of separate bonds for such buyers, a blanket surety bond
68 may be obtained. Any such bond or bonds shall be filed with
69 the secretary of state. The cost of any such bond or bonds shall
70 be paid from funds appropriated to the board.

71 All purchases and acquisitions shall be made in consider-
72 ation and within limits of available appropriations and funds
73 and in accordance with applicable provisions of article two,
74 chapter five-a of this code, relating to expenditure schedules
75 and quarterly allotments of funds and in accordance with
76 section sixteen, article three of said chapter.

77 The board may make requisitions upon the auditor for a
78 sum to be known as an advance allowance account, in no case
79 to exceed five percent of the total of the appropriations for
80 the board, and the auditor shall draw his warrant upon the
81 treasurer for such accounts; and all such advance allowance
82 accounts shall be accounted for by the board once every
83 thirty days or oftener if required by the state auditor. Such
84 authority shall not be delegated to any state institution under
85 the control and supervision of the board.

86 Contracts entered into pursuant to this section shall be
87 signed by the board in the name of the state and shall be
88 approved as to form by the attorney general. A contract that
89 requires more than six months for its fulfillment shall be
90 filed with the state auditor. The board shall prescribe the
91 amount of deposit or bond to be submitted with a bid or con-
92 tract, if any, and the amount of deposit or bond to be given for
93 the faithful performance of a contract. If the board purchases
94 or contracts for materials, supplies, equipment and printing
95 contrary to the provisions of sections ten-c through ten-f of
96 this article or the rules and regulations pursuant thereto, such
97 purchase or contract shall be void and of no effect.

98 The board may request the director of purchases to make

99 available, from time to time, the facilities and services of his
100 department to the board in the purchase and acquisition of
101 materials, supplies, equipment and printing, and the director
102 of purchases shall cooperate with the board in all such pur-
103 chases and acquisitions upon the request of the board.

§18-26-10d. Disposition of obsolete and unusable equipment, surplus supplies and other unneeded materials; inventories.

1 The board shall dispose of obsolete and unusable equipment,
2 surplus supplies and other unneeded materials, either by trans-
3 fer to other governmental agencies or institutions, by ex-
4 change or trade, or by sale as junk or otherwise. The board
5 shall adopt rules and regulations governing and controlling the
6 disposition of all such equipment, supplies and materials. The
7 board shall advertise, by newspaper publication as a Class II
8 legal advertisement in compliance with the provisions of article
9 three, chapter fifty-nine of this code, in the county in which
10 the equipment, supplies and materials are located at least ten
11 days prior to the disposition, the availability or sales of such
12 disposable equipment, supplies and materials and may sell
13 same, in whole or in part, at public auction, or may transfer,
14 exchange or trade same to other governmental agencies or in-
15 stitutions (if by exchange or trade, then without advertising),
16 in whole or in part, as sound business practices may warrant
17 under existing circumstances and conditions. The board shall
18 inventory all such disposable equipment, supplies and materials
19 from time to time as quantity and stocks may warrant, but
20 shall make a complete annual inventory thereof as of the
21 thirty-first day of March of each year. The board may report
22 such inventories to the director of purchases whose services and
23 facilities shall be available to the board in making advanta-
24 geous disposition of any part or all of such disposable equip-
25 ment, supplies and materials. Such inventories shall briefly
26 describe the disposable items, the date of purchase thereof,
27 the vendor to the board, the purchase price paid therefor and
28 the board's order number authorizing disposition thereof and
29 shall indicate briefly the reason said items are no longer
30 needed or can no longer be used by the board. All such in-
31 ventories shall be kept as public records open to public inspec-

32 tion at one or more of the institutions under the jurisdiction of
33 the board for a period of five years and may thereafter be de-
34 stroyed: *Provided*, That under no circumstances shall any of
35 the property described in this section be sold, transferred or
36 conveyed to any private person, firm or corporation other
37 than by public auction or as provided in article eight, chapter
38 five-a of this code.

§18-26-10e. Other code provisions relating to purchasing not controlling; exceptions; criminal provisions and penalties; financial interest of board, etc.; receiving anything of value from interested party and penalties therefor; application of bribery statute.

1 The provisions of article three, chapter five-a of this code
2 shall not control or govern the purchase, acquisition or other
3 disposition of any equipment, materials, supplies or printing
4 by the board, except as provided in sections ten-c through ten-
5 f of this article: *Provided*, That sections thirty-six, thirty-seven
6 and thirty-eight, article three of said chapter five-a shall apply
7 to all purchasing activities of the board.

8 Neither the board, nor any employee of the board, shall be
9 financially interested, or have any beneficial personal interest,
10 directly or indirectly, in the purchase of any equipment, ma-
11 terials, supplies or printing, nor in any firm, partnership, cor-
12 poration or association furnishing them. Neither the board nor
13 any employee of said board shall accept or receive directly or
14 indirectly from any person, firm or corporation, known by the
15 board or such employee to be interested in any bid, contract
16 or purchase, by rebate, gift or otherwise, any money or other
17 thing of value whatsoever, or any promise, obligation or con-
18 tract for future reward, or compensation.

19 A person who violates any of the provisions of the preceding
20 paragraph shall be guilty of a misdemeanor, and, upon con-
21 viction thereof, shall be confined in jail not less than three
22 months nor more than one year, or fined not less than fifty
23 nor more than one thousand dollars, or both, in the discretion
24 of the court: *Provided*, That any person who violates any of

25 such provisions by receiving money or other thing of value
26 under circumstances constituting the crime of bribery under the
27 provisions of section three, article five-a, chapter sixty-one of
28 this code, shall, upon conviction of bribery, be punished as
29 provided in said article five-a of chapter sixty-one.

§18-26-10f. Prequalification disclosure by vendors; register of vendors; exceptions; suspension of vendors.

1 Every person, firm or corporation selling or offering to sell
2 to the board, upon competitive bids or otherwise, any mater-
3 ials, equipment, supplies or printing shall comply with all of
4 the provisions of section fourteen-a, article three, chapter five-
5 a of this code and shall file with the director of the purchas-
6 ing division of the state of West Virginia the affidavit re-
7 quired herein: *Provided*, That every such person, firm or
8 corporation who is presently in compliance with said section
9 shall not be required to requalify thereunder to be able to
10 transact business with the board.

11 Any person, firm or corporation failing or refusing to com-
12 ply with said statute as herein required shall be ineligible to
13 sell or offer to sell commodities or printing to the board as
14 hereinafter set forth: *Provided*, That any person suspended
15 under the provisions of section thirty-nine of said article three
16 shall not be eligible to sell or offer to sell commodities or
17 printing to the board: *Provided, however*, That the board shall
18 have the power and authority to suspend, for a period not to
19 exceed one year, the right and privilege of a person to bid on
20 purchases of the board when there is reason to believe that
21 such person has violated any of the provisions in sections ten-c
22 through ten-f of this article or the rules and regulations of the
23 board pursuant thereto. Every person whose right to bid has
24 been so suspended shall be notified thereof by a letter posted
25 by registered mail containing the reason for such suspension
26 and shall have the right to have the board's action reviewed in
27 accordance with section forty, article three, chapter five-a
28 of this code.

CHAPTER 93

(S. B. 642—By Mr. Wright)

[Passed March 11, 1983; in effect from passage. Approved by the Governor.]

AN ACT to amend article four, 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 seven, relating to the capitol mail office; presorting of mail.

Be it enacted by the Legislature of West Virginia:

That article four, 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 seven, to read as follows:

ARTICLE 4. GENERAL SERVICES DIVISION.

§5A-4-7. Preparation of mail for special postal rates.

1 All mail received by the mailing office for deposit in
2 the United States mail may be processed and presorted
3 according to postal regulations in order to receive the
4 most favorable mailing rates available. The commis-
5 sioner is authorized to make such expenditures as are
6 necessary to presort all outgoing mail or to enter into
7 contracts with any person, firm or corporation engaged
8 in such business to supply the service.

CHAPTER 94

(Com. Sub. for S. B. 47—By Mr. Holliday, Mr. Boettner,
Mr. McGraw, Mr. President, and Mr. Tonkovich)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three-a, article eight, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the state

agency for surplus property; specifying additional eligible purchasers to be public service districts, county building commissions, airport authorities and parks and recreation commissions to purchase state surplus property; authorizing the director of the state agency for surplus property to sell expendable, obsolete or unused motor vehicles owned by the state to eligible organizations, for a price less than the "average loan" value as published in the National Automobile Dealer's Association Official Used Car Guide (N.A.D.A.) when the fair market value of the vehicle is less than the N.A.D.A. average loan value; and providing that such fair market value must be based on a thorough inspection of the vehicle by the director or his representative; sale of vehicles to eligible organizations; restrictions on titling and resale.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. STATE AGENCY FOR SURPLUS PROPERTY.

§5A-8-3a. Disposition by director of surplus state property; semiannual report by director; application of proceeds from sale.

1 The director shall have the exclusive power and authority
2 to make disposition of commodities or expendable
3 commodities now owned or in the future acquired by the
4 state when, in the opinion of the director, any such
5 commodities are or become obsolete or unusable or are not
6 being used or should be replaced.

7 The director shall determine what commodities or
8 expendable commodities should be disposed of and he shall
9 make such disposition in the manner which in his opinion
10 will be most advantageous to the state, either by
11 transferring the particular commodities or expendable
12 commodities between departments, by selling such
13 commodities to county commissions, county boards of
14 education, municipalities, public service districts, county
15 building commissions, airport authorities, parks and
16 recreation commissions, and volunteer fire departments in
17 this state, when such volunteer fire departments have been

18 held exempt from taxation under section 501(c) of the
19 United States Internal Revenue Code, by trading in such
20 commodities as a part payment on the purchase of new
21 commodities, or by sale thereof to the highest bidder by
22 means of public auctions or sealed bids, after having first
23 advertised the time, terms and place of such sale as a Class II
24 legal advertisement in compliance with the provisions of
25 article three, chapter fifty-nine of this code, and the
26 publication area for such publication shall be the county
27 wherein the sale is to be conducted. The sale may also be
28 advertised in such other advertising media as the director
29 may deem advisable. The director may sell to the highest
30 bidder or to any one or more of the highest bidders, if there
31 is more than one, or, if in his opinion the best interest of the
32 state will be served, reject all bids.

33 Upon the transfer of commodities or expendable
34 commodities between departments, or upon the sale thereof
35 to an eligible organization described above, the director
36 shall set the price to be paid by the receiving eligible
37 organization, with due consideration given to current
38 market prices.

39 The director may sell expendable, obsolete or unused
40 motor vehicles owned by the state to an eligible
41 organization, other than volunteer fire departments. In
42 addition, the director may sell expendable, obsolete or
43 unused motor vehicles owned by the state with a gross
44 weight in excess of four thousand pounds to an eligible
45 volunteer fire department. The director, with due
46 consideration given to current market prices, shall set the
47 price to be paid by the receiving eligible organization, for
48 motor vehicles sold pursuant to this provision: *Provided,*
49 That the sale price of any motor vehicle sold to an eligible
50 organization shall not be less than the "average loan" value,
51 as published in the most recent available eastern edition of
52 the National Automobile Dealer's Association (N.A.D.A.)
53 Official Used Car Guide, if such a value is available, unless
54 the fair market value of the vehicle is less than the N.A.D.A.
55 "average loan" value, in which case the vehicle may be sold
56 for less than the "average loan" value. Such fair market
57 value must be based on a thorough inspection of the vehicle
58 by the director or his representative who shall consider the

59 mileage of the vehicle, and the condition of the body, engine
60 and tires as indicators of its fair market value. If no such
61 value is available, the director shall set the price to be paid
62 by the receiving eligible organization with due
63 consideration given to current market prices. The duly
64 authorized representative of such eligible organization, for
65 whom such motor vehicle or other similar surplus
66 equipment is purchased or otherwise obtained, shall cause
67 ownership and proper title thereto to be vested only in the
68 official name of the authorized governing body for whom
69 the purchase or transfer was made. Such ownership or title,
70 or both, shall remain in the possession of that governing
71 body and be nontransferable for a period of not less than
72 one year from the date of such purchase or transfer. Resale
73 or transfer of ownership of such motor vehicle or equipment
74 prior to an elapsed period of one year may be made only by
75 reason of certified unserviceability.

76 The director shall report to the legislative auditor,
77 semiannually, all sales of commodities or expendable
78 commodities made during the preceding six months to
79 eligible organizations. The report shall include a
80 description of the commodities sold, the price paid by the
81 eligible organization, which received the commodities; and
82 the report shall show to whom each commodity was sold.

83 The proceeds of such sales or transfers shall be deposited
84 in the state treasury to the credit on a pro rata basis of the
85 fund or funds out of which the purchase of the particular
86 commodities or expendable commodities was made:
87 *Provided*, That the director may charge and assess fees
88 reasonably related to the costs of care and handling with
89 respect to the transfer, warehousing, sale and distribution of
90 state property disposed of or sold pursuant to the provisions
91 of this section.

CHAPTER 95

(S. B. 28—By Mrs. Spears)

[Passed March 2, 1983; in effect from passage. Approved by the Governor.]

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

nine hundred thirty-one, as amended, relating to the state geological and economic survey; establishing a director thereof; authorizing him to employ assistants and set fees; and creating a special revenue account subject to legislative appropriation.

Be it enacted by the Legislature of West Virginia:

That section four, article two, 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 2. GEODETIC AND GEOLOGICAL SURVEY.

§29-2-4. State geological and economic survey; director.

1 The state geological and economic survey, heretofore
2 established, shall be continued. The governor shall ap-
3 point as director of the survey a geologist of established
4 reputation. The director may employ such assistants and
5 employees as he may deem necessary. He shall also de-
6 termine the compensation of all persons employed by the
7 survey, and may remove them at pleasure.

8 The director may set such reasonable fees as may be
9 necessary to recover additional costs incurred in perform-
10 ing geological and analytical analyses. These fees shall be
11 deposited in the state treasury in a special revenue ac-
12 count, to be known as the "Geological and Analytical
13 Services Fund." The director is hereby authorized to
14 expend such funds, as are appropriated by the Legislature,
15 from this fund for the purpose of defraying said costs.

CHAPTER 96

(H. B. 1249—By Mr. Steptoe and Mr. Hagedorn)

[Passed March 5, 1983; in effect July 1, 1983. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article one, chapter sixteen of the code of West Virginia, one thousand nine hundred

thirty-one, as amended, relating to expenditures by the state department of health; authorizing advance payments to be made to public and nonprofit health services providers only after determination of necessity therefor and for period no greater than necessary.

Be it enacted by the Legislature of West Virginia:

That section twelve, 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.

§16-1-12. Expenditures of state department of health.

1 The state department of health shall have power to expend
2 annually, for the purpose of performing the duties imposed
3 on it, or authorized by law, such sum as may be appro-
4 priated by the Legislature for the department of health. The
5 director of health shall audit all bills, which shall be made
6 out in due form and verified by the members of the board
7 of health, directors of divisions, employees or agents render-
8 ing services or incurring traveling or other expenses in the
9 performance of the duties of their offices or employments.
10 Such bills, when approved by the auditor, shall be paid out of
11 the state treasury.

12 The director of the department of health is authorized to
13 make advance payments to public and nonprofit health services
14 providers when it has been determined by the director of
15 health to be necessary for the initiation or continuation of
16 health services. Such advance payments, being in derogation
17 of the principle of payment only after receipt of goods or ser-
18 vices, shall be authorized only after serious consideration by
19 the director of the necessity therefor and shall be for a period
20 no greater than ninety days in advance of rendition of
21 service or receipt of goods and continuation of health services.

CHAPTER 97

(H. B. 1748—By Mr. Givens and Mrs. Theiling)

[Passed March 9, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four-a, article three, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the compulsory testing for tuberculosis of school children and school personnel; X ray required only if medically indicated.

Be it enacted by the Legislature of West Virginia:

That section four-a, 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.**

§16-3-4a. Compulsory testing for tuberculosis of school children and school personnel; X rays required for reactors; suspension from school or employment for pupils and personnel found to have tuberculosis in a communicable stage.

1 All kindergarten pupils and all first grade pupils who have
2 not had an approved tuberculin skin test in kindergarten and
3 all students transferring from a school located outside this state
4 shall furnish a certificate from a licensed physician stating that
5 a tuberculin skin test approved by the director of the depart-
6 ment of health has been made within four months prior to
7 the beginning of the school year, unless such pupil has moved
8 to this state from another state less than four months prior to
9 starting the school year, in which event such pupil shall have
10 such test as soon in advance of the start of the school as is
11 reasonable, or if the school year has already started, the pupil
12 shall take such test within one month of the time he enters
13 school. Test results must be recorded on the certificate. Posi-
14 tive reactors to the skin test must be immediately evaluated
15 by a physician and, if medically indicated, X rayed, and re-
16 ceive periodic X rays thereafter, when medically indicated.

17 Pupils found to have tuberculosis in a communicable stage
18 will not be allowed to attend school until their disease has been
19 arrested and is no longer communicable.

20 All school personnel shall have an approved tuberculin skin
21 test at time of employment and once every two years or more
22 frequently if medically indicated. Positive reactors to the skin
23 test are to be immediately referred to a physician for evalua-
24 tion and indicated treatment or further studies. The county
25 health officer shall be responsible for arranging proper follow-
26 up of school personnel and students who are unable to obtain
27 physician evaluation for a converted tuberculin skin test.
28 School personnel found to have tuberculosis in a communi-
29 cable stage shall have their employment discontinued or sus-
30 pended until their disease has been arrested and is no longer
31 communicable. School personnel who have not had the re-
32 quired examination will be suspended from employment until
33 reports of examination are confirmed.

CHAPTER 98

(H. B. 1747—By Mr. Givens and Mrs. Theiling)

[Passed March 3, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve-a, article five, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the registration of infants born with specified birth defects; requiring physician or midwife to check for defects; defects specified; registration of minors with impairments.

Be it enacted by the Legislature of West Virginia:

That section twelve-a, article five, 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 5. VITAL STATISTICS.

§16-5-12a. Registration of infants born with specified birth defects; requiring physician or midwife to check for defects, including visual impairments; registration of minors with previously undiagnosed impairments; form to be provided by state registrar; confidentiality; exceptions; parental consent.

1 When a live birth occurs, the physician or midwife in at-
2 tendance at, or present immediately after, the birth shall
3 examine the infant for any of the following birth defects:

- 4 (a) Anencephaly;
- 5 (b) Spina bifida;
- 6 (c) Hydrocephaly;
- 7 (d) Cleft palate;
- 8 (e) Total cleft lip;
- 9 (f) Esophageal atresia and atenosis;
- 10 (g) Rectal and anal atresia;
- 11 (h) Hypospadias;
- 12 (i) Reduction and deformity—upper limb;
- 13 (j) Reduction and deformity—lower limb;
- 14 (k) Congenital dislocation of the hip;
- 15 (l) Down's syndrome;
- 16 (m) Visual impairments; and
- 17 (n) Others as may be requested by the director.

18 If any such impairment is found in an infant, and/or if
19 such impairment is found in any subsequent examination of
20 any minor which has not been previously diagnosed, the
21 examining physician, midwife or other health care provider
22 licensed under chapter thirty of the code shall within thirty
23 days of the examination make a report of the diagnosis to
24 the state registrar of vital statistics on forms provided by the
25 state registrar of vital statistics. The report shall include the

26 name of the child, the name or names of the parents or
27 parent or guardian and a description of the impairment.

28 The information received by the state registrar pursuant
29 to this section pertaining to the identity of the persons
30 named shall be kept confidential: *Provided*, That if consent
31 of the parents, or if only one parent exists, of the parent,
32 or of the guardian is obtained, the registrar may provide
33 such information to the department of health, the department
34 of welfare, the department of education, the division of
35 vocational rehabilitation and the school for the deaf and
36 the blind so that such information can be utilized to provide
37 assistance or services for the benefit of the child.

CHAPTER 99

(H. B. 1742—By Mrs. Blatnik and Mrs. Leary)

[Passed March 9, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five-b, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section six-a, relating to consumer representatives on hospital boards of directors; percentage of consumer representatives required.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5B. HOSPITALS AND SIMILAR INSTITUTIONS.

§16-5B-6a. Consumer majorities on hospital boards of directors.

1 (a) The Legislature declares that a crisis in health care
2 costs exists, that one important approach to deal with this
3 crisis is to have widespread citizen participation in
4 hospital decision making and that many hospitals in West
5 Virginia exclude from their boards important categories of

6 consumers, including small businesses, organized labor, elderly
7 persons and lower-income consumers. The Legislature further
8 declares that nonprofit hospitals receive such major revenue
9 from public sources and are so crucial in health planning and
10 development that it is necessary to require consumer repre-
11 sentatives on their boards of directors. Therefore, the Legisla-
12 ture determines that nonprofit hospitals and hospitals owned
13 by local governments should have boards of directors repre-
14 sentative of the communities they serve.

15 (b) As used in this section, "applicable hospitals" means
16 all nonprofit hospitals and all hospitals owned by a county,
17 city or other political subdivision of the state of West Virginia.

18 (c) At least forty percent of the boards of directors of appli-
19 cable hospitals shall, on or before the first day of July, one
20 thousand nine hundred eighty-four, be composed of an equal
21 portion of consumer representatives from each of the following
22 four categories: Small businesses, organized labor, elderly per-
23 sons and persons whose income is less than the national median
24 income. Special consideration shall be made to select women,
25 racial minorities and handicapped persons.

26 (d) The provisions of this section may be enforced by the
27 director of health, or by any citizen of the county wherein any
28 offending hospital is located, by the filing of an action at law
29 in the circuit court of such county.

CHAPTER 100

(Com. Sub. for H. B. 1668—By Mr. Kelly and Mrs. Brown)

[Passed March 3, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eighteen, relating to nursing and personal care homes; providing that each patient's personal funds shall be kept in a separate account; requiring consent for use; requiring records; and providing penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5C. NURSING AND PERSONAL CARE HOMES.

§16-5C-18. Separate accounts for patient's personal funds; consent for use; records; penalties.

1 (a) Each nursing home and personal care home subject to
2 the provisions of this article shall hold in a separate account
3 and in trust each patient's personal funds deposited with the
4 facility.

5 (b) No person may use or cause to be used for any purpose
6 the personal funds of any patient admitted to any such fa-
7 cility unless consent for the use thereof has been obtained
8 from the patient or from a committee or guardian or relative.

9 (c) Each nursing home and personal care home shall main-
10 tain a true and complete record of all receipts for any disburse-
11 ments from the personal funds account of each patient in the
12 facility, including the purpose and payee of each disbursement,
13 and shall render a true account of such record to the patient
14 or his representative upon demand and upon termination of
15 the patient's stay in the facility.

16 (d) Any person or corporation who violates any subsection
17 of this section is guilty of a misdemeanor, and, upon convic-
18 tion thereof, shall be fined not more than one thousand dollars,
19 or imprisoned in the county jail not more than one year, or
20 both fined and imprisoned.

CHAPTER 101

(Com. Sub. for H. B. 1352—By Mrs. Neal)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding there-

to a new article, designated article twenty-nine, relating to patient access to health care records.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 29. HEALTH CARE RECORDS.

§16-29-1. Copies of health care records to be furnished to patients.

§16-29-2. Reasonable expenses to be reimbursed.

§16-29-1. Copies of health care records to be furnished to patients.

1 Any licensed, certified or registered health care provider so
2 licensed, certified or registered under the laws of this state
3 shall, upon the written request of a patient, his authorized agent
4 or authorized representative, within a reasonable time, furnish
5 a copy or summary of the patient's record to the patient, his
6 authorized agent or authorized representative subject to the
7 following exceptions:

8 (a) In the case of a patient receiving treatment for psychiat-
9 ric or psychological problems, a summary of the record shall
10 be made available to the patient, his authorized agent or au-
11 thorized representative following termination of the treatment
12 program.

13 (b) Nothing in this article shall be construed to require a
14 health care provider responsible for diagnosis, treatment or
15 administering health care services in the case of minors for
16 birth control, prenatal care, drug rehabilitation or related ser-
17 vices, or venereal disease according to any provision of the
18 code, to release patient records of such diagnosis, treatment
19 or provision of health care as aforesaid to a parent or guardian,
20 without prior written consent therefor from the patient, nor
21 shall anything in this article be construed to apply to persons
22 regulated under the provisions of chapter eighteen of this code
23 or the rules and regulations established thereunder.

24 (c) The furnishing of a copy or summary of the reports of
25 x-ray examinations, electrocardiograms and other diagnostic

26 procedures shall be deemed to comply with the provisions of
27 this article.

28 (d) For purposes of this article, "patient record" does not
29 include a provider's office notes.

30 (e) The provisions of this article may be enforced by a
31 patient, authorized agent or authorized representative, and
32 any health care provider found to be in violation of this
33 article shall pay any attorney fees and costs, including court
34 costs incurred in the course of such enforcement.

§16-29-2. Reasonable expenses to be reimbursed.

1 The provider shall be reimbursed by the person requesting in
2 writing a copy of such records at the time of delivery for all
3 reasonable expenses incurred in complying with this article.

CHAPTER 102

(Com. Sub. for S. B. 320—By Mr. McGraw, Mr. President, Mr. Nelson,
Mrs. Chace, Mrs. Lucht, Mr. Heck, Mr. Holliday, Mr. Holmes, Mr. Boettner,
Mr. Stacy and Mr. Davis)

[Passed March 12, 1983; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-nine-b, relating to legislative findings; definitions; freeze on hospital rates and cap on revenues; penalty; notice; creation of the West Virginia health care cost review authority within the department of health; qualifications; oath; chairman; terms; vacancies; compensation; advisory council; staff; powers generally; budget; funding; annual report; jurisdiction; authority designated as state's health planning agency and to assume certificate of need functions as of July one, one thousand nine hundred eighty-four; hearings; administrative procedures applicable; examiner; subpoena power; review of final orders; injunctions and mandamus; refusal to comply; start-up period; uniform

system of accounts and financing, reporting; annual reporting by hospitals; rate-setting powers; commencement of review activities; determination of rates; procedure for initial rate schedules; adjustments and revisions; incentives; utilization review and quality assurance; powers with respect to insurance policies; public disclosure; exemptions from antitrust laws; criminal penalties for violations; effective date; and termination date.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 29B. WEST VIRGINIA HEALTH CARE COST REVIEW AUTHORITY.

- §16-29B-1. Legislative findings; purpose.
- §16-29B-2. Short title.
- §16-29B-3. Definitions.
- §16-29B-4. Freeze on rates, cap on revenues; penalty; notice.
- §16-29B-5. Establishment of the West Virginia health care cost review authority; creation of the board; qualifications; terms; oath; compensation and expenses of members; vacancies; appointment of chairman; and meetings of board.
- §16-29B-6. Advisory council.
- §16-29B-7. Staff.
- §16-29B-8. Powers generally; budget expenses of the board.
- §16-29B-9. Annual report.
- §16-29B-10. Jurisdiction of the board.
- §16-29B-11. Designation of board as the state's health planning agency.
- §16-29B-12. Hearings; administrative procedures act applicable; hearing examiner; subpoenas.
- §16-29B-13. Review of final orders of board.
- §16-29B-14. Injunction; mandamus.
- §16-29B-15. Refusal to comply.
- §16-29B-16. Start-up period.
- §16-29B-17. Uniform system of accounts and financing; reporting.
- §16-29B-18. Hospital annual financing reporting.
- §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-22. Incentives.
- §16-29B-23. Utilization review and quality assurance.

- §16-29B-24. Powers with respect to insurance policies and health organizations.
- §16-29B-25. Public disclosure.
- §16-29B-26. Exemptions from state antitrust laws.
- §16-29B-27. Penalties for violations.
- §16-29B-28. Effective date and termination date.

§16-29B-1. Legislative findings: purpose.

1 The Legislature hereby finds and declares that the
2 health and welfare of the citizens of this state is being
3 threatened by unreasonable increases in the cost of acute
4 care hospital services. In order to alleviate this threat,
5 information on hospital cost must be gathered, a system
6 of cost control must be developed and an entity of state
7 government must be given authority to ensure the con-
8 tainment of acute care hospital costs. Therefore, the
9 purpose of this article is to protect the health and well-
10 being of the citizens of this state by guarding against
11 unreasonable loss of economic resources as well as to
12 ensure the continuation of appropriate acute care hos-
13 pital services.

§16-29B-2. Short title.

1 This article may be cited as the "West Virginia Health
2 Care Cost Review Authority."

§16-29B-3. Definitions.

1 As used in this article, unless a different meaning
2 clearly appears from the context:

3 (a) "Charges" means the economic value established
4 for accounting purposes of the goods and services a hospi-
5 tal provides for all classes of purchasers;

6 (b) "Class of purchaser" means a group of potential
7 hospital patients with common characteristics affecting
8 the way in which their hospital care is financed. Examples
9 of classes of purchasers are medicare beneficiaries, welfare
10 recipients, subscribers of corporations established and
11 operated pursuant to article twenty-four, chapter thirty-
12 three of this code, members of health maintenance organ-
13 izations and other groups as defined by the board;

14 (c) "Board" means the three member board of directors

15 of the West Virginia health care cost review authority, an
16 autonomous division within the state department of
17 health;

18 (d) "Health care provider" means a person, partner-
19 ship, corporation, facility or institution licensed, certified
20 or authorized by law to provide professional health care
21 service in this state to an individual during this indi-
22 vidual's medical care, treatment or confinement;

23 (e) "Hospital" means a facility subject to licensure as
24 such under the provisions of article five-b of this chapter
25 and any acute care facility operated by the state govern-
26 ment which is primarily engaged in providing to in-
27 patients, by or under the supervision of physicians,
28 diagnostic and therapeutic services for medical diagnosis,
29 treatment and care of injured, disabled or sick persons,
30 and does not include state mental health facilities or
31 state long-term care facilities;

32 (f) "Person" means an individual, trust, estate, part-
33 nership, committee, corporation, association or other or-
34 ganization such as a joint stock company, estate or politi-
35 cal subdivision or instrumentality thereof;

36 (g) "Purchaser" means a consumer of patient care ser-
37 vices, a natural person who is directly or indirectly respon-
38 sible for payment for such patient care services rendered
39 by a hospital, but does not include third party payors;

40 (h) "Rates" means all value given or money payable
41 to hospitals for health care services, including fees,
42 charges and cost reimbursements;

43 (i) "Records" means accounts, books and other data
44 related to health care costs at health care facilities sub-
45 ject to the provisions of this article which do not in-
46 clude privileged medical information, individual per-
47 sonal data, confidential information, the disclosure of
48 which is prohibited by other provisions of this code and
49 the laws enacted by the federal government, and in-
50 formation, the disclosure of which would be an invasion
51 of privacy; and

52 (j) "Third party payor" means any natural person,

53 person, corporation or government entity responsible for
54 payment for patient care services rendered by hospitals.

§16-29B-4. Freeze on rates; cap on revenues; penalty; notice.

1 All rates for hospital services provided on the first day
2 of February, one thousand nine hundred eighty-three,
3 shall remain the same for such services on and after that
4 date except as adjustments are provided in this article.
5 Until such time as the board created in section five of
6 this article establishes the initial rate schedule for a hospi-
7 tal pursuant to the provisions of section twenty-one, said
8 hospital's gross patient revenues as most recently re-
9 ported to the department of health pursuant to article
10 five-f of this chapter shall not increase by more than
11 twelve percent per annum. Any hospital altering its
12 payor mix by increasing or decreasing the proportion
13 of medicare, medicaid or charity care patients during this
14 period shall have its allowed twelve percent per annum
15 increased or decreased in proportion to the change in
16 its patient mix.

17 Any hospital whose gross patient revenues exceed
18 those allowed as set forth in this section shall pay back
19 the excess to the board. Within thirty days of passage
20 of this article, the health department shall notify each
21 hospital of the provisions of this section: *Provided*, That
22 prior to the first day of July, one thousand nine hundred
23 eighty-four, or until such earlier time as the board may
24 determine, the director of the state department of health
25 shall be empowered to approve temporary rate increases
26 for hospitals subject to the provisions of this article, in
27 accordance with the provisions of section twenty-one,
28 subsection (c) of this article. The board shall have
29 authority to develop rules and regulations to administer
30 the provisions of this section.

**§16-29B-5. Establishment of the West Virginia health care
cost review authority; creation of the board;
qualifications; terms; oath; compensation and ex-
penses of members; vacancies; appointment of
chairman; and meetings of the board.**

1 There is created within the department of health an

2 autonomous division, the "West Virginia Health Care
3 Cost Review Authority," hereinafter referred to as the
4 board.

5 (a) The board shall consist of three members, ap-
6 pointed by the governor, with the advice and consent of
7 the Senate. The board members shall be citizens and
8 residents of this state. No more than two of said board
9 members may be members of the same political party.
10 One board member shall have a background in health
11 care finance or economics, one board member shall have
12 previous employment experience in human services, busi-
13 ness administration or substantially related fields and
14 one board member shall be a consumer of health services
15 with a demonstrated interest in health care issues.

16 (b) Each board member shall, before entering upon
17 the duties of his office, take and subscribe to the oath
18 provided by section five, article IV of the constitution
19 of the state of West Virginia, which oath shall be filed
20 in the office of the secretary of state. The governor shall
21 designate one of the board members to serve as chair-
22 man at the governor's will and pleasure. The chairman
23 shall be the chief administrative officer of the board.
24 The governor may remove any board member only for
25 incompetency, neglect of duty, gross immorality, mal-
26 feasant in office or violation of the provisions of this
27 article. The governor shall appoint three board mem-
28 bers, one for a term of two years, one for a term of four
29 years and one for a term of six years, with all the terms
30 beginning on the effective date of this article. All future
31 appointments shall be for terms of six years, except that
32 an appointment to fill a vacancy shall be for the unex-
33 pired term only. No board member shall serve more
34 than two consecutive six-year terms.

35 (c) No person while in the employ of, or holding any
36 official relation to, any hospital subject to the provi-
37 sions of this article, or who has any pecuniary interest
38 therein, may serve as a member of the board or as an
39 employee thereof. Nor may any such board member be
40 a candidate for or hold public office or be a member of

41 any political committee while acting as such board mem-
42 ber; nor may any board member or employee of said
43 board receive anything of value, either directly or in-
44 directly from any hospital subject to the provisions of
45 this article. Should any of the board members become a
46 candidate for any public office or for membership on any
47 political committee, the governor shall remove said board
48 member from the board and shall appoint a new board
49 member to fill the vacancy created. No board member
50 may accept employment with any hospital subject to the
51 jurisdiction of the board within two years after said
52 board member ceases to be a board member.

53 (d) The concurrent judgment of two of the board
54 members when in session as the board shall be deemed
55 the action of the board. A vacancy in the board shall not
56 affect the right or duty of the remaining board members
57 to function as a board.

58 (e) The annual salary of the chairman of the board
59 shall be forty thousand dollars. The annual salary of the
60 other board members shall be thirty-six thousand five
61 hundred dollars.

§16-29B-6. Advisory council.

1 There is created the West Virginia health care cost
2 review council, hereinafter referred to as the council:

3 (a) The council shall be composed of twelve members.
4 Five members shall serve in an ex officio capacity and
5 have no vote, and those members being the director of
6 health, the commissioner of human services, the commis-
7 sioner of insurance, the chairman of the public employees
8 insurance board and the director of the division of voca-
9 tional rehabilitation, or their respective designated repre-
10 sentatives. The seven voting members shall be appointed
11 by the governor, with the advice and consent of the Sen-
12 ate, and shall be selected as follows: One representative of
13 the health insurance industry, one administrator of a
14 large hospital, one administrator of a small hospital
15 and four members who are consumers of health services.
16 When selecting the members who are consumers of health

17 services, in addition to other factors, consideration shall
18 be given to constituencies of organized labor, major pur-
19 chasers of health insurance and senior citizens.

20 (b) No more than four of the voting members of the
21 council may belong to the same political party, and no
22 more than two may reside in the same congressional dis-
23 trict. Selection of all voting members of the council shall
24 be made with due diligence to ensure membership there-
25 on by persons representing all cultural, demographic
26 and ethnic segments of the population of this state. Mem-
27 bers of the council shall be appointed for terms of three
28 years each, except that of the voting members first ap-
29 pointed, three members shall be appointed for terms of
30 one year, two members for terms of two years and two
31 members for terms of three years. Members shall be
32 eligible for reappointment for a second three-year term.
33 Vacancies shall be filled in the same manner as the ori-
34 ginal appointments for the duration of the unexpired
35 term. The board shall appoint a chairman of the council
36 who shall serve at the will and pleasure of the board.

37 (c) The presence of a majority of the voting members
38 of the council shall constitute a quorum for the trans-
39 action of business. The council shall elect from among
40 its voting members a vice chairman and such other of-
41 ficers as it shall deem necessary. The council shall meet
42 no less than four times during the calendar year, and
43 additional meetings shall be held upon a call of the
44 chairman or a majority of the voting members, or the
45 board.

46 (d) The council shall serve as an advisory body to
47 the board on the development of health care cost con-
48 tainment policy, strategies and methods, and shall re-
49 view, and from time to time make recommendations in
50 regard thereto, state-of-the-art concepts in health care
51 policy at the national, state and local level and their
52 application to the deliberations of the board. The coun-
53 cil shall serve as a conduit for the collection and trans-
54 mission of information to the board regarding the con-
55 sequences of board policy upon health care cost con-

56 tainment and upon hospitals that are subject to the pro-
57 visions of this article. The council shall serve as a means
58 for coordinating health care cost containment policy
59 among departments of state government. The council
60 shall review decisions of the board and make public
61 comments thereon as it sees fit.

62 (e) In order to assist with the council's deliberations,
63 the board's staff shall gather information on cost contain-
64 ment efforts, including, but not limited to, the provision of
65 alternative delivery systems, prospective payment sys-
66 tems, alternative rate-making methods and programs of
67 consumer education. The council shall pay particular at-
68 tention to the economic and health status impact of such
69 efforts on purchasers or classes of purchasers, particularly
70 the elderly and those on low or fixed incomes.

71 (f) The board staff shall further gather information on
72 state-of-the-art advances in medical technology, the cost
73 effectiveness of such advances and their impact on health
74 care advances in hospital and health care management
75 practices, and any other state-of-the-art concepts relating
76 to health care cost containment, health care improve-
77 ment or other issues the council finds relevant and directs
78 staff to investigate. The board staff shall prepare and
79 keep a register of such information and update it on an
80 annual basis.

81 (g) The board shall consider any recommendations of
82 the council regarding additions or modifications to the
83 board's rate setting and cost containment responsibilities
84 as well as other responsibilities under the board's pur-
85 view.

86 (h) The council shall make its own report to the
87 board, the governor and the Legislature within thirty
88 days of the close of each fiscal year. This report shall
89 include summaries of all meetings of the council, any
90 public comments on board decisions, together with any
91 suggestions and policy recommendations.

92 (i) Council members shall be reimbursed from the
93 board fund for sums necessary to carry out its responsi-

94 bilities and for reasonable travel expenses to attend coun-
95 cil meetings.

§16-29B-7. Staff.

1 (a) The board may employ such persons as may be
2 necessary to effect the provisions of this article. The
3 board shall set the respective salaries or compensations of
4 all staff. Any person employed by the board other than
5 on a part-time basis shall devote full time to the per-
6 formance of his or her duties as such employee during
7 the regular working hours of the board.

8 (b) The board shall appoint general counsel who
9 shall act as legal counsel to the board. The general
10 counsel shall serve at the will and pleasure of the board:

11 (1) The general counsel may act to bring and to
12 defend actions on behalf of the board in the courts of the
13 state and in federal courts.

14 (2) In all adjudicative matters before the board, the
15 general counsel shall advise the board. The staff shall
16 represent itself in all such actions before the board.

17 (c) The board may contract with third parties, in-
18 cluding state agencies, for any services that may be nec-
19 essary to perform the duties imposed upon it by this
20 article where such contractual agreements will promote
21 economy, avoid duplication of effort or make the best
22 use of available expertise.

§16-29B-8. Powers generally; budget expenses of the board.

1 (a) In addition to the powers granted to the board
2 elsewhere in this article, the board may:

3 (1) Adopt, amend and repeal necessary, appropriate
4 and lawful policy guidelines, rules and regulations in ac-
5 cordance with article three, chapter twenty-nine-a of
6 this code;

7 (2) Hold public hearings, conduct investigations and
8 require the filing of information relating to matters af-
9 fecting the costs of services in hospitals subject to the
10 provisions of this article and may subpoena witnesses,

11 papers, records, documents and all other data in connec-
12 tion therewith. The board may administer oaths or af-
13 firmations in any hearing or investigation;

14 (3) Apply for, receive and accept gifts, payments and
15 other funds and advances from the United States, the
16 state or any other governmental body, agency or agencies
17 or from any other private or public corporation or person
18 (with the exception of hospitals subject to the provisions
19 of this article, or associations representing them, doing
20 business in the state of West Virginia, except in accor-
21 dance with subsection (c) of this section), and enter into
22 agreements with respect thereto, including the under-
23 taking of studies, plans, demonstrations or projects. Any
24 such gifts or payments that may be received or any such
25 agreements that may be entered into shall be used or
26 formulated only so as to pursue legitimate, lawful pur-
27 poses of the board, and shall in no respect inure to the
28 private benefit of a board member, staff member, donor
29 or contracting party;

30 (4) Lease, rent, acquire, purchase, own, hold, con-
31 struct, equip, maintain, operate, sell, encumber and as-
32 sign rights or dispose of any property, real or personal,
33 consistent with the objectives of the board as set forth
34 in this article: *Provided*, That such acquisition or pur-
35 chase of real property or construction of facilities shall
36 be consistent with planning by the state building commis-
37 sion and subject to the approval of the Legislature;

38 (5) Contract and be contracted with and execute all
39 instruments necessary or convenient in carrying out the
40 board's functions and duties; and

41 (6) Exercise, subject to limitations or restrictions here-
42 in imposed, all other powers which are reasonably nec-
43 essary or essential to effect the express objectives and
44 purposes of this article.

45 (b) The board shall annually prepare a budget for
46 the next fiscal year for submission to the governor and
47 the Legislature which shall include all sums necessary
48 to support the activities of the board and its staff.

49 (c) Each hospital subject to the provisions of this
50 article shall be assessed by the board on a pro rata
51 basis using the gross revenues of each hospital as reported
52 under the authority of section eighteen of this article as
53 the measure of the hospital's obligation. The amount of
54 such fee shall be determined by the board except that in
55 no case shall a hospital's obligation exceed one tenth of
56 one percent of its gross revenue. Such fees shall be paid
57 on or before the first day of July in each year and shall
58 be paid into the state treasury and kept as a special
59 revolving fund, designated "health care cost review
60 fund," with the moneys in such fund being expendable
61 after appropriation by the Legislature for purposes con-
62 sistent with this article. Any balance remaining in said
63 fund at the end of any fiscal year shall not revert to the
64 treasury, but shall remain in said fund and such moneys
65 shall be expendable after appropriation by the Legisla-
66 ture in ensuing fiscal years.

67 (d) During the board's start-up period, before the
68 first day of July, one thousand nine hundred eighty-four,
69 each hospital subject to the provisions of this article shall
70 be assessed by the board on a pro rata basis using the
71 gross revenues of each hospital as reported under the
72 provisions of article five-f, chapter sixteen of this code.
73 Within sixty days of passage of this article, the depart-
74 ment of health shall notify each hospital of the amount
75 of such fee, which in no case shall exceed one tenth of
76 one percent of the gross revenue of each hospital, the
77 total amount of which fees shall not in any event exceed
78 five hundred thousand dollars during said start-up period.
79 Such fees shall be paid into the aforementioned special
80 fund in two equal installments, the first of which shall
81 be paid on the first day of April, one thousand nine
82 hundred eighty-three, the second of which shall be paid
83 on the first day of January, one thousand nine hundred
84 eighty-four.

85 (e) Each hospital's assessment shall be treated as an
86 allowable expense by the board.

87 (f) The board is empowered to withhold rate ap-
88 provals if any such fees remain unpaid.

§16-29B-9. Annual report.

1 The board shall, within thirty days of the close of the
2 fiscal year, or from time to time as requested by the
3 Legislature, prepare and transmit to the governor and
4 the Legislature a report of its operations and activities
5 for the preceding fiscal year. This report shall include
6 summaries of all reports made by the hospitals subject to
7 this article, together with facts, suggestions and policy
8 recommendations the board considers necessary. The
9 board shall, after rate review and determination in ac-
10 cordance with the provisions of this article, include such
11 rate schedules in its annual report or other reports as
12 may be requested by the Legislature.

§16-29B-10. Jurisdiction of the board.

1 (a) Notwithstanding any other provision of state law,
2 after the first day of July, one thousand nine hundred
3 eighty-four, the jurisdiction of the board as to rates for
4 health services care shall extend to all hospitals as de-
5 fined herein doing business in the state of West Virginia
6 (with the exception of hospitals owned and operated by
7 the federal government).

8 (b) Those costs or charges associated with individual
9 health care providers or health care provider groups
10 providing inpatient or outpatient services under a con-
11 tractual agreement with hospitals (excluding simple ad-
12 mitting privileges) shall be under the jurisdiction of the
13 board. The jurisdiction of the board shall not extend to
14 the regulation of rates of private health care providers
15 or health care groups providing inpatient or outpatient
16 services under a contractual agreement with hospitals
17 when the provision of such service is outside the hospital
18 setting, and shall not extend to the regulation of rates
19 of all other private health care providers practicing out-
20 side the hospital setting: *Provided*, That such practice
21 outside of the hospital setting is not found to be an
22 evasion of the purposes of this article.

§16-29B-11. Designation of board as the state's health planning agency.

1 (a) On and after the first day of July, one thousand

2 nine hundred eighty-four, notwithstanding any provision
3 of this code to the contrary, the board shall be the state's
4 health planning and development agency, as provided
5 by section 1521 of the United States Public Health Services
6 Act, as amended, and it shall carry out and perform all
7 the functions set forth in section 1523 of that act, includ-
8 ing review and approval or disapproval of capital ex-
9 penditures for health care facilities or services as de-
10 lined in article two-d of this chapter.

11 (b) On and after the first day of July, one thousand
12 nine hundred eighty-four, the board shall serve as the
13 planning agency designated in the agreement between
14 the state and the secretary of the department of health
15 and human services pursuant to Title 42, United States
16 Code section 1320a-1 (1976), as amended, in which the
17 use of federal funds for capital expenditures is limited to
18 those projects approved by the planning agency.

19 (c) This article does not affect proceedings that were
20 begun or rights or powers enforceable under the pro-
21 visions of article two-d of this chapter at any time before
22 the first day of July, one thousand nine hundred eighty-
23 four.

**§16-29B-12. Hearings; administrative procedures act applica-
ble; hearing examiner; subpoenas.**

1 (a) The board may conduct such hearings as it deems
2 necessary for the performance of its functions and shall
3 hold hearings when required by the provisions of this
4 chapter or upon a written demand therefor by a person
5 aggrieved by any act or failure to act by the board or by
6 any rule, regulation or order of the board. All hearings
7 of the board shall be announced in a timely manner and
8 shall be open to the public except as may be necessary
9 to conduct business of an executive nature.

10 (b) All pertinent provisions of article five, chapter
11 twenty-nine-a of this code shall apply to and govern the
12 hearing and administrative procedures in connection with
13 and following the hearing except as specifically stated
14 to the contrary in this article.

15 (c) Any hearing may be conducted by members of the
16 board or by a hearing examiner appointed for such pur-
17 pose. Any member of the board may issue subpoenas
18 and subpoenas duces tecum which shall be issued and
19 served pursuant to the time, fee and enforcement speci-
20 fications in section one, article five, chapter twenty-nine-
21 a of this code.

22 (d) Notwithstanding any other provision of state law,
23 when a hospital alleges that a factual determination made
24 by the board is incorrect, the burden of proof shall be
25 on the hospital to demonstrate that such determination
26 is, in light of the total record, not supported by substantial
27 evidence. The burden of proof remains with the hospital
28 in all cases.

29 (e) After any hearing, after due deliberation, and in
30 consideration of all the testimony, the evidence and the
31 total record made, the board shall render a decision in
32 writing. The written decision shall be accompanied by
33 findings of fact and conclusions of law as specified in
34 section three, article five, chapter twenty-nine-a of this
35 code, and a copy of the decision and accompanying find-
36 ings and conclusions shall be served by certified mail,
37 return receipt requested, upon the party demanding the
38 hearing, and upon its attorney of record, if any.

39 (f) Any interested individual, group or organization
40 shall be recognized as affected parties upon written re-
41 quest from the individual, group or organization. Af-
42 fected parties shall have the right to bring relevant evi-
43 dence before the board and testify thereon. Affected
44 parties shall have equal access to records, testimony and
45 evidence before the board, and shall have equal access
46 to the expertise of the board's staff. The board shall
47 have authority to develop rules and regulations to ad-
48 minister provisions of this section.

49 (g) The decision of the board is final unless reversed,
50 vacated or modified upon judicial review thereof, in ac-
51 cordance with the provisions of section thirteen of this
52 article.

§16-29B-13. Review of final orders of board.

1 (a) A final decision of the board and the record upon
2 which it was made shall, upon request of any affected
3 party, be reviewed by the agency of the state designated
4 by the governor to hear appeals under the provisions of
5 article two-d of this chapter. To be effective, such re-
6 quest must be received within thirty days after the date
7 upon which all parties received notice of the board
8 decision, and the hearing shall commence within thirty
9 days of receipt of the request.

10 (b) For the purpose of administrative review of board
11 decisions, the review agency shall conduct its proceed-
12 ings in conformance with the West Virginia rules of civil
13 procedure for trial courts of record and the local rules
14 for use in the civil courts of Kanawha County and shall
15 review appeals in accordance with the provisions gov-
16 erning the judicial review of contested administrative
17 cases in section four, article five, chapter twenty-nine-a
18 of this code, notwithstanding the exceptions of section
19 five, article five, chapter twenty-nine-a of this code.

20 (c) The decision of the review agency shall be made
21 in writing within forty-five days after the conclusion of
22 such hearing.

23 (d) The written findings of the review agency shall
24 be sent to all affected parties, and shall be made avail-
25 able by the commission to others upon request.

26 (e) The decision of the review agency shall be con-
27 sidered the final decision of the board; however, the re-
28 view agency may remand the matter to the board for
29 further action or consideration.

30 (f) Upon the entry of a final decision by the review
31 agency, any affected party may within thirty days after
32 the date upon which all affected parties receive notice
33 of the decision of the review agency, appeal said decision
34 in the circuit court of Kanawha County. The decision
35 of the review agency shall be reviewed by that circuit
36 court in accordance with the provisions for the judicial

37 review of administrative decisions contained in section
38 four, article five, chapter twenty-nine-a of this code.

§16-29B-14. Injunction; mandamus.

1 The board may compel obedience to its lawful orders
2 by injunction or mandamus or other proper proceedings
3 in the name of the state in any circuit court having juris-
4 diction of the parties or of the subject matter, or the
5 supreme court of appeals direct, and such proceeding
6 shall be determined in an expeditious manner.

§16-29B-15. Refusal to comply.

1 (a) Whenever a hospital fails or refuses to furnish to
2 the board any records or information requested under
3 the provisions of this article or otherwise fails or refuses
4 to comply with the requirements of this article or any
5 reasonable rule and regulation promulgated by the board
6 under the provisions of this article, the board may make
7 and enter an order of enforcement and serve a copy
8 thereof on the hospital in question by certified mail, re-
9 turn receipt requested.

10 (b) The hospital shall be granted a hearing on the
11 order of enforcement if, within twenty days after receipt
12 of a copy thereof, it files with the board a written demand
13 for hearing. A demand for hearing shall operate auto-
14 matically to stay or suspend the execution of the order of
15 enforcement, with the exception of orders relating to rate
16 increases.

17 (c) Upon receipt of a written demand for a hearing,
18 the board shall set a time and place therefor, not less
19 than ten and no more than thirty days thereafter. Any
20 scheduled hearing may be continued by the board upon
21 motion for good cause shown by the hospital demanding
22 the hearing.

§16-29B-16. Start-up period.

1 (a) The department of health shall cooperate to the
2 fullest extent possible and transfer all data, records, re-
3 ports, analyses and summaries filed, collected or devel-
4 oped by the department of health pursuant to article

5 five-f of this chapter, upon request of the board. With
6 the approval of the board the department of health shall
7 expend out of any funds available for the purpose such
8 moneys as are necessary for the use of its staff by the
9 board during the start-up period, and the department of
10 health shall be reimbursed by the board for any such
11 expenses so incurred. During the lifetime of the board
12 the functions and responsibilities set forth in article five-f
13 of this chapter shall be performed by the board, and
14 whenever in this code reference is made to said article
15 five-f, said reference shall be deemed to mean reference
16 to the board.

17 (b) The board shall then compile all other relevant
18 financial and accounting data in order to have available
19 the statistical information necessary to properly con-
20 duct rate review and approval. Such data shall include
21 necessary operating expenses, appropriate expenses in-
22 curred for rendering services to patients who cannot or
23 do not pay, all properly incurred interest charges, and
24 reasonable depreciation expenses based on the expected
25 useful life of the property and equipment involved. The
26 board shall also obtain from each hospital a current rate
27 schedule as well as any subsequent amendments or
28 modifications of that schedule as it may require.

29 (c) Prior to the commencement of review activities,
30 the board may examine rate-making methods used by
31 other regulatory agencies in the state and hospital rate-
32 making agencies in other states before adopting a method
33 or methods for determining rates for the hospitals sub-
34 ject to this article.

35 (d) Upon appointment, the board shall enter into
36 negotiations with the health care financing administra-
37 tion within the United States department of health and
38 human services to seek approval and assurances from,
39 and enter into agreements with, the United States depart-
40 ment of health and human services so that the afore-
41 mentioned federal agency and affected state agencies al-
42 low reimbursement to hospitals subject to the provisions
43 of this article in accordance with rates approved by the

44 board. The absence of such approval and assurances
45 from, and agreements with, the health care financing
46 administration within the department of health and
47 human services shall not diminish the authority of the
48 board to set rates of payment for other payors.

49 (e) On or before June one, one thousand nine hundred
50 eighty-four, the board shall submit its application for
51 purposes of entering into an agreement with the secretary
52 of the department of health and human services so that
53 the aforementioned federal agency agrees to allow pay-
54 ment for services provided by hospitals subject to the
55 provisions of this article in accordance with rates ap-
56 proved by the board. If such agreement is not obtained
57 by the board from the department of health and human
58 services on or before December one, one thousand nine
59 hundred eighty-four, then the board, is functions, this
60 article, and all rules and regulations promulgated there-
61 under shall terminate, and be void and of no further
62 effect.

63 (f) No later than the first day of June, one thousand
64 nine hundred eighty-three, every hospital shall provide
65 to the board a full and complete verified statement of
66 services offered as of the first day of February, one
67 thousand nine hundred eighty-three, together with a
68 verified statement of rates in effect as of the first day of
69 February, one thousand nine hundred eighty-three, for
70 such services.

**§16-29B-17. Uniform system of accounts and financing; re-
porting.**

1 (a) The board shall develop and specify a uniform sys-
2 tem of accounting and financial reporting, including cost
3 allocation methods by which hospitals shall record their
4 revenues, income, expenses, capital outlay, assets, lia-
5 bilities and units of service. The development and speci-
6 fication process aforementioned shall be conducted in a
7 manner determined by the board to be most efficient for
8 that purpose notwithstanding the provisions of chapter
9 twenty-nine-a of this code. Each hospital shall adopt this

10 uniform system for the purpose of reporting costs and
11 revenues to the board effective for the fiscal year be-
12 ginning on or after twelve months from the effective
13 date of this article.

14 (b) The board may provide for modification in the
15 accounting and reporting system in order to correctly
16 reflect differences in the scope or type of services and
17 financial structures of the various categories, sizes and
18 types of hospitals and in a manner consistent with the
19 purposes of this article.

20 (c) The board may provide technical assistance to
21 those hospitals which request it and which evidence
22 sufficient need for assistance in the establishment of a
23 data collection system to the extent that funds are avail-
24 able to the board for this purpose.

25 (d) The board shall, after consultation with health
26 care providers, purchasers, classes of purchasers and
27 third-party payors, adopt a mandatory form for report-
28 ing to the board, at its request, medical diagnosis, treat-
29 ment and other services rendered to each purchaser by
30 health care providers subject to the provisions of this
31 article.

32 (e) Following a public hearing, the board shall estab-
33 lish a program to minimize the administrative burden on
34 hospitals by eliminating unnecessary duplication of
35 financial and operational reports; and to the extent pos-
36 sible, notwithstanding any other law, coordinate reviews,
37 reports and inspections performed by federal, state, local
38 and private agencies.

§16-29B-18. Hospital annual financial reporting.

1 (a) It shall be the duty of every hospital which comes
2 under the jurisdiction of this article to file with the board
3 the following financial statements or reports in a form
4 and at intervals specified by the board, but at least
5 annually:

6 (1) A balance sheet detailing the assets, liabilities
7 and net worth of the hospital for its preceding fiscal
8 year;

9 (2) A statement of income and expenses for the pre-
10 ceding fiscal year;

11 (3) A statement of services rendered and services
12 available; and

13 (4) Such other reports as the board may prescribe.

14 Where more than one licensed hospital is operated by
15 the reporting organization, the information required by
16 this section shall be reported for each hospital separately.

17 (b) The annual financial statements filed pursuant to
18 this section shall be prepared in accordance with the
19 system of accounting and reporting adopted under sec-
20 tion seventeen of this article. The board may require
21 attestations from responsible officials of the hospital that
22 such reports have to the best of their knowledge been
23 prepared truthfully and in accordance with the prescribed
24 system of accounting and reporting.

25 (c) All reports filed under any provisions of this
26 article, except personal medical information personally
27 identifiable to a purchaser, shall be open to public in-
28 spection and shall be available for examination at the
29 offices of the board during regular business hours.

30 (d) Whenever a further investigation is deemed nec-
31 essary or desirable to verify the accuracy of any in-
32 formation set forth in any statement, schedule or report
33 filed by a hospital under the provisions of this section,
34 the board may require a full or partial audit of the
35 records of the hospital.

§16-29B-19. Rate-setting powers generally.

1 (a) The board shall have power: (1) To initiate re-
2 views and investigations of hospital rates and establish
3 and approve such rates; (2) to initiate reviews and in-
4 vestigations 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 The board shall commence reviews no sooner than
12 twelve months and no later than fifteen months after the
13 effective date of this article.

14 (b) In the interest of promoting the most efficient and
15 effective use of hospital service, the board may adopt
16 and approve alternative methods of rate determination.
17 The board may also adopt methods of charges and pay-
18 ments of an experimental nature which are in the public
19 interest and consistent with the purpose of this 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 for
3 services provided by hospitals under the jurisdiction of
4 the board by any purchaser or third-party payor to or
5 on behalf of any purchaser or class of purchasers unless:

6 (1) The costs of the hospital's services are reasonably
7 related to the services provided and the rates are reason-
8 ably related to the costs;

9 (2) The rates are equitably established among all
10 purchasers or classes of purchasers within a hospital
11 without discrimination unless federal or state statutes
12 or regulations conflict with this requirement. Equity
13 among classes of purchasers may be achieved by con-
14 sidering demonstrated differences in the financial re-
15 quirements of hospitals resulting from service, coverage
16 and payment characteristics of a class of purchasers. The
17 provision for differentials in rates among classes of pur-
18 chasers should be carried out in the context of each
19 hospital's total financial requirements for the efficient
20 provision of necessary services. The board shall institute
21 a study of objective methods of computing the percentage
22 differential to be utilized for all hospitals in determining
23 appropriate projected gross revenues under subsection
24 (b) of this section. Such study shall include a review
25 and determination of the relevant and justifiable eco-
26 nomic factors which can be considered in setting such

27 differential. The differential shall be allowed for only
28 those activities and programs which result in quantifiable
29 savings to the hospital with respect to patient care costs,
30 bad debts, free care or working capital, or reductions in
31 the payments of other payors. Each component utilized
32 in determining the differential shall be individually
33 quantified so that the differential shall equal the value
34 assigned to each component. The board shall consider
35 such matters as coverage to individual subscribers, the
36 elderly and small groups, payment practices, savings in
37 hospital administrative costs, cost containment programs
38 and working capital. The study shall also provide for
39 a method of annual recomputation of the differential and
40 triennial recomputation of all other components. The
41 board may contract with any person or entity to assist
42 the board in the discharge of its duties as herein stated.
43 Whoever obstructs any person or entity conducting a
44 study authorized under the provisions of this section shall
45 be deemed to be in violation of this article and shall be
46 subject to any appropriate actions, including injunctive
47 relief, as may be necessary for the enforcement of this
48 section;

49 (3) The rates of payment for medicaid are reasonable
50 and adequate to meet the costs which must be incurred by
51 efficiently and economically operated hospitals subject
52 to the provisions of this article. The rates shall take into
53 account the situation of hospitals which serve dispro-
54 portionate numbers of low income patients and assure
55 that individuals eligible for medicaid have reasonable
56 access, taking into account geographic location and rea-
57 sonable travel time, to inpatient hospital services of
58 adequate quality;

59 (4) The rates are equitable in comparison to prevail-
60 ing rates for similar services in similar hospitals as
61 determined by the board.

62 (b) In the interest of promoting efficient and ap-
63 propriate utilization of hospital services the board shall
64 review and make findings on the appropriateness of
65 projected gross revenues for a hospital as such revenues

66 relate to charges for services and anticipated incidence
67 of service. The board shall further render a decision as
68 to the amount of net revenue over expenditures that is
69 appropriate for the effective operation of the hospital.

70 (c) When applying the criteria set forth above, the
71 board shall consider all relevant factors including, but not
72 limited to, the following: The economic factors in the
73 hospital's area; the hospital's efforts to share services;
74 the hospital's efforts to employ less costly alternatives for
75 delivering substantially similar services or producing
76 substantially similar or better results in terms of the
77 health status of those served; the efficiency of the hospital
78 as to cost and delivery of health care; the quality of care;
79 occupancy level; a fair return on invested capital, not
80 otherwise compensated for; whether the hospital is oper-
81 ated for profit or not for profit; costs of education; and,
82 income from any investments and assets not associated
83 with patient care, including, but not limited to, parking
84 garages, residences, office buildings, and income from
85 foundations and restricted funds whether or not so as-
86 sociated.

87 (d) Wages, salaries and benefits paid to or on behalf
88 of nonsupervisory employees of hospitals subject to this
89 article shall not be subject to review unless the board
90 first determines that such wages, salaries and bene-
91 fits may be unreasonably or uncustomarily high or low.
92 Said exemption does not apply to accounting and report-
93 ing requirements contained in this article, nor to any that
94 may be established by the board. "Nonsupervisory
95 personnel," for the purposes of this section, means, but is
96 not limited to, employees of hospitals subject to the pro-
97 visions of this article who are paid on an hourly basis.

98 (e) Reimbursement of capital and operating costs for
99 new services and capital projects subject to article two-d
100 of this chapter shall not be allowed by the board if such
101 costs were incurred subsequent to the eighth day of July,
102 one thousand nine hundred seventy-seven, unless they
103 were exempt from review or approved by the state plan-
104 ning development agency prior to the first day of July,

105 one thousand nine hundred eighty-four, pursuant to the
106 provisions of article two-d of this chapter.

107 (f) The board shall consult with relevant licensing
108 agencies and may require them to provide written find-
109 ings with regard to their statutory functions and in-
110 formation obtained by them in the pursuit of those func-
111 tions. Any licensing agency empowered to suggest or
112 mandate changes in buildings or operations of hospitals
113 shall give notice to the board together with any findings.

114 (g) Rates shall be set by the board in advance of the
115 year during which they apply except for the procedure
116 set forth in subsection (c), section twenty-one of this
117 article and shall not be adjusted for costs actually in-
118 curred.

119 (h) All determinations, orders and decisions of the
120 board with respect to rates and revenues shall be prospec-
121 tive in nature.

122 (i) No hospital may charge for services at rates in
123 excess of those established in accordance with the re-
124 quirements of and procedures set forth in this article.

**§16-29B-21. Procedure for obtaining initial rate schedule; ad-
justments and revisions of rate schedules.**

1 (a) The board shall propose the initial schedule of
2 rates and shall notify the affected hospital and commun-
3 ity by registered mail and announcement in the local
4 media respectively. Any hospital may contest its pro-
5 posed rate schedule by written notice to the board within
6 twenty days after receipt of the proposed schedule. The
7 board shall, in a contested proceeding, issue a final order
8 with regard to the initial schedule of rates within ninety
9 days after the board first submits the proposed initial
10 schedule. If no notice of contest is filed, the proposed
11 rates shall go into effect sixty days from the date first
12 proposed.

13 (b) After the issuance of the order establishing the
14 initial rate schedule, no hospital subject to this article

15 may change or amend its schedule of rates except in
16 accordance with the following procedures:

17 (1) Any request for a change in rate schedules or
18 other changes must be filed in writing to the board with
19 such supporting data as the hospital seeking to change
20 its rates considers appropriate, in the form prescribed by
21 the board. Upon receipt of notice, the board, if it con-
22 siders necessary, may hold a public hearing on the pro-
23 posed change. Such hearing shall be held no later than
24 forty-five days after receipt of the notice. The review of
25 the proposed change may not exceed an overall period
26 of one hundred eighty days from the date of filing to the
27 date of the board's order. If the board fails to complete
28 its review of the proposed change within the time period
29 specified for the review, the proposed change shall be
30 deemed to have been approved by the board. Any pro-
31 posed change shall go into effect upon the date specified
32 in the order;

33 (2) Each hospital shall establish, in a written report
34 which shall be incorporated into each proposed rate
35 application, that it has thoroughly investigated and con-
36 sidered:

37 (A) The economic and social impact of any proposed
38 rate increase, or service decrease, on hospital cost con-
39 tainment and upon health care purchasers, including
40 classes of purchasers, such as the elderly and low and
41 fixed income persons;

42 (B) State-of-the-art advances in health care cost con-
43 tainment, hospital management and rate design, as al-
44 ternatives to or in mitigation of any rate increase, or
45 service decrease, which report shall describe the state-
46 of-the-art advances considered and shall contain specific
47 findings as to each consideration, including the reasons
48 for adoption or rejection of each;

49 (C) Implementation of cost control systems, including
50 the elimination of unnecessary or duplicative facilities
51 and services, promotion of alternative forms of care,
52 and other cost control mechanisms;

53 (D) Initiatives to create alternative delivery systems;
54 and

55 (E) Efforts to encourage third-party payors, includ-
56 ing, but not limited to, insurers, health service, care and
57 maintenance organizations, to control costs, including a
58 combination of education, persuasion, financial incentives
59 and disincentives to control costs;

60 (3) In the event the board modifies the request of a
61 hospital for a change in its rates so that the hospital
62 obtains only a partial increase in its rate schedule, the
63 hospital shall have the right to accept the benefits of the
64 partial increase in rates and charge its purchasers ac-
65 cordingly without in any way adversely affecting or
66 waiving its right to appeal that portion of the decision
67 and order of the board which denied the remainder of
68 the requested rate increase.

69 (c) Whether before or after the issuance of the order
70 establishing the initial rate schedule for a hospital sub-
71 ject to the provisions of this article, the board, or the
72 director of the state department of health as stated in
73 section four of this article, shall have the discretionary
74 authority to allow a temporary change in a hospital's rates
75 which may be effective immediately upon filing and in
76 advance of review procedures when it has been de-
77 termined that such temporary rate changes are in the
78 public interest, and are necessary to prevent insolvency,
79 to maintain accreditation or for emergency repairs or to
80 relieve undue financial hardship. When considering such
81 temporary rate change requests, the board or the director
82 shall extend preference to hospitals demonstrating im-
83 mediate risk of insolvency, or demonstrating substantial
84 financial hardship, to main accreditation or for emergency
85 repairs which in the discretion of the board or the
86 director justifies temporary rate changes prior to com-
87 mencement of or full review of said rate changes by the
88 board as set forth in this article. The board or the director
89 when considering requests for temporary rate changes
90 shall consider:

91 (1) The financial burden imposed upon purchasers or
92 classes of purchasers by such change;

93 (2) Whether such change is in the public interest;

94 (3) Other factors determined to be relevant to the
95 merits of a temporary rate change request.

96 (d) The board or the director shall make public its find-
97 ings concerning a temporary rate change request.

98 (e) The board shall develop standards and criteria in
99 order to assure that any temporary rate change is in the
100 public interest and necessary to prevent harm to the pub-
101 lic interest and to prevent insolvency or to relieve undue
102 financial hardship. For temporary rate setting and review
103 functions performed by the director of the state depart-
104 ment of health pursuant to the provisions of this article,
105 the board shall reimburse said department for all reason-
106 able and necessary expenses incurred by the department
107 in fulfillment of its responsibilities, duties and functions
108 hereunder, until such time as the board assumes such
109 responsibilities, duties and functions unto itself pur-
110 suant to the provisions of this article.

111 (f) When any change affecting an increase in rates
112 goes into effect before a final order is entered in the pro-
113 ceedings, for whatever reasons, where it deems it nec-
114 essary and practicable, the board may order the hospital
115 to keep a detailed and accurate account of all amounts
116 received by reason of the increase in rates and the pur-
117 chasers and third-party payors from whom such amounts
118 were received. At the conclusion of any hearing, appeal
119 or other proceeding, the board may order the hospital
120 to refund with interest to each affected purchaser and/or
121 third-party payor any part of the increase in rates that
122 may be held to be excessive or unreasonable. In the event
123 a refund is not practicable, the hospital shall, under ap-
124 propriate terms and conditions determined by the board,
125 charge over and amortize by means of a temporary de-
126 crease in rates whatever income is realized from that
127 portion of the increase in rates which was subsequently
128 held to be excessive or unreasonable.

129 (g) The board, upon a determination that a hospital
130 has overcharged purchasers or charged purchasers at

131 rates not approved by the board or charged rates which
132 were subsequently held to be excessive or unreasonable,
133 may prescribe rebates to purchasers and third-party
134 payors in effect by the aggregate total of the over-
135 charge.

136 (h) That board may open a proceeding against any
137 hospital at any time with regard to compliance with
138 rates approved and the efficiency and effectiveness of the
139 care being rendered in the hospital.

§16-29B-22. Incentives.

1 The board shall be required to allow, as an incentive
2 to the efficient management and operation of hospitals
3 covered by this article, that if said hospitals are more ef-
4 ficient than anticipated, they shall retain a portion of the
5 resulting savings and if less efficient shall bear the re-
6 sulting deficits.

§16-29B-23. Utilization review and quality assurance.

1 (a) In order to avoid unnecessary or inappropriate
2 utilization of hospital services and to ensure high quality
3 hospital care, the board shall establish a utilization re-
4 view and quality assurance program. The board shall
5 coordinate this program with utilization review and
6 peer review programs presently established in state
7 agencies, hospital services and health service corpora-
8 tions, hospitals or other organizations.

9 (b) With the assistance of the above-mentioned enti-
10 ties, and after public hearings, the board shall develop
11 a plan for the review, on a sampling basis, of the necessity
12 of admissions, length of stay and quality of care rendered
13 at said hospitals.

14 (c) The board shall monitor identified problem areas
15 and shall impose such sanctions and provide such incen-
16 tives as necessary to ensure high quality and appropriate
17 services and utilization in hospitals under the jurisdiction
18 of this article.

§16-29B-24. Powers with respect to insurance policies and health organizations.

1 (a) With respect to any policy of accident or health
2 insurance, including, but not limited to, those insurance
3 policies covered by articles fifteen, sixteen and sixteen-a,
4 chapter thirty-three of this code, and with respect to
5 any health service, care or maintenance organization, or
6 similar health-related organizations, including, but not
7 limited to, those covered by articles twenty-four, twenty-
8 five and twenty-five-a, chapter thirty-three of this code,
9 the board shall:

10 (1) Be considered for all purposes a directly affected
11 party before the insurance commissioner for purposes
12 of any application, hearing or appeal on insurance mat-
13 ters;

14 (2) Review requests for, and make comments on,
15 proposed rate increases or coverage decreases submitted
16 to the insurance commissioner with respect to the reason-
17 ableness of the request and impact on health care cost
18 containment;

19 (3) Comment on the advisability, reasonableness and
20 impact on health care cost containment of any other
21 matter coming before the insurance commissioner or any
22 other governmental agency or body.

23 (b) On or before the date of filing with the insurance
24 commissioner of any rate, including any proposed in-
25 crease or decrease thereof, and any coverage matter, in-
26 cluding any proposed increase or decrease thereof, each
27 company or organization, described in subsection (a)
28 above, shall notify the board of such filing, by copy
29 thereof or notice form, as the board directs.

30 (c) Each company or organization, described in sub-
31 section (a) above, shall establish, in a written report
32 which shall be incorporated into each proposed rate ap-
33 plication, that it has thoroughly investigated and con-
34 sidered:

35 (1) The economic and social impact of any proposed

36 rate increase, or coverage decrease, on health care cost
37 containment and upon health care purchasers, including
38 classes of purchasers, such as the elderly and low and
39 fixed income persons;

40 (2) State-of-the-art advances in insurance and health
41 care management and rate design as alternatives to or
42 in mitigation of any rate increase, or coverage decrease,
43 which report shall describe the state-of-the-art advances
44 considered and shall contain specific findings as to each
45 consideration, including the reasons for adoption or re-
46 jection of each;

47 (3) Implementation of cost control systems, including
48 a combination of education, persuasion, financial incen-
49 tives and disincentives to control costs;

50 (4) Initiatives to create alternative delivery systems;
51 and

52 (5) Efforts to encourage health care providers to con-
53 trol costs, including the elimination of unnecessary or
54 duplicative facilities and services, promotion of alterna-
55 tive forms of care, and other cost control mechanisms.

§16-29B-25. Public disclosure.

1 From time to time, the board shall engage in or carry
2 out analyses and studies relating to health care costs,
3 the financial status of any hospital subject to the provi-
4 sions of this article or any other appropriate related mat-
5 ters, and it shall be empowered to publish and disseminate
6 any information which would be useful to members of
7 the general public in making informed choices about
8 hospitals.

§16-29B-26. Exemptions from state antitrust laws.

1 Actions of the board shall be exempt from antitrust
2 action as provided in section five, article eighteen, chapter
3 forty-seven of this code. Any actions of hospitals under
4 the board's jurisdiction, when made in compliance with
5 orders, directives, rules or regulations issued or promul-
6 gated by the board, shall likewise be exempt.

§16-29B-27. Penalties for violations.

1 In addition to civil remedies set forth, any person or
2 hospital violating any provision of this article or any
3 valid order or rule and regulation lawfully established
4 hereunder shall be guilty of a misdemeanor, and, upon
5 conviction thereof, shall be punished by a fine of not
6 more than one thousand dollars. Each day of a continuing
7 violation after conviction shall be considered a separate
8 offense. No fines assessed may be considered part of the
9 hospital's costs in the regulation of its rates.

§16-29B-28. Effective date and termination date.

1 This article shall be in effect from passage. The board
2 shall terminate under the provisions of article ten, chapter
3 four of the code, on the thirtieth day of June, one thousand
4 nine hundred eighty-seven, unless extended by legislation
5 enacted before the termination date.

CHAPTER 103

(Com. Sub. for H. B. 1532—By Mr. Steptoe and Mr. Doyle)

[Passed March 9, 1983; in effect April 1, 1983. Approved by the Governor.]

AN ACT to amend and reenact section twelve-a, article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to pari-mutuel wagering on interstate and intrastate horse and dog racing generally; requiring the approval of the owners and trainers at horse racetracks to contracts between certain legal wagering entities and racing associations licensed in the state; and requiring one tenth of one percent of the commissions retained by certain licensees be paid into the general revenue fund of county commissions or of the municipality of the county or municipality in which the race track is located.

Be it enacted by the Legislature of West Virginia:

That section twelve-a, 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.

§19-23-12a. Pari-mutuel wagering on interstate and intrastate horse and dog racing.

1 (1) Notwithstanding any other provisions of this code, a
2 racing association licensed in this state to conduct race
3 meetings may, with the consent of the racing commission and
4 the written approval of the authorized representative of a
5 majority of the owners and trainers who hold the permit
6 required by section two of this article at the horse race
7 track, contract with any legal wagering entity in this or
8 any other state to accept wagers on any race or races
9 conducted by such legal wagering entity. Such wagering shall
10 be conducted within the confines of such licensee's racetrack
11 unless the wager becomes part of the host racing association's
12 pari-mutuel pool.

13 (2) Such horse association shall retain a basic com-
14 mission not to exceed seventeen and twenty-five one-hundredths
15 percent of all money wagered, plus an additional amount
16 equal to one and seventy-five one-hundredths percent of
17 the amount wagered each day on all multiple wagers deter-
18 mined by a combination of two winning horses, including,
19 but not limited to, the daily double, quinella and perfecta
20 or plus an additional amount equal to seven and seventy-five
21 one-hundredths percent of the amount wagered each day on
22 all trifecta wagers or any other multiple wager which in-
23 volves a single betting interest on three or more horses.
24 Breakage shall be calculated and distributed in the manner
25 provided by subsection (c), section nine of this article.

26 (3) The commission deducted by any licensee from the
27 pari-mutuel pools on dog racing shall not exceed sixteen and
28 one-fourth percent of the total of such pari-mutuel pools
29 for the day.

30 (4) Out of the commission retained or deducted by a
31 licensee under the provisions of subsections (2) and (3) of this
32 section, the licensee shall pay one tenth of one percent into the
33 general fund of the county commission of the county in which

34 the racetrack is located, except if within a municipality, then
35 to such municipality's general fund.

36 (5) The association shall pay each day a pari-mutuel pools
37 tax calculated under the provisions of section ten of this
38 article.

39 (6) After deducting the county or municipal share pro-
40 vided for in subsection (4) of this section and the pari-mutuel
41 pools tax required by subsection (5) of this section, and the
42 amount required to be paid under the terms of the contract
43 with the legal wagering entity of this or another state and the
44 costs of transmission, the horse racing association shall make
45 a deposit equal to fifty percent of the remainder into the purse
46 fund established under the provisions of subdivision (b) (1),
47 section nine of this article.

48 (7) All of the provisions of the "Federal Interstate Horse-
49 racing Act of 1978," also known as Public Law 95-515, sec-
50 tion 3001-3007 of title 15, U. S. Code, shall be instructive as
51 the intent of this section.

52 (8) For the purposes of this section the words "legal
53 wagering entity" shall be limited to any person engaged in
54 horse racing or dog racing pursuant to a license or other
55 permission granted by the state in which such person's race-
56 track is situated and conducting race meetings, with a pari-
57 mutuel wagering system permitted under that state's laws
58 and in which the participants are wagering with each other and
59 not the operator.

CHAPTER 104

(S. B. 150—By Mr. Tucker)

[Passed March 12, 1983; in effect from passage. Approved by the Governor.]

AN ACT to amend article eighteen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-three-a, relating to the West Virginia

housing development fund; county and municipal governments; and bond issues under the Federal Revenue Adjustments Act of 1980.

Be it enacted by the Legislature of West Virginia:

That article eighteen, chapter thirty-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-three-a, to read as follows:

ARTICLE 18. WEST VIRGINIA HOUSING DEVELOPMENT FUND.

§31-18-23a. Bond issues under the Federal Revenue Adjustments Act of 1980.

1 Under subtitle A of Public Law 96-499, which is called
2 the "Mortgage Subsidy Bond Tax Act," a subtitle of the
3 "Revenue Adjustments Act of 1980," this state is permitted
4 to issue up to two hundred million dollars per year dur-
5 ing the three year life of the act. Pursuant to that act, the
6 Legislature hereby authorizes the West Virginia housing
7 development fund to issue bonds in the aggregate amount
8 of one hundred million dollars in the year one thousand
9 nine hundred eighty-three. County and municipal gov-
10 ernments are hereby authorized to issue bonds in the
11 amount of one hundred million dollars during the year
12 one thousand nine hundred eighty-three: *Provided*, That
13 the allocation to a county or municipality is to be based
14 on a formula using the percentage of the state popula-
15 tion residing in the county or municipality based on the
16 1980 census: *Provided, however*, That use of the alloca-
17 tion by a county or municipality is conditioned upon such
18 county or municipality providing to the housing develop-
19 ment fund an analysis supporting the demand for the
20 bonds to be issued or firm commitments from qualified
21 lenders participating in the program. Each county and
22 municipality shall have until the thirtieth day of Sep-
23 tember, one thousand nine hundred eighty-three, to sell
24 bonds allocated under this act, after which time all unused
25 authority is then allocated to the housing development
26 fund. The housing development fund shall determine
27 the manner of reallocation for such unused authority or

28 may itself issue bonds for all or part of the unused au-
29 thority. Counties and municipalities choosing not to issue
30 bonds may assign any unused authority to another county
31 or municipality upon notification of such action to the
32 housing development fund. Such transfer must result in
33 a sale of bonds by the thirtieth day of September of that
34 year. Any county or municipality may apply in the man-
35 ner prescribed by the housing development fund for
36 reallocation or an additional allocation.

CHAPTER 105

(Com. Sub. for S. B. 419—By Mr. Boettner, Mr. Holliday and Mr. Palumbo)

[Passed March 2, 1983: in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article eleven, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the human rights commission; providing for notice of and an alternative right to sue if a complaint is dismissed for certain reasons or no public hearing and no conciliation agreements have been had within specified time periods: and providing for ninety days in which to file suit and the conclusion of proceedings before the commission upon such filing.

Be it enacted by the Legislature of West Virginia:

That section thirteen, 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.

§5-11-13. Exclusiveness of remedy; exceptions.

1 (a) Except as provided in subsection (b), nothing con-
2 tained in this article shall be deemed to repeal or super-
3 sede any of the provisions of any existing or hereafter
4 adopted municipal ordinance, municipal charter or of any
5 law of this state relating to discrimination because of

6 race, religion, color, national origin, ancestry, sex, age,
7 blindness or handicap, but as to acts declared unlawful by
8 section nine of this article the procedure herein provided
9 shall, when invoked, be exclusive and the final determina-
10 tion therein shall exclude any other action, civil or crimi-
11 nal, based on the same grievance of the complainant con-
12 cerned. If such complainant institutes any action based
13 on such grievance without resorting to the procedure
14 provided in this article, he may not subsequently resort
15 to the procedure herein. In the event of a conflict between
16 the interpretation of a provision of this article and the
17 interpretation of a similar provision contained in any
18 municipal ordinance authorized by charter, the interpre-
19 tation of the provision in this article shall apply to such
20 municipal ordinance.

21 (b) Notwithstanding the provisions of subsection (a) of
22 this section, a complainant may institute an action against
23 a respondent in the county wherein the respondent re-
24 sides or transacts business at any time within ninety
25 days after the complainant is given notice of a right to
26 sue pursuant to this subsection (b) or, if the statute of
27 limitations on the claim has not expired at the end of
28 such ninety-day period, then at any time during which
29 such statute of limitations has not expired. If a suit is
30 filed under this section the proceedings pending before
31 the commission shall be deemed concluded.

32 The commission shall give a complainant who has filed
33 a complaint a notice of a right to sue forthwith upon (1)
34 the dismissal of the complaint within one hundred eighty
35 days of the filing thereof for any reason other than a
36 decision on the merits of the case, or (2) the expiration
37 of a period of one hundred eighty days during which
38 period no public hearing has been held on such complaint
39 and the commission and the respondent have not entered
40 into a conciliation agreement to which the complainant is
41 a party: *Provided*, That the commission shall also give
42 the complainant notice of a right to sue in any case in
43 which, after the expiration of one year, the complaint has
44 not been determined on its merits or a conciliation agree-
45 ment entered into to which the complainant is a party.

46 Notice of right to sue shall be given immediately upon
47 complainant being entitled thereto, by personal service
48 or certified mail, return receipt requested, which notice
49 shall inform the complainant in plain terms of his right
50 to institute a civil action as provided in this section with-
51 in ninety days of the giving of such notice. Service of
52 the notice shall be complete upon mailing.

53 (c) In any action filed under this section, if the court
54 finds that the respondent has engaged in or is engaging
55 in an unlawful discriminatory practice charged in the
56 complaint, the court shall enjoin the respondent from
57 engaging in such unlawful discriminatory practice and
58 order affirmative action which may include, but is not
59 limited to, reinstatement or hiring of employees, granting
60 of back pay or any other legal or equitable relief as the
61 court deems appropriate. In actions brought under this
62 section, the court in its discretion may award all or a
63 portion of the costs of litigation, including reasonable
64 attorney fees and witness fees, to the complainant.

65 (d) The provisions of this section shall be available to
66 all complainants whose active cases are pending before
67 the human rights commission as well as those complain-
68 ants who file after the effective date of this section.

CHAPTER 106

(H. B. 1351—By Mrs. Neal)

[Passed February 28, 1983: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one-a, relating to renaming the department of welfare the department of human services; and continuing department of welfare as department of human services.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 9. HUMAN SERVICES.

ARTICLE 2. DEPARTMENT OF HUMAN SERVICES AND OFFICE OF COMMISSIONER OF HUMAN SERVICES; POWERS, DUTIES AND RESPONSIBILITIES GENERALLY.

§9-2-1a. Department of welfare renamed department of human services; continuation.

1 The state department of welfare, created pursuant to the
2 provisions of chapter nine of this code, is hereby continued
3 as an official department of the state of West Virginia, but
4 from the effective date of this section its name shall be
5 the department of human services. All references in the
6 code to the department of welfare shall mean the department
7 of human services, and all references to the commissioner of
8 the department of welfare shall mean the commissioner of the
9 department of human services and for all other legal purposes
10 the department of welfare shall continue as the department of
11 human services.

CHAPTER 107

(S. B. 672—By Mr. Williams)

[Passed March 9, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article two, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section two, article four of said chapter; and to amend chapter sixteen of said code by adding thereto a new article, designated article two-e, all relative to state funding for birthing center services; licensure of birthing centers; definitions; applications and fees; suspension or revocation of license;

judicial review; establishment of rules and regulations by director of health; emergency filing; insurance coverage of birthing center charges; violations; penalties; injunction.

Be it enacted by the Legislature of West Virginia:

That section six, article two, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; that section two, article four of said chapter be amended and reenacted; and that chapter sixteen of said code be amended by adding thereto a new article, designated article two-e, all to read as follows:

Chapter

9. Human Services.

16. Public Health.

CHAPTER 9. HUMAN SERVICES.

Article

2. Department of Human Services and Office of Commissioner of Human Services; Powers, Duties and Responsibilities Generally.

4. State Advisory Board; Medical Services Fund; Advisory Council; Relief Fund.

ARTICLE 2. DEPARTMENT OF HUMAN SERVICES, AND OFFICE OF COMMISSIONER OF HUMAN SERVICES; POWERS, DUTIES AND RESPONSIBILITIES GENERALLY.

§9-2-6. Powers of commissioner.

1 Within limits of state appropriations and federal grants
2 and subject to provisions of state and federal laws and
3 regulations, the commissioner, in addition to all other
4 powers, duties and responsibilities granted and assigned to
5 that office in this chapter and elsewhere by law, is
6 authorized and empowered to:

7 (1) Promulgate, amend, revise and rescind department
8 rules and regulations respecting the organization and
9 government of the department and the execution and
10 administration of those powers, duties and responsibilities
11 granted and assigned by this chapter and elsewhere by law
12 to the department and the commissioner.

13 (2) Promulgate, amend, revise and rescind department
14 rules and regulations respecting qualifications for
15 receiving the different classes of welfare assistance
16 consistent with or permitted by federal laws, rules and

17 regulations, but not inconsistent with state law: *Provided*,
18 That such rules and regulations respecting qualifications
19 shall permit the expenditure of state funds to pay for care
20 rendered in any birthing center licensed under the
21 provisions of article two-e, chapter sixteen of this code, by a
22 licensed nurse midwife or midwife as this occupation is
23 defined in section one, article fifteen, chapter thirty of this
24 code, and which care is within the scope of duties for such
25 licensed nurse midwife or midwife as permitted by the
26 provisions of section seven, article fifteen of said chapter
27 thirty.

28 (3) Obtain by purchase or lease such grounds, buildings,
29 office or other space, equipment, facilities and services, as
30 may be necessary for the execution and administration of
31 those powers, duties and responsibilities granted and
32 assigned by this chapter and elsewhere by law to the
33 department and the commissioner.

34 (4) Sign and execute in the name of the state by the state
35 department of human services any contract or agreement
36 with the federal government or its agencies, other states,
37 political subdivisions of this state, corporations, associa-
38 tions, partnerships or individuals.

39 (5) Establish such special funds as may be required by
40 the Federal Social Security Act, as amended, or by any
41 other act or acts of Congress, in order for this state to take
42 full advantage of the benefits and provisions thereof
43 relating to the federal-state assistance and federal
44 assistance programs administered by the department, and
45 to make payments into and disbursements out of any such
46 special fund or funds in accordance with the requirements
47 of the Federal Social Security Act, as amended, or any other
48 act or acts of Congress, and in accordance with applicable
49 state law and the objects and purposes of this chapter. In
50 addition, the state department of human services, through the
51 commissioner, is hereby authorized to accept any and all
52 gifts or grants, whether in money, land, services or
53 materials, which gift or gifts, if in the form of moneys, shall
54 be placed in a separate fund and expended solely for the
55 purpose of welfare programs. No part of this special fund
56 shall revert to the general revenue funds of this state. No
57 expenses incurred pursuant to this special fund shall be a
58 charge against the general funds of this state.

59 (6) Establish, in addition to the state advisory board and
60 advisory council provided for in this chapter, such county
61 advisory boards as may in his judgment be necessary or
62 desirable to advise the department and the commissioner
63 with respect to the total welfare assistance program
64 administered by the department or any phase thereof, such
65 additional board or boards to consist of such number of
66 persons, professional, lay, or both, and to have such
67 responsibilities of an advisory nature, as the commissioner
68 may determine. However, (1) the members of any such
69 additional board or boards shall not be compensated for
70 their services but shall be entitled to reimbursement for
71 actual expenses incurred in the performance of their duties
72 as a member of any such board; and (2) the members of any
73 such additional board or boards shall serve at the will and
74 pleasure of the commissioner.

75 (7) Provide at department expense a program of
76 continuing professional, technical and specialized instruc-
77 tion for the personnel of the department.

78 (8) Pay from available funds all or part of the reasonable
79 expenses incurred by a person newly employed by the
80 department in moving his household furniture, effects and
81 immediate family from his place of residence in this state to
82 his place of employment in this state; and to pay from
83 available funds all or part of the reasonable expenses
84 incurred by a department employee in moving his
85 household furniture, effects and immediate family as a
86 result of a reassignment of the employee which is
87 considered desirable, advantageous to and in the best
88 interests of the state, but no part of the moving expenses of
89 any one such employee shall be paid more frequently than
90 once in twelve months or for any movement other than from
91 one place of employment in this state to another place of
92 employment in this state.

93 (9) Establish and maintain such institutions as are
94 necessary for the temporary care, maintenance and training
95 of children and other persons.

96 (10) Prepare and submit state plans which will meet the
97 requirements of federal laws, rules and regulations
98 governing federal-state assistance and federal assistance
99 and which are not inconsistent with state law.

100 (11) Organize within the department a board of review,
101 consisting of a chairman appointed by the commissioner
102 and as many assistants or employees of the department as
103 may be determined by the commissioner and as may be
104 required by federal laws, rules and regulations respecting
105 state assistance, federal-state assistance and federal
106 assistance, such board of review to have such powers of a
107 review nature and such additional powers as may be
108 granted to it by the commissioner and as may be required by
109 federal laws, rules and regulations respecting federal-state
110 assistance and federal assistance.

111 (12) Provide by rules and regulations such review and
112 appeal procedures within the department of human services as
113 may be required by applicable federal laws, rules and
114 regulations respecting state assistance, federal-state
115 assistance and federal assistance and as will provide
116 applicants for, and recipients of all, classes of welfare
117 assistance an opportunity to be heard by the board of
118 review, a member thereof, or individuals designated by said
119 board, upon claims involving denial, reduction, closure,
120 delay or other action or inaction pertaining to welfare
121 assistance.

122 (13) Provide by rules and regulations, consistent with
123 requirements of applicable federal laws, rules and
124 regulations, application forms and application procedures
125 for the various classes of welfare assistance.

126 (14) Provide locations for making applications for the
127 various classes of welfare assistance.

128 (15) Provide a citizen or group of citizens an
129 opportunity to file objections and to be heard upon
130 objections to the grant of any class of welfare assistance.

131 (16) Delegate to the personnel of the department all
132 powers and duties vested in the commissioner, except the
133 power and authority to sign contracts and agreements, but
134 the commissioner shall remain responsible therefore.

135 (17) Make such reports, in such form and containing
136 such information, as may be required by applicable federal
137 laws, rules and regulations respecting federal-state
138 assistance and federal assistance.

139 (18) Invoke any legal, equitable or special remedies for
140 the enforcement of the provisions of this chapter.

**ARTICLE 4. STATE ADVISORY BOARD; MEDICAL SERVICES FUND;
ADVISORY COUNCIL; GENERAL RELIEF FUND.**

§9-4-2. Medical services fund.

1 The special fund known as the state of West Virginia
2 public assistance medical services fund established by
3 chapter one hundred forty-three, acts of the Legislature,
4 regular session, one thousand nine hundred fifty-three, as
5 amended by chapter two, acts of the Legislature, first
6 extraordinary session, one thousand nine hundred sixty,
7 and chapter forty-nine, acts of the Legislature, regular
8 session, one thousand nine hundred sixty-six, shall be
9 continued in accordance with the provisions of this section
10 so long as the same may be required by federal laws, rules
11 and regulations applicable to federal-state assistance and
12 thereafter so long as the commissioner shall deem such fund
13 to be otherwise necessary or desirable, and henceforth such
14 special fund shall be known as the department of human
15 services medical services fund, hereinafter referred to as the
16 fund.

17 The fund shall consist of payments made into the fund out
18 of state appropriations for medical services to recipients of
19 specified classes of welfare assistance and such federal
20 grants-in-aid as are made available for specified classes of
21 welfare assistance. Any balance in the fund at the end of any
22 fiscal year shall remain in the fund and shall not expire or
23 revert. Payments shall be made out of the fund upon
24 requisition of the commissioner by means of a warrant
25 signed by the auditor and treasurer.

26 Recipients of those classes of welfare assistance as are
27 specified by the department, consistent with applicable
28 federal laws, rules and regulations, shall be entitled to have
29 costs of necessary medical services paid out of the fund, in
30 the manner and amounts, to the extent, and for the period
31 determined from time to time to be feasible by the
32 commissioner pursuant to rules, regulations and standards
33 established by him. Such rules, regulations and standards
34 shall comply with requirements of applicable federal laws,
35 rules and regulations and shall be established on the basis

36 of money available for the purpose, the number of
37 recipients, the experience with respect to the incidence of
38 illness, disease, accidents, and other causes among such
39 recipients causing them to require medical services and the
40 costs thereof, the amounts which recipients require
41 otherwise in order to maintain a subsistence compatible
42 with decency and health, and any other factor considered
43 relevant and proper by the commissioner: *Provided*, That
44 such rules and regulations respecting qualifications shall
45 permit the expenditure of state funds to pay for care
46 rendered in any birthing center licensed under the
47 provisions of article two-e, chapter sixteen of this code, by a
48 licensed nurse midwife or midwife as this occupation is
49 defined in section one, article fifteen, chapter thirty of this
50 code, and which care is within the scope of duties for such
51 licensed nurse midwife or midwife as permitted by the
52 provisions of section seven, article fifteen of said chapter
53 thirty.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 2E. BIRTHING CENTERS.

§16-2E-1. Definitions.

- 1 For the purpose of this article:
- 2 "Birthing center" means a type of facility which is a
3 building, house or the equivalent organized to provide
4 facilities and staff to support a birthing service for pregnant
5 clients.

§16-2E-2. Birthing centers to obtain license; application; fees; suspension or revocation.

- 1 No person, partnership, association or corporation, or any
2 local governmental unit or any division, department, board
3 or agency thereof may operate a birthing center unless such
4 operation shall have been approved and licensed by the
5 state director of health in accordance with the provisions of
6 this article and the rules and regulations lawfully
7 promulgated hereunder provided that all birthing centers
8 which are in operation or which have received a certificate
9 of need valid as of the date of passage of this act shall be
10 deemed to have been so approved and shall be issued a
11 license within thirty days of passage of this act.

12 Any person, partnership, association or corporation, or
13 any local governmental unit or any division, department,
14 board or agency thereof desiring a license hereunder shall
15 file with the department of health an application in such
16 form as the department shall prescribe and furnish
17 accompanied by a fee of ten dollars. Information received
18 by the department of health under the provisions of this
19 section shall be confidential. The director of health is
20 authorized to issue licenses for the operation of birthing
21 centers which are found to comply with the provisions of
22 this article and with all rules and regulations promulgated
23 by the department. The license issued shall not be
24 transferred or assignable. The director of health is
25 authorized to suspend or revoke a license issued hereunder
26 if the provisions of this article or of the rules and
27 regulations are violated.

28 Before any such license is suspended or revoked,
29 however, written notice shall be given the licensee, stating
30 the grounds of the complaint, and the date, time and place
31 set for the hearing on the complaint, which date shall not be
32 less than thirty days from the time notice is given. Such
33 notice shall be sent by registered mail to the licensee at the
34 address where the institution concerned is located. The
35 licensee shall be entitled to be represented by legal counsel
36 at the hearing.

37 If a license is revoked as herein provided, a new
38 application for a license shall be considered by the director
39 of health if, when and after, the conditions upon which
40 revocation was based have been corrected and evidence of
41 this fact has been furnished. A new license shall then be
42 granted after proper inspection has been made and all
43 provisions of this article and rules and regulations
44 promulgated hereunder have been satisfied.

45 All of the pertinent provisions of article five, chapter
46 twenty-nine-a of this code shall apply to and govern any
47 hearing authorized and required by the provisions of this
48 article and the administrative procedure in connection with
49 and following any such hearing, with like effect as if the
50 provisions of said article five were set forth in extenso in
51 this section.

52 The court shall have the power to affirm, modify or
53 reverse the decision of the department and either the
54 applicant or licensee or the department may appeal from
55 the court's decision to the supreme court of appeals.
56 Pending the final disposition of the matter the status quo of
57 the applicant or licensee shall be preserved.

58 Any applicant or licensee who is dissatisfied with the
59 decision of the state department of health as a result of the
60 hearing provided in this section may, within thirty days
61 after receiving notice of the decision, appeal to the circuit
62 court, in term or in vacation, of the county in which the
63 applicant or licensee is located for judicial review of the
64 decision.

§16-2E-3. State director of health to establish rules and regulations; legislative findings; emergency filing.

1 The director of health shall promulgate rules and
2 regulations not in conflict with any provision of this article,
3 as it finds necessary in order to ensure adequate care and
4 accommodations for consumers of birthing centers. In
5 promulgating such regulations the director shall be limited
6 to simple, necessary provisions which shall not have the
7 effect of hampering the development and licensure of
8 birthing centers. Such regulations shall not address
9 acceptable site characteristics such as the number of
10 minutes of travel time between a birthing center and a
11 hospital, or physical environment, such as acceptable levels
12 of temperature of any refrigerator found in a birthing
13 center, or clinical equipment, such as the number and kind
14 of clocks which a birthing center must have on the premises.

15 The Legislature hereby finds and declares that it is in the
16 public interest to encourage the development of birthing
17 centers for the purpose of providing an alternative method
18 of birth, and therefore, in order to provide for the licensing
19 of such birthing centers to prevent substantial harm to the
20 public interest because of preexisting delay, within sixty
21 days of passage of this act, the director of health shall
22 proceed to promulgate such rules and regulations under the
23 provisions of chapter twenty-nine-a, article three, section
24 fifteen.

§16-2E-4. Insurance.

1 Not later than the first day of July, one thousand nine
2 hundred eighty-three, every policy or contract of individual
3 accident and sickness insurance covered under the
4 provision of article fifteen, chapter thirty-three, or policy or
5 contract of group accident and sickness insurance covered
6 under the provisions of article sixteen of said chapter,
7 including, but not limited to, any subscriber contract issued
8 by a corporation organized pursuant to article twenty-four
9 of said chapter, shall include benefits to all subscribers and
10 members for birthing center service charges, and for care
11 rendered therein by a licensed nurse midwife or midwife as
12 this occupation is defined in section one, article fifteen,
13 chapter thirty of this code, and which care is within the
14 scope of duties for such licensed nurse midwife or midwife
15 as permitted by the provisions of section seven, article
16 fifteen of said chapter thirty.

§16-2E-5. Violations; penalties; injunction.

1 Any person, partnership, association or corporation, and
2 any local governmental unit or any division, department,
3 board or agency thereof establishing, conducting,
4 managing or operating a birthing center without first
5 obtaining a license therefor as herein provided, or violating
6 any provisions of this article or any rule or regulation
7 lawfully promulgated thereunder, shall be guilty of a
8 misdemeanor, and, upon conviction thereof, shall be
9 punished for the first offense by a fine of not more than one
10 hundred dollars, or by imprisonment in the county jail for a
11 period of not more than ninety days, or by both such fine
12 and imprisonment, in the discretion of the court. For each
13 subsequent offense the fine may be increased to not more
14 than five hundred dollars, with imprisonment in the county
15 jail for a period of not more than ninety days, or both such
16 fine and imprisonment, in the discretion of the court. Each
17 day of a continuing violation after conviction shall be
18 considered a separate offense.

19 Notwithstanding the existence or pursuit of any other
20 remedy, the director may, in the manner provided by law,
21 maintain an action in the name of the state for an injunction
22 against any person, partnership, association, corporation,
23 or any local governmental unit, or any division,

24 department, board or agency thereof, to restrain or prevent
25 the establishment, conduct, management or operation of
26 any birthing center without first obtaining a license
27 therefor in the manner hereinbefore provided.

CHAPTER 108

(S. B. 51—By Mr. Holliday)

[Passed March 1, 1983; 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 eleven, relating to right of subrogation by department of human services to the rights of recipients of medical assistance; establishing certain procedures with respect to such right of subrogation; the rights of the recipients of medical assistance to maintain actions for injuries and the inclusion of such assistance as a portion of damages therein; prohibiting certain information from being given the jury in such cases; distribution of amount awarded and payment of attorney fees in such cases; establishing certain rights and duties with respect to the settlement of such cases; rules with respect to the bringing of action by the department of human services to enforce its right of subrogation and the effect thereof; and permitting certain causes of action to be split for such purpose.

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, amended, be amended by adding thereto a new section, designated section eleven, to read as follows:

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§9-5-11. Right of subrogation by department of human services to the rights of recipients of medical assistance; rules as to effect of subrogation.

- 1 (a) If medical assistance is paid on behalf of a recipient
- 2 of medical assistance because of any sickness, injury, disease

3 or disability, and another person is legally liable for such
4 expense, the department may recover reimbursement for such
5 medical assistance from such other person, or from the
6 recipient of such assistance if he has been reimbursed by the
7 other person. The department shall be legally subrogated to
8 the rights of the recipient against the person so liable, but only
9 to the extent of the reasonable value of the medical assistance
10 paid and attributable to such sickness, injury, disease or dis-
11 ability; and the commissioner may compromise, settle and
12 execute a release of any such claim. The provisions of this
13 subsection are subject to the provisions of subsection (b) of
14 this section.

15 (b) Nothing in this section shall be construed so as to
16 prevent the recipient of medical assistance from maintaining
17 an action for injuries received by him against any other person
18 and from including therein, as part of the compensatory dam-
19 ages sought to be recovered, the amount or amounts of his
20 medical expenses, even though such person received medical
21 assistance in the payment of such medical expenses in whole
22 or in part.

23 If the action be tried by a jury, the jury shall not be in-
24 formed as to the interest of the department of human services,
25 if any, and such fact shall not be disclosed to the jury at any
26 time. The trial judge shall, upon the entry of judgment or
27 the verdict, direct that an amount equal to the amount of
28 medical assistance given be withheld and paid over to the
29 department of human services. Irrespective of whether the case
30 be terminated by judgment or by settlement without trial,
31 from the amount required to be paid to the department of
32 human services there shall be deducted the attorney fees
33 attributable to such amount in accordance with and in propor-
34 tion to the fee arrangement made between the recipient and
35 his attorney of record so that the department shall bear the
36 pro rata portion of such attorney fees. Nothing in this section
37 shall preclude any person who has received medical assistance
38 from settling any cause of action which he may have against
39 another person and delivering to the department, from the
40 proceeds of such settlement, the sums received by him from
41 the department or paid by the department for his medical

42 assistance. Any release given by a person who has received
43 medical assistance to another person releasing such other
44 person of liability with respect to any cause of action shall be
45 binding upon the department if the person for whose benefit
46 the release inures is unaware of, or has not been informed of,
47 the interest of the department therein. If such other person is
48 aware of or has been informed of the department's interest
49 in the matter, it shall be the duty of the person to whose bene-
50 fit the release inures to withhold so much of the settlement
51 as may be necessary to reimburse the department to the extent
52 of its interest in the settlement. If the department intends to
53 maintain an action against any person for the collection of
54 sums paid by it for medical assistance, it shall, prior thereto,
55 notify the recipient of such assistance of its intent to bring an
56 action at least thirty days prior to the bringing thereof. Such
57 notice shall inform the recipient of the department's intent
58 and shall advise the recipient of his right to bring such action
59 in his own name in which he may include as a part of his claim
60 the sums claimed by the department. Such notice shall also
61 advise the recipient that unless the department is notified by
62 him or his representative within thirty days of the date of the
63 receipt of such notice, the department shall proceed to main-
64 tain an action to the extent of its interest in the name of the
65 department. Any action subsequently brought by the depart-
66 ment in its name as subrogee of the recipient shall not preclude
67 the recipient from maintaining an action in his own name
68 for the full amount of the claim and any verdict rendered
69 therein shall be reduced by the amount previously awarded
70 the department as hereinafter provided. To the extent pro-
71 vided herein and in no other event, unless specifically provided
72 by law, shall any cause of action be divisible or capable of
73 being spilt if such cause arises from the same transaction.

CHAPTER 109

(H. B. 1739—By Mr. Jordan)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

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

thirty-one, as amended, relating to unlawful methods of hunting and fishing; use of a ferret.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-5. Unlawful methods of hunting and fishing.

1 Except as authorized by the director, it is unlawful at any
2 time for any person to:

3 (1) Shoot at or to shoot any wild bird or animal unless it
4 is plainly visible to him;

5 (2) Dig out, cut out or smoke out, or in any manner
6 take or attempt to take, any live wild animal or wild bird
7 out of its den or place of refuge, except as may be authorized
8 by regulations promulgated by the director or by law;

9 (3) Make use of, or take advantage of, any artificial light
10 in hunting, locating, attracting, taking, trapping or killing
11 any wild bird or wild animal, or to attempt to do so, while
12 having in his possession or subject to his control, or for any
13 person accompanying him to have in his possession or subject
14 to his control, any firearm, whether cased or uncased, bow,
15 arrow, or both, or other implement or device suitable for
16 taking, killing or trapping a wild bird or animal: *Provided,*
17 That it shall not be unlawful to hunt or take raccoon, opossum
18 or skunk by the use of artificial lights. No person shall be
19 guilty of a violation of this subdivision merely because he
20 looks for, looks at, attracts or makes motionless a wild bird
21 or wild animal with or by the use of an artificial light, unless
22 at such time he has in his possession a firearm, whether cased
23 or uncased, bow, arrow, or both, or other implement or device
24 suitable for taking, killing or trapping a wild bird or wild
25 animal, or unless such artificial light (other than the head
26 lamps of an automobile or other land conveyance) is attached
27 to, a part of, or used from within or upon an automobile or
28 other land conveyance.

29 Any person violating the provisions of this subdivision
30 shall be guilty of a misdemeanor, and, upon conviction
31 thereof, shall for each offense be fined not less than one
32 hundred dollars nor more than five hundred dollars and shall
33 be imprisoned in the county jail for not less than ten days
34 nor more than one hundred days;

35 (4) Hunt for, take, kill, wound or shoot at wild animals
36 or wild birds from an airplane, or other airborne con-
37 veyance, an automobile, or other land conveyance, or from
38 a motor-driven water conveyance, except as may be authorized
39 by regulations promulgated by the director;

40 (5) Take any beaver or muskrat by any means other than
41 by trap;

42 (6) Catch, capture, take or kill by seine, net, bait, trap
43 or snare or like device of any kind, any wild turkey, ruffed
44 grouse, pheasant or quail;

45 (7) Destroy or attempt to destroy needlessly or will-
46 fully the nest or eggs of any wild bird or have in his pos-
47 session such nest or eggs unless authorized to do so under
48 regulations or under a permit by the director;

49 (8) Except as provided in section six of this article,
50 carry an uncased or loaded gun in any of the woods of this
51 state except during the open firearms hunting season for
52 wild animals and nonmigratory wild birds within any county
53 of the state, unless he has in his possession a permit in
54 writing issued to him by the director: *Provided*, That this
55 section shall not prohibit hunting or taking of unprotected
56 species of wild animals and wild birds and migratory wild
57 birds, during the open season, in the open fields, open water
58 and open marshes of the state;

59 (9) Except as provided in section six of this article, carry
60 an uncased or loaded gun after the hour of five o'clock
61 antemeridian on Sunday in any woods or on any highway,
62 railroad right-of-way, public road, field or stream of this
63 state, except at a regularly used rifle, pistol, skeet, target or
64 trapshooting ground or range;

65 (10) Have in his possession a loaded firearm or a fire-

66 arm from the magazine of which all shells and cartridges
67 have not been removed, in or on any vehicle or conveyance,
68 or its attachments, within the state, except as may otherwise
69 be provided by law or regulation. Except as hereinafter
70 provided, between five o'clock postmeridian of one day and
71 seven o'clock antemeridian, eastern standard time of the day
72 following, any unloaded firearm, being lawfully carried in
73 accordance with the foregoing provisions, shall be so carried
74 only when in a case or taken apart and securely wrapped.
75 During the period from July first to September thirtieth, in-
76 clusive, of each year, the foregoing requirements relative to
77 carrying certain unloaded firearms shall be permissible only
78 from eight-thirty o'clock postmeridian to five o'clock ante-
79 meridian, eastern standard time;

80 (11) Hunt, catch, take, kill, trap, injure or pursue with
81 firearms or other implement by which wildlife may be taken
82 after the hour of five o'clock antemeridian on Sunday any
83 wild animals or wild birds: *Provided*, That traps previously
84 and legally set may be tended after the hour of five o'clock
85 antemeridian on Sunday, if the person so doing shall not
86 have firearms or long bow of any description in his possession;

87 (12) Hunt with firearms or long bow while under the
88 influence of intoxicating liquor;

89 (13) Hunt, catch, take, kill, injure or pursue a wild animal
90 or bird with the use of a ferret;

91 (14) Buy raw furs, pelts or skins of fur-bearing animals
92 unless licensed to do so;

93 (15) Have in his possession or about his premises,
94 without the written permission of the director, any hunting
95 or fishing paraphernalia which cannot be used lawfully in
96 this state for hunting or fishing, and any conservation officer
97 shall remove and destroy such hunting and fishing parapher-
98 nalia, whenever found in this state, and the person or persons
99 claiming ownership shall have no recourse at law against
100 such confiscation and destruction;

101 (16) Catch, take, kill, or attempt to catch, take or kill
102 any fish at any time by any means other than by rod,
103 line and hooks with natural or artificial lures unless

104 otherwise authorized by law or regulation issued by
105 the director: *Provided*, That snaring of any species of suckers,
106 carp, fallfish and creek chubs shall at all times be lawful;

107 (17) Employ or hire, or induce or persuade, by the use
108 of money or other things of value, or by any means, any
109 person to hunt, take, catch or kill, any wild animal or wild
110 bird except those species on which there is no closed sea-
111 son, or to fish for, catch, take or kill any fish, amphibian
112 or aquatic life which is protected by the provisions of this
113 chapter or regulations of the director, or the sale of which is
114 prohibited;

115 (18) Hunt, catch, take, kill, capture, pursue, transport,
116 possess or use any migratory game or nongame birds included
117 in the terms of conventions between the United States and
118 Great Britain and between the United States and United
119 Mexican States for the protection of migratory birds and wild
120 mammals concluded respectively, August sixteen, one thou-
121 sand nine hundred sixteen, and February seven, one thousand
122 nine hundred thirty-six, except during the time and in the
123 manner and numbers prescribed by the Federal Migratory
124 Bird Treaty Act and regulations made thereunder;

125 (19) Kill, take, catch or have in his possession, living
126 or dead, any wild bird, other than a game bird; or expose
127 for sale, or transport within or without the state any such
128 bird, except as aforesaid. No part of the plumage, skin
129 or body of any protected bird shall be sold or had in
130 possession for sale, except mounted or stuffed plumage,
131 skin, bodies or heads of such birds legally taken and
132 stuffed or mounted, irrespective of whether such bird was
133 captured within or without this state, except the English or
134 European sparrow (*Passer domesticus*), starling (*Sturnus vul-*
135 *garis*), crow (*Corvus brachyrhynchos*) and cowbird (*Molothrus*
136 *ater*), which shall not be protected and the killing thereof at
137 any time is lawful;

138 (20) Use dynamite or any like explosive or poisonous
139 mixture placed in any waters of the state for the purpose of
140 killing or taking fish. Any person violating the provisions
141 of this subdivision shall be guilty of a felony, and, upon

142 conviction thereof, shall be fined not more than five hundred
143 dollars or imprisoned for not less than six months nor more
144 than three years, or both fined and imprisoned;

145 (21) Have a bow and gun, or have a gun and any arrow or
146 arrows, in the fields or woods at the same time;

147 (22) Have a crossbow in the woods or fields or use a
148 crossbow to hunt for, take or attempt to take any wildlife;

149 (23) Take or attempt to take turkey, bear, elk or deer
150 with any arrow unless the same is equipped with a point
151 having at least two sharp cutting edges measuring in excess
152 of three fourths of an inch wide;

153 (24) Take or attempt to take any wildlife with an arrow
154 having an explosive head or shaft, a poisoned arrow, or an
155 arrow which would affect wildlife by any chemical action;

156 (25) Shoot an arrow across any public highway or from
157 aircraft, motor-driven watercraft, motor vehicle or other
158 land conveyance;

159 (26) Permit any dog owned by him or under his control to
160 chase, pursue or follow upon the track of any wild animal or
161 wild bird, either day or night, between the first day of May
162 and the fifteenth day of August next following: *Provided*,
163 That dogs may be trained on wild animals and wild birds,
164 except deer and wild turkeys, and field trials may be held
165 or conducted on the grounds or lands of the owner or by his
166 bona fide tenant or tenants or upon the grounds or lands of
167 another person with his written permission or on public lands,
168 at any time: *Provided, however*, That notwithstanding any of
169 the above provisions, no person may train a dog in any
170 county in which there is a legal bear hunting season, except
171 that residents may train dogs in such counties after the
172 twenty-fourth day of August through the end of the legal small
173 game hunting season: *Provided further*, That nonresidents
174 shall not train dogs in this state at any time except during the
175 legal small game hunting season: *And provided further*, That
176 the person training said dogs does not have firearms or other
177 implements in his possession during the closed season on

178 such wild animals and wild birds, whereby wild animals or wild
179 birds could be taken or killed;

180 (27) Conduct or participate in a field trial, water race
181 or wild hunt hereafter referred to as trial: *Provided*, That
182 any person, group of persons, club or organization may hold
183 such trial at any time of the year upon obtaining such permit
184 as is provided for in section fifty-six of this article. The per-
185 son responsible for obtaining said permit shall prepare and
186 keep an accurate record of the names and addresses of all
187 persons participating in said trial, and make same readily
188 available for inspection by any conservation officer upon re-
189 quest; and

190 (28) Except as provided in section four of this article,
191 hunt, catch, take, kill or attempt to hunt, catch, take or
192 kill any wild animal, wild bird or wild fowl except during the
193 open season established by regulation of the director as autho-
194 rized by subdivision six, section seven, article one of this
195 chapter.

CHAPTER 110

(H. B. 1257—By Mr. Steptoe)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section forty-two, relating to a special season for the taking of deer with muzzle-loading rifles.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.**§20-2-42. Killing of deer with muzzle-loading rifles.**

1 There shall be a special season each year for the taking of
2 deer with muzzle-loading rifles to be set at such time and
3 to be of such duration as determined by the director: *Pro-*
4 *vided*, That such special season shall not be set prior to the
5 regular season for the taking of deer with firearms. Deer
6 of either sex may be taken during this season with muzzle-
7 loading rifles in all counties open for the taking of antlerless
8 deer as provided in section forty-six-b of this article. Antlered
9 deer only may be taken in all other counties having a regular
10 season for the taking of deer with firearms.

11 Only single shot muzzle-loading rifles with iron sights having
12 a bore diameter of no less than forty-four one-hundredths inch
13 shall be legal firearms for the taking of deer during the special
14 season provided herein.

15 A hunter killing a deer with a muzzle-loading rifle may
16 hunt for and kill an additional deer during the bow season
17 or regular firearms season, but shall not hunt for or kill
18 more than two deer in any calendar year.

19 The special season provided herein shall be concurrent
20 with all other seasons designated for the taking of game.

CHAPTER 111

(H. B. 1872—By Mr. Manchin and Mr. Starcher)

[Passed March 12, 1983; in effect January 1, 1984. Approved by the Governor.]

AN ACT to repeal section forty-six, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to Class L nonresident statewide bow and arrow hunting and fishing license and Class LL nonresident statewide bow and arrow bear hunting license.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. WILDLIFE RESOURCES.

§1. Repeal of section relating to Class L nonresident statewide bow and arrow hunting and fishing license and Class LL nonresident statewide bow and arrow bear hunting license.

- 1 Section forty-six, article two, chapter twenty of the code
- 2 of West Virginia, one thousand nine hundred thirty-one, as
- 3 amended, is hereby repealed.

CHAPTER 112

(S. B. 508—By Mr. Williams)

[Passed March 8, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section forty-six-b, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to eliminating certain restrictions on the issuance of Class N special deer hunting licenses.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-46b. Class N special deer hunting license.

- 1 A Class N license is a special deer hunting license for
- 2 antlerless deer of either sex and entitles the licensee to
- 3 hunt for and kill antlerless deer of either sex during the
- 4 Class N license season. The fee for a Class N license is
- 5 eight dollars.
- 6 The Class N license may be issued only for the purpose
- 7 of removing antlerless deer when the director deems
- 8 it essential for proper management of wildlife resources.
- 9 The director shall establish such rules and regulations
- 10 governing the issuance of such Class N licenses as he

11 deems necessary to limit, on a fair and equitable basis,
12 the number of persons who may hunt for antlerless
13 deer in any county, or any part of a county.

14 When the director deems it essential that Class N
15 license season be held in a particular county or part of a
16 county, that season shall be set by the natural resources
17 commission as provided for in section seventeen, article
18 one of this chapter.

19 Bona fide resident landowners or their resident chil-
20 dren, bona fide residents of West Virginia who are
21 tenants of such land, and any bona fide resident stock-
22 holder of resident corporations which are formed for
23 the primary purpose of hunting or fishing and which
24 are the fee simple owners of no less than one thousand
25 acres of land upon which such antlerless deer may be
26 hunted are not required to have a Class N license in
27 their possession while hunting antlerless deer on their
28 own land during the Class N license season.

29 A Class N license may be issued only to a resident of
30 this state who holds a valid Class A, Class AB or Class Q
31 license issued for the current calendar year or a resident
32 of West Virginia who is not required to obtain a license
33 or permit to hunt as provided in section twenty-eight.
34 article two of this chapter, except that this requirement
35 shall not apply to persons under the age of fifteen. The
36 director shall require proof of age before issuing a Class
37 N license, and such license shall contain a space for record-
38 ing the number of the valid Class A, Class AB or Class Q
39 license.

CHAPTER 113

(H. B. 1234—By Mr. Ballouz and Mr. Shaffer)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section sixty, re-

lating to wildlife resources; requiring deer and wild boar hunters, on public lands or the lands of another, to wear daylight fluorescent orange attire; providing an exemption; and criminal penalty.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-60. Required attire for deer hunters; exemption; penalty.

1 Any person who hunts deer on public lands or the lands
2 of another during the period designated for firearms hunting
3 of deer shall wear a daylight fluorescent orange outer garment
4 over at least four hundred square inches of his person: *Pro-*
5 *vided*, That persons engaged in agricultural occupations shall be
6 exempt from the provisions of this section while hunting deer
7 on their own property. Any person violating any provision of
8 this section is guilty of a misdemeanor, and, upon conviction
9 thereof, shall be fined not less than five dollars nor more
10 than fifty dollars.

CHAPTER 114

(H. B. 1664—By Mr. Farley)

[Passed March 3, 1983; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections fourteen and fourteen-c, article three, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to preparation and filing of premium tax returns by insurance companies; payment of tax; annual financial statements.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-14. Annual financial statement and premium tax return; remittance by insurer of premium tax, less certain deductions.

§33-3-14c. Computation of tax; payment.

§33-3-14. Annual financial statement and premium tax return; remittance by insurer of premium tax, less certain deductions.

1 Every insurer transacting insurance in West Virginia shall
2 file with the commissioner, on or before the first day of March,
3 each year, a financial statement made under oath of its
4 president or secretary and on a form prescribed by the
5 commissioner. Such insurer shall also, on or before the
6 first day of March of each year subject to the provisions of
7 section fourteen-c of this article, under the oath of its pre-
8 sident or secretary, make a premium tax return for the pre-
9 vious calendar year, on a form prescribed by the com-
10 missioner showing the gross amount of direct premiums
11 (whether designated as a premium or by some other name)
12 collected and received by it during the previous calendar year
13 on policies covering risks resident, located or to be per-
14 formed in this state and compute the amount of premium
15 tax chargeable to it in accordance with the provisions of
16 this article, deducting the amount of quarterly payments as
17 required to be made pursuant to the provisions of section
18 fourteen-c of this article, if any, less any adjustments to
19 the gross amount of such direct premiums made during such
20 calendar year, if any, and transmit with such return to the
21 commissioner a remittance in full for the tax due. The tax
22 shall be a sum equal to two percent of the gross direct
23 premiums, including dividends (by whatever name called) on
24 participating policies applied in reduction of premiums, less
25 premiums returned to policyholders because of cancellation
26 of policies, and shall also include any additional tax due under
27 section fourteen-a of this section. All taxes received by the
28 commissioner shall be paid by him into the state treasury
29 for the benefit of the state fund.

§33-3-14c. Computation of tax; payment.

1 The taxes levied hereunder shall be due and payable in
2 quarterly installments on or before the twenty-fifth day of the

3 month succeeding the end of the quarter in which they accrue,
4 except for the fourth quarter, for which taxes shall be due
5 and payable on or before the first day of March of the
6 succeeding year. The insurer subject to making such pay-
7 ments shall, by the twenty-fifth day of the month succeeding the
8 close of the quarter, except the fourth quarter as provided above
9 prepare an estimate of the tax based on the estimated amount of
10 taxable premiums during the preceding calendar quarter, less
11 adjustments to the gross amount of direct premiums from the
12 preceding quarter, sign the same by its president or secre-
13 tary, under oath, and mail the same together with a re-
14 mittance of the amount of tax to the office of the commis-
15 sioner.

16 Any insurer failing or refusing to pay estimated taxes
17 for more than thirty days after the time specified is liable
18 for a civil penalty of up to one hundred dollars for each
19 additional day of delinquency, to be assessed by the com-
20 missioner. Failure of an insurer to make quarterly payments,
21 if required, of at least one fourth of either the total tax
22 paid during the preceding calendar year or eighty percent
23 of the actual tax for the current calendar year is considered
24 the same as a failure or refusal to pay the estimated taxes and
25 subjects the insurer to the penalties provided in this section.
26 The amount of estimated taxes and the penalties collected shall
27 be paid to the commissioner and he may suspend the insurer
28 until estimated taxes and penalty, should any penalty be im-
29 posed, are fully paid.

CHAPTER 115

(S. B. 602—By Mr. Heck)

[Passed March 11, 1983; in effect July 1, 1983. Approved by the Governor.]

AN ACT to amend and reenact section fourteen-b, article three, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to credits given against premium tax to insurance companies for investment in West Virginia securities.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-14b. Credits against premium tax for investment in West Virginia securities.

1 If the annual statement of any insurance company
2 covering a calendar year shows it to have investments at
3 the close of said year in West Virginia securities, as
4 hereinafter defined, of as much as twenty-five percent
5 of its admitted assets, it shall be entitled to a credit against
6 the premium tax levied by section fourteen of this article
7 and the premium tax levied by section fourteen-a of this
8 article in an amount equal to one hundred percent of
9 such tax for such calendar year.

10 West Virginia securities, as used in this section, shall
11 mean real estate situate in this state; bonds or interest-
12 bearing notes or obligations of this state; bonds or interest-
13 bearing notes or obligations of any county, district, school
14 district or independent school district, municipality or any
15 other political subdivision of this state; revenue bonds
16 issued by any West Virginia state agency, board, de-
17 partment or commission authorized to issue such bonds
18 by the laws of this state; bonds or notes secured by
19 mortgages or deeds of trust on real estate situate in this
20 state; securities of corporations organized and existing
21 under the laws of this state including, but not by way of
22 limitation, bonds, debentures, notes, equipment trust
23 obligations or other evidences of indebtedness, and shares
24 of common and preferred stock of such corporations; cash
25 balances in regularly established national and state banks
26 in this state reflected as an asset in such annual state-
27 ment; and investment shares and investment share ac-
28 counts in federally insured savings and loan associations
29 in this state.

CHAPTER 116

(S. B. 603—By Mr. Heck)

[Passed March 10, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen-d, article three, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the additional fire and casualty insurance premium tax dedicated to policemen's and firemen's pension and relief funds and volunteer fire departments; and certain premiums exempt.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-14d. Additional fire and casualty insurance premium tax; allocation of proceeds; effective date.

1 (a) For the purpose of providing additional revenue
2 for municipal policemen's and firemen's pension and
3 relief funds and additional revenue for volunteer and
4 part volunteer fire companies and departments, there is
5 hereby levied and imposed, on and after the first day of
6 January, one thousand nine hundred eighty-two, an
7 additional premium tax equal to one percent of gross
8 direct premiums collected, less premiums returned to
9 policyholders because of cancellation of policies, for fire
10 insurance and casualty insurance policies. For purposes
11 of this section, casualty insurance shall not include in-
12 surance on the life of a debtor pursuant to or in connec-
13 tion with a specific loan or other credit transaction or
14 insurance on a debtor to provide indemnity for payments
15 becoming due on a specific loan or other credit transaction
16 while the debtor is disabled as defined in the policy. Ex-
17 cept as otherwise provided in this section, all provisions
18 of this article relating to the levy, imposition and collec-

19 tion of the regular premium tax are applicable to the levy,
20 imposition and collection of the additional tax.

21 All moneys collected from this additional tax shall be
22 received by the commissioner and paid by him into a
23 special account in the state treasury, designated the
24 municipal pensions and protection fund. The net pro-
25 ceeds of this tax after appropriation thereof by the
26 Legislature shall be distributed in accordance with the
27 provisions of subsection (c) of this section.

28 (b) Before the first day of August, one thousand nine
29 hundred eighty-three, and before the first day of August
30 of each calendar year thereafter, the treasurer of each
31 municipality in which a municipal policemen's or fire-
32 men's pension and relief fund has been established shall
33 report to the state treasurer the average monthly number
34 of members who worked at least one hundred hours per
35 month of municipal policemen's or firemen's pension
36 systems during the preceding fiscal year. Before the first
37 day of August, one thousand nine hundred eighty-three,
38 and before the first day of August of each calendar year
39 thereafter, the state fire marshal shall report to the state
40 treasurer the names and addresses of all volunteer and
41 part volunteer fire companies and departments within the
42 state which meet the eligibility requirements established
43 in section eight-a, article fifteen, chapter eight of this
44 code.

45 Before the first day of September, one thousand nine
46 hundred eighty-three, and before the first day of Septem-
47 ber of each calendar year thereafter, the state treasurer
48 shall allocate and authorize for distribution the revenues
49 in the municipal pensions and protection fund which
50 were collected during the preceding calendar year to
51 municipal policemen's and firemen's pension and relief
52 funds and to volunteer and part volunteer fire companies
53 and departments. Seventy-five percent of the aforemen-
54 tioned revenues allocated shall be allocated to municipal
55 policemen's and firemen's pension and relief funds and
56 twenty-five percent of such allocated revenues shall be
57 allocated to volunteer and part volunteer fire companies
58 and departments.

59 (c) (1) Each municipal pension and relief fund shall
60 have allocated and authorized for distribution a pro rata
61 share of the revenues allocated to municipal policemen's
62 and firemen's pension and relief funds based upon the
63 corresponding municipality's average monthly number of
64 members who worked at least one hundred hours per
65 month during the preceding fiscal year. All moneys re-
66 ceived by municipal pension and relief funds under this
67 section may be expended only for the purposes described
68 in sections sixteen through twenty-eight, article twenty-
69 two, chapter eight of this code.

70 (2) Each volunteer fire company or department shall
71 receive an equal share of the revenues allocated for
72 volunteer and part volunteer fire companies and depart-
73 ments.

74 (3) In addition to the share allocated and distributed
75 in accordance with subdivision (1) of this subsection,
76 each municipal fire department composed of full-time
77 paid members and volunteers and part volunteer fire
78 companies and departments shall receive a share equal
79 to the share distributed to volunteer fire companies under
80 subdivision (2) of this subsection reduced by an amount
81 equal to such share multiplied by the ratio of the num-
82 ber of full-time paid fire department members who are
83 also members of a municipal firemen's pension system to
84 the total number of members of such fire department.

85 (d) The allocation and distribution of revenues pro-
86 vided for in this section are subject to the provisions of
87 section twenty, article twenty-two, and sections eight-a
88 and eight-b, article fifteen, chapter eight of this code.

CHAPTER 117

(H. B. 1813—By Mr. Lewis)

[Passed March 11, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article six, 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 thirty-one-b, relating to nondiscriminatory automobile liability insurance rates for handicapped persons.

Be it enacted by the Legislature of West Virginia:

That article six, 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 thirty-one-b, to read as follows:

ARTICLE 6. THE INSURANCE POLICY.

§33-6-31b. Nondiscriminatory automobile insurance rates for handicapped persons.

- 1 No insurer, in determining rates to be charged for a policy
- 2 or contract of bodily injury liability insurance or of property
- 3 damage liability insurance, covering liability arising from the
- 4 ownership, maintenance or use of a motor vehicle, may dis-
- 5 criminate in any manner on the basis of an insured's or poten-
- 6 tial insured's physical handicap.

CHAPTER 118

(H. B. 1662—By Mr. Riffle)

[Passed February 28, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article seven, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section thirty, article thirteen, chapter thirty-three of said code, all relating to the standard valuation law for life insurance policies and to the standard nonforfeiture law for life insurance policies.

Be it enacted by the Legislature of West Virginia:

That section nine, article seven, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section thirty, article thirteen,

chapter thirty-three of said code be amended and reenacted, all to read as follows:

Article

7. **Assets and Liabilities.**

13. **Life Insurance.**

ARTICLE 7. ASSETS AND LIABILITIES.

§33-7-9. Standard valuation law for life policies.

1 (1) The commissioner shall annually value, or cause to
2 be valued, the reserve liabilities (hereinafter called reserves)
3 for all outstanding life insurance policies and annuity and
4 pure endowment contracts of every life insurer transacting
5 insurance in this state, except that in the case of an alien
6 insurer such valuation shall be limited to its United States
7 business, and may certify the amount of any such reserves,
8 specifying the mortality table or tables, rate or rates of
9 interest and method (net level premium method or other) used
10 in the calculation of such reserves.

11 All valuations made by him or by his authority shall be
12 made upon the net premium basis.

13 In every case the standard of valuation employed shall be
14 stated in his annual report.

15 In calculating such reserves, he may use group methods
16 and approximate averages for fractions of a year or other-
17 wise. In lieu of the valuation of the reserves herein required
18 of any foreign or alien company, he may accept any valua-
19 tion made, or cause to be made, by the insurance supervisory
20 official of any state or other jurisdiction when such valua-
21 tion complies with the minimum standard herein provided
22 and if the official of such state or jurisdiction accepts as
23 sufficient and valid for all legal purposes the certificate of
24 valuation of the commissioner when such certificate states the
25 valuation to have been made in a specified manner according
26 to which the aggregate reserves would be at least as large
27 as if they had been computed in the manner prescribed by
28 the law of that state or jurisdiction.

29 (2) This subsection shall apply to only those policies
30 and contracts issued prior to the original operative date of

31 the Standard Nonforfeiture Law (now section thirty, article
32 thirteen of this chapter). All valuations shall be according
33 to the standard of valuations adopted by the insurer for
34 the obligations to be valued. Any insurer may adopt dif-
35 ferent standards for obligations of different dates or classes,
36 but if the total value determined by any such standard for
37 the obligation for which it has been adopted shall be less
38 than that determined by the legal minimum standard here-
39 inafter prescribed, or if the insurer adopts no standard, said
40 legal minimum standard shall be used.

41 Except as otherwise provided in paragraph (B), subdivision
42 (a), subsection (3), the legal minimum standard for con-
43 tracts issued before the first day of January, in the year one
44 thousand nine hundred one, shall be actuaries' or combined
45 experience table of mortality with interest at four percent per
46 annum, and for contracts issued on or after said date shall
47 be the "American Experience Table" of mortality with interest
48 at three and one-half percent per annum, except that the
49 minimum standard for the valuation of annuities and pure
50 endowments purchased under group annuity and pure en-
51 dowment contracts shall be that provided by this subsection
52 but replacing the interest rates specified in this subsection
53 by an interest rate of five percent per annum. Policies
54 issued by insurers doing business in this state may provide
55 for not more than one-year preliminary term insurance:
56 *Provided*, That if the premium charged for term insurance
57 under a limited payment life preliminary term policy pro-
58 viding for the payment of all premiums thereof in less than
59 twenty years from the date of the policy, or under an endow-
60 ment preliminary term policy, exceeds that charged for like
61 insurance under twenty payment life preliminary term policies
62 of the same insurer, the reserve thereon at the end of any
63 year, including the first, shall not be less than the reserve
64 on a twenty payment life preliminary term policy issued
65 in the same year and at the same age, together with an
66 amount which shall be equivalent to the accumulation of a
67 net level premium sufficient to provide for a pure endowment
68 at the end of the premium payment period, equal to the
69 difference between the value at the end of such period of

70 such a twenty payment life preliminary term policy and a
71 full reserve at such time of such a limited payment life or
72 endowment policy.

73 The commissioner may vary the standards of interest and
74 mortality in the case of alien insurers and in particular cases
75 of invalid lives and other extra hazards.

76 Reserves for all such policies and contracts may be cal-
77 culated, at the option of the insurer, according to any stan-
78 dards which produce greater aggregate reserves for all such
79 policies and contracts than the minimum reserves required
80 by this subsection.

81 (3) Except as otherwise provided in paragraphs (B) to
82 (G), subdivision (a) of this subsection, this subsection shall
83 apply to only those policies and contracts issued on or after
84 the original operative date of the Standard Nonforfeiture Law
85 (now section thirty, article thirteen of this chapter).

86 (a) (A) Except as otherwise provided in paragraphs (B)
87 to (G) of this subdivision, the minimum standard for the
88 valuation of all such policies and contracts shall be the com-
89 missioners reserve valuation methods defined in subdivisions
90 (b), (c) and (f), five percent interest for group annuity and
91 pure endowment contracts and three and one-half percent
92 interest for all other such policies and contracts, or in the
93 case of policies and contracts, other than annuity and pure
94 endowment contracts, issued on or after the third day of
95 June, one thousand nine hundred seventy-four, four per-
96 cent interest for such policies issued prior to the sixth day of
97 April, one thousand nine hundred seventy-seven, five and one-
98 half percent interest for single premium life insurance policies
99 and four and one-half percent interest for all other such
100 policies issued on or after the sixth day of April, one thousand
101 nine hundred seventy-seven, and the following tables:

102 (i) For all ordinary policies of life insurance issued on
103 the standard basis, excluding any disability and accidental
104 death benefits in such policies, — the Commissioners 1941
105 Standard Ordinary Mortality Table for such policies issued
106 prior to the operative date of subsection (4a), section thirty,
107 article thirteen of this chapter, and the Commissioners 1958

108 Standard Ordinary Mortality Table for such policies issued
109 on or after the operative date of subsection (4a), section thirty,
110 article thirteen of this chapter and prior to the operative
111 date of subsection (4c), section thirty, article thirteen of
112 this chapter: *Provided*, That for any category of such policies
113 issued on female risks all modified net premiums and present
114 values referred to in this section may be calculated according
115 to an age not more than six years younger than the actual
116 age of the insured; and for such policies issued on or after
117 the operative date of subsection (4c), section thirty, article
118 thirteen of this chapter (I) the Commissioners 1980 Standard
119 Ordinary Mortality Table or (II) at the election of the company
120 for any one or more specified plans of life insurance, the
121 Commissioners 1980 Standard Ordinary Mortality Table with
122 ten-year selection mortality factors or (III) any ordinary
123 mortality table, adopted after one thousand nine hundred
124 eighty by the National Association of Insurance Commission-
125 ers, that is approved by regulation promulgated by the com-
126 missioner for use in determining the minimum standard of
127 valuation for such policies;

128 (ii) For all industrial life insurance policies issued on
129 the standard basis, excluding any disability and accidental
130 death benefits in such policies, — the 1941 Standard Indus-
131 trial Mortality Table for such policies issued prior to the
132 operative date of subsection (4b), section thirty, article thirteen
133 of this chapter, for such policies issued on or after such
134 operative date the Commissioners 1961 Standard Industrial
135 Mortality Table or any industrial mortality table, adopted after
136 one thousand nine hundred eighty by the National Association
137 of Insurance Commissioners, that is approved by regulation
138 promulgated by the commissioner for use in determining the
139 minimum standard of valuation for such policies;

140 (iii) For individual annuity and pure endowment contracts,
141 excluding any disability and accidental death benefits in such
142 policies, — the 1937 Standard Annuity Mortality Table or,
143 at the option of the company, the Annuity Mortality Table
144 for 1949, ultimate, or any modification of either of these
145 tables approved by the commissioner;

146 (iv) For group annuity and pure endowment contracts,

147 excluding any disability and accidental death benefits in such
148 policies, — the Group Annuity Mortality Table for 1951,
149 any modification of such table approved by the commissioner,
150 or, at the option of the company, any of the tables or modifica-
151 tion of tables specified for individual annuity and pure en-
152 dowment contracts;

153 (v) For total and permanent disability benefits in or sup-
154 plementary to ordinary policies or contracts, — for policies
155 or contracts issued on or after the first day of January, one
156 thousand nine hundred sixty-six, the tables of period two
157 disablement rates and the one thousand nine hundred thirty
158 to one thousand nine hundred fifty termination rates of the
159 one thousand nine hundred fifty-two disability study of the
160 society of actuaries, with due regard to the type of benefits or
161 any tables of disablement rates and termination rates, adopted
162 after one thousand nine hundred eighty by the National
163 Association of Insurance Commissioners, that are approved
164 by regulation promulgated by the commissioner for use in de-
165 termining the minimum standard of valuation for such policies;
166 for policies or contracts issued on or after the first day of
167 January, one thousand nine hundred sixty-one, and prior to
168 the first day of January, one thousand nine hundred sixty-
169 six, either such tables or, at the option of the company,
170 the Class (3) Disability Table (1926); and for policies
171 issued prior to the first day of January, one thousand nine
172 hundred sixty-one, the Class (3) Disability Table (1926).
173 Any such table shall, for active lives, be combined with a
174 mortality table permitted for calculating the reserves for life
175 insurance policies;

176 (vi) For accidental death benefits in or supplementary
177 to policies, —for policies issued on or after the first day of
178 January, one thousand nine hundred sixty-six, the 1959
179 Accidental Death Benefits Table or any accidental death
180 benefits table, adopted after one thousand nine hundred
181 eighty by the National Association of Insurance Commis-
182 sioners, that is approved by regulation promulgated by the
183 commissioner for use in determining the minimum standard
184 of valuation for such policies; for policies issued on or
185 after the first day of January, one thousand nine hun-

186 dred sixty-one and prior to the first day of January, one
187 thousand nine hundred sixty-six, either such table or,
188 at the option of the company, the Inter-Company
189 Double Indemnity Mortality Table; and for policies issued
190 prior to the first day of January, one thousand nine hun-
191 dred sixty-one, the Inter-Company Double Indemnity Mortality
192 Table. Either table shall be combined with a motality table
193 permitted for calculating the reserves for life insurance policies;
194 and

195 (vii) For group life insurance, life insurance issued on the
196 substandard basis and other special benefits, — such tables
197 as may be approved by the commissioner.

198 (B) Except as provided in paragraphs (C) to (G), the
199 minimum standard for the valuation of all individual annuity
200 and pure endowment contracts issued on or after the operative
201 date of this paragraph (B), as defined herein, and for all
202 annuities and pure endowments purchased on or after such
203 operative date under group annuity and pure endowment
204 contracts, shall be the commissioners reserve valuation methods
205 defined in subdivisions (b) and (c) and the following tables
206 and interest rates;

207 (i) For individual annuity and pure endowment contracts
208 issued prior to the sixth day of April, one thousand nine
209 hundred seventy-seven, excluding any disability and accidental
210 death benefits in such contracts, — the 1971 Individual
211 Annuity Mortality Table, or any modification of this table
212 approved by the commissioner, and six percent interest for
213 single premium immediate annuity contracts, and four percent
214 interest for all other individual annuity and pure endowment
215 contracts;

216 (ii) For individual single premium immediate annuity
217 contracts issued on or after the sixth day of April, one
218 thousand nine hundred seventy-seven, excluding any disability
219 and accidental death benefits in such contracts, — the 1971
220 Individual Annuity Mortality Table or any individual annuity
221 mortality table, adopted after one thousand nine hundred
222 eighty by the National Association of Insurance Commission-
223 ers, that is approved by regulation promulgated by the com-

224 missioner for use in determining the minimum standard of
225 valuation for such contracts, or any modification of these
226 tables approved by the commissioner, and seven and one-half
227 percent interest;

228 (iii) For individual annuity and pure endowment contracts
229 issued on or after the sixth day of April, one thousand nine
230 hundred seventy-seven, other than single premium immediate
231 annuity contracts, excluding any disability and accidental
232 death benefits in such contracts, — the 1971 Individual An-
233 nuity Mortality Table or any individual annuity mortality
234 table adopted after one thousand nine hundred eighty by
235 the National Association of Insurance Commissioners, that
236 is approved by regulation promulgated by the commissioner
237 for use in determining the minimum standard of valuation for
238 such contracts, or any modification of these tables approved
239 by the commissioner, and five and one-half percent interest for
240 single premium deferred annuity and pure endowment con-
241 tracts, and four and one-half percent interest for all other
242 such individual annuity and pure endowment contracts;

243 (iv) For all annuities and pure endowments purchased
244 prior to the sixth day of April, one thousand nine hundred
245 seventy-seven, under group annuity and pure endowment con-
246 tracts, excluding any disability and accidental death benefits
247 purchased under such contracts, — the 1971 Group Annuity
248 Mortality Table, or any modification of this table approved
249 by the commissioner, and six percent interest; and

250 (v) For all annuities and pure endowments purchased on
251 or after the sixth day of April, one thousand nine hundred
252 seventy-seven, under group annuity and pure endowment con-
253 tracts, excluding any disability and accidental death benefits
254 purchased under such contracts, — the 1971 Group Annuity
255 Mortality Table or any group annuity mortality table, adopted
256 after one thousand nine hundred eighty by the National
257 Association of Insurance Commissioners, that is approved
258 by regulation promulgated by the commissioner for use in
259 determining the minimum standard of valuation for such an-
260 nuities and pure endowments, or any modification of these
261 tables approved by the commissioner, and seven and one-half
262 percent interest.

263 After the third day of June, one thousand nine hundred
264 seventy-four, any company may file with the commissioner a
265 written notice of its election to comply with the provisions
266 of this paragraph (B) after a specified date before the first
267 day of January, one thousand nine hundred seventy-nine,
268 which shall be the operative date of this paragraph (B) for
269 such company, provided that a company may elect a dif-
270 ferent operative date for individual annuity and pure endow-
271 ment contracts from that elected for group annuity and pure
272 endowment contracts. If a company makes no such election,
273 the operative date of this paragraph (B) for such company
274 shall be the first day of January, one thousand nine hundred
275 seventy-nine.

276 (C) The interest rates used in determining the minimum
277 standard for the valuation of:

278 (i) All life insurance policies issued in a particular calendar
279 year, on or after the operative date of subsection (4c), section
280 thirty, article thirteen of this chapter;

281 (ii) All individual annuity and pure endowment contracts
282 issued in a particular calendar year on or after the first
283 day of January, one thousand nine hundred eighty-two;

284 (iii) All annuities and pure endowments purchased in a
285 particular calendar year on or after the first day of January,
286 one thousand nine hundred eighty-two, under group annuity
287 and pure endowment contracts; and

288 (iv) The net increase, if any, in a particular calendar year
289 after the first day of January, one thousand nine hundred
290 eighty-two, in amounts held under guaranteed interest con-
291 tracts shall be the calendar year statutory valuation interest
292 rates as defined in this subsection.

293 (D) The calendar year statutory valuation interest rates,
294 I, shall be determined as follows and the results rounded
295 to the nearer one quarter of one percent ($1/4$ of 1%):

296 (i) For life insurance,

297 $I = .03 + W (R1 - .03) + W/2 (R2 - .09);$

298 (ii) For single premium immediate annuities and for an-
299 nuity benefits involving life contingencies arising from other
300 annuities with cash settlement options and from guaranteed
301 interest contracts with cash settlement options,

$$302 \quad I = .03 + W (R - .03)$$

303 where R_1 is the lesser of R and $.09$;

304 R_2 is the greater of R and $.09$,

305 R is the reference interest rate defined in this section and

306 W is the weighting factor defined in this section.

307 (iii) For other annuities with cash settlement options
308 and guaranteed interest contracts with cash settlement op-
309 tions, valued on an issue year basis, except as stated in (ii)
310 above, the formula for life insurance stated in (i) above shall
311 apply to annuities and guaranteed interest contracts with
312 guarantee durations in excess of ten years and the formula for
313 single premium immediate annuities stated in (ii) above shall
314 apply to annuities and guaranteed interest contracts with
315 guarantee duration of ten years or less;

316 (iv) For other annuities with no cash settlement options
317 and for guaranteed interest contracts with no cash settlement
318 options, the formula for single premium immediate annuities
319 stated in (ii) above shall apply; and

320 (v) For other annuities with cash settlement options and
321 guaranteed interest contracts with cash settlement options,
322 valued on a change in fund basis, the formula for single
323 premium immediate annuities stated in (ii) above shall apply.

324 However, if the calendar year statutory valuation interest
325 rate for any life insurance policies issued in any calendar
326 year determined without reference to this sentence differs
327 from the corresponding actual rate for similar policies issued
328 in the immediately preceding calendar year by less than one
329 half of one percent ($\frac{1}{2}$ of 1%), the calendar year statutory
330 valuation interest rate for such life insurance policies shall
331 be equal to the corresponding actual rate for the immediately

332 preceding calendar year. For purposes of applying the im-
 333 mediately preceding sentence, the calendar year statutory
 334 valuation interest rate for life insurance policies issued in a
 335 calendar year shall be determined for one thousand nine
 336 hundred eighty (using the reference interest rate defined for
 337 one thousand nine hundred seventy-nine) and shall be deter-
 338 mined for each subsequent calendar year regardless of when
 339 subsection (4c), section thirty, article thirteen of this chapter
 340 becomes operative.

341 (E) The weighting factors referred to in the formulas stated
 342 above are given in the following tables:

343 (i) Weighting Factors for Life Insurance:

| 344 | Guarantee | |
|-----|------------------------------------|-----------|
| 345 | Duration | Weighting |
| 346 | (Years) | Factors |
| 347 | <hr/> | <hr/> |
| 348 | 10 or less | .50 |
| 349 | More than 10, but not more than 20 | .45 |
| 350 | More than 20 | .35 |

351 For life insurance, the guarantee duration is the maximum
 352 number of years the life insurance can remain in force on a
 353 basis guaranteed in the policy or under options to convert
 354 to plans of life insurance with premium rates or nonforfeiture
 355 values or both which are guaranteed in the original policy;

356 (ii) Weighting factor for single premium immediate annui-
 357 ties and for annuity benefits involving life contingencies
 358 arising from other annuities with cash settlement options and
 359 guaranteed interest contracts with cash settlement options:

360 .80

361 (iii) Weighting factors for other annuities and for guaran-
 362 teed interests contracts, except as stated in (ii) above, shall be
 363 as specified in tables (a), (b) and (c) below, according to the
 364 rules and definitions in (d), (e) and (f) below:

365 (a) For annuities and guaranteed interest contracts valued
 366 on an issue year basis:

| | Guarantee Duration (Years) | Weighting Factor for Plan Type | | |
|-----|-------------------------------------|-----------------------------------|-----|-----|
| | | A | B | C |
| 370 | _____ | | | |
| 371 | 5 or less: | .80 | .60 | .50 |
| 372 | More than 5, but not more than 10: | .75 | .60 | .50 |
| 373 | More than 10, but not more than 20: | .65 | .50 | .45 |
| 374 | More than 20: | .45 | .35 | .35 |

375 (b) For annuities and guaranteed in-
 376 terest contracts valued on a change in
 377 fund basis, the factors shown in (a)
 378 above;

379 (c) For annuities and guaranteed in-
 380 terest contracts valued on an issue year
 381 basis (other than those with no cash
 382 settlement options) which do not guar-
 383 antee interest on considerations received
 384 more than one year after issue or pur-
 385 chase and for annuities and guaranteed
 386 interest contracts valued on a change
 387 in fund basis which do not guarantee
 388 interest rates on considerations received
 389 more than twelve months beyond the
 390 valuation date, the factors shown in (a)
 391 or derived in (b) increased by: .05 .05 .05

392 (d) For other annuities with cash settlement options and
 393 guaranteed interest contracts with cash settlement options,
 394 the guarantee duration is the number of years for which the
 395 contract guarantees interest rates in excess of the calendar
 396 year statutory valuation interest rate for life insurance poli-
 397 cies with guarantee duration in excess of twenty years. For
 398 other annuities with no cash settlement options and for
 399 guaranteed interest contracts with no cash settlement options,
 400 the guarantee duration is the number of years from the date
 401 of issue or date of purchase to the date annuity benefits are
 402 scheduled to commence;

403 (e) Plan type as used in the above tables is defined as
 404 follows:

405 Plan Type A:

406 At any time policyholder may withdraw funds only (1)
407 with an adjustment to reflect changes in interest rates or
408 asset values since receipt of the funds by the insurance
409 company or (2) without such adjustment but in installments
410 over five years or more or (3) as an immediate life annuity
411 or (4) no withdrawal permitted;

412 Plan Type B:

413 Before expiration of the interest rate guarantee, policyholder
414 may withdraw funds only (1) with an adjustment to reflect
415 changes in interest rates or asset values since receipt of the
416 funds by the insurance company or (2) without such ad-
417 justment but in installments over five years or more or
418 (3) no withdrawal permitted. At the end of interest rate
419 guarantee, funds may be withdrawn without such adjustment
420 in a single sum or installments over less than five years;
421 and

422 Plan Type C:

423 Policyholder may withdraw funds before expiration of in-
424 terest rate guarantee in a single sum or installments over
425 less than five years either (1) without adjustment to reflect
426 changes in interest rates or asset values since receipt of the
427 funds by the insurance company or (2) subject only to a
428 fixed surrender charge stipulated in the contract as a per-
429 centage of the fund.

430 (f) A company may elect to value guaranteed interest
431 contracts with cash settlement options and annuities with
432 cash settlement options on either an issue year basis or on
433 a change in fund basis. Guaranteed interest contracts with
434 no cash settlement options and other annuities with no cash
435 settlement options must be valued on an issue year basis.
436 As used in this subsection, an issue year basis of valuation
437 refers to a valuation basis under which the interest rate
438 used to determine the minimum valuation standard for the
439 entire duration of the annuity or guaranteed interest con-
440 tract is the calendar year valuation interest rate for the year
441 of issue or year of purchase of the annuity or guaranteed

442 interest contract, and the change in fund basis of valuation
443 refers to a valuation basis under which the interest rate
444 used to determine the minimum valuation standard applica-
445 ble to each change in the fund held under the annuity or
446 guaranteed interest contract is the calendar year valuation
447 interest rate for the year of the change in the fund.

448 (F) The reference interest rate referred to in paragraph
449 (D) shall be defined as follows:

450 (i) For all life insurance, the lesser of the average over a
451 period of thirty-six months and the average over a period of
452 twelve months, ending on the thirtieth day of June of the
453 calendar year next preceding the year of issue, of Moody's
454 Corporate Bond Yield Average — Monthly Average Corpor-
455 ates, as published by Moody's Investors Service, Inc;

456 (ii) For single premium immediate annuities and for an-
457 nuity benefits involving life contingencies arising from other
458 annuities with cash settlement options and guaranteed in-
459 terest contracts with cash settlement options, the average
460 over a period of twelve months, ending on the thirtieth day
461 of June of the calendar year of issue or year of purchase,
462 of Moody's Corporate Bond Yield Average — Monthly Aver-
463 age Corporates, as published by Moody's Investors Service,
464 Inc;

465 (iii) For other annuities with cash settlement options and
466 guaranteed interest contracts with cash settlement options,
467 valued on a year of issue basis, except as stated in (ii) above,
468 with guarantee duration in excess of ten years, the lesser
469 of the average over a period of thirty-six months and the
470 average over a period of twelve months, ending on the
471 thirtieth day of June of the calendar year of the issue or
472 purchase, of Moody's Corporate Bond Yield Average —
473 Monthly Average Corporates, as published by Moody's In-
474 vestors Service, Inc;

475 (iv) For other annuities with cash settlement options and
476 guaranteed interest contracts with cash settlement options,
477 valued on a year of issue basis, except as stated in (ii) above,
478 with guarantee duration of ten years or less, the average over

479 a period of twelve months, ending on the thirtieth day of
480 June of the calendar year of issue or purchase, of Moody's
481 Corporate Bond Yield Average — Monthly Average Corpor-
482 ates, as published by Moody's Investors Service, Inc;

483 (v) For other annuities with no cash settlement options
484 for guaranteed interest contracts with no cash settlement
485 options, the average over a period of twelve months, ending
486 on the thirtieth day of June of the calendar year of issue
487 or purchase, of Moody's Corporate Bond Yield Average —
488 Monthly Average Corporates, as published by Moody's In-
489 vestors Service, Inc; and

490 (vi) For other annuities with cash settlement options
491 and guaranteed interest contracts with cash settlement op-
492 tions, valued on a change in fund basis, except as stated in
493 (ii) above, the average over a period of twelve months, end-
494 ing on the thirtieth day of June of the calendar year of the
495 change in the fund, of Moody's Corporate Bond Yield Aver-
496 age — Monthly Average Corporates, as published by Moody's
497 Investors Service, Inc.

498 (G) In the event that Moody's Corporate Bond Yield
499 Average — Monthly Average Corporates is no longer pub-
500 lished by Moody's Investors Service, Inc., or in the event that
501 the National Association of Insurance Commissioners deter-
502 mines that Moody's Corporate Bond Yield Average — Month-
503 ly Average Corporates as published by Moody's Investors
504 Service, Inc., is no longer appropriate for the determination
505 of the reference interest rate, then an alternative method for
506 determination of the reference interest rate, which is adopted
507 by the National Association of Insurance Commissioners and
508 approved by regulation promulgated by the commissioner, may
509 be substituted.

510 (b) Except as otherwise provided in subdivisions (c)
511 and (f), reserves according to the commissioners reserve
512 valuation method, for the life insurance and endow-
513 ment benefits of policies providing for a uniform amount of
514 insurance and requiring the payment of uniform pre-
515 miums, shall be the excess, if any, of the present value,
516 at the date of valuation, of such future guaranteed bene-

517 fits provided for by such policies, over the then present
518 value of any future modified net premiums therefor.
519 The modified net premiums for any such policy shall be
520 such uniform percentage of the respective contract pre-
521 miums for such benefits that the present value, at the
522 date of issue of the policy of all such modified net pre-
523 miums shall be equal to the sum of the then present
524 value of such benefits provided for by the policy and the excess
525 of (A) over (B), as follows:

526 (A) A net level annual premium equal to the present
527 value, at the date of issue, of such benefits provided
528 for after the first policy year, divided by the present
529 value, at the date of issue, of an annuity of one per-
530 cent per annum payable on the first and each subsequent
531 anniversary of such policy on which a premium falls due:
532 *Provided*, That such net level annual premium shall not
533 exceed the net level annual premium on the nineteen-
534 year premium whole life plan for insurance of the same
535 amount at an age one year higher than the age at issue of
536 such policy;

537 (B) A net one-year term premium for such benefits pro-
538 vided for in the first policy year: *Provided*, That for any
539 life insurance policy issued on or after the first day of
540 January, one thousand nine hundred eighty-five, for which
541 the contract premium in the first policy year exceeds that
542 of the second year and for which no comparable additional
543 benefit is provided in the first year for such excess and
544 which provides an endowment benefit or a cash surrender
545 value or a combination thereof in an amount greater than
546 such excess premium, the reserve according to the com-
547 missioners reserve valuation method as of any policy anni-
548 versary occurring on or before the assumed ending date
549 defined herein as the first policy anniversary on which the
550 sum of any endowment benefit and any cash surrender value
551 then available is greater than such excess premium shall,
552 except as otherwise provided in subdivision (f), be the
553 greater of the reserve as of such policy anniversary cal-
554 culated as described in the preceding paragraph of this sub-
555 division (b) and the reserve as of such policy anniversary

556 calculated as described in that paragraph, but with (i) the
557 value defined in subparagraph (A) of that paragraph being
558 reduced by fifteen percent of the amount of such excess first
559 year premium, (ii) all present values of benefits and premiums
560 being determined without reference to premiums or benefits
561 provided for by the policy after the assumed ending date,
562 (iii) the policy being assumed to mature on such date as an
563 endowment and (iv) the cash surrender value provided on
564 such date being considered as an endowment benefit. In
565 making the above comparison the mortality and interest bases
566 stated in paragraphs (A), (C), (D), (E), (F) and (G) of sub-
567 division (a) of this subsection shall be used.

568 Reserves according to the commissioners reserve valuation
569 method for (i) life insurance policies providing for a varying
570 amount of insurance or requiring the payment of varying
571 premiums, (ii) group annuity and pure endowment contracts
572 purchased under a retirement plan or plan of deferred com-
573 pensation, established or maintained by an employer (includ-
574 ing a partnership or sole proprietorship) or by an employee
575 organization, or by both, other than a plan providing in-
576 dividual retirement accounts or individual retirement annui-
577 ties under section 408 of the Internal Revenue Code, as now
578 or hereafter amended, (iii) disability and accidental death
579 benefits in all policies and contracts and (iv) all other bene-
580 fits, except life insurance and endowment benefits in life
581 insurance policies and benefits provided by all other annuity
582 and pure endowment contracts, shall be calculated by a
583 method consistent with the principles of this subdivision (b),
584 except that any extra premiums charged because of im-
585 pairments or special hazards shall be disregarded in the
586 determination of modified net premiums.

587 (c) This subdivision shall apply to all annuity and pure
588 endowment contracts other than group annuity and pure
589 endowment contracts purchased under a retirement plan or
590 plan of deferred compensation, established or maintained by
591 an employer (including a partnership or sole proprietorship)
592 or by an employee organization, or by both, other than a
593 plan providing individual retirement accounts or individual

594 retirement annuities under section 408 of the Internal Revenue
595 Code, as now or hereafter amended.

596 Reserves according to the commissioners annuity reserve
597 method for benefits under annuity or pure endowment con-
598 tracts, excluding any disability and accidental death benefits
599 in such contracts, shall be the greatest of the respective
600 excesses of the present values, at the date of valuation, of
601 the future guaranteed benefits, including guaranteed non-
602 forfeiture benefits, provided for by such contracts at the end
603 of each respective contract year, over the present value, at
604 the date of valuation, of any future valuation considerations
605 derived from future gross considerations, required by the
606 terms of such contract, that become payable prior to the end
607 of such respective contract year. The future guaranteed
608 benefits shall be determined by using the mortality table, if
609 any, and the interest rate, or rates, specified in such contracts
610 for determining guaranteed benefits. The valuation consider-
611 ations are the portions of the respective gross considerations
612 applied under the terms of such contracts to determine non-
613 forfeiture values.

614 (d) In no event shall a company's aggregate reserves for
615 all life insurance policies, excluding disability and accidental
616 death benefits, be less than the aggregate reserves calculated
617 in accordance with the methods set forth in subdivisions (b),
618 (c), (f) and (g) and the mortality table or tables and rate or
619 rates of interest used in calculating nonforfeiture benefits for
620 such policies.

621 (e) Reserves for any category of policies, contracts or
622 benefits as established by the commissioner may be cal-
623 culated, at the option of the insurer, according to any
624 standards which produce greater aggregate reserves for such
625 category than those calculated according to the minimum
626 standard herein provided, but the rate or rates of interest
627 used for policies and contracts, other than annuity and pure
628 endowment contracts, shall not be higher than the corres-
629 ponding rate or rates of interest used in calculating any non-
630 forfeiture benefits provided for therein.

631 Any such company which at any time shall have adopted

632 any standard of valuation producing greater aggregate re-
633 serves than those calculated according to the minimum stan-
634 dard herein provided may, with the approval of the com-
635 missioner, adopt any lower standard of valuation, but not
636 lower than the minimum herein provided.

637 (f) If in any contract year the gross premium charged by
638 any life insurer on any policy or contract is less than the
639 valuation net premium for the policy or contract calculated
640 by the method used in calculating the reserve thereon, but
641 using the minimum valuation standards of mortality and rate
642 of interest, the minimum reserve required for such policy or
643 contract shall be the greater of either the reserve calculated
644 according to the mortality table, rate of interest and method
645 actually used for such policy or contract, or the reserve
646 calculated by the method actually used for such policy or
647 contract but using the minimum valuation standards of
648 mortality and rate of interest and replacing the valuation
649 net premium by the actual gross premium in each contract
650 year for which the valuation net premium exceeds the actual
651 gross premium. The minimum valuation standards of mortality
652 and rate of interest referred to in this section are those stan-
653 dards stated in paragraphs (A), (C), (D), (E), (F) and (G)
654 of subdivision (a): *Provided*, That for any life insurance policy
655 issued on or after the first day of January, one thousand
656 nine hundred eighty-five, for which the gross premium in the
657 first policy year exceeds that of the second year and for
658 which no comparable additional benefit is provided in the
659 first year for such excess and which provides an endowment
660 benefit or a cash surrender value or a combination thereof
661 in an amount greater than such excess premium, the fore-
662 going provisions of this subdivision (f) shall be applied as if
663 the method actually used in calculating the reserve for such
664 policy were the method described in subdivision (b), ignoring
665 the second paragraph of subdivision (b). The minimum
666 reserve at each policy anniversary of such a policy shall be
667 the greater of the minimum reserve calculated in accordance
668 with subdivision (b), including the second paragraph of that
669 subdivision and the minimum reserve calculated in accor-
670 dance with this subdivision (f).

671 (g) In the case of any plan of life insurance which pro-
672 vides for future premium determination, the amounts of which
673 are to be determined by the insurance company based on
674 the estimates of future experience, or in the case of any plan
675 of life insurance or annuity which is of such a nature that
676 the minimum reserves cannot be determined by the methods
677 described in subdivisions (b), (c) and (f), the reserves which
678 are held under any such plan must:

679 (A) Be appropriate in relation to the benefits and the
680 pattern of premiums for the plan; and

681 (B) Be computed by a method which is consistent with the
682 principles of this standard valuation law, as determined by
683 regulations promulgated by the commissioner.

ARTICLE 13. LIFE INSURANCE.

§33-13-30. Standard nonforfeiture law for life insurance.

1 (1) In the case of policies issued on or after the original
2 operative date of this provision, no policy of life insurance,
3 except as stated in subsection six, shall be delivered or issued
4 for delivery in this state unless it shall contain in substance
5 the following provisions, or corresponding provisions which
6 in the opinion of the commissioner are at least as favorable
7 to the defaulting or surrendering policyholder as are the
8 minimum requirements hereinafter specified and are essen-
9 tially in compliance with subsection (5a) of this law:

10 (a) That, in the event of default in any premium payment,
11 the insurer will grant, upon proper request not later than
12 sixty days after the due date of the premium in default, a
13 paid-up nonforfeiture benefit on a plan stipulated in the
14 policy, effective as of such due date, of such amount as
15 may be hereinafter specified. In lieu of such stipulated paid-
16 up nonforfeiture benefit, the insurer may substitute, upon
17 proper request not later than sixty days after the due date
18 of the premium in default, an actuarially equivalent alternative
19 paid-up nonforfeiture benefit which provides a greater amount
20 or longer period of death benefits or, if applicable, a greater
21 amount or earlier payment of endowment benefits;

22 (b) That, upon surrender of the policy within sixty days

23 after the due date of any premium payment in default after
24 premiums have been paid for at least three full years, the
25 insurer will pay, in lieu of any paid-up nonforfeiture benefit,
26 a cash surrender value of such amount as may be herein-
27 after specified;

28 (c) That a specified paid-up nonforfeiture benefit shall
29 become effective as specified in the policy unless the per-
30 son entitled to make such election elects another available
31 option not later than sixty days after the due date of the
32 premium in default;

33 (d) That, if the policy shall have become paid up by
34 completion of all premium payments or if it is continued
35 under any paid-up nonforfeiture benefit which became effec-
36 tive on or after the third policy anniversary the insurer will
37 pay, upon surrender of the policy within thirty days after
38 any policy anniversary, a cash surrender value of such amount
39 as may be hereinafter specified;

40 (e) In the case of policies which cause on a basis guaran-
41 teed in the policy unscheduled changes in benefits or premiums,
42 or which provide an option for changes in benefits or pre-
43 miums other than a change to a new policy, a statement
44 of the mortality table, interest rate and method used in
45 calculating cash surrender values and the paid-up nonfor-
46 feiture benefits available under the policy. In the case of all
47 other policies, a statement of the mortality table and interest
48 rate used in calculating the cash surrender values and the
49 paid-up nonforfeiture benefits available under the policy, to-
50 gether with a table showing the cash surrender value, if any,
51 and paid-up nonforfeiture benefits, if any, available under the
52 policy on each policy anniversary either during the first twenty
53 policy years or during the term of the policy, whichever is
54 shorter, such values and benefits to be calculated upon the
55 assumption that there are no dividends or paid-up additions
56 credited to the policy and that there is no indebtedness to the
57 insurer on the policy; and

58 (f) A statement that the cash surrender values and the
59 paid-up nonforfeiture benefits available under the policy
60 are not less than the minimum values and benefits required

61 by or pursuant to the insurance law of the state in which
62 the policy is delivered; an explanation of the manner in
63 which the cash surrender values and the paid-up nonforfeiture
64 benefits are altered by the existence of any paid-up additions
65 credited to the policy or any indebtedness to the company on
66 the policy; if a detailed statement of the method of computa-
67 tion of the values and benefits shown in the policy is not
68 stated therein a statement that such method of computation
69 has been filed with the insurance supervisory official of the
70 state in which the policy is delivered; and a statement of the
71 method to be used in calculating the cash surrender value
72 and paid-up nonforfeiture benefits available under the policy
73 on any policy anniversary beyond the last anniversary for which
74 such values and benefits are consecutively shown in the
75 policy.

76 Any of the foregoing provisions or portions thereof, not
77 applicable by reason of the plan of insurance may, to the
78 extent inapplicable, be omitted from the policy.

79 The insurer shall reserve the right to defer the payment
80 of any cash surrender value for a period of thirty days after
81 demand therefor with surrender of the policy.

82 (2) Any cash surrender value available under the policy
83 in the event of default in a premium payment due on any
84 policy anniversary, whether or not required by subsection
85 (1), shall be an amount not less than the excess, if any, of
86 the present value, on such anniversary, of the future guaran-
87 teed benefits which would have been provided for by the
88 policy, including any existing paid-up additions, if there
89 had been no default, over the sum of (i) the then present
90 value of the adjusted premiums as defined in subsections
91 (4), (4a), (4b) and (4c), corresponding to premiums which
92 would have fallen due on and after such anniversary, and
93 (ii) the amount of any indebtedness to the insurer on the
94 policy: *Provided*, That for any policy issued on or after the
95 operative date of subsection (4c) as defined therein, which
96 provides supplemental life insurance or annuity benefits at
97 the option of the insured and for an identifiable additional
98 premium by rider or supplemental policy provision, the cash
99 surrender value referred to in the first paragraph of this

100 subsection shall be an amount not less than the sum of the
101 cash surrender value as defined in such paragraph for an
102 otherwise similar policy issued at the same age without such
103 rider or supplemental policy provision and the cash surrender
104 value as defined in such paragraph for a policy which pro-
105 vides only the benefits otherwise provided by such rider or
106 supplemental policy provision: *Provided, however,* That for
107 any family policy issued on or after the operative date of
108 subsection (4c) as defined therein, which defines a primary
109 insured and provides term insurance on the life of the spouse
110 of the primary insured expiring before the spouse's age
111 seventy-one, the cash surrender value referred to in the
112 first paragraph of this subsection shall be an amount not
113 less than the sum of the cash surrender value as defined in
114 such paragraph for an otherwise similar policy issued at the
115 same age without such term insurance on the life of the
116 spouse and the cash surrender value as defined in such para-
117 graph for a policy which provides only the benefits otherwise
118 provided by such term insurance on the life of the spouse.

119 Any cash surrender value available within thirty days after
120 any policy anniversary under any policy paid up by comple-
121 tion of all premium payments or any policy continued under
122 any paid-up nonforfeiture benefit, whether or not required
123 by subsection (1), shall be an amount not less than the
124 present value, on such anniversary, of the future guaranteed
125 benefits provided for by the policy, including any existing
126 paid-up additions decreased by any indebtedness to the in-
127 surer on the policy.

128 (3) Any paid-up nonforfeiture benefit available under the
129 policy in the event of default in a premium payment due on
130 any policy anniversary shall be such that its present value
131 as of such anniversary shall be at least equal to the cash
132 surrender value then provided for by the policy or, if none
133 is provided for, that cash surrender value which would have
134 been required by this section in the absence of the condition
135 that premiums shall have been paid for at least a specific
136 period.

137 (4) This subsection (4) shall not apply to policies issued
138 on or after the operative date of subsection (4c) as defined

139 therein. Except as provided in the third paragraph of this
140 subsection, the adjusted premiums for any policy shall be
141 calculated on an annual basis and shall be such uniform
142 percentage of the respective premiums specified in the policy
143 for each policy year, excluding extra premiums on a sub-
144 standard policy, that the present value, at the date of issue
145 of the policy, of all such adjusted premiums shall be equal
146 to the sum of (i) the then present value of the future guaranteed
147 benefits provided for by the policy; (ii) two percent of the
148 amount of insurance, if the insurance be uniform in amount,
149 or of the equivalent uniform amount, as hereinafter defined,
150 if the amount of insurance varies with duration of the policy;
151 (iii) forty percent of the adjusted premium for the first policy
152 year; (iv) twenty-five percent of either the adjusted premium
153 for the first policy year or the adjusted premium for a whole
154 life policy of the same uniform or equivalent uniform amount
155 with uniform premiums for the whole of life issued at the
156 same age for the same amount of insurance, whichever is
157 less: *Provided*, That in applying the percentages specified
158 in (iii) and (iv) above, no adjusted premium shall be deemed
159 to exceed four percent of the amount of insurance or uniform
160 amount equivalent thereto. The date of issue of a policy for
161 the purpose of this subsection shall be the date as of which
162 the rated age of the insured is determined.

163 In the case of a policy providing an amount of insurance
164 varying with duration of the policy, the equivalent uniform
165 amount thereof for the purpose of this subsection shall be
166 deemed to be the uniform amount of insurance provided by
167 an otherwise similar policy, containing the same endowment
168 benefit or benefits, if any, issued at the same age and for
169 the same term, the amount of which does not vary with
170 duration and the benefits under which have the same present
171 value at the date of issue as the benefits under the policy:
172 *Provided*, That in the case of a policy providing a varying
173 amount of insurance issued on the life of a child under
174 age ten, the equivalent uniform amount may be computed
175 as though the amount of insurance provided by the policy
176 prior to the attainment of age ten were the amount pro-
177 vided by such policy at age ten.

178 The adjusted premiums for any policy providing term
179 insurance benefits by rider or supplemental policy provision
180 shall be equal to (a) the adjusted premiums for an otherwise
181 similar policy issued at the same age without such term
182 insurance benefits, increased, during the period for which
183 premiums for such term insurance benefits are payable, by
184 (b) the adjusted premiums for such term insurance, the
185 foregoing items (a) and (b) being calculated separately and
186 as specified in the first two paragraphs of this subsection
187 except that, for the purposes of (ii), (iii) and (iv) of the
188 first such paragraph, the amount of insurance or equivalent
189 uniform amount of insurance used in the calculation of the
190 adjusted premiums referred to in (b) shall be equal to the
191 excess of the corresponding amount determined for the entire
192 policy over the amount used in the calculation of the adjusted
193 premiums in (a).

194 Except as otherwise provided in subsections (4a) and (4b),
195 all adjusted premiums and present values referred to in
196 this section shall for all policies of ordinary insurance
197 be calculated on the basis of the Commissioners 1941
198 Standard Ordinary Mortality Table: *Provided*, That for any
199 category of ordinary insurance issued on female risks, ad-
200 justed premiums and present values may be calculated ac-
201 cording to an age not more than three years younger than
202 the actual age of the insured, and such calculations for all
203 policies of industrial insurance shall be made on the basis
204 of the 1941 Standard Industrial Mortality Table. All cal-
205 culations shall be made on the basis of the rate of interest,
206 not exceeding three and one-half percent per annum, specified
207 in the policy for calculating cash surrender values and paid-
208 up nonforfeiture benefits: *Provided, however*, That in cal-
209 culating the present value of any paid-up term insurance with
210 accompanying pure endowment, if any, offered as a nonfor-
211 feiture benefit, the rates of mortality assumed may be not
212 more than one hundred and thirty percent of the rates of
213 mortality according to such applicable table: *Provided further*,
214 That for insurance issued on a substandard basis, the cal-
215 culation of any such adjusted premiums and present values
216 may be based on such other table of mortality as may be
217 specified by the insurer and approved by the commissioner.

218 (4a) This subsection (4a) shall not apply to ordinary
219 policies issued on or after the operative date of subsection
220 (4c) as defined therein. In the case of ordinary policies
221 issued on or after the operative date of this subsection
222 (4a) as defined herein, all adjusted premiums and present
223 values referred to in this section shall be calculated on
224 the basis of the Commissioners 1958 Standard Ordinary
225 Mortality Table and the rate of interest specified in the
226 policy for calculating cash surrender values and paid-up
227 nonforfeiture benefits provided that such rate of interest
228 shall not exceed three and one-half percent per annum except
229 that a rate of interest not exceeding four percent per annum
230 may be used for policies issued on or after the third day of
231 June, one thousand nine hundred seventy-four, and prior to
232 the sixth day of April, one thousand nine hundred seventy-
233 seven, and a rate of interest not exceeding five and one-half
234 percent per annum may be used for policies issued on or after
235 the sixth day of April, one thousand nine hundred seventy-
236 seven, except that for any single premium whole life or en-
237 dowment insurance policy a rate of interest not exceeding six
238 and one-half percent per annum may be used: *Provided*, That
239 for any category of ordinary insurance issued on female risks,
240 adjusted premiums and present values may be calculated
241 according to an age not more than six years younger than the
242 actual age of the insured: *Provided, however*, That in cal-
243 culating the present value of any paid-up term insurance
244 with accompanying pure endowment, if any, offered as a
245 nonforfeiture benefit, the rates of mortality assumed may be
246 not more than those shown in the Commissioners 1958 Ex-
247 tended Term Insurance Table: *Provided further*, That for
248 insurance issued on a substandard basis, the calculation of any
249 such adjusted premiums and present values may be based on
250 such other table of mortality as may be specified by the
251 company and approved by the commissioner.

252 After the third day of June, one thousand nine hundred
253 fifty-nine, any company may file with the commissioner a
254 written notice of its election to comply with the provisions
255 of this subsection after a specified date before the first
256 day of January, one thousand nine hundred sixty-six. After

257 the filing of such notice, then upon such specified date (which
258 shall be the operative date of this subsection for such com-
259 pany), this subsection shall become operative with respect
260 to the ordinary policies thereafter issued by such company.
261 If a company makes no such election, the operative date of
262 this subsection for such company shall be the first day of
263 January, one thousand nine hundred sixty-six.

264 (4b) This subsection (4b) shall not apply to industrial
265 policies issued on or after the operative date of subsection
266 (4c) as defined therein. In the case of industrial policies
267 issued on or after the operative date of this subsection (4b)
268 as defined herein, all adjusted premiums and present values
269 referred to in this section shall be calculated on the basis
270 of the Commissioners 1961 Standard Industrial Mortality
271 Table and the rate of interest specified in the policy for
272 calculating cash surrender values and paid-up nonforfeiture
273 benefits provided that such rate of interest shall not exceed
274 three and one-half percent per annum except that a rate
275 of interest not exceeding four percent per annum may be
276 used for policies issued on or after the third day of June,
277 one thousand nine hundred seventy-four, and prior to the
278 sixth day of April, one thousand nine hundred seventy-seven,
279 and a rate of interest not exceeding five and one-half percent
280 per annum may be used for policies issued on or after the
281 sixth day of April, one thousand nine hundred seventy-seven,
282 except that for any single premium whole life or endowment
283 insurance policy a rate of interest not exceeding six and
284 one-half percent per annum may be used: *Provided*, That in
285 calculating the present value of any paid-up term insurance
286 with accompanying pure endowment, if any, offered as a
287 nonforfeiture benefit, the rates of mortality assumed may be
288 not more than those shown in the Commissioners 1961
289 Industrial Extended Term Insurance Table: *Provided, however*,
290 That for insurance issued on a substandard basis, the cal-
291 culation of any such adjusted premiums and present values
292 may be based on such other table of mortality as may be
293 specified by the company and approved by the commissioner.

294 After the effective date of this subsection (4b), any com-
295 pany may file with the commissioner a written notice of its

296 election to comply with the provisions of this subsection
297 after a specified date before the first day of January, one
298 thousand nine hundred sixty-eight. After the filing of such
299 notice, then upon such specified date (which shall be the
300 operative date of this subsection for such company), this
301 subsection shall become operative with respect to the in-
302 dustrial policies thereafter issued by such company. If a
303 company makes no such election, the operative date of this
304 subsection for such company shall be the first day of January,
305 one thousand nine hundred sixty-eight.

306 (4c) (a) This subsection shall apply to all policies issued
307 on or after the operative date of this subsection (4c) as
308 defined herein. Except as provided in the seventh para-
309 graph of this subsection, the adjusted premiums for any
310 policy shall be calculated on an annual basis and shall be
311 such uniform percentage of the respective premiums specified
312 in the policy for each policy year, excluding amounts pay-
313 able as extra premiums to cover impairments or special
314 hazards and also excluding any uniform annual contract
315 charge or policy fee specified in the policy in a statement
316 of the method to be used in calculating the cash surrender
317 values and paid-up nonforfeiture benefits, that the present
318 value, at the date of issue of the policy, of all adjusted
319 premiums shall be equal to the sum of (i) the then present
320 value of the future guaranteed benefits provided for by the
321 policy; (ii) one percent of either the amount of insurance,
322 if the insurance be uniform in amount, or the average amount
323 of insurance at the beginning of each of the first ten policy
324 years; and (iii) one hundred twenty-five percent of the
325 nonforfeiture net level premium as hereinafter defined:
326 *Provided*, That in applying the percentage specified in (iii)
327 above no nonforfeiture net level premium shall be deemed to
328 exceed four percent of either the amount of insurance, if
329 the insurance be uniform in amount, or the average amount
330 of insurance at the beginning of each of the first ten policy
331 years. The date of issue of a policy for the purpose of this
332 subsection shall be the date as of which the rated age of the
333 insured is determined;

334 (b) The nonforfeiture net level premium shall be equal

335 to the present value, at the date of issue of the policy, of
336 the guaranteed benefits provided for by the policy divided
337 by the present value, at the date of issue of the policy, of
338 an annuity of one per annum payable on the date of issue of
339 the policy and on each anniversary of such policy on which
340 a premium falls due;

341 (c) In the case of policies which cause on a basis guaran-
342 teed in the policy unscheduled changes in benefits or pre-
343 miums, or which provide an option for changes in benefits
344 or premiums other than a change to a new policy, the ad-
345 justed premiums and present values shall initially be cal-
346 culated on the assumption that future benefits and premiums
347 do not change from those stipulated at the date of issue
348 of the policy. At the time of any such change in the benefits
349 or premiums the future adjusted premiums, nonforfeiture
350 net level premiums and present values shall be recalculated
351 on the assumption that future benefits and premiums do not
352 change from those stipulated by the policy immediately after
353 the change;

354 (d) Except as otherwise provided in the seventh para-
355 graph of this subsection, the recalculated future adjusted
356 premiums for any such policy shall be such uniform percentage
357 of the respective future premiums specified in the policy
358 for each policy year, excluding amounts payable as extra
359 premiums to cover impairments and special hazards, and
360 also excluding any uniform annual contract charge or policy
361 fee specified in the policy in a statement of the method to
362 be used in calculating the cash surrender values and paid-up
363 nonforfeiture benefits, that the present value, at the time
364 of change to the newly defined benefits or premiums, of
365 all such future adjusted premiums shall be equal to the excess
366 of (A) the sum of (i) the then present value of the then
367 future guaranteed benefits provided for by the policy and
368 (ii) the additional expense allowance, if any, over (B) the
369 then cash surrender value, if any, or present value of any
370 paid-up nonforfeiture benefit under the policy;

371 (e) The additional expense allowance, at the time of the
372 change to the newly defined benefits or premiums, shall be

373 the sum of (i) one percent of the excess, if positive, of
374 the average amount of insurance at the beginning of each of
375 the first ten policy years subsequent to the change over the
376 average amount of insurance prior to the change at the
377 beginning of each of the first ten policy years subsequent
378 to the time of the most recent previous change, or, if there
379 has been no previous change, the date of issue of the policy;
380 and (ii) one hundred twenty-five percent of the increase,
381 if positive, in the nonforfeiture net level premium;

382 (f) The recalculated nonforfeiture net level premium shall
383 be equal to the result obtained by dividing (A) by (B) where:

384 (A) Equals the sum of

385 (i) The nonforfeiture net level premium applicable prior
386 to the change times the present value of an annuity of one
387 per annum payable on each anniversary of the policy on or
388 subsequent to the date of the change on which a premium
389 would have fallen due had the change not occurred; and

390 (ii) The present value of the increase in future guaranteed
391 benefits provided for by the policy;

392 (B) Equals the present value of an annuity of one per
393 annum payable on each anniversary of the policy on or sub-
394 sequent to the date of change on which a premium falls due.

395 (g) Notwithstanding any other provisions of this sub-
396 section to the contrary, in the case of a policy issued on
397 a substandard basis which provides reduced graded amounts
398 of insurance so that, in each policy year, such policy has
399 the same tabular mortality cost as an otherwise similar
400 policy issued on the standard basis which provides higher
401 uniform amounts of insurance, adjusted premiums and present
402 values for such substandard policy may be calculated as if
403 it were issued to provide such higher uniform amounts of
404 insurance on the standard basis;

405 (h) All adjusted premiums and present values referred to
406 in this section shall for all policies of ordinary insurance
407 be calculated on the basis of (i) the Commissioners 1980
408 Standard Ordinary Mortality Table or (ii) at the election of

409 the company for any one or more specified plans of life
410 insurance, the Commissioners 1980 Standard Ordinary Mor-
411 tality Table with ten-year select mortality factors; shall for
412 all policies of industrial insurance be calculated on the
413 basis of the Commissioners 1961 Standard Industrial Mor-
414 tality Table; and shall for all policies issued in a particular
415 calendar year be calculated on the basis of a rate of interest
416 not exceeding the nonforfeiture interest rate as defined in
417 this subsection for policies issued in that calendar year:
418 *Provided, That:*

419 (i) At the option of the company, calculations for all
420 policies issued in a particular calendar year may be made on
421 the basis of a rate of interest not exceeding the nonforfeiture
422 interest rate, as defined in this subsection, for policies issued
423 in the immediately preceding calendar year;

424 (ii) Under any paid-up nonforfeiture benefit, including
425 any paid-up dividend additions, any cash surrender value
426 available, whether or not required by subsection (1), shall
427 be calculated on the basis of the mortality table and rate
428 of interest used in determining the amount of such paid-up
429 nonforfeiture benefit and paid-up dividend additions, if any;

430 (iii) A company may calculate the amount of any guaran-
431 teed paid-up nonforfeiture benefit including any paid-up addi-
432 tions under the policy on the basis of an interest rate no
433 lower than that specified in the policy for calculating cash
434 surrender values;

435 (iv) In calculating the present value of any paid-up term
436 insurance with accompanying pure endowment, if any, offered
437 as a nonforfeiture benefit, the rates of mortality assumed
438 may be not more than those shown in the Commissioners
439 1980 Extended Term Insurance Table for policies of ordinary
440 insurance and not more than the Commissioners 1961 In-
441 dustrial Extended Term Insurance Table for policies of in-
442 dustrial insurance;

443 (v) For insurance issued on a substandard basis, the cal-
444 culation of any such adjusted premiums and present values
445 may be based on appropriate modifications of the afore-
446 mentioned tables;

447 (vi) Any ordinary mortality tables, adopted after 1980
448 by the National Association of Insurance Commissioners, that
449 are approved by regulation promulgated by the commissioner
450 for use in determining the minimum nonforfeiture standard
451 may be substituted for the Commissioners 1980 Standard
452 Ordinary Mortality Table with or without ten-year select
453 mortality factors or for the Commissioners 1980 Extended
454 Term Insurance Table; and

455 (vii) Any industrial mortality tables, adopted after 1980
456 by the National Association of Insurance Commissioners,
457 that are approved by regulation promulgated by the com-
458 missioner for use in determining the minimum nonforfeiture
459 standard may be substituted for the Commissioners 1961
460 Standard Industrial Mortality Table or the Commissioners
461 1961 Industrial Extended Term Insurance Table.

462 (i) The nonforfeiture interest rate per annum for any
463 policy issued in a particular calendar year shall be equal
464 to one hundred and twenty-five percent of the calendar year
465 statutory valuation interest rate for such policy as defined
466 in the Standard Valuation Law, rounded to the nearer one
467 quarter of one percent ($1/4$ of 1%);

468 (j) Notwithstanding any other provision in this code to
469 the contrary, any refiling of nonforfeiture values or their
470 methods of computation for any previously approved policy
471 form which involves only a change in the interest rate or
472 mortality table used to compute nonforfeiture values shall
473 not require refiling of any other provisions of that policy
474 form; and

475 (k) After the effective date of this subsection (4c), any
476 company may file with the commissioner a written notice
477 of its election to comply with the provisions of this section
478 after a specified date before the first day of January, one
479 thousand nine hundred eighty-nine, which shall be the oper-
480 ative date of this subsection for such company. If a company
481 makes no such election, the operative date of this section
482 for such company shall be the first day of January, one
483 thousand nine hundred eighty-nine.

484 (4d) In the case of any plan of life insurance which pro-
485 vides for future premium determination, the amounts of which
486 are to be determined by the insurance company based on
487 then estimates of future experience, or in the case of any
488 plan of life insurance which is of such a nature that minimum
489 values cannot be determined by the methods described in
490 subsections (1), (2), (3), (4), (4a), (4b) and (4c) herein, then:

491 (a) The commissioner must be satisfied that the benefits
492 provided under the plan are substantially as favorable to
493 policyholders and insureds as the minimum benefits other-
494 wise required by subsections (1), (2), (3), (4), (4a), (4b) or
495 (4c) herein;

496 (b) The commissioner must be satisfied that the benefits
497 and the pattern of premiums of that plan are not such as to
498 mislead prospective policyholders or insureds; and

499 (c) The cash surrender values and paid-up nonforfeiture
500 benefits provided by such plan must not be less than the
501 minimum values and benefits required for the plan computed
502 by a method consistent with the principles of this Standard
503 Nonforfeiture Law for Life Insurance, as determined by regu-
504 lations promulgated by the commissioner.

505 (5) Any cash surrender value and any paid-up nonforfeiture
506 benefit, available under the policy in the event of default
507 in a premium payment due at any time other than on the
508 policy anniversary, shall be calculated with allowance for the
509 lapse of time and the payment of fractional premiums beyond
510 the last preceding policy anniversary. All values referred to
511 in subsections (2), (3), (4), (4a), (4b) and (4c) may be cal-
512 culated upon the assumption that any death benefit is pay-
513 able at the end of the policy year of death. The net value
514 of any paid-up additions, other than paid-up term additions,
515 shall be not less than the amounts used to provide such
516 additions. Notwithstanding the provisions of subsection two,
517 additional benefits payable (i) in the event of death or dis-
518 memberment by accident or accidental means, (ii) in the
519 event of total and permanent disability, (iii) as reversion-
520 ary annuity or deferred reversionary annuity benefits, (iv)
521 as term insurance benefits provided by a rider or sup-

522 plemental policy provision to which, if issued as a separate
523 policy, this subsection would not apply, (v) as term in-
524 surance on the life of a child or on the lives of children
525 provided in a policy on the life of a parent of the child,
526 if such term insurance expires before the child's age is
527 twenty-six, is uniform in amount after the child's age is one,
528 and has not become paid up by reason of the death of a
529 parent of the child, and (vi) as other policy benefits addi-
530 tional to life insurance and endowment benefits, and pre-
531 miums for all such additional benefits, shall be disregarded
532 in ascertaining cash surrender values and nonforfeiture bene-
533 fits required by this section, and no such additional bene-
534 fits shall be required to be included in any paid-up nonfor-
535 feiture benefits.

536 (5a) This subsection, in addition to all other applicable
537 subsections of this law, shall apply to all policies issued on or
538 after the first day of January, one thousand nine hundred
539 eighty-five. Any cash surrender value available under the policy
540 in the event of default in a premium payment due on any
541 policy anniversary shall be in an amount which does not
542 differ by more than two tenths of one percent of either the
543 amount of insurance, if the insurance be uniform in amount,
544 or the average amount of insurance at the beginning of each
545 of the first ten policy years, from the sum of (a) the
546 greater of zero and the basic cash value hereinafter specified
547 and (b) the present value of any existing paid-up additions
548 less the amount of any indebtedness to the company under the
549 policy.

550 The basic cash value shall be equal to the present
551 value, on such anniversary, of the future guaranteed bene-
552 fits which would have been provided for by the policy, ex-
553 cluding any existing paid-up additions and before deduc-
554 tion of any indebtedness to the company, if there had been
555 no default, less the then present value of the nonforfeiture
556 factors, as hereinafter defined, corresponding to premiums
557 which would have fallen due on and after such anniversary:
558 *Provided*, That the effects on the basic cash value of supple-
559 mental life insurance or annuity benefits or of family coverage,
560 as described in subsection (2) or (4), whichever is ap-

561 plicable, shall be the same as are the effect specified in sub-
562 section (2) or (4), whichever is applicable, on the cash sur-
563 render values defined in that subsection.

564 The nonforfeiture factor for each policy year shall be an
565 amount equal to a percentage of the adjusted premium for
566 the policy year, as defined in subsection (4) or (4c), which-
567 ever is applicable. Except as is required by the next suc-
568 ceeding sentence of this paragraph, such percentage:

569 (a) Must be the same percentage for each policy year
570 between the second policy anniversary and the later of (i)
571 the fifth policy anniversary and (ii) the first policy anniver-
572 sary at which there is available under the policy a cash
573 surrender value in an amount, before including any paid-
574 up additions and before deducting any indebtedness, of at
575 least two tenths of one percent of either the amount of insur-
576 ance, if the insurance be uniform in amount, or the average
577 amount of insurance at the beginning of each of the first
578 ten policy years; and

579 (b) Must be such that no percentage after the later of
580 the two policy anniversaries specified in the preceding item
581 (a) may apply to fewer than five consecutive policy years:
582 *Provided*, That no basic cash value may be less than the
583 value which would be obtained if the adjusted premiums for
584 the policy, as defined in subsection (4) or (4c), whichever
585 is applicable, were substituted for the nonforfeiture factors
586 in the calculation of the basic cash value.

587 All adjusted premiums and present values referred to in
588 this subsection shall for a particular policy be calculated
589 on the same mortality and interest bases as are used in demon-
590 strating the policy's compliance with the other sections of
591 this law. The cash surrender values referred to in this sub-
592 section shall include any endowment benefits provided for by
593 the policy.

594 Any cash surrender value available other than in the event
595 of default in a premium payment due on a policy anniversary,
596 and the amount of any paid-up nonforfeiture benefit avail-
597 able under the policy in the event of default in a premium

598 payment shall be determined in manners consistent with the
599 manners specified for determining the analogous minimum
600 amounts in subsections (1), (2), (3), (4c) and (5). The
601 amounts of any cash surrender values and of any paid-up
602 nonforfeiture benefits granted in connection with additional
603 benefits such as those listed as items (i) through (vi) in sub-
604 section (5) shall conform with the principles of this subsec-
605 section (5a).

606 (6) This section shall not apply to any of the following:

607 (a) Reinsurance;

608 (b) Group insurance;

609 (c) Pure endowment;

610 (d) Annuity or reversionary annuity contract;

611 (e) Term policy of uniform amount, which provides no
612 guaranteed nonforfeiture or endowment benefits, or renewal
613 thereof, of twenty years or less expiring before age seventy-
614 one, for which uniform premiums are payable during the
615 entire term of the policy;

616 (f) Term policy of decreasing amount, which provides no
617 guaranteed nonforfeiture or endowment benefits, on which
618 each adjusted premium, calculated as specified in subsections
619 (4), (4a), (4b) and (4c), is less than the adjusted premium
620 so calculated on a policy of uniform amount, or renewal
621 thereof, which provides no guaranteed nonforfeiture or en-
622 dowment benefits, issued at the same age and for the same
623 initial amount of insurance and for a term of twenty years or
624 less expiring before age seventy-one, or which uniform pre-
625 miums are payable during the entire term of the policy;

626 (g) Policy, which provides no guaranteed nonforfeiture
627 or endowment benefits, for which no cash surrender value,
628 if any, or present value of any paid-up nonforfeiture benefit,
629 at the beginning of any policy year, calculated as specified
630 in subsections (2), (3), (4), (4a), (4b) and (4c), exceeds two
631 and one-half percent of the amount of insurance at the be-
632 ginning of the same policy year; and

633 (h) Policy which shall be delivered outside this state

634 through an agent or other representative of the insurer issuing
635 the policy. For purposes of determining the applicability of
636 this section, the age at expiry for a joint term life insurance
637 policy shall be the age at expiry of the oldest life.

CHAPTER 119

(H. B. 1603—By Mr. Goff)

[Passed March 9, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article thirteen, chapter thirty-three 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 section two, article twenty-three of said chapter, all relating to the maximum rate of interest on life insurance policy loans; reinstatements; applicability of other provisions of chapter.

Be it enacted by the Legislature of West Virginia:

That section twelve, article thirteen, chapter thirty-three 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 section two, article twenty-three of said chapter be amended and reenacted, all to read as follows:

Article

13. Life Insurance.

14. Fraternal Benefit Societies.

ARTICLE 13. LIFE INSURANCE.

§33-13-8a. Maximum rate of interest on policy loans.

§33-13-12. Reinstatements.

§33-13-8a. Maximum rate of interest on policy loans.

1 (a) For purposes of this section the “published monthly
2 average” means:

3 (1) Moody’s corporate bond yield average—monthly aver-

4 age corporates as published by Moody's Investors Service, Inc.,
5 or any successor thereto; or

6 (2) In the event that Moody's corporate bond yield average
7 —monthly average corporates is no longer published, a substan-
8 tially similar average, established by regulation issued by the
9 commissioner.

10 (b) Policies issued on or after the first day of June, one
11 thousand nine hundred eighty-three, shall provide for maxi-
12 mum policy loan interest rates as follows:

13 (1) A provision permitting a maximum interest rate of not
14 more than eight percent per annum; or

15 (2) A provision permitting an adjustable maximum interest
16 rate established from time to time by the life insurer as per-
17 mitted by law.

18 (c) The rate of interest charged on a policy loan made under
19 subdivision (2), subsection (b) of this section shall not exceed
20 the higher of the following:

21 (1) The published monthly average for the calendar month
22 ending two months before the date on which the rate is deter-
23 mined; or

24 (2) The rate used to compute the cash surrender values un-
25 der the policy during the applicable period plus one percent
26 per annum.

27 (d) If the maximum rate of interest is determined pursuant to
28 subdivision (2), subsection (b) of this section, the policy shall
29 contain a provision setting forth the frequency at which the
30 rate is to be determined for that policy.

31 (e) The maximum rate for each policy shall be determined
32 at regular intervals at least once every twelve months, but not
33 more frequently than once in any three-month period. At the
34 intervals specified in the policy:

35 (1) The rate being charged may be increased whenever such
36 increase as determined under subsection (c) of this section
37 would increase that rate by one-half percent or more per
38 annum; and

39 (2) The rate being charged shall be reduced whenever such
40 reduction as determined under subsection (c) of this section
41 would decrease that rate by one-half percent or more per
42 annum.

43 (f) The life insurer shall:

44 (1) Notify the policyholder at the time a cash loan is made
45 of the initial rate of interest on the loan;

46 (2) Notify the policyholder with respect to premium loans
47 of the initial rate of interest on the loan within forty-
48 five days after making the loan. Notice need not be given
49 to the policyholder when a further premium loan is added,
50 except as provided in subdivision (3) below;

51 (3) Send to policyholder with loans reasonable advance
52 notice of any increase in the rate; and

53 (4) Include in the notices required above the substance of
54 the pertinent provisions of subsections (b) and (d) of this
55 section.

56 (g) No policy shall terminate in a policy year as the sole
57 result of a change in the interest rate during that policy year,
58 and the life insurer shall maintain coverage during that policy
59 year until the time at which it would otherwise have terminated
60 if there had been no change during that policy year.

61 (h) The substance of the pertinent provisions of subsections
62 (b) and (d) shall be set forth in the policies to which they apply.

63 (i) For purposes of this section:

64 (1) The rate of interest on policy loans permitted under
65 this section includes the interest rate charged on reinstatement
66 of policy loans for the period during and after any lapse of a
67 policy;

68 (2) The term "policy loan" includes any premium loan made
69 under a policy to pay one or more premiums that were not
70 paid to the life insurer as they fell due;

71 (3) The term "policyholder" includes the owner of the policy

72 or the person designated to pay premiums as shown on the
73 records of the life insurer; and

74 (4) The term "policy" includes certificates issued by a
75 fraternal benefit society and annuity contracts which provide
76 for policy loans.

77 (j) No other provision of law shall apply to policy loan
78 interest rates unless made specifically applicable to such rates.

79 (k) The provisions of this section shall not apply to any
80 insurance contract issued before the first day of June, one
81 thousand nine hundred eighty-three, unless the policyholder
82 agrees in writing to the applicability of such provisions.

§33-13-12. Reinstatements.

1 There shall be a provision that unless the policy has been
2 surrendered for its cash surrender value or unless the paid-up
3 term insurance, if any, has expired, the policy will be re-
4 instated at any time within three years from the date of
5 premium default upon written application therefor, the produc-
6 tion of evidence of insurability satisfactory to the insurer,
7 the payment of all premiums in arrears, and the payment or
8 reinstatement of any other indebtedness to the insurer upon
9 the policy, all with interest at a rate not exceeding six percent
10 per annum compounded annually. However, with respect to
11 policies issued on or after the first day of June, one thousand
12 nine hundred eighty-three, the rate of interest on the payment
13 or reinstatement of any other indebtedness to the insurer upon
14 the policy shall be as provided in section eight-a of this
15 article.

ARTICLE 23. FRATERNAL BENEFIT SOCIETIES.

§33-23-2. Other provisions of chapter applicable.

1 Every fraternal benefit society shall be governed and be
2 subject, to the same extent as other insurers transacting like
3 kinds of insurance, to the following articles of this chapter:
4 Article one (definitions), article two (insurance commissioner),
5 article four (general provisions), article ten (rehabilitation and
6 liquidation), article eleven (unfair trade practices) and article
7 thirteen (life insurance).

CHAPTER 120

(S. B. 476—By Mr. Heck, Mr. Nelson and Mr. Kaufman)

[Passed March 12, 1983; 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 four-b; to amend article sixteen of said chapter by adding thereto a new section, designated section three-e; and to amend article twenty-four of said chapter by adding thereto a new section, designated section seven-a, all relating to providing that accident and sickness policies, group accident and sickness policies and hospital, medical service, dental and health service corporation policies cover nonsalaried, primary health care nursing services; and providing definition.

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 four-b; that article sixteen of said chapter be amended by adding thereto a new section, designated section three-e; and that article twenty-four of said chapter be amended by adding thereto a new section, designated section seven-a, all to read as follows:

Article

- 15. Accident and Sickness Insurance.
- 16. Group Accident and Sickness Insurance.
- 24. Hospital Service Corporations, Medical Service Corporations, Dental Service Corporations and Health Service Corporations.

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

§33-15-4b. Policies to cover nursing services; definition.

- 1 (a) Any insurer who, on or after the first day of
- 2 January, one thousand nine hundred eighty-four, delivers
- 3 or issues a policy of accident and sickness insurance
- 4 in this state under the provisions of this article shall
- 5 make available as benefits to all subscribers and members

6 coverage for primary health care nursing services as
7 hereinafter set forth if such services are currently being
8 reimbursed when rendered by any other duly licensed
9 health care practitioner. No insurer may be required
10 to pay for duplicative health care services actually pro-
11 vided by both a registered professional nurse or licensed
12 midwife and other health providers.

13 (b) For purposes of this section, section three-e, article
14 sixteen and section seven-a, article twenty-four of
15 this chapter, "primary health care nursing services"
16 includes nursing care rendered by a nonsalaried duly
17 licensed registered professional nurse engaged in private
18 nursing practice or partnership with other health care
19 providers within the lawful scope of practice as defined
20 in section one, article seven, chapter thirty of this code,
21 and care rendered by a licensed nurse midwife or mid-
22 wife as this occupation is defined in section one, article
23 fifteen, chapter thirty of this code, and which care is
24 within the scope of duties for such licensed nurse-midwife
25 or midwife as permitted by the provisions of section
26 seven, article fifteen of said chapter thirty.

27 (c) Nothing in this section may be construed to permit
28 any registered professional nurse licensee or midwife
29 licensee to perform professional services beyond such
30 individual's areas of professional competence as estab-
31 lished by education, training and experience.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-3e. Policies to cover nursing services.

1 (a) Any insurer who, on or after the first day of
2 January, one thousand nine hundred eighty-four, delivers
3 or issues a policy of group accident and sickness insurance
4 in this state under the provisions of this article shall
5 make available as benefits to all subscribers and mem-
6 bers coverage for primary health care nursing services as
7 defined in section four-b, article fifteen of this chapter,
8 if such services are currently being reimbursed when
9 rendered by any other duly licensed health care prac-
10 titioner. No insurer may be required to pay for duplica-
11 tive health care services actually provided by both a

12 registered professional nurse or licensed midwife and
13 other health providers.

14 (b) Nothing in this section may be construed to permit
15 any registered professional nurse licensee or midwife
16 licensee to perform professional services beyond such
17 individual's areas of professional competence as estab-
18 lished by education, training and experience.

**ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL
SERVICE CORPORATIONS, DENTAL SERVICE
CORPORATIONS AND HEALTH SERVICE COR-
PORATIONS.**

§33-24-7a. Contracts to cover nursing service.

1 (a) Any contract made under the provisions of this
2 article shall, on or after the first day of January, one
3 thousand nine hundred eighty-four, contain a provision
4 that the corporation shall make available as covered
5 benefits to all subscribers and members coverage for
6 primary health care nursing services as defined in sec-
7 tion four-b, article fifteen of this chapter, if such services
8 are currently being reimbursed when rendered by any
9 other duly licensed health care practitioner. No corpora-
10 tion may be required to pay for duplicative health care
11 services actually provided by both a registered profes-
12 sional nurse or licensed midwife and other health pro-
13 viders.

14 (b) Nothing in this section may be construed to permit
15 any registered professional nurse licensee or midwife
16 licensee to perform professional services beyond such
17 individual's scope of professional competence as estab-
18 lished by education, training and experience.

CHAPTER 121

(H. B. 1336—By Mr. Holt and Mr. Hutchinson)

[Passed March 4, 1983; 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 eleven; and to amend article sixteen of said chapter by adding thereto a new section, designated section seven, all relating to prohibiting individual and group hospital indemnity insurance policies from excluding coverage for confinement in government-operated hospitals.

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 eleven; and that article sixteen of said chapter be amended by adding thereto a new section, designated section seven, all to read as follows:

Article

15. **Accident and Sickness Insurance.**

16. **Group Accident and Sickness Insurance.**

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

§33-15-11. Hospital indemnity policies not to exclude coverage for confinement in government hospital.

1 No policy providing hospital indemnity coverage may ex-
2 clude coverage because of confinement in a hospital operated
3 by the federal or state government.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-7. Hospital indemnity policies not to exclude coverage for confinement in government hospital.

1 No policy providing hospital indemnity coverage may ex-
2 clude coverage because of confinement in a hospital operated
3 by the federal or state government.

CHAPTER 122

(Com. Sub. for H. B. 1287—By Mr. Farley and Mr. Shiflet)

[Passed February 28, 1983; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article twenty-two, chapter thirty-three of the code of West Virginia, one thousand nine

hundred thirty-one, as amended; and to amend and reenact section six, article thirty of said chapter, all relating to other provisions of chapter applicable; relating to mine subsidence coverage.

Be it enacted by the Legislature of West Virginia:

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

Article

- 22. Farmers' Mutual Fire Insurance Companies.**
- 30. Mine Subsidence Insurance.**

ARTICLE 22. FARMERS' MUTUAL FIRE INSURANCE COMPANIES.

§33-22-2. Other provisions of chapter applicable.

1 Each such company to the same extent such provisions are
2 applicable to domestic mutual insurers shall be governed by
3 and be subject to the following articles of this chapter: Article
4 one (definitions), article two (insurance commissioner), article
5 four (general provisions) except that section sixteen of article
6 four shall not be applicable thereto, article ten (rehabilitation
7 and liquidation) except that under the provisions of section
8 thirty-two of said article ten no assessment shall be levied
9 against any former member of a farmers' mutual fire in-
10 surance company who is no longer a member of such company
11 at the time the order to show cause was issued, article eleven
12 (unfair practices and frauds), article twelve (agents, brokers
13 and solicitors) except that the agents' license fee shall be one
14 dollar, article twenty-six (West Virginia Insurance Guaranty
15 Association Act), and article thirty (mine subsidence in-
16 surance) except that under the provisions of section six, article
17 thirty, a farmers' mutual insurance company shall have the
18 option of offering mine subsidence coverage to all of its
19 policyholders but shall not be required to do so; but only to
20 the extent such provisions are not inconsistent with the pro-
21 visions of this article.

ARTICLE 30. MINE SUBSIDENCE INSURANCE.**§33-30-6. Mine subsidence coverage.**

1 Beginning the first day of October, one thousand nine
2 hundred eighty-two, every insurance policy issued or renewed
3 insuring on a direct basis a structure located in this state shall
4 include, at a separately stated premium, insurance for loss
5 occurring on or after October first, one thousand nine hun-
6 dred eighty-two, caused by mine subsidence if requested by
7 the insured. The premium charged for coverage shall be the
8 same as the premium level set by the board. The loss coverage
9 shall be the loss in excess of two percent of the policy's total
10 insured value, but at no time shall the deductible be less than
11 two hundred fifty dollars nor more than five hundred dol-
12 lars; and total insured value reinsured by the board shall not
13 exceed fifty thousand dollars.

CHAPTER 123**(H. B. 2023—By Mr. Gilliam)**

[Passed March 12, 1983; in effect July 1, 1983. Approved by the Governor.]

AN ACT to amend and reenact section two, article one, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section two, article two of said chapter; to amend and reenact section twelve, article four of said chapter; to amend and reenact sections two, six, eight and nine, article six of said chapter; and to amend and reenact section six-a, article nine, chapter eighteen of said code, all relating to depositories for demand deposits; categories of demand deposits; competitive bidding for disbursement accounts; maintenance of deposits by treasurer; itemized record of moneys received for deposit; regulations governing deposits; credit to state fund; exceptions; treasurer authorized to provide check-cashing service; establishment and audit of cash funds; definitions; costs and expenses; fees for services; investment funds established; management thereof; permissible investments; and school finances.

Be it enacted by the Legislature of West Virginia:

That section two, article one, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section two, article two of said chapter be amended and reenacted; that section twelve, article four of said chapter be amended and reenacted; that sections two, six, eight and nine, article six of said chapter be amended and reenacted; and that section six-a, article nine, chapter eighteen of said code be amended and reenacted, all to read as follows:

Chapter

12. Public Moneys and Securities.

18. Education.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

Article

1. State Depositories.

2. Payment and Deposit of Taxes and Other Amounts Due the State or Any Political Subdivision.

4. Accounts, Reports and General Provisions.

6. West Virginia State Board of Investments.

ARTICLE 1. STATE DEPOSITORIES.

§12-1-2. Depositories for demand deposits; categories of demand deposits; competitive bidding for disbursement accounts; maintenance of deposits by treasurer.

1 The state board of investments shall designate the state
2 and national banks in this state which shall serve as depositor-
3 ies for all state funds placed in demand deposits. Any such
4 state or national bank shall, upon request to such board, be
5 designated as a state depository for such deposits, if such
6 bank meets the requirements set forth in this chapter.

7 Demand deposit accounts shall consist of receipt, disburse-
8 ment and investment accounts. Receipt accounts shall be
9 those accounts in which are deposited moneys belonging to
10 or due the state of West Virginia or any official, department,
11 board, commission or agency thereof.

12 Disbursement accounts shall be those accounts from which
13 are paid moneys due from the state of West Virginia or any
14 official, department, board, commission, political subdivision

15 or agency thereof to any political subdivision, person, firm
16 or corporation except moneys paid from investment accounts.

17 Investment accounts shall be those accounts established
18 by the treasurer or board of investments for the buying and
19 selling of securities for investment for the state of West
20 Virginia or any official, department, board, commission or
21 agency thereof or to meet obligations to paying agents or
22 for paying charges incurred for the custody, safekeeping and
23 management of such securities pursuant to the provisions of
24 section five, article five of this chapter, or for paying the
25 charges of any bank or trust company acting as paying agent
26 or copaying agent for a bond issue of the state pursuant to
27 the provisions of section seven-a, article one, chapter fifty-
28 seven of this code.

29 The board of investments shall promulgate rules and
30 regulations, in accordance with the provisions of chapter
31 twenty-nine-a of the code of West Virginia, as amended,
32 concerning depositories for receipt accounts and investment
33 accounts prescribing the selection criteria, procedures, com-
34 pensation and such other contractual terms as it considers
35 to be in the best interests of the state giving due considera-
36 tion to: (1) The activity of the various accounts maintained
37 therein; (2) the reasonable value of the banking services
38 rendered or to be rendered the state by such depositories;
39 and (3) the value and importance of such deposits to the
40 economy of the communities and the various areas of the
41 state affected thereby.

42 The board of investments shall select depositories for dis-
43 bursement accounts through competitive bidding by eligible
44 banks in this state. The board shall promulgate rules and
45 regulations, in accordance with the provisions of chapter twen-
46 ty-nine-a of the code of West Virginia, as amended, prescrib-
47 ing the procedures and criteria for such bidding and selec-
48 tion. It shall, in its invitations for bids, specify the approxi-
49 mate amounts of deposits, the duration of contracts to be
50 awarded and such other contractual terms as it considers to
51 be in the best interests of the state, consistent with obtaining
52 the most efficient service at the lowest cost.

53 The amount of money needed for current operation pur-
54 poses of the state government, as determined by the state
55 treasurer, shall be maintained at all times in the state treasury,
56 in cash or in disbursement accounts with banks designated
57 as depositories in accordance with the provisions of this
58 section. No state officer or employee shall make or cause
59 to be made any deposits of state funds in banks not so
60 designated.

**ARTICLE 2. PAYMENT AND DEPOSIT OF TAXES AND OTHER
AMOUNTS DUE THE STATE OR ANY POLITICAL
SUBDIVISION.**

**§12-2-2. Itemized record of moneys received for deposit; regula-
tions governing deposits; credit to state fund; exceptions.**

1 All officials and employees of the state authorized by
2 statute to accept moneys due the state of West Virginia
3 shall keep a daily itemized record of such moneys so re-
4 ceived for deposit in the state treasury and shall deposit
5 within twenty-four hours with the state treasurer all moneys
6 received or collected by them for or on behalf of the state
7 for any purpose whatsoever. The treasurer shall promulgate
8 rules and regulations, in accordance with the provisions of
9 chapter twenty-nine-a of this code governing the procedure
10 for such deposits. When so paid, such moneys shall be
11 credited to the state fund and treated by the auditor and
12 treasurer as part of the general revenue of the state: *Provided,*
13 That all moneys received out of appropriations made by the
14 Congress of the United States shall be carried in special fund
15 accounts, apart from the general revenues of the state,
16 in the state treasury and all such moneys shall not be used
17 for any purpose whatsoever unless and until authorized and
18 directed by the Legislature, excepting the following funds which
19 shall be carried in separate accounts:

20 (a) All funds excluded by the provisions of section six,
21 article eleven, chapter four of this code;

22 (b) All funds derived from the sale of farm and dairy prod-
23 ucts from farms operated by any agency of the state
24 government other than the farm management commission;

25 (c) All endowment funds, bequests, donations, executive
26 emergency funds, and death and disability funds;

27 (d) All fees and funds collected at state educational in-
28 stitutions for student activities;

29 (e) All funds derived from collections from dormitories,
30 boardinghouses, cafeterias and road camps;

31 (f) All moneys received from counties by institutions
32 for the deaf and blind on account of clothing for indigent
33 pupils;

34 (g) All insurance collected on account of losses by fire
35 and refunds;

36 (h) All funds derived from bookstores and sales of blank
37 paper and stationery, and collections by the chief inspector
38 of public offices;

39 (i) All moneys collected and belonging to the capitol
40 building fund, state road fund, state road sinking funds,
41 general school fund, school fund, state fund (moneys belong-
42 ing to counties, districts and municipalities), state interest
43 and sinking funds, state compensation funds, the fund main-
44 tained by the public service commission for the investigation
45 and supervision of applications and all funds and moneys
46 payable to or received by the natural resources commission
47 of West Virginia;

48 (j) All moneys collected or received under any act of
49 the Legislature providing that funds collected or received
50 thereunder shall be used for specific purposes.

51 The state treasurer shall have authority to establish an
52 imprest fund or funds in the office of any state agency or
53 institution making proper application to him. To implement
54 this authority the treasurer shall promulgate rules and regu-
55 lations, in accordance with the provisions of chapter twenty-
56 nine-a of this code. The treasurer or his designee shall an-
57 nually audit all such funds and prepare a list of all such
58 funds showing the location and amount as of fiscal year
59 end, retaining such list as a permanent record of the trea-
60 surer's office until such time as the legislative auditor shall

61 have completed an audit of the imprest funds of all agencies
62 and institutions involved.

63 All moneys, excepted as aforesaid, shall be paid into the
64 state treasury in the same manner as collections not so ex-
65 cepted, and shall be carried in separate accounts to be used
66 and expended only for the purposes for which the same
67 are authorized to be collected by law. The gross amount
68 collected in all cases shall be paid into the state treasury,
69 and commissions, costs and expenses of collection authorized
70 by general law to be paid out of the gross collection are
71 hereby authorized to be paid out of the moneys collected
72 and paid into the state treasury in the same manner as other
73 payments are made from the state treasury.

74 The official or employee making such deposits in the
75 state treasury shall prepare such deposit lists in such manner
76 and upon such report forms as may be prescribed by the
77 treasurer. The original of this report shall accompany the
78 deposit to the treasurer's office. Certified or receipted copies
79 shall be immediately forwarded by the state treasurer to the
80 state auditor and to the commissioner of finance and ad-
81 ministration, and a copy shall be kept by the official or
82 employee making the report and shall become a part of his
83 permanent record.

ARTICLE 4. ACCOUNTS, REPORTS AND GENERAL PROVISIONS.

§12-4-12. Treasurer authorized to provide check-cashing service; establishment and audit of cash funds.

1 The treasurer may provide a check-cashing service at his
2 office in the capitol building and may charge fees for such
3 service for each check cashed and for each check returned
4 for insufficient funds. For this purpose, he may establish
5 from receipts in the treasury not more than two cash funds
6 each in an initial amount not to exceed one hundred thou-
7 sand dollars. He shall designate certain employees in his
8 office who are to provide the service and have charge of
9 such funds, and may require such employees to be bonded
10 either individually or by blanket bonds. The cost of such
11 bond or bonds shall be paid out of the treasurer's current
12 expense appropriation.

13 The fees received for such service shall be deposited in
14 the cash funds and itemized accounts of such receipts shall
15 be maintained. Any check determined by the treasurer to
16 be uncollectible shall be charged against the fund from which
17 it was cashed. The legislative auditor shall, at least an-
18 nually, but may at any time, audit the cash funds and all
19 accounts and records relating to the service provided pur-
20 suant to this section. If the amount of either cash fund (after
21 charges for uncollectible checks) exceeds one hundred thou-
22 sand dollars at the conclusion of any audit, the treasurer
23 shall transfer such excess to the general revenue fund.

ARTICLE 6. WEST VIRGINIA STATE BOARD OF INVESTMENTS.

§12-6-2. Definitions.

§12-6-6. Costs and expenses; fees for services.

§12-6-8. Investment funds established; management thereof.

§12-6-9. Permissible investments.

§12-6-2. Definitions.

1 As used in this article, unless a different meaning clearly
2 appears from the context:

3 (1) "Board" means the West Virginia state board of in-
4 vestments;

5 (2) "Consolidated fund" means the investment fund man-
6 aged by the board and established pursuant to subsection
7 (b), section eight of this article;

8 (3) "Consolidated pension fund" means the investment fund
9 managed by the board and established pursuant to subsection
10 (a), section eight of this article;

11 (4) "Local government account" means the account within
12 the consolidated fund established pursuant to subsection (b),
13 section eight of this article;

14 (5) "Local government funds" means the moneys of a
15 political subdivision, including policemen's pension and re-
16 lief funds, firemen's pension and relief funds and volunteer
17 fire departments, transferred to the board for deposit in the
18 local government account;

19 (6) "Pension funds" means and includes the workmen's

20 compensation fund; the state teachers retirement system funds;
21 the death, disability and retirement fund for members of
22 the department of public safety; the public employees retire-
23 ment system funds; the judges retirement fund; and such
24 other retirement or pension funds and systems as may be here-
25 after established on behalf of public employees of the state
26 or of its political subdivisions and administered by the state;
27 or pension funds established on behalf of public employees
28 of its political subdivisions and administered by the political
29 subdivisions;

30 (7) "Political subdivision" means and includes a county,
31 municipality, or any agency, authority, board, commission or
32 instrumentality of a county or municipality, and regional coun-
33 cils created pursuant to the provisions of section five, article
34 twenty-five, chapter eight of this code;

35 (8) "Securities" means all bonds, notes, debentures or
36 other evidences of indebtedness and shall not mean corporate
37 stock;

38 (9) "State account" means the account within the consoli-
39 dated fund established pursuant to subsection (b), section
40 eight of this article; and

41 (10) "State funds" means all moneys of the state which may
42 be lawfully invested except (a) the pension fund (as defined
43 in subdivision (6) of this section) and (b) the "school fund"
44 established by section four, article XII of the state constitution.

§12-6-6. Costs and expenses; fees for services.

1 All costs and expenses of the board including fees of
2 professional consultants, advisors and auditors, brokerage
3 commissions and all other necessary expenses of the board
4 incurred in the performance of its functions shall be proper
5 charges against, and payable on a pro rata basis from, the
6 earnings of the various funds managed by the board.

§12-6-8. Investment funds established; management thereof.

1 (a) There is hereby established a special investment fund
2 to be managed by the board and designated as the "con-
3 solidated pension fund" for the common investment of pension

4 funds. All administrators, custodians or trustees of the var-
5 ious pension funds are hereby authorized to make moneys
6 available to the board for investment. Pension funds received
7 by the board shall be deposited in the consolidated pension
8 fund. Any security deposited by the various pension funds
9 shall be valued at the prevailing market price on the day
10 of deposit.

11 (b) There is hereby also established a special investment
12 fund to be managed by the board and designated as the
13 "consolidated fund." The consolidated fund shall consist of
14 a special account for the common investment of state funds
15 designated as the "state account" and a special account for
16 the common investment of local government funds designated
17 as the "local government account." Moneys in both accounts
18 may be combined for the common investment of the con-
19 solidated fund on an equitable basis.

20 (c) Each board, commission, department, official or agency
21 charged with the administration of state funds is hereby
22 authorized to make moneys available to the board for invest-
23 ment. State funds received by the board shall be deposited
24 in the state account.

25 (d) Each political subdivision of this state through its
26 treasurer or equivalent financial officer is hereby authorized
27 to enter into agreements with the board for the investment
28 of moneys of such political subdivision: *Provided*, That it
29 first be determined by the treasurer for such political sub-
30 division that the available interest rate offered by an accep-
31 table depository in such treasurer's county be less than the
32 interest rate, net of administrative fees referred to in article
33 six, chapter twelve of this code, offered it through the state
34 board of investments. Local government funds received by
35 the board pursuant to such agreements shall be deposited in
36 the local government account. Any political subdivision may
37 enter into an agreement with any state agency from which
38 it receives funds to allow such funds to be transferred to
39 their investment account with the state board of investments.

40 (e) Each county board of education through its treasurer
41 is hereby authorized to enter into agreements with the board

42 of investments for the investment of moneys of such county
43 board of education: *Provided, however,* That it first be
44 determined by the treasurer for such county board of edu-
45 cation that the available interest rate offered by an accept-
46 able depository in such treasurer's county be less than the
47 interest rate, net of administrative fees referred to in article
48 six, chapter twelve of this code, offered it through the state
49 board of investments.

50 (f) Moneys held in the various funds and accounts ad-
51 ministered by the board shall be invested as permitted in
52 section nine and subject to the restrictions contained in
53 section ten of this article. The board shall maintain records
54 of the deposits and withdrawals of each participant and the
55 performance of the various funds and accounts. The board
56 shall also establish such rules and regulations for the ad-
57 ministration of the various funds and accounts established
58 by this section as it shall deem necessary for the administra-
59 tion thereof, including, but not limited to: (1) The specifica-
60 tion of minimum amounts which may be deposited in any
61 fund or account and minimum periods of time for which
62 deposits will be retained; (2) creation of reserves for losses;
63 (3) provision for payment of expenses from earnings; and
64 (4) distribution of the earnings in excess of such expenses
65 or allocation of losses to the several participants in an equit-
66 able manner: *Provided,* That in the event any moneys made
67 available to the board may not lawfully be combined for
68 investment or deposited in the consolidated funds established
69 by this section, the board may create special accounts and
70 may administer and invest such moneys in accordance with
71 the restrictions specially applicable thereto.

72 (g) The board shall at all times maintain and have available
73 for public inspection a report containing monthly balances in
74 the treasury, which said balances shall include, but not be
75 limited to, the following:

76 (a) Total local government account balance.

77 (b) General revenue surplus balance.

78 (c) General revenue surplus appropriation account balance.

- 79 (d) State general revenue reappropriated account balance.
80 (e) State general revenue current account balance.
81 (f) Total state account balance.
82 (g) Total general revenue.
83 (h) Total of state account balance which is invested longer
84 than overnight.
85 (i) Total of state account balance which is invested over-
86 night.
- 87 The board shall not be required to make such information
88 available until January first, one thousand nine hundred eighty-
89 four: *Provided*, That the board shall have such reports avail-
90 able on a daily basis for each day the Legislature is in session.

§12-6-9. Permissible investments.

- 1 Notwithstanding the restrictions which may otherwise be
2 provided by law as to the investment of funds, the board may
3 invest funds made available to it in any of the following:
- 4 (a) Any direct obligation of, or obligation guaranteed as
5 to the payment of both principal and interest by, the United
6 States of America;
- 7 (b) Any evidence of indebtedness issued by any of the
8 following agencies: Government National Mortgage Associa-
9 tion, Federal Land Banks, Federal Home Loan Banks, Federal
10 Intermediate Credit Banks, Banks for Cooperatives, Tennessee
11 Valley Authority, United States Postal Service, Farmers Home
12 Administration, Export-Import Bank, Federal Financing Bank,
13 Federal Home Loan Mortgage Corporation, Student Loan
14 Marketing Association and Federal Farm Credit Banks;
- 15 (c) Any evidence of indebtedness issued by the Federal
16 National Mortgage Association to the extent such indebtedness
17 is guaranteed by the Government National Mortgage Asso-
18 ciation;
- 19 (d) Any evidence of indebtedness that is secured by a first
20 lien deed of trust or mortgage upon real property situate
21 within this state, if the payment thereof is substantially in-

22 sured or guaranteed by the United States of America or any
23 agency thereof;

24 (e) Direct and general obligations of this state;

25 (f) Any undivided interest in a trust, the corpus of which
26 is restricted to mortgages on real property and, unless all
27 of such property is situate within the state and insured, such
28 trust at the time of the acquisition of such undivided interest,
29 is rated in one of the three highest rating grades by an agency
30 which is nationally known in the field of rating pooled
31 mortgage trusts;

32 (g) Any bond, note, debenture, commercial paper or other
33 evidence of indebtedness of any private corporation or asso-
34 ciation organized and operating in the United States: *Provided*,
35 That any such security is, at the time of its acquisition, rated
36 in one of the three highest rating grades by an agency which
37 is nationally known in the field of rating corporate securities:
38 *Provided, however*, That if any commercial paper and/or
39 any such security will mature within one year from the date
40 of its issuance, it shall, at the time of its acquisition, be
41 rated in one of the two highest rating grades by such an
42 agency: *Provided further*, That any such security not rated
43 in one of the two highest rating grades by any such agency
44 and commercial paper or other evidence of indebtedness of
45 any private corporation or association shall be purchased
46 only upon the written recommendation from an investment
47 adviser that has over three hundred million dollars in other
48 funds under its management;

49 (h) Negotiable certificates of deposit issued by any bank,
50 trust company, national banking association or savings in-
51 stitution organized and operating in the United States, which
52 mature in less than one year and are fully collateralized; and

53 (i) Interest earning deposits including certificates of de-
54 posit, with any duly designated state depository, which de-
55 posits are fully secured by a collaterally secured bond as
56 provided in section four, article one of this chapter.

CHAPTER 18. EDUCATION.**ARTICLE 9. SCHOOL FINANCES.****§18-9-6a. County board of education treasurer authorized to make funds available to state board of investments; allocation of income.**

1 Notwithstanding any other provision of this code, when
2 it appears to any of the various county boards of education
3 that funds on deposit in its demand deposit account exceed
4 the current requirements or demands, and it further be deter-
5 mined by the treasurer for such county board of education
6 that the available interest rate offered by an acceptable
7 depository in such treasurer's county be less than the interest
8 rate, net of administrative fees referred to in article six,
9 chapter twelve of this code, offered it through the state board
10 of investments, the county board of education treasurer may,
11 with the approval in writing of each county board of educa-
12 tion whose funds are involved, make such funds available to
13 the state board of investments for investment in accordance
14 with the provisions of said article six, chapter twelve of the
15 code. Any county board of education treasurer may enter
16 into an agreement with any state agency from which they
17 receive funds to allow such funds to be transferred to their
18 investment account with the state board of investments.

19 Any income earned on such investment shall be allocated
20 by such treasurer to the board of education whose funds were
21 made available, such allocation to be made in accordance
22 with the accounting and allocation principles established by
23 the board of investments.

CHAPTER 124

(S. B. 321—By Mr. McGraw, Mr. President)

[Passed January 31, 1983; in effect from passage. Approved by the Governor.]

AN ACT to amend article six, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nine-a,

relating to requiring the board of investments to transfer moneys to the general revenue fund for timely payment of governmental services, with repayment to the board to be made with interest by June thirtieth, one thousand nine hundred eighty-three.

Be it enacted by the Legislature of West Virginia:

That article six, 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 nine-a, to read as follows:

ARTICLE 6. WEST VIRGINIA STATE BOARD OF INVESTMENTS.

§12-6-9a. Transfers to the state.

1 Whenever the governor determines that the general revenues
2 in the treasury available for expenditure are insufficient for
3 timely payment of government services provided by general
4 revenue appropriations, the board shall transfer such moneys
5 from the consolidated fund to the general revenue fund of
6 the state as are determined by the governor to be necessary to
7 meet such payments. The total of such transfers shall not
8 exceed fifty million dollars, and such transfers shall be repaid
9 no later than the thirtieth day of June, one thousand nine
10 hundred eighty-three, and shall be subject to interest equal to
11 the actual interest rate earned by the consolidated fund on the
12 day of each transfer for the period of each transfer.

CHAPTER 125

(Com. Sub. for H. B. 1100—By Mrs. Blatnik)

[Passed February 22, 1983; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article twenty-nine, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to law-enforcement officer training and certification; and providing an exemption from such training and certification for any law-enforcement officer who has been employed in such capacity for a

period of not less than five consecutive years immediately prior to date of certification.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 29. LAW-ENFORCEMENT OFFICER TRAINING AND CERTIFICATION.

§30-29-5. Certification requirements.

1 (a) Except as provided in subsections (b) and (g) below,
2 no person may be employed as a law-enforcement officer by
3 any West Virginia law-enforcement agency on or after the
4 effective date of this article unless the person is certified, or
5 is certifiable in one of the manners specified in subsections
6 (c) through (e) below, by the governor's committee as having
7 met the minimum entry level law-enforcement qualification and
8 training program requirements promulgated pursuant to this
9 article.

10 (b) Except as provided in subsection (g) below, a person
11 who is not certified, or certifiable in one of the manners
12 specified in subsections (c) through (e) below, may be con-
13 ditionally employed as a law-enforcement officer until cer-
14 tified: *Provided*, That, within ninety calendar days of the
15 commencement of employment or the effective date of this
16 article if the person is already employed on the effective
17 date, he or she makes a written application to attend an
18 approved law-enforcement training academy. The academy
19 shall notify the applicant in writing of the receipt of the
20 application and of the tentative date of the applicant's en-
21 rollment. Any applicant who, as the result of extenuating
22 circumstances acceptable to his or her law-enforcement of-
23 ficial, is unable to attend the scheduled training program
24 to which he or she was admitted may reapply and shall be
25 admitted to the next regularly scheduled training program.
26 An applicant who satisfactorily completes the program shall,
27 within thirty days of completion, make written application
28 to the governor's committee requesting certification as hav-

29 ing met the minimum entry level law-enforcement qualifi-
30 cation and training program requirements. Upon determin-
31 ing that an applicant has met the requirements for certifi-
32 cation, the governor's committee shall forward to the appli-
33 cant documentation of certification. An applicant who fails
34 to complete the training program to which he or she is first
35 admitted, or was admitted upon reapplication, may not be
36 certified by the governor's committee.

37 (c) Any person who is employed as a law-enforcement
38 officer on the effective date of this article and is a graduate
39 of the West Virginia basic police training course, the West
40 Virginia department of public safety cadet training pro-
41 gram, or other approved law-enforcement training academy,
42 is certifiable as having met the minimum entry law-enforce-
43 ment training program requirements and is exempt from
44 the requirement of attending a law-enforcement training
45 academy. To receive certification, the person shall make
46 written application within ninety calendar days of the ef-
47 fective date of this article to the governor's committee re-
48 questing certification. The governor's committee shall review
49 the applicant's relevant scholastic records and, upon deter-
50 mining that the applicant has met the requirements for certifica-
51 tion, shall forward to the applicant documentation of certifi-
52 cation.

53 (d) Any person who is employed as a law-enforcement
54 officer on the effective date of this article and is not a
55 graduate of the West Virginia basic police training course,
56 the West Virginia department of public safety cadet training
57 program, or other approved law-enforcement training academy,
58 is certifiable as having met the minimum entry level law-
59 enforcement training program requirements and is exempt
60 from the requirement of attending a law-enforcement training
61 academy if the person has been employed as a law-enforcement
62 officer for a period of not less than five consecutive years
63 immediately preceding the date of application for certifica-
64 tion. To receive certification, the person shall make written
65 application within ninety calendar days following the ef-
66 fective date of this article to the governor's committee re-
67 questing certification. The application shall include notarized

68 statements as to the applicant's years of employment as a
69 law-enforcement officer. The governor's committee shall re-
70 view the application and, upon determining that the applicant
71 has met the requirements for certification, shall forward to
72 the applicant documentation of certification.

73 (e) Any person who begins employment on or after the
74 effective date of this article as a law-enforcement officer
75 is certifiable as having met the minimum entry level law-
76 enforcement training program requirements and is exempt
77 from attending a law-enforcement training academy if the
78 person has satisfactorily completed a course of instruction
79 in law enforcement equivalent to or exceeding the minimum
80 applicable law-enforcement training curricula promulgated by
81 the governor's committee. To receive certification, the person
82 shall make written application within ninety calendar days
83 following the commencement of employment to the governor's
84 committee requesting certification. The application shall in-
85 clude a notarized statement of the applicant's satisfactory com-
86 pletion of the course of instruction in law enforcement, a
87 notarized transcript of the applicant's relevant scholastic re-
88 cords, and a notarized copy of the curriculum of the completed
89 course of instruction. The governor's committee shall review
90 the application and, if it finds the applicant has met the
91 requirements for certification, shall forward to the applicant
92 documentation of certification.

93 (f) Any person who is employed as a law-enforcement offi-
94 cer on or after the effective date of this article and fails to
95 be certified shall be automatically terminated and no further
96 emoluments shall be paid to such officer by his employer.
97 Any person terminated shall be entitled to reapply, as a private
98 citizen, to the subcommittee for training and certification, and
99 upon being certified may again be employed as a law-enforce-
100 ment officer in this state.

101 (g) Nothing in this article may be construed as prohibiting
102 any governing body, civil service commission or chief execu-
103 tive of any West Virginia law-enforcement agency from re-
104 quiring their law-enforcement officers to meet qualifications
105 and satisfactorily complete a course of law-enforcement instruc-
106 tion which exceeds the minimum entry level law-enforcement

107 qualification and training curricula promulgated by the gov-
108 ernor's committee.

109 (h) The requirement of this section for qualification, train-
110 ing and certification of law-enforcement officers shall not
111 be mandatory during the two years next succeeding the effec-
112 tive date of this article for the law-enforcement officers of a
113 law-enforcement agency which employs a civil service system
114 for its law-enforcement personnel, nor shall such provisions be
115 mandatory during the five years next succeeding the effective
116 date of this article for law-enforcement officers of a law-
117 enforcement agency which does not employ a civil service
118 system for its law-enforcement personnel: *Provided*, That
119 such requirements shall be mandatory for all such law-enforce-
120 ment officers until their law-enforcement officials apply for
121 their exemption by submitting a written plan to the governor's
122 committee which will reasonably assure compliance of all
123 law-enforcement officers of their agencies within the applica-
124 ble two or five-year period of exemption.

125 (i) Any person aggrieved by a decision of the governor's
126 committee made pursuant to this article may contest such
127 decision in accordance with the provisions of article five,
128 chapter twenty-nine-a of this code.

CHAPTER 126

(Com. Sub. for S. B. 514—By Mr. Rogers, Mr. Tomblin and Mr. Chafin)

[Passed March 5, 1983: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article three, chapter fifty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to rates for legal advertisements; computation; and filing affidavits with secretary of state.

Be it enacted by the Legislature of West Virginia:

That section three, article three, chapter fifty-nine of the

code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 3. NEWSPAPERS AND LEGAL ADVERTISEMENTS.

§59-3-3. Rates for legal advertisements; computation; filing affidavits with secretary of state.

1 (a) The rates which a publisher or proprietor of a
2 qualified newspaper in West Virginia may charge and
3 receive for a single or first publication of any legal ad-
4 vertisement set solid shall depend upon the bona fide
5 circulation of such newspaper, as follows:

6 (1) Two cents per word if the qualified newspaper has
7 a bona fide circulation of one thousand or less;

8 (2) Five cents per word if the qualified newspaper has
9 a bona fide circulation of one thousand to ten thousand;

10 (3) Six and one-fourth cents per word if the qualified
11 newspaper has a bona fide circulation of more than ten
12 thousand but less than forty thousand; or

13 (4) Seven and one-fourth cents per word if the quali-
14 fied newspaper has a bona fide circulation of forty thou-
15 sand or more.

16 (b) In computing the number of words in a legal
17 advertisement, not set solid, the basis shall be upon the
18 size of type in which legal advertising is set by the quali-
19 fied newspaper making the publication, and shall be
20 computed at the legal rate as though the matter was solid
21 type, that is to say, on the basis of eighty-four words to
22 the single column inch in six point type, and fifty-four
23 words to the single column inch in eight point type, and
24 any other size type in proportion.

25 (c) In determining the cost of a legal advertisement
26 which is to appear more than once in the same qualified
27 newspaper, the cost for the first publication shall be com-
28 puted as specified in subsections (a) and (b) of this
29 section, and the cost of the second and each subsequent
30 publication shall be seventy-five percent of the cost of the
31 first publication computed as aforesaid.

32 (d) The rates provided for in this section may be
33 charged on and after the first day of July, one thousand
34 nine hundred eighty-three. Between the effective date of
35 this section and the said first day of July, one thousand
36 nine hundred eighty-three, the rates for publishing legal
37 advertisements shall be those in effect immediately prior
38 to the effective date of this section. The average bona fide
39 circulation stated by each qualified newspaper in the
40 statement filed by such newspaper with the United States
41 post office department in November, one thousand nine
42 hundred eighty-two, shall control the rate circulation
43 classification of such qualified newspaper for the period
44 from the first day of July, one thousand nine hundred
45 eighty-three, until the first day of July, one thousand
46 nine hundred eighty-four. On or before the first day of
47 November, one thousand nine hundred eighty-four, the
48 publisher or proprietor of each newspaper desiring to pub-
49 lish any legal advertisement during the ensuing fiscal
50 year shall file with the secretary of state an affidavit
51 stating the average bona fide circulation of such news-
52 paper during the preceding calendar year, and sufficient
53 facts shall be set forth in the affidavit to show whether
54 such newspaper is a qualified newspaper. The average
55 bona fide circulation stated in such affidavit by each
56 qualified newspaper shall control the rate circulation
57 classification of such qualified newspaper for the ensuing
58 fiscal year, beginning on the first day of July, one thou-
59 sand nine hundred eighty-four. The publisher or proprie-
60 tor of each newspaper desiring to publish any legal
61 advertisement during the ensuing fiscal year shall file an
62 affidavit as aforesaid on or before the first day of Novem-
63 ber of each succeeding year, and such affidavit shall
64 control the rate circulation classification of such news-
65 paper, if it is a qualified newspaper, for the ensuing fiscal
66 years. Any qualified newspaper, for which the required
67 affidavit is not filed on or before the first day of March of
68 any calendar year after the year one thousand nin-
69 hundred eighty-three, shall be conclusively presumed to
70 have for the ensuing fiscal year a bona fide circulation of
71 less than one thousand. At the time a publisher or pro-
72 prietor of a qualified newspaper files an affidavit with the

73 secretary of state, as aforesaid, such publisher or proprie-
74 tor shall notify the clerk of the county commission and
75 the board of education of the county in which such quali-
76 fied newspaper is published of the circulation classifica-
77 tion of such qualified newspaper and of the applicable
78 rate for publishing legal advertisements in such qualified
79 newspaper during the ensuing fiscal year. If the qualified
80 newspaper is published in a municipality, the publisher
81 or proprietor shall at the same time also furnish the same
82 notification to the clerk or recorder of such municipality.

CHAPTER 127

(S. B. 678—By Mr. Chafin, Mr. Huffman, Mr. Ash, Mr. Rogers, Mr. Sacco,
Mr. Tomblin, Mr. Chernenko, Mrs. Spears, Mr. Loehr, Mr. Holliday, Mr. Colombo,
Mr. White, Mr. Boettner, Mr. Heck and Mr. Holmes)

[Passed March 12, 1983; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section seventeen, article one, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to appearance of members of Legislature and designated employees in court, administrative or tribunal hearings during sessions, committee meetings or caucuses; and setting aside sentences, judgments, orders and decrees entered contrary to provisions.

Be it enacted by the Legislature of West Virginia:

That section seventeen, article one, 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 1. OFFICERS, MEMBERS AND EMPLOYEES; APPROPRIATIONS; INVESTIGATIONS; DISPLAY OF FLAGS; RECORDS; USE OF CAPITOL BUILDING.

§4-1-17. Members not required to attend court ten days before, during or thirty days after sessions, two days before, during or three days after interim committee and party caucus meetings; legislative employees; sentences, judgments, etc., contrary to section.

1 No member of the Legislature, without his consent,
2 may be required to appear in any action or proceeding
3 in any court of the state of West Virginia and/or any
4 court sitting in said state or in or before any administra-
5 tive agency of this state or any other state or local gov-
6 ernmental tribunal, either as a party, witness or attorney
7 within ten days immediately before, at any time during
8 any session of the Legislature, and within thirty days
9 thereafter, or two days immediately before, at any time
10 during any interim meetings of any committee of the
11 Legislature or party caucus, and within three days there-
12 after. Five temporary legislative employees may be
13 designated in writing by the speaker of the House of
14 Delegates to the clerk of the House of Delegates and five
15 temporary legislative employees may be designated in
16 writing by the president of the Senate to the clerk of
17 the Senate. No such designee, without his or her con-
18 sent, may be required to appear in any action or proceed-
19 ing in any court of the state of West Virginia and/or any
20 court sitting in said state or in or before any administra-
21 tive agency of this state or any other state or local govern-
22 mental tribunal either as a party, witness or attorney at
23 any time during any period of designation or session of
24 the Legislature, and within thirty days thereafter.

25 Any sentence, judgment, order or decree made con-
26 trary to the provisions of this section, in any action or
27 proceeding, without the consent of such member of the
28 Legislature or designated employee who is a party or
29 attorney therein, if in a court having regular terms, shall
30 be set aside upon the application by motion of any party
31 to the action or proceedings or by the attorney of such
32 party, if made at the next regular term of such court
33 commencing after the adjournment of such session of
34 the Legislature, and, if in a court not having regular
35 terms or by a magistrate, or by an administrative agency
36 of this state, or any other state or local governmental
37 tribunal, shall be set aside upon such application if made
38 within thirty days next following such adjournment.
39 Such sentences, judgments, orders and decrees shall not
40 be invalid by reason of the provisions hereof until and

41 unless set aside in the manner and within the time
42 limits herein prescribed.

CHAPTER 128

(S. B. 356—By Mr. Nelson and Mr. Jones)

[Passed March 9, 1983: in effect from passage. Approved by the Governor.]

AN ACT to amend the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new chapter, designated chapter sixty-four, relating generally to legislative authorization for the promulgation of certain legislative rules by various executive agencies; authorizing certain agencies to promulgate certain legislative rules in the form that such rules were filed in the state register; authorizing certain agencies to promulgate legislative rules as amended; providing the effective dates for such rules and waiving any technical deficiencies which may have occurred when such rules proceeded through the rule-making process; providing for authorization to the employee suggestion award board to promulgate legislative rules for the purpose of governing the operation of the public employee suggestion program; providing for authorization to the state board of health to promulgate legislative rules for the purpose of regulating waste water treatment works operators, for the purpose of requiring laboratories to report positive or reactive serologic and other tests for syphilis and positive laboratory examinations for neisseria gonorrhoea to the state department of health, for the purpose of regulating public water supply operators, for the purpose of regulating sewage systems, for the purpose of setting forth the requirements for licensure of nonprofit corporations for guardianship service, for the purpose of governing methods and standards relating to implied consent for chemical test for intoxication, for the purpose of regulating the approval of laboratories for syphilis serology, for the purpose of regulating nursing home licensure, for the purpose of regulating fees for permits, for the purpose of regulating the certificate of need program, for the purpose of regulating

instillation of medication in the eyes of the newborn and the dissemination of advice and information concerning the dangers of inflammation of the eyes of the newborn, and for the purpose of establishing a controlled substance therapeutic research program and certification of patients, practitioners and hospital pharmacies; providing for authorization to the air pollution control commission to promulgate legislative rules for the purpose of preventing and controlling particulate air pollution from manufacturing process operations, and for the purpose of setting requirements for preconstruction review, determination of emissions offsets for proposed new or modified stationary sources of air pollutions and bubble concept for intrasource pollutants; providing for authorization to the commissioner of motor vehicles to promulgate legislative rules for the purpose of regulating the denial of driving privileges for medical reasons; providing for authorization to the teachers retirement board to promulgate legislative rules for the purpose of governing the state teachers retirement system; providing for authorization to the West Virginia racing commission to promulgate legislative rules for the purpose of regulating the use of medication in race horses, regulating minimum purses for greyhound races, for the purpose of regulating tip sheet vendors at horse racing tracks, for the purpose of regulating tip sheet vendors at greyhound racing tracks, and for the purpose of regulating simulcast races; providing for authorization to the state water resources board to promulgate legislative rules for the purpose of regulating underground injection control; providing for authorization to the department of labor to promulgate legislative rules for the purpose of regulating the operation of steam boilers, permit fees, annual reports and inspectors; providing for authorization to the department of mines to promulgate legislative rules for the purpose of governing the submission and approval of a comprehensive mine safety program for coal mining operations; providing for authorization to the West Virginia housing development fund to promulgate legislative rules for the purpose of administration of single-family mortgage loans for the West Virginia state board of investments under the state mortgage and industrial development investment pool; providing for authorization

to the commissioner of banking to promulgate legislative rules pertaining to the installation, operation and sharing of customer bank communication terminals and the utilization of nonexclusive access interchange systems; providing for authorization to the alcohol beverage control commissioner to promulgate legislative rules for the purpose of regulating the transportation of alcoholic beverages, for the purpose of regulating the suitability of kitchen and dining facilities; for the purpose of stating grounds for refusal to license private clubs; and for the purpose of regulating lighting of licensed premises.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 64. LEGISLATIVE RULES.

Article

1. **General Legislative Authorization.**
2. **Executive Agency Authorization to Promulgate Legislative Rules.**

ARTICLE 1. GENERAL LEGISLATIVE AUTHORIZATION.

- §64-1-1. Legislative authorization.
 §64-1-2. Effective date of rules.
 §64-1-3. Technical deficiencies waived.

§64-1-1. Legislative authorization.

1 Under the provisions of article three, chapter twenty-
 2 nine-a of the code of West Virginia, the Legislature
 3 expressly authorizes the promulgation of the rules
 4 described in article two of this chapter, subject only to the
 5 limitations set forth with respect to each such rule in the
 6 section or sections of this chapter authorizing its
 7 promulgation.

§64-1-2. Effective date of rules.

1 The effective date of the legislative rules authorized in
 2 article two of this chapter shall be governed by the
 3 provisions of section thirteen, article three, chapter twenty-
 4 nine-a, unless the agency promulgating the rules
 5 establishes an effective date which is earlier than that
 6 provided by section thirteen, article three, chapter twenty-
 7 nine-a, in which case the effective date established by the
 8 agency shall control, unless the Legislature in the bill autho-

9 rizing the rules establishes an effective date for such rules in
 10 which case the effective date established by the Legislature
 11 shall control.

§64-1-3. Technical deficiencies waived.

1 The Legislature further declares each legislative rule now
 2 or hereafter authorized under article two of this chapter to
 3 have been validly promulgated notwithstanding any failure
 4 to comply with any requirement of chapter twenty-nine-a
 5 for the promulgation of rules at any stage of the
 6 promulgation process prior to authorization by the
 7 Legislature in article two of this chapter.

**ARTICLE 2. EXECUTIVE AGENCY AUTHORIZATION TO PROMULGATE
 LEGISLATIVE RULES.**

| | |
|--------------------|---|
| §64-2-5a(1a)(3). | Employee suggestion award board. |
| §64-2-16(1)(7). | State board of health. |
| §64-2-16(1)(9). | State board of health. |
| §64-2-16(2a)(6). | State board of health. |
| §64-2-16(2d)(5). | State board of health. |
| §64-2-16(2d)(8). | State board of health. |
| §64-2-16(3)(10). | State board of health. |
| §64-2-16(3)(12). | State board of health. |
| §64-2-16(5a)(7). | State board of health. |
| §64-2-16(5c)(3). | State board of health. |
| §64-2-16(20)(5). | Air pollution control commission. |
| §64-2-17a(2)(9). | Commissioner of motor vehicles. |
| §64-2-17b(3c)(6). | Commissioner of motor vehicles. |
| §64-2-17c(5)(8). | State board of health. |
| §64-2-18(7a)(4). | Teachers retirement board |
| §64-2-19(23)(6). | West Virginia racing commission. |
| §64-2-20(5a)(3). | Water resources board. |
| §64-2-21(3)(7). | Department of labor. |
| §64-2-22(1)(34a). | Department of mines. |
| §64-2-31(18b)(7). | West Virginia housing development fund. |
| §64-2-31a(8)(12b). | Commissioner of banking |
| §64-2-44(10a)(6). | State board of health. |
| §64-2-48(1)(6a). | State board of health. |
| §64-2-60(6)(12). | Alcohol beverage control commissioner. |
| §64-2-60(7)(2). | Alcohol beverage control commissioner. |
| §64-2-60(7)(5). | Alcohol beverage control commissioner. |
| §64-2-60(7)(10). | Alcohol beverage control commissioner. |

§64-2-5a(1a)(3). Employee suggestion award board.

1 The legislative rules filed in the state register on the
 2 twenty-third day of July, one thousand nine hundred
 3 eighty-two, relating to the employee suggestion award

4 board (public employee suggestion program) are
5 authorized.

§64-2-16(1)(7). State board of health.

1 (a) The legislative rules filed in the state register on the
2 second day of June, one thousand nine hundred eighty-two,
3 relating to the state board of health (waste water treatment
4 works operations) are authorized.

5 (b) The legislative rules filed in the state register on the
6 second day of June, one thousand nine hundred eighty-two,
7 relating to the state board of health (laboratory reporting of
8 syphilis and gonorrhoea) are authorized.

9 (c) The legislative rules filed in the state register on the
10 second day of June, one thousand nine hundred eighty-two,
11 relating to the state board of health (public water supply
12 operators) with the modification of §11.02 as presented to
13 the legislative rule-making review committee on the ninth
14 day of November, one thousand nine hundred eighty-two,
15 are authorized.

16 (d) The legislative rules filed in the state register on the
17 twenty-second day of October, one thousand nine hundred
18 eighty-two, relating to the state board of health (sewage
19 systems) with the modifications presented to the legislative
20 rule-making review committee on the sixth day of
21 December, one thousand nine hundred eighty-two, are
22 authorized except lines ten through seventeen, page eight of
23 the rules shall be stricken in their entirety and the
24 remaining paragraphs renumbered. These rules were
25 proposed by the state board of health pursuant to sections
26 seven and nine, article one, chapter sixteen of this code.

27 (e) The legislative rules filed in the state register on the
28 second day of June, one thousand nine hundred eighty-two,
29 relating to the state board of health (approval of
30 laboratories) are authorized. These rules were proposed by
31 the state board of health pursuant to section one, article
32 seven, chapter sixteen and section six-a, article one,
33 chapter forty-eight of this code.

34 (f) The legislative rules filed in the state register on the
35 thirteenth day of August, one thousand nine hundred
36 eighty-two, and filed with amendments on the eleventh day
37 of January, one thousand nine hundred eighty-three,

38 relating to the state board of health (nursing home
39 licensure) are authorized with the amendment of §5.15.02 of
40 those rules as set forth below:

41 By striking the word “and” at the end of subdivision (f),
42 by changing the period at the end of subdivision (g) to a
43 semicolon, and by adding the following after subdivision
44 (g): “(h) one (1) member who represents social work
45 services.”

46 These rules were proposed by the state board of health
47 pursuant to section seven, article one, chapter sixteen and
48 section three, article five-c, chapter sixteen of this code.

§64-2-16(1)(9). State board of health.

1 The rules authorized by the Legislature in section sixteen
2 (1)(7)(d) of this article were also proposed by the state board
3 of health pursuant to section nine, article one, chapter
4 sixteen of this code.

§64-2-16(2a)(6). State board of health.

1 The legislative rules filed in the state register on the
2 twenty-fourth day of November, one thousand nine
3 hundred eighty-two, relating to the state board of health
4 (permit fees), are authorized.

§64-2-16(2d)(5). State board of health.

1 The legislative rules filed in the state register on the third
2 day of June, one thousand nine hundred eighty-two,
3 relating to the state board of health (certificate of need) are
4 authorized. These rules were proposed by the state board of
5 health pursuant to sections five and eight, article two-d,
6 chapter sixteen of this code.

§64-2-16(2d)(8). State board of health.

1 The rules authorized by the Legislature in section sixteen
2 (2d)(5) of this article were also proposed by the state board
3 of health pursuant to section eight, article two-d, chapter
4 sixteen of this code.

§64-2-16(3)(10). State board of health.

1 The legislative rules filed in the state register on the
2 sixteenth day of August, one thousand nine hundred eighty-
3 two, relating to the state board of health (eyes of newborn
4 children), are authorized. These rules were proposed by the

5 state board of health pursuant to sections ten and twelve,
6 article three, chapter sixteen of this code.

§64-2-16(3)(12). State board of health.

1 The rules authorized by the Legislature in section sixteen
2 (3)(10) of this article were also proposed by the state board
3 of health pursuant to section twelve, article three, chapter
4 sixteen of this code.

§64-2-16(5a)(7). State board of health.

1 The legislative rules filed in the state register on the third
2 day of June, one thousand nine hundred eighty-two,
3 relating to the state board of health (controlled substances
4 research program and certification), are authorized.

§64-2-16(5c)(3). State board of health.

1 The rules authorized by the Legislature in section sixteen
2 (1)(7)(f) of this article were also proposed by the state board
3 of health pursuant to section three, article five-c, chapter
4 sixteen of this code.

§64-2-16(20)(5). Air pollution control commission.

1 (a) The legislative rules filed in the state register on the
2 thirteenth day of August, one thousand nine hundred
3 eighty-two, relating to the air pollution control commission
4 (series VII), are authorized.

5 (b) The legislative rules filed in the state register on the
6 thirteenth day of August, one thousand nine hundred
7 eighty-two, relating to air pollution control commission
8 (series XIX), are authorized.

§64-2-17a(2)(9). Commissioner of motor vehicles.

1 The legislative rules filed in the state register on the
2 second day of December, one thousand nine hundred
3 eighty-two, relating to the commissioner of motor vehicles
4 (denial of driving privileges), are authorized with the
5 amendments set forth below:

6 By inserting the words "licensed in the United States"
7 after the phrase "physician of the applicant's choice", on
8 page five, line two, and page seven, line one; and by striking
9 out the words "licensed vision specialist" and inserting in
10 lieu thereof the words "an optometrist or ophthalmologist

11 licensed in the United States", on page five, line three, and
12 on page seven, line two.

13 These rules were proposed by the commissioner pursuant
14 to section nine, article two, chapter seventeen-a and section
15 six, article three-c, chapter seventeen-b of this code.

§64-2-17b(3c)(6). Commissioner of motor vehicles.

1 The rules authorized by the Legislature in section
2 seventeen-a (2)(9) of this article were also proposed by the
3 commissioner of motor vehicles pursuant to section six,
4 article three-c, chapter seventeen-b of this code.

§64-2-17c(5)(8). State board of health.

1 The legislative rules filed in the state register on the fifth
2 day of November, one thousand nine hundred eighty-two,
3 relating to the state board of health (chemical test for
4 intoxication), are authorized.

§64-2-18(7a)(4). Teachers retirement board.

1 The legislative rules filed in the state register on the
2 eleventh day of August, one thousand nine hundred eighty-
3 two, relating to the teachers retirement board, are
4 authorized with the following amendments:

5 Section VI, subsection 6, D, (a) (ii), of the rules, is to be
6 amended on line two by striking out the words "(3) thru (7)"
7 and inserting in lieu thereof the words "(3) thru (13)";
8 Section VII, subsection 7, B, (c) of the rules is to be amended
9 on line three after the word "100", by striking out the word
10 "consecutive", and by redesignating the subsection as
11 subsection "(a)"; and Section X, subsection 10, A, (c), of the
12 rules is to be amended on line one, after the word
13 "physicians," by striking out the words "of member's
14 choice," and inserting in lieu thereof the words "one
15 selected by the Board and one selected by the member,".

§64-2-19(23)(6). West Virginia racing commission.

1 (a) The legislative rules filed in the state register on the
2 twenty-third day of April, one thousand nine hundred
3 eighty-two, relating to the West Virginia racing commission
4 (Rule 795), are authorized.

5 (b) The legislative rules filed in the state register on the
6 twenty-third day of April, one thousand nine hundred

7 eighty-two, relating to the West Virginia racing commission
8 (Rule 107), are authorized.

9 (c) The legislative rules filed with the legislative rule-
10 making review committee on the tenth day of January, one
11 thousand nine hundred eighty-three, relating to the West
12 Virginia racing commission (Rule 471), are authorized.

13 (d) The legislative rules filed in the state register on the
14 tenth day of January, one thousand nine hundred eighty-
15 three, relating to the West Virginia racing commission (Rule
16 526), are authorized.

17 (e) The legislative rules filed in the state register on the
18 twenty-third day of April, one thousand nine hundred
19 eighty-two, relating to the West Virginia racing commission
20 (Rule 819), are authorized.

§64-2-20(5a)(3). Water resources board.

1 The legislative rules filed in the state register on the sixth
2 day of January, one thousand nine hundred eighty-three,
3 relating to the state water resources board (underground
4 injection control program), are authorized.

§64-2-21(3)(7). Department of labor.

1 The legislative rules filed in the state register on the tenth
2 day of May, one thousand nine hundred eighty-two,
3 relating to the department of labor (steam boiler rules) as
4 modified by the legislative rule-making review committee,
5 are authorized.

§64-2-22(1)(34a). Department of mines.

1 The legislative rules filed in the state register on the
2 thirty-first day of March, one thousand nine hundred
3 eighty-two, relating to the department of mines (mine
4 safety program), are authorized.

§64-2-31(18b)(7). West Virginia housing development fund.

1 The legislative rules filed in the state register on the
2 twenty-seventh day of December, one thousand nine
3 hundred eighty-two, relating to the West Virginia housing
4 development fund (single-family mortgage loans), are
5 authorized.

§64-2-31a(8)(12b). Commissioner of banking.

1 The legislative rules filed in the state register on the

2 eleventh day of June, one thousand nine hundred eighty-
3 two, relating to the commissioner of banking (com-
4 munication terminals and interchange systems), are authorized.

§64-2-44(10a)(6). State board of health.

1 The legislative rules filed in the state register on the
2 twenty-fourth day of November, one thousand nine
3 hundred eighty-two, relating to the state board of health
4 (guardianship service), are authorized with the exception of
5 section 9.3 of those rules which may not be promulgated.

§64-2-48(1)(6a). State board of health.

1 The rules authorized by the Legislature in section sixteen
2 (1)(7)(e) of this article were proposed by the state board of
3 health pursuant to section six-a, article one, chapter forty-
4 eight of this code.

§64-2-60(6)(12). Alcohol beverage control commissioner.

1 The legislative rules filed in the state register on the
2 thirtieth day of December, one thousand nine hundred
3 eighty-two, relating to the alcohol beverage control
4 commissioner (transportation of alcoholic beverages),
5 are authorized.

§64-2-60(7)(2). Alcohol beverage control commissioner.

1 The legislative rules filed in the state register on the
2 thirteenth day of August, one thousand nine hundred
3 eighty-two, relating to the alcohol beverage control
4 commissioner (kitchen and dining facilities), are authorized.
5 These rules were proposed by the alcohol beverage control
6 commissioner pursuant to sections two and ten, article
7 seven, chapter sixty of this code.

§64-2-60(7)(5). Alcohol beverage control commissioner.

1 The legislative rules filed in the state register on the
2 twenty-fourth day of August, one thousand nine hundred
3 eighty-two, relating to the alcohol beverage control com-
4 missioner (refusal to license private clubs), are authorized
5 with the exception of subsection (a) of the rules which shall
6 be promulgated as set forth below in this section as follows:

7 (a) For purposes of this regulation, the commissioner
8 may refuse to grant any license if he has reasonable cause to

9 believe, as indicated by documented evidence, that the
10 applicant, or any officer, director or manager thereof, or
11 shareholder owning twenty percent or more of its capital
12 stock, beneficial or otherwise, or other person conducting
13 or managing the affairs of the applicant or of the proposed
14 licensed premises, in whole or part:

15 (1) Is not a person of good moral character or repute;

16 (2) Has maintained a noisy, loud, disorderly or
17 unsanitary establishment;

18 (3) Has demonstrated, either by his police record or by
19 his record as former licensee under chapter sixty or chapter
20 eleven, article sixteen of the West Virginia code, a lack of
21 respect for law and order, generally, or for the laws and
22 rules governing the sale and distribution of alcoholic
23 beverages or nonintoxicating beer;

24 (4) Has the general reputation of drinking alcoholic
25 beverages to excess, or is addicted to the use of narcotics;

26 (5) Has misrepresented a material fact in applying to the
27 commissioner for a license.

28 (b) For purposes of this regulation, the commissioner
29 shall refuse to grant any license if he has reasonable cause to
30 believe, as indicated by documented evidence, that the appli-
31 cant, or any officer, director or manager thereof, or share-
32 holder owning twenty percent or more of its capital stock,
33 beneficial or otherwise, or other person conducting or man-
34 aging the affairs of the applicant or of the proposed licensed
35 premises, in whole or part:

36 (1) Is not eighteen years of age or older;

37 (2) Has been convicted of a felony or other crime
38 involving moral turpitude, and, upon such conviction, the
39 applicant shall not be eligible for licensure within five years
40 next preceding successful completion of all conditions of
41 probation, discharge from parole supervision or expiration
42 of sentence;

43 (3) Has been convicted of violating the liquor laws of any
44 state or the United States, and, upon such conviction, the
45 applicant shall not be eligible for licensure within five years
46 next preceding successful completion of all conditions of

47 probation, discharge from parole supervision or expiration
48 of sentence;

49 (4) Has had any license revoked under the liquor laws of
50 any state or the United States within five years next
51 preceding the filing date of the application;

52 (5) Is not the legitimate owner of the business proposed
53 to be licensed, or other persons have ownership interests in
54 the business which have not been disclosed;

55 (6) Is a person to whom alcoholic beverages may not be
56 sold under the provisions of chapter sixty of the West
57 Virginia code;

58 (7) Has been adjudicated an incompetent;

59 (8) Is an officer or employee of the alcohol beverage
60 control commissioner of West Virginia; or

61 (9) Is violating or allowing the violation of any provision
62 of chapter sixty, chapter sixty-one or chapter eleven, article
63 sixteen of the code in its establishment at the time its
64 application for a license is pending.

65 These rules were proposed by the alcohol beverage
66 control commissioner pursuant to sections five and ten,
67 article seven, chapter sixty of this code.

§64-2-60(7)(10). Alcohol beverage control commissioner.

1 (a) The legislative rules filed in the state register on the
2 thirteenth day of August, one thousand nine hundred
3 eighty-two, relating to the alcohol beverage control
4 commissioner (lighting of licensed premises), are
5 authorized.

6 (b) The rules authorized by the Legislature in section
7 sixty (7) (2) of this article were also proposed by the alcohol
8 beverage control commissioner pursuant to section ten, arti-
9 cle seven, chapter sixty of this code.

10 (c) The rules authorized by the Legislature in section
11 sixty (7)(5) of this article were also proposed by the alcohol
12 beverage commissioner pursuant to section five, article
13 seven, chapter sixty of this code.

CHAPTER 129

(Com. Sub. for H. B. 1306—Mr. Hamilton)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty-six, article two, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the discharge of mechanic's lien by depositing the amount in dispute in escrow; and the disbursement of the escrow.

Be it enacted by the Legislature of West Virginia:

That section thirty-six, article two, 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 2. MECHANICS' LIENS.

§38-2-36. Discharge or release of lien; recordation; escrow; disbursement of escrow.

1 (a) When a debt secured by any lien mentioned in this
2 article is fully paid at any time after the lien creditor shall have
3 filed his notice of such lien in the office of the clerk of the
4 county commission, such creditor assignee shall cause the
5 clerk to enter a discharge of such lien in the margin of the
6 book in which such account is entered and immediately op-
7 posite thereto, or shall execute a release thereof, which shall
8 be recorded in the book in which such notice is entered and
9 noted on the margin of such notice.

10 (b) (1) At any time after a lien creditor has given notice of
11 lien as required by the provisions of this article and has sub-
12 sequently duly filed such notice of lien with the clerk of the
13 county commission as provided for in this article, the owner
14 or any person against whom the lien is claimed may apply to
15 the circuit court having jurisdiction to enforce such lien, by
16 petition, for an order authorizing such owner or other person
17 against whom the lien is claimed to deposit, in escrow, with the
18 clerk of the circuit court, an amount equal to the sum set out
19 as due in the notice of lien, and directing the circuit clerk to
20 execute a release of the lien. Previous to the filing of such peti-

21 tion, the petitioner shall cause to be served upon the lien credi-
22 tor a notice of the time and place that such application will be
23 made, which notice shall be served by registered mail, return
24 receipt requested, addressed to the lien creditor or his autho-
25 rized agent at the address set forth in the notice of lien: *Pro-*
26 *vided*, That if no such address is set forth in the notice of lien,
27 the petitioner shall serve the notice, setting forth the time and
28 place that his application will be made, in the same manner as
29 original process is served for the commencement of civil ac-
30 tions.

31 (2) At the hearing upon the petition, the court shall ascer-
32 tain what interest, if any, might reasonably be expected to
33 accrue on the sum claimed to be due, either by contract or by
34 operation of law, and subsequently be payable to the lien
35 creditor, should he prevail upon his claim. The court shall also
36 determine the current rate of return upon investments made by
37 the general receiver of the court at the time of the hearing,
38 and ascertain what rate of interest might reasonably be earned
39 upon the petitioner's escrow deposit when paid into the court.
40 To the extent that the anticipated interest due to the lien
41 creditor exceeds the anticipated return upon the investment of
42 the escrow deposit, the court may require an additional de-
43 posit beyond the sum set forth in the notice of lien, as the
44 interests of the parties may require. The order authorizing the
45 deposit and directing the execution of the release shall, if the
46 court anticipates that complex or extended litigation may arise
47 in resolving the issue of the validity of liens or claims in the
48 case, require that the petitioner or other parties give security
49 before the court, or the clerk thereof, for payment of the costs
50 which may be awarded in the court, and of the fees due, or to
51 become due, in any action to determine such issue.

52 (3) If an escrow deposit is authorized by the court, such
53 deposit shall be made by cash, and when paid into court, shall
54 be received by the general receiver of the court, who shall take
55 charge of and invest the money deposited in the manner pro-
56 vided for in section one, article six, chapter fifty-one of this
57 code until otherwise ordered to pay out or dispose of the same
58 by the circuit court. Upon presentation to the clerk of the
59 county commission wherein the notice of lien is filed of an

60 order of the court and a receipt executed by the clerk of the
61 circuit court for the amount required to be deposited by the
62 terms of the order, the clerk of the county commission shall
63 file the order and shall enter a discharge of the lien in the
64 margin of the book in which such account is entered and im-
65 mediately opposite thereto, or shall execute a release thereof,
66 which shall be recorded in the book in which such notice is
67 entered and noted on the margin of such notice.

68 (4) Unless an action to determine the validity of the credi-
69 tor's claim is commenced within six months after the creditor
70 shall have filed his notice of lien in the office of the clerk of
71 the county commission as provided for in this article, the
72 court shall, upon motion of the depositor, order the general
73 receiver to pay out to the depositor the sum deposited, to-
74 gether with any dividends and interest, if any, earned upon the
75 investment of the deposit, less any compensation for the ser-
76 vices of the general receiver as the court may direct in accor-
77 dance with the provisions of section seven, article six, chapter
78 fifty-one of this code. If the claim is satisfied or settled and
79 compromised at any time while secured by the deposit made
80 with the general receiver but before an action is commenced,
81 the court shall, upon proof of satisfaction or settlement and
82 compromise, order the general receiver to pay out the deposit
83 to the depositor in the same manner as though suit was not
84 commenced within the requisite period of six months as de-
85 scribed above. If an action is commenced, the general receiver
86 shall thereafter pay out the money deposited and the dividends
87 and interest, if any, earned upon the investment of the deposit,
88 as the court may order or decree, less any compensation for
89 the services of the general receiver as the court may direct in
90 accordance with the provisions of said section seven.

CHAPTER 130

(H. B. 1113—By Mr. Steptoe)

[Passed February 25, 1983; in effect July 1, 1983. Approved by the Governor.]

AN ACT to amend and reenact section one, article two, chapter fifty
of the code of West Virginia, one thousand nine hundred thirty-

one, as amended, relating to the limit of civil jurisdiction of magistrates.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. JURISDICTION AND AUTHORITY.

***§50-2-1. Civil jurisdiction.**

1 Except as limited herein and in addition to jurisdiction
2 granted elsewhere to magistrate courts or justices of the peace,
3 magistrate courts shall have jurisdiction of all civil actions
4 wherein the value or amount in controversy or the value of
5 property sought, exclusive of interest and cost, is not more
6 than two thousand dollars. Magistrate courts shall have juris-
7 diction of matters involving unlawful entry or detainer of real
8 estate so long as the title to such real estate is not in dispute.
9 Except as the same may be in conflict with the provisions of
10 this chapter, the provisions of article three, chapter fifty-five
11 of this code, regarding unlawful entry and detainer, shall
12 apply to such actions in magistrate court. Magistrate courts
13 shall have jurisdiction of actions on bonds given pursuant to
14 the provisions of this chapter. Magistrate courts shall have
15 continuing jurisdiction to entertain motions in regard to post-
16 judgment process issued from magistrate court and decisions
17 thereon may be appealed in the same manner as judgments.

18 Magistrate courts shall not have jurisdiction of actions in
19 equity, of matters in eminent domain, of matters in which the
20 title to real estate is in issue, of proceedings seeking satisfac-
21 tion of liens through the sale of real estate, of actions for false
22 imprisonment, of actions for malicious prosecution or of ac-
23 tions for slander or libel or of any of the extraordinary
24 remedies set forth in chapter fifty-three of this code.

25 Magistrates, magistrate court clerks, magistrate court deputy
26 clerks and magistrate assistants shall have the authority to

*Clerk's Note: This section was also amended by S. B. 300, which passed subsequent to this act.

27 administer any oath or affirmation, to take any affidavit or
28 deposition, unless otherwise expressly provided by law, and
29 to take, under such regulations as are prescribed by law, the
30 acknowledgment of deeds and other writings.

CHAPTER 131

(H. B. 1537—By Mr. Hatcher and Mr. Martin)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article two, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to magistrates generally; limiting the amount of bond or recognizance required in certain misdemeanor cases in magistrate courts.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. JURISDICTION AND AUTHORITY.

§50-2-3. Criminal jurisdiction; limitations on bail.

1 In addition to jurisdiction granted elsewhere to magistrate
2 courts or a justice of the peace, magistrate courts shall have
3 jurisdiction of all misdemeanor offenses committed in the
4 county and to conduct preliminary examinations on warrants
5 charging felonies committed within the county. A magistrate
6 shall have the authority to issue arrest warrants in all criminal
7 matters, to issue warrants for search and seizure and, except
8 in cases involving capital offenses, to set and admit to bail:
9 *Provided*, That in cases punishable only by fine such bail or
10 recognizance shall not exceed the maximum amount of the fine
11 and applicable court costs permitted or authorized by statute
12 to be imposed in the event of conviction.

CHAPTER 132

(S. B. 75—By Mr. Ash, Mr. Davis and Mr. Harman)

[Passed March 3, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section sixteen, article three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to physician assistants; definition of Type B physician assistants and approved programs; certification of Type A and B physician assistants; temporary certification.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-16. Physician assistants; definitions; board of medicine rules and regulations; annual report; certification; temporary certification; recertification; reciprocity; job description required; revocation or suspension of certification; responsibilities of supervising physician; legal responsibility for physician assistants; identification; limitations on employment and duties; fees; unlawful use of title of "physician assistant"; unlawful representation of physician assistant as a physician; criminal penalties.

1 (a) As used in this section:

2 (1) "Type A physician assistant" means an assistant to a
3 primary care physician who is a graduate of an approved
4 program of instruction in primary health care, has passed
5 the national certification examination and is qualified to
6 perform direct patient care services under the supervision
7 of the primary care physician;

8 (2) "Type B physician assistant" means an assistant to a
9 physician who is a graduate of an approved program of
10 instruction in a recognized nonprimary care clinical
11 specialty or is a graduate of an approved program of
12 instruction in primary health care and has either received

13 additional post-graduate training in a recognized
14 nonprimary care clinical specialty or has received
15 additional training from a physician adequate to qualify
16 him to perform patient services in that specialty as defined
17 by the supervising physician;

18 (3) "Supervising physician" means a doctor of medicine
19 or podiatry permanently licensed in this state who assumes
20 legal and supervisory responsibility for the work or training
21 of any physician assistant under his supervision;

22 (4) "Approved program" means an educational
23 program for physician assistants approved and accredited
24 by the committee on allied health education and
25 accreditation on behalf of the American Medical
26 Association; and

27 (5) "Health care facility" means any licensed hospital,
28 nursing home, extended care facility, state health or mental
29 institution, clinic or physician's office.

30 (b) The board shall promulgate rules and regulations
31 governing the extent to which physician assistants may
32 function in this state. Such regulations shall provide that
33 the physician assistant is limited to the performance of
34 those services for which he is trained and that he performs
35 only under the supervision and control of a physician
36 permanently licensed in this state, but such supervision and
37 control does not require the personal presence of the
38 supervising physician at the place or places where services
39 are rendered if the physician assistant's normal place of
40 employment is on the premises of the supervising physician.
41 The supervising physician may send the physician assistant
42 off the premises to perform duties under his direction, but a
43 separate place of work for the physician assistant shall not
44 be established. In promulgating such rules and regulations,
45 the board shall allow the physician assistant to perform
46 those procedures and examinations submitted to it in the
47 job description required by subsection (g) of this section.
48 The board shall compile and publish an annual report that
49 includes a list of currently certified physician assistants
50 and their employers and location in the state; a list of
51 approved programs; the number of graduates of such
52 approved programs each year and the number of physician
53 assistants from other states practicing in this state.

54 (c) The board shall certify as a Type A physician
55 assistant any person who files an application and furnishes
56 satisfactory evidence to it that he has met the following
57 standards:

58 (1) He is a graduate of an approved program of
59 instruction in primary health care;

60 (2) He has passed the examination for a primary care
61 physician assistant administered by the National Board of
62 Medical Examiners on behalf of the National Commission
63 on Certification of Physician Assistants; and

64 (3) He is of good moral character.

65 (d) The board may certify as a Type B physician assistant
66 any person who files an application and furnishes satisfac-
67 tory evidence to it that he has met the following standards:

68 (1) He is of good moral character;

69 (2) He is a graduate of an approved program of
70 instruction in a recognized nonprimary care clinical
71 specialty or is a graduate of an approved program of
72 instruction in primary health care and has either received
73 additional post-graduate training in a recognized
74 nonprimary care clinical specialty or has received
75 additional training from a physician adequate to qualify
76 him to perform patient services in that specialty as defined
77 by the supervising physician; or

78 (3) He has been previously certified by the board as a
79 Type B physician assistant prior to the first day of July, one
80 thousand nine hundred eighty-three.

81 Certification of an assistant to a physician practicing the
82 specialty of ophthalmology is not permitted or required
83 under this section.

84 (e) When any graduate of an approved program sub-
85 mits an application to the board, accompanied by a job de-
86 scription in conformity with subsection (i) of this section,
87 for a Type A physician assistant certificate, the board shall
88 issue to such applicant a temporary certificate allowing
89 such applicant to function as a Type A physician assistant
90 for the period of one year. Said temporary certificate may
91 be renewed for one additional year upon the request of the
92 supervising physician. A Type A physician assistant who

93 has not been certified as such by the National Board of
94 Medical Examiners on behalf of the National Commission
95 on Certification of Physician Assistants will be restricted to
96 work under the direct supervision of the supervising
97 physician.

98 (f) When any person who meets the qualifications for a Type
99 B physician assistant as defined in this section and who
100 submits an application accompanied by a job description
101 for a Type B physician assistant certificate, the board may
102 certify such applicant as a Type B physician assistant for a
103 period of four months. Upon expiration of the four-month
104 temporary certification, the board may certify the
105 applicant as a Type B physician assistant. The Type B
106 physician assistant will be restricted to work under the
107 direct supervision of the supervising physician until he has
108 passed either the examination for surgical assistants or the
109 examination for primary care physician assistants
110 administered by the National Board of Medical Examiners
111 on behalf of the National Commission on Certification of
112 Physician Assistants.

113 (g) Certification of a Type B physician assistant is
114 subject to review and recertification after every three-year
115 period following the first certification. Recertification
116 requires a report from the supervising physician of a Type B
117 physician assistant which must include a performance
118 evaluation, a summary of experience or continuing medical
119 education and any proposed change in job description.

120 (h) The board may certify as a physician assistant in this
121 state without examination any person who has been
122 certified or licensed by examination in another state of the
123 United States which has requirements substantially
124 equivalent to the requirements of this section.

125 (i) Any physician applying to the board to supervise
126 either a Type A or Type B physician assistant shall provide a
127 job description that sets forth the range of medical services
128 to be provided by such assistant. Before a physician
129 assistant can be employed or otherwise use his skills, the
130 supervising physician must obtain approval of the job
131 description from the board. The board may revoke or
132 suspend any certification of an assistant to a physician for

133 cause, after giving such person an opportunity to be heard
134 in the manner provided by sections eight and nine, article
135 one of this chapter.

136 (j) The supervising physician is responsible for ob-
137 serving, directing and evaluating the work, records and
138 practices of each physician assistant performing under his
139 supervision. He shall notify the board in writing of any
140 termination of his supervisory relationship with a
141 physician assistant within ten days of the termination. The
142 legal responsibility for any physician assistant remains
143 with the supervising physician at all times, including
144 occasions when the assistant, under his direction and
145 supervision, aids in the care and treatment of a patient in a
146 health care facility. A health care facility is not legally
147 responsible for the actions or omissions of the physician
148 assistant unless the physician assistant is an employee of
149 the facility.

150 (k) When functioning as a physician assistant, the
151 physician assistant shall wear a name tag that identifies
152 him and specifies his type of classification and the name of
153 his supervising physician. A two and one-half by three and
154 one-half inch card of identification shall be furnished by
155 the board upon certification of the physician assistant and
156 shall specify the type of classification.

157 (l) A supervising physician shall not supervise at any
158 one time more than two physician assistants.

159 A physician assistant shall not sign any prescription. He
160 shall not perform any service that his supervising physician
161 is not qualified to perform. He shall not perform any service
162 that is not included in his job description and approved by
163 the board as provided for in this section.

164 The provisions of this section do not authorize any
165 physician assistant to perform any specific function or duty
166 delegated by this code to those persons licensed as
167 chiropractors, dentists, dental hygienists, optometrists or
168 pharmacists or certified as nurse anesthetists.

169 (m) Each job description submitted by a licensed
170 supervising physician shall be accompanied by a fee of fifty
171 dollars. A fee of five dollars shall be charged for the annual
172 renewal of the certificate.

173 (n) It is unlawful for any person who is not certified by
174 the board as a physician assistant to use the title of
175 "physician assistant" or to represent to any other person
176 that he is a physician assistant. Any person who violates the
177 provisions of this subsection is guilty of a misdemeanor,
178 and, upon conviction thereof, shall be fined not more than
179 two thousand dollars.

180 (o) It is unlawful for any physician assistant to
181 represent to any person that he is a physician, surgeon or
182 podiatrist. Any person who violates the provisions of this
183 subsection is guilty of a felony, and, upon conviction
184 thereof, shall be imprisoned in the penitentiary for not less
185 than one nor more than two years, or be fined not more than
186 two thousand dollars, or both fined and imprisoned.

CHAPTER 133

(Com. Sub. for S. B. 116—By Mr. Colombo)

[Passed March 11, 1983; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, ten, twelve, thirteen, fourteen, sixteen, seventeen, eighteen, nineteen, twenty-two, twenty-four, twenty-five, twenty-six, forty and forty-two, article six, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section forty-three, relating to revising the West Virginia surface coal mining and reclamation act; pertaining to definitions; filing notices of violation with permit applications; bonds; compliance with federal environmental protection laws; decreasing the civil penalty for violations to seven hundred fifty dollars per day per violation; assessment of civil penalties; appeals; review of permits; designation of areas unsuitable for surface mining; prohibiting conflicts of interest by members of the reclamation commission; validity of regulations; consolidating authority to issue permits, promulgate and enforce rules in article five-a, as they relate to surface mining in the director of the department of natural resources; and providing for appeal of orders of the director.

Be it enacted by the Legislature of West Virginia:

That sections three, ten, twelve, thirteen, fourteen, sixteen, seventeen, eighteen, nineteen, twenty-two, twenty-four, twenty-five, twenty-six, forty and forty-two, article six, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that article six, be further amended by adding thereto a new section, designated section forty-three, all to read as follows:

ARTICLE 6. WEST VIRGINIA SURFACE COAL MINING AND RECLAMATION ACT.

- §20-6-3. Definitions.
- §20-6-10. Permit application requirements and contents.
- §20-6-12. Performance bonds; amount and method of bonding; bonding requirements; special reclamation tax and fund; prohibited acts; period of bond liability.
- §20-6-13. General environmental protection performance standards for surface mining; variances.
- §20-6-14. General environmental protection performance standards for the surface effects of underground mining; application of other provisions of article to surface effects of underground mining.
- §20-6-16. Cessation of operation by order of inspector; informal conference; imposition of affirmative obligation; appeal.
- §20-6-17. Notice of violation; procedure and actions; enforcement; permit revocation and bond forfeiture; civil and criminal penalties; appeals to the board; prosecution; injunctive relief.
- §20-6-18. Approval, denial, revision and prohibition of permit.
- §20-6-19. Permit revision and renewal requirements; requirements for transfer; assignment and sale of permit rights; and operator reassignment.
- §20-6-22. Designation of areas unsuitable for surface mining; petition for removal of designation; prohibition of surface mining on certain areas; exceptions; taxation of minerals underlying land designated unsuitable.
- §20-6-24. Appeals to the board; hearings before board; subpoena and subpoena duces tecum; records; findings and orders of the board.
- §20-6-25. Appeal from order of board; judicial review; temporary relief.
- §20-6-26. Release of performance bond or deposits; application; notice; duties of director; public hearings; final maps on grade release.
- §20-6-40. Conflict of interest prohibited; criminal penalties therefor; employee protection.
- §20-6-42. Validity of regulations promulgated under section 502(c) of the Surface Mining Control and Reclamation Act of 1977.
- §20-6-43. Consolidation of permitting, enforcement and rule-making authority for surface-mining operations; National Pollutant Discharge Elimination System; effective date of section.

§20-6-3. Definitions.

1 As used in this article, unless used in a context that
2 clearly requires a different meaning, the term:

3 (a) "Adequate treatment" means treatment of water by
4 physical, chemical or other approved methods in a manner
5 so that the treated water shall not violate the effluent
6 limitations or cause a violation of the water quality
7 standards established for the river, stream or drainway into
8 which such water is released.

9 (b) "Affected area" means, when used in the context of
10 surface mining activities, all land and water resources
11 within the permit area which are disturbed or utilized
12 during the term of the permit in the course of surface-mining
13 and reclamation activities. "Affected area" means, when
14 used in the context of underground mining activities, all
15 surface land and water resources affected during the term
16 of the permit (1) by surface operations or facilities incident
17 to underground mining activities or (2) by underground
18 operations.

19 (c) "Adjacent areas" means, for the purpose of permit
20 application, renewal, revision, review and approval, those
21 land and water resources, contiguous to or near a permit
22 area, upon which surface-mining and reclamation
23 operations conducted within a permit area during the life of
24 such operations may have an impact. "Adjacent areas"
25 means, for the purpose of conducting surface-mining and
26 reclamation operations, those land and water resources
27 contiguous to or near the affected area upon which surface-
28 mining and reclamation operations conducted within a
29 permit area during the life of such operations may have an
30 impact.

31 (d) "Applicant" means any person who has or should
32 have applied for any permit pursuant to this article.

33 (e) "Approximate original contour" means that surface
34 configuration achieved by the backfilling and grading of
35 the disturbed areas so that the reclaimed area, including
36 any terracing or access roads, closely resembles the general
37 surface configuration of the land prior to mining and blends
38 into and complements the drainage pattern of the
39 surrounding terrain, with all highwalls and spoil piles

40 eliminated: *Provided*, That water impoundments may be
41 permitted pursuant to subdivision (8), subsection (b),
42 section thirteen of this article: *Provided, however*, That
43 minor deviations may be permitted in order to minimize
44 erosion and sedimentation, retain moisture to assist
45 revegetation, or to direct surface runoff.

46 (f) "Assessment officer" means an employee of the
47 department, other than a surface-mining reclamation
48 supervisor, inspector or inspector-in-training, appointed
49 by the director to issue proposed penalty assessments and to
50 conduct informal conferences to review notices, orders and
51 proposed penalty assessments.

52 (g) "Breakthrough" means the release of water which
53 has been trapped or impounded, or the release of air into
54 any underground cavity, pocket or area as a result of
55 surface-mining operations.

56 (h) "Coal processing wastes" means earth materials
57 which are or have been combustible, physically unstable, or
58 acid-forming or toxic-forming, which are wasted or
59 otherwise separated from product coal, and slurried or
60 otherwise transported from coal processing plants after
61 physical or chemical processing, cleaning or concentrating
62 of coal.

63 (i) "Department" means the department of natural
64 resources.

65 (j) "Director" means the director of the department of
66 natural resources, deputy directors, the chief of the division
67 of reclamation, the assistant chiefs of the division of
68 reclamation and all duly authorized surface-mining
69 reclamation supervisors, or inspectors and inspectors-in-
70 training.

71 (k) "Disturbed area" means an area where vegetation,
72 topsoil or overburden has been removed or placed by
73 surface-mining operations, and reclamation is incomplete.

74 (l) "Imminent danger to the health or safety of the
75 public" means the existence of such condition or practice,
76 or any violation of a permit or other requirement of this
77 article, which condition, practice or violation could
78 reasonably be expected to cause substantial physical harm
79 or death to any person outside the permit area before such

80 condition, practice or violation can be abated. A reasonable
81 expectation of death or serious injury before abatement
82 exists if a rational person, subjected to the same conditions
83 or practices giving rise to the peril, would not expose
84 himself to the danger during the time necessary for the
85 abatement.

86 (m) "Minerals" means clay, coal, flagstone, gravel,
87 limestone, manganese, sand, sandstone, shale, iron ore and
88 any other metal or metallurgical ore.

89 (n) "Operation" means those activities conducted by an
90 operator who is subject to the jurisdiction of this article.

91 (o) "Operator" means any person who is granted or who
92 should obtain a permit to engage in any activity covered by
93 this article.

94 (p) "Permit" means a permit to conduct surface-mining
95 operations pursuant to this article.

96 (q) "Permit area" means the area of land indicated on
97 the approved proposal map submitted by the operator as
98 part of his application showing the location of perimeter
99 markers and monuments and shall be readily identifiable
100 by appropriate markers on the site.

101 (r) "Permittee" means a person holding a permit issued
102 under this article.

103 (s) "Person" means any individual, partnership, firm,
104 society, association, trust, corporation, other business
105 entity or any agency, unit or instrumentality of federal,
106 state or local government.

107 (t) "Prime farmland" has the same meaning as that
108 prescribed by the United States secretary of agriculture on
109 the basis of such factors as moisture availability,
110 temperature regime, chemical balance, permeability,
111 surface layer composition, susceptibility to flooding and
112 erosion characteristics, and which historically have been
113 used for intensive agricultural purposes and as published in
114 the Federal Register.

115 (u) "Surface mine," "surface mining" or "surface-
116 mining operations" means:

117 (1) Activities conducted on the surface of lands for the
118 removal of coal, or, subject to the requirements of section

119 fourteen of this article, surface operations and surface
120 impacts incident to an underground coal mine, including
121 the drainage and discharge therefrom. Such activities
122 include excavation for the purpose of obtaining coal,
123 including, but not limited to, such common methods as
124 contour, strip, auger, mountaintop removal, box cut, open
125 pit and area mining; the uses of explosives and blasting;
126 reclamation and in situ distillation or retorting, leaching or
127 other chemical or physical processing; and the cleaning,
128 concentrating, or other processing or preparation, loading
129 of coal for commercial purposes at or near the mine site; and

130 (2) The areas upon which the above activities occur or
131 where such activities disturb the natural land surface. Such
132 areas shall also include any adjacent land, the use of which
133 is incidental to any such activities; all lands affected by the
134 construction of new roads or the improvement or use of
135 existing roads to gain access to the site of such activities and
136 for haulage; and excavations, workings, impoundments,
137 dams, ventilation shafts, entryways, refuse banks, dumps,
138 stockpiles, overburden piles, spoil banks, culm banks,
139 tailings, holes or depressions, repair areas, storage areas,
140 processing areas, shipping areas and other areas upon
141 which are sited structures, facilities, or other property or
142 materials on the surface, resulting from or incident to such
143 activities: *Provided*, That such activities do not include the
144 extraction of coal incidental to the extraction of other
145 minerals where coal does not exceed sixteen and two-thirds
146 percent of the tonnage of minerals removed for purposes of
147 commercial use or sale, or coal prospecting subject to
148 section eight of this article: *Provided, however*, That
149 permanent facilities not within the area being mined and
150 not directly involved in the excavation, loading, storage or
151 processing of the coal shall not be subject to the provisions
152 of this article. Such facilities include, but are not limited to,
153 offices, garages, bathhouses, parking areas, and
154 maintenance and supply areas.

155 (v) "Underground mine" means the surface effects
156 associated with the shaft, slopes, drifts or inclines
157 connected with excavations penetrating coal seams or
158 strata and the equipment connected therewith which
159 contribute directly or indirectly to the mining, preparation
160 or handling of coal.

161 (w) "Significant, imminent environmental harm to
162 land, air or water resources" means the existence of any
163 condition or practice, or any violation of a permit or other
164 requirement of this article, which condition, practice or
165 violation could reasonably be expected to cause significant
166 and imminent environmental harm to land, air or water
167 resources. The term "environmental harm" means any
168 adverse impact on land, air or water resources, includ-
169 ing, but not limited to, plant, wildlife and fish, and the
170 environmental harm is imminent if a condition or practice
171 exists which is causing such harm or may reasonably be
172 expected to cause such harm at any time before the end of
173 the abatement time set by the director. An environmental
174 harm is significant if that harm is appreciable and not
175 immediately repairable.

§20-6-10. Permit application requirements and contents.

1 (a) The surface-mining permit application shall
2 contain:

3 (1) The names and addresses of: (A) The permit
4 applicant; (B) the owner of record of the property, surface
5 and mineral, to be mined; (C) the holders of record of any
6 leasehold interest in the property; (D) any purchaser of
7 record of the property under a real estate contract; (E) the
8 operator, if he is a person different from the applicant; and
9 (F) if any of these are business entities other than a single
10 proprietor, the names and addresses of the principals,
11 officers and resident agent;

12 (2) The names and addresses of the owners of record of
13 all surface and subsurface areas contiguous to any part of
14 the proposed permit area: *Provided*, That all residents
15 living on property contiguous to the proposed permit area
16 shall be notified by the applicant, by registered or certified
17 mail, of such application on or before the first day of
18 publication of the notice provided for in subdivision (6) of
19 this subsection;

20 (3) A statement of any current surface-mining permits
21 held by the applicant in the state and the permit number
22 and each pending application;

23 (4) If the applicant is a partnership, corporation,
24 association or other business entity, the following where

25 applicable: The names and addresses of every officer,
26 partner, resident agent, director or person performing a
27 function similar to a director, together with the names and
28 addresses of any person owning of record ten percent or
29 more of any class of voting stock of the applicant; and a list
30 of all names under which the applicant, officer, director,
31 partner or principal shareholder previously operated a
32 surface-mining operation in the United States within the
33 five-year period preceding the date of submission of the
34 application;

35 (5) A statement of whether the applicant, or any officer,
36 partner, director, principal shareholder of the applicant,
37 any subsidiary, affiliate or persons controlled by or under
38 common control with the applicant, has ever been an
39 officer, partner, director or principal shareholder in a
40 company which has ever held a federal or state mining
41 permit which in the five-year period prior to the date of
42 submission of the application has been permanently
43 suspended or revoked or has had a mining bond or similar
44 security deposited in lieu of bond forfeited and, if so, a brief
45 explanation of the facts involved;

46 (6) A copy of the applicant's advertisement to be
47 published in a newspaper of general circulation in the
48 locality of the proposed permit area at least once a week for
49 four successive weeks. The advertisement shall contain in
50 abbreviated form the information required by this section
51 including the ownership and map of the tract location and
52 boundaries of the proposed site so that the proposed
53 operation is readily locatable by local residents, the
54 location of the office of the department of natural resources
55 where the application is available for public inspection and
56 stating that written protests will be accepted by the director
57 until a certain date which shall be at least thirty days after
58 the last publication of the applicant's advertisement;

59 (7) A description of the type and method of surface-
60 mining operation that exists or is proposed, the engineering
61 techniques used or proposed, and the equipment used or
62 proposed to be used;

63 (8) The anticipated starting and termination dates of
64 each phase of the surface-mining operation and the number
65 of acres of land to be affected;

66 (9) A description of the legal documents upon which the
67 applicant bases his legal right to enter and conduct surface-
68 mining operations on the proposed permit area and whether
69 that right is the subject of pending court litigation:
70 *Provided*, That nothing in this article may be construed as
71 vesting in the director the jurisdiction to adjudicate
72 property-rights disputes;

73 (10) The name of the watershed and location of the
74 surface stream or tributary into which surface and pit
75 drainage will be discharged;

76 (11) A determination of the probable hydrologic
77 consequences of the mining and reclamation operations,
78 both on and off the mine site, with respect to the hydrologic
79 regime, quantity and quality of water in surface and ground
80 water systems, including the dissolved and suspended
81 solids under seasonal flow conditions and the collection of
82 sufficient data for the mine site and surrounding areas so
83 that an assessment can be made by the director of the
84 probable cumulative impacts of all anticipated mining in
85 the area upon the hydrology of the area, and particularly
86 upon water availability: *Provided*, That this determination
87 shall not be required until such time as hydrologic
88 information on the general area prior to mining is made
89 available from an appropriate federal or state agency or, if
90 existing and in the possession of the applicant, from the
91 applicant: *Provided, however*, That the permit application
92 shall not be approved until the information is available and
93 is incorporated into the application;

94 (12) Accurate maps to an appropriate scale clearly
95 showing: (A) The land to be affected as of the date of
96 application; (B) the area of land within the permit area
97 upon which the applicant has the legal right to enter and
98 conduct surface-mining operations; and (C) all types of
99 information set forth on enlarged topographical maps of the
100 United States geological survey of a scale of 1:24,000 or
101 larger, including all man-made features and significant
102 known archaeological sites existing on the date of
103 application. In addition to other things specified by the
104 director, the map shall show the boundary lines and names
105 of present owners of record of all surface areas abutting the
106 proposed permit area and the location of all structures
107 within one thousand feet of the proposed permit area;

108 (13) Cross-section maps or plans of the proposed
109 affected area, including the actual area to be mined,
110 prepared by or under the direction of and certified by a
111 person approved by the director, showing pertinent
112 elevation and location of test borings or core samplings,
113 where required by the director, and depicting the following
114 information: (A) The nature and depth of the various strata
115 or overburden; (B) the location of subsurface water, if
116 encountered, and its quality; (C) the nature and thickness of
117 any coal or rider seams above the seam to be mined; (D) the
118 nature of the stratum immediately beneath the coal seam to
119 be mined; (E) all mineral crop lines and the strike and dip of
120 the coal to be mined, within the area of land to be affected;
121 (F) existing or previous surface-mining limits; (G) the
122 location and extent of known workings of any underground
123 mines, including mine openings to the surface; (H) the
124 location of any significant aquifers; (I) the estimated
125 elevation of the water table; (J) the location of spoil, waste
126 or refuse areas and topsoil preservation areas; (K) the
127 location of all impoundments for waste or erosion control;
128 (L) any settling or water treatment facility or drainage
129 system; (M) constructed or natural drainways and the
130 location of any discharges to any surface body of water on
131 the area of land to be affected or adjacent thereto; and (N)
132 adequate profiles at appropriate cross sections of the
133 anticipated final surface configuration that will be
134 achieved pursuant to the operator's proposed reclamation
135 plan;

136 (14) A statement of the result of test borings or core
137 samples from the permit area, including: (A) Logs of the
138 drill holes; (B) the thickness of the coal seam to be mined
139 and analysis of the chemical and physical properties of the
140 coal; (C) the sulfur content of any coal seam; (D) chemical
141 analysis of potentially acid or toxic forming sections of the
142 overburden; and (E) chemical analysis of the stratum lying
143 immediately underneath the coal to be mined: *Provided,*
144 That the provisions of this subdivision may be waived by
145 the director with respect to the specific application by a
146 written determination that such requirements are
147 unnecessary;

148 (15) For those lands in the permit application which a
149 reconnaissance inspection suggests may be prime

150 farmlands, a soil survey shall be made or obtained
151 according to standards established by the secretary of
152 agriculture in order to confirm the exact location of such
153 prime farmlands;

154 (16) A reclamation plan as presented in section eleven of
155 this article;

156 (17) Information pertaining to coal seams, test borings,
157 core samplings or soil samples as required by this section
158 shall be made available to any person with an interest
159 which is or may be adversely affected: *Provided*, That
160 information which pertains only to the analysis of the
161 chemical and physical properties of the coal, except
162 information regarding mineral or elemental content which
163 is potentially toxic to the environment, shall be kept
164 confidential and not made a matter of public record;

165 (18) When requested by the director, the climatological
166 factors that are peculiar to the locality of the land to be
167 affected, including the average seasonal precipitation, the
168 average direction and velocity of prevailing winds, and the
169 seasonal temperature ranges; and

170 (19) Other information that may be required by rules
171 and regulations reasonably necessary to effectuate the
172 purposes of this article.

173 (b) If the director finds that the probable total annual
174 production at all locations of any coal surface-mining
175 operator will not exceed one hundred thousand tons, the
176 determination of probable hydrologic consequences and
177 the statement of the result of test borings or core samplings
178 shall, upon the written request of the operator, be
179 performed by a qualified public or private laboratory
180 designated by the director and a reasonable cost of the
181 preparation of such determination and statement shall be
182 assumed by the department from funds provided by the
183 United States department of the interior pursuant to Public
184 Law 95-87.

185 (c) Before the first publication of the applicant's
186 advertisement, each applicant for a surface-mining permit
187 shall file, except for that information pertaining to the coal
188 seam itself, a copy of the application for public inspection in
189 the nearest office of the department of natural resources as
190 specified in the applicant's advertisement.

191 (d) Each applicant for a permit shall be required to
192 submit to the director as a part of the permit application a
193 certificate issued by an insurance company authorized to do
194 business in this state covering the surface-mining operation
195 for which the permit is sought, or evidence that the
196 applicant has satisfied state self-insurance requirements.
197 The policy shall provide for personal injury and property
198 damage protection in an amount adequate to compensate
199 any persons damaged as a result of surface coal mining and
200 reclamation operations, including use of explosives, and
201 entitled to compensation under the applicable provisions of
202 state law. The policy shall be maintained in full force and
203 effect during the terms of the permit or any renewal,
204 including the length of all reclamation operations.

205 (e) Each applicant for a surface-mining permit shall
206 submit to the director as part of the permit application a
207 blasting plan where explosives are to be used, which shall
208 outline the procedures and standards by which the operator
209 will meet the provisions of the blasting performance
210 standards.

211 (f) The applicant shall file as a part of his permit
212 application a schedule listing all notices of violation, bond
213 forfeitures, permit revocations, cessation orders or
214 permanent suspension orders resulting from a violation of
215 Public Law 95-87, this article or any law or regulation of the
216 United States or any department or agency of any state
217 pertaining to air or environmental protection received by
218 the applicant in connection with any surface-mining
219 operation during the three-year period prior to the date of
220 application, and indicating the final resolution of any
221 notice of violation, forfeiture, revocation, cessation or
222 permanent suspension.

223 (g) Within five working days of receipt of an application
224 for a permit, the director shall notify the operator in
225 writing, stating whether the application is complete and
226 whether the operator's advertisement may be published. If
227 the application is not complete, the director shall state in
228 writing why the application is incomplete.

**§20-6-12. Performance bonds; amount and method of bonding;
bonding requirements; special reclamation tax
and fund; prohibited acts; period of bond liability.**

1 (a) After a surface-mining permit application has been

2 approved pursuant to this article, but before a permit has
3 been issued, each operator shall furnish bond, on a form to
4 be prescribed and furnished by the director, payable to the
5 state of West Virginia and conditioned upon the operator
6 faithfully performing all of the requirements of this article
7 and of the permit. The amount of the bond shall be one
8 thousand dollars for each acre or fraction thereof. The bond
9 shall cover (1) the entire permit area, or (2) that increment of
10 land within the permit area upon which the operator will
11 initiate and conduct surface-mining and reclamation
12 operations within the initial term of the permit. If the
13 operator chooses to use incremental bonding, as succeeding
14 increments of surface-mining and reclamation operations
15 are to be initiated and conducted within the permit area, the
16 operator shall file with the director an additional bond or
17 bonds to cover such increments in accordance with this
18 section: *Provided*, That once the operator has chosen to
19 proceed with bonding either the entire permit area or with
20 incremental bonding, he shall continue bonding in that
21 manner for the term of the permit: *Provided, however*, That
22 the minimum amount of bond furnished shall be ten
23 thousand dollars.

24 (b) The period of liability for performance bond
25 coverage shall commence with issuance of a permit and
26 continue for the full term of the permit plus any additional
27 period necessary to achieve compliance with the
28 requirements in the reclamation plan of the permit.

29 (c) (1) The form of the performance bond shall be
30 approved by the director and may include, at the option of
31 the operator, surety bonding, collateral bonding (including
32 cash and securities), establishment of an escrow account,
33 self-bonding or a combination of these methods. If
34 collateral bonding is used, the operator may elect to deposit
35 cash, or collateral securities or certificates as follows:
36 Bonds of the United States or its possessions, of the federal
37 land bank, or of the homeowners' loan corporation; full
38 faith and credit general obligation bonds of the state of
39 West Virginia, or other states, and of any county, district or
40 municipality of the state of West Virginia or other states; or
41 certificates of deposit in a bank in this state, which
42 certificates shall be in favor of the department. The cash
43 deposit or market value of such securities or certificates

44 shall be equal to or greater than the sum of the bond. The
45 director shall, upon receipt of any such deposit of cash,
46 securities or certificates, promptly place the same with the
47 treasurer of the state of West Virginia whose duty it shall be
48 to receive and hold the same in the name of the state in trust
49 for the purpose for which the deposit is made when the
50 permit is issued. The operator making the deposit shall be
51 entitled from time to time to receive from the state
52 treasurer, upon the written approval of the director, the
53 whole or any portion of any cash, securities or certificates so
54 deposited, upon depositing with him in lieu thereof, cash or
55 other securities or certificates of the classes herein specified
56 having value equal to or greater than the sum of the bond.

57 (2) The reclamation commission may approve an
58 alternative bonding system if it will (A) reasonably assure
59 that sufficient funds will be available to complete the
60 reclamation, restoration and abatement provisions for all
61 permit areas which may be in default at any time, and (B)
62 provide a substantial economic incentive for the permittee
63 to comply with all reclamation provisions.

64 (d) The director may accept the bond of the applicant
65 itself without separate surety when the applicant
66 demonstrates to the satisfaction of the director the
67 existence of a suitable agent to receive service of process
68 and a history of financial solvency and continuous
69 operation sufficient for authorization to self-insure.

70 (e) It shall be unlawful for the owner of surface or
71 mineral rights to interfere with the present operator in the
72 discharge of his obligations to the state for the reclamation
73 of lands disturbed by him.

74 (f) All bond releases shall be accomplished in
75 accordance with the provisions of section twenty-six of this
76 article.

77 (g) All special reclamation taxes deposited by the
78 director with the treasurer or the state of West Virginia to
79 the credit of the special reclamation fund prior to the
80 effective date of this article shall be transferred to the
81 special reclamation fund created by this section and shall
82 be expended pursuant to the provisions of this subsection:
83 *Provided*, That no taxes transferred into the special
84 reclamation fund created by this section shall be subject to

85 refund. The fund shall be administered by the director, and
86 he is authorized to expend the moneys in the fund for the
87 reclamation and rehabilitation of lands which were
88 subjected to permitted surface-mining operations and
89 abandoned after the third day of August, one thousand nine
90 hundred seventy-seven, where the amount of the bond
91 posted and forfeited on such land is less than the actual cost
92 of reclamation. The director may also expend such amounts
93 as are reasonably necessary to implement and administer
94 the provisions of this chapter.

95 Whenever the special reclamation fund established by
96 this subsection sinks below one million dollars at the end of
97 any given quarterly period, every person then conducting
98 coal surface-mining operations shall contribute into said
99 fund a sum equal to one cent per ton of clean coal mined
100 thereafter. This fee shall be collected by the state tax
101 commissioner in the same manner as the West Virginia
102 business and corporation tax in accordance with the
103 provisions of chapter eleven of this code and shall be
104 deposited by him with the treasurer of the state of West
105 Virginia to the credit of the special reclamation fund. At the
106 beginning of each quarter, the director shall advise the state
107 tax commissioner and the governor of the assets, excluding
108 payments, expenditures and liabilities, in the fund. If such
109 assets are below one million dollars, a notice of assessment
110 shall be given to all operators by the state tax commissioner
111 and the one cent per ton assessment shall be collected until
112 the end of the quarter in which the fund's assets, excluding
113 payments, expenditures and liabilities are in excess of two
114 million dollars.

§20-6-13. General environmental protection performance standards for surface mining; variances.

1 (a) Any permit issued by the director pursuant to this
2 article to conduct surface-mining operations shall require
3 that such surface-mining operations will meet all
4 applicable performance standards of this article, and other
5 requirements as the reclamation commission shall
6 promulgate.

7 (b) The following general performance standards shall
8 be applicable to all surface mines and shall require the
9 operation as a minimum to:

10 (1) Maximize the utilization and conservation of the
11 solid fuel resource being recovered to minimize re-affecting
12 the land in the future through surface mining;

13 (2) Restore the land affected to a condition capable of
14 supporting the uses which it was capable of supporting
15 prior to any mining, or higher or better uses of which there
16 is reasonable likelihood so long as the use or uses do not
17 present any actual or probable hazard to public health or
18 safety or pose any actual or probable threat of water
19 diminution or pollution, and the permit applicants'
20 declared proposed land use following reclamation is not
21 deemed to be impractical or unreasonable, inconsistent
22 with applicable land use policies and plans, involves
23 unreasonable delay in implementation, or is violative of
24 federal, state or local law;

25 (3) Except as provided in subsection (c) of this section,
26 with respect to all surface mines, backfill, compact where
27 advisable to ensure stability or to prevent leaching of toxic
28 materials, and grade in order to restore the approximate
29 original contour: *Provided*, That in surface mining which is
30 carried out at the same location over a substantial period of
31 time where the operation transects the coal deposit, and the
32 thickness of the coal deposits relative to the volume of the
33 overburden is large and where the operator demonstrates
34 that the overburden and other spoil and waste materials at a
35 particular point in the permit area or otherwise available
36 from the entire permit area is insufficient, giving due
37 consideration to volumetric expansion, to restore the
38 approximate original contour, the operator, at a minimum,
39 shall backfill, grade and compact, where advisable, using
40 all available overburden and other spoil and waste
41 materials to attain the lowest practicable grade but not
42 more than the angle of repose, to provide adequate drainage
43 and to cover all acid-forming and other toxic materials, in
44 order to achieve an ecologically sound land use compatible
45 with the surrounding region: *Provided, however*, That in
46 surface mining where the volume of overburden is large
47 relative to the thickness of the coal deposit and where the
48 operator demonstrates that due to volumetric expansion
49 the amount of overburden and other spoil and waste
50 materials removed in the course of the mining operation is

51 more than sufficient to restore the approximate original
52 contour, the operator shall, after restoring the approximate
53 contour, backfill, grade and compact, where advisable, the
54 excess overburden and other spoil and waste materials to
55 attain the lowest grade but not more than the angle of
56 repose, and to cover all acid-forming and other toxic
57 materials, in order to achieve an ecologically sound land use
58 compatible with the surrounding region and, such
59 overburden or spoil shall be shaped and graded in such a
60 way as to prevent slides, erosion and water pollution and is
61 revegetated in accordance with the requirements of this
62 article: *Provided further*, That the reclamation commission
63 shall promulgate rules and regulations governing variances
64 to the requirements for return to approximate original
65 contour or highwall elimination and where adequate
66 material is not available from surface-mining operations
67 permitted after the effective date of this article for (A)
68 underground mining operations existing prior to the third
69 day of August, one thousand nine hundred seventy-seven,
70 or (B) for areas upon which surface mining prior to the first
71 day of July, one thousand nine hundred seventy-seven,
72 created highwalls;

73 (4) Stabilize and protect all surface areas, including
74 spoil piles, affected by the surface-mining operation to
75 effectively control erosion and attendant air and water
76 pollution;

77 (5) Remove the topsoil from the land in a separate layer,
78 replace it on the backfill area, or if not utilized immediately,
79 segregate it in a separate pile from other spoil and, when the
80 topsoil is not replaced on a backfill area within a time short
81 enough to avoid deterioration of the topsoil, maintain a
82 successful vegetative cover by quick growing plants or by
83 other similar means in order to protect topsoil from wind
84 and water erosion and keep it free of any contamination by
85 other acid or toxic material: *Provided*, That if topsoil is of
86 insufficient quantity or of poor quality for sustaining
87 vegetation, or if other strata can be shown to be more
88 suitable for vegetation requirements, then the operator
89 shall remove, segregate and preserve in a like manner such
90 other strata which is best able to support vegetation;

91 (6) Restore the topsoil or the best available subsoil
92 which is best able to support vegetation;

93 (7) Ensure that all prime farmlands are mined and
94 reclaimed in accordance with the specifications for soil
95 removal, storage, replacement and reconstruction
96 established by the United States secretary of agriculture
97 and the soil conservation service pertaining thereto. The
98 operator, as a minimum, shall be required to: (A) Segregate
99 the A horizon of the natural soil, except where it can be
100 shown that other available soil materials will create a final
101 soil having a greater productive capacity, and if not utilized
102 immediately, stockpile this material separately from other
103 spoil, and provide needed protection from wind and water
104 erosion or contamination by other acid or toxic material;
105 (B) segregate the B horizon of the natural soil, or underlying
106 C horizons or other strata, or a combination of such
107 horizons or other strata that are shown to be both texturally
108 and chemically suitable for plant growth and that can be
109 shown to be equally or more favorable for plant growth
110 than the B horizon, in sufficient quantities to create in the
111 regraded final soil a root zone of comparable depth and
112 quality to that which existed in the natural soil, and if not
113 utilized immediately, stockpile this material separately
114 from other spoil and provide needed protection from wind
115 and water erosion or contamination by other acid or toxic
116 material; (C) replace and regrade the root zone material
117 described in subparagraph (B) above with proper
118 compaction and uniform depth over the regraded spoil
119 material; and (D) redistribute and grade in a uniform
120 manner the surface soil horizon described in subparagraph
121 (A) above;

122 (8) Create, if authorized in the approved surface-mining
123 and reclamation plan and permit, permanent
124 impoundments of water on mining sites as part of
125 reclamation activities in accordance with regulations
126 promulgated by the reclamation commission;

127 (9) Where augering is the method of recovery, seal all
128 auger holes with an impervious and noncombustible
129 material in order to prevent drainage except where the
130 director determines that the resulting impoundment of
131 water in such auger holes may create a hazard to the
132 environment or the public welfare and safety: *Provided,*
133 That the director may prohibit augering if necessary to
134 maximize the utilization, recoverability or conservation of

135 the mineral resources or to protect against adverse water
136 quality impacts;

137 (10) Minimize the disturbances to the prevailing
138 hydrologic balance at the mine site and in associated off-
139 site areas and to the quality and quantity of water in surface
140 and ground water systems both during and after surface-
141 mining operations and during reclamation by: (A) Avoiding
142 acid or other toxic mine drainage; (B) conducting surface-
143 mining operations so as to prevent to the extent possible,
144 using the best technology currently available, additional
145 contributions of suspended solids to streamflow or runoff
146 outside the permit area, but in no event shall contributions
147 be in excess of requirements set by applicable state or
148 federal law; (C) constructing an approved drainage system
149 pursuant to subparagraph (B) of this subdivision prior to
150 commencement of surface-mining operations, such system
151 to be certified by a person approved by the director to be
152 constructed as designed and as approved in the reclamation
153 plan; (D) avoiding channel deepening or enlargement in
154 operations requiring the discharge of water from mines; (E)
155 unless otherwise authorized by the director, cleaning out
156 and removing temporary or large settling ponds or other
157 siltation structures after disturbed areas are revegetated
158 and stabilized, and depositing the silt and debris at a site
159 and in a manner approved by the director; (F) restoring
160 recharge capacity of the mined area to approximate
161 premining conditions; and (G) such other actions as the
162 reclamation commission may prescribe;

163 (11) With respect to surface disposal of mine wastes,
164 tailings, coal processing wastes and other wastes in areas
165 other than the mine working excavations, stabilize all
166 waste piles in designated areas through construction in
167 compacted layers, including the use of noncombustible and
168 impervious materials if necessary, and assure the final
169 contour of the waste pile will be compatible with natural
170 surroundings and that the site will be stabilized and
171 revegetated according to the provisions of this article;

172 (12) Design, locate, construct, operate, maintain,
173 enlarge, modify and remove or abandon, in accordance with
174 the standards and criteria developed pursuant to
175 subsection (f) of this section, all existing and new coal mine

176 waste piles consisting of mine wastes, tailings, coal
177 processing wastes or other liquid and solid wastes, and used
178 either temporarily or permanently as dams or
179 embankments;

180 (13) Refrain from surface mining within five hundred
181 feet of any active and abandoned underground mines in
182 order to prevent breakthroughs and to protect health or
183 safety of miners: *Provided*, That the director shall permit an
184 operator to mine near, through or partially through an
185 abandoned underground mine or closer to an active
186 underground mine if: (A) The nature, timing and
187 sequencing of the approximate coincidence of specific
188 surface-mine activities with specific underground mine
189 activities are coordinated jointly by the operators involved
190 and approved by the director of the department of mines,
191 and (B) the operations will result in improved resource
192 recovery, abatement of water pollution or elimination of
193 hazards to the health and safety of the public: *Provided*,
194 That any breakthrough which does occur shall be sealed;

195 (14) Ensure that all debris, acid-forming materials,
196 toxic materials or materials constituting a fire hazard are
197 treated or buried and compacted, or otherwise disposed of in
198 a manner designed to prevent contamination of ground or
199 surface waters, and that contingency plans are developed to
200 prevent sustained combustion: *Provided*, That the operator
201 shall remove or bury all metal, lumber, equipment and
202 other debris resulting from the operation before grading
203 release;

204 (15) Ensure that explosives are used only in accordance
205 with existing state and federal law and the regulations
206 promulgated by the reclamation commission, which shall
207 include provisions to: (A) Provide adequate advance
208 written notice to local governments and residents who
209 might be affected by the use of the explosives by publication
210 of the planned blasting schedule in a newspaper of general
211 circulation in the locality and by mailing a copy of the
212 proposed blasting schedule to every resident living within
213 one-half mile of the proposed permit area excluding
214 drainage structures, haulroads and access roads unless
215 there will be blasting on or near such structures or roads:
216 *Provided*, That this notice shall suffice as daily notice to

217 residents or occupants of the areas; (B) maintain for a
218 period of at least three years and make available for public
219 inspection, upon written request, a log detailing the location
220 of the blasts, the pattern and depth of the drill holes, the
221 amount of explosives used per hole and the order and length
222 of delay in the blasts; (C) limit the type of explosives and
223 detonating equipment, the size, the timing and frequency of
224 blasts based upon the physical conditions of the site so as to
225 prevent (i) injury to persons; (ii) damage to public and
226 private property outside the permit area; (iii) adverse
227 impacts on any underground mine; and (iv) change in the
228 course, channel or availability of ground or surface water
229 outside the permit area; (D) require that all blasting
230 operations be conducted by persons certified by the director
231 of the department of mines; and (E) provide that upon
232 written request of a resident or owner of a man-made
233 dwelling or structure within one-half mile of any portion of
234 the area identified in subparagraph (A) of this subdivision,
235 the applicant or permittee shall conduct a preblasting
236 survey or other appropriate investigation of the structures
237 and submit the results to the director and a copy to the
238 resident or owner making the request. The area of the
239 survey shall be determined by the director in accordance
240 with regulations promulgated by the reclamation
241 commission;

242 (16) Ensure that all reclamation efforts proceed in an
243 environmentally sound manner and as contemporaneously
244 as practicable with the surface-mining operations. Time
245 limits shall be established by the reclamation commission
246 requiring backfilling, grading and planting to be kept
247 current: *Provided*, That where surface-mining operations
248 and underground mining operations are proposed on the
249 same area, which operations must be conducted under
250 separate permits, the director may grant a variance from
251 the requirement that reclamation efforts proceed as
252 contemporaneously as practicable to permit underground
253 mining operations prior to reclamation:

254 (A) If the director finds in writing that:

255 (i) The applicant has presented, as part of the permit
256 application, specific, feasible plans for the proposed
257 underground mining operations;

258 (ii) The proposed underground mining operations are
259 necessary or desirable to assure maximum practical
260 recovery of the mineral resource and will avoid multiple
261 disturbance of the surface;

262 (iii) The applicant has satisfactorily demonstrated that
263 the plan for the underground mining operations conforms
264 to requirements for underground mining in the jurisdiction
265 and that permits necessary for the underground mining
266 operations have been issued by the appropriate authority;

267 (iv) The areas proposed for the variance have been
268 shown by the applicant to be necessary for the
269 implementing of the proposed underground mining
270 operations;

271 (v) No substantial adverse environmental damage,
272 either on-site or off-site, will result from the delay in
273 completion of reclamation as required by this article;

274 (vi) Provisions for the off-site storage of spoil will
275 comply with subdivision (22), subsection (b), section
276 thirteen of this article;

277 (B) If the reclamation commission has promulgated
278 specific regulations to govern the granting of such
279 variances in accordance with the provisions of this
280 subparagraph and has imposed such additional
281 requirements as he deems necessary;

282 (C) If variances granted under the provisions of this
283 subsection are to be reviewed by the director not more than
284 three years from the date of issuance of the permit; and

285 (D) If liability under the bond filed by the applicant
286 with the director pursuant to subsection (b), section twelve
287 of this article shall be for the duration of the underground
288 mining operations and until the requirements of subsection
289 (g), section twelve and section twenty-six of this article
290 have been fully complied with.

291 (17) Ensure that the construction, maintenance and
292 postmining conditions of access and haulroads into and
293 across the site of operations will control or prevent erosion
294 and siltation, pollution of water, damage to fish or wildlife
295 or their habitat, or public or private property: *Provided,*
296 That access roads constructed for and used to provide

297 infrequent service to surface facilities, such as ventilators
298 or monitoring devices, shall be exempt from specific
299 construction criteria provided adequate stabilization to
300 control erosion is achieved through alternative measures;

301 (18) Refrain from the construction of roads or other
302 access ways up a stream bed or drainage channel or in
303 proximity to the channel so as to significantly alter the
304 normal flow of water;

305 (19) Establish on the regraded areas, and all other lands
306 affected, a diverse, effective and permanent vegetative
307 cover of the same seasonal variety native to the area of land
308 to be affected or of a fruit, grape or berry producing variety
309 suitable for human consumption and capable of self-
310 regeneration and plant succession at least equal in extent of
311 cover to the natural vegetation of the area, except that
312 introduced species may be used in the revegetation process
313 where desirable or when necessary to achieve the approved
314 postmining land use plan;

315 (20) Assume the responsibility for successful
316 revegetation, as required by subdivision (19) of this
317 subsection, for a period of not less than five growing
318 seasons, as defined by the director, after the last year of
319 augmented seeding, fertilizing, irrigation or other work in
320 order to assure compliance with subdivision (19) of this
321 subsection: *Provided*, That when the director issues a
322 written finding approving a long-term agricultural
323 postmining land use as a part of the mining and reclamation
324 plan, the director may grant exception to the provisions of
325 subdivision (19) of this subsection: *Provided, however*, That
326 when the director approves an agricultural postmining land
327 use, the applicable five growing seasons of responsibility
328 for revegetation shall commence at the date of initial
329 planting for such agricultural postmining land use;

330 (21) Protect off-site areas from slides or damage
331 occurring during surface-mining operations and not
332 deposit spoil material or locate any part of the operations or
333 waste accumulations outside the permit area: *Provided*,
334 *however*, That spoil material may be placed outside the
335 permit area, if approved by the director, after a finding that
336 environmental benefits will result from such;

337 (22) Place all excess spoil material resulting from
338 surface mining activities in such a manner that: (A) Spoil is
339 transported and placed in a controlled manner in position
340 for concurrent compaction and in a way as to assure mass
341 stability and to prevent mass movement; (B) the areas of
342 disposal are within the bonded permit areas and all organic
343 matter shall be removed immediately prior to spoil
344 placements; (C) appropriate surface and internal drainage
345 system or diversion ditches are used to prevent spoil erosion
346 and movement; (D) the disposal area does not contain
347 springs, natural water courses or wet weather seeps, unless
348 lateral drains are constructed from the wet areas to the
349 main underdrains in a manner that filtration of the water
350 into the spoil pile will be prevented; (E) if placed on a slope,
351 the spoil is placed upon the most moderate slope among
352 those upon which, in the judgment of the director, the spoil
353 could be placed in compliance with all the requirements of
354 this article, and shall be placed, where possible, upon, or
355 above, a natural terrace, bench or berm, if placement
356 provides additional stability and prevents mass movement;
357 (F) where the toe of the spoil rests on a downslope, a rock toe
358 buttress, of sufficient size to prevent mass movement, is
359 constructed; (G) the final configuration is compatible with
360 the natural drainage pattern and surroundings and suitable
361 for intended uses; (H) design of the spoil disposal area is
362 certified by a qualified registered professional engineer in
363 conformance with professional standards; and (I) all other
364 provisions of this article are met: *Provided*, That where the
365 excess spoil material consists of at least eighty percent, by
366 volume, sandstone, limestone or other rocks that do not
367 slake in water, the director may approve alternate methods
368 for disposal of excess spoil material, including fill
369 placement by dumping in a single lift, on a site specific
370 basis: *Provided, however*, That the services of a qualified
371 registered professional engineer experienced in the design
372 and construction of earth and rockfill embankment are
373 utilized: *Provided further*, That such approval shall not be
374 unreasonably withheld if the site is suitable;

375 (23) Meet such other criteria as are necessary to achieve
376 reclamation in accordance with the purposes of this article,
377 taking into consideration the physical, climatological and
378 other characteristics of the site;

379 (24) To the extent possible, using the best technology
380 currently available, minimize disturbances and adverse
381 impacts of the operation on fish, wildlife and related
382 environmental values, and achieve enhancement of these
383 resources where practicable; and

384 (25) Retain a natural barrier to inhibit slides and
385 erosion on permit areas where outcrop barriers are
386 required: *Provided*, That constructed barriers may be
387 allowed where (A) natural barriers do not provide adequate
388 stability, (B) natural barriers would result in potential
389 future water quality deterioration, and (C) natural barriers
390 would conflict with the goal of maximum utilization of the
391 mineral resource: *Provided, however*, That, at a minimum,
392 the constructed barrier must be of sufficient width and
393 height to provide adequate stability and the stability factor
394 must equal or exceed that of the natural outcrop barrier:
395 *Provided further*, That where water quality is paramount,
396 the constructed barrier must be composed of impervious
397 material with controlled discharge points.

398 (c) (1) The reclamation commission may prescribe
399 procedures pursuant to which the director may permit
400 surface-mining operations for the purposes set forth in
401 subdivision (3) of this subsection.

402 (2) Where an applicant meets the requirements of
403 subdivisions (3) and (4) of this subsection, a permit without
404 regard to the requirement to restore to approximate
405 original contour set forth in subsection (b) or (d) of this
406 section may be granted for the surface mining of coal where
407 the mining operation will remove an entire coal seam or
408 seams running through the upper fraction of a mountain,
409 ridge or hill, except as provided in subparagraph (A),
410 subdivision (4) of this subsection, by removing all of the
411 overburden and creating a level plateau or a gently rolling
412 contour with no highwalls remaining, and capable of
413 supporting postmining uses in accordance with the
414 requirements of this subsection.

415 (3) In cases where an industrial, commercial, woodland,
416 agricultural, residential or public use is proposed for the
417 postmining use of the affected land, the director may grant
418 a permit for a surface-mining operation of the nature
419 described in subdivision (2) of this subsection where: (A)

420 The proposed postmining land use is deemed to constitute
421 an equal or better use of the affected land, as compared with
422 premining use; (B) the applicant presents specific plans for
423 the proposed postmining land use and appropriate
424 assurances that the use will be: (i) Compatible with
425 adjacent land uses; (ii) practicable with respect to achieving
426 the proposed use; (iii) supported by commitments from
427 public agencies where appropriate; (iv) practicable with
428 respect to private financial capability for completion of the
429 proposed use; (v) planned pursuant to a schedule attached
430 to the reclamation plan so as to integrate the mining
431 operation and reclamation with the postmining land use;
432 and (vi) designed by a person approved by the director in
433 conformance with standards established to assure the
434 stability, drainage and configuration necessary for the
435 intended use of the site; (C) the proposed use would be
436 compatible with adjacent land uses, and existing state and
437 local land use plans and programs; (D) the director provides
438 the county commission of the county in which the land is
439 located and any state or federal agency which the director,
440 in his discretion, determines to have an interest in the
441 proposed use, an opportunity of not more than sixty days to
442 review and comment on the proposed use; and (E) all other
443 requirements of this article will be met.

444 (4) In granting any permit pursuant to this subsection,
445 the director shall require that: (A) A natural barrier be
446 retained to inhibit slides and erosion on permit areas where
447 outcrop barriers are required: *Provided*, That constructed
448 barriers may be allowed where (i) natural barriers do not
449 provide adequate stability, (ii) natural barriers would
450 result in potential future water quality deterioration, and
451 (iii) natural barriers would conflict with the goal of
452 maximum utilization of the mineral resource: *Provided*,
453 *however*, That, at a minimum, the constructed barrier must
454 be of sufficient width and height to provide adequate
455 stability and the stability factor must equal or exceed that
456 of the natural outcrop barrier: *Provided further*, That
457 where water quality is paramount, the constructed barrier
458 must be composed of impervious material with controlled
459 discharge points; (B) the reclaimed area is stable; (C) the
460 resulting plateau or rolling contour drains inward from the
461 outsoles except at specific points; (D) no damage will be

462 done to natural watercourses; (E) spoil will be placed on the
463 mountaintop bench as is necessary to achieve the planned
464 postmining land use: *Provided*, That all excess spoil
465 material not retained on the mountaintop shall be placed in
466 accordance with the provisions of subdivision (22),
467 subsection (b) of this section; and (F) ensure stability of the
468 spoil retained on the mountaintop and meet the other
469 requirements of this article.

470 (5) All permits granted under the provisions of this
471 subsection shall be reviewed not more than three years from
472 the date of issuance of the permit, unless the applicant
473 affirmatively demonstrates that the proposed development
474 is proceeding in accordance with the terms of the approved
475 schedule and reclamation plan.

476 (d) In addition to those general performance standards
477 required by this section, when surface mining occurs on
478 slopes of twenty degrees or greater, or on such lesser slopes
479 as may be defined by regulation after consideration of soil
480 and climate, no debris, abandoned or disabled equipment,
481 spoil material or waste mineral matter will be placed on the
482 natural downslope below the initial bench or mining cut:
483 *Provided*, That soil or spoil material from the initial cut of
484 earth in a new surface-mining operation may be placed on a
485 limited specified area of the downslope below the initial cut
486 if the permittee can establish to the satisfaction of the
487 director that the soil or spoil will not slide and that the other
488 requirements of this section can still be met.

489 (e) The reclamation commission may promulgate
490 regulations pursuant to which the director may permit
491 variances from the requirements of this section: *Provided*,
492 That the watershed control of the area is improved:
493 *Provided, however*, That complete backfilling with spoil
494 material shall be required to completely cover the highwall,
495 which material will maintain stability following mining
496 and reclamation.

497 (f) The reclamation commission shall promulgate
498 regulations for the design, location, construction,
499 maintenance, operation, enlargement, modification,
500 removal and abandonment of new and existing coal mine
501 waste piles. In addition to engineering and other technical
502 specifications, the standards and criteria developed

503 pursuant to this subsection must include provisions for
504 review and approval of plans and specifications prior to
505 construction, enlargement, modification, removal or
506 abandonment; performance of periodic inspections during
507 construction; issuance of certificates of approval upon
508 completion of construction; performance of periodic safety
509 inspections; and issuance of notices and orders for required
510 remedial or maintenance work or affirmative action:
511 *Provided*, That whenever the director finds that any coal
512 processing waste pile constitutes an imminent danger to
513 human life, he may, in addition to all other remedies and
514 without the necessity of obtaining the permission of any
515 person prior or present who operated or operates the pile or
516 the landowners involved, enter upon the premises where
517 any such coal processing waste pile exists and may take or
518 order to be taken such remedial action as may be necessary
519 or expedient to secure the coal processing waste pile and to
520 abate the conditions which cause the danger to human life:
521 *Provided, however*, That the cost reasonably incurred in
522 any remedial action taken by the director under this
523 subsection may be paid for initially by funds appropriated
524 to the department of natural resources for these purposes,
525 and the sums so expended shall be recovered from any
526 responsible operator or landowner, individually or jointly,
527 by suit initiated by the attorney general at the request of the
528 director. For purposes of this subsection "operates" or
529 "operated" means to enter upon a coal processing waste
530 pile, or part thereof, for the purpose of disposing,
531 depositing, dumping coal processing wastes thereon or
532 removing coal processing waste therefrom, or to employ a
533 coal processing waste pile for retarding the flow of or for the
534 impoundment of water.

§20-6-14. General environmental protection performance standards for the surface effects of underground mining; application of other provisions of article to surface effects of underground mining.

- 1 (a) The reclamation commission shall promulgate
- 2 separate regulations directed toward the surface effects of
- 3 underground coal mining operations, embodying the
- 4 requirements in subsection (b) of this section: *Provided*,
- 5 That in adopting such regulations, the reclamation
- 6 commission shall consider the distinct difference between

7 surface coal mines and underground coal mines in West
8 Virginia. Such regulations may not conflict with or
9 supersede any provision of the federal or state coal mine
10 health and safety laws or any regulation issued pursuant
11 thereto.

12 (b) Each permit issued by the director pursuant to this
13 article and relating to underground coal mining shall
14 require the operation as minimum to:

15 (1) Adopt measures consistent with known technology
16 in order to prevent subsidence causing material damage to
17 the extent technologically and economically feasible,
18 maximize mine stability and maintain the value and
19 reasonably foreseeable use of overlying surface lands,
20 except in those instances where the mining technology used
21 requires planned subsidence in a predictable and controlled
22 manner: *Provided*, That this subsection does not prohibit
23 the standard method of room and pillar mining;

24 (2) Seal all portals, entryways, drifts, shafts or other
25 openings that connect the earth's surface to the
26 underground mine workings when no longer needed for the
27 conduct of the mining operations in accordance with the
28 requirements of all applicable federal and state law and
29 regulations promulgated pursuant thereto;

30 (3) Fill or seal exploratory holes no longer necessary for
31 mining and maximize to the extent technologically and
32 economically feasible, if environmentally acceptable,
33 return of mine and processing waste, tailings and any other
34 waste incident to the mining operation to the mine
35 workings or excavations;

36 (4) With respect to surface disposal of mine wastes,
37 tailings, coal processing wastes and other wastes in areas
38 other than the mine workings or excavations, stabilize all
39 waste piles created by the operator from current operations
40 through construction in compacted layers, including the
41 use of incombustible and impervious materials, if
42 necessary, and assure that any leachate therefrom will not
43 degrade surface or ground waters below water quality
44 standards established pursuant to applicable federal and
45 state law and that the final contour of the waste
46 accumulation will be compatible with natural

47 surroundings and that the site is stabilized and revegetated
48 according to the provisions of this section;

49 (5) Design, locate, construct, operate, maintain,
50 enlarge, modify and remove or abandon, in accordance with
51 the standards and criteria developed pursuant to
52 subsection (f), section thirteen of this article, all existing
53 and new coal mine waste piles consisting of mine wastes,
54 tailings, coal processing wastes and solid wastes and used
55 either temporarily or permanently as dams or
56 embankments;

57 (6) Establish on regraded areas and all other disturbed
58 areas a diverse and permanent vegetative cover capable of
59 self-regeneration and plant succession and at least equal in
60 extent of cover to the natural vegetation of the area within
61 the time period prescribed in subdivision (20), subsection
62 (b), section thirteen of this article;

63 (7) Protect off-site areas from damages which may
64 result from such mining operations;

65 (8) Eliminate fire hazards and otherwise eliminate
66 conditions which constitute a hazard to health and safety of
67 the public;

68 (9) Minimize the disturbance of the prevailing
69 hydrologic balance at the mine site and in associated off-
70 site areas and to the quantity and the quality of water in
71 surface and ground water systems both during and after
72 mining operations and during reclamation by: (A) Avoiding
73 acid or other toxic mine drainage by such measures as, but
74 not limited to: (i) Preventing or removing water from
75 contact with toxic producing deposits; (ii) treating drainage
76 to reduce toxic content which adversely affects
77 downstream water before being released to water courses;
78 and (iii) casing, sealing or otherwise managing boreholes,
79 shafts and wells to keep acid or other toxic drainage from
80 entering ground and surface waters; and (B) conducting
81 mining operations so as to prevent, to the extent possible
82 using the best technology currently available, additional
83 contributions of suspended solids to streamflow or runoff
84 outside the permit area, but in no event shall the
85 contributions be in excess of requirements set by applicable
86 state or federal law, and avoiding channel deepening or

87 enlargement in operations requiring the discharge of water
88 from mines: *Provided*, That in recognition of the distinct
89 differences between surface and underground mining the
90 monitoring of water from underground coal mine workings
91 shall be in accordance with the provisions of the Clean
92 Water Act of 1977;

93 (10) With respect to other surface impacts of
94 underground mining not specified in this subsection,
95 including the construction of new roads or the improvement
96 or use of existing roads to gain access to the site of such
97 activities and for haulage, repair areas, storage areas,
98 processing areas, shipping areas, and other areas upon
99 which are sited structures, facilities or other property or
100 materials on the surface, resulting from or incident to such
101 activities, operate in accordance with the standards
102 established under section thirteen of this article for such
103 effects which result from surface-mining operations:
104 *Provided*, That the reclamation commission shall make
105 such modifications in the requirements imposed by this
106 subdivision as are necessary to accommodate the distinct
107 difference between surface and underground mining in
108 West Virginia;

109 (11) To the extent possible using the best technology
110 currently available, minimize disturbances and adverse
111 impacts of the operation on fish, aquatic life, wildlife and
112 related environmental values, and achieve enhancement of
113 such resources where practicable; and

114 (12) Unless otherwise permitted by the director after
115 consultation with the department of mines and in
116 consideration of the relevant safety and environmental
117 factors, locate openings for all new drift mines working in
118 acid producing or iron producing coal seams in a manner as
119 to prevent a gravity discharge of water from the mine.

120 (c) In order to protect the stability of the land, the
121 director shall suspend underground mining under
122 urbanized areas, cities, towns and communities and
123 adjacent to industrial or commercial buildings, major
124 impoundments or permanent streams if he finds imminent
125 danger to inhabitants of the urbanized areas, cities, towns
126 or communities.

127 (d) The provisions of this article relating to permits,
128 bonds, insurance, inspections, reclamation and
129 enforcement, public review and administrative and judicial
130 review shall also be applicable to surface operations and
131 surface impacts incident to an underground mine with such
132 modifications by regulation to the permit application
133 requirements, permit approval or denial procedures and
134 bond requirements as are necessary to accommodate the
135 distinct difference between surface mines and underground
136 mines in West Virginia.

**§20-6-16. Cessation of operation by order of inspector;
informal conference; imposition of affirmative
obligations; appeal.**

1 (a) Notwithstanding any other provisions of this article,
2 a surface-mining reclamation inspector shall have the
3 authority to issue a cessation order for any portion of a
4 surface-mining operation when an inspector determines
5 that any condition or practice exists, or that any permittee
6 is in violation of any requirements of this article or any
7 permit condition required by this article, which condition,
8 practice or violation also creates an imminent danger to the
9 health or safety of the public, or is causing or can
10 reasonably be expected to cause significant, imminent
11 environmental harm to land, air or water resources. The
12 cessation order shall take effect immediately. Unless
13 waived in writing, an informal conference shall be held at or
14 near the site relevant to the violation set forth in the
15 cessation order within twenty-four hours after the order
16 becomes effective or such order shall expire. The conference
17 shall be held before a surface-mining reclamation
18 supervisor who shall, immediately upon conclusion of said
19 hearing, determine when and if the operation or portion
20 thereof may resume. Any operator who believes he is
21 aggrieved by the decision of the surface-mining
22 reclamation supervisor may immediately appeal to the
23 director, setting forth reasons why the operation should not
24 be halted. The director forthwith shall determine when the
25 operation or portion thereof may be resumed.

26 (b) The cessation order shall remain in effect until the
27 director determines that the condition, practice or violation
28 has been abated, or until modified, vacated or released by

29 the director. Where the director finds that the ordered
30 cessation of any portion of a surface coal mining operation
31 will not completely abate the imminent danger to health or
32 safety of the public or the significant imminent
33 environmental harm to land, air or water resources, the
34 director shall, in addition to the cessation order, impose
35 affirmative obligations on the operator requiring him to
36 take whatever steps the director deems necessary to abate
37 the imminent danger or the significant environmental
38 harm.

39 (c) Any cessation order issued pursuant to this section
40 or any other provision of this article may be released by any
41 inspector. An inspector shall be readily available to
42 terminate a cessation order upon abatement of the
43 violation.

**§20-6-17. Notice of violation; procedure and actions;
enforcement; permit revocation and bond
forfeiture; civil and criminal penalties; appeals
to the board; prosecution; injunctive relief.**

1 (a) If any of the requirements of this article, rules and
2 regulations promulgated pursuant thereto or permit
3 conditions have not been complied with, the director may
4 cause a notice of violation to be served upon the operator or
5 his duly authorized agent. A copy of the notice shall be
6 handed to the operator or his duly authorized agent in
7 person or served by certified mail addressed to the operator
8 at the permanent address shown on the application for a
9 permit. The notice shall specify in what respects the
10 operator has failed to comply with this article, rules and
11 regulations or permit conditions and shall specify a
12 reasonable time for abatement of the violation not to exceed
13 fifteen days. If the operator has not abated the violation
14 within the time specified in the notice, or any reasonable
15 extension thereof, not to exceed seventy-five days, the
16 director shall order the cessation of the operation or the
17 portion thereof causing the violation, unless the operator
18 affirmatively demonstrates that compliance is unattainable
19 due to conditions totally beyond the control of the operator.
20 If a violation is not abated within the time specified or any
21 extension thereof, or any cessation order is issued, a
22 mandatory civil penalty of not less than seven hundred fifty

23 dollars per day per violation shall be assessed: *Provided,*
24 That if a cessation order is released or expires within
25 twenty-four hours after issuance no mandatory civil
26 penalty shall be assessed. A cessation order shall remain in
27 effect until the director determines that the violation has
28 been abated or until modified, vacated or terminated by the
29 director or by a court. In any cessation order issued under
30 this subsection the director shall determine the steps
31 necessary to abate the violation in the most expeditious
32 manner possible and shall include the necessary measures
33 in the order.

34 (b) If the director determines that a pattern of violations
35 of any requirement of this article or any permit condition
36 exists or has existed, as a result of the operator's lack of
37 reasonable care and diligence, or that the violations are
38 willfully caused by the operator, the director shall
39 immediately issue an order directing the operator to show
40 cause why the permit should not be suspended or revoked
41 and giving the operator thirty days in which to request a
42 public hearing. If a hearing is requested, the director shall
43 inform all interested parties of the time and place of the
44 hearing. Any hearing under this section shall be recorded
45 and subject to the provisions of chapter twenty-nine-a of
46 this code. Within sixty days following the public hearing,
47 the director shall issue and furnish to the permittee and all
48 other parties to the hearing a written decision, and the
49 reasons therefor, concerning suspension or revocation of
50 the permit. Upon the operator's failure to show cause why
51 the permit should not be suspended or revoked, the director
52 shall immediately revoke the operator's permit, forfeit the
53 operator's bond, or other security posted pursuant to
54 section twelve of this article, and give notice to the attorney
55 general, who shall collect the forfeiture without delay:
56 *Provided,* That the entire proceeds of such forfeiture shall
57 be deposited with the treasurer of the state of West Virginia
58 to the credit of the special reclamation fund. All forfeitures
59 collected prior to the effective date of this article shall be
60 deposited in the special reclamation fund and shall be
61 expended back upon the areas for which the bond was
62 posted: *Provided, however,* That any excess therefrom shall
63 remain in the special reclamation fund.

64 (c) Any person engaged in surface-mining operations
65 who violates any permit condition or who violates any other
66 provision of this article or rules and regulations
67 promulgated pursuant thereto may also be assessed a civil
68 penalty. The penalty shall not exceed five thousand dollars.
69 Each day of continuing violation may be deemed a separate
70 violation for purposes of penalty assessments. In
71 determining the amount of the penalty, consideration shall
72 be given to the operator's history of previous violations at
73 the particular surface-mining operation, the seriousness of
74 the violation, including any irreparable harm to the
75 environment and any hazard to the health or safety of the
76 public, whether the operator was negligent, and the
77 demonstrated good faith of the operator charged in
78 attempting to achieve rapid compliance after notification
79 of the violation.

80 (d) (1) Upon the issuance of a notice or order pursuant
81 to this section, the assessment officer shall, within thirty
82 days, set a proposed penalty assessment and notify the
83 operator in writing of such proposed penalty assessment.
84 The proposed penalty assessment must be paid in full
85 within thirty days of receipt or, if the operator wishes to
86 contest either the amount of the penalty or the fact of
87 violation, an informal conference with the assessment
88 officer may be requested within fifteen days or a formal
89 hearing before the reclamation board of review may be
90 requested within thirty days. The notice of proposed
91 penalty assessment shall advise the operator of the right to
92 an informal conference and a formal hearing pursuant to
93 this section. When an informal conference is requested, the
94 operator shall have fifteen days from receipt of the
95 assessment officer's decision to request a formal hearing
96 before the board. (A) When an informal conference is held,
97 the assessment officer shall have authority to affirm,
98 modify or vacate the notice, order or proposed penalty
99 assessment. (B) When a formal hearing is requested, the
100 amount of the proposed penalty assessment shall be
101 forwarded to the director for placement in an escrow
102 account. Formal hearings shall be of record and subject to
103 the provisions of article five, chapter twenty-nine-a of the
104 code of West Virginia, one thousand nine hundred thirty-
105 one, as amended. Following the hearing the board shall

106 affirm, modify or vacate the notice, order or proposed
107 penalty assessment and, when appropriate, incorporate an
108 assessment order requiring that the assessment be paid.

109 (2) Civil penalties owed under this section may be
110 recovered by the director in the circuit court of Kanawha
111 County. Civil penalties collected under this article shall be
112 deposited with the treasurer of the state of West Virginia to
113 the credit of the special reclamation fund established in
114 section twelve of this article. If, through the administrative
115 or judicial review of the proposed penalty, it is determined
116 that no violation occurred or that the amount of the penalty
117 should be reduced, the director shall within thirty days
118 remit the appropriate amount to the person, with interest at
119 the rate of six percent or at the prevailing United States
120 department of the treasury rate, whichever is greater.
121 Failure to forward the money to the director within thirty
122 days shall result in a waiver of all legal rights to contest the
123 violation or the amount of the penalty.

124 (3) Any person having an interest which is or may be
125 adversely affected by any order of the director or the board
126 may file an appeal only in accordance with the provisions of
127 section twenty-five of this article within thirty days after
128 receipt of the order.

129 (4) The filing of an appeal provided for in this section
130 shall not stay execution of the order appealed from.
131 Pending completion of the investigation and hearing
132 required by this section, the applicant may file with the
133 director a written request that the director grant temporary
134 relief from any notice or order issued under section sixteen
135 or seventeen of this article, together with a detailed
136 statement giving reasons for granting such relief. The
137 director shall issue an order or decision granting or denying
138 such relief expeditiously: *Provided*, That where the
139 applicant requests relief from an order for cessation of
140 surface-mining and reclamation operations, the decision on
141 the request shall be issued within forty-eight hours of its
142 receipt. The director may grant such relief, under such
143 conditions as he may prescribe if:

144 (A) All parties to the proceedings have been notified and
145 given an opportunity to be heard on a request for temporary
146 relief;

147 (B) The person requesting the relief shows that there is a
148 substantial likelihood that he will prevail on the merits in
149 the final determination of the proceedings;

150 (C) The relief will not adversely affect the public health
151 or safety or cause significant imminent environmental
152 harm to land, air or water resources; and

153 (D) The relief sought is not the issuance of a permit
154 where a permit has been denied, in whole or in part, by the
155 director.

156 (e) Any person who willfully and knowingly violates a
157 condition of a permit issued pursuant to this article or
158 regulations promulgated pursuant thereto, or fails or
159 refuses to comply with any order issued under said article
160 and regulations or any order incorporated in a final
161 decision issued by the director, is guilty of a misdemeanor,
162 and, upon conviction thereof, shall be fined not less than
163 one hundred dollars nor more than ten thousand dollars, or
164 imprisoned in the county jail not more than one year, or
165 both fined and imprisoned.

166 (f) Whenever a corporate operator violates a condition
167 of a permit issued pursuant to this article, regulations
168 promulgated pursuant thereto, or any order incorporated in
169 a final decision issued by the director, any director, officer
170 or agent of the corporation, who willfully and knowingly
171 authorized, ordered or carried out the failure or refusal,
172 shall be subject to the same civil penalties, fines and
173 imprisonment that may be imposed upon a person under
174 subsections (c) and (e) of this section.

175 (g) Any person who knowingly makes any false
176 statement, representation or certification, or knowingly
177 fails to make any statement, representation or certification
178 in any application, petition, record, report, plan or other
179 document filed or required to be maintained pursuant to
180 this article or regulations promulgated pursuant thereto, is
181 guilty of a misdemeanor, and, upon conviction thereof, shall
182 be fined not less than one hundred dollars nor more than ten
183 thousand dollars, or imprisoned in the county jail not more
184 than one year, or both fined and imprisoned.

185 (h) Whenever any person: (A) Violates or fails or refuses
186 to comply with any order or decision issued by the director

187 under this article; or (B) interferes with, hinders or delays
188 the director in carrying out the provisions of this article; or
189 (C) refuses to admit the director to the mine; or (D) refuses
190 to permit inspection of the mine by the director; or (E)
191 refuses to furnish any reasonable information or report
192 requested by the director in furtherance of the provisions of
193 this article; or (F) refuses to permit access to, and copying
194 of, such records as the director determines necessary in
195 carrying out the provisions of this article; or (G) violates
196 any other provisions of this article, the regulations
197 promulgated pursuant thereto, or the terms and conditions
198 of any permit, the director, the attorney general or the
199 prosecuting attorney of the county in which the major
200 portion of the permit area is located may institute a civil
201 action for relief, including a permanent or temporary
202 injunction, restraining order or any other appropriate
203 order, in the circuit court of Kanawha County or any court
204 of competent jurisdiction to compel compliance with and
205 enjoin such violations, failures or refusals. The court or the
206 judge thereof may issue a preliminary injunction in any case
207 pending a decision on the merits of any application filed
208 without requiring the filing of a bond or other equivalent
209 security.

210 (i) Any person who shall, except as permitted by law,
211 willfully resist, prevent, impede or interfere with the
212 director or any of his agents in the performance of duties
213 pursuant to this article is guilty of a misdemeanor, and,
214 upon conviction thereof, shall be punished by a fine of not
215 more than five thousand dollars or by imprisonment for not
216 more than one year, or both.

§20-6-18. Approval, denial, revision and prohibition of permit.

1 (a) Upon the receipt of a surface-mining application or
2 significant revision or renewal thereof, including public
3 notification and an opportunity for a public hearing, the
4 director shall grant, require revision of, or deny the
5 application for a permit within sixty days and notify the
6 applicant in writing of his decision.

7 (b) No permit or significant revision of a permit may be
8 approved unless the applicant affirmatively demonstrates
9 and the director finds in writing on the basis of the
10 information set forth in the application or from information

11 otherwise available which shall be documented in the
12 approval and made available to the applicant that:

13 (1) The permit application is accurate and complete and
14 that all the requirements of this article and regulations
15 thereunder have been complied with;

16 (2) The applicant has demonstrated that reclamation as
17 required by this article can be accomplished under the
18 reclamation plan contained in the permit application;

19 (3) The assessment of the probable cumulative impact of
20 all anticipated mining in the area on the hydrologic
21 balance, as specified in section ten of this article, has been
22 made by the director and the proposed operation has been
23 designed to prevent material damage to the hydrologic
24 balance outside the permit area;

25 (4) The area proposed to be mined is not included within
26 an area designated unsuitable for surface mining pursuant
27 to section twenty-two of this article or is not within an area
28 under administrative study by the reclamation commission
29 for such designation; and

30 (5) In cases where the private mineral estate has been
31 severed from the private surface estate, the applicant has
32 submitted: (A) The written consent of the surface owner to
33 the extraction of coal by surface mining; or (B) a
34 conveyance that expressly grants or reserves the right to
35 extract the coal by surface mining; or (C) if the conveyance
36 does not expressly grant the right to extract coal by surface
37 mining, the surface-subsurface legal relationship shall be
38 determined in accordance with applicable law: *Provided*,
39 That nothing in this article shall be construed to authorize
40 the director to adjudicate property rights disputes.

41 (c) Where information available to the department
42 indicates that any surface-mining operation located in the
43 state of West Virginia, owned or controlled by the
44 applicant, is currently in violation of this article or other
45 environmental laws or regulations, the permit shall not be
46 issued until the applicant submits proof that such violation
47 has been corrected or is in the process of being corrected to
48 the satisfaction of the director or the department or agency
49 which has jurisdiction over the violation, and no permit
50 may be issued to any applicant after a finding by the

51 director, after an opportunity for hearing, that the
52 applicant or the operator specified in the application
53 controls or has controlled mining operations with a
54 demonstrated pattern of willful violations of this article of
55 such nature and duration with such irreparable damage to
56 the environment as to indicate an intent not to comply with
57 the provisions of this article: *Provided*, That if the director
58 finds that the applicant is or has been affiliated with, or
59 managed or controlled by, or is or has been under the
60 common control of, other than as an employee, a person who
61 has had a surface-mining permit revoked or bond or other
62 security forfeited for failure to reclaim lands as required by
63 the laws of this state, he shall not issue a permit to the
64 applicant: *Provided, however*, That subject to the
65 discretion of the director and based upon a petition for
66 reinstatement, permits may be issued to any applicant if,
67 after the revocation or forfeiture, the operator whose
68 permit has been revoked or bond forfeited shall have paid
69 into the special reclamation fund any additional sum of
70 money determined by the director to be adequate to reclaim
71 the disturbed area, and the director is satisfied that the
72 petitioner will comply with this article.

73 (d) (1) In addition to finding the application in
74 compliance with subsection (b) of this section, if the area
75 proposed to be mined contains prime farmland, the director
76 may, pursuant to regulations promulgated hereunder, grant
77 a permit to mine on prime farmland if the operator
78 affirmatively demonstrates that he has the technological
79 capability to restore such mined area, within a reasonable
80 time, to equivalent or higher levels of yield as nonmined
81 prime farmland in the surrounding area under equivalent
82 levels of management, and can meet the soil reconstruction
83 standards in subdivision seven, subsection (b), section
84 thirteen of this article. Except for compliance with
85 subsection (b) of this section, the requirements of
86 subdivision (1) of this subsection shall apply to all permits
87 issued after the third day of August, one thousand nine
88 hundred seventy-seven.

89 (2) Nothing in this subsection shall apply to any permit
90 issued prior to the third day of August, one thousand nine
91 hundred seventy-seven, or to any revisions or renewals

92 thereof, or to any existing surface-mining operations for
93 which a permit was issued prior to said date.

94 (e) If the director finds that the overburden on any part
95 of the area of land described in the application for a permit
96 is such that experience in the state with a similar type of
97 operation upon land with similar overburden shows that
98 one or more of the following conditions cannot feasibly be
99 prevented: (1) Substantial deposition of sediment in stream
100 beds, (2) landslides, or (3) acid-water pollution, the director
101 may delete such part of the land described in the
102 application upon which such overburden exists.

**§20-6-19. Permit revision and renewal requirements;
requirements for transfer; assignment and sale of
permit rights; and operator reassignment.**

1 (a) (1) Any valid permit issued pursuant to this article
2 shall carry with it the right of successive renewal upon
3 expiration with respect to areas within the boundaries of
4 the existing permit. The holders of the permit may apply for
5 renewal and the renewal shall be issued: *Provided*, That on
6 application for renewal, the burden shall be on the
7 opponents of renewal, unless it is established that and
8 written findings by the director are made that: (A) The
9 terms and conditions of the existing permit are not being
10 satisfactorily met: *Provided*, That if the permittee is
11 required to modify operations pursuant to mining or
12 reclamation requirements which become applicable after
13 the original date of permit issuance, the permittee shall be
14 provided an opportunity to submit a schedule allowing a
15 reasonable period to comply with such revised
16 requirements; (B) the present surface-mining operation is
17 not in compliance with the applicable environmental
18 protection standards of this article; (C) the renewal
19 requested substantially jeopardizes the operator's
20 continuing responsibility on existing permit areas; (D) the
21 operator has not provided evidence that the performance
22 bond in effect for said operation will continue in effect for
23 any renewal requested as required pursuant to section
24 twelve of this article; or (E) any additional revised or
25 updated information as required pursuant to rules and
26 regulations promulgated by the reclamation commission
27 has not been provided.

28 (2) If an application for renewal of a valid permit
29 includes a proposal to extend the surface-mining operation
30 beyond the boundaries authorized in the existing permit,
31 except incidental boundary revisions, the applicant shall
32 apply for a new permit. Incidental boundary revisions shall
33 include, but not be limited to, additional areas of
34 disturbance ancillary to permitted surface effects of
35 underground mining operations, provided that the operator
36 has submitted (A) adequate bond, (B) a map showing the
37 disturbed area and facilities, and (C) a reclamation plan.

38 (3) Any permit renewal shall be for a term not to exceed
39 the period of time for which the original permit was issued.
40 Application for permit renewal shall be made at least one
41 hundred twenty days prior to the expiration of the valid
42 permit.

43 (4) Any permit renewal application shall be on forms
44 prescribed by the director and shall contain such
45 information as the director requires pursuant to rule or
46 regulation.

47 (b) (1) During the term of the permit, the permittee
48 may submit to the director an application for a revision of
49 the permit, together with a revised reclamation plan.

50 (2) An application for a significant revision of a permit
51 shall be subject to all requirements of this article and
52 regulations promulgated pursuant thereto.

53 (3) Any extension to an area already covered by the
54 permit, except incidental boundary revisions, shall be made
55 by application for another permit.

56 (c) The director shall review outstanding permits of a
57 five-year term before the end of the third year of the permit.
58 Other permits shall be reviewed within the time established
59 by regulations. The director may require reasonable
60 revision or modification of the permit following review:
61 *Provided*, That such revision or modification shall be based
62 upon written findings and shall be preceded by notice to the
63 permittee and opportunity for hearing.

64 (d) No transfer, assignment or sale of the rights granted
65 under any permit issued pursuant to this article shall be
66 made without the prior written approval of the director.

§20-6-22. Designation of areas unsuitable for surface mining; petition for removal of designation; prohibition of surface mining on certain areas; exceptions; taxation of minerals underlying land designated unsuitable.

1 (a) The reclamation commission shall establish a
2 planning process to enable objective decisions based upon
3 competent and scientifically sound data and information as
4 to which, if any, land areas of this state are unsuitable for all
5 or certain types of surface-mining operations pursuant to
6 the standards set forth in subdivisions (1) and (2) of this
7 subsection: *Provided*, That such designation shall not
8 prevent prospecting pursuant to section eight of this article
9 on any area so designated.

10 (1) Upon petition pursuant to subsection (b) of this
11 section, the reclamation commission shall designate an area
12 as unsuitable for all or certain types of surface-mining
13 operations, if it determines that reclamation pursuant to
14 the requirements of this article is not technologically and
15 economically feasible.

16 (2) Upon petition pursuant to subsection (b) of this
17 section, a surface area may be designated unsuitable for
18 certain types of surface-mining operations, if the
19 operations: (A) Conflict with existing state or local land use
20 plans or programs; (B) affect fragile or historic lands in
21 which the operations could result in significant damage to
22 important historic, cultural, scientific and aesthetic values
23 and natural systems; (C) affect renewable resource lands,
24 including significant aquifers and aquifer recharge areas,
25 in which the operations could result in a substantial loss or
26 reduction of long-range productivity of water supply, food
27 or fiber products; or (D) affect natural hazard lands in
28 which the operations could substantially endanger life and
29 property. Such lands to include lands subject to frequent
30 flooding and areas of unstable geology.

31 (3) The reclamation commission shall develop a process
32 which includes: (A) The review of surface-mining lands; (B)
33 a data base and an inventory system which will permit
34 proper evaluation of the capacity of different land areas of
35 the state to support and permit reclamation of surface-
36 mining operations; (C) a method for implementing land use

37 planning decisions concerning surface-mining operations;
38 and (D) proper notice and opportunities for public
39 participation, including a public hearing prior to making
40 any designation or redesignation pursuant to this section.

41 (4) Determinations of the unsuitability of land for
42 surface mining, as provided for in this section, shall be
43 integrated as closely as possible with present and future
44 land use planning and regulation processes at federal, state
45 and local levels.

46 (5) The requirements of this section shall not apply to
47 lands on which surface-mining operations were being
48 conducted on the third day of August, one thousand nine
49 hundred seventy-seven, or under a permit issued pursuant
50 to this article, or where substantial legal and financial
51 commitments in the operations were in existence prior to
52 the fourth day of January, one thousand nine hundred
53 seventy-seven.

54 (b) The director, or any person having an interest which
55 is or may be adversely affected, shall have the right to
56 petition the reclamation commission to have an area
57 designated as unsuitable for surface-mining operations or
58 to have such a designation terminated. The petition shall
59 contain allegations of fact with supporting evidence which
60 would tend to establish the allegations. After receipt of the
61 petition, the reclamation commission shall immediately
62 begin an administrative study of the area specified in the
63 petition. Within ten months after receipt of the petition, the
64 reclamation commission shall hold a public hearing in the
65 locality of the affected area after appropriate notice and
66 publication of the date, time and location of the hearing.
67 After the director or any person having an interest which is
68 or may be adversely affected has filed a petition and before
69 the hearing required by this subsection, any person may
70 intervene by filing allegations of fact with supporting
71 evidence which would tend to establish the allegations.
72 Within sixty days after the hearing, the reclamation
73 commission shall issue and furnish to the petitioner and any
74 other party to the hearing, a written decision regarding the
75 petition and the reasons therefor. In the event that all the
76 petitioners stipulate agreement prior to the requested

77 hearing and withdraw their request, the hearing need not be
78 held.

79 (c) Prior to designating any land areas as unsuitable for
80 surface-mining operations, the reclamation commission
81 shall prepare a detailed statement on: (1) The potential coal
82 resources of the area; (2) the demand for the coal resources;
83 and (3) the impact of the designation on the environment,
84 the economy and the supply of coal.

85 (d) After the third day of August, one thousand nine
86 hundred seventy-seven, and subject to valid existing rights,
87 no surface-mining operations, except those which existed
88 on that date, shall be permitted:

89 (1) On any lands in this state within the boundaries of
90 units of the national park system, the national wildlife
91 refuge systems, the national system of trails, the national
92 wilderness preservation system, the wild and scenic rivers
93 system, including study rivers designated under section
94 five-a of the Wild and Scenic Rivers Act, and national
95 recreation areas designated by act of Congress;

96 (2) Which will adversely affect any publicly owned park
97 or places included in the national register of historic sites,
98 or national register of natural landmarks unless approved
99 jointly by the director and the federal, state or local agency
100 with jurisdiction over the park, the historic site or natural
101 landmark;

102 (3) Within one hundred feet of the outside right-of-way
103 line on any public road, except where mine access roads or
104 haulage roads join such right-of-way line, and except that
105 the director may permit the roads to be relocated or the area
106 affected to lie within one hundred feet of the road if, after
107 public notice and an opportunity for a public hearing in the
108 locality, the director makes a written finding that the
109 interests of the public and the landowners affected thereby
110 will be protected;

111 (4) Within three hundred feet from any occupied
112 dwelling, unless waived by the owner thereof, or within
113 three hundred feet of any public building, school, church,
114 community or institutional building, public park, or within
115 one hundred feet of a cemetery; or

116 (5) On any federal lands within the boundaries of any
117 national forest: *Provided*, That surface coal mining
118 operations may be permitted on the lands if the secretary of
119 the interior finds that there are no significant recreational,
120 timber, economic or other values which may be
121 incompatible with the surface-mining operations:
122 *Provided, further*, that the surface operations and impacts
123 are incident to an underground coal mine.

124 (e) Notwithstanding any other provision of this code,
125 the coal underlying any lands designated unsuitable for
126 surface-mining operations under any provisions of this
127 article or underlying any land upon which mining is
128 prohibited by any provisions of this article shall be assessed
129 for taxation purposes according to their value and the
130 Legislature hereby finds that the coal has no value for the
131 duration of the designation or prohibition unless suitable
132 for underground mining not in violation of this article:
133 *Provided*, That the owner of the coal shall forthwith notify
134 the proper assessing authorities if the designation or
135 prohibition is removed so that the coal may be reassessed.

**§20-6-24. Appeals to the board; hearings before board;
subpoena and subpoena duces tecum; records;
findings and orders of the board.**

1 (a) Any person having an interest which is or may be
2 adversely affected by any order of the reclamation
3 commission assessment officer or a decision of the director
4 to grant, deny, modify, renew or significantly revise a
5 permit, or a decision of the director concerning a bond
6 release pursuant to section twenty-six of this article, may
7 appeal that decision to the board, or may intervene in a
8 timely manner in any such pending appeal. The person so
9 appealing to the board shall be known as the appellant, and
10 the commissioner or director shall be known as the
11 appellee. The appellant and appellee are deemed to be
12 parties to the appeal. Any hearing shall be subject to the
13 requirements of chapter twenty-nine-a of this code.

14 (b) The appeal shall be in writing and shall set forth the
15 action complained of and the specific grounds upon which
16 the appeal is based. Within thirty days after the appellant is
17 notified of the decision of the director or the reclamation
18 commission, or within fifteen days after the appellant is

19 notified of the decision of the assessment officer, the
20 appellant or any person with an interest which is or may be
21 adversely affected may request a hearing on the reasons for
22 the decision complained of. A notice of the appeal shall be
23 filed with the reclamation commission or the director
24 within three days after the appeal is filed with the board.

25 (c) Upon the filing of the appeal, the board shall fix the
26 time and place at which the hearing on the appeal will be
27 held, which hearing shall be held within thirty days after
28 the notice of appeal is filed, and shall give the appellant, the
29 commission and the director at least twenty days' written
30 notice thereof by certified mail. The board may postpone or
31 continue any hearing upon its own motion or motion of the
32 parties to the appeal.

33 (d) Not later than five days prior to the time fixed for the
34 hearing on the appeal, the reclamation commission or
35 director shall prepare and certify to the board a complete
36 record of the proceedings of the reclamation commission or
37 director out of which the appeal arises, including all
38 documents and correspondence related to the matter.

39 (e) The board shall hear the appeal de novo and any
40 party to the appeal may submit evidence. For the purpose of
41 conducting a hearing on an appeal, the board may require
42 the attendance of witnesses and the production of books,
43 records and papers, and it may, and at the request of any
44 party it shall, issue subpoenas for witnesses or subpoenas
45 duces tecum to compel the production of any books, records
46 or papers, directed to the sheriff of the county where
47 witnesses, books, records or papers are found, which
48 subpoenas and subpoenas duces tecum shall be served and
49 returned in the same manner as subpoenas and subpoenas
50 duces tecum in civil litigation are served and returned. The
51 fees and allowances for mileage of sheriffs and witnesses
52 shall be the same as those permitted in civil litigation in
53 trial courts. All fees and mileage expenses incurred and the
54 expense of preparing a copy of the record at the request of
55 the appellant shall be paid by the appellant. The board may
56 visit the site of the activity or proposed activity which is the
57 subject of the hearing and take such additional evidence as
58 it considers necessary provided that all parties and
59 intervenors be given notice of the visit and are given an
60 opportunity to accompany the board.

61 (f) In case of disobedience or neglect of any subpoena or
62 subpoena duces tecum served on any person, or the refusal
63 of any witness to testify to any matter regarding which he
64 may be lawfully interrogated, the circuit court of the county
65 in which the disobedience, neglect or refusal occurs, on
66 application of the board or any member thereof, shall
67 compel obedience by attachment proceedings for contempt
68 as in the case of disobedience of the requirements of a
69 subpoena or subpoena duces tecum issued from the court of
70 a refusal to testify therein. Witnesses at the hearings shall
71 testify under oath and any member of the board may
72 administer oaths or affirmations to persons who so testify.

73 (g) A stenographic record of the testimony and other
74 evidence submitted shall be made. The record shall include
75 all of the testimony and other evidence and the rulings on
76 the admissibility of evidence, but any party may at the time
77 object to the admission of any evidence and except to the
78 rulings of the board thereon, and if the board refuses to
79 admit evidence the party offering the same may make a
80 proffer thereof, and the proffer shall be made a part of the
81 record of the hearing.

82 (h) If upon completion of the hearing the board finds
83 that the decision appealed from was lawful and reasonable,
84 it shall make a written order affirming the same, or if the
85 board finds that the decision was not supported by
86 substantial evidence in the record considered as a whole, it
87 shall make a written order reversing or modifying the
88 decision appealed from. Every order made by the board
89 shall contain a written finding by the board of the facts
90 upon which the order is based. On all appeals to the board,
91 the board shall issue a final decision thirty days after the
92 hearing or within thirty days after the testimony presented
93 at the hearing has been transcribed and checked for
94 accuracy. Notice of the making of such order shall be given
95 forthwith to each party to the appeal by mailing a certified
96 copy thereof to each party by registered or certified mail.
97 The order of the board shall be final unless vacated upon
98 judicial review thereof.

**§20-6-25. Appeal from order of board; judicial review;
temporary relief.**

1 (a) Within thirty days after receipt of an order from the

2 board, any applicant, any person with an interest which is
3 or may be adversely affected, or the appellee who has
4 participated in the administrative proceedings before the
5 board and who is aggrieved by the decision of the board may
6 obtain judicial review thereof by appealing to the circuit
7 court of Kanawha County or the county in which the
8 surface-mining operation is located. Any party desiring to
9 so appeal shall file with the board a notice of appeal,
10 designating the order appealed from, stating whether the
11 appeal is taken on questions of law, questions of fact or
12 questions of law and fact, and stating specific grounds upon
13 which the appeal is based. A copy of the notice shall also be
14 filed by the appellant with the court and shall be mailed or
15 otherwise delivered to the appellee. The notice and copies
16 thereof shall be filed and mailed or otherwise delivered
17 within thirty days after the date upon which the appellant
18 received notice from the board by certified mail of the
19 making of the order appealed from. No appeal bond may be
20 required to make effective an appeal on questions of law,
21 questions of fact or questions of law and fact.

22 (b) The filing of a notice of appeal shall not, unless
23 specifically ordered by the court, operate as a stay of the
24 order of the board. The court may, under such conditions as
25 it may prescribe, grant such temporary relief as it deems
26 appropriate pending final determination of the proceedings
27 if:

28 (1) All parties to the proceedings have been notified and
29 given an opportunity to be heard on a request for temporary
30 relief;

31 (2) The person requesting relief shows that there is a
32 substantial likelihood that he will prevail on the merits of
33 the final determination of the proceedings; and

34 (3) The relief will not adversely affect the public health
35 or safety or cause significant imminent environmental
36 harm to land, air or water resources.

37 (c) Within thirty days after receipt of the notice of
38 appeal, the board shall prepare and file in the court the
39 complete record of the proceedings out of which the appeal
40 arises, including a transcript of the testimony and other
41 evidence which was submitted before the board. The

42 expense of preparing a copy of the record shall be taxed as a
43 part of the costs of the appeal. The appellant shall provide
44 security for costs satisfactory to the court. Upon demand by
45 a party, the board shall furnish, at the cost of the party
46 requesting the same, a copy of such record. In the event such
47 complete record is not filed in the court within the time
48 provided for in this section, either party may apply to the
49 court to have the case docketed, and the court shall order
50 such record filed.

51 (d) Appeals taken on questions of law, fact or both, shall
52 be heard upon assignment of error filed in the case or set out
53 in the briefs of the appellant. Errors not argued by brief may
54 be disregarded. The court shall hear the appeal solely upon
55 the record made before the board.

56 (e) The court may affirm, vacate, modify, set aside or
57 remand any order of the board for further action as the
58 court may direct. Any order shall be affirmed if the court
59 concludes that the order is supported by substantial
60 evidence based on the record as a whole. The judgment of
61 the court shall be final unless reversed, vacated or modified
62 on appeal to the supreme court of appeals of West Virginia,
63 and jurisdiction is hereby conferred upon the court to hear
64 and entertain the appeals upon application made therefor
65 in the manner and within the time provided for civil appeals
66 generally.

67 (f) The availability of the review shall not be construed
68 to limit the operation of the rights established in section
69 twenty-eight of this article except as provided therein.

70 (g) Whenever an order is issued under this section, or as
71 a result of any administrative or judicial proceeding under
72 this article, at the request of any person, a sum equal to the
73 aggregate amount of all costs and expenses, including
74 attorney fees, as determined by the board or the court to
75 have been reasonably incurred by such person for or in
76 connection with his participation in the proceedings, may
77 be assessed against either party by the board or the court.

**§20-6-26. Release of performance bond or deposits;
application; notice; duties of director; public
hearings; final maps on grade release.**

1 (a) The permittee may file a request with the director for

2 the release of a performance bond or deposit. The permittee
3 shall publish an advertisement regarding such request for
4 release in the same manner as is required of advertisements
5 for permit applications. A copy of such advertisements shall
6 be submitted to the director as part of any bond release
7 application and shall contain a notification of the precise
8 location of the land affected, the number of acres, the
9 permit and the date approved, the amount of the bond filed
10 and the portion sought to be released, the type and
11 appropriate dates of reclamation work performed and a
12 description of the results achieved as they relate to the
13 permittee's approved reclamation plan. In addition, as part
14 of any bond release application, the permittee shall submit
15 copies of letters which he has sent to adjoining property
16 owners, local government bodies, planning agencies,
17 sewage and water treatment authorities or water
18 companies in the locality in which the surface-mining
19 operation is located, notifying them of the permittee's
20 intention to seek release from the bond. Any request for
21 grade release shall also be accompanied by final maps.

22 (b) Upon receipt of the application for bond release, the
23 director, within thirty days, taking into consideration
24 existing weather conditions, shall conduct an inspection
25 and evaluation of the reclamation work involved. Such
26 evaluation shall consider, among other things, the degree of
27 difficulty to complete any remaining reclamation, whether
28 pollution of surface and subsurface water is occurring, the
29 probability of continuance or future occurrence of such
30 pollution and the estimated cost of abating such pollution.
31 The director shall notify the permittee in writing of his
32 decision to release or not to release all or part of the
33 performance bond or deposit within sixty days from the
34 date of the initial publication of the advertisement if no
35 public hearing is requested. If a public hearing is held, the
36 director's decision shall be issued within thirty days
37 thereafter.

38 (c) If the director is satisfied that reclamation covered
39 by the bond or deposit or portion thereof has been
40 accomplished as required by this article, he may release
41 said bond or deposit, in whole or in part, according to the
42 following schedule:

43 (1) When the operator completes the backfilling,
44 regrading and drainage control of a bonded area in
45 accordance with his approved reclamation plan, the release
46 of sixty percent of the bond or collateral for the applicable
47 bonded area: *Provided*, That a minimum bond of ten
48 thousand dollars shall be retained after grade release;

49 (2) Two years after the last augmented seeding,
50 fertilizing, irrigation or other work to insure compliance
51 with subdivision (19), subsection (b), section thirteen of this
52 article, the release of an additional twenty-five percent of
53 the bond or collateral for the applicable bonded area:
54 *Provided*, That a minimum bond of ten thousand dollars
55 shall be retained after the release provided for in this
56 subdivision; and

57 (3) When the operator has completed successfully all
58 surface-mining and reclamation activities, the release of the
59 remaining portion of the bond, but not before the expiration
60 of the period specified in subdivision (20), subsection (b),
61 section thirteen of this article: *Provided*, That the
62 revegetation has been established on the regraded mined
63 lands in accordance with the approved reclamation plan:
64 *Provided, however*, That such a release may be made where
65 the quality of the untreated post-mining water discharged is
66 better than or equal to the premining water quality
67 discharged from the mining site.

68 No part of the bond or deposit may be released under this
69 subsection so long as the lands to which the release would
70 be applicable are contributing additional suspended solids
71 to streamflow or runoff outside the permit area in excess of
72 the requirements set by section thirteen or fourteen of this
73 article, or until soil productivity for prime farmlands has
74 returned to equivalent levels of yield as nonmined land of
75 the same soil type in the surrounding area under equivalent
76 management practices as determined from the soil survey
77 performed pursuant to section ten of this article. Where a
78 sediment dam is to be retained as a permanent
79 impoundment pursuant to section thirteen of this article, or
80 where a road or minor deviation is to be retained for sound
81 future maintenance of the operation, the portion of the
82 bond may be released under this subsection so long as
83 provisions for sound future maintenance by the operator or
84 the landowner have been made with the director.

85 (d) If the director disapproves the application for
86 release of the bond or portion thereof, the director shall
87 notify the permittee, in writing, stating the reasons for
88 disapproval and recommending corrective actions
89 necessary to secure said release and notifying the operator
90 of his right to a hearing.

91 (e) When any application for total or partial bond
92 release is filed with the director, he shall notify the
93 municipality in which a surface-mining operation is
94 located by registered or certified mail at least thirty days
95 prior to the release of all or a portion of the bond.

96 (f) Any person with a valid legal interest which is or may
97 be adversely affected by release of the bond or the
98 responsible officer or head of any federal, state or local
99 governmental agency which has jurisdiction by law or
100 special expertise with respect to any environmental, social
101 or economic impact involved in the operation, or is
102 authorized to develop and enforce environmental standards
103 with respect to such operations, has the right to file written
104 objections to the proposed bond release and request a
105 hearing with the director within thirty days after the last
106 publication of the permittee's advertisement. If written
107 objections are filed and a hearing requested, the director
108 shall inform all of the interested parties of the time and
109 place of the hearing and shall hold a public hearing in the
110 locality of the surface-mining operation proposed for bond
111 release within three weeks after the close of the public
112 comment period. The date, time and location of such public
113 hearing shall also be advertised by the director in a
114 newspaper of general circulation in the same locality.

115 (g) Without prejudice to the rights of the objectors, the
116 applicant, or the responsibilities of the director pursuant to
117 this section, the director may hold an informal conference
118 to resolve any written objections and satisfy the hearing
119 requirements of this section thereby.

120 (h) For the purpose of such hearing, the director has the
121 authority and is hereby empowered to administer oaths,
122 subpoena witnesses and written or printed materials,
123 compel the attendance of witnesses, or production of
124 materials, and take evidence including, but not limited to,
125 inspections of the land affected and other surface-mining

126 operations carried on by the applicant in the general
127 vicinity. A verbatim record of each public hearing required
128 by this section shall be made and a transcript made
129 available on the motion of any party or by order of the
130 director at the cost of the person requesting the transcript.

**§20-6-40. Conflict of interest prohibited; criminal penalties
therefor; employee protection.**

1 (a) No employee of the department or employee of the
2 reclamation board of review performing any function or
3 duty under this article or any members of the reclamation
4 commission shall have a direct or indirect financial interest
5 in any surface-mining operation. Whoever knowingly
6 violates the provisions of this subsection is guilty of a
7 misdemeanor, and, upon conviction thereof, shall be fined
8 not more than two thousand five hundred dollars, or
9 imprisoned in the county jail not more than one year, or
10 both fined and imprisoned. The director shall establish
11 methods by which the provisions of this subsection will be
12 monitored and enforced, including appropriate provisions
13 for the filing and the review of statements and supplements
14 thereto concerning any financial interest which may be
15 affected by this subsection.

16 (b) No person shall discharge or in any other way
17 discriminate against, or cause to be fired or discriminated
18 against, any employee or any authorized representative of
19 employees by reason of the fact that the employee or
20 representative has filed, instituted, or caused to be filed or
21 instituted, any proceeding under this article, or has testified
22 or is about to testify in any proceeding resulting from the
23 administration or enforcement of the provisions of this
24 article.

25 (c) Any employee or a representative of employees who
26 has reason to believe that he has been fired or otherwise
27 discriminated against by any person in violation of
28 subsection (b) of this section may, within thirty days after
29 the alleged violation occurs, petition to the reclamation
30 board of review for a review of the firing or discrimination.
31 The employee or representative shall be known as the
32 petitioner and shall serve a copy of the petition upon the
33 person or operator who will be the respondent. The
34 participants shall be given ten days' written notice of the

35 hearing before the board and the hearing shall be held
36 within thirty days of the filing of the petition. The board
37 shall have the same powers and shall hear the petition in the
38 same manner as provided in subsections (e) and (f), section
39 twenty-four of this article.

40 (d) If the board finds that the alleged violation did
41 occur, it shall issue an order incorporating therein findings
42 of fact and conclusions requiring the participant
43 committing the violation to take such affirmative action to
44 abate the violation by appropriate action, including, but
45 not limited to, the hiring or reinstatement of the employee
46 or representative to his former position with compensation.
47 If the board finds no violation, it shall issue a finding to that
48 effect. Orders issued by the board under this section shall be
49 subject to judicial review in the same manner as other
50 orders of the board issued under this article.

51 (e) Whenever an order is issued under this section to
52 abate any violation, at the request of the petitioner a sum
53 equal to the aggregate costs and expenses, including
54 attorneys' fees to have been reasonably incurred by the
55 petitioner for, or in connection with, the institution and
56 prosecution of the proceedings, shall be assessed against the
57 person committing the violation.

**§20-6-42. Validity of regulations promulgated under section
502(c) of the Surface Mining Control and
Reclamation Act of 1977.**

1 (a) All rules and regulations promulgated under section
2 502(c) of the federal Surface Mining Control and
3 Reclamation Act of 1977 (Public Law 95-87), pursuant to
4 the provisions of chapter sixty-three, acts of the
5 Legislature, regular session, one thousand nine hundred
6 seventy-eight, and chapter seventy-one, acts of the
7 Legislature, regular session, one thousand nine hundred
8 seventy-nine, shall remain in full force and effect until the
9 expiration of eight months after approval of the West
10 Virginia state program under section 503 of Public Law
11 95-87 upon proclamation of the governor that the approval
12 has been granted: *Provided*, That those persons conducting
13 operations under a permit or underground opening
14 approval issued in accordance with said section 502(c), and
15 in compliance therewith, shall be subject to said regulations

16 until the administrative decision pertaining to the granting
17 or denying of a permit under this article has been made by
18 the director.

19 (b) Permits granted under this article shall be subject to
20 rules and regulations promulgated hereunder.

§20-6-43. Consolidation of permitting, enforcement and rule-making authority for surface-mining operations; National Pollutant Discharge Elimination System; effective date of section.

1 (a) Notwithstanding any provisions of this chapter to
2 the contrary, all powers, duties and responsibilities of the
3 chief of the division of water resources under article five-a
4 of this chapter with respect to all coal mines, preparation
5 plants and all refuse and waste therefrom subject to said
6 article five-a, are hereby transferred to the director. The
7 director shall have sole authority to issue, amend, transfer,
8 renew or revoke all permits required under article five-a of
9 this chapter with respect to all coal mines, preparation
10 plants and all refuse and waste therefrom subject to said
11 article five-a. The procedures for issuance, amendment,
12 transferral, renewal and revocation of such permits shall be
13 governed by the provisions of this article. The director shall
14 consolidate the various permit programs under articles
15 five-a and six of this chapter applicable to all coal mines,
16 preparation plants and all refuse and waste therefrom. All
17 provisions of article five-a heretofore applicable to coal
18 mines, preparation plants and all refuse and waste
19 therefrom shall be continued under this section.

20 (b) Notwithstanding any provisions of this chapter to
21 the contrary, the reclamation commission shall have sole
22 authority to promulgate rules and regulations necessary or
23 proper to implement the provisions of article five-a of this
24 chapter with respect to all coal mines, preparation plants
25 and all refuse and waste therefrom, except that the water
26 resources board shall have the sole authority pursuant
27 to section three-a, article five-a of this chapter to
28 promulgate rules and regulations setting standards of
29 water quality applicable to the waters of the state. To the
30 extent feasible, the reclamation commission shall
31 promulgate rules and regulations consolidating the various
32 regulatory programs under this chapter applicable to all

33 coal mines, preparation plants and all refuse and waste
34 therefrom. The promulgation of such rules and regulations
35 shall be governed by the provisions of this article.

36 (c) Notwithstanding any provisions of this chapter to
37 the contrary, the director shall have the sole authority to
38 enforce and shall enforce the rules and regulations of the
39 reclamation commission and the rules and regulations of
40 the water resources board setting water quality standards
41 for the waters of the state as they apply to all coal mines,
42 preparation plants and all refuse and waste therefrom. The
43 enforcement of such rules and regulations shall be governed
44 by the provisions of this article.

45 (d) Notwithstanding any provisions of this chapter to
46 the contrary, any order of the director issued pursuant to
47 subsection (a) of this section, under article five-a of this
48 chapter, or for the purposes of implementing the "National
49 Pollutant Discharge Elimination System" established
50 under the Federal Clean Water Act, shall be appealable only to
51 the state water resources board and such appeal shall be
52 governed by the provisions of section fifteen, article five-a of this
53 chapter.

54 (e) This section shall become effective upon a
55 proclamation by the governor stating that final approval of
56 the partial transfer of the National Pollutant Discharge
57 Elimination System established under the Federal Clean
58 Water Act contemplated by this section has been given by
59 the Administrator of the United States Environmental
60 Protection Agency.

CHAPTER 134

(S. B. 27—By Mrs. Spears)

[Passed February 16, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article six, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the reclamation commission of the department of natural resources,

generally; and providing for the continuation and reestablishment of the commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. WEST VIRGINIA SURFACE COAL MINING AND RECLAMATION ACT.

§20-6-7. Reclamation commission; duties, functions and compensation; petition for issuance, amendment or repeal of a rule.

1 (a) There is hereby created and established in the
2 department of natural resources a reclamation commission
3 which shall be composed of the director of natural
4 resources, serving as chairman, the chief of the division of
5 reclamation, the chief of the water resources division, and
6 the director of the department of mines. The members of the
7 commission shall receive no compensation for their services
8 on the commission, but shall be reimbursed for expenses
9 necessarily incurred in performing their functions. The
10 commission shall meet upon the call of any member. The
11 director shall request the attorney general to appoint one or
12 more assistant attorneys general who shall perform such
13 duties as may be required by the director. The attorney
14 general, in pursuance of such request, may select and
15 appoint one or more assistant attorneys general, to serve at
16 the will and pleasure of the attorney general, and such
17 assistant or assistants, shall be paid out of any funds made
18 available for that purpose by the Legislature or by Public
19 Law 95-87 to the department of natural resources.

20 (b) The commission shall have authority to:

21 (1) Promulgate rules and regulations, in accordance
22 with the provisions of chapter twenty-nine-a of this code, to
23 implement the provisions of this article: *Provided*, That the
24 commission shall give notice by publication of the public
25 hearing required in article three, chapter twenty-nine-a
26 of this code: *Provided, however*, That any forms, handbooks
27 or similar materials having the effect of a rule or regulation
28 as defined in article three, chapter twenty-nine-a of this
29 code, or issued, developed or distributed by the director

30 pursuant to or as a result of a rule or regulation, shall be
31 subject to the provisions of article three, chapter twenty-
32 nine-a of this code;

33 (2) Make investigations or inspections necessary to
34 ensure complete compliance with the provisions of this
35 article;

36 (3) Conduct hearings or appoint persons to conduct
37 hearings under provisions of this article or rules and
38 regulations adopted by the commission; and for the purpose
39 of any investigation or hearing hereunder, the commission,
40 any member, or any appointee thereof may administer
41 oaths or affirmations, subpoena witnesses, compel their
42 attendance, take evidence and require production of any
43 books, papers, correspondence, memoranda, agreements, or
44 other documents or records relevant or material to the
45 inquiry;

46 (4) Enforce, through the director, the provisions of this
47 article as provided herein; and

48 (5) Appoint such advisory committees as may be of
49 assistance to the commission in the development of
50 programs and policies: *Provided*, That such advisory
51 committees shall, in each instance, include members
52 representative of the general public.

53 (c) (1) After the commission has adopted the
54 regulations required by this article, any person may
55 petition the commission to initiate a proceeding for the
56 issuance, amendment or repeal of a rule under this article.

57 (2) Such petitions shall be filed in the office of the
58 commission and shall set forth the facts which support the
59 issuance, amendment or repeal of a rule under this article.

60 (3) The commission may hold a public hearing or may
61 conduct such investigation or proceeding as the commission
62 deems appropriate in order to determine whether or not
63 such petition should be granted.

64 (4) Within ninety days after filing of a petition
65 described in subdivision (1) of this subsection, the
66 commission shall either grant or deny the petition. If the
67 commission grants the petition, the commission shall
68 promptly commence an appropriate proceeding in

69 accordance with the provisions of chapter twenty-nine-a of
70 this code. If the commission denies such petition, the
71 commission shall so notify the petitioner in writing setting
72 forth the reasons for such denial.

73 After having conducted a performance and fiscal audit
74 through its joint committee on government operations,
75 pursuant to section nine, article ten, chapter four of this
76 code, the Legislature hereby finds and declares that the
77 reclamation commission should be continued and
78 reestablished. Accordingly, notwithstanding the provisions
79 of section four, article ten, chapter four of this code, the
80 reclamation commission shall continue to exist until the
81 first day of July, one thousand nine hundred eighty-nine.

CHAPTER 135

(H. B. 1974—By Mrs. Neal and Mr. Hutchinson)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article six, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirteen-a, relating to the West Virginia surface coal mining and reclamation act; and pilot program for the growing of grapes on reclaimed areas.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. WEST VIRGINIA SURFACE COAL MINING AND RECLAMATION ACT.

§20-6-13a. Pilot program for the growing of grapes on reclaimed areas.

1 In furtherance of the purposes set forth in subdivision
2 twenty, section thirteen of this article, the director is hereby

3 authorized and directed to establish and maintain a pilot
4 program to determine the best procedures for propagating
5 the growth of grapevines and bushes on reclaimed surface-
6 mined areas. Such program shall investigate and implement
7 selections of the best variety of grapes for reclamation pur-
8 poses based upon environmental considerations and soil qual-
9 ity, the most desirable methods of planting and tending grapes
10 and any other related matters deemed desirable by the direc-
11 tor. The cost of such program shall be paid from funds
12 regularly appropriated to the department.

CHAPTER 136

(H. B. 1290—By Mr. Moore)

[Passed March 8, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty-one, article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the department of mines board of appeals; providing for increased compensation for board members per meeting; and increasing amount of expense reimbursement.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. ADMINISTRATION; ENFORCEMENT.

§22-1-31. Board of appeals.

1 There is hereby created a board of appeals, consisting of
2 three members. Two members of the board shall be appointed
3 by the governor, one person who by reason of previous
4 training and experience may reasonably be said to represent
5 the viewpoint of miners, and one person who by reason
6 of previous training and experience may reasonably be said to
7 represent the viewpoint of the operators. The third person,
8 who shall be chairman of the board and who must not have

9 had any connection at any time with the coal industry or
10 an organization representing miners, shall be selected by the
11 two members appointed by the governor. The term of office
12 of members of the board shall be five years.

13 The function and duties of the board shall be to hear
14 appeals, make determinations on questions of miners' entitle-
15 ments due to withdrawal orders and appeals from discharge or
16 discrimination, and suspension of certification certificates.

17 The chairman of the board shall have the power to adminis-
18 ter oaths and subpoena witnesses and require production of
19 any books, papers, records or other documents relevant or
20 material to the appeal inquiry.

21 Each member of the board shall receive one hundred dollars
22 per diem while actually engaged in the performance of the
23 work of the board. Each member shall be reimbursed for all
24 reasonable and necessary expenses actually incurred during
25 the performance of their duties. Each member shall receive
26 mileage expense reimbursement at the rate established by
27 rule and regulation of the commissioner of the department of
28 finance and administration for in-state travel of public em-
29 ployees. No reimbursement for expenses shall be made except
30 upon an itemized account, properly certified by such members
31 of the board. All reimbursement for expenses shall be paid
32 out of the state treasury upon a requisition upon the state
33 auditor.

34 Board members, before performing any duty, shall take
35 and subscribe to the oath required by article IV, section five of
36 the constitution of West Virginia.

CHAPTER 137

(H. B. 1941—By Mr. Moore and Mr. Casey)

[Passed March 8, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article six-a, chapter twenty-two of the code
of West Virginia, one thousand nine hundred thirty-one,

as amended, by adding thereto a new section, designated section four-a, relating to the appointment of the chairman of the board of miner training, education and certification by the executive when the board cannot agree upon a selection; and the boards authority to select the chairman upon subsequent vacancies.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6A. BOARD OF MINER TRAINING, EDUCATION AND CERTIFICATION.

§22-6A-4a. Failure to elect chairman; appointment.

1 Whenever a vacancy in the office of chairman of the board
2 shall exist for more than sixty days, then the power of the
3 six persons appointed to the board by the governor to select
4 and agree upon the chairman shall be suspended. Upon such
5 suspension, the chairman shall be appointed by the governor,
6 with the advice and consent of the Senate, to serve for the
7 unexpired term of the chairman. The governor shall select as
8 chairman a person who is neither an employee of the depart-
9 ment of mines, a coal operator, employee of a coal operator or
10 a miner and shall ascertain to his satisfaction that the person to
11 be appointed can preside impartially as chairman of the board
12 and has such experience in the design and operation of educa-
13 tional programs in fields other than mining as will, in the
14 opinion of the governor, qualify the person to serve on the
15 board notwithstanding his lack of past or present involvement
16 in the mining industry.

17 After the governor has exercised the power of appointment
18 conferred by this section and the person appointed qualifies
19 and serves as chairman and a vacancy in the office of chairman
20 thereafter occurs, then the suspension of the power of the
21 other six members to select and agree upon a chairman shall
22 cease and such power shall vest in and remain with such other
23 members until and unless again suspended under this section
24 because of the failure to timely exercise such power.

CHAPTER 138

(Com. Sub. for H. B. 1402—By Mr. Chambers and Mr. Steptoe)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nine-a; to amend and reenact section sixteen of said article fifteen; to amend article two, chapter fifteen of said code by adding thereto two new sections, designated sections forty and forty-one; to amend and reenact section five, article three, chapter seventeen-b of said code; to amend and reenact section three, article four of said chapter seventeen-b; to amend and reenact sections two, two-a, four, five, seven, eight, nine and ten, article five, chapter seventeen-c of said code; to further amend said article five by adding thereto a new section, designated section eleven; to amend and reenact sections one and two, article five-a of said chapter seventeen-c; to further amend said article five-a by adding thereto a new section, designated section two-a; to amend and reenact sections three and four of said article five-a; and to further amend said chapter seventeen-c by adding thereto a new article, designated article five-b, all of said code, relating to driving under the influence of alcohol, controlled substances or drugs generally; denying consumers sales tax exemption on liquors and wines for resales by private clubs; making the purchase of liquors or wines for resale subject to such tax; prescribing the form for tax returns for consumers sales tax and the mode of payment; requiring the payment of consumers sales tax collected from licensed private clubs to be paid into a drunk driving prevention fund within the state treasury; creating a commission on drunk driving prevention, prescribing the membership thereof and the terms of office; providing for meetings and quorum; describing the powers and duties of the commission on drunk driving prevention; authorizing said commission to promulgate rules; setting forth monitoring and reporting functions of the commission; setting forth the grounds for mandatory revocation of licenses upon conviction of certain offenses; providing penalties for driving while license suspended

or revoked; providing additional penalties for driving while license revoked for driving under influence of alcohol, controlled substances or drugs or for driving while having an alcoholic concentration of ten hundredths of one percent, or more, by weight, or for refusing a designated secondary chemical test; defining criminal offenses involving driving a motor vehicle while under the influence of alcohol, controlled substances or drugs and setting forth the penalties therefor; defining the phrase "in this state" and making certain terms or phrases synonymous; providing for implied consent to blood alcohol tests and the administration of such tests; defining the term "law-enforcement officer"; prescribing how preliminary breath analysis to be administered and how the results thereof are to be used; permitting persons to refuse to take tests upon being warned of penalties for refusal; providing administrative penalties for refusal and allowing right to hearing before suspension; providing for the interpretation and use of chemical tests and describing presumptions arising from such tests; granting persons arrested the right to demand test; allowing fee for withdrawing blood sample and permitting recovery of fee upon conviction; requiring municipal ordinances to contain the same elements as offenses under article five, chapter seventeen-c or otherwise making them null and void; requiring municipal ordinances to prescribe the same penalties as are prescribed for offenses under article five, chapter seventeen-c containing the same elements; providing for implied consent to administrative procedures dealing with revocation of licenses; allowing revocation of license; authorizing legislative rules to set conditions for contesting secondary chemical test in administrative hearing; requiring commissioner to promulgate certain procedural rules; setting forth hearing procedures; defining the scope of the hearing; providing for findings to be made prior to revocation of license; providing for order of revocation of judicial review of the same; authorizing assessment of cost against party requesting hearing; creation of special account for costs assessed at hearing; establishing a safety and treatment program for persons violating article; providing a procedure for reissuance of revoked license; requiring commissioner to report prior offenses to police officer submitting report of violations; establishing penalties to be imposed on officer or commissioner for failure to

file statements or mail reports within time periods prescribed; requiring postmortem tests for alcohol in persons killed in motor vehicle accidents; providing time limit to conduct test and who may conduct test; granting civil and criminal immunity to person conducting test; providing fee for conducting test; relating to whom and how county medical examiners report results of blood test; limiting the admissibility of the results of test as evidence; and providing that the reports of the tests are only for statistical and highways safety purposes.

Be it enacted by the Legislature of West Virginia:

That article fifteen, 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 nine-a; that section sixteen of said article fifteen be amended and reenacted; that article two, chapter fifteen of said code be amended by adding thereto two new sections, designated sections forty and forty-one; that section five, article three, chapter seventeen-b of said code be amended and reenacted; that section three, article four of said chapter seventeen-b be amended and reenacted; that sections two, two-a, four, five, seven, eight, nine and ten, article five, chapter seventeen-c of said code be amended and reenacted; that said article five be further amended by adding thereto a new section, designated section eleven; that sections one and two, article five-a of said chapter seventeen-c be amended and reenacted; that said article five-a be further amended by adding thereto a new section, designated section two-a; that sections three and four of said article five-a be amended and reenacted; and that said chapter seventeen-c be further amended by adding thereto a new article, designated article five-b, all to read as follows:

Chapter

11. Taxation.

15. Public Safety.

17B. Motor Vehicle Operator's and Chauffeur's Licenses.

17C. Traffic Regulations and Laws of the Road.

CHAPTER 11. TAXATION.

ARTICLE 15. CONSUMERS SALES TAX.

§11-15-9a. Exemption; exception for resale of liquors and wines.

§11-15-16. Tax return and payment; exception.

§11-15-9a. Exemptions; exception for resale of liquors and wines.

1 The exemptions provided in this article for sales of tangible
2 personal property and services rendered for use or consumption
3 in connection with the conduct of the business of selling tan-
4 gible personal property to consumers or dispensing a service
5 subject to the tax under this article and, for sales of tangible
6 personal property for the purpose of resale in the form of
7 tangible personal property, shall not apply to persons or or-
8 ganizations licensed under authority of article seven, chapter
9 sixty of this code, for the purchase of liquor or wines from the
10 alcohol beverage control commissioner for resale.

§11-15-16. Tax return and payment; exception.

1 The taxes levied by this article shall be due and payable in
2 monthly installments, on or before the fifteenth day of the
3 month next succeeding the month in which the tax accrued.
4 The taxpayer shall, on or before the fifteenth day of each
5 month, make out and mail to the tax commissioner a return
6 for the preceding month, in the form prescribed by the tax
7 commissioner, showing: (a) The total gross proceeds of his
8 business for that month; (b) the gross proceeds of his busi-
9 ness upon which the tax is based; (c) the amount of the tax
10 for which he is liable; and (d) any further information neces-
11 sary in the computation and collection of the tax which the
12 tax commissioner may require. A remittance for the amount
13 of the tax shall accompany the return: *Provided*, That not-
14 withstanding the provisions of section thirty of this article, any
15 such tax collected by the alcohol beverage control commission-
16 er from persons or organizations licensed under authority of
17 article seven, chapter sixty of this code shall be paid into a
18 revolving fund account in the state treasury, designated the
19 drunk driving prevention fund, to be administered by the
20 commission on drunk driving prevention, subject to appropria-
21 tions by the Legislature.

22 A monthly return shall be signed by the taxpayer or his
23 duly authorized agent.

CHAPTER 15. PUBLIC SAFETY.**ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.**

§15-2-40. Commission on drunk driving prevention created; members; quorum; meetings.

§15-2-41. Powers and duties of commission; rule-making authority; monitoring and reporting.

§15-2-40. Commission on drunk driving prevention created; members; quorum; meetings.

1 There is hereby created within the department of public
2 safety the commission on drunk driving prevention which shall
3 consist of seven members as follows: The superintendent of the
4 department of public safety; the commissioner of the depart-
5 ment of motor vehicles; the alcohol beverage control commis-
6 sioner; a prosecuting attorney appointed by the governor from
7 a list of three prosecuting attorneys submitted by the prosecut-
8 ing attorney's association; a county sheriff appointed by the
9 governor from a list of three county sheriffs submitted by the
10 county sheriff's association; a municipal police officer appoint-
11 ed by the governor from a list of three officers submitted by
12 the state fraternal order of police; a lay citizen of the state
13 appointed by the governor, who has demonstrated an interest
14 in the prevention of drunk driving.

15 The superintendent of the department of public safety shall
16 be the chairman, ex officio, of the commission and shall pro-
17 vide the necessary staff and meeting facilities to the commis-
18 sion. The appointed members shall serve for a term of two
19 years and may be reappointed. Any appointed member who
20 ceases to occupy the position which qualifies him for the ap-
21 pointment shall immediately vacate his membership on the
22 commission. Each member shall serve until the appointment
23 of his successor.

24 No member shall receive any compensation, but shall be re-
25 imbursed for actual and necessary expenses incurred in the
26 performance of his duties.

27 A majority of the members of the commission shall consti-
28 tute a quorum for the transaction of business. Meetings shall

29 be held at the call of the chairman or of a majority of its
30 members.

**§15-2-41. Powers and duties of commission; rule-making authority;
monitoring and reporting.**

1 The commission shall have the following powers and duties:

2 (a) Develop and maintain a comprehensive program to pre-
3 vent drunk driving and to enhance the enforcement of laws
4 defining drunk driving offenses.

5 (b) Inquire and determine from state and local law-enforce-
6 ment agencies the availability and need for equipment and ad-
7 ditional personnel for the effective enforcement of laws defining
8 drunk driving offenses.

9 (c) Subject to appropriations of the Legislature, administer
10 the drunk driving prevention fund created by the provisions of
11 section sixteen, article fifteen, chapter eleven of this code by
12 providing grants to state and local law-enforcement agencies for
13 the purchase of equipment or hiring of additional personnel
14 for the effective enforcement of laws defining drunk driving of-
15 fenses and such other items as the commission may define by
16 legislative rule to be reasonable and necessary.

17 (d) Promulgate rules to guide and administer said fund and
18 to establish procedures and criteria for grants to state and local
19 law-enforcement agencies under this section, in accordance
20 with the provisions of article three, chapter twenty-nine-a of
21 this code.

22 (e) Monitor, review and evaluate the expenditure, use and
23 effectiveness of the fund and report to the Legislature annually
24 on the exercise of its powers and duties under this section, in-
25 cluding an annual accounting of expenditures and of the grants
26 made under this section.

**CHAPTER 17B. MOTOR VEHICLE OPERATOR'S
AND CHAUFFEUR'S LICENSES.**

Article

- 3. Cancellation, Suspension or Revocation of Licenses.**
- 4. Violation of License Provisions.**

ARTICLE 3. CANCELLATION, SUSPENSION OR REVOCATION OF LICENSES.**§17B-3-5. Grounds for mandatory revocation of license by department.**

1 The department shall forthwith revoke the license of any
2 operator or chauffeur upon receiving a record of such opera-
3 tor's or chauffeur's conviction of any of the following offenses,
4 when such conviction has become final:

5 (1) Manslaughter or negligent homicide resulting from the
6 operation of a motor vehicle;

7 (2) Any felony in the commission of which a motor vehicle
8 is used;

9 (3) Failure to stop and render aid as required under the
10 laws of this state in the event of involvement in a motor ve-
11 hicle accident resulting in the death or personal injury of
12 another;

13 (4) Perjury or the making of a false affidavit or statement
14 under oath to the department under this chapter or under any
15 other law relating to the ownership or operation of motor ve-
16 hicles;

17 (5) Conviction, or forfeiture of bail not vacated, upon three
18 charges of reckless driving committed within a period of
19 twenty-four months;

20 (6) Driving under the influence of alcohol, controlled sub-
21 stances or other drugs outside the state of West Virginia
22 which conviction is under a municipal ordinance or statute
23 of the United States or any other state of an offense which
24 has the same elements as an offense described in section two,
25 article five, chapter seventeen-c of this code; and

26 (7) Nothing herein shall prohibit the department from exer-
27 cising its authority to revoke or suspend a person's license to
28 drive a motor vehicle in this state, as provided in chapter
29 seventeen-c of this code.

ARTICLE 4. VIOLATION OF LICENSE PROVISIONS.**§17B-4-3. Driving while license suspended or revoked; driving while license revoked for driving under the influence of alcohol, controlled substances or drugs, or while having an alcoholic concentration in the blood of ten hundredths of one percent or more, by weight, or for refusing to take secondary chemical test of blood alcohol content.**

1 (a) Except as otherwise provided in subsection (b) of this
2 section any person who drives a motor vehicle on any public
3 highway of this state at a time when his privilege so to do has
4 been lawfully suspended or revoked shall, for the first offense,
5 be guilty of a misdemeanor, and, upon conviction thereof, shall
6 be imprisoned in the county jail for forty-eight hours and, in
7 addition to such mandatory jail sentence, shall be fined not
8 less than fifty dollars nor more than five hundred dollars; for
9 the second offense, such person shall be guilty of a misde-
10 meanor, and, upon conviction thereof, shall be punished by
11 imprisonment in the county jail for a period of ten days and, in
12 addition to such mandatory jail sentence, shall be fined not
13 less than one hundred dollars nor more than five hundred dol-
14 lars; for the third or any subsequent offense, such person shall
15 be guilty of a misdemeanor, and, upon conviction thereof,
16 shall be imprisoned in the county jail for six months and, in
17 addition to such mandatory jail sentence, shall be fined not
18 less than one hundred fifty dollars nor more than five hundred
19 dollars.

20 (b) Any person who drives a motor vehicle on any public
21 highway of this state at a time when his privilege so to do has
22 been lawfully revoked for driving under the influence of al-
23cohol, controlled substances or other drugs, or while having an
24 alcoholic concentration in his blood of ten hundredths of one
25 percent or more, by weight, or for refusing to take a second-
26 ary chemical test of blood alcohol content shall, for the
27 first offense, be guilty of a misdemeanor, and, upon con-
28 viction thereof, shall be imprisoned in the county jail for
29 not less than forty-eight hours nor more than six months
30 and, in addition to such mandatory jail sentence, shall be
31 fined not less than one hundred dollars nor more than

32 five hundred dollars; for the second offense, such person
33 shall be guilty of a misdemeanor, and, upon conviction
34 thereof, shall be punished by imprisonment in the county
35 jail for a period of not less than six months nor more than
36 one year and, in addition to such mandatory jail sentence,
37 shall be fined not less than one thousand dollars nor more
38 than three thousand dollars; for the third or any subsequent
39 offense, such person shall be guilty of a felony, and, upon con-
40 viction thereof, shall be imprisoned in the penitentiary for not
41 less than one year nor more than three years and, in addition
42 to such mandatory jail sentence, shall be fined not less than
43 three thousand dollars nor more than five thousand dollars.

44 (c) The department upon receiving a record of the con-
45 viction of any person under this section upon a charge of
46 driving a vehicle while the license of such person was law-
47 fully revoked shall extend the period of such suspension for an
48 additional like period and if the conviction was upon a charge
49 of driving while a license was revoked lawfully the department
50 shall not issue a new license for an additional period of one year
51 from and after the date such person would otherwise have been
52 entitled to apply for a new license.

CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.

Article

5. Serious Traffic Offenses.

5A. Administrative Procedures for Suspension and Revocation of Licenses for Driving Under the Influence of Alcohol, Controlled Substances or Drugs.

5B. Postmortem Tests for Alcohol in Persons Killed in Motor Vehicle Accidents.

ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

- §17C-5-2. Driving under influence of alcohol, controlled substances or
drugs; penalties.
- §17C-5-2a. Definition of phrase "in this state"; phrases synonymous with driv-
ing under the influence of alcohol; validation of warrants and
indictments.
- §17C-5-4. Implied consent to test; administration at direction of law-en-
forcement officer; designation of type of test; definition of
law-enforcement officer.
- §17C-5-5. Preliminary analysis of breath to determine alcoholic content of
blood.

- §17C-5-7. Refusal to submit to tests; revocation of license or privilege; consent not withdrawn if person arrested incapable of refusal; hearings.
- §17C-5-8. Interpretation and use of chemical test.
- §17C-5-9. Right to demand test.
- §17C-5-10. Fee for withdrawing blood sample and making urine test; payment of fees.
- §17C-5-11. Municipal ordinances to contain same elements as offenses under this article; penalties in municipal ordinances required to conform to state penalties.

§17C-5-2. Driving under influence of alcohol, controlled substances or drugs; penalties.

- 1 (a) Any person who:
- 2 (1) Drives a vehicle in this state while he is:
- 3 (A) Under the influence of alcohol, or
- 4 (B) Under the influence of any controlled substance, or
- 5 (C) Under the influence of any other drug, or
- 6 (D) Under the combined influence of alcohol and any con-
- 7 trolled substance or any other drug, and
- 8 (2) When so driving does any act forbidden by law or fails
- 9 to perform any duty imposed by law in the driving of such ve-
- 10 hicle, which act or failure proximately causes the death of any
- 11 person within one year next following such act or failure, and
- 12 (3) Commits such act or failure in reckless disregard of the
- 13 safety of others, and when the influence of alcohol, controlled
- 14 substances or drugs is shown to be a contributing cause to such
- 15 death,
- 16 (4) Shall be guilty of a felony, and, upon conviction thereof,
- 17 shall be imprisoned in the penitentiary for not less than one nor
- 18 more than three years and shall be fined not less than one thou-
- 19 sand dollars nor more than three thousand dollars.
- 20 (b) Any person who:
- 21 (1) Drives a vehicle in this state while he is:
- 22 (A) Under the influence of alcohol, or
- 23 (B) Under the influence of any controlled substance, or

24 (C) Under the influence of any other drug, or

25 (D) Under the combined influence of alcohol and any con-
26 trolled substance or any other drug, and

27 (2) When so driving does any act forbidden by law or
28 fails to perform any duty imposed by law in the driving of
29 such vehicle, which act or failure proximately causes the death
30 of any person within one year next following such act or
31 failure,

32 (3) Shall be guilty of a misdemeanor, and, upon conviction
33 thereof, shall be imprisoned in the county jail for not less
34 than ninety days nor more than one year and shall be fined
35 not less than five hundred dollars nor more than one thousand
36 dollars.

37 (c) Any person who:

38 (1) Drives a vehicle in this state while he is:

39 (A) Under the influence of alcohol, or

40 (B) Under the influence of any controlled substance, or

41 (C) Under the influence of any other drug, or

42 (D) Under the combined influence of alcohol and any
43 controlled substance or any other drug, and

44 (2) When so driving does any act forbidden by law or fails
45 to perform any duty imposed by law in the driving of such
46 vehicle, which act or failure proximately causes bodily injury
47 to any person other than himself,

48 (3) Shall be guilty of a misdemeanor, and, upon conviction
49 thereof, shall be imprisoned in the county jail for not less
50 than one day nor more than one year, which jail term shall
51 include actual confinement of not less than twenty-four hours,
52 and shall be fined not less than two hundred dollars nor more
53 than one thousand dollars.

54 (d) Any person who:

55 (1) Drives a vehicle in this state while he is:

56 (A) Under the influence of alcohol, or

- 57 (B) Under the influence of any controlled substance, or
58 (C) Under the influence of any other drug, or
59 (D) Under the combined influence of alcohol and any con-
60 trolled substance or any other drug.
- 61 (2) Shall be guilty of a misdemeanor, and, upon convic-
62 tion thereof, shall be imprisoned in the county jail for not
63 less than one day nor more than six months, which jail
64 term shall include actual confinement of not less than twenty-
65 four hours, and shall be fined not less than one hundred
66 dollars nor more than five hundred dollars.
- 67 (e) Any person who, being an habitual user of narcotic
68 drugs or amphetamine or any derivative thereof, drives a
69 vehicle in this state, shall be guilty of a misdemeanor,
70 and, upon conviction thereof, shall be imprisoned in the
71 county jail for not less than one day nor more than six
72 months, which jail term shall include actual confinement
73 of not less than twenty-four hours, and shall be fined not less
74 than one hundred dollars nor more than five hundred dollars.
- 75 (f) Any person who:
- 76 (1) Knowingly permits his vehicle to be driven in this
77 state by any other person who is:
- 78 (A) Under the influence of alcohol, or
79 (B) Under the influence of any controlled substance, or
80 (C) Under the influence of any other drug, or
81 (D) Under the combined influence of alcohol and any con-
82 trolled substance or any other drug,
- 83 (2) Shall be guilty of a misdemeanor, and, upon conviction
84 thereof, shall be imprisoned in the county jail for not more
85 than six months and shall be fined not less than one hundred
86 dollars nor more than five hundred dollars.
- 87 (g) Any person who:
- 88 (1) Knowingly permits his vehicle to be driven in this
89 state by any other person who is an habitual user of narcotic
90 drugs or amphetamine or any derivative thereof.

91 (2) Shall be guilty of a misdemeanor, and, upon conviction
92 thereof, shall be imprisoned in the county jail for not
93 more than six months and shall be fined not less than one
94 hundred dollars nor more than five hundred dollars.

95 (h) Any person violating any provision of subsection (b),
96 (c), (d), (e), (f) or (g) of this section shall, for the second
97 offense under this section, be guilty of a misdemeanor, and,
98 upon conviction thereof, shall be imprisoned in the county
99 jail for a period of not less than six months nor more than
100 one year, and the court may, in its discretion, impose a fine
101 of not less than one thousand dollars nor more than three
102 thousand dollars.

103 (i) A person violating any provision of subsection (b),
104 (c), (d), (e), (f) or (g) of this section shall, for the third or
105 any subsequent offense under this section, be guilty of a
106 felony, and, upon conviction thereof, shall be imprisoned in
107 the penitentiary for not less than one nor more than three
108 years, and the court may, in its discretion, impose a fine
109 of not less than three thousand dollars nor more than five
110 thousand dollars.

111 (j) For purposes of subsections (h) and (i) of this section
112 relating to second, third and subsequent offenses, the following
113 types of convictions shall be regarded as convictions under
114 this section:

115 (1) Any conviction under the provisions of subsection
116 (a), (b), (c), (d), (e) or (f) of the prior enactment
117 of this section for an offense which occurred on or after
118 the first day of September, one thousand nine hundred
119 eighty-one, and prior to the effective date of this
120 section;

121 (2) Any conviction under the provisions of subsection
122 (a) or (b) of the prior enactment of this section
123 for an offense which occurred within a period of
124 five years immediately preceding the first day of September,
125 one thousand nine hundred eighty-one;

126 (3) Any conviction under a municipal ordinance of
127 this state or any other state or a statute of the United

128 States or of any other state of an offense which has
129 the same elements as an offense described in this section,
130 which offense occurred after the effective date of this
131 section.

132 (k) The fact that any person charged with a violation
133 of subsection (a), (b), (c), (d) or (e) of this section,
134 or any person permitted to drive as described under sub-
135 section (f) or (g) of this section, is or has been legally
136 entitled to use alcohol, a controlled substance or a drug
137 shall not constitute a defense against any charge of vio-
138 lating subsection (a), (b), (c), (d), (e), (f) or (g) of this
139 section.

140 (l) For purposes of this section, the term "controlled
141 substance" shall have the meaning ascribed to it in chapter
142 sixty-a of this code.

143 (m) The sentences provided herein upon conviction for
144 a violation of this article are mandatory and shall not be
145 subject to suspension or probation: *Provided*, That the court
146 may apply the provisions of article eleven-a, chapter sixty-two
147 of this code to a person sentenced or committed to a term of
148 one year or less.

149 (n) The reenactment of this section in the regular session
150 of the Legislature during the year one thousand nine hundred
151 eighty-three, shall not in any way add to or subtract from
152 the elements of the offenses set forth herein and earlier defined
153 in the prior enactment of this section.

**§17C-5-2a. Definition of phrase "in this state"; phrases synonymous
with driving under the influence of alcohol; validation
of warrants and indictments.**

1 (a) For purposes of this article and article five-a of this
2 chapter, the phrase "in this state" shall mean anywhere within
3 the physical boundaries of this state, including, but not limited
4 to, publicly maintained streets and highways, and subdivision
5 streets or other areas not publicly maintained but nonetheless
6 open to the use of the public for purposes of vehicular travel.

7 (b) When used in this code, the terms or phrases "driving
8 under the influence of intoxicating liquor," "driving or operat-

9 ing a motor vehicle while intoxicated," "for any person who is
10 under the influence of intoxicating liquor to drive any vehicle,"
11 or any similar term or phrase shall be construed to mean and
12 be synonymous with the term or phrase "while under the
13 influence of alcohol . . . drives a vehicle" as the latter term or
14 phrase is used in section two of this article.

15 (c) From and after the effective date of this section a war-
16 rant or indictment which charges or alleges an offense, pro-
17 hibited by the provisions of section two of this article, and
18 which warrant or indictment uses any of the terms or phrases
19 set forth in subsection (b) of this section, shall not thereby be
20 fatally defective if such warrant or indictment otherwise informs
21 the person so accused of the charges against him.

**§17C-5-4. Implied consent to test; administration at direction of
law-enforcement officer; designation of type of test;
definition of law-enforcement officer.**

1 Any person who drives a motor vehicle in this state shall be
2 deemed to have given his consent by the operation thereof,
3 subject to the provisions of this article, to a preliminary breath
4 analysis and a secondary chemical test of either his blood,
5 breath or urine for the purposes of determining the alcoholic
6 content of his blood. A preliminary breath analysis may be ad-
7 ministered in accordance with the provisions of section five of
8 this article whenever a law-enforcement officer has reasonable
9 cause to believe a person to have committed an offense pro-
10 hibited by section two of this article or by an ordinance of a
11 municipality of this state which has the same elements as an
12 offense described in said section two of this article. A secondary
13 test of blood, breath or urine shall be incidental to a lawful
14 arrest and shall be administered at the direction of the arresting
15 law-enforcement officer having reasonable grounds to believe
16 the person to have committed an offense prohibited by section
17 two of this article or by an ordinance of a municipality of this
18 state which has the same elements as an offense described in
19 said section two of this article. The law-enforcement agency by
20 which such law-enforcement officer is employed shall desig-
21 nate which one of the aforesaid secondary tests shall be ad-
22 ministered: *Provided*, That if the test so designated is a blood
23 test and the person so arrested refuses to submit to such blood

24 test, then the law-enforcement officer making such arrest shall
25 designate in lieu thereof, either a breath or urine test to be ad-
26 ministered, and notwithstanding the provisions of section seven
27 of this article, such refusal to submit to a blood test only shall
28 not result in the revocation of the arrested person's license to
29 operate a motor vehicle in this state. Any person to whom a
30 preliminary breath test is administered who is then arrested
31 shall be given a written statement advising him that his refusal
32 to submit to the secondary chemical test finally designated as
33 provided in this section, will result in the revocation of his
34 license to operate a motor vehicle in this state for a period of at
35 least one year and up to life.

36 For the purpose of this article the term "law-enforcement of-
37 ficer" or "police officer" shall mean and be limited to (1) any
38 member of the department of public safety of this state, (2)
39 any sheriff and any deputy sheriff of any county, and (3) any
40 member of a police department in any municipality as defined
41 in section two, article one, chapter eight of this code. If any
42 municipality does not have available to its law-enforcement of-
43 ficers the testing equipment or facilities necessary to conduct
44 any secondary test which a law-enforcement officer may ad-
45 minister under this article, any member of the department of
46 public safety, the sheriff of the county wherein the arrest is
47 made or any deputy of such sheriff or any municipal law-
48 enforcement officer of another municipality within the county
49 wherein the arrest is made may, upon the request of such
50 arresting law-enforcement officer and in his presence, conduct
51 such secondary test and the results of such test may be used
52 in evidence to the same extent and in the same manner as if
53 such test had been conducted by such arresting law-enforce-
54 ment officer. Only the person actually administering or con-
55 ducting such test shall be competent to testify as to the
56 results and the veracity of such test.

**§17C-5-5. Preliminary analysis of breath to determine alcoholic
content of blood.**

1 When a law-enforcement officer has reason to believe a
2 person has committed an offense prohibited by section two of
3 this article or by an ordinance of a municipality of this state
4 which has the same elements as an offense described in said

5 section two of this article, the law-enforcement officer may
6 require such person to submit to a preliminary breath analysis
7 for the purpose of determining such person's blood alcohol
8 content. Such breath analysis must be administered as soon as
9 possible after the law-enforcement officer has a reasonable be-
10 lief that the person has been driving while under the influence
11 of alcohol, controlled substances or drugs. Any preliminary
12 breath analysis required under this section must be adminis-
13 tered with a device and in a manner approved by the depart-
14 ment of health for that purpose. The results of a preliminary
15 breath analysis shall be used solely for the purpose of guiding
16 the officer in deciding whether an arrest should be made. When
17 a driver is arrested following a preliminary breath analysis, the
18 tests as hereinafter provided in this article shall be administered
19 in accordance with the provisions thereof.

**§17C-5-7. Refusal to submit to tests; revocation of license or
privilege; consent not withdrawn if person arrested
is incapable of refusal; hearing.**

1 (a) If any person under arrest as specified in section
2 four of this article refuses to submit to any secondary chemical
3 test, the test shall not be given: *Provided*, That prior to such
4 refusal, the person is given a written statement advising him
5 that his refusal to submit to the secondary test finally desig-
6 nated will result in the revocation of his license to operate a
7 motor vehicle in this state for a period of at least one year and
8 up to life. The officer shall within forty-eight hours of such re-
9 fusal, sign and submit to the commissioner of motor vehicles a
10 written statement of the officer that (1) he had reasonable
11 grounds to believe such person had been driving a motor ve-
12 hicle in this state while under the influence of alcohol, con-
13 trolled substances or drugs, (2) such person was lawfully placed
14 under arrest for an offense relating to driving a motor vehicle
15 in this state while under the influence of alcohol, controlled sub-
16 stances or drugs, (3) such person refused to submit to the
17 secondary chemical test finally designated in the manner pro-
18 vided in section four of this article, and (4) such person was
19 given a written statement advising him that his license to oper-
20 ate a motor vehicle in this state would be revoked for a period
21 of at least one year and up to life if he refused to submit to the

22 secondary chemical test finally designated in the manner pro-
23 vided in section four of this article. The signing of the state-
24 ment required to be signed by this section shall constitute an
25 oath or affirmation by the person signing such statement that
26 the statements contained therein are true and that any copy filed
27 is a true copy. Such statement shall contain upon its face a
28 warning to the officer signing that to willfully sign a statement
29 containing false information concerning any matter or thing,
30 material, or not material, is false swearing and is a misdemea-
31 nor. Upon receiving the statement the commissioner shall make
32 and enter an order revoking such person's license to operate a
33 motor vehicle in this state for the period prescribed by this sec-
34 tion.

35 For the first refusal to submit to the designated secondary
36 chemical test, the commissioner shall make and enter an order
37 revoking such person's license to operate a motor vehicle in
38 this state for a period of one year. If the commissioner has
39 previously revoked the person's license under the provisions of
40 this section, the commissioner shall, for the refusal to submit to
41 the designated secondary chemical test, make and enter an
42 order revoking such person's license to operate a motor vehicle
43 in this state for a period of ten years: *Provided*, That the license
44 may be reissued in five years in accordance with the provisions
45 of section three, article five-a of this chapter. If the commis-
46 sioner has previously revoked the person's license more than
47 once under the provisions of this section, the commissioner
48 shall, for the refusal to submit to the designated secondary
49 chemical test, make and enter an order revoking such person's
50 license to operate a motor vehicle in this state for a period of
51 life: *Provided*, That the license may be reissued in ten years in
52 accordance with the provisions of section three, article five-a
53 of this chapter. A copy of each such order shall be forwarded
54 to such person by registered or certified mail, return receipt re-
55 quested, and shall contain the reasons for the revocation and
56 shall specify the revocation period imposed pursuant to this sec-
57 tion. No such revocation shall become effective until ten days
58 after receipt of the copy of such order. Any person who is un-
59 conscious or who is otherwise in a condition rendering him in-
60 capable of refusal, shall be deemed not to have withdrawn his
61 consent for a test of his blood, breath or urine as provided in

62 section four of this article and the test may be administered al-
63 though such person is not informed that his failure to submit to
64 the test will result in the revocation of his license to operate a
65 motor vehicle in this state for the period provided for in this
66 section.

67 A revocation hereunder shall run concurrently with the period
68 of any suspension or revocation imposed in accordance with
69 other provisions of this code and growing out of the same inci-
70 dent which gave rise to the arrest for driving a motor vehicle
71 while under the influence of alcohol, controlled substances or
72 drugs and the subsequent refusal to undergo the test finally
73 designated in accordance with the provisions of section four of
74 this article.

75 (b) For the purposes of this section, where reference is made
76 to previous suspensions or revocations under this section, the
77 following types of suspensions or revocations shall also be re-
78 garded as suspensions or revocations under this section:

79 (1) Any suspension or revocation on the basis of a con-
80 viction under a municipal ordinance of another state or a
81 statute of the United States or of any other state of an offense
82 which has the same elements as an offense described in section
83 two of this article, for conduct which occurred on or after the
84 effective date of this section;

85 (2) Any revocation under the provisions of section one or
86 two, article five-a of this chapter, for conduct which occurred
87 on or after the effective date of this section.

88 (c) A person whose license to operate a motor vehicle in
89 this state has been revoked shall be afforded an opportunity
90 to be heard, in accordance with the provisions of section two,
91 article five-a of this chapter.

§17C-5-8. Interpretation and use of chemical test.

1 Upon trial for the offense of driving a motor vehicle in this
2 state while under the influence of alcohol, controlled sub-
3 stances or drugs, or upon the trial of any civil or criminal
4 action arising out of acts alleged to have been committed by
5 any person driving a motor vehicle while under the in-
6 fluence of alcohol, controlled substances or drugs, evidence of

7 the amount of alcohol in the person's blood at the time of the
8 arrest or of the acts alleged, as shown by a chemical analysis
9 of his blood, breath or urine, is admissible, if the sample or
10 specimen was taken within two hours from and after the time
11 of arrest or of the acts alleged, and shall give rise to the fol-
12 lowing presumptions or have the following effect:

13 (a) Evidence that there was, at that time, five hundredths
14 of one percent or less, by weight, of alcohol in his blood,
15 shall be prima facie evidence that the person was not under
16 the influence of alcohol;

17 (b) Evidence that there was, at that time, more than five
18 hundredths of one percent and less than ten hundredths of one
19 percent, by weight, of alcohol in the person's blood shall be
20 relevant evidence, but it is not to be given prima facie effect
21 in indicating whether the person was under the influence of
22 alcohol;

23 (c) Evidence that there was, at that time, ten hundredths
24 of one percent or more, by weight, of alcohol in his blood,
25 shall be admitted as prima facie evidence that the person was
26 under the influence of alcohol.

27 Percent by weight of alcohol in the blood shall be based
28 upon milligrams of alcohol per one hundred cubic centimeters
29 of blood.

30 A chemical analysis of a person's blood, breath or urine,
31 in order to give rise to the presumptions or to have the effect
32 provided for in subdivisions (a), (b) and (c) of this section,
33 must be performed in accordance with methods and standards
34 approved by the state department of health. A chemical analy-
35 sis of blood or urine to determine the alcoholic content of
36 blood shall be conducted by a qualified laboratory or by the
37 state police scientific laboratory of the criminal identification
38 bureau of the department of public safety.

39 The provisions of this article shall not limit the introduc-
40 tion in any administrative or judicial proceeding of any other
41 competent evidence bearing on the question of whether the
42 person was under the influence of alcohol, controlled sub-
43 stances or drugs.

§17C-5-9. Right to demand test.

1 Any person lawfully arrested for driving a motor vehicle in
2 this state while under the influence of alcohol, controlled sub-
3 stances or drugs shall have the right to demand that a sample
4 or specimen of his blood, breath or urine be taken within two
5 hours from and after the time of arrest, and that a chemical
6 test thereof be made. The analysis disclosed by such chemical
7 test shall be made available to such arrested person forthwith
8 upon demand.

§17C-5-10. Fee for withdrawing blood sample and making urine test; payment of fees.

1 A reasonable fee shall be allowed to the person withdrawing
2 a blood sample or administering a urine test at the request and
3 direction of a law-enforcement officer in accordance with the
4 provisions of this article. If the person whose blood sample
5 was withdrawn or whose urine was tested was arrested and
6 charged with a violation of section two of this article, the
7 county having venue of such charge shall pay said fee, and if
8 said person is subsequently convicted of such charge, such fee
9 shall be taxed as a part of the costs of the criminal proceeding
10 and shall be paid, notwithstanding any other provision of this
11 code to the contrary, into the general fund of said county. If
12 the person whose blood sample was withdrawn or whose urine
13 was tested was arrested and charged with a violation of a
14 similar ordinance of any municipality, said municipality shall
15 pay said fee, and if said person is subsequently convicted of
16 such charge, such fee shall be taxed as a part of the costs of
17 the criminal proceeding and shall be paid, notwithstanding any
18 other provision of this code to the contrary, into the general
19 fund of said municipality.

§17C-5-11. Municipal ordinances to contain same elements as offenses under this article; penalties in municipal ordinances required to conform to state penalties.

1 (a) Notwithstanding the provisions of section five, article
2 twelve, chapter eight of this code, on and after the first day of
3 September, one thousand nine hundred eighty-three, each and
4 every municipal ordinance defining a misdemeanor offense of or
5 relating to driving under the influence of alcohol or driving

6 under the influence of intoxicating liquor or otherwise pro-
7 hibiting conduct made unlawful by this article shall be null and
8 void and of no effect unless such ordinance defines such an
9 offense in substantially similar terms as an offense defined
10 under the provisions of this article and such offense contains
11 the same elements as an offense defined herein.

12 (b) Notwithstanding the provisions of section one, article
13 eleven, chapter eight of this code, on and after the first day
14 of August, one thousand nine hundred eighty-three, each and
15 every municipal ordinance defining a misdemeanor offense of or
16 relating to driving under the influence of alcohol or driving
17 under the influence of intoxicating liquor or otherwise pro-
18 hibiting conduct made unlawful by this article shall prescribe
19 the same penalty for such offense as is prescribed for an
20 offense under this article containing the same elements.

**ARTICLE 5A. ADMINISTRATIVE PROCEDURES FOR SUSPENSION
AND REVOCATION OF LICENSES FOR DRIVING
UNDER THE INFLUENCE OF ALCOHOL, CON-
TROLLED SUBSTANCES OR DRUGS.**

§17C-5A-1. Implied consent to administrative procedure; revocation for driving under the influence of alcohol, controlled substances or refusal to submit to secondary chemical test.

§17C-5A-2. Hearings; revocation; review.

§17C-5A-2a. Assessment of costs; special account created.

§17C-5A-3. Safety and treatment program; reissuance of license.

§17C-5A-4. Search for record of prior offenses by driver.

**§17C-5A-1. Implied consent to administrative procedure; revoca-
tion for driving under the influence of alcohol, con-
trolled substances or drugs; refusal to submit to
secondary chemical test.**

1 (a) Any person who is licensed to operate a motor vehicle in
2 this state and who drives a motor vehicle in this state shall be
3 deemed to have given his consent by the operation thereof, sub-
4 ject to the provisions of this article, to the procedure set forth in
5 this article for the determination of whether his license to oper-
6 ate a motor vehicle in this state should be revoked because he
7 did drive a motor vehicle while under the influence of alcohol,
8 controlled substances or drugs, or combined influence of al-
9 cohol or controlled substances or drugs, or did drive a motor

10 vehicle while having an alcoholic concentration in his blood of
11 ten hundredths of one percent or more, by weight, or did re-
12 fuse to submit to any designated secondary chemical test.

13 (b) Any law-enforcement officer arresting a person for an
14 offense described in section two, article five of this chapter or
15 for an offense described in a municipal ordinance which has
16 the same elements as an offense described in said section two
17 of article five, shall report to the commissioner of the depart-
18 ment of motor vehicles by written statement within forty-eight
19 hours the name and address of the person so arrested. Such re-
20 port shall include the specific offense with which the person is
21 charged, and, if applicable, a copy of the results of any second-
22 ary chemical test of blood, breath or urine. The signing of the
23 statement required to be signed by this subsection shall consti-
24 tute an oath or affirmation by the person signing such state-
25 ment that the statements contained therein are true and that
26 any copy filed is a true copy. Such statement shall contain up-
27 on its face a warning to the officer signing that to willfully
28 sign a statement containing false information concerning any
29 matter or thing, material or not material, is false swearing and
30 is a misdemeanor.

31 (c) If, upon examination of the written statement of the
32 officer and the test results described in subsection (b) of
33 this section, the commissioner shall determine that a person
34 was arrested for an offense described in section two, article
35 five of this chapter or for an offense described in a municipal
36 ordinance which has the same elements as an offense described
37 in said section two of article five, and that the results of the
38 tests indicate that at the time the test or tests were administered
39 the person had, in his blood, an alcohol concentration of
40 ten hundredths of one percent or more, by weight, or at the
41 time the person was arrested he was under the influence of
42 alcohol, controlled substances or drugs, the commissioner shall
43 make and enter an order revoking such person's license to
44 operate a motor vehicle in this state. A copy of such order
45 shall be forwarded to such person by registered or certified
46 mail, return receipt requested, and shall contain the reasons
47 for the revocation and the revocation periods provided for in

48 section two of this article. No revocation shall become effec-
49 tive until ten days after receipt of a copy of such order.

§17C-5A-2. Hearing; revocation; review.

1 (a) Upon the written request of a person whose license to
2 operate a motor vehicle in this state has been revoked under
3 the provisions of section one of this article or section seven,
4 article five of this chapter, the commissioner of motor vehicles
5 shall afford the person an opportunity to be heard. Such writ-
6 ten request must be filed with the commissioner in person or by
7 registered or certified mail, return receipt requested, within ten
8 days after receipt of a copy of the order of revocation. The
9 hearing shall be before said commissioner or authorized deputy
10 or agent of said commissioner and all of the pertinent provi-
11 sions of article five, chapter twenty-nine-a of this code shall
12 apply: *Provided*, That in the case of a resident of this state the
13 hearing shall be held in the county wherein the arrest was
14 made in this state unless the commissioner or his authorized
15 deputy or agent and such person agree that the hearing may be
16 held in some other county.

17 (b) Any such hearing shall be held within twenty days
18 after the date upon which the commissioner received the
19 timely written request therefor, unless there is a postponement
20 or continuance. The commissioner may postpone or continue
21 any hearing on his own motion, or upon application for each
22 person for good cause shown. The commissioner shall adopt
23 and implement by a procedural rule written policies govern-
24 ing the postponement or continuance of any such hearing on
25 his own motion or for the benefit of any law-enforcement
26 officer or any person requesting such hearing, and such
27 policies shall be enforced and applied to all parties equally.
28 For the purpose of conducting such hearing, the commissioner
29 shall have the power and authority to issue subpoenas and
30 subpoenas duces tecum in accordance with the provisions of
31 section one, article five, chapter twenty-nine-a of this code:
32 *Provided*, That the notice of hearing to the appropriate law-
33 enforcement officers by registered or certified mail, return
34 receipt requested, shall constitute a subpoena to appear at such
35 hearing without the necessity of payment of fees by the depart-
36 ment of motor vehicles. All subpoenas and subpoenas duces

37 tecum shall be issued and served within the time and for the
38 fees and shall be enforced, as specified in section one, article
39 five of said chapter twenty-nine-a, and all of said section one
40 provisions dealing with subpoenas and subpoenas duces tecum
41 shall apply to subpoenas and subpoenas duces tecum issued for
42 the purpose of a hearing hereunder.

43 (c) Law-enforcement officers shall be compensated for the
44 time expended in their travel and appearance before the
45 commissioner by the law-enforcement agency by whom they
46 are employed at their regular rate if they are scheduled to be on
47 duty during said time or at their regular overtime rate if they
48 are scheduled to be off-duty during said time.

49 (d) The principal question at such hearing shall be whether
50 the person did drive a motor vehicle while under the influence
51 of alcohol, controlled substances or drugs, or did drive a motor
52 vehicle while having an alcohol concentration in his blood of
53 ten hundredths of one percent or more, by weight, or did refuse
54 to submit to the designated secondary chemical test.

55 The commissioner may propose a legislative rule in compli-
56 ance with the provisions of article three, chapter twenty-nine-a
57 of this code, which rule may provide that if a person accused
58 of driving a motor vehicle while under the influence of alcohol,
59 controlled substances or drugs, or accused of driving a motor
60 vehicle while having an alcohol concentration in his blood of
61 ten hundredths of one percent or more, by weight, intends to
62 challenge the results of any secondary chemical test of blood,
63 breath or urine, or intends to cross-examine the individual or
64 individuals who administered the test or performed the chemi-
65 cal analysis, he shall, within an appropriate period of time
66 prior to the hearing, notify the commissioner in writing of
67 such intention. Such rule may provide that when there is a
68 failure to comply with the notice requirement, the results of
69 the secondary test, if any, shall be admissible as though the
70 person and the commissioner had stipulated the admissibility
71 of such evidence. Any such rule shall provide that the rule
72 shall not be invoked in the case of a person who is not repre-
73 sented by counsel unless the communication from the commis-
74 sioner to the person establishing a time and place for hearing
75 also informed the person of the consequences of his failure to

76 timely notify the commissioner of his intention to challenge the
77 results of the secondary chemical test or cross-examine the in-
78 dividual or individuals who administered the test or performed
79 the chemical analysis.

80 (e) In the case of a hearing wherein a person is accused of
81 driving a motor vehicle while under the influence of alcohol,
82 controlled substances or drugs, or accused of driving a motor
83 vehicle while having an alcoholic concentration in his blood of
84 ten hundredths of one percent or more, by weight, the com-
85 missioner shall make specific findings as to (1) whether the
86 arresting law-enforcement officer had reasonable grounds to
87 believe such person to have been driving while under the in-
88 fluence of alcohol, controlled substances or drugs, or while
89 having an alcoholic concentration in his blood of ten hun-
90 dredths of one percent or more, by weight, (2) whether such
91 person was lawfully placed under arrest for an offense in-
92 volving driving under the influence of alcohol, controlled sub-
93 stances or drugs, and (3) whether the tests, if any, were ad-
94 ministered in accordance with the provisions of this article
95 and article five of this chapter.

96 (f) If, in addition to a finding that the person did drive
97 a motor vehicle while under the influence of alcohol, con-
98 trolled substances or drugs, or did drive a motor vehicle
99 while having an alcoholic concentration in his blood of ten
100 hundredths of one percent or more, by weight, the
101 commissioner also finds by a preponderance of the evidence
102 that the person when so driving did an act forbidden by law
103 or failed to perform a duty imposed by law, which act or
104 failure proximately caused the death of a person and was
105 committed in reckless disregard of the safety of others, and if
106 the commissioner further finds that the influence of alcohol,
107 controlled substances or drugs or the alcoholic concentration
108 in the blood was a contributing cause to the death, the com-
109 missioner shall revoke the person's license for a period of ten
110 years: *Provided*, That if the commissioner has previously sus-
111 pended or revoked the person's license under the provisions of
112 this section or section one of this article, the period of revo-
113 cation shall be for the life of such person.

114 (g) If, in addition to a finding that the person did drive

115 a motor vehicle while under the influence of alcohol, con-
116 trolled substances or drugs, or did drive a motor vehicle
117 while having an alcoholic concentration in his blood of ten
118 hundredths of one percent or more, by weight, the com-
119 missioner also finds by a preponderance of the evidence
120 that the person when so driving did an act forbidden by
121 law or failed to perform a duty imposed by law, which
122 act or failure proximately caused the death of a person,
123 the commissioner shall revoke the person's license for a
124 period of five years: *Provided*, That if the commissioner
125 has previously suspended or revoked the person's license
126 under the provisions of this section or section one of this article,
127 the period of revocation shall be for the life of such person.

128 (h) If, in addition to a finding that the person did drive
129 a motor vehicle while under the influence of alcohol, controlled
130 substances or drugs, or did drive a motor vehicle while having
131 an alcoholic concentration in his blood of ten hundredths of one
132 percent or more, by weight, the commissioner also finds by
133 a preponderance of the evidence that the person when so
134 driving did an act forbidden by law or failed to perform a duty
135 imposed by law, which act or failure proximately caused bodily
136 injury to a person other than himself, the commissioner shall
137 revoke the person's license for a period of two years: *Provided*,
138 That if the commissioner has previously suspended or revoked
139 the person's license under the provisions of this section or sec-
140 tion one of this article, the period of revocation shall be ten
141 years: *Provided, however*, That if the commissioner has pre-
142 viously suspended or revoked the person's license more than
143 once under the provisions of this section or section one of this
144 article, the period of revocation shall be for the life of such
145 person.

146 (i) If the commissioner finds by a preponderance of the
147 evidence that the person did drive a motor vehicle while under
148 the influence of alcohol, controlled substances or drugs, or
149 did drive a motor vehicle while having an alcoholic concentra-
150 tion in his blood of ten hundredths of one percent or more,
151 by weight, or finds that the person, being an habitual user
152 of narcotic drugs or amphetamine or any derivative thereof,
153 did drive a motor vehicle, or finds that the person knowingly

154 permitted his vehicle to be driven by another person who
155 was under the influence of alcohol, controlled substances or
156 drugs, or knowingly permitted his vehicle to be driven by
157 a person who had an alcoholic concentration in his blood of
158 ten hundredths of one percent or more, by weight, the com-
159 missioner shall revoke the person's license for a period of
160 six months: *Provided*, That if the commissioner has pre-
161 viously suspended or revoked the person's license under the
162 provisions of this section or section one of this article, the
163 period of revocation shall be ten years: *Provided, however*,
164 That if the commissioner has previously suspended or revoked
165 the person's license more than once under the provisions of
166 this section or section one of this article, the period of revoca-
167 tion shall be for the life of such person.

168 (j) For purposes of this section, where reference is made
169 to previous suspensions or revocations under this section, the
170 following types of criminal convictions or administrative sus-
171 pensions or revocations shall also be regarded as suspensions or
172 revocations under this section or section one of this article:

173 (1) Any administrative revocation under the provisions
174 of the prior enactment of this section for conduct which
175 occurred on or after the first day of September, one thousand
176 nine hundred eighty-one, and prior to the effective date of
177 this section;

178 (2) Any conviction under the provisions of a prior enact-
179 ment of section two, article five of this chapter for conduct
180 which occurred within a period of five years immediately pre-
181 ceding the first day of September, one thousand nine hundred
182 eighty-one;

183 (3) Any suspension or revocation on the basis of a con-
184 viction under a municipal ordinance of another state or a statute
185 of the United States or of any other state of an offense which
186 has the same elements as an offense described in section two,
187 article five of this chapter, for conduct which occurred on or
188 after the effective date of this section;

189 (4) Any suspension or revocation on the basis of a convic-
190 tion under a statute of the United States or of any other state
191 of an offense which has the same elements as an offense

192 described in section two, article five of this chapter, or a prior
193 enactment of said section, for conduct which occurred within
194 a period of five years immediately preceding the first day of
195 September, one thousand nine hundred eighty-one;

196 (5) Any revocation under the provisions of section seven,
197 article five of this chapter, for conduct which occurred on
198 or after the effective date of this section.

199 (k) In the case of a hearing wherein a person is accused
200 of refusing to submit to a designated secondary test, the
201 commissioner shall make specific findings as to (1) whether
202 the arresting law-enforcement officer had reasonable grounds
203 to believe such person had been driving a motor vehicle
204 in this state while under the influence of alcohol, controlled
205 substances or drugs, (2) whether such person was lawfully
206 placed under arrest for an offense relating to driving a motor
207 vehicle in this state while under the influence of alcohol, con-
208 trolled substances or drugs, (3) whether such person refused
209 to submit to the secondary test finally designated in the man-
210 ner provided in section four of this article, and (4) whether
211 such person had been given a written statement advising
212 him that his license to operate a motor vehicle in this state
213 would be revoked for at least one year and up to
214 life if he refused to submit to the test finally designated
215 in the manner provided in section four, article five of this
216 chapter.

217 (l) If the commissioner finds by a preponderance of the
218 evidence that (1) the arresting law-enforcement officer had
219 reasonable grounds to believe such person had been driving
220 a motor vehicle in this state while under the influence of
221 alcohol, controlled substances or drugs, (2) such person was
222 lawfully placed under arrest for an offense relating to driving
223 a motor vehicle in this state while under the influence of
224 alcohol, controlled substances or drugs, (3) such person re-
225 fused to submit to the secondary chemical test finally desig-
226 nated, and (4) such person had been given a written statement
227 advising him that his license to operate a motor vehicle in this
228 state would be revoked for a period of at least one year and up
229 to life if he refused to submit to the test finally designated,
230 the commissioner shall revoke the person's license to operate

231 a motor vehicle in this state for the periods specified in
232 section seven, article five of this chapter.

233 (m) If the commissioner finds to the contrary with respect
234 to the above issues, he shall rescind his earlier order of revoca-
235 tion or shall reduce the order of revocation to the appropriate
236 period of revocation under this section, or section seven,
237 article five of this chapter.

238 A copy of the commissioner's order made and entered follow-
239 ing the hearing shall be served upon such person by registered
240 or certified mail, return receipt requested. During the pendency
241 of any such hearing, the revocation of the person's license
242 to operate a motor vehicle in this state shall be stayed.

243 If the commissioner shall after hearing make and enter an
244 order affirming his earlier order of revocation such person
245 shall be entitled to judicial review as set forth in chapter
246 twenty-nine-a of this code, except that the commissioner shall
247 not stay enforcement of the order; and, pending such appeal,
248 the court may grant a stay or supersedeas of such order only
249 upon motion and hearing, and a finding by the court upon the
250 evidence presented, that there is a reasonable probability that
251 the appellant shall prevail upon the merits, and the appellant
252 will suffer irreparable harm if such order is not stayed.

§17C-5A-2a. Assessment of costs; special account created.

1 The department of motor vehicles is hereby authorized
2 and required to assess witness costs at the same rate as witness
3 fees in circuit court and a docket fee of ten dollars for each
4 hearing request against any person filing a request for a hearing
5 under section two of this article who fails to appear, fails to
6 have said order rescinded or fails to have said order modified
7 to a lesser period of revocation.

8 All fees and costs collected hereunder shall be paid into a
9 special revenue account in the state treasury. The funds in
10 said account shall be used to pay or reimburse the various
11 law-enforcement agencies at the same rate as witnesses in
12 circuit court for the travel and appearance of its officers
13 before the commissioner or authorized deputy or agent pur-
14 suant to a hearing request under the provisions of this article.

15 The department shall authorize payment to the law-enforce-
16 ment agencies from said account as the fees for a particular
17 hearing request are received from the person against whom
18 the costs were assessed. The department shall authorize trans-
19 fer to an appropriate agency account from the special account to
20 pay costs of registered and certified mailings and other ex-
21 penses associated with the conduct of hearings under this
22 article as the docket fee for a particular hearing request is
23 received from the person against whom the costs were assessed.

24 In the event judicial review results in said order being
25 rescinded or modified to a lesser period of revocation the
26 costs assessed shall be discharged.

§17C-5A-3. Safety and treatment program; reissuance of license.

1 (a) The department of motor vehicles, in cooperation with
2 the department of health, the division of alcoholism and drug
3 abuse, shall establish by rule and regulation a comprehensive
4 safety and treatment program for persons whose license has
5 been revoked under the provisions of this article, or section
6 seven, article five of this chapter, or subsection (6), section
7 three, article five, chapter seventeen-b of this code, and shall
8 likewise establish the minimum qualifications for persons con-
9 ducting the safety and treatment program. The program shall
10 include, but not be limited to, treatment of alcoholism, alcohol
11 and drug abuse, psychological counseling, educational courses
12 on the dangers of alcohol and drugs as they relate to driving, de-
13 fensive driving, or other safety driving instruction, and other
14 programs designed to properly educate, train and rehabilitate
15 the offender.

16 (b) (1) The department of motor vehicles, in cooperation
17 with the department of health, the division of alcoholism and
18 drug abuse, shall provide for the preparation of an educational
19 and treatment program for each person whose license has been
20 revoked under the provisions of this article or section seven,
21 article five of this chapter, or subsection (6), section five,
22 article three, chapter seventeen-b of this code, which shall con-
23 tain the following: (A) A listing and evaluation of the of-
24 fender's prior traffic record; (B) characteristics and history of
25 alcohol or drug use, if any; (C) his amenability to rehabilita-

26 tion through the alcohol safety program; and (D) a recom-
27 mendation as to treatment or rehabilitation, and the terms and
28 conditions of such treatment or rehabilitation. The program
29 shall be prepared by persons knowledgeable in the diagnosis of
30 alcohol or drug abuse and treatment. The cost of the program
31 shall be paid out of fees established by the commissioner of
32 motor vehicles in cooperation with the department of health,
33 division of alcohol and drug abuse. These fees shall be de-
34 posited in a special account administering the program, to be
35 designated the "driver's rehabilitation fund."

36 (2) The commissioner, after giving due consideration to
37 the program developed for the offender, shall prescribe the
38 necessary terms and conditions for the reissuance of the license
39 to operate a motor vehicle in this state revoked under this
40 article, or section seven, article five of this chapter, or sub-
41 section (6), section five, article three, chapter seventeen-b of
42 this code, which shall include successful completion of the
43 educational, treatment or rehabilitation program, subject to
44 the following:

45 (A) When the period of revocation is six months, the
46 license to operate a motor vehicle in this state shall not be
47 reissued until (i) at least ninety days have elapsed from the
48 date of the initial revocation, during which time the revocation
49 was actually in effect, (ii) the offender has successfully com-
50 pleted the program, (iii) all costs of the program and ad-
51 ministration have been paid, and (iv) all costs assessed as a
52 result of a revocation hearing have been paid.

53 (B) When the period of revocation is for a period of
54 years, the license to operate a motor vehicle in this state shall
55 not be reissued until (i) at least one half of such time period
56 has elapsed from the date of the initial revocation, during which
57 time the revocation was actually in effect, (ii) the offender has
58 successfully completed the program, (iii) all costs of the pro-
59 gram and administration have been paid, and (iv) all costs
60 assessed as a result of a revocation hearing have been paid.

61 (C) When the period of revocation is for life, the license
62 to operate a motor vehicle in this state shall not be reissued
63 until (i) at least ten years have elapsed from the date of the

64 initial revocation, during which time the revocation was
65 actually in effect, (ii) the offender has successfully com-
66 pleted the program, (iii) all costs of the program and ad-
67 ministration have been paid, and (iv) all costs assessed as a
68 result of a revocation hearing have been paid.

69 (c) Notwithstanding any provisions of this section to the
70 contrary, when the necessary terms and conditions for the
71 successful completion of the safety and treatment program
72 for the reissuance of the person's license to operate a motor
73 vehicle includes or requires full-time commitment to a treat-
74 ment facility for a period of one day or more, the person
75 shall be forthwith entitled to judicial review, pursuant to chap-
76 ter twenty-nine-a of this code, of the requirement of and neces-
77 sity for full-time commitment to a treatment facility as a condi-
78 tion for successful completion of the person's safety and
79 treatment program.

§17C-5A-4. Search for record of prior offenses by driver.

1 The commissioner shall immediately upon receipt of the
2 statements required by section seven, article five of this chapter
3 and section one of this article record the date and time of day
4 of the receipt of such statements and shall forthwith cause a
5 search of the appropriate records of the department to be made
6 for any record of prior offenses under this article and such
7 commissioner shall immediately report to the officer making
8 such statement an abstract showing any such prior offense, the
9 date thereof, the identity of any court in which any proceedings
10 in regard thereto were instituted and the disposition thereof.

11 Any law-enforcement officer who fails to file the statements
12 required by this chapter within forty-eight hours of the arrest
13 of any person charged for any violation of section two, article
14 five of this chapter or for any offense described in a municipal
15 ordinance which has the same elements as an offense described
16 in said section two, article five, shall be guilty of a misde-
17 meanor and shall be subject to a fine of not less than twenty
18 dollars nor more than five hundred dollars. And if the com-
19 missioner shall willfully fail to post by United States mail or
20 other adequate means of communication a written report ad-
21 dressed to the law-enforcement officer of any such offense.

22 as required by this section, within a period of forty-eight hours
23 after the receipt of the statement, the commissioner shall be
24 guilty of a misdemeanor and shall be subject to a fine of not
25 less than twenty dollars nor more than five hundred dollars.

**ARTICLE 5B. POSTMORTEM TESTS FOR ALCOHOL IN PERSONS
KILLED IN MOTOR VEHICLE ACCIDENTS.**

§17C-5B-1. Blood test for alcohol in drivers and adult pedestrians killed in motor vehicle accidents; time limit for conducting test; who may conduct test; express consent to withdraw blood from dead body granted; granting civil and criminal immunity to person conducting test; fee for test.

§17C-5B-2. To whom and how county medical examiners report results of blood tests; such report not admissible as evidence; use of reports only for statistical and highway safety purposes.

§17C-5B-1. Blood test for alcohol in drivers and adult pedestrians killed in motor vehicle accidents; time limit for conducting test; who may conduct test; express consent to withdraw blood from dead body granted; granting civil and criminal immunity to person conducting test; fee for test.

1 When any motor vehicle driver or adult pedestrian dies in a
2 motor vehicle accident in this state or dies within four hours
3 after having been involved in a motor vehicle accident in this
4 state, the physician in attendance, or law-enforcement officer
5 having knowledge of such death, or the funeral director, or any
6 other person present when such death occurred, shall immedi-
7 ately report such death to the medical examiner of the county
8 in which such death occurred. Upon receipt of such notice, the
9 medical examiner shall take charge of the dead body and shall
10 conduct, or shall cause to be conducted, within twelve hours
11 after receiving such notice and before the dead body is em-
12 balmed, a blood test to determine the presence and percentage
13 concentration of alcohol in the blood of such dead body.

14 The blood test required under this section shall be conducted
15 only by a person qualified to conduct an autopsy under article
16 twelve, chapter sixty-one of this code or by a doctor of medi-
17 cine, doctor of osteopathy, registered nurse, trained medical
18 technician at the place of his employment or county coroner
19 who is deemed qualified by the office of medical examina-
20 tions to conduct such blood test.

21 Any person who is to conduct a blood test under the pro-
22 visions of this section is hereby expressly authorized to with-
23 draw blood from the dead body in the quantity necessary to
24 conduct such blood test. Any person withdrawing blood from
25 the dead body and testing such blood and any hospital or clinic
26 in which such blood is withdrawn and tested under the provi-
27 sions of this section shall be immune from all civil and criminal
28 liability which might otherwise be imposed.

29 Any person conducting a blood test under the provisions of
30 this section shall receive a standardized fee in the amount de-
31 termined by the office of medical examinations, which fee
32 shall be paid from funds appropriated to the office of medi-
33 cal examinations.

34 Nothing contained in this section shall be construed to pre-
35 clude the taking of a blood test by any other person having
36 the right to take any such test or cause such test to be taken
37 while the medical examiner has charge of the body.

**§17C-5B-2. To whom and how county medical examiners report
results of blood tests; such reports not admissible as
evidence; use of reports only for statistical and high-
way safety purposes.**

1 Each county medical examiner shall immediately report the
2 results of each blood test conducted under the authority of
3 section one of this article by him, or conducted at his request,
4 to the chief medical examiner of the office of medical exami-
5 nations and to the department of public safety. The results of
6 such blood test and report thereof shall be used only for rec-
7 ordkeeping and statistical purposes. No results of such blood
8 test or any report thereof shall be admissible in evidence in any
9 action or proceeding of any kind in any court or before any
10 tribunal, board, agency or person.

11 The department of public safety shall compile the data from
12 all such reports submitted to it on a monthly basis. The depart-
13 ment shall forward such compilations to the governor's high-
14 way safety administration and the department of motor ve-
15 hicles. Such compilations shall be only for statistical purposes
16 and highway safety information and shall not disclose or re-
17 veal in any manner the identity of any dead person whose

18 blood was tested under the provisions of section one of this
19 article.

20 The department of public safety, the governor's highway
21 safety administration and department of motor vehicles shall
22 make use of such compilations in a manner to provide accur-
23 ate and useful statistical information to government and the
24 public relative to achieving a reduction in motor vehicle acci-
25 dents arising in whole or in part from the imbibing of alcohol
26 by motor vehicle drivers and adult pedestrians.

CHAPTER 139

(S. B. 706—By Mr. Holmes)

[Passed March 11, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to certificates of title; providing for issuance of title when the applicant has paid the required taxes and fees to a motor vehicle dealership which has filed for bankruptcy; and providing further for the assignment of any claims against the motor vehicle dealership to the department of motor vehicles.

Be it enacted by the Legislature of West Virginia:

That section four, 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-3-4. Application for certificate of title; tax for privilege of certification of title; penalty for false swearing.**

1 Certificates of registration of any vehicle or registra-

*Clerk's Note: This section was also amended by H. B. 1300, which passed subsequent to the passage of this act.

2 tion plates therefor, whether original issues or duplicates,
3 shall not be issued or furnished by the department of
4 motor vehicles or any other officer charged with the duty,
5 unless the applicant therefor already has received, or
6 shall at the same time make application for and be
7 granted, an official certificate of title of the vehicle. The
8 application shall be upon a blank form to be furnished
9 by the department of motor vehicles and shall contain a
10 full description of the vehicle, which description shall
11 contain a manufacturer's serial or identification number
12 or other number as determined by the commissioner and
13 any distinguishing marks, together with a statement of
14 the applicant's title and of any liens or encumbrances
15 upon the vehicle, the names and addresses of the holders
16 of the liens and any other information as the department
17 of motor vehicles may require. The application shall be
18 signed and sworn to by the applicant. A tax is
19 hereby imposed upon the privilege of effecting the
20 certification of title of each vehicle in the amount
21 equal to five percent of the value of said mo-
22 tor vehicle at the time of such certification. If
23 the vehicle is new, the actual purchase price or
24 consideration to the purchaser thereof shall be the
25 value of the vehicle; if the vehicle is a used or
26 secondhand vehicle, the present market value at time of
27 transfer or purchase shall be considered the value thereof
28 for the purposes of this section: *Provided*, That so much
29 of the purchase price or consideration as is represented
30 by the exchange of other vehicles on which the tax herein
31 imposed has been paid by the purchaser shall be deducted
32 from the total actual price or consideration paid for the
33 vehicle, whether the same be new or secondhand; if the
34 vehicle be acquired through gift, or by any manner
35 whatsoever, unless specifically exempted in this section,
36 the present market value of the vehicle at the time of the
37 gift or transfer shall be considered the value thereof
38 for the purposes of this section. No certificate of title for
39 any vehicle shall be issued to any applicant unless the
40 applicant shall have paid to the department of motor
41 vehicles the tax imposed by this section which shall be
42 five percent of the true and actual value of said vehicle

43 whether the vehicle be acquired through purchase, by
44 gift or by any other manner whatsoever except gifts
45 between husband and wife or between parents and chil-
46 dren: *Provided, however,* That the husband or wife, or the
47 parents or children previously have paid the tax on the
48 vehicles so transferred to the state of West Virginia:
49 *Provided further,* That the department of motor vehicles
50 may issue a certificate of registration and title to an ap-
51 plicant if the applicant provides sufficient proof to the
52 department of motor vehicles that the applicant has paid
53 the taxes and fees required by this section to a motor
54 vehicle dealership that has filed bankruptcy proceedings
55 in the United States bankruptcy court and the taxes and
56 fees so required to be paid by the applicant have been
57 impounded due to the bankruptcy proceedings: *And*
58 *provided further,* That the applicant makes an affidavit
59 of the same and assigns all rights to claims for money
60 the applicant may have against the motor vehicle dealer-
61 ship to the department of motor vehicles.

62 The tax imposed by this section shall not apply to
63 vehicles to be registered as Class H vehicles, or Class S
64 vehicles, as defined in section one, article ten of this
65 chapter, which are used or to be used in interstate com-
66 merce, nor shall the tax imposed by this section apply to
67 titling of vehicles by a registered dealer of this state for
68 resale only, nor shall the tax imposed by this section
69 apply to titling of vehicles by this state or any political
70 subdivision thereof, or by any volunteer fire department
71 or duly chartered rescue or ambulance squad organized
72 and incorporated under the laws of the state of West
73 Virginia as a nonprofit corporation for protection of life
74 or property. The total amount of revenue collected by
75 reason of this tax shall be paid into the state road fund
76 and expended by the commissioner of highways for
77 matching federal aid funds allocated for West Virginia.
78 In addition to said tax, there shall be a charge of five
79 dollars for each original certificate of title or duplicate
80 certificate of title so issued: *Provided,* That this state or
81 any political subdivision thereof, or any volunteer fire

82 department, or duly chartered rescue squad, shall be
83 exempted from payment of such charge.

84 Such certificate shall be good for the life of the vehicle,
85 so long as the same is owned or held by the original
86 holder of such certificate, and need not be renewed an-
87 nually, or any other time, except as herein provided.

88 If, by will or direct inheritance, a person becomes the
89 owner of a motor vehicle and the tax herein imposed
90 previously has been paid, to the department of motor
91 vehicles, on that vehicle, he shall not be required to pay
92 such tax.

93 A person who has paid the tax imposed by this section
94 shall not be required to pay the tax a second time for the
95 same motor vehicle, but he shall be required to pay a
96 charge of five dollars for the certificate of retitle of that
97 motor vehicle, except that the tax shall be paid by the
98 person when the title to the vehicle has been trans-
99 ferred either in this or another state from such person
100 to another person and transferred back to such person.

101 Notwithstanding any provisions of this code to the
102 contrary, the owners of trailers, semitrailers and other
103 vehicles not subject to the certificate of title tax prior
104 to the enactment of this chapter shall be subject to the
105 privilege tax imposed by this section: *Provided*, That
106 mobile homes, house trailers, modular homes and similar
107 nonmotive propelled vehicles susceptible of being moved
108 upon the highways but primarily designed for habitation
109 and occupancy, rather than for transporting persons or
110 property, or any vehicle operated on a nonprofit basis and
111 used exclusively for the transportation of mentally re-
112 tarded or physically handicapped children when the ap-
113 plication for certificate of registration for such vehicle
114 is accompanied by an affidavit stating that such vehicle
115 will be operated on a nonprofit basis and used exclusively
116 for the transportation of mentally retarded and physi-
117 cally handicapped children, shall not be subject to the tax
118 imposed by this section, but shall be taxable under the
119 provisions of articles fifteen and fifteen-a, chapter eleven
120 of this code.

121 If any person making any affidavit required under any
122 provision of this section, shall therein knowingly swear
123 falsely, or if any person shall counsel, advise, aid or abet
124 another in the commission of false swearing, he shall be
125 guilty of a misdemeanor, and, on conviction thereof, shall
126 be fined not more than one hundred dollars or be im-
127 prisoned in the county jail for a period not to exceed
128 thirty days, or in the discretion of the court be subject
129 to both such fine and imprisonment.

CHAPTER 140

(Com. Sub. for H. B. 1300—By Mr. Speaker, Mr. See)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the application for motor vehicle certificate of title and the tax upon the privilege of certification; increasing the penalty for the first conviction for false swearing; creating a felony offense for second and subsequent convictions for false swearing; and providing penalties for second and subsequent convictions.

Be it enacted by the Legislature of West Virginia:

That section four, 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-3-4. Application for certificate of title; tax for privilege of certification of title; penalty for false swearing.**

1 Certificates of registration of any vehicle or registration plates
2 therefor, whether original issues or duplicates, shall not be is-

*Clerk's Note: This section was also amended by S. B. 706, which passed prior to this act.

3 sued or furnished by the department of motor vehicles or any
4 other officer charged with such duty, unless the applicant there-
5 for already has received, or shall at the same time make appli-
6 cation for and be granted, an official certificate of title of such
7 vehicle. Such application shall be upon a blank form to be fur-
8 nished by the department of motor vehicles and shall contain a
9 full description of the vehicle, which description shall contain a
10 manufacturer's serial or identification number or other number
11 as determined by the commissioner and any distinguishing
12 marks, together with a statement of the applicant's title and of
13 any liens or encumbrances upon such vehicle, the names and
14 addresses of the holders of such liens and such other informa-
15 tion as the department of motor vehicles may require. The ap-
16 plication shall be signed and sworn to by the applicant. A tax is
17 hereby imposed upon the privilege of effecting the certification
18 of title of each vehicle in the amount equal to five percent of
19 the value of said motor vehicle at the time of such certification.
20 If the vehicle is new, the actual purchase price or consideration
21 to the purchaser thereof shall be the value of said vehicle; if the
22 vehicle is a used or secondhand vehicle, the present market
23 value at time of transfer or purchase shall be deemed the value
24 thereof for the purposes of this section: *Provided*, That so
25 much of the purchase price or consideration as is represented
26 by the exchange of other vehicles on which the tax herein im-
27 posed has been paid by the purchaser shall be deducted from
28 the total actual price or consideration paid for said vehicle,
29 whether the same be new or secondhand; if the vehicle be ac-
30 quired through gift, or by any manner whatsoever, unless spec-
31 ifically exempted in this section, the present market value of
32 the vehicle at the time of the gift or transfer shall be deemed
33 the value thereof for the purposes of this section. No certifi-
34 cate of title for any vehicle shall be issued to any applicant un-
35 less such applicant shall have paid to the department of motor
36 vehicles the tax imposed by this section which shall be five per-
37 cent of the true and actual value of said vehicle whether the
38 vehicle be acquired through purchase, by gift, or by any other
39 manner whatsoever except gifts between husband and wife or
40 between parents and children: *Provided, however*, That hus-
41 band or wife, or parents or children previously have paid said
42 tax on the vehicles so transferred to the state of West Virginia.

43 The tax imposed by this section shall not apply to vehicles to
44 be registered as Class H vehicles, or Class S vehicles, as defined
45 in section one, article ten of this chapter, which are used or to
46 be used in interstate commerce, nor shall the tax imposed by
47 this section apply to titling of vehicles by a registered dealer of
48 this state for resale only, nor shall the tax imposed by this sec-
49 tion apply to titling of vehicles by this state or any political sub-
50 division thereof, or by any volunteer fire department or duly
51 chartered rescue or ambulance squad organized and incorporat-
52 ed under the laws of the state of West Virginia as a nonprofit
53 corporation for protection of life or property. The total amount
54 of revenue collected by reason of this tax shall be paid into the
55 state road fund and expended by the commissioner of highways
56 for matching federal aid funds allocated for West Virginia. In
57 addition to said tax, there shall be a charge of five dollars for
58 each original certificate of title or duplicate certificate of title
59 so issued: *Provided further*, That this state or any political
60 subdivision thereof, or any such volunteer fire department, or
61 duly chartered rescue squad, shall be exempted from payment
62 of such charge.

63 Such certificate shall be good for the life of the vehicle,
64 so long as the same is owned or held by the original holder of
65 such certificate, and need not be renewed annually, or any
66 other time, except as herein provided.

67 If, by will or direct inheritance, a person becomes the owner
68 of a motor vehicle and the tax herein imposed previously has
69 been paid, to the department of motor vehicles, on that ve-
70 hicle, he shall not be required to pay such tax.

71 A person who has paid the tax imposed by this section shall
72 not be required to pay the tax a second time for the same
73 motor vehicle, but he shall be required to pay a charge of
74 five dollars for the certificate of retitling of that motor vehicle,
75 except that such tax shall be paid by such person when the
76 title to such vehicle has been transferred either in this or
77 another state from such person to another person and trans-
78 ferred back to such person.

79 Notwithstanding any provisions of this code to the con-
80 trary, the owners of trailers, semitrailers and other vehicles
81 not subject to the certificate of title tax prior to the enactment

82 of this chapter shall be subject to the privilege tax imposed
83 by this section: *Provided*, That mobile homes, house trailers,
84 modular homes and similar nonmotive propelled vehicles sus-
85 ceptible of being moved upon the highways but primarily de-
86 signed for habitation and occupancy, rather than for trans-
87 porting persons or property, or any vehicle operated on a non-
88 profit basis and used exclusively for the transportation of
89 mentally retarded or physically handicapped children when
90 the application for certificate of registration for such vehicle is
91 accompanied by an affidavit stating that such vehicle will be
92 operated on a nonprofit basis and used exclusively for the
93 transportation of mentally retarded and physically handicapped
94 children, shall not be subject to the tax imposed by this sec-
95 tion, but shall be taxable under the provisions of articles fif-
96 teen and fifteen-a, chapter eleven of this code.

97 If any person making any affidavit required under any pro-
98 vision of this section, shall therein knowingly swear falsely, or
99 if any person shall counsel, advise, aid or abet another in the
100 commission of false swearing, he shall on first offense be guilty
101 of a misdemeanor, and, upon conviction thereof, shall be
102 fined not more than five hundred dollars or be imprisoned in
103 the county jail for a period not to exceed six months or in the
104 discretion of the court be subject to both such fine and im-
105 prisonment; for a second or any subsequent conviction within
106 five years, he shall be guilty of a felony, and, upon conviction
107 thereof, shall be fined not more than five thousand dollars or
108 be imprisoned in the penitentiary for not less than one year nor
109 more than five years or in the discretion of the court be sub-
110 ject to both such fine and imprisonment.

CHAPTER 141

(Com. Sub. for H. B. 1243—By Mr. Speaker, Mr. See)

[Passed February 23, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section

twelve-a, relating to requiring a certificate of title of a motor vehicle to include an odometer disclosure form; requiring completion of the form by the owner and purchaser of a motor vehicle; specifying information to be included on the disclosure form; allowing certain exceptions to completion of the form; and providing a penalty.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

§17A-3-12a. Disclosure of odometer information on certificate of title; exception; penalty.

1 (a) On and after the first day of July, one thousand nine
2 hundred eighty-three, in accordance with provisions of sec-
3 tion four hundred eight-a, of the Motor Vehicle Information
4 and Costs Savings Act, Public Law 92-513, the owner and
5 the purchaser of a motor vehicle must complete the odometer
6 disclosure form on the certificate of title before a new cer-
7 tificate of title may be issued for a transfer of ownership of a
8 vehicle. The odometer disclosure form on the certificate of
9 title shall contain the following information:

10 (1) The odometer reading at the time of transfer;

11 (2) Certification by the owner that to the best of his
12 knowledge the odometer reading reflects:

13 (A) The actual mileage the vehicle has been driven;

14 (B) The amount of mileage in excess of the designated
15 mechanical odometer limit of ninety-nine thousand, nine hun-
16 dred ninety-nine miles; or

17 (C) A difference from the number of miles the vehicle
18 has actually been driven and that the difference is greater
19 than that caused by odometer calibration error, and that the
20 odometer reading is not the actual mileage.

21 (3) Certification by the owner that while the motor ve-
22 hicle was in his possession:

23 (A) Neither he nor any person altered, set back or dis-
24 connected the odometer;

25 (B) The odometer was altered for repair or replacement
26 purposes and that the actual mileage registered on the re-
27 paired or replacement odometer was identical to that mileage
28 before such service; or

29 (C) That the odometer reading is not the actual mileage
30 and that the true mileage is unknown to him.

31 (b) Notwithstanding the provisions of this section, the
32 form for odometer disclosure on the certificate of title need
33 not be completed for any of the following motor vehicles:

34 (1) A vehicle having a gross weight of more than sixteen
35 thousand pounds;

36 (2) A vehicle that is not self-propelled;

37 (3) A vehicle that is twenty-five years old or older; or

38 (4) A transfer of a new motor vehicle prior to its first
39 transfer for purposes other than resale.

40 (c) In addition to the information provided in this section,
41 the odometer disclosure form shall refer to the federal Motor
42 Vehicle Information and Cost Savings Act and this section of
43 the code, and shall state that incorrect information may result
44 in civil liability and civil or criminal penalties.

45 (d) A transfer of a motor vehicle which has not been pre-
46 viously titled in this state or which has a certificate of title issued
47 prior to the effective date of this section, must include the
48 execution of the transfer by the owner and the purchaser
49 on a written statement signed by each of the two parties,
50 which statement contains substantially the same information
51 as is required in this section and with the provisions of
52 the odometer mileage statement form pursuant to the Motor
53 Vehicle Information and Cost Savings Act.

54 (e) The commissioner shall promulgate rules and regula-

55 tions for the administration of this section in accordance with
56 chapter twenty-nine-a of this code.

57 (f) Any person who violates any of the provisions of
58 this section with intent to defraud shall be guilty of a mis-
59 demeanor, and, upon conviction thereof, shall be fined not
60 less than two hundred dollars nor more than one thousand
61 dollars, or imprisoned in the county jail for not more than
62 six months, or both fined and imprisoned.

CHAPTER 142

(H. B. 1881—By Mr. Ashcraft and Mrs. Burke)

[Passed March 11, 1983; in effect July 1, 1983. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to original and renewal of registration and issuance of certificates of title; increasing the number of characters for use on license plates to six; and reducing the fees for special registration plates from forty dollars to twenty-five dollars.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

§17A-3-14. Registration plates generally.

1 The department upon registering a vehicle shall issue to
2 the owner one registration plate for a motorcycle, trailer,
3 semitrailer or other motor vehicle.

4 Every registration plate shall have displayed upon it the

5 registration number assigned to the vehicle for which it is
6 issued, also the name of this state, which may be abbreviated,
7 and the year number for which it is issued or the date of ex-
8 piration thereof.

9 Such registration plate and the required letters and numerals
10 thereon, except the year number for which issued or the date
11 of expiration, shall be of sufficient size to be plainly readable
12 from a distance of one hundred feet during daylight, said regis-
13 tration numbering to begin with number two.

14 The color of the registration plates shall be blue and gold
15 of reflectorized material.

16 The department shall not issue, permit to be issued, or dis-
17 tribute any special numbers except as follows:

18 (a) The governor shall be issued registration plates, on one
19 of which shall be imprinted the numeral one and on the other
20 the word one.

21 (b) Upon appropriate application, there shall be issued to
22 the secretary of state, state superintendent of free schools, audi-
23 tor, treasurer, commissioner of agriculture, and the attorney
24 general, the members of both houses of the Legislature, includ-
25 ing the elected officials thereof, the justices of the supreme court
26 of appeals of West Virginia, the representatives and senators
27 of the state in the Congress of the United States, the judges of
28 the United States district courts for the state of West Virginia
29 and the judges of the United States court of appeals for the
30 fourth circuit, if any of said judges shall be residents of West
31 Virginia, a special registration plate for a motor vehicle owned
32 by said official or spouse, but not to exceed two plates for each
33 such official, which plate shall bear the initials of the individ-
34 ual, or any combination of letters not to exceed six, which com-
35 bination of letters shall be limited to a contraction of the proper
36 name or names of such individual or a familiar form applicable
37 to such names or a name by which the individual is generally
38 known, and shall not include any name that might be construed
39 as a slogan or advertisement which has no relation to the name
40 or names of such individual or to a reasonable name by which

41 generally known, together with a designation of the office and
42 which plate shall supersede, during that term of office and
43 while such motor vehicle is owned by said official or spouse,
44 the regular numbered plate assigned to him.

45 (c) Upon appropriate application, any owner of a motor
46 vehicle subject to Class A registration under the provisions
47 of this article may request that the department issue a
48 registration plate bearing a maximum of six letters or num-
49 bers. The department shall attempt to comply with such request
50 wherever possible and shall promulgate appropriate rules and
51 regulations for the orderly distribution of such plates:
52 *Provided*, That for purposes of this subdivision, such registra-
53 tion plates so requested and issued shall include all plates
54 bearing the numbers two through two thousand and shall be
55 subject to the provisions of subdivision (e) of this section.

56 (d) Upon appropriate application, there shall be issued to
57 any disabled veteran, who is exempt from the payment of regis-
58 tration fees under the provisions of this chapter, a registration
59 plate which bears the letters "DV" in red, and also the regular
60 identification numerals in red.

61 (e) In addition to the regular registration fees set forth in
62 section three, article ten of this chapter, a fee of twenty-five
63 dollars shall be paid to the department in each case in which
64 an application for a special registration plate is made as pro-
65 vided in subdivisions (a), (b) and (c): *Provided*, That nothing
66 in this section shall be construed to require a charge for a
67 free prisoner of war license plate authorized by other provisions
68 of this code.

69 Notwithstanding the provisions of this section, or of any
70 other provision of this chapter, the commissioner may, in
71 his discretion, issue a type of registration plate suitable for
72 permanent use on motor vehicles, trailers and semitrailers,
73 together with appropriate devices to be attached thereto to
74 indicate the year for which such vehicles have been properly
75 registered or the date of expiration of such registration. The
76 design of such plates shall be determined by the commissioner.

CHAPTER 143

(Com. Sub. for H. B. 1143—By Mr. Steptoe)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-three, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to motor vehicles; original and renewal of registration; issuance of certificates of title; providing for the issuance of a maximum of five Class A licenses for use by county sheriffs and municipalities.

Be it enacted by the Legislature of West Virginia:

That section twenty-three, 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-3-23. Registration plates to state, county, municipal and other governmental vehicles.

1 Any motor vehicle designed to carry passengers, owned or
2 leased by the state of West Virginia, or any of its departments,
3 bureaus, commissions or institutions, except vehicles used by
4 the governor, treasurer, vehicles operated by the department of
5 public safety, not to exceed six vehicles operated by conserva-
6 tion officers of the department of natural resources, and not to
7 exceed ten vehicles operated by the arson investigators of the
8 office of state fire marshal, shall not be operated or driven by
9 any person unless it shall have displayed and attached to the
10 front thereof, in the same manner as regular motor vehicle
11 registration plates are attached, a plate of the same size as
12 the regular registration plate, with white lettering on a green
13 background bearing the words "West Virginia" in one line
14 and the words "State Car" in another line, and the lettering for
15 the words "State Car" shall be of sufficient size to be plainly
16 readable from a distance of one hundred feet during daylight.

17 Such vehicle shall also have attached to the rear a plate

18 bearing a number and such other words and figures as the
19 commissioner of motor vehicles shall prescribe. The rear plate
20 shall also be green with the number in white.

21 On registration plates issued to vehicles owned by counties,
22 the color shall be white on red with the word "County" on top
23 of the plate and the words "West Virginia" on the bottom.
24 On any registration plates issued to a city or municipality, the
25 color shall be white on blue with the word "City" on top, and
26 the words "West Virginia" on the bottom. The colors may
27 not be reversed and shall be of reflectorized material. The com-
28 missioner is hereby authorized to designate the colors and de-
29 sign of any other registration plates that are issued without
30 charge to any other agency in accordance with the motor ve-
31 hicle laws. The registration plates issued to counties, munic-
32 ipalities and other governmental agencies authorized to receive
33 colored plates hereunder shall be affixed to both the front and
34 rear of such vehicles: *Provided*, That upon application and
35 payment of fees, the commissioner is hereby authorized to
36 issue a maximum of five Class A license plates per ap-
37 plicant to be used by county sheriffs and municipalities
38 on law-enforcement vehicles while engaged in undercover in-
39 vestigations.

40 No other registration plate shall be issued for, or attached
41 to, any such state-owned vehicle.

42 The commissioner of motor vehicles shall have a sufficient
43 number of both front and rear plates produced to attach to all
44 state-owned cars. The numbered registration plates for such
45 vehicles shall start with the number "five hundred" and the
46 commissioner shall issue consecutive numbers for all state-
47 owned cars.

48 It shall be the duty of each office, department, bureau,
49 commission or institution furnished any such vehicle to have
50 such plates affixed thereto prior to the operation of such ve-
51 hicle by any official or employee.

52 Any person violating the provisions of this section shall be
53 guilty of a misdemeanor, and, upon conviction thereof, shall
54 be fined not less than fifty dollars nor more than one hundred
55 dollars.

- 56 Magistrates shall have concurrent jurisdiction with circuit
57 and criminal courts for the enforcement of this section.

CHAPTER 144

(H. B. 1656—By Mr. Yanni)

[Passed March 2, 1983; in effect July 1, 1983. Approved by the Governor.]

AN ACT to amend and reenact section ten, article four, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to motor vehicles; transfers of title or interest; salvage certificates for certain wrecked vehicles; fee for salvage certificates; and providing penalty for violation.

Be it enacted by the Legislature of West Virginia:

That section ten, 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-4-10. Salvage certificates for certain wrecked or damaged vehicles; fee; penalty.

1 In the event a motor vehicle is determined to be a total
2 loss or otherwise designated as "totaled" by any insurance
3 company or insurer, and upon payment of an agreed price
4 as a claim settlement to any insured or claimant owner for the
5 purchase of the vehicle, the insurance company or the insurer
6 shall receive the certificate of title and the vehicle. The in-
7 surance company or insurer shall within ten days surrender
8 the certificate of title and a copy of the claim settlement to the
9 department of motor vehicles. The department shall issue
10 a "salvage certificate," on a form prescribed by the com-
11 missioner, in the name of the insurance company or the insurer.
12 Upon the sale of the vehicle the insurance company or insurer
13 shall endorse the assignment of ownership on the salvage certifi-
14 cate and deliver it to the purchaser who shall also apply for a

15 salvage certificate, even if the insured or claimant owner is the
16 purchaser. The vehicle shall not be titled or registered for
17 operation on the streets or highways of this state unless there is
18 compliance with subsection (b) of this section:

19 (a) Any owner who scraps, compresses, dismantles or des-
20 troys a vehicle for which a certificate of title or salvage
21 certificate has been issued, shall, within ten days surrender the
22 certificate of title or salvage certificate to the department for
23 cancellation. Any person who purchases or acquires a vehicle
24 as salvage or scrap, to be dismantled, compressed or destroyed,
25 shall, within ten days surrender the certificate to the depart-
26 ment. If the vehicle is to be reconstructed, the owner must
27 obtain a salvage certificate and comply with the provisions of
28 subsection (b) of this section.

29 (b) If the motor vehicle is a "reconstructed vehicle" as
30 defined in section one, article one of this chapter, it may not
31 be titled or registered for operation until it has been inspected
32 by an authorized law-enforcement officer or official state in-
33 spection station to determine the operating condition and
34 vehicle identification number and all other inspection require-
35 ments. Following an approved inspection, an application
36 for a new certificate of title may be submitted to the depart-
37 ment; however, the applicant may be required to submit all
38 receipts for component parts, equipment and materials used
39 in the reconstruction. The salvage certificate must also be
40 surrendered to the department before a certificate of title may
41 be issued.

42 (c) The department shall charge a fee of twenty-five dol-
43 lars for the issuance of each salvage certificate but shall not
44 require the payment of the five percent privilege tax. However,
45 upon application for a certificate of title for a reconstructed
46 vehicle, the department shall collect the five percent privilege
47 tax on the fair market value of the vehicle as determined by
48 the commissioner.

49 (d) A certificate of title issued by the department for a
50 reconstructed vehicle shall contain markings in bold print
51 on the face of the title that it is for a reconstructed vehicle.

52 Any person who violates the provisions of this section shall

53 be guilty of a misdemeanor, and, upon conviction thereof, shall
54 be fined not less than five hundred dollars nor more than one
55 thousand dollars, or imprisoned in the county jail for not more
56 than one year, or both fined and imprisoned.

CHAPTER 145

(H. B. 1029—By Mr. Steptoe)

[Passed March 11, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article fifteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirty-six-a, relating to traffic regulations and laws of the road; equipment; sun screening devices; penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. EQUIPMENT.

§17C-15-36a. Sun screening devices; penalties.

1 (a) This section establishes the requirements for approved
2 vehicle glazing materials designed to reduce the effects of
3 the sun and for products and materials designed to be used
4 in conjunction with vehicle glazing materials for the purpose
5 of reducing the effects of the sun.

6 (b) No person may operate or drive a passenger car, multi-
7 purpose passenger vehicle, truck or bus with a gross vehicle
8 rating of ten thousand pounds or less unless in compliance
9 with this section. This section applies to all exterior locations
10 of glazing materials within the applicable vehicles except for
11 roof mount locations.

12 (c) As used in this section:

13 (1) "Sun screening devices" means products or materials de-
14 signed to be used in conjunction with approved vehicle safety
15 glazing materials for the purpose of reducing the effects of
16 the sun.

17 (2) "Luminous reflectance and light transmittance" means
18 that reflectance and transmittance referred to in this section are
19 in the visible light range.

20 (3) "Reflectance" means the ratio of the amount of total
21 light expressed in percentages, which is reflected outward by
22 the product or material to the amount of total light falling on
23 the product or material.

24 (4) "Transmittance" means the ratio of the amount of total
25 light expressed in percentages, which is allowed to pass through
26 the product or material including the glazing to the amount of
27 total light falling on the product or material and the glazing.

28 (5) "Manufacturer" means:

29 Any person engaged in the manufacturing or assembling of
30 sun screening products or materials designed to be used in
31 conjunction with vehicle glazing materials (person means
32 every natural person, firm, copartnership, association or cor-
33 poration); or one who fabricates, laminates or tempers the
34 glazing material incorporating the capacity to reflect or to
35 reduce the transmittance of light during the manufacturing
36 process.

37 (6) "Commissioner" means the commissioner of motor ve-
38 hicles responsible for promulgating rules and regulations gov-
39 erning vehicle equipment approval or use of motor vehicles
40 over the highways of the state.

41 (7) "FMVSS" means the federal motor vehicle safety stan-
42 dards of the national highway transportation safety administra-
43 tion.

44 (8) "Motor homes" means vehicular units designed to pro-
45 vide temporary living quarters built into and an integral part
46 of or permanently attached to a self-propelled motor vehicle
47 chassis.

48 (d) Glazing Location Applicability—(1) No person may

49 operate any motor vehicle on any public highway, road or
50 street with the front windshield, the side windows to the im-
51 mediate right and left of the driver, or side wings forward of
52 and to the left and right of the driver that do not meet the
53 requirements of FMVSS 205 in effect at the time of its manu-
54 facture or are either covered by or treated with any product
55 or material which would alter the glazing color, increase its
56 reflectivity, or reduce its light transmittance.

57 Nothing in this regulation prohibits the use of any products
58 or materials along the top edge of the windshield so long as
59 such products or materials are transparent and do not en-
60 croach upon the AS-1 portion of the windshield as provided
61 by FMVSS 205 and FMVSS 128.

62 (2) All windows behind the driver—No person may oper-
63 ate any motor vehicle on any public highway, road or street
64 with any windows behind the driver which do not meet the
65 requirements of FMVSS 205 at the time of manufacture or
66 are either covered by, treated with or composed of any product
67 or material except as specified below:

68 (A) Film materials, when tested in conjunction with glazing
69 materials, shall have a total reflectance of $35 \pm 3\%$ or less
70 and transmittance of at least $8 \pm 3\%$ or more.

71 (B) Perforated sun screening materials, when tested in
72 conjunction with glazing materials, shall have a total reflect-
73 ance of $35 \pm 3\%$ or less and transmittance of no less than
74 $30 \pm 3\%$. For those products or materials having different
75 levels of reflectance, the highest reflectance from the product
76 or material will be measured by dividing the area into sixteen
77 equal sections and averaging the overall reflectance. The
78 measured reflectance of any of those sections shall not exceed
79 fifty percent.

80 (C) Louvered materials, when installed as designed, may not
81 reduce the area of driver visibility below fifty percent as
82 measured on a horizontal plane. When such materials are used
83 in conjunction with rear window, the measurement shall be
84 made based upon the driver's view from the inside rear view
85 mirror.

86 (D) Glazing, where the capability to either reflect or reduce
87 the transmittance of light is incorporated within the glazing
88 during the manufacturing process:

89 (i) Shall have, when tested as a completed unit, a total
90 reflectance of $35 \pm 3\%$ or less and transmittance of at least
91 $8 \pm 3\%$ or more; and

92 (ii) Is not required to meet the seventy percent luminous
93 transmittance requirement as specified in Test No. 2 of ANSI
94 Z.26 as referenced in FMVSS 205.

95 (E) Privacy drapes, curtains or blinds installed on the inte-
96 rior of motor homes.

97 (F) Right and left outside rearview mirrors are required
98 with the use of any sun screening device or material except
99 when used only on the top edge of the windshield.

100 (e) Certification and Testing—Each manufacturer shall
101 demonstrate compliance with the applicable requirements of
102 this section. Test specimens of the products or materials shall
103 be tested in conjunction with the glazing material of intended
104 use. The necessary tests shall be conducted by or supervised
105 by an approved, certified laboratory or a testing organization.

106 (1) Testing of the products or materials referred to in sub-
107 section (d) of this section shall be conducted in accordance
108 with the applicable provisions of the following standards:

109 (A) Transmittance — American National Standards Insti-
110 tute (ANSI) Z26.1-1977; and

111 (B) Reflectance — ANSI/ASTM E308-73, "Spectrophoto-
112 metry and Description of Color in CIE System," and ANSI/
113 ASTM E179-73, "Selection of Geometric Conditions for
114 Measurement of Reflectance and Transmittance."

115 (2) Testing of the products or materials referred to in sub-
116 section (d) of this section shall be conducted in accordance
117 with the applicable provisions of the following standards:

118 (A) Transmittance — ANSI Z26.1-1977. The light source
119 beam shall be at least one-half inch in diameter or larger.

120 (B) Reflectance — ANSI/ASTM E308-73, "Spectrophoto-
121 metry and Description of Color in CIE System," and ANSI/
122 ASTM C523-68, "Standard Test Method for Light Reflectance
123 of Acoustical Materials by the Integrating Sphere Reflecto-
124 meter." The luminous reflectance shall be measured under
125 CIE light source C with the lamp source beam being at least
126 one-half inch in diameter or larger.

127 (3) Each manufacturer shall certify to the commissioner,
128 the equipment approval program, or other agency designated
129 by the commissioner that the product or material is in com-
130 pliance with the reflectivity and transmittance requirements of
131 this regulation.

132 (f) Labeling or marking—(1) Each manufacturer, except
133 as specified in this subsection, shall provide a label with a
134 means for permanent and legible installation between the ma-
135 terial and each glazing surface to which it is applied that con-
136 tains the following information:

137 (A) Manufacturer; and

138 (B) Statement, "Complies with VESC-20" (vehicle equip-
139 ment safety commission).

140 (2) A manufacturer of a glazing material which meets the
141 requirements of above shall permanently and legibly mark the
142 glazing material with a code or symbol denoting that it meets
143 the reflectance and luminous transmittance requirements of
144 this regulation.

145 (3) Each manufacturer shall provide on the container or
146 package of the product or material the information specified in
147 this subsection and a statement that the material is permitted
148 for automotive use where state or local laws do not prohibit
149 such use. Such information shall be permanently and legibly
150 affixed to the container or package.

151 (4) Each manufacturer shall include instructions with the
152 product or material for proper installation, including the affix-
153 ing of the label specified in this subsection. The labeling or
154 marking shall be placed in the left lower corner of each glazing
155 surface when facing the vehicle from the outside.

156 (5) No person may offer for sale or for use any sun screen-
157 ing product or material for motor vehicle use not in compliance
158 with this section.

159 (6) No person may install any sun screening product or
160 material on vehicles intended for use on public roads without
161 permanently affixing the label specified in this subsection.

162 (g) Nothing in this section permits or prohibits the use and
163 placement of federal, state or local certificates on any window
164 as may be required or prohibited by applicable law, nor does
165 it apply to public carriers.

166 (h) Anyone who violates any provision of this section is
167 guilty of a misdemeanor, and, upon conviction thereof, shall
168 be fined not less than twenty dollars nor more than one
169 hundred dollars and for each subsequent offense occurring
170 within a one-year period, shall be fined not more than two
171 hundred dollars or imprisoned in the county jail not more than
172 six months, or both fined and imprisoned: *Provided*, That
173 before any penalties may be imposed under this section, the
174 person violating any provisions of this section shall be given
175 thirty days to correct the violation.

CHAPTER 146

(Com. Sub. for H. B. 1839—By Mr. Yanni)

[Passed March 9, 1983; in effect April 1, 1983. Approved by the Governor.]

AN ACT to amend and reenact sections two, four and nine, article seventeen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the size and weight of certain commercial vehicles operated on the roads and highways of this state; authorizing truck tractor-semitrailer-trailer combinations and truck tractor-semitrailer combinations; exceptions authorized by the United States department of transportation.

Be it enacted by the Legislature of West Virginia:

That sections two, four and nine, article seventeen, chapter seven-

teen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 17. SIZE, WEIGHT, AND LOAD.

§17C-17-2. Width of vehicles.

§17C-17-4. Height and width of vehicles and loads.

§17C-17-9. Gross weight of vehicles and loads.

§17C-17-2. Width of vehicles.

1 (a) The total outside width, exclusive of safety equipment
2 authorized by the United States department of transportation,
3 of any vehicle or the load thereon shall not exceed ninety-six
4 inches, except as otherwise provided in this article: *Provided,*
5 That any vehicle with a total outside width of one hundred
6 two inches, exclusive of safety equipment authorized by the
7 United States department of transportation, may be operated
8 on any highway within the state designated by the United States
9 department of transportation or the commissioner of the de-
10 partment of highways.

11 (b) Motor buses and trackless trolley coaches with a total
12 outside width of one hundred two inches, excluding safety
13 equipment authorized by the United States department of
14 transportation, may operate on any highway.

§17C-17-4. Height and length of vehicles and loads.

1 (a) A vehicle including any load thereon shall not exceed
2 a height of twelve feet six inches, except as provided in section
3 eleven-b of this article, and except that vehicles used as auto-
4 mobile transports including any load thereon shall not exceed
5 a height of thirteen feet six inches, but the owners of such
6 automobile transports shall be responsible to the state depart-
7 ment of highways for any damage to bridges or other road
8 structures, and to municipalities and utility companies for
9 any damage to wires, traffic devices or other structures, and
10 to any person suffering property damage when any such dam-
11 age is proximately caused by the height of such vehicle or
12 vehicles and load being in excess of twelve feet six inches.

13 (b) A motor vehicle including any load thereon shall not

14 exceed a length of thirty-five feet extreme overall dimension,
15 inclusive of front and rear bumpers, except that any bus,
16 truck or trackless trolley coach equipped with three axles, any
17 school bus with two axles or any vehicle used to transport
18 passengers by an urban mass transportation authority created
19 pursuant to article twenty-seven, chapter eight of the code
20 shall not exceed an overall length, inclusive of front and rear
21 bumpers, of forty feet.

22 (c) Except as hereinafter provided, a combination of ve-
23 hicles coupled together shall not consist of more than two
24 units, and no such combination of vehicles including any load
25 thereon shall have an overall length, inclusive of front and
26 rear bumpers, in excess of fifty feet, except as provided in
27 section eleven-b of this article, and except as otherwise pro-
28 vided in respect to the use of a pole trailer as authorized in
29 section five of this article: *Provided*, That the limitation that
30 a combination of vehicles coupled together shall not consist of
31 more than two units shall not apply to a combination of ve-
32 hicles coupled together by a saddle mount device used to trans-
33 port motor vehicles in a drive-away service when no more than
34 two saddle mounts are used: *Provided, however*, That equip-
35 ment used in said combination meets the requirements of the
36 safety regulations of the United States department of trans-
37 portation.

38 (d) The length limitations for truck tractor-semitrailer com-
39 binations and truck tractor-semitrailer-trailer combinations
40 operating on the national system of interstate and defense high-
41 ways and those classes of qualifying federal-aid primary system
42 highways so designated by the United States secretary of
43 transportation, and those highways providing reasonable ac-
44 cess to and from terminals, facilities for food, fuel, repairs and
45 rest, and points of loading and unloading for household goods
46 carriers from such highways, and further, as to other high-
47 ways so designated by the West Virginia commissioner of
48 highways, shall be as follows: The maximum length of a semi-
49 trailer unit operating in a truck tractor-semitrailer combination
50 shall not exceed forty-eight feet in length and the maximum
51 length of any semitrailer or trailer operating in a truck tractor-
52 semitrailer-trailer combination shall not exceed twenty-eight

53 feet in length and in no event shall any combinations exceed
 54 three units, including the truck tractor: *Provided*, That no-
 55 thing herein contained shall impose an overall length limitation
 56 as to commercial motor vehicles operating in truck tractor-
 57 semitrailer or truck tractor-semitrailer-trailer combinations.

§17C-17-9. Gross weight of vehicles and loads.

1 (a) It shall be unlawful for any owner, lessee or borrower
 2 of a vehicle or combination of vehicles to operate on any
 3 highway such vehicle or combination of vehicles with a gross
 4 weight in excess of the gross weight for which such vehicle
 5 or combination of vehicles is registered or in excess of any
 6 weight limitation set forth in this chapter, whether such
 7 limitation be specifically stated in this chapter or set by
 8 express authority granted in this chapter.

9 (b) Subject to the limit upon the weight imposed upon
 10 the highway through any one axle as set forth in section
 11 eight of this article, or the limit imposed upon the highway
 12 through any tandem-axle as set forth in section eight-a of
 13 this article, the total gross weight with load imposed upon
 14 the highway by any one group of two or more consecutive
 15 axles of a vehicle or combination of vehicles shall not exceed
 16 the gross weight given for the respective distance between
 17 the first and last axle of the total group of axles measured
 18 longitudinally to the nearest foot as set forth in the following
 19 table:

| | Distance in feet between the extremes of any groups of two or more consecutive axles | Maximum load in pounds carried on any group of two or more consecutive axles | | | | |
|----|--|--|---------|---------|---------|---------|
| | | 2 axles | 3 axles | 4 axles | 5 axles | 6 axles |
| 20 | 4 | 34000 | | | | |
| 21 | 5 | 34000 | | | | |
| 22 | 6 | 34000 | | | | |
| 23 | 7 | 34000 | | | | |
| 24 | 8 | 34000 | 34000 | | | |

| | | | | | | |
|----|----|-------|-------|-------|-------|-------|
| 25 | 9 | 39000 | 42500 | | | |
| 26 | 10 | 40000 | 43500 | | | |
| 27 | 11 | | 44000 | | | |
| 28 | 12 | | 45000 | 50000 | | |
| 29 | 13 | | 45500 | 50500 | | |
| 30 | 14 | | 46500 | 51500 | | |
| 31 | 15 | | 47000 | 52000 | | |
| 32 | 16 | | 48000 | 52500 | 58000 | |
| 33 | 17 | | 48500 | 53500 | 58500 | |
| 34 | 18 | | 49500 | 54000 | 59000 | |
| 35 | 19 | | 50000 | 54500 | 60000 | |
| 36 | 20 | | 51000 | 55500 | 60500 | 66000 |
| 37 | 21 | | 51500 | 56000 | 61000 | 66500 |
| 38 | 22 | | 52500 | 56500 | 61500 | 67000 |
| 39 | 23 | | 53000 | 57500 | 62500 | 68000 |
| 40 | 24 | | 54000 | 58000 | 63000 | 68500 |
| 41 | 25 | | 54500 | 58500 | 63500 | 69000 |
| 42 | 26 | | 55500 | 59500 | 64000 | 69500 |
| 43 | 27 | | 56000 | 60000 | 65000 | 70000 |
| 44 | 28 | | 57000 | 60500 | 65500 | 71000 |
| 45 | 29 | | 57500 | 61500 | 66000 | 71500 |
| 46 | 30 | | 58500 | 62000 | 66500 | 72000 |
| 47 | 31 | | 59000 | 62500 | 67500 | 72500 |
| 48 | 32 | | 60000 | 63500 | 68000 | 73000 |
| 49 | 33 | | | 64000 | 68500 | 74000 |
| 50 | 34 | | | 64500 | 69000 | 74500 |
| 51 | 35 | | | 65500 | 70000 | 75000 |
| 52 | 36 | | | 66000 | 70500 | 75500 |
| 53 | 37 | | | 66500 | 71000 | 76000 |
| 54 | 38 | | | 67500 | 72000 | 77000 |
| 55 | 39 | | | 68000 | 72500 | 77500 |
| 56 | 40 | | | 68500 | 73000 | 78000 |
| 57 | 41 | | | 69500 | 73500 | 78500 |
| 58 | 42 | | | 70000 | 74000 | 79000 |
| 59 | 43 | | | 70500 | 75000 | 80000 |
| 60 | 44 | | | 71500 | 75500 | 80500 |
| 61 | 45 | | | 72000 | 76000 | 81000 |
| 62 | 46 | | | 72500 | 76500 | 81500 |
| 63 | 47 | | | 73500 | 77500 | 82000 |
| 64 | 48 | | | 74000 | 78000 | 83000 |

| | | | | |
|----|----|-------|-------|-------|
| 65 | 49 | 74500 | 78500 | 83500 |
| 66 | 50 | 75500 | 79000 | 84000 |
| 67 | 51 | 76000 | 80000 | 84500 |
| 68 | 52 | 76500 | 80500 | 85000 |
| 69 | 53 | 77500 | 81000 | 86000 |
| 70 | 54 | 78000 | 81500 | 86500 |
| 71 | 55 | 78500 | 82500 | 87000 |
| 72 | 56 | 79500 | 83000 | 87500 |
| 73 | 57 | 80000 | 83500 | 88000 |
| 74 | 58 | | 84000 | 89000 |
| 75 | 59 | | 85000 | 89500 |
| 76 | 60 | | 85500 | 90000 |

77 *Provided*, That no vehicle or combination of vehicles
78 shall have a gross weight, including the load, in excess of
79 sixty-five thousand pounds, except that the maximum gross
80 weight of vehicles operating on the national system of inter-
81 state and defense highways and any highway providing
82 reasonable access to and from terminals and facilities for
83 food, fuel, repairs and rest within the state shall not be
84 in excess of eighty thousand pounds and except as otherwise
85 provided in this article. Notwithstanding the limits prescribed
86 in subsection (b) of this section, two consecutive sets of
87 tandem-axles may carry a gross load of thirty-four thousand
88 pounds each providing the overall distance between the first
89 and last axles of such consecutive sets of tandem-axles is
90 thirty-six feet or more: *Provided, however*, That the limits
91 prescribed in subsection (b) of this section shall not prohibit
92 the operation of any vehicle or combination of vehicles of a
93 type which could be lawfully operated in accordance with gross
94 vehicle weights in effect on the first day of January, one
95 thousand nine hundred seventy-five: *Provided further*, That
96 no maximum weight in excess of or in conflict with any weight
97 limitations prescribed by or pursuant to any act of Congress
98 shall be permitted on the national system of interstate and
99 defense highways.

CHAPTER 147

(H. B. 1096—By Mr. Ballouz)

[Passed February 7, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article one, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to correcting a printer's error from "parts" to "parks."

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

*§20-1-7. Additional powers, duties and services of director.

1 In addition to all other powers, duties and responsibilities
2 granted and assigned to the director in this chapter and
3 elsewhere by law, the director is hereby authorized and
4 empowered to:

5 (1) With the advice of the commission, prepare and ad-
6 minister, through the various divisions created by this chapter,
7 a long-range comprehensive program for the conservation
8 of the natural resources of the state which best effectuates
9 the purpose of this chapter and which makes adequate pro-
10 visions for the natural resources laws of the state;

11 (2) Sign and execute in the name of the state by the
12 "department of natural resources" any contract or agreement
13 with the federal government or its departments or agencies,
14 subdivisions of the state, corporations, associations, partner-
15 ships or individuals;

16 (3) Conduct research in improved conservation methods
17 and disseminate information matters to the residents of the
18 state;

*Clerk's Note: This section was amended by S. B. 411, which passed subsequent to the passage of this act.

19 (4) Conduct a continuous study and investigation of the
20 habits of wildlife, and for purposes of control and protection,
21 to classify by regulation the various species into such categories
22 as may be established as necessary;

23 (5) Prescribe the locality in which the manner and method
24 by which the various species of wildlife may be taken, or
25 chased, unless otherwise specified by this chapter;

26 (6) Hold at least six meetings each year at such time and
27 at such points within the state, as in the discretion of the
28 natural resources commission may appear to be necessary and
29 proper for the purpose of giving interested persons in the
30 various sections of the state an opportunity to be heard con-
31 cerning open season for their respective areas, and report
32 the results of the meetings to the natural resources com-
33 mission before such season and bag limits are fixed by it;

34 (7) Suspend open hunting season upon any or all wildlife
35 in any or all counties of the state with the prior approval
36 of the governor in case of an emergency such as a drought,
37 forest fire hazard or epizootic disease among wildlife. The
38 suspension shall continue during the existence of the emergency
39 and until rescinded by the director. Suspension, or reopening
40 after such suspension, of open seasons may be made upon
41 twenty-four hours' notice by delivery of a copy of the order
42 of suspension or reopening to the wire press agencies at the
43 state capitol;

44 (8) Supervise the fiscal affairs and responsibilities of
45 the department;

46 (9) Designate such localities as he shall determine to
47 be necessary and desirable for the perpetuation of any species
48 of wildlife;

49 (10) Enter private lands to make surveys or inspections
50 for conservation purposes, to investigate for violations of
51 provisions of this chapter, to serve and execute warrants
52 and processes, to make arrests and to otherwise effectively
53 enforce the provisions of this chapter;

54 (11) Acquire for the state in the name of the "de-
55 partment of natural resources" by purchase, condemnation,

56 lease or agreement, or accept or reject for the state, in the
57 name of the department of natural resources, gifts, dona-
58 tions, contributions, bequests or devises of money, security
59 or property, both real and personal, and any interest in
60 such property, including lands and waters, which he deems
61 suitable for the following purposes:

62 (a) For state forests for the purpose of growing timber,
63 demonstrating forestry, furnishing or protecting watersheds
64 or providing public recreation;

65 (b) For state parks or recreation areas for the purpose
66 of preserving scenic, aesthetic, scientific, cultural, archaeolog-
67 ical or historical values or natural wonders, or providing
68 public recreation;

69 (c) For public hunting, trapping or fishing grounds or
70 waters for the purpose of providing areas in which the
71 public may hunt, trap or fish, as permitted by the pro-
72 visions of this chapter, and the rules and regulations issued
73 hereunder;

74 (d) For fish hatcheries, game farms, wildlife research
75 areas and feeding stations;

76 (e) For the extension and consolidation of lands or waters
77 suitable for the above purposes by exchange of other lands
78 or waters under his supervision;

79 (f) For such other purposes as may be necessary to carry
80 out the provisions of this chapter;

81 (12) Capture, propagate, transport, sell or exchange any
82 species of wildlife as may be necessary to carry out the
83 provisions of this chapter;

84 (13) Sell, with the approval in writing of the governor,
85 timber for not less than the value thereof, as appraised by
86 a qualified appraiser appointed by the director, from all
87 lands under the jurisdiction and control of the director,
88 except those lands that are designated as state parks and
89 those in the Kanawha state forest. The appraisal shall be
90 made within a reasonable time prior to any sale, reduced to
91 writing, filed in the office of the director and shall be avail-

92 able for public inspection. When the appraised value of
93 the timber to be sold is more than five hundred dollars,
94 the director, before making sale thereof, shall receive sealed
95 bids therefor, after notice by publication as a Class II
96 legal advertisement in compliance with the provisions of
97 article three, chapter fifty-nine of this code, and the publi-
98 cation area for such publication shall be each county in
99 which the timber is located. The timber so advertised shall
100 be sold at not less than the appraised value to the highest
101 responsible bidder, who shall give bond for the proper per-
102 formance of the sales contract as the director shall designate;
103 but the director shall have the right to reject any and all
104 bids and to readvertise for bids. If the foregoing provisions
105 of this section have been complied with, and no bid equal
106 to or in excess of the appraised value of the timber is
107 received, the director may, at any time, during a period of six
108 months after the opening of the bids, sell the timber in such
109 manner as he deems appropriate, but the sale price shall
110 not be less than the appraised value of the timber advertised.
111 No contract for sale of timber made pursuant to this section
112 shall extend for a period of more than ten years. And all
113 contracts heretofore entered into by the state for the sale of
114 timber shall not be validated by this section if the same be
115 otherwise invalid. The proceeds arising from the sale of
116 the timber so sold, shall be paid to the treasurer of the
117 state of West Virginia, and shall be credited to the depart-
118 ment and used exclusively for the purposes of this chapter:
119 *Provided*, That nothing contained herein shall prohibit the
120 sale of timber which otherwise would be removed from rights-
121 of-way necessary for and strictly incidental to the extraction
122 of minerals;

123 (14) Sell or lease, with the approval in writing of the
124 governor, coal, oil, gas, sand, gravel and any other minerals
125 that may be found in the lands under the jurisdiction and
126 control of the director, except those lands that are designated
127 as state parks. The director, before making sale or lease
128 thereof, shall receive sealed bids therefor, after notice by
129 publication as a Class II legal advertisement in compliance
130 with the provisions of article three, chapter fifty-nine of this
131 code, and the publication area for such publication shall be

132 each county in which such lands are located. The minerals
133 so advertised shall be sold or leased to the highest respon-
134 sible bidder, who shall give bond for the proper performance
135 of the sales contract or lease as the director shall designate;
136 but the director shall have the right to reject any and all bids
137 and to readvertise for bids. The proceeds arising from any
138 such sale or lease shall be paid to the treasurer of the state of
139 West Virginia and shall be credited to the department and
140 used exclusively for the purposes of this chapter;

141 (15) Exercise the powers granted by this chapter for the
142 protection of forests, and regulate fires and smoking in the
143 woods or in their proximity at such times and in such
144 localities as may be necessary to reduce the danger of forest
145 fires;

146 (16) Cooperate with departments and agencies of state,
147 local and federal governments in the conservation of natural
148 resources and the beautification of the state;

149 (17) Report to the governor each year all information
150 relative to the operation and functions of his department
151 and he shall make such other reports and recommendations as
152 may be required by the governor, including an annual
153 financial report covering all receipts and disbursements of
154 the department for each fiscal year, and he shall deliver
155 such report to the governor on or before the first day of
156 December next after the end of the fiscal year so covered.
157 A copy of such report shall be delivered to each house of
158 the Legislature when convened in January next following;

159 (18) Keep a complete and accurate record of all pro-
160 ceedings, record and file all bonds and contracts taken or
161 entered into, and assume responsibility for the custody and
162 preservation of all papers and documents pertaining to his
163 office, except as otherwise provided by law;

164 (19) Offer and pay, in his discretion, rewards for in-
165 formation respecting the violation, or for the apprehension
166 and conviction of any violators, of any of the provisions of
167 this chapter;

168 (20) Require such reports as he may deem to be necessary
169 from any person issued a license or permit under the pro-

170 visions of this chapter, but no person shall be required to
171 disclose secret processes or confidential data of competitive
172 significance;

173 (21) Purchase as provided by law all equipment necessary
174 for the conduct of his department;

175 (22) Conduct and encourage research designed to further
176 new and more extensive uses of the natural resources of this
177 state and to publicize the findings of such research;

178 (23) Encourage and cooperate with other public and
179 private organizations or groups in their efforts to publicize
180 the attractions of the state;

181 (24) Accept and expend, without the necessity of appro-
182 priation by the Legislature, any gift or grant of money made
183 to the department for any and all purposes specified in
184 this chapter, and he shall account for and report on all
185 such receipts and expenditures to the governor;

186 (25) Cooperate with the state historian and other ap-
187 propriate state agencies in conducting research with refer-
188 ence to the establishment of state parks and monuments of
189 historic, scenic and recreational value, and to take such steps
190 as may be necessary in establishing such monuments or parks
191 as he deems advisable;

192 (26) Maintain in his office at all times, properly in-
193 dexed by subject matter, and also, in chronological sequence,
194 all rules and regulations made or issued under the authority
195 of this chapter. Such records shall be available for public
196 inspection on all business days during the business hours of
197 working days;

198 (27) Delegate the powers and duties of his office, except
199 the power to execute contracts, to appointees and employees
200 of the department, who shall act under the direction and
201 supervision of the director and for whose acts he shall be
202 responsible;

203 (28) Conduct schools, institutions and other educational
204 programs, apart from or in cooperation with other govern-
205 mental agencies, for instruction and training in all phases of
206 the natural resources programs of the state;

207 (29) Authorize the payment of all or any part of the
208 reasonable expenses incurred by an employee of the depart-
209 ment in moving his household furniture and effects as a result
210 of a reassignment of the employee: *Provided*, That no part
211 of the moving expenses of any one such employee shall be paid
212 more frequently than once in twelve months;

213 (30) Promulgate rules and regulations, in accordance with
214 the provisions of chapter twenty-nine-a of this code, to im-
215 plement and make effective the powers and duties vested in
216 him by the provisions of this chapter and take such other
217 steps as may be necessary in his discretion for the proper
218 and effective enforcement of the provisions of this chapter:
219 *Provided*, That all rules and regulations relating to articles
220 five and five-a of this chapter shall be promulgated by the
221 water resources board; and

222 (31) Regulate and set the digging season of native, wild
223 ginseng: *Provided*, That the digging season for wild, native
224 ginseng be set between the first day of December and the
225 fifteenth day of November of the following year.

CHAPTER 148

(S. B. 411—By Mr. Williams)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article one, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the powers, duties and services of the director of the department of natural resources; regulation of native, wild and cultivated ginseng.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.***§20-1-7. Additional powers, duties and services of director.**

1 In addition to all other powers, duties and responsibilities
2 granted and assigned to the director in this chapter and
3 elsewhere by law, the director is hereby authorized and
4 empowered to:

5 (1) With the advice of the commission, prepare and
6 administer, through the various divisions created by this
7 chapter, a long-range comprehensive program for the
8 conservation of the natural resources of the state which best
9 effectuates the purpose of this chapter and which makes
10 adequate provisions for the natural resources laws of the
11 state;

12 (2) Sign and execute in the name of the state by the
13 "department of natural resources" any contract or agreement
14 with the federal government or its departments or agencies,
15 subdivisions of the state, corporations, associations,
16 partnerships or individuals;

17 (3) Conduct research in improved conservation methods
18 and disseminate information matters to the residents of the
19 state;

20 (4) Conduct a continuous study and investigation of the
21 habits of wildlife, and for purposes of control and protection,
22 to classify by regulation the various species into such
23 categories as may be established as necessary;

24 (5) Prescribe the locality in which the manner and method
25 by which the various species of wildlife may be taken, or
26 chased, unless otherwise specified by this chapter;

27 (6) Hold at least six meetings each year at such time and at
28 such points within the state, as in the discretion of the natural
29 resources commission may appear to be necessary and
30 proper for the purpose of giving interested persons in the
31 various sections of the state an opportunity to be heard
32 concerning open season for their respective areas, and report
33 the results of the meetings to the natural resources
34 commission before such season and bag limits are fixed by it;

*Clerk's Note: This section was also amended by H. B. 1096, which passed prior to the passage of this act.

35 (7) Suspend open hunting season upon any or all wildlife
36 in any or all counties of the state with the prior approval of the
37 governor in case of an emergency such as a drought, forest
38 fire hazard or epizootic disease among wildlife. The
39 suspension shall continue during the existence of the
40 emergency and until rescinded by the director. Suspension,
41 or reopening after such suspension, of open seasons may be
42 made upon twenty-four hours' notice by delivery of a copy of
43 the order of suspension or reopening to the wire press
44 agencies at the state capitol;

45 (8) Supervise the fiscal affairs and responsibilities of the
46 department;

47 (9) Designate such localities as he shall determine to be
48 necessary and desirable for the perpetuation of any species of
49 wildlife;

50 (10) Enter private lands to make surveys or inspections for
51 conservation purposes, to investigate for violations of
52 provisions of this chapter, to serve and execute warrants and
53 processes, to make arrests and to otherwise effectively
54 enforce the provisions of this chapter;

55 (11) Acquire for the state in the name of the "department
56 of natural resources" by purchase, condemnation, lease or
57 agreement, or accept or reject for the state, in the name of the
58 department of natural resources, gifts, donations,
59 contributions, bequests or devises of money, security or
60 property, both real and personal, and any interest in such
61 property, including lands and waters, which he deems
62 suitable for the following purposes:

63 (a) For state forests for the purpose of growing timber,
64 demonstrating forestry, furnishing or protecting watersheds
65 or providing public recreation;

66 (b) For state parks or recreation areas for the purpose of
67 preserving scenic, aesthetic, scientific, cultural,
68 archaeological or historical values or natural wonders, or
69 providing public recreation;

70 (c) For public hunting, trapping or fishing grounds or
71 waters for the purpose of providing areas in which the public
72 may hunt, trap or fish, as permitted by the provisions of this
73 chapter, and the rules and regulations issued hereunder;

74 (d) For fish hatcheries, game farms, wildlife research areas
75 and feeding stations;

76 (e) For the extension and consolidation of lands or waters
77 suitable for the above purposes by exchange of other lands or
78 waters under his supervision;

79 (f) For such other purposes as may be necessary to carry
80 out the provisions of this chapter;

81 (12) Capture, propagate, transport, sell or exchange any
82 species of wildlife as may be necessary to carry out the
83 provisions of this chapter;

84 (13) Sell, with the approval in writing of the governor,
85 timber for not less than the value thereof, as appraised by a
86 qualified appraiser appointed by the director, from all lands
87 under the jurisdiction and control of the director, except
88 those lands that are designated as state parks and those in the
89 Kanawha state forest. The appraisal shall be made within a
90 reasonable time prior to any sale, reduced to writing, filed in
91 the office of the director and shall be available for public
92 inspection. When the appraised value of the timber to be sold
93 is more than five hundred dollars, the director, before making
94 sale thereof, shall receive sealed bids therefor, after notice by
95 publication as a Class II legal advertisement in compliance
96 with the provisions of article three, chapter fifty-nine of this
97 code, and the publication area for such publication shall be
98 each county in which the timber is located. The timber so
99 advertised shall be sold at not less than the appraised value to
100 the highest responsible bidder, who shall give bond for the
101 proper performance of the sales contract as the director shall
102 designate; but the director shall have the right to reject any
103 and all bids and to readvertise for bids. If the foregoing
104 provisions of this section have been complied with, and no
105 bid equal to or in excess of the appraised value of the timber
106 is received, the director may, at any time, during a period of
107 six months after the opening of the bids, sell the timber in
108 such manner as he deems appropriate, but the sale price shall
109 not be less than the appraised value of the timber advertised.
110 No contract for sale of timber made pursuant to this section
111 shall extend for a period of more than ten years. And all
112 contracts heretofore entered into by the state for the sale of
113 timber shall not be validated by this section if the same be
114 otherwise invalid. The proceeds arising from the sale of the

115 timber so sold, shall be paid to the treasurer of the state of
116 West Virginia, and shall be credited to the department and
117 used exclusively for the purposes of this chapter: *Provided*,
118 That nothing contained herein shall prohibit the sale of
119 timber which otherwise would be removed from
120 rights-of-way necessary for and strictly incidental to the
121 extraction of minerals;

122 (14) Sell or lease, with the approval in writing of the
123 governor, coal, oil, gas, sand, gravel and any other minerals
124 that may be found in the lands under the jurisdiction and
125 control of the director, except those lands that are designated
126 as state parks. The director, before making sale or lease
127 thereof, shall receive sealed bids therefor, after notice by
128 publication as a Class II legal advertisement in compliance
129 with the provisions of article three, chapter fifty-nine of this
130 code, and the publication area for such publication shall be
131 each county in which such lands are located. The minerals so
132 advertised shall be sold or leased to the highest responsible
133 bidder, who shall give bond for the proper performance of the
134 sales contract or lease as the director shall designate; but the
135 director shall have the right to reject any and all bids and to
136 readvertise for bids. The proceeds arising from any such sale
137 or lease shall be paid to the treasurer of the state of West
138 Virginia and shall be credited to the department and used
139 exclusively for the purposes of this chapter;

140 (15) Exercise the powers granted by this chapter for the
141 protection of forests, and regulate fires and smoking in the
142 woods or in their proximity at such times and in such
143 localities as may be necessary to reduce the danger of forest
144 fires;

145 (16) Cooperate with departments and agencies of state,
146 local and federal governments in the conservation of natural
147 resources and the beautification of the state;

148 (17) Report to the governor each year all information
149 relative to the operation and functions of his department and
150 he shall make such other reports and recommendations as
151 may be required by the governor, including an annual
152 financial report covering all receipts and disbursements of
153 the department for each fiscal year, and he shall deliver such
154 report to the governor on or before the first day of December
155 next after the end of the fiscal year so covered. A copy of such

156 report shall be delivered to each house of the Legislature
157 when convened in January next following;

158 (18) Keep a complete and accurate record of all
159 proceedings, record and file all bonds and contracts taken or
160 entered into, and assume responsibility for the custody and
161 preservation of all papers and documents pertaining to his
162 office, except as otherwise provided by law;

163 (19) Offer and pay, in his discretion, rewards for
164 information respecting the violation, or for the apprehension
165 and conviction of any violators, of any of the provisions of
166 this chapter;

167 (20) Require such reports as he may deem to be necessary
168 from any person issued a license or permit under the
169 provisions of this chapter, but no person shall be required to
170 disclose secret processes or confidential data of competitive
171 significance;

172 (21) Purchase as provided by law all equipment necessary
173 for the conduct of his department;

174 (22) Conduct and encourage research designed to further
175 new and more extensive uses of the natural resources of this
176 state and to publicize the findings of such research;

177 (23) Encourage and cooperate with other public and
178 private organizations or groups in their efforts to publicize
179 the attractions of the state;

180 (24) Accept and expend, without the necessity of
181 appropriation by the Legislature, any gift or grant of money
182 made to the department for any and all purposes specified in
183 this chapter, and he shall account for and report on all such
184 receipts and expenditures to the governor;

185 (25) Cooperate with the state historian and other
186 appropriate state agencies in conducting research with
187 reference to the establishment of state parks and monuments
188 of historic, scenic and recreational value, and to take such
189 steps as may be necessary in establishing such monuments or
190 parks as he deems advisable;

191 (26) Maintain in his office at all times, properly indexed by
192 subject matter, and also, in chronological sequence, all rules
193 and regulations made or issued under the authority of this
194 chapter. Such records shall be available for public inspection

195 on all business days during the business hours of working
196 days;

197 (27) Delegate the powers and duties of his office, except
198 the power to execute contracts, to appointees and employees
199 of the department, who shall act under the direction and
200 supervision of the director and for whose acts he shall be
201 responsible;

202 (28) Conduct schools, institutions and other educational
203 programs, apart from or in cooperation with other
204 governmental agencies, for instruction and training in all
205 phases of the natural resources programs of the state;

206 (29) Authorize the payment of all or any part of the
207 reasonable expenses incurred by an employee of the
208 department in moving his household furniture and effects as
209 a result of a reassignment of the employee: *Provided*, That no
210 part of the moving expenses of any one such employee shall
211 be paid more frequently than once in twelve months;

212 (30) Promulgate rules and regulations, in accordance with
213 the provisions of chapter twenty-nine-a of this code, to
214 implement and make effective the powers and duties vested
215 in him by the provisions of this chapter and take such other
216 steps as may be necessary in his discretion for the proper and
217 effective enforcement of the provisions of this chapter:
218 *Provided*, That all rules and regulations relating to articles
219 five and five-a of this chapter shall be promulgated by the
220 water resources board; and

221 (31) Regulate the digging, possession and sale of native,
222 wild or cultivated ginseng: *Provided*, That the digging season
223 for wild, native or cultivated ginseng shall begin on the
224 fifteenth day of August and end on the thirtieth day of
225 November of each year unless otherwise authorized by the
226 director. Ginseng dealers shall: (a) Obtain a ginseng dealer's
227 permit from the director of the department of natural
228 resources; (b) keep on forms provided by the director
229 accurate records for all ginseng acquired showing the year
230 harvested, the date acquired by the dealer, county of origin,
231 weight and whether wild or cultivated; and (c) have all
232 records and all acquired ginseng inspected by the director at
233 official ginseng inspection stations for the purpose of
234 certifying the dealer's records and issuing a certificate

235 documenting the inspection and the weight of the ginseng.
236 All ginseng dug in West Virginia must be certified by the
237 director before being transported or shipped out of the state.
238 No person shall have in his possession uncertified green
239 ginseng from the first day of April through the fourteenth day
240 of August.

CHAPTER 149

(S. B. 707—By Mr. Williams)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eighteen-c, relating to cooperation with the federal government in the management of federal lands within the state; and adoption of rules and regulations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§20-1-18c. Cooperation with federal government in management of federal lands within the state.

1 The Legislature recognizes that there are large areas
2 of this state that are owned by or under the control of
3 the government of the United States. In order to co-
4 operate with the various federal agencies which have
5 jurisdiction over these areas and to effectively enforce
6 rules and regulations to protect these areas, the Legisla-
7 ture hereby authorizes the director to adopt such rules
8 and regulations as are necessary to cooperate in all law-
9 enforcement activities with the various federal agencies.
10 Such rules and regulations shall be adopted according

11 to the administrative procedures act as provided in chap-
12 ter twenty-one-a of this code. To the extent that any
13 rules and regulations adopted by the director are identical
14 to existing federal rules and regulations, they may be
15 promulgated without the procedures required under the
16 administrative procedures act except that there shall be
17 public notice of the adoption of such regulations and they
18 shall be filed in the office of the secretary of state.

CHAPTER 150

(H. B. 1993—By Mr. Shiflet and Mr. Harman)

[Passed March 12, 1983; in effect from passage. Approval by the Governor.]

AN ACT to amend and reenact section eight, article nine, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to audit of county and municipal funds by the tax commissioner; payment of costs of audit; revolving fund; charges for costs limited.

Be it enacted by the Legislature of West Virginia:

That section eight, article nine, 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 9. SUPERVISION OF PUBLIC OFFICES.

§6-9-8. Payment of cost of services of chief inspector; revolving fund.

1 The cost of any service or act performed by the chief
2 inspector under the provisions of this article as to any county
3 or district office, officer or institution, shall be paid by the
4 county commission of the county; the cost thereof as to any
5 board of education shall be paid by such board; the cost there-
6 of as to any municipal corporation shall be paid by the authori-
7 ties thereof: *Provided*, That in municipalities in which the total
8 revenue from all taxes does not exceed the sum of two thou-
9 sand dollars annually, such cost including the per diem and all

10 actual costs and expenses of such services shall not exceed
11 the sum of sixty dollars. The cost of this service shall be the
12 actual cost and expense of the service performed, including
13 transportation, hotel, meals, materials, per diem compen-
14 sation of deputies, assistants, clerical help and such other
15 costs as may be necessary to enable them to perform the
16 services required, but in no event shall such costs exceed
17 the sum of two thousand dollars for services rendered to
18 a Class III or a Class IV municipality. The chief inspector
19 shall render to the agency liable for such cost a statement
20 thereof as soon after the same was incurred as practicable,
21 and it shall be the duty of such agency to allow the same,
22 and cause it to be paid promptly in the manner that other
23 claims and accounts are allowed and paid, and such total
24 amount shall constitute a debt against the local agency due
25 the state. Whenever there is in the state treasury a sum of
26 money due any such county commission, board of educa-
27 tion or municipality from any source, upon the application
28 of the chief inspector, the same shall be at once applied
29 on the debt aforesaid against the county commission, board
30 of education or municipality, and the fact of such applica-
31 tion of such fund shall be reported by the auditor to the
32 said county commission, board of education or municipality,
33 which report shall be a receipt for the amount therein
34 named. All money received by the chief inspector from
35 this source shall be paid into the state treasury, shall be de-
36 posited to the credit of an account to be known as chief
37 inspector's fund and shall be expended only for the purpose
38 of covering the cost of such services, unless otherwise directed
39 by the Legislature. The cost of any such examination, service
40 or act by the chief inspector made necessary, or such part
41 thereof as was made necessary, by the willful fault of any
42 officer or employee, may be recovered by the chief inspector
43 from such person, on motion, on ten days' notice in any
44 court having jurisdiction.

45 For the purpose of permitting payments to be made at
46 definite periods to deputy inspectors and assistants for per
47 diem compensation and expenses, there is hereby created a
48 revolving fund for the chief inspector's office. The fund
49 shall be accumulated and administered as follows:

50 (1) There shall be appropriated from the state fund
51 general revenue the sum of twenty-five thousand dollars to
52 be transferred to this fund to create a revolving fund
53 which, together with other payments into this fund as
54 provided in this article, shall constitute a fund to defray
55 the cost of this service.

56 (2) Payments received for the cost of services of the
57 chief inspector's office shall be deposited into this revolving
58 fund, which shall be known as the chief inspector's fund.

59 (3) Any appropriations made to this fund shall not be
60 deemed to have expired at the end of any fiscal period.

CHAPTER 151

(Com. Sub. for S. B. 657—By Mr. Loehr)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and three, article nineteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to municipal waterworks and electric power systems; construction of improvements; extension beyond corporate limits; right of eminent domain; exempting municipal electric power systems from requirement of certificate of convenience and necessity.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 19. MUNICIPAL WATERWORKS AND ELECTRIC POWER SYSTEMS.

PART I. MUNICIPAL WATERWORKS AND ELECTRIC POWER SYSTEMS AUTHORIZED; DEFINITIONS.

§8-19-1. Acquisition and operation of municipal waterworks systems; construction of improvements to municipal electric power systems; extension beyond corporate limits; definitions.

PART III. RIGHT OF EMINENT DOMAIN.

§8-19-3. Right of eminent domain; limitations.

PART I. MUNICIPAL WATERWORKS AND ELECTRIC
POWER SYSTEMS AUTHORIZED; DEFINITIONS.

§8-19-1. Acquisition and operation of municipal waterworks systems; construction of improvements to municipal electric power systems; extension beyond corporate limits; definitions.

1 Subject to and in accordance with the provisions of this
2 article, any municipality may acquire, construct, estab-
3 lish, extend, equip, repair, maintain and operate, or lease
4 to others for operation, a waterworks system, or con-
5 struct, maintain and operate additions, betterments and
6 improvements to an existing waterworks system or an
7 existing electric power system, notwithstanding any pro-
8 vision or limitation to the contrary in any other law or
9 charter: *Provided*, That such municipality shall not serve
10 or supply water facilities or electric power facilities or
11 services within the corporate limits of any other munici-
12 pality without the consent of the governing body of such
13 other municipality.

14 When used in this article, the term "waterworks sys-
15 tem" shall be construed to mean and include a water-
16 works system in its entirety or any integral part thereof,
17 including mains, hydrants, meters, valves, standpipes,
18 storage tanks, pump tanks, pumping stations, intakes,
19 wells, impounding reservoirs, pumps, machinery, purifi-
20 cation plants, softening apparatus and all other facilities
21 necessary, appropriate, useful, convenient or incidental
22 in connection with or to a water supply system.

23 When used in this article, the term "electric power
24 system" means a system or facility which produces elec-
25 tric power in its entirety or any integral part thereof,
26 including, but not limited to, power lines and wires,
27 power poles, guy wires, insulators, transformers, gener-
28 ators, cables, power line towers, voltage regulators,
29 meters, power substations, machinery and all other fa-
30 cilities necessary, appropriate, useful or convenient or
31 incidental in connection with or to an electric power
32 supply system.

PART III. RIGHT OF EMINENT DOMAIN.

§8-19-3. Right of eminent domain; limitations.

1 For the purpose of acquiring, constructing, establishing
2 or extending any waterworks system, or for the purpose
3 of constructing any additions, betterments or improve-
4 ments to any waterworks or electric power system, or for
5 the purpose of acquiring any property necessary, appro-
6 priate, useful, convenient or incidental for or to any
7 waterworks or electric power system, under the provi-
8 sions of this article, the municipality shall have the right
9 of eminent domain as provided in chapter fifty-four of
10 this code: *Provided*, That such right of eminent domain
11 for the acquisition of a complete privately owned water-
12 works system shall not be exercised without prior
13 approval of the public service commission, and in no
14 event shall any municipality construct, establish or extend
15 beyond the corporate limits of said municipality a municip-
16 al waterworks or electric power system under the pro-
17 visions of this article to supply service in competition
18 with an existing privately or municipally owned water-
19 works or electric power system in such municipality or
20 within the proposed extension of such system, unless a
21 certificate of public convenience and necessity therefor
22 shall have been issued by the public service commission.
23 Nothing herein shall prohibit a municipal electric power
24 system from constructing, operating and maintaining elec-
25 tric generators or electric generating systems or electric
26 transmission systems outside of said municipality and
27 said electric generation systems shall not be under the
28 jurisdiction of the public service commission.

CHAPTER 152

(S. B. 588—By Mr. Boettner)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifty, article twenty-four, chapter eight of the code of West Virginia, one thou-

sand nine hundred thirty-one, as amended, relating to land use under preexisting ordinances; prohibited uses shall not apply outside of urban areas

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 24. INTERGOVERNMENTAL RELATIONS—URBAN AND RURAL PLANNING AND ZONING.

§8-24-50. Existing uses safeguarded.

1 Such zoning ordinance or ordinances shall not prohibit
2 the continuance of the use of any land, building or struc-
3 ture for the purpose for which such land, building or
4 structure is used at the time such ordinance or ordinances
5 take effect, but any alteration or addition to any land or
6 any alteration, addition or replacement of or to any exist-
7 ing building or structure for the purpose of carrying on
8 any use prohibited under the zoning rules and regulations
9 applicable to the district may be prohibited: *Provided,*
10 That no such prohibition shall apply, outside of urban
11 areas, to alterations or additions to or replacement of
12 buildings or structures by any farm, industry or manu-
13 facturer, or to the use of land presently owned by any
14 farm, industry or manufacturer but not used for agri-
15 cultural, industrial or manufacturing purposes, or to the
16 use or acquisition of additional land which may be re-
17 quired for the protection, continuing development or
18 expansion of any agricultural, industrial or manufacturing
19 operation or any present or future satellite agricultural,
20 industrial or manufacturing use. If a nonconforming use
21 has been abandoned, any future use of such land, build-
22 ing or structure shall be in conformity with the provisions
23 of the ordinance regulating the use in the district in
24 which such land, building or structure may be located:
25 *Provided, however,* That abandonment of any particular
26 agricultural, industrial or manufacturing process, outside
27 of urban areas, shall not be construed as abandonment of
28 agricultural, industrial or manufacturing use.

29 Nothing contained in this article shall be deemed to
30 authorize an ordinance, rule and regulation which would
31 prevent, outside of urban areas, the complete use and
32 alienation of any timber and any and all minerals, in-
33 cluding coal, oil and gas, by the owner or alienee thereof.
34 For the purpose of this section, urban area shall include
35 all lands or lots within the jurisdiction of a municipal
36 planning commission as defined in this article.

CHAPTER 153

(H. B. 1860—By Mr. Minard and Mr. Schifano)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three and four, article twenty-a, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section five, relating to neighborhood rehabilitation; the use of community development funds to provide loans and grants to persons qualified as living in owner-occupied, single family units within counties and municipalities; removing certain limitations by giving counties and municipalities the authority to provide loans and grants to the owners of rental units which are not necessarily owner-occupied and contain more than four units; and allowing deferred repayment of loans.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 20A. NEIGHBORHOOD REHABILITATION.

88-20A-1. Legislative findings and purpose.

88-20A-2. Definitions.

§8-20A-3. Neighborhood rehabilitation fund.

§8-20A-4. Inspection and technical assistance.

§8-20A-5. Deferral of repayment.

§8-20A-1. Legislative findings and purpose.

1 (a) The Legislature hereby finds and declares that the lack
2 of safe, decent, sanitary and affordable owner-occupied and
3 rental dwellings is one of the most serious problems facing
4 this state and that a major contributing factor to this problem
5 is the deterioration of the state's existing housing stock; that
6 these deteriorating dwellings exist in both the urban and rural
7 areas of the state; that a disproportionate number of
8 owners of these deteriorating dwellings are older, less affluent
9 and otherwise less able to afford the expense of the remodeling,
10 repairing and rehabilitating of their residences necessary to
11 maintain such residences in a sanitary, safe and decent condi-
12 tion; that because of the lack of acceptable loan collateral,
13 the age of their residences and the location and age of the
14 neighborhoods in which their residences are located, many of
15 such owners have not been able to borrow funds necessary
16 to effect such remodeling, repair and rehabilitation; and that
17 some of such homeowners who have been able to obtain
18 funds for such purposes have been able to do so only upon
19 rates of interest and upon other terms and conditions which
20 are particularly onerous and disadvantageous to such owners.

21 (b) The Legislature further finds and declares that the as-
22 sistance authorized in this article will provide, and will en-
23 courage private lenders to provide, to such owners, more read-
24 ily and at rates of interest and upon other terms and condi-
25 tions significantly more favorable to such owners, the loans
26 necessary to finance the cost of such remodeling, repair and
27 rehabilitation.

28 (c) The Legislature further finds and declares that the pow-
29 ers granted to municipalities and counties in this article will
30 enable them to maximize the use of federal programs for hous-
31 ing rehabilitation.

32 (d) The Legislature further finds and declares that it is
33 manifestly in the public interest to foster the pride, self-
34 respect and esteem incident to home ownership and to encour-

35 age and assist in the maintenance of residences, both owner
36 occupied and rental, in a safe, decent and sanitary condition;
37 that without the assistance authorized in this article, there will
38 be continued deterioration of housing with the resultant prolif-
39 eration of slums, higher crime rates and general decline in
40 civic pride, public spirit and the quality of life, with all of the
41 public cost, direct and indirect, attendant thereon; and that
42 accordingly by providing such assistance, any municipality or
43 county will be acting in all respect for the benefit of the
44 people of the state of West Virginia and shall thereby serve a
45 public purpose in improving and otherwise promoting their
46 health, welfare and prosperity. In order to carry out the general
47 purposes stated herein, the Legislature further declares that
48 the governing body of any county or municipality shall, inso-
49 far as it may deem reasonable and proper, give preference to
50 the rehabilitation of owner-occupied dwellings when making
51 grants or loans under this article.

§8-20A-2. Definitions.

1 As used in this article, unless the context otherwise requires:

2 (1) "Eligible dwelling" means real estate upon which there
3 is located a structure designed primarily for residential hous-
4 ing and consisting of dwelling units for not more than thirty
5 families: *Provided*, That all ownership thereof shall be limited
6 to persons who would qualify as eligible owners.

7 (2) "Eligible owner" means a person or persons residing
8 within the boundaries of a municipality or county, and owning
9 an eligible dwelling within the boundaries of that municipality
10 or county, irrespective of race, creed, national origin or sex,
11 with respect to whom it is determined by the governing body
12 of such municipality or county that (a) such person or persons,
13 because of financial condition, age, infirmity, family size or
14 other reasons, is unable to obtain, on suitable terms and con-
15 ditions, loans or other credit necessary for the rehabilitation
16 of such eligible dwelling, and hence requires the assistance as
17 provided in this article, (b) such rehabilitation is necessary to
18 place such eligible dwelling in a safe, sanitary and decent con-
19 dition, and (c) the assistance as authorized in this article shall
20 make financing available to such person or persons, or enable

21 such person or persons, to obtain such financing on terms and
22 conditions substantially more favorable to such person or
23 persons than would otherwise be available.

24 (3) "Rehabilitation" means a specific work of improvement
25 within a municipality or county undertaken primarily to re-
26 model, repair or rehabilitate an eligible dwelling.

§8-20A-3. Neighborhood rehabilitation fund.

1 (a) Any municipality or county shall have plenary power
2 and authority, by charter provision, ordinance or resolu-
3 tion, to establish a special fund of moneys made available by
4 appropriation, grant, contribution, loan or otherwise, to be
5 known as the neighborhood rehabilitation fund of such mu-
6 nicipality or county, to be governed, administered and ac-
7 counted for by the governing body of such municipality or
8 county, as a special purpose account, separate and distinct
9 from any other moneys, fund or funds owned by such
10 municipality or county.

11 (b) The governing body of any municipality or county
12 may, from time to time, by resolution, establish criteria
13 which shall govern the determination of persons who qualify
14 as eligible owners and the amount of assistance to such
15 owners.

16 (c) The purpose of such neighborhood rehabilitation fund
17 shall be to provide funds for the making of grants and
18 loans, or to guarantee the repayment of loans made by
19 private lenders, to eligible residents of such municipality or
20 county, the proceeds of which loans and grants are to be
21 used exclusively for rehabilitation.

22 (d) Such loans shall be made or guaranteed and grants
23 made only upon determination by the governing body of such
24 municipality or county, or by a board or commission ap-
25 pointed for such purpose by such governing body, that the
26 recipients are eligible owners, that the proceeds of the loan
27 or grant shall be used for rehabilitation and that loans or
28 grants to such eligible recipients for rehabilitation are not
29 otherwise available upon reasonably equivalent terms and
30 conditions: *Provided*, That grants may be given only for the
31 rehabilitation of residences occupied by their owners.

32 (e) No loan shall be made or guaranteed by such mu-
33 nicipality or county except in accordance with a written
34 agreement between such municipality or county, the eligible
35 owner and in the case of a guaranteed loan the lender
36 making such loan, which agreement shall provide, without
37 limitation, that:

38 (1) The proceeds of such loan shall be used exclusively
39 for rehabilitation;

40 (2) The loan shall be in such principal amount, repay-
41 able in such number of consecutive and substantially equal
42 monthly installments at such annual rate of interest and shall
43 be secured in such manner as specified in such agreement;

44 (3) In the case of a guaranteed loan, such municipality
45 or county shall be obligated to repay, from the neighborhood
46 rehabilitation fund established in accordance with this article,
47 any installment or installments of such loan as shall be in
48 default from time to time in accordance with the provisions
49 of such agreement;

50 (4) In the event an eligible owner defaults on such loan
51 made by such municipality or county, or in the event such
52 municipality or county incurs an obligation on a guaranteed
53 loan, such municipality or county shall be entitled, at its
54 option, to realize on any and all security for said loan:
55 *Provided*, That the right of such municipality or county to
56 realize on such security with respect to a guaranteed loan
57 shall be subordinate and secondary to the right of the lender
58 as to such security, to the extent of the unpaid balance of
59 such loan.

60 (f) Nothing in this article contained shall be so construed
61 as to authorize any municipality or county to make any con-
62 tract or incur any obligation or liability of any kind or nature,
63 except such as shall be discharged or payable solely from
64 the funds on deposit in such neighborhood rehabilitation
65 fund.

§8-20A-4. Inspection and technical assistance.

1 In addition to all other powers and rights of a municipality
2 or county, any municipality or county shall have plenary power

3 and authority, at the request of eligible owners, to inspect the
4 residences of such eligible owners, to make recommendations
5 concerning rehabilitation and to provide all manner of tech-
6 nical services and assistance in the planning, processing and
7 design of needed rehabilitation.

§8-20A-5. Deferral of repayment.

1 The governing body of a municipality or county may, at its
2 discretion, establish criteria for extreme hardship (by reason
3 of age, low income, disability or other factors) applicable to
4 an eligible owner, and which criteria will permit deferral of
5 repayment of a portion or of all the loan until a definite future
6 date, the death of the eligible owner or the sale of the "eligible
7 dwelling" to another owner, whichever occurs first. The eligi-
8 ble owner for the purposes of this section shall be interpreted
9 as the person in whom title of the property is vested or the
10 spouse of said eligible owner at the time the rehabilitation loan
11 or grant, or both, is provided.

CHAPTER 154

(Com. Sub. for H. B. 1392—By Mr. Martin)

[Passed March 11, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, one-g, one-k, twelve-b, fifteen, sixteen and seventeen, article four, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section two, article seven of said chapter twenty-two; to further amend said article four by adding thereto four new sections, designated sections one-m, one-n, one-o and twenty-one; and to further amend said chapter twenty-two by adding thereto a new article, designated article four-c, all relating to defining "waste" and "well work" with regard to oil and gas wells; broadening the scope of an oil and gas inspector's duty to investigate whether imminent danger exists from violations of the provisions of this article; providing for the service of the permit application and other documents

upon the owner of surface lands; providing to surface landowners an opportunity to comment on issuance of a permit; permits required for well work; applications; contents thereof; responsible agents named; permit numbers; denial of permits; modification of applications; creating additional reclamation requirements; granting the administrator the right to prevent waste of gas; granting the administrator the same rights as others to restrain waste of natural gas; providing criminal penalties; creating a civil penalty of two thousand five hundred dollars for violation of the provisions of this article or any rule or order promulgated by the department; raising the criminal penalty fine for willful violation from two thousand dollars to five thousand dollars; providing a cause of action for damages caused by explosions occurring before or after the effective date of this article; providing for compensation to surface owners for damage caused by the production of oil and gas; definitions; creating a rebuttable presumption regarding rotary drilling and severance of oil and gas rights from the surface estate; detailing compensable damages; preserving common law remedies; providing for notice of claim; settlements; election of remedies; arbitration provided; severability; and requiring anyone injecting gas into or storing gas in a storage reservoir to file a map and data required by the federal energy regulatory commission with the department.

Be it enacted by the Legislature of West Virginia:

That sections one, one-g, one-k, twelve-b, fifteen, sixteen and seventeen, article four, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section two, article seven of said chapter be amended and reenacted; that article four of said chapter be further amended by adding thereto four new sections, designated sections one-m, one-n, one-o and twenty-one; and that said chapter twenty-two be further amended by adding thereto a new article, designated article four-c, all to read as follows:

Article

4. Oil and Gas Wells.

4C. Oil and Gas Production Damage Compensation.

7. Underground Gas Storage Reservoirs.

ARTICLE 4. OIL AND GAS WELLS.

§22-4-1. Definitions.

- §22-4-1g. Findings and orders of inspectors concerning violations; determination of reasonable time for abatement; extensions of time for abatement; special inspections; notice of findings and orders.
- §22-4-1k. Permit required for well work; permit fee; application; soil erosion control plan.
- §22-4-1m. Notice to property owners.
- §22-4-1n. Procedure for filing comments; certification of notice.
- §22-4-1o. Review of application; issuance of permit in the absence of objections and comments.
- §22-4-12b. Reclamation requirements.
- §22-4-15. Right of adjacent owner or operator to prevent waste of gas; recovery of cost.
- §22-4-16. Restraining waste.
- §22-4-17. Offenses; penalties.
- §22-4-21. Cause of action for damages caused by explosion.

§22-4-1. Definitions.

- 1 Unless the context in which used clearly requires a different
2 meaning, as used in this article:
- 3 (a) "Casing" means a string or strings of pipe commonly
4 placed in wells drilled for natural gas or petroleum or both;
- 5 (b) "Cement" means hydraulic cement properly mixed with
6 water;
- 7 (c) "Chairman" means the chairman of the West Virginia
8 shallow gas well review board as provided for in section four,
9 article four-b of this chapter;
- 10 (d) "Chief" means chief of the division of water resources
11 of the department of natural resources;
- 12 (e) "Coal operator" means any person or persons, firm,
13 partnership, partnership association or corporation that pro-
14 poses to or does operate a coal mine;
- 15 (f) "Coal seam" and "workable coal bed" are interchange-
16 able terms and mean any seam of coal twenty inches or more
17 in thickness, unless a seam of less thickness is being commer-
18 cially worked, or can in the judgment of the department fore-
19 seeably be commercially worked and will require protection
20 if wells are drilled through it;
- 21 (g) "Deep well" means any well drilled and completed in a
22 formation at or below the top of the uppermost member of

23 the "Onondaga Group" or at a depth of or greater than six
24 thousand feet, whichever is shallower;

25 (h) "Department" or "department of mines" means, for
26 purposes of this article and articles five and seven of this
27 chapter, the office of oil and gas of the department of mines;

28 (i) "Administrator" means the head of the office of oil and
29 gas of the department of mines and all references to the "de-
30 puty director" shall be defined to mean the administrator of
31 the office of oil and gas;

32 (j) "Expanding cement" means any cement approved by the
33 office of oil and gas which expands during the hardening
34 process, including, but not limited to, regular oil field cements
35 with the proper additives;

36 (k) "Facility" means any facility utilized in the oil and gas
37 industry in this state and specifically named or referred to
38 in this article or in articles five or seven of this chapter, other
39 than a well or well site;

40 (l) "Gas" means all natural gas and all other fluid hydro-
41 carbons not defined as oil in subdivision (m) of this section;

42 (m) "Oil" means natural crude oil or petroleum and other
43 hydrocarbons, regardless of gravity, which are produced at
44 the well in liquid form by ordinary production methods and
45 which are not the result of condensation of gas after it leaves
46 the underground reservoirs;

47 (n) "Owner" when used with reference to any well, shall
48 include any person or persons, firm, partnership, partnership
49 association or corporation that owns, manages, operates, con-
50 trols or possesses such well as principal, or as lessee or con-
51 tractor, employee or agent of such principal;

52 (o) "Owner" when used with reference to any coal seam,
53 shall include any person or persons who own, lease or oper-
54 ate such coal seam;

55 (p) "Person" means any natural person, corporation, firm,
56 partnership, partnership association, venture, receiver, trustee,
57 executor, administrator, guardian, fiduciary or other represen-

58 tative of any kind, and includes any government or any politi-
59 cal subdivision or any agency thereof;

60 (q) "Plat" means a map, drawing or print showing the lo-
61 cation of a well or wells as herein defined;

62 (r) "Review board" means the West Virginia shallow gas
63 well review board as provided for in section four, article four-
64 b of this chapter;

65 (s) "Safe mining through of a well" means the mining of coal
66 in a workable coal bed up to a well which penetrates such
67 workable coal bed and through such well so that the casing or
68 plug in the well bore where the well penetrates the workable
69 coal bed is severed;

70 (t) "Shallow well" means any gas well drilled and com-
71 pleted in a formation above the top of the uppermost member
72 of the "Onondaga Group" or at a depth less than six thousand
73 feet, whichever is shallower;

74 (u) "Stimulate" means any action taken by a well operator
75 to increase the inherent productivity of an oil or gas well, in-
76 cluding, but not limited to, fracturing, shooting or acidizing,
77 but excluding cleaning out, bailing or workover operations;

78 (v) "Waste" means (i) physical waste, as the term is gen-
79 erally understood in the oil and gas industry; (ii) the locating,
80 drilling, equipping, operating or producing of any oil or gas
81 well in a manner that causes, or tends to cause, a substantial
82 reduction in the quantity of oil or gas ultimately recoverable
83 from a pool under prudent and proper operations, or that
84 causes or tends to cause a substantial or unnecessary or exces-
85 sive surface loss of oil or gas; or (iii) the drilling of more deep
86 wells than are reasonably required to recover efficiently and
87 economically the maximum amount of oil and gas from a pool;
88 (iv) substantially inefficient, excessive or improper use, or the
89 substantially unnecessary dissipation of, reservoir energy, it
90 being understood that nothing in this chapter shall be con-
91 strued to authorize any agency of the state to impose manda-
92 tory spacing of shallow wells except for the provisions of sec-
93 tion eight, article four-a of this chapter and the provisions of
94 article four-b of this chapter; (v) inefficient storing of oil or

95 gas: *Provided*, That storage in accordance with a certificate of
96 public convenience issued by the federal energy regulatory
97 commission shall be conclusively presumed to be efficient; and
98 (vi) other underground or surface waste in the production or
99 storage of oil, gas, or condensate, however caused;

100 (w) "Well" means any shaft or hole sunk, drilled, bored or
101 dug into the earth or into underground strata for the extraction
102 or injection or placement of any liquid or gas, or any shaft
103 or hole sunk or used in conjunction with such extraction or
104 injection or placement. The term "well" does not include any
105 shaft or hole sunk, drilled, bored or dug into the earth for
106 the sole purpose of core drilling or pumping or extracting
107 therefrom potable, fresh or usable water for household, do-
108 mestic, industrial, agricultural or public use;

109 (x) "Well work" means the drilling, re-drilling, deepening,
110 stimulating, pressuring by injection of any fluid, converting
111 from one type of well to another, combining or physically
112 changing to allow the migration of fluid from one formation to
113 another or plugging or replugging of any well;

114 (y) "Well operator" or "operator" means any person or
115 persons, firm, partnership, partnership association or corpor-
116 ation that proposes to or does locate, drill, operate or aban-
117 don any well as herein defined; and

118 (z) "Office of oil and gas" or "office" means the office of
119 oil and gas within the department of mines charged with the
120 responsibility of administering the provisions of chapter
121 twenty-two, articles four, five and seven of the code of West
122 Virginia, one thousand nine hundred thirty-one, as amended.

**§22-4-1g. Findings and orders of inspectors concerning violations;
determination of reasonable time for abatement; ex-
tensions of time for abatement; special inspections;
notice of findings and orders.**

1 (a) If an oil and gas inspector, upon making an inspection
2 of a well or well site or any other oil or gas facility, finds that
3 any provision of this article is being violated, he shall also
4 find whether or not an imminent danger to persons exists, or
5 whether or not there exists an imminent danger that a fresh

6 water source or supply will be contaminated or lost. If he
7 finds that such imminent danger exists, he shall forthwith make
8 an order requiring the operator of such well or well site or
9 other oil or gas facility to cease further operations until such
10 imminent danger has been abated. If he finds that no such
11 imminent danger exists, he shall determine what would be a
12 reasonable period of time within which such violation should
13 be totally abated. Such findings shall contain reference to the
14 provisions of this article which he finds are being violated,
15 and a detailed description of the conditions which cause and
16 constitute such violation.

17 (b) The period of time so found by such oil and gas in-
18 spector to be a reasonable period of time shall not exceed
19 seven days. Such period may be extended by such inspector,
20 or by any other oil and gas inspector duly authorized by the
21 administrator, from time to time, for good cause, but not to
22 exceed a total of thirty days, upon the making of a special in-
23 spection to ascertain whether or not such violation has been
24 totally abated: *Provided*, That such thirty-day period may be
25 extended beyond thirty days by such inspectors where abate-
26 ment is shown to be incapable of accomplishment because of
27 circumstances or conditions beyond the control of the well
28 operator. The administrator shall cause a special inspection to
29 be made: (A) Whenever an operator of a well or well site or
30 any other oil or gas facility, prior to the expiration of any such
31 period of time, requests him to cause a special inspection to
32 be made at such well or well site or any other oil or gas fa-
33 cility; and (B) Upon expiration of such period of time as
34 originally fixed or as extended, unless the administrator is
35 satisfied that the violation has been abated. Upon making such
36 special inspection, such oil and gas inspector shall determine
37 whether or not such violation has been totally abated. If he
38 determines that such violation has not been totally abated, he
39 shall determine whether or not such period of time as original-
40 ly fixed, or as so fixed and extended, should be extended. If
41 he determines that such period of time should be extended, he
42 shall determine what a reasonable extension would be. If he
43 determines that such violation has not been totally abated, and
44 if such period of time as originally fixed, or as so fixed and
45 extended, has then expired, and if he also determines that such

46 period of time should not be further extended, he shall there-
47 upon make an order requiring the operator of such well or
48 well site or other oil or gas facility to cease further operations
49 of such well, well site or facility, as the case may be. Such
50 findings and order shall contain reference to the specific pro-
51 visions of this article which are being violated.

52 (c) Notice of each finding and order made under this sec-
53 tion shall promptly be given to the operator of the well or
54 well site or other oil or gas facility to which it pertains by the
55 person making such finding or order.

56 (d) No order shall be issued under the authority of this
57 section which is not expressly authorized herein.

**§22-4-1k. Permit required for well work; permit fee; application;
soil erosion control plan.**

1 (a) It is unlawful for any person to commence any well
2 work, including site preparation work which involves any dis-
3 turbance of land, without first securing from the administrator
4 a well work permit. An application may propose and a permit
5 may approve two or more activities defined as well work.

6 (b) The application for a well work permit shall be accom-
7 panied by the applicable bond as prescribed by section two,
8 two-b or nine of this article, and the applicable plat required
9 by section two or two-b of this article.

10 (c) Every permit application filed under this section shall
11 be verified and shall contain the following:

12 (1) The names and addresses of (i) the well operator, (ii)
13 the agent required to be designated under subsection (e) of
14 this section, and (iii) every person whom the applicant must
15 notify under any section of this article together with a certifi-
16 cation and evidence that a copy of the application and all other
17 required documentation has been delivered to all such persons;

18 (2) The name and address of every coal operator operating
19 coal seams under the tract of land on which the well is or may
20 be located, and the coal seam owner of record and lessee of
21 record required to be given notice by section two, if any, if said
22 owner or lessee is not yet operating said coal seams;

- 23 (3) The number of the well or such other identification as
24 the administrator may require;
- 25 (4) The type of well;
- 26 (5) The well work for which a permit is requested;
- 27 (6) The approximate depth to which the well is to be drilled
28 or deepened, or the actual depth if the well has been drilled;
- 29 (7) Any permit application fee required by law;
- 30 (8) If the proposed well work will require casing or tubing
31 to be set, the entire casing program for the well, including the
32 size of each string of pipe, the starting point and depth to
33 which each string is to be set, and the extent to which each
34 such string is to be cemented;
- 35 (9) If the proposed well work is to convert an oil well or
36 a combination well or to drill a new well for the purpose of
37 introducing pressure for the recovery of oil as provided in
38 section ten-a of this article, specifications in accordance with
39 the data requirements of section two-b of this article;
- 40 (10) If the proposed well work is to plug or replug the well,
41 (i) specifications in accordance with the data requirements of
42 section nine of this article, (ii) a copy of all logs in the oper-
43 ator's possession as the administrator may require, and (iii) a
44 work order showing in detail the proposed manner of plugging
45 or unplugging the well, in order that a representative of the
46 administrator and any interested persons may be present when
47 the work is done. In the event of an application to drill, redrill
48 or deepen a well, if the well work is unsuccessful so that the
49 well must be plugged and abandoned, and if the well is one on
50 which the well work has been continuously progressing pur-
51 suant to a permit, the operator may proceed to plug the well
52 as soon as he has obtained the verbal permission of the ad-
53 ministrator or his designated representative to plug and aban-
54 don the well, except that the operator shall make reasonable
55 effort to notify as soon as practicable the surface owner and
56 the coal owner, if any, of the land at the well location, and
57 shall also timely file the plugging affidavit required by section
58 nine of this article;

59 (11) If the proposed well work is to stimulate an oil or gas
60 well, specifications in accordance with the data requirements
61 of section two-a of this article;

62 (12) The erosion and sediment control plan required under
63 subsection (d) of this section for applications for permits to
64 drill; and

65 (13) Any other relevant information which the administra-
66 tor may require by rule.

67 (d) An erosion and sediment control plan shall accompany
68 each application for a well work permit except for a well work
69 permit to plug or replug any well. Such plan shall contain
70 methods of stabilization and drainage, including a map of the
71 project area indicating the amount of acreage disturbed. The
72 erosion and sediment control plan shall meet the minimum re-
73 quirements of the West Virginia erosion and sediment control
74 manual as adopted and from time to time amended by the of-
75 fice of oil and gas, in consultation with the several soil conser-
76 vation districts pursuant to the control program established in
77 this state through section 208 of the federal Water Pollution
78 Control Act Amendments of 1972. The erosion and sediment
79 control plan shall become part of the terms and conditions of
80 a well work permit, except for a well work permit to plug or
81 replug any well, which is issued and the provisions of the plan
82 shall be carried out where applicable in the operation. The
83 erosion and sediment control plan shall set out the proposed
84 method of reclamation which shall comply with the require-
85 ments of section twelve-b of this article.

86 (e) The well operator named in such application shall disig-
87 nate the name and address of an agent for such operator who
88 shall be the attorney-in-fact for the operator and who shall be a
89 resident of the state of West Virginia upon whom notices,
90 orders or other communications issued pursuant to this article
91 or article five-a, chapter twenty, may be served, and upon
92 whom process may be served. Every well operator required to
93 designate an agent under this section shall within five days
94 after the termination of such designation notify the department
95 of such termination and designate a new agent.

96 (f) The well owner or operator shall install the permit num-

97 ber as issued by the administrator in a legible and permanent
98 manner to the well upon completion of any permitted work.
99 The dimensions, specifications and manner of installation shall
100 be in accordance with the rules of the administrator.

101 (g) The administrator may waive the requirements of this
102 section and sections one-m, one-n and one-o of this article in
103 any emergency situation, if he deems such action necessary.
104 In such case the administrator may issue an emergency permit
105 which would be effective for not more than thirty days, but
106 which would be subject to reissuance by the administrator.

107 (h) For the purpose of ascertaining whether or not issuance
108 of any permit for well work will cause or contribute to a pollu-
109 tion problem, the administrator shall consult with the director
110 of the department of natural resources. In the event the issuance
111 of any such permit may reasonably be expected to cause or con-
112 tribute to any such pollution, then the administrator shall not
113 issue such permit.

114 (i) The administrator shall deny the issuance of a permit if
115 he determines that the applicant has committed a substantial
116 violation of a previously issued permit, including the erosion
117 and sediment control plan, or a substantial violation of one or
118 more of the rules promulgated hereunder, and has failed to
119 abate or seek review of the violation within the time prescribed
120 by the administrator pursuant to the provisions of sections one-
121 g and one-h of this article and the rules promulgated hereunder,
122 which time may not be unreasonable: *Provided*, That in the
123 event that the administrator does find that a substantial viola-
124 tion has occurred and that the operator has failed to abate or
125 seek review of the violation in the time prescribed, he may sus-
126 pend the permit on which said violation exists, after which sus-
127 pension the operator shall forthwith cease all well work being
128 conducted under the permit: *Provided, however*, That the ad-
129 ministrator may reinstate the permit without further notice, at
130 which time the well work may be continued. The administrator
131 shall make written findings of any such determination made by
132 him and may enforce the same in the circuit courts of this state
133 and the operator may appeal such suspension pursuant to the
134 provisions of section four of this article. The administrator
135 shall make a written finding of any such determination.

136 (j) Any person who violates any provision of this section
137 shall be guilty of a misdemeanor, and, upon conviction there-
138 of, shall be fined not more than five thousand dollars, or be
139 imprisoned in the county jail not more than twelve months, or
140 both fined and imprisoned.

§22-4-1m. Notice to property owners.

1 (a) No later than the filing date of the application, the
2 applicant for a permit for any well work shall deliver by
3 personal service or by certified mail, return receipt requested,
4 copies of the application, well plat and erosion and sediment
5 control plan required by section one-k of this article to each
6 of the following persons:

7 (1) The owners of record of the surface of the tract on
8 which the well is, or is to be located; and

9 (2) The owners of record of the surface tract or tracts
10 overlying the oil and gas leasehold being developed by the
11 proposed well work, if such surface tract is to be utilized
12 for roads or other land disturbance as described in the
13 erosion and sediment control plan submitted pursuant to sec-
14 tion one-k of this article.

15 (b) If more than three tenants in common or other co-
16 owners of interests described in subsection (a) of this sec-
17 tion hold interests in such lands, the applicant may serve
18 the documents required upon the person described in the
19 records of the sheriff required to be maintained pursuant to
20 section eight, article one, chapter eleven-a of this code or
21 publish in the county in which the well is located or to be
22 located a Class II legal advertisement as described in section
23 two, article three, chapter fifty-nine of this code, containing
24 such notice and information as the administrator shall pre-
25 scribe by rule, with the first publication date being at least
26 ten days prior to the filing of the permit application: *Provided,*
27 That all owners occupying the tracts where the well work is,
28 or is proposed to be located at the filing date of the permit
29 application shall receive actual service of the documents
30 required by subsection (a) of this section.

31 (c) Materials served upon persons described in subsections

32 (a) and (b) of this section shall contain a statement of the
33 methods and time limits for filing comments, who may file
34 comments and the name and address of the administrator for
35 the purpose of filing comments and obtaining additional in-
36 formation and a statement that such persons may request,
37 at the time of submitting comments, notice of the permit
38 decision and a list of persons qualified to test water as
39 provided in this section.

40 (d) Any person entitled to submit comments shall also be
41 entitled to receive a copy of the permit as issued or a copy
42 of the order denying the permit if such person requests the
43 receipt thereof as a part of the comments concerning said
44 permit application.

45 (e) Persons entitled to notice may contact the district
46 office of the department to ascertain the names and location
47 of water testing laboratories in the area capable and qualified
48 to test water supplies in accordance with standard accepted
49 methods. In compiling such list of names the department
50 shall consult with the state and local health departments.

§22-4-1n. Procedure for filing comments; certification of notice.

1 (a) All persons described in subsections (a) and (b),
2 section one-m of this article may file comments with the
3 administrator as to the location or construction of the appli-
4 cant's proposed well work within fifteen days after the appli-
5 cation is filed with the administrator.

6 (b) Prior to the issuance of any permit for well work, the
7 applicant shall certify to the administrator that the require-
8 ments of section one-m of this article have been completed
9 by the applicant. Such certification may be by affidavit of
10 personal service or the return receipt card or other postal
11 receipt for certified mailing.

**§22-4-1o. Review of application; issuance of permit in the ab-
sence of objections and comments.**

1 The administrator shall review each application for a well
2 work permit and shall determine whether or not a permit shall
3 be issued.

4 No permit may be issued less than fifteen days after the
5 filing date of the application for any well work except
6 plugging or replugging; and no permit for plugging or re-
7 plugging may be issued less than five days after the filing date
8 of the application except a permit for plugging or replugging
9 a dry hole: *Provided*, That if the applicant certifies that all
10 persons entitled to notice of the application under the pro-
11 visions of this article have been served in person or by certified
12 mail, return receipt requested, with a copy of the well work
13 application, including the erosion and sediment control plan,
14 if required, and the plat required by section one-k of this
15 article, and further files written statements of no objection
16 by all such persons, the administrator may issue the well work
17 permit at any time.

18 The administrator may cause such inspections to be made
19 of the proposed well work location as to assure adequate
20 review of the application. The permit shall not be issued,
21 or shall be conditioned including conditions with respect to the
22 location of the well and access roads prior to issuance if the
23 administrator determines that:

24 (1) The proposed well work will constitute a hazard to
25 the safety of persons; or

26 (2) The plan for soil erosion and sediment control is not
27 adequate or effective; or

28 (3) Damage would occur to publicly owned lands or re-
29 sources; or

30 (4) The proposed well work fails to protect fresh water
31 sources or supplies.

32 The administrator shall promptly review all comments
33 filed. If after review of the application and all comments
34 received, the application for a well work permit is approved,
35 and no timely objection or comment has been filed with the
36 administrator or made by the department under the pro-
37 visions of section three, three-a or three-b of this article,
38 the permit shall be issued, with conditions, if any. Nothing
39 in this section shall be construed to supersede the provisions

40 of sections one-k, two, two-a, two-b, three, three-a and
41 three-b of this article.

42 The administrator shall mail a copy of the permit as
43 issued or a copy of the order denying a permit to any person
44 who submitted comments to the administrator concerning said
45 permit and requested such copy.

§22-4-12b. Reclamation requirements.

1 The operator of a well shall reclaim the land surface within
2 the area disturbed in siting, drilling, completing or producing
3 the well in accordance with the following requirements:

4 (a) Within six months after the completion of the drilling
5 process, the operator shall fill all the pits for containing muds,
6 cuttings, salt water and oil that are not needed for production
7 purposes, or are not required or allowed by state or federal law
8 or rule and remove all concrete bases, drilling supplies and
9 drilling equipment. Within such period, the operator shall
10 grade or terrace and plant, seed or sod the area disturbed
11 that is not required in production of the well where necessary
12 to bind the soil and prevent substantial erosion and sedimenta-
13 tion. No pit may be used for the ultimate disposal of salt
14 water. Salt water and oil shall be periodically drained or re-
15 moved, and properly disposed of, from any pit that is retained
16 so the pit is kept reasonably free of salt water and oil.

17 (b) Within six months after a well that has produced oil
18 or gas is plugged, or after the plugging of a dry hole, the
19 operator shall remove all production and storage structures,
20 supplies and equipment, and any oil, salt water and debris,
21 and fill any remaining excavations. Within such period, the
22 operator shall grade or terrace and plant, seed or sod the
23 area disturbed where necessary to bind the soil and prevent
24 substantial erosion and sedimentation.

25 The administrator may, upon written application by an
26 operator showing reasonable cause, extend the period within
27 which reclamation shall be completed, but not to exceed a
28 further six-month period.

29 If the administrator refuses to approve a request for ex-
30 tension, he shall do so by order.

31 (c) It shall be the duty of an operator to commence the
32 reclamation of the area of land disturbed in siting, drilling,
33 completing or producing the well in accordance with soil
34 erosion and sediment control plans approved by the ad-
35 ministrator or his designate.

36 (d) The administrator shall promulgate rules setting forth
37 requirements for the safe and efficient installation and burying
38 of all production and gathering pipelines where practical and
39 reasonable except that such rules shall not apply to those pipe-
40 lines regulated by the public service commission.

**§22-4-15. Right of adjacent owner or operator to prevent waste
of gas; recovery of cost.**

1 If the owner or operator of any such well shall neglect or
2 refuse to drill, case and equip, or plug and abandon, or shut in
3 and conserve from waste the gas produced therefrom, as re-
4 quired to be done and performed by the preceding sections of
5 this article, for a period of twenty days after a written notice
6 so to do, which notice may be served personally upon the
7 owner or operator, or may be posted in a conspicuous place
8 at or near the well, it shall be lawful for the owner or opera-
9 tor of any adjacent or neighboring lands or the administrator
10 to enter upon the premises where such well is situated and
11 properly case and equip such well, or, in case the well is to
12 be abandoned, to properly plug and abandon it, or in case the
13 well is wasting gas, to properly shut it in and make such needed
14 repairs to the well to prevent the waste of gas, in the manner
15 required to be done by the preceding sections of this article;
16 and the reasonable cost and expense incurred by an owner,
17 operator or the administrator in so doing shall be paid by the
18 owner or operator of such well and may be recovered as debts
19 of like amount are by law recoverable.

20 The administrator may utilize funds and procedures es-
21 tablished pursuant to section twelve-a of this article for
22 the purposes set out in this section. Amounts recovered by
23 the administrator pursuant to this section shall be deposited
24 in the oil and gas reclamation fund established pursuant to
25 section twelve-a of this article.

§22-4-16. Restraining waste.

1 Aside from and in addition to the imposition of any penal-
2 ties under this article, it shall be the duty of any circuit court
3 in the exercise of its equity jurisdiction to hear and deter-
4 mine any bill or bills in equity which may be filed to restrain
5 the waste of natural gas in violation of this article, and to
6 grant relief by injunction or by other decrees or orders, in
7 accordance with the principles and practice in equity. The
8 plaintiff in such bill shall have sufficient standing to maintain
9 the same if he shall aver and prove that he is interested in the
10 lands situated within the distance of one mile from such well,
11 either as an owner of such land, or of the oil or gas, or both,
12 thereunder, in fee simple, or as an owner of leases thereof or
13 of rights therein for the production of oil and gas or either of
14 them or as the administrator.

§22-4-17. Offenses; penalties.

1 (a) Any person or persons, firm, partnership, partnership
2 association or corporation who willfully violates any provision
3 of this article or any rule or order promulgated hereunder shall
4 be subject to a civil penalty not exceeding two thousand five
5 hundred dollars. Each day a violation continues after notice
6 by the office of oil and gas constitutes a separate offense. The
7 penalty shall be recovered by a civil action brought by the
8 office of oil and gas, in the name of the state, before the cir-
9 cuit court of the county in which the subject well or facility
10 is located. All such civil penalties collected shall be credited
11 to the general fund of the state.

12 (b) Any person or persons, firm, partnership, partnership
13 association or corporation willfully violating any of the pro-
14 visions of this article which prescribe the manner of drilling
15 and casing or plugging and filling any well, or which prescribe
16 the methods of conserving gas from waste, or which fix the
17 distance from wells within which mining operations shall not
18 be conducted without the approval of the office of oil and gas,
19 or violating the terms of any order of the office of oil and gas
20 allowing mining operations within a lesser distance of any
21 well than that prescribed by the article, is guilty of a misde-
22 meanor, and, upon conviction thereof, shall be punished by a

23 fine not exceeding five thousand dollars, or imprisoned in jail
24 for not exceeding twelve months, or both, in the discretion of
25 the court, and prosecutions under this section may be brought
26 in the name of the state of West Virginia in the court exer-
27 cising criminal jurisdiction in the county in which the violation
28 of such provisions of the article or terms of such order was
29 committed, and at the instance and upon the relation of any
30 citizens of this state.

§22-4-21. Cause of action for damages caused by explosions.

1 Any person suffering personal injury or property damage
2 due to any explosion caused by any permittee, shall have a
3 cause of action against such permittee for three years after
4 the explosion regardless of whether the explosion occurred
5 before or after the effective date of this article.

**ARTICLE 4C. OIL AND GAS PRODUCTION DAMAGE COMPENSA-
TION.**

- §22-4C-1. Legislative findings and purpose.
- §22-4C-2. Definitions.
- §22-4C-3. Compensation of surface owners for drilling operations.
- §22-4C-4. Common law right of action preserved; offsets.
- §22-4C-5. Notification of claim.
- §22-4C-6. Agreement; offer of settlement.
- §22-4C-7. Rejection; legal action; arbitration; fees and costs.
- §22-4C-8. Application of article.
- §22-4C-9. Severability.

§22-4C-1. Legislative findings and purpose.

1 (a) The Legislature finds the following:

2 (1) Exploration for and development of oil and gas re-
3 serves in this state must coexist with the use, agricultural or
4 otherwise, of the surface of certain land and that each consti-
5 tutes a right equal to the other.

6 (2) Modern methods of extraction of oil and gas require
7 the use of substantially more surface area than the methods
8 commonly in use at the time most mineral estates in this state
9 were severed from the fee tract; and, specifically, the drilling
10 of wells by the rotary drilling method was virtually unknown
11 in this state prior to the year one thousand nine hundred
12 sixty, so that no person theretofore severing his oil and gas

13 from his surface land and no person theretofore leasing his oil
14 and gas with the right to explore for and develop the same
15 could reasonably have known nor could it have been reason-
16 ably contemplated that rotary drilling operations imposed a
17 greater burden on the surface than the cable tool drilling
18 method heretofore employed in this state; and since the year
19 one thousand nine hundred sixty, the use of rotary drilling
20 methods has spread slowly but steadily in this state, with con-
21 comitant public awareness of its impact on surface land; and
22 that the public interest requires that the surface owner be en-
23 titled to fair compensation for the loss of the use of his surface
24 area during the rotary drilling operation, but recognizing the
25 right of the oil and gas operator to conduct rotary drilling
26 operations as allowed by law.

27 (3) Prior to the first day of January, one thousand nine
28 hundred sixty, the rotary method of drilling oil or gas wells was
29 virtually unknown to the surface owners of this state nor was
30 such method reasonably contemplated during the negotiations
31 which occasioned the severance of either oil or gas from the
32 surface.

33 (4) The Legislature further finds and creates a rebuttable
34 presumption that even after the thirty-first day of December,
35 one thousand nine hundred fifty-nine, and prior to the effective
36 date of this article, it was unlikely that any surface owner knew
37 or should have known of the rotary method of drilling oil or
38 gas wells, but, that such knowledge was possible and that the
39 rotary method of drilling oil or gas wells could have, in some
40 instances, been reasonably contemplated by the parties during
41 the negotiations of the severance of the oil and gas from the
42 surface. This presumption against knowledge of the rotary
43 drilling method may be rebutted by a clear preponderance of
44 the evidence showing that the surface owner or his predecessor
45 of record did in fact know of the rotary drilling method at the
46 time he or his predecessor executed a severance deed or lease
47 of oil and gas and that he fairly contemplated the rotary drill-
48 ing method and received compensation for the same.

49 (b) Any surface owner entitled to claim any finding or any
50 presumption which is not rebutted as provided in this section

51 shall be entitled to the compensation and damages of this
52 article.

53 (c) The Legislature declares that the public policy of this
54 state shall be that the compensation and damages provided in
55 this article for surface owners may not be diminished by any
56 provision in a deed, lease or other contract entered into after
57 the effective date of this article.

58 (d) It is the purpose of this article to provide constitu-
59 tionally permissible protection and compensation to surface
60 owners of lands on which oil and gas wells are drilled from the
61 burden resulting from drilling operations commenced after the
62 effective date of this article. This article is to be interpreted in
63 the light of the legislative intent expressed herein. This article
64 shall be interpreted to benefit surface owners, regardless of
65 whether the oil and gas mineral estate was separated from the
66 surface estate and regardless of who executed the document
67 which gave the oil and gas developer the right to conduct
68 drilling operations on the land. Section four of this article
69 shall be interpreted to benefit all persons.

§22-4C-2. Definitions.

1 (a) In this article, unless the context or subject matter
2 otherwise requires:

3 (1) "Agricultural production" means the production of any
4 growing grass or crop attached to the surface of the land,
5 whether or not the grass or crop is to be sold commercially,
6 and the production of any farm animals, whether or not the
7 animals are to be sold commercially;

8 (2) "Drilling operations" means the actual drilling or re-
9 drilling of an oil or gas well commenced subsequent to the
10 effective date of this article, and the related preparation
11 of the drilling site and access road, which requires entry.
12 upon the surface estate;

13 (3) "Oil and gas developer" means the person who secures
14 the drilling permit required by article four of this chapter:

15 (4) "Person" means any natural person, corporation,
16 firm, partnership, partnership association, venture, receiver.

17 trustee, executor, administrator, guardian, fiduciary or other
18 representative of any kind, and includes any government or
19 any political subdivision or agency thereof;

20 (5) "Surface estate" means an estate in or ownership of
21 the surface of a particular tract of land overlying the oil
22 or gas leasehold being developed; and

23 (6) "Surface owner" means a person who owns an estate in
24 fee in the surface of land, either solely or as a co-owner.

§22-4C-3. Compensation of surface owners for drilling operations.

1 (a) The oil and gas developer shall be obligated to pay the
2 surface owner compensation for:

3 (1) Lost income or expenses incurred as a result of being
4 unable to dedicate land actually occupied by the driller's opera-
5 tion or to which access is prevented by such drilling operation
6 to the uses to which it was dedicated prior to commencement
7 of the activity for which a permit was obtained measured from
8 the date the operator enters upon the land until the date
9 reclamation is completed, (2) the market value of crops
10 destroyed, damaged or prevented from reaching market, (3)
11 any damage to a water supply in use prior to the commencement
12 of the permitted activity, (4) the cost of repair of personal
13 property up to the value of replacement by personal property
14 of like age, wear and quality, and (5) the diminution in value,
15 if any, of the surface lands and other property after com-
16 pletion of the surface disturbance done pursuant to the activity
17 for which the permit was issued determined according to the
18 actual use made thereof by the surface owner immediately
19 prior to the commencement of the permitted activity.

20 The amount of damages may be determined by any formula
21 mutually agreeable between the surface owner and the oil and
22 gas developer.

23 (b) Any reservation or assignment of the compensation pro-
24 vided in this section apart from the surface estate except to a
25 tenant of the surface estate is prohibited.

26 (c) In the case of surface lands owned by more than one
27 person as tenants in common, joint tenants or other co-owner-

28 ship, any claim for compensation under this article shall be
29 for the benefit of all such co-owners. The resolution of a claim
30 for compensation provided in this article shall operate as a
31 bar to the assertion of additional claims under this section
32 arising out of the same drilling operations.

§22-4C-4. Common law right of action preserved; offsets.

1 (a) Nothing in section three or elsewhere in this article
2 shall be construed to diminish in any way the common law
3 remedies, including damages, of a surface owner or any
4 other person against the oil and gas developer for the un-
5 reasonable, negligent or otherwise wrongful exercise of the
6 contractual right, whether express or implied, to use the
7 surface of the land for the benefit of his mineral interest.

8 (b) An oil and gas operator shall be entitled to offset
9 compensation agreed to be paid or awarded to a surface owner
10 under section three against any damages sought by or awarded
11 to the surface owner through the assertions of common law
12 remedies respecting the surface land actually occupied by
13 the same drilling operation.

14 (c) An oil and gas operator shall be entitled to offset
15 damages agreed to be paid or awarded to a surface owner
16 through the assertion of common law remedies against com-
17 pensation sought by or awarded to the surface owner under
18 section three respecting the surface land actually occupied
19 by the same drilling operation.

§22-4C-5. Notification of claim.

1 Any surface owner, to receive compensation under section
2 three of this article, shall notify the oil and gas developer
3 of the damages sustained by the person within two years
4 after the date that the oil and gas developer files notice that
5 he is commencing reclamation under section twelve-b,
6 article four of this chapter. Such notice shall be given to
7 surface owners by registered or certified mail, return receipt
8 requested, and shall be complete upon mailing. If more than
9 three tenants in common or other co-owners hold interests
10 in such lands, the developer may give such notice to the
11 person described in the records of the sheriff required to be

12 maintained pursuant to section eight, article one, chapter
13 eleven-a of this code or publish in the county in which the
14 well is located or to be located a Class II legal advertisement
15 as described in section two, article three, chapter fifty-nine
16 of this code, containing such notice and information as the
17 administrator shall prescribe by rule.

§22-4C-6. Agreement; offer of settlement.

1 Unless the parties provide otherwise by written agreement,
2 within sixty days after the oil and gas developer received the
3 notification of claim specified in section five of this article,
4 the oil and gas developer shall either make an offer of
5 settlement to the surface owner seeking compensation, or
6 reject the claim. The surface owner may accept or reject
7 any offer so made.

§22-4C-7. Rejection; legal action; arbitration; fees and costs.

1 (a) Unless the oil and gas developer has paid the surface
2 owner a negotiated settlement of compensation within sixty
3 days after the date the notification of claim was mailed
4 under section five of this article, the surface owner may,
5 within eighty days after the notification mail date, either
6 (i) bring an action for compensation in the circuit court of
7 the county in which the well is located, or (ii) elect instead,
8 by written notice delivered by personal service or by certified
9 mail, return receipt requested, to the designated agent named
10 by the oil and gas developer under the provisions of section
11 one-k, article four of this chapter, to have his compensation
12 finally determined by binding arbitration pursuant to article
13 ten, chapter fifty-five of this code.

14 Settlement negotiations, offers and counter-offers between
15 the surface owner and the oil and gas developer shall not be
16 admissible as evidence in any arbitration or judicial proceed-
17 ing authorized under this article, or in any proceeding result-
18 ing from the assertion of common law remedies.

19 (b) The compensation to be awarded to the surface owner
20 shall be determined by a panel of three disinterested arbi-
21 trators. The first arbitrator shall be chosen by the surface
22 owner in his notice of election under this section to the oil

23 and gas developer; the second arbitrator shall be chosen by
24 the oil and gas developer within ten days after receipt of
25 the notice of election; and the third arbitrator shall be chosen
26 jointly by the first two arbitrators within twenty days there-
27 after. If they are unable to agree upon the third arbitrator
28 within twenty days, then the two arbitrators are hereby
29 empowered to and shall forthwith submit the matter to the
30 court under the provisions of section one, article ten, chapter
31 fifty-five of this code, so that, among other things, the third
32 arbitrator can be chosen by the judge of the circuit court of
33 the county wherein the surface estate lies.

34 (c) The following persons shall be deemed interested and
35 not be appointed as arbitrators: Any person who is personally
36 interested in the land on which rotary drilling is being per-
37 formed or has been performed, or in any interest or right
38 therein, or in the compensation and any damages to be
39 awarded therefor, or who is related by blood or marriage
40 to any person having such personal interest, or who stands
41 in the relation of guardian and ward, master and servant,
42 principal and agent, or partner, real estate broker, or surety
43 to any person having such personal interest, or who has
44 enmity against or bias in favor of any person who has
45 such personal interest or who is the owner of, or interested
46 in, such land or the oil or gas development thereof. No
47 person shall be deemed interested or incompetent to act as
48 arbitrator by reason of his being an inhabitant of the county,
49 district or municipal corporation wherein the land is located,
50 or holding an interest in any other land therein.

51 (d) The panel of arbitrators shall hold hearings and take
52 such testimony and receive such exhibits as shall be necessary
53 to determine the amount of compensation to be paid to the
54 surface owner. However, no award of compensation shall be
55 made to the surface owner unless the panel of arbitrators
56 has first viewed the surface estate in question. A transcript of
57 the evidence may be made but shall not be required.

58 (e) Each party shall pay the compensation of his own
59 arbitrator and one half of the compensation of the third
60 arbitrator, or his own court costs as the case may be.

§22-4C-8. Application of article.

- 1 The remedies provided by this article shall not preclude
- 2 any person from seeking other remedies allowed by law.

§22-4C-9. Severability.

- 1 If any section, subsection, subdivision, subparagraph, sen-
- 2 tence or clause of this article is adjudged to be unconstitutional
- 3 or invalid, such invalidation shall not affect the validity of
- 4 the remaining portions of this article, and, to this end, the
- 5 provisions of this article are hereby declared to be sever-
- 6 able.

ARTICLE 7. UNDERGROUND GAS STORAGE RESERVOIRS.**§22-7-2. Filing of maps and data by persons operating or proposing to operate gas storage reservoirs.**

- 1 (a) Any person who, on the effective date of this article,
- 2 is injecting gas into or storing gas in a storage reservoir which
- 3 underlies or is within three thousand linear feet of an operat-
- 4 ing coal mine which is operating in a coal seam that extends
- 5 over the storage reservoir or the reservoir protective area
- 6 shall, within sixty days thereafter, file with the department
- 7 a copy of a map and certain data in the form and manner
- 8 provided in this subsection.

- 9 Any person who, on the effective date of this article,
- 10 is injecting gas into or storing gas in a storage reservoir
- 11 which is not at such date under or within three thousand
- 12 linear feet, but is less than ten thousand linear feet from
- 13 an operating coal mine which is operating in a coal seam
- 14 that extends over the storage reservoir or the reservoir
- 15 protective area, shall file such map and data within such
- 16 time in excess of sixty days as the department may fix.

- 17 Any person who, after the effective date of this article,
- 18 proposes to inject or store gas in a storage reservoir located
- 19 as above shall file the required map and data with the de-
- 20 partment not less than six months prior to the starting of
- 21 actual injection or storage.

- 22 The map provided for herein shall be prepared by a
- 23 competent engineer or geologist. It shall show the stratum

24 or strata in which the existing or proposed storage reservoir
25 is or is to be located, the geographic location of the outside
26 boundaries of the said storage reservoir and the reservoir
27 protective area, the location of all known oil or gas wells
28 which have been drilled into or through the storage stratum
29 within the reservoir or within three thousand linear feet
30 thereof, indicating which of these wells have been, or are
31 to be cleaned out and plugged or reconditioned for storage
32 and also indicating the proposed location of all additional
33 wells which are to be drilled within the storage reservoir or
34 within three thousand linear feet thereof.

35 The following information, if available, shall be furnished
36 for all known oil or gas wells which have been drilled into
37 or through the storage stratum within the storage reservoir
38 or within three thousand linear feet thereof; name of the
39 operator, date drilled, total depth, depth of production if the
40 well was productive of oil or gas, the initial rock pressure
41 and volume, the depths at which all coal seams were en-
42 countered and a copy of the driller's log or other similar
43 information. At the time of the filing of the aforesaid maps
44 and data such person shall file a detailed statement of what
45 efforts he has made to determine, (1) that the wells shown
46 on said map are accurately located thereon, and (2) that to
47 the best of his knowledge they are all the oil or gas wells
48 which have ever been drilled into or below the storage
49 stratum within the proposed storage reservoir or within the
50 reservoir protective area. This statement shall also include
51 information as to whether or not the initial injection is for
52 testing purposes, the maximum pressures at which injection
53 and storage of gas is contemplated, and a detailed explanation
54 of the methods to be used or which theretofore have been
55 used in drilling, cleaning out, reconditioning or plugging
56 wells in the storage reservoir or within the reservoir pro-
57 tective area. The map and data required to be filed hereunder
58 shall be amended or supplemented semiannually in case any
59 material changes have occurred: *Provided*, That the depart-
60 ment may require a storage operator to amend or supplement
61 such map or data at more frequent intervals if material changes
62 have occurred justifying such earlier filing.

63 At the time of the filing of the above maps and data,
64 and the filing of amended or supplemental maps or data, the
65 department shall give written notice of said filing to all
66 persons who may be affected under the provisions of this
67 subsection by the storage reservoir described in such maps or
68 data. Such notices shall contain a description of the bound-
69 daries of such storage reservoir. When a person operating
70 a coal mine or owning an interest in coal properties which
71 are or may be affected by the storage reservoir, requests
72 in writing a copy of any map or data filed with the department
73 such copy shall be furnished by the storage operator.

74 (b) Any person who, on the effective date of this article,
75 is injecting gas into or storing gas in any other storage
76 reservoir in this state not subject to subsection (a) of this
77 section shall, on or before the first day of July, one thousand
78 nine hundred eighty-three, file with the department a map
79 in the same detail as the map required for a storage reservoir
80 subject to subsection (a) of this section; and, if the initial
81 injection of gas into the storage reservoir by such person
82 or any predecessor occurred after the thirty-first day of
83 December, one thousand nine hundred seventy, data in the
84 same detail as the data required for a storage reservoir shall
85 be filed subject to subsection (a) of this section: *Provided,*
86 That in the case of a storage reservoir the operation of which
87 has been certificated by the federal power commission or
88 the federal energy regulatory commission under section seven
89 of the federal Natural Gas Act, the person may, in lieu of
90 the data, submit copies of the application and all amendments
91 and supplements of record in the federal docket, together with
92 the certificate of public convenience and necessity and any
93 amendments thereto.

94 Any person who, after the effective date of this article,
95 proposes to inject or store gas in any other storage reservoir
96 in this state not subject to subsection (a) of this section shall
97 file with the department a map and data in the same detail
98 as the map and data required for a storage reservoir subject
99 to subsection (a) of this section not less than six months prior
100 to the starting of actual injection or storage: *Provided,* That in
101 the case of a storage reservoir the operation of which will be re-

102 quired to be certificated by the federal energy regulatory com-
103 mission, the person may, in lieu of the data, submit copies of
104 the application and all amendments and supplementals filed in
105 the federal docket, together with the certificate of public con-
106 venience and necessity and any amendments thereto, within
107 twenty days after the same have been filed by such person or
108 issued by the federal energy regulatory commission.

109 At the time of the filing of the above maps and data or
110 documents in lieu of data and filing of amended or supple-
111 mental maps or data or documents in lieu of data, or upon
112 receipt of an application filed with the federal energy regul-
113 tory commission for a new storage reservoir, the department
114 shall give notice of said filing by a Class II legal advertisement
115 in accordance with the provisions of article three, chapter
116 fifty-nine of this code, the publication area for which shall
117 be the county or counties in which the storage reservoir is
118 located. Such legal advertisements shall contain a description
119 of the boundaries of such storage reservoir. The storage
120 operator shall pay for the legal advertisement upon receipt
121 of the invoice therefor from the department. When any
122 person owning an interest in land which is or may be affected
123 by the storage reservoir requests in writing a copy of any
124 map or data or documents in lieu of data filed with the de-
125 partment, such copy shall be furnished by the storage operator.

126 (c) The department shall also intervene in the federal
127 docket, and participate in the proceedings for the purpose
128 of assuring that the certificate of public convenience and
129 necessity issued by the federal energy regulatory commission
130 does not authorize operations or practices in conflict with
131 the provisions of this article. The department may cooperate
132 with the public service commission if the commission also
133 intervenes. The attorney general is hereby directed to provide
134 legal representation to the department to achieve the purposes
135 of this subsection.

136 (d) For all purposes of this article, the outside boundaries
137 of a storage reservoir shall be defined by the location of those
138 wells around the periphery of the storage reservoir which had
139 no gas production when drilled in said storage stratum:
140 *Provided*, That the boundaries as thus defined shall be

141 originally fixed or subsequently changed where, based upon
142 the number and nature of such wells, upon the geological and
143 production knowledge of the storage stratum, its character,
144 permeability, and distribution, and operating experience, it is
145 determined in a conference or hearing under section ten of
146 this article that modification should be made.

CHAPTER 155

(S. B. 183—By Mr. Tonkovich and Mr. Boettner)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one-a, one-d, two and nine, article four, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section twenty-two, all relating to oil and gas wells; creation of and powers and duties of the office of oil and gas and administration thereof; increasing the fee for natural gas policy act certifications; providing permit application fees and exception; providing for appointment of oil and gas inspectors and supervising inspector; providing for the qualifications, minimum salaries, expenses reimbursable and removal of appointed inspectors and supervising inspector; raising the bond for a permit to drill, fracture or stimulate an oil or gas well and the blanket bond to drill, fracture or stimulate a number of such wells; increasing the required cash deposit to be deposited with the administrator to permit release of the bond; raising the bond requirement for plugging or abandoning a well or plugging or abandoning a number of wells; providing for reorganization of the office of oil and gas for proper and effective administration and to enforce this article and requiring the submission of reports of compliance with such reorganization requirements and time therefor.

Be it enacted by the Legislature of West Virginia:

That sections one-a, one-d, two and nine, article four, chapter twenty-two of the code of West Virginia, one thousand nine

hundred thirty-one, as amended, be amended and reenacted; and that said article four be further amended by adding thereto a new section, designated section twenty-two, all to read as follows:

ARTICLE 4. OIL AND GAS WELLS.

§22-4-1a. Office of oil and gas—Purposes; rules; administration; appointments; powers and duties; public records.

§22-4-1d. Oil and gas inspectors; eligibility for appointment; qualifications; salary; expenses; removal.

§22-4-2. Plats prerequisite to drilling or fracturing wells; preparation and contents; notice and information furnished to coal operators, owners or lessees; issuance of permits; performance bonds or securities in lieu thereof; bond forfeiture.

§22-4-9. Plugging, abandonment and reclamation of well; notice of intention; performance bonds or securities in lieu thereof; affidavit showing time and manner.

§22-4-22. Reorganization; report required.

§22-4-1a. Office of oil and gas—Purposes; rules; administration; appointments; powers and duties; public records.

1 (a) There is hereby created, under the jurisdiction of the
2 director of the department of mines, an office of oil and gas
3 which shall have as its purpose the supervision of the
4 execution and enforcement of matters related to oil and gas
5 set out in this article and in articles five and seven of this
6 chapter.

7 (b) The office of oil and gas is authorized to enact rules
8 necessary to effectuate the above stated purposes.

9 (c) There shall be an employee of the office of oil and gas
10 whose title shall be "administrator of the office of oil and
11 gas" who shall be appointed by the director of the
12 department of mines to serve at the will and pleasure of the
13 director and whose salary shall be set by the director. The
14 administrator shall have full charge of the oil and gas
15 matters set out in this article and in articles five and seven
16 of this chapter, subject always to the direct supervision and
17 control of the director of the department of mines. As such
18 the administrator shall have the power and duty to:

19 (1) Supervise and direct the activities of the office of oil
20 and gas and see that the purposes set forth in subsections (a)
21 and (b) of this section are carried out;

22 (2) Employ a supervising oil and gas inspector and oil
23 and gas inspectors upon approval by the director;

- 24 (3) Supervise and direct such oil and gas inspectors and
25 supervising inspector in the performance of their duties;
- 26 (4) Suspend for good cause any oil and gas inspector or
27 supervising inspector without compensation for a period
28 not exceeding thirty days in any calendar year;
- 29 (5) Prepare report forms to be used by oil and gas
30 inspectors or the supervising inspector in making their
31 findings, orders and notices, upon inspections made in
32 accordance with this chapter;
- 33 (6) Employ a hearing officer and such clerks,
34 stenographers and other employees, as may be necessary to
35 carry out his duties and the purposes of the office of oil and
36 gas, and fix their compensation;
- 37 (7) Hear and determine applications made by owners,
38 well operators, and coal operators for the annulment or
39 revision of orders made by oil and gas inspectors or the
40 supervising inspector, and to make inspections, in
41 accordance with the provisions of this article and articles
42 five and seven of this chapter;
- 43 (8) Cause a properly indexed permanent and public
44 record to be kept of all inspections made by himself or by oil
45 and gas inspectors or the supervising inspector;
- 46 (9) Make annually a full and complete written report to
47 the director of the department of mines in such form and
48 detail as the director may from time to time request, so that
49 the director can complete the preparation of the director's
50 annual report to the governor of the state;
- 51 (10) Conduct such research and studies as the director
52 shall deem necessary to aid in protecting the health and
53 safety of persons employed within or at potential or existing
54 oil or gas production fields within this state, to improve
55 drilling and production methods and to provide for the
56 more efficient protection and preservation of oil and gas-
57 bearing rock strata and property used in connection
58 therewith;
- 59 (11) Perform any and all acts necessary to carry out and
60 implement the state requirements established by 92
61 Statutes at Large 3352, et seq., the "Natural Gas Policy Act
62 of 1978," which are to be performed by a designated state

63 jurisdictional agency regarding determinations that wells
64 within the state qualify for a maximum lawful price under
65 certain categories of natural gas as set forth by the
66 provisions of the said "Natural Gas 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 to
69 receive a maximum lawful price under the provisions of the
70 "Natural Gas Policy Act of 1978" is sought from the
71 administrator; 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 for
74 each permit application filed after the effective date of this
75 subdivision: *Provided*, That no permit application fee shall
76 be required when an application is submitted solely for
77 plugging or replugging of a well. All application fees
78 required hereunder shall be in addition to any other fees
79 required by the provisions of this article;

80 (14) Perform all other duties which are expressly
81 imposed upon him by the provisions of this chapter, as well
82 as duties assigned to him by the director of the department
83 of mines.

84 (d) All records of the department shall be open to the
85 public.

**§22-4-1d. Oil and gas inspectors; eligibility for appointment;
qualifications; salary; expenses; removal.**

1 (a) No person is eligible for appointment as an oil and
2 gas inspector or supervising inspector unless at the time of
3 his probationary appointment he (1) is a citizen of West
4 Virginia, in good health and of good character, reputation
5 and temperate habits; (2) has had at least ten years'
6 practical experience in the oil and gas industry, at least five
7 years of which, immediately preceding his original ap-
8 pointment, shall have been in the oil and gas industry in
9 this state: *Provided*, That a diploma in geology or in mining
10 or petroleum engineering shall be considered the equivalent
11 of five years' practical experience; and (3) has good
12 theoretical and practical knowledge of oil and gas drilling
13 and production methods, practices and techniques, sound
14 safety practices and applicable mining laws.

15 (b) In order to qualify for appointment as an oil and gas
16 inspector or supervising inspector, an eligible applicant
17 shall submit to a written and oral examination by the oil
18 and gas inspectors' examining board and shall furnish such
19 evidence of good health, character and other facts
20 establishing eligibility as such board may require. If such
21 board finds after investigation and examination that an
22 applicant (1) is eligible for appointment and (2) has passed
23 all written and oral examinations, the board shall add such
24 applicant's name and grade to the register of qualified
25 eligible candidates and certify its action to the
26 administrator. No candidate's name may remain on the
27 register for more than three years without requalifying.

28 (c) The salary of the supervising inspector shall be not
29 less than twenty-five thousand dollars per annum. Salaries
30 of inspectors shall be not less than twenty thousand dollars
31 per annum. The supervising inspector and inspectors shall
32 receive mileage expense reimbursement at the rate
33 established by rule of the commissioner of the department
34 of finance and administration for in-state travel of public
35 employees. Within the limits provided by law, the salary of
36 each inspector and of the supervising inspector shall be
37 fixed by the administrator, subject to the approval of the
38 director of the department of mines and oil and gas
39 inspectors' examining board. In fixing salaries of the oil and
40 gas inspectors and of the supervising inspector, the
41 administrator shall consider ability, performance of duty
42 and experience. No reimbursement for traveling expenses
43 may be made except upon an itemized account of such
44 expenses submitted by the inspector or supervising
45 inspector, as the case may be, who shall verify, upon oath,
46 that such expenses were actually incurred in the discharge
47 of his official duties.

48 (d) An inspector or the supervising inspector, after
49 having received a permanent appointment, shall be
50 removed from office only for physical or mental
51 impairment, incompetency, neglect of duty, drunkenness,
52 malfeasance in office, or other good cause.

53 Proceedings for the removal of an oil and gas inspector or
54 the supervising inspector may be initiated by the
55 administrator or the director of the department of mines

56 whenever either has reasonable grounds to believe and does
57 believe that adequate cause exists warranting removal.
58 Such a proceeding shall be initiated by a verified petition,
59 filed with the oil and gas inspectors' examining board by
60 the administrator or the director, setting forth with
61 particularity the facts alleged. Not less than twenty
62 reputable citizens engaged in oil and gas drilling and
63 production operations in the state may petition the
64 administrator or the director of the department of mines for
65 the removal of an inspector or the supervising inspector. If
66 such petition is verified by at least one of the petitioners,
67 based on actual knowledge of the affiant, and alleges facts
68 which, if true, warrant the removal of the inspector or
69 supervising inspector, the administrator or the director of
70 the department of mines shall cause an investigation of the
71 facts to be made. If, after such investigation, the
72 administrator or the director finds that there is substantial
73 evidence which, if true, warrants removal of the inspector
74 or supervising inspector, he shall file a petition with the oil
75 and gas inspectors' examining board requesting removal of
76 the inspector or supervising inspector.

77 On receipt of a petition by the administrator or by the
78 director of the department of mines seeking removal of an
79 inspector or the supervising inspector, the oil and gas
80 inspectors' examining board shall promptly notify the
81 inspector or supervising inspector, as the case may be, to
82 appear before it at a time and place designated in said
83 notice, which time shall be not less than fifteen days nor
84 more than thirty days thereafter. There shall be attached to
85 the copy of the notice served upon the inspector or
86 supervising inspector a copy of the petition filed with such
87 board.

88 At the time and place designated in said notice, the oil and
89 gas inspectors' examining board shall hear all evidence
90 offered in support of the petition and on behalf of the
91 inspector or supervising inspector. Each witness shall be
92 sworn and a transcript shall be made of all evidence taken
93 and proceedings had at any such hearing. No continuance
94 may be granted except for good cause shown.

95 The chairman of the board, the administrator and the
96 director of the department of mines may administer oaths
97 and subpoena witnesses.

98 An inspector or supervising inspector who willfully
99 refuses or fails to appear before such board, or having
100 appeared, refuses to answer under oath any relevant
101 question on the ground that his testimony or answer might
102 incriminate him, or refuses to accept a grant of immunity
103 from prosecution on account of any relevant matter about
104 which he may be asked to testify at such hearing before such
105 board, forfeits his position.

106 If, after hearing, the oil and gas inspectors' examining
107 board finds that the inspector or supervising inspector
108 should be removed, it shall enter an order to that effect. The
109 decision of the board shall be final and shall not be subject
110 to judicial review.

**§22-4-2. Plats prerequisite to drilling or fracturing wells;
preparation and contents; notice and information
furnished to coal operators, owners or lessees;
issuance of permits; performance bonds or
securities in lieu thereof; bond forfeiture.**

1 Before drilling for oil or gas, or before fracturing or
2 stimulating a well on any tract of land, the well operator
3 shall have a plat prepared by a licensed land surveyor or
4 registered engineer showing the district and county in
5 which the tract of land is located, the name and acreage of
6 the same, the names of the owners of adjacent tracts, the
7 proposed or actual location of the well determined by
8 survey, the courses and distances of such location from two
9 permanent points or landmarks on said tract and the
10 number to be given the well and the date of drilling
11 completion of a well when it is proposed that such well be
12 fractured and shall forward by registered or certified mail a
13 copy of the plat to the department of mines. In the event the
14 tract of land on which the said well proposed to be drilled or
15 fractured is located is known to be underlaid with one or
16 more coal seams, copies of the plat shall be forwarded by
17 registered or certified mail to each and every coal operator
18 operating said coal seams beneath said tract of land, who
19 has mapped the same and filed his maps with the
20 department in accordance with article two of this chapter,
21 and the coal seam owner of record and lessee of record, if
22 any, if said owner or lessee has recorded the declaration
23 provided in section twenty of this article, and if said owner
24 or lessee is not yet operating said coal seams beneath said

25 tract of land. With each of such plats there shall be enclosed
26 a notice (form for which shall be furnished on request by the
27 department of mines) addressed to the department of mines
28 and to each such coal operator, owner and lessee, if any, at
29 their respective addresses, informing them that such plat
30 and notice are being mailed to them respectively by
31 registered or certified mail, pursuant to the requirements of
32 this article. If no objections are made, or are found by the
33 department, to such proposed location or proposed
34 fracturing within fifteen days from receipt of such plat and
35 notice by the department of mines, the same shall be filed
36 and become a permanent record of such location or
37 fracturing subject to inspection at any time by any
38 interested person, and the department may forthwith issue
39 to the well operator a permit reciting the filing of such plat,
40 that no objections have been made by the coal operators,
41 owners and lessees, if any, or found thereto by the
42 department, and authorizing the well operator to drill at
43 such location, or to fracture the well. Unless the department
44 has objections to such proposed location or proposed
45 fracturing or stimulating, such permit may be issued prior
46 to the expiration of such fifteen-day period upon the
47 obtaining by the well operator of the consent in writing of
48 the coal operator or operators, owners and lessees, if any, to
49 whom copies of the plat and notice shall have been mailed
50 as herein required, and upon presentation of such written
51 consent to the department. The notice above provided for
52 may be given to the coal operator by delivering or mailing it
53 by registered or certified mail as above to any agent or
54 superintendent in actual charge of mines.

55 A permit to drill, or to fracture or stimulate an oil or gas
56 well, shall not be issued unless the application therefor is
57 accompanied by a bond of the operator in the sum of ten
58 thousand dollars, payable to the state of West Virginia, with
59 a corporate bonding or surety company authorized to do
60 business in this state as surety thereon, conditioned on full
61 compliance with all laws, rules and regulations relating to
62 the drilling, redrilling, deepening, casing, plugging,
63 abandonment and reclamation of wells and for furnishing
64 such reports and information as may be required by the
65 department: *Provided*, That when such operator makes or
66 has made application for permits to drill a number of wells

67 or fracture or stimulate a well or wells the operator may in
68 lieu of furnishing a separate bond furnish a blanket bond in
69 the sum of fifty thousand dollars, payable to the state of
70 West Virginia, with a corporate bonding or surety company
71 authorized to do business in this state as surety thereon, and
72 conditioned as aforesaid: *Provided, however,* That in lieu of
73 corporate surety on a separate or blanket bond, as the case
74 may be, the operator may elect to deposit with the
75 administrator cash or the following collateral securities or
76 any combination thereof: (1) Bonds of the United States or
77 agency thereof, or those guaranteed by, or for which the
78 credit of the United States or agency therefor is pledged for
79 the payment of the principal and interest thereof; (2) direct
80 general obligation bonds of this state, or any other state, or
81 territory of the United States, or the District of Columbia,
82 unconditionally guaranteed as to the principal and interest
83 by such other state or territory of the United States, or the
84 District of Columbia if such other state, territory, or the
85 District of Columbia has the power to levy taxes for the
86 payment of the principal and interest of such securities, and
87 if at the time of the deposit such other state, territory or the
88 District of Columbia is not in default in the payment of any
89 part of the principal or interest owing by it upon any part of
90 its funded indebtedness; (3) direct general obligation bonds
91 of any county, district, city, town, village, school district or
92 other political subdivision of this state issued pursuant to
93 law and payable from ad valorem taxes levied on all the
94 taxable property located herein, that the total indebtedness
95 after deducting sinking funds and all debts incurred for
96 self-sustaining public works does not exceed five percent of
97 the assessed value of all taxable property therein at the time
98 of the last assessment made before the date of such deposit,
99 and that the issuer has not, within five years prior to the
100 making thereof, been in default for more than ninety days in
101 the payment of any part of the principal or interest on any
102 debt, evidenced by its bonds; (4) revenue bonds issued by
103 this state or any agency of this state when such bonds are
104 payable from revenues or earnings specifically pledged for
105 the payment of principal and interest, and a lawful sinking
106 fund or reserve fund has been established and is being
107 maintained for the payment of such bonds; (5) revenue
108 bonds issued by a municipality in this state for the

109 acquisition, construction, improvement or extension of a
110 waterworks system, or a sewerage system, or a combined
111 waterworks and sewerage system, when such bonds are
112 payable from revenue or earnings specifically pledged for
113 the payment of principal and interest, and a lawful sinking
114 fund or reserve fund has been established and is being
115 maintained for the payment of such bonds; (6) revenue
116 bonds issued by a public service board of a public service
117 district in this state for the acquisition, construction,
118 improvement or extension of any public service properties,
119 or for the reimbursement or payment of the costs and
120 expenses of creating the district, when such bonds are
121 payable from revenue or earnings specifically pledged for
122 the payment of principal and interest, and a lawful sinking
123 fund or reserve fund has been established and is being
124 maintained for the payment of such bonds; (7) revenue
125 bonds issued by a board of trustees of a sanitary district in
126 this state for the corporate purposes of such district, when
127 such bonds are payable from revenue or earnings
128 specifically pledged for the payment of principal and
129 interest, and a lawful sinking fund or reserve fund has been
130 established and is being maintained for the payment of such
131 bonds; and (8) bonds issued by a federal land bank or home
132 owners' loan corporation. The cash deposit or market value,
133 or both, of the collateral securities shall be equal to or
134 greater than the penalty of the separate or blanket bond, as
135 the case may be. Upon receipt of any such deposit or cash or
136 collateral securities, the administrator shall immediately
137 deliver the same to the treasurer of the state of West
138 Virginia. The treasurer shall determine whether any such
139 securities satisfy the requirements of this section. If the
140 securities are approved they shall be accepted by the
141 treasurer. If the securities are not approved, they shall be
142 rejected and returned to the operator and no permit shall be
143 issued until a corporate surety bond is filed or cash or
144 proper collateral securities are filed in lieu of such surety.
145 The treasurer shall hold any cash or securities in the name
146 of the state in trust for the purposes for which the deposit
147 was made. The operator shall be entitled to all interest and
148 income earned on the collateral securities filed by such
149 operator so long as the operator is in full compliance with
150 all laws, rules and regulations relating to the drilling,
151 redrilling, deepening, casing, plugging, abandonment and

152 reclamation of wells and for furnishing such reports and
153 information as may be required by the department. The
154 operator making the deposit shall be entitled from time to
155 time to receive from the treasurer, upon the written order of
156 the administrator, the whole or any portion of such
157 securities upon depositing with the treasurer in lieu thereof
158 cash equal to or greater than the penalty of the bond, or
159 other approved securities of the classes herein specified
160 having a market value equal to or greater than the penalty
161 of the bond, or a corporate surety bond.

162 When an operator has furnished a separate bond from a
163 corporate bonding or surety company to drill, fracture or
164 stimulate an oil or gas well and the well produces oil or gas,
165 or both, its operator may deposit with the administrator
166 cash from the sale of the oil or gas, or both, until the total
167 deposited is ten thousand dollars. When the sum of the cash
168 deposited is ten thousand dollars, the separate bond for the
169 well shall be released by the department. Upon receipt of
170 such cash, the administrator shall immediately deliver the
171 same to the treasurer of the state of West Virginia. The
172 treasurer shall hold such cash in the name of the state in
173 trust for the purpose for which the bond was furnished and
174 the deposit was made. The operator shall be entitled to all
175 interest and income which may be earned on the cash
176 deposited so long as the operator is in full compliance with
177 all laws, rules and regulations relating to the drilling,
178 redrilling, deepening, casing, plugging, abandonment and
179 reclamation of the well for which the cash was deposited
180 and so long as he has furnished all reports and information
181 as may be required by the department. If the cash realized
182 from the sale of oil or gas, or both, from the well is not
183 sufficient for the operator to deposit with the administrator
184 the sum of ten thousand dollars within one year of the day
185 the well started producing, the corporate or surety company
186 which issued the bond on the well may notify the operator
187 and the department of its intent to terminate its liability
188 under its bond. The operator then shall have thirty days to
189 furnish a new bond from a corporate bonding or surety
190 company or collateral securities, as provided in the next
191 preceding paragraph of this section, with the department. If
192 a new bond or collateral securities are furnished by the
193 operator, the liability of the corporate bonding or surety

194 company under the original bond shall terminate as to any
195 acts and operations of the operator occurring after the
196 effective date of the new bond or the date the collateral
197 securities are accepted by the treasurer of the state of West
198 Virginia. If the operator does not furnish a new bond or
199 collateral securities, as provided in the next preceding
200 paragraph of this section, with the department, he shall
201 immediately plug, fill and reclaim the well in accordance
202 with all of the provisions of law, rules and regulations
203 applicable thereto. In such case, the corporate or surety
204 company which issued the original bond shall be liable for
205 any plugging, filling or reclamation not performed in
206 accordance with such laws, rules and regulations.

207 Any such bond shall remain in force until released by the
208 department and the department shall release the same
209 when it is satisfied the conditions thereof have been fully
210 performed. Upon the release of any such bond, any cash or
211 collateral securities deposited shall be returned by the
212 administrator to the operator who deposited same.

213 If any of the requirements of this article or rules and
214 regulations promulgated pursuant thereto or the orders of
215 the administrator have not been complied with within the
216 time limit set by the violation notice as defined in sections
217 one-g, one-h and one-i of this article, the performance bond
218 shall then be forfeited.

219 When any bond is forfeited pursuant to the provisions of
220 this article or rules and regulations promulgated pursuant
221 thereto the administrator shall give notice to the attorney
222 general who shall collect the forfeiture without delay.

223 All forfeitures shall be deposited in the treasury of the
224 state of West Virginia in the special reclamation fund as
225 defined in section twelve-a of this article.

**§22-4-9. Plugging, abandonment and reclamation of well;
notice of intention; performance bonds or securities
in lieu thereof; affidavit showing time and manner.**

1 All dry or abandoned wells or wells presumed to be
2 abandoned under the provisions of section seven of this
3 article shall be plugged and reclaimed in accordance with
4 this section and the other provisions of this article and in

5 accordance with the rules and regulations promulgated by
6 the administrator.

7 Prior to the commencement of plugging operations and
8 the abandonment of any well, the well operator shall either
9 (a) notify, by registered or certified mail, the department of
10 mines and the coal operator operating coal seams, the coal
11 seam owner of record or lessee of record, if any, to whom
12 notices are required to be given by section two of this
13 article, and the coal operators to whom notices are required
14 to be given by section two-a of this article, of its intention to
15 plug and abandon any such well (using such form of notice
16 as the department may provide), giving the number of the
17 well and its location and fixing the time at which the work
18 of plugging and filling will be commenced, which time shall
19 be not less than five days after the day on which such notice
20 so mailed is received or in due course should be received by
21 the department of mines, in order that a representative or
22 representatives of the department and such coal operator,
23 owner or lessee, if any, may be present at the plugging and
24 filling of the well: *Provided*, That whether such
25 representatives appear or do not appear, the well operator
26 may proceed at the time fixed to plug and fill the well in the
27 manner hereinafter described, or (b) first obtain the written
28 approval of the department of mines and such coal
29 operator, owner or lessee, if any, or (c) in the event the well
30 to be plugged and abandoned is one on which drilling or
31 reworking operations have been continuously progressing
32 pursuant to authorization granted by the department, first
33 obtain the verbal permission of the administrator or his
34 designated representative to plug and abandon such well,
35 except that the well operator shall, within a reasonable
36 period not to exceed five days after the commencement of
37 such plugging operations, give the written notices required
38 by subdivision (a) above.

39 No well may be plugged or abandoned unless prior to the
40 commencement of plugging operations and the
41 abandonment of any well the department is furnished a
42 bond of the operator in the sum of ten thousand dollars,
43 payable to the state of West Virginia, with a corporate
44 bonding or surety company authorized to do business in this
45 state as surety thereon, conditioned on full compliance with
46 all laws, rules and regulations relating to the casing,

47 plugging, abandonment and reclamation of wells and for
48 furnishing such reports and information as may be required
49 by the department. When a number of wells are involved,
50 the operator may in lieu of furnishing a separate bond
51 furnish a blanket bond in the sum of fifty thousand dollars,
52 payable to the state of West Virginia, with a corporate
53 bonding or surety company authorized to do business in this
54 state as surety thereon, and conditioned as aforesaid. In lieu
55 of corporate surety on a separate or blanket bond, as the
56 case may be, the operator may elect to deposit with the
57 administrator cash or collateral securities as specified in
58 section two of this article. All of the provisions of section
59 two dealing with cash or collateral securities in lieu of
60 corporate surety shall be fully applicable hereto except for
61 the condition of the bond with respect to which the operator
62 must be in full compliance in order to be entitled to the
63 interest and income earned on such securities. The operator
64 shall be entitled to such interest and income under this
65 section so long as the operator is in full compliance with all
66 laws, rules and regulations relating to the casing, plugging,
67 abandonment and reclamation of wells and for furnishing
68 such reports and information as may be required by the
69 department. Any such bond shall remain in force until
70 released by the department and the department shall
71 release the same when it is satisfied the conditions thereof
72 have been fully performed. Notwithstanding the foregoing
73 provisions, any operator who, in accordance with section
74 two of this article, has furnished a separate bond, which has
75 not been released by the department, for the drilling,
76 converting or drilling for the introduction of liquids, for the
77 disposal of sewage, industrial waste or other waste or the
78 effluent therefrom, or introducing pressure, whether liquid
79 or gas, or introducing liquid for the purposes provided for in
80 section ten-a of this article or fracturing of the well that is
81 now proposed to be plugged and abandoned, or who, in
82 accordance with the provisions of said section two of this
83 article, has furnished a blanket bond which has not been
84 released by the department, shall not be required by this
85 section to furnish any other bond. When the plugging,
86 filling and reclamation of a well have been completed, an
87 affidavit, in triplicate, shall be made (on a form to be
88 furnished by the department) by two experienced persons
89 who participated in the work, the administrator or his

90 designated representative, in which affidavit shall be set
91 forth the time and manner in which the well was plugged
92 and filled and the land reclaimed. One copy of this affidavit
93 shall be retained by the well operator, another (or true
94 copies of same) shall be mailed to the coal operator or
95 operators, if any, and the third to the department of mines.

§22-4-22. Reorganization; report required.

1 (a) The Legislature finds that the office of the
2 administrator is, as of the first day of February, one
3 thousand nine hundred eighty-three, inadequately
4 organized, staffed, equipped and housed to perform the
5 functions presently assigned to it and likely to be assigned
6 to it.

7 (b) The director shall assure that the administrator
8 effectively implements the provisions of this section.

9 (c) Within the appropriations and other funds lawfully
10 available to the office, the administrator, under the
11 supervision, direction and authority of the director, shall (1)
12 promptly prepare a plan for the reorganization of the office
13 that will ensure the efficient, fair, modern, prompt and
14 effective administration and enforcement of the statutes
15 now or hereafter committed to the office for execution,
16 including adequate provision for personnel, equipment,
17 training and working space, (2) consult with the civil
18 service commission to design and implement a plan for the
19 retention, attraction, training and appropriate
20 compensation of qualified inspectors, including, if
21 appropriate, separate classifications or steps for inspectors
22 whose training, efficiency and experience may justify
23 increased compensation, (3) design and implement a plan to
24 reduce and ultimately eliminate any existing backlog of
25 work in the approval of filings under the "Natural Gas
26 Policy Act of 1978," the timely and effective processing of
27 permits, applications, the conduct of inspections and
28 enforcement activities, and all other duties assigned to the
29 office by law or developed by departmental rule, (4) design
30 and implement a plan for optimum utilization of personnel,
31 increased use of modern communication and other
32 administration and enforcement techniques, sufficient to
33 assure maximum efficiency of the office within the means
34 provided by appropriations or other funds, and (5) file with

35 the clerk of each house of the Legislature, for immediate
36 presentation to each house, a report of full compliance with
37 this section and any further recommendations of the
38 director or the administrator to assist in the proper
39 operation of the office, which report shall be approved by
40 the director and so filed on the first day of the regular
41 session of the Legislature to be held in the year one
42 thousand nine hundred eighty-four.

CHAPTER 156

(Com. Sub. for S. B. 450—By Mr. Nelson and Mr. Jones)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article four, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one-p, relating to oil and gas wells; transmitting copies of permits to the assessor of the county in which the well is located.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. OIL AND GAS WELLS.

§22-4-1p. Copy of permits to county assessor.

1 Upon the issuance of any permit pursuant to the pro-
2 visions of this article, the deputy director shall transmit
3 a copy of such permit to the office of the assessor for the
4 county in which the well is located.

CHAPTER 157

(Com. Sub. for S. B. 558—By Mr. Nelson)

[Passed March 3, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article eleven-c, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section five-a, relating to petroleum products franchise agreements; permitting franchise dealer to designate certain successors to his interests in the franchise under certain conditions; defining certain terms; establishing the conditions under which such succession may occur; and permitting change of the designated successor.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11C. WEST VIRGINIA PETROLEUM PRODUCTS FRANCHISE ACT.

§47-11C-2. Definitions.

§47-11C-5a. Motor fuel franchise agreements.

§47-11C-2. Definitions.

- 1 As used in this article:
- 2 (1) "Adult" means any person who is not a minor;
- 3 (2) "Dealer" means any person, other than an agent or
- 4 employee of a producer, who is engaged in the retail sale
- 5 of petroleum products under a franchise agreement as
- 6 defined by this section;
- 7 (3) "Designated family member" means the adult
- 8 spouse or the adult child or stepchild of the dealer or any
- 9 other adult person related to the dealer by either the half
- 10 or whole blood or the adult spouse of the other adult

11 person, who has experience in the service station business
12 and who, in the case of the dealer's death or retirement,
13 is designated in the franchise agreement for a service
14 station as the successor to the dealer's interest under the
15 agreement and who shall become the dealer upon the
16 completion of the succession;

17 (4) "Franchise" or "franchise agreement" means a
18 written agreement between a producer and a dealer un-
19 der which the dealer is granted the right to use a trade-
20 mark, trade name, service mark or other identifying
21 symbol or name owned by the producer, or a written
22 agreement between a producer and a dealer by which the
23 dealer is granted the right to occupy premises owned,
24 leased or controlled by the producer, for the purpose of
25 engaging in the retail sale of petroleum products of the
26 producer;

27 (5) "Good cause" means failure of the dealer to make
28 good faith effort to comply with any material require-
29 ment of a franchise agreement;

30 (6) "Producer" means every person who produces,
31 refines, manufactures, processes or otherwise alters any
32 motor fuel and other petroleum products for sale or use
33 in this state; and

34 (7) "Service station" means any filling station, store,
35 garage or other place of business in this state for the
36 retail sale of motor fuel and other petroleum products.

§47-11C-5a. Motor fuel franchise agreements.

1 (a) Effective the first day of July, one thousand nine
2 hundred eighty-three, every franchise agreement entered
3 into between a producer and dealer shall contain provi-
4 sions which comply with this section.

5 (b) A dealer shall have the right, effective upon his
6 death or retirement, to have his interests under a fran-
7 chise agreement assigned to a designated family member
8 who has been approved by the producer in accordance
9 with the producer's reasonable standards for personal
10 and financial condition unless the producer shows that
11 the designated family member no longer meets the rea-

12 sonable standards set at the time of the previous approv-
13 al. All franchise agreements shall contain a provision
14 identifying the designated family member who is entitled
15 to succeed to the interests of the dealer under the agree-
16 ment upon his death or retirement. The foregoing shall
17 not prohibit a producer from requiring as a condition to
18 honoring the succession that the designated family mem-
19 ber accept a trial franchise within thirty days of the
20 dealer's death or retirement and that the designated fam-
21 ily member attend a training program offered by the
22 producer. As used herein, the term "trial franchise" shall
23 have the same meaning as the same is defined in the
24 federal petroleum marketing practices act (15 USC, para-
25 graph 2801, et seq.).

26 (c) A dealer and producer may mutually agree to
27 change the designated family member entitled to succeed
28 to the dealer's interests under a franchise agreement. The
29 designated family member shall provide, upon the re-
30 quest of the producer, personal and financial data that is
31 reasonably necessary to determine whether the succession
32 should be honored. The producer shall not be obligated
33 to accept a designated family member under this subsec-
34 tion who does not meet the producer's reasonable stan-
35 dards, but any refusal to accept the designated family
36 member as a successor dealer shall be given by the
37 producer in writing to the dealer and shall fairly state
38 the reason therefor.

CHAPTER 158

(S. B. 258—By Mr. Davis)

[Passed March 3, 1983; in effect July 1, 1983. Approved by the Governor.]

AN ACT to amend and reenact sections two, five, six, nine and fourteen, article five, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section three hundred one, article three, chapter sixty-a of said code, all relating to

eliminating requirement that investigators appointed by the board of pharmacy be registered pharmacists; increasing and setting certain fees connected with the operation of the state board of pharmacy; setting certain other fees connected with the manufacture, distribution and dispensing of controlled substances; and criminal penalties.

Be it enacted by the Legislature of West Virginia:

That sections two, five, six, nine and fourteen, article five, chapter thirty of the code West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section three hundred one, article three, chapter sixty-a of said code be amended and reenacted, all to read as follows:

Chapter

30. Professions and Occupations.

60A. Uniform Controlled Substances Act.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 5. PHARMACISTS, ASSISTANT PHARMACIST AND DRUGSTORES.

- §30-5-2. Board of pharmacy; appointment, qualifications and terms of members; powers and duties generally.
- §30-5-5. Qualifications for registration as pharmacist; certificates of registration.
- §30-5-6. Registration of pharmacists from other states.
- §30-5-9. Fees.
- §30-5-14. Pharmacies or drugstores to be registered; permit to operate; fees; registered pharmacist to conduct business.

§30-5-2. Board of pharmacy; appointment, qualifications and terms of members; powers and duties generally.

1 There shall be a state board of pharmacy, known as the
 2 "West Virginia board of pharmacy," which shall consist of
 3 five practicing pharmacists, who shall be appointed by the
 4 governor by and with the advice and consent of the Senate.
 5 Each member of the board, at the time of his appointment,
 6 shall be a citizen and registered pharmacist of this state,
 7 and actively engaged in the practice of pharmacy.

8 The members of the board in office on the date this code
 9 takes effect shall, unless sooner removed, continue to serve
 10 until their respective terms expire and until their successors
 11 have been appointed and have qualified. On or before the
 12 first day of July, one thousand nine hundred thirty-one, and

13 on or before the first day of July of each year thereafter, the
14 governor shall appoint one member to serve for a term of
15 five years, commencing on said first day of July, and any
16 member shall be eligible for reappointment.

17 The board, in addition to the authority, powers and duties
18 granted to the board by this chapter and chapter sixteen of
19 the code, shall have the authority to: (a) Regulate the
20 practice of the profession of pharmacy; (b) regulate the
21 employment of apprentices and interns in pharmacy; (c)
22 appoint, within the limit of appropriations, inspectors who
23 shall be registered pharmacists, and investigators, both
24 intended to act as agents of the board within the provisions
25 of this chapter and chapter sixteen of the code and such
26 rules and regulations as the board shall promulgate; and (d)
27 adopt rules of professional conduct appropriate to the
28 establishment and maintenance of high standards of
29 integrity and dignity in a profession.

**§30-5-5. Qualifications for registration as pharmacist;
certificates of registration.**

1 In order to be registered as a pharmacist within the
2 meaning of this article, a person shall be a citizen of the
3 United States, not less than eighteen years of age, shall
4 present to the board of pharmacy satisfactory evidence that
5 he is a graduate of a recognized school of pharmacy as
6 defined by the board of pharmacy. In addition thereto, he
7 shall have had at least nine months of practical experience
8 in a pharmacy or drugstore under the instruction and
9 supervision of a registered pharmacist and shall pass
10 satisfactorily an examination by or under the direction of
11 the board of pharmacy: *Provided*, That any registered
12 pharmacist who has renewed his registration as such
13 assistant pharmacist for each consecutive year since his
14 original registration with the state board of pharmacy, may
15 upon application to the board of pharmacy, be registered as
16 a pharmacist within the meaning of this article. An
17 applicant for examination shall forward to the secretary a
18 fee of one hundred twenty-five dollars with his application.

19 Every applicant for registration as a pharmacist shall
20 present to the board of pharmacy satisfactory evidence that
21 he is a person of good moral character and not addicted to
22 drunkenness or the use of controlled substances. The board

23 shall issue certificates of registration to all persons who
24 successfully pass the required examination and are
25 otherwise qualified and to all those whose certificates or
26 licenses the board shall accept in lieu of an examination as
27 provided in section six of this article.

§30-5-6. Registration of pharmacists from other states.

1 The board of pharmacy may register and admit to
2 practice as pharmacists in this state, without examination,
3 such persons as have been legally registered or licensed as
4 pharmacists in other states: *Provided*, That the applicant
5 for such registration shall appear personally before the
6 board and shall present satisfactory evidence of
7 qualification equal to that required of applicants for
8 registration in this state, and that he was registered or
9 licensed by examination in such other state, and that the
10 standard of competence required in such other state is not
11 lower than that required in this state: *Provided, however*,
12 That the board is satisfied that such other state accords
13 similar recognition to registered pharmacists of this state.
14 Applicants for registration under this section shall, with
15 their application, forward to the secretary of the board of
16 pharmacy a fee of one hundred twenty-five dollars.

§30-5-9. Fees.

1 The board of pharmacy shall be entitled to charge and
2 collect the following fees, in addition to those provided in
3 article one of this chapter and in sections fourteen and
4 sixteen of this article: For renewing the registration of a
5 pharmacist, thirty dollars; to register an intern pharmacist,
6 ten dollars; and to register a consultant pharmacist, twenty
7 dollars.

§30-5-14. Pharmacies or drugstores to be registered; permit to operate; fees; registered pharmacist to conduct business.

1 The board of pharmacy shall require and provide for the
2 annual registration of every pharmacy or drugstore, as
3 defined, doing business in this state. Any person, firm,
4 corporation or partnership desiring to operate, maintain,
5 open or establish a pharmacy or drugstore, as defined, in
6 this state, shall apply to the board of pharmacy for a permit
7 to do so. The application for such permit or license shall be

8 made on a form prescribed and furnished by the board of
9 pharmacy, which when properly executed, shall indicate
10 the owner, manager, trustee, lessee, receiver or other
11 person or persons desiring such permit, as well as the
12 location of such pharmacy or drugstore, including street
13 and number, and such other information as the board of
14 pharmacy may require. If it is desired to operate, maintain,
15 open or establish more than one pharmacy or drugstore,
16 separate application shall be made and separate permits or
17 licenses shall be issued for each. Every initial application
18 for a permit shall be accompanied by the required fee of one
19 hundred fifty dollars. The fee for renewal of such permit or
20 license shall be seventy-five dollars annually. If an
21 application is found satisfactory, the secretary of the board
22 of pharmacy shall issue to the applicant a permit or license
23 for each pharmacy or drugstore for which application is
24 made. Permits or licenses issued under this section shall not
25 be transferable and shall expire on the thirtieth day of June
26 of each calendar year, and if application for renewal of
27 permit or license is not made or a new one granted on or
28 before the first day of August, following, the old permit or
29 license shall lapse and become null and void. Every such
30 place of business so registered shall be in direct charge of a
31 registered pharmacist and operate in compliance with the
32 general provisions governing the practice of pharmacy and
33 the operation of a drugstore or pharmacy.

34 The provisions of this section shall have no application to
35 the sale of patent or proprietary medicines which are not
36 poisonous, deleterious or habit-forming, nor to such ordi-
37 nary drugs in original retail packages when such are not
38 poisonous, deleterious or habit-forming, nor to flavoring
39 extracts or dyestuffs as are usually sold in a country store.

CHAPTER 60A. UNIFORM CONTROLLED SUBSTANCES ACT.

ARTICLE 3. REGULATION OF MANUFACTURE, DISTRIBUTION AND DISPENSING OF CONTROLLED SUBSTANCES.

§60A-3-301. Rules; fees.

1 The state board of pharmacy shall promulgate rules and
2 charge fees relating to the registration and control of the
3 manufacture and distribution of controlled substances

4 within this state, and each department, board or agency of
5 this state which licenses or registers practitioners
6 authorized to dispense any controlled substance shall
7 promulgate rules and charge fees relating to the
8 registration and control of the dispensing of controlled
9 substances within this state by those practitioners licensed
10 or registered by such department, board or agency.

11 The state board of pharmacy or the department, board or
12 agency shall collect the following annual registration fees
13 from persons who manufacture, distribute, dispense or
14 conduct research with controlled substances: For
15 registration of a manufacturer, fifty dollars; for
16 registration of a wholesaler, fifty dollars; for registration of
17 a retailer, fifteen dollars; for registration of a hospital or
18 clinic, fifteen dollars; and for registration of a research
19 institution, five dollars.

CHAPTER 159

(H. B. 1410—By Mr. Ashcraft and Mr. Manchin)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article twenty, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the licensing of physical therapists; and removing the restriction that physical therapists may only treat persons referred to them by a licensed physician or surgeon, dentist, osteopathic physician and surgeon, or chiropodist-podiatrist.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 20. PHYSICAL THERAPISTS.**§30-20-3. License required; exception; firms, associations and corporations engaging in the practice of physical therapy; unauthorized practice of physical therapy.**

1 (a) No person shall engage in, offer to engage in or
2 hold himself out to the public as being engaged in, the
3 practice of physical therapy in this state unless he is a
4 licensed physical therapist: *Provided*, That the foregoing
5 prohibition shall not apply to the activities of a licensed
6 physical therapy assistant performed in accordance with the
7 definitional requirements of a physical therapy assistant as
8 specified in subdivision (1), section two of this article. No
9 person shall use in connection with his name the words "phys-
10 ical therapy technician," "registered physical therapist,"
11 "physical therapist," "licensed physical therapist" or "phys-
12 iotherapist" or use the initials "R.P.T.," "P.T.T.," "P.T." or
13 any other letters, words or insignia which induces or tends
14 to induce the belief that such person is qualified to engage
15 or is engaged in the practice of physical therapy unless he is
16 a licensed physical therapist. No person shall use in connec-
17 tion with his name the words "physical therapy assistant,"
18 "registered physical therapy assistant" or "licensed physical
19 therapy assistant" or use the initials "P.T.A.," "A.P.T." or
20 any other letters, words or insignia which induces or tends to
21 induce the belief that such person is qualified to act or is
22 acting as a physical therapy assistant unless he is a licensed
23 physical therapy assistant. No firm, association or corpor-
24 ation shall, except through a licensee or licensees, render
25 any service or engage in any activity which if rendered
26 or engaged in by any individual would constitute the practice
27 of physical therapy.

28 (b) Notwithstanding the provisions of subsection (a) of
29 this section, any person who practiced physical therapy in
30 this state for five continuous years prior to July one, one
31 thousand nine hundred sixty-three, and who was eligible to
32 qualify for a license under the former provisions of this
33 article by successful completion of a written examination
34 provided by the board and who has not yet successfully
35 completed such examination, may continue to practice physi-

36 cal therapy without a license or temporary permit issued
37 under the provisions of this article, and notwithstanding that
38 such person does not meet the educational requirement speci-
39 fied in subdivision (5), subsection (a), section six of this article,
40 may continue to take such examination: *Provided*, That unless
41 and until such person passes such examination, such person
42 shall not use in connection with his name the words "physical
43 therapy technician," "registered physical therapist," "physical
44 therapist," "licensed physical therapist" or "physiotherapist"
45 or use the initials "R.P.T.," "P.T.T.," "P.T." or any other
46 letters, words or insignia which induces or tends to
47 induce the belief that such person is a licensed physical
48 therapist.

49 (c) No person shall act, nor hold himself out as being
50 able to act, as a physical therapy assistant unless he is a
51 licensed physical therapy assistant.

52 (d) Nothing contained within this article shall prohibit
53 any person licensed in this state under any other article of
54 this code from engaging in the practice for which he is licensed.

55 (e) Nothing contained within this article shall be construed
56 as authorizing a physical therapist, or physical therapy assistant,
57 or any other person to practice medicine, surgery, osteopathy,
58 homeopathy, chiropractics, naturopathy or any other form,
59 branch or method of healing as authorized by the laws of the
60 state of West Virginia.

61 (f) A licensed physical therapy assistant shall not practice
62 physical therapy other than in accordance with the definitional
63 requirements of a physical therapy assistant as specified in
64 subdivision (i), section two of this article.

CHAPTER 160

(Com. Sub. for H. B. 1212—By Mr. Carmichael)

[Passed March 9, 1983; 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 amend-

ed, by adding thereto four new sections, designated sections five-a, five-b, five-c and five-d, relating to prohibiting employers from requiring, requesting or knowingly subjecting any employee or prospective employee to submit to a polygraph, lie detector or other such similar test using mechanical measures of physiological reactions to evaluate truthfulness; providing for exceptions for law-enforcement agencies and military forces of this state and for employers who manufacture, distribute or dispensed drugs; limitations upon the use of test results; providing for the licensing of polygraph examiners; establishing qualifications for polygraph examiners; requiring the commissioner of labor to promulgate rules governing polygraph tests; requiring the commissioner of labor to design and administer a test for licensing of examiners; establishing a licensing fee; providing for a penalty for violation of these sections; and providing for a cause of action and treble damages to an employee or prospective employee.

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 four new sections, designated sections five-a, five-b, five-c and five-d, all to read as follows:

ARTICLE 5. WAGE PAYMENT AND COLLECTION.

§21-5-5a. Definitions.

§21-5-5b. Employer limitations on use of detection of deception devices or instruments; exceptions.

§21-5-5c. License required for polygraph examiners; qualifications; promulgation of rules governing administration of polygraph tests.

§21-5-5d. Penalties; cause of action.

§21-5-5a. Definitions.

1 As used in sections five-b, five-c and five-d of this article,
2 unless the context clearly requires otherwise:

3 (1) "Employer" means any individual, person, corporation,
4 department, board, bureau, agency, commission, division, of-
5 fice, company, firm, partnership, council or committee of the
6 state government; public benefit corporation, public authority
7 or political subdivision of the state, or other business entity,

8 which employs or seeks to employ an individual or individuals.
9 All provisions of sections five-b, five-c and five-d of this
10 article pertaining to employers shall apply in equal force and
11 effect to their agents and representatives.

12 (2) "Employee" means an individual employed by an em-
13 ployer.

14 (3) "Polygraph" means an instrument which records per-
15 manently and simultaneously a subject's cardiovascular and
16 respiratory patterns and galvanic skin response as minimum
17 standards: *Provided*, That such instrument may record other
18 physiological changes pertinent to the detection of deception.

19 (4) "Prospective employee" means an individual seeking or
20 being sought for employment with an employer.

**§21-5-5b. Employer limitations on use of detection of deception
devices or instruments; exceptions.**

1 No employer may require or request either directly or indi-
2 rectly, that any employee or prospective employee of such em-
3 ployer submit to a polygraph, lie detector or other such similar
4 test utilizing mechanical measures of physiological reactions
5 to evaluate truthfulness, and no employer may knowingly al-
6 low the results of any such examination or test administered
7 outside this state to be utilized for the purpose of determining
8 whether to employ a prospective employee or to continue the
9 employment of an employee in this state: *Provided*, That the
10 provisions of this section shall not apply to employees of an
11 employer authorized to manufacture, distribute or dispense
12 the drugs to which article five, chapter thirty applies, exclud-
13 ing ordinary drugs as defined in section twenty-one, article
14 five, chapter thirty: *Provided, however*, That the provisions
15 of this section shall not apply to law-enforcement agencies or
16 to military forces of the state as defined by section one, article
17 one, chapter fifteen of the code: *Provided further*, That the
18 results of any such examination shall be used solely for the
19 purpose of determining whether to employ or to continue to
20 employ any person exempted hereunder and for no other
21 purpose.

§21-5-5c. License required for polygraph examiners; qualifications; promulgation of rules governing administration of polygraph tests.

1 (a) No person, firm or corporation shall administer a
2 polygraph, lie detector or other such similar test utilizing
3 mechanical measures of physiological reactions to evaluate
4 truthfulness to an employee or prospective employee without
5 holding a current valid license to do so as issued by the
6 commissioner of labor. No test shall be administered by a
7 licensed corporation except by an officer or employee thereof
8 who is also licensed.

9 (b) A person is qualified to receive a license as an ex-
10 aminer if he:

11 (1) Is at least eighteen years of age;

12 (2) Is a citizen of the United States;

13 (3) Has not been convicted of a misdemeanor involving
14 moral turpitude or a felony;

15 (4) Has not been released or discharged with other than
16 honorable conditions from any of the armed services of the
17 United States or that of any other nation;

18 (5) Has passed an examination conducted by the commis-
19 sioner of labor or under his supervision, to determine his
20 competency to obtain a license to practice as an examiner;

21 (6) Has satisfactorily completed not less than six months
22 of internship training; and

23 (7) Has met any other qualifications of education or
24 training established by the commissioner of labor in his sole
25 discretion which qualifications are to be at least as stringent
26 as those recommended by the American polygraph association.

27 (c) The commissioner of labor may design and by pro-
28 cedural rule designate and thereafter administer any test
29 he deems appropriate to those persons applying for a license
30 to administer polygraph, lie detector or such similar test to
31 employees or prospective employees. The test designed by
32 the commissioner of labor shall be so designed as to ensure

33 that the applicant is thoroughly familiar with the code of
34 ethics of the American polygraph association and has been
35 trained in accordance with association rules. The test must
36 also include a rigorous examination of the applicant's knowl-
37 edge of and familiarity with all aspects of operating polygraph
38 equipment.

39 (d) The license to give a polygraph, lie detector or similar
40 test to employees or prospective employees shall be issued for
41 a period of one year. It may be reissued from year to year.

42 (e) The commissioner of labor shall charge a fee of one
43 hundred dollars for each issuance or reissuance of a license
44 to give a polygraph, lie detector or similar test to employees
45 or prospective employees. Such fee shall be deposited in the
46 general revenue fund of the state.

47 (f) The commissioner of labor shall promulgate legislative
48 rules pursuant to the provisions of chapter twenty-nine-a,
49 article three governing the administration of polygraph, lie
50 detector or such similar test to employees. Such legislative
51 rules shall include:

52 (1) The type and amount of training or schooling necessary
53 for a person before which he may be licensed to give or
54 interpret such polygraph, lie detector or similar test;

55 (2) Standards of accuracy which shall be met by machines
56 or other devices to be used in polygraph, lie detector or
57 similar tests; and

58 (3) The conditions under which a polygraph, lie detector
59 or such similar test may be given.

§21-5-5d. Penalties; cause of action.

1 (a) It shall be a misdemeanor to administer or interpret a
2 polygraph, lie detector or similar test utilizing mechanical
3 measures of physiological reactions to evaluate truthfulness
4 to an employee or prospective employee without having
5 received a valid and current license to do so as issued by
6 the commissioner of labor or in violation of any rule or
7 regulation promulgated by the commissioner under section
8 five-c of this article. Any person convicted of violating

9 section five-c shall be fined not more than five hundred
10 dollars.

11 (b) Any employer who violates section five-b of this article
12 is guilty of a misdemeanor, and, upon conviction thereof, shall
13 be fined not more than five hundred dollars.

14 (c) An employee or prospective employee has a right to
15 sue an employer or prospective employer for a violation of the
16 provisions of section five-b of this article. If successful, the
17 employee or prospective employee shall recover threefold the
18 damages sustained by him, together with reasonable attorneys'
19 fees, filing fees and reasonable costs of the action. Reasonable
20 costs of the action may include, but shall not be limited to,
21 the expenses of discovery and document reproduction. Dam-
22 ages may include, but shall not be limited to, back pay for
23 the period during which the employee did not work or was
24 denied a job.

CHAPTER 161

(Com. Sub. for H. B. 1269—By Mrs. Theiling and Mr. Givens)

[Passed March 9, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact article fourteen, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to preneed burial contracts; providing for a legislative declaration of policy and intent; providing for the definition of certain terms with respect thereto; requiring all persons selling preneed burial contracts to obtain certificates of authority so to do; the authority of the department of labor with respect thereto; requiring the payment of certain fees and establishing a special account into which such fees are to be paid; providing for the application for certificates of authority and the contents thereof; requiring the annual reports and the annual renewal for the certificates of authority; requiring all agents and employees who sell preneed burial contracts for a certificate holder to be licensed; providing for the disposition of all sums collected by a certificate holder pursuant to a pre-

need burial contract and requiring that a certain portion of such proceeds be held in trust; procedures for the administration of such trusts; requiring the department to promulgate rules and regulations; establishing procedures for the withdrawal of such funds from such trust accounts; permitting the cancellation of such contracts by the purchaser thereof and providing for the return of all funds placed in the trust account pursuant to such canceled contract; providing for the disposition of the income of such contracts; providing for the appointment, qualification and removal of the trustees; requiring such trustees to post bond and establishing the penal sum of such bonds; establishing the type of investments in which trust assets may be placed; allowing contract buyers to make the contract irrevocable in certain instances; providing for the form and content of all such contracts; requiring the department of labor to administer and enforce the provisions of this article and requiring such department to prepare and furnish all forms necessary to such administration and enforcement; limiting and restricting the rights of certificate holders and licensees to solicit the sale of any such contracts; establishing certain disciplinary proceedings to be conducted by such department and for the revocation of certification or licensure for certain violations of the provisions of this article; granting authority to the department to liquidate any holder of a certificate for certain violations of the provisions of this article or of the rules and regulations promulgated thereunder; providing for certain civil and criminal penalties for such violations; providing for civil action and injunctive proceedings in favor of any aggrieved consumer or contract purchaser and awarding attorney's fees and costs in certain cases with respect thereto; and providing for the severability of the provisions of said article.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14. PRENEED BURIAL CONTRACTS.

§47-14-1. Declaration of policy; legislative intent.

§47-14-2. Definitions.

- §47-14-3 Certificate of authority required; fees to go to department of labor; special account established; duties of certificate holder.
- §47-14-4. Agents and employees; licenses required; fee to go to department of labor.
- §47-14-5. Disposition of proceeds; trusts; procedure for administration; department to promulgate rules and regulations.
- §47-14-6. Withdrawal of funds.
- §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.
- §47-14-9. Forms and rules.
- §47-14-10. Solicitation.
- §47-14-11. Disciplinary proceedings; revocation of license or certificate; liquidation upon violation.
- §47-14-12. Civil action; attorney's fees.
- §47-14-13. Penalty.
- §47-14-14. Severability.

§47-14-1. Declaration of policy; legislative intent.

1 It is contrary to public policy for any person to receive, hold,
2 control or manage funds or proceeds received from the sale
3 of, or from a contract to sell, funeral services, funeral goods,
4 burial goods or any one or combination of them, where pay-
5 ments for same are made either outright or on an installment
6 basis, prior to the death of the person or persons so pur-
7 chasing them, or for whom they are purchased, unless that
8 person holds, controls or manages those funds subject to the
9 limitations and regulations prescribed by this article.

10 It is the legislative intent that the provisions of this article
11 shall be construed as a limitation upon the manner in which
12 a person is permitted to accept funds in prepayment of funeral
13 services to be performed in the future, or funeral or burial
14 goods to be used in connection with the funeral or final dis-
15 position of human remains, so that at all times members of the
16 public may have an opportunity to arrange and pay for funer-
17 als for themselves and their families in advance of need while
18 at the same time providing all possible safeguards whereunder
19 such prepaid funds cannot be dissipated, whether intentionally
20 or not, in order that such funds are available for the payment of
21 funeral services so arranged. Further, it is the legislative intent

22 that no person may offer, sell or negotiate for the sale of a
23 preneed funeral service contract through anyone who is not
24 licensed under this article.

§47-14-2. Definitions.

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

3 (1) "Burial goods" means all merchandise supplied in regard
4 to burial, or entombment in a mausoleum or inurnment in a
5 columbarium, but does not include those services actually
6 performed by a cemetery acting only as such, or the sale by
7 any person of cemetery lots, land or interest therein, services
8 incidental thereto, or the sale by any person of markers, me-
9 morials, monuments, equipment, crypts, urns, burial vaults or
10 vaults constructed or to be constructed in a mausoleum or
11 columbarium.

12 (2) "Contract beneficiary" means any person specified or
13 implied in a preneed funeral contract, upon whose death fun-
14 eral services, funeral goods or burial goods shall be performed,
15 provided or delivered.

16 (3) "Contract buyer" means any person, whether or not a
17 contract beneficiary, who purchases goods or services pursuant
18 to a preneed funeral contract but shall not include any person
19 other than a natural person.

20 (4) "Contract seller" or "seller" means a person, his agent
21 or his employee, who sells, makes available or provides pre-
22 need funeral contracts.

23 (5) "Department" means the state department of labor.

24 (6) "Funds" means moneys or other consideration received
25 pursuant to the sale of a preneed funeral contract, including
26 interest accrued or earned thereon.

27 (7) "Funeral goods" means those items of merchandise sold
28 or offered for sale directly to the public by any person which
29 will be used in connection with a funeral or alternative for final
30 disposition of human remains, but does not include those ser-
31 vices actually performed by a cemetery acting only as such, or
32 the sale by the cemetery of cemetery lots, land or interest there-

33 in, services incidental thereto, or the sale by any person of
34 markers, memorials, monuments, equipment, crypts, urns,
35 burial vaults or vaults constructed or to be constructed in a
36 mausoleum or columbarium.

37 (8) "Funeral services" means those services usually perform-
38 ed by a funeral service licensee, including, but not limited to,
39 care and preparation of human remains and coordinating rites
40 and ceremonies in connection with the disposition of human
41 remains carried out at the request of any individual responsible
42 for funeral and disposition arrangements.

43 (9) "Person" means a natural person, partnership, firm,
44 association or corporation, including any agent or employee
45 thereof residing in or doing business in this state who is en-
46 gaged in the selling of, making available of or providing of
47 "preneed funeral contracts," defined herein, or is the recipient
48 of funds paid for such purpose.

49 (10) "Person who makes a preneed funeral contract avail-
50 able" means a person who, while not directly selling the con-
51 tents of a preneed funeral contract to the public through his
52 efforts, makes such contracts available to the public but shall
53 not include manufacturers of funeral goods or burial goods.

54 (11) "Personal residence" means any residential building in
55 which one temporarily or permanently maintains his abode in-
56 cluding, but not limited to, hotels, motels, apartments, nursing
57 homes, convalescent homes, homes for the aged and public
58 and private institutions.

59 (12) "Preneed funeral contract" means any contract, agree-
60 ment, mutual understanding, series or combination of con-
61 tracts, agreements and mutual understandings, other than a
62 contract of insurance, under which, for a specified consider-
63 ation paid in advance of death in a lump sum or by install-
64 ments, a person promises to furnish or make available or pro-
65 vide funeral services, funeral goods or burial goods for use at
66 a time determinable by the death of the "contract beneficiary"
67 who is either named or implied.

68 (13) "Provider" means a person who, though not a party
69 to a preneed funeral contract does, through his efforts, make

70 the services or goods referred to in such a contract available
71 to the public pursuant to such a contract.

72 (14) "Trustee" means any natural person, partnership or
73 corporation, including any bank, trust company, savings and
74 loan association or credit union, which receives money pur-
75 suant to any agreement or contract made pursuant to the pro-
76 visions of this article.

**§47-14-3. Certificate of authority required; fees to go to depart-
ment of labor; special account established; duties of
certificate holder.**

1 (a) No person may receive, hold, control or manage any
2 funds or other thing of value tendered as payment on any pre-
3 need funeral contract unless such person has obtained a certif-
4 icate of authority or renewal thereof from the department:
5 *Provided*, That no bank, trust company, savings and loan asso-
6 ciation or other financial institution regulated by this state or
7 insured by an agency of the United States federal government
8 is required to obtain a certificate of authority.

9 (b) No person may sell, make available or be a provider of
10 a preneed funeral contract unless such person has obtained a
11 certificate of authority or renewal thereof from the department.

12 (c) Any person desiring to obtain a certificate of authority
13 shall file with the department, upon forms provided by the
14 department, a completed application, together with a one
15 hundred dollar application fee for his original certificate of
16 authority. The fee shall be payable to a special revenue ac-
17 count to be known as the "Preneed Burial Contract Regulation
18 Fund" for the purpose of administering the provisions of this
19 article. The original application or a renewal application shall
20 contain at least the following information:

21 (1) The name and address of each person owning ten per-
22 cent or more interest in the applicant;

23 (2) The experience of the applicant;

24 (3) Such other information as the department may require
25 to determine to its satisfaction that the applicant possesses the
26 ability, experience, financial stability and integrity to deal in
27 preneed funeral contracts; and

28 (4) The types of preneed funeral contracts proposed to be
29 written or otherwise dealt in and copies of any writings used
30 pursuant thereto; and if a person is a party to or bound by any
31 such contract, an itemization of all outstanding preneed funeral
32 contracts, the dates upon which such contracts were entered in-
33 to, the names of all parties involved in such contracts or having
34 any right thereunder, the amount paid toward each contract
35 and, if payments are not completed, the amounts owing on each
36 contract and the present depository or holder of all such funds.

37 (d) Each certificate of authority holder shall renew its
38 certificate of authority according to the schedule established
39 by this article. The fee for renewal shall be two hundred
40 dollars, payable to the "Preneed Burial Contract Regulation
41 Fund" established by this section.

42 (e) Each certificate of authority holder shall file with the
43 department an annual report with its request for renewal which
44 shall contain the following:

45 (1) An identification of all outstanding preneed funeral con-
46 tracts, the dates upon which the contracts were entered, the
47 names of all parties involved in such contracts or having any
48 right thereunder, including, but not limited to, the beneficiary,
49 the amount paid on each contract and, if payments are not
50 completed, the amounts owing and the present balance of funds
51 applicable to each such contract.

52 (2) The name of the contract seller and the name of the
53 provider of services and goods and a statement that the pro-
54 vider has sufficient funds available to perform all of its obliga-
55 tions under its contracts.

56 (3) A statement that the contract seller and the person
57 receiving funds paid thereunder have complied with the trust
58 requirements of this article and of the present depository or
59 holder of such funds and a statement of the amounts thereof
60 itemized as to each such contract.

61 (4) Any changes or amendments in any contracts or obliga-
62 tions of the seller and provider that occurred since the date of
63 the last report.

64 (5) Such other information as may be considered neces-

65 sary by the department in order to meet its responsibilities
66 under this article.

67 This annual report shall be required of any person who sells,
68 provides or makes preneed funeral contracts available or re-
69 ceives moneys or other consideration therefor from the public.

70 (f) An original certificate of authority expires on the thirty-
71 first day of December following its issuance.

72 (g) Every application, request for renewal and statement
73 filed with either of the foregoing shall be sworn by the appli-
74 cant or certificate holder. If the certificate holder is a partner-
75 ship, it shall be sworn by each member thereof. If the certifi-
76 cate holder is a corporation, it shall be sworn by the president
77 and secretary thereof.

78 (h) Upon the department's being satisfied that the state-
79 ment and matters which may accompany it meet the require-
80 ments of this article and of its rules and regulations and, if
81 by investigation by the department of the principals, including
82 directors, officers, stockholders, employees and agents of such
83 person, nothing is found to warrant denial of the certificate,
84 the department shall issue to such person the certificate of
85 authority or renewal thereof.

86 (i) (1) The certificate holder shall keep accurate accounts,
87 books and records in this state of all transactions, copies of
88 all contracts, dates and amounts of payments made and ac-
89 cepted thereon, the name and address of each contract buyer,
90 the name of the beneficiary as to each contract, the name of
91 the trustee holding trust funds received under each contract
92 and such other records as the department may require to
93 enable it to determine whether such certificate holder is
94 complying with the provisions of this article. Such records must
95 be kept until twelve months after termination of the applicable
96 preneed contract.

97 (2) The certificate holder shall make all books and records
98 pertaining to preneed funeral contracts available to the de-
99 partment for examination. The department may not more fre-
100 quently than once in any calendar year, unless pursuant to an
101 order of court for good cause shown, during ordinary business

102 hours, cause to be examined the books, records and accounts
103 of the certificate holder with respect to funds received by said
104 certificate holder and for that purpose may require the at-
105 tendance of and examine, under oath, all persons whose testi-
106 mony he may require.

107 (3) The certificate holder shall pay for the cost of any
108 examination which is not the first one in that calendar year,
109 including the salary and traveling expenses paid to the person
110 making the examination during the time spent in making the
111 examination and in traveling to and returning from the point
112 where the records are kept and all other expenses necessarily
113 incurred in the examination. The department shall assess and
114 collect a fee for each such examination, based on the certifi-
115 cate holder's total outstanding preneed funeral service con-
116 tracts and the cost of such examination, but the cost to the
117 person being audited shall not be more than a total cost of
118 five hundred dollars for each such examination. This fee shall
119 be payable to the "Preneed Burial Contract Regulation Fund"
120 established in this section.

**§47-14-4. Agents and employees; licenses required; fee to go to
department of labor.**

1 No agent or employee of a contract seller may sell preneed
2 funeral contracts in this state without first obtaining from the
3 department a license for such purpose. The fee for such
4 license and the annual renewal thereof shall be twenty-five
5 dollars. These fees shall be payable to the "Preneed Burial
6 Contract Regulation Fund" established by section three of this
7 article. The commissioner shall not issue such license without
8 requiring an applicant for the license, or if the applicant is a
9 corporation, its individual agents, to provide proof to warrant
10 its issuance by presenting with the application affidavits from
11 his employer stating that, to the employer's best information,
12 knowledge and belief the applicant merits a license. The acts
13 of the agent shall be considered acts of the employer. The de-
14 partment may require the applicant to pass a written exami-
15 nation to ascertain if the applicant has sufficient knowledge of
16 the industry and the provisions of this article to properly carry
17 on the business covered by this article.

§47-14-5. Disposition of proceeds; trusts; procedure for administration; department to promulgate rules and regulations.

1 (a) All sums paid or collected on such contracts entered in-
2 to after the effective date of this article shall be handled in the
3 following manner:

4 (1) The contract seller or other person collecting the funds
5 may retain for his own use and benefits and for the purpose of
6 covering his selling expenses, servicing costs and general over-
7 head, an amount not to exceed ten percent of the total amount
8 agreed to be paid by the contract buyer as reflected in the pre-
9 need funeral contract. Such ten percent or other amount is
10 exempt from the trust and refunding provisions of this article;

11 (2) All of the funds collected under the contract, less the
12 amount authorized to be deducted under subdivision (1) of this
13 subsection, shall be deposited under the provisions of subdivi-
14 sion (3) hereof;

15 (3) Unless otherwise specifically exempt under this article,
16 all funds paid to or collected by any person from a preneed
17 funeral contract shall, within thirty days after receipt thereof
18 by such a person, be deposited in this state (i) in the name of
19 a trustee who is a contract seller, provider or person making
20 the preneed funeral contract available, in a state or federally
21 chartered and insured bank, savings institution, building and
22 loan institution located in this state or in a state or federally
23 chartered credit union located in this state, or (ii) under the
24 terms of a trust instrument entered into with a national or state
25 bank having trust powers or a trust company located in this
26 state.

27 (b) The funds to be deposited from more than one preneed
28 funeral contract may at the option of the recipient thereof
29 or the certificate of authority holder, be placed in a common
30 or commingled trust fund in this state under a single trust in-
31 strument.

32 (c) All deposits shall be placed in an account with a trustee
33 in the name of the contract seller, provider or person making
34 the contract available, as set forth in the contract, to whom the
35 contract buyer makes payment. Records shall be maintained

36 as to each contract showing the amount paid, the amount de-
37 posited and the amount invested with respect to any particular
38 buyer's contract.

39 (d) All funds required to be deposited and covered by this
40 article shall remain in this state.

41 (e) All accounts of money deposited in any bank, savings
42 institution, building and loan association or credit union in
43 accordance with the provisions of this article are subject to
44 periodic examination by the department of banking of this
45 state.

46 (f) The department shall promulgate rules and regulations
47 in accordance with chapter twenty-nine-a of this code for the
48 purpose of administering the provisions of this article: *Pro-*
49 *vided*, That the department shall, by such rules and regula-
50 tions, require the contract seller to secure a fidelity bond of
51 sufficient surety to guarantee that a contract purchaser who
52 cancels a contract under the provisions of this article receives
53 all of the moneys paid into any trust account.

§47-14-6. Withdrawal of funds.

1 (a) Disbursements of funds discharging any preneed funeral
2 contract shall be made by the trustee to the person named
3 in the contract upon receipt of a certified photostatic copy
4 of the death certificate of the contract beneficiary and evidence
5 satisfactory to the trustee that the preneed funeral service
6 or preneed burial supply contract has been fully performed.
7 In the event that, after the death of the contract beneficiary,
8 the contract services or goods are not provided because they
9 are not desired by the heirs or by the personal representative
10 of the contract beneficiary, the trustee shall have authority
11 to expend one hundred percent of the amount placed in the
12 trust account and paid on the contract, in any general locality
13 within or outside of this state, which shall be the burial location
14 of the contract beneficiary. If the service and goods are not
15 provided upon the death of the contract beneficiary because
16 of actions of the seller, provider or person making the preneed
17 funeral contract available, then all of the funds held on
18 deposit shall in ten days be refunded to the contract buyer

19 or his legal representative who also has available any other
20 remedy set forth in this article.

21 (b) Any contract buyer or legally authorized person, acting
22 in his behalf, may cancel a preneed funeral contract prior
23 to the death of the contract beneficiary by notifying in
24 writing the contract seller or present obligor of the provisions
25 thereof, if a different person, of such desire to cancel. The
26 seller or obligor shall, in ten days after receipt of such notice,
27 notify the trustee of such cancellation and the trustee shall
28 within thirty days after receipt of written notification pay
29 to the contract buyer, or his legal representative, all funds
30 placed in the trust account and paid on the contract.

31 (c) If the contract buyer is more than one hundred eighty
32 days in default with respect to any payment or installment
33 due on or pursuant to the preneed funeral contract, the con-
34 tract seller or provider may, on ten days' prior written notice,
35 cancel the contract. All funds in the trust account shall be
36 refunded to the contract purchaser or to the estate of the
37 contract beneficiary.

38 (d) The seller of a preneed funeral contract may not can-
39 cel the contract unless the contract is in default as to the
40 buyer's obligations.

41 (e) Payment by any depository or any trustee made in
42 good faith pursuant to the terms of this section shall forever
43 relieve such depository or trustee, as such, for any further
44 liability for such funds under the contract and in law.

§47-14-7. Income on trust accounts.

1 (a) Whether the payments on a preneed funeral contract
2 are placed in a bank, savings institution, building and loan
3 association, credit union or in a common trust fund as
4 permitted in this article, or are part of a commingled com-
5 mon trust fund as permitted in this article, the income from
6 a contract deposit shall accrue to the individual account until
7 such time as the burial goods, funeral goods and funeral
8 services for the contract beneficiary are required to be de-
9 livered and returned by reason of such beneficiary's death.

10 (b) Upon the death of such contract beneficiary, the total

11 amount in the trust account attributable to the contract
12 beneficiary shall be disbursed as follows:

13 (1) If the cost of the goods and services contracted for
14 at the time of such beneficiary's death exceeds the amount
15 paid under the contract, then the provider may have and use
16 the principal and so much of the interest as may be neces-
17 sary to defray such additional cost over and above the
18 contract cost: *Provided*, That, to the extent that the cost
19 of goods and services provided exceeds the principal and
20 interest thereon, the provider shall provide and make available
21 the goods and services contracted for at no additional cost
22 to the contract purchaser or to the heirs or personal representa-
23 tive of the contract beneficiary;

24 (2) To the extent the principal and interest thereon exceed
25 the cost of the goods and services contracted for, then the
26 provider may retain only so much of the principal and
27 interest necessary to defray the total of such cost and the
28 balance shall be returned to the estate of the contract bene-
29 ficiary or to the contract buyer as may be proper under the
30 provisions of this article or the rules and regulations of the
31 department.

32 (c) The trustee for the trust shall make annual valuations
33 of assets held in trust. No person may withdraw income from
34 the trust, except for the purpose of executing the terms of
35 the contract and to disburse the trust proceeds as provided in
36 subsection (b) of this section.

**§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 con-
tract allowed; credit life insurance allowed; successor
in interest defined.**

1 (a) A contract seller, provider or person making the pre-
2 need funeral contract available may not enforce a preneed
3 funeral contract made in violation of this article, but a con-
4 tract buyer or his heirs or legal representative may recover all
5 amounts paid under his contract and all accrued income on
6 such amount where the contract seller, provider or person

7 making the preneed funeral contract available has violated the
8 provisions of this article as to such contract. The right of such
9 recovery is in addition to the remedy provided for in section
10 twelve of this article.

11 (b) A contract seller, provider or person making the pre-
12 need funeral contract available may appoint a board of at
13 least three individual trustees under a trust instrument, if the
14 trustee is other than a chartered state or national bank or trust
15 company under the supervision of the department of banking
16 of this state, to serve as trustees of its trust funds. Each indi-
17 vidual trustee shall be a resident of this state and shall hold
18 office subject to the direction of the seller. Not more than one
19 member of the board of trustees of a trust fund may have a
20 proprietary interest in the seller appointing trustees or in any
21 certificate of authority holder who is placing funds in such trust.

22 Individual trustees of a trust fund shall file a fidelity bond
23 with a corporate surety thereon which is licensed to do busi-
24 ness in this state with the department of labor in an amount
25 equal to the funds in trust, guaranteeing payment of damages
26 occasioned by breach of the trustees' fiduciary duties. The
27 trustees of one or more trust funds need file only one such
28 bond. The aggregate liability of the surety shall in no case
29 exceed the face amount of the bond. The department of labor
30 or any aggrieved person claiming against any bond required
31 by this section may maintain an action against the trustee and
32 the surety. Individual trustees shall take no action respect-
33 ing trust funds unless there is on file with the department a
34 bond as required by this section. If the trustees are individuals,
35 the commissioner may suspend the certificate of authority of
36 any contract seller, provider or person making the preneed
37 funeral contract available having trust funds with respect to
38 which there is no bond on file with the department as required
39 by this section.

40 (c) All trustees under the terms of this article are subject
41 to the following investment standards: In acquiring, investing,
42 reinvesting, exchanging, retaining, selling and managing prop-
43 erty for the benefit of others, trustees have the responsibilities
44 which customarily attach to such offices and to the type of
45 estates entrusted to their care and shall exercise the judgment

46 and care under the circumstances then prevailing which men
47 of prudence, discretion and intelligence exercise in the man-
48 agement of their own affairs, not in regard to speculation but
49 in regard to the permanent disposition of their funds, consider-
50 ing the probable income as well as the probable safety of their
51 capital.

52 (d) No preneed funeral contract may restrict any contract
53 buyer who, for the purpose of receiving public assistance, may
54 make his or her contract irrevocable in accordance with the
55 laws and regulations of this state.

56 (e) All preneed funeral contracts must be in writing and
57 no contract form may be used without prior approval of the
58 department.

59 (f) Each contract buyer shall pay a fee of five dollars to the
60 contract seller, who in turn will forward such sum to the de-
61 partment within ten days after execution of the preneed funer-
62 al contract. The contract shall be recorded in the department.
63 Within ten days after receiving the fee, the department will
64 notify the contract purchaser, by mail, of the recording. The
65 fees shall be placed by the department in an account under the
66 department's control entitled "Preneed Guarantee Fund," and
67 the income thereon shall accrue to the fund. The department
68 may use such income, if necessary in its discretion, to enforce
69 this article.

70 In the event any buyer of any preneed funeral contract is
71 unable to receive the benefits of his contract, or to receive the
72 funds due by reason of his cancellation thereof, such buyer
73 may apply to the department on a form supplied by the de-
74 partment. Upon the finding of the department that said bene-
75 fits or return of payment is not available to the buyer, the de-
76 partment will cause to be paid to the said buyer from the
77 "Preneed Guarantee Fund" the amount actually paid by the
78 buyer under his or her contract. If the seller's liability for de-
79 fault is subsequently proven, any award made by a court of
80 law shall be made payable to the "Preneed Burial Contract
81 Regulation Fund" established in section three of this article.

82 (g) Notwithstanding the provisions of subsection (f), sec-
83 tion five of this article, delivery of funeral or burial goods

84 prior to the death of the person for whose benefit they are
85 purchased does not constitute performance or fulfillment,
86 either wholly or in part, of any preneed contract or series of
87 contracts.

88 (h) The contract buyer may, on acceptance in writing by
89 a transferee, transfer the obligations of the seller, provider or
90 person making the preneed funeral contract available to other
91 persons within or without this state. The funds on deposit
92 for the contract on any future payments, if any, by the con-
93 tract buyer shall then be transferred to and deposited under
94 applicable state law, if any, in the state wherein the contract
95 buyer resides or to a state where the obligations of the pro-
96 vider of the funeral service and goods will be fulfilled.

97 Upon such transfer, the contract buyer and transferee shall,
98 in writing, release the contract seller, provider or person mak-
99 ing the preneed funeral contract available and the trusts, as
100 applicable, for any further liability under such contract.

101 Nothing in this article or in any preneed contract may limit
102 the right of a contract buyer to assign such a contract to any
103 person whomsoever except as specifically provided herein and
104 except that if the assignee is a resident of this state or the con-
105 tract is to be fulfilled by the assignee in this state, the assignee
106 must hold a certificate of authority under this article. If the
107 contract is to be fulfilled in another state, the assignee must in
108 all respects be in compliance with the preneed funeral law
109 of that state, if any.

110 (i) Notwithstanding any other law of this state, a contract
111 seller, provider or person making the preneed funeral contract
112 available may, if requested by the contract buyer where the
113 contract is to be paid in installments, provide for the sale of
114 credit life insurance on the life of the contract beneficiary in
115 order to have the funds necessary to make payment in full
116 under the contract if the beneficiary should die prior to com-
117 pleting all the payments due. The seller shall disclose all costs
118 of such insurance in clear language and shall inquire of the
119 buyer whether he understands the terms of the insurance con-
120 tract and is aware of the total cost of the insurance.

121 (j) In the event any certificate of authority holder or any-

122 one in violation of the article who has outstanding preneed
123 funeral contracts and is not the current holder of a certificate
124 of authority sells its business, through the sale of assets or
125 stock, which is involved in the fulfillment of obligations under
126 preneed funeral contracts, the buyer of such business is a
127 "successor in interest" and is covered not only by this article
128 but shall assume the obligations of seller under seller's out-
129 standing preneed funeral contracts regardless of whether seller
130 made known to buyer the existence of such contract or con-
131 tracts.

§47-14-9. Forms and rules.

1 The administration and enforcement of the provisions of this
2 article are vested in the department. The department shall
3 prepare and furnish all forms necessary under this article, in-
4 cluding forms for applications for certificates of authority,
5 for renewals thereof, for annual statements, for other required
6 reports and for preneed funeral contracts. The department shall
7 promulgate, in accordance with the provisions of chapter
8 twenty-nine-a of this code, such rules and regulations as may
9 be necessary to effectuate the purpose of this article.

§47-14-10. Solicitation.

1 (a) Any contract seller or agent or employee or person act-
2 ing in behalf of any such person may not:

3 (1) Directly or indirectly call upon individuals or persons
4 in hospitals, rest homes, nursing homes or similar institutions
5 for the purpose of soliciting preneed funeral contracts or mak-
6 ing funeral or final disposition arrangements without first hav-
7 ing been specifically requested by such person to do so;

8 (2) Directly or indirectly employ any agent, assistant, em-
9 ployee, independent contracting person or any other person to
10 call upon individuals or persons in hospitals, rest homes, nurs-
11 ing homes or similar institutions for the purpose of soliciting
12 preneed funeral contracts or making funeral or final disposition
13 arrangements without first having been specifically requested
14 by such person to do so;

15 (3) Solicit relatives of persons whose death is apparently
16 pending or whose death has recently occurred for the purpose

17 of providing funeral services, final disposition, burial or fun-
18 eral goods for such person;

19 (4) Solicit or accept or pay any consideration for recom-
20 mending or causing a dead human body to be provided fun-
21 eral services and funeral and burial goods by specific per-
22 sons, or the services of a specific crematory, mausoleum or
23 cemetery except where such arrangement is the subject of a
24 preneed funeral contract;

25 (5) Solicit by telephone call or by visit to a personal resi-
26 dence, unless such solicitation has been previously requested
27 by the person solicited or by a family member residing at such
28 residence.

29 (b) Notwithstanding any other provision of law to the con-
30 trary, nothing in this article shall be construed to restrict the
31 right of a person to lawfully advertise, to use direct mail or
32 otherwise communicate in a manner not within the above pro-
33 hibition of solicitation or to solicit the business of anyone re-
34 sponding to such communication or otherwise initiating dis-
35 cussion of the goods or services being offered.

36 (c) Nothing herein shall be construed to prohibit general
37 advertising.

38 (d) Anyone making a personal or written solicitation for a
39 preneed funeral contract shall, at the very first instance, di-
40 vulge the real reason for the contract or solicitation.

41 (e) The department may adopt rules regulating the solici-
42 tation of preneed contracts by certificate holders or registrants
43 to protect the public from solicitation practices which utilize
44 undue influence or which take undue advantage of a person's
45 ignorance or emotional vulnerability.

**§47-14-11. Disciplinary proceedings; revocation of license or certi-
ficate; liquidation upon violation.**

1 (a) The following acts constitute grounds for which the dis-
2 ciplinary actions in subsection (b) may be taken against any
3 person holding a certificate of authority or license pursuant to
4 this article:

5 (1) Violating any provisions of this article;

6 (2) Attempting to procure or procuring a certificate of
7 authority or license under this article by bribery or fraudulent
8 misrepresentation;

9 (3) Having had any certificate of authority or license to sell
10 preneed funeral contracts revoked, suspended or otherwise
11 acted against, including denial of licensure, by a licensing au-
12 thority of another jurisdiction;

13 (4) Being convicted or found guilty of a crime in any juris-
14 diction which directly relates to the sale of preneed funeral
15 contracts;

16 (5) Making or filing a report required by this article which
17 the certificate holder knows to be false or knowingly failing
18 to make or file a report required by this article;

19 (6) Advertising goods or services in a manner which is
20 fraudulent, false, deceptive or misleading in form or content;

21 (7) Engaging in fraud, deceit or misrepresentation in the
22 conduct of business of the certificate holder;

23 (8) Failing to comply with a lawful order of the department;

24 (9) Knowingly making any false or misleading statement,
25 oral or written, directly or indirectly, regarding the sale of
26 services or merchandise in connection with the conduct of the
27 certificate holder's business;

28 (10) Not maintaining the funds received under the contracts
29 as required by this article;

30 (11) Failing to cancel a preneed funeral contract upon prop-
31 er request and refund that portion of the amount paid on such
32 a contract as required by this article;

33 (12) Failing to renew or qualify for renewal of its certifi-
34 cate of authority or license;

35 (13) Failing to produce records in connection with the
36 certificate holder's business or has otherwise failed to comply
37 with the provisions of this article or any rule promulgated by
38 the department pursuant to this article; or

39 (14) Soliciting by the certificate holder, its agents, em-

40 ployees or representatives through the use of fraud, undue in-
41 fluence, misrepresentation or overreaching or other forms of
42 vexatious conduct as defined by law, this article or the rules
43 and regulations of the department as to preneed funeral con-
44 tracts.

45 (b) Upon the violation of any of the provisions of this
46 article, determined in an administrative hearing after notice and
47 an opportunity to be heard, the department may institute revo-
48 cation proceedings regarding a license to operate a funeral
49 home or a certificate of authority to sell preneed funeral con-
50 tracts, or both the license and the certificate of authority or
51 file a complaint in a court of competent jurisdiction setting
52 forth the relevant facts and praying for the issuance of an
53 order to show cause why the license to operate a funeral home
54 or the certificate of authority to sell preneed funeral contracts,
55 or both the license and the certificate should not be revoked.

56 (1) Upon application for such rule to show cause, the court
57 may, in its discretion, issue an injunction restraining the de-
58 fendant from transacting further business until further order
59 of the court.

60 (2) Upon return of such order to show cause, the court shall
61 hear and try the issue forthwith. If the court determines that
62 the person so charged as defendant in such proceeding has not
63 been guilty of the omission, failure or violation alleged in the
64 complaint by the department, the court shall dismiss such com-
65 plaint. If the court finds that the charges of the department are
66 supported by the evidence, it may enter an order directing the
67 revocation of a license to operate a funeral home or of a certi-
68 ficate of authority to sell preneed funeral contracts, or the re-
69 vocation of both the license and the certificate of authority.

70 (3) In any such order of liquidation or in any order or
71 orders thereafter entered, the court shall provide a notice to
72 creditors, filing of claims and all other details necessary and
73 essential to an estate in receivership.

74 (c) When the department finds any certificate holder or
75 licensee guilty of any of the acts set forth in subsection (a) of
76 this section after an administrative hearing, or finds that any
77 funeral services or funeral or burial goods are offered for sale

78 when the offer is not a bona fide offer to sell such services or
79 goods, it may enter an order imposing one or more of the fol-
80 lowing penalties:

81 (1) Denial of an application for a certificate of authority or
82 license, including a renewal;

83 (2) Revocation or suspension of a certificate of authority or
84 license;

85 (3) Imposition of an administrative fine not to exceed one
86 thousand dollars for each county where there are separate vio-
87 lations;

88 (4) Issuance of a reprimand; or

89 (5) Placement of the licensee or certificate holder on pro-
90 bation for a period of time and subject to such conditions as
91 the department may specify.

92 (d) All preneed funeral contract buyers have a priority in
93 claims against the provider, to the extent that their interest is
94 set forth in this article.

95 (e) For purposes of this section, the acts or omissions of
96 any person employed by or under contract to or on behalf of
97 the certificate holder shall be treated as acts or omissions of
98 the certificate holder.

99 (f) Subject to the provisions of subsection (b), section
100 seven of this article, all prices or quotations of prices con-
101 tained in any preneed funeral contract shall be fully and
102 clearly stated.

§47-14-12. Civil action; attorney's fees.

1 (a) The failure of a certificate holder or licensee to comply
2 with the provisions of this article gives rise to a civil cause of
3 action in favor of any aggrieved consumer or contract pur-
4 chaser. Upon entry of a judgment for damages in favor of
5 the plaintiff, the trial court shall award punitive damages in
6 the amount of three times the actual damages awarded in the
7 judgment.

8 (b) The prevailing party, after judgment in trial court and
9 exhaustion of all appeals, if any, shall receive reasonable at-
10 torney's fees and costs from the nonprevailing party.

11 (c) The attorney for the prevailing party shall submit a
12 sworn affidavit of his time spent on the case and his costs in-
13 curred for all the motions, hearings and appeals to the trial
14 judge who presided over the civil case.

15 (d) The trial judge shall award the prevailing party the sum
16 of reasonable costs incurred in the action, plus a reasonable
17 legal fee for the hours actually spent on the case as sworn to
18 in an affidavit.

19 (e) Any award of attorney's fees or costs shall become part
20 of the judgment and subject to execution as the law allows.

§47-14-13. Penalty.

1 Any person who receives, holds, manages or controls any
2 funds or proceeds realized from the writing and issuing of a
3 preneed funeral contract or disburses such funds or proceeds
4 in any manner other than as authorized or required by this
5 article or who has violated any of the provisions of this
6 article or the rules and regulations promulgated hereunder
7 is guilty of a misdemeanor, and, upon conviction thereof,
8 shall be punished by a fine of not less than one hundred nor
9 more than one thousand dollars for each occurrence, or
10 imprisoned in the county jail for a term not to exceed one
11 year or both fined and imprisoned.

§47-14-14. Severability.

1 If any section, subsection, subdivision, subparagraph, sen-
2 tence or clause of this article is adjudged to be unconstitutional
3 or invalid, such invalidation shall not affect the validity of the
4 remaining portions of this article, and, to this end, the pro-
5 visions of this article are hereby declared to be severable.

CHAPTER 162

(S. B. 130—By Mr. Craigo)

[Passed March 11, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen-b, article three,
chapter twelve of the code of West Virginia, one thousand

nine hundred thirty-one, as amended, relating to appropriations, expenditures and deductions; and providing that a state employee or officer may authorize that a voluntary deduction from his net wages be made for supplemental health and life insurance premiums, subject to prior approval by the auditor.

Be it enacted by the Legislature of West Virginia:

That section thirteen-b, article three, 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 3. APPROPRIATIONS AND EXPENDITURES.

§12-3-13b. Voluntary deductions by state auditor from salaries of employees to pay association dues or fees and to pay supplemental health and life insurance premiums.

1 Any officer or employee of the state of West Virginia
2 may authorize that a voluntary deduction from his net
3 wages be made for the payment of membership dues or
4 fees to an employee association. Voluntary deductions
5 may also be authorized by an officer or employee for any
6 supplemental health and life insurance premium, subject
7 to prior approval by the auditor. Such deductions shall
8 be authorized on a form provided by the auditor of the
9 state of West Virginia and shall state (a) the identity
10 of the employee; (b) the amount and frequency of such
11 deductions; and (c) the identity and address of the as-
12 sociation or insurance company to which such dues shall
13 be paid. Upon execution of such authorization and its
14 receipt by the office of the auditor, such deductions shall
15 be made in the manner specified on the form and re-
16 mitted to the designated association or insurance com-
17 pany on the tenth day of each month: *Provided*, That
18 such deductions shall not be made more frequently than
19 once monthly. Deduction authorizations may be revoked
20 at any time thirty days prior to the date on which the
21 deduction is regularly made and on a form to be provided
22 by the office of the state auditor: *Provided, however*,
23 That nothing in this section shall interfere with or remove

24 any existing arrangement for dues deduction between an
25 employer of any political subdivision of the state and its
26 employees.

CHAPTER 163

(H. B. 1315—By Mr. Steptoe)

[Passed March 11, 1983; in effect July 1, 1983. Approved by the Governor.]

AN ACT to amend and reenact sections two, seven, fifteen and seventeen, article twenty-one, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article twenty-one by adding thereto three new sections, designated sections fourteen-a, fourteen-b and twenty-two, relating to public legal services generally; defining eligible proceedings; defining criminal charge; the powers and limitations of the West Virginia public legal services council; permitting the auditing and accounting division to require reports on nonbillable time; authorizing the auditing and accounting division to require increased itemization on vouchers; providing for the budget of the appellate division to be within the appropriations of the council or as provided by law; providing for supplemental grants; specifying that loans under this article are considered advancements only; limiting the use of funds; apportioning cost of representation; authorizing repayment of cost of representation; and prohibiting certain public defender corporations from being activated before the first day of April, one thousand nine hundred eighty-three.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. PUBLIC LEGAL SERVICES.

§29-21-2. Definitions.

§29-21-7. Powers, duties and limitations of council.

§29-21-14a. Supplemental grants.

§29-21-14b. Nature of loans.

§29-21-15. Limitation on use of funds; exceptions.

§29-21-17. Determination of maximum income levels; eligibility guidelines; use of form affidavit; inquiry by court; denial of services; repayment; limitation on remedies against affiant.

§29-21-22. Restriction on activation of corporations.

§29-21-2. Definitions.

1 As used in this article:

2 (1) "Council" or "legal services council" means the West
3 Virginia public legal services council established under this
4 article;

5 (2) "Eligible client" means any person who is the subject
6 of a serious criminal charge, has been convicted of such charge,
7 is a party in a juvenile court proceeding, or is the respondent
8 in a commitment proceeding, and who is to be afforded legal
9 representation under the provisions of this article;

10 (3) "Eligible proceeding" means any of the following pro-
11 ceedings or charges: Serious criminal charges, juvenile pro-
12 ceedings, contempts of court, child abuse and neglect proceed-
13 ings, mental hygiene commitment proceedings, paternity pro-
14 ceedings, or any post conviction, extraordinary remedy or other
15 appellate proceeding arising out of an eligible proceeding
16 or any other type of proceeding in which the West Virginia
17 state supreme court of appeals or the United States supreme
18 court has specifically held an indigent person is constitutionally
19 entitled to legal representation;

20 (4) "Legal representation" or "legal assistance" means the
21 provision of any legal services consistent with the purposes and
22 provisions of this article;

23 (5) "Outside practice of law" means the provision of
24 legal assistance to a client who is not entitled to receive
25 legal assistance from the employer of the attorney rendering
26 assistance, but does not include, among other activities, teach-
27 ing, consulting or performing evaluation;

28 (6) "Public defender" means the staff attorney employed
29 on a full-time basis by a public defender corporation who, in
30 addition to his direct representation of eligible clients, has ad-
31 ministrative responsibility for the operation of the public de-
32 fender corporation: *Provided*, That the public defender may
33 be a part-time employee if the board of directors of the public
34 defender corporation finds that there are extraordinary circum-
35 stances wherein efficient operation requires that no staff at-
36 torney should be employed on a full-time basis, and the council
37 approves such part-time employment;

38 (7) "Assistant public defender" means a staff attorney
39 hired by the public defender to provide direct representation
40 of eligible clients, and whose salary and status as a full-time or
41 part-time employee are fixed by the board of directors of the
42 public defender corporation;

43 (8) "Public defender corporation" or "public defender of-
44 fice" means a corporation created under section nine of this
45 article for the sole purpose of providing legal representation to
46 eligible clients; and

47 (9) "Serious criminal charge" means:

48 (a) A felony;

49 (b) A misdemeanor or offense, the penalty for which in-
50 volves the possibility of confinement or a fine of more than five
51 hundred dollars, or any other offense of a criminal nature
52 which, in the opinion of the court, because of the complexity
53 of the matter, or the youth, inexperience or mental capacity of
54 the accused or the probable substantial impact of an adverse
55 judgment or fine, or both, requires representation of the ac-
56 cused by an attorney;

57 (c) An act which, except for the age of the person involved,
58 would otherwise be a serious crime; and

59 (d) Any other charge, including revocation of probation or
60 parole, which involves the possibility of confinement in a jail
61 or penal institution.

§29-21-7. Powers, duties and limitations of council.

1 (a) Consistent with the provisions of this article, the council

2 is authorized to make loans and grants to and contracts with
3 public defender corporations and with individuals, partnerships,
4 firms, corporations and nonprofit organizations, for the pur-
5 pose of providing legal representation to eligible clients under
6 this article, and to make such other loans, grants and contracts
7 as are necessary to carry out the purposes and provisions of
8 this article.

9 (b) The council is authorized to accept, and employ or
10 dispose of in furtherance of the purposes of this article, any
11 money or property, real, personal or mixed, tangible or intan-
12 gible, received by gift, devise, bequest or otherwise.

13 (c) The council shall establish and the executive director or
14 his designate shall operate a criminal law research center as
15 provided for in section eight of this article, and through such
16 center shall undertake directly, or by grant or contract, to
17 serve as a clearinghouse for information, to provide training
18 and technical assistance relating to the delivery of legal repre-
19 sentation, and to engage in research, except that broad general
20 legal or policy research unrelated to direct representation of
21 eligible clients may not be undertaken by grant or contract.

22 (d) The council shall establish and the executive director
23 or his designate shall operate an accounting and auditing divi-
24 sion to require and monitor the compliance of public defender
25 corporations and their employees with the provisions of this
26 article. This division shall receive all plans and proposals for
27 loans, grants and contracts, and all requisitions for payment,
28 and shall review the same. All such plans and proposals shall
29 be approved or disapproved by the division on the basis of con-
30 formity to the provisions of this article, and a recommenda-
31 tion shall then be made to the executive director and the coun-
32 cil. After review by the division, the executive director shall
33 draw requisitions on the state auditor for payment to public
34 defender corporations and others, upon proper application
35 under the provisions of this article. The division shall prepare,
36 or cause to be prepared, reports concerning the evaluation, in-
37 spection or monitoring of public defender corporations and
38 other grantees, contractors or persons or entities receiving fi-
39 nancial assistance under this article, and shall further carry out

40 the council's responsibilities for records and reports as set
41 forth in section nineteen of this article.

42 Upon the request of the executive director, the accounting
43 and auditing division shall require each public defender cor-
44 poration to annually report on nonbillable time of its profes-
45 sional employees, including time utilized in administration of
46 the respective offices, so as to compare such time to similar
47 time expended in nonpublic law offices for like activities. Re-
48 sults of such studies shall be included by the council in the
49 annual report required in subsection (c), section nineteen of
50 this article.

51 Notwithstanding any provision of law to the contrary, upon
52 the request of the executive director, the accounting and audit-
53 ing division shall require vouchers for work thereafter per-
54 formed pursuant to the provisions of this article to be itemized
55 to some lesser fraction of an hour other than to the nearest
56 quarter-hour.

57 (e) The council shall establish and the executive director
58 or his designate shall operate an appellate advocacy division
59 for the purpose of prosecuting litigation on behalf of eligible
60 clients in the supreme court of appeals. The executive director
61 or a person designated by him shall be the director of the ap-
62 pellate advocacy division and shall represent eligible clients in
63 only those instances where the trial attorney or other local
64 counsel is unwilling or unable to serve as appellate counsel.
65 The executive director is empowered to select and employ staff
66 attorneys to perform the duties prescribed by this subsection,
67 the number of such staff attorneys being fixed by the council.
68 Within the appropriations to the council, the appellate division
69 shall have its own budget as determined to be appropriate by
70 the council or as provided by law and shall maintain vouchers
71 and records for representation of eligible clients, for record
72 purposes only.

§29-21-14a. Supplemental grants.

1 (a) A public defender corporation may make application
2 to the council for a supplemental grant at any time
3 during any fiscal year that it appears from actual experience
4 that the grants earned or to be earned by the corporation pur-

5 suant to section fourteen of this article less all credits against
6 loans will be insufficient to permit operation of the public de-
7 fender corporation at the level deemed at the time of the appli-
8 cation to be sufficient to enable the corporation to provide the
9 services required of such corporation by law. The application
10 for such supplemental grant shall clearly identify (1) any pro-
11 posed change in the level of operations of the corporation from
12 that projected in the current program application, (2) the costs
13 or savings expected to result from such change, and (3) the
14 change, if any, in the earning of grants expected to be caused
15 by reason of such change. The supplemental grant application
16 shall also identify any anticipated deficit expected by reason of
17 any matter other than a change in the level of operations and
18 identify and evaluate the causes therefor.

19 (b) Upon receipt by the council of any application for a
20 supplemental grant, the executive director shall expeditiously
21 evaluate the application and report his findings and recom-
22 mendations to the council. He may require of the applicant
23 corporation such reasonable additional information as he may
24 deem appropriate. After consideration of the application, the
25 council may:

26 (1) Refuse such application,

27 (2) Reduce the rate at which grants earned are credited to
28 outstanding loans of the corporation, within the limits of avail-
29 able appropriations and the projected obligations of the council,

30 (3) Allow all or part of the supplemental grant, with or
31 without reduction of credits to loans,

32 (4) Make such recommendations to the corporation for re-
33 duction of costs or increased earnings as he may deem appro-
34 priate.

35 The auditor shall honor the requisition of the executive
36 director for such supplemental grants, from then current appro-
37 priations to the council, which shall be paid at such times and
38 in such installments as the executive director shall specify.

39 (c) The council shall include in the annual report required
40 in subsection (c), section nineteen of this article, a detailed re-

41 port of the supplemental grants made under this section and its
42 evaluation of the causes therefor.

43 (d) Supplemental grants shall be accumulated from year to
44 year. In the event all equipment and operational loans are
45 paid by a corporation, grants earned by the corporation shall
46 be credited against such supplemental grants at a rate specified
47 by the executive director not in excess of the rate for credit
48 against loans. The unpaid balances due on supplemental grants
49 shall be listed in the annual report required by subsection (c),
50 section nineteen of this article, together with the executive di-
51 rector's evaluation of the causes therefor.

§29-21-14b. Nature of loans.

1 Loans made under the provisions of this article are in the
2 nature of advancements, designed primarily to measure the ef-
3 ficiency, in economic terms, of publicly employed legal counsel.
4 Accordingly, such advancements constitute expenditures of
5 the council in the fiscal year transferred to the public defender
6 corporation. There is not and shall not be any obligation im-
7 posed upon such corporations or their directors, either official-
8 ly or individually, to actually repay such advancements. Such
9 advancements are to be reduced solely by the application of
10 credits on grants earned, as provided in this article.

§29-21-15. Limitation on use of funds; exceptions.

1 (a) Funds made available by the council to public defender
2 corporations under this article, either by loan, grant or con-
3 tract, shall be used to provide legal representation for persons
4 accused or convicted of serious criminal charges, except that
5 funds may be used for representation of indigent persons in the
6 following proceedings:

7 (1) Juvenile proceedings, including child neglect and abuse
8 proceedings;

9 (2) Mental hygiene proceedings;

10 (3) Habeas corpus actions brought for the purpose of chal-
11 lenging the validity of confinement arising out of proceedings
12 involving serious criminal charges, juvenile proceedings or
13 mental hygiene proceedings or for which legal representation is
14 otherwise afforded by this article;

15 (4) Prohibition actions brought for the purpose of challeng-
16 ing the excessive exercise of authority in a criminal, juvenile,
17 or commitment proceeding for which legal representation is
18 afforded by this article;

19 (5) Mandamus actions brought for the purpose of com-
20 manding action applicable to proceedings covered by this
21 article;

22 (6) Extradition proceedings;

23 (7) Representation of persons who risk incrimination by
24 testifying as material witnesses in criminal proceedings; and

25 (8) Proceedings under article seven, chapter forty-eight of
26 this code in which the issue of paternity is to be determined.

27 (b) Funds received from another source other than the
28 council for the provision of legal representation shall not be
29 used by a public defender corporation for purposes prohibited
30 by this article.

**§29-21-17. Determination of maximum income levels; eligibility
guidelines; use of form affidavit; inquiry by court;
denial of services; repayment; limitation on remedies
against affiant.**

1 (a) The council shall establish, in consultation with the
2 commissioner of the department of finance and administration,
3 with the chief justice of the supreme court of appeals, and with
4 the judges of the several circuits, maximum annual income
5 levels for individuals eligible for legal representation under this
6 article. The council shall consider such factors as family size,
7 urban and rural differences, substantial cost-of-living variation
8 and the cost of available private representation.

9 (b) In addition to the maximum annual income level for
10 an area established under subsection (a) of this section, a cir-
11 cuit judge shall consider other relevant factors before deter-
12 mining whether a person is eligible to receive legal represen-
13 tation under the provisions of this article. Taking into account
14 all pertinent factors and being satisfied that no undue hard-
15 ship will be created, circuit judges may order that the total
16 cost of providing representation under this article shall be

17 apportioned between the state and the eligible client. A
18 person whose income exceeds the maximum annual income
19 level for eligible clients may still receive all or part of the
20 necessary legal representation if the court finds the person's
21 circumstances require that eligibility be allowed on the basis
22 of one or more of the following factors:

23 (1) Current income prospects, taking into account seasonal
24 variations in income;

25 (2) Liquid net assets and other assets which may reason-
26 ably be available for the employment of private counsel;

27 (3) Fixed debts and obligations, including federal, state and
28 local taxes and medical expenses;

29 (4) Child care, transportation and other expenses necessary
30 for employment;

31 (5) Age or physical infirmity of resident family members;

32 (6) The cost of obtaining private legal representation with
33 respect to the particular matter in which assistance is sought;
34 and

35 (7) The consequences for the individual if legal assistance
36 is denied.

37 (c) The council shall adopt a simple form affidavit to be
38 completed by persons seeking legal representation for use by
39 courts to determine eligibility. The information obtained shall
40 be preserved by the court for audit by the council. If there
41 is substantial reason to doubt the accuracy of information in
42 the affidavit, the circuit court shall make appropriate inquiry
43 upon the record to determine whether a person is an indigent
44 person entitled to all or any of the legal assistance sought and
45 may deny all or any part of such services to the affiant which
46 the court finds to be within the financial resources of the
47 affiant and may revoke any prior appointment of counsel which
48 the court determines to have been improvidently made. No
49 circuit court shall deny all or any part of the services requested
50 by the affiant unless the court shall determine upon the record
51 that such service or services, including counsel, are available
52 to the person seeking them and are within the financial re-
53 sources of such person. Upon the determination that appoint-

54 ment of counsel previously made should be revoked, or that
55 further provision of any other service should be denied, any
56 attorney previously appointed shall be entitled to compensa-
57 tion under the provisions of law applicable to such appoint-
58 ment for services already rendered and any other officer of
59 the court having previously rendered such services shall like-
60 wise be entitled to such compensation, if any, for services al-
61 ready rendered as law may provide.

62 (d) In the circumstances and manner set forth below, cir-
63 cuit judges may order repayment to the state of the costs of
64 representation provided under this article:

65 (1) In every case in which services are provided to an in-
66 digent person and an adverse judgment has been rendered
67 against such person, the court may require that person to
68 pay as costs the compensation of appointed counsel, the ex-
69 penses of the defense and such other fees and costs as autho-
70 rized by statute.

71 (2) The court shall not order a person to pay costs unless
72 the person is able to pay without undue hardship. In deter-
73 mining the amount and method of repayment of costs, the
74 court shall take account of the financial resources of the per-
75 son, the person's ability to pay and the nature of the burden
76 that payment of costs will impose. The fact that the court
77 initially determines, at the time of a case's conclusion, that
78 it is not proper to order the repayment of costs does not pre-
79 clude the court from subsequently ordering repayment should
80 the person's financial circumstances change.

81 (3) When a person is sentenced to repay costs, the court
82 may order payment to be made forthwith or within a specified
83 period of time or in specified installments. If a person is
84 sentenced to a term of imprisonment, an order for repayment
85 of costs is not enforceable during the period of imprisonment
86 unless the court expressly finds, at the time of sentencing,
87 that the person has sufficient assets to pay the amounts ordered
88 to be paid or finds there is a reasonable likelihood the person
89 will acquire the necessary assets in the foreseeable future.

90 (4) A person who has been sentenced to repay costs, and
91 who is not in contumacious default in the payment thereof,

92 may at any time petition the sentencing court for modification
93 of the repayment order. If it appears to the satisfaction of the
94 court that continued payment of the amount ordered will im-
95 pose undue hardship on the person or the person's immediate
96 family, the court may modify the method or amount of pay-
97 ment.

98 (5) When a person sentenced to pay costs is also placed on
99 probation or imposition or execution of sentence is suspended,
100 the court may make the repayment of costs a condition of pro-
101 bation or suspension of sentence.

102 (e) Circuit clerks shall keep a record of repaid counsel
103 fees and defense expenses collected under this section's provi-
104 sions and shall, quarterly, pay the moneys to the state auditor.

105 (f) The making of an affidavit subject to inquiry under this
106 section shall not in any event give rise to criminal remedies
107 against the affiant nor occasion any civil action against the
108 affiant except for the recovery of costs as in any other case
109 where costs may be recovered: *Provided*, That a person who
110 has made an affidavit knowing the contents thereof to be
111 false may be prosecuted for false swearing as provided by law.

§29-21-22. Restriction on activation of corporations.

1 Notwithstanding any other provision of law to the contrary,
2 no public defender office created by section nine of this article,
3 other than those corporations designated and activated by sub-
4 section (b) of said section nine, shall be activated so as to
5 transact any business or exercise its power under this article
6 before the first day of April, one thousand nine hundred
7 eighty-three.

CHAPTER 164

(Com. Sub. for H. B. 1395—By Mr. Albright)

[Passed March 12, 1983: in effect ninety days from passage. Approved by the Governor.]

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

hundred thirty-one, as amended, relating to the public service commission; exempting from jurisdiction of the commission natural gas producers who provide natural gas service to not more than twenty-five residential customers; and providing for the commission to regulate such producers in certain cases.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-1. Jurisdiction of commission; waiver of jurisdiction.

1 The jurisdiction of the commission shall extend to all public
2 utilities in this state, and shall include any utility engaged in
3 any of the following public services:

4 Common carriage of passengers or goods, whether by air,
5 railroad, street railroad, motor or otherwise, by express or
6 otherwise, by land, water or air, whether wholly or partly by
7 land, water or air; transportation of oil, gas or water by
8 pipeline; transportation of coal and its derivatives and all
9 mixtures and combinations thereof with other substances by
10 pipeline; sleeping car or parlor car services; transmission of
11 messages by telephone, telegraph or radio; generation and
12 transmission of electrical energy by hydroelectric or other
13 utilities for service to the public, whether directly or through
14 a distributing utility; supplying water, gas or electricity, by
15 municipalities or others; sewer systems servicing twenty-five or
16 more persons or firms other than the owner of the sewer systems; any public service district created under the provisions
17 of article thirteen-a, chapter sixteen of this code; toll bridges,
18 wharves, ferries; and any other public service: *Provided,*
19 That natural gas producers who provide natural gas service
20 to not more than twenty-five residential customers are exempt
21 from the jurisdiction of the commission with regard to the pro-
22 vision of such residential service: *Provided, however,* That
23

24 upon request of any of the customers of such natural gas pro-
25 ducers, the commission may, upon good cause being shown,
26 exercise such authority as the commission may deem appro-
27 priate over the operation, rates and charges of such producer
28 and for such length of time as the commission may consider
29 to be proper: *Provided further*, That the jurisdiction the com-
30 mission may exercise over the rates and charges of municipally
31 operated public utilities is limited to that authority granted the
32 commission in section four-b of this article: *And provided*
33 *further*, That the decision making authority granted to the
34 commission in sections four and four-a of this article shall,
35 in respect to an application filed by a public service district,
36 be delegated to a single hearing examiner appointed from the
37 commission staff, which hearing examiner shall be authorized
38 to carry out all decision making duties assigned to the com-
39 mission by said sections, and to issue orders having the full
40 force and effect of orders of the commission.

41 The commission may, upon application, waive its jurisdic-
42 tion and allow a utility operating in an adjoining state to
43 provide service in West Virginia when:

44 (1) An area of West Virginia cannot be practicably and
45 economically served by a utility licensed to operate within the
46 state of West Virginia;

47 (2) Said area can be provided with utility service by a
48 utility which operates in a state adjoining West Virginia;

49 (3) The utility operating in the adjoining state is regulated
50 by a regulatory agency or commission of the adjoining state;
51 and

52 (4) The number of customers to be served is not substantial.

53 The rates the out-of-state utility charges West Virginia cus-
54 tomers shall be the same as the rate the utility is duly autho-
55 rized to charge in the adjoining jurisdiction.

56 The commission, in the case of any such utility, may re-
57 voke its waiver of jurisdiction for good cause.

CHAPTER 165

(Com. Sub. for H. B. 1396—By Mr. Albright)

[Passed March 12, 1983; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and four, article six-a, chapter twenty-four-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to motor carrier registration generally; registration of motor carriers with the public service commission of the motor vehicles used by such carriers and the identification of such vehicles; requiring the designation of a local agent for the purpose of service of process; changing the dates required for the application for and the issuance of stamps used for the registration and identification of such motor vehicles and the date for applying for the form used for such purposes; and changing the date which such identification and registration expire.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6A. REGISTRATION OF INTERSTATE COMMERCE COMMISSION AUTHORITY AND IDENTIFICATION OF VEHICLES TO BE OPERATED THEREUNDER.

§24A-6A-1. Filing of interstate commerce commission authority required; exception.

§24A-6A-4. Application for, issuance and use of identification stamps and cab cards; expiration of registration and identification.

§24A-6A-1. Filing of interstate commerce commission authority required; exception.

1 No motor carrier shall operate within the borders of this
 2 state under authority issued by the interstate commerce com-
 3 mission (hereinafter referred to as I.C.C.) unless and until
 4 it shall have filed with this commission a copy of such author-
 5 ity. However, a motor carrier shall only be required to file
 6 with this commission that portion of its authority permitting
 7 operation within the borders of this state. A motor carrier
 8 shall not be required to file with this commission an emergency

9 or temporary operating authority having a duration of thirty
10 consecutive days or less if such carrier has: (a) Registered its
11 other authority and identified its vehicles or driveaway opera-
12 tion under the provisions of this chapter, and (b) furnished to
13 this commission a telegram or other written communication
14 describing such emergency or temporary operating authority
15 and stating that operation thereunder shall be in full accord
16 with the requirements of this chapter. Each motor carrier shall
17 file with the commission its designation of a local agent for
18 service of process on the uniform application for registration of
19 interstate operating authority as promulgated by the I.C.C.; ex-
20 cept that such form need not be filed if the designation has
21 been filed with the commission pursuant to 49 U.S.C., Sec-
22 tion 10330(b).

**§24A-6A-4. Application for, issuance and use of identification
stamps and cab cards; expiration of registration and
identification.**

1 (a) On or before the thirty-first day of December of each
2 calendar year, but not earlier than the preceding first day of
3 October, such motor carrier shall apply to the commission for
4 the issuance of an identification stamp or stamps for the regis-
5 tration and identification of the vehicle or vehicles which it in-
6 tends to operate, or driveaway operations which it intends to
7 conduct, within the borders of this state during the ensuing
8 year. Such motor carrier may thereafter file one or more sup-
9 plemental applications for additional stamps if the need there-
10 fore arises or is anticipated.

11 (b) If the commission determines that the motor carrier has
12 complied with all applicable provisions of this chapter, the
13 commission shall issue to the motor carrier the number of
14 identification stamps requested.

15 (c) An identification stamp issued under the provisions of
16 this article shall be used for the purpose of registering and
17 identifying a vehicle or driveaway operation as being operated
18 or conducted by a motor carrier under authority issued by the
19 I.C.C., and shall not be used for the purpose of distinguishing
20 between the vehicles operated by the same motor carrier. A
21 motor carrier receiving an identification stamp under the pro-

22 visions of this article shall not knowingly permit the use of
23 same by any other person or organization.

24 (d) The commission shall require the motor carrier to ac-
25 company such application with a list identifying each vehicle
26 (other than one to be used in driveaway operations) which it
27 intends to operate within the borders of this state during the
28 ensuing year. The commission shall further require the motor
29 carrier to keep such list current by filing with it an identifi-
30 cation of each vehicle acquired for operation within the
31 borders of this state and each vehicle whose operation is
32 discontinued therein after the filing of such list. The filing of
33 an identification of such newly acquired or discontinued ve-
34 hicle shall be made with the commission on or before the
35 sixteenth day after the motor carrier initiates or discontinues
36 operation of the vehicle within the borders of this state.

37 (e) On or before the thirty-first day of December of each
38 calendar year, but not earlier than the preceding first day of
39 October, such motor carrier shall apply to the national asso-
40 ciation of regulatory utility commissioners (hereinafter referred
41 to as NARUC) for the issuance of a sufficient supply of uni-
42 form identification cab cards for use in connection with the
43 registration and identification of the vehicle or vehicles which
44 it intends to operate, or driveaway operations which it intends
45 to conduct, within the borders of the state during the ensuing
46 year.

47 (f) A motor carrier receiving a cab card under the provi-
48 sions of this article shall not knowingly permit the use of
49 same by any other person or organization. Prior to operating a
50 vehicle, or conducting a driveaway operation, within the
51 borders of this state during the ensuing year, the motor carrier
52 shall place one of such identification stamps on the back of a
53 cab card in the square bearing the name of this state in such a
54 manner that the same cannot be removed without defacing it.
55 The motor carrier shall thereupon duly complete and execute
56 the form or certificate printed on the front of the cab card so
57 as to identify itself and such vehicle or driveaway operation.

58 (g) The registration and identification of a vehicle or drive-
59 away operation under the provisions of this article and the

60 identification stamp evidencing same and the cab card pre-
61 pared therefor shall become void on the first day of January in
62 the succeeding calendar year, unless such registration is
63 terminated prior thereto.

CHAPTER 166

(S. B. 521—By Mr. Williams)

[Passed March 11, 1983; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article thirteen-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to public service districts and allowing each city, incorporated town or other municipal corporation having a population over three thousand to appoint one person to the public service board of its district.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13A. PUBLIC SERVICE DISTRICTS FOR WATER, SEWERAGE AND GAS SERVICES.

§16-13A-3. District to be a public corporation and political subdivision; powers thereof; public service boards.

1 From and after the date of the adoption of the order
2 creating any public service district, it shall thereafter
3 be a public corporation and political subdivision of the
4 state, but without any power to levy or collect ad valorem
5 taxes. Each district may acquire, own and hold property,
6 both real and personal, in its corporate name, and may
7 sue, may be sued, may adopt an official seal and may
8 enter into contracts necessary or incidental to its pur-
9 poses, including contracts with any city, incorporated
10 town or other municipal corporation located within or

11 without its boundaries for furnishing wholesale supply of
12 water for the distribution system of the city, town or
13 other municipal corporation, and contract for the opera-
14 tion, maintenance, servicing, repair and extension of any
15 properties owned by it or for the operation and im-
16 provement or extension by the district of all or any part
17 of the existing municipally owned public service prop-
18 erties of any city, incorporated town or other municipal
19 corporation included within the district: *Provided*, That
20 no contract shall extend beyond a maximum of forty
21 years, but provisions may be included therein for a re-
22 newal or successive renewals thereof and shall conform
23 to and comply with the rights of the holders of any out-
24 standing bonds issued by the municipalities for the public
25 service properties.

26 The powers of each public service district shall be
27 vested in and exercised by a public service board con-
28 sisting of not less than three members, who shall be
29 persons residing within the district who have success-
30 fully completed a training program to be established and
31 administered by the public service commission in con-
32 junction with the department of natural resources and
33 the department of health. The members shall be appointed
34 in the following manner:

35 Each city, incorporated town or other municipal cor-
36 poration having a population of more than three thousand
37 but less than eighteen thousand shall be entitled to ap-
38 point one member of the board, and each such city,
39 incorporated town or other municipal corporation having
40 a population in excess of eighteen thousand shall be
41 entitled to appoint one additional member of the board
42 for each additional eighteen thousand population. The
43 members of the board representing such cities, incorpo-
44 rated towns or other municipal corporations shall be
45 residents thereof and shall be appointed by a resolution
46 of the governing bodies thereof and upon the filing of
47 a certified copy or copies of the resolution or resolutions
48 in the office of the clerk of the county commission which
49 entered the order creating the district, the persons so
50 appointed shall thereby become members of the board

51 without any further act or proceedings. If the number of
52 members of the board so appointed by the governing
53 bodies of cities, incorporated towns or other municipal
54 corporations included in the district shall equal or exceed
55 three, then no further members shall be appointed to
56 the board and the members shall be and constitute the
57 board of the district.

58 If no city, incorporated town or other municipal cor-
59 poration having a population of more than three thou-
60 sand is included within the district, then the county
61 commission which entered the order creating the district
62 shall appoint three members of the board, who are per-
63 sons residing within the district, which three members
64 shall become members of and constitute the board of the
65 district without any further act or proceedings.

66 If the number of members of the board appointed by
67 the governing bodies of cities, incorporated towns or other
68 municipal corporations included within the district is
69 less than three, then the county commission which en-
70 tered the order creating the district shall appoint such
71 additional member or members of the board, who are
72 persons residing within the district, as is necessary to
73 make the number of members of the board equal three,
74 and the additional member or members shall thereupon
75 become members of the board; and the member or mem-
76 bers appointed by the governing bodies of the cities,
77 incorporated towns or other municipal corporations in-
78 cluded within the district and the additional member or
79 members appointed by the county commission as afore-
80 said, shall be and constitute the board of the district. A
81 person may serve as a member of the board in one or
82 more public service districts.

83 The population of any city, incorporated town or other
84 municipal corporation, for the purpose of determining the
85 number of members of the board, if any, to be appointed
86 by the governing body or bodies thereof, shall be con-
87 clusively considered to be the population stated for such
88 city, incorporated town or other municipal corporation in
89 the last official federal census.

90 The respective terms of office of the members of the
91 first board shall be fixed by the county commission and
92 shall be as equally divided as may be, that is approxi-
93 mately one third of the members for a term of two years,
94 a like number for a term of four, and the term of the
95 remaining member or members for six years, from the
96 first day of the month during which the appointments
97 are made. The first members of the board appointed as
98 aforesaid shall meet at the office of the clerk of the
99 county commission which entered the order creating the
100 district as soon as practicable after the appointments and
101 shall qualify by taking an oath of office: *Provided*, That
102 any member or members of the board may be removed
103 from their respective office as provided in section three-a
104 of this article.

105 Any vacancy shall be filled for the unexpired term
106 within thirty days, otherwise successor members of the
107 board shall be appointed for terms of six years and the
108 terms of office shall continue until successors have been
109 appointed and qualified. All successor members shall be
110 appointed in the same manner as the member succeeded
111 was appointed.

112 The board shall organize within thirty days following
113 the first appointments and annually thereafter at its first
114 meeting after the first day of January of each year by
115 selecting one of its members to serve as chairman and by
116 appointing a secretary and a treasurer who need not be
117 members of the board. The secretary shall keep a record
118 of all proceedings of the board which shall be available
119 for inspection as other public records. Duplicate records
120 shall be filed with the county commission and shall
121 include the minutes of all board meetings. The treasurer
122 is lawful custodian of all funds of the public service
123 district and shall pay same out on orders authorized or
124 approved by the board. The secretary and treasurer shall
125 perform other duties appertaining to the affairs of the
126 district and shall receive salaries as shall be prescribed
127 by the board. The treasurer shall furnish bond in an
128 amount to be fixed by the board for the use and benefit
129 of the district.

130 The members of the board, and the chairman, secretary
131 and treasurer thereof, shall make available to the county
132 commission, at all times, all of its books and records
133 pertaining to the district's operation, finances and affairs,
134 for inspection and audit. The board shall meet at least
135 monthly.

CHAPTER 167

(H. B. 2032—By Mr. Speaker, Mr. See)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article eighteen, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requiring the governor to determine the location of the principal office of the railroad maintenance authority.

Be it enacted by the Legislature of West Virginia:

That section six, article eighteen, 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 18. WEST VIRGINIA RAILROAD MAINTENANCE AUTHORITY.

§29-18-6. Powers, duties and responsibilities of authority generally.

1 The West Virginia railroad maintenance authority is here-
2 by granted, has and may exercise all powers necessary or
3 appropriate to carry out and effectuate its corporate purpose.

4 (a) The authority shall have the power and capacity to:

5 (1) Adopt, and from time to time, amend and repeal bylaws
6 necessary and proper for the regulation of its affairs and the
7 conduct of its business and rules and regulations to implement
8 and make effective its powers and duties, such rules and regula-
9 tions to be promulgated in accordance with the provisions
10 of chapter twenty-nine-a of this code.

11 (2) Adopt an official seal.

12 (3) Maintain a principal office and, if necessary, regional
13 suboffices at locations properly designated or provided.

14 (4) Sue and be sued in its own name and plead and be im-
15 pleaded in its own name, and particularly to enforce the obliga-
16 tions and covenants made under sections ten, eleven and six-
17 teen of this article. Any actions against the authority shall be
18 brought in the circuit court of Kanawha County. The location
19 of the principal office of the authority shall be determined by
20 the governor.

21 (5) Make loans and grants to governmental agencies and
22 persons for carrying out railroad projects by any such govern-
23 mental agency or person and, in accordance with chapter
24 twenty-nine-a of this code, adopt rules and procedures for
25 making such loans and grants.

26 (6) Acquire, construct, reconstruct, enlarge, improve, fur-
27 nish, equip, maintain, repair, operate, lease or rent to, or con-
28 tract for operation by a governmental agency or person, railroad
29 projects, and, in accordance with chapter twenty-nine-a of this
30 code, adopt rules and regulations for the use of such projects.

31 (7) Make available the use or services of any railroad
32 project to one or more persons, one or more governmental
33 agencies, or any combination thereof.

34 (8) Issue railroad maintenance authority bonds and notes
35 and refunding bonds of the state, payable solely from reve-
36 nues as provided in section ten of this article unless the
37 bonds are refunded by refunding bonds, for the purpose of
38 paying any part of the cost of one or more railroad projects
39 or parts thereof.

40 (9) Acquire, by gift or purchase, hold and dispose of
41 real and personal property in the exercise of its powers and
42 the performance of its duties as set forth in this article.

43 (10) Acquire in the name of the state, by purchase or
44 otherwise, on such terms and in such manner as it deems
45 proper, or by the exercise of the right of eminent domain in

46 the manner provided in chapter fifty-four of this code, rail
47 properties and appurtenant rights and interests necessary for
48 carrying out railroad projects.

49 (11) Make and enter into all contracts and agreements
50 and execute all instruments necessary or incidental to the
51 performance of its duties and the execution of its powers.
52 When the cost under any such contract or agreement, other
53 than compensation for personal services, involves an ex-
54 penditure of more than two thousand dollars, the authority
55 shall make a written contract with the lowest responsible
56 bidder after public notice published as a Class II legal ad-
57 vertisement in compliance with the provisions of article three,
58 chapter fifty-nine of this code, the publication area for such
59 publication to be the county wherein the work is to be
60 performed or which is affected by the contract, which notice
61 shall state the general character of the work and the general
62 character of the materials to be furnished, the place where
63 plans and specifications therefor may be examined and the
64 time and place of receiving bids, but a contract or lease for
65 the operation of a railroad project constructed and owned
66 by the authority or an agreement for cooperation in the
67 acquisition or construction of a railroad project pursuant to
68 section sixteen of this article is not subject to the foregoing
69 requirements and the authority may enter into such contract
70 or lease or such agreement pursuant to negotiation and upon
71 such terms and conditions and for such period as it finds to be
72 reasonable and proper under the circumstances and in the best
73 interests of proper operation or of efficient acquisition or con-
74 struction of such railroad project. The authority may reject
75 any and all bids. A bond with good and sufficient surety,
76 approved by the authority, shall be required of all con-
77 tractors in an amount equal to at least fifty percent of the
78 contract price, conditioned upon the faithful performance of
79 the contract.

80 (12) Appoint a director and employ managers, superin-
81 tendents and other employees and retain or contract with
82 consulting engineers, financial consultants, accountants, at-
83 torneys and such other consultants and independent contractors

84 as are necessary in its judgment to carry out the provisions
85 of this article, and fix the compensation or fees thereof. All
86 expenses thereof shall be payable from the proceeds of rail-
87 road maintenance authority revenue bonds or notes issued
88 by the authority, from revenues and funds appropriated for
89 such purpose by the Legislature or from grants from the
90 federal government which may be used for such purpose.

91 (13) Receive and accept from any state or federal agency,
92 grants for or in aid of the construction of any railroad
93 project or for research and development with respect to
94 railroads and receive and accept aid or contributions from
95 any source of money, property, labor or other things of
96 value, to be held, used and applied only for the purposes for
97 which such grants and contributions are made.

98 (14) Engage in research and development with respect to
99 railroads.

100 (15) Purchase fire and extended coverage and liability
101 insurance for any railroad project and for the principal
102 office and suboffices of the authority, insurance protecting
103 the authority and its officers and employees against liability,
104 if any, for damage to property or injury to or death of persons
105 arising from its operations and be a member of, and to partici-
106 pate in, the state workmen's compensation program.

107 (16) Charge, alter and collect rates, rentals and other
108 charges for the use or services of any railroad project as
109 provided in this article.

110 (17) Do all acts necessary and proper to carry out the
111 powers expressly granted to the authority in this article.

112 (b) In addition, the authority shall have the power to:

113 (1) Acquire rail properties both within and not within the
114 jurisdiction of the interstate commerce commission and rail
115 properties within the purview of the federal Regional- Rail
116 Reorganization Act of 1973, any amendments to it and
117 any other relevant federal legislation.

- 118 (2) Enter into agreements with owners of rail properties
119 for the acquisition of rail properties or use, or both, of
120 rail properties upon such terms, conditions, rates or rentals
121 as can best effectuate the purposes of this article.
- 122 (3) Acquire rail properties and other property of a rail-
123 road in concert with another state or states as is necessary
124 to ensure continued rail service in this state.
- 125 (4) Establish a state plan for rail transportation and
126 local rail services.
- 127 (5) Administer and coordinate such state plan.
- 128 (6) Provide in such state plan for the equitable dis-
129 tribution of federal rail service continuation subsidies among
130 state, local and regional transportation authorities.
- 131 (7) Promote, supervise and support safe, adequate and
132 efficient rail services.
- 133 (8) Employ sufficiently trained and qualified personnel for
134 these purposes.
- 135 (9) Maintain adequate programs of investigation, re-
136 search, promotion and development in connection with such
137 purposes and to provide for public participation therein.
- 138 (10) Provide satisfactory assurances on behalf of the
139 state that fiscal control and fund accounting procedures will
140 be adopted by the state necessary to assure proper dis-
141 bursement of and accounting for federal funds paid to the
142 state as rail service continuation subsidies.
- 143 (11) Comply with the regulations of the secretary of
144 transportation of the United States department of transporta-
145 tion affecting federal rail service continuation programs.
- 146 (12) Do all things otherwise necessary to maximize federal
147 assistance to the state under Title IV of the federal Regional
148 Rail Reorganization Act of 1973 and to qualify for rail service
149 continuation subsidies pursuant to the federal Regional Rail
150 Reorganization Act of 1973.

CHAPTER 168

(Com. Sub. for S. B. 228—Mr. McGraw, Mr. President)

[Passed March 9, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-b, relating to installation of illuminating devices on certain railway cabooses for protection of workmen and property when such cars are being pushed at night; exemptions; enforcement; penalty; and liability.

Be it enacted by the Legislature of West Virginia:

That chapter thirty-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 two-b, to read as follows:

ARTICLE 2B. ILLUMINATION EQUIPMENT FOR RAILROAD CABOOSSES.

- §31-2B-1. Legislative findings and purposes.
- §31-2B-2. Illumination requirements; time periods for implementation; application of requirements.
- §31-2B-3. Repair and maintenance; exemption.
- §31-2B-4. Runs originating from out of state.
- §31-2B-5. Enforcement penalty.
- §31-2B-6. No individual responsibility.

§31-2B-1. Legislative findings and purposes.

- 1 The Legislature hereby finds that for the purpose of
- 2 protecting the lives of workmen, other persons and rail-
- 3 road equipment there shall be maintained at the rear of
- 4 cabooses illumination when they are being pushed during
- 5 hours of darkness.

§31-2B-2. Illumination requirements; time period for implementation; application of requirements.

- 1 (a) From the effective date of this article, there shall
- 2 be maintained at the rear of all cabooses, while cabooses
- 3 are being pushed during the hours of darkness, either a

4 handheld or installed backup light which shall have
5 sufficient candlepower to illuminate the track for a dis-
6 tance of at least two hundred fifty feet under clear
7 atmospheric conditions on all local and mine runs.

8 (b) Every railroad company operating within this
9 state shall be required to comply with the provisions of
10 this article, but shall have one year from the effective
11 date hereof to comply with such requirements.

12 (c) The provisions of this article shall apply to all
13 local and mine run cabooses.

§31-2B-3. Repair and maintenance; exemption.

1 Any railroad company operating a caboose to which the
2 illumination requirements of section two of this article
3 apply shall not be in violation of said article if the failure
4 of lighting equipment required under the provisions of
5 this article is corrected at the first point maintenance
6 supplies are available, or in the case of repairs, the first
7 point at which materials and repair facilities are avail-
8 able and repairs can reasonably be made.

§31-2B-4. Runs originating from out of state.

1 Runs originating from without the state of West Vir-
2 ginia shall be exempt from the requirements of this
3 article.

§31-2B-5. Enforcement penalty.

1 The provisions of this article shall be enforced by the
2 public service commission. If any railroad company vio-
3 lates the provisions of this article, it shall be guilty of a
4 misdemeanor, and, upon conviction thereof, shall be fined
5 not more than five hundred dollars for each violation.

§31-2B-6. No individual responsibility.

1 With the exception of intentional misconduct or negli-
2 gence on the part of the employee, this article shall not
3 be construed to impose any individual responsibility
4 upon any railroad employee for damage to his employer
5 due to breakage or loss of use while the employee is
6 engaged in handling the lights as required by this article.

- 7 This article shall be construed as imposing upon the
8 employer responsibility for securing and maintaining the
9 lights required by this article.

CHAPTER 169

(S. B. 630—By Mr. McGraw, Mr. President)

[Passed March 8, 1983; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article seventeen-a, relating to authorizing the issuance and sale of notes as special obligations of the state of West Virginia to finance the construction of surface transportation improvements; setting forth the purpose and scope thereof; definition of terms; authorizing the issuance of notes or other obligations either definitive or temporary; defining the use of the proceeds of such notes; providing for the execution of notes; providing for the issuance of a declaration establishing terms and sale of notes issued; providing for matters to be contained in the declaration establishing the terms and sale of such notes; manner of sale of notes including determination of price, and terms and conditions to be made by five-member group and composition thereof; five-member group to serve as financial advisor with authorization to retain professional financial assistance; security of notes issued; pledge and assignment of security; validity and binding effect of pledge or assignment; trust agreements with trust companies or banks to be set forth in trust agreements; rights of individual holders of notes until such notes are discharged; limitation of liability of the state of West Virginia, commissioner of the West Virginia department of highways and any officers of the state of West Virginia executing notes or agreements in connection with the issuance of notes or other obligations; authorizing certain persons, companies, banks and associations who or which

may invest funds properly and legally, including capital belonging to them or in their control, to invest in such notes; exemption of notes and income from certain taxation; providing for attorney general or his duly appointed legal representative to serve as note counsel and that legal expenses approved by attorney general, incurred in the execution of this act, shall be a payable cost thereunder.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 17A. CONSTRUCTION FINANCING FOR SURFACE TRANSPORTATION IMPROVEMENTS.

- §17-17A-1. Purpose and scope.
- §17-17A-2. Definitions.
- §17-17A-3. Authorization of notes.
- §17-17A-4. Establishment of terms and sale of notes; financial advisor.
- §17-17A-5. Security for notes; trust agreements.
- §17-17A-6. Rights of holders; limitation on liability of state.
- §17-17A-7. Legality for investments; tax exemption.
- §17-17A-8. Attorney general or his duly appointed legal representative to serve as note counsel; legal expenses a payable cost.

§17-17A-1. Purpose and scope.

1 This article is intended to facilitate the acquisition of
2 right-of-way for and the construction of improvements to
3 interstate routes sixty-four and seventy-seven to be
4 funded wholly or in part by amounts to be made avail-
5 able pursuant to the Federal Surface Transportation
6 Assistance Act of one thousand nine hundred eighty-two,
7 or from amounts specifically appropriated or dedicated
8 therefor by the state, or from amounts which may prop-
9 erly be expended from the state road fund under article
10 three, chapter seventeen of this code. This article au-
11 thorizes notes, in an aggregate amount of outstanding
12 notes not to exceed sixty-four million dollars, to be issued
13 to provide construction financing for such improvements
14 in anticipation of reimbursement from such sources, but
15 such notes will be special obligations of the state only,

16 and will not be general obligations of the state or secured
17 by any claim on the general credit or taxing power of
18 the state.

§17-17A-2. Definitions.

1 As used in this article, the following words and terms
2 shall have the following meaning:

3 "Commissioner" means the West Virginia commissioner
4 of highways.

5 "Cost," when used with respect to any surface trans-
6 portation improvement, means any and all costs of ac-
7 quiring, constructing, reconstructing, replacing, complet-
8 ing or repairing any surface transportation improvement,
9 including, without limiting the generality of the foregoing,
10 land, property, rights, franchises, materials, labor and
11 services, contractors' fees, planning and engineering ex-
12 penses, financing costs, legal fees, trustees' or paying
13 agents' fees and interest on obligations issued under this
14 article.

15 "Note" means any note or other obligation issued pur-
16 suant to this article.

17 "Outstanding note" means a note which has been issued
18 pursuant to this article and has not been repaid, but
19 does not include notes which are to be paid from desig-
20 nated moneys or securities which are irrevocably held in
21 trust solely for such purpose.

22 "Surface transportation improvement" means inter-
23 state completion projects on interstate route sixty-four
24 or on interstate route seventy-seven, as to which all or a
25 portion of the cost thereof is to be reimbursed to the
26 state under federal surface transportation legislation.

§17-17A-3. Authorization of notes.

1 The commissioner is hereby authorized to pay the cost
2 of any surface transportation improvement through the
3 issuance of special obligation notes. No such notes may
4 be issued, however, unless they are part of an issue
5 described in a written declaration executed by the gov-

6 error and the commissioner and filed in the office of the
7 secretary of state.

8 Except in the case of renewal notes, the proceeds of
9 such notes shall be used solely for the payment of the cost
10 of the surface transportation improvements which they
11 were issued to finance, which shall be verified by the
12 commissioner and under such further restrictions, if any,
13 as may be provided. If the proceeds of such notes, by
14 error or calculation or otherwise, shall be less than the
15 cost of the related surface transportation improvements,
16 additional notes may in like manner be issued to provide
17 the amount of such deficit, and unless otherwise provided
18 in the trust agreement hereinafter mentioned, shall be
19 deemed to be of the same issue and shall be entitled to
20 payment from the same sources, without preference or
21 priority of the notes first issued for the same related
22 surface transportation improvements. If the proceeds of
23 notes issued for any related surface transportation im-
24 provements shall exceed the cost thereof, the surplus
25 shall be applied to the payment, purchase or redemption
26 of such notes.

27 Such notes shall be executed by the governor and the
28 commissioner, under the great seal of the state, attested
29 by the facsimile signature of the secretary of state, and
30 the coupons, if any, attached thereto shall be authenti-
31 cated by the facsimile signature of the commissioner. The
32 governor and the commissioner may execute such notes
33 by their facsimile signatures, but, unless provision has
34 been made for the authentication thereof by a trustee
35 determined to be responsible by the commissioner, each
36 note shall bear at least one manual signature.

37 Prior to the preparation of definitive notes, the gover-
38 nor and the commissioner may under like restrictions
39 issue temporary notes with or without coupons, exchange-
40 able for definitive notes upon the issuance of the latter.
41 Such notes may be issued without any other proceedings,
42 or the happening of any other conditions or things than
43 those proceedings, conditions and things which are speci-
44 fied and required by this article or by the constitution of
45 the state.

§17-17A-4. Establishment of terms and sale of notes; financial advisor.

1 The description contained in any declaration with re-
2 spect to an issue of notes hereunder shall specify the
3 particular surface transportation improvements to be
4 financed through the issuance of the notes, the estimate of
5 the cost of such improvements, the aggregate amount of
6 outstanding notes which may at any point in time consti-
7 tute a part of such issue, the time or times and manner
8 of sale of such notes, and the particular terms of such
9 notes, or the manner in which such terms will be deter-
10 mined, including the date or dates, time or times of
11 issuance, time or times and amount or amounts of ma-
12 turity or maturities, specified or variable rate or rates
13 of interest, the form of such notes and provisions for
14 registration or exchange, if applicable, the method and
15 manner of payment of such notes, the provisions, if any,
16 for redemption or renewal of such notes, and specifying
17 such other similar matters as the commissioner may de-
18 termine to be necessary and appropriate in connection
19 with the sale and issuance of the notes.

20 The notes of an issue described in any such declaration
21 shall be sold in such manner, at such price or prices and
22 on such terms and conditions as no less than three mem-
23 bers of the five-member group, comprised of the trea-
24 surer, the auditor, the commissioner of finance and ad-
25 ministration, the tax commissioner and the commissioner,
26 determines to be in the best interest of the state, taking
27 into account the financial responsibility of the purchaser
28 and the terms and conditions of purchase and especially
29 the availability of the proceeds of the notes when needed
30 to pay the cost of the related surface transportation im-
31 provements. Such five-member group shall serve as
32 financial advisor and upon the determination of no less
33 than three members, as aforesaid, may retain professional
34 financial assistance for such purpose.

§17-17A-5. Security for notes; trust agreements.

1 In connection with any issue of notes hereunder, the
2 commissioner may pledge or assign, as security for the

3 payment of the principal of or interest on such notes,
4 any of the following:

5 (a) Any amounts to be received from the United States
6 of America, or any agency or instrumentality thereof,
7 as reimbursements of the costs incurred in connection
8 with the surface transportation improvements to be
9 financed by such notes, together with the rights and
10 interests of the state with respect to such reimbursement;

11 (b) Any amounts in the state road fund which may
12 properly be applied to the reimbursements of any such
13 costs pursuant to article three of this chapter seventeen;

14 (c) The proceeds of any such notes pending their use
15 or of notes which may be issued to renew or refund such
16 notes;

17 (d) The proceeds of any insurance or letters of credit
18 or similar arrangements undertaken in connection with
19 the acquisition, construction or financing of such surface
20 transportation improvements;

21 (e) Any other amounts specifically designated for the
22 purpose of paying any such costs, but only to the extent
23 appropriated by the Legislature and paid from general
24 revenues prior to such pledge or dedicated for such pur-
25 pose by the Legislature from proprietary revenues of the
26 state.

27 Any such pledge or assignment shall be valid and bind-
28 ing from the time it is made, and the lien of such pledge
29 or assignment shall be enforceable and need not be
30 perfected by delivery or any filing or further act. Such
31 lien shall be valid against all parties having claims of
32 any kind in tort, contract or otherwise, irrespective of
33 whether such parties have notice of the lien of such
34 pledge or assignment.

35 The commissioner may enter into an agreement or
36 agreements with any trust company or with any bank
37 having the power of a trust company, either within or
38 outside of the state, as trustee for the holders of notes
39 issued hereunder, setting forth therein such duties of the

40 state and of the commissioner in respect of the acquisition
41 and construction of surface transportation improvements,
42 the conservation and application of all moneys, the in-
43 surance of moneys on hand or on deposit, and the rights
44 and remedies of the trustee and the holders of the notes,
45 as may be agreed upon with the original purchasers of
46 such notes, and including therein provisions restricting
47 the individual right of action of holders as is customary
48 in such trust agreements to protect and enforce the rights
49 and remedies of the trustee and the holders. All expenses
50 incurred in carrying out such agreement may be treated
51 as a part of the cost of construction of the surface trans-
52 portation improvements affected by the agreement.

§17-17A-6. Rights of holders; limitation on liability of state.

1 The state of West Virginia does hereby pledge to and
2 agree with the holders of any notes issued under this
3 article that the state will not limit or alter the rights
4 hereby vested in the commissioner to fulfill the terms
5 of any agreements made with the holders thereof, or in
6 any way impair the rights and remedies of such holders
7 until such notes, together with the interest thereon, with
8 interest on any unpaid installments of interest, and
9 all costs and expenses in connection with any action or
10 proceeding by or on behalf of such holders, are fully met
11 and discharged. The commissioner is hereby authorized
12 to include this pledge and agreement of the state in any
13 agreement with the holders of such notes.

14 The holder of any note, or the trustee therefor, shall
15 have the right to bring suit for the payment of such note
16 or to compel the enforcement of any agreement securing
17 such note to the extent therein provided. Such notes
18 shall be special obligations of the state, payable solely
19 from the sources herein provided, and shall not be a
20 general obligation debt or liability of the state or con-
21 stitute any claim on its general revenues or taxing power.
22 Neither the commissioner nor any other officer of the
23 state executing notes or other agreements hereunder shall
24 have any personal liability thereon or be subject to per-
25 sonal accountability therefor.

§17-17A-7. Legality for investment; tax exemption.

1 The notes are hereby made securities in which all
2 insurance companies and associations, and other persons
3 carrying on an insurance business, all banks, bankers,
4 trust companies, building and loan associations, savings
5 and loan associations, investment companies and other
6 persons carrying on a banking business, and other per-
7 sons, except administrators, guardians, executors, trustees
8 and fiduciaries, who are now or who may hereafter be
9 authorized to invest in bonds or other obligations of the
10 state, may properly and legally invest funds including
11 capital in their control or belonging to them.

12 The notes and the income therefrom shall at all times
13 be exempt from taxation, except for death and gift taxes,
14 taxes on transfers, sales taxes, real property taxes and
15 business and occupation taxes.

§17-17A-8. Attorney general or his duly appointed legal representative to serve as note counsel; legal expenses a payable cost.

1 The attorney general, or his duly appointed legal repre-
2 sentative, shall serve as note counsel and shall be respon-
3 sible for the issuance of a final approving opinion regard-
4 ing the legality of the sale of such notes. Legal expenses,
5 approved by the attorney general, incurred in the execu-
6 tion of this act, shall be a payable cost thereof.

CHAPTER 170**(S. B. 53—By Mr. Boettner)**

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article twenty-three, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to areas where salvage yards may be established; screening from the public view; issuance of permits by the county planning commission or other designated agency.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 23. SALVAGE YARDS.

§17-23-4. Areas where establishment prohibited; screening requirements; existing licensed yards.

1 On and after the effective date of this article, (1) no
2 license shall be issued to establish a salvage yard or any
3 part thereof within one thousand feet of the nearest edge
4 of the right-of-way of any road within the state road
5 system designated and classified or redesignated and
6 reclassified as expressway, trunkline or feeder, or any
7 road within the state road system designated and classi-
8 fied or redesignated and reclassified for purposes of allo-
9 cation of federal highway funds as part of the federal-aid
10 interstate or primary systems: *Provided*, That this limi-
11 tation shall not apply to landfills established and main-
12 tained by any county or municipality if such landfill is
13 effectively screened and obscured by natural objects.
14 plantings, fences or other appropriate means so as
15 not to be visible from the main traveled way of the sys-
16 tem, and (2) no license shall be issued to establish a
17 salvage yard or any part thereof within three hundred
18 feet of the nearest edge of the right-of-way of any state
19 local service road, unless the view thereof from such state
20 local service road shall be effectively screened and ob-
21 scured by fences: *Provided*, That this limitation shall not
22 apply to landfills established and maintained by any
23 county or municipality if such landfill is effectively
24 screened and obscured by natural objects, plantings, fen-
25 ces or other appropriate means so as not to be visible
26 from the main traveled way of the system.

27 The license of any salvage yard duly issued under the
28 former provisions of this article, which salvage yard or
29 any part thereof on the effective date of this article, is
30 (1) within one thousand feet of the nearest edge of the

31 right-of-way of any road within the state road system
32 designated and classified or redesignated and reclassified
33 as expressway, trunk line, or feeder, or any road within
34 the state road system designated and classified or re-
35 designated and reclassified for purposes of allocation of
36 federal highway funds as part of the federal-aid interstate
37 or primary systems or is (2) within three hundred feet
38 of the nearest edge of the right-of-way of any state local
39 service road, may be renewed only if the view of the said
40 salvage yard and all parts thereof are effectively screened
41 from the adjacent road by natural objects, plantings,
42 fences or other appropriate means.

43 Any salvage yard which, on the effective date of this
44 article, is duly licensed under the former provisions of
45 this article may be established or continue to be operated
46 and maintained without screening by natural objects,
47 plantings, fences or other appropriate means so long as
48 any part of such salvage yard is (1) not located within
49 one thousand feet of any road within the state road
50 system designated and classified or redesignated and re-
51 classified as expressway, trunk line, or feeder, or any
52 road within the state road system designated and classi-
53 fied or redesignated and reclassified for the purposes of
54 allocation of federal highway funds as part of the federal-
55 aid interstate or primary systems or is (2) not located
56 within three hundred feet of the nearest edge of the
57 right-of-way of any state local service road.

58 On or after the first day of July, one thousand nine
59 hundred eighty-three, any owner or operator establish-
60 ing, operating or maintaining a salvage yard for which a
61 license is required under the provisions of section three
62 of this article is hereby required to obtain a permit from
63 the county planning commission, or if the county does
64 not have a county planning commission, from an office
65 or agency designated by the county commission, in which
66 the salvage yard is located. There shall be no charge for
67 the permit. The permit requirement of this section does
68 not apply to any owner or operator who has established,
69 or is operating or maintaining, a salvage yard prior to the
70 first day of July, one thousand nine hundred eighty-three.

CHAPTER 171

(Com. Sub. for S. B. 550—By Mr. Williams)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five-f, relating to the creation of a solid waste management act; transferring authority over the management of solid waste from the department of health to the department of natural resources; purpose and legislative findings; definitions; powers and duties of the director of natural resources and the chief of the water resources division; rules; prohibited acts; permits required; orders; inspections; enforcement; civil and criminal penalties; appeal and review procedures; short title.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5F. SOLID WASTE MANAGEMENT ACT.

- §20-5F-1. Purpose and legislative findings.
- §20-5F-2. Definitions.
- §20-5F-3. Transfer of authority.
- §20-5F-4. Powers and duties; rules and rule making.
- §20-5F-5. Prohibitions; permits required.
- §20-5F-6. Orders, inspections and enforcement; civil and criminal penalties.
- §20-5F-7. Appeal and review procedures.
- §20-5F-8. Short title.

§20-5F-1. Purpose and legislative findings.

- 1 (a) The purpose of this article is to transfer jurisdiction
- 2 over the management of solid waste under section nine,
- 3 article one, chapter sixteen of the code from the department
- 4 of health to the department of natural resources and to
- 5 establish a comprehensive program of controlling solid
- 6 waste disposal.
- 7 (b) The Legislature finds that uncontrolled,
- 8 inadequately controlled and improper collection,
- 9 transportation, processing and disposal of solid waste (1) is

10 a public nuisance and a clear and present danger to people;
11 (2) provides harborages and breeding places for disease-
12 carrying, injurious insects, rodents and other pests harmful
13 to the public health, safety and welfare; (3) constitutes a
14 danger to livestock and domestic animals; (4) decreases the
15 value of private and public property, causes pollution,
16 blight and deterioration of the natural beauty and resources
17 of the state and has adverse economic and social effects on
18 the state and its citizens; (5) results in the squandering of
19 valuable nonrenewable and nonreplenishable resources
20 contained in solid waste; (6) that resource recovery and
21 recycling reduces the need for landfills and extends their
22 life; and that (7) proper disposal, resource recovery or
23 recycling of solid waste is for the general welfare of the
24 citizens of this state.

§20-5F-2. Definitions.

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

3 (a) "Approved solid waste facility" means a solid waste
4 facility or practice which has a valid permit under this
5 article;

6 (b) "Director," "board," "chief," "person," "persons,"
7 "applicant," "water," "waters," "water resources," "sewage,"
8 "point source," "code" and "department" shall have the
9 same meaning as defined in section two, article five-a, chap-
10 ter twenty of the code;

11 (c) "Open dump" means any solid waste disposal which
12 does not have a permit under this article, or is in violation of
13 state law, or where solid waste is disposed in a manner that
14 does not protect the environment;

15 (d) "Sludge" means any solid, semisolid, residue or
16 precipitate, separated from or created by a municipal,
17 commercial or industrial waste treatment plant, water
18 supply treatment plant or air pollution control facility or
19 any other such waste having similar origin;

20 (e) "Solid waste" means any garbage, paper, litter,
21 refuse, cans, bottles, sludge from a waste treatment plant,
22 water supply treatment plant or air pollution control
23 facility, other discarded material, including carcasses of
24 any dead animal or any other offensive or unsightly matter,

25 solid, liquid, semisolid or contained liquid or gaseous
26 material resulting from industrial, commercial, mining,
27 agricultural operations or from community activities but
28 does not include solid or dissolved material in sewage, or
29 solid or dissolved materials in irrigation return flows or
30 industrial discharges which are point sources and have
31 permits under article five-a, chapter twenty of the code, or
32 source, special nuclear or byproduct material as defined by
33 the Atomic Energy Act of 1954, as amended, or a hazardous
34 waste either identified or listed under article five-e,
35 chapter twenty of the code or refuse, slurry and overburden
36 regulated under article six, chapter twenty of the code;

37 (f) "Solid waste disposal" means the practice of
38 disposing solid waste including placing, depositing,
39 dumping or throwing or causing to be placed, deposited,
40 dumped or thrown any solid waste; and

41 (g) "Solid waste facility" means any system, facility,
42 land, contiguous land, improvements on the land,
43 structures or other appurtenances or methods used for
44 processing, recycling or disposing of solid waste, including
45 landfills, transfer stations, resource recovery facilities and
46 other such facilities not herein specified.

§20-5F-3. Transfer of authority.

1 The Legislature hereby transfers from the department of
2 health to the department of natural resources the duties,
3 responsibilities and authority of the state director of health
4 under section nine, article one, chapter sixteen of the code
5 as to the permitting and regulating of solid wastes and
6 hereby designates the chief to be the authorized
7 representative denoted in that section for this purpose:
8 *Provided*, That the state director of health shall retain
9 authority under chapter sixteen of the code to enforce the
10 public health laws over solid waste disposal which presents
11 an imminent and substantial endangerment to the public
12 health.

§20-5F-4. Powers and duties; rules and rule making.

1 In addition to all other powers, duties, responsibilities
2 and authority granted and assigned to the director and chief
3 in the code and elsewhere described by law, they are hereby
4 empowered as follows:

5 (a) The director may adopt rules and regulations in
6 compliance with the West Virginia administrative
7 procedures act to carry out the provisions of this article
8 including modifying any existing rules and regulations and
9 establishing permit application fees up to an amount
10 sufficient to defray the costs of permit review. In
11 promulgating rules and regulations the director may
12 consider and establish requirements based on the quantity
13 of solid waste to be handled, including different
14 requirements for solid waste facilities or approved solid
15 waste facilities which handle more than one hundred tons
16 of solid waste per day, the environmental impact of solid
17 waste disposal, the nature, origin or characteristics of the
18 solid waste, public sentiment, the financial capability of the
19 applicant, soil and geological considerations and other
20 natural resource considerations. All existing rules and
21 regulations of the department of health relating to solid
22 waste disposal shall remain valid and be enforceable by the
23 department of natural resources on the effective date of this
24 article until changed or modified by the director, in
25 compliance with chapter twenty-nine-a of the code.

26 (b) The chief, after public notice and opportunity for
27 public hearing, may issue a permit with reasonable terms
28 and conditions for installation, establishment,
29 modification, operation or abandonment of a solid waste
30 facility: *Provided*, That the director may deny the issuance
31 of a permit on the basis of information in the application or
32 from other sources including public comment, if the solid
33 waste facility may cause adverse impacts on the natural
34 resources and environmental concerns under the director's
35 purview in chapter twenty of the code, destruction of
36 aesthetic values, destruction or endangerment of the
37 property of others or is significantly adverse to the public
38 sentiment of the area where the solid waste facility is, or
39 will be, located. The director may also prohibit the
40 installation or establishment of specific types and sizes of
41 solid waste facilities in a specified geographical area of the
42 state based on the above cited factors and may delete such
43 geographical area from consideration for that type and size
44 solid waste facility.

45 (c) The director, chief or any authorized representative,
46 employee or agent of the department, may at reasonable

47 times, enter onto any approved solid waste facility, open
48 dump, solid waste facility or property where solid waste is
49 present for the purpose of making an inspection or
50 investigation of solid waste disposal.

51 (d) The director, chief or any authorized representative,
52 employee or agent of the department may, at reasonable
53 times, enter any approved solid waste facility, open dump,
54 solid waste facility or property where solid waste is present
55 and take samples of the waste, soils, air or water or may,
56 upon issuance of an order, require any person to take and
57 analyze samples of such waste, soil, air or water.

58 (e) The director or chief may also perform or require a
59 person, by order, to perform any and all acts necessary to
60 carry out the provisions of this article or the rules
61 promulgated thereunder.

62 (f) The chief or his authorized representative, employee
63 or agent shall make periodic inspections at every approved
64 solid waste facility to effectively implement and enforce the
65 requirements of this article or its rules and regulations.

§20-5F-5. Prohibitions; permits required.

1 (a) Open dumps are prohibited and it shall be unlawful
2 for any person to create, contribute to or operate an open
3 dump or for any landowner to allow an open dump to exist
4 on his property unless that open dump is under a
5 compliance schedule approved by the chief. Such
6 compliance schedule shall contain an enforceable sequence
7 of actions leading to compliance and shall not exceed three
8 years. No portion of this subsection shall be construed to
9 prevent a person from disposing of solid waste from his own
10 household upon his own private, rented or leased property
11 as long as such disposal does not create a public nuisance,
12 hazard to health, violate the terms of section fifteen, article
13 five, chapter twenty of the code or other provisions of the
14 code.

15 (b) It shall be unlawful for any person, unless he holds a
16 valid permit from the division to install, establish,
17 construct, modify, operate or abandon any solid waste
18 facility. All approved solid waste facilities shall be
19 installed, established, constructed, modified, operated or
20 abandoned in accordance with this article, plans,
21 specifications, orders, instructions and rules in effect.

22 (c) Any permit issued under this article shall be issued
23 in compliance with the requirements of this article, its rules
24 and article five-a and the rules promulgated thereunder, so
25 that only a single permit shall be required of a solid waste
26 facility under these two articles. Each permit issued under
27 this article shall have a fixed term not to exceed five years:
28 *Provided*, That the chief may administratively extend a
29 permit beyond its five year term if the approved solid waste
30 facility is in compliance with this article, its rules and
31 article five-a of this chapter and the rules promulgated
32 thereunder: *Provided, however*, That such administrative
33 extension may not be for more than one year. Upon expira-
34 tion of a permit, a new permit may be issued upon applica-
35 tion, public notice and opportunity for public hearing, if the
36 approved solid waste facility will meet all applicable rules,
37 standards, limitations and other requirements of this article
38 and article five-a.

39 (d) All existing permits of the department of health for
40 solid waste facilities under section nine, article one, chapter
41 sixteen of the code shall continue in full force and effect
42 until a permit is issued for that approved solid waste facility
43 under this article: *Provided*, That all such existing permits of
44 the department of health shall expire within five years of
45 the effective date of this article. Within four years of the
46 effective date of this article, all persons holding such
47 department of health permits shall apply to the chief for a
48 permit under this article: *Provided, however*, That the chief
49 may require persons holding such existing health depart-
50 ment permits to reapply under this section prior to four
51 years from the effective date of this article if persistent
52 violations of this article, any permit term or condition,
53 orders or rules promulgated under this article, exists at that
54 facility.

§20-5F-6. Orders, inspections and enforcement; civil and criminal penalties.

1 (a) If the director or chief, upon inspection,
2 investigation or through other means observes, discovers or
3 learns of a violation of this article, its rules, article five-a of
4 this chapter or its rules, or any permit or order issued under
5 this article, he may issue an order requiring compliance
6 within a specified time which may exceed thirty days or
7 suspending or revoking the permit.

8 (b) Any person who willfully or negligently violates any
9 rules or regulations promulgated under this article, permit
10 terms and conditions or orders of the director or chief shall
11 be subject to the same criminal penalties as set forth in
12 section nineteen, article five-a, chapter twenty of the code.

13 (c) Any person who violates this article, any rules
14 promulgated thereunder, permit term or condition or order
15 of the chief or director shall be subject to a civil penalty not
16 to exceed ten thousand dollars per day of such violation.
17 The director or chief may institute civil actions to obtain
18 injunctive or other relief either in the circuit court wherein
19 the violation occurs or in the circuit court of Kanawha
20 County.

§20-5F-7. Appeal and review procedures.

1 (a) Any person having an interest which is or may be
2 adversely affected, or who is aggrieved by an order of the
3 director or chief, or by the issuance or denial of a permit or
4 by the permit's terms or conditions, may appeal to the water
5 resources board in the same manner as appeals are taken
6 under the water pollution control act, section fifteen, article
7 five-a, chapter twenty of the code.

8 (b) Any party, the director or the chief adversely
9 affected by an order made and entered by the water
10 resources board may obtain judicial review thereof in the
11 same manner as provided for under section sixteen, article
12 five-a of the water pollution control act.

§20-5F-8. Short title.

1 This article may be known and cited as the "solid waste
2 management act."

CHAPTER 172

(Com. Sub. for H. B. 1340—By Mr. Faircloth)

[Passed March 11, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article six, chapter five of the code of West Virginia, one thousand nine hundred

thirty-one, as amended, relating to continuing and reestablishing the state building commission; composition.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. STATE BUILDING COMMISSION.

§5-6-1. Name of state office building commission changed; composition; appointment, terms and qualifications of members; chairman and secretary; compensation and expenses; powers and duties generally; frequency of meetings.

1 "The State Office Building Commission of West Virginia"
2 heretofore created, shall continue in existence but on and
3 after February nine, one thousand nine hundred sixty-six,
4 shall be known and designated as "The State Building Com-
5 mission of West Virginia" and shall continue as a body cor-
6 porate and as an agency of the state of West Virginia. On
7 and after the date aforesaid, the commission shall consist of
8 the governor, attorney general, state treasurer and four addi-
9 tional members to be appointed by the governor by and with
10 the advice and consent of the Senate. The terms of office
11 for said members to be appointed by the governor shall be
12 four years, except that the terms of office of the first four
13 members so appointed by the governor shall be for one, two,
14 three and four years respectively. No more than three of
15 such members so appointed by the governor shall be mem-
16 bers of the same political party, nor shall any of said members
17 be members or employees of the executive, legislative or judi-
18 cial branches of government of West Virginia or any political
19 subdivision thereof. The governor shall be chairman of the
20 commission. The secretary of state shall be a member of
21 the commission and serve as its secretary, but shall not have
22 the right to vote upon matters before the commission. All
23 members of the commission shall be citizens and residents
24 of this state. The members of the commission shall be paid
25 or reimbursed for their necessary expenses incurred under
26 this article, but shall receive no compensation for their ser-

27 vices as members or officers of the commission: *Provided,*
28 That each member of the commission appointed by the gov-
29 ernor shall, in addition to such reimbursement for necessary
30 expenses receive a per diem of thirty-five dollars for each day
31 or substantial portion thereof that he is engaged in the work
32 of the commission. Such expenses and per diem shall be paid
33 solely from funds provided under the authority of this article,
34 and the commission shall not proceed to exercise or carry out
35 any authority or power herein given it to bind said commis-
36 sion beyond the extent to which money has been provided
37 under the authority of this article. On or before the fifteenth
38 day of each month, the commission shall prepare and trans-
39 mit to the president and minority leader of the Senate and
40 the speaker and the minority leader of the House of Dele-
41 gates a report covering the activities of the said commission
42 for the preceding calendar month.

43 After having conducted a performance and fiscal audit
44 through its joint committee on government operations, pur-
45 suant to section nine, article ten, chapter four of this code,
46 the Legislature hereby finds and declares that the state build-
47 ing commission should be continued and reestablished. Ac-
48 cordingly, notwithstanding the provisions of section four,
49 article ten, chapter four of this code, the state building com-
50 mission shall continue to exist until the first day of July, one
51 thousand nine hundred eighty-six.

CHAPTER 173

(S. B. 26—By Mrs. Spears)

[Passed February 18, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article six, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to deposit of funds of the state building commission; providing for review by the legislative auditor.

Be it enacted by the Legislature of West Virginia:

That section five, article six, chapter five of the code of West

Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 6. STATE BUILDING COMMISSION.

§5-6-5. Deposit and disbursement of funds of commission; security for deposits; audits.

1 All moneys of the commission from whatever source
2 derived shall be paid to the treasurer of the state of West
3 Virginia who shall not commingle said moneys, but shall
4 deposit them to a special revenue account to be known as
5 the "State Building Commission Fund." The moneys in
6 said account shall be impressed with and subject to the
7 lien or liens thereon in favor of the bondholders provided
8 in the proceedings for issuance of bonds pursuant to this
9 article. The moneys in said account shall be paid out on
10 check of the treasurer on requisition of the chairman of
11 the commission, or of such other person as the commis-
12 sion may authorize to make such requisition. All deposits
13 of such moneys shall, if required by the treasurer or the
14 commission, be secured by obligations of the United
15 States, of the state of West Virginia, or of the commission,
16 of a market value equal at all times to the amount of the
17 deposit, and all banking institutions are authorized to
18 give such security for such deposits. The legislative
19 auditor and his legally authorized representatives are
20 hereby authorized and empowered from time to time to
21 examine the accounts and books of the commission, in-
22 cluding its receipts, disbursements, contracts, leases,
23 sinking funds, investments and any other matters relating
24 to its financial standing.

CHAPTER 174

(S. B. 135—By Mrs. Spears)

[Passed March 9, 1983; 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 termination of certain governmental entities or programs.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. THE WEST VIRGINIA SUNSET LAW.

§4-10-4. Termination of governmental entities or programs.

1 The following governmental entities and programs shall
2 be terminated on the date indicated but no governmental
3 entity or program shall be terminated under this article
4 unless a performance audit has been conducted of such
5 entity or program, except as authorized under section
6 fourteen of this article:

7 (1) On the first day of July, one thousand nine hundred
8 eighty-one: Judicial council of West Virginia; geological
9 and economic survey commission; motor vehicle certifi-
10 cate appeal board; child welfare licensing board.

11 (2) On the first day of July, one thousand nine hun-
12 dred eighty-two: Ohio River basin commission; Ohio
13 River valley water sanitation commission; commission on
14 postmortem examination; state commission on manpower,
15 training and technology; southern regional education
16 board; department of corrections.

17 (3) On the first day of July, one thousand nine hundred
18 eighty-three: Anatomical board; economic opportunity
19 advisory commission; community development authority
20 board.

21 (4) On the first day of July, one thousand nine hun-
22 dred eighty-four: Office of the workers' compensation
23 commissioner; capitol building commission; the following
24 divisions of the programs of the department of agricul-
25 ture: Soil conservation committee, rural resource divi-
26 sion, meat inspection; and the following divisions of
27 programs of the department of natural resources: Water
28 resources, U.S. geological survey, rabies control, work
29 incentive program; West Virginia alcoholic beverage con-
30 trol licensing advisory board; driver's licensing advisory

31 board; oil and gas inspectors' examining board; women's
32 commission.

33 (5) On the first day of July, one thousand nine hundred
34 eighty-five: Department of welfare; beautification com-
35 mission; labor management advisory council; employ-
36 ment security advisory council; oil and gas conservation
37 commission; board of regents.

38 (6) On the first day of July, one thousand nine hun-
39 dred eighty-six: Division of archives and history; state
40 board of insurance; interstate commission on the Potomac
41 River basin; public service commission; health resources
42 advisory council; welfare advisory council; board of bank-
43 ing and financial institutions: *Provided*, That in the case
44 of the public service commission, the study by the com-
45 mittee required by this article shall be completed on or
46 before the first day of July, one thousand nine hundred
47 eighty-five, and shall be by such date transmitted to the
48 joint committee on government and finance for review by
49 the joint committee or its subcommittee designated pur-
50 suant to section one, article one, chapter twenty-four of
51 this code for review, examination and study of the opera-
52 tions of the public service commission; state building
53 commission.

54 (7) On the first day of July, one thousand nine hun-
55 dred eighty-seven: The geological and economic survey;
56 the commission on uniform state laws; department of
57 labor; civil service commission advisory board; council of
58 finance and administration; motorcycle safety standards
59 and specifications board.

60 (8) On the first day of July, one thousand nine hun-
61 dred eighty-eight: Information system advisory commis-
62 sion; veteran's council; labor management relations board;
63 board of investments; records management and preserva-
64 tion advisory committee; minimum wage rate board.

65 (9) On the first day of July, one thousand nine hun-
66 dred eighty-nine: Mental retardation advisory commit-
67 tee; interagency committee on pesticides; commission on
68 charitable organizations; board of school finance; vete-

69 ran's affairs advisory council; emergency medical ser-
70 vices advisory council; pesticides board of review; recla-
71 mation commission.

72 (10) On the first day of July, one thousand nine hun-
73 dred ninety: Consumer affairs advisory council; savings
74 and loan association; forest industries industrial founda-
75 tion.

CHAPTER 175

(H. B. 1894—By Mr. Goff and Mr. Farley)

[Passed March 11, 1983; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article eleven, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to transfers exempt from inheritance and transfer taxes; pension benefits received by beneficiaries of policemen's and firemen's pension funds.

Be it enacted by the Legislature of West Virginia:

That section one, 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. INHERITANCE AND TRANSFER TAXES.

§11-11-1. When imposed.

1 A tax, payable into the treasury of the state, shall be
2 imposed upon the transfer, in trust, or otherwise, of any
3 property, or interest therein, real, personal or mixed, if
4 such transfer be:

5 (a) By will or by laws of this state regulating descent
6 and distribution from any person who is a resident of the
7 state at the time of his death and who shall die seized or
8 possessed of property.

9 (b) By will or by laws regulating descent and distribu-
10 tion of property within the state, or within its taxing jurisdic-

11 tion, and the decedent was a nonresident of the state at the
12 time of his death.

13 (c) By a resident, or by a nonresident owning taxable
14 property within the state or within its jurisdiction, by deed,
15 grant, sale or gifts, made in contemplation of the death of
16 the grantor, vendor or donor, or intended to take effect
17 in possession or enjoyment at or after such death, or where
18 any change in the use or enjoyment of property included
19 in such transfer, or the income thereof, may occur in the
20 lifetime of the grantor, vendor or donor, by reason of any
21 power reserved to, or conferred upon, the grantor, vendor
22 or donor, either solely or in conjunction with any person
23 or persons, to alter, or to amend, or to revoke any trans-
24 fer, or any portion thereof, as to the portion remaining at
25 the time of death of the grantor, vendor or donor, thus
26 subject to alteration, amendment or revocation. If any one
27 of the transfers mentioned in this subdivision is made for
28 valuable consideration, the portion of the transfer for which
29 the grantor, or vendor receives equivalent monetary value is
30 not taxable, but the remaining portion thereof is taxable.
31 Every transfer by deed, grant, sale or gift, made within three
32 years prior to the death of the grantor, vendor or donor,
33 without adequate valuable consideration, shall be presumed
34 to have been made in the contemplation of death within the
35 meaning of this subdivision.

36 (d) By any person who shall transfer any property which
37 he owns, or shall cause any property to which he is absolutely
38 entitled to be transferred to or vested in himself and any
39 other person jointly, with the right of survivorship, in whole or
40 in part, in such other person, a transfer shall be deemed to
41 occur and to be taxable under the provisions of this article
42 upon the vesting of such title in the survivor: *Provided,*
43 That this subdivision shall not apply to bank accounts and to
44 shares or savings accounts in federal savings and loan as-
45 sociations organized under the federal homeowners' loan act
46 of one thousand nine hundred thirty-three, as amended,
47 or in building and loan associations organized under article
48 six, chapter thirty-one of this code, payable to the class
49 designated in clause (a), section two of this article in a

50 total amount of twenty-five hundred dollars or less: *Pro-*
51 *vided, however,* That in the case of a surviving spouse, not
52 more than fifty percent of the value of any transfer mentioned
53 in this subdivision (d) shall be included and taxed in any
54 such decedent's estate.

55 (e) To any person deriving an estate in property coupled
56 with a general or limited power of appointment:

57 (1) *General power.*—Any transfer involving the crea-
58 tion of a general power of appointment shall be treated as
59 transferring to the donee of the power a fee or equivalent
60 interest in the property which is subject to the power.

61 (2) *Limited power.*—Any transfer involving the crea-
62 tion of any other power of appointment shall be treated
63 as transferring to the donee of the power a life estate or
64 term of years in the property which is subject to the power
65 and as transferring remainder or reversionary interests there-
66 in to those who would take if the power is not exercised.
67 The portion of tax which is imposed on any person entitled
68 in remainder or reversion shall be payable in the same man-
69 ner, and within the same time, as if such person's interest had
70 vested in possession. Unless otherwise provided by the de-
71 cedent, the tax on such temporary interests and on such
72 remainder or reversionary interests shall be payable out of
73 the corpus of the property which is subject to the power.

74 (f) By the exercise or nonexercise of a general power of
75 appointment:

76 (1) *Power that remains unexercised at time of death.*—
77 If at the time of his death a decedent has a general power
78 of appointment with respect to property, the exercise of
79 that power is subject to tax as a transfer of the property
80 from the decedent to the person to whom the property is
81 appointed. The failure of the decedent to exercise a general
82 power of appointment is subject to tax as a transfer of the
83 property from the decedent to the person to whom the property
84 passes by virtue of the nonexercise of the power. For purposes
85 of this paragraph the power of appointment shall be con-
86 sidered to exist on the date of the decedent's death even
87 though the exercise of that power is subject to a precedent

88 giving of notice or even though the exercise of the power takes
89 effect only on the expiration of a stated period after its exer-
90 cise, whether or not on or before the date of the decedent's
91 death, notice has been given or the power has been exercised.

92 (2) *Exercise or release by decedent of power during his*
93 *lifetime.*—The exercise or release by the decedent during his
94 lifetime of a general power of appointment is a transfer subject
95 to tax if the exercise or release is of such a nature that if it
96 were a transfer of property owned by the decedent, such trans-
97 fer would be subject to tax under this article. A disclaimer
98 or renunciation of such a power of appointment shall not be
99 deemed a release of such power.

100 (3) *Definition.*—For purposes of subdivisions (e) and
101 (f), the term “general power of appointment” and the term
102 “lapse of power” shall have the same meaning as when used in
103 section 2041 of the Internal Revenue Code.

104 (g) By the terms of any annuity or investment contracts,
105 or similar type or form of contract or policy, and shall be
106 on the amount payable under any such contract or policy, on
107 account of a death, to named beneficiaries, to his estate or
108 in trust for the benefit of any individual or individuals,
109 including (1) all such policies or contracts hereafter issued,
110 and (2) all such policies or contracts now in force: *Pro-*
111 *vided*, That there shall be exempt from the provisions of
112 this subdivision the proceeds of such contracts or policies:

113 (i) When the premiums on such policies or contracts were
114 paid by the beneficiary named in such policy or contract, to
115 the extent only of the ratio of premiums paid by the bene-
116 ficiary bear to the total premiums paid;

117 (ii) When the proceeds of such policies or contracts have
118 been assigned by the decedent for a valuable consideration
119 either in form absolute or as collateral security for the
120 payment of a bona fide indebtedness of the decedent, to the
121 extent that the proceeds thereof shall be necessary to pay
122 and satisfy indebtedness: *Provided, however*, That no annuity
123 settlement or arrangement accepted in lieu of cash settlement
124 of a life insurance policy, whereby the proceeds of such
125 policy are payable in installments, shall be subject to taxa-

126 tion under the provisions of this article, nor shall the provisions
127 of this article apply to the proceeds of any policy of life or
128 accident insurance payable to a named beneficiary or bene-
129 ficiaries whether directly or in trust or otherwise.

130 Where annuity or investment contracts or policies are
131 left by a decedent in such manner that the proceeds thereof
132 cannot be subjected to the payment of his debts, and where
133 the proceeds of such annuity or investment contracts are
134 received by beneficiaries thereof, the fact that the decedent
135 may have been insolvent and that a portion of his debts
136 may remain unpaid shall not affect the liability for inheritance
137 tax on such proceeds.

138 Notwithstanding anything contained herein to the con-
139 trary, there shall be exempt from tax hereunder the proceeds
140 of an annuity or other payment, whether attributable to em-
141 ployer contribution, employee contribution or otherwise, re-
142 ceivable by any beneficiary under:

143 (1) An employees' trust (or under a contract purchased
144 by an employees' trust) forming part of a pension, stock
145 bonus, or profit-sharing plan, including self-employed plans,
146 which, at the time of the decedent's separation from em-
147 ployment (whether by death or otherwise), or at the time
148 of termination of the plan if earlier, met the requirements
149 of section 401(a) of the Internal Revenue Code;

150 (2) A retirement annuity contract purchased by an em-
151 ployer (and not by an employees' trust) pursuant to a plan
152 which, at the time of decedent's separation from employment
153 (by death or otherwise), or at the time of termination of the
154 plan if earlier, was a plan described in section 403(a) of
155 the Internal Revenue Code;

156 (3) A retirement annuity contract purchased for an em-
157 ployee by an employer which is an organization referred to in
158 section 170(b) (1) (A) (ii) or (vi) of the Internal Revenue
159 Code, or which is a religious organization (other than a trust)
160 and which is exempt from tax under section 501(a) of the
161 Internal Revenue Code;

162 (4) Annuity under the retired serviceman's family pro-

163 tection plan or survivor benefit plan pursuant to chapter 73
164 of Title 10 of the United States Code;

165 (5) A retirement savings plan for which a deduction has
166 been allowed under section 218 of the Internal Revenue Code;

167 (6) A pension or relief fund for policemen and firemen
168 established pursuant to the provisions of section sixteen,
169 article twenty-two, chapter eight of this code; and the effect
170 of this exemption from taxation with respect to surviving
171 spouses and dependent children of deceased policemen and
172 firemen shall be retroactive to the first day of January, one
173 thousand nine hundred eighty-one.

174 All references to the Internal Revenue Code shall be to
175 the Internal Revenue Code of 1954, as amended, as in effect
176 on the first day of January, one thousand nine hundred
177 seventy-six. All references to the United States Code shall
178 be to the United States Code in effect on the first day of Janu-
179 ary, one thousand nine hundred seventy-six.

CHAPTER 176

(Com. Sub. for S. B. 310—By Mr. McGraw, Mr. President)

[Passed March 12, 1983; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, two-k, three and three-b, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections three, four-c, four-d, sixteen and seventy-one, article twenty-one of said chapter eleven; to amend said article twenty-one by adding thereto a new section, designated section four-e; to amend and reenact sections four and nine, article twenty-four of said chapter eleven; and to further amend said article twenty-four by adding thereto three new sections, designated sections four-a, ten and seventeen-a, all relating to taxation on account of business and other activities on personal income, corporation net income, gross income and gross values; providing for the transitional reduction of

business and occupation tax during five-year period beginning the first day of July, one thousand nine hundred eighty-five through June thirtieth, one thousand nine hundred ninety, and exception; providing for temporary surtax on redefined gross income of persons engaged in banking or financial business; increasing business and occupation tax annual exemption; amending definitions; providing for increase in personal income tax rate brackets above specified level; providing for temporary surtax on personal income in certain brackets; establishing minimum tax on personal income; creating separate classification and rate tables for heads of households; providing for effect of any rate changes during taxable year; increasing the amount of the West Virginia personal income tax exemption and providing for withholding conformity therewith; changing corporation net income tax rate and providing for two rate brackets; imposing temporary surtax on corporations net income; providing for effect of any rate changes during taxable year; reducing amount of business and occupation tax or carrier tax credits applicable against corporation net income tax liability; providing for taxpayer, at his option, to elect full deduction of such tax liabilities in lieu of credit; providing a credit to manufacturing employers for hiring qualified employees during specified period, amount of credit and period thereof, limitations thereon and definitions thereof; and providing for application of interest to underpayments of tax or estimated tax.

Be it enacted by the Legislature of West Virginia:

That sections two, two-k, three and three-b, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections three, four-c, four-d, sixteen and seventy-one, article twenty-one of said chapter eleven be amended and reenacted; that said article twenty-one be further amended by adding thereto a new section, designated section four-e; that sections four and nine, article twenty-four of said chapter eleven be amended and reenacted; and that said article twenty-four be further amended by adding thereto three new sections, designated sections four-a, ten and seventeen-a, all to read as follows:

Article

- 13. **Business and Occupation Tax.**
- 21. **Personal Income Tax.**
- 24. **Corporation Net Income Tax.**

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

- §11-13-2. Imposition of privilege tax; transitional reduction, across-the-board, of tax during five-year period July one, one thousand nine hundred eighty-five through June thirtieth one thousand nine hundred ninety.
- §11-13-2k. Banking and other financial business; rate of tax; additional, temporary surtax imposed and period thereof; legislative findings.
- §11-13-3. Exemptions; transitional increase of annual exemption and periods thereof.
- §11-13-3b. Definitions; reduction allowed in tax due; how computed.

§11-13-2. Imposition of privilege tax; transitional reduction, across-the-board, of tax during five-year period July one, one thousand nine hundred eighty-five through June thirtieth, one thousand nine hundred ninety.

1 There is hereby levied and shall be collected annual
2 privilege taxes against the persons, on account of the
3 business and other activities, and in the amounts to be
4 determined by the application of rates against values or
5 gross income as set forth in sections two-a to two-m,
6 inclusive, of this article and the application of the surtax
7 rate against gross income as set forth in section two-k.

8 During the five-year period, beginning on the first day of
9 July, one thousand nine hundred eighty-five and through
10 the thirtieth day of June, one thousand nine hundred ninety,
11 the taxes imposed by this section and at the rates set forth in
12 sections two-a through two-m, and the surtax imposed in
13 section two-k, shall be reduced by five percent for each year
14 thereof through reduction of the rates applicable and in
15 effect on the first day of July, one thousand nine hundred
16 eighty-five: *Provided*, That there shall be no such reduction
17 of the tax imposed in section two-l for the use and benefit of
18 counties and municipalities.

19 If any person liable for any tax under section two-a,
20 two-l or two-m shall ship or transport his products or any
21 part thereof out of the state without making sale of such
22 products, the value of the products in the condition or form
23 in which they exist immediately before transportation out

24 of the state shall be the basis for the assessment of the tax
25 imposed in said section, except in those instances in which
26 another measure of the tax is expressly provided. The tax
27 commissioner shall prescribe equitable and uniform rules
28 for ascertaining such value.

29 In determining value, however, as regards sales from one
30 to another of affiliated companies or persons, or under
31 other circumstances where the relation between the buyer
32 and seller is such that the gross proceeds from the sale are
33 not indicative of the true value of the subject matter of the
34 sale, the tax commissioner shall prescribe uniform and
35 equitable rules for determining the value upon which such
36 privilege tax shall be levied, corresponding as nearly as
37 possible to the gross proceeds from the sale of similar
38 products of like quality or character where no common
39 interest exists between the buyer and seller but the
40 circumstances and conditions are otherwise similar.

41 Gross income included in the measure of the tax under
42 sections two-a, two-b, two-l and two-m of this article shall
43 neither be added nor deducted in computing the tax levied
44 under the other sections of this article.

45 A person exercising any privilege taxable under section
46 two-a, two-b, two-l or two-m of this article and engaging in
47 the business of selling his natural resources, manufactured
48 products or electricity at retail in this state shall be required
49 to make returns of the gross proceeds of such retail sales and
50 pay the tax imposed in section two-c of this article for the
51 privilege of engaging in the business of selling such natural
52 resources, manufactured products or electricity at retail in
53 this state. But any person exercising any privilege taxable
54 under section two-a, two-b, two-l or two-m of this article
55 and engaging in the business of selling his natural
56 resources, manufactured products or electricity to
57 producers of natural resources, manufacturers,
58 wholesalers, jobbers, retailers or commercial consumers for
59 use or consumption in the purchaser's business shall not be
60 required to pay the tax imposed in section two-c of this
61 article.

62 Persons exercising any privilege taxable under section
63 two-b or two-m of this article shall not be required to pay
64 the tax imposed in section two-c of this article for the

65 privilege of selling their manufactured products or
66 electricity for delivery outside of this state, but the gross
67 income derived from the sale of such products or electricity
68 outside of this state shall be included in determining the
69 measure of the tax imposed on such person in section two-b
70 or two-m.

71 A person exercising privileges taxable under the other
72 sections of this article, producing coal, oil, natural gas,
73 minerals, timber or other natural resource products, the
74 production of which is taxable under sections two-a and
75 two-l, and using or consuming the same in his business or
76 transferring or delivering the same as any royalty payment,
77 in kind, or the like, shall be deemed to be engaged in the
78 business of mining and producing coal, oil, natural gas,
79 minerals, timber or other natural resource products for sale,
80 profit or commercial use, and shall be required to make
81 returns on account of the production of the business
82 showing the gross proceeds or equivalent in accordance
83 with uniform and equitable rules for determining the value
84 upon which such privilege tax shall be levied,
85 corresponding as nearly as possible to the gross proceeds
86 from the sale of similar products of like quality or character
87 by other taxpayers, which rules the tax commissioner shall
88 prescribe.

**§11-13-2k. Banking and other financial business; rate of tax;
additional, temporary surtax imposed and
period thereof; legislative findings.**

1 Upon every person engaging or continuing within this
2 state in the business of banking or financial business, from
3 and after the first day of April, one thousand nine hundred
4 seventy-one, the tax shall be equal to one and fifteen one-
5 hundredths percent of the gross income received from
6 interest, premiums, discounts, dividends, service fees or
7 charges, commissions, fines, rents from real or tangible
8 personal property, however denominated, royalties,
9 charges for bookkeeping or data processing, receipts from
10 check sales, charges or fees, and receipts from the sale of
11 tangible personal property: *Provided*, That gross income
12 shall not include (a) interest received on the obligations of
13 the United States, its agencies and instrumentalities, (b)
14 interest received on the obligations of this state, or any

15 political subdivision of this state, or (c) interest received on
16 investments or loans primarily secured by first mortgages
17 or deeds of trust on residential property occupied by
18 nontransients: *Provided, however,* That all interest derived
19 on activities exempt under (c) above, shall be reported, as to
20 amounts, on the return of a person taxable under the
21 provisions of this section.

22 In addition to the primary tax hereinabove, there is
23 hereby imposed an additional, temporary surtax of fifteen
24 percent of such primary tax liability and with such primary
25 tax and additional tax, the temporary surtax, together, to
26 constitute the tax imposed by this section. Such additional,
27 temporary surtax is imposed for the period on and after the
28 first day of June, one thousand nine hundred eighty-three,
29 and to expire, be nullified and of no further force or effect
30 whatsoever after the thirtieth day of June, one thousand
31 nine hundred eighty-five.

32 Persons taxed pursuant to the provisions of this section
33 shall not be taxed under sections two-a to two-j, inclusive,
34 or section two-l or two-m of this article.

35 The Legislature hereby finds and declares that it is the
36 intent of the Legislature to subject national banking
37 associations and other financial organizations to the tax
38 imposed by this article, in accordance with the
39 authorization contained in section five thousand two
40 hundred nineteen of the Revised Statutes of the United
41 States as amended by Public Law 91-156 enacted the
42 twenty-fourth day of December, one thousand nine
43 hundred sixty-nine.

§11-13-3. Exemptions; transitional increase of annual exemption and periods thereof.

1 For any tax imposed under the provisions of this article
2 with respect to any period prior to the first day of July, one
3 thousand nine hundred eighty-three, there shall be an
4 exemption in every case of fifty dollars in amount of tax
5 computed under the provisions of this article. A person
6 exercising a privilege taxable hereunder for a fractional
7 part of a tax year shall be entitled to an exemption of the
8 sum bearing the proportion to fifty dollars that the period of
9 time the privilege is exercised bears to a whole year. Only

10 one exemption shall be allowed to any one person, whether
11 he exercises one or more privileges taxable hereunder.

12 For any tax imposed under the provisions of this article
13 with respect to (a) the period beginning on and after the first
14 day of July, one thousand nine hundred eighty-three, and
15 through the thirtieth day of June, one thousand nine
16 hundred eighty-four, there shall be an exemption in every
17 case of twenty-five dollars per month; (b) the period
18 beginning on and after the first day of July, one thousand
19 nine hundred eighty-four, and through the thirtieth day of
20 June, one thousand nine hundred eighty-five, there shall be
21 an exemption in every case of thirty-three dollars and
22 thirty-three cents per month; and (c) the period beginning
23 on or after the first day of July, one thousand nine hundred
24 eighty-five, there shall be an exemption in every case of
25 forty-one dollars and sixty-seven cents per month in
26 amount of tax computed under the provisions of this article.
27 Only one exemption shall be allowed to any one person,
28 whether he exercises one or more privileges taxable
29 hereunder.

30 The provisions of this article shall not apply to: (a)
31 Insurance companies which pay the state of West Virginia a
32 tax upon premiums: *Provided*, That said exemption shall
33 not extend to that part of the gross income of insurance
34 companies which is received for the use of real property,
35 other than property in which any such company maintains
36 its office or offices, in this state, whether such income be in
37 the form of rentals or royalties; (b) nonprofit cemetery
38 companies organized and operated for the exclusive benefit
39 of their members; (c) fraternal societies, organizations and
40 associations organized and operated for the exclusive
41 benefit of their members and not for profit: *Provided, how-*
42 *ever*, That said exemption shall not extend to that part of the
43 gross income arising from the sale of alcoholic liquor, food
44 and related services of such fraternal societies, organizations
45 and associations which are licensed as private clubs under
46 the provisions of article seven, chapter sixty of this code; (d)
47 corporations, associations and societies organized and oper-
48 ated exclusively for religious or charitable purposes; (e)
49 production credit associations, organized under the provi-
50 sions of the federal "Farm Credit Act of 1933"; (f) any credit
51 union organized under the provisions of chapter thirty-one

52 or any other chapter of this code: *Provided further*, That the
53 exemptions of this section shall not apply to corporations or
54 cooperative associations organized under the provisions of
55 article four, chapter nineteen of this code; (g) gross income
56 derived from advertising service rendered in the business of
57 radio and television broadcasting; and (h) the gross income
58 or gross proceeds of sale of a gasification or liquefaction of
59 coal project in the demonstration, pilot or research stages:
60 *And provided further*, That prior to the commencement of
61 operation of any such project, the tax commissioner shall
62 have first certified the project as eligible for such exemption:
63 *And provided further*, That such exemption shall expire
64 seven years from the date the project first receives gross
65 income or gross proceeds from sales.

§11-13-3b. Definitions; reduction allowed in tax due; how computed.

1 When used in this section, the phrase "normal tax" means
2 the tax computed by the application of rates against values
3 or gross income as set forth in sections two-a to two-m,
4 inclusive, in this article, less the amount of the annual
5 exemption for the period actually engaged in business.

6 The normal tax shall be computed by the application of
7 rates against values or gross income as set forth in sections
8 two-a to two-m, inclusive, of this article, less the amount of
9 the annual exemption allowed and determined under
10 section three of this article.

11 The surtax shall be computed by the application of the
12 surtax rate against gross income as set forth in section
13 two-k of this article.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-3. Imposition of tax; additional temporary surtax imposed; effective and termination dates; minimum tax; persons subject to tax.

§11-21-4c. Rate of tax—Taxable periods beginning on or after January 1, 1971 and ending before April 1, 1983.

§11-21-4e. Effect of rate changes during taxable year.

§11-21-16. West Virginia personal exemptions of resident individual.

§11-21-71. Requirement of withholding tax from wages.

§11-21-3. Imposition of tax; additional, temporary surtax imposed; effective and termination dates; minimum tax; persons subject to tax.

1 (a) *Imposition of tax.*

2 (1) *Primary tax.*—A tax determined in accordance with
3 the rates hereinafter set forth in this article is hereby
4 imposed for each taxable year on the West Virginia taxable
5 income of every individual, estate and trust.

6 (2) *Temporary surtax.*—In addition to the primary tax
7 imposed upon the persons, for the periods, on West Virginia
8 taxable income, and at the rates, as aforesaid, there is
9 hereby imposed an additional tax, a temporary surtax, of
10 twelve percent of such determined primary tax liability for
11 individuals and heads of household with West Virginia
12 taxable income in excess of ten thousand dollars and for
13 those filing a joint return with West Virginia taxable
14 income in excess of twenty thousand dollars; and with such
15 primary tax and additional tax, the temporary surtax,
16 together with the minimum tax herein, to constitute the tax
17 imposed by this section and under this article.

18 (3) *Minimum tax.*—In addition to the primary tax and
19 the temporary surtax imposed by this section, there is
20 imposed a minimum tax, which shall be the excess, if any,
21 by which an amount equal to twenty-five percent of any
22 federal minimum tax or alternative minimum tax for the
23 taxable year exceeds the sum of the primary tax and the
24 temporary surtax imposed by this section for the taxable
25 year.

26 (4) *Effective date.*—The additional tax, the temporary
27 surtax herein imposed, and the minimum tax herein
28 imposed are hereby made effective on and after the first day
29 of April, one thousand nine hundred eighty-three:
30 *Provided*, That the temporary surtax shall expire, be
31 nullified and of no further force or effect whatsoever after
32 the thirtieth day of June, one thousand nine hundred
33 eighty-five. Section four-e of this article, applicable to the
34 effect of any rate changes during a taxable year shall be
35 construed to include and also be applicable to the surtax
36 imposed in this section or any change of surtax hereafter
37 during a taxable year.

38 (b) *Partners and partnerships.*—A partnership as such
39 shall not be subject to tax under this article. Persons
40 carrying on business as partners shall be liable for tax
41 under this article only in their separate or individual
42 capacities.

43 (c) *Associations taxable as corporations.*—An
44 association, trust or other unincorporated organization
45 which is taxable as a corporation for federal income tax
46 purposes, shall not be subject to tax under this article.

47 (d) *Exempt trusts and organizations.*—A trust or other
48 unincorporated organization which by reason of its
49 purposes or activities is exempt from federal income tax
50 shall be exempt from tax under this article (regardless of
51 whether subject to federal income tax on unrelated business
52 taxable income).

53 (e) *Cross references.*—For definitions of West Virginia
54 taxable income of:

55 (1) Resident individual, see section eleven.

56 (2) Resident estate or trust, see section eighteen.

57 (3) Nonresident individual, see section thirty-one.

58 (4) Nonresident estate or trust, see section thirty-eight.

**§11-21-4c. Rate of tax—Taxable periods beginning on or after
January 1, 1971 and ending before April 1, 1983.**

1 (a) *Rate of tax on individuals, heads of households,*
2 *estates and trusts.*—The tax imposed by section three of this
3 article on the West Virginia taxable income of every
4 individual, every individual who is a head of a household in
5 the determination of his federal income tax for the taxable
6 year, and every estate and trust shall be determined in
7 accordance with the following table:

| | | |
|----|---|---|
| 8 | If the West Virginia taxable | |
| 9 | income is: | The tax is: |
| 10 | Not over \$2,000..... | 2.1% of the taxable income |
| 11 | Over \$2,000 but not over \$4,000 | \$42.00, plus 2.3% of excess over \$2,000 |
| 12 | Over \$4,000 but not over \$6,000 | \$88.00, plus 2.8% of excess over \$4,000 |
| 13 | Over \$6,000 but not over \$8,000 | \$144.00, plus 3.2% of excess over \$6,000 |
| 14 | Over \$8,000 but not over \$10,000 | \$208.00, plus 3.5% of excess over \$8,000 |
| 15 | Over \$10,000 but not over \$12,000 | \$278.00, plus 4.0% of excess over \$10,000 |
| 16 | Over \$12,000 but not over \$14,000 | \$358.00, plus 4.6% of excess over \$12,000 |
| 17 | Over \$14,000 but not over \$16,000 | \$450.00, plus 4.9% of excess over \$14,000 |
| 18 | Over \$16,000 but not over \$18,000 | \$548.00, plus 5.3% of excess over \$16,000 |
| 19 | Over \$18,000 but not over \$20,000 | \$654.00, plus 5.4% of excess over \$18,000 |
| 20 | Over \$20,000 but not over \$22,000 | \$762.00, plus 6.0% of excess over \$20,000 |
| 21 | Over \$22,000 but not over \$26,000 | \$882.00, plus 6.1% of excess over \$22,000 |
| 22 | Over \$26,000 but not over \$32,000 | \$1,126.00, plus 6.5% of excess over \$26,000 |
| 23 | Over \$32,000 but not over \$38,000 | \$1,516.00, plus 6.8% of excess over \$32,000 |
| 24 | Over \$38,000 but not over \$44,000 | \$1,924.00, plus 7.2% of excess over \$38,000 |
| 25 | Over \$44,000 but not over \$50,000 | \$2,356.00, plus 7.5% of excess over \$44,000 |
| 26 | Over \$50,000 but not over \$60,000 | \$2,806.00, plus 7.9% of excess over \$50,000 |
| 27 | Over \$60,000 but not over \$70,000 | \$3,596.00, plus 8.2% of excess over \$60,000 |
| 28 | Over \$70,000 but not over \$80,000 | \$4,416.00, plus 8.6% of excess over \$70,000 |
| 29 | Over \$80,000 but not over \$90,000 | \$5,276.00, plus 8.8% of excess over \$80,000 |
| 30 | Over \$90,000 but not over \$100,000 | \$6,156.00, plus 9.1% of excess over \$90,000 |
| 31 | Over \$100,000 but not over \$150,000 | \$7,066.00, plus 9.3% of excess over \$100,000 |
| 32 | Over \$150,000 but not over \$200,000 | \$11,716.00, plus 9.5% of excess over \$150,000 |
| 33 | Over \$200,000 | \$16,466.00, plus 9.6% of excess over \$200,000 |

34 (b) *Rate of tax in case of joint return or return of*
 35 *surviving spouse.*—In the case of a joint return of a husband
 36 and wife and the return of an individual who is entitled to
 37 file his federal income tax return for the taxable year as a
 38 surviving spouse, the tax imposed by section three of this
 39 article on the West Virginia taxable income shall be
 40 determined in accordance with the following table:

41 If the West Virginia taxable

42 income is:

The tax is:

43 Not over \$4,000..... 2.1% of the taxable income

44 Over \$4,000 but not over \$8,000 \$84.00, plus 2.3% of excess of over \$4,000

45 Over \$8,000 but not over \$12,000 \$176.00, plus 2.8% of excess of over \$8,000

46 Over \$12,000 but not over \$16,000 \$288.00, plus 3.2% of excess over \$12,000

47 Over \$16,000 but not over \$20,000 \$416.00, plus 3.5% of excess over \$16,000

48 Over \$20,000 but not over \$24,000 \$556.00, plus 4.0% of excess over \$20,000

49 Over \$24,000 but not over \$28,000 \$716.00, plus 4.6% of excess over \$24,000

50 Over \$28,000 but not over \$32,000 \$900.00, plus 4.9% of excess over \$28,000

51 Over \$32,000 but not over \$36,000 \$1,096.00, plus 5.3% of excess over \$32,000

52 Over \$36,000 but not over \$40,000 \$1,308.00, plus 5.4% of excess over \$36,000

53 Over \$40,000 but not over \$44,000 \$1,524.00, plus 6.0% of excess over \$40,000

54 Over \$44,000 but not over \$52,000 \$1,764.00, plus 6.1% of excess over \$44,000

55 Over \$52,000 but not over \$64,000 \$2,252.00, plus 6.5% of excess over \$52,000

56 Over \$64,000 but not over \$76,000 \$3,032.00, plus 6.8% of excess over \$64,000

57 Over \$76,000 but not over \$88,000 \$3,848.00, plus 7.2% of excess over \$76,000

58 Over \$88,000 but not over \$100,000 ... \$4,712.00, plus 7.5% of excess over \$88,000

59 Over \$100,000 but not over \$120,000 . \$5,612.00, plus 7.9% of excess over \$100,000

60 Over \$120,000 but not over \$140,000 . \$7,192.00, plus 8.2% of excess over \$120,000

61 Over \$140,000 but not over \$160,000 . \$8,832.00, plus 8.6% of excess over \$140,000

62 Over \$160,000 but not over \$180,000 . \$10,552.00, plus 8.8% of excess over \$160,000

63 Over \$180,000 but not over \$200,000 . \$12,312.00, plus 9.1% of excess over \$180,000

64 Over \$200,000 but not over \$300,000 . \$14,132.00, plus 9.3% of excess over \$200,000

65 Over \$300,000 but not over \$400,000 . \$23,432.00, plus 9.5% of excess over \$300,000

66 Over \$400,000 \$32,932.00, plus 9.6% of excess over \$400,000

67 (c) *Applicability of this section.*—The provisions of this
 68 section shall be applicable in determining the rate of tax
 69 imposed by this article for all taxable years or portions
 70 thereof beginning on or after the first day of January, one
 71 thousand nine hundred seventy-one, and ending before the
 72 first day of April, one thousand nine hundred eighty-three.

§11-21-4d. Rate of tax—Taxable periods beginning on or after April 1, 1983.

- 1 (a) *Rate of tax on individuals, estates and trusts.*—The tax
- 2 imposed by section three of this article on the West Virginia
- 3 taxable income of every individual, and every estate and
- 4 trust shall be determined in accordance with the following
- 5 table:

| 6 If the West Virginia taxable | 7 income is: | The tax is: |
|--------------------------------|---|--|
| 8 | Not over \$2,000..... | 2.1% of the taxable income |
| 9 | Over \$2,000 but not over \$4,000 | \$42.00, plus 2.3% of excess over \$2,000 |
| 10 | Over \$4,000 but not over \$6,000 | \$88.00, plus 2.8% of excess over \$4,000 |
| 11 | Over \$6,000 but not over \$8,000 | \$144.00, plus 3.2% of excess over \$6,000 |
| 12 | Over \$8,000 but not over \$10,000 | \$208.00, plus 3.5% of excess over \$8,000 |
| 13 | Over \$10,000 but not over \$12,000 | \$278.00, plus 4.0% of excess over \$10,000 |
| 14 | Over \$12,000 but not over \$14,000 | \$358.00, plus 5.3% of excess over \$12,000 |
| 15 | Over \$14,000 but not over \$16,000 | \$464.00, plus 5.9% of excess over \$14,000 |
| 16 | Over \$16,000 but not over \$18,000 | \$582.00, plus 6.8% of excess over \$16,000 |
| 17 | Over \$18,000 but not over \$20,000 | \$718.00, plus 7.4% of excess over \$18,000 |
| 18 | Over \$20,000 but not over \$22,000 | \$866.00, plus 8.2% of excess over \$20,000 |
| 19 | Over \$22,000 but not over \$26,000 | \$1,030.00, plus 9.2% of excess over \$22,000 |
| 20 | Over \$26,000 but not over \$32,000 | \$1,398.00, plus 10.5% of excess over \$26,000 |
| 21 | Over \$32,000 but not over \$38,000 | \$2,028.00, plus 11.6% of excess over \$32,000 |
| 22 | Over \$38,000 but not over \$44,000 | \$2,724.00, plus 12.6% of excess over \$38,000 |
| 23 | Over \$44,000 but not over \$50,000 | \$3,480.00, plus 12.9% of excess over \$44,000 |
| 24 | Over \$50,000 but not over \$60,000 | \$4,254.00, plus 12.9% of excess over \$50,000 |
| 25 | Over \$60,000 but not over \$70,000 | \$5,544.00, plus 13.0% of excess over \$60,000 |
| 26 | Over \$70,000 but not over \$80,000 | \$6,844.00, plus 13.0% of excess over \$70,000 |
| 27 | Over \$80,000 but not over \$90,000 | \$8,144.00, plus 13.0% of excess over \$80,000 |
| 28 | Over \$90,000 but not over \$100,000 | \$9,444.00, plus 13.0% of excess over \$90,000 |
| 29 | Over \$100,000 but not over \$150,000 | \$10,744.00, plus 13.0% of excess over \$100,000 |
| 30 | Over \$150,000 but not over \$200,000 | \$17,244.00, plus 13.0% of excess over \$150,000 |
| 31 | Over \$200,000 | \$23,744.00, plus 13.0% of excess over \$200,000 |

32 (b) *Rate of tax on heads of households.*—The tax im-
 33 posed by section three of this article on the West Virginia
 34 taxable income of every individual who is a head of a
 35 household in the determination of his federal income tax for
 36 the taxable year, shall be determined in accordance with
 37 the following table:

| | |
|---|--|
| 38 If the West Virginia taxable | |
| 39 income is: | The tax is: |
| 40 Not over \$2,000..... | 2.1% of the taxable income |
| 41 Over \$2,000 but not over \$4,000 | \$42.00, plus 2.3% of excess over \$2,000 |
| 42 Over \$4,000 but not over \$6,000 | \$88.00, plus 2.8% of excess over \$4,000 |
| 43 Over \$6,000 but not over \$8,000 | \$144.00, plus 3.2% of excess over \$6,000 |
| 44 Over \$8,000 but not over \$10,000 | \$208.00, plus 3.5% of excess over \$8,000 |
| 45 Over \$10,000 but not over \$12,000 | \$278.00, plus 3.8% of excess over \$10,000 |
| 46 Over \$12,000 but not over \$14,000 | \$354.00, plus 4.7% of excess over \$12,000 |
| 47 Over \$14,000 but not over \$16,000 | \$448.00, plus 5.3% of excess over \$14,000 |
| 48 Over \$16,000 but not over \$18,000 | \$554.00, plus 6.1% of excess over \$16,000 |
| 49 Over \$18,000 but not over \$20,000 | \$676.00, plus 6.6% of excess over \$18,000 |
| 50 Over \$20,000 but not over \$22,000 | \$808.00, plus 7.4% of excess over \$20,000 |
| 51 Over \$22,000 but not over \$26,000 | \$956.00, plus 8.2% of excess over \$22,000 |
| 52 Over \$26,000 but not over \$32,000 | \$1,284.00, plus 9.5% of excess over \$26,000 |
| 53 Over \$32,000 but not over \$38,000 | \$1,854.00, plus 10.4% of excess over \$32,000 |
| 54 Over \$38,000 but not over \$44,000 | \$2,478.00, plus 11.4% of excess over \$38,000 |
| 55 Over \$44,000 but not over \$50,000 | \$3,162.00, plus 11.6% of excess over \$44,000 |
| 56 Over \$50,000 but not over \$60,000 | \$3,858.00, plus 11.6% of excess over \$50,000 |
| 57 Over \$60,000 but not over \$70,000 | \$5,018.00, plus 11.7% of excess over \$60,000 |
| 58 Over \$70,000 but not over \$80,000 | \$6,188.00, plus 13.0% of excess over \$70,000 |
| 59 Over \$80,000 but not over \$90,000 | \$7,488.00, plus 13.0% of excess over \$80,000 |
| 60 Over \$90,000 but not over \$100,000 | \$8,788.00, plus 13.0% of excess over \$90,000 |
| 61 Over \$100,000 but not over \$150,000.... | \$10,088.00, plus 13.0% of excess over \$100,000 |
| 62 Over \$150,000 but not over \$200,000.... | \$16,588.00, plus 13.0% of excess over \$150,000 |
| 63 Over \$200,000 | \$23,088.00, plus 13.0% of excess over \$200,000 |

64 (c) *Rate of tax in case of joint return or return of*
 65 *surviving spouse.*—In the case of a joint return of a husband
 66 and wife and the return of an individual who is entitled to
 67 file his federal income tax return for the taxable year as a
 68 surviving spouse, the tax imposed by section three of this
 69 article on the West Virginia taxable income shall be
 70 determined in accordance with the following table:

71 If the West Virginia taxable

72 income is:

The tax is:

| | |
|--|--|
| 73 Not over \$4,000..... | 2.1% of the taxable income |
| 74 Over \$4,000 but not over \$8,000 | \$84.00, plus 2.3% of excess of over \$4,000 |
| 75 Over \$8,000 but not over \$12,000 | \$176.00, plus 2.8% of excess of over \$8,000 |
| 76 Over \$12,000 but not over \$16,000 | \$288.00, plus 3.2% of excess over \$12,000 |
| 77 Over \$16,000 but not over \$20,000 | \$416.00, plus 3.5% of excess over \$16,000 |
| 78 Over \$20,000 but not over \$24,000 | \$556.00, plus 4.0% of excess over \$20,000 |
| 79 Over \$24,000 but not over \$28,000 | \$716.00, plus 5.3% of excess over \$24,000 |
| 80 Over \$28,000 but not over \$32,000 | \$928.00, plus 5.9% of excess over \$28,000 |
| 81 Over \$32,000 but not over \$36,000 | \$1,164.00, plus 6.8% of excess over \$32,000 |
| 82 Over \$36,000 but not over \$40,000 | \$1,436.00, plus 7.4% of excess over \$36,000 |
| 83 Over \$40,000 but not over \$44,000 | \$1,732.00, plus 8.2% of excess over \$40,000 |
| 84 Over \$44,000 but not over \$52,000 | \$2,060.00, plus 9.2% of excess over \$44,000 |
| 85 Over \$52,000 but not over \$64,000 | \$2,796.00, plus 10.5% of excess over \$52,000 |
| 86 Over \$64,000 but not over \$76,000 | \$4,056.00, plus 11.6% of excess over \$64,000 |
| 87 Over \$76,000 but not over \$88,000 | \$5,448.00, plus 12.6% of excess over \$76,000 |
| 88 Over \$88,000 but not over \$100,000 | \$6,960.00, plus 12.9% of excess over \$88,000 |
| 89 Over \$100,000 but not over \$120,000 | \$8,508.00, plus 12.9% of excess over \$100,000 |
| 90 Over \$120,000 but not over \$140,000 | \$11,088.00, plus 13.0% of excess over \$120,000 |
| 91 Over \$140,000 but not over \$160,000 | \$13,688.00, plus 13.0% of excess over \$140,000 |
| 92 Over \$160,000 but not over \$180,000 | \$16,288.00, plus 13.0% of excess over \$160,000 |
| 93 Over \$180,000 but not over \$200,000 | \$18,888.00, plus 13.0% of excess over \$180,000 |
| 94 Over \$200,000 but not over \$300,000 | \$21,488.00, plus 13.0% of excess over \$200,000 |
| 95 Over \$300,000 but not over \$400,000 | \$34,488.00, plus 13.0% of excess over \$300,000 |
| 96 Over \$400,000 | \$47,488.00, plus 13.0% of excess over \$400,000 |

97 (d) *Applicability of this section.*—The provisions of this
98 section shall be applicable in determining the rate of tax
99 imposed by this article for all taxable periods or portions
100 thereof beginning on or after the first day of April, one
101 thousand nine hundred eighty-three.

§11-21-4e. Effect of rate changes during taxable year.

1 (a) If any rate of tax imposed by this article changes to
2 become effective after the thirty-first day of December, of a
3 calendar year, and if the taxable year includes the effective
4 date of the change of rate (unless that date is the first day of
5 the taxable year) then: (1) Tentative taxes shall be
6 computed by applying the rate for the period before the
7 effective date of the change of rate, and the rate for the
8 period on and after such date, to the taxable income for the
9 entire taxable year; and (2) the tax for such taxable year
10 shall be the sum of that proportion of each tentative tax
11 which the number of months in each period bears to the
12 number of months in the entire taxable year.

13 (b) For purposes of subsection (a):

14 (1) If the rate changes for taxable years “beginning
15 after” or “ending after” a certain date, the following day
16 shall be considered the effective date of the change; and

17 (2) If a rate changes for taxable years “beginning on or
18 after” a certain date, that date shall be considered the
19 effective date of the change of rate.

§11-21-16. West Virginia personal exemptions of resident individual.

1 (a) *General.*—For any tax imposed under the provisions
2 of this article with respect to any taxable year prior to the
3 first day of January, one thousand nine hundred eighty-
4 three, a resident individual shall be allowed a West Virginia
5 exemption of six hundred dollars for each exemption for
6 which he is entitled to a deduction for the taxable year for
7 federal income tax purposes. With respect to any taxable
8 year beginning on or after the first day of January, one
9 thousand nine hundred eighty-three, and prior to the first
10 day of January, one thousand nine hundred eighty-four,
11 said exemption shall be seven hundred dollars; and with
12 respect to any taxable year beginning on or after the first

13 day of January, one thousand nine hundred eighty-four,
14 said exemption shall be eight hundred dollars.

15 (b) *Husband and wife.*—If the West Virginia income
16 taxes of a husband and wife are separately determined but
17 their federal income tax is determined on a joint return,
18 each of them shall be separately entitled, with respect to
19 any taxable year prior to the first day of January, one
20 thousand nine hundred eighty-three, to a West Virginia
21 exemption of six hundred dollars for each federal
22 exemption to which he would be separately entitled for the
23 taxable year if their federal income taxes had been
24 determined on separate returns. With respect to any taxable
25 year beginning on or after the first day of January, one
26 thousand nine hundred eighty-three, and prior to the first
27 day of January, one thousand nine hundred eighty-four,
28 said exemption shall be seven hundred dollars; and with
29 respect to any taxable year beginning on or after the first
30 day of January, one thousand nine hundred eighty-four,
31 said exemption shall be eight hundred dollars.

§11-21-71. Requirement of withholding tax from wages.

1 (a) *General.*—Every employer maintaining an office or
2 transacting business within this state and making payment
3 of any wage taxable under this article to a resident or
4 nonresident individual shall deduct and withhold from
5 such wages for each payroll period a tax computed in such
6 manner as to result, so far as practicable, in withholding
7 from the employee's wages during each calendar year an
8 amount substantially equivalent to the tax reasonably
9 estimated to be due under this article resulting from the
10 inclusion in the employee's West Virginia adjusted gross
11 income of his wages received during such calendar year.
12 The method of determining the amount to be withheld shall
13 be prescribed by the tax commissioner, with due regard to
14 the West Virginia withholding exemption of the employee.
15 This section shall not apply to payments by the United
16 States for service in the armed forces of the United States.

17 (b) *Withholding exemptions.*—For purposes of this
18 section:

19 (1) An employee shall be entitled to the same number of
20 West Virginia withholding exemptions as the number of
21 withholding exemptions to which he is entitled for federal

22 income tax withholding purposes. An employer may rely
 23 upon the number of federal withholding exemptions
 24 claimed by the employee, except where the employee claims
 25 a higher number of West Virginia withholding exemptions.

26 (2) With respect to any taxable year prior to the first day
 27 of January, one thousand nine hundred eighty-three, the
 28 amount of each West Virginia exemption shall be six
 29 hundred dollars whether the individual is a resident or
 30 nonresident. With respect to any taxable year beginning on
 31 or after the first day of January, one thousand nine hundred
 32 eighty-three, and prior to the first day of January, one
 33 thousand nine hundred eighty-four, said exemption shall
 34 be seven hundred dollars and with respect to any taxable
 35 year beginning on or after the first day of January, one
 36 thousand nine hundred eighty-four, said exemption shall be
 37 eight hundred dollars.

38 (c) *Exception for certain nonresidents.*—If the income
 39 tax law of another state of the United States or of the
 40 District of Columbia results in its residents being allowed a
 41 credit under section forty sufficient to offset all taxes
 42 required by this article to be withheld from the wages of an
 43 employee, the tax commissioner may by regulation relieve
 44 the employers of such employees from the withholding
 45 requirements of this article with respect to such employees.

ARTICLE 24. CORPORATION NET INCOME TAX.

- §11-24-4. Imposition of primary tax and rate thereof; imposition of additional, temporary surtax; effective and termination dates.
- §11-24-4a. Effect of rate change during taxable year.
- §11-24-9. Credits against primary tax; election of taxpayer.
- §11-24-10. Credit for hiring of qualified employees by eligible taxpayers engaged in manufacturing.
- §11-24-17a. Interest and additions to tax on payments of estimated tax.

§11-24-4. Imposition of primary tax and rate thereof; imposition of additional temporary surtax; effective and termination dates.

1 (a) *Primary tax.*

2 (1) In the case of taxable periods beginning after the
 3 thirtieth day of June, one thousand nine hundred sixty-
 4 seven, and ending prior to the first day of January, one
 5 thousand nine hundred eighty-three, a tax is hereby
 6 imposed for each taxable year at the rate of six percent

7 per annum on the West Virginia taxable income of every
8 domestic or foreign corporation engaging in business in this
9 state or deriving income from property, activity or other
10 sources in this state, except corporations exempt under
11 section five.

12 (2) In the case of taxable periods beginning on or after
13 the first day of January, one thousand nine hundred eighty-
14 three, a tax is hereby imposed for each taxable year on the
15 West Virginia taxable income of every domestic or foreign
16 corporation engaging in business in this state or deriving
17 income from property, activity or other sources in this state,
18 except corporations exempt under section five, at the rates
19 which follow:

20 (A) On taxable income not in excess of fifty thousand
21 dollars, the rate of six percent; and

22 (B) On taxable income in excess of fifty thousand
23 dollars, the rate of seven percent.

24 (b) *Temporary surtax.*—In addition to the primary tax
25 imposed, determinable and with exemptions, as aforesaid,
26 there is hereby imposed an additional tax, a temporary
27 surtax, of fifteen percent of the determined primary tax
28 liability (as determined prior to application of any credits
29 allowable under section nine of this article), and with such
30 additional, temporary surtax being hereby made effective
31 and applicable to taxable years or portions thereof
32 beginning on and after the first day of January, one
33 thousand nine hundred eighty-three, with such additional,
34 temporary surtax to expire, be nullified and be of no further
35 force or effect whatsoever after the thirtieth day of June,
36 one thousand nine hundred eighty-five. Section four-a of
37 this article, applicable to the effect of any rate changes
38 during a taxable year, shall be construed to include and also
39 be applicable to this surtax or any change of such surtax
40 hereafter occurring during a taxable year. Corporations
41 exempt under section five of this article from the primary
42 tax, as imposed, are hereby made exempt from the
43 additional, temporary surtax, as imposed.

§11-24-4a. Effect of rate changes during taxable year.

1 (a) If any rate of tax imposed by this article changes to
2 become effective after the thirty-first day of December of a

3 calendar year, and if the taxable year included the effective
4 date of the change of rate (unless that date is the first day of
5 the taxable year) then: (1) Tentative taxes shall be
6 computed by applying the rate for the period before the
7 effective date of the change of rate, and the rate for the
8 period on and after such date, to the taxable income for the
9 entire taxable year; and (2) the tax for such taxable year
10 shall be the sum of that proportion of each tentative tax
11 which the number of months in each period bears to the
12 number of months in the entire taxable year.

13 (b) For purposes of subsection (a):

14 (1) If the rate changes for taxable years "beginning
15 after" or "ending after" a certain date, the following day
16 shall be considered the effective date of the change; and

17 (2) If a rate changes for taxable years "beginning on or
18 after" a certain date, that date shall be considered the
19 effective date of the change of rate.

§11-24-9. Credits against primary tax; election of taxpayer.

1 (a) *Credit for primary taxes imposed under article*
2 *thirteen, chapter eleven of this code.*—A credit shall be
3 allowed against the primary tax imposed by this article
4 equal to the amount of the liability of the taxpayer for the
5 taxable year for any tax imposed under article thirteen,
6 chapter eleven of this code: *Provided*, That the amount of
7 such business and occupation tax credit shall not exceed
8 fifty percent of the primary tax liability of the taxpayer
9 under this article which is attributable to the West Virginia
10 taxable income derived by the taxpayer for the taxable year
11 from the business or occupation with respect to which said
12 tax under article thirteen was imposed and shall not in any
13 event exceed fifty percent of the primary tax liability of the
14 taxpayer under this article for such taxable year: *Provided*,
15 *however*, That the entire amount of the business and
16 occupation tax liability of the taxpayer, which was taken as
17 a deduction in determining its federal taxable income for
18 the taxable year, shall be an adjustment increasing federal
19 taxable income under section six of this article: *Provided*
20 *further*, That the taxpayer may at its option elect in lieu of
21 claiming the credit allowable by this subsection, to not
22 increase its federal taxable income under section six of this
23 article and thereby take as a full deduction under this

24 article for the taxable year the amount of its business and
25 occupation tax liability for the taxable year, which was
26 taken as a deduction on its federal return for such taxable
27 year.

28 For purposes of this section, the tax imposed under article
29 thirteen, chapter eleven of this code shall be the amount of
30 the liability of the taxpayer for such tax under said article
31 thirteen computed without reduction for the tax credit for
32 industrial expansion or revitalization allowed for such
33 year.

34 (b) *Credit for taxes imposed under article twelve-a,*
35 *chapter eleven of this code.*—A credit shall be allowed
36 against the primary tax imposed by this article equal to the
37 amount of the liability of the taxpayer for the taxable year
38 for any tax imposed on the taxpayer under article twelve-a,
39 chapter eleven of this code: *Provided,* That the amount of
40 such credit shall not exceed fifty percent of the primary tax
41 liability of the taxpayer under this article which is
42 attributable to the West Virginia taxable income derived by
43 the taxpayer for the taxable year from any source with
44 respect to which said tax under article twelve-a was
45 imposed and shall not in any event exceed fifty percent of
46 the primary tax liability of the taxpayer under this article for
47 such taxable year: *Provided, however,* That the entire
48 amount of the carrier income tax liability of the taxpayer,
49 which was taken as a deduction in determining its federal
50 taxable income for the taxable year shall be an adjustment
51 increasing federal taxable income under section six of this
52 article: *Provided further,* That the taxpayer may at its
53 option elect in lieu of claiming the credit allowable by this
54 subsection, to not increase its federal taxable income under
55 section six of this article and thereby take as a full deduction
56 under this article for the taxable year the amount of its
57 carrier income tax liability for the taxable year, which was
58 taken as a deduction on its federal return for the taxable
59 year.

§11-24-10. Credit for hiring of qualified employees by eligible taxpayers engaged in manufacturing.

1 (a) A credit shall be allowed under the provisions of this
2 section against the primary tax liability of the taxpayer
3 under this article to eligible taxpayers who hire qualified

4 employees during the period beginning April first, one
5 thousand nine hundred eighty-three, and ending December
6 thirty-first, one thousand nine hundred eighty-four.

7 (b) For the purpose of this section, the term "eligible
8 taxpayer" shall mean a taxpayer who:

9 (1) Is subject to tax liability under section two-b, article
10 thirteen, chapter eleven of this code, relating to business and
11 occupation tax upon the business of manufacturing, com-
12 pounding or preparing for sale any articles, substances or
13 commodities; and

14 (2) Hires a qualified employee, as defined herein, during
15 the period beginning April first, one thousand nine hundred
16 eighty-three, and ending December thirty-first, one
17 thousand nine hundred eighty-four; which employee to
18 such employer is not a returning seasonal employee or
19 employee of like-type.

20 (c) For the purpose of this section, the term "qualified
21 employee" shall mean an employee who is hired and
22 employed at a location within this state by an eligible
23 taxpayer for full-time employment, which, for the purposes
24 of this section, shall mean employment for at least one
25 hundred twenty hours per month at a wage equal to, or
26 greater than, the prevailing federal minimum wage and:

27 (1) At the time he or she is hired, has either exhausted
28 entitlement to unemployment compensation benefits under
29 the provisions of chapter twenty-one-a of this code or
30 would have exhausted such benefits within a period of six
31 weeks from date of employment; or

32 (2) At the time of employment, he or she is hired so that
33 one or more present employees will not be required to
34 continue working overtime, and with a resultant decrease
35 in the amount of overtime compensation paid by the
36 employer.

37 (d) The term "qualified employee" shall not include a
38 person who displaces an employed individual, other than an
39 individual who is discharged for cause, or shall not include
40 an individual employed and who is closely related to a
41 person who owns, directly or indirectly, more than fifty
42 percent of the outstanding stock of the business, or an

43 individual employed and who is closely related to the owner
44 or owners of an unincorporated business.

45 (e) Notwithstanding any provision of this code to the
46 contrary, the department of employment security shall
47 disclose, upon request, to the state tax commissioner or his
48 employees, any wage, benefits or eligibility information
49 with respect to an identified individual which is contained
50 in its records.

51 (f) The maximum total credits allowed to any eligible
52 taxpayer in all taxable years because of the hiring of any
53 one qualified employee shall be one thousand dollars:
54 *Provided*, That the amount of the credit allowed by this
55 section in any one taxable year shall be the lesser of either
56 one thousand dollars for each qualified employee hired in
57 such taxable year, or ten percent of the gross wages paid by
58 the eligible taxpayer to each qualified employee hired in
59 such taxable year: *Provided, however*, That unused credit
60 for an eligible employee may be carried forward to the next
61 tax year if necessary and until the lesser of either one
62 thousand dollars for each qualified employee or ten percent
63 of the gross wages paid to the eligible employee during his
64 or her first employment year is taken as a credit by the
65 eligible taxpayer. The credit allowable by this section for a
66 taxable year is not subject to the fifty percent limitation
67 specified in section nine of this article, and any unused
68 credit may be carried over to each of the next three taxable
69 years following the unused credit year until used or
70 forfeited due to lapse of time.

§11-24-17a. Interest and additions to tax on payments of estimated tax.

1 The interest provisions of subsection (a), section
2 seventeen, and the additions to tax provisions of section
3 eighteen, both of article ten of this chapter, shall apply to an
4 underpayment of estimated tax under this article, whether
5 such underpayment is because of a failure to pay the entire
6 installment payment then due or because of an under-
7 estimation by more than twenty percent of the amount of
8 tax due for the taxable year under this article.

CHAPTER 177

(S. B. 659—By Mr. McGraw, Mr. President, Mr. Chernenko, Mr. Loehr,
Mr. Sacco and Mr. Tonkovich)

[Passed March 8, 1983; in effect from passage. Approved by the Governor.]

AN ACT to amend article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-a, relating to business and occupation tax; allowing a deduction from gross income for employer contribution to a qualified employee stock ownership plan by a manufacturer.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-3a. Deduction for contributions to an employee stock ownership plan by a manufacturer.

1 (a) *General rule.*—There shall be allowed as a de-
2 duction from gross income reportable under section two-b
3 of this article, for the taxable year, the amount of quali-
4 fied contribution to an employee stock ownership plan
5 made during the taxable year, for any period beginning
6 after the thirtieth day of June, one thousand nine hundred
7 eighty-three.

8 (b) *Definitions.*—For purposes of this section the
9 term:

10 (1) "Employee stock ownership plan" means a plan
11 as defined in paragraph (7), subsection (e), section 4975
12 of the Internal Revenue Code.

13 (2) "Internal Revenue Code" means the Internal
14 Revenue Code of 1954, as amended, which is codified as
15 Title 26 of the United States Code.

16 (3) "Qualified contribution" means the amount of
17 employer contributions during the taxable year to an
18 employee stock ownership plan, which are deductible by
19 the corporation for federal income tax purposes under
20 paragraph (10), subsection (a), section 404 of the Internal
21 Revenue Code, and which do not exceed the amount al-
22 lowable under paragraph (6), subsection (c), section 415.
23 of the Internal Revenue Code.

CHAPTER 178

(S. B. 536—By Mr. McGraw, Mr. President)

[Passed March 11, 1983; in effect April 1, 1983. Approved by the Governor.]

AN ACT to amend article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-e; and to amend said chapter eleven by adding thereto a new article, designated article thirteen-e, all relating generally to the credit against business and occupation taxes for eligible investment in new or expanded or revitalized coal loading facilities; authorizing issuance of regulations; stating legislative findings and purpose; defining terms; allowing credit for eligible investment in coal loading facilities; defining eligible investment in coal loading facilities; and providing for forfeiture and recapture of credit.

Be it enacted by the Legislature of West Virginia:

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

Article

13. Business and Occupation Tax.

13E. Business and Occupation Tax Credit for Coal Loading Facilities.

ARTICLE 13. BUSINESS AND OCCUPATION TAX.**§11-13-3e. Tax credit for coal loading facilities; regulations.**

- 1 (a) There shall be allowed as a credit against the tax
- 2 imposed by this article, the amount determined under
- 3 article thirteen-e of this chapter, relating to tax credit for
- 4 new or expanded or revitalized coal loading facilities.
- 5 (b) The tax commissioner may prescribe such
- 6 regulations as may be necessary to carry out the purposes of
- 7 this section and article thirteen-e of this chapter.

ARTICLE 13E. BUSINESS AND OCCUPATION TAX CREDIT FOR COAL LOADING FACILITIES.

- §11-13E-1. Legislative findings and purpose.
- §11-13E-2. Definitions.
- §11-13E-3. Amount of credit allowed for coal loading facilities.
- §11-13E-4. Eligible investment.
- §11-13E-5. Forfeiture of unused tax credits; redetermination of credit allowed.
- §11-13E-6. Transfer of eligible investment to successors.

§11-13E-1. Legislative finding and purpose.

- 1 The Legislature finds that production of coal is very
- 2 important to the economy of this state, and that a sound
- 3 economy is in the public interest and promotes the general
- 4 welfare of the people of this state. In order to encourage
- 5 capital investment in this state, through the construction of
- 6 new or the expansion or revitalization of existing coal
- 7 loading facilities, and thereby increase employment and
- 8 economic development, there is hereby provided a business
- 9 and occupation tax credit for investment in coal loading
- 10 facilities.

§11-13E-2. Definitions.

- 1 (a) Any term used in this article shall have the same
- 2 meaning as when used in a comparable context in article
- 3 thirteen of this chapter, unless a different meaning is
- 4 clearly required by the context of its use or by definition in
- 5 this article.
- 6 (b) For purposes of this article, the term:
- 7 (1) "Coal loading facility" means any building or
- 8 structure specifically designed and solely used to transfer
- 9 coal from a coal processing or preparation facility, or from a
- 10 coal storage facility, or both, or from any means of
- 11 transportation, to any means of rail or barge transportation

12 used to move coal, including such land as is directly
13 associated with and solely used for the coal loading facility,
14 and including any device or combination of machinery and
15 equipment that is directly associated with and solely used
16 for the loading of coal. This definition applies only when the
17 transfer is to any means of rail or barge transportation and
18 specifically excludes the transfer to any other form of
19 transportation. This may include, but is not limited to, the
20 coal loading tippie, conveyors, coal storage facilities,
21 weighing equipment and rail trackage, if they are directly
22 associated with and solely used for the loading of coal. In no
23 event may the eligible investment in a coal loading facility,
24 for purposes of this credit, include the cost of any coal
25 processing, preparation, blending or sizing facility or
26 equipment, or any combination thereof, even though
27 physically a part of the coal loading facility, and even
28 though such coal processing, preparation, blending or
29 sizing facility or equipment, or any combination thereof, is
30 necessary or essential to the loading of commercially usable
31 or marketable coal.

32 (2) "Eligible taxpayer" means any person subject to tax
33 under article thirteen of this chapter who purchases real or
34 personal property, or a combination thereof, for the
35 purpose of building or constructing a new or expanded coal
36 loading facility in this state, or who revitalizes an existing
37 coal loading facility which was located in this state on the
38 first day of April, one thousand nine hundred eighty-three,
39 and upon completion, operates the new or expanded or
40 revitalized coal loading facility.

41 (3) "Revitalization" means capital investment in a coal
42 loading facility located in this state on the first day of April,
43 one thousand nine hundred eighty-three, to replace or
44 modernize buildings, structures, equipment, machinery
45 and other tangible personal property directly associated
46 with and solely used in the operation of a coal loading
47 facility, including the acquisition of any real property
48 directly associated with and solely used in the operation of a
49 revitalized coal loading facility.

50 (4) "Property purchased for a coal loading facility"
51 means real property and improvements thereto, and
52 tangible personal property, but only if such real or personal

53 property is constructed or purchased for use as a component
54 part of a new or expanded coal loading facility, or the
55 revitalization of an existing coal loading facility which was
56 located within this state on the first day of April, one
57 thousand nine hundred eighty-three. This term includes
58 only tangible personal property with respect to which
59 depreciation or amortization, in lieu of depreciation, is
60 allowable in determining the personal income tax or
61 corporation net income tax due under articles twenty-one
62 or twenty-four of this chapter, and has a useful life at the
63 time the property is placed in service or use in this state of
64 four years or more. Property acquired by lease for a term of
65 ten years or longer, if used as a component part of a coal
66 loading facility, shall be included within this definition.
67 "Property purchased for a coal loading facility" shall not
68 include:

69 (A) Property which qualifies or was qualified for credit
70 under articles thirteen-c or thirteen-d of this chapter.

71 (B) Repair costs, including materials used in making the
72 repair, unless under generally accepted accounting
73 principles the cost of the repair must be capitalized and not
74 expensed.

75 (C) Motor vehicles licensed by the department of motor
76 vehicles.

77 (D) Airplanes.

78 (E) Off-premise transportation equipment.

79 (F) Property which is primarily used outside this state.

80 (G) Property purchased prior to the first day of April,
81 one thousand nine hundred eighty-three. Property shall be
82 deemed to have been purchased prior to said date only if:

83 (i) The physical construction, reconstruction or erection
84 of the property was begun prior to said first day of April or
85 such property was constructed, reconstructed, erected or
86 acquired pursuant to a written contract existing on or
87 before the thirty-first day of March, one thousand nine
88 hundred eighty-three, and limited to the provision of such
89 contract as of such date, binding on the taxpayer.

90 (ii) The machinery or equipment was owned by the
91 taxpayer on or before the thirty-first day of March, one

92 thousand nine hundred eighty-three, or was acquired by
93 the taxpayer pursuant to a binding purchase contract which
94 was in effect on such date.

95 (iii) In the case of leased property, there was a binding
96 lease or contract to lease identifiable equipment in effect on
97 or before the thirty-first day of March, one thousand nine
98 hundred eighty-three.

99 (H) Property which is acquired incident to the purchase
100 of the stock or assets of a taxpayer, which property was or
101 had been used by the seller in his business in this state, or
102 which property was previously designated "property
103 purchased for industrial expansion" under article thirteen-
104 c of this chapter and used to qualify for the tax credit
105 provided by that article, or was previously designated
106 "property purchased for industrial revitalization" under
107 article thirteen-d of this chapter and used to qualify for the
108 tax credit provided by that article.

§11-13E-3. Amount of credit allowed for coal loading facilities.

1 There shall be allowed to eligible taxpayers a credit
2 against the business and occupation taxes imposed by
3 article thirteen of this chapter for investment in a new or
4 expanded or revitalized coal loading facility. The amount of
5 this credit shall be equal to ten percent of the cost of the
6 eligible investment made in a coal loading facility and shall
7 reduce the business and occupation tax imposed under
8 sections two-a, two-b and two-h, article thirteen of this
9 chapter, subject to the following conditions and limitations:

10 (a) The allowable credit shall be applied over a ten-year
11 period at the rate of one tenth of the amount thereof per
12 taxable year, beginning with the taxable year in which the
13 eligible investment is first placed in service or use in this
14 state.

15 (b) The amount of annual credit allowed shall not
16 reduce the business and occupation taxes imposed on the
17 business of producing coal under section two-a, article
18 thirteen of this chapter, the business of manufacturing,
19 compounding or preparing coal for sale under section two-
20 b, article thirteen of this chapter and on the activity of
21 loading coal under section two-h, article thirteen of this
22 chapter, below fifty percent of the amount which would be

23 imposed for the taxable year in the absence of the annual
24 exemption allowed by section three, article thirteen of this
25 chapter.

26 (c) When in any taxable year the eligible taxpayer is
27 entitled to claim credit under this article and article
28 thirteen-c or article thirteen-d of this chapter, the total
29 amount of credits allowed shall not exceed fifty percent of
30 the tax liability under section two-b or two-h, article
31 thirteen of this chapter on manufacturing or manu-
32 facturing-service activity.

33 (d) No carryover to a subsequent tax year or carryback
34 to a prior tax year shall be allowed for the amount of any
35 unused portion of the credit allowed under this article for
36 the taxable year. Any unused credit shall be forfeited.

37 (e) No credit shall be allowed under this article for any
38 property purchased for a coal loading facility prior to the
39 first day of April, one thousand nine hundred eighty-three.

§11-13E-4. Eligible investment.

1 (a) *General.*—The eligible investment in property
2 purchased for a new or expanded or revitalized coal loading
3 facility shall be the applicable percentage of the cost of each
4 property purchased for the purpose of such coal loading
5 facility, which is placed in service or use in this state by the
6 eligible taxpayer during the taxable year.

7 (b) *Applicable percentage.*—For the purpose of
8 subsection (a), the applicable percentage for any property
9 shall be determined under the following table:

| 10 If useful life is - | The applicable percentage is - |
|----------------------------------|--------------------------------|
| 11 4 years or more but less than | |
| 12 6 years | 33 1/3% |
| 13 6 years or more but less than | |
| 14 8 years | 66 2/3% |
| 15 8 years or more | 100% |

16 The useful life of any property for purposes of this section
17 shall be determined as of the date such property is first
18 placed in service or use in this state by the taxpayer, and is
19 the period during which the property may reasonably be
20 expected to be useful to the taxpayer as part of a coal
21 loading facility.

22 (c) *Cost.*—For purposes of subsection (a), the cost of
23 each property purchased for a coal loading facility shall be
24 determined under the following rules:

25 (1) *Trade-ins.*—Cost shall not include the value of any
26 property given in trade or exchange for the property
27 purchased for a coal loading facility.

28 (2) *Damaged, destroyed or stolen property.*—If property
29 is damaged or destroyed by fire, flood, storm or other
30 casualty or is stolen, the cost of replacement property shall
31 not include any insurance proceeds received in
32 compensation for the loss.

33 (3) *Rental property.*—The cost of property acquired by
34 lease for a term of ten years or longer shall be one hundred
35 percent of the rent reserved for the primary term of the
36 lease, not to exceed twenty years. Lease renewals, subleases
37 or assignments shall not be considered.

38 (4) *Property purchased for multiple use.*—The cost of
39 property purchased for multiple business use including use
40 as a component part of a coal loading facility business
41 together with some other business or activity not eligible for
42 credit under this article shall be apportioned between such
43 businesses or activities. The amount apportioned to the
44 activity of loading coal shall be considered as an eligible
45 investment subject to the conditions and limitations of this
46 section.

47 (5) *Self-constructed property.*—In the case of self-
48 constructed property, the cost thereof shall be the amount
49 properly charged to the capital account for purposes of
50 depreciation.

**§11-13E-5. Forfeiture of unused tax credits; redetermination
of credit allowed.**

1 (a) *Disposition of property or cessation of use.*—If
2 during any taxable year, property with respect to which tax
3 credit has been allowed under this article:

4 (1) Is disposed of prior to the end of its useful life, as
5 determined under section three of this article; or

6 (2) Ceases to be used in a coal loading facility by the
7 eligible taxpayer, in this state, prior to the end of its useful
8 life, as determined under section three of this article, then

9 the unused portion of the credit allowed for such property
10 shall be forfeited for the taxable year and all ensuing years.
11 Additionally, except when the property is damaged or
12 destroyed by fire, flood, storm or other casualty or is stolen,
13 the taxpayer shall redetermine the amount of credit
14 allowed in all earlier years by reducing the applicable
15 percentage of cost of such property allowed under section
16 three of this article to correspond with the percentage of
17 cost allowable for the period of time that the property was
18 actually used in this state as a coal loading facility of the
19 eligible taxpayer. The taxpayer shall then file a
20 reconciliation statement with its annual business and
21 occupation tax return for the year in which the forfeiture
22 occurs, and pay any additional business and occupation
23 taxes, plus interest and any applicable penalties.

24 (b) *Cessation of operation of coal loading facility.*—If
25 during any taxable year the eligible taxpayer ceases
26 operation of a coal loading facility in this state, for which
27 credit was allowed under this article, before expiration of
28 the useful life of property with respect to which tax credit
29 has been allowed under this article, then the unused portion
30 of the allowed credit shall be forfeited for the taxable year
31 and all ensuing years. Additionally, except when the
32 cessation is due to fire, flood, storm or other casualty, the
33 taxpayer shall redetermine the amount of credit allowed in
34 earlier years by reducing the applicable percentage of cost
35 of such property allowed under section three of this article
36 to correspond with the percentage of cost allowable for the
37 period of time that the property was actually used in this
38 state in a coal loading facility of the eligible taxpayer. The
39 taxpayer shall then file a reconciliation statement with its
40 annual business and occupation tax return for the year in
41 which the forfeiture occurs and pay any additional business
42 and occupation taxes, plus interest and any applicable
43 penalties.

§11-13E-6. Transfer of eligible investment to successors.

1 (a) *Mere change in form of business.*—Property shall not
2 be treated as disposed of under section five of this article by
3 reason of a mere change in the form of conducting the
4 business as long as the property is used as or in a coal
5 loading facility in this state and the taxpayer retains a

6 substantial interest in the successor business. In this event,
7 the successor business shall be allowed to claim the amount
8 of credit still available with respect to the coal loading
9 facility or facilities transferred and the taxpayer
10 (transferor) shall not be required to redetermine the amount
11 of credit allowed in earlier years.

12 (b) *Sale to successor.*—Property shall not be treated as
13 disposed of under section five of this article by reason of any
14 sale to a successor business which continues to operate the
15 coal loading facility in this state. Upon sale the successor
16 shall acquire the amount of credit that remains available
17 under this article for each subsequent taxable year and the
18 taxpayer (transferor) shall not be required to redetermine
19 the amount of credit allowed in earlier years.

CHAPTER 179

(Com. Sub. for H. B. 1657—By Mr. Speaker, Mr. See, by request of the Executive)

[Passed February 18, 1983; in effect April 1, 1983. 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; to further amend said article fifteen by adding thereto a new section, designated section eighteen; to amend and reenact section three, article fifteen-a of said chapter eleven; and to further amend said article fifteen-a by adding thereto a new section, designated section thirteen, all relating to imposing the consumers sales and service tax on sales of gasoline and special fuel, generally at the wholesale level, by distributors, importers and others, and the use tax on the use or consumption within this state of gasoline or special fuel; terminating certain exemptions and making sales taxable; defining terms; providing for sales and use tax to be imposed on the basis of specified rate applicable to the average wholesale price, converted and computed on a per gallon basis, and exclusive of state and federal gallonage taxes, with such average wholesale price to not be less than the average wholesale price of gasoline and special fuel specified on the effective

date of the bill; requiring computation of use tax liability of motor carriers to be based on such average wholesale price of gasoline and special fuel, as determined by the tax commissioner annually, and providing that in no event shall such price be less than that specified on the effective date of the bill; providing for filing of returns and payment of tax on the twenty-fifth day of the month following a taxable period; authorizing combined returns and combined payments of the taxes due under articles fourteen and fifteen, and fourteen-a and fifteen-a, chapter eleven of the code; to facilitate compliance, and for such purpose, changing to the twenty-fifth day of each month succeeding the tax period, the due dates of returns and payments of taxes imposed by articles fourteen and fourteen-a of chapter eleven of the code; dedicating revenues to the "road fund"; providing a construction clause; and specifying effective date.

Be it enacted by the Legislature of West Virginia:

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

Article

15. Consumers Sales Tax.

15A. Use Tax.

ARTICLE 15. CONSUMERS SALES TAX.

§11-15-9. Exemptions.

§11-15-18. Tax on gasoline and special fuel.

§11-15-9. Exemptions.

- 1 The following sales and services shall be exempt:
- 2 (1) Sales of gas, steam and water delivered to consumers
- 3 through mains or pipes, and sales of electricity;
- 4 (2) Sales of textbooks required to be used in any of the
- 5 schools of this state;

6 (3) Sales of property or services to the state, its institutions
7 or subdivisions, and to the United States, including agencies
8 of federal, state or local governments for distribution in public
9 welfare or relief work;

10 (4) Sales of motor vehicles which are titled by the depart-
11 ment of motor vehicles and which are subject to the tax im-
12 posed by section four, article three, chapter seventeen-a of the
13 code;

14 (5) Sales of property or services to churches and bona fide
15 charitable organizations who make no charge whatsoever for
16 the services they render: *Provided*, That the exemption here-
17 in granted shall apply only to services, equipment, supplies
18 and materials directly used or consumed by these organiza-
19 tions, and shall not apply to purchases of gasoline or special
20 fuel;

21 (6) Sales of property or services to corporations or organi-
22 zations qualified under section 501(c)(3) of the Internal Reve-
23 nue Code of 1954, as amended, or under section 501(c)(4)
24 of the Internal Revenue Code of 1954, as amended, who make
25 casual and occasional sales not conducted in a repeated man-
26 ner or in the ordinary course of repetitive and successive
27 transactions of like character: *Provided*, That the exemption
28 herein granted shall apply only to services, equipment, sup-
29 plies and materials directly used or consumed by these organi-
30 zations and shall not apply to purchases of gasoline or special
31 fuel;

32 (7) Sales of property or services to persons engaged in this
33 state in the business of contracting, manufacturing, transpor-
34 tation, transmission, communication or in the production of
35 natural resources: *Provided*, That the exemption herein grant-
36 ed shall apply only to services, machinery, supplies and ma-
37 terials directly used or consumed in the businesses or organiza-
38 tions named above, and shall not apply to purchases of gaso-
39 line or special fuel;

40 (8) An isolated transaction in which any tangible personal
41 property is sold, transferred, offered for sale, or delivered by
42 the owner thereof or by his representative for the owner's
43 account, such sale, transfer, offer for sale or delivery not being

44 made in the ordinary course of repeated and successive trans-
45 actions of like character by such owner or on his account by
46 such representatives;

47 (9) Sales of tangible personal property and services ren-
48 dered for use or consumption in connection with the conduct of
49 the business of selling tangible personal property to consumers
50 or dispensing a service subject to tax under this article or
51 which would be subject to tax under this article but for the
52 exemption for food provided in section eleven of this article
53 and sales of tangible personal property and services rendered
54 for use or consumption in connection with the commercial
55 production of an agricultural product the ultimate sale of which
56 will be subject to the tax imposed by this article or which
57 would have been subject to tax under this article but for the
58 exemption for food provided in section eleven of this article:
59 *Provided*, That sales of tangible personal property and services
60 to be used or consumed in the construction of or permanent
61 improvement to real property and sales of gasoline and special
62 fuel shall not be exempt;

63 (10) Sales of tangible personal property for the purpose
64 of resale in the form of tangible personal property: *Provided*,
65 That sales of gasoline and special fuel by distributors and im-
66 porters shall be taxable except when the sale is to another
67 distributor for resale;

68 (11) Sales of property or services to nationally chartered
69 fraternal or social organizations for the sole purpose of free
70 distribution in public welfare or relief work: *Provided*, That
71 sales of gasoline and special fuel shall be taxable;

72 (12) Sales and services, fire fighting, or station house equip-
73 ment, including construction and automotive, made to any
74 volunteer fire department organized and incorporated under
75 the laws of the state of West Virginia: *Provided*, That sales
76 of gasoline and special fuel shall be taxable;

77 (13) Sales of newspapers when delivered to consumers by
78 route carriers;

79 (14) Sales of drugs dispensed upon prescription and sales
80 of insulin to consumers for medical purposes;

81 (15) Sales of radio and television broadcasting time, news-
82 paper and outdoor advertising space for the advertisement of
83 goods or services;

84 (16) Sales and services performed by day care centers;

85 (17) Casual and occasional sales of property or services
86 not conducted in a repeated manner or in the ordinary course
87 of repetitive and successive transactions of like character by
88 corporations or organizations qualified under section 501(c)(3)
89 of the Internal Revenue Code of 1954, as amended, or under
90 section 501(c)(4) of the Internal Revenue Code of 1954, as
91 amended;

92 (18) Bank safety deposit boxes;

93 (19) Sales of property or services to a school which has
94 approval from the West Virginia board of regents to award
95 degrees, which has its principal campus in this state, and
96 which is exempt from federal and state income taxes under
97 section 501(c)(3) of the Internal Revenue Code of 1954, as
98 amended: *Provided*, That sales of gasoline and special fuel
99 shall be taxable; and

100 (20) Sales of mobile homes to be utilized by purchasers
101 as their principal year-round residence and dwelling: *Provided*,
102 that these mobile homes shall be subject to tax at the three
103 percent rate.

§11-15-18. Tax on gasoline and special fuel.

1 (a) *General.* — All sales of gasoline or special fuel by
2 distributors or importers, except when to another distributor
3 for resale in this state, when delivery is made in this state,
4 shall be subject to the tax imposed by this article, notwith-
5 standing any provision of this article to the contrary. Sales
6 of gasoline or special fuel by a person who paid the tax
7 imposed by this article on his purchases of fuel, shall not
8 thereafter be again taxed under the provisions of this article.
9 This section shall be construed so that all gallons of gasoline
10 or special fuel sold and delivered, or delivered, in this state
11 are taxed one time.

12 (b) *Measure of tax.* — The measure of tax on sales of

13 gasoline or special fuel by distributors or importers shall be
14 the average wholesale price as defined and determined in sub-
15 section (c), section thirteen, article fifteen-a of this chapter.
16 For purposes of maintaining revenue for highways, and recog-
17 nizing that the tax imposed by this article is generally imposed
18 on gross proceeds from sales to ultimate consumers, whereas
19 the tax on gasoline and special fuel herein is imposed on the
20 average wholesale price of such gasoline and special fuel;
21 in no case, for the purposes of taxation under this article,
22 shall such average wholesale price be deemed to be less
23 than ninety-seven cents per gallon of gasoline or special fuel
24 for all gallons of gasoline and special fuel sold during the
25 reporting period, notwithstanding any provision of this article
26 to the contrary.

27 (c) *Definitions.* — For purposes of this section:

28 (1) "Aircraft" shall include any airplane or helicopter that
29 lands in this state on a regular or routine basis, and trans-
30 ports passengers or freight.

31 (2) "Aircraft fuel" shall mean gasoline and special fuel
32 suitable for use in any aircraft engine.

33 (3) "Distributor" shall mean and include every person:

34 (A) Who produces, manufactures, processes or otherwise
35 alters gasoline or special fuel in this state for use or for sale;
36 or

37 (B) Who engages in this state in the sale of gasoline or
38 special fuel for the purpose of resale or for distribution; or '

39 (C) Who receives gasoline or special fuel into the cargo
40 tank of a tank wagon in this state for use or sale by such
41 person.

42 (4) "Gasoline" shall mean and include any product com-
43 monly or commercially known as gasoline, regardless of
44 classification, suitable for use as fuel in an internal combustion
45 engine, except special fuel as hereinafter defined, including
46 any product obtained by blending together any one or more
47 products, with or without other products, if the resultant pro-
48 duct is capable of the same use.

49 (5) "Importer" shall mean and include every person,
50 resident or nonresident, other than a distributor, who receives
51 gasoline or special fuel outside this state for use, sale or con-
52 sumption within this state, but shall not include the fuel in
53 the supply tank of a motor vehicle that is not a motor carrier.

54 (6) "Motor carrier" shall mean and include: (A) Any
55 passenger vehicle which has seats for more than nine passengers
56 in addition to the driver, any road tractor, tractor truck or any
57 truck having more than two axles, which is operated or
58 caused to be operated, by any person on any highway in this
59 state using gasoline or special fuel; and (B) any aircraft,
60 barge or other watercraft, or locomotive transporting passen-
61 gers or freight in or through this state.

62 (7) "Motor vehicle" shall mean and include automobiles,
63 motor carriers, motor trucks, motorcycles and all other ve-
64 hicles or equipment, engines or machines which are operated
65 or propelled by combustion of gasoline or special fuel.

66 (8) "Retail dealer of gasoline or special fuel" shall mean
67 and include any person not a distributor who sells gasoline
68 or special fuel from a fixed location in this state to users.

69 (9) "Special fuel" shall mean and include any gas or
70 liquid, other than gasoline, used or suitable for use as fuel
71 in an internal combustion engine. The term "special fuel"
72 shall include products commonly known as natural or casing-
73 head gasoline and shall include gasoline and special fuel for
74 heating any private residential dwelling, building or other
75 premises; but shall not include any petroleum product or
76 chemical compound such as alcohol, industrial solvent, heavy
77 furnace oil, lubricant, etc., not commonly used nor practicably
78 suited for use as fuel in an internal combustion engine.

79 (10) "Supply tank" shall mean any receptacle on a motor
80 vehicle from which gasoline or special fuel is supplied for the
81 propulsion of the vehicle or equipment located thereon, ex-
82 clusive of a cargo tank. A supply tank includes a separate
83 compartment of a cargo tank used as a supply tank, and any
84 auxiliary tank or receptacle of any kind or cargo tank, from
85 which gasoline or special fuel is supplied for the propulsion

86 of the vehicle, whether or not such tank or receptacle is
87 directly connected to the fuel supply line of the vehicle.

88 (11) "Tank wagon" shall mean and include any motor
89 vehicle or vessel with a cargo tank or cargo tanks ordinarily
90 used for making deliveries of gasoline or special fuel, or
91 both, for sale or use.

92 (12) "Taxpayer" shall mean any person liable for the
93 tax imposed by this article.

94 (13) "User" shall mean any person who purchases gaso-
95 line or special fuel for use or consumption.

96 (d) *Tax due.* — The tax on sales of gasoline and special
97 fuel shall be paid by each taxpayer on or before the twenty-
98 fifth day of each month, by check, bank draft, certified check
99 or money order, payable to the tax commissioner for the
100 amount of tax due for the preceding month, notwithstanding
101 any provision of this article to the contrary.

102 (e) *Monthly return.* — On or before the twenty-fifth
103 day of each month, the taxpayer shall make and file a return
104 for the preceding month showing such information as the tax
105 commissioner may require, notwithstanding any provision of
106 this article to the contrary.

107 (f) *Compliance.* — To facilitate ease of administration and
108 compliance by taxpayers, the tax commissioner may require
109 distributors, importers and other persons liable for the tax
110 imposed by this article on sales of gasoline or special fuel,
111 to file a combined return and make a combined payment of
112 the tax due under this article on sales of gasoline and special
113 fuel, and the tax due under article fourteen of this chapter,
114 on gasoline and special fuel. In order to encourage use of a
115 combined return each month and the making of a single
116 payment each month for both taxes, the due date of the
117 return and tax due under article fourteen of this chapter is
118 hereby changed from the last day of each month to the
119 twenty-fifth day of each month, notwithstanding any provision
120 in article fourteen of this chapter to the contrary.

121 (g) *Dedication of tax to highways.* — All tax collected
122 under the provisions of this section after deducting the amount

123 of any refunds lawfully paid shall be deposited in the "road
124 fund" in the state treasurer's office, and shall be used only
125 for the purpose of construction, reconstruction, maintenance
126 and repair of highways, and payment of principal and interest
127 on state bonds issued for highway purposes.

128 (h) *Construction.* — This section shall not be construed as
129 taxing any sale of gasoline or special fuel which this state is
130 prohibited from taxing under the constitution of this state or
131 the constitution or laws of the United States.

132 (i) *Effective date.* — The provisions of this section and
133 the amendments to section nine of this article shall take effect
134 on the first day of April, one thousand nine hundred eighty-
135 three.

ARTICLE 15A. USE TAX.

§11-15A-3. Exemptions.

§11-15A-13. Tax on gasoline and special fuel.

§11-15A-3. Exemptions.

1 The use in this state of the following tangible personal prop-
2 erty is hereby specifically exempted from the tax imposed by
3 this article:

4 (1) All articles of tangible personal property brought into
5 the state of West Virginia by a nonresident individual thereof
6 for his or her use or enjoyment, except gasoline and special
7 fuel: *Provided*, That fuel contained in the supply tank of a
8 motor vehicle that is not a motor carrier shall not be taxable.

9 (2) Tangible personal property, the gross receipts from
10 the sale of which are exempted from the sales tax by the terms
11 of article fifteen, chapter eleven of the code of West Virginia,
12 one thousand nine hundred thirty-one, as amended.

13 (3) Tangible personal property, the gross receipts from the
14 sale of which are derived from the sale of machinery, supplies
15 and materials to contractors, or to persons engaged in the
16 business of manufacturing, transportation, transmission, com-
17 munication or in the production of natural resources in this
18 state: *Provided*, That purchases of gasoline or special fuel
19 from distributors or importers shall be taxable.

20 (4) Tangible personal property, the gross receipts or the
21 gross proceeds from the sale of which are required to be in-
22 cluded in the measure of the tax imposed by article fifteen,
23 chapter eleven of the code of West Virginia, one thousand nine
24 hundred thirty-one, as amended.

25 (5) Tangible personal property the sale of which in this
26 state is not subject to the West Virginia consumers sales tax.

27 (6) Sales of mobile homes to be utilized by purchasers as
28 their principal year-round residence and dwelling: *Provided*,
29 That these mobile homes shall be subject to tax at the three
30 percent rate.

§11-15A-13. Tax on gasoline and special fuel.

1 (a) Imposition of tax.

2 (1) *On deliveries in this state.* — Gasoline or special fuel
3 furnished or delivered within this state to consumers or users
4 is subject to the tax rate imposed by section two of this
5 article: *Provided*, That the amount of tax due under section
6 two shall in no event be less than five percent of the average
7 wholesale price of gasoline, and with such price to, in no
8 case, be deemed to be less than ninety-seven cents per gallon
9 for all gallons of gasoline and special fuel taxable under sec-
10 tion two of this article.

11 (2) *On purchases out of state.* — An excise tax is hereby
12 imposed on the use or consumption in this state of gasoline or
13 special fuel purchased outside this state at the rate of five
14 percent of the average wholesale price of such gasoline or
15 special fuel, as determined under subsection (c), notwithstand-
16 ing any provision of this article to the contrary: *Provided*,
17 That gasoline or special fuel contained in the supply tank of
18 a motor vehicle that is not a motor carrier shall not be tax-
19 able, except that gasoline or special fuel imported in the supply
20 tank or auxiliary tank of construction equipment, mining equip-
21 ment, track maintenance equipment or other similar equip-
22 ment, shall be taxed in the same manner as that in the supply
23 tank of a motor carrier.

24 (b) *Definitions.* — Terms used in the section shall have the

25 same meaning as when used in a comparable context in sec-
26 tion eighteen, article fifteen of this chapter.

27 (c) *Determination of average wholesale price.*

28 (1) To simplify determining the average wholesale price of
29 all gasoline and special fuel, the tax commissioner shall, ef-
30 fective with the period beginning the first day of the month of
31 the effective date of this section and each first day of January,
32 annually, thereafter, determine the average wholesale price of
33 gasoline and special fuel for each annual period, on the basis
34 of sales data gathered for the preceding period of the first day
35 of July through the thirty-first day of October. Notification of
36 the average wholesale price of gasoline and special fuel shall
37 be given by the tax commissioner at least thirty days in ad-
38 vance of each first day of January, annual period, by filing
39 notice of the average wholesale price in the state register, and
40 by such other means as the tax commissioner deems reason-
41 able: *Provided*, That notice of the average wholesale price of
42 gasoline and special fuel for the first period shall be timely
43 given if filed in the state register on the effective date of this
44 section.

45 (2) The "average wholesale price" shall mean the single,
46 state-wide average per gallon wholesale price, rounded to the
47 third decimal (thousandth of a cent), exclusive of state and
48 federal excise taxes on each gallon of gasoline or diesel fuel,
49 as determined by the tax commissioner from information fur-
50 nished by distributors of gasoline or special fuel in this state,
51 or such other information regarding wholesale selling prices as
52 the tax commissioner may gather, or a combination of such
53 information: *Provided*, That in no event shall the average
54 wholesale price be determined to be less than ninety-seven cents
55 per gallon of gasoline or special fuel.

56 (3) All actions of the tax commissioner in acquiring data
57 necessary to establish and determine the average wholesale
58 price of gasoline and special fuel, in providing notification of
59 his determination prior to the effective date of any change in
60 rate, and in establishing and determining the average wholesale
61 price of fuel, may be made by the tax commissioner without

62 compliance with the provisions of article three, chapter twenty-
63 nine-a of this code.

64 (4) In any administrative or court proceeding brought to
65 challenge the average wholesale price of gasoline and special
66 fuel as determined by the tax commissioner, his determination
67 shall be presumed to be correct and shall not be set aside un-
68 less it is clearly erroneous.

69 (d) *Computation of tax due from motor carriers.* — Every
70 person who operates or causes to be operated a motor carrier
71 in this state shall pay the tax imposed by this section on the
72 average wholesale price of all gallons of gasoline or special
73 fuel used in the operation of any motor carrier within this
74 state, under the following rules:

75 (1) The total amount of gasoline or special fuel used in the
76 operation of the motor carrier within this state shall be that
77 proportion of the total amount of gasoline and special fuel used
78 in any motor carrier's operations within and without this state,
79 that the total number of miles traveled within this state bears
80 to the total number of miles traveled within and without this
81 state.

82 (2) A motor carrier shall first determine the gross amount
83 of tax due under this section on the average wholesale value,
84 determined under subsection (c), of all gasoline and special
85 fuel used in the operation of the motor carrier within this
86 state during the preceding quarter, as if all gasoline and
87 special fuel had been purchased outside this state.

88 (3) Next, the taxpayer shall determine the total tax paid
89 under article fifteen of this chapter on all gasoline and special
90 fuel purchased in this state for use in the operation of the
91 motor carrier.

92 (4) The difference between (2) and (3) is the amount of
93 tax due under this article when (2) is greater than (3), or the
94 amount to be refunded or credited to the motor carrier when
95 (3) is greater than (2), which refund or credit shall be allowed
96 in the same manner and under the same conditions as a refund
97 or credit is allowed for the tax imposed by article fourteen-a of
98 this chapter.

99 (e) *Return and payment of tax.* — Tax due under this
100 article on the use or consumption in this state of gasoline or
101 special fuel shall be paid by each taxpayer on or before the
102 twenty-fifth day of January, April, July and October of each
103 year, notwithstanding any provision of this article to the con-
104 trary, by check, bank draft, certified check or money order,
105 payable to the tax commissioner, for the amount of tax due
106 for the preceding quarter. Every taxpayer shall make and file
107 with his remittance, a return showing such information as the
108 tax commissioner may require.

109 (f) *Compliance.* — To facilitate ease of administration and
110 compliance by taxpayers, the tax commissioner may require
111 motor carriers liable for the taxes imposed by this article on
112 the use of gasoline or special fuel in the operation of motor
113 carriers within this state, and the tax imposed by article four-
114 teen-a of this chapter on such gallons of fuel, to file a com-
115 bined return and make a combined payment of the tax due
116 under this article and article fourteen-a of this chapter on
117 such fuel. In order to encourage use of a combined return and
118 the making of a single payment each quarter for both taxes,
119 the due date of the return and tax due under article fourteen-
120 a of this chapter is hereby changed from the last day of Jan-
121 uary, April, July and October of each calendar year, to the
122 twenty-fifth day of such months, notwithstanding any pro-
123 vision in article fourteen-a of this chapter to the contrary.

124 (g) *Dedication of tax to highways.* — All tax collected under
125 the provisions of this section after deducting the amount of any
126 refunds lawfully paid shall be deposited in the "road fund" in
127 the state treasurer's office, and shall be used only for the pur-
128 pose of construction, reconstruction, maintenance and repair
129 of highways, and payment of principal and interest on state
130 bonds issued for highway purposes.

131 (h) *Construction.* — The tax imposed by this article on the
132 use of gasoline or special fuel in this state shall not be con-
133 strued as taxing any gasoline or special fuel which the state is
134 prohibited from taxing under the constitution of this state or
135 the constitution or laws of the United States.

136 (i) *Effective date.* — The provisions of this section and the

137 amendments to section three of this article shall take effect
138 on the first day of April, one thousand nine hundred eighty-
139 three.

CHAPTER 180

(S. B. 227—By Mr. McGraw, Mr. President)

[Passed March 1, 1983; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to updating meaning of terms used in the West Virginia personal income tax act.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-9. Meaning of terms.

1 Any term used in this article shall have the same
2 meaning as when used in a comparable context in the
3 laws of the United States relating to income taxes, unless
4 a different meaning is clearly required. Any reference in
5 this article to the laws of the United States shall mean
6 the provisions of the Internal Revenue Code of 1954, as
7 amended, and such other provisions of the laws of the
8 United States as relate to the determination of income
9 for federal income tax purposes. All amendments made to
10 the laws of the United States prior to the first day of
11 January, one thousand nine hundred eighty-three, shall
12 be given effect in determining the taxes imposed by this
13 article for the tax period beginning the first day of Janu-
14 ary, one thousand nine hundred eighty-two, and there-
15 after, but no amendment to the laws of the United States

16 made on or after the first day of January, one thousand
17 nine hundred eighty-three, shall be given effect.

CHAPTER 181

(S. B. 484—By Mr. Nelson)

[Passed March 4, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to personal income tax exclusions; and medical certificates filed as proof of permanent and total disability.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-12. West Virginia adjusted gross income of resident individual.

1 (a) *General.*—The West Virginia adjusted gross income
2 of a resident individual means his federal adjusted gross
3 income as defined in the laws of the United States for
4 the taxable year with the modifications specified in this
5 section.

6 (b) *Modifications increasing federal adjusted gross*
7 *income.*—There shall be added to federal adjusted gross
8 income the following items, except that modifications
9 (5), (6) and (7) shall be required only with respect to
10 tax periods ending on or after the first day of January,
11 one thousand nine hundred eighty-two:

12 (1) Interest income on obligations of any state other
13 than this state, or of a political subdivision of any such
14 other state unless created by compact or agreement to
15 which this state is a party;

16 (2) Interest or dividend income on obligations or
17 securities of any authority, commission or instrumentality
18 of the United States, which the laws of the United States
19 exempt from federal income tax but not from state in-
20 come taxes;

21 (3) Income taxes imposed by this state or any other
22 taxing jurisdiction, to the extent deductible in determin-
23 ing federal adjusted gross income and not credited against
24 federal income tax;

25 (4) Interest on indebtedness incurred or continued to
26 purchase or carry obligations or securities the income
27 from which is exempt from tax under this article, to the
28 extent deductible in determining federal adjusted gross
29 income;

30 (5) Interest on a depository institution tax-exempt
31 savings certificate which is allowed as an exclusion from
32 federal gross income under section 128 of the Internal
33 Revenue Code, for the federal taxable year;

34 (6) The amount allowed as a deduction from federal
35 gross income under section 221 of the Internal Revenue
36 Code by married couples who file a joint federal return
37 for the federal taxable year; and

38 (7) The deferral value of certain income that is not
39 recognized for federal tax purposes, which value shall
40 be an amount equal to a percentage of the amount al-
41 lowed as a deduction in determining federal adjusted
42 gross income pursuant to the accelerated cost recovery
43 system under section 168 of the Internal Revenue Code
44 for the federal taxable year, with the percentage of the
45 federal deduction to be added as follows with respect to
46 the following recovery property: three-year property—
47 no modification; five-year property—ten percent; ten-
48 year property—fifteen percent; fifteen-year public utility
49 property—twenty-five percent; and fifteen-year real prop-
50 erty—thirty-five percent: *Provided*, That this modifica-
51 tion shall not apply to any person whose federal de-
52 duction is determined by the use of the straight line
53 method.

54 (c) *Modifications reducing federal adjusted gross in-*
55 *come.*—There shall be subtracted from federal adjusted
56 gross income:

57 (1) Interest income on obligations of the United States
58 and its possessions to the extent includible in gross in-
59 come for federal income tax purposes;

60 (2) Interest or dividend income on obligations or
61 securities of any authority, commission or instrumental-
62 ity of the United States to the extent includible in gross
63 income for federal income tax purposes but exempt from
64 state income taxes under the laws of the United States;

65 (3) Any gain from the sale or other disposition of
66 property having a higher fair market value on the first
67 day of January, one thousand nine hundred sixty-one,
68 than the adjusted basis at said date for federal income
69 tax purposes: *Provided*, That the amount of this ad-
70 justment is limited to that portion of any such gain which
71 does not exceed the difference between such fair market
72 value and such adjusted basis: *Provided, however*, That
73 if such gain is considered a long-term capital gain for
74 federal income tax purposes, the modification shall be
75 limited to forty percent of such portion of the gain;

76 (4) The amount of any refund or credit for overpay-
77 ment of income taxes imposed by this state, or any other
78 taxing jurisdiction, to the extent properly included in
79 gross income for federal income tax purposes;

80 (5) Annuities, retirement allowances, returns of con-
81 tributions and any other benefit received under the
82 public employees retirement system, the department
83 of public safety death, disability and retirement fund,
84 the state teachers retirement system, and all forms of
85 military retirement, including regular armed forces,
86 reserves and national guard, including any survivorship
87 annuities derived therefrom, to the extent includible in
88 gross income for federal income tax purposes;

89 (6) Retirement income received in the form of pen-
90 sions and annuities after the thirty-first day of December,
91 one thousand nine hundred seventy-nine, under any

92 police or firemen's retirement system, including any
93 survivorship annuities derived therefrom, to the extent
94 includible in gross income for federal income tax pur-
95 poses;

96 (7) Federal adjusted gross income in the amount of
97 eight thousand dollars received from any source after
98 the thirty-first day of December, one thousand nine
99 hundred seventy-nine, by any person who has attained
100 the age of sixty-five on or before the last day of the
101 taxable year, or by any person certified by proper
102 authority as permanently and totally disabled, regardless
103 of age, on or before the last day of the taxable year, to
104 the extent includible in federal adjusted gross income
105 for federal tax purposes: *Provided*, That if a person has
106 a medical certification from a prior year and he is still
107 permanently and totally disabled, a copy of the original
108 certificate is acceptable as proof of disability. A copy
109 of the form filed for the federal disability income tax
110 exclusion is acceptable: *Provided, however*, That

111 (i) Where the total modification under subdivisions
112 (1), (2), (5), and (6) of this subsection is eight thousand
113 dollars per person or more, no deduction shall be allowed
114 under this subdivision, and

115 (ii) Where the total modification under subdivisions
116 (1), (2), (5) and (6) of this subsection is less than
117 eight thousand dollars per person, the total modification
118 allowed under this subdivision for all gross income re-
119 ceived by such person shall be limited to the difference
120 between eight thousand dollars and the sum of modifi-
121 cations under such subdivisions;

122 (8) Federal adjusted gross income in the amount of
123 eight thousand dollars received from any source after
124 the thirty-first day of December, one thousand nine
125 hundred seventy-nine, by the surviving spouse of any
126 person who had attained the age of sixty-five or who
127 had been certified as permanently and totally disabled,
128 to the extent includible in federal adjusted gross income
129 for federal tax purposes: *Provided*, That

130 (i) Where the total modification under subdivisions
131 (1), (2), (5), (6) and (7) of this subsection is eight
132 thousand dollars or more, no deduction shall be allowed
133 under this subdivision, and

134 (ii) Where the total modification under subdivisions
135 (1), (2), (5), (6) and (7) of this subsection is less than
136 eight thousand dollars per person, the total modification
137 allowed under this subdivision for all gross income re-
138 ceived by such person shall be limited to the difference
139 between eight thousand dollars and the sum of such
140 subdivisions; and

141 (9) Any pay or allowances received, after the thirty-
142 first day of December, one thousand nine hundred
143 seventy-nine, by West Virginia residents who have not
144 attained the age of sixty-five, as compensation for active
145 service in the armed forces of the United States: *Pro-*
146 *vided*, That such deduction shall be limited to an amount
147 not to exceed four thousand dollars.

148 (d) *Modification for West Virginia fiduciary adjust-*
149 *ment.*—There shall be added to or subtracted from federal
150 adjusted gross income, as the case may be, the taxpayer's
151 share, as beneficiary of an estate or trust, of the West
152 Virginia fiduciary adjustment determined under section
153 nineteen of this article.

154 (e) *Partners.*—The amounts of modifications required
155 to be made under this section by a partner, which relate
156 to items of income, gain, loss or deduction of a partner-
157 ship, shall be determined under section seventeen of this
158 article.

159 (f) *Husband and wife.*—If husband and wife determine
160 their federal income tax on a joint return but determine
161 their West Virginia income taxes separately, they shall
162 determine their West Virginia adjusted gross incomes
163 separately as if their federal adjusted gross incomes had
164 been determined separately.

CHAPTER 182

(S. B. 226—By Mr. McGraw, Mr. President)

[Passed March 1, 1983; 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 updating meaning of terms used in the West Virginia corporation net income tax act.

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.

1 (a) *General.*—Any term used in this article shall have
2 the same meaning as when used in a comparable context
3 in the laws of the United States relating to federal income
4 taxes, unless a different meaning is clearly required by
5 the context or by definition in this article. Any reference
6 in this article to the laws of the United States or to the
7 Internal Revenue Code or to the federal income tax law
8 shall mean the provisions of the laws of the United
9 States as relate to the determination of income for federal
10 income tax purposes. All amendments made to the laws
11 of the United States prior to the first day of January,
12 one thousand nine hundred eighty-three, shall be given
13 effect in determining the taxes imposed by this article
14 for the tax period beginning the first day of January,
15 one thousand nine hundred eighty-two, and thereafter,
16 but no amendment to laws of the United States made
17 on or after the first day of January, one thousand nine
18 hundred eighty-three, shall be given effect.

19 (b) *Certain terms defined.* — For purposes of this
20 article:

21 (1) The term "tax commissioner" means the tax com-
22 missioner of the state of West Virginia or his delegate.

23 (2) The term "corporation" means and includes a
24 joint-stock company or any association which is taxable
25 as a corporation under the federal income tax law.

26 (3) The term "domestic corporation" means any corpo-
27 ration organized under the laws of West Virginia.

28 (4) The term "foreign corporation" means any corpora-
29 tion other than a domestic corporation.

30 (5) The term "state" means any state of the United
31 States, the District of Columbia, the Commonwealth of
32 Puerto Rico, any territory or possession of the United
33 States, and any foreign country or political subdivision
34 thereof.

35 (6) The term "taxable year" means the taxable year
36 for which the taxable income of the taxpayer is com-
37 puted under the federal income tax law.

38 (7) The term "taxpayer" means a corporation subject
39 to the tax imposed by this article.

40 (8) The term "tax" includes, within its meaning,
41 interest and penalties, unless the intention to give it a
42 more limited meaning is disclosed by the context.

43 (9) The term "commercial domicile" means the prin-
44 cipal place from which the trade or business of the tax-
45 payer is directed or managed.

46 (10) The term "compensation" means wages, salaries,
47 commissions and any form of remuneration paid to em-
48 ployees for personal services.

49 (11) The term "West Virginia taxable income" means
50 the taxable income of a corporation as defined by the
51 laws of the United States for federal income tax purposes,
52 adjusted as provided in section six of this article:
53 *Provided*, That in the case of a corporation having income
54 from business activity which is taxable without this
55 state, its "West Virginia taxable income" shall be such
56 portion of its taxable income as so defined and adjusted

57 as is allocated or apportioned to this state under the
58 provisions of section seven of this article.

59 (12) The term "business income" means income aris-
60 ing from transactions and activity in the regular course
61 of the taxpayer's trade or business and includes income
62 from tangible and intangible property if the acquisition
63 and disposition of the property constitute integral parts
64 of the taxpayer's regular trade or business operations.

65 (13) The term "nonbusiness income" means all income
66 other than business income.

67 (14) The term "public utility" means any business
68 activity to which the jurisdiction of the public service
69 commission of West Virginia extends under section one,
70 article two, chapter twenty-four of the code of West
71 Virginia.

72 (15) The term "this code" means the code of West
73 Virginia, one thousand nine hundred thirty-one, as
74 amended.

75 (16) The term "this state" means the state of West
76 Virginia.

CHAPTER 183

(H. B. 1343—By Mr. Albright)

[Passed March 12, 1983; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article two, chapter eleven-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section two, article three of said chapter, relating to the publication and posting of delinquent tax lists; providing for removal of names from the lists; providing a second publication of a list for delinquent lands; providing for notice by certified mail of the delinquency; allowing one certified notice to a landowner owning more than one parcel; contents of notice

provided in certain cases; and authorizing collection of costs for notification of delinquency.

Be it enacted by the Legislature of West Virginia:

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

Article

2. Delinquency and Methods of Enforcing Payment.

3. Sale of Land For Taxes.

ARTICLE 2. DELINQUENCY AND METHODS OF ENFORCING PAYMENT.

§11A-2-13. Publication and posting of delinquent tax lists.

1 A copy of each of the delinquent lists shall be posted at the
2 front door of the courthouse of the county at least two weeks
3 before the session of the county commission at which they are
4 to be presented for examination. At the same time a copy of
5 each list shall be published as a Class I-O legal advertisement
6 in compliance with the provisions of article three, chapter
7 fifty-nine of this code, and the publication area for such pub-
8 lication shall be the county. Only the aggregate amount of
9 the taxes owed by each person need be published. To cover
10 the cost of preparing, publishing and posting the delinquent
11 lists, a charge of two dollars and fifty cents shall be added to
12 the taxes and interest already due on each item listed.

13 Any person, whose taxes were delinquent on May first, may
14 have his name removed from the delinquent lists prior to the
15 time the same is delivered to the newspapers for publication,
16 by paying to the sheriff the full amount of the taxes and costs
17 owed by such person at the date of such redemption. The
18 sheriff shall collect a charge of only fifty cents if redemption is
19 made before the list is delivered for publication. Costs col-
20 lected by the sheriff hereunder which are not expended for
21 publication shall be paid into the general county fund.

ARTICLE 3. SALE OF LAND FOR TAXES.

§11A-3-2. Second publication of list of delinquent real estate; notice.

1 On or before September tenth of each year, the sheriff shall

2 prepare a second list of delinquent lands, which shall include
 3 all real estate in his county remaining delinquent as of Sep-
 4 tember first, together with a notice of sale, in form or effect
 5 as follows:

6 Notice is hereby given that the following described tracts or
 7 lots of land or undivided interests therein in the County of
 8 _____ which are delinquent for the nonpayment
 9 of taxes for the year (or years) 19_____, will be offered for
 10 sale by the undersigned sheriff (or collector) at public auction
 11 at the front door of the courthouse of the county, between the
 12 hours of ten in the morning and four in the afternoon, on the
 13 _____ day of _____, 19_____.

14 Each unredeemed tract or lot, or each unredeemed part
 15 thereof or undivided interest therein, will be sold at public
 16 auction to the highest bidder for cash in an amount which
 17 shall not be less than the taxes, interest and charges which
 18 shall be due thereon to the date of sale, as set forth.

| 19 | Name of person | Quality | Local | Total amount of taxes, |
|----|----------------|---------|----------|------------------------|
| 20 | charged | of | descrip- | interest and charges |
| 21 | with taxes | land | tion | due to date of sale |

22 Any of the aforesaid tracts or lots, or part thereof or an
 23 undivided interest therein, may be redeemed by the payment
 24 to the undersigned sheriff (or collector) before sale, of the
 25 total amount of taxes, interest and charges due thereon up to
 26 the date of redemption.

27 Given under my hand this _____ day of
 28 _____, 19_____.

29 _____
 30 Sheriff (or collector).

31 The sheriff shall publish the list and notice prior to the sale
 32 date fixed in the notice as a Class III-O legal advertisement in
 33 compliance with the provisions of article three, chapter fifty-
 34 nine of this code, and the publication area for such publication
 35 shall be the county. In addition to such publication, the sheriff
 36 shall send a notice by certified mail to the last known address
 37 of each person whose taxes are delinquent notifying such per-

38 son of the delinquency: *Provided*, That in the case of the
39 owner of several parcels of property the sheriff may, at his
40 option, mail one notice or several notices to the owner of
41 several parcels of property on which taxes are delinquent. If he
42 elects to mail only one notice, that notice shall set forth a
43 legally sufficient description of all parcels of property on which
44 taxes are delinquent. In no event shall failure to receive the
45 mailed notice by the landowner affect the validity of the title of
46 the property conveyed if it is sold pursuant to section four,
47 article three, chapter eleven-a of this code.

48 To cover the cost of preparing and publishing the delinquent
49 list and mailing notice to the landowners, a charge of six dol-
50 lars shall be added to the taxes, interest and charges already
51 due on each item and other charges shall be stated in the list
52 as the total amount due.

53 Any person, whose taxes were delinquent on September
54 first, may have his name removed from the delinquent list prior
55 to the time the same is delivered to the newspapers for pub-
56 lication and the mailing of the above required notice by pay-
57 ing to the sheriff the full amount of taxes and costs owed by
58 such person at the date of such redemption. In such case, the
59 sheriff shall include but fifty cents of the costs provided in this
60 section in making such redemption. Costs collected by the
61 sheriff hereunder which are not expended for publication and
62 mailing shall be paid into the general county fund.

CHAPTER 184

(S. B. 174—By Mrs. Spears)

[Passed March 11, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, ten, eleven and fifteen article six, chapter twenty-one-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 four-a; and to amend and reenact section five-a, article nine of said chapter, all relating to unemploy-

ment compensation; disqualification for benefits; benefit rates; partial unemployment; benefit payments for service with nonprofit organizations, state hospitals, institutions of higher education, and educational institutions and governmental entities; the special administration fund; providing that for purposes of computation of unemployment compensation benefits an individual's national guard or reserve inactive duty for training shall not be considered to be employment; providing that such individual may not be considered unavailable for work; and providing that remuneration received for such training may not be deducted from the unemployment compensation benefit to which such individual is entitled.

Be it enacted by the Legislature of West Virginia:

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

Article

6. Employee Eligibility; Benefits.

9. Employment Security Administration Fund.

ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.

§21A-6-3. Disqualification for benefits.

§21A-6-4a. National guard or reserve training not to be considered employment; such individual not unavailable for work; remuneration for training not to be deducted from unemployment compensation benefit.

§21A-6-10. Benefit rate—Total unemployment; annual computation and publication of rates.

§21A-6-11. Benefit rate—Partial unemployment.

§21A-6-15. Benefit payments for service with nonprofit organizations, state hospitals, institutions of higher education, educational institutions and governmental entities.

§21A-6-3. Disqualification for benefits.

1 Upon the determination of the facts by the commissioner,
2 an individual shall be disqualified for benefits:

3 (1) For the week in which he left his most recent work
4 voluntarily without good cause involving fault on the part

5 of the employer and until the individual returns to covered
6 employment and has been employed in covered
7 employment at least thirty working days.

8 For the purpose of this subdivision (1), an individual shall
9 not be deemed to have left his most recent work voluntarily
10 without good cause involving fault on the part of the
11 employer, if such individual leaves his work with an
12 employer with whom he has been employed at least thirty
13 working days or more for the purpose of returning to, and if
14 he in fact, within a fourteen-day calendar period, does
15 return to, employment with the last preceding employer
16 with whom he was previously employed within the past
17 year prior to his return to work day, and which last
18 preceding employer, after having previously employed such
19 individual for thirty working days or more, laid off such
20 individual because of lack of work, which layoff occasioned
21 the payment of benefits under this chapter or could have
22 occasioned the payment of benefits under this chapter had
23 such individual applied for such benefits. It is the intent of
24 this paragraph to cause no disqualification for benefits for
25 such an individual who complies with the foregoing set of
26 requirements and conditions. Benefits paid to such
27 individual under the provisions of this chapter shall,
28 notwithstanding the provisions of subsection (2), section
29 seven, article five of this chapter, and of subdivision (12) of
30 this section three, be charged to the account of such last
31 preceding employer with whom such individual was
32 previously employed for thirty working days.

33 (2) For the week in which he was discharged from his
34 most recent work for misconduct and the six weeks
35 immediately following such week; or for the week in which
36 he was discharged from his last thirty-day employing unit
37 for misconduct and the six weeks immediately following
38 such week. Such disqualification shall carry a reduction in
39 the maximum benefit amount equal to six times the
40 individual's weekly benefit. However, if the claimant
41 returns to work in covered employment for thirty days
42 during his benefit year, whether or not such days are
43 consecutive, the maximum benefit amount shall be
44 increased by the amount of the decrease imposed under the
45 disqualification; except that:

46 If he were discharged from his most recent work for one of
47 the following reasons, or if he were discharged from his last
48 thirty days employing unit for one of the following reasons:
49 Misconduct consisting of willful destruction of his
50 employer's property; assault upon the person of his
51 employer or any employee of his employer; if such assault is
52 committed at such individual's place of employment or in
53 the course of employment; reporting to work in an
54 intoxicated condition, or being intoxicated while at work;
55 arson, theft, larceny, fraud or embezzlement in connection
56 with his work; or any other gross misconduct; he shall be
57 and remain disqualified for benefits until he has thereafter
58 worked for at least thirty days in covered employment:
59 *Provided*, That for the purpose of this subdivision the words
60 "any other gross misconduct" shall include, but not be
61 limited to, any act or acts of misconduct where the
62 individual has received prior written warning that
63 termination of employment may result from such act or
64 acts.

65 (3) For the week in which he failed without good cause
66 to apply for available, suitable work, accept suitable work
67 when offered, or return to his customary self-employment
68 when directed to do so by the commissioner, and for the four
69 weeks which immediately follow for such additional period
70 as any offer of suitable work shall continue open for his
71 acceptance. Such disqualification shall carry a reduction in
72 the maximum benefit amount equal to four times the
73 individual's weekly benefit amount.

74 (4) For a week in which his total or partial
75 unemployment is due to a stoppage of work which exists
76 because of a labor dispute at the factory, establishment or
77 other premises at which he was last employed, unless the
78 commissioner is satisfied that he was not (one)
79 participating, financing, or directly interested in such
80 dispute, and (two) did not belong to a grade or class of
81 workers who were participating, financing, or directly
82 interested in the labor dispute which resulted in the
83 stoppage of work. No disqualification under this
84 subdivision shall be imposed if the employees are required
85 to accept wages, hours or conditions of employment
86 substantially less favorable than those prevailing for
87 similar work in the locality, or if employees are denied the

88 right of collective bargaining under generally prevailing
89 conditions, or if an employer shuts down his plant or
90 operation or dismisses his employees in order to force wage
91 reduction, changes in hours or working conditions.

92 For the purpose of this subdivision, if any stoppage of
93 work continues longer than four weeks after the
94 termination of the labor dispute which caused stoppage of
95 work, there shall be a rebuttable presumption that that part
96 of the stoppage of work which exists after said period of
97 four weeks after the termination of said labor dispute did
98 not exist because of said labor dispute; and in such event the
99 burden shall be upon the employer or other interested party
100 to show otherwise.

101 (5) For a week with respect to which he is receiving or
102 has received:

103 (a) Wages in lieu of notice;

104 (b) Compensation for temporary total disability under
105 the workers' compensation law of any state or under a
106 similar law of the United States;

107 (c) Unemployment compensation benefits under the
108 laws of the United States or any other state.

109 (6) For the week in which an individual has voluntarily
110 quit employment to marry or to perform any marital,
111 parental or family duty, or to attend to his or her personal
112 business or affairs and until the individual returns to
113 covered employment and has been employed in covered
114 employment at least thirty working days.

115 (7) Benefits shall not be paid to any individual on the
116 basis of any services, substantially all of which consist of
117 participating in sports or athletic events or training or
118 preparing to so participate, for any week which commences
119 during the period between two successive sport seasons (or
120 similar periods) if such individual performed such services
121 in the first of such seasons (or similar periods) and there is a
122 reasonable assurance that such individual will perform
123 such services in the later of such seasons (or similar
124 periods).

125 (8) (a) Benefits shall not be paid on the basis of
126 services performed by an alien unless such alien is an

127 individual who has been lawfully admitted for permanent
128 residence or otherwise is permanently residing in the
129 United States under color of law (including an alien who is
130 lawfully present in the United States as a result of the
131 application of the provisions of section 203 (a) (7) or section
132 212 (d) (5) of the Immigration and Nationality Act):
133 *Provided*, That any modifications to the provisions of
134 section 3304 (a) (14) of the Federal Unemployment Tax Act
135 as provided by Public Law 94-566 which specify other
136 conditions or other effective date than stated herein for the
137 denial of benefits based on services performed by aliens and
138 which modifications are required to be implemented under
139 state law as a condition for full tax credit against the tax
140 imposed by the Federal Unemployment Tax Act shall be
141 deemed applicable under the provisions of this section;

142 (b) Any data or information required of individuals
143 applying for benefits to determine whether benefits are not
144 payable to them because of their alien status shall be
145 uniformly required from all applicants for benefits;

146 (c) In the case of an individual whose application for
147 benefits would otherwise be approved, no determination
148 that benefits to such individual are not payable because of
149 his alien status shall be made except upon a preponderance
150 of the evidence.

151 (9) For each week in which an individual is unemployed
152 because, having voluntarily left employment to attend a
153 school, college, university or other educational institution,
154 he is attending such school, college, university or other
155 educational institution, or is awaiting entrance thereto or is
156 awaiting the starting of a new term or session thereof, and
157 until the individual returns to covered employment.

158 (10) For each week in which he is unemployed because
159 of his request, or that of his duly authorized agent, for a
160 vacation period at a specified time that would leave the
161 employer no other alternative but to suspend operations.

162 (11) For each week in which he is receiving or has
163 received benefits under Title II of the Social Security Act or
164 similar payments under any act of Congress and/or
165 remuneration in the form of an annuity, pension, or other
166 retirement pay from a base period and/or chargeable

167 employer or from any trust or fund contributed to by a base
168 period and/or chargeable employer. But if such
169 remuneration for any week is less than the benefits which
170 would otherwise be due him for such week under this
171 chapter, he shall be entitled to receive for such week, if
172 otherwise eligible, benefits reduced by the amount of such
173 remuneration: *Provided*, That if such amount of benefits is
174 not a multiple of one dollar, it shall be computed to the next
175 lowest multiple of one dollar: *Provided, however*, That
176 there shall be no disqualification if in the individual's base
177 period there are no wages which were paid by the base
178 period and/or chargeable employer paying such
179 remuneration, or by a fund into which the employer has
180 paid during said base period. Claimant may be required to
181 certify as to whether or not he is receiving or has been
182 receiving remuneration in the form of an annuity, pension,
183 or other retirement pay from a base period and/or
184 chargeable employer or from a trust fund contributed to by
185 a base period and/or chargeable employer.

186 (12) For fifty-two weeks, beginning with the date of the
187 decision, if the commissioner finds such individual who
188 within twenty-four calendar months immediately
189 preceding such decision, has made a false statement or
190 representation knowing it to be false or knowingly fails to
191 disclose a material fact, to obtain or increase any benefit or
192 payment under this article: *Provided*, That disqualification
193 under this subdivision shall not preclude prosecution under
194 section seven, article ten of this chapter.

195 (13) For the purposes of this section, an employer's
196 account shall not be charged under any of the following
197 conditions: When benefits are paid for unemployment
198 immediately after the expiration of a period of
199 disqualification for (a) discharge for any of the causes set
200 forth in subdivision (2) of this section, or (b) failing without
201 good cause to apply for available suitable work, accept
202 suitable work when offered, or to return to his customary
203 self-employment when directed to do so by the
204 commissioner.

§21A-6-4a. National guard or reserve training not to be considered employment; such individual not unavailable for work; remuneration for training not to be deducted from unemployment compensation benefit.

1 Notwithstanding any other provision of this chapter to
2 the contrary, the following provisions apply to an
3 individual who is a member of the state national guard or
4 other reserve component of the United States armed forces:

5 (1) If such individual is otherwise unemployed under
6 the provisions of this chapter, he may not be considered to
7 be employed because he is engaged in inactive duty for
8 training;

9 (2) Such individual may not be considered unavailable
10 for work by reason of his inactive duty for training; and

11 (3) Remuneration which the individual receives for
12 participating in inactive duty for training may not be
13 deducted from the unemployment compensation benefit to
14 which he is otherwise entitled.

§21A-6-10. Benefit rate—Total unemployment; annual computation and publication of rates.

1 Each eligible individual who is totally unemployed in any
2 week shall be paid benefits with respect to that week at the
3 weekly rate appearing in Column (C) in Table A in this
4 paragraph, on the line on which in Column (A) there is
5 indicated the employee's wage class, except as otherwise
6 provided under the term "total and partial unemployment"
7 in section three, article one of this chapter. The employee's
8 wage class shall be determined by his base period wages as
9 shown in Column (B) in Table A. The right of an employee to
10 receive benefits shall not be prejudiced nor the amount
11 thereof be diminished by reason of failure by an employer to
12 pay either the wages earned by the employee or the
13 contribution due on such wages. An individual who is
14 totally unemployed but earns in excess of twenty-five
15 dollars as a result of odd-job or subsidiary work in any
16 benefit week shall be paid benefits for such week in
17 accordance with the provisions of this chapter pertaining to
18 benefits for partial unemployment.

TABLE A

| Wage Class | | Wages in Base Period | | Weekly Benefit Rate | Maximum Benefit in Benefit Year for Total and/or Partial Unemployment |
|------------|---|----------------------|----------|---------------------|---|
| (Column A) | | (Column B) | | (Column C) | (Column D) |
| 19 | | Under | \$700.00 | Ineligible | |
| 20 | 1 | 700.00 | 799.99 | \$12.00 | \$312.00 |
| 21 | 2 | 800.00 | 899.99 | 13.00 | 338.00 |
| 22 | 3 | 900.00 | 999.99 | 14.00 | 364.00 |
| 23 | 4 | 1,000.00 | 1,149.99 | 15.00 | 390.00 |
| 24 | 5 | 1,150.00 | 1,299.99 | 16.00 | 416.00 |
| 25 | 6 | 1,300.00 | 1,449.99 | 17.00 | 442.00 |
| 26 | 7 | 1,450.00 | 1,599.99 | 18.00 | 468.00 |
| 27 | 8 | 1,600.00 | 1,749.99 | 19.00 | 494.00 |
| 28 | 9 | 1,750.00 | 1,899.99 | 20.00 | 520.00 |
| 29 | 10 | 1,900.00 | 2,049.99 | 21.00 | 546.00 |
| 30 | 11 | 2,050.00 | 2,199.99 | 22.00 | 572.00 |
| 31 | 12 | 2,200.00 | 2,349.99 | 23.00 | 598.00 |
| 32 | 13 | 2,350.00 | 2,499.99 | 24.00 | 624.00 |
| 33 | 14 | 2,500.00 | 2,599.99 | 25.00 | 650.00 |
| 34 | 15 | 2,600.00 | 2,699.99 | 26.00 | 676.00 |
| 35 | 16 | 2,700.00 | 2,799.99 | 27.00 | 702.00 |
| 36 | 17 | 2,800.00 | 2,899.99 | 28.00 | 728.00 |
| 37 | 18 | 2,900.00 | 2,999.99 | 29.00 | 754.00 |
| 38 | 19 | 3,000.00 | 3,099.99 | 30.00 | 780.00 |
| 39 | 20 | 3,100.00 | 3,199.99 | 31.00 | 806.00 |
| 40 | 21 | 3,200.00 | 3,349.99 | 32.00 | 832.00 |
| 41 | 22 | 3,350.00 | 3,499.99 | 33.00 | 858.00 |
| 42 | 23 | 3,500.00 | 3,649.99 | 34.00 | 884.00 |
| 43 | 24 | 3,650.00 | 3,799.99 | 35.00 | 910.00 |
| 44 | Notwithstanding any of the foregoing provisions of this | | | | |
| 45 | section, on and after July one, one thousand nine hundred | | | | |
| 46 | sixty-seven, the maximum weekly benefit rate shall be forty | | | | |
| 47 | percent of the average weekly wage in West Virginia. | | | | |
| 48 | Notwithstanding any of the foregoing provisions of this | | | | |
| 49 | section, on and after July one, one thousand nine hundred | | | | |

50 seventy, the maximum weekly benefit rate shall be forty-
51 five percent of the average weekly wage in West Virginia.

52 Notwithstanding any of the foregoing provisions of this
53 section, on and after July one, one thousand nine hundred
54 seventy-one, the maximum weekly benefit rate shall be fifty
55 percent of the average weekly wage in West Virginia.

56 Notwithstanding any of the foregoing provisions of this
57 section, on and after July one, one thousand nine hundred
58 seventy-three, the maximum weekly benefit rate shall be
59 fifty-five percent of the average weekly wage in West
60 Virginia.

61 The commissioner, after he has determined the maximum
62 weekly benefit rate upon the basis of the above formula,
63 shall establish as many additional wage classes as are
64 required, increasing the amount of base period wages
65 required for each class by one hundred fifty dollars, the
66 weekly benefit rate for each class by one dollar, and the
67 maximum benefit by twenty-six dollars. The maximum
68 weekly benefit rate, when computed by the commissioner,
69 in accordance with the foregoing provisions, shall be
70 rounded to the next lowest multiple of one dollar.

71 Notwithstanding any of the foregoing provisions of this
72 section, including Table A, on and after July one, one
73 thousand nine hundred seventy-four:

74 (1) The maximum weekly benefit rate shall be seventy
75 percent of the average weekly wage in West Virginia.

76 (2) The weekly benefit rate (Column (C) of said Table A)
77 in each and every wage class, one through twenty-four, both
78 inclusive (Column (A) of said Table A), shall be increased
79 two dollars, and the maximum benefit in benefit year for
80 total and/or partial unemployment (Column (D) of said
81 Table A) in each and every wage class (Column (A) of said
82 Table A), shall be increased fifty-two dollars.

83 (3) The commissioner, after he has determined the
84 maximum weekly benefit rate upon the basis of the formula
85 set forth in subdivision (1) above, shall establish as many
86 additional wage classes as are required, increasing the
87 amount of the base period wages required for each wage
88 class by one hundred fifty dollars, establishing the weekly
89 benefit rate for each wage class by rounded dollar amount

90 to be fifty percent of one fifty-second of the median dollar
 91 amount of wages in base period for such wage class, and
 92 establishing the maximum benefit for each wage class as an
 93 amount equal to twenty-eight times the weekly benefit rate.
 94 The maximum weekly benefit rate, when computed by the
 95 commissioner, in accordance with the foregoing provisions,
 96 shall be rounded to the next lowest multiple of one dollar.

97 Notwithstanding any of the foregoing provisions of this
 98 section, on and after July one, one thousand nine hundred
 99 seventy-nine, the weekly benefit rate for each wage class by
 100 rounded dollar amount shall be fifty-five percent of one
 101 fifty-second of the median dollar amount of wages in base
 102 period for such wage class except that the weekly benefit
 103 rate for classifications one through twenty shall remain
 104 unchanged, but in any case the weekly benefit rate on or
 105 after July one, one thousand nine hundred eighty-three,
 106 shall be in accordance with Table B below.

TABLE B

| Wage Class | | Wages in Base Period | Weekly Benefit Rate | Maximum Benefit in Benefit Year for Total and/or Partial Unemployment |
|------------|----|------------------------|---------------------|---|
| 107 | | Under \$ 1,150.00 | Ineligible | |
| 108 | 1 | \$ 1,150.00 - 1,299.99 | \$ 18.00 | \$ 504.00 |
| 109 | 2 | 1,300.00 - 1,449.99 | 19.00 | 532.00 |
| 110 | 3 | 1,450.00 - 1,599.99 | 20.00 | 560.00 |
| 111 | 4 | 1,600.00 - 1,749.99 | 21.00 | 588.00 |
| 112 | 5 | 1,750.00 - 1,899.99 | 22.00 | 616.00 |
| 113 | 6 | 1,900.00 - 2,049.99 | 23.00 | 644.00 |
| 114 | 7 | 2,050.00 - 2,199.99 | 24.00 | 672.00 |
| 115 | 8 | 2,200.00 - 2,349.99 | 25.00 | 700.00 |
| 116 | 9 | 2,350.00 - 2,499.99 | 26.00 | 728.00 |
| 117 | 10 | 2,500.00 - 2,599.99 | 27.00 | 756.00 |
| 118 | 11 | 2,600.00 - 2,699.99 | 28.00 | 784.00 |
| 119 | 12 | 2,700.00 - 2,799.99 | 29.00 | 812.00 |
| 120 | 13 | 2,800.00 - 2,899.99 | 30.00 | 840.00 |
| 121 | 14 | 2,900.00 - 2,999.99 | 31.00 | 868.00 |
| 122 | 15 | 3,000.00 - 3,099.99 | 32.00 | 896.00 |

| | | | | |
|-----|----|---------------------|-------|----------|
| 123 | 16 | 3,100.00 - 3,199.99 | 33.00 | 924.00 |
| 124 | 17 | 3,200.00 - 3,349.99 | 35.00 | 980.00 |
| 125 | 18 | 3,350.00 - 3,499.99 | 37.00 | 1,036.00 |
| 126 | 19 | 3,500.00 - 3,649.99 | 38.00 | 1,064.00 |
| 127 | 20 | 3,650.00 - 3,799.99 | 40.00 | 1,120.00 |
| 128 | 21 | 3,800.00 - 3,949.99 | 41.00 | 1,148.00 |
| 129 | 22 | 3,950.00 - 4,099.99 | 43.00 | 1,204.00 |
| 130 | 23 | 4,100.00 - 4,249.99 | 45.00 | 1,260.00 |
| 131 | 24 | 4,250.00 - 4,399.99 | 46.00 | 1,288.00 |
| 132 | 25 | 4,400.00 - 4,549.99 | 47.00 | 1,316.00 |
| 133 | 26 | 4,550.00 - 4,699.99 | 48.00 | 1,344.00 |
| 134 | 27 | 4,700.00 - 4,849.99 | 50.00 | 1,400.00 |
| 135 | 28 | 4,850.00 - 4,999.99 | 52.00 | 1,456.00 |
| 136 | 29 | 5,000.00 - 5,149.99 | 53.00 | 1,484.00 |
| 137 | 30 | 5,150.00 - 5,299.99 | 55.00 | 1,540.00 |
| 138 | 31 | 5,300.00 - 5,449.99 | 56.00 | 1,568.00 |
| 139 | 32 | 5,450.00 - 5,599.99 | 58.00 | 1,624.00 |
| 140 | 33 | 5,600.00 - 5,749.99 | 60.00 | 1,680.00 |
| 141 | 34 | 5,750.00 - 5,899.99 | 61.00 | 1,708.00 |
| 142 | 35 | 5,900.00 - 6,049.99 | 63.00 | 1,764.00 |
| 143 | 36 | 6,050.00 - 6,199.99 | 64.00 | 1,792.00 |
| 144 | 37 | 6,200.00 - 6,349.99 | 66.00 | 1,848.00 |
| 145 | 38 | 6,350.00 - 6,499.99 | 67.00 | 1,876.00 |
| 146 | 39 | 6,500.00 - 6,649.99 | 69.00 | 1,932.00 |
| 147 | 40 | 6,650.00 - 6,799.99 | 71.00 | 1,988.00 |
| 148 | 41 | 6,800.00 - 6,949.99 | 72.00 | 2,016.00 |
| 149 | 42 | 6,950.00 - 7,099.99 | 74.00 | 2,072.00 |
| 150 | 43 | 7,100.00 - 7,249.99 | 75.00 | 2,100.00 |
| 151 | 44 | 7,250.00 - 7,399.99 | 77.00 | 2,156.00 |
| 152 | 45 | 7,400.00 - 7,549.99 | 79.00 | 2,212.00 |
| 153 | 46 | 7,550.00 - 7,699.99 | 80.00 | 2,240.00 |
| 154 | 47 | 7,700.00 - 7,849.99 | 82.00 | 2,296.00 |
| 155 | 48 | 7,850.00 - 7,999.99 | 83.00 | 2,324.00 |
| 156 | 49 | 8,000.00 - 8,149.99 | 85.00 | 2,380.00 |
| 157 | 50 | 8,150.00 - 8,299.99 | 86.00 | 2,408.00 |
| 158 | 51 | 8,300.00 - 8,449.99 | 88.00 | 2,464.00 |
| 159 | 52 | 8,450.00 - 8,599.99 | 90.00 | 2,520.00 |
| 160 | 53 | 8,600.00 - 8,749.99 | 91.00 | 2,548.00 |
| 161 | 54 | 8,750.00 - 8,899.99 | 93.00 | 2,604.00 |
| 162 | 55 | 8,900.00 - 9,049.99 | 94.00 | 2,632.00 |
| 163 | 56 | 9,050.00 - 9,199.99 | 96.00 | 2,688.00 |
| 164 | 57 | 9,200.00 - 9,349.99 | 98.00 | 2,744.00 |

| | | | | |
|-----|-----|----------------------|--------|----------|
| 165 | 58 | 9,350.00 - 9,499.99 | 99.00 | 2,772.00 |
| 166 | 59 | 9,500.00 - 9,649.99 | 101.00 | 2,828.00 |
| 167 | 60 | 9,650.00 - 9,799.99 | 102.00 | 2,856.00 |
| 168 | 61 | 9,800.00 - 9,949.99 | 104.00 | 2,912.00 |
| 169 | 62 | 9,950.00 -10,099.99 | 106.00 | 2,968.00 |
| 170 | 63 | 10,100.00 -10,249.99 | 107.00 | 2,996.00 |
| 171 | 64 | 10,250.00 -10,399.99 | 109.00 | 3,052.00 |
| 172 | 65 | 10,400.00 -10,549.99 | 110.00 | 3,080.00 |
| 173 | 66 | 10,550.00 -10,699.99 | 112.00 | 3,136.00 |
| 174 | 67 | 10,700.00 -10,849.99 | 113.00 | 3,164.00 |
| 175 | 68 | 10,850.00 -10,999.99 | 115.00 | 3,220.00 |
| 176 | 69 | 11,000.00 -11,149.99 | 117.00 | 3,276.00 |
| 177 | 70 | 11,150.00 -11,299.99 | 118.00 | 3,304.00 |
| 178 | 71 | 11,300.00 -11,449.99 | 120.00 | 3,360.00 |
| 179 | 72 | 11,450.00 -11,599.99 | 121.00 | 3,388.00 |
| 180 | 73 | 11,600.00 -11,749.99 | 123.00 | 3,444.00 |
| 181 | 74 | 11,750.00 -11,899.99 | 125.00 | 3,500.00 |
| 182 | 75 | 11,900.00 -12,049.99 | 126.00 | 3,528.00 |
| 183 | 76 | 12,050.00 -12,199.99 | 128.00 | 3,584.00 |
| 184 | 77 | 12,200.00 -12,349.99 | 129.00 | 3,612.00 |
| 185 | 78 | 12,350.00 -12,499.99 | 131.00 | 3,668.00 |
| 186 | 79 | 12,500.00 -12,649.99 | 132.00 | 3,696.00 |
| 187 | 80 | 12,650.00 -12,799.99 | 134.00 | 3,752.00 |
| 188 | 81 | 12,800.00 -12,949.99 | 136.00 | 3,808.00 |
| 189 | 82 | 12,950.00 -13,099.99 | 137.00 | 3,836.00 |
| 190 | 83 | 13,100.00 -13,249.99 | 139.00 | 3,892.00 |
| 191 | 84 | 13,250.00 -13,399.99 | 140.00 | 3,920.00 |
| 192 | 85 | 13,400.00 -13,549.99 | 142.00 | 3,976.00 |
| 193 | 86 | 13,550.00 -13,699.99 | 144.00 | 4,032.00 |
| 194 | 87 | 13,700.00 -13,849.99 | 145.00 | 4,060.00 |
| 195 | 88 | 13,850.00 -13,999.99 | 147.00 | 4,116.00 |
| 196 | 89 | 14,000.00 -14,149.99 | 148.00 | 4,144.00 |
| 197 | 90 | 14,150.00 -14,299.99 | 149.00 | 4,172.00 |
| 198 | 91 | 14,300.00 -14,449.99 | 151.00 | 4,228.00 |
| 199 | 92 | 14,450.00 -14,599.99 | 153.00 | 4,284.00 |
| 200 | 93 | 14,600.00 -14,749.99 | 154.00 | 4,312.00 |
| 201 | 94 | 14,750.00 -14,899.99 | 156.00 | 4,368.00 |
| 202 | 95 | 14,900.00 -15,049.99 | 157.00 | 4,396.00 |
| 203 | 96 | 15,050.00 -15,199.99 | 159.00 | 4,452.00 |
| 204 | 97 | 15,200.00 -15,349.99 | 161.00 | 4,508.00 |
| 205 | 98 | 15,350.00 -15,499.99 | 163.00 | 4,564.00 |
| 206 | 99 | 15,500.00 -15,649.99 | 164.00 | 4,592.00 |
| 207 | 100 | 15,650.00 -15,799.99 | 166.00 | 4,648.00 |

| | | | | | |
|-----|-----|-----------|------------|--------|----------|
| 208 | 101 | 15,800.00 | -15,949.99 | 167.00 | 4,676.00 |
| 209 | 102 | 15,950.00 | -16,099.99 | 169.00 | 4,732.00 |
| 210 | 103 | 16,100.00 | -16,249.99 | 171.00 | 4,788.00 |
| 211 | 104 | 16,250.00 | -16,399.99 | 172.00 | 4,816.00 |
| 212 | 105 | 16,400.00 | -16,549.99 | 174.00 | 4,872.00 |
| 213 | 106 | 16,550.00 | -16,699.99 | 175.00 | 4,900.00 |
| 214 | 107 | 16,700.00 | -16,849.99 | 177.00 | 4,956.00 |
| 215 | 108 | 16,850.00 | -16,999.99 | 179.00 | 5,012.00 |
| 216 | 109 | 17,000.00 | -17,149.99 | 180.00 | 5,040.00 |
| 217 | 110 | 17,150.00 | -17,299.99 | 182.00 | 5,096.00 |
| 218 | 111 | 17,300.00 | -17,449.99 | 183.00 | 5,124.00 |
| 219 | 112 | 17,450.00 | -17,599.99 | 185.00 | 5,180.00 |
| 220 | 113 | 17,600.00 | -17,749.99 | 186.00 | 5,208.00 |
| 221 | 114 | 17,750.00 | -17,899.99 | 188.00 | 5,264.00 |
| 222 | 115 | 17,900.00 | -18,049.99 | 190.00 | 5,320.00 |
| 223 | 116 | 18,050.00 | -18,199.99 | 191.00 | 5,348.00 |
| 224 | 117 | 18,200.00 | -18,349.99 | 193.00 | 5,404.00 |
| 225 | 118 | 18,350.00 | -18,499.99 | 194.00 | 5,432.00 |
| 226 | 119 | 18,500.00 | -18,649.99 | 195.00 | 5,460.00 |
| 227 | 120 | 18,650.00 | -18,799.99 | 197.00 | 5,516.00 |
| 228 | 121 | 18,800.00 | -18,949.99 | 199.00 | 5,572.00 |
| 229 | 122 | 18,950.00 | -19,099.99 | 200.00 | 5,600.00 |
| 230 | 123 | 19,100.00 | -19,249.99 | 202.00 | 5,656.00 |
| 231 | 124 | 19,250.00 | -19,399.99 | 203.00 | 5,684.00 |
| 232 | 125 | 19,400.00 | -19,549.99 | 205.00 | 5,740.00 |
| 233 | 126 | 19,550.00 | -19,699.99 | 207.00 | 5,796.00 |
| 234 | 127 | 19,700.00 | -19,849.99 | 209.00 | 5,852.00 |
| 235 | 128 | 19,850.00 | And Over | 211.00 | 5,908.00 |

236 After he has established such additional wage classes, the
 237 commissioner shall prepare and publish a table setting
 238 forth such information.

239 Average weekly wage shall be computed by dividing the
 240 number of employees in West Virginia earning wages in
 241 covered employment into the total wages paid to employees
 242 in West Virginia in covered employment, and by further
 243 dividing said result by fifty-two, and shall be determined
 244 from employer wage and contribution reports for the
 245 previous calendar year which are furnished to the
 246 department on or before June one following such calendar
 247 year. The average weekly wage, as determined by the
 248 commissioner, shall be rounded to the next higher dollar.

249 The computation and determination of rates as aforesaid
250 shall be completed annually before July one, and any such
251 new wage class, with its corresponding wages in base
252 period, weekly benefit rate, and maximum benefit in a
253 benefit year established by the commissioner in the
254 foregoing manner effective on a July one, shall apply only to
255 a new claim established by a claimant on and after said July
256 one, and shall not apply to continued claims of a claimant
257 based on his new claim established before said July one.

§21A-6-11. Benefit rate—Partial unemployment.

1 An eligible individual who is partially unemployed in any
2 week shall, upon claim therefor filed within such time and
3 in such manner as the commissioner may by regulation
4 prescribe, be paid benefits for such partial unemployment
5 in an amount equal to his weekly benefit rate, as
6 determined in accordance with section ten of this article,
7 less that part of wages from any source payable to him with
8 respect to such week which is in excess of twenty-five
9 dollars (notwithstanding the reference to fifteen dollars in
10 the definition of partial unemployment contained in section
11 three, article one of this chapter): *Provided*, That such
12 amount of benefits if not a multiple of one dollar shall be
13 computed to the next lowest multiple of one dollar. Such
14 partial benefits shall be paid to such individual for the week
15 for which he is claiming benefits without regard to the
16 provisions of subdivision one, section one of this article.

§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 defined
2 in subdivisions (9) and (10) of the definition of
3 "employment" in section three, article one of this chapter,
4 shall be payable in the same amount, on the same terms and
5 subject to the same conditions as compensation payable on
6 the basis of other service subject to this chapter; except that
7 benefits based on service in an instructional, research, or
8 principal administrative capacity in an institution of higher
9 education shall not be paid to an individual for any week of
10 unemployment which begins during the period between
11 two successive academic years, or during a similar period

12 between two regular terms, whether or not successive, or
13 during a period of paid sabbatical leave provided for in the
14 individual's contract, if the individual has a contract or
15 contracts to perform services in any such capacity for any
16 institution or institutions of higher education for both such
17 academic years or both such terms.

18 (2) Benefits based on service in employment defined in
19 subdivisions (9) and (10) of the definition of "employment"
20 in section three, article one of this chapter, shall be payable
21 in the same amount, on the same terms and subject to the
22 same conditions as benefits payable on the basis of other
23 service subject to this act, except that:

24 (a) With respect to service performed after December
25 thirty-one, one thousand nine hundred seventy-seven, in an
26 instructional, research, or principal administrative
27 capacity for an educational institution, benefits shall not be
28 paid based on such services for any week of unemployment
29 commencing during the period between two successive
30 academic years, or during a similar period between two
31 regular but not successive terms, or during any holiday or
32 vacation period, or during a period of paid sabbatical leave
33 provided for in the individual's contract, to any individual
34 if such individual performs such services in the first of such
35 academic years (or terms) or prior to the beginning of such
36 holiday or vacation period and if there is a contract or a
37 reasonable assurance that such individual will perform
38 services in any such capacity for any educational institution
39 in the second of such academic years or terms or after such
40 holiday or vacation period: *Provided*, That subsection (1) of
41 this section shall apply with respect to such services prior to
42 January one, one thousand nine hundred seventy-eight;

43 (b) With respect to services performed after April one,
44 one thousand nine hundred eighty-three, in any other
45 capacity for an educational institution, benefits shall not be
46 paid on the basis of such services to any individual for any
47 week which commences during any holiday or vacation
48 period, or during a period between two successive academic
49 years or terms if such individual performs such services in
50 the first of such academic years or terms or prior to the
51 beginning of such holiday or vacation period and there is a
52 reasonable assurance that such individual will perform
53 such services in the second of such academic years or terms

54 or after such holiday or vacation periods, except that if
55 compensation is denied to any individual under this
56 subsection and such individual was not offered an
57 opportunity to perform such services for the educational
58 institution for the second of such academic years or terms,
59 such individual shall be entitled to a retroactive payment of
60 compensation for each week for which the individual filed a
61 timely claim for compensation and for which compensation
62 was denied solely by reason of this clause.

ARTICLE 9. EMPLOYMENT SECURITY ADMINISTRATION FUND.

§21A-9-5a. Special administration fund.

1 There is hereby created in the state treasury a fund to be
2 known as the employment security special administration
3 fund, which shall consist of interest collected on delinquent
4 payments pursuant to section seventeen, article five of this
5 chapter. The moneys deposited with this fund are hereby
6 appropriated and made available to the order of the
7 commissioner for the purpose of (a) replacements in the
8 employment security administration fund as provided in
9 section eight of this article, (b) to meet special,
10 extraordinary, and contingent expenses not provided for in
11 the employment security administration fund, and (c)
12 refunds pursuant to section nineteen of article five, of
13 interest erroneously collected, and (d) cover expenditures
14 for which federal funds have been authorized but not yet
15 received, subject to repayment to the fund. This fund shall
16 be administered and disbursed in the same manner and
17 under the same conditions as other special funds of the state
18 treasury. Balances to the credit of the special
19 administration fund shall not lapse at any time but shall be
20 continuously available to the commissioner for
21 expenditures consistent with this chapter: *Provided*, That
22 (1) not more than five hundred thousand dollars shall be
23 expended from said fund in any fiscal year; (2) that at the
24 beginning of each calendar quarter the commissioner shall
25 estimate the amount that may be required in that quarter
26 for refunds of interest erroneously collected; (3) that
27 thereupon the excess, if any, over the amounts provided to
28 be expended under this section shall be paid into the
29 unemployment compensation trust fund.

CHAPTER 185

(S. B. 717—By Mr. Tucker)

[Passed March 11, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article eleven-a, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to unfair trade practices; how retailer cost is determined; and providing for increase in wholesale markup cost for doing business.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11A. UNFAIR TRADE PRACTICES.

§47-11A-6. How cost determined.

1 (a) The term "cost" when applicable to the business of
2 retailer shall mean bona fide cost and shall mean (i) the
3 invoice cost of the article, product or item of merchandise
4 to the retailer or the replacement cost thereof to the
5 retailer within thirty days prior to the date of sale, offer
6 for sale or advertisement for sale, as the case may be, in
7 the quantity last purchased, whichever is lower, from
8 either of which there shall be deducted all trade dis-
9 counts, except customary discounts for cash, and (ii) to
10 either of which there shall be added the following items
11 of expense:

12 (1) Freight charges not otherwise included in the cost
13 of the article, product or item of merchandise, but which
14 freight charges shall not be construed as including cartage
15 to retail outlet if done or paid for by the retailer;

16 (2) A markup to cover, in part, the cost of doing busi-
17 ness, which markup in the absence of proof of a lesser
18 cost, shall be seven percent of the aggregate of invoice
19 cost or replacement cost (whichever is used), less trade
20 discounts as aforesaid, and plus said freight charges.

21 (b) The term "cost" when applicable to the business of
22 a wholesaler shall mean bona fide cost and shall mean
23 (i) the invoice cost of the merchandise to the wholesaler
24 plus applicable taxes, or the replacement cost of the
25 merchandise to the wholesaler within thirty days prior
26 to the date of sale, offer for sale or advertisement for
27 sale, as the case may be, in the quantity last purchased,
28 whichever is lower, from either of which there shall be
29 deducted all trade discounts except customary discounts
30 for cash and (ii) to either of which there shall be added
31 the following items of expense:

32 (1) Freight charges not otherwise included in the cost
33 of the article, product or item of merchandise, but which
34 freight charges shall not be construed as including cartage
35 to the retail outlet if done or paid for by the wholesaler;

36 (2) A markup to cover, in part, the cost of doing busi-
37 ness, which markup in the absence of proof of a lesser
38 cost, shall be four percent of the aggregate of invoice
39 cost or replacement cost (whichever is used), less trade
40 discounts as aforesaid, and plus said freight charges.

CHAPTER 186

(Com. Sub. for S. B. 117—By Mr. McGraw, Mr. President, Mr. Boettner, Mr. Nelson,
Mr. Tonkovich, Mrs. Lucht, Mrs. Chace, Mr. Craig, Mrs. Spears, Mr. Holliday,
Mr. Chernenko, Mr. Loehr, Mr. Heck, Mr. Burdette, Mr. Holmes, Mr. Cook, Mr. Sacco,
Mr. Kaufman, Mr. Chafin, Mr. Jones and Mr. Stacy)

[Passed March 12, 1983: in effect from passage. Approved by the Governor.]

AN ACT to amend article twenty-four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eleven; to amend and reenact sections one and seven, article one, chapter twenty-four of said code; to amend and reenact sections three, four-a, four-b and eleven, article two of said chapter; to further amend said article by adding thereto two new sections, designated sections four-c and sixteen; to amend and reenact sections two and seven, article

three of said chapter; to further amend said article by adding thereto two new sections, designated sections three-a and eight; and to amend said chapter by adding thereto two new articles, designated articles two-a and two-b, all relating to corporate net income tax; credit for reducing electric and natural gas utility rates for low-income residential customers; legislative purpose and policy of the public service commission; regulation of utilities and the powers, duties and authority of the public service commission with respect thereto; open meetings of the commission and exceptions thereto; audits and investigations of utility management practices; requiring that the commission review transactions between utilities and their affiliates; limiting the amount of profit a utility may realize to just and reasonable amounts, when considering the income of an affiliate; holding rate hearings within the area served by the public utility; written reports incorporated into rate applications; procedures for changing rates of electric and telephone cooperatives and municipally operated public utilities; notice to the customers of all such cooperatives and municipal utilities of impending rate changes; removing such utilities and cooperatives from the authority of the public service commission for limited purposes; permitting the commission to allow emergency rates to take effect upon petition by such municipal utilities and electric and telephone cooperatives under certain circumstances and conditions; limitations upon and procedures for rate increases for natural gas public utilities as a result of the purchase by such utility of natural gas from its suppliers; the burden of proof upon such utilities in such cases; the powers and duties of the commission with respect thereto and requiring the commission to promulgate certain rules and regulations with respect to such cases; requiring such utility to present certain evidence in all such cases; purchase cost adjustment increases for gas utilities purchasing more than fifty percent of their gas from affiliates; the transportation of natural gas by intrastate and interstate gas pipelines and local distribution companies; requiring certificates of convenience and necessity in certain cases with respect thereto; providing that certain anticompetitive clauses in natural gas purchase and sale contracts are prohibited and the authority of the commission with respect to determining

the reasonableness of such contracts; providing for reduced rates for low income residential customers of gas and electric utilities during certain months of the year; establishing rules for persons qualifying for such low rates and for proving one's eligibility therefor; providing a system for the recovery by the utility for the revenue deficiency resulting from such reduced rates; creating a fund to be administered by the auditor designated the "Low Income Residential Utility Assistance Fund" to be used to defray such deficiencies and providing for legislative appropriation into such fund; authorizing the state auditor to accept in the name of the fund, gifts, donations, contributions, bequests of money or securities; providing for the transfer of certain funds allocated to the low income energy assistance program to be transferred into such fund; establishing procedures for taxpayers receiving an income tax refund to dedicate a certain portion of such refund for payment into such fund; establishing certain rules for the apportionment of such fund among the several utilities; temporary suspension of natural gas rate increases and exceptions thereto; emergency rate increases during period of temporary suspension; amending the provisions relating to the prohibition of discrimination with respect to rates charged by utilities to permit the commission to authorize rate designs consistent with the provisions of article two-a of said chapter; providing for the designation of intrastate gas pipelines, local distribution companies and certain interstate gas pipelines having excess or unused capacity as intrastate common carriers; providing by rule or order of the commission to require such pipelines or companies to transport natural gas sold to, used or produced by any person for designated uses; providing for rates and charges therefor; exempting certain lines; providing a severability clause; requiring the commission to impose certain conditions upon utilities who have filed for a permit to abandon service as a condition of such abandonment; and limiting deposits of residential customers of public utilities to one twelfth of the estimated annual charge.

Be it enacted by the Legislature of West Virginia:

That article twenty-four, 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

eleven; that sections one and seven, article one, chapter twenty-four of said code be amended and reenacted; that sections three, four-a, four-b and eleven, article two of said chapter be amended and reenacted; that said article be further amended by adding thereto two new sections, designated sections four-c and sixteen; that sections two and seven, article three of said chapter be amended and reenacted; that said article be further amended by adding thereto two new sections, designated sections three-a and eight; and that said chapter be amended by adding thereto two new articles, designated articles two-a and two-b, all to read as follows:

Chapter

11. Taxation.

24. Public Service Commission.

CHAPTER 11. TAXATION.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-11. Credit for reducing electric and natural gas utility rates for low-income residential customers.

1 (a) *General.*—A credit shall be allowed under the
2 provisions of this section against the primary tax liability of
3 the eligible taxpayer under this article, for the cost of
4 providing electric or natural gas utility service, or both, at
5 reduced rates to qualified low-income residential
6 customers during the preceding heating season.

7 (b) *Definitions.*—For purposes of this section the term:

8 (1) “Eligible taxpayer” means a utility which provides
9 electric or natural gas service, or both, to qualified low-
10 income residential customers at special reduced rates
11 ordered by the public service commission of West Virginia
12 pursuant to the authority of section one, article two-a,
13 chapter twenty-four of this code.

14 (2) “Cost incurred by the public utility” means the
15 difference between actual utility charges to qualified low-
16 income residential customers under the special reduced
17 rate schedule and what those charges would have been if the
18 special reduced rate schedule had not applied.

19 (3) “Cost of providing reduced rate electric or natural
20 gas utility service” means the amount certified by the
21 public service commission of West Virginia under the

22 provisions of article two-a, chapter twenty-four of this
23 code, as the cost incurred by the public utility in providing
24 reduced special rates for electric or natural gas utility
25 service to qualified low-income residential customers
26 during the preceding heating season, as required by section
27 one, article two-a, chapter twenty-four of this code.

28 (4) "Preceding heating season" means the period
29 November, December, January, February and March of the
30 fiscal year ending on the thirtieth day of June.

31 (5) "Qualified low-income residential customers"
32 means those utility customers lawfully receiving reduced
33 rate electric or natural gas utility service, or both, under
34 section one, article two-a, chapter twenty-four of this code,
35 at a residence located in this state.

36 (6) "Special reduced rates" means the rates ordered by
37 the public service commission of West Virginia under
38 authority of section one, article two-a, chapter twenty-four
39 of this code.

40 (c) *When credit may be taken*—An eligible taxpayer
41 may claim credit for the cost of providing reduced rate
42 electric or natural gas utility service, or both, on its annual
43 return for the taxable year in which it receives certification
44 of the amount thereof from the public service commission of
45 West Virginia.

46 (d) *Application of credit*—The credit allowable by this
47 section for a taxable year is not subject to the fifty percent
48 limitation specified in section nine of this article, and any
49 unused credit may be carried over to each of the next three
50 taxable years following the unused credit year until used or
51 forfeited due to lapse of time.

52 (e) *Copy of certification letter*—A copy of the certifica-
53 tion from the public service commission of West Virginia,
54 shall be attached to the annual return under this article, on
55 which the credit allowed by this section is taken.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

Article

1. General Provisions.
2. Powers and Duties of Public Service Commission.
- 2A. Reduced Rates for Low-income Residential Customers of Electricity and Gas.
- 2B. Temporary Suspension of Rate Increases.
3. Duties and Privileges of Public Utilities Subject to Regulations of Commission.

ARTICLE 1. GENERAL PROVISIONS.

§24-1-1. Legislative purpose and policy; plan for internal reorganization; promulgation of plan as rule; cooperation with joint committee on government and finance.

§24-1-7. Rules of procedure; commission not bound by rules of evidence or pleadings; inscription on, use of and judicial notice of seal.

§24-1-1. Legislative purpose and policy; plan for internal reorganization; promulgation of plan as rule; cooperation with joint committee on government and finance.

1 (a) It is the purpose and policy of the Legislature in
2 enacting this chapter to confer upon the public service
3 commission of this state the authority and duty to enforce
4 and regulate the practices, services and rates of public
5 utilities in order to:

6 (1) Ensure fair and prompt regulation of public utilities
7 in the interest of the using and consuming public;

8 (2) Provide the availability of adequate, economical and
9 reliable utility services throughout the state;

10 (3) Encourage the well-planned development of utility
11 resources in a manner consistent with state needs and in
12 ways consistent with the productive use of the state's
13 energy resources, such as coal;

14 (4) Ensure that rates and charges for utility services are
15 just, reasonable, applied without unjust discrimination or
16 preference, applied in a manner consistent with the
17 purposes and policies set forth in article two-a of this
18 chapter, and based primarily on the costs of providing these
19 services; and

20 (5) Encourage energy conservation and the effective
21 and efficient management of regulated utility enterprises.

22 (b) The Legislature creates the public service com-
23 mission to exercise the legislative powers delegated to it.
24 The public service commission is charged with the
25 responsibility for appraising and balancing the interests of
26 current and future utility service customers, the general
27 interests of the state's economy and the interests of the
28 utilities subject to its jurisdiction in its deliberations and
29 decisions.

30 (c) The Legislature directs the public service
31 commission to identify, explore and consider the potential
32 benefits or risks associated with emerging and state-of-the-
33 art concepts in utility management, rate design and
34 conservation. The commission may conduct inquiries and
35 hold hearings regarding such concepts in order to provide
36 utilities subject to its jurisdiction and other interested
37 persons the opportunity to comment, and shall report to the
38 governor and the Legislature regarding its findings and
39 policies to each of these areas not later than the first day of
40 the regular session of the Legislature in the year one
41 thousand nine hundred eighty-five, and every two years
42 thereafter.

43 (d) It is legislative policy to ensure that the Legislature
44 and the general public become better informed regarding
45 the regulation of public utilities in this state and the
46 conduct of the business of the public service commission. To
47 aid in the achievement of this policy, the public service
48 commission annually shall present to the joint committee
49 on government and finance, created by article three,
50 chapter four of this code, or a subcommittee designated by
51 the joint committee, a management summary report which
52 describes in a concise manner:

53 (1) The major activities of the commission for the year
54 especially as such activities relate to the implementation of
55 the provisions of this chapter;

56 (2) Important policy decisions reached and initiatives
57 undertaken during the year;

58 (3) The current balance of supply and demand for
59 natural gas and electric utility services in the state and a
60 forecast of the probable balance for the next ten years; and

61 (4) Other information considered by the commission to
62 be important including recommendations for statutory
63 reform and the reasons for such recommendations.

64 (e) In addition to any other studies and reports required
65 to be conducted and made by the public service commission
66 pursuant to any other provision of this section, the
67 commission shall study and initially report to the
68 Legislature no later than the first day of the regular session
69 of the Legislature in the year one thousand nine hundred
70 eighty, upon:

71 (1) The extent to which natural gas wells or wells
72 heretofore supplying gas utilities in this state have been
73 capped off or shut in; the number of such wells, their
74 probable extent of future production and the reasons given
75 and any justification for, capping off or shutting in such
76 wells, the reasons, if any, why persons engaged or heretofore
77 engaged in the development of gas wells in this state or the
78 Appalachian areas have been discouraged from drilling,
79 developing or selling the production of such wells and
80 whether there are fixed policies by any utility or group of
81 utilities to avoid the purchase of natural gas produced in
82 the Appalachian region of the United States generally and
83 in West Virginia specifically.

84 (2) The extent of the export and import of natural gas
85 utility supplies in West Virginia.

86 (3) The cumulative effect of the practices mentioned in
87 subdivisions (1) and (2) of this subsection upon rates
88 theretofore and hereafter charged gas utility customers in
89 West Virginia.

90 In carrying out the provisions of this section the
91 commission shall have jurisdiction over such persons,
92 whether public utilities or not, as may be in the opinion of
93 the commission necessary to the exercise of its mandate and
94 may compel attendance before it, take testimony under oath
95 and compel the production of papers or other documents.
96 Upon reasonable request by the commission, all other state
97 agencies shall cooperate with the commission in carrying
98 out the provisions and requirements of this subsection.

99 (f) No later than the first day of the regular session of the
100 Legislature in the year one thousand nine hundred eighty,

101 the public service commission shall submit to the
102 Legislature a plan for internal reorganization which plan
103 shall specifically address the following:

104 (1) A division within the public service commission
105 which shall include the office of the commissioners, the
106 hearing examiners and such support staff as may be
107 necessary to carry out the functions of decision making and
108 general supervision of the commission, which functions
109 shall not include advocacy in cases before the commission;

110 (2) The creation of a division which shall act as an
111 advocate for the position of and in the interest of all
112 customers;

113 (3) The means and procedures by which the division to
114 be created pursuant to the provisions of subdivision (2) of
115 this subsection shall protect the interests of each class of
116 customers and the means by which the commission will
117 assure that such division will be financially and
118 departmentally independent of the division created by
119 subdivision (1) of this subsection;

120 (4) The creation of a division within the public service
121 commission which shall assume the duties and
122 responsibilities now charged to the commissioners with
123 regard to motor carriers which division shall exist
124 separately from those divisions set out in subdivisions (1)
125 and (2) of this subsection and which shall relieve the
126 commissioners of all except minimal administrative
127 responsibilities as to motor carriers and which plan shall
128 provide for a hearing procedure to relieve the
129 commissioners from hearing motor carrier cases;

130 (5) Which members of the staff of the public service
131 commission shall be exempted from the salary schedules or
132 pay plan adopted by the civil service commission and
133 identify such staff members by job classification or
134 designation, together with the salary or salary ranges for
135 each such job classification or designation;

136 (6) The manner in which the commission will strengthen
137 its knowledge and independent capacity to analyze key
138 conditions and trends in the industries it regulates
139 extending from general industry analysis and supply-
140 demand forecasting to continuing and more thorough

141 scrutiny of the capacity planning, construction
142 management, operating performance and financial
143 condition of the major companies within these industries.

144 Such plan shall be based on the concept that each of the
145 divisions mentioned in subdivisions (1), (2) and (4) of this
146 subsection shall exist independently of the others and the
147 plan shall discourage ex parte communications between
148 them by such means as the commission shall direct,
149 including, but not limited to, separate clerical and
150 professional staffing for each division. Further, the public
151 service commission is directed to incorporate within the
152 said plan to the fullest extent possible the recommendations
153 presented to the subcommittee on the public service
154 commission of the joint committee on government and
155 finance in a final report dated February, one thousand nine
156 hundred seventy-nine, and entitled "A Plan for Regulatory
157 Reform and Management Improvement."

158 The commission shall before the fifth day of January, one
159 thousand nine hundred eighty, adopt said plan by order,
160 which order shall promulgate the same as a rule of the
161 commission to be effective upon the date specified in said
162 order, which date shall be no later than the thirty-first day
163 of December, one thousand nine hundred eighty. Certified
164 copies of such order and rule shall be filed on the first day of
165 the regular session of the Legislature, one thousand nine
166 hundred eighty, by the chairman of the commission with the
167 clerk of each house of the Legislature, the governor and the
168 secretary of state. The chairman of the commission shall
169 also file with the office of the secretary of state the receipt of
170 the clerk of each house and of the governor, which receipt
171 shall evidence compliance with this section.

172 Upon the filing of a certified copy of such order and rule,
173 the clerk of each house of the Legislature shall report the
174 same to their respective houses and the presiding officer
175 thereof shall refer the same to appropriate standing
176 committee or committees.

177 Within the limits of funds appropriated therefor, the rule
178 of the public service commission shall be effective upon the
179 date specified in the order of the commission promulgating
180 it unless an alternative plan be adopted by general law or
181 unless the rule is disapproved by a concurrent resolution of

182 the Legislature adopted prior to adjournment sine die of the
183 regular session of the Legislature to be held in the year one
184 thousand nine hundred eighty: *Provided*, That if such rule
185 is approved in part and disapproved in part by a concurrent
186 resolution of the Legislature adopted prior to such
187 adjournment, such rule shall be effective to the extent and
188 only to the extent that the same is approved by such
189 concurrent resolution.

190 The rules promulgated and made effective pursuant to
191 this section shall be effective notwithstanding any other
192 provisions of this code for the promulgation of rules or
193 regulations.

194 (g) The public service commission is hereby directed to
195 cooperate with the joint committee on government and
196 finance of the Legislature in its review, examination and
197 study of the administrative operations and enforcement
198 record of the railroad safety division of the public service
199 commission and any similar studies.

200 (h) (1) The Legislature hereby finds that rates for
201 natural gas charged to customers of all classes have risen
202 dramatically in recent years to the extent that such
203 increases have adversely affected all customer classes. The
204 Legislature further finds that it must take action necessary
205 to mitigate the adverse consequences of these dramatic rate
206 increases.

207 (2) The Legislature further finds that the practices of
208 natural gas utilities in purchasing high-priced gas supplies,
209 in purchasing gas supplies from out-of-state sources when
210 West Virginia possesses abundant natural gas, and in
211 securing supplies, directly or indirectly by contractual
212 agreements including take-or-pay provisions, indefinite
213 price escalators, or most-favored nation clauses have
214 contributed to the dramatic increase in natural gas prices. It
215 is therefore the policy of the Legislature to discourage such
216 purchasing practices in order to protect all customer
217 classes.

218 (3) The Legislature further finds that it is in the best
219 interests of the citizens of West Virginia to encourage the
220 transportation of natural gas in intrastate commerce by
221 interstate or intrastate pipelines or by local distribution

222 companies in order to provide competition in the natural
223 gas industry and in order to provide natural gas to
224 consumers at the lowest possible price.

225 (i) The Legislature further finds that transactions
226 between utilities and affiliates are a contributing factor to
227 the increase in natural gas and electricity prices and tend to
228 confuse consideration of a proper rate of return calculation.
229 The Legislature therefore finds that it is imperative that the
230 public service commission have the opportunity to properly
231 study the issue of proper rate of return for lengthy periods
232 of time and to limit the return of a utility to a proper level
233 when compared to return or profit that affiliates earn on
234 transactions with sister utilities.

**§24-1-7. Rules of procedure; commission not bound by rules of
evidence or pleadings; inscription on, use of and
judicial notice of seal.**

1 The commission shall prescribe such rules and
2 regulations as may be necessary to carry out the provisions
3 of this chapter, including rules of procedure and for taking
4 evidence in all matters that may come before it, and enter
5 such orders as may be just and lawful: *Provided*, That no
6 such rule or regulation shall be effective unless
7 promulgated pursuant to the provisions of sections one
8 through ten, article three, chapter twenty-nine-a of this
9 code: *Provided, however*, That no such rule or regulation
10 shall become effective until sixty days after its final
11 adoption or until the effective date proposed by the
12 commission, whichever is later: *Provided further*, That any
13 rules and regulations promulgated prior to the effective
14 date of this section shall remain in full force and effect
15 unless changed, modified or repealed in accordance
16 herewith. The rules and regulations promulgated
17 hereunder by the public service commission shall not be
18 subject to the legislative rule-making review procedures
19 established in sections eleven through fifteen, article three,
20 chapter twenty-nine-a of this code. In the investigations,
21 preparations and hearings of cases, the commission shall
22 not be bound by the technical rules of pleading and
23 evidence, but in that respect it may exercise such discretion
24 as will facilitate its efforts to understand and learn all the
25 facts bearing upon the right and justice of the matters
26 before it.

27 Meetings of the commission wherein the sole purpose is to
28 decide or deliberate toward a decision on any matter are
29 exempt from the requirements of article nine-a, chapter six
30 of this code, any other provision of this code to the contrary
31 notwithstanding.

32 All orders of the commission shall set forth separately
33 findings of facts and conclusions of law, which findings of
34 fact shall make specific reference to the evidence in the
35 record which supports such findings.

36 The commission shall have a seal bearing the following
37 inscription: "The Public Service Commission of West
38 Virginia." The seal shall be affixed to all writs and
39 authentications of copies of records, and to such other
40 instruments as the commission shall direct. All courts shall
41 take judicial notice of said seal.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-3. General power of commission with respect to rates.

§24-2-4a. Procedure for changing rates after June 30, 1981.

§24-2-4b. Procedures for changing rates of electric and telephone cooperatives
and municipally operated water utilities.

§24-2-4c. Rate increase for natural gas public utilities relating to purchase of
natural gas from suppliers.

§24-2-11. Requirements for certificate of public convenience and necessity.

§24-2-16. Anticompetitive clauses in natural gas contracts prohibited.

§24-2-3. General power of commission with respect to rates.

1 The commission shall have power to enforce, originate,
2 establish, change and promulgate tariffs, rates, joint rates,
3 tolls and schedules for all public utilities: *Provided*, That
4 the commission may exercise such rate authority over
5 municipal utilities only under the circumstances set forth in
6 section four-b of this article. And whenever the commission
7 shall, after hearing, find any existing rates, tolls, tariffs,
8 joint rates or schedules unjust, unreasonable, insufficient
9 or unjustly discriminatory or otherwise in violation of any
10 of the provisions of this chapter, the commission shall by an
11 order fix reasonable rates, joint rates, tariffs, tolls or
12 schedules to be followed in the future in lieu of those found
13 to be unjust, unreasonable, insufficient or unjustly
14 discriminatory or otherwise in violation of any provisions
15 of law, and the said commission, in fixing the rate of any
16 railroad company, may fix a fair, reasonable and just rate to

17 be charged on any branch line thereof, independent of the
18 rate charged on the main line of such railroad.

19 In determining just and reasonable rates, the commission
20 may audit and investigate management practices and
21 policies, or have performed an audit and investigation of
22 such practices and policies, in order to determine whether
23 the utility is operating with efficiency and is utilizing sound
24 management practices. The commission shall adopt rules
25 and regulations setting forth the scope, frequency and
26 application of such audits and investigations to the various
27 utilities subject to its jurisdiction. The commission may
28 include the cost of conducting the management audit in the
29 cost of service of the utility.

30 In determining just and reasonable rates, the commission
31 shall investigate and review transactions between utilities
32 and affiliates. The commission shall limit the total return of
33 the utility to a level which, when considered with the level
34 of profit or return the affiliate earns on transactions with
35 the utility, is just and reasonable.

§24-2-4a. Procedure for changing rates after June 30, 1981.

1 After the thirtieth day of June, one thousand nine
2 hundred eighty-one, no public utility subject to this chapter
3 except those utilities subject to the provisions of section
4 four-b of this article, shall change, suspend or annul any
5 rate, joint rate, charge, rental or classification except after
6 thirty days' notice to the commission and the public, which
7 notice shall plainly state the changes proposed to be made
8 in the schedule then in force and the time when the changed
9 rates or charges shall go into effect; but the commission may
10 enter an order suspending the proposed rate as hereinafter
11 provided. The proposed changes shall be shown by printing
12 new schedules, or shall be plainly indicated upon the
13 schedules in force at the time, and kept open to public
14 inspection: *Provided*, That the commission may, in its
15 discretion, and for good cause shown, allow changes upon
16 less time than the notice herein specified or may modify the
17 requirements of this section in respect to publishing,
18 posting and filing of tariffs, either by particular
19 instructions or by general order.

20 Whenever there shall be filed with the commission any
21 schedule stating a change in the rates or charges, or joint

22 rates or charges, or stating a new individual or joint rate or
23 charge or joint classification or any new individual or joint
24 regulation or practice affecting any rate or charge the
25 commission may either upon complaint or upon its own
26 initiative without complaint enter upon a hearing
27 concerning the propriety of such rate, charge,
28 classification, regulation or practice; and, if the
29 commission so orders, it may proceed without answer or
30 other form of pleading by the interested parties, but upon
31 reasonable notice, and, pending such hearing and the
32 decisions thereon, the commission, upon filing with such
33 schedule and delivering to the public utility affected
34 thereby a statement in writing of its reasons for such
35 suspension, may suspend the operation of such schedule
36 and defer the use of such rate, charge, classification,
37 regulation or practice, but not for a longer period than two
38 hundred seventy days beyond the time when such rate,
39 charge, classification, regulation or practice would
40 otherwise go into effect; and after full hearing, whether
41 completed before or after the rate, charge, classification,
42 regulation or practice goes into effect, the commission may
43 make such order in reference to such rate, charge,
44 classification, regulation or practice as would be proper in a
45 proceeding initiated after the rate, charge, classification,
46 regulation or practice had become effective: *Provided*, That
47 in the case of a public utility having two thousand five
48 hundred customers or less and which is not principally
49 owned by any other public utility corporation or public
50 utility holding corporation, the commission may suspend
51 the operation of such schedule and defer the use of such
52 rate, charge, classification, regulation or practice, but not
53 for a longer period than one hundred twenty days beyond
54 the time when such rate, charge, classification, regulation
55 or practice would otherwise go into effect; and in the case of
56 a public utility having more than two thousand five
57 hundred customers, but not more than five thousand
58 customers, and which is not principally owned by any other
59 public utility corporation or public utility holding
60 corporation, the commission may suspend the operation of
61 such schedule and defer the use of such rate, charge,
62 classification, regulation or practice, but not for a longer
63 period than one hundred fifty days beyond the time when
64 such rate, charge, classification, regulation or practice

65 would otherwise go into effect; and in the case of a public
66 utility having more than five thousand customers, but not
67 more than seven thousand five hundred customers, and
68 which is not principally owned by any other public utility
69 corporation or public utility holding corporation, the
70 commission may suspend the operation of such schedule
71 and defer the use of such rate, charge, classification,
72 regulation or practice, but not for a longer period than one
73 hundred eighty days beyond the time when such rate,
74 charge, classification, regulation or practice would
75 otherwise go into effect; and after full hearing, whether
76 completed before or after the rate, charge, classification,
77 regulation or practice goes into effect, the commission may
78 make such order in reference to such rate, charge,
79 classification, regulation or practice as would be proper in a
80 proceeding initiated after the rate, charge, classification,
81 regulation or practice had become effective: *Provided*,
82 *however*, That if any such hearing and decision thereon is
83 not concluded within the periods of suspension, as above
84 stated, such rate, charge, classification, regulation or
85 practice shall go into effect at the end of such period not
86 subject to refund: *Provided further*, That if any such rate,
87 charge, classification, regulation or practice goes into effect
88 because of the failure of the commission to reach a decision,
89 the same shall not preclude the commission from rendering
90 a decision with respect thereto which would disapprove,
91 reduce or modify any such proposed rate, charge,
92 classification, regulation or practice, in whole or in part,
93 but any such disapproval, reduction or modification shall
94 not be deemed to require a refund to the customers of such
95 utility as to any rate, charge, classification, regulation or
96 practice so disapproved, reduced or modified. The fact of
97 any rate, charge, classification, regulation or practice going
98 into effect by reason of the commission's failure to act
99 thereon shall not affect the commission's power and
100 authority to subsequently act with respect to any such
101 application or change in any rate, charge, classification,
102 regulation or practice. Any rate, charge, classification,
103 regulation or practice which shall be approved,
104 disapproved, modified or changed, in whole or in part, by
105 decision of the commission shall remain in effect as so
106 approved, disapproved, modified or changed during the
107 period or pendency of any subsequent hearing thereon or

108 appeal therefrom. Orders of the commission affecting rates,
109 charges, classifications, regulations or practices which
110 have gone into effect automatically at the end of the
111 suspension period are prospective in effect only.

112 At any hearing involving a rate sought to be increased or
113 involving the change of any rate, charge, classification,
114 regulation or practice, the burden of proof to show the
115 justness and reasonableness of the increased rate or
116 proposed increased rate, or the proposed change of rate,
117 charge, classification, regulation or practice shall be upon
118 the public utility making application for such change. The
119 commission shall, whenever practicable and within
120 budgetary constraints, conduct one or more public hearings
121 within the area served by the public utility making
122 application for such increase or change, for the purpose of
123 obtaining comments and evidence on the matter from local
124 ratepayers.

125 Each public utility subject to the provisions of this
126 section shall be required to establish, in a written report
127 which shall be incorporated into each general rate case
128 application, that it has thoroughly investigated and
129 considered the emerging and state-of-the-art concepts in
130 the utility management, rate design and conservation
131 as reported by the commission under subsection (c),
132 section one, article one of this chapter, as alternatives to, or
133 in mitigation of, any rate increase. The utility report shall
134 contain as to each concept considered the reasons for adop-
135 tion or rejection of each. When in any case pending before
136 the commission all evidence shall have been taken and the
137 hearing completed, the commission shall render a decision
138 in such case. The failure of the commission to render a
139 decision with respect to any such proposed change in any
140 such rate, charge, classification, regulation or practice
141 within the various time periods specified in this section after
142 the application therefor shall constitute neglect of duty on
143 the part of the commission and each member thereof.

144 Where more than twenty members of the public are
145 affected by a proposed change in rates, it shall be a
146 sufficient notice to the public within the meaning of this
147 section if such notice is published as a Class II legal
148 advertisement in compliance with the provisions of article

149 three, chapter fifty-nine of this code, and the publication
150 area for such publication shall be the community where the
151 majority of the resident members of the public affected by
152 such change reside or, in case of nonresidents, have their
153 principal place of business within this state.

154 The commission may order rates into effect subject to
155 refund, plus interest in the discretion of the commission, in
156 cases in which the commission determines that a temporary
157 or interim rate increase is necessary for the utility to avoid
158 financial distress, or in which the costs upon which these
159 rates are based are subject to modification by the
160 commission or another regulatory commission and to
161 refund to the public utility. In such case the commission
162 may require such public utility to enter into a bond in an
163 amount deemed by the commission to be reasonable and
164 conditioned upon the refund to the persons or parties
165 entitled thereto of the amount of the excess if such rates so
166 put into effect are subsequently determined to be higher
167 than those finally fixed for such utility.

168 No utility may make application for a general rate
169 increase while another general rate application is pending
170 before the commission and not finally acted upon, except
171 pursuant to the provisions of the next preceding paragraph
172 of this section. The provisions of this paragraph shall not be
173 construed so as to prohibit any such rate application from
174 being made while a previous application which has been
175 finally acted upon by the commission is pending before or
176 upon appeal to the West Virginia supreme court of appeals.

**§24-2-4b. Procedures for changing rates of electric and
telephone cooperatives and municipally
operated water utilities.**

1 (a) Electric cooperatives, telephone cooperatives and
2 municipally operated public utilities are not subject to the
3 rate approval provisions of section four or four-a of this
4 article but are subject to the limited rate provisions of this
5 section.

6 (b) All rates and charges set by electric cooperatives,
7 telephone cooperatives and municipally operated public
8 utilities shall be just, reasonable, applied without unjust
9 discrimination or preference and based primarily on the

10 costs of providing these services. Such rates and charges
11 shall be adopted by the electric or telephone cooperative's
12 governing board and in the case of the municipally operated
13 public utility by municipal ordinance to be effective not
14 sooner than forty-five days after adoption: *Provided*, That
15 notice of intent to effect a rate change shall be specified on
16 the monthly billing statement of the customers of such
17 utility for the month next preceding the month in which the
18 rate change is to become effective or the utility shall give its
19 customers, and in the case of a cooperative, its customers,
20 members and stockholders, such other reasonable notice as
21 will allow filing of timely objections to such rate change.
22 Such rates and charges shall be filed with the commission
23 together with such information showing the basis of such
24 rates and charges and such other information as the
25 commission considers necessary. Any change in such rates
26 and charges with updated information shall be filed with
27 the commission. If a petition, as set out in subdivision (1), (2)
28 or (3), subsection (c) of this section, is received and the
29 electric cooperative, telephone cooperative or municipality
30 has failed to file with the commission such rates and
31 charges with such information showing the basis of rates
32 and charges and such other information as the commission
33 considers necessary, the suspension period limitation of one
34 hundred twenty days and the one hundred day period
35 limitation for issuance of an order by a hearing examiner, as
36 contained in subsections (d) and (e) of this section, is tolled
37 until the necessary information is filed. The electric coopera-
38 tive, telephone cooperative or municipality shall set the date
39 when any new rate or charge is to go into effect.

40 (c) The commission shall review and approve or modify
41 such rates upon the filing of a petition within thirty days of
42 the adoption of the ordinance or resolution changing said
43 rates or charges by:

44 (1) Any customer aggrieved by the changed rates or
45 charges who presents to the commission a petition signed by
46 not less than twenty-five percent of the customers served by
47 such municipally operated public utility, or twenty-five
48 percent of the membership of the electric or telephone
49 cooperative residing within the state; or

50 (2) Any customer who is served by a municipally
51 operated public utility and who resides outside the

52 corporate limits and who is affected by the change in said
53 rates or charges and who presents to the commission a
54 petition alleging discrimination between customers within
55 and without the municipal boundaries. Said petition shall
56 be accompanied by evidence of discrimination; or

57 (3) Any customer or group of customers who are
58 affected by said change in rates who reside within the
59 municipal boundaries and who present a petition to the
60 commission alleging discrimination between said customer
61 or group of customers and other customers of the municipal
62 utility. Said petition shall be accompanied by evidence of
63 discrimination.

64 (d) (1) The filing of a petition with the commission
65 signed by not less than twenty-five percent of the customers
66 served by the municipally operated public utility, or
67 twenty-five percent of the membership of the electric or
68 telephone cooperative residing within the state, under
69 subdivision (1), subsection (c) of this section, shall suspend
70 the adoption of the rate change contained in the ordinance
71 or resolution for a period of one hundred twenty days from
72 the date said rates or charges would otherwise go into
73 effect, or until an order is issued as provided herein.

74 (2) Upon sufficient showing of discrimination by
75 customers outside the municipal boundaries, or a customer
76 or a group of customers within the municipal boundaries,
77 under a petition filed under subdivision (2) or (3),
78 subsection (c) of this section, the commission shall suspend
79 the adoption of the rate change contained in the ordinance
80 for a period of one hundred twenty days from the date said
81 rates or charges would otherwise go into effect or until an
82 order is issued as provided herein.

83 (e) The commission shall forthwith appoint a hearing
84 examiner from its staff to review the grievances raised by
85 the petitioners. Said hearing examiner shall conduct a
86 public hearing, and shall within one hundred days from the
87 date the said rates or charges would otherwise go into
88 effect, unless otherwise tolled as provided in subsection (b)
89 of this section, issue an order approving, disapproving or
90 modifying in whole or in part, the rates or charges imposed
91 by the electric or telephone cooperative or by the
92 municipally operated public utility pursuant to this section.

93 (f) Upon receipt of a petition for review of the rates
94 under the provisions of subsection (c) of this section, the
95 commission may exercise the power granted to it under the
96 provisions of section three of this article. The commission
97 may determine the method by which such rates are
98 reviewed and may grant and conduct a de novo hearing on
99 the matter if the customer, electric or telephone cooperative
100 or municipality requests such a hearing.

101 (g) The commission may, upon petition by a
102 municipality or electric or telephone cooperative, allow an
103 interim or emergency rate to take effect, subject to future
104 modification, if it is determined that such interim or
105 emergency rate is necessary to protect the municipality
106 from financial hardship and if that financial hardship is
107 attributable solely to the purchase of the utility commodity
108 sold. In such cases, the commission may waive the forty-
109 five-day waiting period provided for in subsection (b) of
110 this section and the one hundred twenty-day suspension
111 period provided for in subsection (d) of this section.

112 (h) Notwithstanding any other provision, the
113 commission shall have no authority or responsibility with
114 regard to the regulation of rates, income, services or
115 contracts by municipally operated public utilities for
116 services which are transmitted and sold outside of the state
117 of West Virginia.

**§24-2-4c. Rate increases for natural gas public utilities relating
to purchase of natural gas from suppliers.**

1 Before granting any rate increase to a natural gas public
2 utility the commission must determine that dependable
3 lower-priced supplies of natural gas are not readily
4 available to the applicant from other sources.

5 At any hearing involving a rate increase for a natural gas
6 public utility, the burden of proof to demonstrate that
7 dependable lower-priced supplies of natural gas are not
8 readily available from other sources and that contracts
9 between the public utility and its suppliers for purchase of
10 natural gas are negotiated at arm's length and are not
11 detrimental to the customers of the utility's services shall be
12 upon the public utility making application for such change.
13 Should the applying public utility not satisfactorily meet

14 this burden, then the commission may not authorize an
15 increase greater than that which reflects the reasonable
16 cost of natural gas which is determined to be readily
17 available.

18 It a gas utility purchases from an affiliate more than fifty
19 percent of its gas supplied to its customers, any purchase
20 cost adjustment increase shall be based on actual costs and
21 may be subject to the general rate case requirements and
22 review of section four-a of this article.

23 Before the first day of January, one thousand nine
24 hundred eighty-four, the commission shall promulgate
25 rules and regulations detailing what an applying natural
26 gas utility must show in providing that dependable, lower-
27 priced supplies of natural gas are not readily available to
28 the applicant from other sources. Such rules and
29 regulations shall include a requirement that each such
30 utility let out bids for the purchase of a substantial quantity
31 of natural gas supplied to its customers and that each such
32 public utility present evidence demonstrating that all
33 available sources of gas have been thoroughly investigated
34 and that the utility's purchases were at the lowest available
35 price among reliable sources at the time of the purchase.
36 Such evidence shall include a list of all persons, firms and
37 corporations which were investigated as sources of gas; the
38 price per thousand cubic feet at which each investigated
39 person, firm or corporation offered gas for sale; the
40 availability and cost of transporting such gas and the
41 amount of gas potentially available each month by such
42 person, firm or corporation. Such list shall also include the
43 same information resulting from investigation of all "shut-
44 in" wells.

**§24-2-11. Requirements for certificate of public convenience
and necessity.**

1 (a) No public utility, person or corporation shall begin
2 the construction of any plant, equipment, property or
3 facility for furnishing to the public any of the services
4 enumerated in section one, article two of this chapter, nor
5 apply for, nor obtain any franchise, license or permit from
6 any municipality or other governmental agency, except
7 ordinary extensions of existing systems in the usual course
8 of business, unless and until it shall obtain from the public

9 service commission a certificate of public convenience and
10 necessity requiring such construction, franchise, license or
11 permit. Upon the filing of any application for such
12 certificate, and after hearing, the commission may, in its
13 discretion, issue or refuse to issue, or issue in part and refuse
14 in part, such certificate of convenience and necessity:
15 *Provided*, That the commission, after it gives proper notice
16 and if no protest is received within thirty days after the
17 notice is given, may waive formal hearing on the
18 application. Notice shall be given by publication which
19 shall state that a formal hearing may be waived in the
20 absence of protest, made within thirty days, to the
21 application. The notice shall be published as a Class I legal
22 advertisement in compliance with the provisions of article
23 three, chapter fifty-nine of this code. The publication area
24 shall be the proposed area of operation. Any public utility,
25 person or corporation subject to the provisions of this
26 section shall give the commission at least thirty days' notice
27 of the filing of any such application for a certificate of
28 public convenience and necessity under this section:
29 *Provided*, That the commission may modify or waive the
30 thirty-day notice requirement. The commission shall
31 render its final decision on any application filed after the
32 thirtieth day of June, one thousand nine hundred eighty-
33 one, under the provisions of this section or section eleven-a
34 of this article within two hundred seventy days of the filing
35 of the application and within ninety days after final
36 submission of any such application for decision following a
37 hearing: *Provided, however*, That if the projected total cost
38 of the project is greater than fifty million dollars, the
39 commission shall render its final decision on any such
40 application filed under the provisions of this section or
41 section eleven-a of this article within four hundred days of
42 the filing of the application and within ninety days after
43 final submission of any such application for decision after a
44 hearing. If such decision is not rendered within the
45 aforementioned two hundred seventy days, four hundred
46 days or ninety days, the commission shall issue a certificate
47 of convenience and necessity as applied for in the
48 application. The commission shall prescribe such rules and
49 regulations as it may deem proper for the enforcement of
50 the provisions of this section; and, in establishing that

51 public convenience and necessity do exist, the burden of
52 proof shall be upon the applicant.

53 (b) Pursuant to the requirements of subsection (a) of this
54 section the commission may issue a certificate of public
55 convenience and necessity to any intrastate pipeline,
56 interstate pipeline or local distribution company for the
57 transportation in intrastate commerce of natural gas used
58 by any person for one or more uses, as defined by rule, by
59 the commission in the case of

60 (1) Natural gas sold by a producer, pipeline or other
61 seller to such person; or

62 (2) Natural gas produced by such person.

§24-2-16. Anticompetitive clauses in natural gas contracts prohibited.

1 (a) Unenforceable clauses: Any provision of any
2 contract for the sale of natural gas, which is or becomes
3 utility natural gas, including any contract in existence on or
4 before the date of enactment of this section, is hereby
5 declared against public policy and unenforceable to the
6 extent that such clause requires the utility to buy more than
7 a reasonable amount of gas at a greater than reasonable
8 price if such provision includes:

9 (1) A take-or-pay clause which commits the purchaser
10 to take delivery of a minimum volume of natural gas; or

11 (2) An indefinite price escalator clause which has been
12 defined in the Natural Gas Policy Act, section 105(b)(3)(B),
13 15 U.S.C.A., section 3315(b)(3)(B), as any provision of any
14 contract:

15 (i) Which provides for the establishment or adjustment of
16 the price for natural gas delivered under such contract by
17 reference to other prices for natural gas, for crude oil, or for
18 refined petroleum products; or

19 (ii) Which allows for the establishment or adjustment of
20 the price of natural gas delivered under such contract by
21 negotiation between the parties; or

22 (3) A most favored nation clause which accords to the
23 transaction, presently or in the future, the highest price
24 prevailing in the region for similar transactions.

25 (b) Commission review: Upon application made by the
26 utility, or upon its own motion, the commission may hold
27 hearings after notice as to the reasonableness of the
28 quantity and price of gas purchased pursuant to such
29 contracts.

**ARTICLE 2A. REDUCED RATES FOR LOW-INCOME RESIDENTIAL
CUSTOMERS OF ELECTRICITY AND GAS.**

§24-2A-1. Special rates for gas and electric utility customers receiving Social Security Supplemental Security Income (SSI), Aid to Families with Dependent Children (AFDC), Aid to Families with Dependent Children—Unemployed (AFDC-U), or food stamps.

§24-2A-2. Recovery of revenue deficiency.

§24-2A-1. Special rates for gas and electric utility customers receiving Social Security Supplemental Security Income (SSI), Aid to Families with Dependent Children (AFDC), Aid to Families with Dependent Children—Unemployed (AFDC-U), or food stamps.

1 The commission shall order a special reduced rate
2 schedule for the provision of gas and electric service for
3 the billing months of November, December, January,
4 February and March of each year; to residential utility
5 customers receiving (a) Social Security Supplemental
6 Security Income (SSI), (b) Aid to Families with Dependent
7 Children (AFDC), (c) Aid to Families with Dependent
8 Children — Unemployed (AFDC-U), or (d) food stamps, if
9 such food stamp recipients are sixty years of age or older.
10 The rate to be established for each gas and electric utility
11 shall be twenty percent less than the rate applicable to other
12 residential customers obtaining similar service. Before any
13 individual may qualify for this reduced rate service the
14 following requirements must be met:

15 (a) The residential reduced rate service shall apply only
16 to current customers or to those persons who subsequently
17 become customers in their own right. If an SSI, AFDC,
18 AFDC-U or food stamp recipient is living in a household
19 which is served under the name of a non-SSI, AFDC,
20 AFDC-U or food stamp recipient, that service may not be
21 changed or have been changed subsequent to the twelfth
22 day of March, one thousand nine hundred eighty-three, to
23 the name of the SSI, AFDC, AFDC-U or food stamp
24 recipient in order to qualify for the reduced rate service.

25 (b) The burden of proving eligibility for the residential
26 reduced rate service shall be on the customer requesting the
27 service. To meet that burden, individuals, requesting resi-
28 dential reduced rate service must demonstrate that they
29 are actual customers of the utility and must produce either
30 their SSI, AFDC, AFDC-U or food stamp identification
31 card. No customer who is a recipient of both SSI and either
32 AFDC, AFDC-U or food stamps, shall be eligible for more
33 than one discount for each kind of utility service.

34 The commission shall establish reasonable standards
35 regarding proof of continuing eligibility for the residential
36 reduced rate schedule set forth in this article. Such
37 standards shall be established by rules and regulations.

§24-2A-2. Recovery of revenue deficiency.

1 In order to provide the residential reduced rate schedule
2 and still maintain the integrity of the various gas or electric
3 utilities' earnings, at the end of the billing period for the
4 month of March, one thousand nine hundred eighty-four,
5 and each year thereafter the commission shall conduct such
6 proceedings as necessary to determine the revenue
7 deficiency resulting from the reduced rates, and the
8 deficiency shall be recovered by each affected utility as
9 follows:

10 (1) There is hereby created a special fund in the office of
11 the auditor to be known as the "Low Income Residential
12 Utility Assistance Fund." The Legislature may appropriate
13 into such fund such sums of general or special revenues as it
14 may deem appropriate. The auditor is hereby authorized
15 and empowered to accept for the state, in the name of the
16 fund, gifts, donations, contributions, bequests of money or
17 securities and such sums as may become available as a
18 result of a voluntary check-off and contribution of state tax
19 refunds on state corporate and personal income tax return
20 forms designed by the state tax commissioner. Also, there
21 may be transferred into such fund, upon the requisition of
22 the governor, any unexpended balance in any year
23 remaining after distribution of funds allocated to and
24 received by the state pursuant to the "Low Income Energy
25 Assistance Program" established by and pursuant to the
26 Omnibus Budget Reconciliation Act of 1981, (Title 42,
27 U.S.C. §§8621 et seq.) to the extent and only to the extent

28 such transfers may be permitted by applicable statute, rule
29 or regulation of the United States: *Provided*, That nothing
30 herein shall be construed to permit, require or authorize
31 any discontinuance or reduction of assistance to any person
32 now or hereafter eligible for assistance from the "Low
33 Income Energy Assistance Program."

34 (2) At the end of the billing period for the month of
35 March, one thousand nine hundred eighty-four, and each
36 year thereafter the commission shall ascertain from the
37 auditor the total amount available for distribution in that
38 fiscal year, if any, from the low income residential utility
39 assistance fund created under this section. Such fund shall
40 be allocated among the various gas and electric utilities
41 according to the proportionate share of each such utility's
42 revenue deficiency resulting from reduced rates mandated
43 by section one of this article bears to the total aggregate
44 deficiency of all such utilities. The commission shall
45 transmit to the auditor its requisition drawn to the order of
46 each affected utility for the proportion of its revenue
47 deficiency to be paid from the fund.

48 Such payments may be made as frequently during any
49 fiscal year as may be deemed appropriate by the
50 commission.

51 (3) After payment by the auditor under this section, the
52 remaining revenue deficiency, if any, shall be allowed as a
53 tax credit against the liability of the utility pursuant to the
54 provisions of section eleven, article twenty-four of chapter
55 eleven.

ARTICLE 2B. TEMPORARY SUSPENSION OF RATE INCREASES.

§24-2B-1. Temporary suspension of rate increases.

§24-2B-2. Emergency rate increase; financial hardship procedure.

§24-2B-1. Temporary suspension of rate increases.

1 Pursuant to the findings contained in subsections (h) and
2 (i), section one, article one of this chapter and in order to
3 permit the public service commission to implement the
4 provisions of Enrolled Committee Substitute for S. B. 117
5 enacted by the Legislature during the regular session
6 thereof in the year one thousand nine hundred eighty-three,
7 and notwithstanding any other provision of this chapter,

8 upon the effective date of this article, the commission shall
9 authorize no increase of rates charged by any utility for
10 natural gas to any customer of any class for a period of
11 twelve months. With respect to cases for rate increases
12 which are pending before the commission on the effective
13 date of this section, such cases may be suspended by the
14 commission and held in abeyance by the commission during
15 the pendency of the period of suspension mandated by this
16 section or any such cases may proceed to completion and the
17 commission may rule thereon upon the same to the same
18 extent as if this section had not been enacted, all within the
19 sound discretion of the commission.

20 The commission may authorize such gas rate increases
21 during the period of suspension of rate increases mandated
22 by this section as it may deem proper by reason of increased
23 costs of purchased gas. The commission may consider in
24 determining whether to authorize such rate increases the
25 purchase and use of West Virginia gas by such utilities if
26 such gas were available at a cheaper rate than other gas
27 actually purchased by such utilities.

**§24-2B-2. Emergency rate increase; financial hardship
procedure.**

1 During the period of temporary suspension of rates
2 generally, as provided herein, the commission may upon
3 petition by a utility allow an emergency rate to take effect,
4 subject to future modification by the commission and
5 subject to refund to the customers of such utility, if it is
6 determined that such emergency rate is necessary to protect
7 the utility from extreme financial hardship and if that
8 financial hardship is attributable solely to the temporary
9 suspension of rate increases. The commission shall provide
10 by rule and regulation criteria for determination of extreme
11 financial hardship within the meaning of this section. Such
12 petition shall be subject to the same notice requirements as
13 set forth in article two, section four-a of this chapter.

ARTICLE 3. DUTIES AND PRIVILEGES OF PUBLIC UTILITIES SUBJECT TO REGULATIONS OF COMMISSION.

§24-3-2. Discrimination prohibited.

§24-3-3a. Gas utility pipelines declared as common carriers; commission approval of certain transportation.

§24-3-7. Permit to abandon service; certificate; alternative service.

§24-3-8. Deposits.

§24-3-2. Discrimination prohibited.

1 No public utility subject to the provisions of this chapter
2 shall, directly or indirectly, by any special rate, rebate,
3 drawback or other device or method, charge, demand,
4 collect or receive from any person, firm or corporation, a
5 greater or less compensation, for any service rendered or to
6 be rendered, than it charges, demands, collects or receives
7 from any other person, firm or corporation for doing a like
8 and contemporaneous service under the same or
9 substantially similar circumstances and conditions.

10 It shall be unlawful for any public utility subject to the
11 provisions of this chapter to make or give any undue or
12 unreasonable preference or advantage to any particular
13 person, company, firm, corporation or locality, or any
14 particular character of traffic or service, in any respect
15 whatsoever, or to subject any particular person, firm,
16 corporation, company or locality, or any particular
17 character of traffic or service, to any undue or unreasonable
18 prejudice or disadvantage in any respect whatsoever.

19 Nothing in this section shall be construed to prevent the
20 commission from authorizing or requiring any rate design
21 consistent with the purposes and policies set forth in article
22 two-a of this chapter.

§24-3-3a. Gas utility pipelines declared as common carriers; commission approval of certain transportation.

1 (a) As used in this section or in section eleven, article
2 two of this chapter:

3 (1) "Intrastate pipeline" means (i) any utility or (ii) any
4 other person, firm or corporation engaged in natural gas
5 transportation in intrastate commerce to or for another
6 person, firm or corporation for compensation.

7 (2) "Interstate pipeline" means any person, firm or
8 corporation engaged in natural gas transportation subject

9 to the jurisdiction of the FERC under the Natural Gas Act or
10 the Natural Gas Policy Act of 1978.

11 (3) "Local distribution company" means any person,
12 other than any interstate pipeline or any intrastate pipeline,
13 engaged in transportation or local distribution of natural
14 gas and the sale of natural gas for ultimate consumption.

15 (4) "Intrastate commerce" includes the production,
16 gathering, treatment, processing, transportation and
17 delivery of natural gas entirely within this state.

18 (5) "Transportation" includes exchange, backhaul,
19 displacement or other means of transportation.

20 (6) "FERC" means the Federal Energy Regulatory
21 Commission.

22 (b) The commission may by rule or order, authorize and
23 require the transportation of natural gas in intrastate
24 commerce by intrastate pipelines, by interstate pipelines
25 with unused or excess capacity not needed to meet
26 interstate commerce demands or by local distribution
27 companies for any person for one or more uses, as defined
28 by rule, by the commission in the case of:

29 (1) Natural gas sold by a producer, pipeline or other
30 seller to such person; or

31 (2) Natural gas produced by such person.

32 (c) For reasons of safety, deliverability or operational
33 efficiency the commission may, in its discretion, by rule or
34 order, exclude from the requirements of this section any
35 part of any pipeline solely dedicated to storage, or
36 gathering, or low pressure distribution of natural gas.

37 (d) (1) The rates and charges of any interstate pipeline
38 with respect to any transportation authorized and required
39 under subsection (b) of this section shall be just and
40 reasonable and computed by the public service commission
41 in accordance with the guidelines set forth by the FERC and
42 in effect upon the date of application by the commission for
43 the transportation of natural gas by any interstate pipeline
44 on behalf of any intrastate pipeline or any local distribution
45 company.

46 (2) The rates and charges of any intrastate pipeline with
47 respect to any transportation authorized and required

48 under subsection (b) of this section shall be fair and
49 reasonable and may not exceed an amount which is
50 reasonably comparable to the rates and charges which
51 interstate pipelines would be permitted to charge for
52 providing similar transportation service. The computation
53 of such rates and charges by the public service commission
54 shall be in accordance with the guidelines set forth by the
55 FERC and in effect upon the date of application by the
56 commission for the transportation of natural gas by any
57 intrastate pipeline in behalf of any interstate pipeline or
58 any local distribution company served by any interstate
59 pipeline.

60 (e) The provisions of this article and each section,
61 subsection, subdivision, paragraph and subparagraph
62 thereof shall be severable from the provisions of each other
63 subparagraph, paragraph, subdivision, subsection, section,
64 article or chapter of this code so that if any provision of this
65 article be held void, the remaining provisions of this act and
66 this code shall remain valid.

§24-3-7. Permit to abandon service; certificate; alternative service.

1 No railroad or other public utility shall abandon all or
2 any portion of its service to the public or the operation of
3 any of its lines which would affect the service it is rendering
4 the public unless and until there shall first have been filed
5 with the public service commission of this state an
6 application for a permit to abandon service and obtained
7 from the commission an order stating that the present and
8 future public convenience and necessity permits such
9 abandonment.

10 In the event the commission determines that an
11 application to abandon gas service or any part thereof is in
12 the public interest and required by the present and future
13 public convenience and necessity, it shall include in its
14 order, as a condition of releasing any such utility from its
15 public service obligation to provide gas service, a provision
16 requiring the utility, prior to discontinuing service, to pay
17 the cost reasonably necessary to convert each customer to
18 an alternate fuel source.

§24-3-8. Deposits.

1 No public utility shall require any deposit of any

- 2 residential customer which shall exceed one twelfth of the
3 estimated annual charge to the customer for such service:
4 *Provided*, That the provisions of this section shall not apply
5 to deposits received prior to the effective date of this act.

CHAPTER 187

(S. B. 525—By Mr. Williams)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article five-a, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to revisions of the water pollution control act; providing the chief of the division of water resources with the authority to promulgate rules and regulations; and imposing restrictions upon the water resources board concerning the rules and regulations promulgated by the chief.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5A. WATER POLLUTION CONTROL ACT.

PART II. CHIEF OF DIVISION OF WATER RESOURCES AND WATER RESOURCES BOARD.

§20-5A-3. General powers and duties of chief and board with respect to pollution.

- 1 (a) In addition to all other powers and duties of the chief of
2 the departments division of water resources, as prescribed in
3 this article or elsewhere by law, the chief, under the supervi-
4 sion of the director, shall have and may exercise the following
5 powers and authority and shall perform the following duties:
- 6 (1) To perform any and all acts necessary to carry out
7 the purposes and requirements of this article and of the
8 "Federal Water Pollution Control Act," as amended,
9 relating to this state's participation in the "National
10 Pollutant Discharge Elimination System" established
11 under that act;

12 (2) To encourage voluntary cooperation by all persons
13 in controlling and reducing the pollution of the waters of
14 this state, and to advise, consult and cooperate with all
15 persons, all agencies of this state, the federal government or
16 other states, and with interstate agencies in the furtherance
17 of the purposes of this article, and to this end and for the
18 purpose of studies, scientific or other investigations,
19 research, experiments and demonstrations pertaining
20 thereto, the department may receive moneys from such
21 agencies, officers and persons on behalf of the state. The
22 department shall pay all moneys so received into a special
23 fund hereby created in the state treasury, which fund shall
24 be expended under the direction of the chief solely for the
25 purpose or purposes for which the grant, gift or
26 contribution shall have been made;

27 (3) To encourage the formulation and execution of plans
28 by cooperative groups or associations of municipal
29 corporations, industries, industrial users, and other users of
30 waters of the state, who, jointly or severally, are or may be
31 the source of pollution of such waters, for the control and
32 reduction of pollution;

33 (4) To encourage, participate in, or conduct or cause to
34 be conducted studies, scientific or other investigations,
35 research, experiments and demonstrations relating to
36 water pollution, and the causes, control and reduction
37 thereof, and to collect data with respect thereto, all as may
38 be deemed advisable and necessary to carry out the
39 purposes of this article;

40 (5) To study and investigate all problems concerning
41 water flow, water pollution and the control and reduction
42 of pollution of the waters of the state, and to make reports
43 and recommendations with respect thereto;

44 (6) To collect and disseminate information relating to
45 water pollution and the control and reduction thereof;

46 (7) To develop a public education and promotion
47 program to aid and assist in publicizing the need of and
48 securing support for pollution control and abatement;

49 (8) To sample ground and surface water with sufficient
50 frequency to ascertain the standards of purity or quality
51 from time to time of the waters of the state;

52 (9) To develop programs for the control and reduction of
53 the pollution of the waters of the state;

54 (10) To exercise general supervision over the
55 administration and enforcement of the provisions of this
56 article, and all rules, regulations, permits and orders issued
57 pursuant to the provisions of this article;

58 (11) In cooperation with the college of engineering at
59 West Virginia University and the schools and departments
60 of engineering at other institutions of higher education
61 operated by this state, to conduct studies, scientific or other
62 investigations, research, experiments and demonstrations
63 in an effort to discover economical and practical methods
64 for the elimination, disposal, control and treatment of
65 sewage, industrial wastes, and other wastes, and the control
66 and reduction of water pollution, and to this end, the chief
67 may cooperate with any public or private agency and
68 receive therefrom, on behalf of the state, and for deposit in
69 the state treasury, any moneys which such agency may
70 contribute as its part of the expenses thereof, and all gifts,
71 donations or contributions received as aforesaid shall be
72 expended by the chief according to the requirements or
73 directions of the donor or contributor without the necessity
74 of an appropriation therefor, except that an accounting
75 thereof shall be made in the fiscal reports of the
76 department;

77 (12) To require the prior submission of plans,
78 specifications, and other data relative to, and to inspect the
79 construction and operation of, any activity or activities in
80 connection with the issuance and revocation of such
81 permits as are required by this article or the rules and
82 regulations promulgated hereunder;

83 (13) To require any and all persons directly or indirectly
84 discharging, depositing or disposing of treated or untreated
85 sewage, industrial wastes or other wastes, or the effluent
86 therefrom, into or near any waters of the state or into any
87 underground strata, and any and all persons operating an
88 establishment which produces or which may produce or
89 from which escapes, releases or emanates or may escape,
90 release or emanate treated or untreated sewage, industrial

91 wastes or other wastes, or the effluent therefrom, into or
92 near any waters of the state or into any underground strata,
93 to file with the division of water resources such information
94 as the chief may require in a form or manner prescribed by
95 him for such purpose, including, but not limited to, data as
96 to the kind, characteristics, amount and rate of flow of any
97 such discharge, deposit, escape, release or disposition; and

98 (14) To adopt, modify or repeal procedural rules and
99 interpretive rules in accordance with the provisions of
100 chapter twenty-nine-a of this code administering and
101 implementing the powers, duties and responsibilities
102 vested in the chief by the provisions of this article.

103 (b) In addition to all other powers and duties of the
104 water resources board, as prescribed in this article or
105 elsewhere by law, the board shall have and may exercise the
106 following powers and authority and shall perform the
107 following duties:

108 (1) To cooperate with any interstate agencies for the
109 purpose of formulating, for submission to the Legislature,
110 interstate compacts and agreements relating to the control
111 and reduction of water pollution;

112 (2) To adopt, modify, repeal and enforce rules and
113 regulations, in accordance with the provisions of chapter
114 twenty-nine-a of this code, (A) implementing and making
115 effective the declaration of policy contained in section one
116 of this article and the powers, duties and responsibilities
117 vested in the board and the chief by the provisions of this
118 article and otherwise by law; (B) preventing, controlling
119 and abating pollution; (C) establishing standards of quality
120 for the waters of the state under such conditions as the
121 board may prescribe for the prevention, control and
122 abatement of pollution; and (D) to facilitate the state's
123 participation in the "National Pollutant Discharge
124 Elimination System" pursuant to the "Federal Water
125 Pollution Control Act," as amended: *Provided*, That no
126 such rule and regulation adopted by the board shall specify
127 the design of equipment, type of construction or particular
128 method which a person shall use to reduce the discharge of a
129 pollutant: *Provided further*, That the board may not modify
130 or repeal by rule making procedural rules and interpretive
131 rules promulgated by the chief in accordance with the

132 provisions of chapter twenty-nine-a of this code
133 administering and implementing the powers, duties and
134 responsibilities vested in the chief by the provisions of this
135 article; and

136 (3) To make and enter a consent order which shall have
137 the same effect as an order entered after a hearing as
138 provided in section fifteen of this article.

139 (c) The board is hereby authorized to hire one or more
140 individuals to serve as hearing examiners on a full or part-
141 time basis. Such individuals may be attorneys-at-law
142 admitted to practice before any circuit court of this state.
143 All such hearing examiners shall be individuals authorized
144 to take depositions under the laws of this state.

145 (d) Whenever required to carry out the objectives of this
146 article: (A) The chief shall require the owner or operator of
147 any point source or establishment to (i) establish and
148 maintain such records, (ii) make such reports, (iii) install,
149 use and maintain such monitoring equipment or methods,
150 (iv) sample such effluents in accordance with such methods,
151 at such locations, at such intervals and in such manner as
152 the chief shall prescribe, and (v) provide such other
153 information as he may reasonably require; and (B) the chief
154 or his authorized representative upon presentation of
155 credentials (i) shall have a right of entry to, upon or through
156 any premises in which an effluent source is located or in
157 which any records required to be maintained under (A) of
158 this subsection are located, and (ii) may at reasonable times
159 have access to and copy any records, inspect any monitoring
160 equipment or method required under (A) of this subsection
161 and sample any streams in the area as well as sample any
162 effluents which the owner or operator of such source is
163 required to sample under (A) of this subsection.

164 (e) The board is hereby authorized and empowered to
165 investigate and ascertain the need and factual basis for the
166 establishment of public service districts as a means of
167 controlling and reducing pollution from unincorporated
168 communities and areas of the state, investigate and
169 ascertain, with the assistance of the public service
170 commission, the financial feasibility and projected
171 financial capability of the future operation of any such
172 public service district or districts, and to present reports

173 and recommendations thereon to the county commissions of
174 the areas concerned, together with a request that such
175 county commissions create a public service district or
176 districts, as therein shown to be needed and required and as
177 provided in article thirteen-a, chapter sixteen of this code.
178 In the event a county commission shall fail to act to
179 establish a county-wide public service district or districts,
180 the board shall act jointly with the state director of health,
181 the director of the department of natural resources and the
182 chief of the division of water resources to further
183 investigate and ascertain the financial feasibility and
184 projected financial capability and, subject to the approval
185 of the public service commission, order the county
186 commission to take action to establish such public service
187 district or districts as may be necessary to control, reduce or
188 abate the pollution, and when so ordered the county
189 commission members must act to establish such a county-
190 wide public service district or districts.

CHAPTER 188

(S. B. 481—By Mr. Williams)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article five-a, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the procedure concerning water pollution control permits; transfer of permits; prior permits; extension of permit when reissuance application pending; discretionary issuance of permits upon reasonable terms and conditions; permits to have a fixed term; and denial of permits.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5A. WATER POLLUTION CONTROL ACT.**§20-5A-7. Procedure concerning permits required under article; transfer of permits; prior permits.**

1 (a) The chief or his duly authorized representatives
2 shall conduct such investigation as is deemed necessary
3 and proper in order to determine whether any such ap-
4 plication should be granted or denied. In making such
5 investigation and determination as to any application per-
6 taining solely to sewage, the chief shall consult with the
7 director of the division of sanitary engineering of the
8 state department of health, and in making such investi-
9 gation and determination as to any application pertaining
10 to any activity specified in subdivision (7), subsection
11 (b), section five of this article, the chief shall consult
12 with the director of the state geological and economic
13 survey and the deputy director of the oil and gas division
14 of the department of mines, and all such persons shall
15 cooperate with the chief and assist him in carrying out the
16 duties and responsibilities imposed upon him under the
17 provisions of this article and the rules and regulations of
18 the board; such cooperation shall include, but not be
19 limited to, a written recommendation approving or dis-
20 approving the granting of the permit and the reason or
21 reasons for such recommendation, which recommendation
22 and the reason or reasons therefor shall be submitted to
23 the chief within the specified time period prescribed by
24 rules and regulations of the board.

25 (b) The department's permit shall be issued upon such
26 reasonable terms and conditions as the chief may direct
27 if (1) the application, together with all supporting in-
28 formation and data and other evidence, establishes that
29 any and all discharges or releases, escapes, deposits and
30 disposition of treated or untreated sewage, industrial
31 wastes or other wastes, or the effluent therefrom, result-
32 ing from the activity or activities for which the applica-
33 tion for a permit was made will not cause pollution
34 of the waters of this state or violate any effluent limita-
35 tions or any rules and regulations of the board: *Provided,*
36 That the chief may issue a permit whenever in his judg-

37 ment the water quality standards of the state may be
38 best protected by the institution of a program of phased
39 pollution abatement which under the terms of the permit
40 may temporarily allow a limited degree of pollution of
41 the waters of the state; and (2) in cases wherein it is
42 required, such applicant shall include the name and ad-
43 dress of the responsible agent as set forth in section
44 eight-b of this article.

45 (c) Each permit issued under this article shall have a
46 fixed term not to exceed five years: *Provided*, That when
47 the applicant, in accordance with agency rules, has
48 made a timely and complete application for permit re-
49 issuance, the permit term may be extended by the chief,
50 at his discretion, for a period not to exceed eighteen
51 months beyond its expiration date. Upon expiration of a
52 permit, a new permit may be issued by the chief upon
53 condition that the discharges or releases, escapes, deposits
54 and disposition thereunder meet or will meet all applica-
55 ble state and federal water quality standards, effluent
56 limitations and all other requirements of this article.

57 (d) An application for a permit incident to remedial
58 action in accordance with the provisions of section eleven
59 of this article shall be processed and decided as any other
60 application for a permit required under the provisions of
61 section five of this article.

62 (e) A complete application for any permit shall be
63 acted upon by the chief, and the department's permit de-
64 livered or mailed, or a copy of any order of the chief
65 denying any such application delivered or mailed to the
66 applicant by the chief, within a reasonable time period as
67 prescribed by rules and regulations of the board.

68 (f) When it is established that an application for a
69 permit should be denied, the chief shall make and enter
70 an order to that effect, which order shall specify the
71 reasons for such denial, and shall cause a copy of such
72 order to be served on the applicant by registered or cer-

73 tified mail. The chief shall also cause a notice to be served
74 with a copy of such order, which notice shall advise the
75 applicant of his right to appeal to the board by filing a
76 notice of appeal on the form prescribed by the board for
77 such purpose, with the board, in accordance with the
78 provisions of section fifteen of this article, within thirty
79 days after the date upon which the applicant received the
80 copy of such order. However, an applicant may alter the
81 plans and specifications for the proposed activity and
82 submit a new application for any such permit, in which
83 event the procedure hereinbefore outlined with respect
84 to an original application shall apply.

85 (g) Upon the sale of property which includes an activ-
86 ity for which the department's permit was granted, the
87 permit shall be transferable to the new owner, but the
88 transfer shall not become effective until the provisions of
89 section eight-b of this article are fully complied with, and
90 until such transfer is made in the records of the division
91 of water resources.

92 (h) All permits for the discharge of sewage, industrial
93 wastes or other wastes into any waters of the state issued
94 by the water resources board prior to July one, one
95 thousand nine hundred sixty-four, and all permits here-
96 tofore issued under the provisions of this article, and
97 which have not been heretofore revoked, are subject to
98 review, revocation, suspension, modification and reissu-
99 ance in accordance with the terms and conditions of this
100 article and the rules and regulations promulgated there-
101 under. Any order of revocation, suspension or modifica-
102 tion made and entered pursuant to this subsection shall
103 be upon at least twenty days' notice and shall specify the
104 reasons for such revocation, suspension or modification
105 and the chief shall cause a copy of such order, together
106 with a copy of a notice of the right to appeal to the board
107 as provided for in section eight of this article, to be served
108 upon the permit holder as specified in said section eight.

CHAPTER 189

(H. B. 1502—By Mr. Speaker, Mr. See, by request of the Executive)

[Passed February 11, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article one, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to changing and redefining the term workmen's, as used in the descriptions of the various offices, boards and funds set out in the law, to mean workers'.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GENERAL ADMINISTRATIVE PROVISIONS.

§23-1-1. Workers' compensation commissioner; appointment; term; oath; bond; conflict of interest; compensation; official seal; legal services; references to director deemed to mean commissioner; references to workmen's compensation deemed to mean workers' compensation.

1 There shall be a state workers' compensation com-
2 missioner who shall be appointed by the governor by and
3 with the advice and consent of the Senate and who shall
4 serve at the will and pleasure of the governor during the
5 term for which the governor was elected and until the
6 commissioner's successor has been appointed and qualified.
7 An appointment may be made to fill a vacancy or otherwise
8 when the Senate is not in session, but shall be acted upon
9 at the next session thereof. The person so appointed shall
10 take the oath or affirmation prescribed by section five, article
11 IV of the constitution, and such oath shall be certified by the
12 person who administers the same and shall be filed in the office
13 of the secretary of state. The person so appointed shall
14 give bond in the penalty of twenty-five thousand dollars
15 conditioned for the faithful performance of the duties of
16 this office, which bond shall be approved by the attorney

17 general as to form, and by the governor as to sufficiency.
18 The surety of such bond may be a bonding or surety company,
19 in which case the premiums shall be paid out of the ap-
20 propriation made for the administration of this chapter.
21 The commissioner shall hold no position of trust or profit,
22 or engage in any occupation or business, interfering or
23 inconsistent with the duties as such commissioner. Notwith-
24 standing the provisions of section two-a, article seven, chap-
25 ter six of the code of West Virginia, one thousand nine
26 hundred thirty-one, as amended, the commissioner shall
27 receive an annual salary of twenty thousand dollars, pay-
28 able out of the workers' compensation fund. The com-
29 missioner shall have an official seal for the authentication
30 of orders and proceedings, upon which seal shall be en-
31 graved the words "West Virginia Compensation Commis-
32 sioner" and such other design as the commissioner may
33 prescribe. The courts in this state shall take judicial notice
34 of the seal of the commissioner and in all cases copies of
35 orders, proceedings or records in the office of the West Virginia
36 compensation commissioner shall be equal to the original in
37 evidence.

38 The attorney general shall perform all legal services re-
39 quired by the commissioner under the provisions of this
40 chapter: *Provided*, That in any case in which an application
41 for review is prosecuted from any final decision of the
42 workers' compensation appeal board to the supreme court of
43 appeals, as provided by section four, article five of this
44 chapter, or in any court proceeding before the workers'
45 compensation appeal board, in which such representation
46 shall appear to the commissioner to be desirable, the commis-
47 sioner may designate a regular employee of this office, qualified
48 to practice before such court to represent the commissioner up-
49 on such appeal or proceeding, and in no case shall the person
50 so appearing for the commissioner before the court receive re-
51 munerations therefor other than such person's regular salary.

52 Whenever in this chapter or elsewhere in law reference
53 is made to "state director of workmen's compensation" or
54 "compensation commissioner" such reference shall henceforth

55 be construed and understood to mean "state workers' com-
56 pensation commissioner."

57 Whenever in this chapter or elsewhere in law reference is
58 made to the term "workmen's compensation" or reference is
59 made to the "workmen's compensation advisory board," "work-
60 men's compensation fund," "disabled workmen's relief fund"
61 and "workmen's compensation appeal board," such references
62 to and the titles of each such board or fund shall be hence-
63 forth construed to mean, and shall be defined to mean, re-
64 spectively, "workers' compensation," "workers' compensation
65 advisory board," "workers' compensation fund," "disabled
66 workers' relief fund" and "workers' compensation appeal
67 board."

CHAPTER 190

(S. B. 313—By Mr. McGraw, Mr. President)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eighteen, article one, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to workers' compensation advisory board.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GENERAL ADMINISTRATIVE PROVISIONS.

§23-1-18. **Workers' compensation advisory board created; membership; appointment; terms; meetings; duties; annual reports.**

1 There is hereby created an advisory board to the com-
2 missioner of the workers' compensation fund to be
3 known as "the workers' compensation advisory board."

4 The workers' compensation advisory board consists of

5 ten members. The workers' compensation commissioner is
6 an ex officio member of the board whose term as such
7 member continues for that period in which the commis-
8 sioner holds that office. The other nine members of the
9 board shall be appointed by the governor with three mem-
10 bers representing employees subject to this chapter, three
11 members representing employers subject to this chapter
12 and three members representing providers of medical
13 services to such employees for which such providers are
14 compensated under the provisions of this chapter. The
15 term of each member except the workers' compensa-
16 tion commissioner shall be three years: *Provided*, That of
17 the persons originally appointed, three members, includ-
18 ing one member of each of the three representative
19 groups, shall be designated to serve for terms of one
20 year each, three members, including one member of each
21 of the three representative groups, shall be designated to
22 serve for terms of two years each and three members,
23 including one member of each of the three representative
24 groups, shall be designated to serve for a term of three
25 years each. The terms of all the initially appointed mem-
26 bers of the board shall begin on the first day of July,
27 one thousand nine hundred eighty-three. Upon the ex-
28 piration of each of such initial appointments the term of
29 each new appointee shall be three years, but any person
30 appointed to fill a vacancy occurring prior to the expira-
31 tion of the term for which his predecessor was appointed
32 shall be appointed only for the remainder of such term.
33 Each member shall serve until the appointment and
34 qualification of his successor. Members shall be eligible for
35 reappointment.

36 The workers' compensation commissioner shall serve
37 as chairman of the board. The other nine members shall
38 select one of their number to serve as vice chairman of
39 the board and to preside in the absence of the commis-
40 sioner. Meetings may be held at any time at the call of
41 the commissioner. The commissioner shall call a meeting
42 whenever a majority of the other members of the board
43 requests the commissioner to do so. At least one meeting
44 shall be held annually.

45 The purpose of the board and the duty of its members
46 are to advise the workers' compensation commissioner
47 on matters pertinent to the administration of the work-
48 ers' compensation fund. The board shall consider any
49 matter brought before it by the commissioner or any
50 appointed member and may consider any matter referred
51 to it by a person not a member of the board. At the con-
52 clusion of its consideration of any proposal the board
53 shall make its recommendation to the commissioner. The
54 commissioner is not bound by any recommendation of the
55 board. The board also may formulate general or long-
56 range plans for improvements in the administration of
57 the fund for the consideration of the commissioner.

58 By the second Wednesday of January of each year the
59 board shall prepare and deliver to the workers' com-
60 pensation commissioner and to the Legislature a report
61 of all the matters it considered, recommendations it made
62 and plans it formulated during the preceding calendar
63 year. The report shall include any recommendations it
64 may have for changes in the law which would be neces-
65 sary to implement any of its administrative recommenda-
66 tions.

CHAPTER 191

(Com. Sub. for H. B. 1313—By Mr. Moore)

[Passed March 12, 1983; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four and sixteen, article four, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to funeral expenses; commissioner's jurisdiction over case continuous; modification of finding or order; time limitation on awards; reimbursement of claimant for expenses; and requirements for reimbursement of medical examination costs.

Be it enacted by the Legislature of West Virginia:

That sections four and sixteen, article four, chapter twenty-three

of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

§23-4-4. Funeral expenses.

§23-4-16. Commissioner's jurisdiction over case continuous; modification of finding or order; time limitation on awards; reimbursement of claimant for expenses.

§23-4-4. Funeral expenses.

1 In case the personal injury causes death, reasonable funeral
2 expenses, not to exceed two thousand five hundred dollars,
3 shall be paid from the fund, payment to be made to the per-
4 sons who have furnished the services and supplies, or to the
5 persons who have advanced payment for same, as the com-
6 missioner may deem proper, in addition to such award as may
7 be made to the employee's dependents.

**§23-4-16. Commissioner's jurisdiction over case continuous; modi-
fication of finding or order; time limitation on awards;
reimbursement of claimant for expenses.**

1 The power and jurisdiction of the commissioner over each
2 case shall be continuing and he may from time to time, after
3 due notice to the employer, make such modifications or changes
4 with respect to former findings or orders as may be justified:
5 *Provided*, That no further award may be made in fatal cases
6 arising after March seventh, one thousand nine hundred twenty-
7 nine, except within two years after the death of the employee,
8 or in case of nonfatal injuries, on and after March seventh,
9 one thousand nine hundred twenty-nine, except within five
10 years after payments for temporary disability shall have ceased
11 or not more than two times within five years after the com-
12 missioner shall have made the last payment in the original
13 award or any subsequent increase thereto in any permanent
14 disability case: *Provided, however*, That no such modification
15 or change may be made in any case in which no award has
16 been made, except within five years after the date of injury:
17 *Provided further*, That a further award may be made for
18 medical benefits only at any time. In any case in which an
19 injured employee shall make application for a further ad-
20 justment of his claim, if such application be in writing and

21 filed within the applicable time limit as prescribed herein, the
22 commissioner shall pass upon and determine the merits of
23 such application within thirty days after the filing thereof.

24 If such application is based on a report of any medical
25 examination made of the claimant and submitted by the claim-
26 ant to the commissioner in support of his application, and the
27 claim is opened for further consideration and additional award
28 is later made, the claimant shall be reimbursed for the ex-
29 penses of such examination. Such reimbursement shall be
30 made by the commissioner to the claimant, in addition to all
31 other benefits awarded, upon due proof of the amount thereof
32 being furnished the commissioner by the claimant, but shall
33 in no case exceed the sum of one hundred dollars: *Provided,*
34 That upon a showing by the claimant or the examining phy-
35 sician of good cause why a medical examination cost in excess
36 of one hundred dollars, the commissioner may reimburse the
37 claimant for the actual cost thereof, but not in excess of two
38 hundred fifty dollars.

CHAPTER 192

(Com. Sub. for H. B. 1201—By Mr. Speaker, Mr. See and Mr. Albright)

[Passed February 7, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article four, chapter twenty-three 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-c, all relating to workmen's compensation; providing for the rejection of workmen's compensation claims resulting from a self-inflicted injury or intoxication; eliminating from workmen's compensation claims the defenses of willful misconduct, willful disobedience, willful self-exposure and failure to use protective or safety appliances; authorizing a civil suit in addition to workmen's compensation benefits when the injury or death results from a deliberate intention to produce such injury or death; setting forth certain legislative findings as to the purposes of

the West Virginia workmen's compensation system and the immunity from suit provisions provided as a part of such system; specifying circumstances under which the immunity from suit shall be abrogated; requiring a court hearing in action brought under this chapter to dismiss the action unless there is substantial evidence of the existence of the facts required by this section; disallowing punitive or exemplary damages in suits other than those based upon an injury caused by an employer who acted with a consciously, subjectively and deliberately formed intention to produce the specific result of injury or death to an employee; providing that the provisions of this section are severable; establishing an employers' excess liability fund, which is separate from the workmen's compensation fund and participation in which is optional for employers; providing for payment of damages from the fund; the manner of settlement of claims against the fund in certain cases; providing for the funding of the fund; and providing for the administration of the fund and clarifying the rule-making and other powers of the workmen's compensation commissioner with respect to said fund.

Be it enacted by the Legislature of West Virginia:

That section two, article four, chapter twenty-three 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-c, all to read as follows:

Article

4. Disability and Death Benefits.

4C. Employers' Excess Liability Fund.

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

§23-4-2. Disbursement where injury is self-inflicted or intentionally caused by employer; legislative declarations and findings; "deliberate intention" defined.

- 1 (a) Notwithstanding anything hereinbefore or hereinafter
- 2 contained, no employee or dependent of any employee shall be
- 3 entitled to receive any sum from the workmen's compensation
- 4 fund, or to direct compensation from any employer making the
- 5 election and receiving the permission mentioned in section
- 6 nine, article two of this chapter, or otherwise under the pro-

7 visions of this chapter, on account of any personal injury to
8 or death to any employee caused by a self-inflicted injury or
9 the intoxication of such employee. For the purpose of this
10 chapter, the commissioner may cooperate with the state de-
11 partment of mines and the state department of labor in pro-
12 moting general safety programs and in formulating rules and
13 regulations to govern hazardous employments.

14 (b) If injury or death result to any employee from the
15 deliberate intention of his employer to produce such injury
16 or death, the employee, the widow, widower, child or dependent
17 of the employee shall have the privilege to take under this
18 chapter, and shall also have cause of action against the em-
19 ployer, as if this chapter had not been enacted, for any excess
20 of damages over the amount received or receivable under this
21 chapter.

22 (c) (1) It is declared that enactment of this chapter and the
23 establishment of the workmen's compensation system in this
24 chapter was and is intended to remove from the common law
25 tort system all disputes between or among employers and em-
26 ployees regarding the compensation to be received for injury
27 or death to an employee except as herein expressly provided,
28 and to establish a system which compensates even though the
29 injury or death of an employee may be caused by his own fault
30 or the fault of a co-employee; that the immunity established
31 in sections six and six-a, article two of this chapter, is an
32 essential aspect of this workmen's compensation system; that
33 the intent of the Legislature in providing immunity from com-
34 mon law suit was and is to protect those so immunized from
35 litigation outside the workmen's compensation system except
36 as herein expressly provided; that, in enacting the immunity
37 provisions of this chapter, the Legislature intended to create
38 a legislative standard for loss of that immunity of more nar-
39 row application and containing more specific mandatory ele-
40 ments than the common law tort system concept and standard
41 of willful, wanton and reckless misconduct; and that it was
42 and is the legislative intent to promote prompt judicial reso-
43 lution of the question of whether a suit prosecuted under the
44 asserted authority of this section is or is not prohibited by the
45 immunity granted under this chapter.

46 (2) The immunity from suit provided under this section and
47 under section six-a, article two of this chapter, may be lost only
48 if the employer or person against whom liability is asserted
49 acted with "deliberate intention." This requirement may be
50 satisfied only if:

51 (i) It is proved that such employer or person against whom
52 liability is asserted acted with a consciously, subjectively and
53 deliberately formed intention to produce the specific result of
54 injury or death to an employee. This standard requires a show-
55 ing of an actual, specific intent and may not be satisfied by
56 allegation or proof of (A) conduct which produces a result
57 that was not specifically intended; (B) conduct which con-
58 stitutes negligence, no matter how gross or aggravated; or
59 (C) willful, wanton or reckless misconduct; or

60 (ii) The trier of fact determines, either through specific
61 findings of fact made by the court in a trial without a jury, or
62 through special interrogatories to the jury in a jury trial, that
63 all of the following facts are proven:

64 (A) That a specific unsafe working condition existed in the
65 workplace which presented a high degree of risk and a strong
66 probability of serious injury or death;

67 (B) That the employer had a subjective realization and an
68 appreciation of the existence of such specific unsafe working
69 condition and of the high degree of risk and the strong prob-
70 ability of serious injury or death presented by such specific
71 unsafe working condition;

72 (C) That such specific unsafe working condition was a vio-
73 lation of a state or federal safety statute, rule or regulation,
74 whether cited or not, or of a commonly accepted and well-
75 known safety standard within the industry or business of such
76 employer, which statute, rule, regulation or standard was
77 specifically applicable to the particular work and working con-
78 dition involved, as contrasted with a statute, rule, regulation
79 or standard generally requiring safe workplaces, equipment or
80 working conditions;

81 (D) That notwithstanding the existence of the facts set forth
82 in subparagraphs (A) through (C) hereof, such employer never-

83 theless thereafter exposed an employee to such specific unsafe
84 working condition intentionally; and

85 (E) That such employee so exposed suffered serious injury
86 or death as a direct and proximate result of such specific un-
87 safe working condition.

88 (iii) In cases alleging liability under the provisions of the
89 preceding paragraph (ii):

90 (A) No punitive or exemplary damages shall be awarded to
91 the employee or other plaintiff;

92 (B) Notwithstanding any other provision of law or rule to
93 the contrary, and consistent with the legislative findings of
94 intent to promote prompt judicial resolution of issues of im-
95 munity from litigation under this chapter, the court shall dis-
96 miss the action upon motion for summary judgment if it shall
97 find, pursuant to Rule 56 of the Rules of Civil Procedure that
98 one or more of the facts required to be proved by the provi-
99 sions of subparagraphs (A) through (E) of the preceding para-
100 graph (ii) do not exist, and the court shall dismiss the action
101 upon a timely motion for a directed verdict against the plain-
102 tiff if after considering all the evidence and every inference
103 legitimately and reasonably raised thereby most favorably to
104 the plaintiff, the court shall determine that there is not suf-
105 ficient evidence to find each and every one of the facts re-
106 quired to be proven by the provisions of subparagraph (A)
107 through (E) of the preceding paragraph (ii); and

108 (C) The provisions of this paragraph and of each sub-
109 paragraph thereof shall be severable from the provisions of each
110 other subparagraph, subsection, section, article or chapter of
111 this code so that if any provision of a subparagraph of this
112 paragraph be held void, the remaining provisions of this act
113 and this code shall remain valid.

114 (d) The reenactment of this section in the regular session
115 of the Legislature during the year one thousand nine hundred
116 eighty-three, shall not in any way affect the right of any per-
117 son to bring an action with respect to or upon any cause of
118 action which arose or accrued prior to the effective date of
119 such reenactment.

ARTICLE 4C. EMPLOYERS' EXCESS LIABILITY FUND.

§23-4C-1. Purpose.

§23-4C-2. Employers' excess liability fund established.

§23-4C-3. Payment of excess damages from fund.

§23-4C-4. Employers' excess liability fund; how funded.

§23-4C-5. Administration.

§23-4C-1. Purpose.

1 The purpose of this article is to establish a fund to provide
2 insurance coverage for employers subject to this chapter who
3 may be subjected to liability under section two, article four
4 of this chapter, for any excess of damages over the amount re-
5 ceived or receivable under this chapter.

§23-4C-2. Employers' excess liability fund established.

1 To provide insurance coverage for employers subject to this
2 chapter who may be subjected to liability for any excess of
3 damages over the amount received or receivable under this
4 chapter, there is hereby established a fund to be known as
5 the employers' excess liability fund, which fund shall be sep-
6 arate from the workmen's compensation fund. The employers'
7 excess liability fund shall consist of premiums paid thereto by
8 employers who may voluntarily elect to subscribe to the fund
9 for coverage of potential liability to any person who may be
10 entitled to any excess of damages over the amount received
11 or receivable under this chapter.

§23-4C-3. Payment of excess damages from fund.

1 Upon receipt of a final order of a court determining the
2 liability under section two, article four of this chapter, of
3 a subscribing employer and the amount of the excess of dam-
4 ages over the amount received or receivable under this chap-
5 ter, the commissioner shall make disbursements from the em-
6 ployers' excess liability fund in such amounts and to such
7 persons as such final order may direct. In the event of a pro-
8 posed settlement of a disputed claim against a subscribing em-
9 ployer, the commissioner, upon approving the settlement upon
10 petition by the subscribing employer, shall make disbursements
11 from the employers' excess liability fund in such amounts and
12 to such persons as the approved settlement may specify. In
13 the event of the settlement of any disputed claim wherein one

14 or more of the persons entitled to the proceeds to be paid
15 pursuant to such settlement is under a legal disability by reason
16 of age, mental incapacity or other reason, such settlement, if
17 required by other provisions of law to be approved by a cir-
18 cuit court, shall be approved by the circuit court of the county
19 wherein such person under disability is a resident or wherein
20 a civil action could be brought and maintained upon such
21 claim, in addition to being approved by the commissioner as
22 required by this section. The commissioner shall by legislative
23 rule establish criteria and procedures for the settlement of all
24 disputed claims. In order to expeditiously establish such cri-
25 teria and procedures, the commissioner is hereby given author-
26 ity to promulgate such emergency rule or rules as may be
27 necessary in accordance with the provisions of section fifteen,
28 article three, chapter twenty-nine-a of this code. The provisions
29 of said section fifteen, article three, chapter twenty-nine-a
30 notwithstanding, such emergency rule, whether procedural,
31 interpretive or legislative, shall be effective upon the filing
32 thereof in the state register and shall have an effective period
33 of not to exceed eighteen months, unless any such rule or rules
34 be altered or amended or such period of time shortened or
35 lengthened by subsequent act of the Legislature. No action shall
36 lie for de novo or other review of such rule to contest or
37 question the existence of circumstances justifying the promul-
38 gation of an emergency rule nor to challenge the validity of
39 such rule because of its classification as an emergency rule.

§23-4C-4. Employers' excess liability fund; how funded.

1 For the purpose of creating the employers' excess liability
2 fund, each employer who shall elect to subscribe to the fund
3 shall pay premiums based upon and being such a percentage
4 of the payroll of the employer as the commissioner may deter-
5 mine. It shall be the duty of the commissioner to fix and
6 maintain the lowest possible rates or premiums consistent with
7 the maintenance of a solvent fund. The premium rates shall
8 be adjusted annually, or more often as may in the opinion of
9 the commissioner be necessary.

10 The commissioner shall initially classify subscribers into
11 groups or classes according to the nature of the unusual hazards
12 incident to the business thereof as contemplated by section four,

13 article two of this chapter, and assign premium rates thereto
14 The fixing, maintaining and adjusting of premium rates and the
15 initial classification of subscribers into groups or classes pur-
16 suant to this section shall be deemed to be findings or deter-
17 minations of fact and not a legislative rule. In addition, the
18 commissioner shall by legislative rule prescribe procedures for
19 subscription, payroll reporting, premium payment, termination
20 of subscription, reinstatement, reclassification of groups, classes
21 or subscribers, the increase or decrease of premiums based
22 upon incidence of liability and amounts awarded, and other
23 matters pertinent to the subscribers' continuing participation in
24 the employers' excess liability fund.

§23-4C-5. Administration.

1 The employers' excess liability fund shall be administered
2 by the state workmen's compensation commissioner, who shall
3 employ such employees as may be necessary to discharge his
4 duties and responsibilities under this article. All payments of
5 salaries and expenses of the employees and all expenses
6 peculiar to the administration of this article shall be made by
7 the state treasurer from the employers' excess liability fund
8 upon requisitions signed by the commissioner.

CHAPTER 193

(H. B. 1654—By Mr. Love and Mr. Cipriani)

[Passed March 1, 1983: in effect from passage. Approved by the Governor.]

AN ACT to repeal chapter one hundred fifty-five, acts of the Legislature, regular session, one thousand nine hundred sixty-nine, as last amended by chapter one hundred forty-three, acts of the Legislature, regular session, one thousand nine hundred seventy-three, relating to the creation and maintenance of a children's shelter and certain funds in Hancock County; and to provide for the transfer of any unexpended balance remaining in the funds established by said chapter to the Hancock County sheltered workshop.

Be it enacted by the Legislature of West Virginia:

HANCOCK COUNTY CHILDREN'S SHELTER.

§1. Repeal of act creating Hancock county children's shelter and funds; transfer of funds.

1 Chapter one hundred fifty-five, acts of the Legislature,
2 regular session, one thousand nine hundred sixty-nine, as
3 last amended by chapter one hundred forty-three, acts of the
4 Legislature, regular session, one thousand nine hundred seven-
5 ty-three, is hereby repealed and any unexpended balance
6 remaining in any of the funds or accounts established under
7 the provisions of said chapter are hereby transferred to the
8 Hancock County sheltered workshop.

CHAPTER 194

(S. B. 569—By Mr. Nelson and Mr. Heck)

[Passed March 5, 1983; in effect July 1, 1983. Approved by the Governor.]

AN ACT to amend and reenact chapter twenty-six, acts of the Legislature, regular session, one thousand nine hundred twenty-five (municipal charters), as amended by chapter one hundred twenty-two, acts of the Legislature, regular session, one thousand nine hundred thirty-three; by chapter one hundred thirty-two, acts of the Legislature, regular session, one thousand nine hundred seventy-two; and by chapter one hundred forty-eight, acts of the Legislature, regular session, one thousand nine hundred seventy-four, all relating to the Greater Huntington park and recreation district; definitions; park district generally, composition, terms, conflicts; compensation; expenses; vacancies; oaths; elections; duties; bonds; meetings; commission a public corporate body; perpetual existence; seal; powers; comprehensive plan; financing; providing for additional levies on certain governing authorities; law enforcement; title to property.

Be it enacted by the Legislature of West Virginia:

That chapter twenty-six, acts of the Legislature, regular session, one thousand nine hundred twenty-five (municipal charters), as

amended by chapter one hundred twenty-two, acts of the Legislature, regular session, one thousand nine hundred thirty-three, by chapter one hundred thirty-two, acts of the Legislature, regular session, one thousand nine hundred seventy-two; and by chapter one hundred forty-eight, acts of the Legislature, regular session, one thousand nine hundred seventy-four, be amended and reenacted, all to read as follows:

GREATER HUNTINGTON PARK AND RECREATION DISTRICT.

- §1. Definitions.
- §2. Greater Huntington park and recreation district; composition; terms of office; political affiliation; no commissioner may hold another elected public office; compensation; expenses; no commissioner may be personally interested in contracts or property controlled by board.
- §3. Vacancies in office of park commissioners.
- §4. Oath of commissioners; election of officers; election of other officers; duties of officers; bond of secretary; secretary pro tempore.
- §5. Meetings; quorum; parliamentary authority; office.
- §6. Park district a public corporate body; perpetual existence; seal; powers.
- §6a. Comprehensive plan.
- §7. Financing and financial powers.
- §8. Law enforcement.
- §9. Title to property.

§1. Definitions.

- 1 Unless the context clearly indicates otherwise:
- 2 "Commissioners" means the members of the Greater
- 3 Huntington park and recreation district as defined
- 4 hereinafter.
- 5 "Control" means the right and authority to manage, direct,
- 6 order and otherwise exercise dominion over.
- 7 "Greater Huntington park and recreation district" means
- 8 both the geographical area within the boundaries of the
- 9 county of Cabell and Westmoreland tax district in the county
- 10 of Wayne established on the effective date of this act and the
- 11 public corporate entity created herein.
- 12 "Park system" means any and all indoor and outdoor park,
- 13 recreation, and conservation areas and facilities which are or
- 14 in the future may be owned, operated or leased in the park
- 15 district. Said areas and facilities may include, by way of
- 16 illustration and not as a limitation: Regional, community, and
- 17 neighborhood parks and playgrounds; athletic facilities and
- 18 play fields such as sports centers, stadiums, arenas,
- 19 gymnasiums and physical fitness centers; aquatic facilities

20 such as swimming pools, lakes, ponds, water parks, water
21 amusements, beaches, waterfronts, boat docks, boat houses,
22 and boat launching ramps; court areas for net games such as
23 basketball, volleyball, badminton, tennis, handball,
24 racquetball, squash and platform tennis; picnic facilities such
25 as groves, shelters and lodges; golf courses, skating rinks;
26 stables and riding paths; gardens, botanic gardens,
27 arboretums, nature centers, zoos, aviaries and environmental
28 interpretive centers; museums, historic landmarks and
29 historic districts; snack bars, restaurants, lounges and gift
30 shops; camps and overnight lodges; theaters; performing arts
31 and crafts centers; recreation centers; mechanical and
32 electronic games centers; dance halls; amusements;
33 parkways and boulevards; and cemeteries, and other public
34 parks and recreational areas and facilities.

35 "Public office" means any elective office, whether federal,
36 state or municipal, where the office holder is elected by the
37 public at large and is obligated to perform duties as an office
38 holder.

§2. Greater Huntington park and recreation district; composition; terms of office; political affiliation; no commissioner may hold another elected public office; compensation; expenses; no commissioner may be personally interested in contracts or property controlled by board.

1 (a) The purpose of the board of park commissioners of the
2 city of Huntington as heretofore created and established by
3 the acts hereby amended and reenacted, shall be to establish,
4 own, develop and operate a park system for the benefit,
5 health, safety, welfare, pleasure and relaxation of the
6 inhabitants of the Greater Huntington park and recreation
7 district and shall hereafter be known as the Greater
8 Huntington park and recreation district.

9 (b) The park district shall be governed by ten
10 commissioners; nine of whom shall be elected from Cabell
11 County but no more than two of whom shall be elected from
12 any one magisterial district, and one of whom shall be elected
13 from Westmoreland magisterial district in the county of
14 Wayne. The commissioners shall be elected pursuant to
15 paragraph one of subsection (b) of this section.

16 (1) Commissioners of the park district shall be nominated
17 and elected in the general election for state officers on the
18 first Tuesday after the first Monday in November and in the
19 manner prescribed by law for the nomination and election of
20 district officers, except as provided in subsection (b).

21 At the general election in the year one thousand nine
22 hundred eighty-four, there shall be elected six
23 commissioners. One commissioner shall be elected from the
24 Westmoreland magisterial district in the county of Wayne.
25 Five commissioners shall be elected from the county of
26 Cabell. In Westmoreland district of Cabell County the
27 person receiving the highest number of votes shall be elected
28 for a term of six years. In Cabell County, the three persons
29 receiving the highest number of votes shall be elected for a
30 term of six years, the person receiving the next highest
31 number of votes shall be elected for a term of four years, and
32 the remaining elected commissioner shall be elected for a
33 term of two years.

34 Beginning at the general election in the year one thousand
35 nine hundred eighty-six and every sixth year thereafter, there
36 shall be elected three commissioners who shall be elected for
37 a term of six years.

38 Beginning at the general election in the year one thousand
39 nine hundred eighty-eight and every sixth year thereafter,
40 there shall be elected three commissioners who shall be
41 elected for a term of six years.

42 Beginning at the general election in the year one thousand
43 nine hundred ninety, and every sixth year thereafter, there
44 shall be elected four commissioners who shall be elected for a
45 term of six years.

46 (2) The commissioners in office upon the effective date of
47 this act under the authority of the acts hereby amended and
48 reenacted, shall continue in office for the term for which they
49 were elected.

50 (c) No elected commissioner shall hold any other elected
51 or appointed public office.

52 (d) Commissioners shall receive no compensation for their
53 services as commissioners, but they shall be entitled to
54 reimbursement for all reasonable and necessary expenses
55 actually incurred in the performance of their duties as
56 commissioners.

57 (e) Commissioners shall have no personal financial
58 interest, directly or indirectly, in any contract entered into by
59 the park district, or hold any remunerative position in
60 connection with the establishment, construction,
61 improvement, extension, development, maintenance or
62 operation of any of the property under their control as
63 commissioners.

§3. Vacancies in office of park commissioners.

1 Any vacancy which may occur in the office of an elected
2 commissioner, by death, resignation, refusal to serve, or
3 otherwise, shall be filled by the park district at its first regular
4 meeting thereafter, by appointment of a suitable person, and
5 the person so appointed shall hold office until the next
6 election for commissioners, when a person shall be elected
7 for the remainder of the unexpired term of commissioner.

§4. Oath of commissioners; election of officers; election of other officers; duties of officers; bond of secretary; secretary pro tempore.

1 (a) After appointment or election, and before entering
2 upon his duties as commissioner, each new commissioner
3 shall take the following oath as administered by the clerk of
4 the city of Huntington:

5 "Ido solemnly swear that I will
6 faithfully perform the duties as a member of the Greater
7 Huntington park and recreation district during the term for
8 which I was elected, to the best of my ability according to
9 law."

10 (b) At the park district's first meeting and every year
11 thereafter, it shall elect one of its members as president, and
12 another member as vice-president. The park district shall
13 elect a secretary who need not be a member of the park
14 district, as well as elect a member of the park district who
15 shall serve as treasurer. The park district shall have the power
16 to appoint from among its members such other officers as it
17 deems necessary and to delegate such duties and authority to
18 these other officers as is consistent with carrying out the
19 purposes of this charter. Any officer may be removed from
20 office, upon adequate notice and hearing, although not
21 relieved of his duties as a commissioner, by a vote of the
22 majority of commissioners present and voting.

23 (c) The officers of the park district shall have the following
24 specified duties and any duty which is reasonably inferred
25 therefrom and which is consistent with carrying out the
26 purposes of this charter.

27 (1) President—The president shall perform such duties as
28 ordinarily devolve upon the presiding officer of a deliberative
29 body, except that he shall have a vote upon each and every
30 question, as every other commissioner, but he shall have only
31 one vote on each question. Additionally, the president shall:
32 (a) Act as chief administrative officer and legal representative
33 of the park district; (b) represent and speak for the park
34 district to other organizations and to the public; (c) appoint
35 committees and delegate duties; (d) sign letters or documents
36 necessary to carry out the will of the park district.

37 (2) Vice-President—The vice-president shall assume the
38 duties of the president in case of the absence or incapacity of
39 the president and shall become president on the death,
40 resignation or permanent incapacity of the president as
41 determined by the park district.

42 (3) Secretary—The secretary shall be the chief recording
43 and corresponding officer and the custodian of the records of
44 the park district. The duties of the secretary shall be to: (a)
45 Take careful and authentic notes of the proceedings of the
46 meetings as a basis for preparing the minutes; (b) prepare and
47 certify the correctness of the minutes and enter them in the
48 official minute book; (c) read or circulate the minutes to the
49 commissioners for correction and approval; (d) enter any
50 corrections approved by the commissioners in the minute
51 book and initial them; (e) record and attest by his signature
52 the approved minutes as the official minutes of the park
53 district, with the date of approval; (f) provide the presiding
54 officer of the assembly with the exact wording of a pending
55 motion or of one previously acted on; (g) prepare a list of
56 members and call the roll when directed by the presiding
57 officer; (h) read all papers, documents, or communications as
58 directed by the presiding officer; (i) bring to each meeting the
59 minute book, a copy of ordinances, rules, and policies, a list of
60 the members, a list of standing and special committees, and a
61 copy of the parliamentary authority adopted by the
62 organization; (j) search the minutes for information requested
63 by officers or members; (k) assist the presiding officer before
64 each meeting in preparing a detailed agenda; (l) preserve all

65 records, reports, and official documents of the park district
66 except those specifically assigned to the custody of others as
67 well as preserve all papers containing evidence of title,
68 contracts and obligations; (m) prepare and send required
69 notices of meetings and proposals; (n) provide the chairman
70 of each special committee with a list of his committee
71 members, a copy of the motion referring the subject to the
72 committee, and instructions and other documents that may
73 be useful; (o) provide the chairman of each standing
74 committee with a copy of all proposals referred to it,
75 instructions, or material that may be useful; (p) authenticate
76 official documents by his signature; (q) carry on the official
77 correspondence of the park district as directed, except
78 correspondence assigned to other officers; (r) make available
79 the minute book for public inspection as a public record; (s)
80 codify and preserve all ordinances enacted by the park
81 district.

82 For this service the secretary, who is not a commissioner,
83 may receive such compensation as the park district may
84 allow. Before entering upon the duties of his office, the
85 secretary shall enter into a bond with one or more sureties
86 deemed sufficient by the park district and approved by the
87 park district, conditioned upon the faithful performance of
88 his duties, the bond to be payable to the Greater Huntington
89 park and recreation district in such penal sum as the park
90 district determines, which bond shall be filed with the park
91 district for safekeeping. In the secretary's absence, the park
92 district may appoint a secretary pro tempore.

93 (4) Treasurer—The treasurer shall be responsible for the
94 collection, safekeeping, investing and expenditure of all
95 funds and assets of the park district, and for keeping an
96 accurate financial record thereof which record shall be
97 available for public inspection. Before entering upon the
98 duties of his office, the treasurer shall enter into a bond with
99 one or more sureties deemed sufficient by the park district,
100 and approved by the park district, conditioned upon the
101 faithful discharge of his duties and the accounting for and
102 paying over, as may be required, all moneys which may come
103 into his possession by virtue of his office. Such bond shall be
104 in such penal sum as the park district may require, payable to
105 the Greater Huntington park and recreation district and filed
106 with the park district for safekeeping.

§5. Meetings; quorum; parliamentary authority; office.

1 (a) The commissioners shall select a regular time and
2 place for meetings of the park district which meetings shall
3 be open to the public. Minutes of commission meetings shall
4 be open to any bona fide resident of the park district upon
5 request. Not less than six members shall constitute a quorum
6 to transact business. Special meetings, also open to the
7 public, may be called by the president, or at the request of
8 four members, by the secretary. The concurrence of six
9 members of the park district shall be required to decide all
10 questions involving the expenditure of money.

11 (b) All meetings of the park district shall be conducted
12 under the rules of parliamentary procedure as established by
13 the Sturgis Standard Code of Parliamentary Procedure.

14 (c) The park district shall have and maintain an office in a
15 location of its own choosing which office shall be open to the
16 public during normal business hours.

§6. Park district a public corporate body; perpetual existence; seal; powers.

1 The Greater Huntington park and recreation district shall
2 be a public corporate body, although not a municipal
3 corporation, and shall have perpetual existence and a
4 common seal. The park district shall have powers to:

5 (1) Appropriate and expend funds from the sources of
6 income derived from the enactment of this charter for the
7 purposes of establishing, constructing, improving, extending,
8 developing, maintaining and operating, or any combination
9 of the foregoing, a public park system for the park district;
10 however, it may not expend funds on or appropriate funds to
11 external agencies, public or private, for any purpose
12 whatsoever. In accordance with section six, item four, the
13 park district may contract with other agencies for direct
14 services received or for joint endeavors in which the park
15 district is an active participant;

16 (2) Purchase, hold, own, sell, convey or lease or take lease
17 of real or personal property;

18 (3) Receive any gift, grant, donation, bequest, devise or
19 trust funds;

20 (4) Sue and be sued;

- 21 (5) Contract and be contracted with;
- 22 (6) Do any and all things and acts which may be necessary,
23 appropriate, convenient or incidental to carry out and
24 effectuate the purposes and provisions of this charter;
- 25 (7) Retain complete and exclusive control and
26 management of all of the properties owned by the park
27 district and dispose of the same as in the park district's
28 opinion will best serve the purposes of this charter and the
29 interests of the public;
- 30 (8) Acquire in the park district's name by purchase, lease,
31 or by exercise of the power of eminent domain, or otherwise,
32 such lands, structures or bodies of water, located anywhere
33 within the state of West Virginia park district as the park
34 district shall determine to be necessary, appropriate,
35 convenient or incidental to the establishment, construction,
36 improvement, extension, development, maintenance or
37 operation of a park system;
- 38 (9) Establish, construct, improve, extend, develop,
39 maintain and operate a park system;
- 40 (10) Employ such persons as, in its opinion, may be
41 necessary for the establishment, construction, improvement,
42 extension, development, maintenance, operation or
43 management of the property under its control, at such wages,
44 salaries or fees as it shall deem proper, and the park district
45 shall have full control of all employees;
- 46 (11) Promulgate those ordinances, rules and regulations
47 necessary to maintain the property belonging to the park
48 district as places of beauty, education and recreation or
49 necessary to promote the health, property, lives, decency,
50 morality and good order of the independent park district, its
51 inhabitants and members of the general public making use of
52 such property owned or controlled by the park district, or
53 necessary to regulate the use of or driving upon the property
54 owned or controlled by the park district;
- 55 (12) Abate, or cause to be abated, all nuisances affecting
56 the park district's property or persons thereupon;
- 57 (13) Regulate or prohibit the placing of signs, billboards,
58 posters and advertisements upon the park district's property,
59 or adjacent thereto;

60 (14) Keep the park district's property in good order and
61 free from obstruction for the use and benefit of the public;

62 (15) Construct, improve, maintain, repair, operate, curb or
63 recurb, pave or repave, grade or regrade, surface or resurface
64 roads, bridges, sewers, culverts, sidewalks, public ways,
65 easements and other public works upon lands controlled or
66 owned by the park district;

67 (16) Enter into contracts, agreements, leases and other
68 legal obligations extending beyond a period of one fiscal year:
69 *Provided*, That the contract, agreement, lease or other legal
70 obligation does not require the expenditure of tax revenues;

71 (17) Enter into intergovernmental agreements as any
72 municipal corporation would be so entitled to enter into
73 according to law and under such conditions as are required
74 by law of municipal corporations before they enter
75 intergovernmental agreements: *Provided*, That every such
76 intergovernmental agreement shall, prior to and as a
77 condition precedent to its becoming effective, be submitted
78 to the attorney general of the state of West Virginia who shall
79 determine whether the agreement is in proper form and is
80 compatible with the laws of this state;

81 (18) Provide by contract with the city of Huntington, town
82 of Milton, village of Barboursville, and the counties of Cabell
83 and Wayne for the joint construction of sewers and other
84 public works upon property owned or controlled by the
85 board, to be paid for by joint funds; and

86 (19) Spend moneys of the park district to effectuate the
87 purposes set forth in this charter.

§6a. Comprehensive plan.

1 No later than the first day of January, one thousand nine
2 hundred eighty-six, the park district shall prepare and make
3 public a comprehensive plan as to the future development of
4 the park district. During the year one thousand nine hundred
5 eighty-four, the commission shall conduct at least one public
6 hearing in each magisterial district for the purpose of
7 obtaining citizen input for the comprehensive plan.

§7. Financing and financial powers.

1 The park district shall have the following powers to:

2 (1) Make charges to the public for services offered or
3 goods sold by the park district.

4 (a) Charges for services may be in the forms of, but not
5 limited to: Admission and entrance fees; exclusive use and
6 rental fees; user fees; license and permit fees; equipment
7 rental; program maintenance fees; instructor fees; special
8 accommodation fees; amusement fees; restricted
9 membership fees; and cemetery service fees.

10 (b) Charges for goods sold may be in the forms of, but not
11 limited to: Beverages and foods; novelties and gifts; clothing;
12 athletic equipment and supplies; cemetery plots, crypts,
13 monuments, memorials, markers, vaults and any other forms
14 of merchandise sold in connection with the burial of the dead;
15 and other items that may pertain to the operation and
16 maintenance of the park district.

17 (2) Annually levy on each one hundred dollars of the
18 assessed valuation of the property taxable in said park
19 district, within the corporate boundaries of the city of
20 Huntington according to the last assessment thereof for state
21 and county purposes, as follows:

22 On Class I property, one and one-half cents; on Class II
23 property, three cents; on Class IV property, six cents. The
24 park district may levy a lesser amount, in which case the
25 above levies shall be reduced proportionately. These levies
26 shall be made at the time and in the manner provided by
27 article eight, chapter eleven of the code of West Virginia, one
28 thousand nine hundred thirty-one, as amended; except that
29 the levies shall be included in the maximum rates for the city
30 of Huntington as established by law.

31 After the park district has made the levy, it shall certify to
32 the finance director of the city of Huntington the amount of
33 the said levy, and the finance director shall thereupon extend
34 the levy upon the tax tickets, and all levies made by the park
35 district shall be collected by the finance director who shall
36 occupy a fiduciary relationship with the park district, and
37 then such levy funds shall be paid to the park district upon
38 written order of the park district signed by the president of
39 the park district and countersigned by the secretary of the
40 park district.

41 Levies for support, maintenance and operation.

42 (3) In order to ensure adequate support for the
43 maintenance and operation of the park district the following
44 governing authorities shall, upon written request by the park
45 district levy annually as follows within the respective taxing
46 districts of the governing authorities, on each one hundred
47 dollars of assessed valuation of the property taxable in the
48 area served by it according to the last assessment for state and
49 county purposes, amounts not exceeding the following
50 amounts for fiscal year beginning July first, one thousand
51 nine hundred eighty-three:

52 (a) The county commission of Cabell County, for the first
53 year of the act and annually thereafter: Class one, .433 cents;
54 class two, .866 cents; class three and class four, 1.73 cents.

55 (b) The county commission of Wayne County, for the first
56 year of the act and annually thereafter: Class one, .0066 cents;
57 class two, .0132 cents; class three and class four, .0266 cents.

58 (c) The board of education of the county of Cabell shall
59 provide funds available to the board through special and
60 excess levies for the first year of the act and annually
61 thereafter: Class one, .433 cents; class two, .866 cents; class
62 three and class four, 1.73 cents.

63 (d) The city of Huntington, for the first year of the act and
64 annually thereafter: Class one, one and three-tenths cents;
65 class two, two and six-tenths cents; class three and four, five
66 and two-tenths cents.

67 (e) The town of Milton, for the first year of the act and
68 annually thereafter: Class one, one and three-tenths cents;
69 class two, two and six-tenths cents; class three and class four,
70 five and two-tenths cents.

71 (f) The town of Barboursville, for the first year of the act
72 and annually thereafter: Class one, one and three-tenths
73 cents; class two, two and six-tenths cents; class three and
74 class four, five and two-tenths cents.

75 In addition to the aforesaid amounts which, upon written
76 request by said board, the governing authorities shall levy,
77 each such governing authority may support the park district
78 with any other general or special revenues or excess levies.
79 All income realized by the operation of the park district from
80 any sources other than the above levies shall be used by the
81 board of directors for support of the park district.

82 All money collected or appropriated by the foregoing
83 governing authorities for park district purposes shall be
84 deposited in a special account of the park district and shall be
85 disbursed by that board for the purpose of operating such
86 park district.

87 (4) Assess the cost of improvements to or construction of
88 streets, sidewalks, sewers, curbs, alleys, public ways or
89 easements, or portions thereof, upon the abutting property
90 owners whose property lies within the park district. Such
91 assessments shall require approval of a majority of the
92 commissioners present and voting, and shall be commenced
93 and conducted in such manner as is prescribed by article
94 eighteen, chapter eight of the code of West Virginia, one
95 thousand nine hundred thirty-one, as amended.

96 (5) The municipalities of Huntington, Milton, and
97 Barboursville and the counties of Cabell and Wayne are
98 hereby empowered, and authorized to issue, in the manner
99 prescribed by law, revenue bonds or general obligation
100 bonds, for the purpose of raising funds to establish, construct,
101 improve, extend, develop, maintain or operate, a system of
102 public parks and recreational facilities for the city or
103 counties, or to refund any bonds of the city or counties, the
104 proceeds of which were expended in the establishing,
105 constructing, improving, extending, developing, maintaining
106 or operating of such public park and recreation system or any
107 part thereof. Any bonds issued for any of the purposes stated
108 in this section shall contain in the title or subtitle thereto the
109 words "public park and recreation bonds," in order to
110 identify the same, and shall be of such form, denomination
111 and maturity and shall bear such rate of interest as shall be
112 fixed by ordinance of the governing body of the city or
113 counties. The governing body may provide for the issuance of
114 bonds for other lawful purposes of the city or counties in the
115 same ordinance in which provision shall be made for the
116 issuance of bonds under the provisions of this section. The
117 park district shall pay all of the costs and expenses of any
118 election which shall be held to authorize the issuance of
119 public park and recreation bonds only. The costs and
120 expenses of holding an election to authorize the issuance of
121 public park and recreation bonds and bonds for other city or
122 county purposes shall be paid by the park district and the city
123 or counties respectively, in the proportion that the public

124 park and recreation bonds bear to the total amount of bonds
125 authorized.

126 Whenever the governing body of the city or counties and
127 the requisite majority of the legal votes cast at the election
128 thereon shall authorize in the manner prescribed by law, the
129 issuance of bonds for the purpose of establishing,
130 constructing, improving, extending, developing, maintaining
131 or operating, or any combination of the foregoing, a system of
132 public parks and recreational facilities for the city or
133 counties, or for refunding any outstanding bonds, the
134 proceeds of which were applied to any of said purposes, said
135 bonds shall be issued and delivered to the park district to be
136 by it sold in the manner prescribed by law, and the proceeds
137 thereof shall be paid into the treasury of the park district, and
138 the same shall be applied and utilized by the park district for
139 the purposes prescribed by the ordinance authorizing the
140 issuance of such bonds. In any ordinance for the issuance of
141 bonds for such purposes, it shall be a sufficient statement of
142 the purposes for creating the debt to specify that the same is
143 for purposes of establishing, constructing, improving,
144 extending, developing, maintaining or operating, or any
145 combination of the foregoing, a public park and recreation
146 system for the city or counties, without specifying the
147 particular establishment, construction, improvement,
148 extension, development, maintenance or operation
149 contemplated; but an ordinance for refunding bonds shall
150 designate the issue and the number of bonds which it is
151 proposed to refund.

152 (6) Sue and be sued; make contracts and guarantees; incur
153 liabilities; borrow or lend money for any time period deemed
154 advisable by the commission, sell, mortgage, lease, exchange,
155 transfer or otherwise dispose of its property; or pledge its
156 property as collateral or security for any time period deemed
157 advisable by the commission.

158 (7) Create trusts of such kind as will expedite the efficient
159 management of the property and other assets owned or
160 controlled by the park district. The trustee, whether
161 individual or corporate, in any such trust shall have a
162 fiduciary relationship with the park district and may be
163 removed by the park district for good cause shown or for a
164 breach of the fiduciary relationship with the park district.

§8. Law enforcement.

1 (a) The park district is authorized and empowered to
2 employ as many park rangers as the park district shall deem
3 proper and necessary. Park rangers shall have the power to
4 make arrests for violations of ordinances promulgated by the
5 park district upon the property under the jurisdiction of the
6 park district. Park rangers may not carry a gun without
7 obtaining a license therefor as required by law.

8 (b) Police officers employed by the city of Huntington,
9 town of Milton, village of Barboursville, members of the West
10 Virginia department of public safety and sheriff's deputies in
11 Cabell and Wayne counties are hereby authorized and
12 empowered to make arrests for violations of ordinances
13 promulgated by the park district upon property within the
14 park district which is under the jurisdiction of the park
15 district; and all of the foregoing officers of the law, except
16 members of the Huntington police department, are hereby
17 authorized and empowered to make arrests for violations of
18 ordinances promulgated by the park district upon property
19 under the jurisdiction of the park district which is outside of
20 the park district.

21 (c) For violations of park district ordinances, jurisdiction
22 of all warrants relating thereto to be issued is hereby granted
23 to such courts as have criminal jurisdiction of misdemeanors
24 committed upon property which is owned or controlled by
25 the park district.

§9. Title to property.

1 The title of all parks, parkways, playgrounds, athletic fields,
2 cemeteries, boulevards and other property, real, personal and
3 mixed, vested in the board of park commissioners under the
4 powers and authority of the acts hereby amended and
5 reenacted shall be and remain vested in the Greater
6 Huntington park and recreation district as herein
7 reconstituted.

8 Notwithstanding any provisions of this charter to the
9 contrary, the park district is hereby authorized and
10 empowered to grant and convey to any municipality, town,
11 village, county or to the state of West Virginia, all right, title,
12 control and interest, jurisdiction and maintenance of any
13 streets or boulevards owned by the park district, whenever

14 the park district deems such action to be necessary or
15 convenient and proper and in the best interests of the
16 inhabitants of the park district.

CHAPTER 195

(S. B. 557—By Mrs. Lucht and Mr. Whitacre)

[Passed March 12, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to authorize the county commission of Morgan County to borrow funds for the renovation of the Morgan County jail.

Be it enacted by the Legislature of West Virginia:

MORGAN COUNTY JAIL.

§1. Morgan County commission authorized to borrow funds for jail renovation.

§2. Limitation; repayment; term.

§1. Morgan County commission authorized to borrow funds for jail renovation.

1 The county commission of Morgan County is hereby
2 authorized to borrow funds from a commercial bank lo-
3 cated within the state of West Virginia, which funds shall
4 be used for the reconstruction, renovation and improve-
5 ment of the existing Morgan County jail, and to execute
6 on behalf of the county any evidence of indebtedness
7 necessary to this purpose.

§2. Limitation; repayment; term.

1 The amount of the indebtedness incurred under the
2 authority of this act shall not exceed one hundred thou-
3 sand dollars. Repayment of such obligation shall be made
4 from funds available to the sheriff by the provisions of
5 section fifteen, article five, chapter seven of the code of
6 West Virginia for jail renovation, and the sheriff is
7 authorized to make such expenditures from the county
8 general fund; from any special fund and from any other

- 9 moneys available to the county commission for such
10 purpose.
- 11 Any obligation incurred under the provisions of this
12 act shall not exceed ten years' duration.

CHAPTER 196

(H. B. 1995—By Mr. Albright and Mr. Farley)

[Passed March 12, 1983; in effect from passage. Approved by the Governor.]

AN ACT to authorize the board of regents to sell at auction a building and lots located on Hickory Street in Parkersburg for a price not less than the average appraised value and to deposit the proceeds of sale to the Parkersburg Community College Capital Building and Land Improvements account.

Be it enacted by the Legislature of West Virginia:

SALE OF LAND IN PARKERSBURG BY BOARD OF REGENTS.

§1. Board of regents authorized to sell building and land located in Parkersburg.

1 The board of regents is hereby authorized and empowered to
2 sell a building and lots, designated as Lots 15 and 16 of
3 Edgewater Addition No. 11 in the city of Parkersburg, bound-
4 ed and described as beginning at the northwesterly corner of
5 Hickory Street and Jefferson Avenue; thence with the north-
6 westerly line of Hickory Street in a northeasterly direction
7 113.74 feet to a point in the line of Lot No. 14; with the
8 southwesterly direction 137.94 feet to a point; thence at
9 right angles and in a southwesterly direction 100 feet to
10 Jefferson Avenue; thence with the line of Jefferson Avenue
11 in a southeasterly direction 83.76 feet to the place of begin-
12 ning, and being a part of Edgewater Addition No. 11, located
13 in the city of Parkersburg, Wood County, West Virginia, at
14 a public auction: Provided, That prior to such action the
15 board of regents shall have the property appraised by two

16 licensed appraisers and shall not sell the property for less
17 than the average of the two appraisals.

**§2. Proceeds to be deposited in Parkersburg Community College
Capital Building and Land Improvements account.**

1 The proceeds from the sale of the property referred to in
2 section one shall be deposited in a Parkersburg Community
3 College Capital Building and Land Improvements account for
4 the purpose of building and land improvements by Parkers-
5 burg Community College.

CHAPTER 197

(S. B. 578—By Mr. Chafin, Mr. Heck, Mr. Rogers, Mr. Tomblin and Mr. Wright)

[Passed March 4, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to authorize the county commission of Wayne County
to convey certain water distribution lines to the Hunting-
ton Water Corporation.

Be it enacted by the Legislature of West Virginia:

WAYNE COUNTY.

§1. County commission authorized to convey waterline.

1 The Legislature hereby recognizes that an adequate
2 water supply is necessary for the citizens of Wayne Coun-
3 ty, and that the county commission has constructed
4 certain water distribution lines in order that the local
5 water utility can supply water to the residents of the
6 area. Accordingly, the Legislature hereby finds and de-
7 clares that the transfer of such waterlines to a water
8 utility for the purpose of water service promotes the
9 health and welfare of the public and, therefore, is a
10 public purpose.

11 The county commission of Wayne County is hereby
12 authorized and empowered to transfer and convey to the
13 Huntington Water Corporation the following waterlines:
14 Beginning at the present terminus of the Huntington

15 Water Corporation's eight inch water main approxi-
16 mately five feet off the edge of pavement on the south-
17 east side of Spring Valley Road, S. R. 7, in the vicinity
18 of the Northern Wayne County Vocational School, the
19 said eight inch waterline has been extended following S.
20 R. 7 (Spring Valley Road) to S. R. 6 (Sherwood Drive), a
21 distance of approximately 10,350 feet. At the intersection
22 of S. R. 5 (Goodwill Road) with S. R. 7 (Spring Valley
23 Road), approximately 3,450 feet from the beginning of the
24 project, an eight inch waterline extends across S. R. 7 to
25 the northeast corner of the intersection of S. R. 5 (Good-
26 will Road) and S. R. 5/1 (Hubbards Branch Road) and
27 then extends in the northerly direction approximately
28 1,000 feet along the east side of S. R. 5/1 (Hubbards
29 Branch Road). At the terminus of the project on S. R. 7
30 (Spring Valley Road), an eight inch line extends approxi-
31 mately 6,550 feet in the easterly direction generally on
32 the north side of S. R. 6 (Sherwood Drive). At approxi-
33 mately 2,280 feet from the beginning of S. R. 6 (Sherwood
34 Drive) another line, consisting of approximately 1,050
35 feet of six inch and 1,000 feet of two inch waterline,
36 extends in the southerly direction along the road desig-
37 nated as the South Branch Sherwood Drive. The total
38 project consists of 17,900 feet of eight inch, 1,050 feet six
39 inch, and 1,000 feet two inch waterline, six fire hydrants,
40 and eleven valves.

RESOLUTIONS

(Only resolutions of general interest are included herein.)

HOUSE CONCURRENT RESOLUTION NO. 9

(By Mr. Shiflet)

[Adopted March 4, 1983.]

Providing for the adoption and implementation of the West Virginia clean community system program for a more beautiful West Virginia.

WHEREAS, Improper waste handling practices continue to be a serious problem in the state of West Virginia; and

WHEREAS, The directors of the office of economic and community development and the department of natural resources endorse the concept of voluntary control of solid waste in keeping West Virginia "proud and clean"; and

WHEREAS, Improved waste handling practices could be accomplished with the implementation of a West Virginia clean community system program; therefore, be it

Resolved by the Legislature of West Virginia:

That the clean community system council be established and consist of the director of the office of economic and community development, the director of natural resources, a representative of the environmental protection division of the attorney general's office, the commissioner of the department of highways, state superintendent of schools, state superintendent of department of public safety, beverage industry recycling program association, West Virginia county officials association, West Virginia municipal league, West Virginia resource recovery solid waste disposal authority, one member from each house of the Legislature of West Virginia, appropriate conservation and civic organizations and the broadest possible cross section of the state's residents chosen from diverse geographic and socio-cultural groups on a nonpartisan basis; and that said council be created and established to provide overall policy direction, promotion and coordination of the West Virginia clean community system; and, be it

Further Resolved, That a state coordinator for the West Virginia clean community system council be appointed and, with appropriate budget, work within the office of economic and community development and along with members of the council, plan and execute a West Virginia clean community system designed to involve all cities, counties and state agencies; and, be it

Further Resolved, That the Clerk of the House of Delegates is hereby authorized and directed to transmit appropriate copies of this resolution to the governor of the state of West Virginia and the heads of departments named herein.

HOUSE CONCURRENT RESOLUTION NO. 12

(By Mrs. Neal, Mrs. Burke, Mr. Steptoe, Mr. Murphy
Mr. Sluss, Mr. Jordan and Mr. Doyle)

[Adopted February 22, 1983.]

Directing the West Virginia Department of Agriculture to initiate whatever cooperation is needed with the other Southern member states of The Council of State Governments and the United States Department of Agriculture to ensure the monitoring and eradication of gypsy moths from within the Southern states.

WHEREAS, The gypsy moth has been a major pest in the Northeastern United States since the early 1900's and is now spreading southward at an alarming rate, having already reached the eastern parts of West Virginia; and

WHEREAS, The gypsy moth can cause up to one hundred percent mortality in susceptible nursery stock and many other agricultural commodities in addition to having a direct negative impact on tourism through the presence of larvae in campgrounds; and

WHEREAS, Many entomologists believe that the gypsy moth may become an even more serious pest in the Southeastern states than anywhere else due to the warmer climate prevailing in the region; and

WHEREAS, It would be of mutual benefit to West Virginia, all of the Southern states and the United States Department of Agriculture to work cooperatively in helping slow the southward spread of this most serious insect pest; therefore, be it

Resolved by the Legislature of West Virginia:

That the West Virginia Department of Agriculture initiate cooperation with other Southern member states of The Council of State Governments and the United States Department of Agriculture to actively monitor the spread of the gypsy moth with the primary purpose being locating and eradicating isolated infestations and working together to reduce the incidences of artificial spread; and, be it

Further Resolved, That the Department of Agriculture, other Southern member states of The Council of State Governments and the United States Department of Agriculture should cooperatively share information and initiate any specific studies needed to alleviate the Southeastern gypsy moth problem; and, be it

Further Resolved, That the Clerk of the House of Delegates send a copy of this resolution to the Secretary of the United States Department of Agriculture, the West Virginia Commissioner of Agriculture and the Governors, Legislatures and Commissioners of Agriculture of the other Southern member states of The Council of State Governments.

HOUSE CONCURRENT RESOLUTION NO. 18

(By Mr. Teets)

[Adopted March 7, 1983.]

Urging the West Virginia Department of Health to study the importation of municipal and industrial sludge into the State of West Virginia and to adopt rules and regulations concerning the allowable content of such sludge that can be imported into the State, and further urging the Department of Natural Resources to prohibit the use of sludge in any reclamation project until such rules and regulations are adopted.

WHEREAS, There currently exists an effort to import municipal and industrial sludge from outside of West Virginia into the State for disposal and there are currently no specific statutes or rules and regulations governing this activity; and

WHEREAS, There is no uniformity in the composition of municipal and industrial sludge and this lack of uniformity of composition makes it difficult to monitor the content of this sludge; and

WHEREAS, Municipal and industrial sludge may contain various contaminants and heavy metal elements which can be detrimental to human health and welfare; and

WHEREAS, There currently exists no consensus within the scientific disciplines as to the long range effects of applying municipal and industrial sludge to the soil and other jurisdictions have experienced enormous deleterious results from the disposal of various other waste products about which very little was known; and

WHEREAS, It is in the best interests of the citizens of West Virginia that the importation, transfer, storage and disposal of municipal and industrial sludge be very closely monitored and regulated; therefore, be it

Resolved by the Legislature of West Virginia:

That the Department of Health is hereby urged to investigate the overall effect of municipal or industrial sludge upon the environment and to promulgate within their current statutory authority rules and regulations governing the allowable content of municipal or industrial sludge that may be imported into the State of West Virginia for any purposes and the monitoring of the same, and that the Department of Natural Resources is hereby urged to prohibit the use of municipal or industrial sludge in any reclamation project until the Department of Health has adopted such rules and regulations; and, be it

Further Resolved, That the Clerk of the House of Delegates is hereby directed to forward copies of this resolution to the directors of the Department of Natural Resources and the Department of Health.

HOUSE CONCURRENT RESOLUTION NO. 20

(By Mr. Bird)

[Adopted February 25, 1983.]

Urging the United States Congress and the President to fund and reactivate the Synthetic Fuels Programs.

WHEREAS, West Virginia's economy was damaged by the cutback of the Synthetic Fuels Programs in Morgantown, West Virginia; and

WHEREAS, A reactivation of the programs would provide a boost

to West Virginia's sagging economy and provide employment for many of our citizens; and

WHEREAS, Such a reactivation would cut down on the United States' dependency on foreign oil and would assist in ensuring a high level of national defense; therefore, be it

Resolved by the Legislature of West Virginia:

That the United States Congress and the President are hereby urged to fund and reactivate the Synthetic Fuels Programs; 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 President of the United States, to Senators Byrd and Randolph and to members of West Virginia's Congressional Delegation.

SENATE CONCURRENT RESOLUTION NO. 6

(By Mr. Palumbo, Mr. Wright and Mrs. Chace)

[Adopted February 18, 1983.]

Requesting West Virginia University to make an in-depth study of the role of advanced technology in the economic development of this State and to formulate a long-term economic plan for the State for promoting advanced technology enterprises as well as encouraging industries and businesses already in this State to remain and expand.

WHEREAS, Promoting the growth of advanced technology is a crucial part of West Virginia's future economic development in that advanced technology will spawn new enterprises as well as modernize and expand the scope of our traditional industries; and

WHEREAS, Certain areas of this State are especially suited for advanced technology enterprises; and

WHEREAS, The health and development of the economy depends both on enhancing industries already established in this State and on attracting new industries; and

WHEREAS, Promoting the growth and diversification of West Virginia's economy requires long-range planning; therefore, be it

Resolved by the Legislature of West Virginia:

That West Virginia University by and through its President is hereby requested to appoint a task force to make a study and formulate a long-range economic plan for the State of West Virginia to stimulate research, development and training in advance technology and to modernize and expand the scope of traditional industries, such as coal, manufacturing, tourism, etc.; and, be it

Further Resolved, That the task force, once appointed, submit a proposal including cost estimates to the Joint Committee on Government and Finance within forty-five days of the adoption of this resolution. The Joint Committee on Government and Finance may accept or reject the submitted proposal; and, be it

Further Resolved, That if the proposal is accepted by the Joint Committee on Government and Finance, the task force shall report its findings, recommendations and proposals to the Joint Committee on Government and Finance on or before eight months following the date upon which the proposal is accepted, as aforesaid, the expenses necessary to conduct such a study and to develop a long-range economic plan to be paid from the legislative appropriation made to the Joint Committee on Government and Finance.

SENATE CONCURRENT RESOLUTION NO. 8

(By Mr. McGraw, Mr. President, Mr. Tonkovich, Mr. Nelson,
Mr. Boettner, Mr. Holliday, Mr. Heck, Mrs. Chace, Mr. Cook,
Mrs. Lucht and Mr. Kaufman)

[Adopted February 18, 1983.]

Memorializing Congress to adopt a resolution requesting the President of the United States to propose to the Union of Soviet Socialist Republics a mutual and verifiable nuclear weapons moratorium.

WHEREAS, The greatest challenge facing the earth is to prevent the occurrence of nuclear war by accident or design; and

WHEREAS, The nuclear arms race is dangerously increasing the risk of a holocaust which would be humanity's final war; and

WHEREAS, The United States of America and the Union of Soviet Socialist Republics already have a combined total arsenal in excess of fifty thousand nuclear weapons; and

WHEREAS, An all-out nuclear exchange between said two nations would result in the deaths of millions of Americans and Soviet citizens and would result, throughout the entire world, in death, injury and disease on a scale that has no precedent in the history of human experience; and

WHEREAS, There is widespread agreement that the United States of America and the Union of Soviet Socialist Republics currently have equal nuclear fighting capabilities with neither nation having a distinct advantage over the other; and

WHEREAS, An immediate halt in the testing, production and deployment of new nuclear weapons would help secure world peace and avoid the possibility of a nuclear conflagration and would save our nation, over the next ten years, billions of dollars in military expenditures, which savings could be used to help balance the federal budget, reduce taxes, create employment and improve human services; therefore, be it

Resolved by the Legislature of West Virginia:

That the Congress of the United States adopt a resolution requesting that the President of the United States propose to the government of the Union of Soviet Socialist Republics a mutual and verifiable nuclear weapons moratorium by which the said two nations would agree to halt immediately the testing, production and deployment of all nuclear warheads, missiles and delivery systems; and, be it

Further Resolved, That the West Virginia delegation to the Congress of the United States introduce such a resolution or join with other members of Congress in its introduction; and, be it

Further Resolved, That copies of this resolution be sent to the Clerk and Speaker of the United States House of Representatives, the Secretary and Majority Leader of the United States Senate, and to each member of the West Virginia Congressional delegation.

SENATE CONCURRENT RESOLUTION NO. 19

(By Mr. Tonkovich, Mr. Wright, Mr. Chernenko, Mr. Ash,
Mr. Sacco, Mr. Heck, Mr. Tomblin, Mr. Chafin and Mr. Loehr)

[Adopted March 3, 1983.]

Requesting the United States Department of Commerce to take action to have the federal trade laws and regulations promptly and vigorously enforced to prevent the illegal sales of foreign steel in the United States.

WHEREAS, The American steel industry produces an industrial material that is essential to the United States economy and necessary to our national defense; and

WHEREAS, The steel industry is an important part of the West Virginia economy, providing employment for thousands of our state's residents; and

WHEREAS, The American steel industry and West Virginia's coal mining industry are linked by an important and mutually beneficial customer-supplier relationship; and

WHEREAS, Imports of illegally traded foreign steel have played a significant role in reducing the operating rate of the American steel industry to barely thirty percent of capacity and forcing one hundred seventy thousand steelworkers to be laid off from their jobs; and

WHEREAS, Imports of illegally traded foreign steel have caused unemployment among West Virginia's coal miners and hardship for their families; and

WHEREAS, State government officials have joined labor and industry leaders in urging an end to the influx of illegally priced and subsidized foreign steel; therefore, be it

Resolved by the Legislature of West Virginia:

That the United States Department of Commerce is requested to take action to have the federal trade laws and regulations promptly and vigorously enforced, thus rightfully ending the illegal sales of foreign steel in this country which are strangling our domestic steel industry; and, be it

Further Resolved, That this resolution be sent to the Secretary of

the United States Department of Commerce, each member of the West Virginia Delegation to Congress and the President of the United States.

SENATE CONCURRENT RESOLUTION NO. 21

(By Mr. McGraw, Mr. President, Mr. Ash, Mr. Boettner, Mrs. Chace, Mr. Cook, Mr. Craig, Mr. Heck, Mr. Holliday, Mr. Kaufman, Mrs. Lucht, Mr. Nelson, Mr. Palumbo, Mr. Parker, Mrs. Spears and Mr. Tucker)

[Adopted March 1, 1983.]

Memorializing the Congress of the United States to adopt a Joint Resolution again proposing an amendment to the Constitution of the United States providing that equality of rights under the law shall not be denied or abridged by the United States, or by any state, on the basis of gender.

WHEREAS, The State of West Virginia has long recognized the principle that equality of rights under the law shall not be denied or abridged on account of sex; and

WHEREAS, In recognition of this basic tenet, West Virginia was historically and remains at the forefront of efforts to adopt and ratify an "Equal Rights Amendment" to the United States Constitution; and

WHEREAS, West Virginia has by law prohibited gender-based discrimination; and

WHEREAS, The Congress of the United States has the authority, and indeed the responsibility, to ensure that the law of the land clearly prohibits gender-based discrimination and ensures equality of rights under the law; therefore, be it

Resolved by the Legislature of West Virginia:

That the Congress of the United States is hereby requested to adopt a Joint Resolution proposing an amendment to the Constitution of the United States that guarantees that equality of rights under the law shall not be denied or abridged by the United States, or by any state, on account of sex; and, be it

Further Resolved, That the Clerk of the Senate of West Virginia

forward copies of this resolution to each member of the West Virginia congressional delegation.

HOUSE JOINT RESOLUTION NO. 28

(By Mrs. Brown and Mr. Humphreys)

[Adopted February 23, 1983.]

Ratifying the proposed amendment to the Constitution of the United States to provide for representation of the District of Columbia in the Congress.

WHEREAS, The Ninety-fifth Congress of the United States of America at its second session by a constitutional two-thirds vote in both Houses adopted a Joint Resolution proposing an amendment to the Constitution of the United States, which Joint Resolution is in the following words:

JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States to provide for representation of the District of Columbia in the Congress.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three fourths of the several states within seven years from the date of its submission by the Congress:

“ARTICLE.....

“SECTION 1. For purposes of representation in the Congress, election of the President and Vice President, and article V of this Constitution, the District constituting the seat of government of the United States shall be treated as though it were a State.

“SEC. 2. The exercise of the rights and powers conferred under this article shall be by the people of the District constituting the seat of government, and as shall be provided by the Congress.

"SEC. 3. The twenty-third article of amendment to the Constitution of the United States is hereby repealed.

"SEC. 4. This article shall be inoperative, unless it shall have been ratified as an amendment to the Constitution by the legislatures of three fourths of the several States within seven years from the date of its submission."

Therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature of the State of West Virginia hereby ratifies this proposed amendment to the Constitution of the United States; and, be it

Further Resolved, That the Secretary of State of the State of West Virginia notify the Administrator of General Services, Washington, D. C., the President of the Senate of the United States and the Speaker of the House of Representatives of the United States of this action by forwarding to each of them a certified copy of this Joint Resolution adopted by the West Virginia Legislature.

SENATE JOINT RESOLUTION NO. 3

(By Mr. Rogers and Mr. Cook)

[Adopted February 15, 1983.]

Proposing an amendment to the Constitution of the State of West Virginia, amending section thirty-six, article six thereof, relating to the authority of the Legislature to regulate state operated and controlled lotteries; relating to bingo; providing for county option for bingo and raffles; 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-four, which proposed amendment is that section thirty-six, article six thereof be amended to read as follows:

ARTICLE VI. THE LEGISLATURE.

§36. Lotteries; bingo; raffles; county option.

1 The Legislature shall have no power to authorize lotteries
2 or gift enterprises for any purpose, and shall pass laws to
3 prohibit the sale of lottery or gift enterprise tickets in this
4 State; except that the Legislature may authorize lotteries
5 which are regulated, controlled, owned and operated by the
6 State of West Virginia in the manner provided by general
7 law, either separately by this State or jointly or in coopera-
8 tion with one or more other states and may authorize state-
9 regulated bingo games and raffles for the purpose of raising
10 money by charitable or public service organizations or by the
11 State Fair of West Virginia for charitable or public service
12 purposes: *Provided*, That each county may disapprove the
13 holding of bingo games and raffles within that county at a
14 regular, primary or special election but once having disap-
15 proved such activity, may thereafter authorize the holding of
16 bingo games and raffles, by majority vote at a regular, primary
17 or special election held not sooner than five years after the
18 election resulting in disapproval; that all proceeds from the
19 bingo games and raffles be used for the purpose of supporting
20 charitable or public service purposes; and that the Legislature
21 shall provide a means of regulating the bingo games and
22 raffles so as to ensure that only charitable or public service
23 purposes are served by the conducting of the bingo games and
24 raffles.

25 *Resolved further*, That in accordance with the provisions
26 of article eleven, chapter three of the code of West Virginia,
27 one thousand nine hundred thirty-one, as amended, such
28 proposed amendment is hereby numbered "Amendment No.
29 1" and designated as the "West Virginia State Lottery Amend-
30 ment" and the purpose of the proposed amendment is sum-
31 marized as follows: "To amend the State Constitution to per-

- 32 mit the Legislature to pass laws authorizing state operated and
33 controlled lotteries.”
-

LEGISLATURE OF WEST VIRGINIA

ACTS

SECOND EXTRAORDINARY SESSION, 1982

H. J. R. 1

(By MR. SPEAKER, MR. SEE, by request of the Executive)

[Adopted July 27, 1982.]

Proposing an amendment to the Constitution of the state of West Virginia, amending section one-b, article ten thereof, relating to ad valorem taxation; 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-two, which proposed amendment is that section one-b, article ten thereof be amended to read as follows:

ARTICLE X. TAXATION AND FINANCE.

1b. Property tax Limitation and Homestead Exemption Amendment of 1982.

- 1 Ad valorem property taxation shall be in accordance with
- 2 this section and other applicable provisions of this article
- 3 not inconsistent with this section.

4 Subsection A—Value; Rate of Assessment; Exceptions

5 Notwithstanding any other provisions of this Constitution
6 and except as otherwise provided in this section, all property
7 subject to ad valorem taxation shall be assessed at sixty
8 percent of its value, as directed to be ascertained in this
9 section, except that the Legislature may from time to time, by
10 general law agreed to by two thirds of the members elected
11 to each house, establish a higher percentage for the purposes
12 of this paragraph, which percentage shall be uniform as to
13 all classes of property defined in section one of this article,
14 but not more than one hundred percent of such value.

15 Notwithstanding the foregoing, for the first day of July, one
16 thousand nine hundred eighty-two, and the first day of July of
17 each year thereafter until the values may be fixed as a result
18 of the first statewide reappraisal hereinafter required, assess-
19 ments shall be made under the provisions of current statutory
20 law, which is hereby validated for such purpose until and unless
21 amended by the Legislature. Assessment and taxation in
22 accord with this section shall be deemed to be equal and
23 uniform for all purposes.

24 Subsection B—Determination of Value

25 The Legislature shall provide by general law for periodic
26 statewide reappraisal of all property, which reappraisal shall
27 be related for all property to a specified base year which, as
28 to each such reappraisal, shall be uniform for each appraisal
29 for all classes of property and all counties. In such law, the
30 Legislature shall provide for consideration of (1) trends in
31 market values over a fixed period of years prior to the base
32 year, (2) the location of the property, and (3) such other
33 factors and methods as it may determine: *Provided*, That
34 with respect to reappraisal of all property upon the base
35 year of one thousand nine hundred eighty, such reappraisals
36 are deemed to be valid and in compliance with this section:
37 *Provided, however*, That with respect to farm property, as
38 defined from time to time by the Legislature by general law,
39 the determination of value shall be according to its fair and
40 reasonable value for farming purposes, as may be defined by
41 general law.

42 The results of each statewide appraisal shall upon comple-
43 tion be certified and published and errors therein may be
44 corrected, all as provided by general law. The first such state-
45 wide appraisal shall be completed, certified and published
46 on or before the thirty-first day of March, one thousand nine
47 hundred eighty-five, for use when directed by the Legislature.

48 The Legislature shall further prescribe by general law the
49 manner in which each statewide reappraisal shall be employed
50 to establish the value of the various separately assessed par-
51 cels or interests in parcels of real property and various items
52 of personal property subject to ad valorem property taxation,
53 the methods by which increases and reductions in value sub-
54 sequent to the base year of each statewide reappraisal shall
55 be ascertained, and require the enforcement thereof.

56 **Subsection C—General Homestead Exemption**

57 Notwithstanding any other provision of this Constitution to
58 the contrary, the first twenty thousand dollars of assessed
59 valuation of any real property, or of personal property in
60 the form of a mobile home, used exclusively for residential
61 purposes and occupied by the owner or one of the owners
62 thereof as his residence who is a citizen of this state and who
63 is sixty-five years of age or older or is permanently and totally
64 disabled as that term may be defined by the Legislature, shall
65 be exempt from ad valorem property taxation, subject to
66 such requirements, limitations and conditions as shall be
67 prescribed by general law.

68 Notwithstanding any other provision of this Constitution
69 to the contrary, the Legislature shall have the authority to
70 provide by general law for an exemption from ad valorem
71 property taxation in an amount not to exceed the first twenty
72 thousand dollars of value of any real property, or of per-
73 sonal property in the form of a mobile home, used ex-
74 clusively for residential purposes and occupied by the owner
75 or one of the owners thereof as his residence who is a
76 citizen of this state, and who is under sixty-five years of age
77 and not totally and permanently disabled: *Provided*, That
78 upon enactment of such general law, this exemption shall
79 only apply to such property in any county in which the

80 property was appraised at its value as of the first day of
81 January, one thousand nine hundred eighty, or thereafter, as
82 determined by the Legislature, and this exemption shall be
83 phased in over such period of time not to exceed five years
84 from the date such property was so appraised, or such longer
85 time as the Legislature may determine by general law: *Pro-*
86 *vided, however,* That in no event shall any one person and
87 his spouse, or one homestead be entitled to more than one
88 exemption under these provisions: *Provided further,* That
89 these provisions are subject to such requirements, limitations
90 and conditions as shall be prescribed by general law.

91 The Legislature shall have the authority to provide by
92 general law for property tax relief to citizens of this State
93 who are tenants of residential or farm property.

94 **Subsection D—Additional Limitations on Value**

95 With respect to the first statewide reappraisal, pursuant to
96 this section, the resulting increase in value in each and every
97 parcel of land or interest therein and various items of personal
98 property subject to ad valorem property taxation over and
99 above the previously assessed value shall be allocated over
100 a period of ten years in equal amounts annually.

101 The Legislature may by general law also provide for the
102 phasing in of any subsequent statewide reappraisal of property.

103 **Subsection E—Levies for Free Schools**

104 In equalizing the support of free schools provided by state
105 and local taxes, the Legislature may require that the local
106 school districts levy all or any portion of the maximum levies
107 allowed under section one of this article which has been allo-
108 cated to such local school districts.

109 Within the limits of the maximum levies permitted for
110 excess levies for schools or better schools in sections one
111 and ten of this article, the Legislature may, in lieu of the
112 exercise of such powers by the local school districts as
113 heretofore provided, submit to the voters, by general law,
114 a statewide excess levy, and if it be approved by the required
115 number of voters, impose such levy, subject however to all

116 the limitations and requirements for the approval of such
117 levies as in the case of a district levy. The law submitting
118 the question to the voters shall provide, upon approval of
119 the levy by the voters, for the assumption of the obligation of
120 any local excess levies for schools then in force theretofore
121 authorized by the voters of a local taxing unit to the extent
122 of such excess levies imposed by the state and so as to
123 avoid double taxation of those local districts. The Legislature
124 may also by general law reserve to the school districts such
125 portions of the power to lay authorized excess levies as it may
126 deem appropriate to enable local school districts to provide
127 educational services which are not required to be furnished
128 or supported by the state. If a statewide excess levy for the
129 support of free schools is approved by the required majority,
130 the revenue from such a statewide excess levy shall be de-
131 posited in the state treasury and be allocated first for the
132 local obligations assumed and thereafter for such part of the
133 state effort to support free schools, by appropriation or as
134 the law submitting the levy to the voters shall require, as
135 the case may be.

136 The defeat of any such proposed statewide excess levy for
137 school purposes shall not in any way abrogate or impair any
138 local existing excess levy for such purpose nor prevent the
139 adoption of any future local excess levy for such purpose.

140 **Subsection F—Implementation**

141 In the event of any inconsistency between any of the pro-
142 visions of this section and other provisions of this Con-
143 stitution, the provisions of this section shall prevail. The
144 Legislature shall have plenary power to provide by general
145 law for the equitable application of this article and, as to
146 taxes to be assessed prior to the first statewide reappraisal,
147 to make such laws retroactive to the first day of July, one
148 thousand nine hundred eighty-two or thereafter.

149 *Resolved further,* That in accordance with the provisions of
150 article eleven, chapter three of the code of West Virginia, one
151 thousand nine hundred thirty-one, as amended, such pro-
152 posed amendment is hereby numbered "Amendment No. 3"
153 and designated as the "Property Tax Limitation and Home-

154 stead Exemption Amendment of 1982” and the purpose of
155 the proposed amendment is summarized as follows: “To
156 provide for assessment of property for purposes of ad valorem
157 taxation at sixty percent of its value upon statewide re-
158 appraisal; to provide for assessment of property under current
159 statutory law until the results of such reappraisal and to
160 validate such law; to provide for the determination of market
161 value, and to permit the Legislature by a vote of two thirds
162 of the members elected to each House to set higher percentages
163 for all classes of property; to authorize the Legislature by
164 general law to permit the results of any reappraisal to be
165 phased in over such period of time after the year in which
166 the reappraisal is completed in such manner as the Legislature
167 may specify; to provide the Legislature with the power to pro-
168 tect the levies for free schools and to provide for statewide
169 levies for such purpose; to require an exemption from ad
170 valorem taxation amounting to twenty thousand dollars of
171 assessed value of any real property or mobile home occupied
172 as a resident by persons who are sixty-five years of age or
173 older or permanently disabled; to authorize an exemption of
174 up to twenty thousand dollars of value for owners of homes
175 or mobile homes who are under sixty-five years of age and not
176 disabled; and to provide for a phase-in period for the latter
177 exemption after appraisement of property at its value as of
178 the first day of January, one thousand nine hundred eighty
179 or thereafter, as determined by the Legislature.”

LEGISLATURE OF WEST VIRGINIA

ACTS

FIRST EXTRAORDINARY SESSION, 1983

CHAPTER 1

(H. B. 109—By Mr. Speaker, Mr. See, by request of the Executive)

[Passed May 25, 1983; in effect from passage. Approved by the Governor.]

AN ACT to direct that certain dedicated revenues appropriated from the general revenue fund of the state to the department of health be expended for the care, treatment and rehabilitation of alcoholics; declaring the balance of funds available for such purpose.

WHEREAS, The West Virginia supreme court of appeals, in the case of *McGraw v. Hansbarger*, No. 15676, issued March 31, 1983, determined that section nine-c, article three, chapter sixty of the code of West Virginia, established a special revenue account of one million dollars annually which has been appropriated by budget bills since the year one thousand nine hundred sixty-nine, to be used exclusively for the care, treatment and rehabilitation of alcoholics; and

WHEREAS, The West Virginia supreme court of appeals in that case further stated that some undetermined amount remains in this account, which amount may be as much as fourteen million dollars, and has directed the commissioner of the department of finance and administration to consult with and assist the director of the department of health in the preparation of an appropriate expenditure schedule for expenditure of the revenue in such account; and

WHEREAS, No such special revenue account has ever been kept by any state agency, in either the executive or legislative branches of government, so that the sum of up to fourteen million dollars does

not actually exist for the purposes of section nine-c, article three, chapter sixty of said code; and

WHEREAS, The sum of one million dollars per year has been collected by the alcohol beverage control commissioner and paid into the general revenue fund of the state, in accordance with the requirements of section nine-c, article three, chapter sixty of said code; and

WHEREAS, All moneys in the general revenue fund of the state, in each year beginning one thousand nine hundred sixty-nine, have been appropriated through the regular budgetary process, with no specific appropriation of any general or dedicated revenues solely for the care, treatment and rehabilitation of alcoholics; and

WHEREAS, The Legislature has appropriated within Account No. 4000 of the budget of the state department of health for fiscal year one thousand nine hundred eighty-four, a line item for alcohol, drug abuse and developmentally disabled in the amount of \$2,136,000; therefore

Be it enacted by the Legislature of West Virginia:

That it is expressly found and declared by the Legislature that the balance of all accrued moneys collected in dedicated revenues since the year one thousand nine hundred sixty-nine, pursuant to section nine-c, article three, chapter sixty of the code of West Virginia, and appropriated exclusively for the care, treatment and rehabilitation of alcoholics is zero; and the director of the department of health shall expend not less than one million dollars of the sum appropriated to a line item for alcohol, drug abuse and developmentally disabled for fiscal year one thousand nine hundred eighty-four, exclusively for the care, treatment and rehabilitation of alcoholics.

CHAPTER 2

(Com. Sub. for H. B. 103—By Mr. Speaker, Mr. See, by request of the Executive)

[Passed June 2, 1983; 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 federal block grants

and other federal funds, and the state road fund, remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-three, to the Governor's Office of Economic and Community Development, Account Nos. 1220, 8029 and 8031; to the State Commission on Aging, Account No. 4060; to the Department of Culture and History, Account No. 3540; to the West Virginia Library Commission, Account No. 3490; to the State Department of Highways, Account No. 6700; to the State Health Department, Account Nos. 4000, 8503, 8502 and 8506; to the Department of Welfare, Account Nos. 4050 and 9161; to the State Board of Education—Vocational Division, Account No. 2890, supplementing chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill.

WHEREAS, The governor submitted to the Legislature an executive message, dated May 17, 1983, which contained revision of the revenue estimates and financial statements for the general revenue fund, the state road fund and the revenue sharing trust fund; and

WHEREAS, It appears from such executive message, that there now remains unappropriated balances in the general revenue fund, the state road fund and the revenue sharing trust fund, for further appropriation during fiscal year 1982-83, part of which balances are appropriated by the terms of this supplementary appropriation bill; and

WHEREAS, Article VI, section fifty-one of the West Virginia constitution requires each supplementary appropriation bill to be limited to some single work, object or purpose therein stated, the single work, object or purpose of this supplementary appropriation bill is to assist the unemployed with jobs, training and educational opportunities under a governor's emergency employment program and federal funds including moneys from the federal emergency jobs and humanitarian aid program of 1983; therefore

Be it enacted by the Legislature of West Virginia:

That Account Nos. 1220, 8029, 8031, 4060, 3540, 3490, 6700, 4000, 8503, 8502, 8506, 4050, 9161 and 2890 be established (where appropriate) and supplemented by adding the following line items or additional sums to existing line items, to chapter twenty,

acts of the Legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill:

TITLE 2. APPROPRIATIONS.

1 **Section 1a. Appropriations of federal funds.**—In accordance
2 with chapter four, article eleven, federal funds are hereby ap-
3 propriated conditionally upon fulfillment of the provisions set
4 forth in chapter five-a, article two of the code of West Vir-
5 ginia, the following amounts, as itemized, for expenditure dur-
6 ing the fiscal year one thousand nine hundred eighty-three.

7

EXECUTIVE

8

6A—*Office of Economic and Community Development*
9 *Emergency Employment, Training and Education*

10

Acct. No. 1220

| | Federal Funds Fiscal Year 1982-83 | State General Revenue Fiscal Year 1982-83 |
|--|--|---|
| 11 1 Emergency Jobs Program | \$1,300,870 | \$ |
| 12 2 Assistance for Dislocated 13 Workers | 955,813 | |
| 14 3 Weatherization Program | 1,377,565 | |
| 15 4 Park and Recreation 16 Development | 556,700 | |
| 17 5 Energy Conservation Program | 500,000 | |
| | <hr/> | |
| 18 Total | \$4,690,948 | \$ |

19 The purpose of the above supplemental appropriation in
20 line item 1 is to provide funds for the development of outdoor
21 recreation areas and facilities. The purpose of the remaining
22 supplemental appropriations, line items 2, 3, 4 and 5 is to pro-
23 vide jobs for unemployed West Virginians and pay for other
24 necessary expenses.

25 Any unexpended balances remaining in the above appropria-
26 tion at the close of the fiscal year 1982-83, is hereby reappro-
27 priated for expenditure during fiscal year 1983-84.

28

EDUCATIONAL

29

32—*State Board of Education—Vocational Division*

30

Acct. No. 2890

31

8A To Local Entities \$ 400,000 \$

32

9 Total \$ 400,000 \$

33

The purpose of this supplemental appropriation is to correct or remove architectural barriers in public educational facilities.

35

Any unexpended balance remaining in the above appropriation for "To Local Entities" at the close of the fiscal year 1982-83, is hereby reappropriated for expenditure during the fiscal year 1983-84.

39

39A—*West Virginia Library Commission*

40

Acct. No. 3490

41

1 Library Matching Fund

42

(construction) Total \$ 642,477 \$

43

The above appropriation is to be expended for the construction of instant or outpost libraries in the following communities: Alderson, Buffalo, Bradshaw, Chapmanville, Cowen, Helvetia, Hinton, Mt. Storm, Nutter Fort, Pennsboro, Peterstown, Rainelle, Salem, Summit Point, Valley Head, War, Webster Springs and Whitesville.

49

Any funds remaining after the above listed projects have been fully funded may be expended to fund construction of additional libraries.

52

Any unexpended balance remaining in the above appropriations at the close of the fiscal year 1982-83, is hereby reappropriated for expenditure during the fiscal year 1983-84.

55

41A—*Department of Culture and History*

56

Acct. No. 3540

57

1 Historic preservation \$ 411,000 \$

58

2 Total \$ 411,000 \$

59 The purpose of this supplemental appropriation is to fund
60 the historic preservation program.

61 Any unexpended balance remaining in the above appropria-
62 tion at the close of the fiscal year 1982-83, is hereby reap-
63 propriated for expenditure during fiscal year 1983-84.

64 HEALTH AND WELFARE

65 53—*State Health Department*

66 Acct. No. 4000

| | | | | |
|----|-----|-------------------------------|-------------|-------|
| 67 | 1 | Personal Services | \$ 291,145 | \$ |
| 68 | 2 | Current Expenses | 2,596,737 | |
| 69 | 2A | Repairs and Alterations | 114,173 | |
| 70 | 3 | Equipment | 50,200 | |
| 71 | 24A | Capital Outlay | 239,125 | |
| | | | <hr/> | <hr/> |
| 72 | 25 | Total | \$3,291,380 | \$ |

73 The purpose of the above appropriation is to provide addi-
74 tional services under various federal grant programs.

75 Any unexpended balance remaining in the above appropria-
76 tion for "Personal Services," "Current Expenses," "Repairs and
77 Alterations," "Equipment" and "Capital Outlay" at the close
78 of the fiscal year 1982-83, is hereby reappropriated for ex-
79 penditure during the fiscal year 1983-84.

80 57—*Department of Welfare*

81 Acct. No. 4050

| | | | | |
|----|-----|----------------------------|-------------|-------|
| 82 | 1 | Personal Services | \$ 154,992 | \$ |
| 83 | 2 | Current Expenses | 98,109 | |
| 84 | 4 | Equipment | 151,000 | |
| 85 | 9 | Emergency Assistance | 582,628 | |
| 86 | 11A | To Local Entities | 101,025 | |
| | | | <hr/> | <hr/> |
| 87 | 12 | Total | \$1,087,754 | \$ |

88 The purpose of this supplemental appropriation is to provide
89 funds under the donated foods and emergency shelter pro-
90 grams.

91 Any unexpended balance remaining in the appropriation of
 92 federal funds for "Personal Services," "Current Expenses,"
 93 "Equipment," "Emergency Assistance" and "To Local Enti-
 94 ties" at the close of the fiscal year 1982-83, is hereby reappro-
 95 priated for expenditure during fiscal year 1983-84.

96 Item 57—Department of Welfare will be hereinafter desig-
 97 nated as the Department of Human Services.

98 58—*State Commission on Aging*

99 Acct. No. 4060

| | | | | | |
|-------|----|-------------------------|----|--------|----|
| 100 | 1 | Personal Services | \$ | 929 | \$ |
| 101 | 2 | Current Expenses | | 591 | |
| 102 | 5A | To Local Entities | | 78,353 | |
| <hr/> | | | | | |
| 103 | 6 | Total | \$ | 79,873 | \$ |

104 The purpose of this supplemental appropriation is to pro-
 105 vide funds under Title V of the Older Americans Act.

106 Any unexpended balance remaining in the above appropria-
 107 tion of federal funds for "Personal Services," "Current Ex-
 108 penses" and "To Local Entities" at the close of the fiscal year
 109 1982-83, is hereby reappropriated for expenditure during the
 110 fiscal year 1983-84.

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

7 102—*Department of Highways*

8 Acct. No. 6700

9 TO BE PAID FROM STATE ROAD FUND

| | | Federal Funds Fiscal Year 1982-83 | Other Revenue Fiscal Year 1982-83 |
|----|-----------------------|--|--|
| 10 | 11A Other Federal Aid | | |
| 11 | Programs—Total | \$ | \$4,581,000 |

12 The purpose of this supplemental appropriation is to provide
13 funds for a program to replace or rehabilitate small bridges.

14 Any unexpended balance remaining in this appropriation
15 at the close of the fiscal year 1982-83, is hereby reappropriated
16 for expenditure during the fiscal year 1983-84.

1 **Sec. 6a. Appropriation of federal funds.**—In accordance
2 with chapter four, article eleven, federal funds are hereby
3 appropriated conditionally upon the fulfillment of the provi-
4 sions set forth in chapter five-a, article two of the code of
5 West Virginia, the following amounts as itemized for ex-
6 penditure during the fiscal year one thousand nine hundred
7 eighty-three.

1 **Sec. 7a. Appropriations from federal block grants.**—The
2 following items are hereby appropriated from federal block
3 grants and are to be available for expenditure during the fiscal
4 year 1982-83.

5 138—*State Health Department—Alcohol, Drug Abuse*
6 *and Mental Health*

7 Acct. No. 8503

8 TO BE PAID FROM FEDERAL FUNDS

9 1 Current Expenses—Total \$ 1,251,500

10 The purpose of this supplemental appropriation is to provide
11 funding for additional services under the alcohol, drug abuse
12 and mental health block grant.

13 Any unexpended balance remaining in the above appropria-
14 tion at the close of the fiscal year 1982-83, is hereby re-
15 appropriated for expenditure during the fiscal year 1983-84.

16 139—*State Health Department—Maternal and Child Health*

17 Acct. No. 8502

18 TO BE PAID FROM FEDERAL FUNDS

19 1 Personal Services \$ 190,940
20 2 Current Expenses 1,578,581

| | | | |
|----|---|-------------------------------|--------------------|
| 21 | 3 | Repairs and Alterations | 25,000 |
| 22 | 4 | Total | <u>\$1,794,521</u> |

23 The purpose of this supplemental appropriation is to provide
 24 funding for additional services under the maternal and child
 25 health block grant.

26 Any unexpended balance remaining in the above appropria-
 27 tion at the close of the fiscal year 1982-83, is hereby reappro-
 28 priated for expenditure during the fiscal year 1983-84.

29 140—*State Health Department—Preventive Health*

30 Acct. No. 8506

31 TO BE PAID FROM FEDERAL FUNDS

| | | | |
|----|---|-------------------------|------------------|
| 32 | 1 | Personal Services | \$ 31,820 |
| 33 | 2 | Current Expenses | 32,565 |
| 34 | 3 | Total | <u>\$ 64,385</u> |

35 The purpose of this supplemental appropriation is to pro-
 36 vide funding for additional services under the preventive health
 37 block grant.

38 Any unexpended balance remaining in the above appro-
 39 priation at the close of the fiscal year 1982-83, is hereby re-
 40 appropriated for expenditure during the fiscal year 1983-84.

41 141—*Department of Welfare—Social Services*

42 Acct. No. 9161

43 TO BE PAID FROM FEDERAL FUNDS

| | | | |
|----|---|------------------------------|-------------|
| 44 | 1 | Current Expenses—Total | \$2,657,294 |
|----|---|------------------------------|-------------|

45 The purpose of this supplemental appropriation is to provide
 46 funding for additional services under the social services block
 47 grant, and to further provide funding for temporary social
 48 services jobs for unemployed West Virginians who have ex-
 49 hausted unemployment benefits who would meet civil service
 50 requirements and are otherwise qualified for the job classifica-
 51 tions for which they are selected, and who will perform non-

52 professional services not intended to replace the services of
53 professional social workers.

54 Any unexpended balance remaining in the above appropria-
55 tion at the close of the fiscal year 1982-83, is hereby reap-
56 propriated for expenditure during the fiscal year 1983-84. Item
57 141—Department of Welfare—Social Services will be hereinaf-
58 ter designated as the department of human services—social
59 services.

60 142—*Office of Economic and Community Development—*
61 *Community Development*

62 Acct. No. 8029

63 TO BE PAID FROM FEDERAL FUNDS

| | | | | |
|----|---|-------------------------|----|-----------|
| 64 | 1 | Personal Services | \$ | 8,442 |
| 65 | 2 | Current Expenses | \$ | 5,000 |
| 66 | 3 | To Local Entities | \$ | 5,638,558 |
| | | | | <hr/> |
| 67 | 4 | Total | \$ | 5,652,000 |

68 The purpose of this supplemental appropriation is to provide
69 funding for additional services under the community develop-
70 ment block grant.

71 Any unexpended balance remaining in the above appropria-
72 tion at the close of the fiscal year 1982-83, is hereby reap-
73 propriated for expenditure during the fiscal year 1983-84.

74 143—*Office of Economic and Community Development—*
75 *Community Services*

76 Acct. No. 8031

77 TO BE PAID FROM FEDERAL FUNDS

| | | | | |
|----|---|-------------------------|----|---------|
| 78 | 1 | Personal Services | \$ | 12,864 |
| 79 | 2 | Current Expenses | | 3,836 |
| 80 | 3 | To Local Entities | | 317,906 |
| | | | | <hr/> |
| 81 | 4 | Total | \$ | 334,606 |

82 The purpose of this supplemental appropriation is to pro-

- 83 vide funding for additional services under the community
84 services block grant.
- 85 Any unexpended balance remaining in the above appropria-
86 tion at the close of the fiscal year 1982-83, is hereby reap-
87 propriated for expenditure during the fiscal year 1983-84.

CHAPTER 3

(Com. Sub. for S. B. 3—By Mr. McGraw, Mr. President)

[Passed June 2, 1983; 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 funds and the revenue sharing trust fund, remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-three, to the Office of Economic and Community Development, Emergency Employment, Training and Education, Account Nos. 1220 and 9721, supplementing chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature an Executive Message, dated May 17, 1983, which contained revisions of the revenue estimates and financial statements for the general revenue fund and the revenue sharing trust fund; and

WHEREAS, The Legislature through enactment at the First Extraordinary Session, 1983, of certain item decrease, reduction and expiration supplementary appropriation bills, thereby making available additional general revenues and revenue sharing trust fund moneys for appropriation in fiscal year 1982-83, a portion of which said moneys are hereby appropriated by the terms of this supplementary appropriation bill; and

WHEREAS, Article VI, Section 51 of the Constitution of West Virginia requires each supplementary appropriation bill to be limited to some single work, object or purpose stated therein; such single work, object or purpose of this supplementary appropriation bill is to provide for an Emergency Employment

of his recommended supplemental appropriations and of the general revenue fund statement; and

WHEREAS, It appears from such message that certain amounts of that supplementary appropriation will not be needed or used for repayment of principal and interest to the Board of Investments as anticipated in Enrolled Senate Bill No. 322; therefore

Be it enacted by the Legislature of West Virginia:

1 That the sum of one million dollars of the balance in
2 Account No. 1250, available for expenditure in the current
3 fiscal year 1982-83, as appropriated by Enrolled Senate Bill
4 No. 322, enacted January thirtieth, one thousand nine
5 hundred eighty-three, which supplemented chapter
6 twenty, acts of the Legislature, one thousand nine hundred
7 eighty-two, known as the budget bill, be supplemented,
8 amended, reduced and caused to be expired into the state
9 fund, general revenue of the state, with such amount to be
10 immediately available for other and further appropriation
11 upon the effective date of this bill.

12 The purpose of this supplementary appropriation bill is
13 to supplement, amend, reduce and cause to expire into the
14 state fund, general revenue of the state, one million dollars
15 of the moneys in Account No. 1250, Governor's Office —
16 Board of Investments Transfer Repayments, with such
17 amount to be immediately available for other and further
18 appropriation.

CHAPTER 5

(H. B. 116—By Mr. Polan)

[Passed June 2, 1983; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and causing to expire into the state fund, general revenue of the state, certain unexpended and unencumbered amounts of the special revenue fund, Account No. 1510, Auditor's Office, Social Security, as appropriated by chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill.

WHEREAS, The Legislature convened its First Extraordinary Session on May 17, 1983, to undertake consideration of a number of complex issues, particularly an Emergency Employment Program for creation of immediate jobs and job training activity directed toward aiding, if not all, at least a number of those West Virginians who are unemployed and have exhausted or are about to exhaust their unemployment compensation benefits; and

WHEREAS, The Legislature, in order to make sufficient revenue available for such emergency employment program, by means of this supplementary appropriation bill does hereby exercise its powers under Article VI, Section 51 of the Constitution of West Virginia to decrease the unencumbered balances of an item appropriated in the budget bill for the current fiscal year 1982-83; therefore

Be it enacted by the Legislature of West Virginia:

That the sum of three million six hundred thousand dollars of the balances in Account No. 1510, Auditor's Office-Social Security, available for expenditure in the current fiscal year 1982-83, as appropriated by chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill, be supplemented, amended, reduced and caused to expire into the state fund, general revenue of the state, and with such amount to be available for other and further appropriation upon the effective date of this bill.

The purpose of this supplementary appropriation bill is to supplement, amend, reduce and cause to expire into the state fund, general revenue of the state, the sum of three million six hundred thousand dollars, of the moneys in Account No. 1510, Auditor's Office-Social Security, to be immediately available for other and further appropriation.

CHAPTER 6

(H. B. 116—By Mr. Polan)

[Passed June 2, 1983; 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 unex-

pending and unencumbered amounts of Account No. 5100, Department of Agriculture, as appropriated by Enrolled Committee Substitute for H. B. No. 1724, enacted March third, one thousand nine hundred eighty-three, which supplemented chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill.

WHEREAS, The Legislature convened its First Extraordinary Session on May 17, 1983, to undertake consideration of a number of complex issues, particularly an Emergency Employment Program for creation of immediate jobs and job training activity directed toward aiding, if not all, at least a number of those West Virginians who are unemployed and have exhausted or are about to exhaust their unemployment compensation benefits; and

WHEREAS, The Legislature, in order to make sufficient revenue available for such emergency employment program, by means of this supplementary appropriation bill does hereby exercise its powers under Article VI, Section 51 of the Constitution of West Virginia to decrease the unencumbered balances of an item appropriated in the budget bill for the current fiscal year 1982-83; therefore

Be it enacted by the Legislature of West Virginia:

That the sum of fifty thousand dollars of the amount appropriated in line item "5a Gypsy Moth Spray Program", available for expenditure in the current fiscal year 1982-83, as appropriated by Enrolled Committee Substitute for H. B. 1724, enacted March third, one thousand nine hundred eighty-three, which supplemented chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill, be supplemented, amended, reduced and caused to expire into the state fund, general revenue of the state, and with such expired amount to be immediately available for other and further appropriation upon the effective date of this bill.

The purpose of this supplementary appropriation bill is to supplement, amend, reduce and cause to expire into the state fund, general revenue of the state, fifty thousand dollars of the moneys in Account No. 5100, Department of Agriculture, and more particularly line item 5a thereof, designated Gypsy Moth Spray Program, with such fifty thousand dollars to be immediately available for other and further appropriation.

CHAPTER 7

(H. B. 119—By Mr. Polan)

[Passed June 2, 1983; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and causing to expire into the state fund, general revenue of the state, certain unexpended and unencumbered amounts of the special revenue fund, Department of Natural Resources, Account No. 8325-09, Investments, as appropriated by chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill.

WHEREAS, The Legislature convened its First Extraordinary Session on May 17, 1983, to undertake consideration of a number of complex issues, particularly an Emergency Employment Program for creation of immediate jobs and job training activity directed toward aiding, if not all, at least a number of those West Virginians who are unemployed and have exhausted or are about to exhaust their unemployment compensation benefits; and

WHEREAS, The Legislature, in order to make sufficient revenue available for such emergency employment program, by means of this supplementary appropriation bill does hereby exercise its powers under Article VI, Section 51 of the Constitution of West Virginia to decrease the unencumbered balances of an item appropriated in the budget bill for the current fiscal year 1982-83; therefore

Be it enacted by the Legislature of West Virginia:

That the sum of five hundred thousand dollars of the balances in Account No. 8325-09, Department of Natural Resources, including balances carried forward on the first day of July, one thousand nine hundred eighty-two, available for expenditure in the current fiscal year 1982-83, as appropriated by chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill, be supplemented, amended, reduced and caused to expire into the state fund, general revenue of the state, and with such amount to be available for other and further appropriation upon the effective date of this bill.

The purpose of this supplementary appropriation bill is to supple-

ment, amend, reduce and cause to expire out of the special revenue fund and into the state fund, general revenue of the state, the sum of five hundred thousand dollars, such moneys being formerly appropriated by the language of the "Sec. 9. Special revenue appropriations." section in the budget bill for the current fiscal year 1982-83.

CHAPTER 8

(H. B. 117—By Mr. Polan)

[Passed June 2, 1983; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and causing to expire into the Revenue Sharing Trust Fund of the state certain unexpended and unencumbered amounts of Item 1, Account No. 9721, Governor's Office, Revenue Sharing Trust Fund, as first appropriated by Chapter Two, acts of the legislature, first extraordinary session, 1977, and the "Sec. 5. Appropriations from revenue sharing trust fund." section thereof, and as reappropriated in each Budget Act thereafter, under the section of each, respectively, providing for "Reappropriations—Revenue Sharing Trust Fund." and thus brought forward and as appropriated by chapter twenty, acts of the legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill.

WHEREAS, The Legislature convened its First Extraordinary Session on May 17, 1983, to undertake consideration of a number of complex issues, particularly an Emergency Employment Program for creation of immediate jobs and job training activity directed toward aiding, if not all, at least a number of those West Virginians who are unemployed and have exhausted or are about to exhaust their unemployment compensation benefits; and

WHEREAS, The Legislature, in order to make sufficient revenue available for such emergency employment program, by means of this supplementary appropriation bill does hereby exercise its powers under Article VI, Section 51 of the Constitution of West Virginia to decrease the unencumbered balances of an item appropriated in the budget bill for the current fiscal year 1982-83; therefore

Be it enacted by the Legislature of West Virginia:

That the total sum of five hundred thousand dollars, being the entire balance unexpended and unencumbered in line item 1 "Gas/Coal Conversion Project", as first appropriated by Chapter Two, acts of the Legislature, first extraordinary session, 1977, and the "Sec. 5. Appropriations from revenue sharing trust fund." section thereof, to the "Governor's Office, Acct. No. 9721" and is reappropriated in each Budget Act thereafter, under the section of each, respectively, providing for "Reappropriations—Revenue Sharing Trust Fund." and thus brought forward and as appropriated by chapter twenty, acts of the Legislature, regular session, one thousand nine hundred eighty-two, known as the budget bill be supplemented, amended, reduced and caused to expire into the revenue sharing trust fund of the state and with such expired amount to be immediately available for other and further appropriation in the current fiscal year 1982-83 and upon the effective date of this bill.

The purpose of this supplementary appropriation bill is to supplement, amend, reduce and cause to expire into the revenue sharing trust fund of the state the entire amount of five hundred thousand dollars, being all of the moneys in Acct. No. 9721, Governor's Office and line item 1 thereof, designated "Gas/Coal Conversion Project", with such five hundred thousand dollars to be immediately available for other and further appropriation in the current fiscal year 1982-83.

CHAPTER 9

(S. B. 15—Originating in the Committee on Finance)

[Passed June 2, 1983; 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 funds remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-four, to the Office of Economic and Community Development, Emergency Employment, Training and Education, Account

No. 1220; and to the West Virginia Library Commission, Account No. 3490, supplementing Enrolled Committee Substitute for House Bill No. 1150, enacted by the Legislature, regular session, one thousand nine hundred eighty-three, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature an Executive Message, dated May 17, 1983, which contained revisions of the revenue estimates and financial statements for the general revenue fund; and

WHEREAS, The Legislature through enactment at the First Extraordinary Session, 1983, of certain item decrease, reduction and expiration supplementary appropriation bills, thereby making available additional general revenues for appropriation in fiscal year 1983-84, a portion of which said moneys are hereby appropriated by the terms of this supplementary appropriation bill; and

WHEREAS, Article VI, Section 51 of the Constitution of West Virginia requires each supplementary appropriation bill to be limited to some single work, object or purpose stated therein; such single work, object or purpose of this supplementary appropriation bill is to provide for an Emergency Employment Program for creation of immediate jobs and job training activity to aid and assist unemployed West Virginians; therefore

Be it enacted by the Legislature of West Virginia:

That Enrolled Committee Substitute for H. B. No. 1150, enacted by the Legislature, regular session, 1983, known as the budget bill, be supplemented by establishing the following accounts and line items thereof in the section as hereinafter specified for the fiscal year ending June thirtieth, one thousand nine hundred eighty-four, as follows:

TITLE 2.—APPROPRIATIONS.

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

8

EXECUTIVE

9 6A—*Office of Economic and Community Development*
 10 *Emergency Employment, Training and Education*

11 Acct. No. 1220

12 State
 13 General
 14 Revenue
 15 Fiscal Year
 16 1983-84

| | | | |
|----|---|--|--------------|
| 17 | 1 | Emergency Jobs Program— | |
| 18 | | Public Service Jobs | \$13,079,264 |
| 19 | 2 | Vocational Centers' Computer Network . . | 750,000 |
| 20 | 3 | Emergency Jobs Program—Parks | 603,204 |
| | | | <hr/> |
| 21 | 4 | Total | \$14,432,468 |

22 5 The purpose of the above supplemental appropriation
 23 6 in line item 1 thereof is to provide jobs for unemployed
 24 7 West Virginians and pay for other necessary expenses.
 25 8 Line item 2 thereof is to furnish modern training
 26 9 equipment in order to train unemployed West
 27 10 Virginians for employment and pay for other necessary
 28 11 expenses. Line item 3 thereof is to provide funds for the
 29 12 development of outdoor recreation areas and facilities
 30 13 and create jobs in respect thereto and pay for other
 31 14 necessary expenses.

32 15 Included in line item 1, above, are the amounts equal
 33 16 to the total of the veto reductions made by the Governor
 34 17 to the budget bill for fiscal year 1983-84, less the
 35 18 amounts restored by decision of the Supreme Court of
 36 19 Appeals to Account No. 4160 and the Spencer State
 37 20 Hospital portion thereof, in said budget bill. So much of
 38 21 this appropriation in line item 1 as is equal to any
 39 22 further such reductions arising from any determination
 40 23 by the Supreme Court of Appeals in respect to any
 41 24 further invalid veto actions of the Governor and in
 42 25 connection with any case challenging such veto
 43 26 reductions shall not be available for expenditure from
 44 27 said line item 1.

45

EDUCATIONAL

46

35A—*West Virginia Library Commission*

47

Acct. No. 3490

48

State

49

General

50

Revenue

51

Fiscal Year

52

1983-84

53 1 Library Matching Fund

54 (construction)—Total\$350,000

55 2 The above appropriation is to be expended for the
56 3 construction of instant or outpost libraries in the
57 4 following communities: Alderson, Buffalo, Bradshaw,
58 5 Chapmanville, Cowen, Helvetia, Hinton, Mt. Storm,
59 6 Nutter Fort, Pennsboro, Peterstown, Rainelle, Salem,
60 7 Summit Point, Valley Head, War, Webster Springs and
61 8 Whitesville.

62 9 Any funds remaining after the above listed projects
63 10 have been fully funded may be expended to fund
64 11 construction of additional libraries.

CHAPTER 10

(H. B. 123—By Mrs. Martin and Mrs. Bledsoe)

[Passed August 17, 1983; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of the revenue sharing trust fund remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-four, to the State Tax Department, Account No. 9781-23, supplementing chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-three, known as the budget bill.

WHEREAS, The current financial statement for the revenue sharing trust fund, dated August 16, 1983, establishes the balance of such fund available for appropriation; and

WHEREAS, The Legislature believes that additional funding for the State Tax Department should be given priority at this time, in providing for employment of additional auditing staff and other department personnel and in implementation of the enhanced computer system operation as specified in the Tax Department "Computer Task Force Report" of October 6, 1982; all on a level of implementation as determined by the State Tax Commissioner; and

WHEREAS, A portion of the balance available for appropriation in the revenue sharing trust fund is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

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

| | | |
|---|---|-----------|
| 1 | TITLE 2. APPROPRIATIONS. | |
| 2 | Sec. 10a. Appropriation from Revenue Sharing Trust Fund. | |
| 3 | <i>132—Revenue Sharing Trust Fund</i> | |
| 4 | <i>State Tax Department</i> | |
| 5 | Acct. No. 9781-23 | |
| 6 | 1 Unclassified | \$600,000 |

7 The purpose of this supplementary appropriation bill is to
8 establish an additional account to provide funds to the State
9 Tax Department, expendable in the current fiscal year of
10 1983-84, and upon the effective date of the bill, and for en-
11 hanced staffing and computer system activities.

CHAPTER 11

(H. B. 124—By Mr. Smith and Mr. Murensky)

[Passed August 17, 1983; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of the revenue sharing

trust fund remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-four, to the Department of Employment Security, Account No. 9784-09, supplementing chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-three, known as the budget bill.

WHEREAS, The current financial statement for the revenue sharing trust fund, dated August 16, 1983, establishes the balance of such fund available for appropriation; and

WHEREAS, The Legislature believes that an initial, limited pilot program for providing incentive for employment by the private sector and subsidy in respect thereto will constitute a viable introduction and initiation of this activity; and

WHEREAS, A portion of the balance available for appropriation in the revenue sharing trust fund is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

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

| | | |
|---|---|---------------------------------------|
| 1 | TITLE 2. APPROPRIATIONS. | |
| 2 | Sec. 10a. Appropriation from Revenue Sharing Trust Fund. | |
| 3 | <i>133—Revenue Sharing Trust Fund</i> | |
| 4 | <i>Department of Employment Security</i> | |
| 5 | Acct. No. 9784-09 | |
| 6 | 1 | Private Sector Employment Subsidy— |
| 7 | 2 | Limited Pilot Program \$100,000 |

8 The purpose of this supplementary appropriation bill is to
 9 provide limited, initial funding for activation of incentives for
 10 private sector employment as specified in Enrolled Senate
 11 Bill No. 16, acts of the Legislature, first extraordinary session,
 12 1983.

CHAPTER 12

(H. B. 120—By Mr. Polan)

[Passed June 2, 1983; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, decreasing and causing to expire into the state fund, general revenue of the state, certain unexpended and unencumbered amounts of certain specified items, and clarifying language of reappropriation in the total existing accounts and general revenue appropriations of the House of Delegates, Account No. 1020; of the Joint Expenses, Account No. 1030; of the Supreme Court-General Judicial, Account No. 1110; of the Governor's Office, Account No. 1200; of the Office of Economic and Community Development, Account No. 1210; of the Auditor's Office-General Administration, Account No. 1500; of the Auditor's Office-Social Security, Account No. 1510; of the Treasurer's Office, Account No. 1600; of the State Tax Department, Account No. 1800; of the Department of Finance and Administration, Account No. 2100; of the Attorney General, Account No. 2400; of the Secretary of State, Account No. 2500; of the West Virginia Board of Regents (Control), Account No. 2790; of the West Virginia Board of Regents, Account No. 2800; of the West Virginia College of Osteopathic Medicine, Account No. 2810; of the Marshall University-Medical School, Account No. 2840; of the West Virginia University-Medical School, Account No. 2850; of the State Department of Education, Account No. 2860; of the State Board of Education-Vocational Division, Account No. 2890; of the State Department of Education-Aid for Exceptional Children, Account No. 2960; of the West Virginia Library Commission, Account No. 3500; of the Department of Culture and History, Account No. 3510; of the Department of Corrections-Central Office, Account No. 3680; of the Department of Corrections-Correctional Units, Account No. 3770; of the State Health Department, Account No. 4000; of the Department of Veterans Affairs-Veterans Home, Account No. 4010; of the Department of Human Services, Account No. 4050; of the State Health Department-Retardation Centers, Account No. 4150; of the State Health Department-Public Hospitals, Account No.

4170; of the State Board of Education-Rehabilitation Division, Account No. 4400; of the Department of Mines, Account No. 4600; of the West Virginia Air Pollution Control Commission, Account No. 4760; of the Department of Agriculture, Account No. 5100; of the Farm Management Commission, Account No. 5110; of the Department of Agriculture-Soil Conservation Committee, Account No. 5120; of the Department of Agriculture-Division of Rural Resources (Matching Fund), Account No. 5130; of the Department of Agriculture-Meat Inspection, Account No. 5140; of the Geological and Economic Survey, Account No. 5200; of the Department of Natural Resources, Account No. 5650; of the Water Development Authority, Account No. 5670; of the West Virginia Railroad Maintenance Authority, Account No. 5690; of the Department of Public Safety, Account No. 5700; of the Adjutant, General-State Militia, Account No. 5800; of the West Virginia Civil Service System, Account No. 5840; and of the Insurance Commissioner, Account No. 6160, as heretofore appropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-four, by Enrolled Committee Substitute for H. B. 1150, enacted by the Legislature, regular session, 1983, known as the budget bill.

WHEREAS, The Legislature convened its First Extraordinary Session on May 17, 1983, to undertake consideration of a number of complex issues, particularly an Emergency Employment Program for creation of immediate jobs and job training activity directed toward aiding, if not all, at least a number of those West Virginians who are unemployed and have exhausted or are about to exhaust their unemployment compensation benefits; and

WHEREAS, The Legislature, in order to make sufficient revenue available for such emergency employment program, by means of this supplementary appropriation bill does hereby exercise its powers under Article VI, Section 51 of the Constitution of West Virginia to decrease the unencumbered balances of certain specified items in existing appropriated accounts in the budget bill, Enrolled Committee Substitute for H. B. 1150, for the fiscal year 1983-84; and

WHEREAS, Article VI, Section 51 of the Constitution of West Virginia requires each supplementary appropriation bill to be limited to some single work, object or purpose therein stated; such single work, object or purpose of this supplementary appropriation bill is

to decrease specified items in the budget bill for fiscal year 1983-84 and expire such funds into the state fund, general revenue, to make available sufficient moneys for an Emergency Employment Program for the state; therefore

Be it enacted by the Legislature of West Virginia:

That the specified items in the total existing accounts and general revenue appropriations of Account Nos. 1020, 1030, 1110, 1200, 1210, 1500, 1510, 1600, 1800, 2100, 2400, 2500, 2790, 2800, 2810, 2840, 2850, 2860, 2890, 2960, 3500, 3510, 3680, 3770, 4000, 4010, 4050, 4150, 4170, 4400, 4600, 4760, 5100, 5110, 5120, 5130, 5140, 5200, 5650, 5690, 5700, 5800, 5840, 6160, and the language of reappropriation under Account No. 5670, as appropriated by Enrolled Committee Substitute for H. B. No. 1150, enacted by the legislature, regular session, 1983, known as the budget bill, be supplemented, amended, decreased and caused to expire into the state fund, general revenue of the state, by reducing and decreasing the total sums for such specified line items and with such line items, as decreased, and language of reappropriation under Account No. 5670, as clarified, to thereafter read as follows:

| | | |
|----|---|--------------|
| 1 | TITLE 2. APPROPRIATIONS. | |
| 2 | Section 1. Appropriations from general revenue. | |
| 3 | LEGISLATIVE | |
| 4 | 2—House of Delegates | |
| 5 | Acct. No. 1020 | |
| 6 | 1 Compensation of Members | \$ 649,000 |
| 7 | 4 Expenses of Members | 425,000 |
| 8 | Total | \$ 2,201,000 |
| 9 | 3—Joint Expenses | |
| 10 | Acct. No. 1030 | |
| 11 | 1 Joint Committee on Government | |
| 12 | 2 and Finance | \$ 3,221,425 |
| 13 | 5 Total | \$ 4,011,425 |

1112

APPROPRIATIONS

[Ch. 12

14

JUDICIAL

15

4—*Supreme Court—General Judicial*

16

Acct. No. 1110

17 1 Personal Services \$ 13,988,620

18 7 Total 20,037,208

19

EXECUTIVE

20

5—*Governor's Office*

21

Acct. No. 1200

22 2 Other Personal Services \$ 896,586

23 5 Total \$ 1,347,331

24 6—*Office of Economic and Community Development*

25

Acct. No. 1210

26 1 Personal Services \$ 1,997,003

27 17 Total \$ 9,406,815

28

FISCAL

29

10—*Auditor's Office—General Administration*

30

Acct. No. 1500

31 2 Other Personal Services \$ 1,336,621

32 6 Total \$ 2,193,788

33 11—*Auditor's Office—Social Security*

34

Acct. No. 1510

35 1 To match contributions of

36 2 state employees for

37 3 Social Security—Total \$ 17,229,000

| | | | | |
|----|---|-------------------------------|----|-----------|
| 38 | | | | |
| | | | | |
| 39 | | | | |
| | | | | |
| 40 | 2 | Other Personal Services | \$ | 664,168 |
| 41 | 6 | Total | \$ | 1,054,536 |

16—*State Tax Department*

| | | | | |
|----|---|------------------------------------|----|------------|
| 42 | | | | |
| | | | | |
| 43 | | | | |
| | | | | |
| 44 | 1 | Personal Services | \$ | 7,567,080 |
| 45 | 7 | Property Reappraisal Program | | 14,925,281 |
| 46 | 8 | Total | \$ | 26,677,376 |

17—*Department of Finance and Administration*

| | | | | |
|----|----|-----------------|----|-----------|
| 47 | | | | |
| | | | | |
| 48 | | | | |
| | | | | |
| 49 | 7 | Utilities | \$ | 300,000 |
| 50 | 17 | Total | \$ | 6,236,612 |

LEGAL

19—*Attorney General*

| | | | | |
|----|----|-------------------------------|----|-----------|
| 51 | | | | |
| | | | | |
| 52 | | | | |
| | | | | |
| 53 | | | | |
| | | | | |
| 54 | 2 | Other Personal Services | \$ | 1,561,426 |
| 55 | 12 | Total | \$ | 2,343,687 |

INCORPORATING AND RECORDING

21—*Secretary of State*

| | | | | |
|----|---|-------------------------------|----|---------|
| 56 | | | | |
| | | | | |
| 57 | | | | |
| | | | | |
| 58 | | | | |
| | | | | |
| 59 | 2 | Other Personal Services | \$ | 407,271 |
| 60 | 9 | Total | \$ | 741,726 |

EDUCATIONAL

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

| | | | | |
|----|---|-------------------------|----|-------------|
| 61 | | | | |
| | | | | |
| 62 | | | | |
| | | | | |
| 63 | | | | |
| | | | | |
| 64 | 1 | Personal Services | \$ | 107,642,864 |

| | | | |
|----|----|--|---------------|
| 65 | 10 | Doctoral Research | —0— |
| 66 | 11 | Total | \$136,631,864 |
| 67 | | 23— <i>West Virginia Board of Regents</i> | |
| 68 | | Acct. No. 2800 | |
| 69 | 1 | Personal Services | \$ 736,033 |
| 70 | 6 | Total | \$ 5,015,033 |
| 71 | | 24— <i>West Virginia College of Osteopathic Medicine</i> | |
| 72 | | Acct. No. 2810 | |
| 73 | 1 | Personal Services | \$ 1,841,760 |
| 74 | 5 | Total | \$ 2,737,760 |
| 75 | | 25— <i>Marshall University—Medical School</i> | |
| 76 | | Acct. No. 2840 | |
| 77 | 1 | Personal Services | \$ 4,374,097 |
| 78 | 5 | Total | \$ 5,703,097 |
| 79 | | 26— <i>West Virginia University—Medical School</i> | |
| 80 | | Acct. No. 2850 | |
| 81 | 1 | Personal Services | \$ 14,187,000 |
| 82 | 11 | Total | \$ 22,831,000 |
| 83 | | 27— <i>State Department of Education</i> | |
| 84 | | Acct. No. 2860 | |
| 85 | 1 | Personal Services | \$ 1,863,638 |
| 86 | 5 | Statewide Testing Program | 756,510 |
| 87 | | Professional Competency | |
| 88 | | Testing | 291,511 |
| 89 | 11 | Total | \$ 4,957,355 |

| | | | |
|-----|----|---|---------------|
| 90 | | 29— <i>State Board of Education—Vocational Division</i> | |
| 91 | | Acct. No. 2890 | |
| 92 | 1 | Personal Services | \$ 358,689 |
| 93 | 17 | Total | \$ 12,032,380 |
| 94 | | 32— <i>State Department of Education—</i> | |
| 95 | | <i>Aid for Exceptional Children</i> | |
| 96 | | Acct. No. 2960 | |
| 97 | 1 | Personal Services | \$ 220,932 |
| 98 | 8 | Total | \$ 7,250,082 |
| 99 | | 36— <i>West Virginia Library Commission</i> | |
| 100 | | Acct. No. 3500 | |
| 101 | 1 | Personal Services | \$ 913,068 |
| 102 | 10 | Total | \$ 6,494,382 |
| 103 | | 37— <i>Department of Culture and History</i> | |
| 104 | | Acct. No. 3510 | |
| 105 | 1 | Personal Services | \$ 924,863 |
| 106 | 12 | Total | \$ 3,147,229 |
| 107 | | 39— <i>Department of Corrections—Central Office</i> | |
| 108 | | Acct. No. 3680 | |
| 109 | 1 | Personal Services | \$ 415,906 |
| 110 | 6 | Total | \$ 1,851,135 |
| 111 | | 41— <i>Department of Corrections—Correctional Units</i> | |
| 112 | | Acct. No. 3770 | |
| 113 | 1 | Personal Services | \$ 9,568,561 |
| 114 | 6 | Total | \$ 18,350,969 |

1116

APPROPRIATIONS

[Ch. 12

1115

HEALTH AND HUMAN SERVICES

1116

42—*State Health Department*

1117

Acct. No. 4000

1118 1 Personal Services \$ 5,756,546

1119 31 Total \$ 44,196,971

1120 43—*Department of Veterans Affairs—Veterans Home*

1121

Acct. No. 4010

1122 1 Personal Services \$ 1,118,017

1123 5 Total \$ 1,118,017

1124 46—*Department of Human Services*

1125

Acct. No. 4050

1126 1 Personal Services \$ 9,218,567

1127 20 Total \$108,466,422

1128 48—*State Health Department—Retardation Centers*

1129

Acct. No. 4150

1130 1 Personal Services \$ 8,544,136

1131 5 Total \$ 10,298,907

1132 50—*State Health Department—Public Hospitals*

1133

Acct. No. 4170

1134 1 Personal Services \$ 11,569,287

1135 5 Total \$ 15,860,263

1136 51—*State Board of Education—Rehabilitation Division*

1137

Acct. No. 4400

1138 1 Personal Services \$ 4,012,248

1139 10 Total \$ 8,945,803

| | | | |
|-----|----|--|--------------|
| 140 | | 54— <i>Department of Mines</i> | |
| 141 | | Acct. No. 4600 | |
| 142 | 1 | Personal Services | \$ 3,363,255 |
| 143 | 8 | Gas Well Certification | 220,000 |
| 144 | 11 | Total | \$ 5,579,074 |
| 145 | | 57— <i>West Virginia Air Pollution Control Commission</i> | |
| 146 | | Acct. No. 4760 | |
| 147 | 1 | Personal Services | \$ 531,104 |
| 148 | 4 | Total | \$ 696,940 |
| 149 | | AGRICULTURE | |
| 150 | | 62— <i>Department of Agriculture</i> | |
| 151 | | Acct. No. 5100 | |
| 152 | 2 | Other Personal Services | \$ 1,819,002 |
| 153 | 5 | Total | \$ 3,345,917 |
| 154 | | 63— <i>Farm Management Commission</i> | |
| 155 | | Acct. No. 5110 | |
| 156 | 1 | Personal Services | \$ 950,064 |
| 157 | 6 | Total | \$ 2,540,964 |
| 158 | | 64— <i>Department of Agriculture—</i> | |
| 159 | | <i>Soil Conservation Committee</i> | |
| 160 | | Acct. No. 5120 | |
| 161 | 1 | Personal Services | \$ 303,084 |
| 162 | 4 | Total | \$ 666,931 |
| 163 | | 65— <i>Department of Agriculture—Division of Rural Resources</i> | |
| 164 | | <i>(Matching Fund)</i> | |
| 165 | | Acct. No. 5130 | |
| 166 | 1 | Personal Services | \$ 706,265 |
| 167 | 4 | Total | \$ 938,508 |

1118 APPROPRIATIONS [Ch. 12

168 66—*Department of Agriculture—Meat Inspection*

169 Acct. No. 5140

170 1 Personal Services \$ 348,104

171 3 Total \$ 502,651

172 CONSERVATION AND DEVELOPMENT

173 68—*Geological and Economic Survey*

174 Acct. No. 5200

175 1 Personal Services \$ 1,225,106

176 6 Total \$ 1,658,716

177 69—*Department of Natural Resources*

178 Acct. No. 5650

179 1 Personal Services \$ 8,663,520

180 13 Total \$ 14,690,714

181 71—*Water Development Authority*

182 Acct. No. 5670

183 5 Any unexpended balance remaining in the appropriation
184 6 for "Capital Outlay," "Phase III Hardship Grants," "Con-
185 7 struction Grants-Phase III," "Hardship Grants," "Lubeck
186 8 Public Service District," "Bolair Public Service District"
187 9 and "McMechen Water Project" at the close of the fiscal
188 10 year 1982-83 is hereby reappropriated for expenditure
189 11 during the fiscal year 1983-84.

190 72—*West Virginia Railroad Maintenance Authority*

191 Acct. No. 5690

192 1 Personal Services \$ 662,614

193 6 Total \$ 799,144

194

PROTECTION

195

73—*Department of Public Safety*

196

Acct. No. 5700

197 1 Personal Services \$ 14,030,943

198 6 Total \$ 23,158,537

199

74—*Adjutant General—State Militia*

200

Acct. No. 5800

201 1 Personal Services \$ 225,587

202 8 Property Maintenance 928,795

203 9 State Armory Board 2,483,142

204 11 Total \$ 4,760,059

205 MISCELLANEOUS BOARDS AND COMMISSIONS

206

75—*West Virginia Civil Service System*

207

Acct. No. 5840

208 1 Personal Services \$ 778,177

209 4 Total \$ 1,017,647

210

81—*Insurance Commissioner*

211

Acct. No. 6160

212 1 Personal Services \$ 591,658

213 4 Total \$ 810,272

CHAPTER 13

(H. B. 115—By Mr. Polan)

[Passed June 2, 1983; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, decreasing and causing to expire into the state fund, general revenue of the state, certain unexpended and unencumbered amounts of a certain item in the account and total existing general revenue appropriation of the State Health Department-Mental Hospitals, Account No. 4160, heretofore appropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-four, by Enrolled Committee Substitute for H. B. No. 1150, enacted by the Legislature, regular session, 1983, known as the budget bill.

WHEREAS, The Legislature convened its First Extraordinary Session on May 17, 1983, to undertake consideration of a number of complex issues, particularly an Emergency Employment Program for creation of immediate jobs and job training activity directed toward aiding, if not all, at least a number of those West Virginians who are unemployed and have exhausted or are about to exhaust their unemployment compensation benefits; and

WHEREAS, The Legislature, in order to make sufficient revenue available for such emergency employment program, by means of this supplementary appropriation bill does hereby exercise its powers under Article VI, Section 51 of the Constitution of West Virginia to decrease the unencumbered balances of certain specified items in existing appropriated account in the budget bill, Enrolled Committee Substitute for H. B. No. 1150, for the fiscal year 1983-84; and

WHEREAS, The Supreme Court of Appeals of West Virginia in its decision in respect to Spencer State Hospital held that the veto action of the Governor on this account was invalid and therefore that the Clerk of the House of Delegates was to print such account as enacted by the Legislature in said Enrolled Committee Substitute for H. B. No. 1150, the budget bill; and

WHEREAS, Such account, as directed printed by the Supreme Court of Appeals, is hereby decreased and amended by this supplementary appropriation bill in order to partially make available funds for the Emergency Employment Program; therefore

Be it enacted by the Legislature of West Virginia:

That certain of the sums of items 1 and 9 in the total existing appropriation of the State Health Department-Mental Hospitals, Account No. 4160, as appropriated by Enrolled Committee Substitute for H. B. No. 1150, enacted by the Legislature, regular session, 1983, known as the budget bill, be supplemented, amended, decreased and caused to expire into the state fund, general revenue of the state, and with the sums remaining and appropriated in such items and in the other unreduced line items in such account to thereafter read as follows:

| | | |
|----|---|---------------|
| 1 | TITLE 2. APPROPRIATIONS. | |
| 2 | Section 1. Appropriations from general revenue. | |
| 3 | HEALTH AND HUMAN SERVICES | |
| 4 | 49— <i>State Health Department—Mental Hospitals</i> | |
| 5 | Acct. No. 4160 | |
| 6 | 1 Personal Services | \$ 18,453,471 |
| 7 | 2 Current Expenses | 5,984,063 |
| 8 | 3 Repairs and Alterations | 276,220 |
| 9 | 4 Equipment | 247,240 |
| 10 | 5 Student Nurse Affiliation | |
| 11 | 6 Program (Huntington) | 71,782 |
| 12 | 7 Psychiatric Training Center- | |
| 13 | 8 Student Nurses (Weston) | 219,971 |
| 14 | 9 Total | \$ 25,252,747 |

15 The purpose of this supplementary appropriation bill is to
 16 supplement, amend, decrease and cause to expire into the state
 17 fund, general revenue of the state, a part of the sum formerly
 18 appropriated to line item 1 in Account No. 4160, State Health
 19 Department-Mental Hospitals, and with such decreases and
 20 expired amount to be available for other and further appropria-
 21 tions.

CHAPTER 14

(Com. Sub. for H. B. 104—By Mr. Speaker, Mr. See, by request of the Executive)

[Passed May 31, 1983; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four, twelve and twenty, article six, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto two new sections, designated sections four-a and ten-a, all relating to the civil service system for employees of the state generally; the classification of employees and positions within such system; requiring the joint committee on government and finance to study civil service coverage of employees of the board of regents; the removal of the prohibition against the extension of civil service coverage to certain employees of the alcohol beverage control commissioner, the department of highways, and all custodians, janitors and laborers employed by any covered agency of the state; specifying the date by which such employees are to be placed within the classified service; specifying certain conditions with respect to the entry of all such persons and persons brought within the classified service by the provisions of certain executive orders; specifying and establishing conditions under which employees within the classified-exempt service who are laid off due to a reduction in force because of lack of funds may be rehired within the classified service; clarifying the rate of compensation with respect to such rehired employees; providing special provisions for reduction in force termination of covered employees; requiring the director to provide instruction in civil service procedures for supervisory personnel; prohibiting favoritism or discrimination because of political or religious opinion, affiliation or race; relating to and limiting certain political activity by employees; prohibiting employees from performing services for any political party, committee or candidate for compensation other than expenses; prohibiting employees from using authority to influence political activity; prohibiting employees from coercing or commanding others to make contributions for political purposes; prohibiting a classified employee from being a candidate for or holding certain paid public offices, from being a candidate or delegate to any

political party convention, or from being a member of any political party committee or a financial agent or treasurer for election purposes; allowing a classified employee to be an officer of a political club; when classified employee may be a candidate for political office; requiring employee who becomes a candidate for political office to take leave of absence; and requiring civil service commissioner to promulgate rules and regulations.

Be it enacted by the Legislature of West Virginia:

That sections four, twelve and twenty, article six, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto two new sections, designated sections four-a and ten-a, all to read as follows:

ARTICLE 6. CIVIL SERVICE SYSTEM.

- §29-6-4. Classified-exempt service; additions to classified service; exceptions.
- §29-6-4a. Conditions for reinstatement of certain employees.
- §29-6-10a. Reduction in work force.
- §29-6-12. Duties of state officers and employees; legal proceedings to secure compliance with article and rules.
- §29-6-20. Favoritism or discrimination because of political or religious opinions, affiliations or race; political activities prohibited.

§29-6-4. Classified-exempt service; additions to classified service; exceptions.

1 (a) The classified-exempt service comprises all positions
2 not included in the classified service and those positions specif-
3 ically excepted from the classified service as provided in this
4 section.

5 In no event shall persons employed by the board of regents
6 be considered as included in either the classified or classified-
7 exempt service: *Provided*, That the joint committee on govern-
8 ment and finance shall direct a special study for the purpose
9 of consideration by the Legislature of including any persons
10 employed by the board of regents in a civil service system.
11 The board of regents, and its advisory council of classified
12 employees, the civil service commission, or any other state
13 agency shall cooperate in such study as may be directed by
14 the joint committee on government and finance. The study
15 shall include reasonable notice and opportunities for all per-

16 sons employed by the board of regents to submit data, objec-
17 tions, suggested proposals, evidence or comments orally or in
18 writing concerning the issue of civil service coverage. The
19 joint committee on government and finance shall report its
20 findings, together with any recommendations, to the Legisla-
21 ture on or before the first day of the regular session in the
22 year one thousand nine hundred eighty-four.

23 Except for the period commencing on the first day of July,
24 one thousand nine hundred seventy-six, and ending on the
25 first Monday after the second Wednesday of the following
26 January and except for the same periods commencing in the
27 year one thousand nine hundred eighty, and in each fourth
28 year thereafter, the governor may, by executive order, with
29 the written consent of the civil service commission and the
30 appointing authority concerned, add to the list of positions
31 in the classified service, but such additions shall not include
32 the following:

33 (1) The state Legislature and other officers elected by
34 popular vote and persons appointed to fill vacancies in elec-
35 tive offices.

36 (2) Members of boards and commissions and heads of
37 departments appointed by the governor or such heads of de-
38 partments selected by commissions or boards when expressly
39 exempt by law or board order.

40 (3) Excluding the policymaking positions in an agency,
41 one principal assistant or deputy and one private secretary
42 for each board or commission or head of a department elected
43 or appointed by the governor or Legislature.

44 (4) All policymaking positions.

45 (5) Not more than fifteen employees in the office of the
46 governor.

47 (6) Judges, referees, receivers, jurors and notaries pub-
48 lic.

49 (7) The secretaries and clerks of each judge of a court
50 of record.

51 (8) Patients or inmates employed in state institutions.

52 (9) Persons employed in a professional or scientific ca-
53 pacity to make or conduct a temporary and special inquiry,
54 investigation or examination on behalf of the Legislature or
55 a committee thereof, an executive department or by author-
56 ity of the governor.

57 (10) All employees assigned to the executive mansion.

58 (11) Superintendents of county maintenance of roads.

59 (12) Part-time professional personnel engaged in profes-
60 sional services without administrative duties and personnel
61 employed for less than ninety working days a year.

62 (13) Employees hired under the governor's emergency em-
63 ployment program of 1983, or the federal emergency jobs and
64 humanitarian aid program of 1983.

65 All executive orders of the governor adding to the list
66 of positions in the classified service which were dated or
67 issued during the period commencing on the first day of
68 July, one thousand nine hundred seventy-six, and ending on
69 the first Monday after the second Wednesday of the following
70 January or which are dated or issued within the same period
71 commencing in the year one thousand nine hundred eighty, or
72 in each fourth year thereafter, shall be null and void, and
73 no person occupying a position added by such executive order
74 to the list of positions in the classified service shall be en-
75 titled on account of such order to any right bestowed upon
76 any position or person within the classified service by the
77 provisions of this article or by any rule or regulation pro-
78 mulgated thereunder.

79 Nothing herein shall be construed as precluding the ap-
80 pointing authorities from filling any classified-exempt posi-
81 tion in the manner in which positions in the classified service
82 are filled.

83 (b) All positions of managers and clerks of stores oper-
84 ated by the alcohol beverage control commissioner, all posi-
85 tions under the supervision of the several superintendents
86 of county maintenance of roads, but not such superintendents,
87 all custodians, janitors and laborers positions in any covered
88 agency shall be included in the classified service effective

89 the first day of July, one thousand nine hundred eighty-
90 three: *Provided*, That any person required to be included
91 in the classified service by the provisions of this subsection
92 who was employed in any of the positions included herein
93 as of the effective date of this section, or who was required
94 to be included in the classified service by any of the executive
95 orders of the governor numbered 1-83, 2-83 or 3-83, dated the
96 thirteenth day of January, one thousand nine hundred eighty-
97 three, shall not be required to take and pass qualifying or
98 competitive examinations upon or as a condition to being added
99 to the classified service: *Provided, however*, That no person
100 required to be included in the classified service by the pro-
101 visions of this subsection or by any of the executive orders
102 of the governor numbered 1-83, 2-83 or 3-83, dated the
103 thirteenth day of January, one thousand nine hundred eighty-
104 three, who was employed in any of the positions included
105 herein as of the effective date of this section, shall be thereafter
106 severed, removed or terminated in his employment prior to his
107 entry into the classified service except for cause as if such
108 person had been in the classified service when severed, re-
109 moved or terminated.

§29-6-4a. Conditions for reinstatement of certain employees.

1 Any present or former employee in the classified-exempt
2 service who is or has been laid off within the fiscal year
3 commencing the first day of July, one thousand nine hundred
4 eighty-two, due to a reduction in force because of a lack of
5 funds whose position was subsequently brought within the
6 classified service by reason of the provisions of subsection
7 (b), section four of this article or any executive order
8 issued pursuant to subsection (a) of said section four since
9 the first day of July, one thousand nine hundred eighty-two,
10 or within one year of such employee being so laid off,
11 shall, if the employing agency of such employee rehires a
12 person or persons to the same or lower classification as that
13 given such position in the classified service, have the following
14 special rights for reinstatement subject to the following terms
15 and conditions:

16 (1) For two years from the date of severance from em-
17 ployment the employee shall have the right of reinstatement

18 to his former or lower classification as if the employee had
19 not been laid off and notwithstanding any registers which
20 may exist for that classification: *Provided*, That the em-
21 ployee take and pass any required qualifying examination
22 and otherwise comply with the regulations of the civil
23 service commission governing employment in a position within
24 the classified service unless the employee is reinstated to
25 substantially the same work and upon such reinstatement has
26 at least three consecutive years of experience as an employee
27 of state government; and

28 (2) Such employee has not reached the age of seventy,
29 been convicted of a crime involving moral turpitude since
30 his layoff and has not developed by the date of his reinstate-
31 ment a permanent physical disability rendering him incapable
32 of performing his duties.

33 Nothing in this section shall be construed to require
34 that an employee who has been reinstated following a layoff
35 be compensated at a rate in excess of that rate of compensation
36 attributable to the position in the classified service to
37 which such employee has been reinstated, irrespective of the
38 position or rate of compensation held or received by such
39 employee prior to such layoff or that such employee had held
40 a higher position in the classified service prior to such layoff
41 and had received a higher rate of compensation.

§29-6-10a. Reduction in work force.

1 Notwithstanding any other provision of this article or any
2 rule promulgated thereunder to the contrary, an employee in
3 the classified service who has performed work for a reasonable
4 period of time in a position with a classification that is higher
5 than the position in which he is employed and classified may,
6 in the event that his regular position would be terminated as a
7 result of a reduction in force in his division, have the right
8 to request that his classification be reviewed and that he be
9 promoted to the higher classified position by passing a
10 qualifying examination for such higher position and provid-
11 ing sufficient evidence of his work periods and satisfactory
12 performance of the duties and responsibilities of the higher
13 classified position.

14 The commission shall provide by legislative rule for the
15 maintenance of records by all covered agencies of the work
16 periods and rating of job performance of employees performing
17 work in a position or positions with a classification that is
18 higher than the position in which he is employed and classi-
19 fied and the duration of work periods required to request
20 review and promotion.

§29-6-12. Duties of state officers and employees; legal proceedings to secure compliance with article and rules.

1 All officers and employees of the state shall comply with
2 and aid in all proper ways in carrying out the provisions
3 of this article and the rules, regulations and orders there-
4 under. All officers and employees shall furnish any records
5 or information which the director or the commission may
6 request for any purpose of this article. The director may insti-
7 tute and maintain any action or proceeding at law or in equity
8 that he considers necessary or appropriate to secure compliance
9 with this article and the rules and orders thereunder. The di-
10 rector has the duty to conduct schools, seminars or classes re-
11 garding handling of complaints, disciplinary matters and opera-
12 tion of civil service system for supervisory employees of the
13 state. The department head of each department shall desig-
14 nate certain supervisory employees to attend said schools,
15 seminars or classes.

§29-6-20. Favoritism or discrimination because of political or religious opinions, affiliations or race; political activities prohibited.

1 (a) No person shall be appointed or promoted to or
2 demoted or dismissed from any position in the classified
3 service or in any way favored or discriminated against with
4 respect to such employment because of his political or reli-
5 gious opinions or affiliations or race; but nothing herein shall
6 be construed as precluding the dismissal of any employee who
7 may be engaged in subversive activities or found disloyal to
8 the nation.

9 (b) No person shall seek or attempt to use any political
10 endorsement in connection with any appointment in the
11 classified service.

12 (c) No person shall use or promise to use, directly or
13 indirectly, any official authority or influence, whether
14 possessed or anticipated, to secure or attempt to secure for
15 any person an appointment or advantage in appointment to a
16 position in the classified service, or an increase in pay or
17 other advantage in employment in any such position, for the
18 purpose of influencing the vote or political action of any
19 person or for any consideration.

20 (d) No employee in the classified service or member of the
21 commission or the director shall, directly or indirectly, solicit
22 or receive any assessment, subscription or contribution, or
23 perform any service for any political party, committee or
24 candidate for compensation, other than for expenses actually
25 incurred, or in any manner take part in soliciting any such
26 assessment, subscription, contribution or service of any em-
27 ployee in the classified service.

28 (e) Notwithstanding any other provision of this code, no
29 employee in the classified service shall:

30 (1) Use his official authority or influence for the purpose
31 of interfering with or affecting the result of an election or a
32 nomination for office;

33 (2) Directly or indirectly coerce, attempt to coerce, com-
34 mand or advise a state or local officer or employee to pay,
35 lend or contribute anything of value to a party, committee,
36 organization, agency or person for political purposes; or

37 (3) Be a candidate for any national or state paid public
38 office or court of record; or hold any paid public office; or be
39 a candidate or delegate to any state or national political party
40 convention, a member of any national, state or local com-
41 mittee of a political party, or a financial agent or treasurer
42 within the meaning of the provisions of section three, four
43 or five-e, article eight, chapter three of this code. Other
44 types of partisan or nonpartisan political campaigning and
45 management not inconsistent with the provisions of this sub-
46 division and with the provisions of subsection (d) of this
47 section shall be permitted.

48 (f) Political participation pertaining to constitutional

49 amendments, referendums, approval of municipal ordinances
50 or activities shall not be deemed to be prohibited by the fore-
51 going provisions of this section.

52 (g) Any classified employee who becomes a candidate
53 for any paid public office as permitted by this section shall
54 be placed on a leave of absence without pay for the period
55 of such candidacy, commencing upon the filing of the cer-
56 tificate of candidacy and upon such other terms and condi-
57 tions as may be prescribed by legislative rule to be promul-
58 gated by the civil service commission no later than the first
59 day of September, one thousand nine hundred eighty-four.

CHAPTER 15

(Com. Sub. for S. B. 10—By Mr. McGraw, Mr. President)

[Passed June 2, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section four, article three, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal section eight, article six-b of said chapter; to amend article three, chapter four of said code by adding thereto a new section, designated section three-b; to amend said chapter eleven by adding thereto a new article, designated article one-a; to amend and reenact sections two and ten, article three of said chapter eleven; to further amend article three of said chapter eleven by adding thereto a new section, designated section thirty-one; to amend and reenact sections three and seven, article six-b of said chapter eleven; and to amend and reenact section six, article twenty-two of said chapter eleven, relating to property taxation generally; providing for the reappraisal of property for the periodic statewide reappraisals mandated by section one-b, article X of the constitution of West Virginia; repealing a section of the code requiring the owner of property to list property subject to taxation under oath; repealing the section of the code which provides for state reimbursement of local levying bodies for revenues lost by reason of the increase in the homestead property tax exemption; directing the joint committee on government and

finance to study matters relating to legislation required by the property tax limitation and homestead exemption amendment of one thousand nine hundred eighty-two, and make recommendation thereon, and to study alternate methods of determining what property should be subject to ad valorem property taxation; describing the manner in which the tax commissioner is to appraise property for the statewide reappraisal; prescribing the powers and duties of the tax commissioner regarding statewide reappraisals; authorizing the tax commissioner to seek enforcement of penalties for failure of assessors or appraisers to perform duties; granting subpoena power to the tax commissioner in aid of the purposes of said article one-a; granting power to the tax commissioner to promulgate rules and regulations to carry out and enforce the provisions of said article one-a, chapter eleven; establishing a base year for the first statewide reappraisal; defining terms; requiring returns and prescribing other methods for identifying property subject to taxation; describing those persons who are required to make return; excepting certain property from listing or appraisal; requiring supplemental information to be filed relating to depreciation of property; providing that certain valuations shall not be taken as certified or given under oath; establishing methods for ascertaining the assessed value of all property as of the first day of July, one thousand nine hundred eighty-three; providing for the collection of information relating to subsequent alterations in property and economic changes; prescribing the method for valuing farm property; requiring the tax commissioner to propose a legislative rule which describes the methods whereby certain classes or species of property will be valued; describing the division of functions between the tax commissioner and assessors; directing that persons registered with the West Virginia department of employment security job service program be given first preference for positions; establishing residency requirements for certain employees; permitting the tax commissioner to revise information concerning property values so as to achieve uniformity; establishing safeguards to assure fair treatment of persons whose property is being assessed; providing for the release of information concerning reappraised values; requiring the tax

commissioner to propose a legislative rule whereby adjustments are to be made in reappraisals due to alterations in property; providing for certification of reappraisals; prohibiting further reappraisals under chapter eighteen of this code until after certification of the first statewide reappraisal; providing for the appraisal of property by the tax commissioner and the delivery of appraisal information to county officials; providing for administrative review of appraisal by the tax commissioner; providing for review and hearing by the county commission; providing for judicial review by writ of certiorari; requiring subsequent statewide reappraisals at least every ten years; mandating agencies of state and local governments to cooperate with the tax commissioner in reappraising property; requiring the tax commissioner to establish a statewide electronic data processing system network; providing for the phase-in of increases in assessed valuations over a ten-year period; providing for the confidentiality of the property tax returns, return information and other information obtained by subpoena or subpoena duces tecum and setting forth penalties for violation of confidentiality; requiring the tax commissioner to develop appraisal manuals for use in making statewide reappraisals; setting forth penalties and forfeitures for failure to list property for appraisal; requiring corporations to report property under oath to the tax commissioner; creating the West Virginia appraisal control and review commission and defining the term of existence thereof; prescribing the duties of said commission; requiring the tax commissioner to provide services, staff and equipment to the commission; providing for the nomination and appointment of commission members; providing for the removal of such members and the filling of vacancies; authorizing compensation and payment of expenses of commission members; describing the composition of commission subcommittees; establishing an appraisement manual review subcommittee and a computer technology review subcommittee; providing for compensation of subcommittee members; empowering the commission to issue cease and desist orders; authorizing the governor to rescind or modify cease and desist orders; providing for meetings of the commission and establishing a quorum therefor; providing for the treatment and disposition of tax-

payer complaints; describing certain requirements for review appraisal; establishing qualifications for review appraisers with respect to residential property; providing that review appraisers shall be competent witnesses in proceedings relating to appraisal of property; setting forth requirements for employment of state employees and employees of designated agents; setting forth legislative findings with respect to employment requirements; requiring the modification of the existing contract for the mass appraisal of residential properties and other reappraisal services; exempting certain appraisal employees of the state tax department from civil service; providing for severability of the provisions of article one-a, chapter eleven of the code; describing the methods by which assessors carry out their work of assessment; setting forth penalties and forfeitures for failure to list property for taxation in annual assessment procedures and removing the requirement that such listing be under oath; ratifying, approving and confirming the usual practices and procedures of assessors prior to the second day of July, one thousand nine hundred eighty-two; allowing a twenty thousand dollar homestead exemption for certain residential property; describing how such homestead exemption shall be entered upon the property books and stating when taxes shall not be levied; and modifying the requirements concerning the declaration of consideration or value appended to instruments of conveyance so as to require certain additional information.

Be it enacted by the Legislature of West Virginia:

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

Chapter**4. The Legislature.****11. Taxation.****CHAPTER 4. THE LEGISLATURE.****ARTICLE 3. JOINT COMMITTEE ON GOVERNMENT AND FINANCE.****§4-3-3b. Duty of the joint committee on government and finance with respect to the statewide reappraisal to be completed on the thirty-first day of March, one thousand nine hundred eighty-five.**

1 The joint committee is hereby directed to study during the
 2 calendar years one thousand nine hundred eighty-three and
 3 one thousand nine hundred eighty-four, any and all matters
 4 upon which legislation is required by the property tax
 5 limitation and homestead exemption amendment of one
 6 thousand nine hundred eighty-two, and any matters upon
 7 which, in the joint committee's judgment, legislation may
 8 become necessary with respect thereto, including a study of
 9 the desirability of this state converting, for purposes of deter-
 10 mining the property subject to ad valorem property taxation,
 11 to an averaged annual value method or pro rata value
 12 method as opposed to a tax-status-day value method. The
 13 committee shall report to the Legislature any recommenda-
 14 tions which it may deem proper, along with legislation to
 15 effectuate those recommendations.

CHAPTER 11. TAXATION.**Article****1A. Appraisal of Property for Periodic Statewide Reappraisals.****3. Assessments Generally.****6B. Homestead Property Tax Exemption.****22. Excise Tax on Privilege of Transferring Real Property.****ARTICLE 1A. APPRAISAL OF PROPERTY FOR PERIODIC STATE-
WIDE REAPPRAISALS.**

§11-1A-1. Tax commissioner to appraise property to ascertain value; relating to reappraisal to specified base year; powers and duties of tax commissioner regarding statewide reappraisals.

§11-1A-2. Base year for first reappraisal.

§11-1A-3. Definitions.

§11-1A-4. Identification of property to be appraised; persons required to make return.

- §11-1A-5. Property excepted from listing for appraisal.
- §11-1A-6. Supplemental information required to be filed.
- §11-1A-7. When valuations not certified.
- §11-1A-8. Ascertainment of assessed value as of the first day of July, one thousand nine hundred eighty-three.
- §11-1A-9. Subsequent alterations in property; economic change.
- §11-1A-10. Valuation of farm property.
- §11-1A-11. Valuation of certain classes or species of property; reserve coal properties; oil producing properties; gas producing properties; timberland; active mining mineral interest; commercial real property and industrial land; commercial and industrial furniture, fixtures, machinery and equipment; intangible personal property; public utility property; vehicles, watercraft and aircraft.
- §11-1A-12. Division of functions between the tax commissioner and assessor; local exceptions to value; revisions by tax commissioner; participation by assessor in hearings and appeals.
- §11-1A-13. Assurance of fair treatment.
- §11-1A-14. Release of results of statewide reappraisal; legislative rule regarding changes in quality or quantity of property; publication and certification of statewide reappraisal.
- §11-1A-15. Appraisal of property; lists to county officials.
- §11-1A-16. Administrative review of appraisal.
- §11-1A-17. Review of appraisal by the county commission sitting as an administrative appraisal review board.
- §11-1A-18. Review by circuit court on certiorari.
- §11-1A-19. Subsequent statewide reappraisals required.
- §11-1A-20. Cooperation of other agencies of state and local government.
- §11-1A-21. Electronic data processing system network for property tax administration.
- §11-1A-22. Phase-in, determination thereof, application and limitations.
- §11-1A-23. Confidentiality and disclosure of property tax returns and return information; offenses; penalties.
- §11-1A-24. Creation and use of appraisal manual.
- §11-1A-25. Failure to list property, etc.; collection of penalties and forfeitures.
- §11-1A-26. Appraisal of corporate property; reports to tax commissioner by corporations.
- §11-1A-27. West Virginia appraisal control and review commission created; term of existence defined; duties of commission; tax commissioner to provide services, staff and equipment; nomination and appointment of members; removal of members and filling of vacancies; compensation and expenses; composition of subcommittees of commission; appraisal manual review subcommittee; computer technology review subcommittee; compensation of subcommittees; issuance of cease and desist orders by commission; authority of governor to rescind or modify cease and desist orders; meetings of commission; quorum; taxpayer complaint and the treatment and disposition thereof.

- §11-1A-28. Review appraisal requirements; qualifications of review appraisers with respect to residential property; review appraisers to be competent witnesses.
- §11-1A-29. Requirements for state employees and employees of designated agents; legislative findings; modifications of existing contract for mass appraisal; exemption of certain appraisal employees of tax commissioner from civil service.
- §11-1A-30. Severability.

§11-1A-1. Tax commissioner to appraise property to ascertain value; relating reappraisal to specified base year; powers and duties of tax commissioner regarding statewide reappraisals.

1 (a) In conducting the reappraisals of property man-
2 dated by the West Virginia Constitution and required
3 by this article, the tax commissioner shall appraise all
4 property so as to ascertain the value thereof for assessment
5 purposes, relating such reappraisal to a specified base year
6 in a manner which is uniform for all classes of property and
7 all counties.

8 (b) It shall be the duty of the tax commissioner to see
9 that the laws concerning the periodic statewide appraisal of
10 property are faithfully enforced. He shall prepare all proper
11 forms and books for the use and guidance of appraisers and
12 assessors, and shall perform all such other duties as may be
13 required by law. He shall from time to time visit the several
14 counties and shall inspect the work of the appraisers and
15 the several assessors and shall confer with them respecting
16 such work for the future. In such conference, or by writing
17 or otherwise, he may inquire into the proceedings of any
18 such officer, make to him such suggestions respecting the
19 discharge of his duty as may seem proper, and give such
20 information and require such action as will cause all
21 property subject to ad valorem property taxation to be
22 appraised at its market value.

23 (c) The tax commissioner may appoint competent
24 persons to appraise property values, and may employ
25 experts to examine and report upon the different kinds and
26 classes of property in the state, with a view to ascertaining
27 the value thereof for appraisal and assessment purposes, to
28 the end that he may furnish to county assessors, county
29 commissions and the state board of public works more
30 accurate information, and more effectively aid and

31 supervise the assessors and the county commissions in their
32 work of assessment and valuation of property for purposes
33 of taxation.

34 (d) Upon the application of any officer concerned with
35 the assessment or collection of taxes, the tax commissioner
36 shall, as to any matter specified by such officer, make like
37 suggestions and give like information. In case of the failure
38 of any appraiser or assessing officer in the discharge of any
39 duty imposed upon him by law, the said commissioner shall,
40 after due notice to any such assessor or collecting officer,
41 proceed to enforce such penalty as may be provided by law,
42 including, in any proper case, the removal of such officer,
43 and to that end the commissioner is authorized to appear
44 before any court or tribunal having jurisdiction. In any
45 proceeding to enforce a penalty, if a hearing for an assessor
46 or collecting officer is not otherwise provided by law, then
47 such assessor or collecting officer shall be afforded a
48 hearing by the tax commissioner in accord with the
49 provisions of article five, chapter twenty-nine-a of this
50 code. The commissioner may cause the violation of any law
51 respecting the appraisal of property subject to ad valorem
52 property taxation to be prosecuted. He may also be heard
53 before any court, council or tribunal, in any proceeding in
54 which an abatement of taxes is sought. The commissioner
55 shall, inter alia, have the power to accept bids, award
56 contracts, requisition funds appropriated for his
57 expenditure, and require the cooperation of other state and
58 local officials. In awarding such contracts the tax
59 commissioner shall require that provision be made for such
60 indemnity, bond or contract of insurance as will be
61 sufficient, in the tax commissioner's judgment, to hold the
62 state harmless.

63 (e) For the efficient administration of the powers vested
64 in the tax commissioner by this section, the commissioner
65 shall have the power to issue subpoenas and subpoenas
66 duces tecum, and compel the attendance of witnesses and
67 the production of books, papers, records, documents and
68 testimony at the time and place specified. Every such
69 subpoena and subpoena duces tecum shall be served at least
70 fifteen days before the return date thereof by personal
71 service made by any person over eighteen years of age.

72 Service of subpoenas and subpoenas duces tecum shall be
73 the responsibility of the commissioner. Any persons, except
74 a person in the employ of the state tax department, who
75 serves any such subpoena or subpoena duces tecum shall be
76 entitled to the same fee as sheriffs who serve witness
77 subpoenas for the circuit courts of this state. Upon motion
78 made promptly, and in any event before the time specified
79 in a subpoena or subpoena duces tecum for compliance
80 therewith, the circuit court of the county in which the
81 person upon whom any such subpoena or subpoena duces
82 tecum was served resides, has his or its principal place of
83 business or is employed, or the circuit court of the county in
84 which any such subpoena or subpoena duces tecum was
85 served, or the judge of any such circuit court in vacation,
86 may grant any relief with respect to any such subpoena or
87 subpoena duces tecum which any such circuit court, under
88 the "West Virginia Rules of Civil Procedure for Trial Courts
89 of Record," could grant, and for any of the same reasons,
90 with respect to any such subpoena or subpoena duces tecum
91 issued from any such circuit court. In case of disobedience
92 or neglect of any subpoena or subpoena duces tecum served
93 on any person, or the refusal of any witness to testify to any
94 matter regarding which he may be lawfully interrogated,
95 the circuit court of Kanawha County or of the county in
96 which such person resides, has his or its principal place of
97 business or is employed, or the judge thereof in vacation,
98 upon application by the commissioner shall compel
99 obedience by attachment proceedings for contempt as in the
100 case of disobedience of the requirements of a subpoena or
101 subpoena duces tecum issued from circuit court or a refusal
102 to testify therein. Witnesses subpoenaed under this
103 subsection shall testify under oath or affirmation.

104 (f) The tax commissioner may prescribe all necessary
105 forms and promulgate such rules and regulations as he
106 believes necessary to carry out and enforce the provisions of
107 this article. Such rules and regulations shall be subject to
108 the provisions and requirements of the state administrative
109 procedures act in chapter twenty-nine-a of this code:
110 *Provided*, That all rules and regulations of the tax
111 commissioner regarding ad valorem property taxes
112 presently in effect on the effective date of this article shall
113 remain in full force and effect until amended or repealed by

114 the commissioner in the manner prescribed by law, or
115 abrogated by the enactment of this article or other statutory
116 provisions of this code.

117 (g) The tax commissioner is hereby directed to
118 cooperate with the joint committee on government and
119 finance of the Legislature in its review, examination and
120 study of the implementation of the property tax limitation
121 and homestead exemption amendment of one thousand
122 nine hundred eighty-two, section one-b, article ten of the
123 constitution of West Virginia, and any other similar studies
124 which may arise under the authority granted to the joint
125 committee on government and finance under the provisions
126 of section three-b, article three, chapter four of this code.
127 The tax commissioner shall continuously monitor and
128 enforce the requirements of this article relating to the
129 employment qualifications of employees of the state and its
130 designated agents, and at least quarterly shall ascertain
131 whether such requirements are being met and report
132 thereon to the joint committee on government and finance.
133 Not less than monthly, the tax commissioner shall report to
134 the joint committee on government and finance or its
135 designated subcommittee on any matters considered or
136 action taken by the West Virginia appraisal control and
137 review commission, or any matters relating to the
138 reappraisal otherwise pertinent or of interest to the joint
139 committee on government and finance. On or before the
140 fifteenth day of January, one thousand nine hundred
141 eighty-four, the tax commissioner shall report to the joint
142 committee on government and finance on the benefits,
143 desirability and disadvantages, as well as the alternative
144 methods available, for the possible implementation of
145 section fifty-three, article VI of the constitution of West
146 Virginia, the forestry amendment.

§11-1A-2. Base year for first reappraisal.

1 The base year for the first statewide reappraisal shall be
2 the year one thousand nine hundred eighty-three.

§11-1A-3. Definitions.

1 As used in this article, unless the context clearly requires
2 a different meaning:

3 (a) "Assessed value" of any item of property is its
4 assessed value after the certification of the first statewide

5 reappraisal and shall be sixty percent of the market value of
6 such item of property regardless of its class or species,
7 except as hereinafter specifically provided in this article;

8 (b) "Base year" shall have the meaning ascribed to that
9 term by the provisions of section two of this article;

10 (c) "Commission" shall mean the West Virginia
11 appraisal control and review commission;

12 (d) "Commissioner" or "tax commissioner" shall mean
13 the chief executive officer of the state tax department
14 except in those instances where the context clearly relates
15 to the West Virginia appraisal control and review
16 commission, in which case "commissioner" shall mean any
17 member of such commission;

18 (e) "Designated agent" shall mean a person, not directly
19 employed by the tax commissioner, who is designated by
20 the tax commissioner to perform reappraisal functions
21 authorized or required by this article. Such term shall
22 include, but not be limited to, agents and independent
23 contractors, and nothing in this article shall be construed to
24 alter the relationship of the state of West Virginia, or its
25 officers, and such persons to create relationships not
26 contemplated by agreements between the tax commissioner
27 and such persons;

28 (f) "Farm" shall mean and include land currently being
29 used primarily for farming purposes, whether by the owner
30 thereof or by a tenant, and which has been so used for at least
31 seasonally during the year next preceding the then current
32 tax year, but shall not include lands used primarily in
33 commercial forestry or the growing of timber for
34 commercial purposes;

35 (g) "Farming purposes" shall mean the utilization of
36 land to produce for sale, consumption or use, any
37 agricultural products, including, but not limited to,
38 livestock, poultry, fruit, vegetables, grains or hays or any of
39 the products derived from any of the foregoing, tobacco,
40 syrups, honey, and any and all horticultural and nursery
41 stock, Christmas trees, all sizes of ornamental trees, sod,
42 seed and any and all similar commodities or products
43 including farm wood lots and the parts of a farm which are
44 lands lying fallow, or in timber or in wastelands;

45 (h) "Property situate in this state" shall mean:

46 (1) Property having legal situs in this state; or

47 (2) In the case of persons with a place of business located
48 in this state and authorized to do business in this state and
49 one or more other states of the United States or any foreign
50 country:

51 (A) Any tangible property brought into this state from
52 time to time or otherwise deemed to have situs in this state
53 for purposes of ad valorem property taxation, and

54 (B) Any intangible property held by such person,
55 wherever evidence thereof is situate. In the case of
56 assessment of such intangible property for ad valorem
57 property taxation after the first statewide reappraisal only
58 such part thereof as may be determined by applicable law or
59 regulation to be subject to such taxation shall be deemed to
60 be situate in this state;

61 (i) "Value," "market value" and "true and actual value"
62 shall have the same meaning and shall mean the price at or
63 for which a particular parcel or species of property would
64 sell if it were sold to a willing buyer by a willing seller in an
65 arms length transaction without either the buyer or the
66 seller being under any compulsion to buy or sell: *Provided,*
67 That in determining value, primary consideration shall be
68 given to the trends of price paid for like or similar property
69 in the area or locality wherein such property is situate over
70 a period of not less than three nor more than eight years
71 next preceding the base year and in the case of a farm or
72 farms shall be determined assuming such land is being used
73 for farming purposes. In addition, the commissioner may,
74 for purposes of appraisalment of any tract or parcel of real
75 property, or chattels, real or other species of property, real
76 or personal, take into account one or more of the following
77 factors: (1) The location of such property; (2) its site
78 characteristics; (3) the ease of alienation thereof,
79 considering the state of its title, the number of owners
80 thereof, and the extent to which the same may be the subject
81 of either dominant or servient easements; (4) the quantity of
82 size of the property and the impact which its sale may have
83 upon surrounding properties; (5) if purchased within the
84 previous eight years, the purchase price thereof and the

85 date of each such purchase; (6) recent sale of, or other
86 transactions involving, comparable property within the
87 next preceding eight years; (7) the value of such property to
88 its owner; (8) the condition of such property; (9) the income,
89 if any, which the property actually produces and has
90 produced within the next preceding eight years; and (10)
91 any commonly accepted method of ascertaining the market
92 value of any such property, including techniques and
93 methods peculiar to any particular species of property if
94 such technique or method is used uniformly and applied to
95 all property of like species.

**§11-1A-4. Identification of property to be appraised; persons
required to make return.**

1 (a) On or before the first day of December, one thousand
2 nine hundred eighty-three, every person who owns
3 property which was situate in this state on the first day of
4 July, one thousand nine hundred eighty-three, shall
5 prepare a return itemizing and describing such property,
6 whether real or personal, and shall file such return with the
7 assessor of the assessment district wherein such property is
8 located, except in the case of a taxpayer whose annual
9 return for the assessment of property is filed with some
10 other public officer, then the return required by this section
11 shall be filed with the tax commissioner who shall allocate
12 the contents to the appropriate counties by such means as
13 he determines appropriate. The form for the return shall be
14 designed by the tax commissioner, and shall provide a
15 means for the orderly listing of all property not excepted
16 from listing under the provisions of section five of this
17 article. A similar return, itemizing and listing such
18 property, shall also be made, at the same time, by every
19 person holding, possessing or controlling real or personal
20 property as executor, administrator, guardian, trustee,
21 receiver, agent, partner, attorney, president or accounting
22 officer of a corporation, consignee, broker, or in any
23 representative or fiduciary character.

24 (b) The return required by subsection (a) of this section
25 shall be made and the information furnished:

26 (1) With respect to an individual who is deceased, the
27 return of such individual required under subsection (a)

28 shall be made by his or her executor, administrator, or other
29 person charged with the property of such decedent;

30 (2) With respect to a person under a disability who is
31 unable to make a return required under subsection (a), the
32 return of such individual shall be made by a duly authorized
33 agent, committee, guardian, fiduciary or other person
34 charged with the care of the person or property of such
35 individual: *Provided*, That this subdivision shall not apply
36 in the case of a receiver appointed by authority of law in
37 possession of only a part of the property of an individual;

38 (3) With respect to a case where a receiver, trustee in
39 bankruptcy, or assignee by order of a court of competent
40 jurisdiction, by operation of law or otherwise, has
41 possession of or holds title to all or substantially all of the
42 property or business of a corporation, whether or not such
43 property or business is being operated, such receiver,
44 trustee or assignee shall make the return for such corpora-
45 tion in the same manner and form as corporations are
46 required to make such returns;

47 (4) With respect to property of an estate or a trust, the
48 return shall be made by the fiduciary thereof; and

49 (5) With respect to the property of a married person who
50 is absent from the state, the return shall be made by his or
51 her spouse.

52 (c) A return made by one or two or more joint fiduciaries
53 shall be sufficient compliance with the requirements of this
54 section in any case where the return is required to be made
55 by a fiduciary.

56 (d) With regard to real property not excepted from
57 listing for appraisal under the provisions of section five of
58 this article, a summary legal description sufficient to
59 identify and locate the property shall be given for each
60 parcel of real estate, and, if applicable, the name of the
61 street and number, its area, and if improved, a short
62 statement of the character of the improvements.

§11-1A-5. Property excepted from listing for appraisal.

1 Bank deposits, money and household goods and personal
2 effects, if such household goods and personal effects are not
3 held or used for profit, are exempt from the ad valorem

4 property taxation and shall not be described and listed on
5 the forms required to be filed under the provisions of
6 section four of this article: *Provided*, That the term
7 "personal effects" shall include, but not be limited to,
8 firearms and ammunition held for personal use and not for
9 profit. A person shall also not list real property assessed and
10 listed upon the land books of the several counties for the
11 taxable year one thousand nine hundred eighty-three, or on
12 the first day of July, one thousand nine hundred eighty-
13 three, for the taxable year one thousand nine hundred
14 eighty-four.

§11-1A-6. Supplemental information required to be filed.

1 Every person required to file a tax return under the
2 provisions of article thirteen, twenty-one or twenty-four of
3 this chapter for the period ending on the thirty-first day of
4 December, one thousand nine hundred eighty-two, or for
5 income received or to be received during the calendar year
6 one thousand nine hundred eighty-three, shall file a copy of
7 a depreciation schedule included in a federal or state tax
8 return for income taxation for the taxpayer's tax year
9 ending on or after the first day of June, one thousand nine
10 hundred eighty-two, or if the person did not prepare a
11 depreciation schedule for such return or elects not to
12 disclose the schedule from the tax return, a schedule
13 showing property on which a deduction for depreciation
14 could be claimed against gross or adjusted gross income
15 received or receivable in the selected year, including a brief
16 description of such property, its basis and, to the extent the
17 taxpayer elects, any accumulated depreciation the
18 taxpayer could have claimed in such year and prior years.

§11-1A-7. When valuations not certified.

1 If a person is required under the provisions of this article
2 to fix what he deems to be the true and actual value of an
3 item of property, whether real or personal, and if such
4 valuation is not required to be made on any other tax return,
5 then the valuation required by this article shall not be taken
6 as certified or given under oath, but all other information
7 required to be given under the provisions of this article shall
8 be deemed to have been given under oath.

§11-1A-8. Ascertainment of assessed value as of the first day of July, one thousand nine hundred eighty-three.

1 (a) All real property assessed and listed upon the land
2 books in the several counties as of the first day of July, one
3 thousand nine hundred eighty-three, and property required
4 to be described and listed pursuant to section four of this
5 article, shall as soon as the same be returned or, if not
6 returned, listed on the land books or otherwise identified,
7 be categorized and systematically inventoried by the
8 assessor of the county wherein such property is returned or
9 returnable and by the tax commissioner in the case of
10 property returned or returnable to the tax commissioner,
11 for the purpose of ascertaining what the previously assessed
12 value for each such item was or would have been as of the
13 first day of July, one thousand nine hundred eighty-three.

14 The information shall be categorized and systematically
15 inventoried in accord with requirements specified by the
16 tax commissioner and entered into the statewide data bank
17 established by the tax commissioner for such purpose by the
18 officer with whom the return is to be filed. The tax
19 commissioner shall provide for the receipt and permanent
20 preservation of the information entered in the data bank
21 under this section and under the provisions of section nine
22 of this article. As to any such property not so assigned a
23 previously assessed value, effort shall be made by the
24 appropriate county assessor to cause a back assessment to
25 be made for the assessment date of the first day of July, one
26 thousand nine hundred eighty-three, and subsequent
27 assessment dates thereafter, if such assessment would have
28 been proper as of the first day of July, one thousand nine
29 hundred eighty-three, or thereafter, under law applicable
30 to assessments on such dates.

31 (b) Property which is exempt from taxation under the
32 provisions of section nine, article three of this chapter shall
33 nonetheless be listed pursuant to section four of this article,
34 and categorized and inventoried pursuant to subsection (a)
35 of this section, and the exemption confirmed or not
36 confirmed.

37 (c) It is the intention of the Legislature in enacting this
38 section to provide a mechanism for determining the
39 previously assessed value of property as that term is used in

40 subsection D, section one-b, article X of the constitution
41 of West Virginia, in order that such previously assessed
42 value may be compared with the assessed value of such
43 property following the first statewide reappraisal to
44 determine whether there is a resulting increase which
45 should be allocated over a period of ten years in equal
46 amounts annually, as required by the said constitutional
47 provision.

§11-1A-9. Subsequent alterations in property; economic change.

1 In determining the previously assessed value of any
2 property under the provisions of section eight of this article
3 or in determining the market value or the assessed value of
4 property as those terms are defined in section three of this
5 article, the appraiser or assessor shall record any
6 information evidencing alterations in the property
7 subsequent to the first day of July, one thousand nine
8 hundred eighty-three, including, but not limited to,
9 substitutions, accretions, improvements, additions,
10 replacements, destructions, removals, casualties, acts of
11 God, waste or any like occurrences. The economic impact on
12 the property, whether inflationary or deflationary as to
13 value, shall be noted, but not considered to have an effect
14 upon the previously assessed value.

§11-1A-10. Valuation of farm property.

1 (a) With respect to farm property, the tax commissioner
2 shall appraise such property so as to ascertain its fair and
3 reasonable value for farming purposes regardless of what
4 the value of the property would be if used for some other
5 purpose, and the value shall be arrived at by giving
6 consideration to the fair and reasonable income which the
7 property might be expected to earn in the locality wherein
8 situated, if rented. The fair and reasonable value for
9 farming purposes shall be deemed to be the market value of
10 such property for appraisal purposes.

11 (b) A person is not engaged in farming if he is primarily
12 engaged in forestry or growing timber. Additionally, a
13 corporation is not engaged in farming unless its principal
14 activity is the business of farming, and in the event that the
15 controlling stock interest in the corporation is owned by

16 another corporation, the corporation owning the
17 controlling interest must also be primarily engaged in the
18 business of farming.

**§11-1A-11. Valuation of certain classes or species of property;
reserve coal properties; oil producing
properties; gas producing properties;
timberland; active mining mineral interest;
commercial real property and industrial land;
commercial and industrial furniture, fixtures,
machinery and equipment; intangible personal
property; public utility property; vehicles,
watercraft and aircraft.**

1 On or before the first day of September, one thousand
2 nine hundred eighty-three, the tax commissioner shall
3 propose a legislative rule for submission to the Legislature
4 pursuant to the provisions of article three, chapter twenty-
5 nine-a of this code, which rule shall describe in detail the
6 methods whereby the tax commissioner will determine the
7 market value, during the first statewide reappraisal, of the
8 following property:

- 9 (1) Active and reserve coal properties;
- 10 (2) Oil producing properties;
- 11 (3) Gas producing properties;
- 12 (4) Timberland;
- 13 (5) Active mining mineral interests including limestone,
14 fireclay, dolomite, sandstone, and other actively mined
15 minerals;
- 16 (6) Commercial real property and industrial land;
- 17 (7) Commercial and industrial furniture, fixtures,
18 machinery and equipment;
- 19 (8) Intangible personal property, including stocks,
20 accounts receivable and stocks in banks and capital of sav-
21 ings and loan associations;
- 22 (9) Public utility property; and
- 23 (10) Vehicles, watercraft and aircraft.

§11-1A-12. Division of functions between the tax commissioner and assessor; local exceptions to value; revisions by tax commissioner; participation by assessor in hearings and appeals.

1 (a) It is the intent of the Legislature that in carrying out
2 the appraisal functions required by this article, the tax
3 commissioner shall utilize the county assessors and their
4 employees. The county clerk shall prepare a list of all
5 transfers of real property recorded during the calendar year
6 one thousand nine hundred eighty-three, for which payment
7 of the excise tax on the privilege of transferring real
8 property, required by article twenty-two of this chapter
9 was required, and forward such list to the tax commissioner
10 during the second month following such transfers'
11 recording with the clerk of the county commission. The
12 assessor shall review the land books for his county for the
13 tax year one thousand nine hundred eighty-three and one
14 thousand nine hundred eighty-four, and shall prepare a
15 written property description of every parcel of real
16 property not previously described on a property record card
17 provided to the assessor by the tax commissioner under the
18 provisions of section eleven, article nine-a, chapter
19 eighteen of this code. The assessors may compile lists of
20 comparable property sales and recommend appraisal
21 values with respect to any property in their districts to
22 which the tax commissioner shall give consideration when
23 he fixes values for such property for reappraisal
24 purposes to the extent such recommended values are
25 supported by competent evidence.

26 (b) In each county during the reappraisal function, the
27 tax commissioner shall designate a tax department
28 employee as the coordinator of reappraisal functions
29 among the commissioner's personnel, the commissioner's
30 designated agents, and the assessor's personnel so as to
31 ensure that the resulting appraisal shall be complete, equal
32 and uniform. In each county the tax commissioner or his
33 designated agent shall prepare a description of the number,
34 job description and minimum qualifications of personnel
35 needed to accomplish the reappraisal, other than
36 permanent employees of the tax commissioner or employees

37 of the assessor. The tax commissioner or his designated
38 agent shall employ qualified individuals to fill the positions
39 giving first preference to persons registered with the West
40 Virginia department of employment security job service
41 program, but all such persons shall be residents of the
42 county, or if the tax commissioner finds it necessary for
43 efficiency, any contiguous county, or if none be available,
44 the state. The tax commissioner shall make reasonable
45 efforts to assure that the additional employment required
46 by this article is allocated equitably among the several
47 counties, with attention to the level of unemployment in
48 and the population of each county.

49 (c) To the extent that the tax commissioner concludes
50 that assessors and local employees have overemphasized or
51 underemphasized local aspects in determining value, the
52 tax commissioner may revise information concerning such
53 values so as to achieve uniformity in the statewide
54 reappraisal: *Provided*, That in any hearings or appeals
55 under the provisions of this article the assessor or employee
56 who participated in the gathering of such information may
57 be a competent witness as to how tentative values were
58 arrived at in the process of reappraisal before any such
59 revision.

§11-1A-13. Assurance of fair treatment.

1 The tax commissioner shall require that his employees
2 and any designated agent visit each parcel of land to be
3 reappraised and perform other functions to assure a
4 competent appraisal.

5 Upon any visit to land, no such employee, agent or
6 employee of the agent shall enter into a dwelling house or
7 the curtilage thereof, if any, unless the employee or agent
8 shall give written notice to an adult person then present of
9 the right of residents thereof to refuse such entry, nor insist
10 upon entry upon any other land except at reasonable times,
11 nor in any manner harass a person for refusing such entry or
12 refusing entry at an unreasonable time, nor in any other
13 manner intentionally harass or abuse any person incident to
14 any such visit.

15 The tax commissioner shall assure that his employees and
16 agents afford to all taxpayers before he certifies the

17 reappraisal reasonable opportunity to review and comment
18 in writing upon the accuracy of all real property
19 descriptions and other reappraisal property listings and use
20 reasonable means to resolve differences in such
21 descriptions and listings, including informal hearings,
22 reinspections where indicated, and written notice to any
23 aggrieved taxpayer of the results of such review.

24 Failure to comply with requirements of this section shall
25 not be construed to invalidate a reappraisal value once
26 determined and certified by the commissioner but upon any
27 appeal or review of such certified reappraisal any evidence
28 obtained in violation of the requirements of this section
29 may be excluded unless corroborated.

30 The tax commissioner shall assure that his employees and
31 agents maintain written records of all changes made in
32 property descriptions or values by reason of informal
33 reviews with taxpayers and all visits to land, including the
34 dates thereof, names of participating persons present and a
35 fair summary of the reasons for any changes. Such records
36 shall be subject to inspection and production in any
37 consideration of the propriety of the appraised value and
38 may be admissible in evidence if otherwise probative upon
39 the issue under consideration.

**§11-1A-14. Release of results of statewide reappraisal; legis-
lative rule regarding changes in quality or quantity
of property; publication and certification of state-
wide reappraisal.**

1 (a) As the tax commissioner completes the appraisal
2 process he may make the information concerning the
3 reappraised values available, either upon request or by
4 notice as hereinafter provided for in this article: *Provided,*
5 That no such information shall be made available by the tax
6 commissioner unless and until the same information is
7 available throughout the assessment district for all
8 property within the same class or species as the particular
9 property for which appraisal values are to be made
10 available.

11 (b) On or before the first day of September, one
12 thousand nine hundred eighty-four, the tax commissioner
13 shall propose a legislative rule for submission to the

14 Legislature pursuant to the provisions of article three,
15 chapter twenty-nine-a of this code which rule shall
16 describe in detail the method whereby the tax
17 commissioner will adjust appraised values determined by
18 the statewide reappraisal on account of substitutions,
19 accretions, improvements, additions, replacements,
20 destructions, removals, casualties, acts of God, waste or any
21 like occurrences.

22 (c) At the time of making available information as to
23 appraised value as provided for in this section which shall
24 not be later than the thirty-first day of March, one thousand
25 nine hundred eighty-five, the tax commissioner shall
26 certify and publish such results for use when directed by the
27 Legislature. As certifications are made and notice is given
28 to taxpayers as provided for in section sixteen of this
29 article, request for review, hearing and appeal under said
30 section may proceed notwithstanding the fact that the
31 statewide reappraisal is not completed for all classes and
32 species of property in all counties of the state. However,
33 none of the appraised values ascertained during the course
34 of the statewide reappraisal of property shall be utilized for
35 assessment purposes unless and until the statewide
36 reappraisal is completed for all classes and species of
37 property in all counties and the use of the results have been
38 directed by the Legislature.

39 (d) Inasmuch as it is the intent of the Legislature that
40 the tax commissioner concentrate his reappraisal efforts
41 upon the first statewide reappraisal until it is completed,
42 and because prior reappraisal methods and results may not
43 be wholly consistent with the methods and results of the
44 statewide reappraisal, the tax commissioner shall not
45 complete, deliver or certify appraisals of nonutility real
46 property and nonutility personal property under the
47 provisions of section eleven, article nine-a, chapter
48 eighteen of this code, after the effective date of this article
49 and prior to the completion, publication and certification of
50 the first statewide reappraisal under this article: *Provided,*
51 That the tax commissioner shall not be precluded from
52 correction of prior appraisals under the provisions of
53 current or prior law, but this proviso shall not be construed
54 to avoid the other provisions of this paragraph.

§11-1A-15. Appraisal of property; lists to county officials.

1 (a) All real property assessed, or which should have
2 been assessed, as of the first day of July, one thousand nine
3 hundred eighty-three, and all property described and listed
4 pursuant to section four of this article, shall be appraised by
5 the tax commissioner at its value as defined in this article,
6 in order that the tax commissioner may comply with the
7 requirement of section one of this article.

8 (b) As appraisals are completed and notices given in
9 accordance with the provisions of section sixteen of this
10 article, lists of the property appraised, the owners and
11 valuations shall be delivered to the assessor, the county
12 commission and the sheriff of the county wherein the
13 appraised property is liable to assessment.

§11-1A-16. Administrative review of appraisal.

1 (a) Upon receipt by the assessor of the lists of property
2 appraised and the owners and the valuations thereof, as
3 provided by section fifteen of this article, the assessor shall
4 forthwith cause a notice to be given in the form of a Class
5 I-0 legal advertisement which advises that the appraisal of
6 property within the county is or has been completed and
7 that the results thereof are available to any person
8 interested therein in the office of sheriff of the county
9 wherein the property is located. After such advertisement
10 has been made, the assessor shall forthwith mail to each
11 owner, a notice of the amount of such valuation. The notice
12 shall be addressed to the person or persons in whose name
13 any such property is assessed or who is liable, and shall be
14 mailed to the address of such person or persons as reflected
15 upon the tax tickets in the office of the sheriff of the county
16 wherein such property is located. Such notice shall be in a
17 form prescribed by the tax commissioner and shall inform
18 the owner that if he desires to challenge such valuation he
19 must inform the tax commissioner within twenty-one days
20 of the date of such notice, in writing, of his intention to so
21 challenge the valuation.

22 (b) If the owner mails such writing to the tax
23 commissioner within twenty-one days of the date of the
24 notice of valuation, the tax commissioner shall, within
25 thirty-five days after the date of the notice of valuation,

26 provide the owner and the assessor with a written statement
27 of the information upon which the tax commissioner relied
28 in making such appraisal.

29 (c) Within twenty-one days after the date of the written
30 statement of information furnished by the tax
31 commissioner as provided in subsection (b) of this section,
32 the owner may request the tax commissioner to review the
33 valuation of this property. Such request shall be in writing,
34 shall state fully the reasons for the request, and shall be
35 supported by such evidence as will enable the tax
36 commissioner to make the redetermination described in
37 subsection (d) of this section.

38 (d) After a request for review is made under subsection
39 (c) of this section, the tax commissioner shall determine
40 whether or not (1) the process of making the appraisal is
41 reasonable under the circumstances, and (2) the amount of
42 valuation of the appraised property is appropriate under
43 the circumstances. In determining whether the appraisal is
44 reasonable and the amount of the valuation appropriate,
45 the tax commissioner shall take into account not only
46 information available at the time the appraisal was made
47 but also information which subsequently becomes
48 available. The tax commissioner shall notify the owner and
49 the assessor of his determination made under this
50 subsection.

51 (e) If, at any time prior to making the determination
52 required by subsection (d) of this section, the tax
53 commissioner shall conclude that an appraised value is
54 incorrect as a result of a clerical error, or a mistake
55 occasioned by an unintentional or inadvertent act as
56 distinguished from a mistake growing out of the exercise of
57 judgment, he may correct such error or mistake and shall
58 give notice thereof to the taxpayer, and the appropriate
59 assessor, county commission and sheriff to whom lists of
60 appraisals have been provided in accordance with section
61 fifteen of this article.

62 (f) The assessor shall be reimbursed by the tax
63 commissioner for the postage expended to mail the notices
64 required by this section. Such forms and envelopes as may
65 be required shall be furnished by the tax commissioner.

66 (g) Whenever the property has been returned or is
67 returnable to the tax commissioner, the tax commissioner
68 shall perform the duties imposed upon the assessor by this
69 section. In such case, the tax commissioner shall specify in
70 such notice the county in which a review of such appraisal
71 shall be heard. The tax commissioner shall specify the
72 county in which he determines that a larger portion of the
73 property appraised is or is usually situate and his
74 determination thereof shall be final.

**§11-1A-17. Review of appraisal by the county commission
sitting as an administrative appraisal review
board.**

1 (a) Within thirty days after the earlier of (1) the day the
2 tax commissioner notifies the owner of his determination
3 described in subsection (d) of the preceding section, or (2)
4 the twenty-first day after the request described in
5 subsection (c) of the preceding section was made, the owner
6 may petition for a hearing of record before the county
7 commission of the county in which the larger portion of the
8 appraised property is liable to assessment for ad valorem
9 property taxation. Contemporaneously with the filing of
10 the petition with the county commission, the owner shall
11 mail a copy of the petition to the tax commissioner and the
12 assessor, and the petition shall have endorsed or appended
13 to it a certificate by the owner or his attorney that such
14 copies were mailed.

15 (b) The county commission shall sit as an administrative
16 appraisal review board, shall hear such testimony, under
17 oath, as the owner, the tax commissioner and other
18 witnesses may offer, and shall make a true record of the
19 testimony by nonstenographic electronic recording suitable
20 to assure that the recorded testimony will be accurate and
21 trustworthy. Upon making such true record and preserving
22 the other evidence presented, the commission shall
23 determine whether the amount of value fixed by the
24 appraisal of the property is correct under the
25 circumstances. If the county commission finds the appraisal
26 to be correct it shall enter an order approving the value as
27 appraised and adopting by reference the determination and
28 reasons made by the commissioner under subsection (d),
29 section sixteen of this article. If the county commission

30 determines that the amount of value fixed by the appraisal
31 of the property is incorrect, and if sufficient evidence has
32 been presented to permit correction of the appraisal, the
33 county commission shall correct the appraisal and fix the
34 value of the appraised property. If the county commission
35 shall find that the evidence is not sufficient to determine the
36 correct value, the county commission shall direct the
37 parties to develop and present such evidence, and may
38 continue the hearing from time to time for this purpose until
39 there be evidence before it sufficient to fix the correct value.
40 Upon making a determination, the county commission shall
41 enter an order and inform the parties in writing, setting
42 forth in summary form the reasons for such determination.

43 (c) Any person who is a taxpayer of ad valorem property
44 taxes in any West Virginia county may protest an appraisal
45 of property under this article for good cause alleged and
46 shown. A person desiring to protest a reappraisal of
47 property shall petition for a hearing before the
48 administrative appraisal review board in the same manner
49 as an owner would petition for hearing with regard to the
50 appraisal of his property under the provisions of subsection
51 (a) of this section: *Provided*, That a petition for protest must
52 be filed with the county commission within forty-five days
53 after the publication of the notice required in subsection (a),
54 section sixteen of this article. The hearing of a protest shall
55 be governed by the same procedures described for hearings
56 in subsection (b) of this section.

57 (d) Upon a showing of good cause, any person who is a
58 taxpayer of ad valorem property taxes in any West Virginia
59 county may be permitted to intervene in the hearing
60 provided for in this section.

§11-1A-18. Review by circuit court on certiorari.

1 Within thirty days after the day the county court notifies
2 the parties of a final determination of value made pursuant
3 to section seventeen of this article, the owner, tax
4 commissioner, protestor or intervenor may request the
5 county commission to certify the evidence and remove and
6 return the record to the circuit court of the county on a writ
7 of certiorari instituted in accordance with the provisions of
8 article three, chapter fifty-three of this code. For purposes

9 of this article, the recorded testimony of the hearing, when
10 certified by the county commission, may be used by the
11 circuit court as the transcript of testimony.

§11-1A-19. Subsequent statewide reappraisals required.

1 After the first statewide reappraisal, to be completed on
2 or before the thirty-first day of March, one thousand nine
3 hundred eighty-five, the commissioner shall require that
4 periodic reviews of property valuation shall take place so as
5 to ensure that all property is valued at market value as set
6 forth herein at all times: *Provided*, That statewide
7 reappraisals of property shall take place at least every ten
8 years after the year one thousand nine hundred eighty-five.

§11-1A-20. Cooperation of other agencies of state and local government.

1 The several departments and agencies of state
2 government, county commissions and county assessors are
3 hereby authorized, required and directed to render such
4 necessary aid and assistance to the tax commissioner as is
5 required to enable the commissioner to complete the first
6 statewide reappraisal of all property by the thirty-first day
7 of March, one thousand nine hundred eighty-five.

§11-1A-21. Electronic data processing system network for property tax administration.

1 (a) The tax commissioner shall devise and cause to be
2 established a statewide electronic data processing system
3 network, to facilitate administration of the ad valorem
4 property tax on real and personal property, through the
5 timely sharing of property tax information among county
6 assessors and the tax commissioner.

7 (b) Each county shall lease, at its expense, the data
8 processing equipment required by the commissioner to be
9 located in each county. Additionally, each county shall
10 provide, at its expense, the necessary staffing and operating
11 personnel and all other necessary facilities, including
12 telephone and other communications equipment, to allow
13 on-line interaction with the host computer or such other
14 computer as the commissioner may designate. Each county
15 shall be charged by the commissioner for its proportionate
16 share of the cost for use of the host computer and other

17 related services. Such data processing and communications
18 equipment must be installed and tested and county
19 personnel trained to use the equipment on or before the first
20 day of July, one thousand nine hundred eighty-five.

21 (c) To ensure equipment compatibility and the efficient
22 operation and maintenance of the statewide electronic data
23 processing system network, the commissioner shall select
24 and may, from time to time, change equipment suppliers at
25 the state and county level. All equipment for the system
26 shall be acquired under the purchasing procedures
27 specified in article three, chapter five-a of this code.

28 (d) The commissioner may promulgate reasonable rules
29 governing the operation of the statewide electronic data
30 processing system network. Such rules shall, at a minimum,
31 specify that each assessor shall enter all changes in the
32 description, status, classification and value not later than
33 the calendar month following the month during which the
34 changes took place. The rules shall provide for thorough
35 and adequate safeguards to prevent unauthorized access to
36 the system network and the data base. The commissioner
37 shall make available to every taxpayer, upon his request,
38 through the system, the description and appraised value of
39 each parcel valued and the method used in determining the
40 appraised value. The system shall be capable of providing
41 for the assessment of each parcel and item of property at
42 sixty percent of its appraised value and for the phasing-in
43 of the first statewide reappraisal, as to each parcel and item
44 of property and the phasing-in of any subsequent
45 reappraisal as may be authorized by the Legislature.

46 (e) County assessors shall convert or cause to be
47 converted, at county expense, any current assessment
48 information not in the data files of the tax commissioner for
49 purposes of the first statewide reappraisal and the
50 preparing of a system of assessments utilizing the results of
51 the reappraisal, to be phased-in as required in section
52 twenty-two of this article. Such conversion shall be
53 completed on or before the first day of July, one thousand
54 nine hundred eighty-five.

55 (f) The commissioner may offer to county sheriffs, as an
56 optional service, a uniform computerized property tax

57 billing and accounting system using the assessed values and
58 taxpayer information generated through the statewide
59 system. Each sheriff using such optional services shall be
60 charged the proportionate cost for use of the host computer
61 and related services and materials, which charge shall be
62 paid by the county commission.

63 (g) The commissioner is hereby specifically authorized
64 and empowered to enter into such contracts as may be
65 necessary and for which funds may be available to establish
66 the electronic data processing system provided for in this
67 section.

68 (h) The cost of any service or act performed by the
69 commissioner under the provisions of this section shall be
70 paid by the county commission of the county for which the
71 service or act was provided. The cost of any service or act
72 shall be the actual cost and expense incurred by the
73 commission to provide the service or act. The commissioner
74 shall render to the county commission a statement of the
75 costs as soon after the same were incurred as practicable. It
76 shall be the duty of the county commission to allow the same
77 and to cause it to be paid promptly in the manner that other
78 claims and accounts are allowed and paid and the amount
79 owed to the tax commissioner shall constitute a debt due the
80 state which may be satisfied from any money owed the
81 county commission by the state for any reason.

82 (i) Payments received for the cost of services or acts
83 performed by the commissioner under this system shall be
84 deposited in a revolving fund which shall be known as the
85 "County Tax Fund," hereby created in the state treasurer's
86 office.

87 (j) As used in this section, the following terms mean:

88 (1) "System" means the statewide electronic data
89 processing system network for administration of the ad
90 valorem property tax on real and personal property
91 provided for in this section.

92 (2) "Electronic data processing" means the use of the
93 computer for operations which include the storing,
94 retrieving, sorting, merging, calculating and reporting data
95 for use in preparing assessment rolls, tax lists, tax bills and
96 other reports for use in property tax administration.

§11-1A-22. Phase-in, determination thereof, application and limitations.

1 The Legislature hereby finds that the "Property Tax
2 Limitation and Homestead Exemption Amendment of
3 1982" intended to provide that the increased valuation of
4 property, both real and personal, resulting from the first
5 statewide reappraisal be allocated over a period of ten years
6 in equal amounts annually.

7 The Legislature further finds and ascertains that the only
8 fair and equitable manner to achieve the allocation of
9 increased valuation over a period of ten years in equal
10 amounts annually is to provide that upon determination by
11 the first statewide reappraisal of the appraised value of
12 each parcel of land or interest therein and each item of
13 personal property, sixty percent of each appraised value
14 shall be compared with its corresponding assessed value for
15 the base year as adjusted to establish the assessed value for
16 the year next preceding the first year of the phase-in. If
17 sixty percent of the appraised value is larger than the
18 previously assessed value for the year next preceding the
19 first year of the phase-in, the difference shall be divided
20 into ten equal parts. For the tax year one thousand nine
21 hundred eighty-six, and for each subsequent year through
22 the tax year one thousand nine hundred ninety-five, the
23 assessed value for the base year shall be increased by one
24 such tenth part. The result plus sixty percent of any
25 subsequent annual increases in appraised value or less sixty
26 percent of any annual decreases in appraised value shall be
27 the assessed value for each such year: *Provided*, That such
28 assessed value shall not exceed sixty percent of the market
29 value in any year.

§11-1A-23. Confidentiality and disclosure of property tax returns and return information; offenses; penalties.

1 (a) *Secrecy of returns and return information.*—
2 Property tax returns and return information filed or
3 supplied pursuant to this article and articles three, four,
4 five and six of this chapter and information obtained by
5 subpoena or subpoena duces tecum issued under the
6 provisions of this article shall be confidential and except as

7 authorized in this section, no officer or employee of the state
8 tax department, county assessors, county commissions and
9 the board of public works shall disclose any return or return
10 information obtained by him, including such return
11 information obtained by subpoena, in any manner in
12 connection with his service as such an officer, member or
13 employee: *Provided*, That nothing herein shall make
14 confidential the itemized description of the property listed,
15 in order to ascertain that all property subject to assessment
16 has been subjected to appraisal: *Provided, however*, That
17 the commissioner and the assessors shall withhold from
18 public disclosure the specific description of burglar alarms
19 and other similar security systems held by any person,
20 stocks, bonds and other personal property held by a natural
21 person, except motor vehicles and other tangible property
22 utilized publicly, and shall withhold from public disclosure
23 information claimed by any taxpayer to constitute a trade
24 secret or confidential patent information: *Provided further*,
25 That such property descriptions withheld from public
26 disclosure shall be subject to production and inspection in
27 connection with any review, protest or intervention in the
28 appraisal or assessment process, under such reasonable
29 limitations as the board of review, board of equalization
30 and review or court shall require. The term officer or
31 employee includes a former officer, member or employee.

32 (b) *Disclosure*.—(1) Information made confidential by
33 subsection (a) of this section shall be open to inspection by
34 or disclosure to officers, members and employees of the
35 state tax department, county assessors, county
36 commissions and to members of the board of public works
37 whose official duties require such inspection or disclosures
38 for property tax administration purposes. Disclosure may
39 be made to persons, or officers or employees thereof, who
40 are employed by the state tax commissioner by contract or
41 otherwise, provided such person, or officer or employee
42 thereof, shall be subject to the provisions of this section as
43 fully as if he was an officer or employee of the state tax
44 department. Information made confidential by subsection
45 (a) of this section shall be open to inspection by the property
46 owner providing such information and to his duly
47 authorized representative.

48 (2) Information made confidential by subsection (a) of
49 this section may be disclosed in a judicial or administrative
50 proceeding to collect or ascertain the amount of tax due, but
51 only if (i) the taxpayer is a party to the proceedings or (ii)
52 such return information directly relates to a transactional
53 relationship between a person who is a party to the
54 proceeding and the taxpayer which directly affects the
55 resolution of an issue in the proceeding.

56 (c) *Reciprocal exchange.*—The tax commissioner may
57 permit the proper officer of the United States, or the
58 District of Columbia, or any other state, or his authorized
59 representative, to inspect reports, declarations or returns
60 filed with the tax commissioner or may furnish to such
61 officer or representative a copy of any such document
62 provided such other jurisdiction grants substantially
63 similar privileges to the tax commissioner or to the attorney
64 general of this state.

65 (d) *Penalties.*—Any officer, member or employee of the
66 state tax department, county assessors, county
67 commissions and the board of public works who violates
68 this section shall be guilty of a misdemeanor, and, upon
69 conviction thereof, shall be fined not more than one
70 thousand dollars or imprisoned for not more than one year,
71 or both, together with the costs of prosecution.

72 (e) *Limitations.*—Any person protected by the
73 provisions of this article may, in writing, waive the secrecy
74 provision of this section for such purpose and such period as
75 he shall therein state, and the officer with whom such
76 waiver is filed, if he so determines, may thereupon release to
77 designated recipients such taxpayer's return or other
78 particulars filed under the provisions of the tax articles
79 administered under the provisions of this article.

80 This section shall not be construed to prohibit the
81 publication or release of statistics so classified so as to
82 prevent the identification of particular reports and the
83 items thereof nor to prevent the publication and release of
84 assessments and appraised values of property.

§11-1A-24. Creation and use of appraisal manual.

1 The tax commissioner shall develop, or cause to be
2 developed, appraisal manuals for all species of property, for

3 use in making statewide reappraisals. These manuals shall
4 be used by the tax commissioner, county assessors, county
5 commissions, the board of public works and any property
6 appraisal firm or firms employed to assist in making
7 statewide reappraisals. These manuals shall, at a minimum:
8 (1) Provide guidelines for determining the appraised value
9 of all species of property that are consistent with this
10 article; (2) establish work procedures; and (3) promote
11 uniformity of approach to tasks. The tax commissioner and
12 his designated agents shall consult with each of the county
13 assessors in the preparation of all such manuals.

**§11-1A-25. Failure to list property, etc.; collection of penalties
and forfeitures.**

1 If any person, firm or corporation, including public
2 service corporations whose duty it is by law to list any real
3 estate or personal property for appraisal, shall refuse to
4 furnish a proper list thereof or refuse to list within the time
5 required by law and within thirty days after written
6 demand therefor; or if any person, firm or corporation,
7 including public service corporations, shall refuse to
8 answer or shall answer falsely any question asked by the
9 assessor or by the tax commissioner, or shall refuse to
10 deliver any other statement required by law, he or it shall
11 forfeit not less than twenty-five nor more than one hundred
12 dollars, and shall be denied all remedy provided by law for
13 the correction of any appraisal made by the tax
14 commissioner. If any person, firm or corporation, including
15 a public service corporation, required by this article to
16 make return of property for appraisal, fails to return a true
17 list of all property which should be appraised under the
18 provisions of this article, in addition to all other penalties
19 provided by law, shall forfeit one percent of the value of the
20 property not yet returned and not otherwise taxed in this
21 state.

22 Such forfeitures shall be collected as is hereinafter
23 provided under the provision of article two, chapter eleven-
24 a of this code, the same as any tax liability, against the
25 defaulting taxpayer, or in case of a decedent, against his
26 personal representative. The sheriff shall apportion such
27 fund among the state, county, district, school district and

28 municipalities which would have been entitled to the taxes
 29 upon such property if it had been assessed, in proportion to
 30 the rates of taxation for each such levying unit for the year
 31 in which the judgment was obtained bears to the sum of
 32 rates for all. Any judgment recovered under this section
 33 shall be a lien, from the time of the service of the notice,
 34 upon all real estate and personal property of such
 35 defaulting taxpayer, owned at the time or subsequently
 36 acquired, in preference to any other lien.

§11-1A-26. Appraisal of corporate property; reports to tax commissioner by corporations.

1 Each incorporated company, foreign or domestic, having
 2 its principal office or chief place of business in this state, or
 3 owning property subject to taxation in this state, shall
 4 include with the return required by this article, a list of the
 5 following items: (a) The amount of capital authorized to be
 6 employed by it; (b) the amount of cash capital paid on each
 7 share of stock; (c) the amount of credits and investments
 8 other than its own capital stock held by it on said date, with
 9 their true and actual value; (d) the quantity, location and
 10 value of all its real estate, and the tax district or districts in
 11 which it is located; and (e) the kinds, quantity and value of
 12 all of its tangible property in each tax district in which it is
 13 located.

14 The list required by this section shall be under oath,
 15 which oath shall be substantially as follows:

16 State of West Virginia, County of , ss:

17 I, , president (treasurer or manager) of
 18 (here insert name of corporation), do solemnly swear (or
 19 affirm) that the foregoing is, to the best of my knowledge
 20 and judgment, true in all respects; that it contains a
 21 statement of all the real estate and personal property,
 22 including credits and investments belonging to said
 23 corporation; and said corporation has not, to my
 24 knowledge, during the sixty-day period immediately prior
 25 to the first day of the assessment year converted any of its
 26 assets into nontaxable securities or notes or other evidence
 27 of indebtedness for the purpose of evading the assessment
 28 of taxes thereon; so help me God.

29

30 The officer administering such oath shall append thereto
31 the following certificate, viz:

32 Subscribed and sworn to before me by
33 this the day of, 19.....

§11-1A-27. West Virginia appraisal control and review commission created; term of existence defined; duties of commission; tax commissioner to provide services, staff and equipment; nomination and appointment of members; removal of members and filling of vacancies; compensation and expenses; composition of subcommittees of commission; appraisal manual review subcommittee; computer technology review subcommittee; compensation of subcommittees; issuance of cease and desist orders by commission; authority of governor to rescind or modify cease and desist orders; meetings of commission; quorum; taxpayer complaint and the treatment and disposition thereof.

1 (a) There is hereby created in the executive department
2 of the state government, within the state tax department,
3 the West Virginia appraisal control and review commission,
4 an independent agency, consisting of seventeen persons, to
5 be selected as provided in this section. The commission shall
6 continue until the values fixed by the first statewide
7 reappraisal shall be first utilized for the determination of
8 assessed value but in no event beyond the first day of July,
9 one thousand nine hundred eighty-seven.

10 (b) It shall be the duty of the commission to determine
11 that the mass appraisal of residential real property is at all
12 times proceeding in accord with the provisions of this
13 article and that no practice or procedure employed in the
14 first statewide reappraisal of property pursuant to this
15 article is employed contrary to law or contrary to the
16 provisions of any regulation or contract consistent with the
17 provisions of this article or other applicable general law.
18 Contractors, the various assessors and their employees and
19 all employees of the state tax commissioner shall appear
20 before the commission upon request and otherwise

21 cooperate with the commission in any inquiries the
22 commission or its subcommittees shall conduct.

23 (c) It shall also be the duty of the commission (1) To
24 publish information to advise the public of the nature and
25 extent of the reappraisal and their rights to specific
26 advice and information from the commission; (2) to receive,
27 investigate, hear and consider complaints by citizens and
28 officers of corporations whose property is subject to return
29 or reappraisal under this article, except complaints
30 disposed of to the satisfaction of the complainants by the
31 assessors of the various counties or informally by the
32 commission, concerning any practice, procedure or activity
33 of the persons or firms conducting any part of the property
34 reappraisal which is or is claimed to be contrary to law, or
35 regulations or contracts entered into pursuant to this
36 article; and (3) to prepare and provide for dissemination to
37 all taxpayers a "Property Owner's Bill of Rights" pamphlet
38 explaining in concise language the reappraisal program
39 required by the constitution and this article and the rights
40 of property owners to formal and informal review of
41 practices and procedures and the fixing of appraised values
42 of their property and such other rights, duties and
43 privileges as arise under this article and the Tax Limitation
44 and Homestead Exemption Amendment of 1982 and such
45 other matters as the commission shall direct.

46 (d) For the purposes of carrying out its duties under this
47 article, the commission shall be furnished by the tax
48 commissioner with office space, clerical and other staff
49 assistance, and equipment, including statewide inward and
50 outward WATS line telephone service, to be known as the
51 "Property Reappraisal Hotline," and reasonable efforts
52 shall be made in the conduct of the first statewide
53 reappraisals to advise the public generally and each person
54 whose residential real property is being reappraised of the
55 availability of such "Property Reappraisal Hotline" and
56 information and advice concerning such reappraisalment.

57 (e) The tax commissioner shall be the chairman of the
58 commission and have the right to vote and preside over the
59 commission and direct its staff to carry out commission
60 directives. The remaining sixteen members shall be drawn
61 from each of the state's four congressional districts as

62 comprised on the effective date of this section. Four
63 persons, all of whom shall be residents of the congressional
64 district for which they are selected, but none of whom shall
65 be residents of the same county, shall be appointed by the
66 governor, with the advice and consent of the Senate. Not
67 more than two persons who are members of the same
68 political party shall be appointed from any congressional
69 district. All persons appointed by the governor shall be
70 residents of the state and of the congressional district for
71 which they are appointed and shall be owners of real
72 property or an interest therein. Within five days after the
73 effective date of this section each county commission shall
74 nominate residents of its county for appointment to the
75 commission and shall commence publication of a Class II-0
76 legal notice, in a newspaper of general circulation in the
77 county, advertising its intention to nominate persons for
78 appointment to the commission and fixing a date not more
79 than ten days after the first publication of such notice as the
80 last day for citizens of the county to suggest the names of
81 possible nominees to the county commission. Any such
82 suggestions may be made in writing or orally to any such
83 county commission. Within seven days after the second
84 publication, any such county commission shall, by order,
85 nominate four persons who are residents of such county and
86 who possess the requisite qualifications, not more than two
87 of whom are members of the same political party, and
88 forthwith transmit a certified copy of such order to the
89 governor. From the list of nominees supplied by the various
90 county commissions, the governor shall appoint the
91 requisite number of persons to the commission within sixty
92 days of the effective date of this section. A person appointed
93 shall serve until the commission terminates unless such
94 person sooner resigns, dies or is removed. A person may be
95 removed only by the governor for good cause in the manner
96 that other officers subject to removal by the governor may
97 be removed: *Provided*, That any member who fails to attend
98 three consecutive regular meetings may be removed by the
99 governor. Any vacancy shall be filled within thirty days of
100 the vacancy by the governor, by appointment of a person
101 nominated by one of the county commissions who has the
102 requisite qualifications: *Provided*, That the governor may
103 request additional nominations from county commissions

104 of counties whose residents are eligible for appointment or
105 appoint any eligible person. Any person appointed to fill a
106 vacancy shall be made with the advice and consent of the
107 Senate, and shall serve until the commission is terminated
108 or such person sooner dies, resigns or is removed.

109 (f) No person holding paid public office shall be eligible
110 for appointment to the commission. Members, except the
111 chairman, shall be paid a per diem of thirty-five dollars for
112 each day of actual service on the commission or a
113 subcommittee thereof but may waive such payment.
114 Members shall be reimbursed reasonable expenses
115 pursuant to regulations for the payment thereof to state
116 government employees. All compensation and expenses of
117 the commission shall be paid from appropriations to the
118 state tax commissioner for the statewide reappraisal.

119 (g) The commission may divide the state into four areas,
120 each area consisting of one of the congressional districts
121 fixed by law. The membership of the commission from each
122 such area shall constitute the membership of a
123 subcommittee for such area. The tax commissioner shall
124 designate an employee of his office assigned to oversee the
125 reappraisal in one or more of the counties within such
126 area as the chairman of the subcommittee for such area,
127 who shall be empowered to act for and on behalf of such
128 subcommittee in the same manner as the tax commissioner
129 shall act for the commission.

130 Any such area subcommittee may, subject to the rules of
131 the commission, review the conduct of the reappraisal in
132 such area and any complaints originating in the area and
133 perform such other duties on behalf of the commission as
134 are consistent with this article and as are consistent with
135 the duties of the commission and make such
136 recommendations to the commission as it may deem
137 appropriate.

138 (h) In addition to the area subcommittees the
139 commission shall appoint a subcommittee of six county
140 assessors to review the various appraisal manuals
141 proposed to be employed in the reappraisal. Within the
142 time frame to be specified by the tax commissioner for his
143 review of such appraisal manuals, the subcommittee shall

144 review and comment on such manuals, such comments to be
145 delivered to the tax commissioner on the date scheduled by
146 him which date shall not be sooner than forty-five nor more
147 than sixty days after delivery of such manuals to the
148 subcommittee. No more than two of the members shall be
149 assessors of counties in any one congressional district.

150 (i) In addition to the area subcommittees the
151 commission shall appoint a subcommittee of four persons
152 recognized by the commission to be experts in computer
153 technology, no two of whom shall be residents of the same
154 congressional district. Within a time frame to be specified
155 by the tax commissioner for his review of computer
156 programs, equipment proposals or other computer plans,
157 the subcommittee shall review and comment on such
158 computer programs, equipment proposals and other
159 computer plans as may be submitted to the tax
160 commissioner for his review and approval, such comments
161 to be delivered to the tax commissioner on the date
162 scheduled by him which date shall not be sooner than
163 forty-five nor more than sixty days after commencement of
164 any such review by the subcommittee.

165 (j) The tax commissioner shall serve as chairman of the
166 subcommittee on manuals and the subcommittee on
167 computer technology, have a vote thereon, and be excluded
168 from consideration in determining if any member meets
169 residency requirements. The commission shall fix the
170 compensation of members of the committee on computer
171 technology other than the chairman. Members of the
172 subcommittee on manuals and computer technology shall
173 also be reimbursed for reasonable expenses according to
174 travel regulations of the executive department.

175 (k) On the recommendation of any subcommittee or
176 upon the initiative of the commission, the commission may
177 after hearing and on a majority vote of those present, issue a
178 cease and desist order with respect to any practice,
179 procedure or activity in the reappraisal which it finds
180 to be contrary to law, this article or any regulation or
181 contract consistent with this article. Such order shall be
182 effective upon its adoption: *Provided*, That within ten days
183 after the adoption of such order, the governor may by
184 executive order rescind or modify the cease and desist

185 order. Any such cease and desist order modified by
186 executive order of the governor shall from the issuance of
187 the executive order be effective only as so modified. No such
188 cease and desist order by the commission or any executive
189 order shall deprive the state of a uniform and equal
190 reappraisal consistent with the provisions of this
191 article. No order of the commission or executive order of the
192 governor shall be stayed in any action except upon
193 application to the supreme court of appeals for relief
194 pursuant to its original jurisdiction.

195 (l) The commission shall meet on the third Wednesday
196 of each month during its term. Any subcommittee shall
197 meet at least monthly during its continuance. A quorum
198 shall consist of one half the membership of the commission
199 or subcommittee computed without regard to the chairman,
200 or his presence or absence. A special meeting of the
201 commission or any subcommittee shall be held on the call of
202 the chairman, provided such call of a special meeting shall
203 be communicated by mail or telephonic communication to
204 the residence of all members of the commission or
205 subcommittee at least twenty-four hours before the date of
206 the meeting.

207 (m) No member of the commission or any subcommittee
208 shall be required to attend court on the day of, the day
209 before or the day after any meeting of the commission or of
210 such subcommittee which such member actually attends.

211 (n)(1) Any taxpayer aggrieved by any procedure,
212 practice, activity or conduct incident to any statewide
213 reappraisal carried out under the provisions of this article
214 shall, in the first instance, lodge a complaint with the
215 assessor of the county wherein such taxpayer has property
216 situate. Any such complaint may be communicated orally or
217 in writing by the taxpayer to the assessor. It shall be the
218 duty of the assessor to receive the complaint, and, unless he
219 resolves the complaint informally to the satisfaction of the
220 taxpayer within five days of its receipt, the assessor shall
221 prepare a report upon a form provided for that purpose by
222 the tax commissioner, setting forth a fair summary of the
223 complaint. In attempting to informally resolve the
224 complaint, the assessor is expressly authorized to contact
225 the officers and employees of the state tax department and

226 its designated agents to discuss possible solutions to the
227 complaint.

228 (2) If the complaint is in the nature of alleged
229 nonconformity to the provisions of this article or other
230 provisions of law relating to the appraisal of property for ad
231 valorem property taxation, regulations promulgated
232 thereunder, or the provisions of an agreement between the
233 tax commissioner and a designated agent, the complaint
234 form prepared by the assessor shall forthwith be
235 transmitted by the assessor to the West Virginia appraisal
236 control and review commission, which shall acknowledge
237 receipt thereof in writing mailed to the taxpayer. Upon
238 request by the taxpayer, he shall be heard at the meeting
239 during which the complaint is considered, and the
240 commission shall afford such other hearing, conduct any
241 appropriate investigation, and dispose of the complaint in
242 such manner as may be provided by law and any rules of
243 procedure adopted.

244 (3) If the complaint is in the nature of alleged
245 misconduct relating to the demeanor of any person charged
246 with responsibility for performing any function required by
247 this article, the complaint form prepared by the assessor
248 shall forthwith be transmitted by the assessor to the tax
249 commissioner, who shall acknowledge receipt thereof in
250 writing mailed to the taxpayer. The tax commissioner shall
251 conduct any appropriate investigation, and dispose of the
252 complaint in such manner as may be provided by law and
253 any rules of procedure adopted.

254 (4) In all cases where disposition is made of a complaint
255 under this subsection, notice of the disposition shall be
256 given to the taxpayer and the assessor.

**§11-1A-28. Review appraisal requirements; qualifications of
review appraisers with respect to residential
property; review appraisers to be competent
witnesses.**

1 In the conduct of mass appraisal of residential real
2 property the tax commissioner shall assure that the person
3 who evaluates the collected data with respect to any parcel
4 of real property subject to such appraisal and visits the
5 property for the purpose of reviewing such data, actual

6 conditions, and estimated value is in the first instance, with
7 respect to residential property containing eight or fewer
8 dwelling units, a bona fide resident of West Virginia for at
9 least one year prior to employment in such capacity and is a
10 person familiar with the area in which such property is
11 located, including the amenities of the area and general
12 trend of market values over the period during which the
13 trend is required by law to be considered. Such person shall,
14 if qualified under this section, be a competent witness in all
15 proceedings relating to the appraisal of such property,
16 notwithstanding any further review or refinement of the
17 data or other consideration in such appraisalment.

**§11-1A-29. Requirements for state employees and employees
of designated agents; legislative findings;
modification of existing contract for mass
appraisal; exemption of certain appraisal
employees of tax commissioner from civil
service.**

1 Of the whole number of persons engaged in the
2 reappraisal process, ninety-five percent of all persons
3 employed by the state and its designated agents in this state
4 to conduct any part of the reappraisal shall be residents of
5 the state. The Legislature finds that the process of
6 reappraisal, the acceptance of the results by the public,
7 and the deeply held attitudes and outlook of the citizens of
8 the state require, for the success of the reappraisal and
9 the acceptance of the widespread resulting adjustments in
10 assessment values, that this stringent requirement be
11 strictly adhered to, to the end that school revenues and
12 other local income and taxation have the benefit of the
13 reappraisal as promptly as possible.

14 On the effective date of this section, the contract of the
15 state for mass appraisal of residential properties and other
16 reappraisal services shall be modified as follows:

17 (1) To conform with this article; and

18 (2) To remove from the contract data encoders and other
19 clerical help, at an aggregate reduction in cost under the
20 contract of at least three million dollars.

21 After investigation, the Legislature finds that the
22 contractor is amenable to the modification of its contract to

23 conform with the requirements of this article. The tax
 24 commissioner is directed to conform such contract to the
 25 requirements of this article within ten days after the
 26 effective date of this section.

27 The data encoders and other clerical employee positions
 28 required to be transferred from the contract to state
 29 employment pursuant to this section, being temporary
 30 positions requiring prompt employment of limited duration,
 31 are hereby classified exempt for the purposes of article six,
 32 chapter twenty-nine of this code. The tax commissioner is
 33 hereby granted plenary authority, subject only to the
 34 supervision of the governor, to determine all terms and
 35 conditions of employment of such employees.

§11-1A-30. Severability.

1 The provisions of subsection (cc), section ten, article two,
 2 chapter two of this code regarding severability shall be
 3 deemed to be included herein as if set forth in extenso in this
 4 section.

ARTICLE 3. ASSESSMENTS GENERALLY.

§11-3-2. Canvass by assessor; lists of property.

§11-3-2. Canvass by assessor; lists of property.

§11-3-10. Failure to list property, etc.; collection of penalties and forfeitures.

§11-3-31. Generally applied, and usual and customary practices and procedures utilized by assessors prior to the second day of July, one thousand nine hundred eighty-two; limit of liability.

1 On the first day of July, in each year, the assessors and
 2 their deputies shall begin the work of assessment in their
 3 respective counties, and shall, from that date, diligently and
 4 continously pursue with all reasonable dispatch, their work
 5 of assessment until the same is completed: *Provided*, That
 6 the assessor and his deputies shall finish their work of
 7 assessment, and complete the land and personal property
 8 books not later than the thirtieth day of January. Beginning
 9 on the first day of July, as aforesaid, the assessor or a deputy
 10 shall obtain from every person in the county who is liable to
 11 assessment, a full and correct description of all of the
 12 personal property of which he was the owner on the first
 13 day of July of the current year, fixing what he deems to be
 14 the true and actual value of each item of personal property
 15 for the guidance of the assessor, who shall finally settle and

16 determine the actual value of each item of such property by
17 the rule prescribed in section one of this article. The
18 assessor or a deputy shall also obtain from such person
19 separate, full and true statements, in like manner, and upon
20 forms to be furnished him, distinctly setting forth in each a
21 correct description of all property, real and personal, held,
22 possessed or controlled by him as executor, administrator,
23 guardian, trustee, receiver, agent, partner, attorney,
24 president or accounting officer of a corporation, consignee,
25 broker, or in any representative or fiduciary character; and
26 he shall fix what he deems the true and actual value thereof
27 to each item of such property, which valuation shall be
28 subject to revision and change by the assessor in like
29 manner as property owned by such person in his own right:
30 *Provided*, That no person shall be compelled to furnish the
31 list mentioned in this section sooner than the tenth day of
32 July of the current year.

33 The assessor shall perform such other duties while
34 making his assessment as may be required of him by law.

**§11-3-10. Failure to list property, etc.; collection of penalties
and forfeitures.**

1 If any person, firm or corporation, including public
2 service corporations, whose duty it is by law to list any real
3 estate or personal property for taxation, shall refuse to
4 furnish a proper list thereof or refuse to list within the time
5 required by law, or if any person, firm or corporation,
6 including public service corporations, shall refuse to
7 answer or shall answer falsely any question asked by the
8 assessor or by the tax commissioner, or shall fail or refuse to
9 deliver any statement required by law, he or it shall forfeit
10 not less than twenty-five nor more than one hundred
11 dollars, and shall be denied all remedy provided by law for
12 the correction of any assessment made by the assessor or by
13 the board of public works. If any person, firm or
14 corporation, including public service corporations,
15 required by law to make return of property for taxation,
16 whether such return is to be made to the assessor, the board
17 of public works, or any other assessing officer or body, fails
18 to return a true list of all property which should be assessed
19 in this state, including notes, bonds, bills and accounts

20 receivable, stocks, and any other intangible personal
21 property, such person, firm or corporation, in addition to all
22 other penalties provided by law, shall forfeit one percent of
23 the value of the property not yet returned and not otherwise
24 taxed in this state. A forfeiture as to all property aforesaid
25 may be enforced for any such default occurring in any year
26 not exceeding five years immediately prior to the time the
27 same is discovered, but no liability to penalty or forfeiture
28 as to notes, bonds, bills and accounts receivable, stocks and
29 other intangible personal property arising prior to the first
30 day of January, one thousand nine hundred thirty-three,
31 shall be enforceable on behalf of the state or of any of its
32 subdivisions. Each failure to make a true return as herein
33 required shall constitute a separate offense, and a forfeiture
34 shall apply to each of them, but all such forfeitures, to
35 which the same person, firm or corporation is liable, shall
36 be enforced in one proceeding against such person, firm or
37 corporation, or against the estate of any deceased person
38 and shall not exceed five percent of the value of the property
39 not returned. Such forfeitures shall be collected as is
40 hereinafter provided under the provision of article two,
41 chapter eleven-a of this code, the same as any tax liability,
42 against the defaulting taxpayer, or in case of a decedent,
43 against his personal representative. The sheriff shall
44 apportion such fund among the state, county, district,
45 school district and municipalities which would have been
46 entitled to the taxes upon such property if it had been
47 assessed, in proportion to the rates of taxation for each such
48 levying unit for the year in which the judgment was
49 obtained bears to the sum of rates for all. When the list of
50 property returned by the appraisers of the estate of any
51 deceased person shows an amount greater than the last
52 assessment list of such deceased person next preceding the
53 appraisal of his estate, it shall be prima facie evidence that
54 such deceased person returned an imperfect list of his
55 property: *Provided*, That any person liable for the tax or his
56 personal representative, may always be permitted to prove
57 by competent evidence that the discrepancy between such
58 assessment list and the appraisal of the estate is caused by a
59 difference of valuation returned by the assessor and that
60 made by the appraisers of the same property or by property
61 acquired after assessment, or that any property enumerated

62 in the appraisers' list had been otherwise listed for taxation,
63 or that it was not liable for taxation. Any judgment
64 recovered under this section shall be a lien, from the time of
65 the service of the notice, upon all real estate and personal
66 property of such defaulting taxpayer, owned at the time or
67 subsequently acquired, in preference to any other lien.

§11-3-31. Generally applied, and usual and customary practices and procedures utilized by assessors prior to the second day of July, one thousand nine hundred eighty-two; limit of liability.

1 To the extent that any generally applied, usual and
2 customary practice or procedure utilized by the assessors of
3 the several counties prior to the second day of July, one
4 thousand nine hundred eighty-two, for the return, listing,
5 appraisement and assessment of property for ad valorem
6 property taxation did not violate the then existing statutory
7 law, interpretations thereof by the courts or the state tax
8 commissioner, or regulations promulgated under such
9 statutory law, and to that extent only, the use of such
10 practice or procedure, in good faith, shall not be the sole
11 basis for, or be considered in, the removal of any public
12 officer or the imposition of any civil liability upon such
13 official. The state tax commissioner shall be competent to
14 offer testimony as to whether the practice or procedure
15 utilized was generally applied, was a usual and customary
16 practice among the several counties, and may offer
17 testimony regarding formal or informal interpretations,
18 rules or practice employed by him and his predecessors in
19 office at the time such alleged usual and customary practice
20 or procedures were utilized in several counties.

ARTICLE 6B. HOMESTEAD PROPERTY TAX EXEMPTION.

§11-6B-3. Twenty thousand dollar homestead exemption allowed.

§11-6B-7. Property tax books.

§11-6B-3. Twenty thousand dollar homestead exemption allowed.

1 (a) *General.*—An exemption from ad valorem property
2 taxes shall be allowed for the first twenty thousand dollars
3 of assessed value of a homestead that is used and occupied
4 by the owner thereof exclusively for residential purposes,
5 when such owner is sixty-five years of age or older or is

6 certified as being permanently and totally disabled. Only
7 one exemption shall be allowed for each homestead used
8 and occupied exclusively for residential purposes by the
9 owner thereof, regardless of the number of qualified owners
10 residing therein.

11 (b) *Attachment of exemption.*—This exemption shall
12 attach to the homestead occupied by the qualified owner on
13 the July first assessment date and shall be applicable to
14 taxes for the following tax year. An exemption shall not be
15 transferred to another homestead until the following July
16 first. If the homestead of an owner qualified under this
17 article is transferred by deed, will or otherwise, the twenty
18 thousand dollar exemption shall be removed from the
19 property on the next July first assessment date unless the
20 new owner qualifies for the exemption.

§11-6B-7. Property tax books.

1 (a) *Property book entry.*—The exemption of the first
2 twenty thousand dollars of assessed value shall be shown on
3 the property books as a deduction from the total assessed
4 value of the homestead.

5 (b) *Levy; statement to homestead owner.*—When the
6 twenty thousand dollar exemption is greater than the total
7 assessed value of the eligible homestead, no taxes shall be
8 levied. The sheriff shall issue a statement to the owner
9 showing that no taxes are due.

**ARTICLE 22. EXCISE TAX ON PRIVILEGE OF TRANSFERRING REAL
PROPERTY.**

**§11-22-6. Duties of clerk; declaration of consideration or
value; filing of sales listing form for tax
commissioner; disposition and use of proceeds.**

1 When any instrument on which the tax as herein provided
2 is imposed is offered for recordation, the clerk of the county
3 commission shall ascertain and compute the amount of the
4 tax due thereon and shall ascertain if stamps in the proper
5 amount are attached thereto as a prerequisite to acceptance
6 of the instrument for recordation.

7 When offered for recording, each instrument subject to
8 the tax as herein provided shall have appended on the face
9 or at the end thereof, a statement or declaration signed by

10 the grantor, grantee or other responsible party familiar
11 with the transaction therein involved declaring the
12 consideration paid for or the value of the property thereby
13 conveyed. Such declaration may be in the following
14 language:

15 "DECLARATION OF CONSIDERATION OR VALUE

16 I hereby declare:

17 (a) The total consideration paid for the property
18 conveyed by the document to which this declaration
19 is appended is \$.; or

20 (b) The true and actual value of the property transferred
21 by the document to which this declaration is appended is,
22 to the best of my knowledge and belief
23 \$.; or

24 (c) The proportion of all the property included in the
25 document to which this declaration is appended which is
26 real property located in West Virginia is%; the value
27 of all the property \$.; the value of real
28 estate in West Virginia is \$.; or

29 (d) This deed conveys real estate located in more than
30 one county in West Virginia; the total consideration paid
31 for, or actual cash value of, all the real estate located
32 in West Virginia conveyed by this document is
33 \$.; and documentary stamps showing
34 payment of all the excise tax on all of said real estate are
35 attached to an executed counterpart of this deed recorded
36 in County.

37 Given under my hand this day of
38, 19.

39 Signed
40 (Indicate whether grantor, grantee,
41 or other interest in conveyance).

42
43 Address"

44 Such declaration shall be considered by the clerk in
45 ascertaining the correct number of stamps required, and if
46 declaration (d) is used no stamps shall be required on the
47 duplicate deed to which it is attached and such duplicate
48 deed shall be admitted to record, and when recorded shall

49 have the same effect for all purposes as if stamps were
50 attached thereto.

51 On or after the first day of July, one thousand nine
52 hundred eighty-three, the clerk shall not record any
53 document with stamps affixed unless there is tendered with
54 the document a completed and verified sales listing form for
55 the benefit and use of the state tax commissioner.
56 Preprinted forms for this purpose shall be provided each
57 clerk by the tax commissioner.

58 The forms shall require the following information: (1) If
59 the last deed in the chain of title represents the last transfer
60 of the property, the names of the grantor and grantee and
61 the deed book and page number; or (2) if the last transfer
62 was not made by deed, the source of the grantor's title, if
63 known; or (3) if the source of the grantor's title is unknown,
64 a description of the property and the name of the person to
65 whom real property taxes are assessed as set forth in the
66 land book prepared by the assessor. In all cases the forms
67 shall require the tax map and parcel number of the
68 property, the district or municipality in which the real
69 property or the greater portion thereof lies, the address of
70 the property, the consideration or value in money, including
71 any other valuable goods or services, upon which the buyer
72 and seller agree to consummate the sale, and any other
73 financing arrangements affecting value. The sales listing
74 form required by this paragraph is to be completed in
75 addition to, and not in lieu of, the declaration required by
76 this section: *Provided*, That the tax commissioner may
77 design and provide a form which combines into one form
78 the contents of the declaration and the sales listing form
79 required herein and recordation and filing of that form may
80 be used as an alternative to filing the sales listing form
81 required herein: *Provided, however*, That the filing with the
82 clerk of a duplicate deed containing the sales listing form
83 information required by this section shall also satisfy the
84 requirements of this section regarding the sales listing
85 form. The clerk shall, at the end of the month, pay all of the
86 proceeds collected from the sale of stamps for the county
87 excise tax into the county general fund for use of the county.

88 On or before the tenth day of each month the clerk shall
89 deliver to the tax commissioner, or a person designated by

- 90 the tax commissioner, the sales listing forms or such other
91 alternative forms as may be authorized by this section for
92 documents recorded during the preceding month.

CHAPTER 16

(S. B. 16—Originating in the Committee on Finance)

{Passed June 2, 1983; in effect from passage. Approved by the Governor}

AN ACT to amend chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-a, relating to an emergency employment supplemental matching program; declaring legislative findings and public purpose; defining certain terms; providing for administration by the commissioner of the department of employment security; providing for funding as made available by legislative appropriation; providing for applications to be furnished eligible unemployed persons and private business prospective employers, and notice to both to be given statewide; providing for matching reimbursement payments to employers, calculation, duration, limits and maximums thereof; and providing for promulgation of permissive and required regulations by commissioner.

Be it enacted by the Legislature of West Virginia:

That 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 article, designated article two-a, to read as follows:

ARTICLE 2A. EMERGENCY EMPLOYMENT SUPPLEMENTAL MATCHING PROGRAM.

- §21A-2A-1. Legislative declaration of finding and purpose.
§21A-2A-2. Definitions.
§21A-2A-3. Application for employment by eligible unemployed person; forms and notice.
§21A-2A-4. Notice to private business employers; applications for prospective employers.
§21A-2A-5. Payments to private business employers; maximums.

§21A-2A-1. Legislative declaration of finding and purpose.

1 The Legislature hereby finds and declares that, due to
2 adverse economic conditions existing in the state,
3 substantial unemployment of the residents of the state has
4 resulted and continues, all to the detriment of its people, its
5 business and industry and of the health, safety and welfare
6 of the state as a whole.

7 The Legislature further finds and declares that the
8 stimulation and encouragement of, and the providing of
9 incentive and inducement for, employment by private
10 business in the private sector is of greater long-term benefit
11 to the state than is public, make-work employment; that it
12 constitutes a wiser expenditure of public moneys, aids in
13 the economic recovery of our private business and industry,
14 the employment of our people, the generation of state
15 revenues, and the advancement of the health, safety and
16 welfare of the state as a whole; and thus constitutes a public
17 purpose.

§21A-2A-2. Definitions.

1 For the purposes of this article the following terms shall
2 have the following meanings, unless the context in which
3 they are used clearly indicates otherwise:

4 (1) "Commissioner" means the commissioner of the
5 department of employment security.

6 (2) "Private business" means any nongovernmental
7 business or industry in the private sector which maintains
8 an active, bona fide place of business in this state, is duly
9 qualified to do business in the state, and is in good standing
10 under the laws of this state.

11 (3) "Eligible unemployed person" means any person
12 who is a bona fide resident of this state who has been
13 eligible for unemployment compensation benefits and has
14 received all the benefits available to him or her, and who is
15 not gainfully employed.

16 (4) "Head of household" means any person who: (1)
17 Claims one or more persons, other than the filing taxpayer,
18 as a dependent on his or her federal income tax return; (2)
19 has living in the same household one or more dependents;
20 and (3) receives no income for the household and does not

21 have a spouse or dependent living in the same household
22 who is employed in regular full-time employment:
23 *Provided*, That participation in any public assistance
24 program or receipt of public assistance benefits shall not
25 disqualify any person from entitlement to head of
26 household status.

§21A-2A-3. Application for employment by eligible unemployed person; forms and notice.

1 Any person who is an eligible unemployed person as
2 defined in section two of this article may apply for
3 employment in the emergency employment supplemental
4 matching program by making application with the
5 commissioner on forms made available by the
6 commissioner at each local job service office: *Provided*,
7 That nothing contained in this section shall be construed to
8 permit funds under this program to be used to interfere or
9 hinder existing employment or employment agreements
10 including, but not limited to, collective bargaining
11 agreements. Funds may not be used in instances where
12 work stoppages resulting from labor management disputes
13 are in effect.

14 The form furnished by the commissioner shall provide for
15 listing the eligible unemployed person's prior work
16 experience, skills, educational history, and such other
17 information as the commissioner deems necessary for the
18 purposes of this article. Priority for employment under this
19 program shall be given to eligible unemployed persons who
20 are heads of households.

21 The commissioner, within fifteen days after the effective
22 date of legislation appropriating funds for the
23 implementation of this article, shall cause to be published a
24 statewide notice of the availability of such application
25 forms under the emergency employment supplemental
26 matching program.

§21A-2A-4. Notice to private business employers; applications for prospective employers.

1 The commissioner, within fifteen days after the effective
2 date of legislation appropriating funds for the
3 implementation of this article, shall publish statewide a
4 notice to private business employers of the opportunity to

5 employ eligible unemployed persons as provided for under
6 this article.

7 Any private business, as defined in section two of this
8 article, seeking to employ eligible unemployed persons may
9 make application at any local job service office on forms to
10 be supplied by the commissioner. Such forms shall provide
11 space for a listing of the nature of the employment position
12 available and the minimum experience, skills and
13 educational requirements therefor. The form shall also
14 provide space for an affidavit by the employer that the
15 employment position to be filled is not being used in lieu of
16 the recall of laid off workers, to replace existing employees
17 or to supplement the compensation paid existing
18 employees. This affidavit shall also contain a statement by
19 the private business employer that there is a reasonable
20 expectation that this employment may continue beyond the
21 end of the six-month reimbursement period provided for
22 under this article. At each job service office of the
23 department of employment security, the commissioner
24 shall cause to be compiled a list of job openings under this
25 program. The list shall be available for inspection by any
26 eligible unemployed person applying for employment
27 hereunder. The commissioner is authorized to require, prior
28 to approval of an application by an employer, examination
29 of such records and documents of the employer as the
30 commissioner may deem necessary to ensure the
31 correctness and truthfulness of the employer's affidavit.

**§21A-2A-5. Payments to private business employers;
maximums.**

1 The commissioner shall reimburse private business
2 employers of eligible unemployed persons from funds
3 appropriated and made available by the Legislature to the
4 commissioner. Such reimbursement shall equal one half of
5 the employer's prevailing starting hourly wage for each
6 person employed under the provisions of this article, but the
7 state's share of the total reimbursement shall not exceed the
8 federal hourly minimum wage. The workweek shall not
9 exceed forty hours per week, per eligible employee, nor
10 shall any reimbursement extend for a period longer than six
11 months. In addition to the compensation provided under
12 the emergency employment supplemental matching

13 program to the employee, each private business employer
14 shall pay an additional sum to each such employee of not
15 less than one half the employer's prevailing starting hourly
16 wage plus applicable costs for each such employee of
17 payments for workers' compensation and employer social
18 security requirements. Any employment and
19 reimbursement provided for in this section shall be agreed
20 to in writing by the employer, the prospective employee and
21 the commissioner prior to such employee's actual
22 employment.

23 The commissioner shall provide by rule and regulation:
24 The total number of employees who may be employed by
25 any single private business employer under this program,
26 the total number of employees who may be employed under
27 the entire program and the priority preference to be given
28 eligible unemployed persons who are heads of households.

29 The commissioner may promulgate such rules and
30 regulations, not inconsistent with the provisions of this
31 article, as may be deemed necessary by him to provide for
32 proper administration of this article.

33 Any funds appropriated for this program which have not
34 been committed for private sector employment purposes
35 within a reasonable period of time determined by the
36 commissioner to be necessary for implementation of this
37 article shall be redistributed for public employment
38 purposes: *Provided*, That this is consistent with the
39 language of the legislative appropriation making the funds
40 available.

CHAPTER 17

(Com. Sub. for H. B. 106—By Mr. Speaker, Mr. See, by request of the Executive)

[Passed May 31, 1983; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section forty-four, article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to temporarily increasing and expanding the preference for resident vendors of

this state doing business with the state, its political subdivisions, including county boards of education; providing for the exclusion of business and occupation taxes in certain cases to determine the lowest bid; defining resident vendor; requiring a percentage of nonmanagement employees on certain public improvement projects to be state residents; exceptions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. PURCHASING DIVISION.

§5A-3-44. Preference for resident vendors; preference for state residents for nonmanagement employment in public improvement projects; exceptions.

1 Other provisions of this article notwithstanding, in any
2 instance that a purchase of commodities or printing by the
3 director or by a state department is required under the
4 provisions of this article to be made upon competitive bids,
5 such purchase shall be made from a vendor resident in West
6 Virginia, if such bid does not exceed the lowest qualified bid
7 from a nonresident vendor by more than two percent of
8 the latter bid, and if such resident vendor has made written
9 claim for such preference at the time the bid was submitted:
10 *Provided*, That from the effective date of this section, through
11 the thirty-first day of December, one thousand nine hundred
12 eighty-four, such preferences for a resident vendor shall be
13 no more than five percent above the lowest qualified bid
14 from a nonresident bidder: *Provided, however*, That such
15 temporarily increased preferences shall apply to vendors doing
16 business with the commissioner of highways including con-
17 tracts awarded pursuant to the provisions of article four,
18 chapter seventeen of this code only where the purchase is
19 made exclusively from state funds: *Provided further*, That
20 political subdivisions of the state including county boards of
21 education may grant the same preferences to any resident
22 vendor of this state who has made a written claim for such
23 preference at the time a bid is submitted, but for the purposes
24 of this proviso, in determining the lowest bid, any political

25 subdivision shall exclude from the bid the amount of business
26 occupation taxes which must be paid by a resident vendor
27 to any municipality within the county comprising or located
28 within such subdivision as a result of being awarded the con-
29 tract which is the object of the bid; in the case of a bid re-
30 ceived by a municipality, the municipality shall exclude only
31 such business and occupation taxes as will be paid to such
32 municipality: *And provided further*, That prior to soliciting
33 any such competitive bids, any such political subdivision may,
34 by majority vote of all its members in a public meeting where
35 all such votes shall be recorded, elect not to exclude from
36 the bid the amount of business and occupation taxes as pro-
37 vided herein.

38 A vendor shall be deemed to be a resident of this state if
39 such vendor is an individual, partnership, association or cor-
40 poration in good standing under the laws of the state of West
41 Virginia who (1) is a resident of the state or a foreign corpora-
42 tion authorized to transact business in the state; (2) main-
43 tains an office in the state; (3) has paid personal property
44 taxes pursuant to article five, chapter eleven of this code on
45 equipment used in the regular course of supplying services
46 of the general type offered; and (4) has paid business and
47 occupation taxes pursuant to article thirteen, chapter eleven
48 of this code. In addition, in the case of a vendor selling
49 tangible personal property, a resident vendor is one who has a
50 stock of materials held in West Virginia for sale in the ordinary
51 course of business, which stock is of the general type offered,
52 and which is reasonably sufficient in quantity to meet the
53 ordinary requirements of customers.

54 From the effective date of this section, through the thirty-
55 first day of December, one thousand nine hundred eighty-
56 four, whenever a contract is awarded pursuant to a bid on the
57 construction of a public improvement, the contract executed
58 between the public authority and the successful bidder shall
59 contain a provision setting forth that more than fifty percent
60 of the nonmanagement personnel employed by the successful
61 bidder and by each of his subcontractors for work performed
62 on the project within the state shall be residents of the state of
63 West Virginia who resided in the state on the date the contract

64 bids are opened: *Provided*, That for purposes of this paragraph
65 the terms "construction," "public improvement" and "public
66 authority" shall be defined in accordance with definitions set
67 forth for those terms under the provisions of section one,
68 article five-a, chapter twenty-one of this code: *Provided, how-*
69 *ever*, That such provision shall be included in contracts be-
70 tween the commissioner of highways and a successful bidder,
71 including any such contracts awarded pursuant to the pro-
72 visions of article four, chapter seventeen of this code, only
73 when the contract amount is to be paid exclusively from state
74 funds.

75 If any of the requirements or provisions set forth in this
76 section jeopardize the receipt of federal funds, then such
77 requirements or provisions shall be void and of no force and
78 effect for that specific public improvement project.

79 If any provision or clause of this section or application
80 thereof to any person or circumstance is held invalid, such
81 invalidity shall not affect other provisions or applications of
82 this section which can be given effect without the invalid
83 provision or application, and to this end the provisions of
84 this section are declared to be severable.

CHAPTER 18

(Com. Sub. for H. B. 107—By Mr. Speaker, Mr. See, by request of the Executive)

[Passed May 24, 1983; in effect from passage. Approved by the Governor.]

AN ACT to amend article two, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five-b, relating to liability of employers in default of payment to the workers' compensation fund; setting forth the legislative purpose; describing when employers in default for purposes of this section; providing for the application of settlement; establishing when employer is reinstated; the effect of reinstatement; setting forth the amount of settlement; limitation of time for settlement; authorizing the commissioner to agree on payment

schedule; limitation on period for payment; when employer in default of settlement payment; effect of default of settlement payment; setting forth notice requirements of commissioner; and requiring commissioner to provide application forms.

Be it enacted by the Legislature of West Virginia:

That article two, chapter twenty-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 five-b, to read as follows:

**ARTICLE 2. EMPLOYERS AND EMPLOYEES SUBJECT TO CHAPTER;
EXTRA TERRITORIAL COVERAGE.**

§23-2-5b. Legislative purpose; application for settlement; reinstatement; amount of settlement; when settlement void; notification of rights.

1 The Legislature hereby declares that it is the purpose of this
2 section to provide any employer who may, as of the effective
3 date of this section, be in default in any payment due under the
4 provisions of this chapter, an opportunity to settle the amount
5 of the default in accordance with the provisions hereinafter
6 set forth. For purposes of this section, the term "default" shall
7 apply to any employer who has failed to subscribe or pay pre-
8 miums to the workers' compensation fund in accordance with
9 the provisions of this chapter.

10 (a) On or before the first day of October, one thousand nine
11 hundred eighty-three, any employer who may qualify un-
12 der this section shall apply to the commissioner for a settlement
13 of the amount of default. Such application shall: (1) Be made
14 on a form prescribed by the commissioner; (2) include the gross
15 payroll of the employer during the entire period of default,
16 which payroll information shall be verified by the employer or
17 its authorized agent; and (3) include a payment equal to one
18 half of one percent of the gross payroll during the period of
19 default, or one hundred dollars, whichever amount shall be
20 greater.

21 (b) Notwithstanding other provisions of this chapter to the
22 contrary, upon timely receipt of the application prescribed in
23 subsection (a) of this section, the commissioner shall declare

24 the employer to be reinstated to the benefits and protections
25 of this chapter: *Provided*, That such reinstatement shall not
26 affect any cause of action which has accrued against the em-
27 ployer as a result of an injury sustained during any period of
28 default: *Provided, however*, That the employer shall make the
29 quarterly premium payments as prescribed by this chapter, be-
30 ginning with the premium due for the third quarter of the year
31 one thousand nine hundred eighty-three, and continuing there-
32 after as the same shall become due.

33 (c) After the commissioner shall have received the appli-
34 cation of an employer as prescribed herein, the commissioner
35 and the employer or its authorized agent shall agree, in writ-
36 ing, on or before the first day of July, one thousand nine hun-
37 dred eighty-four, to settle the default in an amount which shall
38 include all delinquent premium payments, plus interest, com-
39 pounded monthly, at the rate that would have been earned on
40 the premiums had they been timely paid. The commissioner
41 may authorize payment of the amount set forth in the agree-
42 ment on a payment schedule, which period shall not exceed
43 three years from the date of the execution of the agreement.
44 The agreement shall set forth that the employer shall be in
45 default if any payment shall not be received by the commis-
46 sioner within fifteen days of the due date thereof.

47 (d) If the employer shall fail to pay current premiums in
48 accordance with the provisions of this chapter or if the em-
49 ployer shall default upon any payment set forth under the
50 terms of the agreement, such agreement shall be null, void
51 and of no effect and the commissioner shall have the authority
52 to proceed in accordance with the provisions of this chapter.

53 (e) The commissioner shall notify in writing, within fifteen
54 days of the effective date of this section, all employers who are
55 in default as indicated by the records of the commissioner of
56 the employer's right to apply for a settlement in accordance
57 with the provisions of this section. The commissioner may also
58 take additional steps, as deemed appropriate, to notify other
59 employers of the rights set forth herein. The written notice of
60 the commissioner shall include the form required for applica-
61 tion and the commissioner shall make such form available to
62 other employers.

RESOLUTIONS

(Only resolutions of general interest are included herein)

SENATE CONCURRENT RESOLUTION NO. 3

(By Mr. Tonkovich, et al)

[Adopted May 24, 1983]

Urging the Congress of the United States to enact a new jobs program which will help create permanent and productive jobs in West Virginia.

WHEREAS, West Virginia, even under normal allocation procedures, received less than its fair share of the present Federal Jobs Bill; and

WHEREAS, West Virginia for several months now has been experiencing the highest unemployment rate of any state in the nation; and

WHEREAS, The Congress has targeted nearly 2.4 billion dollars of the total 4.6 billion dollars in the jobs bill for specific projects in states other than West Virginia; and

WHEREAS, No such specific projects were targeted for West Virginia despite the fact that West Virginia has the highest unemployment rate in the nation; and

WHEREAS, The Federal Jobs Program funds that are coming to the State of West Virginia are mandated to expand or enhance existing programs rather than have as their primary purpose the creation of new jobs; and

WHEREAS, West Virginia lost more federal aid than any other state last year; therefore, be it

Resolved by the Legislature of West Virginia:

That Congress is hereby urged in its consideration of the second phase of federal jobs program legislation to enact, and the President is urged to promote and approve a new jobs program bill which will target funds for the creation of permanent, productive jobs in West Virginia and other states which did not receive their fair share

of the jobs program funds provided for in the first jobs program bill passed by Congress; and, be it

Further Resolved, That the Clerk of the Senate is hereby directed to send a copy of this resolution to the President of the United States, to the President of the United States Senate, to the Speaker of the House of Representatives and to each member of the West Virginia Congressional delegation.

SENATE CONCURRENT RESOLUTION NO. 5

(By Mr. Tonkovich)

[Adopted June 2, 1983]

Providing for an adjournment of the Legislature until the 17th day of August, 1983, at 12:00 Noon, and for reconvening prior thereto by the Committees on Rules of the Senate and of the House of Delegates."

Resolved by the Legislature of West Virginia:

That when adjournment is taken by the two Houses of the Legislature at the close of their respective sessions on the 2nd day of June, 1983, said adjournment shall be until Wednesday, August 17, 1983, at 12 Noon, pursuant to Article VI, Section 23 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 the Senate and by a majority vote of the Committee on Rules of the House of Delegates, in which event such adjournment shall be until the date and time of reconvening specified by said committees; and that the Legislature hereby expressly authorizes said Committee on Rules, to which this authority is hereby expressly delegated, to call the Legislature to reconvene this session prior to the 17th day of August, 1983, as herein provided.

SENATE CONCURRENT RESOLUTION NO. 6

(By Mr. Boettner)

[Adopted August 17, 1983]

Declaring the intent of the Legislature relating to Committee Substitute for House Bill No. 104 enacted May 31, 1983 and

its application to certain state employees; directing state agency employers to apply Committee Substitute for House Bill No. 104 enacted May 31, 1983, prospectively only; and directing the Joint Committee on Government and Finance to study the issue of whether state employees included in the classified service should be prospectively permitted to hold certain paid public offices; i.e., members of local school boards and local municipal councils or other paid public offices while at the same time being a classified employee.

WHEREAS, The Legislature enacted in the first extraordinary special session on May 31, 1983, Committee Substitute for House Bill No. 104 relating to civil service coverage for certain state employees; and

WHEREAS, In part, this legislation prohibits certain state employees included in the classified service from concurrently holding any paid public office while being a classified state employee; and

WHEREAS, The Legislature was not aware that the West Virginia State Civil Service Commission by prior regulation had authorized state classified employees to hold certain nonpartisan public offices including members of local school boards and nonpartisan membership on municipal councils and that there were certain state classified employees holding such offices at the time of the effective date of Committee Substitute for House Bill No. 104; and

WHEREAS, The above aforementioned Committee Substitute for House Bill No. 104 was made effective from passage and has been interpreted as having an immediate effect on state classified employees now holding any paid public office heretofore authorized by the West Virginia State Civil Service Commission which may require their resignation from public office or termination of employment by the State; and

WHEREAS, Such interpretation is contrary to the intent of the Legislature; and

WHEREAS, It was and is the intent of the Legislature that Committee Substitute for House Bill No. 104 be applied prospectively only and that any person now holding any paid public office authorized by Civil Service Commission regulation, including a member

of a local school board or a local municipal council, need not resign his paid public office or terminate his employment with the state classified system; and

WHEREAS, It is the expressed legislative finding and intent that Committee Substitute for House Bill No. 104 apply prospectively only and have no retroactive effect on any person included in the classified service holding any paid public office on May 31, 1983, the effective date of its passage; therefore, be it

Resolved by the Legislatur of West Virginia:

That the Legislature finds and directs the West Virginia Civil Service Commission and all state agencies of state government as employers of any person under the state classified civil service system to apply Committee Substitute for House Bill No. 104 prospectively and not retroactively; and, be it

Further Resolved, That the Legislature directs that all such employers not require any person included in the classified service holding any paid public office to resign or otherwise terminate his public service office as a result of the passage of Committee Substitute for House Bill No. 104; and, be it

Further Resolved, That the Legislature further directs the Joint Committee on Government and Finance to study the issue of whether state classified employees should be permitted to hold certain public offices, i.e., members of local school boards and local municipal councils or other paid public offices, while at the same time being a state classified employee and to make its findings and recommendations, if any, to the Legislature prior to the first day of the 1984 legislative session.

SENATE CONCURRENT RESOLUTION NO. 7

(By Mr. McGraw, Mr. President)

[Adopted August 17, 1983]

Memorializing the President and the Congress of the United States to enact legislation that will preserve the rights of disabled persons who have been wrongfully terminated from Social Security disability benefits.

WHEREAS, Social Security disability insurance benefits have been

terminated to several thousand residents of West Virginia since 1981, even though most of those recipients continue to suffer totally disabling impairments; and

WHEREAS, Appeals to administrative courts are costly, time consuming and emotionally burdensome and compound the original disability, though the majority of cases end favorably for the recipient, overturning the initial wrongful termination of benefits; and

WHEREAS, Various federal courts have ruled that medical improvement should be a guiding factor in disability determinations, and that ruling has led to the high reversal rate and greater justice for recipients by administrative law judges; and

WHEREAS, The Legislature of West Virginia, through its Joint Committee on Government and Finance, has considered the problem to be of such severity as to investigate the state disability determination program and has held public hearings to gather evidence and disclose the serious problems with the current system; and

WHEREAS, The Governor of West Virginia has issued an executive order directing the state disability determination program to use the standards of federal court decisions most favorable to beneficiaries in all future determinations of disability; and

WHEREAS, The Governor of West Virginia has requested authority and funds from the Social Security Administration to review all cases of benefits terminated in the six-month period ending August 12, 1983, and to apply the criterion of medical improvement to such cases; and

WHEREAS, The Governor of West Virginia also has requested authority and funds from the Social Security Administration for face-to-face interviews between the beneficiary and disability determiner prior to any decision to terminate benefits; and

WHEREAS, Legislation has been introduced in Congress to address the problems in the current system, primarily by requiring proof of medical improvement before benefits may be terminated; therefore, be it

Resolved by the Legislature of West Virginia:

That the Congress of the United States be requested to enact

legislation that will ensure the rights of disabled persons who have been wrongfully denied Social Security disability benefits; 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, and the Secretary of Health and Human Services.

SENATE CONCURRENT RESOLUTION NO. 8

(By Mrs. Spears, Mr. Tucker, Mr. Tomblin and Mr. Wright)

[Adopted August 17, 1983]

Requesting the Governor to declare an "All Emergency Services Day" recognizing the men and women of this State who serve on emergency squads, fire departments and as mobile intensive care paramedics.

WHEREAS, Maintenance of emergency ambulance, medical, fire and rescue services for the entire State is necessary to promote the health and welfare of the citizens and residents of this State; and

WHEREAS, The aforementioned needs are being effectively met by the men and women serving on emergency ambulance squads, fire departments and as mobile intensive care paramedics; and

WHEREAS, In providing these essential services, these men and women train endlessly, enduring long hours and brave dangerous conditions while receiving scant recognition for their performance; and

WHEREAS, The skills and esprit of these men and women reflect great credit upon themselves and the State of West Virginia; therefore, be it

Resolved by the Legislature of West Virginia:

That the Governor is requested to proclaim an "All Emergency Services Day" in order to pay tribute to those West Virginians who provide essential emergency services to the citizens and residents of this State; and, be it

Further Resolved, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Governor.

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