

ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA



Regular Session, 1988
First, Second and Third
Extraordinary Sessions, 1988

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FOREWORD

This volume contains the Acts of the Second Regular Session of the 68th Legislature, 1988, and the First, Second and Third Extraordinary Sessions of the 68th Legislature, 1988.

Second Regular Session, 1988

The Second Regular Session of the 68th Legislature convened on January 13, 1988. The constitutional sixty-day limit on the duration of the session was midnight March 12, 1988. However, the session was extended by Proclamation of the Governor for the sole consideration of the Budget Bill, and the Legislature adjourned *sine die* on March 14, 1988.

Bills totaling 1,993 were introduced in the two houses during this session (1254 House and 739 Senate). The Legislature passed 153 bills, 92 House and 61 Senate. The Governor vetoed seven House bills and seven Senate bills. The Legislature amended and repassed one Senate bill, leaving a net total of thirteen bills lost through veto. Two bills became law in accordance with the Constitution without the signature of the Governor.

S. B. 83, providing fraudulently stopping payment on a check for payment for services rendered be included within crime of theft of services, was vetoed, amended and repassed and approved by the Governor.

The net total number of bills which became law was one hundred forty. The total number lost through veto was thirteen.

Ninety-eight concurrent resolutions were introduced during the session, 50 House and 48 Senate, of which 8 House and 14 Senate were adopted. Thirty-six House Joint and 18 Senate Joint Resolutions were introduced proposing amendments to the State Constitution. The Legislature adopted two Joint Resolutions: H. J. R. 6, ratifying the proposed amendment to the Constitution of the United States relative to increasing salaries of members of Congress, and S. J. R. 17, Bond Enhancement Amendment. The House had 29 House Resolutions and the Senate had 25 Senate Resolutions, of which 14 House and 24 Senate were adopted.

The Senate failed to pass 89 House bills passed by the House and 75 Senate bills failed passage by the House. One House bill, H. B. 2169, requiring lighted headlights during fog, smoke or rain conditions, was rejected by the Senate, and the House rejected S. B. 543, eliminating three-day waiting period for marriage license if both parties over 18 years of age. Three House and five Senate bills died in conference.

First Extraordinary Session, 1988

The First Extraordinary Session convened at 12 Noon on March 22, 1988, and adjourned *sine die* at 2:45 P.M., on that date.

The Proclamation convening the session contained six items for consideration during the session.

Four House bills and four Senate bills were introduced, of which two House and two Senate bills passed. All were approved by the Governor.

The Senate introduced one Senate concurrent resolution and eight Senate resolutions, of which seven Senate resolutions were adopted. The House introduced and adopted one House resolution, providing for payment of expenses of the session.

Second Extraordinary Session, 1988

The Second Extraordinary Session convened on June 1 and adjourned *sine die* on June 10, 1988.

There were six items for consideration by the Legislature in the Governor's proclamation.

Nineteen bills were introduced during the session, thirteen House and six Senate. Two House bills and two Senate bills were passed. The Governor approved three of the four bills and one bill (S. B. 5, Budget Bill) was approved with deletions.

There were five concurrent resolutions introduced in the two houses, three Senate and two House. One House concurrent and two Senate concurrent resolutions were adopted.

Four House resolutions and six Senate resolutions were introduced, of which four House and five Senate were adopted.

One House bill passed the House and failed passage by the Senate.

Third Extraordinary Session, 1988

The Legislature convened for its third extraordinary session on June 14 and adjourned *sine die* on June 28, 1988.

The proclamation calling the Legislature together contained eight items for consideration.

Forty-nine bills were introduced, twenty-two House and twenty-seven Senate, of which one House bill and nine Senate bills passed. All were approved by the Governor.

The House introduced three concurrent resolutions and the Senate introduced two. One Senate concurrent resolution and two House concurrent resolutions were adopted.

One House resolution and four Senate resolutions were introduced and adopted.

One House bill failed to pass the Senate and five Senate bills failed passage by the House.

Extraordinary Session, 1987

The Legislature met in Extraordinary Session at 12 Noon on December 8, 1987, and adjourned *sine die* at 8:56 P.M. the same day.

The Legislature was called together for the purpose of authorizing the transfer of public moneys from the consolidated to the general revenue fund of the State. Four bills dealing with the call were introduced, two House and two Senate.

The Legislature passed the two House bills: H. B. 101, authorizing transfer by the state board of investments of moneys to the general revenue fund from the consolidated fund and providing for repayment therefor, and H. B. 102, supplementing, amending, establishing a new account and authorizing repayment of transfers from general revenue to consolidated fund. The Governor vetoed both bills.

The Senate introduced two Senate concurrent resolutions and four Senate resolutions. The four simple resolutions were adopted. The House introduced and adopted one simple House resolution.

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 25305.

DONALD L. KOPP,
*Clerk of the House and
Keeper of the Rolls.*

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MEMBERS OF THE HOUSE OF DELEGATES

REGULAR SESSION, 1988

OFFICERS

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

| District | Name | Address |
|------------------|--------------------------------|------------------|
| First..... | Patricia Bradley (D)..... | Weirton |
| | Sam Love, Jr. (D)..... | Weirton |
| Second..... | Roy E. Givens (D)..... | Wellsburg |
| | Bernard V. Kelly (D)..... | Weirton |
| Third..... | David B. McKinley (R)..... | Wheeling |
| | Paul J. Otte (R)..... | Wheeling |
| | Bill Reger (D)..... | Wheeling |
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| | Albert D. Yanni (D)..... | Glen Dale |
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| Sixth..... | Larry D. Swann (R)..... | Salem |
| Seventh..... | Otis A. Leggett (R)..... | St. Marys |
| Eighth..... | Stephen C. Bird (D)..... | Parkersburg |
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| | *A. V. Criss, III (R)..... | Vienna |
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| | Patricia Holmes White (D)..... | Poca |
| Thirteenth..... | Robert C. Chambers (D)..... | Huntington |
| | Robert L. Childers (D)..... | Huntington |
| | Phyllis Given (D)..... | Huntington |
| | Patricia O. Hartman (D)..... | Huntington |
| | Richard Houvouras (D)..... | Huntington |
| | Stephen T. Williams (D)..... | Huntington |
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| | Walter Rollins (D)..... | Kenova |
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| | Mike Whitt (D)..... | Meador |
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| | Joe C. Ferrell (D)..... | Logan |
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| | Ancil Miller (D)..... | Chapmanville |
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| Eighteenth..... | Ernest C. Moore (D)..... | Thorpe |
| | Rick Murensky (D)..... | Welch |
| Nineteenth..... | Clayton W. Hale (D)..... | Pineville |
| | Harold Hayden (D)..... | Mullens |

* Appointed a member of the House of Delegates December 8, 1987, to fill the vacancy created by the resignation of the Honorable Sandy Rogers.

** Appointed a member of the House of Delegates June 17, 1987, to fill the vacancy created by the resignation of the Honorable James W. McNeely.

HOUSE OF DELEGATES

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| | | |
|---------------------|---------------------------------|------------------|
| Twentieth..... | Gilbert E. Bailey (D)..... | Princeton |
| | **Terry W. Basham (D)..... | Rock |
| | Richard D. Flanigan (D)..... | Princeton |
| | Howard L. Wellman (D)..... | Bluefield |
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| Twenty-second..... | Paul R. Hutchinson, Jr.(D)..... | Beckley |
| | Sterling Lewis, Jr. (D)..... | Shady Springs |
| | Jack J. Roop (D)..... | Beckley |
| | Arnold W. Ryan (D)..... | Hinton |
| | Tom Susman (D)..... | Sophia |
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| | Dee Caperton (D)..... | Charleston |
| | Barbara Hatfield (D)..... | South Charleston |
| | John R. Hoblitzell (R)..... | Charleston |
| | James F. Humphreys (D)..... | Charleston |
| | Thomas A. Knight (D)..... | Charleston |
| | Charlotte Pritt (D)..... | Charleston |
| | Lyle Sattes (D)..... | Charleston |
| | Rudy Seacrist (D)..... | Charleston |
| | Henry C. Shores (R)..... | Charleston |
| | Sharon Spencer (D)..... | Charleston |
| | John M. Wells (R)..... | Charleston |
| Twenty-fourth..... | John W. Hatcher, Jr. (D)..... | Fayetteville |
| | William Tom Louisos (D)..... | Oak Hill |
| | John Pino (D)..... | Oak Hill |
| Twenty-fifth..... | Betty D. Crookshanks (D)..... | Rupert |
| | Sarah Lee Neal (D)..... | Rainelle |
| Twenty-sixth..... | Linda Nelson Garrett (D)..... | Webster Springs |
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| Twenty-seventh..... | Charles F. Jordan, Jr. (D)..... | Elkins |
| | Joe Martin (D)..... | Elkins |
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| | Clifford L. Summers (D)..... | Buckhannon |
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| | Floyd Fullen (D)..... | Bridgeport |
| | Joseph M. Minard (D)..... | Clarksburg |
| | Kenneth H. Riffle (D)..... | Clarksburg |
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| | Paul E. Prunty (R)..... | Fairmont |
| | Duane Southern (D)..... | Fairmont |
| | William E. Stewart (D)..... | Fairmont |
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| | Shelby (Bosley) Leary (D)..... | Blacksville |
| | Twila S. Metheny (D)..... | Morgantown |
| | Larry E. Schifano (D)..... | Morgantown |
| Thirty-third..... | Fred C. Peddicord, III (R)..... | Kingwood |
| | ***Richard Schwartz (R)..... | Davis |
| Thirty-fourth..... | Marc L. Harman (R)..... | Petersburg |
| | Robert D. Harman (R)..... | Keyser |
| Thirty-fifth..... | Thomas J. Hawse, III (D)..... | Moorefield |
| Thirty-sixth..... | Jerry L. Mezzatesta (D)..... | Romney |
| Thirty-seventh..... | Patrick H. Murphy (D)..... | Martinsburg |
| Thirty-eighth..... | Larry V. Faircloth (R)..... | Inwood |
| Thirty-ninth..... | John Overington (R)..... | Martinsburg |
| Fortieth..... | William H. Martin (D)..... | Charles Town |

*** Appointed a member of the House of Delegates December 8, 1987, to fill the vacancy created by the death of the Honorable Floyd Stiles.

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

MEMBERS OF THE SENATE

REGULAR SESSION, 1988

OFFICERS

President—Dan Tonkovich, Benwood
President Pro Tem—Tony Whitlow, Kellysville
Clerk—Todd C. Willis, Logan
Sergeant at Arms—Estil Bevins, Williamson
Doorkeeper—Porter Cotton, Cabin Creek

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

† Appointed May 21, 1987, to fill the vacancy created by the resignation of the Honorable Gerald W. Ash.

* Elected in 1984. All others elected in 1986.

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

COMMITTEES OF THE HOUSE OF DELEGATES

Regular Session, 1988

STANDING

Agriculture and Natural Resources

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

Banking and Insurance

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

Constitutional Revision

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

Education

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

Finance

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

Government Organization

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

Health and Human Resources

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

Industry and Labor

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

Judiciary

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

Political Subdivisions

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

Roads and Transportation

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

Rules

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

SELECT COMMITTEES

Economic Policy

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

Governmental Ethics

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

JOINT COMMITTEES

Enrolled Bills

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

Government and Finance

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

Joint Rules

Chambers (CoChairman), Murensky and Swann.

Legislative Rule-Making Review

Knight (Chairman), Givens, Murphy, Pritt, Burk and Faircloth.

COMMITTEES OF THE SENATE

Regular Session, 1988

Standing

Agriculture

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

Banking and Insurance

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

Confirmations

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

Education

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

Energy, Industry and Mining

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

Finance

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

Government Organization

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

Health and Human Resources

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

Interstate Cooperation

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

Judiciary

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

Labor

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

Military

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

Natural Resources

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

Transportation

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

Rules

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

SELECT COMMITTEES

Economic Development

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

Quality Education

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

JOINT COMMITTEES

Enrolled Bills

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

Government and Finance

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

Joint Rules

Tonkovich (CoChairman), Boettner and Harman.

Legislative Rule-making Review

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

LEGISLATURE OF WEST VIRGINIA

ACTS

SECOND REGULAR SESSION, 1988

CHAPTER 1

(Com. Sub. for H. B. 4034—By Delegates Phillips and Pitrolo)

[Passed March 12, 1988; in effect July 1, 1988. 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 seven-c, relating to actions and suits; providing immunity from civil liability for qualified directors negligently performing managerial functions on behalf of certain governmental and nonprofit entities defined as volunteer organizations or entities; setting forth legislative findings and a declaration of public purpose; defining certain terms; and providing for the applicability of provisions.

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 seven-c, to read as follows:

ARTICLE 7C. IMMUNITY FROM CIVIL LIABILITY FOR QUALIFIED DIRECTORS OF CERTAIN GOVERNMENTAL AND NONPROFIT ENTITIES.

- §55-7C-1. Findings and declaration of public purpose.
- §55-7C-2. Definitions.
- §55-7C-3. Limited civil liability of qualified directors.

§55-7C-4. Applicability of provisions.

§55-7C-1. Findings and declaration of public purpose.

1 The Legislature hereby finds and declares that the
2 citizens of this state have been and should continue to
3 be well served by those serving without compensation
4 on various boards, commissions, committees, agencies
5 and other organizations of the state, and its political
6 subdivisions, of nonprofit corporations and other
7 organizations engaged in religious, charitable, cultural,
8 benevolent, educational and scientific endeavors, child
9 placement or child care, or indigent or elderly care, and
10 of organizations that advocate the interests of their
11 members with respect to the trades, industries and
12 businesses of the state; that in recent years, the cost of
13 insurance coverage for such persons has risen dramati-
14 cally while the nature and extent of coverage has
15 diminished; that in order to enable persons to willingly
16 serve as qualified directors, as hereinafter defined, the
17 Legislature must provide those qualified directors with
18 limited immunity from civil liability; and that the
19 enactment of this article serves a necessary public
20 purpose. This article is enacted in view of these findings
21 and shall be liberally construed in the light thereof.

§55-7C-2. Definitions.

1 For purposes of this article, unless a different
2 meaning plainly is required:

3 (1) "Managerial function" means the act or acts of a
4 qualified director, whereby such qualified director,
5 through direction, regulation or administration, exer-
6 cises government, control, or superintendence of the
7 affairs of a volunteer organization or entity. Managerial
8 functions shall include ministerial acts and acts involv-
9 ing the exercise of discretion and judgment, but shall
10 not include the physical or manual handling or use of
11 tangible property, including, but not limited to, motor
12 vehicles, or the direct guidance or supervision of
13 persons.

14 (2) "Nonprofit hospital" means a nonprofit organiza-
15 tion, the principal purpose or function of which is the

16 providing of medical or hospital care, and includes
17 general, tuberculosis, and other types of hospitals, and
18 related facilities, such as laboratories, outpatient
19 departments, nurses' home facilities, extended care
20 facilities, facilities related to programs for home health
21 services, self-care units, and central service facilities,
22 operated in connection with hospitals, and also includes
23 education or training facilities for health professional
24 personnel operated as an integral part of a hospital and
25 medical research organizations directly engaged in the
26 continuous active conduct of medical research in
27 conjunction with a hospital, but does not include any
28 hospital furnishing primarily domiciliary care.

29 (3) "Qualified director" means an individual who
30 serves without compensation for personal services as an
31 officer, member or director of a board, commission,
32 committee, agency or other nonprofit organization
33 which is a volunteer organization or entity. For purposes
34 of this article, "compensation" does not include reimbur-
35 sement for expenses, incidental meals, lodging or other
36 accommodations, and does not include per diem compen-
37 sation fixed by statute.

38 (4) "Volunteer organization or entity" means:

39 (A) The state or any political subdivision or subdivi-
40 sions thereof;

41 (B) Nonprofit corporations as defined in section six,
42 article one, chapter thirty-one of this code, and other
43 nonprofit organizations, which such corporations or
44 organizations provide or promote:

45 (i) Religion;

46 (ii) Charity;

47 (iii) Music, art or other literary or cultural activities;

48 (iv) Benevolence;

49 (v) Child placement or child care;

50 (vi) Indigent or elderly care;

51 (vii) Education;

- 52 (viii) Scientific activity;
- 53 (ix) Community or economic development;
- 54 (x) Recreation;
- 55 (xi) Maintenance and repair of community owned real
56 property or of real property maintained by a ho-
57 meowners' association;
- 58 (xii) Legal services for the indigent;
- 59 (xiii) Conservation of natural resources or animal
60 habitat; or
- 61 (xiv) Fire-fighting services and other public safety
62 services.
- 63 (C) Any organization that acts as an advocate for its
64 members and that has as its members individuals or
65 organizations that are:
- 66 (i) Members of a particular trade or industry; or
- 67 (ii) Members of the business community; or
- 68 (iii) Members of armed services veteran associations.
- 69 "Volunteer organization or entity" shall not include a
70 nonprofit hospital which maintains one hundred fifty or
71 more beds for hospitalization of the sick or injured.

§55-7C-3. Limited civil liability of qualified directors.

1 Notwithstanding any other provision of this code, a
2 qualified director shall not be held personally liable for
3 negligence, either through act or omission, or whether
4 actual or imputed, in the performance of managerial
5 functions performed on behalf of a volunteer organiza-
6 tion or entity: *Provided*, That this section shall not
7 exempt a qualified director from liability when he or
8 she is found to be grossly negligent in the performance
9 of his or her duties. Nothing herein shall relieve a
10 volunteer organization or entity from imputed liability
11 for the negligent acts of a qualified director committed
12 within the scope of the qualified director's duties.
13 Nothing in this article shall be construed as a grant of
14 immunity to any person who, through his or her
15 operation of a motor vehicle, causes any injury or

16 damage to another person.

§55-7C-4. Applicability of provisions.

1 The provisions of this article shall not apply to any
2 cause of action arising before the first day of July, one
3 thousand nine hundred eighty-eight.

CHAPTER 2

(Com. Sub. for H. B. 4470—By Mr. Speaker, Mr. Chambers,
and Delegate Swann, by request of the Executive)

[Passed March 11, 1988; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article ten, relating to creating an amusement rides and amusement attractions safety act; promulgation of rules by labor department for installation, maintenance and operation of amusement rides and amusement attractions; definitions; inspection and permit fees; inspectors; permits; application; annual inspection; issuance of permit for amusement rides and amusement attractions; availability to public of certificate of inspection; filing of notice of intention to erect new ride or attraction; notice of serious physical injury or fatality, investigations; service of process on owners or operators; records available to public; temporary cessation of operation of unsafe rides or attractions; requiring liability insurance, bond or other security; continuing authority of cities and counties to regulate other aspects of carnivals and fairs; criminal penalty; and providing continuing authority of state fire marshal to inspect for fire prevention and control.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. AMUSEMENT RIDES AND AMUSEMENT ATTRACTIONS SAFETY ACT.

- §21-10-1. Short title.
- §21-10-2. Definitions.
- §21-10-3. Rules.
- §21-10-4. Inspection and permit fees.
- §21-10-5. Inspectors.
- §21-10-6. Permits; application; annual inspection.
- §21-10-7. Issuance of permit; certificate of inspection; availability to public.
- §21-10-8. Notice of intention to erect new ride or attraction or add to or alter existing ride or attraction.
- §21-10-9. Notice of serious physical injury or fatality; investigations; records available to public.
- §21-10-10. Service of process.
- §21-10-11. Temporary cessation of operation of ride or attraction determined to be unsafe.
- §21-10-12. Insurance; bond.
- §21-10-13. Regulation of carnivals, fairs and amusement rides and amusement attractions by cities and counties.
- §21-10-14. Criminal penalty for violation.
- §21-10-15. Continuing authority of state fire marshal.

§21-10-1. Short title.

- 1 This article shall be known and may be cited as the
- 2 "Amusement Rides and Amusement Attractions Safety
- 3 Act."

§21-10-2. Definitions.

- 1 As used in this article:

- 2 (a) "Amusement ride" means a mechanical device
- 3 which carries or conveys passengers along, around or
- 4 over a fixed or restricted route or course for the purpose
- 5 of giving its passengers amusement, pleasure, thrills or
- 6 excitement. The term includes carnival rides and fair
- 7 rides of a temporary or portable nature which are
- 8 assembled and reassembled or rides which are relocated
- 9 from place to place. "Amusement ride" may not be
- 10 construed to mean any such mechanical device which is
- 11 coin operated and does not include the operation of
- 12 vehicles of husbandry incidental to any agricultural
- 13 operations or the operation of amusement devices of a
- 14 permanent nature which are subject to building regu-
- 15 lations issued by cities or counties and existing appli-
- 16 cable safety orders;

17 (b) "Amusement attraction" means any building or
18 structure around, over or through which people may
19 move or walk without the aid of any moving device
20 integral to the building or structure that provides
21 amusement, pleasure, thrills or excitement, including
22 those of a temporary or portable nature which are
23 assembled and reassembled or which are relocated from
24 place to place. The term does not include any enterprise
25 principally devoted to the exhibition of products of
26 agriculture, industry, education, science, religion or the
27 arts and shall not be construed to include any concession
28 stand or booth for the selling of food or drink or
29 souvenirs.

§21-10-3. Rules.

1 The department of labor shall promulgate rules for
2 the safe installation, repair, maintenance, use, operation
3 and inspection of all amusement rides and amusement
4 attractions as the department finds necessary for the
5 protection of the general public using amusement rides
6 and amusement attractions. The rules shall be in
7 addition to the existing applicable safety orders and will
8 be concerned with engineering force stresses, safety
9 devices and preventative maintenance. All such rules
10 shall be promulgated in accordance with the provisions
11 of article three, chapter twenty-nine-a of this code.

§21-10-4. Inspection and permit fees.

1 The department shall determine a schedule of inspec-
2 tion and permit fees, which fees shall not annually
3 exceed twenty dollars a ride. All such fees received shall
4 be deposited in the general revenue fund. No fees may
5 be charged public agencies. The department shall issue
6 and the owner and/or operator of the amusement rides
7 and amusement attractions shall visibly display to the
8 public inspection stickers denoting and signifying that
9 the inspection and permit fee authorized by this section
10 has been paid.

§21-10-5. Inspectors.

1 The department may hire or contract with inspectors
2 to inspect amusement rides and amusement attractions.

§21-10-6. Permits; application; annual inspection.

1 No operator or owner may knowingly permit the
2 operation of an amusement ride or amusement attrac-
3 tion without a permit issued by the department except
4 that such amusement ride or amusement attraction may
5 operate without a permit from the date of application
6 until inspection as provided herein, but in no event for
7 a period longer than seven days from the date of first
8 assembly in the state. Each year, before the first time
9 the amusement ride or amusement attraction is as-
10 sembled in this state for public use, an operator or
11 owner shall apply for a permit to the department on a
12 form furnished by the department and containing such
13 information as the department may require. Upon such
14 application and within seven days of the first time said
15 ride or attraction is assembled in this state for public
16 use, all amusement rides and amusement attractions
17 shall be inspected, and thereafter at least once every
18 year. Amusement rides and amusement attractions may
19 also be inspected each time they are disassembled and
20 reassembled and periodically at any reasonable time
21 without prior notice. Following satisfactory inspection,
22 the inspector shall issue a permit.

§21-10-7. Issuance of permit; certificate of inspection; availability to public.

1 If, after inspection, an amusement ride or amusement
2 attraction is found to comply with the rules and
3 regulations of the department, the department shall
4 issue a permit to operate. The permit shall be in the
5 form of a certificate of inspection and shall be kept in
6 the records of any operator or owner for a three year
7 period and shall be readily accessible to the public for
8 inspection at any reasonable time at the carnival or fair
9 where such amusement ride or attraction is located. A
10 copy of such certificate, showing the last date of
11 inspection, shall be affixed to such amusement ride or
12 amusement attraction upon issuance.

§21-10-8. Notice of intention to erect new ride or attraction or add to or alter existing ride or attraction.

1 Before a new amusement ride or amusement attrac-
2 tion is erected, or whenever any additions or alterations
3 are made which change the structure, mechanism,
4 classification or capacity of any amusement ride or
5 amusement attraction, the operator shall file with the
6 department a notice of his intention and any plans or
7 diagrams requested by the department for purposes of
8 determining the applicability of section six of this
9 article.

**§21-10-9. Notice of serious physical injury or fatality;
investigations; records available to public.**

1 An owner or operator of an amusement ride or
2 amusement attraction shall notify the department not
3 later than twenty-four hours after any fatality or
4 accident occurring as a result of the operation of the
5 amusement ride or amusement attraction that results in
6 a serious physical injury requiring medical treatment or
7 results in a loss of consciousness. The notice may be oral
8 or written. The department shall investigate each such
9 fatality or accident and any safety related complaint
10 involving an amusement ride or amusement attraction
11 in this state about which the department receives notice.
12 Every owner or operator of an amusement ride or
13 amusement attraction shall keep a record of each such
14 accident or fatality and such record shall be kept with
15 the certificate of inspection required by this article and
16 shall be readily accessible to the public for inspection
17 at any reasonable time at the carnival or fair where such
18 amusement ride or amusement attraction is located.

§21-10-10. Service of process.

1 Any person, firm or corporation operating an amuse-
2 ment ride or amusement attraction may be served with
3 civil process in the same manner as if the owner or
4 operator was a domestic or foreign corporation.

**§21-10-11. Temporary cessation of operation of ride or
attraction determined to be unsafe.**

1 The department may order, in writing, a temporary
2 cessation of operation of an amusement ride or amuse-
3 ment attraction if it has been determined after inspec-

4 tion to be hazardous or unsafe. Operation shall not
5 resume until such conditions are corrected to the
6 satisfaction of the department.

§21-10-12. Insurance; bond.

1 No person may operate an amusement ride or amuse-
2 ment attraction unless at the time there is in existence
3 (a) a policy of insurance approved by the department
4 and obtained from an insurer authorized to do business
5 in this state in an amount of not less than three hundred
6 thousand dollars per person and one million dollars in
7 the aggregate for each amusement ride or attraction
8 location insuring the owner or operator against liability
9 for injury suffered by persons riding the amusement
10 ride or by persons in, on, under or near the amusement
11 attraction, or (b) a bond in a like amount, as approved
12 by the department: *Provided*, That the aggregate
13 liability of the surety under any such bond shall not
14 exceed the face amount thereof, or (c) cash or other
15 security acceptable to the department. Satisfactory
16 evidence of such insurance, bond or other security shall
17 accompany the permit application.

**§21-10-13. Regulation of carnivals, fairs and amusement
rides and amusement attractions by cities
and counties.**

1 Nothing contained in this article prevents cities and
2 counties from regulating carnivals, fairs or amusement
3 rides and amusement attractions with regard to any
4 aspect not relating to installation, repair, maintenance,
5 use, operation and inspection of amusement rides and
6 amusement attractions.

§21-10-14. Criminal penalty for violation.

1 Any operator or owner who knowingly permits the
2 operation of an amusement ride or amusement attrac-
3 tion in violation of the provisions of section six of this
4 article is guilty of a misdemeanor, and, upon conviction
5 thereof, shall be fined not more than one thousand
6 dollars, imprisoned in the county jail not more than
7 twelve months, or both fined and imprisoned.

§21-10-15. Continuing authority of state fire marshal.

1 Nothing in this article shall be construed to be in
2 conflict with or to in any way limit the authority of the
3 state fire marshal under the provisions of chapter
4 twenty-nine, article three, pertaining to fire prevention
5 and control.

CHAPTER 3

(Com. Sub. for H. B. 4591—By Mr. Speaker, Mr. Chambers,
and Delegate Swann, by request of the Executive)

[Passed March 12, 1988; in effect from passage. Approved by the Governor.]

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

WHEREAS, The Governor submitted to the Legislature the executive Budget Document dated January 13, 1988, wherein on page XVII thereof is set forth the revenues and expenditures of the State Road Fund, including fiscal year 1987-88; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the state road fund available for further appropriation during the fiscal year 1987-1988, a part of which balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore,

Be it enacted by the Legislature of West Virginia:

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

mented and thereafter read as follows:

| | | | |
|----|---|----------------|----------------|
| 1 | 88— <i>West Virginia Department of Highways</i> | | |
| 2 | (WV Code Chapters 17 and 17C) | | |
| 3 | Acct. No. 6700 | | |
| 4 | TO BE PAID FROM STATE ROAD FUND | | |
| 5 | | Federal | Other |
| 6 | | Funds | Fund |
| 7 | | Fiscal | Fiscal |
| 8 | | Year | Year |
| 9 | | 1987-88 | 1987-88 |
| 10 | 1 Maintenance Expressway | | |
| 11 | 2 Trunkline and Feeder\$ | — | \$ 56,250,000 |
| 12 | 3 Maintenance, State | | |
| 13 | 4 Local Service | — | 78,584,000 |
| 14 | 5 Maintenance, Contract | | |
| 15 | 6 Paving | | |
| 16 | 7 and Secondary Roads | | |
| 17 | 8 Maintenance | — | 19,500,000 |
| 18 | 9 Small Bridge Repair | | |
| 19 | 10 and Replacement..... | — | 3,000,000 |
| 20 | 11 Inventory Revolving..... | — | 1,500,000 |
| 21 | 12 Toll Road Examination..... | — | 500,000 |
| 22 | 13 Equipment Revolving | — | 16,105,000 |
| 23 | 14 General Operations..... | — | 23,821,000* |
| 24 | 15 Annual Increment | — | 225,000 |
| 25 | 16 Debt Service | — | 80,900,000 |
| 26 | 17 Interstate Construction | — | 138,000,000 |
| 27 | 18 Other Federal Aid | | |
| 28 | Programs..... | — | 176,555,000 |
| 29 | 19 Appalachian Program..... | — | 31,652,000 |
| 30 | 20 Nonfederal Aid | | |
| 31 | Construction | — | 6,358,000 |
| 32 | 21 TOTAL.....\$ | — | \$ 632,950,000 |

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

33 The purpose of this supplementary appropriation bill
 34 is to supplement and amend the existing items in the
 35 aforesaid account for expenditure in the fiscal year of

36 1987-1988, and to reflect the new total spending
 37 authority of the spending unit for such fiscal year. Such
 38 increased amounts shall be available for expenditure
 39 upon the effective date of this bill.

CHAPTER 4

(H. B. 4638—By Mr. Speaker, Mr. Chambers,
 and Delegate Swann, by request of the Executive)

[Passed March 12, 1988; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal block grant moneys out of the treasury from the balance of available federal block grant moneys remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-eight, to the State Department of Health, Account No. 8508, supplementing chapter one hundred twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-seven, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That the budget bill, chapter one hundred twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-seven, be supplemented by adding to Title 2, Section 8 thereof, the following account and line item:

- 1 **TITLE 2. APPROPRIATIONS.**
- 2 **Section 8. Appropriations from federal block**
- 3 **grants.**
- 4 *135a—State Department of Health—*
- 5 *Mental Health Services for the Homeless*
- 6 **Acct. No. 8508**
- 7 **TO BE PAID FROM FEDERAL FUNDS**
- 8 1 Unclassified—Total **\$275,000**
- 9 The purpose of this supplementary appropriation bill
- 10 is to supplement the budget act for the current fiscal

11 year 1987-88 by providing for a new account to be
12 established therein to appropriate federal block grant
13 moneys received for expenditure in the current fiscal
14 year of 1987-88.

15 Such amount shall be available for expenditure
16 immediately upon the effective date of the bill. Any
17 unexpended balance remaining at the close of fiscal year
18 1987-88 is hereby reappropriated for expenditure in
19 fiscal year 1988-89.

CHAPTER 5

(Com. Sub. for H. B. 4167—By Mr. Speaker, Mr. Chambers,
and Delegate Swann, by request of the Executive)

[Passed February 10, 1988; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing, transferring,
and causing to expire into the state fund, general
revenue of the state, by budgetary revision of amounts
and language of appropriation and direction to budget
accounts providing for general revenue appropriations,
certain unexpended amounts of: the Legislature—Joint
Expenses, Account No. 1030; the Auditor's Office—
Unemployment Compensation, Account No. 1520; the
State Tax Department, Account No. 1800; the Depart-
ment of Finance and Administration, Account No. 2100;
the Attorney General, Account No. 2400; the State
Department of Education, Account No. 2860; the
Teachers' Retirement Board, Account No. 2980; the
Department of Culture and History, Account No. 3510;
the Department of Corrections—Correctional Units,
Account No. 3770; the State Board of Education—
Rehabilitation Division, Account No. 4405; the
Department of Agriculture, Account No. 5100; the
Farm Management Commission, Account No. 5110; the
Department of Agriculture—Soil Conservation Commit-
tee, Account No. 5120; the Department of Agriculture—
Meat Inspection, Account No. 5140; the Department of
Natural Resources, Account No. 5650; the West Virginia

Railroad Maintenance Authority, Account No. 5690; the West Virginia Public Employees Retirement Board, Account No. 6140; and the Insurance Commissioner, Account No. 6160, all supplementing chapter one hundred twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-seven, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

1 That the amounts as hereinafter specified, in the
2 general revenue accounts as designated, and the
3 language of appropriation and direction applicable, be
4 expired in reduction and revision of the prior appropri-
5 ations in respect of such accounts, available for expen-
6 diture in the current fiscal year 1987-88, as approp-
7 riated by chapter one hundred twenty-two, acts of the
8 Legislature, regular session, one thousand nine hundred
9 eighty-seven, known as the budget bill; with the amount
10 of reduction and expiration of appropriations for each
11 "Unclassified" or other specified line item, hereinafter,
12 to be as follows: the sum of \$200,000 in Account No.
13 1030; the sum of \$250,000 in Account No. 1520; the sum
14 of \$100,000 in Account No. 1800; the sum of \$100,000
15 in Account No. 2100; the sum of \$50,000 in Account No.
16 2400; the sum of \$300,000 in Account No. 2860; the sum
17 of \$100,000 in Account No 3510; the sum of \$100,000 in
18 Account No. 3770; the sum of \$200,000 in Account No.
19 4405; the sum of \$100,000 in Account No. 5100; the sum
20 of \$100,000 in Account No. 5110; the sum of \$100,000
21 in Account No. 5120; the sum of \$100,000 in Account No.
22 5140; the sum of \$100,000 in Account No. 5650; the sum
23 of \$50,000 in Account No. 5690; the sum of \$7,544,677
24 leaving 0 balance in line item 1 of Account No. 6140;
25 and the sum of \$100,000 in Account No. 6160; with
26 language of appropriation and direction in respect of
27 Account No. 2980, as follows, to be added under such
28 account "The board shall transfer monthly to the
29 P.E.I.B. (account no. 8265) from employee contribution
30 moneys, employer contribution moneys, accumulated
31 reserves or investment income, an amount of money
32 sufficient to reimburse the P.E.I.B. for the cost of the
33 state's share of health care claims of retired Teacher

34 Retirement System members who have elected health
35 care coverage through the P.E.I.B. pursuant to WV
36 Code 5-16-12.”; and that language of appropriation and
37 direction in respect of Account No 6140, as follows, be
38 added under such account “the board shall transfer
39 monthly to the Public Employees Insurance Board
40 (account no 8265) from employees contribution moneys,
41 accumulated reserves, or investment income, an amount
42 of money sufficient to reimburse the P.E.I.B. for the cost
43 of the public employee accrued sick leave program WV
44 Code 5-16-12 and the cost of the state’s share of health
45 care claims of retired P.E.R.S. members who have
46 elected health care coverage through P.E.I.B. pursuant
47 to WV Code 5-16-12.” all such reductions and expira-
48 tions of amounts and additional language of appropri-
49 ation and direction to be available upon the effective
50 date of this bill for use in current fiscal year 1987-88;
51 such being the purpose of this supplemental appropri-
52 ation bill.

CHAPTER 6

(H. B. 4240—By Delegate Farley)

[Passed February 9, 1988; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and causing to expire part of the money balances from the special revenue funds or accounts designated herein and in the amounts specified, with transfer and appropriation hereby of such expired moneys to the Public Employees Insurance Board special revenue fund, designated Basic Insurance Premium Fund, Account No. 8265-05, such designated special revenue funds or accounts for expiration of balances being: the Treasurer’s Office—Investment Service Fees, Account No. 8004-08; the Real Estate Commission, Account No. 8010-99; the Insurance Commissioner, Account No. 8016-99; Community and Industrial Development—Law-Enforcement Training, Operations, Account No. 8026-24; the Tax Commissioner—Amnesty Collection, Account No. 8090-22; the

Oil and Gas Conservation Commission—Oil and Gas Lease Annual Tax, Account No. 8096-06; the State Health Department—Medical Licensing Board, Account No. 8215-25; Barbers and Beauticians—Licenses and Fees, Account No. 8220-99; the Department of Veterans' Affairs—Resident Maintenance Collections, Account No. 8260-13; the Public Service Commission—Special License Fees, Cash Control, Account No. 8280-99; the Department of Natural Resources—Planning and Development Division, Use and Development, Account No. 8329-07; the Department of Banking—Assessment and Examination Fund, Cash Control, Account No. 8395-99; the Department of Motor Vehicles—Motorboat License Fees, Account No. 8421-05; the Department of Energy—Special Reclamation, Account No. 8536-10; and the Health Care Cost Review Authority—Cash Control, Account No. 8564-99, all supplementing chapter one hundred twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-seven, known as the budget bill.

WHEREAS, Due to the current, serious economic difficulties of the State, the revenues, income and receipts of the State are not being timely received for use and the making of payments by State spending units, with an area of particular concern being the nonpayment of health service claims by the Public Employees Insurance Board in respect of health services provided eligible public employees; and

WHEREAS, The health care cards of public employees are not, in many instances, being accepted or honored and cash payments are being first required before receiving health services, due to the late payment or nonpayment of health claim billings to health providers who rely on such payments for their own continued operation; and

WHEREAS, The Legislature has determined that this situation must be immediately addressed and responded to by means of prompt enactment of this supplementary appropriation bill, the single work, object and purpose of which, pursuant to the provisions of Article VI, Section 51, C (7) (a) of the State Constitution, is to provide an appropriation of public moneys to such board by budgetary action which expires certain non-operational moneys now contained in special revenue funds or

accounts of the State and appropriates and transfers the total of such expired moneys to the Public Employees Insurance Board special revenue fund from which health claims are paid; therefore

Be it enacted by the Legislature of West Virginia:

1 That the amounts as hereinafter specified of the
2 balances, in the special revenue funds or accounts, as
3 designated, and as appropriated by chapter one hundred
4 twenty-two, acts of the Legislature, regular session, one
5 thousand nine hundred eighty-seven, known as the
6 budget bill, be supplemented, amended, reduced and
7 caused to expire and with such total amount of expira-
8 tions being hereby appropriated and transferred to the
9 Public Employees Insurance Board special revenue
10 fund, designated Basic Insurance Premium Fund,
11 Account No. 8265-05, to be immediately available for
12 payment of health claims; such expiration amounts and
13 designated accounts are: from Account No. 8004-08, the
14 sum of \$200,000; from Account No. 8010-99, the sum of
15 \$500,000; from Account No. 8016-99, the sum of
16 \$500,000; from Account No. 8026-24, the sum of
17 \$200,000; from Account No. 8090-22, the sum of
18 \$700,000; from Account No. 8096-06, the sum of
19 \$300,000; from Account No. 8215-25, the sum of
20 \$500,000; from Account No. 8220-99, the sum of
21 \$200,000; from Account No. 8260-13, the sum of
22 \$250,000; from Account No. 8280-99, the sum of
23 \$1,000,000; from Account No. 8329-07, the sum of
24 \$500,000; from Account No. 8395-99, the sum of
25 \$200,000; from Account No. 8421-05, the sum of
26 \$100,000; from Account No. 8536-10, the sum of
27 \$500,000; and from Account No. 8564-99, the sum of
28 \$500,000; with the total of the above expirations being
29 hereby appropriated to the Public Employees Insurance
30 Board special revenue fund, designated Basic Insurance
31 Premium Fund, Account No. 8265-05, to be available
32 and used for payment of health claims for public
33 employees in the current fiscal year 1987-88 and upon
34 the effective date of this bill, such being the purpose of
35 this supplementary appropriation bill.

CHAPTER 7

(H. B. 4241—By Delegate Farley)

[Passed February 18, 1988; in effect from passage. Became law without approval of Governor.]

AN ACT supplementing, amending, creating a new special account and authorizing deposits, withdrawals, disbursements and transfers, including repayment transfers into and from such special account for alleviating deficiencies of funds preventing timely payment for governmental operations through use of borrowed public moneys from the consolidated fund of the board of investments and portion thereof designated "state account" and involving only state moneys, with provision for full repayment thereof, with interest, for the fiscal year ending June thirtieth, one thousand nine hundred eighty-eight, and through the subsequent fiscal year ending June thirtieth, one thousand nine hundred eighty-nine, for Governor's Office—Board of Investments Transfers, Account No. 8428-11, supplementing chapter one hundred twenty-two, acts of the legislature, regular session, one thousand nine hundred eighty-seven, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That Account No. 8428-11, Governor's Office—Board of Investments Transfers, a special account be created, supplementing chapter one hundred twenty-two, acts of the legislature, regular session, one thousand nine hundred eighty-seven, known as the budget bill, as follows:

1 TITLE 2. APPROPRIATIONS.

2 Section 3. Appropriations from other funds.

3 112a—*Governor's Office—Board of*
4 *Investments Transfers*

5 (WV Code Chapter 12)

6 Acct. No. 8428-11

7 TO BE PAID FROM SPECIAL ACCOUNT

8 Authority is hereby granted for the making of all
9 deposits, withdrawals, disbursements, or transfers,

10 including transfers from the state general revenue fund
11 into this special account and transfer repayments from
12 this special account as required by the provisions of
13 Enrolled Committee Substitute for H. B. 4095, acts of
14 the Legislature, regular session, 1988, for the fiscal year
15 ending June 30, 1988 and through the fiscal year ending
16 June 30, 1989.

17 The purpose of this supplemental appropriation bill is
18 to supplement the budget act of the state for current
19 fiscal year 1987-88 by creating a new special account
20 therein for the purpose of granting budgetary transfer
21 and spending authority and ultimate repayment to the
22 consolidated fund of the board of investments and for
23 the purpose of lawfully providing for all required
24 actions of deposit, withdrawal, disbursement or transfer
25 in respect of public moneys borrowed from such
26 consolidated fund and used and disbursed to achieve
27 timely payment in specified areas of governmental
28 operation and with ultimate repayment, in full of all
29 such transfers, together with interest, back to such
30 consolidated fund partly by the close of fiscal year 1987-
31 88 and with any remainder and for total full payment
32 by June 30, 1989. The budgetary authorization set forth
33 herein shall be available immediately upon the effective
34 date of this bill.

CHAPTER 8

(H. B. 4671—By Delegates Riffle and Susman)

[Passed March 12, 1988; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article four, chapter thirty-one-a of the code of West Virginia, one thousand nine-hundred thirty-one, as amended, relating to powers of state banking institutions generally, to extend from five years to ten years the period which a banking institution may own, hold and use real estate conveyed to it in satisfaction of debts previously contracted or purchased at sales under judgments,

decrees, trust deeds or mortgages in its favor.

Be it enacted by the Legislature of West Virginia:

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

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

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

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

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

32 following purposes:

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

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

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

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

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

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

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

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

CHAPTER 9

(Com. Sub. for S. B. 15—By Senator Tucker)

[Passed March 10, 1988; in effect from passage. Approved by the Governor.]

AN ACT to amend article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fourteen-a, relating to the transfer of trusts or fiduciary accounts or relationships by a subsidiary of a bank holding company to an affiliated subsidiary of said bank holding company.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-14a. Transfer of fiduciary accounts or relationships between affiliated subsidiary banks of a bank holding company.

1 (a) Notwithstanding any other provision of this code,
2 and unless the will, deed or other instrument creating
3 a trust or fiduciary account or relationship specifically
4 provides otherwise, any affiliate subsidiary which is
5 empowered with and authorized to exercise trust
6 powers, or otherwise performs fiduciary services for a
7 fee, may, without any order or other action on the part
8 of any court or otherwise, transfer to any other affiliate
9 subsidiary exercising or authorized to exercise trust
10 powers any or all rights, franchises and interests in its
11 fiduciary accounts or relationships including, but not
12 limited to, any or all appointments, designations and
13 nominations and any other rights, franchises and
14 interests, as trustee, executor, administrator, guardian,
15 committee, escrow agent, transfer and paying agent of
16 stocks and bonds and every other fiduciary capacity; and
17 the transferee or receiving affiliate subsidiary shall hold

18 and enjoy all rights of property, franchises and interests
19 in the same manner and to the same extent as such
20 rights, franchises and interests were held or enjoyed by
21 the transferor affiliate subsidiary. As to transfers to an
22 affiliate subsidiary pursuant to this section, the receiv-
23 ing affiliate subsidiary shall take, receive, accept, hold,
24 administer and discharge any grants, gifts, bequests,
25 devises, conveyances, trusts, powers and appointments
26 made by deed, deed of trust, will, agreement, order of
27 court or otherwise to, in favor of, or in the name of, the
28 transferor affiliate subsidiary, whether made, executed
29 or entered before or after such transfer and whether to
30 vest or become effective before or after such transfer,
31 as fully and to the same effect as if the receiving affiliate
32 subsidiary had been named and in such deed, deed of
33 trust, will, agreement, order or other instrument instead
34 of such transferor affiliate subsidiary. All acts taken or
35 performed in its own name or in the name of or on
36 behalf of the transferor affiliate subsidiary by any
37 receiving affiliate subsidiary as trustee, agent, executor,
38 administrator, guardian, depository, registrar, transfer
39 agent or other fiduciary with respect to fiduciary
40 accounts or relationships transferred pursuant to this
41 section are as good, valid and effective as if made by
42 the transferor affiliate subsidiary.

43 (b) For purposes of this section, the term "affiliate
44 subsidiary" means any two or more subsidiaries (as
45 defined in section two, article eight-a of this chapter)
46 which are "banks" or "banking institutions" (as those
47 terms are defined in section two, article one of this
48 chapter) and which have a common bank holding
49 company as their parent company. For purposes of this
50 section, the term "bank holding company" shall have the
51 meaning set forth in section three, article eight-a of this
52 chapter.

53 (c) At least thirty days before any transfer authorized
54 by this section, the transferor affiliate subsidiary shall
55 send a statement of intent to transfer together with the
56 name and address of the transferee or receiving
57 affiliated subsidiary by regular United States mail to
58 the most recent known address of all persons who

- 59 appear in the records of the transferor affiliate subsi-
60 diary as having a vested present interest in the trust,
61 fiduciary account or relationship to be transferred.
- 62 (d) This section shall be applicable to both domestic
63 and foreign bank holding company affiliate subsidiaries.

CHAPTER 10

(H. B. 4007—By Delegates Phillips and Bradley)

[Passed March 12, 1988; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eighteen-a, relating to permitting banks to assess a fee for cash swept into short-term investments when acting as a fiduciary.

Be it enacted by the Legislature of West Virginia:

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

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

**§31A-4-18a. Short-term investments when acting as a
fiduciary.**

- 1 (a) Any individual, bank, trust company or other
2 entity engaged in the business of exercising fiduciary
3 powers for compensation and complying with the
4 provisions of this section is deemed to have satisfied its
5 fiduciary obligations and duties with respect to:
- 6 (1) The investment of fiduciary funds awaiting
7 investment or distribution;
- 8 (2) The charging of fees in connection therewith; and
9 (3) The disclosure of policies, procedures and fees in

10 connection therewith.

11 (b) A fiduciary may invest cash awaiting investment
12 or distribution in short-term trust quality investment
13 vehicles. A bank or trust company serving as a fiduciary
14 may place funds awaiting investment or distribution in
15 deposits of the commercial department of such bank or
16 trust company or in deposits of an affiliate bank:
17 *Provided*, That the rate of interest paid on such deposits
18 shall be at least equal to the rate paid by such bank or
19 trust company or affiliate bank on deposits of similar
20 terms and amounts.

21 A fiduciary has complied with this section if cash
22 awaiting investment or distribution in excess of one
23 thousand dollars is invested within ten days of receipt
24 or accumulation thereof.

25 (c) A fiduciary may charge a reasonable fee for the
26 temporary investment of cash awaiting investment or
27 distribution, which fee may be paid from the income
28 produced.

29 (d) A fiduciary has complied with its duty to disclose
30 fees and practices in connection with the investment of
31 funds awaiting investment or distribution if the fidu-
32 ciary's periodic statements set forth the fiduciary's
33 practice and method of computing fees.

CHAPTER 11

(H. B. 4160—By Delegate Bradley)

[Passed March 12, 1988; 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 banks and banking; procedure for authorization of branch banks; penalties; and providing that acceptance of a deposit at the offices of any affiliate bank for credit to the customer's account at any other affiliate bank of

the same bank holding company is permissible and does not constitute branch banking.

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. Procedure for authorization of branch banks; penalties for violation of section.

1 No banking institution shall engage in business at any
2 place other than at its principal office in this state, at
3 a branch bank in this state permitted by this section as
4 a customer bank communication terminal permitted by
5 section twelve-b of this article or at any loan origination
6 office permitted by section twelve-c of this article:
7 *Provided*, That acceptance of a deposit at the offices of
8 any subsidiary, as defined in section two, article eight-
9 a of this chapter, for credit to the customer's account at
10 any other subsidiary of the same bank holding company
11 is permissible and does not constitute branch banking.

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

23 (b) Except for a bank holding company, it shall be
24 unlawful for any individual, partnership, society,
25 association, firm, institution, trust, syndicate, public or
26 private corporation, or any other legal entity, or
27 combination of entities acting in concert, to directly or

28 indirectly own, control or hold with power to vote,
29 twenty-five percent or more of the voting shares of each
30 of two or more banks, or to control in any manner the
31 election of a majority of the directors of two or more
32 banks.

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

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

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

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

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

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

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

64 (f) Any banking institution which is authorized to

65 establish branch banks pursuant to this section may
66 provide the same banking services and exercise the
67 same powers at each such branch bank as may be
68 provided and exercised at its principal banking house.

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

76 (h) The commissioner shall prescribe the form of the
77 application for a branch bank and shall collect an
78 examination and investigation fee of one thousand
79 dollars for each filed application for a branch bank that
80 is to be established by the construction, lease or
81 acquisition of a branch bank facility, and two thousand
82 five hundred dollars for a branch bank that is to be
83 established by the purchase of the business and assets
84 and assumption of the liabilities of, or merger or
85 consolidation with another banking institution. The
86 board shall complete the examination and investigation
87 within ninety days from the date on which such
88 application and fee are received, unless the board
89 request in writing additional information and disclo-
90 sures concerning the proposed branch bank from the
91 applicant banking institution, in which event such
92 ninety-day period shall be extended for an additional
93 period of thirty days plus the number of days between
94 the date of such request and the date such additional
95 information and disclosures are received.

96 (i) Upon completion of the examination and investiga-
97 tion with respect to such application, the board shall, if
98 a hearing be required pursuant to subsection (j) of this
99 section, forthwith give notice and hold a hearing
100 pursuant to the following provisions:

101 (1) Notice of such hearing shall be given to the
102 banking institution with respect to which the hearing is
103 to be conducted in accordance with the provisions of
104 section two, article seven, chapter twenty-nine-a of this

105 code, and such hearing and the administrative proce-
106 dures in connection therewith shall be governed by all
107 of the provisions of article five, chapter twenty-nine-a of
108 this code, and shall be held at a time and place set by
109 the board but shall not be less than ten nor more than
110 thirty days after such notice is given.

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

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

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

133 (1) Public convenience and advantage will be pro-
134 moted by the establishment of the proposed branch
135 bank;

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

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

142 (4) The applicant state-chartered banking institution

143 satisfies such reasonable and appropriate requirements
144 as to sound financial condition as the commissioner or
145 board may from time to time establish by regulation;

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

150 (6) The establishment of the proposed branch bank
151 would not have the effect in any section of the state of
152 substantially lessening competition, nor tend to create a
153 monopoly or in any other manner be in restraint of
154 trade, unless the anticompetitive effects of the establish-
155 ment of that proposed branch bank are clearly out-
156 weighed in the public interest by the probable effect of
157 the establishment of the proposed branch bank in
158 meeting the convenience and needs of the community to
159 be served by that proposed branch bank.

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

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

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

CHAPTER 12

(Com. Sub. for H. B. 4356—By Delegates Phillips and Bradley)

[Passed March 12, 1988; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eight-c, relating to financially-related services by banks and bank holding companies; definitions; limiting investments; authorizing commissioner of banking to promulgate rules.

Be it enacted by the Legislature of West Virginia:

That chapter thirty-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 eight-c, to read as follows:

ARTICLE 8C. PROVISION OF FINANCIALLY-RELATED SERVICES BY BANKS AND BANK HOLDING COMPANIES.

- §31A-8C-1. Banks and bank holding companies permitted to offer financially-related services.
- §31A-8C-2. Financially-related defined.
- §31A-8C-3. Limitation on permitted investment in entities offering financially-related services.
- §31A-8C-4. Promulgation of rules.
- §31A-8C-5. Construction, conflicting provisions.

§31A-8C-1. Banks and bank holding companies permitted to offer financially-related services.

- 1 Upon application to the commissioner of banking and
- 2 approval by the board of banking and financial institu-
- 3 tions, any West Virginia state-chartered banking
- 4 institution or any bank holding company conducting
- 5 business in this state may, either through equity
- 6 investment in other entities or through a wholly-owned
- 7 subsidiary or subsidiaries, or by contract or agreement
- 8 with others to provide such products or services, engage
- 9 in any activity, exercise any power or offer any product
- 10 or service that is financially-related.

§31A-8C-2. Financially-related defined.

1 The term “financially-related” includes:

2 (a) All products, services and activities offered or
3 engaged in by national banks or by any West Virginia
4 state or federally chartered thrift institution or credit
5 union; except those excluded by subsection (f) of this
6 section;

7 (b) Equity investments in real estate development
8 activities, products and services;

9 (c) Securities underwriting and brokerage activities,
10 products and services; except those excluded by subsec-
11 tion (f) of this section;

12 (d) Financial consulting activities, products and
13 services;

14 (e) Any and all other activities, products and services
15 engaged in or offered by other providers of financial
16 products or services which may be deemed by the
17 commissioner of banking to be financially-related;
18 except those excluded by subsections (f) and (g) of this
19 section.

20 (f) The term “financially-related” excludes products,
21 services or activities offered or engaged in by any
22 insurer or by any underwriter, agent, solicitor or broker
23 of insurance, which products, services or activities are
24 regulated by the department of insurance pursuant to
25 chapter thirty-three of the West Virginia code except for
26 such activities, products and services permitted, en-
27 gaged in, or offered by a West Virginia state chartered
28 banking institution prior to the effective date of this
29 article.

30 (g) The term “financially-related” also excludes
31 products, services or activities offered or engaged in by
32 any real estate agent, agency or broker, which products,
33 services or activities are regulated by the state real
34 estate commission pursuant to chapter forty-seven of the
35 West Virginia code except for such activities, products
36 and services permitted, engaged in or offered by a West
37 Virginia state chartered banking institution prior to the
38 effective date of this article or permitted pursuant to

39 subdivision (b) of this section.

§31A-8C-3. Limitation on permitted investment in entities offering financially-related services.

1 No West Virginia state-chartered banking institution
2 or bank holding company may invest or otherwise
3 expend in excess of ten percent in the aggregate of the
4 amount of its capital and surplus, on a consolidated
5 basis, in the conduct of financially-related activities.

§31A-8C-4. Promulgation of rules.

1 The commissioner of banking, pursuant to chapter
2 twenty-nine-a of this code, shall promulgate rules
3 governing the provision of financially-related products
4 and services by West Virginia state-chartered banking
5 institutions and by any bank holding company conduct-
6 ing business in this state. These rules shall include the
7 procedures applicable in connection with application to
8 engage in financially-related activities and offer
9 financially-related products and services and the
10 conduct of such activities.

§31A-8C-5. Construction, conflicting provisions.

1 This article shall be construed liberally to permit
2 banks and bank holding companies to offer financially-
3 related products and services. No other provision of this
4 code shall be deemed to prohibit such activity: *Provided,*
5 That in the provision of such products and services,
6 banks and bank holding companies are subject to the
7 same state and federal regulation and licensing require-
8 ments as are other providers of such products and
9 services.

CHAPTER 13

(Ccm. Sub. for H. B. 4095—By Mr. Speaker, Mr. Chambers,
and Delegate Swann, by request of the Executive)

[Passed February 18, 1988; in effect from passage. Became law without approval of 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-b, relating to transfers from the board of investments consolidated fund and the portion thereof

designated "state account" and involving only state funds, upon request of the governor, as needed for timely payment for government operations during fiscal year 1987-88; specifying purposes for which transferred moneys may be expended and maximum amount of transfer authority; providing terms and conditions for full repayment of transfers with interest to the consolidated fund; making certain findings and declarations; permitting or requiring governor to place in effect spending reductions under either his current authority and methods or a new authority and method granted to the governor; providing for repayment of transfers in current fiscal year, with any shortfall of repayment to constitute first priority against receipts of ensuing fiscal year, and with full payment of all transfers in any event no later than the close of the first quarter of such ensuing fiscal year; creating a special account in the state treasury for deposit, withdrawal and repayment transfer activities and for invoking application of special fund doctrine in respect of budget activities beyond one fiscal year; and specifying certain effective dates.

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-b, to read as follows:

ARTICLE 6. WEST VIRGINIA BOARD OF INVESTMENTS.

§12-6-9b. Transfers to the state; maximum amount of transfer authorization; purposes for use of moneys; terms, conditions, and repayment, with interest; creation of special account in state treasury.

1 Whenever the governor determines that the general
2 revenues available for expenditure are insufficient for
3 timely payments for government operations, the board
4 shall transfer money from the consolidated fund and
5 that portion thereof designated "state account" and
6 involving only state funds, to the special account created
7 by this section in the state treasury, in the amounts
8 determined by the governor to be sufficient and

9 necessary to meet such payments. The total of the
10 transfers may not exceed fifty million dollars, and the
11 transfers are subject to the payment of interest equal to
12 the interest rate earned by the consolidated fund on the
13 day of each transfer for the period of each transfer until
14 repayment.

15 Any such transfer may be used only for the following
16 purposes:

17 (1) Payments of state aid to public schools;

18 (2) Payments to or from the public employees insu-
19 rance board for claims; and

20 (3) Payments for medicaid reimbursement.

21 The Legislature finds and declares that moneys
22 transferred pursuant to this section can be repaid by the
23 end of this current fiscal year by (i) the Legislature
24 enacting measures expiring and reducing appropri-
25 ations of spending units for the current fiscal year 1987-
26 88; (ii) the governor causing additional money to expire
27 through executive action in the current fiscal year,
28 including spending reductions which he may institute
29 under the authority granted him and by one of the
30 methods in article two, chapter five-a of this code; and
31 (iii) improved and deferred receipts of general revenues
32 in the remainder of the current fiscal year enabling the
33 state to meet the governor's revenue estimate.
34 Repayment of transfers are therefore to be made by the
35 governor from such expired moneys and deferred
36 receipts of general revenues relating to the current
37 fiscal year and no later than the thirty-first day of July,
38 one thousand nine hundred eighty-eight, when all
39 reconciliations of receipts and expenses in respect of
40 fiscal year 1987-88 have been made, through transfer
41 from the state general revenue fund to the special
42 account created herein and thence with transfer from
43 such special account to the consolidated fund: *Provided,*
44 That at least five million dollars of such transfers shall
45 be repaid no later than the thirtieth day of June, one
46 thousand nine hundred eighty-eight.

47 The governor is hereby granted new authority and a

48 new method, in addition to the authority and methods
49 granted him in article two, chapter five-a of this code
50 in respect of instituting spending reductions, to provide
51 for and institute reductions of expenditures by spending
52 units, but excluding therefrom any reductions in respect
53 of public schools, higher education, the public employees
54 insurance board, or medicaid; to accomplish full
55 repayment of transfers to the consolidated fund.

56 If sufficient revenues are nevertheless not received
57 during this fiscal year to meet such revenue estimate
58 and to enable full repayment of all transfers by the end
59 of this fiscal year, the governor shall, if he has not
60 already done so, place into effect required reductions of
61 expenditures by spending units from the general
62 revenue fund by one of the methods hereinbefore
63 authorized and set forth, and with such spending
64 reductions to be placed in effect in any event not later
65 than the thirty-first day of July, one thousand nine
66 hundred eighty-eight (the close of the period for
67 reconciliation of receipts and expenses of fiscal year
68 1987-88). Full repayment of any and all transfers shall
69 then constitute a first priority on the moneys available
70 in the first quarter of fiscal year 1988-89 and shall be
71 made by the close of such first quarter, on the thirtieth
72 day of September, one thousand nine hundred eighty-
73 eight, by the governor. The governor shall submit his
74 schedule for repayment, both as to sources and amounts,
75 to the board of investments and a copy thereof at the
76 same time to the legislative auditor.

77 Any repayment of transfers shall not be deemed to
78 renew, restore or increase in any way the maximum
79 amount of fifty million dollars of transfers herein
80 authorized.

81 There is hereby created in the state treasury a special
82 account for the deposits, withdrawals and repayments
83 transferred and made pursuant to this section and to be
84 used in connection with invoking the applicability of the
85 special fund doctrine in respect of budgetary activities
86 involving more than one fiscal year.

87 The authority of the board to make and of the

88 governor to request transfers pursuant to this section
 89 shall expire on the thirtieth day of June, one thousand
 90 nine hundred eighty-eight.

CHAPTER 14

(S. B. 614—By Senators Tonkovich, Mr. President, by request, and Harman)

[Passed March 12, 1988; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section sixteen, article two; section thirteen, article five; and sections three, five and eight, article six, all of chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to state eligibility for Title IV-B and Title IV-E funds by requiring court review of voluntary placements within one hundred eighty days; requiring specific court language in court orders; and requiring court hearings for all foster care cases after twelve months.

Be it enacted by the Legislature of West Virginia:

That section sixteen, article two; section thirteen, article five; and sections three, five and eight, article six, all of chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

Article

2. State Responsibilities for the Protection and Care of Children.
5. Juvenile Proceedings.
6. Procedure in Cases of Child Neglect or Abuse.

ARTICLE 2. STATE RESPONSIBILITIES FOR THE PROTECTION AND CARE OF CHILDREN.

§49-2-16. State responsibility for child care.

- 1 The state department is hereby authorized and
- 2 empowered to provide care, support and protective
- 3 services for children who are handicapped by depen-
- 4 dency, neglect, single parent status, mental or physical
- 5 disability, or who for other reasons are in need of public
- 6 service. Such department is also hereby authorized and
- 7 empowered in its discretion to accept children for care
- 8 from their parent or parents, guardian, custodian or

9 relatives and to accept the custody of children commit-
10 ted to its care by courts exercising juvenile jurisdiction.
11 The department of human services or any county office
12 of such department is also hereby authorized and
13 empowered in its discretion to accept temporary custody
14 of children for care from any law-enforcement officer in
15 an emergency situation.

16 The department of human services shall provide care
17 in special boarding homes for children needing deten-
18 tion pending disposition by a court having juvenile
19 jurisdiction or temporary care following such court
20 action.

21 Within one hundred eighty days of the date of the
22 signatures to a voluntary placement agreement, after
23 receipt of physical custody, the state department shall
24 file with the court a petition for review of the placement,
25 stating the child's situation and the circumstance that
26 gives rise to the voluntary placement. If the department
27 intends to extend the voluntary placement agreement,
28 the department shall file with the court a copy of the
29 child's case plan. The court shall appoint an attorney for
30 the child, who shall also receive a copy of the case plan.
31 The court shall schedule a hearing and shall give notice
32 of the time and place and right to be present at such
33 hearing to: The child's attorney; the child, if twelve
34 years of age or older; the child's parents or guardians;
35 the child's foster parents; and any other such persons as
36 the court may in its discretion direct. The child's
37 presence at such hearing may be waived by the child's
38 attorney at the request of the child or if the child would
39 suffer emotional harm. At the conclusion of the proceed-
40 ings, but no later than one hundred eighty days after
41 the date of the signatures to the voluntary placement
42 agreement, the court shall enter an order determining
43 whether or not continuation of the voluntary placement
44 is in the best interests of the child; specifying under
45 what conditions the child's placement shall continue;
46 and specifying whether or not the department has made
47 reasonable efforts to reunify the family.

ARTICLE 5. JUVENILE PROCEEDINGS.

***§49-5-13. Disposition; appeal.**

1 (a) In aid of disposition, the juvenile probation officer
2 or state department worker assigned to the court shall,
3 upon request of the court, make an investigation of the
4 environment of the child and the alternative dispositions
5 possible. The court, upon its own motion, or upon
6 request of counsel, may order a psychological examina-
7 tion of the child. The report of such examination and
8 other investigative and social reports shall not be made
9 available to the court until after the adjudicatory
10 hearing. Unless waived, copies of the report shall be
11 provided to counsel for the petitioner and counsel for the
12 child no later than seventy-two hours prior to the
13 dispositional hearing.

14 (b) Following the adjudication, the court shall conduct
15 the dispositional proceeding, giving all parties an
16 opportunity to be heard. In disposition the court shall
17 not be limited to the relief sought in the petition and
18 shall give precedence to the least restrictive of the
19 following alternatives consistent with the best interests
20 and welfare of the public and the child:

21 (1) Dismiss the petition;

22 (2) Refer the child and the child's parent or custodian
23 to a community agency for needed assistance and
24 dismiss the petition;

25 (3) Upon a finding that the child is in need of extra-
26 parental supervision (A) place the child under the
27 supervision of a probation officer of the court or of the
28 court of the county where the child has his or her usual
29 place of abode, or other person while leaving the child
30 in custody of his or her parent or custodian and (B)
31 prescribe a program of treatment or therapy or limit the
32 child's activities under terms which are reasonable and
33 within the child's ability to perform;

34 (4) Upon a finding that a parent or custodian is not

* Clerk's Note: This section was also amended by H. B. 3146, which passed prior to this act.

35 willing or able to take custody of the child, that a child
36 is not willing to reside in the custody of his parent or
37 custodian, or that a parent or custodian cannot provide
38 the necessary supervision and care of the child, the court
39 may place the child in temporary foster care or
40 temporarily commit the child to the state department or
41 a child welfare agency. The court order shall state that
42 continuation in the home is contrary to the best interest
43 of the child and why; and whether or not the state
44 department made a reasonable effort to prevent the
45 placement or that the emergency situation made such
46 efforts unreasonable or impossible. Whenever the court
47 transfers custody of a youth to the department of human
48 services, an appropriate order of financial support by
49 the parents or guardians shall be entered in accordance
50 with section five, article seven of this chapter and
51 guidelines promulgated by the supreme court of
52 appeals;

53 (5) Upon a finding that no less restrictive alternative
54 would accomplish the requisite rehabilitation of the
55 child, and upon an adjudication of delinquency pursuant
56 to subdivision (1), section four, article one of this
57 chapter, commit the child to an industrial home or
58 correctional institution for children. Commitments shall
59 not exceed the maximum term for which an adult could
60 have been sentenced for the same offense, with discre-
61 tion as to discharge to rest with the director of the
62 institution, who may release the child and return him
63 to the court for further disposition. The order shall state
64 that continuation in the home is contrary to the best
65 interests of the child and why; and whether or not the
66 state department made a reasonable effort to prevent
67 the placement or that the emergency situation made
68 such efforts unreasonable or impossible;

69 (6) Upon an adjudication of delinquency pursuant to
70 subsection (3) or (4), section four, article one of this
71 chapter, and upon a finding that the child is so totally
72 unmanageable, ungovernable and antisocial that the
73 child is amenable to no treatment or restraint short of
74 incarceration, commit the child to a rehabilitative
75 facility devoted exclusively to the custody and rehabil-

76 itation of children adjudicated delinquent pursuant to
77 said subsection (3) or (4). Commitments shall not exceed
78 the maximum period of one year with discretion as to
79 discharge to rest with the director of the institution, who
80 may release the child and return him or her to the court
81 for further disposition. The order shall state that
82 continuation in the home is contrary to the best interests
83 of the child and why; and whether or not the state
84 department made a reasonable effort to prevent the
85 placement or that the emergency situation made such
86 efforts unreasonable or impossible; or

87 (7) After a hearing conducted under the procedures
88 set out in subsections (c) and (d), section four, article
89 five, chapter twenty-seven of the code, commit the child
90 to a mental health facility in accordance with the child's
91 treatment plan; the director may release a child and
92 return him to the court for further disposition. The
93 order shall state that continuation in the home is
94 contrary to the best interests of the child and why; and
95 whether or not the state department made a reasonable
96 effort to prevent the placement or that the emergency
97 situation made such efforts unreasonable or impossible.

98 (c) The disposition of the child shall not be affected
99 by the fact that the child demanded a trial by jury or
100 made a plea of denial. Any dispositional order is subject
101 to appeal to the supreme court of appeals.

102 (d) Following disposition, it shall be inquired of the
103 respondent whether or not appeal is desired and the
104 response transcribed; a negative response shall not be
105 construed as a waiver. The evidence shall be transcribed
106 as soon as practicable and made available to the child
107 or his or her counsel, if the same is requested for
108 purposes of further proceedings. A judge may grant a
109 stay of execution pending further proceedings.

110 (e) Notwithstanding any other provision of this code
111 to the contrary, in the event a child charged with
112 delinquency under this chapter is transferred to adult
113 jurisdiction and there tried and convicted, the court may
114 nevertheless, in lieu of sentencing such person as an

115 adult, make its disposition in accordance with this
116 section.

ARTICLE 6. PROCEDURE IN CASES OF CHILD NEGLECT OR ABUSE.

§49-6-3. Petition to court when child believed neglected or abused—
Temporary custody.

§49-6-5. Disposition of neglected or abused children.

§49-6-8. Foster care review; annual reports to the court.

§49-6-3. Petition to court when child believed neglected or abused—Temporary custody.

1 (a) Upon the filing of a petition, the court may order
2 that the child alleged to be an abused or neglected child
3 be delivered for not more than ten days into the custody
4 of the state department or a responsible relative,
5 pending a preliminary hearing, if it finds that: (1) There
6 exists imminent danger to the physical well-being of the
7 child, and (2) there are no reasonably available alterna-
8 tives to removal of the child, including, but not limited
9 to, the provision of medical, psychiatric, psychological or
10 homemaking services in the child's present custody. In
11 a case where there is more than one child in the home,
12 the petition shall so state, and notwithstanding the fact
13 that the allegations of abuse or neglect may pertain to
14 less than all of such children, each child in the home for
15 whom relief is sought shall be made a party to the
16 proceeding. Even though the acts of abuse or neglect
17 alleged in the petition were not directed against a
18 specific child who is named in the petition, the court
19 shall order the removal of such child, pending final
20 disposition, if it finds that there exists imminent danger
21 to the physical well-being of the child and a lack of
22 reasonable available alternatives to removal. The initial
23 order directing such custody shall contain an order
24 appointing counsel and scheduling the preliminary
25 hearing, and upon its service shall require the imme-
26 diate transfer of custody of such child or children to the
27 state department or a responsible relative. The court
28 order shall state: (1) That continuation in the home is
29 contrary to the best interests of the child and why; and
30 (2) whether or not the state department made a
31 reasonable effort to prevent the placement or that the

32 emergency situation made such efforts unreasonable or
33 impossible. The order may also direct any party or the
34 department to initiate or become involved in services to
35 facilitate reunification of the family.

36 (b) Whether or not the court orders immediate
37 transfer of custody as provided in subsection (a) of this
38 section, if the facts alleged in the petition demonstrate
39 to the court that there exists imminent danger to the
40 child, the court may schedule a preliminary hearing
41 giving the respondents at least five days' actual notice.
42 If the court finds at the preliminary hearing that there
43 are no alternatives less drastic than removal of the child
44 and that a hearing on the petition cannot be scheduled
45 in the interim period, the court may order that the child
46 be delivered into the temporary custody of the state
47 department or an appropriate person or agency for a
48 period not exceeding sixty days: *Provided*, That the
49 court order shall state (1) that continuation in the home
50 is contrary to the best interests of the child and state
51 the reasons therefor; (2) whether or not the department
52 made reasonable efforts to prevent the child's removal
53 from his or her home; (3) whether or not the state
54 department made a reasonable effort to prevent the
55 placement or that the emergency situation made such
56 efforts unreasonable or impossible; and (4) what efforts
57 should be made by the department to facilitate the
58 child's return home: *Provided, however*, That if the court
59 grants an improvement period as provided in subsection
60 (b), section two of this article, the sixty-day limit upon
61 temporary custody may be waived.

62 (c) If a child or children shall, in the presence of a
63 child protective service worker of the department of
64 human services, be in an emergency situation which
65 constitutes an imminent danger to the physical well-
66 being of the child or children, as that phrase is defined
67 in section three, article one of this chapter, and if such
68 worker has probable cause to believe that the child or
69 children will suffer additional child abuse or neglect or
70 will be removed from the county before a petition can
71 be filed and temporary custody can be ordered, the
72 worker may, prior to the filing of a petition, take the

73 child or children into his or her custody without a court
74 order: *Provided*, That after taking custody of such child
75 or children prior to the filing of a petition, the worker
76 shall forthwith appear before a circuit judge or a
77 juvenile referee of the county wherein custody was
78 taken, or if no such judge or referee be available, before
79 a circuit judge or a juvenile referee of an adjoining
80 county, and shall immediately apply for an order
81 ratifying the emergency custody of the child pending the
82 filing of a petition. The circuit court of every county in
83 the state shall appoint at least one of the magistrates of
84 the county to act as a juvenile referee, who shall serve
85 at the will and pleasure of the appointing court, and who
86 shall perform the functions prescribed for such position
87 by the provisions of this subsection. The parents,
88 guardians or custodians of the child or children may be
89 present at the time and place of application for an order
90 ratifying custody, and if at the time the child or children
91 are taken into custody by the worker, the worker knows
92 which judge or referee is to receive the application, the
93 worker shall so inform the parents, guardians or
94 custodians. The application for emergency custody may
95 be on forms prescribed by the supreme court of appeals
96 or prepared by the prosecuting attorney or the appli-
97 cant, and shall set forth facts from which it may be
98 determined that the probable cause described above in
99 this subsection exists. Upon such sworn testimony or
100 other evidence as the judge or referee deems sufficient,
101 the judge or referee may order the emergency taking
102 by the worker to be ratified. If appropriate under the
103 circumstances, the order may include authorization for
104 an examination as provided for in subsection (b), section
105 four of this article. If a referee issues such an order, the
106 referee shall by telephonic communication have such
107 order orally confirmed by a circuit judge of the circuit
108 or an adjoining circuit who shall on the next judicial day
109 enter an order of confirmation. If the emergency taking
110 is ratified by the judge or referee, emergency custody
111 of the child or children shall be vested in the state
112 department until the end of the next judicial day, at
113 which time any such child taken into emergency custody
114 shall be returned to the custody of his or her parent,

115 guardian or custodian unless a petition has been filed
116 and custody of the child has been transferred under the
117 provisions of section three of this article.

§49-6-5. Disposition of neglected or abused children.

1 (a) Following a determination pursuant to section two
2 of this article wherein the court finds a child to be
3 abused or neglected, the department shall file with the
4 court a copy of the child's case plan, including the
5 permanency plan for the child. The term case plan
6 means a written document that includes, where appli-
7 cable, the requirements of the family case plan as
8 provided for in section three, article six-d of this chapter
9 and that also includes at least the following: A descrip-
10 tion of the type of home or institution in which the child
11 is to be placed, including a discussion of the appropri-
12 ateness of the placement and how the agency which is
13 responsible for the child plans to assure that the child
14 receives proper care and that services are provided to
15 the parents, child and foster parents in order to improve
16 the conditions in the parent(s) home, facilitate return of
17 the child to his or her own home or the permanent
18 placement of the child, and address the needs of the
19 child while in foster care, including a discussion of the
20 appropriateness of the services that have been provided
21 to the child. The term permanency plan refers to that
22 part of the case plan which is designed to achieve a
23 permanent home for the child in the least restrictive
24 setting available. The plan must document efforts to
25 ensure that the child is returned home within approx-
26 imate time lines for reunification as set out in the plan.
27 If reunification is not the permanency plan for the child,
28 the plan must state why reunification is not appropriate
29 and detail the alternative placement for the child to
30 include approximate time lines for when such placement
31 is expected to become a permanent placement. This case
32 plan shall serve as the family case plan for parents of
33 abused or neglected children. Copies of the child's case
34 plan shall be sent to the child's attorney and parent,
35 guardian or custodian at least five days prior to the
36 dispositional hearing. The court shall forthwith proceed
37 to disposition giving both the petitioner and respondents

38 an opportunity to be heard. The court shall give
39 precedence to dispositions in the following sequence:

40 (1) Dismiss the petition;

41 (2) Refer the child, the abusing parent, or other
42 family members to a community agency for needed
43 assistance and dismiss the petition;

44 (3) Return the child to his or her own home under
45 supervision of the state department;

46 (4) Order terms of supervision calculated to assist the
47 child and the abusing parent or parents which prescribe
48 the manner of supervision and care of the child and
49 which are within the ability of the parent or custodian
50 to perform;

51 (5) Upon a finding that the abusing parent or parents
52 are presently unwilling or unable to provide adequately
53 for the child's needs, commit the child temporarily to the
54 custody of the state department, a licensed private child
55 welfare agency or a suitable person who may be
56 appointed guardian by the court. The court order shall
57 state: (1) That continuation in the home is contrary to
58 the best interests of the child and why; and (2) whether
59 or not the state department made a reasonable effort to
60 prevent the placement to include a statement of what
61 efforts were made or that the emergency situation made
62 such efforts unreasonable or impossible; and (3) the
63 specific circumstances of the situation which makes
64 such efforts unreasonable if services were not offered by
65 the department. The court order shall also determine
66 under what circumstances the child's commitment to the
67 department shall continue. Considerations pertinent to
68 the determination include whether the child should (1)
69 be continued in foster care for a specified period, (2)
70 should be considered for adoption, (3) because of a
71 child's special needs or circumstances, be continued in
72 foster care on a permanent or long-term basis, or (4) be
73 continued in foster care until reunification is achieved.
74 The court may order services to meet the special needs
75 of the child. Whenever the court transfers custody of a
76 youth to the department of human services, an approp-

77 riate order of financial support by the parents or
78 guardians shall be entered in accordance with section
79 five, article seven of this chapter; or

80 (6) Upon a finding that there is no reasonable
81 likelihood that the conditions of neglect or abuse can be
82 substantially corrected in the near future, and when
83 necessary for the welfare of the child, terminate the
84 parental or custodial rights and responsibilities and
85 commit the child to the permanent guardianship of the
86 state department or a licensed child welfare agency. If
87 the court shall so find, then in fixing its dispositional
88 order, the court shall consider the following factors: (1)
89 The child's need for continuity of care and caretakers;
90 (2) the amount of time required for the child to be
91 integrated into a stable and permanent home environ-
92 ment; and (3) other factors as the court considers
93 necessary and proper. Notwithstanding any other
94 provisions of this article, the permanent parental rights
95 shall not be terminated if a child fourteen years of age
96 or older or otherwise of an age of discretion as deter-
97 mined by the court, objects to such termination. No
98 adoption of a child shall take place until all proceedings
99 for termination of parental rights under this article and
100 appeals thereof are final. In determining whether or not
101 parental rights should be terminated, the court shall
102 consider the efforts made by the department to provide
103 remedial and reunification services to the parent. The
104 court order shall state: (1) That continuation in the home
105 is not in the best interest of the child and why; and (2)
106 why reunification is not in the best interests of the child;
107 and (3) whether or not the state department made a
108 reasonable effort to prevent the placement or that the
109 emergency situation made such efforts unreasonable or
110 impossible; and (4) whether or not the state department
111 made a reasonable effort to reunify the family including
112 a description of what efforts were made or that such
113 efforts were unreasonable due to specific circumstances.

114 (b) As used in this section, "no reasonable likelihood
115 that conditions of neglect or abuse can be substantially
116 corrected" shall mean that, based upon the evidence
117 before the court, the abusing adult or adults have

118 demonstrated an inadequate capacity to solve the
119 problems of abuse or neglect, on their own or with help.
120 Such conditions shall be deemed to exist in the following
121 circumstances, which shall not be exclusive:

122 (1) The abusing parent or parents have habitually
123 abused or are addicted to alcohol, controlled substances
124 or drugs, to the extent that proper parenting skills have
125 been seriously impaired and such abusing parent or
126 parents have not responded to or followed through the
127 recommended and appropriate treatment which could
128 have improved the capacity for adequate parental
129 functioning;

130 (2) The abusing parent or parents have willfully
131 refused or are presently unwilling to cooperate in the
132 development of a reasonable family case plan designed
133 to lead to the child's return to their care, custody and
134 control;

135 (3) The abusing parent or parents have not responded
136 to or followed through with a reasonable family case
137 plan or other rehabilitative efforts of social, medical,
138 mental health or other rehabilitative agencies designed
139 to reduce or prevent the abuse or neglect of the child,
140 as evidenced by the continuation or insubstantial
141 diminution of conditions which threatened the health,
142 welfare or life of the child;

143 (4) The abusing parent or parents have abandoned the
144 child;

145 (5) The abusing parent or parents have repeatedly or
146 seriously injured the child physically or emotionally, or
147 have sexually abused or sexually exploited the child, and
148 the degree of family stress and the potential for further
149 abuse and neglect are so great as to preclude the use
150 of resources to mitigate or resolve family problems or
151 assist the abusing parent or parents in fulfilling their
152 responsibilities to the child; or

153 (6) The abusing parent or parents have incurred
154 emotional illness, mental illness or mental deficiency of
155 such duration or nature as to render such parent or

156 parents incapable of exercising proper parenting skills
157 or sufficiently improving the adequacy of such skills.

158 (c) The court may as an alternative disposition allow
159 to the parents or custodians an improvement period not
160 to exceed twelve months. During this period the
161 parental rights shall not be permanently terminated and
162 the court shall require the parent to rectify the
163 conditions upon which the determination was based. No
164 more than one such post-dispositional improvement
165 period may be granted. The court may order the child
166 to be placed with the parents, a relative, the state
167 department or other appropriate placement during the
168 period. At the end of the period the court shall hold a
169 hearing to determine whether the conditions have been
170 adequately improved, and at the conclusion of such
171 hearing, shall make a further dispositional order in
172 accordance with this section.

§49-6-8. Foster care review; annual reports to the court.

1 (a) If, twelve months after receipt (by the state
2 department or its authorized agent) of physical custody
3 of a child either by a court ordered placement or by a
4 voluntary agreement, the state department has not
5 placed a child in permanent foster care or an adoptive
6 home or placed the child with a natural parent, the state
7 department shall file with the court a petition for review
8 of the case. The department shall also file with the court
9 a report detailing the efforts that have been made to
10 place the child in a permanent home and copies of the
11 child's case plan including the permanency plan as
12 defined in section five, article six of this chapter. Copies
13 of the report shall be sent to the child's attorney and be
14 made available to the child's parent(s) or guardian.
15 "Permanent foster care" shall mean a written arrange-
16 ment with an adult or adults following a six-month trial
17 period whereby the state department places the care,
18 custody and control of a child until the child's emanci-
19 pation with such adult or adults. The court shall
20 schedule a hearing in chambers, giving notice and the
21 right to be present to: The child's attorney; the child, if
22 twelve years of age or older; the child's parents; the

23 child's guardians; the child's foster parents; and such
24 other persons as the court may in its discretion direct.
25 The child's presence may be waived by the child's
26 attorney at the request of the child or if the child would
27 suffer emotional harm. The purpose of the hearing is to
28 review the child's case, to determine whether and under
29 what conditions the child's commitment to the depart-
30 ment shall continue, and to determine what efforts are
31 necessary to provide the child with a permanent home.
32 At the conclusion of the hearing the court shall in
33 accordance with the best interests of the child enter an
34 appropriate order of disposition. The court order shall
35 state (1) whether or not the department made reasonable
36 effort to prevent out-of-home placement or that the
37 specific situation made such effort unreasonable, (2) the
38 permanency plan for the child, and (3) services required
39 to meet the child's needs. The court shall possess
40 continuing jurisdiction over cases reviewed under this
41 section for so long as a child remains in temporary foster
42 care, or, when a child is returned to his or her natural
43 parents subject to conditions imposed by the court, for
44 so long as the conditions are effective.

45 (b) The state department shall file a supplementary
46 petition for review with the court within eighteen
47 months and every eighteen months thereafter for every
48 child that remains in the physical or legal custody of the
49 state department until the child is placed in an adoptive
50 home or permanent foster care or returned to his or her
51 parents.

52 (c) The state department shall annually report to the
53 court the current status of the placements of children
54 in permanent care and custody of the state department
55 who have not been adopted.

56 (d) Nothing in this article precludes any party from
57 petitioning the court for review of the child's case at any
58 time. The court shall grant such petition upon a showing
59 that there is a change in circumstance or needs of the
60 child that warrants court review.

CHAPTER 15

(S. B. 455—By Senator Lucht, et al)

[Passed March 12, 1988; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two-b, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fifteen, relating to pilot day care programs; requiring the department of finance and administration to assist therein; requiring such program in Morgantown and authorizing two additional programs in the next fiscal year; providing for use of state facilities; providing generally for the operation and funding of such programs; and requiring reports to Legislature.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2B. DUTIES OF COMMISSIONER OF HUMAN SERVICES FOR CHILD WELFARE.

§49-2B-15. Establishment of pilot day care programs.

1 The Legislature finds that state owned or leased
2 facilities are suitable for the provision of child day care
3 and that such day care centers are needed by public
4 employees and other parents in this state. Therefore, the
5 department of human services, in consultation with the
6 department of finance and administration and other
7 appropriate agencies, shall plan and assist in imple-
8 menting day care services for public employees and
9 other parents. Suitable space for at least one pilot
10 program shall be provided in Morgantown, and two
11 other pilot programs may be initiated during fiscal year
12 one thousand nine hundred eighty-nine and continued
13 thereafter.

14 The department of human services shall consider such
15 findings as were made by the legislative interim
16 committee on day care centers and shall conduct such

16 other statewide needs assessments as may facilitate the
17 provision of day care for public employees statewide.

18 The day care centers shall meet all licensing require-
19 ments prescribed by law and shall be under the
20 supervision of the department of human services
21 through profit or nonprofit independent operators in
22 accordance with standards and requirements estab-
23 lished by federal law and rules promulgated by the
24 commissioner of human services.

25 The space provided for day care shall be available
26 without charge for rent, unless such rent shall be
27 required pursuant to bonding covenants. Any alterations
28 necessary to meet state or federal standards shall be
29 provided for by and at the expense of the operator of
30 the day care center. Such space shall be made available
31 with the approval of the department of finance and
32 administration as to space under the control of the
33 executive branch, the board of regents as to space at
34 state institutions of higher education, and by the
35 appropriate official in the legislative or judicial branch
36 as to space under their control.

37 Operators of such day care centers shall charge
38 reasonable fees for child care, and parents using the day
39 care shall pay such fees set at a level that will cover all
40 projected operating costs, less any costs covered by the
41 absence of rent or by donations or fund-raising activi-
42 ties. Fees may be established pursuant to a sliding fee
43 schedule with fees based on the parents' household
44 income.

45 General liability insurance coverage shall be provided
46 by the operators of such day care centers, and such
47 coverage may be provided to nonprofit corporations by
48 the board of risk and insurance management pursuant
49 to subsection (b), section five, article twelve, chapter
50 twenty-nine of this code.

51 Parents shall have the opportunity for involvement in
52 the implementation and operation of the day care
53 centers and shall have access to their children at any
54 time.

55 The department of human services, in consultation
56 with those branches and departments of government
57 wherein day care facilities are located, shall report to
58 the Legislature prior to the first day of January, one
59 thousand nine hundred eighty-nine, its findings relevant
60 to the costs of operation of the pilot program or
61 programs, the benefits to employees and other parents
62 of such day care centers, the problems incident to the
63 operation of the centers, and other matters relevant to
64 the operation of such centers together with recommen-
65 dations for future operation of such centers at other
66 state owned or leased facilities.

CHAPTER 16

(Com. Sub. for H. B. 2717—By Delegates Leary and Knight)

[Passed February 29, 1988; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article six, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the rules promulgated by the civil service commission; changing the rules with respect to layoffs; and providing a method for recall of employees.

Be it enacted by the Legislature of West Virginia:

That section ten, 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.

§29-6-10. Rules of commission.

1 The commission shall have the authority to promul-
2 gate, amend or repeal rules, in accordance with chapter
3 twenty-nine-a of this code, to implement the provisions
4 of this article.

5 (1) For the preparation, maintenance and revision of
6 a position classification plan for all positions in the
7 classified service and a position classification plan for

8 all positions in the classified-exempt service, based upon
9 similarity of duties performed and responsibilities
10 assumed, so that the same qualifications may reasonably
11 be required for and the same schedule of pay may be
12 equitably applied to all positions in the same class. The
13 position classification plan for classified-exempt service
14 shall become effective not later than the first day of
15 July, one thousand nine hundred seventy-nine. Except
16 for persons employed by the board of regents, all
17 persons receiving compensation in the form of a wage
18 or salary, funded either in part or in whole by the state,
19 shall be included in either the position classification
20 plan for classified service or classified-exempt service.
21 After each such classification plan has been approved
22 by the commission, the director shall allocate the
23 position of every employee in the classified service to one
24 of the classes in the classified plan and the position of
25 every employee in the classified-exempt service to one
26 of the positions in the classified-exempt plan. Any
27 employee affected by the allocation of a position to a
28 class shall, after filing with the director of personnel a
29 written request for reconsideration thereof in such
30 manner and form as the director may prescribe, be
31 given a reasonable opportunity to be heard thereon by
32 the director. The interested appointing authority shall
33 be given like opportunity to be heard.

34 (2) For a pay plan for all employees in the classified
35 service, after consultation with appointing authorities
36 and the state fiscal officers, and after a public hearing
37 held by the commission. Such pay plan shall become
38 effective only after it has been approved by the governor
39 after submission to him by the commission.
40 Amendments to the pay plan may be made in the same
41 manner. Each employee shall be paid at one of the rates
42 set forth in the pay plan for the class of position in which
43 he is employed. The principle of equal pay for equal
44 work in the several agencies of the state government
45 shall be followed in the pay plan as established hereby.

46 (3) For open competitive examinations to test the
47 relative fitness of applicants for the respective positions
48 in the classified service. Such examinations need not be

49 held until after the rules have been adopted, the service
50 classified and a pay plan established, but shall be held
51 not later than one year after this article takes effect.
52 Such examinations shall be announced publicly at least
53 fifteen days in advance of the date fixed for the filing
54 of applications therefor, and may be advertised through
55 the press, radio and other media. The director may,
56 however, in his discretion, continue to receive applica-
57 tions and examine candidates long enough to assure a
58 sufficient number of eligibles to meet the needs of the
59 service; and may add the names of successful candidates
60 to existing eligible lists in accordance with their
61 respective ratings.

62 An additional five points shall be awarded to the score
63 of any examination successfully completed by a veteran.
64 A disabled veteran shall be entitled to an additional ten
65 points, rather than five points as aforesaid, upon
66 successful completion of any examination.

67 (4) For promotions within the classified service which
68 shall give appropriate consideration to the applicant's
69 qualifications, record of performance and his score on
70 a written examination, when such examination is
71 practicable. In filling vacancies an effort should be
72 made to achieve a balance between promotion from
73 within the service and the introduction into the service
74 of qualified new employees. An advancement in rank or
75 grade or an increase in salary beyond the maximum
76 fixed for the class shall constitute a promotion.

77 (5) For layoffs by classification for reason of lack of
78 funds or work, or abolition of a position, or material
79 changes in duties or organization, or any loss of position
80 because of the provisions of this subdivision and for
81 recall of employees so laid off, consideration shall be
82 given to an employee's seniority as measured by
83 permanent employment in the classified service or a
84 state agency. In the event that the agency wishes to lay
85 off a more senior employee, the agency must demon-
86 strate that the senior employee cannot perform any
87 other job duties held by less senior employees within
88 that agency in the job class, or any other equivalent or
89 lower job class for which the senior employee is

90 qualified: *Provided*, That if an employee refuses to
91 accept a position in a lower job class, such employee
92 shall retain all rights of recall as hereinafter provided.

93 (6) For recall of employees, recall shall be by reverse
94 order of layoff to any job class that the employee has
95 previously held or a lower class in the series within the
96 agency as that job class becomes vacant. An employee
97 will retain his place on the recall list for the same period
98 of time as his seniority on the date of his layoff, or for
99 a period of two years, whichever is less. No new
100 employees shall be hired for any vacancy in his or her
101 job class or in a lower job class in the series until all
102 eligible employees on layoff are given the opportunity
103 to refuse that job class. An employee shall be recalled
104 onto jobs within the county wherein his last place of
105 employment is located or within a county contiguous
106 thereto. Any laid-off employee who is eligible for a
107 vacant position shall be notified by certified mail of the
108 vacancy. It shall be the responsibility of the employee
109 to notify the agency of any change in his address.

110 (7) For the establishment of eligible lists for appoint-
111 ment and promotion within the classified service, upon
112 which lists shall be placed the names of successful
113 candidates in the order of their relative excellence in the
114 respective examinations. Eligibility for appointment
115 from any such list shall continue not longer than three
116 years. An appointing authority shall make his selection
117 from the top five names on the appropriate lists of
118 eligibles.

119 (8) For the rejection of candidates or eligibles within
120 the classified service who fail to comply with reasonable
121 requirements in regard to such factors as age, physical
122 condition, character, training and experience, who are
123 addicted to alcohol or narcotics, or who have attempted
124 any deception or fraud in connection with an examina-
125 tion, or where in the judgment of the commission there
126 is reasonable doubt of the loyalty of the candidate or
127 allegiance to the nation.

128 (9) For a period of probation not to exceed one year
129 before appointment or promotion may be made complete

130 within the classified service.

131 (10) For provisional employment without competitive
132 examination within the classified service when there is
133 no appropriate eligible list available. No such provi-
134 sional employment may continue longer than six
135 months, nor shall successive provisional appointments
136 be allowed, except during the first year after the
137 effective date of this article, in order to avoid stoppage
138 of orderly conduct of the business of the state.

139 (11) For keeping records of performance of all
140 employees in the classified service, which service
141 records may be considered in determining salary
142 increases and decreases provided in the pay plan; as a
143 factor in promotion tests; as a factor in determining the
144 order of layoffs because of lack of funds or work and
145 in reinstatement; and as a factor in demotions, dis-
146 charges and transfers.

147 (12) For discharge or reduction in rank or grade only
148 for cause of employees in the classified service.
149 Discharge or reduction of these employees shall take
150 place only after the person to be discharged or reduced
151 has been presented with the reasons for such discharge
152 or reduction stated in writing, and has been allowed a
153 reasonable time to reply thereto in writing, or upon
154 request to appear personally and reply to the appointing
155 authority or his deputy. The statement of reasons and
156 the reply shall be filed as a public record with the
157 director. Notwithstanding the foregoing provisions of
158 this subdivision, no permanent employee shall be
159 discharged from the classified service for absenteeism
160 upon using all entitlement to annual leave and sick leave
161 when such use has been due to illness or injury as
162 verified by a physician's certification or for other
163 extenuating circumstances beyond the employee's
164 control unless his disability is of such a nature as to
165 permanently incapacitate him from the performance of
166 the duties of his position. Upon exhaustion of annual
167 leave and sick leave credits for the reasons specified
168 herein and with certification by a physician that the
169 employee is unable to perform his duties, a permanent
170 employee shall be granted a leave of absence without

171 pay for a period not to exceed six months if such
172 employee is not permanently unable to satisfactorily
173 perform the duties of his position.

174 (13) For such other rules and administrative regula-
175 tions, not inconsistent with this article, as may be proper
176 and necessary for its enforcement.

177 (14) The commission shall review and approve by
178 rules and regulations the establishment of all classified-
179 exempt positions to assure consistent interpretation of
180 the provisions of this article.

181 The commission and the director may include in the
182 rules provided for in this article such provisions as are
183 necessary to conform to regulations and standards of
184 any federal agency governing the receipt and use of
185 federal grants-in-aid by any state agency, anything in
186 this article to the contrary notwithstanding. The
187 commission and the director shall see that rules and
188 practices meeting such standards are in effect contin-
189 uously after the effective date of this article.

CHAPTER 17

(H. B. 4426—By Delegates Minard and Bradley)

[Passed March 10, 1988; in effect July 1, 1988. Approved by the Governor.]

AN ACT to amend and reenact sections twenty-three and twenty-four, article two, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections three, four and nineteen-a, article two-a of said chapter, all relating generally to authority, powers and duties of the court of claims; the certification of certain claims to the Legislature and clarifying that claims previously rejected by the Legislature need not be so certified; the disposition of records of the court which are more than ten years old; the authority of the court with respect to crime victims reparations; clarifying the definition of the term "contributory misconduct" with respect thereto; increasing certain costs to be collected in

magistrate courts and circuit courts in certain cases; clarifying that services of the attorney-general in representing the interest of the state with respect to crime victims reparation claims are to be rendered without charge to court or the Legislature; clarifying that payments may be made directly to certain health care providers irrespective of whether a valid assignment of benefits has been made; and permitting the direct payments to certain providers of funeral and other expenses in certain cases and increasing the allowable award for such purposes to three thousand dollars.

Be it enacted by the Legislature of West Virginia:

That sections twenty-three and twenty-four, article two, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections three, four and nineteen-a, article two-a of said chapter, as amended, be amended and reenacted, all to read as follows:

Article

2. Claims Against the State.

2A. Compensation Awards to Victims of Crimes.

ARTICLE 2. CLAIMS AGAINST THE STATE.

§14-2-23. Inclusion of awards in budget.

§14-2-24. Records to be preserved.

§14-2-23. Inclusion of awards in budget.

1 The clerk shall certify to the department of finance
 2 and administration, on or before the twentieth day of
 3 November of each year, a list of all awards recom-
 4 mended by the court to the Legislature for appropria-
 5 tion. The clerk may certify supplementary lists to the
 6 governor to include subsequent awards made by the
 7 court. The governor shall include all awards so certified
 8 in his proposed budget bill transmitted to the Legisla-
 9 ture. Any other provision of this article or of law to the
 10 contrary notwithstanding, the clerk shall not certify any
 11 award which has been previously certified.

§14-2-24. Records to be preserved.

1 The record of each claim considered by the court,
2 including all documents, papers, briefs, transcripts of
3 testimony and other materials, shall be preserved by the
4 clerk for a period of ten years from the date of entry
5 of the court's last order and shall be made available to
6 the Legislature or any committee thereof for the
7 reexamination of the claim. When any such documents,
8 papers, briefs, transcripts and other materials have
9 been so preserved by the clerk for such ten year period,
10 the same shall be transferred to the state records
11 administrator for preservation or disposition in accor-
12 dance with the provisions of article eight, chapter five
13 of this code without cost, either to the court or the
14 Legislature.

**ARTICLE 2A. COMPENSATION AWARDS TO VICTIMS OF
CRIMES.**

§14-2A-3. Definitions.

§14-2A-4. Creation of crime victims compensation fund.

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

§14-2A-3. Definitions.

- 1 As used in this article, the term:
- 2 (a) "Claimant" means any of the following persons,
3 whether residents or nonresidents of this state, who
4 claim an award of compensation under this article:
- 5 (1) A victim;
- 6 (2) A dependent, spouse or minor child of a deceased
7 victim; or in the event that the deceased victim is a
8 minor, the parents, legal guardians and siblings of the
9 victim;
- 10 (3) A third person other than a collateral source who
11 legally assumes or voluntarily pays the obligations of a
12 victim, or of a dependent of a victim, which obligations
13 are incurred as a result of the criminally injurious
14 conduct that is the subject of the claim;
- 15 (4) A person who is authorized to act on behalf of a
16 victim, dependent or a third person who is not a
17 collateral source.
- 18 (b) "Collateral source" means a source of benefits or

19 advantages for economic loss otherwise compensable
20 that the victim or claimant has received, or that is
21 readily available to him, from any of the following
22 sources:

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

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

32 (3) Social security, medicare and medicaid;

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

35 (5) Workers' compensation;

36 (6) Wage continuation programs of any employer;

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

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

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

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

56 intended to cause personal injury or death, or except
57 when the person engaging in the conduct committed
58 negligent homicide, driving under the influence of
59 alcohol, controlled substances or drugs, or reckless
60 driving.

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

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

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

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

96 medically required.

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

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

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

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

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

130 (l) "Victim" means a person who suffers personal
131 injury or death as a result of any one of the following:
132 (1) Criminally injurious conduct; (2) the good faith effort
133 of the person to prevent criminally injurious conduct; or
134 (3) the good faith effort of the person to apprehend a

135 person that the injured person has observed engaging
136 in criminally injurious conduct, or who such injured
137 person has reasonable cause to believe has engaged in
138 such criminally injurious conduct immediately prior to
139 the attempted apprehension.

140 (m) "Contributory misconduct" means any conduct of
141 the claimant, or of the victim through whom the
142 claimant claims an award, that is unlawful or intention-
143 ally tortious and that, without regard to the conduct's
144 proximity in time or space to the criminally injurious
145 conduct has causal relationship to the criminally
146 injurious conduct that is the basis of the claim and shall
147 also include the voluntary intoxication of the claimant,
148 either by the consumption of alcohol or the use of any
149 controlled substance when such intoxication has a causal
150 connection or relationship to the injury sustained. The
151 voluntary intoxication of a victim shall not be a defense
152 against the estate of a deceased victim.

§14-2A-4. Creation of crime victims compensation fund.

1 (a) Every person within the state who is convicted of
2 or pleads guilty to a misdemeanor or felony offense,
3 other than a traffic offense that is not a moving
4 violation, shall pay the sum of three dollars as costs in
5 the case, in addition to any other court costs that the
6 court is required by law to impose upon such convicted
7 person. In addition to the three dollar sums required to
8 be collected as costs under the provisions of this
9 subsection, there shall be collected from every person so
10 convicted in any magistrate court and circuit court (and
11 excluding municipal courts) the sum of one dollar which
12 shall be in addition to any other court cost required by
13 this section or which may be required by law.

14 (b) The clerk of the circuit court, magistrate court or
15 municipal court wherein such additional costs are
16 imposed under the provisions of subsection (a) of this
17 section shall, on or before the last day of each month,
18 transmit all such costs received under this article to the
19 state treasurer for deposit in the state treasury to the
20 credit of a special revenue fund to be known as the
21 "Crime Victims Compensation Fund," which is hereby

22 created. All moneys heretofore collected and received
23 under the prior enactment or reenactments of this
24 article and deposited or to be deposited in the "Crime
25 Victims Reparation Fund" are hereby transferred to the
26 crime victims compensation fund, and the treasurer
27 shall so deposit such moneys in the state treasury. All
28 moneys collected and received under this article and
29 paid into the state treasury and credited to the crime
30 victims compensation fund in the manner prescribed in
31 section two, article two, chapter twelve of this code, shall
32 be kept and maintained for the specific purposes of this
33 article, and shall not be treated by the auditor and
34 treasurer as part of the general revenue of the state.

35 (c) Moneys in the crime victims compensation fund
36 shall be available for the payment of the costs of
37 administration of this article in accordance with the
38 budget of the court approved therefor: *Provided*, That
39 the services of the office of the attorney general, as may
40 be required or authorized by any of the provisions of this
41 article, shall be rendered without charge to the fund.

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

1 As part of the order, the court, or a judge or
2 commissioner thereof, shall determine whether fees are
3 due and owing for health care services rendered by a
4 physician, hospital or other health care provider
5 stemming from an injury received as defined under this
6 article, and further, whether or not the physician,
7 hospital or other health care provider has been pres-
8 ented an assignment of benefits, signed by the crime
9 victim, authorizing direct payments of benefits to the
10 health care provider. If such fees are due and owing and
11 the health care provider has presented a valid assign-
12 ment of benefits, the court, or a judge or commissioner
13 thereof, shall determine the amount or amounts and
14 shall cause such reasonable fees to be paid out of the
15 amount awarded the crime victim under this article
16 directly to the physician, hospital or other health care
17 provider. The requirements of this section shall be
18 applicable to, and any such unpaid fees shall be
19 determined and payable from, the awards made by the

20 Legislature at regular session, one thousand nine
21 hundred eighty-seven, and subsequently: *Provided*, That
22 when a claim is filed under this section, the court shall
23 determine the total damages due the crime victim, and
24 where the total damages exceed the maximum amount
25 which may be awarded under this article, the amount
26 paid the health care provider shall be paid in the same
27 proportion to which the actual award bears to the total
28 damages determined by the court. In any case wherein
29 an award is made which includes an amount for funeral,
30 cremation or burial expenses, or a combination thereof,
31 the court shall provide for the payment directly to the
32 provider or providers of such services, in an amount
33 deemed proper by the court, where such expenses are
34 unpaid at the time of the award.

CHAPTER 18

(S. B. 641—Originating in the Senate Committee on Finance)

[Passed March 12, 1988; 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 civil service system and the department of education to be moral obligations of the state and directing payment thereof.

1 The Legislature has heretofore made findings of fact
2 that the state has received the benefit of the services
3 rendered by certain claimants herein and has consi-
4 dered claims against the state, agencies thereof, which
5 have arisen due to over-expenditures of the departmen-
6 tal appropriations by officers of such state spending
7 unit, such claims having been previously considered by
8 the court of claims which also found that the state has
9 received the benefit of the services rendered by each

10 claimant, but were denied by the court of claims on the
 11 purely statutory grounds that to allow such claims
 12 would be condoning illegal acts contrary to the laws of
 13 the state. The Legislature pursuant to its findings of fact
 14 and also by the adoption of the findings of fact by the
 15 court of claims as its own, and, while not condoning such
 16 illegal acts, hereby declares it to be the moral obligation
 17 of the state to pay each such claim in the amount
 18 specified below, and directs the auditor to issue
 19 warrants upon receipt of a properly executed requisition
 20 supported by an itemized invoice, statement or other
 21 satisfactory document as required by section ten, article
 22 three, chapter twelve of the code of West Virginia, one
 23 thousand nine hundred thirty-one, as amended, for the
 24 payment thereof out of any fund appropriated and
 25 available for the purpose.

26 (a) *Claim against the Civil Service System:*

27 (TO BE PAID FROM GENERAL REVENUE FUND)

28 (1) Department of Employment Security . . \$ 242.00

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

30 (TO BE PAID FROM GENERAL REVENUE FUND)

31 (1) Scott A. Brown \$ 556.00
 32 (2) Betty Craven \$1,641.60
 33 (3) Cindy S. Jeffers \$2,736.00
 34 (4) David Lancaster \$ 820.80
 35 (5) Anthony A. MacFarlane \$ 556.00
 36 (6) Carol J. McCutcheon \$2,736.00
 37 (7) Tamara Sanford \$1,504.00
 38 (8) Elizabeth J. Stuart \$3,830.40
 39 (9) Elizabeth Anne Wolfe \$2,508.00

CHAPTER 19

(S. B. 642—Originating in the Senate Committee on Finance)

[Passed March 4, 1988; in effect from passage. Approved by the Governor.]

AN ACT finding and declaring certain claims for compensa-
 tion of innocent victims of crimes occurring in West

Virginia to be moral obligations of the state and directing the auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

COMPENSATION AWARDS TO VICTIMS OF CRIMES.

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

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

12 *Claims for crime victims compensation awards:*

13 (TO BE PAID FROM CRIME VICTIMS COMPENSATION FUND)

| | | |
|----|---|--------------|
| 14 | (1) Barker, Ethel May | \$ 5,000.00 |
| 15 | (2) Buzzard, Kathy L. | \$ 10,000.00 |
| 16 | (3) Buzzard, Kathy L., as guardian of | |
| 17 | Amanda Jane Buzzard | \$ 10,000.00 |
| 18 | (4) Buzzard, Kathy L., as guardian of | |
| 19 | Tammy Louise Buzzard | \$ 10,000.00 |
| 20 | (5) Candler, Betty J., as guardian of | |
| 21 | Ian R. Candler | \$ 10,000.00 |
| 22 | (6) Cook, Charles W., Jr., as guardian of | |
| 23 | Charles Brian Belcher | \$ 10,000.00 |
| 24 | (7) Cook, Charles W., Jr., as guardian of | |
| 25 | Anthony Belcher | \$ 10,000.00 |
| 26 | (8) Gonzales, Leta J., as guardian of | |
| 27 | Tara Maria Gonzales | \$ 5,000.00 |
| 28 | (9) Harrah, Tracy R. | \$ 10,000.00 |
| 29 | (10) Harrah, Sherry Jane | \$ 10,000.00 |
| 30 | (11) Kaminski, Rebecca A. | \$ 5,000.00 |
| 31 | (12) Pearson, William J. | \$ 10,000.00 |

| | | |
|----|---|--------------|
| 32 | (13) Pridemore, George W..... | \$ 15,000.00 |
| 33 | (14) Pridemore, George W., as guardian of | |
| 34 | Sean Patrick Pridemore..... | \$ 10,000.00 |
| 35 | (15) Robinson, Nancy Viola, as guardian of | |
| 36 | Randolph Woods, II | \$ 10,000.00 |
| 37 | (16) Reckart, Robert E., Sr..... | \$ 10,000.00 |
| 38 | (17) Reckart, Roxie L. | \$ 10,000.00 |
| 39 | (18) Reckart, Roxie L., as guardian of | |
| 40 | Robert E. Reckart, Jr..... | \$ 10,000.00 |
| 41 | TOTAL | \$170,000.00 |
| 42 | The Legislature finds that the above moral obligations | |
| 43 | and the appropriations made in satisfaction thereof shall | |
| 44 | be the full compensation for all claimants herein. | |

CHAPTER 20

(S. B. 180—By Senators Manchin, Brackenrich and Warner)

[Passed March 12, 1988; in effect July 1, 1988. Approved by the Governor.]

AN ACT to amend article fourteen, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nine-b, relating to creating a community care program to be administered by the state commission on aging; providing definitions; specifying services to be offered in said program; and authorizing fee for such services.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14. STATE COMMISSION ON AGING.

§29-14-9b. Creation of a community care program.

1 (a) As used in this section:

2 (1) "Care management" and "comprehensive assess-
3 ment" mean the planning, arrangement for and coordi-

4 nation of appropriate community-based, in-home servi-
5 ces and alternative living arrangements for the frail
6 elderly, disabled or terminally ill. "Care management"
7 and "comprehensive assessment" include assessment of
8 needs, counseling in the development of a case plan,
9 arrangement for services and on-going monitoring of the
10 frail elderly, disabled or terminally ill client's situation
11 to ensure that needed services are received.

12 (2) "Care services" means housekeeping, personal
13 care, chore, escort/transportation, meals, in-home
14 nursing, day care and/or respite services.

15 (3) "Community care" means a system of community-
16 based, in-home services and alternative living arrange-
17 ments in order to provide a full range of preventive,
18 maintenance and restorative services for the frail
19 elderly, disabled or terminally ill. This community care
20 program would be part of the continuum of care system
21 of services.

22 (4) "Continuum of care" means a system of services
23 which has a primary emphasis on in-home care and
24 community service and which includes services such as
25 nursing, medical, transportation and other health and
26 social services available to an individual in an approp-
27 riate setting over an extended period of time as a result
28 of such individual's changing health status.

29 (5) "Disabled" means a person sixty years old or older
30 who has temporary or permanent impairments which
31 cause him to need or who is likely, in the foreseeable
32 future, to need services within the continuum of care.

33 (6) "Frail elderly" means any person sixty years of
34 age or older, with limitations which restrict the
35 individual's ability to perform the normal activities of
36 daily living and which impede individual capacity to
37 live independently.

38 (7) "Sliding fee scale" means a fee for services
39 provided based on the frail elderly client's ability to pay.
40 The sliding fee scale shall be established and at least
41 annually reviewed by the state commission on aging.

42 (b) The state commission on aging shall establish,

43 administer and implement a program for the delivery
44 of community care services for the frail elderly, disabled
45 or terminally ill, based on a sliding fee scale. Such a
46 program shall include, but not be limited to, care
47 management, comprehensive assessment and commun-
48 ity and in-home care services.

CHAPTER 21

(H. B. 4562—By Delegate Yanni)

[Passed March 12, 1988; in effect July 1, 1988. Approved by the Governor.]

AN ACT to amend and reenact section one hundred two, article six, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend said chapter by adding thereto a new article, designated article six-b, all relating to consumer protection; automotive crash parts; unfair methods of competition and unfair or deceptive acts or practices; notices and written statements to be provided to motor vehicle owner; violation; and penalty.

Be it enacted by the Legislature of West Virginia:

That section one hundred two, article six, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said chapter be further amended by adding thereto a new article, designated article six-b, all to read as follows:

Article

6. General Consumer Protection.

6B. Consumer Protection-Automotive Crash Parts.

ARTICLE 6. GENERAL CONSUMER PROTECTION.

§46A-6-102. Definitions.

1 When used in this article the following words, terms
2 and phrases, and any variations thereof required by the
3 context, shall have the meaning ascribed to them in this
4 article, except where the context indicates a different
5 meaning:

6 (a) "Advertisement" means the publication, dissemi-

7 nation or circulation of any matter, oral or written,
8 including labeling, which tends to induce, directly or
9 indirectly, any person to enter into any obligation, sign
10 any contract, or acquire any title or interest in any goods
11 or services and includes every word device to disguise
12 any form of business solicitation by using such terms as
13 "renewal," "invoice," "bill," "statement" or "reminder,"
14 to create an impression of existing obligation when there
15 is none, or other language to mislead any person in
16 relation to any sought-after commercial transaction.

17 (b) "Consumer" means a natural person to whom a
18 sale is made in a consumer transaction, and a "consumer
19 transaction" means a sale to a natural person or persons
20 for a personal, family, household or agricultural
21 purpose.

22 (c) "Merchantable" means, in addition to the qualities
23 prescribed in section three hundred fourteen, article
24 two, chapter forty-six of this code, that the goods
25 conform in all material respects to applicable state and
26 federal statutes and regulations establishing standards
27 of quality and safety of goods and, in the case of goods
28 with mechanical, electrical or thermal components, that
29 the goods are in good working order and will operate
30 properly in normal usage for a reasonable period of
31 time.

32 (d) "Sale" includes any sale, offer for sale or attempt
33 to sell any goods for cash or credit or any services or
34 offer for services for cash or credit.

35 (e) "Trade" or "commerce" means the advertising,
36 offering for sale, sale or distribution of any goods or
37 services and shall include any trade or commerce,
38 directly or indirectly, affecting the people of this state.

39 (f) "Unfair methods of competition and unfair or
40 deceptive acts or practices" means and includes, but is
41 not limited to, any one or more of the following:

42 (1) Passing off goods or services as those of another;

43 (2) Causing likelihood of confusion or of misunder-
44 standing as to the source, sponsorship, approval or
45 certification of goods or services;

46 (3) Causing likelihood of confusion or of misunder-

47 standing as to affiliation, connection or association with,
48 or certification by another;

49 (4) Using deceptive representations or designations of
50 geographic origin in connection with goods or services;

51 (5) Representing that goods or services have sponsor-
52 ship, approval, characteristics, ingredients, uses,
53 benefits or quantities that they do not have, or that a
54 person has a sponsorship, approval, status, affiliation or
55 connection that he does not have;

56 (6) Representing that goods are original or new if they
57 are deteriorated, altered, reconditioned, reclaimed, used
58 or secondhand;

59 (7) Representing that goods or services are of a
60 particular standard, quality or grade, or that goods are
61 of a particular style or model, if they are of another;

62 (8) Disparaging the goods, services or business of
63 another by false or misleading representation of fact;

64 (9) Advertising goods or services with intent not to
65 sell them as advertised;

66 (10) Advertising goods or services with intent not to
67 supply reasonably expectable public demand, unless the
68 advertisement discloses a limitation of quantity;

69 (11) Making false or misleading statements of fact
70 concerning the reasons for, existence of or amounts of
71 price reductions;

72 (12) Engaging in any other conduct which similarly
73 creates a likelihood of confusion or of misunderstanding;

74 (13) The act, use or employment by any person of any
75 deception, fraud, false pretense, false promise or
76 misrepresentation, or the concealment, suppression or
77 omission of any material fact with intent that others rely
78 upon such concealment, suppression or omission, in
79 connection with the sale or advertisement of any goods
80 or services, whether or not any person has in fact been
81 misled, deceived or damaged thereby;

82 (14) Advertising, printing, displaying, publishing,
83 distributing or broadcasting, or causing to be adver-
84 tised, printed, displayed, published, distributed or
85 broadcast in any manner, any statement or representa-

86 tion with regard to the sale of goods or the extension
87 of consumer credit including the rates, terms or
88 conditions for the sale of such goods or the extension of
89 such credit, which is false, misleading, or deceptive, or
90 which omits to state material information which is
91 necessary to make the statements therein not false,
92 misleading or deceptive;

93 (15) Representing that any person has won a prize,
94 one of a group of prizes or any other thing of value, if
95 receipt of the prize or thing of value is contingent upon
96 any payment of a service charge, mailing charge,
97 handling charge or any other similar charge by the
98 person or upon mandatory attendance by the person at
99 a promotion or sales presentation at the seller's place of
100 business or any other location: *Provided*, That a person
101 may be offered one item or the choice of several items
102 conditioned on the person listening to a sales promotion
103 or entering a consumer transaction if the true retail
104 value and an accurate description of the item or items
105 are clearly and conspicuously disclosed along with the
106 person's obligations upon accepting the item or items;
107 such description and disclosure shall be typewritten or
108 printed in at least eight point, regular type, in upper
109 or lower case, where appropriate; or

110 (16) Violating any provision or requirement of article
111 six-b of this chapter.

112 (g) "Warranty" means express and implied warran-
113 ties described and defined in sections three hundred
114 thirteen, three hundred fourteen and three hundred
115 fifteen, article two, chapter forty-six of this code and
116 expressions or actions of a merchant which assure the
117 consumer that the goods have described qualities or will
118 perform in a described manner.

ARTICLE 6B. CONSUMER PROTECTION-AUTOMOTIVE CRASH PARTS.

§46A-6B-1. Legislative declaration.

§46A-6B-2. Definitions.

§46A-6B-3. Notices and written statements to be provided to vehicle owner.

§46A-6B-4. Other remedies available.

§46A-6B-5. Violation of article an unfair method of competition or deceptive act or practice; penalty.

§46A-6B-1. Legislative declaration.

1 The Legislature hereby finds and declares as a matter
2 of public policy that the purpose of this article is to place
3 upon motor vehicle body shops the duty to disclose to
4 motor vehicle owners information on the use of certain
5 replacement crash parts in repairs to motor vehicles and
6 to make certain notices and statements to the motor
7 vehicle owners so that the owners may choose whether
8 aftermarket crash parts or genuine crash parts shall be
9 used in the repair work.

§46A-6B-2. Definitions.

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

3 (a) "Aftermarket crash parts" means crash parts:

4 (1) Manufactured by a person other than the original
5 manufacturer of the motor vehicle to be repaired; and

6 (2) For which the original manufacturer of the motor
7 vehicle has not authorized the use of its name or
8 trademark by the manufacturer of the crash parts.

9 (b) "Code" means the code of West Virginia, one
10 thousand nine hundred thirty-one, as amended;

11 (c) "Crash parts" means exterior or interior sheet
12 metal or fiberglass panels and parts which form the
13 superstructure or body of a motor vehicle, including, but
14 not limited to, fenders, bumpers, quarter panels, door
15 panels, hoods, grills, fire walls, permanent roofs, wheel
16 wells and front and rear lamp display panels;

17 (d) "Genuine crash parts" means crash parts:

18 (1) Manufactured by or for the original manufacturer
19 of the motor vehicle to be repaired; and

20 (2) Which are authorized to carry the name or
21 trademark of the original manufacturer of the motor
22 vehicle.

23 (e) "Motor vehicle" has the meaning stated in section
24 one, article one, chapter seventeen-a of this code; and

25 (f) "Motor vehicle body shop" means any person or
26 business establishment that removes, replaces, recondi-
27 tions or repairs sheet metal or fiberglass motor vehicle

28 crash parts.

§46A-6B-3. Notices and written statements to be provided to vehicle owner.

1 (a) Effective the first day of July, one thousand nine
2 hundred eighty-eight, before beginning repair work on
3 crash parts, a motor vehicle body shop shall:

4 (1) Provide a list to the vehicle owner of the replace-
5 ment crash parts that the body shop intends to use in
6 making repairs;

7 (2) Specify whether the replacement parts are ge-
8 nue crash parts; and

9 (3) Identify the manufacturer of the parts if the
10 replacement parts are aftermarket crash parts.

11 (b) If the replacement crash parts to be used by the
12 body shop in the repair work are aftermarket crash
13 parts, the body shop shall include with its estimate the
14 following written statement: "THIS ESTIMATE HAS
15 BEEN PREPARED BASED ON THE USE OF AF-
16 TERMARKET CRASH PARTS THAT ARE NOT
17 MANUFACTURED BY THE ORIGINAL MANU-
18 FACTURER OF THE VEHICLE OR BY A MANU-
19 FACTURER AUTHORIZED BY THE ORIGINAL
20 MANUFACTURER TO USE ITS NAME OR TRADE-
21 MARK. THE USE OF AN AFTERMARKET CRASH
22 PART MAY INVALIDATE ANY REMAINING WAR-
23 RANTIES OF THE ORIGINAL MANUFACTURER
24 ON THAT CRASH PART."

25 (c) The notices and statements required under this
26 section shall be made in writing in a clear and
27 conspicuous manner, on a separate piece of paper in ten
28 point capital type.

29 (d) This section may not be construed to replace or
30 alter any provision under article six or any other
31 provision of this chapter.

§46A-6B-4. Other remedies available.

1 This article does not:

2 (a) Prohibit a person from filing an action for
3 damages against a body shop; or

- 4 (b) Require a person first to exhaust any administra-
5 tive remedy he may have.

**§46A-6B-5. Violation of article an unfair method of
competition or deceptive act or practice;
penalty.**

- 1 A violation of any provision of this article is an unfair
2 or deceptive act or practice within the meaning of
3 section one hundred two, article six of this chapter and
4 is subject to the enforcement and penalty provisions
5 contained in this chapter.

CHAPTER 22

(H. B. 4002—By Delegate Hatcher)

[Passed March 11, 1988; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two hundred four, two hundred six, two hundred eight and two hundred twelve, article two, chapter sixty-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the uniformed controlled substances act; standards and schedules; adding controlled substances to schedules one, two, three and five; deleting hydrocodone from schedule two; and deleting amyl nitrite, isobutyl nitrite and other organic nitrites from schedule five.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. STANDARDS AND SCHEDULES.

- §60A-2-204. Schedule I.
§60A-2-206. Schedule II.
§60A-2-208. Schedule III.
§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
5 its isomers, esters, ethers, salts and salts of isomers,
6 esters and ethers whenever the existence of such
7 isomers, esters, ethers and salts is possible within the
8 specific chemical designation:

- 9 (1) Acetylmethadol;
- 10 (2) Alfentanil;
- 11 (3) Allylprodine;
- 12 (4) Alphacetylmethadol;
- 13 (5) Alphameprodine;
- 14 (6) Alphamethadol;
- 15 (7) Alpha-methylthiofentanyl;
- 16 (8) Alpha-methylfentanyl;
- 17 (9) Benzethidine;
- 18 (10) Benzylfentanyl;
- 19 (11) Betacetylmethadol;
- 20 (12) Beta-hydroxyfentanyl;
- 21 (13) Beta-hydroxy-3-methylfentanyl;
- 22 (14) Betameprodine;
- 23 (15) Betamethadol;
- 24 (16) Betaprodine;
- 25 (17) Clonitazene;
- 26 (18) Dextromoramide;
- 27 (19) Diampromide;
- 28 (20) Diethylthiambutene;
- 29 (21) Difenoxin;
- 30 (22) Dimenoxadol;
- 31 (23) Dimepheptanol;
- 32 (24) Dimethylthiambutene;
- 33 (25) Dioxaphetylbutyrate;

- 34 (26) Dipipanone;
- 35 (27) Ethylmethylthiambutene;
- 36 (28) Etonitazene;
- 37 (29) Etoxeridine;
- 38 (30) Fenethylline;
- 39 (31) Furethidine;
- 40 (32) Hydroxypethidine;
- 41 (33) Ketobemidone;
- 42 (34) Levomoramide;
- 43 (35) Levophenacilmorphan;
- 44 (36) Morpheridine;
- 45 (37) Noracymethadol;
- 46 (38) Norlevorphanol;
- 47 (39) Normethadone;
- 48 (40) Norpipanone;
- 49 (41) Para-fluorofentanyl;
- 50 (42) Phenadoxone;
- 51 (43) Phenampromide;
- 52 (44) Phenomorphan;
- 53 (45) Phenoperidine;
- 54 (46) Piritramide;
- 55 (47) Proheptazine;
- 56 (48) Properidine;
- 57 (49) Propiram;
- 58 (50) Racemoramide;
- 59 (51) Thiofentanyl;
- 60 (52) 3-methyl fentanyl;
- 61 (53) Tilidine;
- 62 (54) Trimeperidine.

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

- 67 possible within the specific chemical designation:
- 68 (1) Acetorphine;
 - 69 (2) Acetyldihydrocodeine;
 - 70 (3) Benzylmorphine;
 - 71 (4) Codeine methylbromide;
 - 72 (5) Codeine-N-Oxide;
 - 73 (6) Cyprenorphine;
 - 74 (7) Desomorphine;
 - 75 (8) Dihydromorphine;
 - 76 (9) Drotebanol;
 - 77 (10) Etorphine (except HCl Salt);
 - 78 (11) Heroin;
 - 79 (12) Hydromorphenol;
 - 80 (13) Methyldesorphine;
 - 81 (14) Methyldihydromorphine;
 - 82 (15) Morphine methylbromide;
 - 83 (16) Morphine methylsulfonate;
 - 84 (17) Morphine-N-Oxide;
 - 85 (18) Myrophine;
 - 86 (19) Nicocodeine;
 - 87 (20) Nicomorphine;
 - 88 (21) Normorphine;
 - 89 (22) Phoclodine;
 - 90 (23) Thebacon.
- 91 (d) Unless specifically excepted or unless listed in
92 another schedule, any material, compound, mixture or
93 preparation, which contains any quantity of the follow-
94 ing hallucinogenic substances, or which contains any of
95 the salts, isomers and salts of isomers of any thereof
96 whenever the existence of such salts, isomers and salts
97 of isomers is possible within the specific chemical
98 designation and for the purposes of this subsection only,
99 "isomer" includes the optical position and geometric
100 isomers:

- 101 (1) 2,5-dimethoxyamphetamine; also known by these
102 trade or other names: 2,5-dimethoxy-a-methylphenethy-
103 lamine; 2,5-DMA;
- 104 (2) 3,4-methylenedioxy amphetamine; 3,4-methylene
105 dioxy methamphetamine;
- 106 (3) 4-bromo-2, 5-dimethoxyamphetamine or 4-bromo-
107 2,5-dimethoxy-a-methylphenethylamine, or 4-bromo-2,5-
108 DMA;
- 109 (4) 5-methoxy-3, 4-methylenedioxy amphetamine;
- 110 (5) 4-methoxyamphetamine; also known by these
111 trade or other names: 4-methoxy-amethylphenethylam-
112 ine; paramethoxyamphetamine; PMA;
- 113 (6) 3,4,5-trimethoxy amphetamine;
- 114 (7) Bufotenine; known also by these trade and other
115 names: 3-(B-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-
116 dimethylamino-ethyl)-5 indolol; N-N-dimethylserotonin;
117 5-hydroxy-N-dimethyltryptamine; mappine;
- 118 (8) Diethyltryptamine; known also by these trade and
119 other names: N-N-Diethyltryptamine; "DET";
- 120 (9) Dimethyltryptamine; known also by the name
121 "DMT";
- 122 (10) 4-methyl-2,5-dimethoxy amphetamine; known
123 also by these trade and other names: 4-methyl-2,5-
124 dimethoxy-a-methylphenethylamine; "DOM"; "STP";
- 125 (11) Ibogaine; known also by these trade and other
126 names: 7-Ethyl-6, 6a, 7, 8, 9, 10, 12, 13-octahydro-2-
127 methoxy-6,9-methano-5H-pyrido (1', 2': 1, 2 azepino 4,5b)
128 indole; tabernanthe iboga;
- 129 (12) Lysergic acid diethylamide;
- 130 (13) Marihuana;
- 131 (14) Mescaline;
- 132 (15) Peyote; meaning all parts of the plant presently
133 classified botanically as *Lophophora Williamsii* Lema-
134 tre, whether growing or not; the seeds thereof; any
135 extract from any part of such plant; and every com-
136 pound, manufacture, salt, derivative, mixture or
137 preparation of such plant, its seeds or extracts;

- 138 (16) N-ethyl-3-piperidyl benzilate;
139 (17) N-methyl-3-piperidyl benzilate;
140 (18) Psilocybin;
141 (19) Psilocyn;
142 (20) Tetrahydrocannabinols; including synthetic
143 equivalents of the substances contained in the plant or
144 in the resinous extractives of Cannabis or synthetic
145 substances, derivatives and their isomers with similar
146 chemical structure and pharmacological activity such as
147 the following:
148 Delta 1
149 Cis or trans tetrahydrocannabinol, and their optical
150 isomers;
151 Delta 6
152 Cis or trans tetrahydrocannabinol, and their optical
153 isomers;
154 Delta 3, 4
155 Cis or trans tetrahydrocannabinil
156 tetrahydrocannabinol, and their optical isomers;
157 (21) Thiophene analog of phencyclidine; also known
158 by these trade or other names: (A) (1-(2-thienyl)
159 cyclohexyl) piperidine; (B) Thienyl analog of phencycli-
160 dine; TCP; PCP;
161 (22) Ethylamine analog of phencyclidine... Some trade
162 or other names: N-ethyl-1-phenylcyclohexylamine, (1-
163 phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl)
164 ethylamine, cyclohexamine, PCE;
165 (23) Pyrrolidine analog of phencyclidine... Some trade
166 or other names: 1-(1-phenylcyclohexyl)-pyrrolidine,
167 PCPy, PHP;
168 (24) N-ethylamphetamine;
169 (25) Parahexyl.
170 (26) 4-Methylaminorex.
171 (27) 3,4-Methylenedioxy-N-Ethylamphetamine.
172 (28) N-Hydroxy-3, 4-Methylenedioxyamphetamine.
173 (e) Unless specifically excepted or unless listed in

174 another schedule, any of the following depressants, its
175 salts, isomers and salts of isomers whenever the
176 existence of such salts, isomers and salts of isomers is
177 possible within the specific chemical designation:

178 (1) Mecloqualone;

179 (2) Methaqualone.

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

182 (1) Acetyl-alpha-methylfentanyl;

183 (2) Alpha-methylthiofentanyl;

184 (3) Benzylfentanyl;

185 (4) Beta-hydroxyfentanyl;

186 (5) Beta-hydroxy-3-methylfentanyl;

187 (6) 3-Methylthiofentanyl;

188 (7) Thenylfentanyl;

189 (8) Thiofentanyl;

190 (9) 1-Methyl-4-phenyl-4-propionoxypiperidine
191 (MPPP), its optical isomers, salts and salts of isomers;

192 (10) 1-(2-Phenylethyl)-4-phenyl-4-acetyloxypiperidine
193 (PEPAP), its optical isomers, salts and salts of isomers;

194 (11) 3-Methylfentanyl (N-(3-methyl-1-(2-phenylethyl)-
195 4-piperidyl)-N-phenylpropanamide), its optical and
196 geometric isomers, salts and salts of isomers.

§60A-2-206. Schedule II.

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

3 (b) Unless specifically excepted or unless listed in
4 another schedule, any of the following substances
5 whether produced directly or indirectly by extraction
6 from substances of vegetable origin, or independently by
7 means of chemical synthesis, or by a combination of
8 extraction and chemical synthesis:

9 (1) Opium and opiate, and any salt, compound,
10 derivative or preparation of opium or opiate excluding
11 nalorphine, nalmeffene, naloxone and naltrexone and
12 their respective salts, but including the following:

- 13 (A) Raw opium;
- 14 (B) Opium extracts;
- 15 (C) Opium fluid extracts;
- 16 (D) Powdered opium;
- 17 (E) Granulated opium;
- 18 (F) Tincture of opium;
- 19 (G) Codeine;
- 20 (H) Ethylmorphine;
- 21 (I) Ethrophine HCL;
- 22 (J) Hydromorphone;
- 23 (K) Metopon;
- 24 (L) Morphine;
- 25 (M) Oxycodone;
- 26 (N) Oxymorphone;
- 27 (O) Thebaine;
- 28 (2) Any salt, compound, isomer derivative or prepa-
29 ration thereof which is chemically equivalent or
30 identical with any of the substances referred to in
31 subdivision (1) of this subsection, except that these
32 substances shall not include the isoquinoline alkaloids of
33 opium;
- 34 (3) Opium poppy and poppy straw;
- 35 (4) Coca leaves and any salt, compound, derivative or
36 preparation of coca leaves, and any salt, compound,
37 derivative or preparation thereof which is chemically
38 equivalent or identical with any of these substances,
39 except that the substances shall not include decocainized
40 coca leaves or extractions of coca leaves, which extrac-
41 tions do not contain cocaine or ecgonine;
- 42 (5) Concentrate of poppy straw (the crude extract of
43 poppy straw in either liquid, solid or powder form which
44 contains the phenanthrine alkaloids of the opium poppy).
- 45 (c) Unless specifically excepted or unless in another
46 schedule, any of the following opiates, including its
47 isomers, esters, ethers, salts and salts of isomers, esters
48 and ethers whenever the existence of such isomers,

- 49 esters, ethers and salts is possible within the specific
50 chemical designation:
- 51 (1) Alphaprodine;
 - 52 (2) Anileridine;
 - 53 (3) Bezitramide;
 - 54 (4) Dextrorphan-excepted;
 - 55 (5) Dihydrocodeine;
 - 56 (6) Diphenoxylate;
 - 57 (7) Fentanyl;
 - 58 (8) Isomethadone;
 - 59 (9) Levopropoxyphene-excepted;
 - 60 (10) Levomethorphan;
 - 61 (11) Levorphanol;
 - 62 (12) Metazocine;
 - 63 (13) Methadone;
 - 64 (14) Methadone-Intermediate, 4-cyano-2-dimethyla-
65 mino-4, 4-diphenyl butane;
 - 66 (15) Moramide-Intermediate, 2-methyl-3-morpholino-
67 1, 1-diphenyl-propane-carboxylic acid;
 - 68 (16) Pethidine; (meperidine);
 - 69 (17) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-
70 phenylpiperidine;
 - 71 (18) Pethidine-Intermediate-B, ethyl-4-phenylpiperi-
72 dine-ethyl-4-phenylpiper-idin-4-carboxylate;
 - 73 (19) Pethidine-Intermediate-C, 1-methyl-4-phenylpip-
74 eridine-4-carboxylic acid;
 - 75 (20) Phenazocine;
 - 76 (21) Piminodine;
 - 77 (22) Racemethorphan;
 - 78 (23) Racemorphan;
 - 79 (24) Bulk Dextropropoxyphene (non dosage forms);
 - 80 (25) Sufentanil.
- 81 (d) Unless specifically excepted or unless listed in
82 another schedule, any material, compound, mixture or

83 preparation which contains any quantity of the follow-
84 ing substances having a stimulant effect on the central
85 nervous system:

86 (1) Methamphetamine, including its salts, isomers
87 and salts of isomers;

88 (2) Amphetamine, its salts, optical isomers and salts
89 of its optical isomers;

90 (3) Phenmetrazine and its salts;

91 (4) Methylphenidate and its salts.

92 (e) Unless specifically excepted or unless listed in
93 another schedule, any material, compound, mixture or
94 preparation which contains any quantity of the follow-
95 ing substances having a depressant effect on the central
96 nervous system, including its salts, isomers and salts of
97 isomers whenever the existence of such salts, isomers
98 and salts of isomers is possible within the specific
99 chemical designation:

100 (1) Amobarbital;

101 (2) Secobarbital;

102 (3) Pentobarbital;

103 (4) Phencyclidine.

104 (f) Hallucinogenic substances:

105 (1) Dronabinol (synthetic) in sesame oil and encapsu-
106 lated in a soft gelatin capsule in a United States food
107 and drug administration approved drug product. (Some
108 other names for dronabinol: (6aRtrans)-6a, 7, 8, 10a-
109 tetrahydro-6, 6, 9-trimethyl-3-pentyl-6H-dibenzo
110 9b,d) pyran-1-ol or (-) delta-9-(trans)-tetrahydrocanna-
111 bonil).

112 (2) Nabilone: THC-like antiemetic/cancer chemo-
113 therapy.

114 (g) Immediate precursors. Unless specifically ex-
115 cepted or unless listed in another schedule, any material,
116 compound, mixture, or preparation which contains any
117 quantity of the following substances:

118 (1) Immediate precursor to amphetamine and
119 methamphetamine:

- 120 (A) Phenylacetone;
121 Some trade or other names: phenyl-2-propanone;
122 P2P; benzylymethyl ketone; methyl benzyl ketone.
123 (2) Immediate precursors to phencyclidine (PCP):
124 (A) 1-phenylcyclohexylamine;
125 (B) 1-piperidinocyclohexanecarbonitrile (PCC).

§60A-2-208. Schedule III.

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

3 (b) Unless specifically excepted or unless listed in
4 another schedule, any material, compound, mixture or
5 preparation which contains any quantity of the follow-
6 ing substances having a stimulant effect on the central
7 nervous system:

- 8 (1) Benzphetamine;
9 (2) Chlorphentermine;
10 (3) Clortermine;
11 (4) Mazindol;
12 (5) Phendimetrazine.

13 (c) Unless specifically excepted or unless listed in
14 another schedule, any material, compound, mixture or
15 preparation which contains any quantity of the follow-
16 ing substances having a depressant effect on the central
17 nervous system:

- 18 (1) Any substance which contains any quantity of a
19 derivative of barbituric acid or any salt of a derivative
20 of barbituric acid;
21 (2) Chlorhexadol;
22 (3) Glutethimide;
23 (4) Lysergic acid;
24 (5) Lysergic acid amide;
25 (6) Methyprylon;
26 (7) Sulfondiethylmethane;
27 (8) Sulfonethylmethane;
28 (9) Sulfonmethane;

- 29 (10) Any compound, mixture or preparation
30 containing:
- 31 (i) Amobarbital;
- 32 (ii) Secobarbital;
- 33 (iii) Pentobarbital or any salt thereof and one or more
34 other active medicinal ingredients which are not listed
35 in any schedule;
- 36 (11) Any suppository dosage form containing:
- 37 (i) Amobarbital;
- 38 (ii) Secobarbital;
- 39 (iii) Pentobarbital.
- 40 (d) Nalorphine.
- 41 (e) Narcotic drugs. Unless specifically excepted or
42 unless listed in another schedule, any material, com-
43 pound, mixture or preparation containing limited
44 quantities of any of the following narcotic drugs or any
45 salts thereof:
- 46 (1) Not more than 1.8 grams of codeine per 100
47 milliliters and not more than 90 milligrams per dosage
48 unit, with an equal or greater quantity of an isoquin-
49 oline alkaloid of opium;
- 50 (2) Not more than 1.8 grams of codeine per 100
51 milliliters and not more than 90 milligrams per dosage
52 unit, with one or more active, nonnarcotic ingredients
53 in recognized therapeutic amounts;
- 54 (3) Not more than 300 milligrams of dihydrocodei-
55 none or hydrocodone per 100 milliliters and not more
56 than 15 milligrams per dosage unit, with a fourfold or
57 greater quantity of an isoquinoline alkaloid of opium;
- 58 (4) Not more than 300 milligrams of dihydrocodei-
59 none or hydrocodone per 100 milliliters and not more
60 than 15 milligrams per dosage unit, with one or more
61 active, nonnarcotic ingredients in recognized therapeu-
62 tic amounts;
- 63 (5) Not more than 1.8 grams of dihydrocodeine per
64 100 milliliters and not more than 90 milligrams per
65 dosage unit, with one or more active, nonnarcotic
66 ingredients in recognized therapeutic amounts;

67 (6) Not more than 300 milligrams of ethylmorphine
68 per 100 milliliters and not more than 15 milligrams per
69 dosage unit, with one or more active, nonnarcotic
70 ingredients in recognized therapeutic amounts;

71 (7) Not more than 500 milligrams of opium per 100
72 milliliters or per 100 grams and not more than 25
73 milligrams per dosage unit, with one or more active,
74 nonnarcotic ingredients in recognized therapeutic
75 amounts;

76 (8) Not more than 50 milligrams of morphine per 100
77 milliliters or per 100 grams and not more than 2.5
78 milligrams per dosage unit, with one or more active,
79 nonnarcotic ingredients in recognized therapeutic
80 amounts.

§60A-2-212. Schedule V.

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

3 (b) Narcotic drugs. Unless specifically excepted or
4 unless listed in another schedule, any material, com-
5 pound, mixture or preparation containing any of the
6 following narcotic drugs and their salts, as set forth
7 below:

8 (1) Buprenorphine.

9 (c) Narcotic drugs containing nonnarcotic active
10 medicinal ingredients. Any compound, mixture or
11 preparation containing any of the following limited
12 quantities of narcotic drugs or salts thereof, which shall
13 include one or more nonnarcotic active medicinal
14 ingredients in sufficient proportion to confer upon the
15 compound, mixture or preparation valuable medicinal
16 qualities other than those possessed by the narcotic drug
17 alone:

18 (1) Not more than 200 milligrams of codeine per 100
19 milliliters or per 100 grams and not more than 10
20 milligrams per dosage unit;

21 (2) Not more than 100 milligrams of dihydrocodeine
22 per 100 milliliters or per 100 grams and not more than
23 5 milligrams per dosage unit;

- 24 (3) Not more than 100 milligrams of ethylmorphine
25 per 100 milliliters or per 100 grams and not more than
26 5 milligrams per dosage unit;
- 27 (4) Not more than 2.5 milligrams of diphenoxylate
28 and not less than 25 micrograms of atropine sulfate per
29 dosage unit;
- 30 (5) Not more than 100 milligrams of opium per 100
31 milliliters or per 100 grams;
- 32 (6) Not more than 0.5 milligrams of difenoxin and not
33 less than 25 micrograms of atropine sulfate per dosage
34 unit.

CHAPTER 23

(Com. Sub. for S. B. 151—By Senators Palumbo, Parker and Jackson)

[Passed March 11, 1988; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section five hundred five, article five, chapter sixty-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend said chapter sixty-a by adding thereto a new article, designated article seven, relating to forfeiture proceedings in illegal drug offenses; setting forth short title; legislative findings; enumerating items subject to forfeiture; exceptions; authorizing certain persons to seize property; disposition of contraband and other items seized; setting forth procedure for seizure of forfeitable property; when process issued by court necessary for seizure; setting forth when property may be seized without process; disposition of such property; establishing civil proceeding for forfeiture; setting forth the time, contents of and procedure for filing a petition for forfeiture; when court may order the forfeiture of property; prohibiting transfer of property during pendency of proceeding; setting forth time for appeal and notice thereof; providing for the disposition of forfeited moneys, securities and other negotiable instruments; distribution of proceeds; providing for the disposition of other forfeited property; and setting forth

the time and manner of disposition of proceeds thereof.

Be it enacted by the Legislature of West Virginia:

That section five hundred five, article five, chapter sixty-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that said chapter sixty-a be amended by adding thereto a new article, designated article seven, all to read as follows:

ARTICLE 7. WEST VIRGINIA CONTRABAND FORFEITURE ACT.

§60A-7-701. Short title.

§60A-7-702. Legislative findings.

§60A-7-703. Items subject to forfeiture; persons authorized to seize property subject to forfeiture.

§60A-7-704. Procedures for seizure of forfeitable property.

§60A-7-705. Procedures for forfeiture.

§60A-7-706. Disposition of forfeited moneys, securities or other negotiable instruments; distribution of proceeds.

§60A-7-707. Disposition of other forfeited property; distribution of proceeds.

§60A-7-701. Short title.

- 1 This article shall be known and cited as the "West
- 2 Virginia Contraband Forfeiture Act."

§60A-7-702. Legislative findings.

- 1 The Legislature hereby finds and declares that the
- 2 seizure and sale of items under the provisions of this
- 3 article is not contemplated to be a forfeiture as the same
- 4 is used in article twelve, section five of the West
- 5 Virginia constitution and to the extent that such seizure
- 6 and sale may be found to be such a forfeiture, the
- 7 Legislature hereby finds and declares that the proceeds
- 8 from a seizure and sale under this article is not part of
- 9 net proceeds as the same is contemplated by such article
- 10 twelve, section five of the West Virginia constitution.

§60A-7-703. Items subject to forfeiture; persons authorized to seize property subject to forfeiture.

- 1 (a) The following are subject to forfeiture:
- 2 (1) All controlled substances which have been manu-
- 3 factured, distributed, dispensed or possessed in violation
- 4 of this chapter;
- 5 (2) All raw materials, products and equipment of any

6 kind which are used, or intended for use, in manufac-
7 turing, compounding, processing, delivering, importing
8 or exporting any controlled substance in violation of this
9 chapter;

10 (3) All property which is used, or has been used, or
11 is intended for use, as a container for property described
12 in subdivision (1) or (2);

13 (4) All conveyances, including aircraft, vehicles or
14 vessels, which are used, have been used, or are intended
15 for use, to transport, or in any manner to facilitate the
16 transportation, sale, receipt, possession or concealment
17 of property described in subdivision (1) or (2), except
18 that:

19 (i) No conveyance used by any person as a common
20 carrier in the transaction of business as a common
21 carrier shall be forfeited under this section unless it
22 appears that the person owning such conveyance is a
23 consenting party or privy to a violation of this chapter;

24 (ii) No conveyance shall be forfeited under the
25 provisions of this article if the person owning such
26 conveyance establishes that he neither knew, nor had
27 reason to know, that such conveyance was being
28 employed or was likely to be employed in a violation of
29 this chapter; and

30 (iii) No bona fide security interest or other valid lien
31 in any conveyance shall be forfeited under the provisions
32 of this article, unless the state proves by a preponder-
33 ance of the evidence that the holder of such security
34 interest or lien either knew, or had reason to know, that
35 such conveyance was being used or was likely to be used
36 in a violation of this chapter;

37 (5) All books, records, research products and mate-
38 rials, including formulas, microfilm, tapes and data
39 which are used, or have been used, or are intended for
40 use, in violation of this chapter;

41 (6) All moneys, negotiable instruments, securities or
42 other things of value furnished or intended to be
43 furnished in violation of this chapter by any person in
44 exchange for a controlled substance, all proceeds

45 traceable to such an exchange, and all moneys, negotiable instruments and securities used, or which have
46 been used, or which are intended to be used to facilitate
47 any violation of this chapter: *Provided*, That no property
48 may be forfeited under this subdivision, to the extent of
49 the interest of an owner, by reason of any act or omission
50 established by that owner to have been committed or
51 omitted without his knowledge or consent;
52

53 (7) All real property, including any right, title and
54 interest in any lot or tract of land, and any appurtenances or improvements, which are used, or have been used,
55 or are intended to be used, in any manner or part, to
56 commit, or to facilitate the commission of a violation of
57 this chapter punishable by more than one year imprisonment: *Provided*, That no property may be forfeited
58 under this subdivision, to the extent of an interest of an
59 owner, by reason of any act or omission established by
60 that owner to have been committed or omitted without
61 his knowledge or consent.
62
63

64 The requirements of this subsection pertaining to the
65 removal of seized property are not mandatory in the
66 case of real property and the appurtenances thereto.

67 (b) Property subject to forfeiture under this article
68 may be seized by any person granted enforcement
69 powers in section five hundred one, article five of this
70 chapter (hereinafter referred to as the "appropriate
71 person" in this article).

72 (c) Controlled substances listed in article two of this
73 chapter which are manufactured, possessed, transferred, sold or offered for sale in violation of this chapter
74 are contraband and shall be seized and summarily
75 forfeited to the state. Controlled substances which are
76 seized or come into the possession of the state, the
77 owners of which are unknown, are contraband and shall
78 be summarily forfeited to the state upon the seizure
79 thereof.
80

81 (d) Species of plants from which controlled substances
82 may be derived which have been planted or cultivated
83 in violation of the provisions of this chapter, or of which
84 the owners or cultivators are unknown, or which are

85 wild growths, may be seized and summarily forfeited to
86 the state upon the seizure thereof.

87 (e) The failure, upon demand by the appropriate
88 person, or his authorized agent, of the person in
89 occupancy or in control of land or premises upon which
90 the species of plants are growing or being stored, to
91 produce an appropriate registration, or proof that he is
92 the holder thereof, constitutes authority for the seizure
93 and forfeiture of the plants.

94 (f) Notwithstanding any provision of this article to the
95 contrary, controlled substances listed in article two of
96 this chapter and species of plants from which controlled
97 substances may be derived shall either be destroyed or
98 used only for investigative or prosecutorial purposes.

99 (g) Notwithstanding any other provisions of this
100 article to the contrary, any items of real property or any
101 items of tangible personal property sold to a bona fide
102 purchaser will not be subject to forfeiture unless the
103 state establishes by clear and convincing proof that such
104 bona fide purchaser knew or should have known that
105 such property had in the previous three years next
106 preceding such sale been used in violation of this
107 chapter or that such property is a controlled substance.

**§60A-7-704. Procedures for seizure of forfeitable
property.**

1 (a) Seizure of property made subject to forfeiture by
2 the provisions of this article may be made upon process
3 issued by any court of record having jurisdiction over
4 the property.

5 (b) Notwithstanding the provisions of subsection (a) of
6 this section, seizure of property subject to forfeiture by
7 the provisions of this article may be made without
8 process if:

9 (1) The seizure is incident to a lawful arrest or
10 pursuant to a search under a search warrant or an
11 inspection warrant;

12 (2) The property subject to seizure has been the
13 subject of a prior judgment in favor of the state in a

14 forfeiture proceeding based upon this article;

15 (3) The appropriate person has probable cause to
16 believe that the property is directly or indirectly
17 dangerous to health or safety; or

18 (4) The appropriate person has probable cause to
19 believe that the property was used or intended for use
20 in violation of this chapter.

21 (c) In the event of seizure pursuant to subsection (b)
22 of this section, forfeiture proceedings shall be instituted
23 within ninety days of the seizure thereof.

24 (d) Property taken or detained under this section shall
25 not be subject to replevin, but is deemed to be in the
26 custody of the appropriate person, subject only to the
27 orders and decrees of the court having jurisdiction over
28 the forfeiture proceedings. When property is seized
29 under this article, the appropriate person may:

30 (1) Place the property under seal;

31 (2) Remove the property to a place designated by him;
32 or

33 (3) Require the appropriate law-enforcement agency
34 to take custody of the property and remove it to an
35 appropriate location for disposition in accordance with
36 law.

37 The requirements of this subsection pertaining to the
38 removal of seized property are not mandatory in the
39 case of real property and appurtenances thereto.

§60A-7-705. Procedures for forfeiture.

1 (a) (1) Any proceeding wherein the state seeks forfei-
2 ture of property subject to forfeiture under this article
3 shall be a civil proceeding. A petition for forfeiture may
4 be filed on behalf of the state and any law-enforcement
5 agency making a seizure under this article by the
6 prosecuting attorney of a county, or duly appointed
7 special prosecutor.

8 (2) A petition for forfeiture may be filed and proceed-
9 ings held thereon in the circuit court of the county
10 wherein the seizure was made, the real property subject

11 to forfeiture is situate, or the circuit court of the county
12 wherein any owner of the property subject to forfeiture
13 may reside.

14 (3) Any civil trial stemming from a petition for
15 forfeiture brought under this chapter at the demand of
16 either party shall be by jury.

17 (4) A petition for forfeiture of the seized property
18 shall be filed within ninety days after the seizure of the
19 property in question. The petition shall be verified by
20 oath or affirmation of a law-enforcement officer
21 representing the law-enforcement agency responsible
22 for the seizure or the prosecuting attorney and shall
23 contain the following:

24 (i) A description of the property seized;

25 (ii) A statement as to who is responsible for the
26 seizure;

27 (iii) A statement of the time and place of seizure;

28 (iv) The identity of the owner or owners of the
29 property, if known;

30 (v) The identity of the person or persons in possession
31 of the property at the time seized, if known;

32 (vi) A statement of facts upon which probable cause
33 for belief that the seized property is subject to forfeiture
34 pursuant to the provisions of this article is based;

35 (vii) The identity of all persons or corporations having
36 a perfected security interest or lien in the subject
37 property, as well as the identity of all persons or
38 corporations known to the affiant who may be holding
39 a possessory or statutory lien against such property;

40 (viii) A prayer for an order directing forfeiture of the
41 seized property to the state, and vesting ownership of
42 such property in the state.

43 (b) At the time of filing or as soon as practicable
44 thereafter, a copy of the petition for forfeiture shall be
45 served upon the owner or owners of the seized property,
46 as well as all holders of a perfected security interest or
47 lien or of a possessory or statutory lien in the same class,

48 if known. Should diligent efforts fail to disclose the
49 lawful owner or owners of the seized property, a copy
50 of the petition for forfeiture shall be served upon any
51 person who was in possession or alleged to be in
52 possession of the property at the time of seizure, where
53 such person's identity is known. The above service shall
54 be made pursuant to the provisions of the West Virginia
55 Rules of Civil Procedure. Any copy of the petition for
56 forfeiture so served shall include a notice substantially
57 as follows:

58 "To any claimant to the within described property:
59 You have the right to file an answer to this petition
60 setting forth your title in, and right to possession of, the
61 property within thirty days from the service hereof. If
62 you fail to file an answer, a final order forfeiting the
63 property to the state will be entered, and such order is
64 not subject to appeal."

65 If no owner or possessors, lienholders or holders of a
66 security interest be found, then such service may be by
67 Class II legal publication in accordance with the
68 provisions of article three, chapter fifty-nine of this code,
69 and the publication area shall be the county wherein
70 such property was located at the time of seizure and the
71 county wherein the petition for forfeiture is filed.

72 (c) In addition to the requirements of subsection (b)
73 above, the prosecuting attorney or law-enforcement
74 officer upon whose oath or affirmation the petition for
75 forfeiture is based, shall be responsible for the publica-
76 tion of a further notice. Such further notice that a
77 petition for forfeiture has been filed shall be published
78 by Class II legal advertisement in accordance with
79 article three, chapter fifty-nine of this code. The
80 publication area shall be the county wherein the
81 property was seized and the county wherein the petition
82 for forfeiture is filed. The notice shall advise any
83 claimant to the property of their right to file a claim
84 on or before the date set forth in the notice, which date
85 shall not be less than thirty days from the date of the
86 first publication. The notice shall specify that any claim
87 must clearly state the identity of the claimant and an
88 address where legal process can be served upon that

89 person. In addition such notice shall contain the
90 following information:

91 (1) A description of the property seized;

92 (2) A statement as to who is responsible for the
93 seizure;

94 (3) A statement of the time and place of seizure;

95 (4) The identity of the owner or owners of the
96 property, if known;

97 (5) The identity of the person or persons in possession
98 of the property at the time of seizure, if known;

99 (6) A statement that prayer for an order directing
100 forfeiture of the seized property to the state, and vesting
101 ownership of such property in the state shall be
102 requested of the court.

103 (d) If no answer or claim is filed within thirty days
104 of the date of service of the petition pursuant to
105 subsection (b) of this section, or within thirty days of the
106 first publication pursuant to subsection (b) of this
107 section, the court shall enter an order forfeiting the
108 seized property to the state. If any claim to the seized
109 property is timely filed, a time and place shall be set
110 for a hearing upon such claim. The claimant or
111 claimants shall be given notice of such hearing not less
112 than ten days prior to the date set for the hearing.

113 (e) At the hearing upon the claim or claims, the state
114 shall have the burden of proving by a preponderance of
115 the evidence that the seized property is subject to
116 forfeiture pursuant to the provisions of this chapter.

117 (f) Any order forfeiting property to the state and
118 entered pursuant to this section perfects the state's
119 right, title and interest in the forfeited property and
120 relates back to the date of seizure: *Provided*, That in any
121 proceeding under this article the circuit court shall in
122 its final order make specific findings with respect to
123 whether or not probable cause to seize such property
124 existed at the time of such seizure.

125 (g) During the pendency of a forfeiture proceeding, it

126 is unlawful for any property owner or holder of a bona
127 fide security interest or other valid lienholder to
128 transfer or attempt to transfer any ownership interest
129 or security interest in seized property with the intent to
130 defeat the purpose of this article, and the court wherein
131 the petition for forfeiture is filed may enjoin a property
132 owner or holder of a security interest or other lienholder
133 from making such a transfer should one come to its
134 attention. Any such transfer which is made in violation
135 of the provisions of this subsection shall have no effect
136 upon an order of the court forfeiting seized property to
137 the state if a notice of lis pendens is filed prior to the
138 recording of the instrument of transfer.

139 (h) The court may void any transfer of property made
140 before or after a forfeiture proceeding has been
141 commenced, which is subject to forfeiture, if the
142 transfer was not to a bona fide purchaser without notice
143 for value.

144 (i) An appeal of a decision of the circuit court
145 concerning a forfeiture proceeding brought pursuant to
146 this chapter must be filed within one hundred twenty
147 days of the date of entry of the final appealable order.
148 The appellant shall be required to give notice of intent
149 to appeal within thirty days of the entry of such
150 appealable order.

**§60A-7-706. Disposition of forfeited moneys, securities or
other negotiable instruments; distribution
of proceeds.**

1 (a) Whenever moneys, securities or other negotiable
2 instruments are forfeited under the provisions of this
3 article, such proceeds shall be distributed as follows:

4 (1) Ten percent of such proceeds shall be tendered to
5 the office of the prosecuting attorney which initiated the
6 forfeiture proceeding;

7 (2) The balance shall be deposited in a special law-
8 enforcement investigation fund. Such fund shall be
9 administered by the chief of the law-enforcement agency
10 that seized the forfeited property.

11 (b) No funds shall be expended from the special law-

12 enforcement investigation fund except as follows:

13 (1) In the case of the funds belonging to the depart-
14 ment of public safety, such funds shall only be expended
15 at the direction of the superintendent of such depart-
16 ment and in accordance with the provisions of section
17 fifteen, article two, chapter five-a of this code and the
18 provisions of subsection (j), section two, article two,
19 chapter twelve of said code;

20 (2) In the case of funds belonging to the office of
21 either the sheriff or prosecuting attorney of any county
22 in which such special fund has been created, the funds
23 therein may only be expended in the manner provided
24 in sections four and five, article five, chapter seven of
25 this code; and

26 (3) In the case of funds belonging to the police
27 department of any municipality in which such special
28 fund has been created, the funds therein may only be
29 expended in the manner provided in section twenty-two,
30 article thirteen, chapter eight of said code.

**§60A-7-707. Disposition of other forfeited property;
distribution of proceeds.**

1 (a) When property other than that referred to in
2 section seven hundred six of this article is forfeited
3 under this article, the circuit court ordering such
4 forfeiture, upon application by the prosecuting attorney
5 or the chief of the law-enforcement agency that seized
6 said forfeited property, may direct that:

7 (1) Title to the forfeited property be vested in the law-
8 enforcement agency so petitioning; or

9 (2) The law-enforcement agency responsible for the
10 seizure retain the property for official use; or

11 (3) The forfeited property shall be offered at public
12 auction to the highest bidder for cash. Notice of such
13 public auction shall be published as a Class III legal
14 advertisement in accordance with article three, chapter
15 fifty-nine of this code. The publication area shall be the
16 county where the public auction will be held.

17 (b) When a law-enforcement agency receives property

18 pursuant to this section, the court may, upon request of
19 the prosecuting attorney initiating the forfeiture
20 proceeding, require the law-enforcement agency to pay
21 unto the office of said prosecuting attorney, a sum not
22 to exceed ten percent of the value of the property
23 received to compensate said office for actual costs and
24 expenses incurred.

25 (c) The proceeds of every public sale conducted
26 pursuant to this section shall be paid and applied as
27 follows: First, to the balance due on any security interest
28 preserved by the court; second, to the costs incurred in
29 the storage, maintenance and security of the property;
30 third, to the costs incurred in selling the property.

31 (d) Any proceeds of a public sale remaining after
32 distribution pursuant to subsection (c) of this section
33 shall be distributed as follows:

34 (1) Ten percent of such proceeds shall be tendered to
35 the office of the prosecuting attorney who initiated the
36 forfeiture proceeding.

37 (2) The balance shall be deposited in a special law-
38 enforcement investigation fund. Such fund shall be
39 administered by the chief of the law-enforcement agency
40 that seized the forfeited property sold and shall take the
41 form of an interest bearing account with any interest
42 earned to be compounded to the fund. Any funds
43 deposited in the special law-enforcement investigative
44 fund pursuant to this article shall be expended only to
45 defray the costs of protracted or complex investigations,
46 to provide additional technical equipment or expertise,
47 to provide matching funds to obtain federal grants or
48 for such other law-enforcement purposes as the chief of
49 the law-enforcement agency may deem appropriate;
50 however, these funds may not be utilized for regular
51 operating needs.

52 (e) If more than one law-enforcement agency was
53 substantially involved in effecting the seizure and
54 forfeiture of property, the court wherein the petition for
55 forfeiture was filed shall equitably distribute the
56 forfeited property among the law-enforcement agencies.
57 In the event of a public sale of such property pursuant

58 to subsection (a) of this section, the court shall equitably
59 distribute any proceeds remaining after distribution
60 pursuant to subsection (c) and subdivision (1), subsection
61 (d) of this section among such law-enforcement agencies
62 for deposit into their individual special law-enforcement
63 investigative fund. Equitable distribution shall be based
64 upon the overall contribution of the individual law-
65 enforcement agency to the investigation which led to the
66 seizure.

67 (f) Upon the sale of any forfeited property for which
68 title or registration is required by law, the state shall
69 issue a title or registration certificate to any bona fide
70 purchaser at a public sale of such property conducted
71 pursuant to subsection (a) of this section. Upon the
72 request of the law-enforcement agency receiving,
73 pursuant to the order of the court, or electing to retain,
74 pursuant to subsection (a) of this section, any forfeited
75 property for which title or registration is required by
76 law, the state shall issue a title or registration certificate
77 to the appropriate governmental body.

78 (g) Any funds expended pursuant to the provisions of
79 this section, shall only be expended in the manner
80 provided in subsection (b), section seven hundred five of
81 this article.

82 (h) Every prosecuting attorney or law-enforcement
83 agency receiving forfeited property or proceeds from the
84 sale of forfeited property pursuant to this article shall
85 submit an annual report to the body which has budget-
86 tary authority over such agency. Such report shall
87 specify the type and approximate value of all forfeited
88 property and the amount of proceeds from the sale of
89 forfeited property received in the preceding year. No
90 county or municipality may use anticipated receipts of
91 forfeited property in their budgetary process.

92 (i) In lieu of the sale of any forfeited property subject
93 to a bona fide security interest preserved by an order
94 of the court, the law-enforcement agency receiving the
95 forfeited property may pay the balance due on any
96 security interest preserved by the court from funds
97 budgeted to the office or department or from the special

98 fund and retain possession of the forfeited property for
99 official use pursuant to subsection (a) of this section.

100 (j) In every case where property is forfeited, disposi-
101 tion of the forfeited property, in accordance with this
102 article, shall be made within six months of the date upon
103 which the court of jurisdiction orders such forfeiture.
104 Should the office or agency receiving the property fail
105 either to place the property in official use or dispose of
106 the property in accordance with law, the court of
107 jurisdiction shall cause disposition of the property to be
108 made with any proceeds therefrom to be awarded to the
109 state.

110 (k) No such disposition shall occur until all applicable
111 periods for filing a notice of intent to appeal has expired
112 and no party in interest shall have filed such notice. The
113 filing of such notice of intent to appeal shall stay any
114 such disposition until the appeal has been finally
115 adjudicated or until the appeal period of one hundred
116 eighty days has expired without an appeal having
117 actually been taken or filed, unless a valid extension of
118 such appeal has been granted by the circuit court under
119 the provisions of section seven, article four, chapter
120 fifty-eight of this code.

CHAPTER 24

(H. B. 4151—By Delegate Pitrolo)

[Passed February 12, 1988; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections eight and sixty-four, article one, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to corporations; continuing the corporate existence of certain corporations the articles of incorporation of which expired prior to the first day of July, one thousand nine hundred seventy-five; granting such corporations perpetual existence; and validating certain acts of such corporations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. BUSINESS AND NONPROFIT CORPORATIONS.

§31-1-8. General powers of corporations.

§31-1-64. Conditions of expiration of corporate existence.

§31-1-8. General powers of corporations.

- 1 Every corporation shall have the power:
 - 2 (a) To have perpetual succession by its corporate
3 name unless a limited period of duration is stated in its
4 articles of incorporation. Any corporation chartered
5 heretofore which under its agreement of incorporation,
6 had less than perpetual existence, and which continued
7 to and may still be conducting business, is hereby
8 granted perpetual existence, provided all license fees
9 and taxes due the state of West Virginia shall have been
10 paid.
 - 11 (b) To sue and be sued, complain and defend, in its
12 corporate name.
 - 13 (c) To have a corporate seal which may be altered at
14 pleasure, and to use the same by causing it, or a
15 facsimile thereof, to be impressed or affixed or in any
16 other manner reproduced.
 - 17 (d) To purchase, take, receive, lease, take by gift,
18 devise or bequest, or otherwise acquire, own, hold,
19 improve, use and otherwise deal in and with real or
20 personal property, or any interest therein, wherever
21 situated.
 - 22 (e) To sell, convey, mortgage, pledge, lease, exchange,
23 transfer and otherwise dispose of all or any part of its
24 property and assets.
 - 25 (f) To lend money and use its credit to assist its
26 employees.
 - 27 (g) To purchase, take, receive, subscribe for, or

28 otherwise acquire, own, hold, vote, use, employ, sell,
29 mortgage, lend, pledge, or otherwise dispose of, and
30 otherwise use and deal in and with, shares or other
31 interests in, or obligations of, other domestic or foreign
32 corporations, associations, partnerships, joint ventures
33 or individuals, or direct or indirect obligations of the
34 United States or of any other government, state,
35 territory, governmental district or municipality or of
36 any instrumentality thereof.

37 (h) To make contracts and guarantees and incur
38 liabilities, borrow money at such rates of interest as the
39 corporation may determine, issue its notes, bonds and
40 other obligations, and secure any of its obligations by
41 mortgage, deed of trust or pledge of all or any of its
42 property, franchises and income.

43 (i) To lend money for its corporate purposes, invest
44 and reinvest its funds, and take and hold real and
45 personal property as security for the payment of funds
46 so loaned or invested.

47 (j) To conduct its business and affairs, carry on its
48 operations, and have offices and exercise the powers
49 granted by this article, within or without this state.

50 (k) To elect or appoint officers and agents of the
51 corporation, and define their duties and fix their
52 compensation.

53 (l) To make and alter bylaws, not inconsistent with its
54 articles of incorporation or with the laws of this state,
55 for the administration and regulation of the business
56 and affairs of the corporation.

57 (m) To make donations for the public welfare or for
58 charitable, scientific or educational purposes.

59 (n) To transact any lawful business which the board
60 of directors shall find will be in the aid of governmental
61 policy.

62 (o) To pay pensions and establish pension plans or
63 pension trusts for any or all of its directors, officers and
64 employees, and in the case of business corporations, to
65 establish profit-sharing plans, stock bonus plans, stock

66 option plans and other incentive plans for any or all of
67 its directors, officers and employees.

68 (p) To be a promoter, partner, member, associate, or
69 manager of any partnership, joint venture, trust or other
70 enterprise.

71 (q) To cease its corporate activities and surrender its
72 corporate franchise in accordance with the provisions of
73 this article.

74 (r) To have and exercise all powers necessary or
75 convenient to effect its purposes.

§31-1-64. Conditions of expiration of corporate existence.

1 Irrespective of any provisions of any articles of
2 incorporation or amendment thereto, no corporation
3 shall expire by virtue of its own articles of incorporation
4 or amendment thereto until such time as such corpora-
5 tion has fully complied with all of the provisions of this
6 article relating to the voluntary dissolution of corpora-
7 tions, and the existence of any such corporation shall
8 continue beyond the expiration date established in its
9 charter or amendment thereto for all intents and
10 purposes until such corporation shall have been dis-
11 solved in accordance with the provisions of this article.
12 With respect to any and all acts of any corporation, the
13 articles of incorporation of which shall have expired
14 prior to the first day of July, one thousand nine hundred
15 seventy-five, but which continued to conduct or transact
16 business under or pursuant to such articles of incorpo-
17 ration, are, to the extent such acts are not or were not
18 in violation of the laws or public policy of this state, nor
19 ultra vires to such corporation's articles of incorporation
20 or the by-laws thereof, are hereby declared to be valid
21 and proper for all intents and purposes.

22 When any such corporation has fully complied with
23 the provisions of this article relating to the voluntary
24 dissolution of corporations, the secretary of state shall
25 issue a certificate of dissolution which shall be recorded
26 in the same county and in the same manner as would
27 be the case for other certificates of dissolution.

CHAPTER 25

(Com. Sub. for H. B. 2903—By Delegates Roop and R. Harman)

[Passed February 29, 1988; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact article one, 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 eleven-a; and to amend and reenact section four, article eight, chapter forty-seven of said code, all relating to use of the words "corporation," "incorporated" or "limited" in business names; limiting the use of such words or their abbreviations; prohibiting the issuance of business registration certificates in certain instances; when business may be subject to an action in quo warranto; creating a misdemeanor offense; setting forth penalties; prescribing applicability of section; prohibiting the conduct of business under assumed name unless certification of registration of true name is filed with the secretary of state; contents; separate certificate for each name; withdrawal of certificate; change of corporate name and obtaining a certificate of amendment; filing of certificate in office of county clerk where principal business conducted; and requiring the secretary of state to maintain alphabetical index of such certificates.

Be it enacted by the Legislature of West Virginia:

That article one, 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 eleven-a; and that section four, article eight, chapter forty-seven of said code be amended and reenacted, to read as follows:

Chapter

31. Corporations.

47. Regulation of Trade.

CHAPTER 31. CORPORATIONS.

ARTICLE 1. BUSINESS AND NONPROFIT CORPORATIONS.

§31-1-11a. Use of the words "corporation," "incorporated" or "limited"; prohibitions; penalties.

1 (a) Except as otherwise provided in section two,
2 article nine, chapter forty-seven of this code, no person
3 may use, after the first day of July, one thousand nine
4 hundred eighty-eight, the word "corporation," "incorpo-
5 rated" or "limited," or an abbreviation of any such word,
6 in any trade name, business or other organization name
7 unless the same is used by a domestic or foreign
8 corporation authorized by the secretary of state to
9 transact business in West Virginia under the provisions
10 of this chapter.

11 (b) After the first day of July, one thousand nine
12 hundred eighty-eight, the tax commissioner may not
13 issue any business registration certificate under the
14 provisions of article twelve, chapter eleven of this code
15 to any business if the business name includes any of the
16 words or their abbreviations as set forth in subsection
17 (a) of this section unless the business is a domestic or
18 foreign corporation or domestic or foreign limited
19 partnership.

20 (c) Any person who shall unlawfully use any one or
21 more of the above proscribed words or their abbrevia-
22 tions in violation of subsection (a) of this section shall
23 be deemed to be acting as a corporation without
24 authority of law and subject to an action in quo
25 warranto as provided in article two, chapter fifty-three
26 of this code.

27 (d) Any person who violates the provisions of this
28 section is guilty of a misdemeanor, and, upon conviction
29 thereof, shall be fined not less than five hundred dollars,
30 nor more than one thousand dollars, or imprisoned in
31 the county jail not more than thirty days, or both fined
32 and imprisoned.

33 (e) The provisions of this section shall not apply to
34 businesses in existence prior to the first day of July, one
35 thousand nine hundred eighty-eight.

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 8. TRADE NAMES.

§47-8-4. Corporations, associations and limited
partnerships not to conduct business under
assumed name without filing certificate of

**true name; filing, recordation and indexing
of certificates filed; issuance of certificate of
true name.**

1 (a) No corporation, limited partnership or association
2 required to register with the secretary of state in order
3 to conduct business within the state may conduct or
4 transact any business in this state under any assumed
5 name, or under any designation, name or style, corpo-
6 rate or otherwise, other than the name established by
7 the certificate of incorporation, authority, association or
8 limited partnership, unless the corporation, limited
9 partnership or association files in the office of the
10 secretary of state a certificate of registration of true
11 name setting forth the name or names under which such
12 business is, or is to be, conducted or transacted, with the
13 address of the principal office within the state or, if no
14 office is maintained within the state, the address of the
15 principal office in the state in which the corporation,
16 association or limited partnership is established. A new
17 certificate of registration is to be filed if the corporation,
18 limited partnership or association desires to conduct or
19 transact any business in this state under any other
20 assumed name not on file in the office of the secretary
21 of state.

22 (b) Two executed originals of the application for true
23 name registration, shall be delivered to the secretary of
24 state. If the filing officer finds that the application for
25 true name registration conforms to law, he or she shall,
26 when all fees have been paid as prescribed by law, (i)
27 endorse on each of the originals the word "filed" and the
28 month, day and year of the filing; (ii) file one of the
29 originals; and (iii) issue to the applicant the certificate
30 of registration of true name with the other original
31 attached.

32 (c) Upon discontinuing the use of a name other than
33 the name established by the certificate of incorporation,
34 authority, association or limited partnership, the
35 certificate of registration of true name shall be with-
36 drawn by filing a certificate of withdrawal with the
37 office of the secretary of state setting forth the name to
38 be discontinued, the real name, the address of the party

39 transacting business and the date upon which the
40 original certificate of registration of true name was
41 filed.

42 (d) Any corporation authorized to transact business in
43 this state shall procure an amended certificate of
44 incorporation in the event it changes its corporate name
45 by filing articles of amendment with the office of the
46 secretary of state as provided in article one, chapter
47 thirty-one of this code.

48 (e) A domestic corporation, limited partnership or
49 association having its principal office within the state
50 shall file a certified copy of any certificate of true name
51 with the clerk of the county commission of the county
52 in which the principal office is located. A foreign
53 corporation, limited partnership or association having
54 its principal office outside the state shall file a certified
55 copy of any such certificate with the clerk of the county
56 commission of a county in which its principal business
57 is transacted.

58 (f) The secretary of state shall keep an alphabetical
59 index of all persons filing certificates provided for in
60 this section.

CHAPTER 26

(H. B. 4028—By Delegates Phillips and Garrett)

[Passed January 28, 1988; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eighty-seven, article one, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to corporations; certificates representing shares; and facsimile signatures on certificates.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. BUSINESS AND NONPROFIT CORPORATIONS.**§31-1-87. Certificates representing shares.**

1 The shares of a corporation shall be represented by
2 certificates signed by the president or a vice president
3 and the secretary or an assistant secretary of the
4 corporation, and may be sealed with the seal of the
5 corporation or a facsimile thereof. The signatures of the
6 president or vice president and the secretary or assistant
7 secretary upon a certificate may be facsimiles if the
8 certificate is manually signed on behalf of a transfer
9 agent or a registrar, which may be the corporation
10 itself, a subsidiary of the corporation or an independent
11 corporation. In case any officer who has signed or whose
12 facsimile signature has been placed upon such certifi-
13 cate has ceased to be such officer before the certificate
14 is issued, it may be issued by the corporation with the
15 same effect as if he were the officer at the date of its
16 issue.

17 Every certificate representing shares issued by a
18 corporation which is authorized to issue shares of more
19 than one class shall set forth upon the face or back of
20 the certificate, or shall state that the corporation will
21 furnish to any shareholder upon request and without
22 charge, a full statement of the designations, preferences,
23 limitations and relative rights of the shares of each class
24 authorized to be issued, and if the corporation is
25 authorized to issue any preferred or special class in
26 series, the variations in the relative rights and prefer-
27 ences between the shares of each such series so far as
28 the same have been fixed and determined and the
29 authority of the board of directors to fix and determine
30 the relative rights and preferences of subsequent series.

31 Each certificate representing shares shall state upon
32 the face thereof:

33 (a) That the corporation is organized under the laws
34 of this state.

35 (b) The name of the person to whom issued.

36 (c) The number and class of shares, and the designa-
37 tion of the series, if any, which such certificate

38 represents.

39 (d) The par value of each share represented by such
40 certificate, or a statement that the shares are without
41 par value.

42 No certificate shall be issued for any share until such
43 share is fully paid.

CHAPTER 27

(Com. Sub. for H. B. 4056—By Delegate Moore)

[Passed February 3, 1988; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one hundred thirty-six, article one, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the use of the term "corporation"; and allowing a nonprofit corporation to include in its name the word "foundation" in lieu of or in addition to words or abbreviations otherwise denoting its corporate status.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. BUSINESS AND NONPROFIT CORPORATIONS.

§31-1-136. Use of term "corporation"; use of term "foundation" by nonprofit corporation.

1 (a) As used in Part IV of this article, the term
2 "corporation" shall refer exclusively to nonprofit
3 corporations.

4 (b) Any domestic nonprofit corporation and any
5 foreign nonprofit corporation permitted to do so by the
6 law of the state of its incorporation, may include in its
7 name the word "foundation" in lieu of or in addition to
8 the word "corporation", "company", "incorporated" or

9 "limited" or an abbreviation of such words, notwith-
10 standing the provisions of sections eleven, fifty-one and
11 fifty-two of this article.

12 (c) Any domestic nonprofit corporation and any
13 foreign nonprofit corporation desiring to delete from its
14 name for use in this state the word "corporation",
15 "company", "incorporated" or "limited" or an abbrevia-
16 tion of such word may do so by submitting to the
17 secretary of state a certified copy of a resolution of its
18 board of directors or board of trustees requesting such
19 deletion, which resolution shall be concurred in by the
20 members of such corporation, if the charter of the
21 corporation shall so require. If the secretary of state
22 shall find that such request is in proper form and that
23 the requested name (1) includes the word "foundation"
24 and (2) is otherwise proper, the secretary of state shall
25 issue an amendment to the certificate of incorporation
26 or certificate of authority to conduct affairs, as the case
27 may be, restating the corporate name as requested, upon
28 the payment of the fee required for any other amend-
29 ment to such charter or certificate of authority to
30 conduct affairs or do or transact business in this state.

CHAPTER 28

(Com. Sub. for H. B. 2982—By Delegates Pitrolo and Hoblitzell)

[Passed February 19, 1988; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal sections six and seven, article five-a, chapter twenty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article one, chapter twenty-five of said code, by adding a new section thereto, designated section fifteen, relating to establishment, by the commissioner of corrections, of diagnostic and classification divisions at Huttonsville correctional center, West Virginia penitentiary at Moundsville and/or Pruntytown correctional center; requiring that said divisions be maximum security facilities; authorizing the commissioner of corrections to contract with federal correctional institu-

tions for diagnosis and classification of female offenders; authorizing the commissioner of corrections to provide said services for youthful offenders at youth centers; and requiring that persons sentenced to the West Virginia penitentiary first undergo diagnosis and classification at one of said facilities.

Be it enacted by the Legislature of West Virginia:

That sections six and seven, article five-a, chapter twenty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that article one, chapter twenty-five of said code be amended by adding a new section thereto, designated section fifteen, to read as follows:

ARTICLE 1. ORGANIZATION AND INSTITUTIONS.

§25-1-15. Diagnostic and classification divisions.

1 The commissioner of corrections may establish a
2 diagnostic and classification division within Huttonsville
3 correctional center, West Virginia penitentiary at
4 Moundsville and/or the Pruntytown correctional center,
5 formerly known as the West Virginia industrial home
6 for boys at Grafton.

7 Notwithstanding any provision of the code to the
8 contrary, all persons committed to the custody of the
9 commissioner of the department of corrections for
10 presentence diagnosis and classification and all persons
11 sentenced to the West Virginia penitentiary shall, upon
12 imposition of such commitment or sentence, undergo
13 diagnosis and classification in a diagnostic and classi-
14 fication division located at the Huttonsville correctional
15 center, the West Virginia penitentiary at Moundsville,
16 or the Pruntytown correctional center. The diagnostic
17 and classification divisions shall be maximum security
18 facilities: *Provided*, That the commissioner of the
19 department of corrections shall be authorized to provide,
20 at his option, classification and diagnostic services for
21 female offenders through contract with federal correc-
22 tional institutions and to provide diagnostic and
23 classification services for youthful offenders at a youth
24 center operated under the authority of the department
25 of corrections: *Provided, however*, That nothing con-

26 tained herein shall operate to conflict with or interfere
 27 with predisposition diagnostic procedures for juveniles
 28 contained in chapter forty-nine of this code.

29 Nothing herein shall be construed to authorize the
 30 establishment of a diagnostic and classification division
 31 upon the grounds of the Weston state hospital or in a
 32 regional jail operated by the regional jail and prison
 33 authority.

CHAPTER 29

(Com. Sub. for H. B. 4181—By Delegate Bradley)

[Passed March 10, 1988; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article twelve, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to county development authorities; and excusal of member from voting where conflict of interest involved.

Be it enacted by the Legislature of West Virginia:

That section five, article twelve, 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 12. COUNTY AND MUNICIPAL DEVELOPMENT
 AUTHORITIES.**

§7-12-5. Compensation of members; expenses; excusal of member from voting where conflict of interest involved.

1 (a) No member of the authority shall receive any
 2 compensation, whether in formal salary, per diem
 3 allowance or otherwise, in connection with his or her
 4 services as such member. Each member shall, however,
 5 be entitled to reimbursement by the authority for any
 6 necessary expenditures in connection with the perfor-
 7 mance of his or her general duties as such member.

8 (b) Each member present during any meeting of the
 9 authority when any question is put, shall vote unless he

10 or she is immediately and particularly interested
11 therein. Before such a question is put, any member
12 having direct personal or pecuniary interest therein
13 shall announce this fact and request to be excused from
14 voting. The presiding officer of the meeting or a
15 majority of the members present may then excuse the
16 member from voting upon the question. The disqualify-
17 ing interest must be such as affects the members
18 directly, and not as one of a class.

CHAPTER 30

(Com. Sub. for S. B. 34—By Senators Brackenrich and Chernenko)

[Passed March 12, 1988; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and twelve, article seventeen, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to county fire boards; definitions of qualified voters; time limits on completion of petitions; and election for county fire service fees.

Be it enacted by the Legislature of West Virginia:

That sections two and twelve, article seventeen, 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 17. COUNTY FIRE BOARDS.

§7-17-2. Definitions.

§7-17-12. County fire service fees; petition; election; dedication; and increase.

§7-17-2. Definitions.

1 As used in this article unless the context clearly
2 indicates otherwise:

3 (1) "User" means any person to whom fire service is
4 made available under the provisions of this article.

5 (2) "County commission" means the county
6 commission or tribunal in lieu thereof of every county

7 within the state of West Virginia as provided in section
8 nine, article nine of the constitution of the state of West
9 Virginia.

10 (3) "County fire association" means an association
11 created in section three of this article.

12 (4) "County fire board" means that board created in
13 section six of this article.

14 (5) "Fire service" means an organization that provides
15 fire prevention and fire protection to a community, the
16 members of such an organization or the fire fighting
17 profession as a whole.

18 (6) "Qualified voters" means registered voters who
19 reside in the affected fire service district and are users
20 or prospective users of the fire prevention and fire
21 protection services provided by the fire service under
22 the provisions of this article.

**§7-17-12. County fire service fees; petition; election;
dedication; and increase.**

1 Every county commission which provides fire
2 protection services has plenary power and authority to
3 provide by ordinance for the continuance or improve-
4 ment of such service, to make regulations with respect
5 thereto and to impose by ordinance, upon the users of
6 such services, reasonable fire service rates, fees and
7 charges to be collected in the manner specified in the
8 ordinance. However, before a county commission can
9 impose by ordinance, upon the users of such service, a
10 reasonable fire service fee, ten percent of the qualified
11 voters shall present a petition duly signed by them in
12 their own handwriting, and filed with the clerk of the
13 county commission directing that the county commission
14 impose such a fee. The county commission shall not have
15 a lien on any property as security for payments due
16 under the ordinance. Any ordinance enacted under the
17 provisions of this section shall be published as a Class
18 II legal advertisement in compliance with the provisions
19 of article three, chapter fifty-nine of this code, and the
20 publication area for such publication shall be the county
21 in which the county fire board is located. In the event

22 thirty percent of the qualified voters of the county by
23 petition duly signed by them in their own handwriting
24 and filed with the clerk of the county commission within
25 forty-five days after the expiration of such publication
26 protest against such ordinance as enacted or amended,
27 the ordinance may not become effective until it is
28 ratified by a majority of the legal votes cast thereon by
29 the qualified voters of such county at any primary,
30 general or special election as the county commission
31 directs. Voting thereon may not take place until after
32 notice of the submission has been given by publication
33 as above provided for the publication of the ordinance
34 after it is adopted. The powers and authority hereby
35 granted to county commissions are in addition to and
36 supplemental to the powers and authority otherwise
37 granted to them by other provisions of this code.

38 Any fees imposed under this article are dedicated to
39 the county fire board for the purposes provided in this
40 article.

41 In the event the county fire board determines an
42 increase in any such fee imposed by this section is
43 necessary, it shall by resolution request the county
44 commission for such an increase. Procedures set forth
45 in this section for the initial levy of such a fee shall be
46 followed by the county commission in the event an
47 increase is sought.

CHAPTER 31

(Com. Sub. for H. B. 4097—By Delegates Ryan and Hutchinson)

[Passed February 11, 1988; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one-j, article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to amending the terms of court for the tenth circuit court of Raleigh County.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. CIRCUIT COURTS; CIRCUIT JUDGES.

§51-2-1j. Tenth circuit.

- 1 For the county of Raleigh, on the second Monday in
- 2 January, May and September.

CHAPTER 32

(Com. Sub. for S. B. 11—By Senators Whitacre and Parker)

[Passed March 9, 1988; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to willfully and maliciously setting fire on lands; criminal penalties; civil liability.

Be it enacted by the Legislature of West Virginia:

That section six, 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.

§61-3-6. Willfully and maliciously setting fire on lands; criminal penalty; civil liability.

- 1 If any person unlawfully and maliciously sets fire to
- 2 any woods, fence, grass, straw or other thing capable of
- 3 spreading fire on lands, he or she shall be guilty of a
- 4 felony, and, upon conviction, shall be fined not less than
- 5 one hundred dollars nor more than five hundred dollars,
- 6 and be imprisoned for not less than one year nor more
- 7 than five years. He or she shall, moreover, be liable to
- 8 any person injured thereby, or in consequence thereof,
- 9 for double the amount of damages sustained by such
- 10 person.

CHAPTER 33

(Com. Sub. for S. B. 83—By Senator Kaufman)

[Passed March 9, 1988; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-four, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to defining the crime of theft of services; providing that fraudulently stopping payment on a check, draft or order for payment for services performed shall be included within the crime of theft of services and defining penalty therefor.

Be it enacted by the Legislature of West Virginia:

That section twenty-four, 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.

§61-3-24. Obtaining money, property and services by false pretenses; disposing of property to defraud creditors; penalties.

1 (a) If any person obtain from another by any false
2 pretense, token or representation, with intent to
3 defraud, money, goods or other property which may be
4 the subject of larceny, or if he obtain from another any
5 money, goods or other property, which may be the
6 subject of larceny, on credit, by representing that there
7 is money due him or to become due him, and shall assign
8 his claim for such money in writing to the person from
9 whom he shall obtain such money, goods or other
10 property, and shall afterwards collect the same without
11 the consent of such assignee, with intent to defraud, he
12 shall, in either case, be guilty of larceny and, if the value
13 of the money, goods or other property is two hundred
14 dollars or more, such person is guilty of a felony, and,
15 upon conviction thereof, shall be confined in a peniten-
16 tiary not less than one nor more than ten years, or, in
17 the discretion of the court, be confined in the county jail
18 not more than one year and be fined not more than five
19 hundred dollars. If the value of the money, goods or

20 other property is less than two hundred dollars, such
21 person is guilty of a misdemeanor, and, upon conviction
22 thereof, shall be confined in the county jail not more
23 than one year or fined not more than five hundred
24 dollars, or both, in the discretion of the court. If any
25 person obtain by any false pretense, token or represen-
26 tation, with intent to defraud, the signature of any other
27 person to a writing, the false making whereof would be
28 forgery, such person is guilty of a felony, and, upon
29 conviction thereof, shall be confined in the penitentiary
30 not less than one nor more than five years, or, in the
31 discretion of the court, be confined in the county jail not
32 more than one year and fined not more than five
33 hundred dollars. And any person who removes any of
34 his property out of any county with intent to prevent the
35 same from being levied upon by any execution, or who
36 secretes, assigns or conveys, or otherwise disposes of any
37 of his property with intent to defraud any creditor or
38 prevent such property being made liable for payment of
39 his debts, and any person who receives such property
40 with such intent, is guilty of a misdemeanor, and, upon
41 conviction thereof, shall be fined not less than twenty-
42 five nor more than one thousand dollars and be confined
43 in the county jail not more than one year. And when the
44 property so removed, secreted, concealed, assigned,
45 conveyed, received or otherwise disposed of, is worth
46 fifty dollars or less, such offense shall be tried by a
47 magistrate in the mode prescribed for the trial of other
48 criminal offenses by a magistrate: *Provided*, That upon
49 conviction for such offense before a magistrate the
50 person so convicted shall be fined not more than fifty
51 dollars and confined in the county jail not more than
52 thirty days. But nothing in this section contained shall
53 prevent any creditor from proceeding against any such
54 fraudulent debtor as provided in article five, chapter
55 thirty-eight, and in article seven, chapter fifty-three of
56 this code, or of any other remedy in equity or at law now
57 existing.

58 (b) If any person, firm or corporation obtain labor,
59 services or any other such thing of value from another
60 by any false pretense, token or representation, with
61 intent to defraud, that person, firm or corporation is

62 guilty of theft of services and if the value of the labor,
63 services or any other such thing of value is two hundred
64 dollars or more, is guilty of a felony, and, upon
65 conviction thereof, shall be confined in a penitentiary
66 not less than one nor more than ten years, or, in the
67 discretion of the court, be confined in the county jail not
68 more than one year and be fined not more than five
69 hundred dollars. If the value of the labor, services or any
70 other such thing of value is less than two hundred
71 dollars, that person, firm or corporation is guilty of a
72 misdemeanor, and, upon conviction thereof, shall be
73 confined in the county jail not more than one year or
74 fined not more than five hundred dollars, or both, in the
75 discretion of the court.

76 (c) Theft of services includes the obtaining of a stop
77 payment order on a check, draft or order for payment
78 of money owed for services performed in good faith and
79 in substantial compliance with a written or oral contract
80 for services with the fraudulent intent to permanently
81 deprive the provider of such labor, services or other such
82 thing of value of the payment represented by such
83 check, draft or order. Notwithstanding the penalties set
84 forth elsewhere in this section, any person, firm or
85 corporation violating the provisions of this subsection is
86 guilty of a misdemeanor, and, upon conviction thereof,
87 shall be fined not more than two times the face value
88 of the check, draft or order.

89 (d) Imposition of any penalty under this section does
90 not bar or otherwise affect adversely any right or
91 liability to damages, forfeiture or other civil remedy
92 arising from any or all elements of the criminal offense.

CHAPTER 34

(Com. Sub. for H. B. 2646—By Delegates M. Harman and Shiffet)

[Passed March 12, 1988; in effect ninety days from passage. Approved by the Governor.]

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

thousand nine hundred thirty-one, as amended, relating to crimes against property generally; defining the misdemeanor offense of breaking, cutting, taking or carrying away, or in any manner damaging any of the shrubbery or flowers, including everything under the title of flora, whether wild or cultivated, growing within one hundred yards on either side of any public road in this state, without the permission in writing of the owner or tenant of the land upon which the shrubbery or flowers, including everything under the title of flora, are growing, and prescribing a penalty therefor; defining the misdemeanor offense of entering upon the lands or premises of another without written permission of the owner of the lands or premises, in order to break, cut, take or carry away or in any manner to damage or cause to be broken, cut, taken or carried away or in any manner damaged, any trees or timber on the land, and prescribing the penalty therefor; defining the misdemeanor offense of willfully or knowingly possessing, or hauling along any public road in this state, any trees, shrubbery or flowers, including everything under the title of flora, which are protected by law, unless the person so having in his possession or hauling the trees, shrubbery or flowers, and any other plant, has permission in writing so to do from the owner or tenant of the land from which they have been taken, and prescribing the penalty therefor; requiring persons, at the request of a law-enforcement officer, to display the written permission to such officer; providing for certain exceptions as to the persons required to obtain permission in writing or to display the written permission; providing for notice to landowners by an employee, agent or contractor of a public utility if the written permission is pursuant to a contract with said owner or his predecessor in title or by other operation of law; and providing that magistrates shall have concurrent jurisdiction with circuit courts for offenses defined herein.

Be it enacted by the Legislature of West Virginia:

That section forty-eight, 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. Offenses involving damage to shrubbery, flowers, trees and timber; limitation of section; penalties.

1 (a) It is unlawful to break, cut, take or carry away,
2 or in any manner to damage any of the shrubbery or
3 flowers, including everything under the title of flora,
4 whether wild or cultivated, growing within one hundred
5 yards on either side of any public road in this state,
6 without the permission in writing of the owner or tenant
7 of the land upon which the shrubbery or flowers,
8 including everything under the title of flora, are
9 growing.

10 (b) It is unlawful for any person to enter upon the
11 lands or premises of another without written permission
12 of the owner of the lands or premises, in order to break,
13 cut, take or carry away or in any manner to damage or
14 cause to be broken, cut, taken or carried away or in any
15 manner damaged, any trees or timber on the land.

16 (c) It is unlawful for any person willfully or know-
17 ingly to have in his possession, or to haul along any
18 public road in this state, any trees, shrubbery or flowers,
19 including everything under the title of flora, which are
20 protected by this section, unless the person so having in
21 his possession or hauling the trees, shrubbery or flowers,
22 and any other plant, has permission in writing so to do
23 from the owner or tenant of the land from which they
24 have been taken.

25 (d) At the request of a law-enforcement officer, a
26 person engaged in any act which would constitute an
27 offense under the provisions of subsection (a), (b) or (c)
28 of this section if such act were done without the required
29 permission specified therein, shall display the written
30 permission to such officer.

31 (e) Notwithstanding the provisions of this section or
32 section forty-eight-a of this article:

33 (1) An employee of the department of highways or of

34 a county or municipality performing roadside mainte-
35 nance shall obtain the permission of an owner before
36 engaging in any act specified in subsection (a), (b) or (c)
37 of this section but is not required to obtain the
38 permission in writing or to display the written permis-
39 sion as provided in subsection (d) of this section; and

40 (2) If an employee, agent or contractor of a public
41 utility as defined in section two, article one, chapter
42 twenty-four of this code, has obtained the written
43 permission of an owner pursuant to a contract with said
44 owner or his predecessor in title or by other operation
45 of law, the employee, agent or contractor of said public
46 utility shall, prior to engaging in any act specified in
47 subsection (a), (b) or (c) of this section, provide reason-
48 able notice to the owner under rules and regulations
49 which the public service commission shall promulgate:
50 *Provided*, That such rules and regulations shall not
51 require prior notice in a case of sudden emergency
52 endangering persons or property of either the land-
53 owner, the occupant of the land, the public utility or the
54 general public: *Provided, however*, That such rules and
55 regulations shall require reasonable notice to the
56 landowner that such acts have been performed without
57 prior notice by reason of such emergency.

58 (f) Any person who violates the provisions of subsec-
59 tion (a) or (c) of this section shall be guilty of a
60 misdemeanor, and, upon conviction thereof, for the first
61 offense shall be fined not more than fifty dollars, and
62 for subsequent offenses shall be confined in the county
63 jail for not more than three months, or fined not more
64 than fifty dollars, or both, for each offense.

65 (g) Any person who violates the provisions of subsec-
66 tion (b) of this section shall be guilty of a misdemeanor,
67 and, upon conviction thereof, for the first offense shall
68 be fined not less than fifty dollars, and for subsequent
69 offenses shall be confined in the county jail for not less
70 than three months, or fined not less than fifty dollars,
71 or both, for each offense.

72 (h) Magistrates shall have concurrent jurisdiction
73 with circuit courts for offenses under this section.

CHAPTER 35

(Com. Sub. for H. B. 2331—By Delegates Yanni and Kelly)

[Passed February 11, 1988; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article five, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to crimes committed in aid of escape, conveyance or transportation of prohibited matter, or by the purchase or acceptance of gifts or trades for prison-made goods; creating felony offenses for the transporting of prohibited matter onto the grounds of any jail, prison, juvenile facility or juvenile detention center or conveying prohibited matter to an inmate or prisoner in any jail or prison or to a resident of any juvenile facility or juvenile detention center; and providing for penalties for violations thereof.

Be it enacted by the Legislature of West Virginia:

That section eight, article five, 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 5. CRIMES AGAINST PUBLIC JUSTICE.

§61-5-8. Aiding escape and other offenses relating to adults and juveniles in custody, imprisoned or in detention; penalties.

1 (a) Where any adult or juvenile is lawfully detained
 2 in custody or as an inmate or prisoner in any jail or
 3 prison or as a resident of any juvenile facility or juvenile
 4 detention center, if any other person shall convey
 5 anything into the jail, prison, facility or juvenile
 6 detention center or other place of custody of such adult
 7 or juvenile with the intent to aid or facilitate such
 8 adult's or juvenile's escape or attempted escape there-
 9 from, or if such other person shall forcibly rescue or
 10 attempt to rescue such adult or juvenile therefrom, such
 11 other person is guilty of a felony, and, upon conviction
 12 thereof, shall be confined in the penitentiary not less
 13 than one nor more than five years.

14 (b) Where any adult or juvenile is lawfully detained

15 in custody or as an inmate or prisoner in any jail or
16 prison or as a resident of any juvenile facility or juvenile
17 detention center, if any other person shall convey any
18 money or other thing of value, any written or printed
19 matter, any article of merchandise, food or clothing, any
20 medicine, utensil or instrument of any kind to such adult
21 or juvenile without the express authority and permission
22 of the jailer, warden, or other supervising officer and
23 with knowledge that such adult or juvenile is so lawfully
24 detained, such other person is guilty of a misdemeanor,
25 and, upon conviction thereof, shall be fined not less than
26 fifty dollars nor more than five hundred dollars and
27 imprisoned in the county jail not less than three nor
28 more than twelve months: *Provided*, That nothing herein
29 shall preclude an attorney or any of his or her employees
30 from supplying to such detainee any written or printed
31 material which pertains to that attorney's representa-
32 tion of said detainee.

33 (c) If any person transports any alcoholic liquor,
34 nonintoxicating beer, poison, explosive, firearm or other
35 dangerous or deadly weapon or any controlled substance
36 as defined by chapter sixty-a of this code onto the
37 grounds of any jail or prison, or juvenile facility or
38 detention center within this state and is unauthorized by
39 law to do so, or is unauthorized by the administration
40 of said jail or prison, or juvenile facility or detention
41 center, such person is guilty of a felony, and, upon
42 conviction thereof, shall be fined not less than one
43 thousand nor more than five thousand dollars or
44 imprisoned in the penitentiary not less than one year nor
45 more than five years, or, in the discretion of the court,
46 be confined in the county jail not more than one year
47 and shall be fined not more than five hundred dollars.

48 (d) If any person conveys any alcoholic liquor,
49 nonintoxicating beer, poison, explosive, firearm or other
50 dangerous or deadly weapon, or any controlled sub-
51 stance as defined by chapter sixty-a of this code to an
52 inmate or prisoner in any jail or prison or to any
53 resident of any juvenile facility or juvenile detention
54 center within this state and is unauthorized by law to
55 do so, or is unauthorized by the administration of said
56 jail or prison, or juvenile facility or detention center,

57 such person is guilty of a felony, and, upon conviction
58 thereof, shall be fined not less than one thousand nor
59 more than five thousand dollars or imprisoned in the
60 penitentiary not less than one year nor more than five
61 years.

62 (e) Whoever purchases, accepts as a gift, or secures by
63 barter, trade or in any other manner, any article or
64 articles manufactured at or belonging to any jail, prison,
65 juvenile facility or juvenile detention center from any
66 inmate, prisoner or resident detained therein is guilty
67 of a misdemeanor, and, upon conviction thereof, shall be
68 fined not less than fifty dollars nor more than five
69 hundred dollars and imprisoned in the county jail not
70 less than three nor more than twelve months: *Provided,*
71 That this subsection (e) shall not apply to articles
72 specially manufactured in such jail, prison, juvenile
73 facility or juvenile detention center under the authori-
74 zation of the administration of such jail, prison, juvenile
75 facility or juvenile detention center for sale inside or
76 outside of such jail, prison, juvenile facility or juvenile
77 detention center.

78 (f) Whoever persuades, induces or entices or attempts
79 to persuade, induce or entice, any person who is an
80 inmate or prisoner in any jail or prison or resident of
81 any juvenile facility or juvenile detention center to
82 escape therefrom or to engage or aid in any insubordi-
83 nation to the authority of such jail, prison, juvenile
84 facility or juvenile detention center is guilty of a
85 misdemeanor, and, upon conviction thereof, shall be
86 fined not less than fifty dollars nor more than five
87 hundred dollars and imprisoned in the county jail not
88 less than three nor more than twelve months.

CHAPTER 36

(S. B. 438—By Senator Whitlow)

[Passed February 22, 1988; in effect ninety days from passage. Approved by the Governor.]

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

thousand nine hundred thirty-one, as amended, relating to the crime of disorderly conduct; designating certain private places where such conduct may constitute a crime; setting forth penalty; and providing definitions.

Be it enacted by the Legislature of West Virginia:

That section one-b, article six, 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 6. CRIMES AGAINST THE PEACE.

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

1 (a) Any person who, in a public place, a mobile home
 2 park, a public parking area, a common area of an
 3 apartment building or dormitory, or a common area of
 4 a privately owned commercial shopping center, mall or
 5 other group of commercial retail establishments,
 6 disturbs the peace of others by violent, profane, indecent
 7 or boisterous conduct or language or by the making of
 8 unreasonably loud noise that is intended to cause
 9 annoyance or alarm to another person, and who persists
 10 in such conduct after being requested to desist by a law-
 11 enforcement officer acting in his lawful capacity, is
 12 guilty of disorderly conduct, a misdemeanor, and, upon
 13 conviction thereof, shall be fined not more than one
 14 hundred dollars.

15 (b) For purposes of this section:

16 (1) "Mobile home park" means a privately-owned
 17 residential housing area or subdivision wherein the
 18 dwelling units are comprised mainly of mobile homes
 19 and wherein the occupants of such dwelling units share
 20 common elements for purposes of ingress and egress,
 21 parking, recreation and other like residential purposes.

22 (2) "Mobile home" means a moveable or portable unit,
 23 designed and constructed to be towed on its own chassis
 24 (comprised of frame and wheels), and designed to be
 25 connected to utilities for year-round occupancy. The
 26 term includes: (A) Units containing parts that may be
 27 folded, collapsed or telescoped when being towed and
 28 that may be expanded to provide additional cubic

29 capacity, and (B) units composed of two or more
30 separately towable components designed to be joined
31 into one integral unit capable of being separated again
32 into the components for repeated towing.

33 (3) "Public parking area" means an area, whether
34 publicly or privately owned or maintained, open to the
35 use of the public for parking motor vehicles.

CHAPTER 37

(Com. Sub. for H. B. 2184—By Delegates Summers and Stemple)

[Passed February 26, 1988; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seventeen, article six, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to crimes against the peace generally; defining the misdemeanor offense of imparting or conveying or causing to be imparted or conveyed any false information concerning the presence of any bomb or other explosive device in, at, on, near, under or against any dwelling house, structure, improvement, building, bridge, motor vehicle, vessel, boat, railroad car, airplane or other place, or concerning an attempt or alleged attempt being made or to be made to so place or explode any such bomb or other explosive device, and establishing penalties therefor; providing that a second or subsequent offense of imparting or conveying or causing to be imparted or conveyed any such false information shall be a felony, and establishing penalties therefor.

Be it enacted by the Legislature of West Virginia:

That section seventeen, article six, 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 6. CRIMES AGAINST THE PEACE.

§61-6-17. False reports concerning bombs or other explosive devices; penalties.

1 (a) Any person who shall impart or convey or cause
2 to be imparted or conveyed any false information,
3 knowing or having reasonable cause to believe such
4 information to be false, concerning the presence of any
5 bomb or other explosive device in, at, on, near, under
6 or against any dwelling house, structure, improvement,
7 building, bridge, motor vehicle, vessel, boat, railroad
8 car, airplane or other place, or concerning an attempt
9 or alleged attempt being made or to be made to so place
10 or explode any such bomb or other explosive device,
11 shall be guilty of a misdemeanor, and, upon conviction
12 thereof, shall be punished by a fine of not less than one
13 hundred dollars nor more than one thousand dollars, or
14 by confinement in the county jail for not more than one
15 year, or both.

16 (b) Any person violating any provision of subsection
17 (a) of this section shall, for the second or any subsequent
18 offense under this section, be guilty of a felony, and,
19 upon conviction thereof, shall be punished by a fine of
20 not less than one hundred dollars nor more than one
21 thousand dollars, or by imprisonment in the state
22 penitentiary for not less than one year nor more than
23 five years, or both, or, in the discretion of the court, shall
24 be punished by a fine of not less than one hundred
25 dollars nor more than one thousand dollars and by
26 confinement in the county jail for not more than one
27 year.

CHAPTER 38

(Com. Sub. for H. B. 4798—By Delegate Moore)

[Passed March 12, 1988; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article six, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-two, relating to crimes against the peace; wearing masks, hoods or face coverings; exceptions; and providing criminal penalty.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. CRIMES AGAINST THE PEACE.

§61-6-22. Wearing masks, hoods or face coverings.

1 (a) Except as otherwise provided in this section, no
2 person, whether in a motor vehicle or otherwise, while
3 wearing any mask, hood or device whereby any portion
4 of the face is so covered as to conceal the identity of the
5 wearer, may:

6 (1) Come into or appear upon any walk, alley, street,
7 road, highway or other thoroughfare dedicated to public
8 use;

9 (2) Come into or appear in any trading area, con-
10 course, waiting room, lobby or foyer open to, used by or
11 frequented by the general public;

12 (3) Come into or appear upon or within any of the
13 grounds or buildings owned, leased, maintained or
14 operated by the state or any political subdivision thereof;

15 (4) Ask, request, or demand entrance or admission to
16 the premises, enclosure, dwelling or place of business of
17 any other person within this state; or

18 (5) Attend or participate in any meeting upon private
19 property of another unless written permission for such
20 meeting has first been obtained from the owner or
21 occupant thereof.

22 (b) The provisions of this section do not apply to any
23 person:

24 (1) Under sixteen years of age;

25 (2) Wearing a traditional holiday costume;

26 (3) Engaged in a trade or employment where a mask,
27 hood or device is worn for the purpose of ensuring the
28 physical safety of the wearer;

- 29 (4) Using a mask, hood or device in theatrical
 30 productions, including use in mardi gras celebrations or
 31 similar masquerade balls;
- 32 (5) Wearing a mask, hood or device prescribed for
 33 civil defense drills, exercises or emergencies; or
- 34 (6) Wearing a mask, hood or device for the sole
 35 purpose of protection from the elements or while
 36 participating in a winter sport.
- 37 (c) Any person who violates any provision of this
 38 section is guilty of a misdemeanor, and, upon conviction
 39 thereof, shall be fined not more than five hundred
 40 dollars or imprisoned in the county jail not more than
 41 one year, or both fined and imprisoned.

CHAPTER 39

(Com. Sub. for S. B. 536—By Senators Sharpe and Tucker)

[Passed March 8, 1988; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article seven, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to renewal applicants not being required to undergo firearms safety courses with court waiver; that the initial license period be extended to five years; and extending the license for a successive five-year period to renewal applicants meeting basic qualifications and having a renewal bond in place.

Be it enacted by the Legislature of West Virginia:

That section two, article seven, 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 7. DANGEROUS WEAPONS.

§61-7-2. License to carry weapons; how obtained.

- 1 (a) Any person desiring to obtain a state license to
 2 carry any such weapon as is mentioned in the first

3 section of this article, within one or more counties in this
4 state, shall first publish a notice setting forth his name,
5 residence and occupation, and that on a certain day he
6 will apply to the circuit court of his county for such state
7 license. Such notice shall be published as a Class I legal
8 advertisement in compliance with the provisions of
9 article three, chapter fifty-nine of this code, and the
10 publication area for such publication shall be the county
11 in which such person resides. Such notice shall be
12 published at least ten days before such application is
13 made. After the publication of such notice and at the
14 time stated in such notice, upon application to such
15 court, it may grant such license to such person, in the
16 following manner, to wit:

17 (b) The applicant shall file with such court his
18 application in writing, duly verified, which application
19 shall show, as basic qualifications, as follows:

20 (1) That such applicant is a citizen of the United
21 States of America;

22 (2) That the applicant has been a bona fide resident
23 of this state for at least one year next prior to the date
24 of such application, and of the county sixty days next
25 prior thereto;

26 (3) That the applicant is over eighteen years of age;
27 that he is a person of good moral character, of temperate
28 habits, not addicted to intoxication, not addicted to the
29 use of any controlled substance, and has not been
30 convicted of a felony or of any offense involving the use
31 on his part of such weapon in an unlawful manner, and
32 shall prove to the satisfaction of the court that he is
33 gainfully employed in a lawful occupation and has been
34 so engaged for a period of five years next preceding the
35 date of his application;

36 (4) The purpose or purposes for which the applicant
37 desires to carry such weapon, the necessity therefor, and
38 the county or counties in which such license is desired
39 to be effective; and

40 (5) That the applicant has qualified under minimum
41 requirements for handling and firing such firearms.

42 These minimum requirements are those promulgated by
43 the department of natural resources and attained under
44 the auspices of the department of natural resources:
45 *Provided*, That the court may waive this requirement in
46 the case of a renewal applicant who has previously
47 qualified.

48 (c) Upon the hearing of such application the court
49 shall hear evidence upon all matters stated in such
50 application and upon any other matter deemed pertinent
51 by the court, and if such court be satisfied from the
52 proof that there is good reason and cause for such person
53 to carry such weapon, and all of the other conditions of
54 this article be complied with, the court, or the judge
55 thereof in vacation, may grant such license for such
56 purposes, and no other, as such court, or the judge in
57 vacation, may set out in the license (and the word
58 "court" as used in this article shall include the circuit
59 judge thereof, acting either in term or vacation); but,
60 before such license shall be effective such person shall
61 pay to the sheriff, and the court shall so certify in its
62 order granting the license, the sum of fifty dollars, and
63 shall also file a bond with the clerk of such court, in the
64 penalty of five thousand dollars, with good security,
65 signed by a responsible person or persons, or by some
66 surety company, authorized to do business in this state,
67 conditioned that such applicant will not carry such
68 weapon except in accordance with his application and
69 as authorized by the court, and that he will pay all costs
70 and damages accruing to any person by the accidental
71 discharge or improper, negligent or illegal use of such
72 weapon or weapons.

73 (d) Any such initial license granted shall be good for
74 five years, unless sooner revoked, as hereinafter
75 provided, and be coextensive with the county in which
76 granted, and such other county or counties as the court
77 shall designate in the order granting such license:

78 (1) Except that regularly appointed deputy sheriffs
79 having license shall be permitted to carry such revolver
80 or other weapons at any place, within the state, while
81 in the performance of their duties as such deputy
sheriffs;

83 (2) Except that any such license granted to regularly
84 appointed railway police shall be coextensive with the
85 state; and

86 (3) Except that any such license shall be extended for
87 a successive five-year period upon a showing to the court
88 that the renewal applicant meets the basic qualifications
89 set forth in this section and has a renewal bond in place.

90 (e) All license fees collected hereunder shall be paid
91 by the sheriff and accounted for to the auditor as other
92 license taxes are collected and paid, and the state tax
93 commissioner shall prepare all suitable forms for
94 licenses, bonds and certificates showing that such
95 license has been granted and shall do anything else in
96 the premises to protect the state and see to the
97 enforcement of this section.

98 (f) The clerk of the circuit court shall, immediately
99 after license is granted as aforesaid, furnish the
100 superintendent of the department of public safety a
101 certified copy of the order of the court granting such
102 license, for which service the clerk shall be paid a fee
103 of two dollars which shall be taxed as costs in the
104 proceeding. It shall be the duty of the clerk of each
105 circuit court to furnish to the superintendent of the
106 department of public safety, at any time so required, a
107 certified list of all such licenses issued in his county.

CHAPTER 40

(Com. Sub. for H. B. 2888—By Delegate Pitrolo)

[Passed March 12, 1988; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nineteen, article eight, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to making the administration of drugs to horses, mules, donkeys or ponies for the purpose of altering performance a misdemeanor; and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

That section nineteen, article eight, 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 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

§61-8-19. Cruelty to animals; pitting animals against each other in fight; penalties.

1 (a) If any person shall cruelly, unnecessarily or
2 needlessly beat, torture, torment, mutilate, kill, or
3 overload, overdrive, or wilfully deprive of necessary
4 sustenance, any horse or other domestic animal, whether
5 such horse or other animal be his own or that of another
6 person, or shall impound or confine any such animal in
7 any place and fail to supply the same with a sufficient
8 quantity of good, wholesome food and water, or shall
9 carry in or upon any vehicle, or otherwise, any such
10 animal in a cruel or inhuman manner, or knowingly
11 feed a cow on food that produces impure or unwhole-
12 some milk, or shall abandon to die any maimed, sick,
13 infirm or diseased animal, or shall be engaged in or
14 employed at cockfighting, dogfighting, bearbaiting,
15 pitting one animal to fight against another of the same
16 or different kind, or any similar cruelty to animals, or
17 shall receive money for the admission of any person, or
18 shall knowingly purchase an admission, to any place
19 kept for such purpose, or shall use, train or possess a
20 dog or other animal for the purpose of seizing, detain-
21 ing, or mistreating any other domestic animal, he shall
22 be guilty of a misdemeanor, and, upon conviction, shall
23 be fined not less than five nor more than one hundred
24 dollars, and in the discretion of the court or magistrate,
25 may be imprisoned in the county jail not exceeding six
26 months.

27 (b) Any person who knowingly and willfully admin-
28 isters or causes to be administered to any horse, mule,
29 donkey or pony participating in any pulling contest any
30 controlled substances or any other drug for the purpose
31 of altering or otherwise affecting said animals' perfor-
32 mance shall be guilty of a misdemeanor, and, upon conviction

33 thereof, shall be fined not less than one hundred dollars
34 nor more than one thousand dollars.

35 For the purpose of this section the term "controlled
36 substance" shall have the same meaning ascribed to it
37 by subsection (d), section one hundred one, article one,
38 chapter sixty-a of this code.

CHAPTER 41

(H. B. 4133—By Delegates Given and Humphreys)

[Passed March 11, 1988; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article eight, 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 nineteen-a, relating to acts of cruelty to dogs and cats; prohibiting certain acts with respect thereto, including, but not limited to, prohibiting the pitting of such animals against each other in fights; and prescribing penalties for violations.

Be it enacted by the Legislature of West Virginia:

That article eight, 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 nineteen-a, to read as follows:

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY, AND DECENCY.

§61-8-19a. Cruelty to dogs and cats prohibited; pitting such animals in fights against each other prohibited; penalties.

1 If any person shall cruelly, or needlessly beat, torture,
2 torment, mutilate, kill or willfully deprive necessary
3 sustenance, to any dog or cat, irrespective of whether
4 any such dog or cat be his or her own or that of another
5 person, or if any such person shall impound or confine
6 any such dog or cat in any place unprotected from the
7 elements or fail to supply the same with a sufficient

8 quantity of food and water, or shall abandon to die any
9 maimed, sick, or diseased dog or cat or shall be engaged
10 in or employed at dogfighting, or pitting one dog or cat
11 to fight against another dog or cat or any similar cruelty
12 to any dog or cat, or shall receive money for the
13 admission of any person, or shall knowingly purchase an
14 admission, to any place kept for such purpose, or shall
15 use, train or possess a dog or cat for the purpose of
16 seizing, detaining or mistreating any other dog or cat,
17 he or she shall be guilty of a misdemeanor, and, upon
18 conviction, shall be fined not less than one hundred nor
19 more than one thousand dollars, and in addition thereto,
20 in the discretion of the court or magistrate, may be
21 imprisoned in the county jail not exceeding thirty days,
22 and the county humane officer may remove the dog or
23 cat involved and place said animal in the county pound.

CHAPTER 42

(Com. Sub. for S. B. 255—By Senators Chafin, Burdette, Karras, Warner, Boley,
Manchin, Brackenrich, Jackson and Felton)

[Passed March 12, 1988; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section twenty-four, article eight, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend article eight of said chapter by adding thereto a new section, designated section nine-a; to amend and reenact section three, article eight-c of said chapter; and to further amend said chapter by adding thereto a new article, designated article eight-d, relating to offenses against children generally; requiring the development of a curriculum in secondary schools relating to parenting skills; defining certain terms; providing that when any parent, guardian or custodian shall maliciously and intentionally cause the death of a child under his or her care, custody or control by his or her failure or refusal to supply such child with necessary food, clothing, shelter or medical care such parent, guardian or custodian shall be guilty of murder in the first degree;

providing that when any parent, guardian or custodian shall cause the death under his or her care, custody or control by knowingly allowing any other person to maliciously and intentionally fail or refuse to supply such child with necessary food, clothing, shelter or medical care, such other person and such parent, guardian or custodian shall each be guilty of murder in the first degree; providing that the penalty for such offenses defined as first degree murder shall be that which is prescribed for murder in the first degree under the provisions of section two, article two, chapter sixty-one of said code; defining felony offenses of child abuse resulting in injury and establishing the penalties therefor; defining felony offenses of child neglect resulting in injury and establishing the penalties therefor; providing an exception for person when necessary medical care conflicts with the tenets and practices of a recognized religious denomination or order; defining the felony offense of sexual abuse by a parent, guardian or custodian and establishing the penalties therefor; defining the misdemeanor offense of sexual abuse and establishing the penalty therefor; defining the misdemeanor offense of displaying sexual organs to a child and establishing the penalty therefor; defining the felony offense of sending, distributing, exhibiting, possessing, displaying or transporting material by a parent, guardian or custodian, depicting a child engaged in sexually explicit conduct and establishing the penalty therefor; defining the misdemeanor offense of presenting false information concerning offenses against children to attending medical personnel and providing the penalty therefor; and providing that husband and wife are competent witnesses in any proceeding involving offenses against children.

Be it enacted by the Legislature of West Virginia:

That section twenty-four, article eight, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that article eight of said chapter be amended by adding thereto a new section, designated section nine-a; that section three, article eight-c of said chapter

be amended and reenacted; and that said chapter be further amended by adding thereto a new article, designated article eight-d, all to read as follows:

Article

- 8. Crimes Against Chastity, Morality and Decency.
- 8C. Filming of Sexually Explicit Conduct of Minors.
- 8D. Child Abuse.

**ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY
AND DECENCY.**

§61-8-9a. Child abuse; education; curriculum.

1 The Legislature finds the best way to avoid child
2 abuse in West Virginia is to educate our young people
3 on the skills of parenting; therefore, the Legislature
4 directs the commissioner of the department of health,
5 the state superintendent of schools and the commissioner
6 of the department of human services to develop a
7 curriculum to be taught in each of the secondary grades;
8 such curriculum shall include, but not be limited to,
9 discipline, handling stresses of raising children, and the
10 health care needs of children. Such curriculum shall
11 start no later than the 1990-1991 school year.

**ARTICLE 8C. FILMING OF SEXUALLY EXPLICIT CONDUCT OF
MINORS.**

**§61-8C-3. Distribution and exhibiting of material
depicting minors engaged in sexually ex-
plicit conduct prohibited; penalty.**

1 Any person who, with knowledge, sends or causes to
2 be sent, or distributes, exhibits, possesses or displays or
3 transports any material visually portraying a minor
4 engaged in any sexually explicit conduct is guilty of a
5 felony, and, upon conviction thereof, shall be imprisoned
6 in the penitentiary not more than two years, and fined
7 not more than two thousand dollars.

ARTICLE 8D. CHILD ABUSE.

§61-8D-1. Definitions.

§61-8D-2. Murder of a child by a parent, guardian or custodian or other person by refusal or failure to supply necessities, or by delivery, administration or ingestion of a controlled substance; penalties.

§61-8D-3. Child abuse resulting in injury; penalties.

§61-8D-4. Child neglect resulting in injuries; penalties.

- §61-8D-5. Sexual abuse by a parent, guardian or custodian; parent, guardian or custodian allowing sexual abuse to be inflicted upon a child; displaying of sex organs by a parent, guardian or custodian; penalties.
- §61-8D-6. Sending, distributing, exhibiting, possessing, displaying or transporting material by a parent, guardian or custodian, depicting a child engaged in sexually explicit conduct; penalty.
- §61-8D-7. Presentation of false information regarding child's injuries; penalty.
- §61-8D-8. Testimony of husband and wife.

§61-8D-1. Definitions.

- 1 In this article, unless a different meaning plainly is
2 required:
- 3 (1) "Abuse" means the infliction upon a minor of
4 physical injury by other than accidental means.
- 5 (2) "Child" means any person under eighteen years of
6 age not otherwise emancipated by law.
- 7 (3) "Controlled substance" means controlled substance
8 as that term is defined in subsection (d), section one
9 hundred one, article one, chapter sixty-a of this code.
- 10 (4) "Custodian" means a person over the age of
11 fourteen years who has or shares actual physical
12 possession or care and custody of a child on a full-time
13 or temporary basis, regardless of whether such person
14 has been granted custody of the child by any contract,
15 agreement or legal proceeding. "Custodian" shall also
16 include, but not be limited to, the spouse of a parent,
17 guardian or custodian, or a person cohabiting with a
18 parent, guardian or custodian in the relationship of
19 husband and wife, where such spouse or other person
20 shares actual physical possession or care and custody of
21 a child with the parent, guardian or custodian.
- 22 (5) "Guardian" means a person who has care and
23 custody of a child as the result of any contract,
24 agreement or legal proceeding.
- 25 (6) "Neglect" means the unreasonable failure by a
26 parent, guardian, or any person voluntarily accepting a
27 supervisory role towards a minor child to exercise a
28 minimum degree of care to assure said minor child's
29 physical safety or health.
- 30 (7) "Parent" means the biological father or mother of
31 a child, or the adoptive mother or father of a child.

32 (8) "Sexual contact" means sexual contact as that
33 term is defined in section one, article eight-b, chapter
34 sixty-one of this code.

35 (9) "Sexual exploitation" means an act whereby:

36 (A) A parent, custodian or guardian, whether for
37 financial gain or not, persuades, induces, entices or
38 coerces a child to engage in sexually explicit conduct as
39 that term is defined in section one, article eight-c,
40 chapter sixty-one of this code; or

41 (B) A parent, guardian or custodian persuades,
42 induces, entices or coerces a child to display his or her
43 sex organs for the sexual gratification of the parent,
44 guardian, custodian or a third person, or to display his
45 or her sex organs under circumstances in which the
46 parent, guardian or custodian knows such display is
47 likely to be observed by others who would be affronted
48 or alarmed.

49 (10) "Sexual intercourse" means sexual intercourse as
50 that term is defined in section one, article eight-b,
51 chapter sixty-one of this code.

52 (11) "Sexual intrusion" means sexual intrusion as that
53 term is defined in section one, article eight-b, chapter
54 sixty-one of this code.

**§61-8D-2. Murder of a child by a parent, guardian or
custodian or other person by refusal or
failure to supply necessities, or by delivery,
administration or ingestion of a controlled
substance; penalties.**

1 (a) If any parent, guardian or custodian shall mali-
2 ciously and intentionally cause the death of a child
3 under his or her care, custody or control by his or her
4 failure or refusal to supply such child with necessary
5 food, clothing, shelter or medical care, then such parent,
6 guardian or custodian shall be guilty of murder in the
7 first degree.

8 (b) If any parent, guardian or custodian shall cause
9 the death of a child under his or her care, custody or
10 control by knowingly allowing any other person to

11 maliciously and intentionally fail or refuse to supply
12 such child with necessary food, clothing, shelter or
13 medical care, then such other person and such parent,
14 guardian or custodian shall each be guilty of murder in
15 the first degree.

16 (c) The penalty for offenses defined by this section
17 shall be that which is prescribed for murder in the first
18 degree under the provisions of section two, article two
19 of this chapter.

20 (d) The provisions of this section shall not apply to any
21 parent, guardian or custodian who fails or refuses, or
22 allows another person to fail or refuse, to supply a child
23 under the care, custody or control of such parent,
24 guardian or custodian with necessary medical care,
25 when such medical care conflicts with the tenets and
26 practices of a recognized religious denomination or
27 order of which such parent, guardian or custodian is an
28 adherent or member.

§61-8D-3. Child abuse resulting in injury; penalties.

1 (a) If any parent, guardian or custodian shall abuse
2 a child and by such abuse cause such child bodily injury
3 as such term is defined in section one, article eight-b of
4 this chapter, then such parent, guardian or custodian
5 shall be guilty of a felony, and, upon conviction thereof,
6 shall be fined not more than one thousand dollars or
7 imprisoned in the penitentiary not less than one nor
8 more than five years, or in the discretion of the court,
9 be confined in the county jail for not more than one year,
10 or both such fine and imprisonment or confinement.

11 (b) If any parent, guardian or custodian shall abuse
12 a child and by such abuse cause said child serious bodily
13 injury as such term is defined in section one, article
14 eight-b of this chapter, then such parent, guardian or
15 custodian shall be guilty of a felony, and, upon conviction
16 thereof, shall be fined not less than one thousand
17 nor more than five thousand dollars and imprisoned in
18 the penitentiary not less than two nor more than ten
19 years, or both such fine and imprisonment.

§61-8D-4. Child neglect resulting in injuries; penalties.

1 (a) If any parent, guardian or custodian shall neglect
2 a child and by such neglect cause said child bodily
3 injury, as such term is defined in section one, article
4 eight-b of this chapter, then such parent, guardian or
5 custodian shall be guilty of a felony, and, upon convic-
6 tion thereof, shall be fined not more than one thousand
7 dollars or imprisoned in the penitentiary not less than
8 one nor more than three years, or in the discretion of
9 the court, be confined in the county jail for not more
10 than one year, or both such fine and confinement or
11 imprisonment.

12 (b) If any parent, guardian or custodian shall neglect
13 a child and by such neglect cause said child serious
14 bodily injury, as such term is defined in section one,
15 article eight-b of this chapter, then such parent,
16 guardian or custodian shall be guilty of a felony, and,
17 upon conviction thereof, shall be fined not more than
18 three thousand dollars and imprisoned in the peniten-
19 tiary not less than one nor more than ten years, or both
20 such fine and imprisonment.

21 (c) The provisions of this section shall not apply if the
22 neglect by the parent, guardian or custodian is due
23 primarily to a lack of financial means on the part of
24 such parent, guardian or custodian.

25 (d) The provisions of this section shall not apply to any
26 parent, guardian or custodian who fails or refuses, or
27 allows another person to fail or refuse, to supply a child
28 under the care, custody or control of such parent,
29 guardian or custodian with necessary medical care,
30 when such medical care conflicts with the tenets and
31 practices of a recognized religious denomination or
32 order of which such parent, guardian or custodian is an
33 adherent or member.

**§61-8D-5. Sexual abuse by a parent, guardian or
custodian; parent, guardian or custodian
allowing sexual abuse to be inflicted upon
a child; displaying of sex organs by a
parent, guardian or custodian; penalties.**

1 (a) In addition to any other offenses set forth in this
2 code, the Legislature hereby declares a separate and

3 distinct offense under this subsection, as follows: If any
4 parent, guardian or custodian of a child under his or her
5 care, custody or control, shall engage in or attempt to
6 engage in sexual exploitation of, or in sexual inter-
7 course, sexual intrusion or sexual contact with, a child
8 under his or her care, custody or control, notwithstand-
9 ing the fact that the child may have willingly partici-
10 pated in such conduct, or the fact that the child may
11 have consented to such conduct or the fact that the child
12 may have suffered no apparent physical injury or
13 mental or emotional injury as a result of such conduct,
14 then such guardian or custodian shall be guilty of a
15 felony, and, upon conviction thereof, shall be imprisoned
16 in the penitentiary not less than five nor more than ten
17 years, or fined not less than five hundred nor more than
18 five thousand dollars and imprisoned in the penitentiary
19 not less than five years nor more than ten years.

20 (b) If any parent, guardian or custodian shall know-
21 ingly procure another person to engage in or attempt to
22 engage in sexual exploitation of, or sexual intercourse,
23 sexual intrusion or sexual contact with, a child under
24 the care, custody or control of such parent, guardian or
25 custodian when such child is less than sixteen years of
26 age, notwithstanding the fact that the child may have
27 willingly participated in such conduct or the fact that
28 the child may have suffered no apparent physical injury
29 or mental or emotional injury as a result of such
30 conduct, such parent, guardian or custodian shall be
31 guilty of a felony, and, upon conviction thereof, shall be
32 imprisoned in the penitentiary not less than one year nor
33 more than five years, or fined not less than one thousand
34 nor more than ten thousand dollars and imprisoned in
35 the penitentiary not less than one year nor more than
36 five years.

37 (c) If any parent, guardian or custodian shall know-
38 ingly procure another person to engage in or attempt to
39 engage in sexual exploitation of, or sexual intercourse,
40 sexual intrusion or sexual contact with, a child under
41 the care, custody or control of such parent, guardian or
42 custodian when such child is sixteen years of age or
43 older, notwithstanding the fact that the child may have

44 consented to such conduct or the fact that the child may
45 have suffered no apparent physical injury or mental or
46 emotional injury as a result of such conduct, then such
47 parent, guardian or custodian shall be guilty of a
48 misdemeanor, and, upon conviction thereof, shall be
49 confined in the county jail not less than six months nor
50 more than one year.

51 (d) The provisions of this section shall not apply to a
52 custodian whose age exceeds the age of the child by less
53 than four years.

**§61-8D-6. Sending, distributing, exhibiting, possessing,
displaying or transporting material by a
parent, guardian or custodian, depicting a
child engaged in sexually explicit conduct;
penalty.**

1 Any parent, guardian or custodian who, with knowl-
2 edge, sends or causes to be sent, or distributes, exhibits,
3 possesses, displays or transports, any material visually
4 portraying a child under his or her care, custody or
5 control engaged in any sexually explicit conduct, is
6 guilty of a felony, and, upon conviction thereof, shall be
7 imprisoned in the penitentiary not more than two years,
8 and fined not less than four hundred dollars nor more
9 than four thousand dollars.

**§61-8D-7. Presentation of false information regarding
child's injuries; penalty.**

1 Any person who presents false information concerning
2 acts or conduct which would constitute an offense under
3 the provisions of this article to attending medical
4 personnel shall be guilty of a misdemeanor, and, upon
5 conviction thereof, shall be fined not less than one
6 hundred dollars nor more than one thousand dollars,
7 and shall be confined in the county jail not more than
8 one year.

§61-8D-8. Testimony of husband and wife.

1 Husband and wife are competent witnesses in any
2 proceeding under this article and cannot refuse to testify
3 on the grounds of their marital relationship or the
4 privileged nature of their communications.

CHAPTER 43

(H. B. 4259—By Delegates Givens and Leggett)

[Passed March 11, 1988; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections five and seven-a, article one, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the division of archives and history, department of culture and history, following an audit by the joint committee on government operations; and changing the requirement of quarterly publication of the state historical magazine to annual publication.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DEPARTMENT OF CULTURE AND HISTORY.

§29-1-5. Archives and history division; director.

§29-1-7a. Reestablishment of division of archives and history.

*§29-1-5. Archives and history division; director.

- 1 (a) The purposes and duties of the archives and
- 2 history division are to locate, survey, investigate,
- 3 register, identify, excavate, preserve, protect, restore
- 4 and recommend to the commissioner for acquisition
- 5 historic, architectural, archaeological and cultural sites,
- 6 structures, documents and objects worthy of preserva-
- 7 tion, relating to the state of West Virginia and the
- 8 territory included therein from the earliest times to the
- 9 present, upon its own initiative or in cooperation with
- 10 any private or public society, organization or agency; to
- 11 conduct a continuing survey and study throughout the

* Clerk's Note: This section was also amended by SB 267, which passed subsequent to this act.

12 state to determine the needs and priorities for the
13 preservation, restoration and development of such sites,
14 structures, documents and objects; to direct, protect,
15 excavate, preserve, study, and develop such sites,
16 structures, documents, and to operate and maintain a
17 state library for the preservation of all public records,
18 state papers, documents and reports of all three
19 branches of state government including all boards,
20 commissions, departments and agencies as well as any
21 other private or public papers, books or documents of
22 peculiar or historic interest or significance; to preserve
23 and protect all battle or regimental flags borne by West
24 Virginians and other memorabilia of historic interest; to
25 designate appropriate monuments, tablets or markers,
26 historic, architectural and scenic sites within the state
27 and to arrange for the purchase, replacement, care of
28 and maintenance of such monuments, tablets and
29 markers and to formulate and prepare suitable copy for
30 them; to operate and maintain a state museum; to
31 cooperate with the state geological and economic surveys
32 in the survey's archaeological work; to edit and publish
33 an annual historical magazine devoted to the history,
34 biography, bibliography and genealogy of West Virgi-
35 nia; and to perform such other duties as may be assigned
36 to the division by the commissioner.

37 (b) With the advice and consent of the commission, in
38 addition to the duties above set forth, the division shall
39 determine the whereabouts of and require the return of
40 furnishings missing from the capitol building, includ-
41 ing, but not limited to, furnishings chosen or purchased
42 for the capitol by its architect, Cass Gilbert. No
43 furnishings from the capitol may be sold or disposed of
44 except under the direction of the director of surplus
45 state property pursuant to section three-a, article eight,
46 chapter five-a of this code. If furnishings originally
47 designated as capitol building furnishings have been
48 sold or otherwise disposed of without the requisite sale
49 procedures, such furnishings shall be returned to the
50 capitol and, upon presentation of proof of the amount
51 paid, the current owner shall be reimbursed for the cost

52 of the furnishing less any appropriate depreciation or
53 wear and tear.

54 (c) With the advice and consent of the archives and
55 history commission, the commissioner shall appoint a
56 director of the archives and history division, who shall
57 have: (1) A bachelor's degree in one of the social
58 sciences, or equivalent training and experience in the
59 fields of West Virginia history, history, historic preser-
60 vation, archaeology, or in records, library or archives
61 management; or (2) three years' experience in adminis-
62 tration in the fields of West Virginia history, history,
63 historic preservation, archaeology, or in records, library
64 or archives management. Notwithstanding these quali-
65 fications, the person serving as the state historian and
66 archivist on the date of enactment of this article shall
67 be eligible for appointment as the director of the
68 archives and history division. The director of the
69 archives and history division shall serve as the state
70 historian and archivist.

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

75 (e) The director may promulgate rules and regula-
76 tions concerning the professional policies and functions
77 of the archives and history division, subject to the
78 approval of the archives and history commission.

**§29-1-7a. Reestablishment of division of archives and
history.**

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

CHAPTER 44

(S. B. 453—By Senators Tonkovich, Mr. President, by request, and Harman)

[Passed March 12, 1988; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article one, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to changing the name of the West Virginia arts and humanities commission to the West Virginia commission on the arts.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DEPARTMENT OF CULTURE AND HISTORY.

§29-1-9. Commission on the arts.

1 The West Virginia arts and humanities commission
2 established by article seventeen, chapter twenty-nine of
3 this code shall hereafter be known as the commission on
4 the arts which is hereby created and which shall be
5 composed of fifteen appointed members.

6 The governor shall nominate, and by and with the
7 advice and consent of the Senate, appoint the members
8 of the commission for staggered terms of three years.
9 A person appointed to fill a vacancy shall be appointed
10 only for the remainder of that term. Each person
11 serving as a member of the West Virginia arts and
12 humanities commission, for a term which has not
13 expired on the effective date of this article, shall be
14 appointed by the governor without Senate confirmation
15 to the commission on the arts as one of the fifteen
16 appointed members, for the term ending the thirtieth
17 day of June in the year in which his term would expire
18 as a member of the West Virginia arts and humanities
19 council.

20 Effective the first day of July, one thousand nine

21 hundred eighty-eight, no more than eight members may
22 be of the same political party. Members of the commis-
23 sion shall be appointed so as to fairly represent both
24 sexes, the ethnic and cultural diversity of the state and
25 the geographic regions of the state.

26 The commission shall elect one of its members
27 chairman. It shall meet at such time as shall be specified
28 by the chairman. Notice of each meeting shall be given
29 to each member by the chairman at least five days in
30 advance of the meeting. A majority of the members shall
31 constitute a quorum for the transaction of business. The
32 director of the arts and humanities division shall be an
33 ex officio nonvoting member of the commission and shall
34 serve as secretary. The director or a majority of the
35 members may also call a meeting upon such notice as
36 provided in this section.

37 Each member or ex officio member of the commission
38 shall serve without compensation, but shall be reim-
39 bursed for all reasonable and necessary expenses
40 actually incurred in the performance of his duties;
41 except that in the event the expenses are paid, or are
42 to be paid, by a third party, the member or ex officio
43 member, as the case may be, shall not be reimbursed
44 by the state.

45 Upon recommendation of the commissioner, the
46 governor may also appoint such officers of the state as
47 may be appropriate to serve on the commission as ex
48 officio nonvoting members.

49 The commission shall have the following powers:

50 (1) To advise the commissioner and the director of the
51 arts and humanities division concerning the accomplish-
52 ment of the purposes of that division and to establish a
53 state plan with respect thereto;

54 (2) To approve and distribute grants-in-aid and
55 awards from federal and state funds relating to the
56 purposes of the arts and humanities division;

57 (3) To request, accept or expend federal funds to
58 accomplish the purposes of the arts and humanities
59 division when federal law or regulations would prohibit

60 the same by the commissioner or division director, but
 61 would permit the same to be done by the commission
 62 on the arts;

63 (4) To otherwise encourage and promote the purposes
 64 of the arts and humanities division;

65 (5) To approve rules and regulations concerning the
 66 professional policies and functions of the division as
 67 promulgated by the director of the arts and humanities
 68 division; and

69 (6) To advise and consent to the appointment of the
 70 director by the commissioner.

CHAPTER 45

(H. B. 4076—By Delegates Bradley and Love)

[Passed March 12, 1988; 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 twelve, relating to authorizing counties to establish curfews for juveniles and providing jurisdiction for violations of county curfew laws; and the effect of municipal ordinances.

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 twelve, to read as follows:

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-12. Authority for establishing county curfews; jurisdiction for violations.

1 In addition to all other powers and duties now
 2 conferred by law upon county commissions, such
 3 commissions are hereby authorized, by order duly
 4 entered of record, to adopt an ordinance which estab-

5 lishes a curfew for persons under eighteen years of age.
6 It shall be unlawful for any person under eighteen years
7 of age to violate any ordinance: *Provided*, That whenever
8 the county ordinance enacted hereunder conflicts with
9 that of any municipality, the municipal ordinance shall
10 prevail.

11 Any magistrate court, which shall have concurrent
12 jurisdiction with the circuit court, of a county which has
13 enacted an enforceable curfew ordinance may assume
14 jurisdiction of a juvenile charged with violation of such
15 ordinance and make any disposition thereof, which could
16 properly be made by a circuit court exercising its
17 juvenile jurisdiction, except that magistrate courts shall
18 have no jurisdiction to impose a sentence of confinement
19 for the violation of such laws.

CHAPTER 46

(Com. Sub. for H. B. 4580—By Delegates Southern and Williams)

[Passed March 10, 1988; 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; and to amend and reenact sections two and thirteen-a, article twenty-six of said chapter, all relating to correspondence, business, occupational and trade schools; transferring jurisdiction of such schools offering specialized associate degrees from the board of regents to the state board; raising the amount required for a surety bond for such schools; allowing such schools time for corrective measures before a permit to operate can be revoked; authorizing the board of education to conduct on-site reviews to evaluate such schools; excepting schools in this state with certain accreditation as of the effective date of this section from such rules except upon written student complaint; and defining terms.

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; and that sections two and thirteen-a, article twenty-six of said chapter be amended and reenacted, all to read as follows:

Article

2. Board of Education.

26. West Virginia Board of Regents.

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
7 education in the manner and on the terms herein
8 prescribed.

9 The application for a permit shall be made on forms
10 to be furnished by the board, and a ten dollar fee shall
11 be required. The application shall be accompanied by a
12 surety bond in the penal sum of thirty-five thousand
13 dollars for any school which has its physical facilities
14 located in this state and which has operated in this state
15 for at least ten years. For any other school a surety bond
16 in the penal sum of not less than thirty-five thousand
17 dollars, but not more than one hundred thousand
18 dollars, shall be required, such amount to be determined
19 in accordance with the rules of the state board. Schools
20 with more than one campus within the state shall be
21 required to provide a bond for each of its campuses in
22 an amount equal to the bond required for its oldest
23 established campus in this state. The bond may be
24 continuous and shall be conditioned to provide indem-
25 nification to any student suffering loss as a result of any
26 fraud or misrepresentation used in procuring the

27 student's enrollment or failure of the school to meet
28 contractual obligations. The bond shall be given by the
29 school itself as a blanket bond covering all of its
30 representatives. The surety on any such bond may
31 cancel the same upon giving thirty days' notice in
32 writing to the principal on said bond and to the state
33 board of education and thereafter shall be relieved of
34 liability for any breach of condition occurring after the
35 effective date of said cancellation. The ten dollar fee will
36 entitle a school to register up to two individual solicitors.
37 Additional solicitors may be registered by paying a five
38 dollar fee for each registration submitted.

39 A permit shall be valid for one year corresponding to
40 the effective date of the bond and, upon application,
41 accompanied by the required fee and the surety bond
42 as herein required, may be renewed. All fees collected
43 for the issuance or renewal of such permit shall be
44 deposited in the state treasury to the credit of the
45 general school fund.

46 The board may refuse a permit to any school if the
47 board finds that the school engages in practices which
48 are inconsistent with this section or with rules and
49 regulations issued pursuant thereto. A permit issued
50 hereunder, upon fifteen days' notice and after a hearing,
51 if a hearing is requested by the school, may be sus-
52 pended or revoked by the board of education for fraud
53 or misrepresentation in soliciting or enrolling students,
54 for failure of the school to fulfill its contract with one
55 or more students who are residents of West Virginia, or
56 for violation of or failure to comply with any provision
57 of this section or with any regulation of the state board
58 of education pertinent thereto. Prior to the board taking
59 any adverse action, including refusal, suspension or
60 revocation of a permit, the school shall be given
61 reasonable opportunity to take corrective measures. Any
62 refusal, suspension or revocation of a permit, or any
63 other adverse action against a school, shall comply with
64 all constitutional provisions, including due process,
65 relating to the protection of property rights.

66 All correspondence, business, occupational or trade
67 schools which have been issued a permit shall make

68 annual reports to the state board of education on forms
69 furnished by the board and shall provide such appropriate
70 information as the board reasonably may require.
71 All correspondence, business, occupational or trade
72 schools which have been issued a permit shall furnish
73 to the West Virginia board of education a list of its
74 official representatives. Each school shall be issued a
75 certificate of identification by the state board of
76 education for each of its official representatives.

77 The issuance of a permit pursuant to this section does
78 not constitute approval or accreditation of any course or
79 school. No school nor any representative of a school shall
80 make any representation stating, asserting or implying
81 that a permit issued pursuant to this section constitutes
82 approval or accreditation by the state of West Virginia,
83 state board of education or any other department or
84 agency of the state.

85 The state board of education is hereby authorized to
86 adopt rules and conduct on-site reviews to evaluate
87 academic standards maintained by schools for the
88 awarding of certificates, diplomas and specialized
89 associate degrees, which standards may include curriculum,
90 personnel, facilities, materials and equipment:
91 *Provided*, That in the case of accredited correspondence,
92 business, occupational and trade schools under permit
93 on the effective date of this section, having their physical
94 facilities located in this state, and which are accredited
95 by the appropriate nationally recognized accrediting
96 agency or association approved by the United States
97 department of education, the accrediting agency's
98 standards, procedures and criteria shall be accepted as
99 meeting applicable laws, standards, rules and regulations
100 of the state board of education: *Provided, however*,
101 That the state board of education may authorize an
102 investigation of written student complaints alleging a
103 violation of this section, or state board rules or accreditation
104 standards and may take appropriate action based
105 on the findings of such an investigation.

106 The state board of education is hereby authorized to
107 adopt rules for the awarding of any specialized associate
108 degree: *Provided*, That nothing contained herein shall

109 infringe upon the rights of accredited West Virginia
110 proprietary schools operating in West Virginia to confer
111 specialized associate degrees, diplomas or certificates
112 based on credit or clock hours in accordance with
113 standards of the appropriate nationally recognized
114 accrediting agency or association that is approved by the
115 United States department of education. For the pur-
116 poses of this section, schools that award specialized
117 associate degrees shall be defined as proprietary
118 vocational-technical institutions, and specialized asso-
119 ciate degrees shall mean degrees awarded by such
120 institutions pursuant to a program of not less than two
121 academic years.

122 The state board of education is hereby authorized to
123 adopt rules for the administration and enforcement of
124 the provisions of this section and shall establish an
125 advisory committee of not less than five owners or other
126 representatives of resident, privately owned correspon-
127 dence, business, occupational and trade schools.

128 A representative of any school violating any provision
129 of this section shall be guilty of a misdemeanor, and,
130 upon conviction thereof, shall be fined not more than two
131 hundred dollars per day of violation, not to exceed a
132 maximum of two thousand dollars per violation, or
133 imprisoned in the county jail not more than sixty days,
134 or both fined and imprisoned. No correspondence,
135 business, occupational or trade school shall maintain an
136 action in any court of this state to recover for services
137 rendered pursuant to a contract solicited by the school
138 if the school did not hold a valid permit at the time the
139 contract was signed by any of the parties thereto. The
140 attorney general or any county prosecuting attorney, at
141 the request of the state board of education or upon his
142 or her own motion, may bring any appropriate action
143 or proceeding in any court of competent jurisdiction for
144 the enforcement of the provisions of this section relating
145 to permits, bonds and sureties.

ARTICLE 26. WEST VIRGINIA BOARD OF REGENTS.

§18-26-2. Definitions.

§18-26-13a. Accreditation of institutions of higher education; standards for degrees.

§18-26-2. Definitions.

1 Notwithstanding the provisions of section one, article
2 one of this chapter, the following words when used in
3 this article shall have the meaning hereafter ascribed
4 to them unless the context clearly indicates a different
5 meaning:

6 (a) The term "board" shall mean the West Virginia
7 board of regents.

8 (b) The term "state colleges" shall mean Bluefield
9 State College, Concord College, Fairmont State College,
10 Glenville State College, Shepherd College, West Liberty
11 State College, West Virginia Institute of Technology,
12 West Virginia State College, West Virginia School of
13 Osteopathic Medicine and any state community college
14 or other state institution of higher education which may
15 hereafter be established and not designated as a
16 "university."

17 (c) The term "state college" shall mean one of the state
18 colleges.

19 (d) The terms "state universities" and "universities"
20 shall mean Marshall University and West Virginia
21 University and any other state institution of higher
22 education which may hereafter be established and
23 designated as a "university."

24 (e) The terms "state university" and "university" shall
25 mean one of the state universities.

26 (f) The term "community college" shall mean any
27 institution of higher education which has been desig-
28 nated as a community college by the West Virginia
29 board of regents under the provisions of section thirteen-
30 b of this article.

31 (g) The term "higher educational institution" shall
32 mean any institution as defined by sections 401(f), (g),
33 (h) of the Federal Higher Education Facilities Act of
34 1963, as amended.

**§18-26-13a. Accreditation of institutions of higher educa-
tion; standards for degrees.**

1 The West Virginia board of regents shall make rules
2 and regulations for the accreditation of all colleges,
3 universities and other institutions of higher education in
4 the state, and shall determine the minimum standards
5 for the conferring of degrees, with the exception of
6 specialized associate degrees awarded by proprietary
7 vocational-technical institutions pursuant to section ten,
8 article two of this chapter. No institution of higher
9 educational status may confer any degree on any basis
10 of work or merit below the minimum standards pres-
11 cribed by the West Virginia board of regents. Nothing
12 contained herein shall infringe upon the rights, includ-
13 ing rights to award degrees, granted to any institution
14 by charter given according to law, or by actions of the
15 West Virginia board of regents, previous to the adoption
16 of this section: *Provided*, That such right granted to a
17 private, proprietary correspondence, business, occupa-
18 tional or trade school shall be deemed as granted by the
19 state board of education, which shall regulate such
20 schools pursuant to the provision of section ten, article
21 two of this chapter.

22 No charter or other instrument containing the right
23 to confer degrees of higher educational status, with the
24 exception of specialized associate degrees awarded by
25 proprietary vocational-technical institutions pursuant to
26 section ten, article two of this chapter, shall be granted
27 by the state of West Virginia to any institution,
28 association or organization within the state, nor shall
29 any such degree be awarded until the condition of
30 conferring such degree has first been approved in
31 writing by the West Virginia board of regents.

CHAPTER 47

(S. B. 283—By Senators Lucht and Burdette)

[Passed March 12, 1988; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated

section thirteen-f; to amend and reenact section five, article twenty of said chapter; to amend and reenact section four, article four, chapter twenty-five of said code; to amend and reenact sections one and five, article one, chapter twenty-eight of said code; to amend and reenact section ten, article three, chapter twenty-eight of said code; to amend and reenact section four, article thirteen, chapter sixty-two of said code, all relating to education of institutionalized school-age juveniles within facilities operated by the department of corrections; providing for administration and provision of such services; requiring the department of education to designate a director of educational services for institutionalized juveniles who shall hire a principal or lead teacher for each facility and institution; requiring state department of education to provide educational services now the responsibility of employees of department of corrections; permitting qualified educational personnel of correctional facilities to become school personnel of the state department of education; transferring funds for such educational services from the department of corrections to the department of education; and making consequential changes in certain statutes relating to the departments of education and corrections to reflect changes caused by this transfer of responsibility.

Be it enacted by the Legislature of West Virginia:

That article two, 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 thirteen-f; that section five, article twenty, chapter eighteen of said code be amended and reenacted; that section four, article four, chapter twenty-five of said code be amended and reenacted; that sections one and five, article one, chapter twenty-eight of said code be amended and reenacted; that section ten, article three, chapter twenty-eight of said code be amended and reenacted; and that section four, article thirteen, chapter sixty-two of said code be amended and reenacted, all to read as follows:

Chapter

18. Education.

- 25. Department of Corrections.
- 28. State Correctional and Penal Institutions.
- 62. Criminal Procedure.

CHAPTER 18. EDUCATION.

Article

- 2. State Board of Education.
- 20. Education of Exceptional Children.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-13f. Responsibility for administration and provision of educational services in state correctional institutions.

1 The state board is responsible for the administration
2 of programs for the education of all institutionalized
3 school-age juveniles within facilities operated by the
4 department of corrections. School-age juvenile means in
5 this article any individual who would, if not institution-
6 alized, be entitled to attend the public schools in
7 accordance with (1) section five, article two of this
8 chapter; (2) sections fifteen and eighteen, article five of
9 this chapter; or (3) section one, article twenty of this
10 chapter. To strengthen the administration of educational
11 programs, there shall be: (1) A full-time principal or
12 lead teacher at each department of corrections facility
13 having any school-age juveniles and (2) a full-time
14 director of educational services for institutionalized
15 school-age juveniles employed by the department of
16 education. Such principal or lead teacher shall be
17 employed by and responsible to the director of educa-
18 tional services.

19 Classroom teachers and other school personnel shall
20 be hired and provided as necessary to all institutional-
21 ized juveniles by the state department of education to
22 the extent necessary to provide adequate and approp-
23 riate educational opportunity. Adequate and approp-
24 riate educational opportunity requires education servi-
25 ces for institutionalized school-age juveniles on a twelve-
26 month basis, excepting only normal school holidays and
27 those additional days determined by the state board of
28 education in consultation with the appropriate depart-
29 ment head to be necessary. School personnel shall be

30 responsible to the principal or lead teacher while
31 providing educational services but shall comply with
32 rules established by the department of corrections to
33 ensure security and safety in the facility. Educational
34 personnel employed at and by correctional facilities and
35 institutions shall be permitted to transfer to comparable
36 positions as school personnel of the state department of
37 education if those personnel meet the qualifications
38 established for those positions by the state department
39 of education. The daily rate of pay of educational
40 personnel employed by the state department of educa-
41 tion shall be equivalent to the daily rate of pay of the
42 comparable position in the public schools of the county
43 where the institution is located.

44 There shall be a separate line item account of the
45 budget of the state department of education for the
46 education of institutionalized school-age juveniles. All
47 money that the Legislature may annually appropriate
48 for that purpose shall be placed into this account. This
49 account shall be used solely for the education of such
50 juveniles. Money for education of juveniles in the
51 department of corrections shall be deposited in that
52 account and accounted for separately.

ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.

§18-20-5. Powers and duties of state superintendent.

1 The state superintendent of schools shall have power
2 to organize, promote, administer and be responsible for:

3 (1) Stimulating and assisting county boards of educa-
4 tion in establishing, organizing and maintaining special
5 schools, classes, regular class programs, home-teaching
6 and visiting-teacher services.

7 (2) Cooperating with all other public and private
8 agencies engaged in relieving, caring for, curing,
9 educating and rehabilitating exceptional children, and
10 in helping coordinate the services of such agencies.

11 (3) Preparing the necessary rules, regulations, for-
12 mula for distribution of available appropriated funds,
13 reporting forms and procedures necessary to define
14 minimum standards in providing suitable facilities for

15 education of exceptional children and ensuring the
16 employment, certification and approval of qualified
17 teachers and therapists subject to approval by the state
18 board of education.

19 (4) Receiving from county boards of education their
20 applications, annual reports and claims for reimburse-
21 ment from such moneys as are appropriated by the
22 Legislature, auditing such claims and preparing
23 vouchers to reimburse said counties the amounts
24 reimbursable to them.

25 (5) Assuring that all exceptional children in the state,
26 including children in mental health facilities, residential
27 institutions, private schools, and correctional facilities as
28 provided in section thirteen-f, article two, chapter
29 eighteen of this code, receive an education in accordance
30 with state and federal laws.

31 (6) Performing such other duties and assuming such
32 other responsibilities in connection with this program as
33 may be needed.

34 (7) Nothing herein contained shall be construed to
35 prevent any county board of education from establishing
36 and maintaining special schools, classes, regular class
37 programs, home-teaching or visiting-teacher services
38 out of funds available from local revenue.

CHAPTER 25. DEPARTMENT OF CORRECTIONS.

ARTICLE 4. CENTERS FOR HOUSING YOUTHFUL MALE LAW OFFENDERS.

§25-4-4. Superintendent.

1 Each center shall be under the direction of a super-
2 intendent, who shall have the minimum qualification of
3 a college degree with a major in sociology or a related
4 field and be trained and experienced in dealing with
5 youths. He shall be paid an annual salary to be fixed
6 by the commissioner of corrections.

7 At each center the superintendent shall provide a
8 training program which shall include the following four
9 separate, well-integrated components: (1) Work pro-
10 gram; (2) educational program in accordance with

11 section thirteen-f, article two, chapter eighteen of this
 12 code; (3) recreational program; and (4) individual and
 13 group counseling.

CHAPTER 28. STATE CORRECTIONAL AND PENAL INSTITUTIONS.

Article

1. Commitment of Youthful Male Offenders.
3. Industrial Home of Youth.

ARTICLE 1. COMMITMENT OF YOUTHFUL MALE OFFENDERS.

§28-1-1. Care of youthful male offenders.

§28-1-5. Rules and regulations.

§28-1-1. Care of youthful male offenders.

1 The state commissioner of corrections shall be
 2 charged with the care, training and reformation of male
 3 youths of the state committed to his custody. Education
 4 of the male youths is subject to the provisions of section
 5 thirteen-f, article two, chapter eighteen of this code. All
 6 state facilities and institutions for such purpose shall be
 7 managed and controlled as prescribed in article one,
 8 chapter twenty-five of this code.

§28-1-5. Rules and regulations.

1 The state commissioner of corrections shall have
 2 authority to make such rules and regulations for the
 3 management and government of the facilities for
 4 youthful offenders under his control, and the instruction,
 5 discipline, training, employment and disposition of the
 6 boys and their transportation to and from the various
 7 facilities, subject to section thirteen-f, article two,
 8 chapter eighteen of this code, as the commissioner may
 9 deem proper.

ARTICLE 3. INDUSTRIAL HOME FOR YOUTH.

§28-3-10. Rules and regulations.

1 The state commissioner of corrections may make such
 2 rules and regulations for the management and govern-
 3 ment of the industrial home, and the instruction,
 4 discipline, training, employment and disposition of the
 5 youth of the home, and their transportation to and from

6 the home, subject to section thirteen-f, article two,
7 chapter eighteen of this code, as the commissioner may
8 deem proper.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 13. CORRECTIONS MANAGEMENT.

§62-13-4. Powers and duties of commissioner or director generally; compensation and funds of inmates.

1 To accomplish the purposes of this article, the
2 commissioner (or the director of corrections manage-
3 ment if one is appointed) shall:

4 (a) Exercise general supervision over the administra-
5 tion of the institutions under the jurisdiction of the
6 department;

7 (b) Establish separate subdivisions, to be headed by
8 deputy directors, of adult services, youth services, and
9 other subdivisions as he deems advisable, which may be
10 headed by the same or different deputy directors, which
11 said deputy directors must be graduates of an accred-
12 ited college or university with a degree in sociology,
13 psychology, social science or a related field;

14 (c) Establish rules and regulations in writing govern-
15 ing all subdivisions and institutions within the
16 department;

17 (d) Establish an in-service training program for
18 personnel of the department;

19 (e) Classify the institutions of the department, varying
20 according to such factors as security features, program,
21 age and sex of inmates, physical stature or size,
22 character of inmates;

23 (f) Establish a system of classification of inmates,
24 through a reception and examination procedure, and in
25 each institution a classification committee and proce-
26 dure for assignment of inmates within the programs of
27 the institution;

28 (g) Cooperate with the department of education in
29 providing for the education of inmates in all institutions

30 within the department, subject to section thirteen-f,
31 article two, chapter eighteen of this code;

32 (h) Supervise the treatment, custody and discipline of
33 all inmates and the maintenance of the institutions and
34 their industries;

35 (i) Establish a system of compensation for inmates of
36 the correctional institutions of the state who perform
37 good and satisfactory work either within the industrial
38 program or in the servicing and maintenance of the
39 correctional institutions or any other institutions or
40 camps within the state. The commissioner (or the
41 director, with the approval of the commissioner) may
42 establish a graduated scale of compensation to be paid
43 to inmates in accordance with their skill in industry.

44 The principal officer of any correctional institution, on
45 request of an inmate, may expend up to one half of the
46 money so earned by such inmate on behalf of the family
47 of such inmate. The remainder of the money so earned,
48 after deducting amounts expended as aforesaid, shall be
49 accumulated to the credit of the inmate and be paid to
50 the inmate at such times as may be prescribed by such
51 rules and regulations. Such funds so accumulated on
52 behalf of inmates shall be held by the principal officer
53 of each institution, under a bond approved by the
54 attorney general.

55 The accumulation of such total funds, not necessary
56 for current distribution, shall be invested, with the
57 approval of the commissioner or as appropriate, the
58 director through the West Virginia municipal bond
59 commission, in short term bonds or treasury certificates
60 or equivalent of the United States. Bonds and certifi-
61 cates so purchased shall remain in the custody of the
62 state treasurer. The earnings from investments so made
63 shall be reported to the principal officer of each
64 institution from time to time, as earned, and shall be
65 credited to the respective accounts of such institutions
66 by the commission.

67 When such earnings are transferred to the respective
68 institutions, they shall be credited by the principal
69 officer to the credit of and for the benefit of the inmates'
70 activities account.

CHAPTER 48

(S. B. 125—By Senators Burdette and Tonkovich, Mr. President)

[Passed February 4, 1988; in effect from passage. Approved by the Governor.]

AN ACT to amend article nine-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirteen-a, relating to school finance; providing for an allowance for levy rate reduction for certain counties with excess school levies greater than ninety percent; and providing that the section take effect upon approval of the uniform school funding amendment.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-13a. Allowance for levy rate reduction under uniform school funding amendment.

1 (a) Any county which has a local excess levy for
2 schools authorized by sections one and ten, article ten
3 of the constitution of the state of West Virginia which
4 is at a rate greater than ninety percent, approved by the
5 voters of the county prior to the fifth day of March, one
6 thousand nine hundred eighty-eight, and in effect on the
7 first day of July, one thousand nine hundred eighty-
8 eight, shall receive a foundation allowance for levy rate
9 reduction in each fiscal year in which the amount for
10 which tax liens attach pursuant to the uniform levy
11 imposed by section one-d, article ten of the constitution
12 is less than the lesser of the amounts computed pursuant
13 to subsection (b) of this section.

14 (b) The state board shall compute for each county
15 with such expired levy the amount for which a tax lien
16 for the local excess levy for schools attaches in the year

17 in which said local excess levy expires. Such calculation
18 shall be based on a sixty percent assessment of the value
19 of property subject to ad valorem taxation. In each tax
20 year subsequent to such expiration, the state board shall
21 compute the amount for which a tax lien would attach
22 on the first day of July of the then current year based
23 on the rate of local excess levy for schools that was
24 replaced by the uniform excess levy for schools in
25 accordance with section one-d, article ten of the state
26 constitution.

27 (c) The foundation allowance for levy rate reduction
28 shall be equal to the difference between the amount
29 which would be realized by the ninety percent uniform
30 levy and the lesser of the two amounts calculated
31 pursuant to subsection (b) of this section.

32 (d) The provisions of this section shall be null, void
33 and of no effect should the "Uniform School Funding
34 Amendment" fail to be approved by the voters of this
35 state.

CHAPTER 49

(S. B. 698—By Senator Jones)

[Passed March 12, 1988; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article twelve-b, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the board of regents' authorization to issue revenue bonds for certain capital improvements and the payment of relocation costs to those displaced by the acquisition of real property for board projects.

Be it enacted by the Legislature of West Virginia:

That section one, article twelve-b, 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 12B. REVENUE BONDS FOR STATE INSTITUTIONS OF HIGHER EDUCATION — CAPITAL IMPROVEMENTS ON SYSTEM BASIS.

§18-12B-1. Board of regents authorized to issue revenue bonds for certain capital improvements; payment of relocation costs.

1 The West Virginia board of regents shall have
2 authority, as provided in this article, to issue revenue
3 bonds of the state from time to time, either to finance
4 the cost of major renovations, repairs and safety
5 upgrading and providing new capital improvements
6 consisting of facilities, buildings and structures, for
7 those state institutions of higher education as deter-
8 mined by resolution of the board of regents, including
9 any college, university or community college under its
10 supervision, management and control, or to refund, at
11 the discretion of the board of regents, bonds issued and
12 outstanding under and pursuant to the provisions of this
13 article or article eleven-b of this chapter, or both. Such
14 major renovations, repairs and safety upgrading and
15 capital improvements may, in each case, include land
16 for current or future use in connection therewith and
17 equipment and machinery and other similar items
18 essential or convenient in connection with the foregoing
19 but shall not include such items as books, fuel, supplies
20 or other items which are customarily deemed to result
21 in a current operating charge. The principal of, interest
22 and redemption premium, if any, on such bonds shall
23 be payable solely from the special fund herein provided
24 for such payment. The costs of any such major renova-
25 tions, repairs and safety upgrading and capital improve-
26 ments shall include the cost of acquisition of land, the
27 construction and acquisition of any such major renova-
28 tions, repairs and safety upgrading and capital improve-
29 ments and equipment and machinery therefor, and the
30 provision of roads, utilities, and other services necessary,
31 appurtenant or incidental to the foregoing; and shall
32 also include all other charges or expenses necessary,
33 appurtenant or incidental to the construction, acquisi-
34 tion, and financing including, but not limited to, debt
35 service reserve requirements and capitalized interest,
36 and placing in operation of any such major renovations,

37 repairs and safety upgrading and capital improvements:
38 *Provided*, That from time to time but not later than the
39 first day of March, one thousand nine hundred seventy-
40 eight, the board shall issue and sell bonds pursuant to
41 this article in an amount which, when combined with
42 cash available under the provisions of section two of this
43 article, will be sufficient to finance the costs of the
44 following purposes and projects:

45 (1) Refunding of all bonds issued and outstanding
46 under and pursuant to the provisions of article eleven-
47 b of this chapter;

48 (2) A building to house the music, arts and theatre
49 programs at Shepherd College, at a cost not to exceed
50 two million five hundred thousand dollars;

51 (3) A field house at West Liberty State College at a
52 cost not to exceed two million seven hundred thousand
53 dollars;

54 (4) A shop and laboratory building at West Virginia
55 State College at a cost not to exceed two million six
56 hundred thousand dollars;

57 (5) A multipurpose physical education facility at
58 Marshall University, at a cost not to exceed eighteen
59 million dollars;

60 (6) A new football stadium at West Virginia Univer-
61 sity (at a different location than the existing stadium)
62 at a cost not to exceed twenty million dollars; and

63 (7) An all-purpose shell building for sports and
64 physical education at West Virginia University, at a cost
65 not to exceed four million five hundred thousand dollars.

66 In the event that private real property is acquired in
67 connection with the above enumerated projects or any
68 board projects initiated on or after the first day of July,
69 one thousand nine hundred eighty-eight, the board shall
70 reimburse individuals, families and business concerns
71 for relocation costs incurred as a consequence of being
72 displaced by such acquisition. With respect to payment
73 of such relocation costs, the board shall follow the same
74 procedure and be subject to the same limitations as

75 required for the commissioner of highways under
76 section twenty, article two-a, chapter seventeen of this
77 code and regulations promulgated pursuant thereto.

CHAPTER 50

(Com. Sub. for H. B. 4185—By Delegates White and Murphy)

[Passed March 11, 1988; 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 three-a, relating to requiring state institutions of higher education to permit children of certain officers killed in the line of duty to attend classes with tuition and fees waived if space is available; and providing generally therefor.

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 three-a, to read as follows:

ARTICLE 24. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.

§18-24-3a. Tuition and fee waivers for children of officers killed in the line of duty.

1 Each state institution of higher education shall permit
2 any person to attend its undergraduate courses and
3 classes if classroom space is available without charging
4 such person any tuition or any fees, including those
5 provided in sections one-a and one-b of this article, if
6 such person is the child or spouse of a law-enforcement
7 officer as defined in section one, article twenty-nine,
8 chapter thirty of this code, a correctional officer at a
9 state penal institution or a conservation officer, and such
10 officer was killed in the line of duty while employed by
11 the state or any political subdivision thereof: *Provided,*
12 That the state institution of higher education may

13 require such person to pay special fees, including any
14 laboratory fees, if such fees are required of all other
15 students taking a single or the particular course and
16 may also require such person to pay for parking. The
17 board of regents may promulgate rules for determining
18 the availability of classroom space and other rules as it
19 considers necessary to implement this section, including
20 rules regarding qualifications for attendance, which
21 shall not exceed the qualifications required of other
22 persons.

23 The board of regents may also extend to persons
24 attending courses and classes under this section any
25 rights, privileges or benefits extended to other students
26 which it considers appropriate.

CHAPTER 51

(Com. Sub. for H. B. 4042—By Delegates Spencer and Prunty)

[Passed February 16, 1988; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, four, five, six and seven, article twenty-six-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to state autism training center; defining certain terms; clarifying powers and duties of board of regents and the center; clarifying responsibilities of the center in providing services; making director of center an ex officio nonvoting member of advisory board; and providing for expenses, costs and charges in accordance with rules and regulations.

Be it enacted by the Legislature of West Virginia:

That sections two, three, four, five, six and seven, article twenty-six-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 26A. STATE AUTISM TRAINING CENTER.

§18-26A-2. Definitions.

§18-26A-3. Powers and duties of board of regents and state autism center.

§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-2. Definitions.

1 For the purposes of this article:

2 "Board" means the West Virginia board of regents;

3 "Center" means the autism training center;

4 "Client" means a person with the primary diagnosis
5 of autism or autistic-like behavior; and

6 "Expenses" means those reasonable and customary
7 expenditures related to training and treatment of
8 eligible clients as defined in the rules and regulations
9 promulgated by the center.

§18-26A-3. Powers and duties of board of regents and state autism center.

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
5 buildings; the expansion, remodeling, altering or
6 equipping of necessary buildings; and the making of
7 contracts by the board of regents with any state, county
8 or municipal agency, or nonprofit institution, providing
9 for the equipment, expenses, compensation of personnel,
10 operation and maintenance of any facility of such agency
11 or institution utilized for the purposes of this article.
12 The board or its designees may make and enter into all
13 contracts and agreements necessary and incidental to
14 the performance of its powers and duties under this
15 section, and may cooperate with other agencies of the
16 state, county and federal governments.

§18-26A-4. Responsibilities of center.

1 The center shall, through appropriate identification,
2 evaluation, education, individual training and treatment
3 programs for clients, offer appropriate education and
4 training for professional personnel and family members
5 or guardians.

§18-26A-5. Rules and regulations.

1 The board, after consultation with the center, shall
2 make and adopt rules, regulations and standards for the
3 establishment, operation, cost reimbursement, fees for
4 services, maintenance and government control of the
5 center established pursuant to this article, including
6 such rules, regulations and standards as may be
7 necessary for cooperation under and compliance with
8 any existing or future federal statutes pertaining to
9 grants-in-aid for client training or facilities and such
10 other rules and regulations as may be necessary to
11 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 advisory board shall be composed of fifty
4 percent parents or guardians of clients eligible for the
5 center's program; forty percent persons from profes-
6 sional fields related to autism, such as special education,
7 psychology, hearing and speech, neurology and pedi-
8 atrics; and ten percent knowledgeable lay citizens such as
9 legislators or other lay community leaders. The director
10 of the center shall be an ex officio nonvoting member
11 of the advisory board.

§18-26A-7. Trainee team; expense.

1 The primary method of providing services through the
2 center is by the use of trainee teams. A trainee team
3 shall consist of an eligible client, a professional chosen
4 by the primary local service agency and the client's
5 parent or parents or guardian.

6 The center may charge agencies such fees and
7 reimburse trainee team or client expenses as provided
8 by rules and regulations. The center may also provide
9 for reasonable and customary expenses in excess of fees
10 charged sending agencies for each trainee team or
11 otherwise eligible client, including child care for other
12 children of attending parents and others as specified in
13 rules and regulations.

CHAPTER 52

(Com. Sub. for S. B. 1—By Senator Whitlow)

[Passed February 19, 1988; in effect July 1, 1988. Approved by the Governor.]

AN ACT to amend and reenact section thirty-four, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to voting procedures generally; setting forth procedure for voting in person on election day; providing for transfer of registration at least thirty days prior to an election when precinct of registration not handicap accessible; permitting handicapped voter to vote challenged ballot in another precinct when registration not transferred; providing for confidentiality of such challenged ballot; when ballot to be delivered to voter; disposition of "spoiled" ballots; providing for conduct of voter after receipt of ballot; recordation of voter's appearance and of challenged ballots; prohibiting voting assistance except in certain cases; setting forth procedure for voting assistance and providing for challenge thereto; requiring county clerk to prepare a list of assisted voters; disposition of voted ballots, affidavits, lists, election supplies, records and returns; providing for crimes; and setting forth criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-34. Voting procedures generally; assistance to voters; voting records; penalties.

- 1 (a) Any person desiring to vote in an election shall,
- 2 upon entering the election room, clearly state his name
- 3 and residence to one of the poll clerks who shall
- 4 thereupon announce the same in a clear and distinct
- 5 tone of voice. If such person is found to be duly
- 6 registered as a voter at that precinct, he shall be

7 required to sign his name in the space marked "signa-
8 ture of voter" on the pollbook prescribed and provided
9 for the precinct. If such person be physically or
10 otherwise unable to sign his name, his mark shall be
11 affixed by one of the poll clerks in the presence of the
12 other and the name of the poll clerk affixing the voter's
13 mark shall be indicated immediately under such
14 affixation. No ballot shall be given to such person until
15 he so signs his name on the pollbook or his signature
16 is so affixed thereon.

17 (b) The clerk of the county commission is authorized,
18 upon verification that the precinct at which a handi-
19 capped person is registered to vote is not handicap
20 accessible, to transfer such person's registration to the
21 nearest polling place in the county which is handicap
22 accessible. Requests by such persons for a transfer of
23 registration shall be received by the county clerk no
24 later than thirty days prior to the date of the election.
25 Any handicapped person who has not made a request
26 for a transfer of registration at least thirty days prior
27 to the date of the election may vote a challenged ballot,
28 at a handicap accessible polling place in the county of
29 his or her registration, and, if during the canvass the
30 county commission determines that the person had been
31 registered in a precinct not handicap accessible, the
32 voted ballot, if otherwise valid, shall be counted. The
33 handicapped person may vote in the precinct to which
34 the registration was transferred only as long as the
35 disability exists or the precinct from which the handi-
36 capped person was transferred remains inaccessible to
37 the handicapped. To ensure confidentiality of such
38 transferred ballot, the county clerk processing the ballot
39 shall provide the voter with an unmarked envelope and
40 an outer envelope designated "challenged bal-
41 lot/handicapped voter." After validation of the ballot at
42 the canvass, the outer envelope shall be destroyed and
43 the handicapped voter's ballot shall be placed with other
44 approved challenged ballots prior to removal of the
45 ballot from the unmarked envelope.

46 (c) When the voter's signature is properly on the
47 pollbook, the two poll clerks shall sign their names in

48 the places indicated on the back of the official ballot and
49 shall deliver the ballot to the voter to be voted by him
50 then without leaving the election room. If he returns the
51 ballot spoiled to the clerks, they shall immediately mark
52 such ballot "spoiled" and the same shall be preserved
53 and placed in a spoiled ballot envelope together with
54 other spoiled ballots to be delivered to the board of
55 canvassers and deliver to the voter another official
56 ballot, signed by the clerks on the reverse side as before
57 done. The voter shall thereupon retire alone to the booth
58 or compartment prepared within the election room for
59 voting purposes and there prepare his ballot, using a
60 ballpoint pen of not less than five inches in length or
61 other indelible marking device of not less than five
62 inches in length. In voting for candidates in general and
63 special elections, the voter shall comply with the rules
64 and procedures prescribed in section five, article six of
65 this chapter.

66 (d) It shall be the duty of a poll clerk, in the presence
67 of the other poll clerk, to indicate by a check mark
68 inserted in the appropriate place on the registration
69 record of each voter the fact that such voter voted in the
70 election. In primary elections the clerk shall also insert
71 thereon a distinguishing initial or initials of the political
72 party for whose candidates the voter voted. If a person
73 is challenged at the polls, such fact shall be indicated
74 by the poll clerks on the registration record together
75 with the name of the challenger. The subsequent
76 removal of the challenge shall be recorded on the
77 registration record by the clerk of the county
78 commission.

79 (e) (1) No voter shall receive any assistance in voting
80 unless, by reason of blindness, disability, advanced age
81 or inability to read and write, that voter is unable to vote
82 without assistance. Any voter qualified to receive
83 assistance in voting under the provisions of this section
84 may:

85 (A) Declare his or her choice of candidates to an
86 election commissioner of each political party who, in the
87 presence of the voter and in the presence of each other,
88 shall prepare the ballot for voting in the manner

89 hereinbefore provided, and, on request, shall read over
90 to such voter the names of candidates on the ballot as
91 so prepared; or

92 (B) Require the election commissioners to indicate to
93 him or her the relative position of the names of the
94 candidates on the ballot, whereupon the voter shall
95 retire to one of the booths or compartments to prepare
96 his ballot in the manner hereinbefore provided; or

97 (C) Be assisted by any person of the voter's choice:
98 *Provided*, That such assistance may not be given by the
99 voter's present or former employer or agent of that
100 employer or by the officer or agent of a labor union of
101 which the voter is a past or present member.

102 (2) Any voter who requests assistance in voting but
103 who is believed not to be qualified for such assistance
104 under the provisions of this section shall nevertheless be
105 permitted to vote a challenged ballot with the assistance
106 of any person herein authorized to render assistance.

107 (3) Any one or more of the election commissioners or
108 poll clerks in the precinct may challenge such ballot on
109 the ground that the voter thereof received assistance in
110 voting if, when in his or their opinion, the person who
111 received assistance in voting is not so illiterate, blind,
112 disabled or of such advanced age as to have been unable
113 to vote without assistance. The election commissioner or
114 poll clerk or commissioners or poll clerks making such
115 challenge shall enter the challenge and reason therefor
116 on the form and in the manner prescribed or authorized
117 by article three of this chapter.

118 (4) An election commissioner or other person who
119 assists a voter in voting:

120 (A) Shall not in any manner request, or seek to
121 persuade, or induce the voter to vote any particular
122 ticket or for any particular candidate or for or against
123 any public question, and shall not keep or make any
124 memorandum or entry of anything occurring within the
125 voting booth or compartment, and shall not, directly or
126 indirectly, reveal to any person the name of any
127 candidate voted for by the voter, or which ticket he had

128 voted, or how he had voted on any public question, or
129 anything occurring within the voting booth or compart-
130 ment or voting machine booth, except when required
131 pursuant to law to give testimony as to such matter in
132 a judicial proceeding; and

133 (B) Shall sign a written oath or affirmation before
134 assisting such voter on a form prescribed by the
135 secretary of state stating that he or she will not override
136 the actual preference of the voter being assisted,
137 attempt to influence the voter's choice or mislead the
138 voter into voting for someone other than the candidate
139 of voter's choice. Such person assisting the voter shall
140 also swear or affirm that he or she believes that the
141 voter is voting free of intimidation or manipulation.

142 (5) In accordance with instructions issued by the
143 secretary of state, the clerk of the county commission
144 shall provide a form entitled "List of Assisted Voters,"
145 the form of which list shall likewise be prescribed by
146 the secretary of state. The commissioners shall enter the
147 name of each voter receiving assistance in voting the
148 ballot, together with the poll slip number of that voter
149 and the signature of the person or the commissioner
150 from each party who assisted the voter. If no voter shall
151 have been assisted in voting the ballot as herein
152 provided, the commissioners shall likewise make and
153 subscribe to an oath of that fact on such list.

154 (f) After preparing the ballot the voter shall fold the
155 same so that the face shall not be exposed and so that
156 the names of the poll clerks thereon shall be seen. The
157 voter shall then announce his name and present his
158 ballot to one of the commissioners who shall hand the
159 same to another commissioner, of a different political
160 party, who shall deposit it in the ballot box, if such
161 ballot is the official one and properly signed. The
162 commissioner of election may inspect every ballot before
163 it is deposited in the ballot box, to ascertain whether it
164 is single, but without unfolding or unrolling it, so as to
165 disclose its content. When the voter has voted, he shall
166 retire immediately from the election room, and beyond
167 the sixty-foot limit thereof, and shall not return, except
168 by permission of the commissioners.

169 (g) Following the election, the affidavits required by
170 this section from those assisting voters together with the
171 "List of Assisted Voters," shall be returned by the
172 election commissioners to the clerk of the county
173 commission along with the election supplies, records and
174 returns, who shall make such oaths and list available for
175 public inspection and who shall preserve the same for
176 a period of twenty-two months or until disposition is
177 authorized or directed by the secretary of state, or court
178 of record.

179 (h) Any person making an affidavit required under
180 the provisions of this section who shall therein know-
181 ingly swear falsely, or any person who shall counsel, or
182 advise, aid or abet another in the commission of false
183 swearing under this section, shall be guilty of a
184 misdemeanor, and, upon conviction thereof, shall be
185 fined not more than one thousand dollars, or imprisoned
186 in the county jail for a period of not more than one year,
187 or both.

188 (i) Any election commissioner or poll clerk who
189 authorizes or provides unchallenged assistance to a voter
190 when such voter is known to such election commissioner
191 or poll clerk not to require assistance in voting, shall be
192 guilty of a felony, and, upon conviction thereof, shall be
193 fined not more than five thousand dollars, or imprisoned
194 in the penitentiary for a period of not less than one year
195 nor more than five years, or both fined and imprisoned.

CHAPTER 53

(Com. Sub. for H. B. 4018—By Delegate Anderson)

[Passed March 12, 1988; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-six, article two, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to registration of naturalized citizens.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. REGISTRATION OF VOTERS.

§3-2-26. Registration of naturalized citizens.

1 Any naturalized citizen, claiming the right to initially
2 register in this state shall establish his or her right by
3 producing either a certification of naturalization or a
4 certificate of citizenship or a verification of naturaliza-
5 tion or citizenship from the Immigration and Natural-
6 ization Service.

7 Should a naturalized citizen, who has previously
8 registered in a county of this state move to another
9 county of this state, at which time they claim the right
10 to register in the new county of residence, they shall not
11 be required to again produce a certificate of naturaliza-
12 tion or certificate of citizenship or a verification of
13 naturalization or citizenship if they can produce a valid
14 voter registration card from the county of last residence.

CHAPTER 54

(H. B. 4357—By Delegates Roop and Minard)

[Passed February 27, 1988; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section forty-one, article two, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections five, seven and twelve, article three of said chapter; to further amend said article three by adding thereto three new sections, designated sections three-a, five-b and five-c; and to amend and reenact section three, article nine of said chapter three, all relating generally to voting by absent voters; providing for registration and absentee ballot application by federal postcard application for certain persons, in accordance with the Uniformed and Overseas Citizens Absentee Voting Act of 1986; permitting simultaneous

application by persons overseas for registration and for ballot and for primary and general election absent voter ballots; authorizing absentee voting by personal appearance for religious reasons in Saturday elections; setting forth procedure for voting special write-in absent voter's ballot by qualified absentee electors; providing an absent voter procedure in event of medical emergency; requiring the secretary of state to promulgate rules implementing the provisions of the Uniformed and Overseas Citizens Absentee Voting Act of 1986; and increasing penalty for crime of false swearing as to election matters.

Be it enacted by the Legislature of West Virginia:

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

Article

2. Registration of Voters.
3. Voting By Absentee.
9. Offenses and Penalties.

ARTICLE 2. REGISTRATION OF VOTERS.

§3-2-41. Registration and transfer of registration by mail; form to be required and distribution thereof; receipt 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
- 2 in effecting the biennial checkup as provided under
- 3 section twenty-one of this article, central registration
- 4 and transfer as provided under sections twenty-two and
- 5 twenty-seven of this article, and the provision with

6 respect to registration of absentee voters under section
7 twenty-three of this article, any qualified person may
8 register or transfer his registration by mail.

9 (b) Completed applications, when received by any
10 county clerk not later than forty-two days and by the
11 appropriate county clerk not later than thirty days
12 before the following primary, general or special election,
13 entitle the applicant to vote in such election if he is
14 otherwise qualified. Any county clerk receiving an
15 application from a person who does not reside in his
16 county but who does reside elsewhere in the state shall
17 forthwith forward such application to the proper county
18 clerk. Each county clerk shall make an entry on such
19 application of the date it is received by such clerk, and
20 the application shall remain on file in the office of the
21 clerk for at least two years from the date it was
22 received.

23 (c) Applications for use pursuant to this section shall
24 be made available by the county clerk to every adult
25 person of the county, not registered, and to any
26 registered voter of the county upon request. The
27 application for use pursuant to this section shall be a
28 uniform statewide application in a form to be prescribed
29 by the secretary of state and shall include the informa-
30 tion required under the form provisions of section
31 nineteen of this article. The form, which shall be self-
32 addressed, is to be as widely and freely distributed as
33 possible and shall be a bifold self-mailer which shall be
34 compatible with local systems of voter registration data
35 collection and storage.

36 (d) In addition to the information required under the
37 form provisions of section nineteen of this article, the
38 form shall contain such other information as the
39 secretary of state may reasonably require and shall also
40 include the following information:

41 (1) Notice that those currently registered do not need
42 to reregister unless they have moved or failed to vote
43 at least once during a period covering two statewide
44 primary and two general elections as indicated by their
45 registration records;

46 (2) Instructions on how to fill out and submit the form
47 and that the form must be received by the appropriate
48 county clerk at least thirty days prior to the election at
49 which the applicant may vote;

50 (3) Notice that registration or transfer is not complete
51 until the form is received by the appropriate county
52 clerk;

53 (4) Notice of a voter's right to register centrally;

54 (5) A warning to the voter that it is a crime to procure
55 a false registration and notice of the felony offenses
56 provided for in section forty-two of this article;

57 (6) Notice that political party enrollment is optional
58 but, in order to vote in a primary election of a political
59 party, a voter must enroll in that political party;

60 (7) Notice that the applicant must be a citizen of the
61 United States, at least seventeen years old and will be
62 eighteen years old on or before the next general election,
63 and a resident of the county to which application is
64 made;

65 (8) Notice that a voter notification form will be mailed
66 to those applicants whose complete form is received;

67 (9) A space for the applicant to indicate whether or
68 not he has ever been registered before and, if so, his
69 name and address at the time of prior registration;

70 (10) A space for the applicant to indicate his choice
71 of party, if any, in which space the names of all parties
72 are provided so that the applicant can check one with
73 a clear alternative provided for an applicant to decline
74 to affiliate with any party;

75 (11) A space for the applicant to indicate his social
76 security number; and

77 (12) A place for the applicant to execute the applica-
78 tion on a line which is clearly labeled "signature of
79 applicant" and contained in the following specific form
80 of oath or affirmation:

81 "I do solemnly swear or affirm that the information
82 provided in the preceding uniform statewide application

83 is true to the best of my knowledge, information and
84 belief, and I understand that if I willingly provide false
85 information concerning a material matter or thing
86 therein, I shall be deemed guilty of the felony offense
87 of perjury and shall be subject to the penalties for
88 perjury.

89

90

Signature of Applicant

91 Subscribed and sworn (or affirmed) to before me, this
92 _____ day of _____, 19____

93

”

94 which oath or affirmation shall be administered by a
95 person authorized to perform notarial acts under the
96 provisions of article one or one-a, chapter thirty-nine of
97 this code. The person administering the oath or affirma-
98 tion shall not charge a fee for such act, and the uniform
99 statewide application shall inform the person adminis-
100 tering such oath or affirmation that no fee is to be
101 charged.

102 (e) Any person who has registered or reregistered
103 pursuant to this section shall be required to make his
104 first vote in person at the poll or appear in person at
105 the office of the clerk of the circuit court to vote an
106 absentee ballot during a period covering two statewide
107 primary elections and two general elections in order to
108 make such registration valid: *Provided*, That any person
109 who has registered or reregistered pursuant to this
110 section and who has qualified for placement on the
111 special absentee voting list pursuant to section two-b,
112 article three of this chapter, who has qualified to vote
113 an absent voter's ballot by mail pursuant to paragraphs
114 one, two, three or six of the application for voting an
115 absent voter's ballot by mail provided in section five,
116 article three of this chapter, who has qualified to vote
117 through the use of a federal postcard registration, or
118 who has qualified to vote an absent voter's ballot under
119 the provisions of section five-b or five-c, article three of
120 this chapter, shall not be required to make his first vote
121 in person but shall be required to vote during a period
122 covering two statewide primary elections and two

123 general elections next following his registration in order
124 to make such registration valid.

125 Any such person required by this section to make his
126 first vote in person in order to make his registration
127 valid shall present valid identification and proof of age
128 to the clerks at the poll or the clerk in the office of the
129 circuit clerk of the county in which he is registered
130 before casting his first ballot.

131 (f) The uniform statewide application prescribed in
132 this section may refer to various public officials by title
133 or official position (e.g., clerk of the county commission,
134 secretary of state), but in no case may the actual name
135 of the officeholder be printed or otherwise appear on
136 such form: *Provided*, That nothing contained in this
137 subsection shall prohibit a public official, otherwise
138 qualified, from administering the oath or affirmation in
139 accordance with the provisions of subdivision (12),
140 subsection (d) of this section, and affixing his signature
141 thereto.

142 (g) It shall be the duty of the secretary of state to
143 create and commence distribution of the forms for the
144 uniform statewide application within six months
145 following the effective date of this section.

146 (h) Notwithstanding any other provision of this
147 section, persons specified in subsection (2), section one,
148 article three of this chapter may register by mail using
149 the federal postcard application issued pursuant to the
150 authority of the Uniformed and Overseas Citizens
151 Absentee Voting Act of 1986, (Public Law 99-410, 42
152 U.S.C. 1973, et seq.).

153 The oath of the applicant using the federal postcard
154 application shall not be required to be administered by
155 a person authorized to perform notarial acts. Any
156 federal postcard application received by the county
157 clerk or circuit clerk which has been designated by the
158 applicant as both an application for registration and a
159 request for an absent voter's ballot shall be accepted for
160 both purposes if all legal requirements are met.

ARTICLE 3. VOTING BY ABSENTEES.

- §3-3-3a. Voting absent voter's ballot by personal appearance in Saturday elections for religious reasons.
- §3-3-5. Voting an absent voter's ballot by mail; federal postcard application.
- §3-3-5b. Procedures for voting with special write-in absent voter's ballot by qualified persons.
- §3-3-5c. Procedures for voting an emergency absent voter's ballot by qualified voters.
- §3-3-12. Rules, regulations, orders, instructions, forms, lists and records pertaining to absentee voting.

§3-3-3a. Voting absent voter's ballot by personal appearance in Saturday elections for religious reasons.

1 (a) In addition to the persons declared eligible to vote
2 absent voters' ballots pursuant to the provisions of
3 section one of this article, duly registered and otherwise
4 qualified voters who are members of a religious
5 denomination with an established history of observing
6 Saturday as the sabbath may vote absentee by personal
7 appearance in any election to be held on a Saturday.

8 (b) Application for an absent voter's ballot authorized
9 by the provisions of this section shall be made on a form
10 prescribed by the secretary of state. The procedures for
11 voting by personal appearance set forth in section three
12 of this article, to the extent not in conflict with the
13 provisions of this section, shall otherwise govern the
14 procedures herein.

§3-3-5. Voting an absent voter's ballot by mail; federal postcard application.

1 A person desiring to vote an absent voter's ballot by
2 mail may, on or after the first day of January prior to
3 the date of any primary, general or special election in
4 the case of any person outside the continental limits of
5 the United States and not more than eighty-four days
6 prior to the date of any primary, general or special
7 election in the case of any other person, make applica-
8 tion by mail to the clerk of the circuit court of the county
9 in which he is registered to vote for an official absent
10 voter's ballot or ballots to be voted at such election. The
11 clerk of the circuit court shall not honor any such
12 application for an absent voter's ballot received by him
13 after the fourth day next preceding the date of the

14 election. In computing the fourth day, the day of
15 conducting the election shall be excluded.

16 When a clerk receives a completed application to vote
17 an absent voter's ballot by mail in more than one
18 election in an election year from an applicant eligible
19 to vote absentee under subsection (2), section one of this
20 article, the clerk shall, if all legal requirements are met,
21 forward to the applicant the appropriate ballot or
22 ballots for each election held within that jurisdiction.
23 The application to be used by persons who wish to vote
24 an absent voter's ballot by mail shall be prescribed by
25 the secretary of state and shall be in substantially the
26 following form:

27 "APPLICATION FOR VOTING AN ABSENT VO-
28 TER'S BALLOT BY MAIL

29 KNOWING THAT I CAN BE FINED NOT MORE
30 THAN ONE THOUSAND DOLLARS OR IMPRI-
31 SONED IN THE COUNTY JAIL FOR A PERIOD OF
32 NOT MORE THAN ONE YEAR OR BOTH SUCH
33 FINE AND IMPRISONMENT FOR KNOWINGLY
34 MAKING A FALSE STATEMENT OR REPRESEN-
35 TATION HEREIN, I, _____, hereby
36 declare that I am now, or will have been a resident of
37 the state of West Virginia for twelve months, and of the
38 county of _____, for thirty days, next preceding
39 the date of the ensuing election to be held on the
40 _____ day of _____, 19____; that I now reside
41 at _____,

42 (give full address)
43 in the magisterial district of _____,
44 in said county; that I am a duly qualified voter entitled
45 to vote in such election; that I am registered in the
46 precinct of my residence as provided by law; that I am
47 registered as a _____; (state political
48 party if ballot is for primary election) and that (strike
49 out the numbered paragraphs not applicable and
50 complete the numbered paragraph which is applicable):

51 (1) I will be unable to vote in person at the polls on
52 election day because of _____,
53 (state particulars of physical disability, illness or

54 injury) as evidenced below by the statement of a duly
55 licensed physician or chiropractor.

56 (2) I anticipate commitment to a hospital, institution
57 or other confinement on or about the _____
58 day of _____, 19____, for the following medical
59 reasons _____,
60 as evidenced below by the statement of a duly licensed
61 physician or chiropractor, and by reason thereof will not
62 be able to vote in person at the polls in such election.

63 (3) I expect to be absent from the aforementioned
64 county in which I am registered to vote during the
65 entire time the polls are open in such election, and I am
66 (check one applicable):

67 A member of the armed forces in the active service.

68 A spouse or dependent of a member of the armed
69 forces in active service.

70 A member of the merchant marine of the United
71 States.

72 A spouse or dependent of a member of the mer-
73 chant marine of the United States.

74 A citizen of the United States temporarily residing
75 outside the territorial limits of the United States and the
76 District of Columbia.

77 A spouse or dependent residing with or
78 accompanying a citizen of the United States temporarily
79 residing outside the territorial limits of the United
80 States and the District of Columbia.

81 (4) I am required to be absent from the aforementi-
82 oned county in which I am registered during the entire
83 time the polls are open in such election for the reason
84 or reasons hereafter stated; I am not in any of the
85 categories referred to in paragraph (3) above; I am
86 required to be absent from said county during regular
87 business hours of the clerk of the circuit court of said
88 county throughout the period or throughout the re-
89 mainder of the period of voting an absent voter's ballot
90 by personal appearance at said office. _____

91

92 (state reason or reasons for required
93 absence from county on election.)

94 (5) I have been appointed _____
95 (state whether an election
96 commissioner or poll clerk)
97 in precinct No. _____ in said election, which
98 precinct is not the precinct in which I am registered to
99 vote.

100 (6) I will be incarcerated in the county or city jail or
101 other detention facility located in this county on election
102 day but am not under sentence of treason, bribery or a
103 felony, as evidenced below by the statement of the
104 county sheriff, chief of police or authorized deputy.

105 In consideration of the foregoing qualifications, I
106 hereby make application for an official absent voter's
107 ballot (or ballots if more than one are to be used) to be
108 voted by me at such election, and request that such
109 ballot or ballots be mailed to me at the following
110 address:

111 _____
112 (give full address for mailing purposes)

113 (Complete the following paragraph only if assistance
114 will be needed in voting absent voter's ballot):

115 I further declare that I will need assistance in voting
116 an absent voter's ballot for the following reasons _____

117 _____
118 (specify illiteracy or exact nature of physical
119 disability, illness or injury)

120 I hereby declare under the penalties for false swear-
121 ing as provided in section three, article nine, chapter
122 three of the code of West Virginia, one thousand nine
123 hundred thirty-one, as amended, that the statements and
124 declarations contained in this application are true and
125 correct to the best of my knowledge and belief.

126 _____
127 Signature of Applicant

128 _____
129 (or in case the applicant is illiterate he
130 shall make his mark and have it witnessed

131 on the following lines):

132

133

Mark of Applicant

134

135

Signature of Witness"

136 If the person applying for an absent voter's ballot by
137 mail be unable to sign his application because of
138 illiteracy, he shall make his mark on the signature line
139 above provided for an illiterate applicant which mark
140 shall be witnessed.

141 The following declaration must be completed and
142 signed if the reason specified in the above application
143 for being unable to vote in person at such election is
144 physical disability, illness or injury, or is anticipated
145 confinement in a hospital, institution or other place for
146 medical reasons.

147 "STATEMENT OF PHYSICIAN (CHIROPRACTOR)

148 I, _____, hereby declare
149 that I am a physician (chiropractor) duly licensed to
150 practice in the state of _____; that I last
151 examined _____, the applicant
152 whose signature appears on the application above on the
153 _____ day of _____, 19____; and that in my
154 opinion (strike out numbered paragraph not applicable
155 and complete the numbered paragraph which is
156 applicable).

157 (1) The applicant will, because of _____
158 _____,

159 (state particulars of physical disability,
160 illness or injury)
161 be unable to go to the polls on the _____ day of
162 _____, 19____, the date of the election.

163 (2) The applicant will, because of _____
164 _____,

165 (state for what medical reasons)
166 be confined in _____
167 (specify hospital, institution or other place)
168 _____, on or about the _____

169 day of _____, 19____, and will because of such
 170 reasons not be able to go to the polls on the _____ day
 171 of _____, 19____, the date of the election.

172 (Complete the following paragraph if applicant for
 173 absent voter's ballot will need assistance in voting such
 174 ballot, based upon physical disability, illness or injury.)

175 I am of the further opinion that applicant _____,
 176 (will) (will not)

177 because of the aforementioned physical disability, illness
 178 or injury need assistance in voting an absent voter's
 179 ballot.

180

181

Signature of Physician (Chiropractor)"

182 The following declaration must be completed and
 183 signed if the reason specified in the above application
 184 for being unable to vote in person at the election is
 185 incarceration in a facility within the county for other
 186 than conviction of treason, bribery or a felony:

187 "STATEMENT OF SHERIFF, CHIEF
 188 OF POLICE OR AUTHORIZED DEPUTY

189 I, _____, hereby declare that
 190 the applicant whose signature appears on the applica-
 191 tion above will be confined in the county or city jail or
 192 other detention facility on the _____ day of
 193 _____, 19____, the date of the election, and is not
 194 under conviction of treason, bribery or a felony.

195

196

SIGNATURE

197

198

TITLE

199

200

COUNTY"

201 In lieu of the application for an absent voter's ballot
 202 provided above, those persons specified in subsection (2),
 203 section one of this article may use the federal postcard
 204 application for absent voter's ballot form issued under
 205 authority of the Uniformed and Overseas Citizens

206 Absentee Voting Act of 1986, as amended (Public Law
207 99-410, 42 U.S.C. 1973, et seq.). Any such federal
208 postcard application does not have to be executed
209 pursuant to oath or attestation. Upon receipt of a
210 properly completed copy of such form, the clerk of the
211 circuit court shall process it the same as any other
212 application for an absent voter's ballot by mail. Any
213 such properly completed copy may be returned only to
214 the clerk of the circuit court of the county in which the
215 applicant is a registered voter.

216 Immediately upon receipt of a completed application
217 for voting an absent voter's ballot by mail, the clerk of
218 the circuit court shall determine (1) whether the
219 application for voting such ballot has been completed as
220 required by law; (2) whether he has evidence that any
221 of the statements contained in the application are not
222 true; and (3) whether the applicant is in fact duly
223 registered in the precinct of his residence as provided
224 by law and insofar as registration is concerned would
225 be permitted to vote at the polls in such election. If the
226 determination of the clerk of the circuit court as to (1)
227 or (3) is in the negative or as to (2) is in the affirmative,
228 the clerk shall notify the applicant at the time he mails
229 the absent voter's ballot to him that he will challenge
230 the applicant's privilege to vote an absent voter's ballot
231 by mail for reasons which he shall indicate and, upon
232 receipt of the applicant's absent voter's ballot, the clerk
233 shall challenge such ballot.

234 Upon determination by the clerk of the circuit court
235 that the applicant is entitled to vote an absent voter's
236 ballot by mail or that the applicant will be permitted
237 to vote an absent voter's ballot by mail with such ballot
238 to be challenged by the clerk, the clerk shall between
239 the forty-second day and the fourth day next prior to the
240 election in which the absent voter's ballot is to be used,
241 mail to the applicant the following absentee voting
242 supplies: *Provided*, That the clerk shall mail such voting
243 supplies to an applicant whose address is shown to be
244 outside the continental limits of the United States by
245 priority airmail on the same day the application is
246 received in the clerk's office or on the next day

247 thereafter that he has both an application and a ballot:

248 (a) One official absent voter's ballot (or ballots if more
249 than one are to be used) which has been prepared in
250 accordance with law for use in such election; such ballot
251 in the case of a primary election shall be of the party
252 of the applicant's affiliation as indicated on his registra-
253 tion card or, in the case the applicant is not found to
254 be registered by the clerk but votes a ballot challenged
255 by the clerk, the clerk shall send to the applicant an
256 absent voter's ballot of the party designated by the
257 applicant in his application;

258 (b) One Absent Voter's Ballot Envelope No. 1, un-
259 sealed, which shall have no writing thereon except the
260 designation "Absent Voter's Ballot Envelope No. 1";

261 (c) One Absent Voter's Ballot Envelope No. 2,
262 unsealed;

263 (d) Notice that an absent voter's ballot returned from
264 outside the continental limits of the United States must
265 be mailed priority airmail; and

266 (e) Notice that absent voters' ballots must be received
267 in the office of the clerk not later than the time of
268 closing of the polls.

269 Upon receipt of an absent voter's ballot by mail, the
270 voter shall mark the ballot and the voter may have
271 assistance in voting his absent voter's ballot in accor-
272 dance with the provisions of section six of this article.

273 After the voter has voted his absent voter's ballot, he
274 shall (1) enclose the same in Absent Voter's Ballot
275 Envelope No. 1, and seal that envelope, (2) enclose
276 sealed Absent Voter's Ballot Envelope No. 1 in Absent
277 Voter's Ballot Envelope No. 2 and seal that envelope,
278 (3) complete and sign the forms, if any, on Absent
279 Voter's Ballot Envelope No. 2 according to the instruc-
280 tions thereon, and (4) mail, postage prepaid and, if from
281 outside the continental limits of the United States, by
282 priority airmail, the sealed Absent Voter's Ballot
283 Envelope No. 2 to the clerk of the circuit court of the
284 county in which he is registered to vote.

285 Upon receipt of such sealed envelope, the clerk shall
286 (1) enter onto the envelope such information as may be
287 required of him according to the instructions thereon;
288 (2) enter his challenge, if any, to the absent voter's
289 ballot; (3) enter the required information into a record
290 of persons making application for and voting an absent
291 voter's ballot by personal appearance or by mail or
292 otherwise (the form of which record and the information
293 to be entered therein shall be prescribed by the
294 secretary of state); and (4) place such sealed envelope in
295 a secure location in his office, there to remain until
296 delivered to the polling place in accordance with the
297 provisions of this article or, in case of a challenged
298 ballot, to the county commission sitting as a body of
299 canvassers.

**§3-3-5b. Procedures for voting with special write-in
absent voter's ballot by qualified persons.**

1 (a) Notwithstanding any other provisions of this
2 chapter, a person qualified to vote an absent voter's
3 ballot, in accordance with subsection (2), section one of
4 this article, may apply not earlier than ninety days
5 before an election for a special write-in absentee ballot.
6 This ballot shall be for presidential electors and United
7 States senator or representative in Congress.

8 (b) The application for a special write-in absentee
9 ballot may be made on the federal postcard application
10 form or on another form prescribed by the secretary of
11 state.

12 (c) In order to qualify for a special write-in absent
13 voter's ballot, the voter must state that he or she is
14 unable to vote by regular absent voter's ballot or in
15 person due to requirements of military service or due
16 to living in isolated areas or extremely remote areas of
17 the world. This statement may be made on the federal
18 postcard application or on a form prepared by the
19 secretary of state and supplied and returned with the
20 special write-in absent voter's ballot.

21 (d) Upon receipt of said application, the circuit clerk
22 shall issue the special write-in absent voter's ballot
23 which shall be prescribed and provided by the secretary

24 of state. Such ballot shall permit the elector to vote by
25 writing in a party preference for each office, the names
26 of specific candidates for each office, or the name of the
27 person whom the voter prefers for each office. Any such
28 voted ballot must be received by the circuit clerk prior
29 to the close of the polls on election day or it may not
30 be counted.

§3-3-5c. Procedures for voting an emergency absent voter's ballot by qualified voters.

1 (a) Notwithstanding any other provision of this
2 chapter, a person qualified to vote an absent voter's
3 ballot, as defined in subsection (1), section one of this
4 article, who is admitted, on or after the fourth day next
5 preceding the election, to a hospital or other duly
6 licensed health care facility within the county of their
7 residence for emergency medical treatment, and who
8 remains confined and is unable to vote at the polls on
9 election day, may vote an emergency absent voter's
10 ballot under the procedures established in this section.

11 (b) On or before the first Monday of the month next
12 preceding the date on which any election is to be held
13 the circuit clerk of each county shall notify the county
14 commission of the number of sets of emergency absent
15 voter ballot commissioners which he or she deems
16 necessary to perform the duties and functions hereinaf-
17 ter set forth.

18 (c) A set of emergency absent voter ballot commis-
19 sioners at-large shall consist of two persons, appointed
20 by the county commission in accordance with the
21 procedure prescribed for the appointment of election
22 commissioners under the provisions of section twenty-
23 eight, article one of this chapter but without regard to
24 magisterial district or precinct. Emergency absent voter
25 ballot commissioners shall have the same qualifications
26 and rights and take the same oath required under the
27 provisions of this chapter for commissioners of elections.
28 Such commissioners shall be compensated for services
29 and expenses in the same manner as commissioners of
30 election obtaining and delivering election supplies under
31 the provisions of section forty-four, article one of this

32 chapter.

33 (d) Upon request of the voter or a member of the
34 voter's immediate family, the circuit clerk shall issue an
35 application for an emergency absent voter ballot which
36 shall be delivered by a set of the emergency absent voter
37 ballot commissioners. The emergency absent voter ballot
38 application shall be prescribed by the secretary of state
39 and shall be in substantially the following form:

40 "APPLICATION FOR VOTING AN
41 EMERGENCY ABSENT VOTER'S BALLOT

42 KNOWING THAT I CAN BE FINED NOT MORE
43 THAN ONE THOUSAND DOLLARS AND IMPRI-
44 SONED IN THE COUNTY JAIL FOR A PERIOD OF
45 NOT MORE THAN ONE YEAR FOR KNOWINGLY
46 MAKING A FALSE STATEMENT OR REPRESENTATION
47 HEREIN, I, _____, hereby declare that
48 I am now, or will have been a resident of the state of
49 West Virginia for twelve months, and of the county of
50 _____, for thirty days next preceding the date of
51 the ensuing election to be held on the _____ day of
52 _____, 19____; that I now reside at _____

53 _____,
54 (give full address)
55 in the magisterial district of _____, in said
56 county; that I am a duly qualified voter entitled to vote
57 in such election; that I am registered in the precinct of
58 my residence as provided by law; that I am registered
59 as a _____

60 _____;
61 (1) I will be unable to vote in person at the polls on
62 election day because I have been confined in
63 _____

64 _____
65 (State name and location of facility)
66 since _____
67 (State date confinement commenced)
68 because of _____
69 (State particulars of illness or injury)

70 (2) My treating physician is _____

71 I hereby declare under the penalties for false swear-
 72 ing as provided in section three, article nine, chapter
 73 three of the code of West Virginia, one thousand nine
 74 hundred thirty-one, as amended, that the statements and
 75 declarations contained in this application are true and
 76 correct to the best of my knowledge and belief.

77

78

Signature of Applicant

79

80

81

82

(or in case the applicant is illiterate he
 shall make his mark and have it witnessed
 on the following lines):

83

84

Mark of Applicant

85

86

Signature of Witness"

87 If the person applying for an emergency absent voter's
 88 ballot be unable to sign his application because of
 89 illiteracy, he shall make his mark on the signature line
 90 above provided for an illiterate applicant which mark
 91 shall be witnessed.

92 The following declaration is to be completed and
 93 signed by each of the emergency absent voter's ballot
 94 commissioners:

95 "STATEMENT OF EMERGENCY ABSENT
 96 VOTER'S BALLOT COMMISSIONERS

97 We, _____ and _____, hereby
 98 declare that we are the duly appointed emergency
 99 absent voter's ballot commissioners and have met the
 100 applicant, whose name appears on the application above
 101 at his or her place of confinement on the ____ day of
 102 _____, 19____; and that in our opinion, the
 103 applicant will, because of an emergency medical
 104 confinement which commenced at least four days prior
 105 to the election, be unable to go to the polls on the ____
 106 day of _____, 19 ____, the date of the election.

107 We have determined that the applicant has been
 108 confined in _____

109 _____
 110 (State name and location of facility)
 111 since _____
 112 (State date confinement commenced)
 113 because of _____
 114 (State particulars of illness or injury)
 115 _____
 116 (Date) (Signature of Emergency Absent Voter's
 117 Ballot Commissioner)
 118 _____
 119 (Date) (Signature of Emergency Absent Voter's
 120 Ballot Commissioner)"

121 (e) The circuit clerk, upon receiving a proper and
 122 complete application for voting an emergency absent
 123 voter's ballot no earlier than the fourth day next
 124 preceding the election and no later than noon of election
 125 day, shall supply to the emergency absent voter's ballot
 126 commissioners the balloting materials as prescribed in
 127 section five of this article. At least one of the emergency
 128 absent voter ballot commissioners receiving the ballot-
 129 ing materials shall sign a receipt which shall be
 130 attached to the application form. Each of the emergency
 131 absent voter ballot commissioners shall deliver the
 132 materials to the absent voter, await his or her comple-
 133 tion of the ballot, and return the same to the circuit
 134 clerk, and upon delivering the voted ballot to the circuit
 135 clerk, sign an oath that no person other than the absent
 136 voter voted the ballot. The voted ballot shall be returned
 137 to the circuit clerk prior to the close of the polls on
 138 election day. Any ballots received by the clerk after the
 139 time that delivery may reasonably be made but before
 140 the closing of the polls shall be treated as challenged
 141 absent voters' ballots in accordance with the provisions
 142 of section ten of this article and in addition to those
 143 absent voters' ballots subject to challenge as enumerated
 144 therein.

145 (f) If either or both of the emergency absent voter
 146 ballot commissioners should refuse to sign any applica-
 147 tion for voting an emergency absent voter's ballot, then
 148 the voter shall be permitted to vote as an emergency
 149 absent voter and any such ballot shall be treated as a

150 challenged absent voter's ballot in accordance with the
151 provisions of section ten of this article and in addition
152 to those absent voters' ballots subject to challenge as
153 enumerated therein.

154 (g) Any voter who receives assistance in voting an
155 emergency absentee voter's ballot shall comply with the
156 provisions of section six of this article. Any other
157 provisions of this chapter relating to absent voter's
158 ballots not altered by the provisions of this section shall
159 govern the treatment of emergency absent voter's
160 ballots.

§3-3-7. Delivery of absent voters' ballots to polling places.

1 (a) Except as otherwise provided in this article, the
2 absent voters' ballots of each precinct, together with the
3 applications therefor, the affidavits made in connection
4 with assistance in voting, and such forms, lists and
5 records as may be designated by the secretary of state,
6 shall be delivered in a sealed carrier envelope to the
7 election commissioner of the precinct at the time he
8 picks up the official ballots and other election supplies
9 as provided in section twenty-four, article one of this
10 chapter.

11 (b) An absent voter's ballot shall be delivered by the
12 clerk of the circuit court to the election commissioners
13 of the precinct in which the voter thereof is registered,
14 or if not found to be registered, to the election commis-
15 sioner of the precinct in which his residence as stated
16 on the voter's application is located.

17 (c) Absent voters' ballots received after the election
18 commissioner has picked up the official ballots and
19 other election supplies for the precinct shall be delivered
20 to the election commissioner of the precinct who has
21 been so designated under aforementioned section
22 twenty-four, article one, by the clerk in person, or by
23 messenger, before the closing of the polls, provided such
24 ballots are received by the clerk in time to make such
25 delivery. Any ballots received by the clerk after the time
26 that delivery may reasonably be made but before the
27 closing of the polls, shall be treated as challenged absent
28 voters' ballots in accordance with the provisions of

29 section ten of this article and in addition to those absent
30 voters' ballots subject to challenge as enumerated
31 therein.

**§3-3-12. Rules, regulations, orders, instructions, forms,
lists and records pertaining to absentee
voting.**

1 The secretary of state shall make, amend and rescind
2 such rules, regulations, orders and instructions, and
3 prescribe such forms, lists and records, and consolida-
4 tion of such forms, lists and records as may be necessary
5 to carry out the policy of the Legislature as contained
6 in this article and as may be necessary to provide for
7 an effective, efficient and orderly administration of the
8 absent voter law of this state. In the case of West
9 Virginia voters residing outside the continental United
10 States, the secretary of state shall promulgate rules and
11 regulations necessary to implement procedures relating
12 to absent voters contained in the Uniformed and
13 Overseas Citizens Absentee Voting Act of 1986 (P.L. 99-
14 410, 42 U.S.C. 1973, et seq.) and shall forward a copy
15 of the act to all circuit court clerks and clerks of the
16 county commissions within ninety days of the effective
17 date of this section.

18 It shall be the duty of all clerks of the circuit court,
19 other county officers, and all election commissioners and
20 poll clerks to abide by such rules, regulations, orders
21 and instructions and to use such forms, lists and records
22 which, without limiting the foregoing, may include or
23 relate to:

24 (a) The consolidation of the two application forms
25 provided for herein into one form;

26 (b) The size and form of Absent Voter's Ballot
27 Envelope Nos. 1 and 2, and carrier envelopes;

28 (c) The forms and information which shall be placed
29 on Absent Voter's Ballot Envelope No. 2;

30 (d) The forms and manner of making the challenges
31 to absent voters' ballots authorized by this article;

32 (e) The forms of, information to be contained in, and
33 consolidation of lists and records pertaining to applica-
34 tions for, and voting of, absent voters' ballots and

- 35 assistance to persons voting absent voters' ballots;
- 36 (f) The supplying of application forms, envelopes,
37 challenge forms, lists, records, and other forms;
- 38 (g) The keeping and security of voted absent voters'
39 ballots in the office of the clerk of the circuit court.

ARTICLE 9. OFFENSES AND PENALTIES.

§3-9-3. False swearing; penalties.

1 (a) If any election official, or other person, making
2 any affidavit required under any provision of this
3 chapter, shall therein knowingly swear falsely, or if any
4 person shall counsel, advise, aid or abet another in the
5 commission of false swearing, he shall be guilty of a
6 misdemeanor, and, on conviction therefor shall be fined
7 not less than fifty nor more than one thousand dollars
8 and imprisoned in the county jail for a period of not
9 more than one year.

10 (b) If any person making any declaration required
11 under any provision of this chapter shall knowingly
12 make a false statement or representation therein, or if
13 any person shall counsel, advise, aid or abet another to
14 make such a declaration containing any false statement
15 or representation, any such person shall be deemed to
16 be guilty of false swearing although no oath was
17 administered, and such offense is hereby declared to be
18 a misdemeanor. Upon conviction of such offense, any
19 such person shall be fined not less than fifty nor more
20 than one thousand dollars and imprisoned in the county
21 jail for a period of not more than one year.

CHAPTER 55

(H. B. 4150—By Delegate Humphreys)

[Passed February 11, 1988; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and nine, article four-a, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating

to the electronic voting systems; amending the definitions and terminology to allow for tabulating program instructions on modern and advanced technology program media; and providing for an additional measure to secure the new program media from tampering by unauthorized persons.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-2. Definitions.

§3-4A-9. Minimum requirements of electronic voting systems.

§3-4A-2. Definitions.

1 As used in this article, unless otherwise specified:

2 (a) "Automatic tabulating equipment" means all
3 apparatus necessary to electronically count votes
4 recorded on ballot cards and tabulate the results;

5 (b) "Ballot card" means a tabulating card or paper on
6 which votes may be recorded by means of perforating
7 or marking in electronic sensitized ink or pencil;

8 (c) "Ballot labels" means the cards, papers, booklet,
9 pages or other material showing the names of offices
10 and candidates and the statements of measures to be
11 voted on, which are placed on the vote recording device;

12 (d) "Central counting center" means a facility
13 equipped with suitable and necessary automatic tabulat-
14 ing equipment, selected by the county commission, for
15 the electronic counting of votes recorded on ballot cards;

16 (e) "Electronic voting system" is a means of conduct-
17 ing an election whereby votes are recorded on ballot
18 cards by means of marking with electronic sensitized
19 ink or perforating, and such votes are subsequently
20 counted by automatic tabulating equipment at the
21 central counting center;

22 (f) "Program deck" means the actual punch card deck
23 or decks, or a computer program disk, diskette, tape or

24 other programming media, containing the program for
25 counting and tabulating the votes, including the
26 "application program deck";

27 (g) "Application program deck" means the punch
28 card deck containing specific option cards, used and
29 necessary to modify the program of general application,
30 to conduct and tabulate a specific election according to
31 applicable law;

32 (h) "Standard validation test deck" means a deck of
33 ballot cards wherein all voting possibilities which can
34 occur in an election are represented; and

35 (i) "Vote recording device" means equipment in which
36 ballot labels and ballot cards are placed to allow a voter
37 to record his vote.

§3-4A-9. Minimum requirements of electronic voting systems.

1 An electronic voting system of particular make and
2 design shall not be approved by the state election
3 commission or be purchased, leased or used, by any
4 county commission unless it shall fulfill the following
5 requirements:

6 (1) It shall secure or ensure the voter absolute secrecy
7 in the act of voting, or, at the voter's election, shall
8 provide for open voting;

9 (2) It shall be so constructed that no person except in
10 instances of open voting, as herein provided for, can see
11 or know for whom any voter has voted or is voting;

12 (3) It shall permit each voter to vote at any election
13 for all persons and offices for whom and which he is
14 lawfully entitled to vote, whether or not the name of any
15 such person appears on a ballot label as a candidate; and
16 it shall permit each voter to vote for as many persons
17 for an office as he is lawfully entitled to vote for; and
18 to vote for or against any question upon which he is
19 lawfully entitled to vote. The automatic tabulating
20 equipment used in such electronic voting systems shall
21 reject choices recorded on any ballot card or paper
22 ballot if the number of such choices exceeds the number

23 to which a voter is entitled;

24 (4) It shall permit each voter to deposit, write in, or
25 affix upon devices to be provided for that purpose,
26 ballots containing the names of persons for whom he
27 desires to vote whose names do not appear upon the
28 ballot labels;

29 (5) It shall permit each voter to change his vote for
30 any candidate and upon any question appearing upon
31 the ballot labels up to the time when his ballot or ballot
32 card is deposited in the ballot box;

33 (6) It shall contain a program deck consisting of cards
34 that are sequentially numbered, or consisting of a
35 computer program disk, diskette, tape or other pro-
36 gramming media containing sequentially numbered
37 program instructions and coded or otherwise protected
38 from tampering or substitution of the media or program
39 instructions by unauthorized persons, and capable of
40 tabulating all votes cast in each election;

41 (7) It shall contain two standard validation test decks
42 approved as to form and testing capabilities by the state
43 election commission;

44 (8) It shall correctly record and count accurately all
45 votes cast for each candidate and for and against each
46 question appearing upon the ballots or ballot labels;

47 (9) It shall permit each voter at any election other
48 than primary elections, by one mark or punch to vote
49 a straight party ticket, and by one mark or punch to vote
50 for all candidates of one party for presidential electors;
51 and to vote a mixed ticket selected from the candidates
52 of any and all parties and from independent candidates;
53 and it shall permit the proper counting, to the fullest
54 extent possible, of all votes cast for all candidates:
55 *Provided*, That in the event of cross-over voting from a
56 straight party ticket, the system shall not discard any
57 vote on the straight ticket, unless (i) a candidate in a
58 single selection contest opposite the discarded vote on
59 the straight ticket has been clearly chosen by the voter,
60 or (ii) the voter, by mark or punch has clearly indicated
61 which choices on each ticket, not in excess of the total

62 number permitted, the voter has made, or (iii) the
63 choices made by the voter are so contradictory that the
64 voter's choice is indiscernible, in which event, all votes
65 for the candidates for such office shall be discarded;

66 (10) It shall permit each voter in primary elections to
67 vote only for the candidates of the party with which he
68 has declared his affiliation, and preclude him from
69 voting for any candidate seeking nomination by any
70 other political party, permit him to vote for the
71 candidates, if any, for nonpartisan nomination or
72 election, and permit him to vote on public questions;

73 (11) It shall be provided with means for sealing the
74 vote recording device to prevent its use and to prevent
75 tampering with ballot labels, both before the polls are
76 open or before the operation of the vote recording device
77 for an election is begun and immediately after the polls
78 are closed or after the operation of the vote recording
79 device for an election is completed;

80 (12) It shall have the capacity to contain the names
81 of candidates constituting the tickets of at least nine
82 political parties, and to accommodate the wording of at
83 least fifteen questions;

84 (13) It shall be durably constructed of material of
85 good quality and in a workmanlike manner and in a
86 form which shall make it safely transportable;

87 (14) It shall be so constructed with frames for the
88 placing of ballot labels and with suitable means for the
89 protection of such labels, that the labels on which are
90 printed the names of candidates and their respective
91 parties, titles of offices, and wording of questions shall
92 be so reasonably protected from mutilation, disfigure-
93 ment or disarrangement;

94 (15) It shall bear a number that will identify it or
95 distinguish it from any other machine;

96 (16) It shall be so constructed that a voter may easily
97 learn the method of operating it and may expeditiously
98 cast his vote for all candidates of his choice, and upon
99 any public question; and

100 (17) It shall be accompanied by a mechanically
101 operated instruction model which shall show the
102 arrangement of ballot labels, party columns or rows,
103 and questions.

CHAPTER 56

(H. B. 4729—By Delegate Given)

[Passed March 12, 1988; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article six, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one-a; and to amend and reenact section two of said article six, all relating to authorizing municipalities to establish local emergency telephone systems and enter into agreements with counties; definitions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. LOCAL EMERGENCY TELEPHONE SYSTEM.

§24-6-1a. Municipal emergency telephone systems.

§24-6-2. Definitions.

§24-6-1a. Municipal emergency telephone systems.

1 Effective the first day of April, one thousand nine
2 hundred eighty-eight, and thereafter, the provisions of
3 this article shall also be applicable to municipalities of
4 this state. Where the provisions of this article refer to
5 the word "county" or "counties," henceforth such
6 references shall be considered to include the word
7 "municipality" or "municipalities" with respect to the
8 subject matter therein, except and unless such reference
9 to "municipality" or "municipalities" would not have a
10 logical and clear meaning within such context.

11 It is the intent of this section to make this article
12 equally applicable to counties and municipalities alike
13 and to allow county commissions and the officials of
14 municipalities to enter into such agreements between
15 them or the telephone company as may be necessary to
16 accomplish the purposes provided for by this article:
17 *Provided*, That if any county has a system in place,
18 municipalities may not adopt a different system without
19 county approval.

§24-6-2. Definitions.

1 As used in this article, unless the context clearly
2 requires a different meaning:

3 (1) "County answering point" means a facility to
4 which enhanced emergency telephone system calls for a
5 county are initially routed for response, and where
6 county personnel respond to specific requests for
7 emergency service by directly dispatching the approp-
8 riate emergency service provider, relaying a message to
9 the appropriate provider or transferring the call to the
10 appropriate provider.

11 (2) "Emergency services organization" means the
12 organization established under article five, chapter
13 fifteen of this code.

14 (3) "Emergency service provider" means any emer-
15 gency services organization or public safety unit.

16 (4) "Emergency telephone system" means a telephone
17 system which through normal telephone service facili-
18 ties automatically connects a person dialing the primary
19 emergency telephone number to an established public
20 agency answering point, but does not include an
21 enhanced emergency telephone system.

22 (5) "Enhanced emergency telephone system" means a
23 telephone system which automatically connects the
24 person dialing the primary emergency number to the
25 county answering point and in which the telephone
26 network system automatically provides to personnel
27 receiving the call, immediately on answering the call,
28 information on the location and the telephone number
29 from which the call is being made, and upon direction

30 from the personnel receiving the call routes or dis-
31 patches such call by telephone, radio or any other
32 appropriate means of communication to emergency
33 service providers that serve the location from which the
34 call is made.

35 (6) "Public agency" means the state, and any munic-
36 ipality, county, public district or public authority which
37 provides or has authority to provide fire-fighting, police,
38 ambulance, medical, rescue or other emergency
39 services.

40 (7) "Public safety unit" means a functional division of
41 a public agency which provides fire-fighting, police,
42 medical, rescue or other emergency services.

43 (8) "Telephone company" means a public utility which
44 is engaged in the provision of telephone service.

CHAPTER 57

(Com. Sub. for S. B. 545—By Senator Shaw)

[Passed March 12, 1988; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article two, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to referral of decedents' estates to a fiduciary commissioner; exceptions when no disputed claims are filed against the estate.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. PROOF AND ALLOWANCE OF CLAIMS AGAINST ESTATES OF DECEDENTS.

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

1 (a) Upon the return of the appraisalment by the
2 personal representative to the county clerk, the estate of
3 his decedent shall, by order of the county commission
4 to be then made, be referred to a fiduciary commissioner
5 for proof and determination of debts and claims,
6 establishment of their priority, determination of the
7 amount of the respective shares of the legatees and
8 distributees, and any other matter necessary and proper
9 for the settlement of the estate: *Provided*, That in
10 counties where there are two or more such commission-
11 ers, the estates of decedents shall be referred to such
12 commissioners in rotation, in order that, so far as
13 possible, there may be an equal division of the work:
14 *Provided, however*, That if the personal representative
15 shall deliver to the clerk an appraisalment of the assets
16 of the estate showing their value to be fifty thousand
17 dollars or less, exclusive of property held by the
18 decedent and another person or other persons as joint
19 tenants with rights of survivorship, the clerk shall
20 record said appraisalment and publish a notice as set
21 forth herein: *Provided further*, That a fiduciary commis-
22 sioner may not charge to the estate a fee greater than
23 two hundred dollars for the settlement of an estate,
24 except upon approval of the county commission because
25 of complicating issues or problems attendant to such
26 settlement and amount of time involved in and about
27 their resolution. The personal representative shall,
28 within two months from the date of recordation of the
29 appraisalment in such case, make report to the clerk of
30 his receipts, disbursements and distribution, and shall
31 make affidavit that all claims against the estate, for
32 expenses of administration, taxes and debts of the
33 decedent, have been paid in full; the clerk shall be
34 entitled to collect and receive a fee of ten dollars for
35 recording such report and affidavit, and for publication
36 of the notice hereinafter provided, said fee to be in lieu
37 of any other fee provided by law for recording a report
38 of settlement of the accounts of a decedent's personal
39 representative. It shall be the duty of the clerk, at least
40 once a month, to cause to be published once a week for
41 two successive weeks in a newspaper of general circu-
42 lation within the county of the administration of the

43 estate, a notice substantially as follows:

44 NOTICE OF FILING OF ESTATE ACCOUNTS

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

48 _____
49 _____
50 _____

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

59 _____
60 Clerk of the County Commission
61 of _____ County, W. Va.

62 If no such request or objection be made to the clerk
63 or to the county commission, the county commission may
64 confirm the report of the personal representative, and
65 thereupon the personal representative and his surety
66 shall be discharged; but if such objection or request be
67 made, the county commission may confirm the account-
68 ing or may refer the estate to one of its fiduciary
69 commissioners: *Provided*, That the personal representa-
70 tive shall have twenty days after the date of the filing
71 of a claim or claims against the estate of the decedent
72 to approve or reject said claim before said estate shall
73 be referred to a fiduciary commissioner and if all claims
74 are approved as filed then no reference may be made.

75 (b) If upon the return and recordation of the appraise-
76 ment, it shall appear to the clerk that there is only one
77 beneficiary of the estate and that said beneficiary is
78 competent at law, there shall be no further administra-
79 tion upon the estate, and no reference to a fiduciary
80 commissioner, unless, for due cause, the county commis-

81 sion shall order further administration and a reference
 82 to a fiduciary commissioner: *Provided*, That the personal
 83 representative shall have twenty days after the date of
 84 the filing of a claim or claims against the estate of the
 85 decedent to approve or reject said claim before said
 86 estate shall be referred to a fiduciary commissioner and
 87 if all claims are approved as filed then no reference may
 88 be made. The bond of the personal representative and
 89 his surety shall be discharged one year after the date
 90 of qualification of the personal representative if no claim
 91 shall have been filed with the county clerk and no suit
 92 shall have been instituted against the personal represen-
 93 tative. The clerk shall publish a notice once a week for
 94 two successive weeks in a newspaper of general circu-
 95 lation within the county of administration of the estate,
 96 substantially as follows:

97 NOTICE OF UNADMINISTERED ESTATE

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

103 Dated this _____ day of _____, _____.

104

105

106

 Clerk of the County Commission
 of _____ County, W. Va.

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

110 If no person demands administration and no creditor
 111 appears in response to the notice hereinabove provided,
 112 alienation of the decedent's real estate more than six
 113 months after the date of the notice to a bona fide
 114 purchaser for value without notice of any claim against
 115 the estate shall be free of any lien for taxes or debts of
 116 the decedent, notwithstanding the provisions of section
 117 five, article eight, chapter forty-four of this code.

CHAPTER 58

(Com. Sub. for S. B. 95—By Senator Jarrell)

[Passed February 22, 1988; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article five, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article eleven of said chapter, by adding thereto a new section, designated section eight-a, all relating to the appointment of nonresident fiduciaries; expanding the list of nonresidents who may qualify and act as nonresident fiduciaries; permitting nonresidents to be appointed committee for a resident incompetent; prescribing the methods for qualification and appointment of such nonresident fiduciaries; setting forth new and changing certain present bond requirements therefor; appointment of county clerk as attorney-in-fact for service of process and prescribing procedures therefor; permitting other lawful methods of service; setting forth restrictions and procedure for removal of personal assets of an estate; providing for joint and several liability of nonresident fiduciaries and sureties on bonds; setting forth penalties; establishing a procedure for the removal of assets from this state by certain nonresident fiduciaries; providing for liability of the surety for a violation thereof; and holding nonresident fiduciaries accountable after removal of such assets.

Be it enacted by the Legislature of West Virginia:

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

Article.

5. General Provisions as to Fiduciaries.

11. Transfer of Property of Nonresidents and Residents.

ARTICLE 5. GENERAL PROVISIONS AS TO FIDUCIARIES.

§44-5-3. Appointment of nonresident; bond; service of notice and process; fees; penalty.

1 (a) Notwithstanding any other provision of law, no
2 individual who is a nonresident of this state nor any
3 nonresident banking institution nor any corporation
4 having its principal office or place of business outside
5 this state may be appointed or act as executor, admin-
6 istrator, curator, guardian or committee in this state,
7 except that:

8 (1) An individual who is a nonresident of this state
9 may be appointed ancillary administrator of a nonres-
10 ident decedent's assets situate in this state if such
11 nonresident individual is lawfully acting as executor in
12 said decedent's state of domicile and submits letters of
13 probate authenticated by the probate authorities of the
14 decedent's state of domicile to the clerk of the county
15 commission of any county of this state wherein ancillary
16 administration is sought;

17 (2) An individual who is a nonresident of this state
18 may be appointed ancillary administrator of a nonres-
19 ident decedent's assets situate in this state if such
20 nonresident individual is acting as administrator in said
21 decedent's state of domicile and submits letters of
22 administration authenticated by the probate authorities
23 of the decedent's state of domicile to the clerk of the
24 county commission of any county of this state wherein
25 ancillary administration is sought;

26 (3) An individual who is a nonresident of this state
27 may be appointed and act as testamentary guardian of
28 a nonresident infant and thereby exercise dominion and
29 control over such nonresident infant's assets situate in
30 this state upon submission of authenticated documenta-
31 tion that such nonresident testamentary guardian was
32 so appointed at the place of domicile of the nonresident
33 infant. Such authenticated documentation shall be
34 submitted to the clerk of the county commission of any
35 county of this state wherein assets belonging to such
36 nonresident infant are situate;

37 (4) An individual who is a nonresident of this state
38 and who is named executor by a resident decedent may
39 qualify and act as executor in this state;

40 (5) An individual who is a nonresident of this state
41 may be appointed and act as administrator of a
42 nonresident decedent's assets in this state if appointed
43 in accordance with the provisions of section four, article
44 one of this chapter;

45 (6) An individual who is a nonresident of this state
46 may be appointed as the testamentary guardian of a
47 resident infant if appointed in accordance with the
48 provisions of section one, article ten of this chapter;

49 (7) An individual who is a nonresident of this state
50 may be appointed as committee of a resident incompe-
51 tent: *Provided*, That such appointment is made in
52 accordance with the provisions of section one, article
53 eleven, chapter twenty-seven of this code and if such
54 nonresident individual may otherwise qualify as
55 committee.

56 (b) Nonresident individuals enumerated in subsection
57 (a) of this section shall give bond with corporate surety
58 thereon, qualified to do business in this state, and the
59 amount of such bond shall not be less than double the
60 value of the personal assets and double the value of any
61 real property authorized to be sold or double the value
62 of any rents and profits from any real property which
63 the nonresident individual is authorized to receive,
64 except that:

65 (1) Any nonresident individual enumerated in subsec-
66 tion (a) of this section who is the spouse, parent, sibling,
67 lineal descendant or sole beneficiary of a resident or
68 nonresident decedent shall give bond with corporate
69 surety thereon qualified to do business in this state, with
70 such penalty as may be fixed pursuant to the provisions
71 of section seven, article one of this chapter, as approved
72 by the clerk of the county commission;

73 (2) Where the terms of a decedent's will direct that
74 a nonresident individual enumerated in subdivisions (1),
75 (3), (4) and (6), subsection (a) of this section named in
76 a decedent's will shall not give bond or give bond at a
77 specified amount, it shall not be required or shall be
78 required only to the extent required under the terms of
79 the will, unless at the time the will is admitted to record

80 or at any time subsequently, on the application of any
81 person interested, or from the knowledge of the commis-
82 sion or clerk admitting the will to record, it is deemed
83 proper that greater bond be given.

84 (c) When a nonresident individual is appointed as
85 executor, administrator, testamentary guardian or
86 committee pursuant to the provisions of subsection (a)
87 of this section, said individual thereby constitutes the
88 clerk of the county commission wherein such appoint-
89 ment was made as his true and lawful attorney-in-fact
90 upon whom may be served all notices and process in any
91 action or proceeding against him as executor, adminis-
92 trator, testamentary guardian or committee or with
93 respect to such estate, and such qualification shall be a
94 manifestation of said nonresident individual's agree-
95 ment that any notice or process, which is served in the
96 manner hereinafter provided in this subsection, shall be
97 of the same legal force and validity as though such
98 nonresident was personally served with notice and
99 process within this state. Service shall be made by
100 leaving the original and two copies of any notice or
101 process, together with a fee of five dollars, with the clerk
102 of such county commission. The fee of five dollars shall
103 be deposited with the county treasurer. Such clerk shall
104 thereupon endorse upon one copy thereof the day and
105 hour of service and shall file such copy in his office and
106 such service shall constitute personal service upon such
107 nonresident: *Provided*, That the other copy of such notice
108 or process shall be forthwith sent by registered or
109 certified mail, return receipt requested, deliver to
110 addressee only, by said clerk to such nonresident at the
111 address last furnished by him to said clerk and either:
112 (1) Such nonresident's return receipt signed by him or
113 (2) the registered or certified mail bearing thereon the
114 stamp of the post-office department showing that
115 delivery therefor was refused by such nonresident is
116 appended to the original notice or process filed there-
117 with in the office of the clerk of the county commission
118 from which such notice or process was issued. No notice
119 or process may be served on such clerk of the county
120 commission or accepted by him less than thirty days
121 before the return day thereof. The clerk of such county

122 commission shall keep a record in his office of all such
123 notices and processes and the day and hour of service
124 thereof. The provision for service of notice or process
125 herein provided is cumulative and nothing herein
126 contained shall be construed as a bar to service by
127 publication where proper or the service of notice or
128 process in any other lawful mode or manner.

129 (d) The personal estate of a resident decedent, infant
130 or incompetent may not be removed from this state until
131 the inventory or appraisal of that resident de-
132 cendent's, infant's or incompetent's assets has been filed and
133 any new or additional bond required to satisfy the
134 penalties specified in subsection (b) of this section has
135 been furnished. The liability of a nonresident executor,
136 administrator, testamentary guardian or committee and
137 of any such surety shall be joint and several and a civil
138 action on any such bond may be instituted and main-
139 tained against the surety, notwithstanding any other
140 provision of this code to the contrary, even though no
141 civil action has been instituted against such nonresident.

142 (e) Any such nonresident who removes from this state
143 assets administered in and situate in this state without
144 complying with the provisions of this section, the
145 provisions of article eleven, chapter forty-four of this
146 code or any other requirement pertaining to fiduciaries
147 generally, shall be guilty of a misdemeanor, and, upon
148 conviction thereof, shall be fined not more than one
149 thousand dollars or confined in the county jail for not
150 more than one year, or, in the discretion of the court,
151 by both such fine and imprisonment.

152 (f) If a nonresident appointed pursuant to subsection
153 (a) of this section fails or refuses to file an accounting
154 required by this chapter, and the failure continues for
155 two months after the due date, he may, upon notice and
156 hearing, be removed or subjected to any other approp-
157 riate order by the county commission, and if his failure
158 or refusal to account continues for six months, he shall
159 be removed by the county commission.

**ARTICLE 11. TRANSFER OF PROPERTY OF NONRESIDENTS
AND RESIDENTS.**

§44-11-8a. Removal of property of resident infant, incompetent or insane person from this state by nonresident testamentary guardian or nonresident committee.

1 (a) No property or money in this state belonging to a
2 resident infant, incompetent or insane person may be
3 removed from this state by a nonresident testamentary
4 guardian or nonresident committee appointed or qual-
5 ified in this state unless:

6 (1) Such nonresident testamentary guardian or non-
7 resident committee files a petition to remove such
8 property or money in the circuit court of the county
9 wherein such guardian or committee was appointed or
10 qualified, or in which the property or money, or some
11 part thereof, is located;

12 (2) The infant, incompetent or insane person is made
13 a party defendant to such petition;

14 (3) Notice of the petition is filed as a Class II legal
15 advertisement in compliance with the provisions of
16 article three, chapter fifty-nine of this code, and the
17 publication area for such publication is the county in
18 which the petition is filed; and

19 (4) The court determines, after a hearing, that the
20 removal of such property or money will not impair the
21 rights of or be prejudicial to the interests of such infant,
22 incompetent or insane person, or of any other person.

23 (b) If any nonresident testamentary guardian or
24 nonresident committee removes from this state property
25 or money belonging to a resident infant, incompetent or
26 insane person without obtaining an order entered
27 pursuant to the provisions of subsection (a) of this
28 section, the same shall work a forfeiture of his bond, and
29 the liability of such nonresident guardian or committee
30 and of his surety shall be joint and several, and a civil
31 action on any such bond may be instituted and main-
32 tained against the surety, notwithstanding any other
33 provision of this code to the contrary, even though no
34 civil action has been instituted against the nonresident
35 testamentary guardian or nonresident committee.

36 (c) Notwithstanding any provision of section nine of
37 this article to the contrary, any nonresident testamen-
38 tary guardian or nonresident committee who obtains an
39 order described in subsection (a) of this section shall
40 remain accountable to the county commission of the
41 county in which he was appointed or qualified.

CHAPTER 59

(S. B. 538—By Senators Loehr, Chernenko and Whitacre)

[Passed March 12, 1988; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-nine, article one, chapter fifty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to collection of fees, allowances or costs; and providing that the prosecuting attorney may proceed in magistrate court to collect unpaid fees, costs, percentages, penalties, commissions, allowances, compensation, income or any other perquisites of any kind.

Be it enacted by the Legislature of West Virginia:

That section twenty-nine, article one, 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 1. FEES AND ALLOWANCES.

§59-1-29. Collection of such fees.

1 Each clerk of the county commission, sheriff, clerk of
2 the circuit court and prosecuting attorney shall have
3 charge of and collect the fees, costs, percentages,
4 penalties, commissions, allowances, compensation,
5 income and all other perquisites of whatever kind which
6 are now or may hereafter be allowed by law. Whenever
7 there remain due the county and unpaid, for a period
8 of more than six months, any fees, costs, percentages,
9 penalties, commissions, allowances, compensation,
10 income or any other perquisites of any kind, it shall be
11 the duty of the county commission, or other tribunal in
12 lieu thereof, by the prosecuting attorney, to proceed to

13 the collection thereof in the circuit court or magistrate
14 court, upon motion whereof the defendant and the
15 sureties on his bond shall have at least twenty days'
16 notice, or in any other manner provided for by law, and
17 the amount so collected shall be paid into the county
18 treasury to the credit of the general county fund.

CHAPTER 60

(H. B. 4029—By Mr. Speaker, Mr. Chambers)

[Passed March 4, 1988; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article two, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to changing date by which commissioner of finance and administration shall certify certain estimates of revenue.

Be it enacted by the Legislature of West Virginia:

That section thirteen, article two, 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 2. BUDGET DIVISION.

§5A-2-13. Estimates of revenue; reports on revenue collections; withholding department funds on noncompliance.

1 Prior to the beginning of each fiscal year the commis-
2 sioner shall estimate the revenue to be collected month
3 by month by each classification of tax for that fiscal year
4 as it relates to the official estimate of revenue for each
5 tax for that fiscal year and the commissioner shall
6 certify this estimate to the governor and the legislative
7 auditor by the first day of July for that fiscal year.

8 The commissioner shall ascertain the collection of the
9 revenue of the state and shall determine for each month
10 of the fiscal year the proportion which the amount
11 actually collected during a month bears to the collection

12 estimated by him for that month. The commissioner
13 shall certify to the governor and the legislative auditor,
14 as soon as possible after the close of each month, and
15 not later than the fifteenth day of each month, and at
16 such other times as the governor or legislative auditor
17 may request, the condition of the state revenues and of
18 the several funds of the state and the proportion which
19 the amount actually collected during the preceding
20 month bears to the collection estimated by him for that
21 month. The commissioner shall include in this certifica-
22 tion the same information previously certified for prior
23 months in each fiscal year. For the purposes of this
24 section, the commissioner shall have the authority to
25 require all necessary estimates and reports from any
26 spending unit of the state government.

27 If the commissioner fails to certify to the governor and
28 the legislative auditor the information required by this
29 section within the time specified herein, the legislative
30 auditor shall notify the auditor and treasurer of such
31 failure, and thereafter no funds appropriated to the
32 department of finance and administration shall be
33 expended until the commissioner has certified the
34 information required by this section.

CHAPTER 61

(Com. Sub. for H. B. 4190—By Mr. Speaker, Mr. Chambers,
and Delegate Swann)

[Passed February 26, 1988; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact article four-a, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the governor's mansion advisory committee; creation of committee; defining and expanding upon the duties of the committee; updating terminology; providing for the office of governor's mansion director and defining the duties thereof; setting forth and clarifying the use of the state rooms of the mansion; when certain items may be replaced, removed or sold; and setting forth the time in which an outgoing governor should vacate the mansion.

Be it enacted by the Legislature of West Virginia:

That article four-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 4A. GOVERNOR'S MANSION ADVISORY COMMITTEE.

§5A-4A-1. Committee created; appointment, terms, etc., of members; meetings and responsibilities; annual report.

§5A-4A-2. Office of governor's mansion director created; duties and responsibilities.

§5A-4A-3. Official use of state rooms in governor's mansion; vacating private rooms of mansion.

§5A-4A-1. Committee created; appointment, terms, etc., of members; meetings and responsibilities; annual report.

1 (a) There is hereby created the governor's mansion
2 advisory committee. The commissioner of finance and
3 administration, the commissioner of culture and history
4 and the spouse of any governor during the term of office
5 of that governor, or the designated representative of
6 such governor, shall be ex officio members of the
7 committee. In addition, the governor shall appoint three
8 additional members of the committee, one to be a
9 curator in the field of fine arts, one to be an interior
10 decorator who is a member of the American institute of
11 decorators, and one to be a building contractor. The
12 appointive members of the committee shall serve for a
13 term of four years. The members of the committee shall
14 serve without compensation but shall be reimbursed for
15 reasonable and necessary expenses actually incurred in
16 the performance of their duties; except that in the event
17 the expenses are paid, or are to be paid, by a third party,
18 the member shall not be reimbursed by the state. The
19 governor shall designate from the committee a chair-
20 man to serve for a term of one year. The commissioner
21 of finance and administration shall serve as secretary.
22 The committee shall meet upon the call of the chairman
23 annually and may meet at such other times as may be
24 necessary for the performance of its functions.

25 (b) The committee shall be charged with the following
26 responsibilities:

27 (1) To make recommendations to the governor and/or
28 the governor's spouse for the maintaining, preserving
29 and replenishing of all articles of furniture, fixtures,
30 decorative objects, linens, silver, china, crystal and
31 objects of art used or displayed in the state rooms of the
32 governor's mansion, which state rooms shall consist of
33 the front hall, the back hall, the reception room, the
34 ballroom, the sun room, the state dining room, the front
35 upstairs hall, the music room, the family dining room
36 and the library;

37 (2) To make recommendations to the governor and/or
38 the governor's spouse as to the decor and arrangements
39 best suited to enhance the historic and artistic values of
40 the mansion in keeping with the architecture thereof
41 and of such articles of furniture, fixtures, decorative
42 objects, linens, silver, china, crystal and objects of art,
43 which recommendations shall be considered by the
44 governor and/or the governor's spouse in decorating said
45 mansion; and

46 (3) To invite interested persons to attend its meetings
47 or otherwise to assist in carrying out its functions.

48 (c) All departments, boards, agencies, commissions,
49 officials and employees of the state are hereby autho-
50 rized to cooperate with and assist the committee in the
51 performance of its functions and duties whenever
52 possible. As soon after the close of each fiscal year as
53 possible, the committee shall make an annual report to
54 the governor and the Legislature with respect to its
55 activities and responsibilities.

**§5A-4A-2. Office of governor's mansion director created;
duties and responsibilities.**

1 There is hereby created the office of governor's
2 mansion director, who shall be qualified by background
3 and experience for such a position and shall be ap-
4 pointed by the governor to serve at the will and pleasure
5 of the governor. The mansion director shall be charged
6 with the following duties and responsibilities: To protect
7 and preserve all articles of furniture, fixtures, table
8 linens, silver, china, crystal and objects of art displayed
9 in the state rooms in the mansion. The mansion director

10 shall assist the governor and/or the governor's spouse in
11 the scheduling of state government functions and
12 entertainment at the mansion.

§5A-4A-3. Official use of state rooms in governor's mansion; vacating private rooms of mansion.

1 (a) The state rooms of the mansion shall be used for
2 official state government functions and entertainment:
3 *Provided*, That tours of the state rooms of the mansion
4 shall be permitted, and the governor's mansion director
5 shall assist in the scheduling of said tours and prescribe
6 rules and regulations governing same.

7 (b) No personal furniture or furnishings of the first
8 family may be placed in the state rooms of the mansion
9 except for home entertainment equipment.

10 (c) No furniture or furnishings in the state rooms
11 located on the first floor of the mansion may be replaced,
12 removed or sold without prior approval of the governor's
13 mansion advisory committee.

14 (d) No items in the state rooms purchased by the West
15 Virginia mansion preservation foundation, inc., may be
16 replaced, removed or sold without prior approval of such
17 corporation.

18 (e) The outgoing governor and his family shall vacate
19 the private rooms of the mansion at least seven days
20 prior to the inauguration of a new governor so that the
21 mansion may be made suitable for the change in
22 occupancy.

CHAPTER 62

(Com. Sub. for S. B. 289—By Senators Tonkovich, Mr. President, Holliday and Tucker)

[Passed March 12, 1988; in effect July 1, 1988. Approved by the Governor.]

AN ACT to amend chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as

amended, by adding thereto a new article, designated article six-a, relating to a grievance procedure for state employees; legislative purpose; definitions; procedural levels; expedited grievance process; education and state employees grievance board; employment of hearing examiners; submission of annual budget, evaluation and report; promulgation of rules and regulations; hearings; enforcement and reviewability; mandamus proceeding; attorney's fees and costs; and application of article.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6A. GRIEVANCE PROCEDURE FOR STATE EMPLOYEES.

- §29-6A-1. Purpose.
- §29-6A-2. Definitions.
- §29-6A-3. Grievance procedure generally.
- §29-6A-4. Procedural levels and procedure at each level.
- §29-6A-5. Education and state employees grievance board; hearing examiners.
- §29-6A-6. Hearings generally.
- §29-6A-7. Enforcement and reviewability; costs; good faith.
- §29-6A-8. Allocation of costs.
- §29-6A-9. Mandamus proceeding.
- §29-6A-10. Employee's right to attorney's fees and costs.
- §29-6A-11. Application of article.

§29-6A-1. Purpose.

1 The purpose of this article is to provide a procedure
 2 for the equitable and consistent resolution of employ-
 3 ment grievances raised by nonelected state employees
 4 who are classified under the state civil service system,
 5 or employed in any department, other governmental
 6 agencies, or by independent boards or commissions
 7 created by the Legislature, with the exception of
 8 employees of the board of regents, state institutions of
 9 higher education, the Legislature, any employees of any
 10 constitutional officer unless they are covered under the
 11 civil service system, and members of the department of
 12 public safety.

§29-6A-2. Definitions.

1 For the purpose of this article:

2 (a) "Board" means the education employees grievance
3 board created in section five, article twenty-nine,
4 chapter eighteen of this code and hereafter known as the
5 education and state employees grievance board.

6 (b) "Chief administrator" means the commissioner,
7 director or head of any state department, board,
8 commission or agency.

9 (c) "Days" means working days exclusive of Saturday,
10 Sunday or official holidays.

11 (d) "Discrimination" means any differences in the
12 treatment of employees unless such differences are
13 related to the actual job responsibilities of the employees
14 or agreed to in writing by the employees.

15 (e) "Employee" means any person hired for perman-
16 ent employment, either full or part-time, by any
17 department, agency, commission or board of the state
18 created by an act of the Legislature, except those
19 persons employed by the board of regents or by any state
20 institution of higher education, members of the depart-
21 ment of public safety, any employees of any constitu-
22 tional officer unless they are covered under the civil
23 service system and any employees of the Legislature.
24 The definition of "employee" shall not include any
25 patient or inmate employed in a state institution.

26 (f) "Employee organization" means any employee
27 advocacy organization whose membership includes
28 employees as defined in this section which has filed with
29 the board the name, address, chief officer and member-
30 ship criteria of the organization.

31 (g) "Employer" means that state department, board,
32 commission or agency utilizing the services of the
33 employee covered under this article.

34 (h) "Favoritism" means unfair treatment of an
35 employee as demonstrated by preferential, exceptional
36 or advantageous treatment of another or other
37 employees.

38 (i) "Grievance" means any claim by one or more

39 affected state employees alleging a violation, a misap-
40 plication or a misinterpretation of the statutes, policies,
41 rules, regulations or written agreements under which
42 such employees work, including any violation, misappli-
43 cation or misinterpretation regarding compensation,
44 hours, terms and conditions of employment, employment
45 status or discrimination; any discriminatory or other-
46 wise aggrieved application of unwritten policies or
47 practices of their employer; any specifically identified
48 incident of harassment or favoritism; or any action,
49 policy or practice constituting a substantial detriment
50 to or interference with effective job performance or the
51 health and safety of the employees.

52 Any pension matter or other issue relating to public
53 employees insurance in accordance with article sixteen,
54 chapter five of this code, retirement, or any other matter
55 in which authority to act is not vested with the employer
56 shall not be the subject of any grievance filed in
57 accordance with the provisions of this article.

58 (j) "Grievance evaluator" means that individual
59 authorized to render a decision on a grievance under
60 procedural levels one, two and three as set out in section
61 four.

62 (k) "Grievant" means any named employee or group
63 of named employees filing a grievance as defined in
64 subsection (i) of this section.

65 (l) "Harassment" means repeated or continual distur-
66 bance, irritation or annoyance of an employee which
67 would be contrary to the demeanor expected by law,
68 policy and profession.

69 (m) "Hearing examiner" means the individual or
70 individuals employed by the board in accordance with
71 section five of this article.

72 (n) "Immediate supervisor" means that person next in
73 rank above the grievant possessing a degree of adminis-
74 trative authority and designated as such in the em-
75 ployee's contract, if any.

76 (o) "Representative" means any employee organiza-
77 tion, fellow employee, legal counselor or other person or

78 persons designated by the grievant as the grievant's
79 representative.

80 (p) "Reprisal" means the retaliation of an employer or
81 agent toward a grievant, witness, representative or any
82 other participant in the grievance procedure either for
83 an alleged injury itself or any lawful attempt to redress
84 it.

§29-6A-3. Grievance procedure generally.

1 (a) A grievance must be filed within the times
2 specified in section four of this article and shall be
3 processed as rapidly as possible. The number of days
4 indicated at each level specified in section four of this
5 article shall be considered as the maximum number of
6 days allowed and, if a decision is not rendered at any
7 level within the prescribed time limits, the grievant may
8 appeal to the next level: *Provided*, That the specified
9 time limits shall be extended whenever a grievant is not
10 working because of accident, sickness, death in the
11 immediate family or other cause necessitating the
12 grievant to take personal leave from his or her
13 employment.

14 (b) If the employer or its agent intends to assert the
15 application of any statute, policy, rule, regulation or
16 written agreement or submits any written response to
17 the filed grievance at any level, a copy thereof shall be
18 forwarded to the grievant and any representative of the
19 grievant named in the filed grievance. Anything
20 submitted and the grievant's response thereto, if any,
21 shall become part of the record. Failure to assert such
22 statute, policy, rule, regulation or written agreement at
23 any level shall not prevent the subsequent submission
24 thereof in accordance with the provisions of this
25 subsection.

26 (c) The grievant may file the grievance at the level
27 vested with authority to grant the requested relief if
28 each lower administrative level agrees in writing
29 thereto. In the event a grievance is filed at a higher
30 level, the employer shall provide copies to each lower
31 administrative level.

32 (d) An employee may withdraw a grievance at any
33 time by notice, in writing, to the level wherein the
34 grievance is then current. The grievance may not be
35 reinstated by the grievant unless reinstatement is
36 granted by the grievance evaluator at the level where
37 the grievance was withdrawn. If more than one em-
38 ployee is named as grievant in a particular grievance,
39 the withdrawal of one employee shall not prejudice the
40 rights of any other employee named in the grievance.
41 In the event a grievance is withdrawn or an employee
42 withdraws from a grievance, such employer shall notify
43 in writing each lower administrative level.

44 (e) Grievances may be consolidated at any level by
45 agreement of all parties.

46 (f) A grievant may be represented by an employee
47 organization representative, legal counsel or any other
48 person, including a fellow employee, in the preparation
49 or presentation of the grievance. At the request of the
50 grievant, such person or persons may be present at any
51 step of the procedure: *Provided*, That at level one of such
52 grievance, as set forth in section four of this article, a
53 grievant may have only one such representative.

54 (g) If a grievance is filed which cannot be resolved
55 within the time limits set forth in section four of this
56 article prior to the end of the employment term, the time
57 limit set forth in said section shall be reduced as agreed
58 to in writing by both parties so that the grievance
59 procedure may be concluded within ten days following
60 the end of the employment term or an otherwise
61 reasonable time.

62 (h) No reprisals of any kind shall be taken by any
63 employer or agent of the employer against any inter-
64 ested party, or any other participant in the grievance
65 procedure by reason of such participation. A reprisal
66 constitutes a grievance, and any person held to be
67 responsible for reprisal action shall be subject to
68 disciplinary action for insubordination.

69 (i) Decisions rendered at all levels of the grievance
70 procedure shall be dated, shall be in writing setting
71 forth the decision or decisions and the reasons therefor,

72 and shall be transmitted to the grievant and any
73 representative named in the grievance within the time
74 prescribed. If the grievant is denied the relief sought,
75 the decision shall include the name of the individual at
76 the next level to whom appeal may be made.

77 (j) Once a grievance has been filed, supportive or
78 corroborative evidence may be presented at any confer-
79 ence or hearing conducted pursuant to the provisions of
80 this article. Whether evidence substantially alters the
81 original grievance and renders it a different grievance
82 is within the discretion of the grievance evaluator at the
83 level wherein the new evidence is presented. If the
84 grievance evaluator rules that the evidence renders it a
85 different grievance, the party offering the evidence may
86 withdraw same, the parties may consent to such
87 evidence, or the grievance evaluator may decide to hear
88 the evidence or rule that the grievant must file a new
89 grievance. The time limitation for filing the new
90 grievance shall be measured from the date of such
91 ruling.

92 (k) Any change in the relief sought by the grievant
93 shall be consented to by all parties or may be granted
94 at level four within the discretion of the hearing
95 examiner.

96 (l) Forms for filing grievances, giving notice, taking
97 appeals, making reports and recommendations, and all
98 other necessary documents shall be made available by
99 the immediate supervisor to any employee upon request.
100 Such forms shall include information as prescribed by
101 the board. The grievant shall have access to the
102 employer's equipment for purposes of preparing grie-
103 vance documents subject to the reasonable rules of the
104 employer governing the use of such equipment.

105 (m) Notwithstanding the provisions of section three,
106 article nine-a, chapter six of this code, or any other
107 provision relating to open proceedings, all conferences
108 and hearings pursuant to this article shall be conducted
109 in private except that, upon the grievant's request,
110 conferences and hearings at levels two and three shall
111 be open to employees of the grievant's immediate office

112 or work area or, at the request of the grievant, shall be
113 public. Within the discretion of the hearing examiner,
114 conferences and hearings may be public at level four.

115 (n) No person shall confer or correspond with a
116 hearing examiner regarding the merits of the grievance
117 unless all parties to the grievance are present.

118 (o) Grievances shall be processed during regular
119 working hours. Attempts shall be made to process the
120 grievance in a manner which does not interfere with the
121 normal operation of the employer.

122 (p) The grievant or the employee selected by a
123 grievant to represent him in the processing of a
124 grievance through this procedure, or both, shall be
125 granted necessary time off during working hours for the
126 grievance procedure without loss of pay and without
127 charge to annual or compensatory leave credits. In
128 addition to actual time spent in grievance conferences
129 and hearings, the grievant or the employee representa-
130 tive, or both, shall be granted time off during working
131 hours, not to exceed four hours per grievance, for the
132 preparation of such grievance without loss of pay and
133 without charge to annual or compensatory leave credits.
134 However, it shall be understood by all parties that the
135 first responsibility of any state employee is the work
136 assigned by the appointing authority to the employee.
137 Grievance preparation and representation activities by
138 an employee shall not seriously affect the overall
139 productivity of the employee.

140 (q) The aggrieved employee, employing agency and
141 representatives of both shall have the right to call,
142 examine and cross-examine witnesses who are em-
143 ployees of the agency against which the grievance is
144 lodged and who have knowledge of the facts at issue.

145 (r) Both parties may produce witnesses other than
146 employees of the agency against which the grievance is
147 lodged, and such witnesses shall be subject to examina-
148 tion and cross-examination.

149 (s) Should any employer or the employer's agent cause
150 a conference or hearing to be postponed without

151 adequate notice to employees who are scheduled to
152 appear during their normal work day, such employees
153 will not suffer any loss in pay for work time lost.

154 (t) Any grievance evaluator may be excused from
155 participation in the grievance process for reasonable
156 cause, including, but not limited to, conflict of interest
157 or incapacitation, and in such case the grievance
158 evaluator at the next higher level shall designate an
159 alternate grievance evaluator if such is deemed reason-
160 able and necessary.

161 (u) No less than one year following resolution of a
162 grievance at any level, the grievant may by request in
163 writing have removed any record of the grievant's
164 identity from any file kept by the employer.

165 (v) All grievance forms and reports shall be kept in
166 a file separate from the personnel file of the employee
167 and shall not become a part of such personnel file, but
168 shall remain confidential except by mutual written
169 agreement of the parties.

170 (w) The number of grievances filed against an
171 employer or agent or by an employee shall not, per se,
172 be an indication of such employer's or agent's or such
173 employee's job performance.

174 (x) Any chief administrator with whom a grievance
175 was filed may appeal a level four decision on the
176 grounds that the decision (1) was contrary to law or
177 lawfully adopted rule, regulation or written policy of the
178 employer, (2) exceeded the hearing examiner's statutory
179 authority, (3) was the result of fraud or deceit, (4) was
180 clearly wrong in view of the reliable, probative and
181 substantial evidence on the whole record, or (5) was
182 arbitrary or capricious or characterized by abuse of
183 discretion. Such appeal shall follow the procedure
184 regarding appeal provided the grievant in section four
185 of this article and provided both parties in section seven
186 of this article.

§29-6A-4. Procedural levels and procedure at each level.

1 (a) *Level one.*

2 Within ten days following the occurrence of the event
3 upon which the grievance is based, or within ten days
4 of the date on which the event became known to the
5 grievant, or within ten days of the most recent occur-
6 rence of a continuing practice giving rise to a grievance,
7 the grievant or the designated representative, or both,
8 may file a written grievance with the immediate
9 supervisor of the grievant. At the request of the grievant
10 or the immediate supervisor, an informal conference
11 shall be held to discuss the grievance within three days
12 of the receipt of the written grievance. The immediate
13 supervisor shall issue a written decision within six days
14 of the receipt of the written grievance.

15 (b) *Level two.*

16 Within five days of receiving the decision of the
17 immediate supervisor, the grievant may file a written
18 appeal to the administrator of the grievant's work
19 location, facility, area office, or other appropriate
20 subdivision of the department, board, commission or
21 agency. The administrator or his designee shall hold a
22 conference within five days of the receipt of the appeal
23 and issue a written decision upon the appeal within five
24 days of the conference.

25 (c) *Level three.*

26 Within five days of receiving the decision of the
27 administrator of the grievant's work location, facility,
28 area office, or other appropriate subdivision of the
29 department, board, commission or agency, the grievant
30 may file a written appeal of the decision with the chief
31 administrator of the grievant's employing department,
32 board, commission or agency. A copy of the appeal and
33 the level two decision shall be served upon the personnel
34 director of the state civil service commission by the
35 grievant.

36 The chief administrator or his designee shall hold a
37 hearing in accordance with section six of this article
38 within seven days of receiving the appeal. The personnel
39 director of the state civil service commission or his
40 designee may appear at such hearing and submit oral
41 or written evidence upon the matters in the hearing.

42 The chief administrator or his designee shall issue a
43 written decision affirming, modifying or reversing the
44 level two decision within five days of such hearing.

45 (d) *Level four.*

46 (1) If the grievant is not satisfied with the action
47 taken by the chief administrator or his designee, within
48 five days of the written decision the grievant may
49 request, in writing, on a form furnished by the em-
50 ployer, that the grievance be submitted to a hearing
51 examiner as provided for in section five of this article,
52 such hearing to be conducted in accordance with section
53 six of this article within fifteen days following the
54 request therefor: *Provided*, That such hearing may be
55 held within thirty days following the request, or within
56 such time as is mutually agreed upon by the parties, if
57 the hearing examiner gives reasonable cause, in writing,
58 as to the necessity for such delay. A copy of the appeal
59 shall be served by the grievant upon the director of
60 personnel of the state civil service commission. The
61 director of personnel of the state civil service commis-
62 sion, or his designee, may appear at such hearing and
63 submit oral or written evidence upon the matters in the
64 hearing.

65 (2) Within thirty days following the hearing, the
66 hearing examiner shall render a decision in writing to
67 all parties setting forth findings and conclusions on the
68 issues submitted. Subject to the provisions of section
69 seven of this article, the decision of the hearing
70 examiner shall be final upon the parties and shall be
71 enforceable in circuit court.

72 (e) *Expedited grievance process.*

73 An employee may grieve a final action of the employer
74 involving a dismissal, demotion or suspension exceeding
75 twenty days directly to the hearing examiner. The
76 expedited grievance shall be in writing and must be
77 filed within ten days of the date of the final action with
78 the chief administrator and the director of personnel of
79 the state civil service commission.

§29-6A-5. Education and state employees grievance

board; hearing examiners.

1 (a) The education employees grievance board, created
2 by virtue of the provisions of section five, article twenty-
3 nine, chapter eighteen of this code, shall be hereafter
4 known and referred to as the education and state
5 employees grievance board and, in addition to those
6 duties set forth in said chapter eighteen, is hereby
7 authorized and required to administer the grievance
8 procedure at level four as provided for in section four
9 of this article. The board shall employ, in addition to
10 those persons employed as hearing examiners for
11 educational employee grievances, at least two full-time
12 hearing examiners for the purpose of conducting
13 hearings at level four as provided in section four of this
14 article. Such hearing examiners shall be employed on
15 an annual basis along with such clerical help as is
16 necessary to implement the legislative intent expressed
17 in section one of this article.

18 In addition to the budget required for submission to
19 the Legislature by virtue of the provisions of section five,
20 article twenty-nine, chapter eighteen of this code, the
21 board shall submit a yearly budget and shall report
22 annually to the governor and the Legislature regarding
23 proceedings conducted under this article, including
24 receipts and expenditures, number of level four hear-
25 ings conducted, synopses of hearing outcomes and such
26 other information as the board may deem appropriate.
27 The board shall further evaluate on an annual basis the
28 level four grievance process and the performance of all
29 hearing examiners and include such evaluation in the
30 annual report to the governor and the Legislature. In
31 making such evaluation the board shall notify all
32 employers, employee organizations, the director of
33 personnel of the state civil service commission and all
34 grievants participating in level four grievances in the
35 year for which evaluation is being made and shall
36 provide for the submission of written comment and/or
37 the hearing of testimony regarding the grievance
38 process.

39 The board shall provide suitable office space for all
40 hearing examiners in space other than that utilized by

41 any employer as defined in section two of this article and
42 shall ensure that reference materials are generally
43 available. The board shall provide forms for filing
44 grievances, giving notice, taking appeals, making
45 reports and recommendations and such other documents
46 as the board deems necessary for any stage of a
47 grievance under this article.

48 The board is authorized to promulgate rules and
49 regulations consistent with the provisions of this article,
50 such rules and regulations to be adopted in accordance
51 with chapter twenty-nine-a of this code.

52 (b) Hearing examiners are hereby authorized and
53 shall have the power to consolidate grievances, allocate
54 costs among the parties in accordance with section eight
55 of this article, subpoena witnesses and documents in
56 accordance with the provisions of section one, article
57 five, chapter twenty-nine-a of this code, provide such
58 relief as is deemed fair and equitable in accordance with
59 the provisions of this article, and such other powers as
60 will provide for the effective resolution of grievances not
61 inconsistent with any rules and regulations of the board
62 or the provisions of this article: *Provided*, That in all
63 cases the hearing examiner shall have the authority to
64 provide appropriate remedies including, but not limited
65 to, making the employee whole.

§29-6A-6. Hearings generally.

1 The chief administrator or his designee acting as a
2 grievance evaluator or the hearing examiner shall
3 conduct all hearings in an impartial manner and shall
4 ensure that all parties are accorded procedural and
5 substantive due process. All parties shall have an
6 opportunity to present evidence and argument with
7 respect to the matters and issues involved, to cross-
8 examine and to rebut evidence. Reasonable notice of a
9 hearing shall be sent prior to the hearing to all parties
10 and their named representative and shall include the
11 date, time and place of the hearing. Level one, level two
12 and level three hearings shall be at a convenient place
13 accessible to the aggrieved employee. All such hearings
14 shall be held on the employer's premises or on other

15 premises mutually agreeable to the parties and within
16 regular working hours: *Provided*, That any such hearing
17 might continue beyond normal working hours. Level
18 four hearings shall be at a place to be designated by the
19 hearing examiner.

20 The employer that is party to the grievance shall
21 produce prior to such hearing any documents, not
22 privileged, and which are relevant to the subject matter
23 involved in the pending grievance, that have been
24 requested by the grievant, in writing.

25 The chief administrator or his designee or the hearing
26 examiner shall have the power to (1) administer oaths
27 and affirmations, (2) subpoena witnesses, (3) regulate
28 the course of the hearing, (4) hold conferences for the
29 settlement or simplification of the issues by consent of
30 the parties, (5) exclude immaterial, irrelevant or
31 repetitious evidence, (6) sequester witnesses, (7) restrict
32 the number of advocates, and take any other action not
33 inconsistent with the rules and regulations of the board
34 or the provisions of this article.

35 All the testimony and evidence at any level three or
36 level four hearing shall be recorded by mechanical
37 means, and all recorded testimony and evidence at such
38 hearing shall be transcribed and certified by affidavit.
39 The chief administrator shall be responsible for
40 promptly providing a copy of the certified transcript of
41 a level three hearing to any party to that hearing who
42 requests such transcript. The hearing examiner may
43 also request and be provided a transcript upon appeal
44 to level four and allocate the costs therefor as prescribed
45 in section eight of this article. The board shall be
46 responsible for promptly providing a copy of the
47 certified transcript of a level four hearing to any party
48 to that hearing who requests such transcript.

49 Formal rules of evidence shall not be applied, but
50 parties shall be bound by the rules of privilege recog-
51 nized by law. No employee shall be compelled to testify
52 against himself or herself in a grievance involving
53 disciplinary action. The burden of proof shall rest with
54 the employer in disciplinary matters.

55 All materials submitted in accordance with section
56 three of this article; the mechanical recording of all
57 testimony and evidence or the transcription thereof, if
58 any; the decision; and any other materials considered in
59 reaching the decision shall be made a part and shall
60 constitute the record of a grievance. Such record shall
61 be submitted to any level at which appeal has been
62 made, and such record shall be considered, but the
63 development of such record shall not be limited thereby.

64 Every decision pursuant to a hearing shall be in
65 writing and shall be accompanied by findings of fact
66 and conclusions of law.

67 Prior to such decision any party may propose findings
68 of fact and conclusions of law.

§29-6A-7. Enforcement and reviewability; costs; good faith.

1 The decision of the hearing examiner shall be final
2 upon the parties and shall be enforceable in circuit
3 court: *Provided*, That either party or the state civil
4 service commission may appeal to the circuit court of
5 the county in which the grievance occurred on the
6 grounds that the hearing examiner's decision (1) was
7 contrary to law or a lawfully adopted rule, regulation
8 or written policy of the employer, (2) exceeded the
9 hearing examiner's statutory authority, (3) was the
10 result of fraud or deceit, (4) was clearly wrong in view
11 of the reliable, probative and substantial evidence on the
12 whole record, or (5) was arbitrary or capricious or
13 characterized by abuse of discretion or clearly unwar-
14 ranted exercise of discretion. Such appeal shall be filed
15 in the circuit court of the county in which the grievance
16 occurred within thirty days of receipt of the hearing
17 examiner's decision. The decision of the hearing
18 examiner shall not be stayed, automatically, upon the
19 filing of an appeal, but a stay may be granted by the
20 circuit court upon separate motion therefor.

21 The court's ruling shall be upon the entire record
22 made before the hearing examiner, and the court may
23 hear oral arguments and require written briefs. The
24 court may reverse, vacate or modify the decision of the

25 hearing examiner or may remand the grievance to the
26 appropriate chief administrator for further proceedings.

27 Both employer and employee shall at all times act in
28 good faith and make every possible effort to resolve
29 disputes at the lowest level of the grievance procedure.
30 The hearing examiner may make a determination of bad
31 faith and in extreme instances allocate the cost of the
32 hearing to the party found to be acting in bad faith.
33 Such allocation of costs shall be based on the relative
34 ability of the party to pay such costs.

§29-6A-8. Allocation of costs.

1 Any expenses incurred relative to the grievance
2 procedure at levels one through three shall be borne by
3 the party incurring such expenses.

§29-6A-9. Mandamus proceeding.

1 Any employer failing to comply with the provisions of
2 this article may be compelled to do so by mandamus
3 proceeding and shall be liable to any party prevailing
4 against the employer for court costs and attorney fees,
5 as determined and established by the court.

§29-6A-10. Employee's right to attorney's fees and costs.

1 If an employee shall appeal to a circuit court an
2 adverse decision of a hearing examiner rendered in a
3 grievance proceeding pursuant to provisions of this
4 article or is required to defend an appeal and such
5 person shall substantially prevail, the adverse party or
6 parties shall be liable to such employee, upon final
7 judgment or order, for court costs, and for reasonable
8 attorney's fees, to be set by the court, for representing
9 such employee in all administrative hearings and before
10 the circuit court and the supreme court of appeals, and
11 shall be further liable to such employee for any court
12 reporter's costs incurred during any such administrative
13 hearings or court proceedings: *Provided*, That in no
14 event shall such attorney's fees be awarded in excess of
15 a total of one thousand dollars for the administrative
16 hearings and circuit court proceedings nor an additional
17 one thousand dollars for supreme court proceedings:
18 *Provided, however*, That the requirements of this section

19 shall not be construed to limit the employee's right to
 20 recover reasonable attorney's fees in a mandamus
 21 proceeding brought under section nine of this article.

§29-6A-11. Application of article.

1 This article applies to all grievances arising on or
 2 after the effective date of this article. This article
 3 supersedes and replaces the civil service grievance and
 4 appeals procedure currently authorized under the rules
 5 and regulations of the civil service commission upon the
 6 resolution of all grievances and appeals pending in the
 7 civil service grievance system on the effective date of
 8 this article.

CHAPTER 63

(Com. Sub. for H. B. 4180—By Delegate Leary)

[Passed March 11, 1988; 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; and to amend and reenact section ten, article twelve, chapter sixty-one of said code, all relating to authorizing the director of health to promulgate a program for sudden infant death syndrome, and providing medical examiners with stringent guidelines to follow in sudden infant death syndrome cases.

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; and that section ten, article twelve, chapter sixty-one of said code be amended and reenacted, all to read as follows:

Chapter

16. Public Health.

61. Crimes and Their Punishment.

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, administra-
2 tive and fiscal officer of the department of health and
3 shall have the following powers and duties:

4 (1) To supervise and control the business, fiscal,
5 administrative and health affairs of the department of
6 health, and in that regard and in accordance with law,
7 employ, fix the compensation of, and discharge all
8 persons necessary for the proper execution of the laws
9 of this state relating to health and mental health, and
10 the efficient and proper discharge of the duties imposed
11 upon, and execution of powers vested in the director by
12 law; to that end the director may promulgate such
13 written rules as are necessary and proper to delegate
14 functions, establish divisions, specify duties and respon-
15 sibilities, prescribe qualifications of division directors
16 and otherwise administer or supervise the department,
17 subject to the safeguards of the state civil service system
18 as it now exists;

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

35 (3) To make complaint or cause proceedings to be
36 instituted against any person, corporation or other entity
37 for the violation of any health law before any court or
38 agency, without being required to give security for costs;

39 such action may be taken without the sanction of the
40 prosecuting attorney of the county in which the proceed-
41 ings are instituted or to which the proceedings relate;

42 (4) To supervise and coordinate the administration
43 and operation of the state hospitals named in article two,
44 chapter twenty-seven of this code, and any other state
45 facility hereafter created for the mentally ill, mentally
46 retarded or addicted;

47 (5) To supervise and coordinate the administration
48 and operation of the health and other facilities named
49 in chapter twenty-six of this code, except as otherwise
50 therein provided, and any other state facility hereafter
51 created relating to health, not otherwise provided for;

52 (6) To supervise and coordinate the administration
53 and operation of the county and municipal boards of
54 health and health officers;

55 (7) To develop and maintain a state plan of operation
56 which sets forth the needs of the state in the areas of
57 health and mental health; goals and objectives for
58 meeting those needs; methods for achieving the stated
59 goals and objectives; and needed personnel, funds and
60 authority for achieving the goals and objectives;

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

64 (9) To delegate to any appointee, assistant or employee
65 any and all powers and duties vested in the director,
66 including, but not limited to, the power to execute
67 contracts and agreements in the name of the depart-
68 ment: *Provided*, That the director shall be responsible
69 for the acts of such appointees, assistants and employees;

70 (10) To transfer any patient or resident between
71 hospitals and facilities under the control of the director
72 and, by agreement with the state commissioner of public
73 institutions or his successor and otherwise in accord
74 with law, accept a transfer of a resident of a facility
75 under the jurisdiction of the state commissioner of
76 public institutions or his successor;

77 (11) To make periodic reports to the governor and to
78 the Legislature relative to specific subject areas of
79 public health or mental health, the state facilities under
80 the supervision of the director, or other matters
81 affecting the health or mental health of the people of the
82 state;

83 (12) To accept and use for the benefit of the state, for
84 the benefit of the health of the people of this state, any
85 gift or devise of any property or thing which is lawfully
86 given: *Provided*, That if any gift is for a specific purpose
87 or for a particular state hospital or facility, it shall be
88 used as specified. Any profit which may arise from any
89 such gift or devise of any property or thing shall be
90 deposited in a special revenue fund with the state
91 treasurer and shall be used only as specified by the
92 donor or donors;

93 (13) To acquire by condemnation or otherwise any
94 interest, right, privilege, land or improvement and hold
95 title thereto, for the use or benefit of the state or a state
96 hospital or facility, and, by and with the consent of the
97 governor, to sell, exchange or otherwise convey any
98 interest, right, privilege, land or improvement acquired
99 or held by the state, state hospital or state facility; which
100 condemnation proceedings shall be conducted pursuant
101 to chapter fifty-four of this code;

102 (14) To inspect and enforce rules and regulations to
103 control the sanitary conditions of and license all
104 institutions and health care facilities as set forth in this
105 chapter, including, but not limited to, schools, whether
106 public or private, public conveyances, dairies, slaughter-
107 houses, workshops, factories, labor camps, places of
108 entertainment, hotels, motels, tourist camps, all other
109 places open to the general public and inviting public
110 patronage or public assembly, or tendering to the public
111 any item for human consumption and places where
112 trades or industries are conducted;

113 (15) To make inspections, conduct hearings, and to
114 enforce the rules and regulations of the board concern-
115 ing occupational and industrial health hazards, the
116 sanitary condition of streams, sources of water supply,

117 sewerage facilities, and plumbing systems, and the
118 qualifications of personnel connected with such supplies,
119 facilities or systems without regard to whether they are
120 publicly or privately owned; and to make inspections,
121 conduct hearings and enforce the rules and regulations
122 of the board concerning the design of chlorination and
123 filtration facilities and swimming pools;

124 (16) To reorganize the functions and divisions of the
125 department of health, structuring all functions pre-
126 viously assigned to the board of health, department of
127 health, department of mental health, and otherwise
128 assigned to the department of health by this chapter, to
129 the end of establishing the most efficient and economic
130 delivery of health services in accord with the purposes
131 of this chapter; to achieve such goal the director shall
132 establish such divisions, and delegate and assign such
133 responsibilities and functions as he deems necessary to
134 accomplish such reorganization. On or before the first
135 day of February, one thousand nine hundred seventy-
136 eight, the director shall submit to the Legislature a
137 report on the reorganization of such department and the
138 effect thereof, including, but not limited to, the cost, the
139 administrative results and the effect on the delivery of
140 health services;

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

143 (18) To provide for, except as otherwise specified
144 herein, a comprehensive system of community mental
145 health and mental retardation supportive services to the
146 end of preventing the unnecessary institutionalization of
147 persons and promoting the community placement of
148 persons presently residing in mental health and mental
149 retardation facilities and other institutions and for the
150 planning of the provisions of comprehensive mental
151 health and mental retardation services throughout the
152 state;

153 (19) To provide in accordance with this subdivision
154 and the definitions and other provisions of article one-
155 a, chapter twenty-seven of the code, for a comprehensive
156 program for the care, treatment and rehabilitation of

157 alcoholics and drug abusers; for research into the cause
158 and prevention of alcoholism and drug abuse; for the
159 training and employment of personnel to provide the
160 requisite rehabilitation of alcoholics and drug abusers;
161 and for the education of the public concerning alcoho-
162 lism and drug abuse; and

163 (20) To provide in accordance with this subsection for
164 a program for the care, treatment and rehabilitation of
165 the parents of sudden infant death syndrome victims; for
166 the training and employment of personnel to provide the
167 requisite rehabilitation of parents of sudden infant
168 death syndrome victims; for the education of the public
169 concerning sudden infant death syndrome; for the
170 responsibility of reporting to the Legislature on a
171 quarterly basis the incidence of sudden infant death
172 syndrome cases occurring in West Virginia; for the
173 education of police, employees and volunteers of all
174 emergency services concerning sudden infant death
175 syndrome; for the state sudden infant death syndrome
176 advisory council to develop regional family support
177 groups to provide peer support to families of sudden
178 infant death syndrome victims; and for requesting
179 appropriation of funds in both federal and state budgets
180 to fund the sudden infant death syndrome program; and

181 (21) To exercise all other powers delegated to the
182 department by this chapter or otherwise in this code, to
183 enforce all health laws and the rules and regulations
184 promulgated by the board, and to pursue all other
185 activities necessary and incident to the authority and
186 area of concern entrusted to the department or director.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 12. POSTMORTEM EXAMINATIONS.

§61-12-10. When autopsies made and by whom per- formed; reports; records of deaths investi- gated; copies of records and information.

1 If in the opinion of the chief medical examiner, or of
2 the medical examiner of the county in which the death
3 in question occurred, it is advisable and in the public

4 interest that an autopsy be made, or if an autopsy be
5 requested by either the prosecuting attorney or the
6 judge of the circuit court or other court of record having
7 criminal jurisdiction in such county, such autopsy shall
8 be made by the chief medical examiner, by a member
9 of his staff, or by such competent pathologist as the chief
10 medical examiner shall designate and employ pursuant
11 to the provisions of this article. The chief medical
12 examiner may employ any medical examiner who is a
13 qualified pathologist to make such autopsies, and the
14 fees to be paid hereunder for autopsies hereunder shall
15 be in addition to the fee provided for investigations and
16 made pursuant to section eight of this article. A full
17 record and report of the findings developed by the
18 autopsy shall be filed with the office of medical
19 examinations by such person making the autopsy.

20 Within the discretion of the chief medical examiner,
21 or of the person making such autopsy, or if requested
22 by the prosecuting attorney of such county, or of the
23 county where any injury contributing to or causing the
24 death was sustained, a copy of such report of the autopsy
25 shall be furnished such prosecuting attorney.

26 The office of medical examinations shall keep full,
27 complete, and properly indexed records of all deaths
28 investigated, containing all relevant information con-
29 cerning the death, and the autopsy report if such be
30 made. Any prosecuting attorney or law-enforcement
31 officer may secure copies of such records or information
32 necessary to him for the performance of his official
33 duties. Copies of such records or information shall be
34 furnished, upon request, to any party to whom the cause
35 of death is a material issue. Any person performing an
36 autopsy pursuant to the authority of this section shall
37 be empowered to keep and retain, for and on behalf of
38 the chief medical examiner, any tissue from the body
39 upon which the autopsy was performed which may be
40 necessary for further study or consideration.

41 In cases of the death of any infant in the state of West
42 Virginia where sudden infant death syndrome is the
43 suspected cause of death and the chief medical examiner
44 or the medical examiner of the county in which the

45 death in question occurred considers it advisable to
46 perform an autopsy, it is the duty of the chief medical
47 examiner or the medical examiner of the county in
48 which the death occurred to notify at least one parent
49 or legal guardian in written form of the purpose for the
50 autopsy examination and to provide to the parents or
51 legal guardian(s) a report of the findings of the autopsy
52 examination within thirty days of completion of such
53 examination.

CHAPTER 64

(H. B. 4779—By Delegates Flanigan and White)

[Passed March 12, 1988; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article one, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section four, article five-b of said chapter; to further amend said article by adding thereto a new section, designated section five-a; to amend and reenact sections two, three, five, six, nine and seventeen, article five-c of said chapter; to amend and reenact sections two and six, article five-e of said chapter; to amend and reenact sections one, two and three, article five-h of said chapter; and to further amend said article five-h by adding thereto a new section, designated section two-a, all relating to the disposition of moneys received by state director of health; report to auditor; noncompliance; establishment of health facility licensing account; expenditure of moneys; licensure fees for hospitals; accreditation reports to serve as inspections; ambulatory care facilities; ambulatory surgical facilities; nursing and personal care homes; nursing and personal care home definitions; powers, duties and rights of director; rules and regulations; licensure duration and renewal; inspections, licenses and regulations in force; definition for regulation of service providers in legally unlicensed health care facilities, enforcement, criminal penalties; license; application;

regulations; revocation; assistance from department of human services; civil actions in circuit court of Kanawha County or other counties; fire protection standards and residential board and care home definitions.

Be it enacted by the Legislature of West Virginia:

That section thirteen, article one; section four, article five-b, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; to further amend said article by adding thereto a new section, designated section five-a; that sections two, three, five, six, nine and seventeen, article five-c; sections two and six, article five-e; and sections one, two and three, article five-h, all of chapter sixteen, be amended and reenacted; and to further amend article five-h by adding thereto a new section, designated section two-a, all to read as follows:

Article.

- 1. State Department of Health.
- 5B. Hospitals and Similar Institutions.
- 5C. Nursing, and Personal Care Homes and Residential Board and Care Homes.
- 5E. Registration of Service Providers in Legally Unlicensed Health Care Facilities.
- 5H. Residential Board and Care Homes.

ARTICLE 1. STATE DEPARTMENT OF HEALTH.

§16-1-13. Disposition of moneys received by state director of health; report to auditor; noncompliance; establishment of health facility licensing account.

- 1 (a) The state director of health shall receive and
 2 account for all moneys required to be paid as fees for
 3 permits, licenses or registrations, pursuant to the
 4 provisions of this code, and shall pay such moneys into
 5 the state treasury monthly, on or before the tenth day
 6 of the month succeeding the month in which such
 7 moneys were received. The director of health shall, on
 8 the first day of January and the first day of July in each
 9 year, or within five days thereafter, certify to the state
 10 auditor a detailed statement of all such moneys received
 11 by him during the preceding six months. If the director
 12 of health shall fail or refuse to comply with the
 13 provisions of this section, he shall be guilty of a

14 misdemeanor, and, upon conviction thereof, shall be
15 fined for each offense not less than fifty dollars, nor
16 more than two hundred dollars.

17 (b) Subject to the provisions set forth in section two,
18 article two, chapter twelve of this code, there is
19 established in the state treasury a separate account
20 which shall be designated "the health facility licensing
21 account."

22 After the effective date of this provision, the director
23 of health shall deposit to the health facility licensing
24 account all health facility licensing fees.

25 After the first day of July, one thousand nine hundred
26 eighty-eight, the director of health is authorized to
27 expend the moneys deposited in the health facility
28 licensing account in accordance with the laws of this
29 state as is necessary to implement activities of health
30 facility licensing. As part of the annual state budget, the
31 Legislature shall appropriate for health facility licen-
32 sure all moneys deposited in the health facilities
33 licensing account.

34 Any remaining balance including accrued interest in
35 said account at the end of any fiscal year shall not revert
36 to the general revenue fund, but shall remain in said
37 account, and such moneys shall be expendable after
38 appropriation by the Legislature in ensuing fiscal years.
39 The director shall make an annual report to the
40 Legislature on the health facility licensing account,
41 including the previous fiscal year's expenditures and
42 projected expenditures for the next fiscal year.

ARTICLE 5B. HOSPITALS AND SIMILAR INSTITUTIONS.

§16-5B-4. License fees.

§16-5B-4a. Accreditation reports accepted for periodic license inspections.

§16-5B-4. License fees.

1 The application of any person, partnership, associa-
2 tion, corporation, or local government unit for a license
3 to operate a hospital or extended care facility operated
4 in connection with a hospital, shall be accompanied by
5 a fee to be determined by the number of beds available
6 for patients, according to the following schedule of fees:

7 Those with five beds but less than fifty beds shall pay
8 a fee of five hundred dollars; those with fifty beds or
9 more and less than one hundred beds shall pay a fee of
10 seven hundred fifty dollars; those with one hundred beds
11 or more and less than two hundred beds shall pay a fee
12 of one thousand dollars; and those with two hundred
13 beds or more shall pay a fee of one thousand two
14 hundred fifty dollars. The director may annually adjust
15 the licensure fees for inflation based upon the consumer
16 price index. The application of any person, partnership,
17 association, corporation, or local governmental unit for
18 a license to operate an ambulatory health care facility
19 or ambulatory surgical facility shall be accompanied by
20 a reasonable fee to be determined by the director, based
21 on the number of patients served by the facility. No such
22 fee shall be refunded. All licenses issued under this
23 article shall expire on the thirtieth day of June following
24 their issuance, shall be on a form prescribed by the state
25 department of health, shall not be described in the
26 application, shall be posted in a conspicuous place on the
27 licensed premises, and may be renewed from year to
28 year upon application, investigation and payment of the
29 license fee, as in the case of the procurement of an
30 original license: *Provided*, That any such license in
31 effect on the thirtieth day of June of any year, for which
32 timely application for renewal, together with payment
33 of the proper fee, has been made to the state department
34 of health in conformance with the provisions of this
35 article and the rules and regulations issued thereunder,
36 and prior to the expiration date of such license, shall
37 continue in effect until (a) the thirtieth day of June next
38 following the expiration date of such license, or (b) the
39 date of the revocation or suspension of such license
40 pursuant to the provisions of this article, or (c) the date
41 of issuance of a new license, whichever date first occurs:
42 *Provided, however*, That in the case of the transfer of
43 ownership of a facility with an unexpired license, the
44 application of the new owner for a license shall have the
45 effect of a license for a period of three months when filed
46 with the director. All fees received by the state
47 department of health under the provisions of this article
48 shall be deposited in accordance with section thirteen,

49 article one of this chapter.

§16-5B-5a. Accreditation reports accepted for periodic license inspections.

1 Notwithstanding any other provision of this article, a
2 periodic license inspection shall not be conducted by the
3 state department of health for a hospital if the hospital
4 has applied for and received an exemption from such
5 requirement: *Provided*, That no exemption so granted
6 shall diminish the right of the state department of
7 health to conduct complaint inspections: *Provided*,
8 *however*, That no exemption so granted shall relieve a
9 hospital from compliance with section six-a of this
10 article.

11 The state department of health shall grant an
12 exemption from a periodic license inspection during the
13 year following accreditation if a hospital applies by
14 submitting evidence of its accreditation by the joint
15 commission on accreditation of health care organizations
16 or the American osteopathic association and submits a
17 complete copy of such commission's accreditation report.

18 If the accreditation of a hospital is for a period longer
19 than one year, the state department of health shall
20 conduct at least one license inspection of the hospital
21 after the first year of accreditation and before the
22 accreditation has expired and may conduct additional
23 license inspections if needed.

24 Accreditation reports filed with the state department
25 of health shall be treated as confidential in accordance
26 with section ten of this article.

**ARTICLE 5C. NURSING AND PERSONAL CARE HOMES AND
RESIDENTIAL BOARD AND CARE HOMES.**

§16-5C-2. Definitions.

§16-5C-3. Powers, duties and rights of director.

§16-5C-5. Rules and regulations; minimum standards for facilities; rating of facilities.

§16-5C-6. License required; application, fees; duration; renewal.

§16-5C-9. Inspections.

§16-5C-17. Licenses and regulations in force.

§16-5C-2. Definitions.

1 As used in this article, unless a different meaning
2 appears from the context:

3 (a) The term "director" means the director of the West
4 Virginia state department of health or his designee;

5 (b) The term "facility" means any nursing home,
6 personal care home, or residential board and care home
7 as defined in subdivisions (c), (d) and (e) of this section:
8 *Provided*, That the care or treatment in a household,
9 whether for compensation or not, of any person related
10 by blood or marriage, within the degree of consanguin-
11 ity of second cousin to the head of the household, or his
12 or her spouse, may not be deemed to constitute a nursing
13 home, personal care home or residential board and care
14 home within the meaning of this article. Nothing
15 contained in this article shall apply to hospitals, as
16 defined under section one, article five-b of this chapter,
17 or state institutions as defined under section six, article
18 one, chapter twenty-seven or section three, article one,
19 chapter twenty-five, all of this code, or nursing homes
20 operated by the federal government or the state
21 government, or institutions operated for the treatment
22 and care of alcoholic patients, or offices of physicians,
23 or hotels, boarding homes or other similar places that
24 furnish to their guests only room and board, or extended
25 care facilities operated in conjunction with a hospital;

26 (c) The term "nursing home" means any institution,
27 residence or place, or any part or unit thereof, however
28 named, in this state which is advertised, offered,
29 maintained or operated by the ownership or manage-
30 ment, whether for a consideration or not, for the express
31 or implied purpose of providing accommodations and
32 care, for a period of more than twenty-four hours, for
33 three or more persons who are ill or otherwise incapac-
34 itated and in need of extensive, on-going nursing care
35 due to physical or mental impairment, or which
36 provides services for the rehabilitation of persons who
37 are convalescing from illness or incapacitation;

38 (d) The term "personal care home" means any insti-
39 tution, residence or place, or any part or unit thereof,
40 however named, in this state which is advertised,

41 offered, maintained or operated by the ownership or
42 management, whether for a consideration or not, for the
43 express or implied purpose of providing accommoda-
44 tions and personal assistance, for a period of more than
45 twenty-four hours, to three or more persons who are
46 dependent upon the services of others by reason of
47 physical or mental impairment but who do not require
48 extensive, on-going nursing care;

49 (e) The term "residential board and care home" means
50 any institution, residence or place, or any part thereof,
51 however named, in this state which is advertised,
52 offered, maintained or operated by the ownership or
53 management, whether for consideration or not, for the
54 express or implied purpose of providing accommoda-
55 tions and personal assistance, for a period of more than
56 twenty-four hours, to no fewer than three and no more
57 than eight persons who are dependent upon the services
58 of others by reason of physical or mental impairment
59 but who are capable of self-preservation and do not
60 require nursing care;

61 (f) The term "nursing care" means those procedures
62 commonly employed in providing for the physical,
63 emotional and rehabilitational needs of the ill or
64 otherwise incapacitated which require technical skills
65 and knowledge beyond that which the untrained person
66 possesses, including, but not limited to, such procedures
67 as: Irrigations, catheterizations, special procedure
68 contributing to rehabilitation, and administration of
69 medication by any method which involves a level of
70 complexity and skill in administration not possessed by
71 the untrained person;

72 (g) The term "personal assistance" means personal
73 services, including, but not limited to, the following:
74 Help in walking, bathing, dressing, feeding, or getting
75 in or out of bed, or supervision required because of the
76 age or mental impairment of the resident;

77 (h) The term "patient" means an individual under
78 care in a nursing home;

79 (i) The term "resident" means an individual living in
80 a personal care home or a residential board and care

81 home;

82 (j) The term "sponsor" means the person or agency
83 legally responsible for the welfare and support of a
84 patient or resident;

85 (k) The term "person" means an individual and every
86 form of organization, whether incorporated or unincor-
87 porated, including any partnership, corporation, trust,
88 association or political subdivision of the state.

89 The director may define in regulations any term used
90 herein which is not expressly defined.

§16-5C-3. Powers, duties and rights of director.

1 In the administration of this article, the director shall
2 have the following powers, duties and rights:

3 (a) To enforce rules, regulations and standards for
4 nursing homes, personal care homes, and residential
5 board and care homes which are adopted, promulgated,
6 amended or modified by the board of health;

7 (b) To exercise as sole authority all powers relating
8 to the issuance, suspension and revocation of licenses of
9 nursing homes, personal care homes and residential
10 board and care homes;

11 (c) To enforce rules adopted, promulgated, amended
12 or modified by the board of health governing the
13 qualification of applicants for nursing home, personal
14 care home, or residential board and care home licenses,
15 including, but not limited to, educational requirements,
16 financial requirements, personal and ethical
17 requirements;

18 (d) To receive and disburse federal funds and to take
19 whatever action not contrary to law as may be proper
20 and necessary to comply with the requirements and
21 conditions for the receipt of such federal funds;

22 (e) To receive and disburse for authorized purposes
23 any moneys appropriated to the department of health by
24 the Legislature;

25 (f) To receive and disburse for purposes authorized by
26 this article, any funds that may come to the department

27 of health by gift, grant, donation, bequest or devise,
28 according to the terms thereof, as well as funds derived
29 from the department of health's operation, or otherwise;

30 (g) To make contracts, and to execute all instruments
31 necessary or convenient in carrying out the director's
32 functions and duties; and all such contracts, agreements
33 and instruments shall be executed by the director;

34 (h) To appoint officers, agents, employees and other
35 personnel and fix their compensation;

36 (i) To offer and sponsor educational and training
37 programs for nursing homes, personal care homes, and
38 residential board and care home administrative, man-
39 agement and operational personnel;

40 (j) To undertake survey, research and planning
41 projects and programs relating to administration and
42 operation of nursing homes, personal care homes, and
43 residential board and care homes, and to the health,
44 care, treatment and service in general of patients and
45 residents of such homes;

46 (k) To assess civil penalties for violations of facility
47 standards, in accordance with section ten of this article;

48 (l) To classify nursing homes into care categories such
49 as skilled nursing facilities, intermediate care facilities,
50 and other comparable categories under the terms of this
51 article if, in the opinion of the director, the best interest
52 of the public is served by doing so;

53 (m) To inspect any facility and any records main-
54 tained therein, subject to the provisions of section ten of
55 this article;

56 (n) To establish and implement procedures, including
57 informal conferences, investigations and hearings,
58 subject to applicable provisions of article three, chapter
59 twenty-nine-a of this code, and to enforce compliance
60 with the provisions of this article and with regulations
61 issued hereunder, by the board of health;

62 (o) To subpoena witnesses and documents, administer
63 oaths and affirmations, and to examine witnesses under
64 oath for the conduct of any investigation or hearing.

65 Upon failure of a person without lawful excuse to obey
66 a subpoena to give testimony and upon reasonable notice
67 to all persons affected thereby, the director may apply
68 to the circuit court of the county in which the hearing
69 is to be held or to the circuit court of Kanawha County
70 for an order compelling compliance;

71 (p) To make complaint or cause proceedings to be
72 instituted against any person or persons for the violation
73 of the provisions of this article or of regulations issued
74 hereunder, by the board of health. Such action may be
75 taken by the director without the sanction of the
76 prosecuting attorney of the county in which proceedings
77 are instituted, if said officer fails or refuses to discharge
78 his duty. The circuit court of Kanawha County or the
79 circuit court of the county in which the conduct has
80 occurred shall have jurisdiction in all civil enforcement
81 actions brought under this article and may order
82 equitable relief without bond. In no such case shall the
83 director or any person acting under the director's
84 direction be required to give security for costs;

85 (q) To delegate authority to the director's employees
86 and agents to perform all functions of the director
87 except the making of final decisions in adjudications;

88 (r) To submit a report to the governor, the Legislature
89 and the public, on or before the first day of December,
90 one thousand nine hundred seventy-eight, and annually
91 thereafter. The report shall describe the licensing and
92 investigatory activities of the department during the
93 year, and the nature and status of other activities of the
94 department, and may include comment on the acts,
95 policies, practices or procedures of any public or private
96 agency that affect the rights, health or welfare of
97 patients or residents of nursing homes and personal care
98 homes. The annual report shall include a list of all
99 nursing homes, personal care homes, and residential
100 board and care homes, in the state, whether such homes
101 are proprietary or nonproprietary, the classification of
102 each such home; the name of the owner or owners; the
103 total number of beds, the number of private and semi-
104 private rooms, the costs per diem for private patients;
105 the number of full-time employees and their professions;

106 recreational programs; services and programs available
107 as well as the costs thereof, the rating assigned to the
108 home by the department pursuant to section five of this
109 article, and whether or not those nursing homes listed
110 accept medicare and medicaid patients. The report shall
111 also contain the department's recommendations as to
112 changes in law or policy which it deems necessary or
113 appropriate for the protection of the rights, health or
114 welfare of patients of nursing homes and personal care
115 homes in the state; and

116 (s) The director shall determine which of those
117 requirements listed in subsection (r) will apply to
118 personal care homes and residential board and care
119 homes.

**§16-5C-5. Rules and regulations; minimum standards for
facilities; rating of facilities.**

1 (a) All rules and regulations shall be approved by the
2 board of health and promulgated in the manner
3 provided by the provisions of article three, chapter
4 twenty-nine-a of this code. The board of health shall
5 adopt, amend or repeal such rules and regulations as
6 may be necessary or proper to carry out the purposes
7 and intent of this article and to enable the director to
8 exercise the powers and perform the duties conferred
9 upon the director by this article.

10 (b) The board of health shall promulgate regulations
11 establishing minimum standards of operation of facili-
12 ties including, but not limited to, the following:

13 (1) Administrative policies, including (i) an affirma-
14 tive statement of the right of access to facilities by
15 members of recognized community organizations and
16 community legal services programs whose purposes
17 include rendering assistance without charge to patients,
18 consistent with the right of patients to privacy, and (ii)
19 a statement of the rights and responsibilities of patients
20 in facilities which prescribe, as a minimum, such a
21 statement of patients' rights as included in the United
22 States department of health, education and welfare
23 regulations, in force on the effective date of this article,
24 governing participation of intermediate care facilities in

25 the medicare and medicaid programs pursuant to titles
26 eighteen and nineteen of the Social Security Act;

27 (2) Minimum numbers and qualifications of person-
28 nel, including management, medical and nursing, aides,
29 orderlies and support personnel, according to the size
30 and classification of the facility;

31 (3) Safety requirements;

32 (4) Sanitation requirements;

33 (5) Protective and personal services to be provided;

34 (6) Dietary services to be provided;

35 (7) Maintenance of health records;

36 (8) Social and recreational activities to be made
37 available; and

38 (9) Such other categories as the board of health
39 determines to be appropriate to ensure patient's health,
40 safety and welfare.

41 (c) The board of health shall include in its regulations
42 detailed standards for each of the categories of stand-
43 ards established pursuant to subsections (b) and (d) of
44 this section, and shall classify such standards as follows:
45 Class I standards are standards the violation of which,
46 the board of health determines, would present either an
47 imminent danger to the health, safety or welfare of any
48 patient or a substantial probability that death or serious
49 physical harm would result; Class II standards are
50 standards which the board of health determines have a
51 direct or immediate relationship to the health, safety or
52 welfare of any patient, but which do not create immi-
53 nent danger; Class III standards are standards which
54 the board of health determines have an indirect or a
55 potential impact on the health, safety or welfare of any
56 patient.

57 (d) The board of health shall establish:

58 (1) Standards grouped into broad general categories
59 including, but not limited to, nursing services, dietetic
60 services, medical services, the physical facility and
61 patient rights. Standards within each category shall be

62 assigned a numerical value based on its classification
63 according to subsection (c) of this section to represent
64 full compliance with the standard. The board of health
65 shall also determine numerical values for a standard to
66 represent an acceptable level or levels of partial but
67 substantial compliance with the standard, if applicable.

68 (2) A range of values for each category based on the
69 values for individual standards to represent full
70 compliance and various levels of acceptable partial but
71 substantial compliance with the category. A facility
72 must attain an acceptable substantial level of com-
73 pliance for each and every individual category to be
74 deemed in substantial compliance with this article and
75 the regulations promulgated hereunder.

76 (3) Standards for which extra numerical credit may
77 be earned. Such extra credit shall not be used to
78 counterbalance unacceptable levels of compliance with
79 other standards, but may be used to raise a score where
80 the facility is already in partial compliance.

81 (e) Not later than the first day of March, one thousand
82 nine hundred eighty-nine, the board of health shall
83 establish a system of rating facilities, as part of the
84 licensing procedure, in accordance with the criteria
85 established pursuant to this section. Such system shall
86 include four rating categories entitled, from the highest
87 to lowest, "A," "B," "C" and "F." A rating of "F" shall
88 be assigned to those facilities whose performance is not
89 in substantial compliance with this article and regula-
90 tions promulgated hereunder, and shall be the basis for
91 issuance of a provisional license pursuant to subsection
92 (d), section six of this article, or the limitation,
93 suspension, revocation or denial of a license. The rating
94 assigned to each facility shall be on the basis of its
95 immediately prior inspection, and shall be deemed a
96 part of the results and findings of that inspection, and
97 shall be included on the license issued to the facility
98 pursuant to section six of this article.

**§16-5C-6. License required; application; fees; duration;
renewal.**

1 Subject to the provisions of section seventeen of this

2 article, no person may establish, operate, maintain, offer
3 or advertise a nursing home, personal care home, or
4 residential board and care home within this state unless
5 and until he obtains a valid license therefor as hereinaf-
6 ter provided, which license remains unsuspended,
7 unrevoked and unexpired. No public official or em-
8 ployee may place any person in, or recommend that any
9 person be placed in, or directly or indirectly cause any
10 person to be placed in any facility, as defined in section
11 two of this article, which is being operated without a
12 valid license from the director. The procedure for
13 obtaining a license shall be as follows:

14 (a) The applicant shall submit an application to the
15 director on a form to be prescribed by the director,
16 containing such information as may be necessary to
17 show that the applicant is in compliance with the
18 standards for nursing homes, personal care homes, or
19 residential board and care homes as established by this
20 article and the rules and regulations lawfully promul-
21 gated by the board of health hereunder. The application
22 and any exhibits thereto shall provide the following
23 information:

24 (1) The name and address of the applicant;

25 (2) The name, address and principal occupation (i) of
26 each person who, as a stockholder or otherwise, has a
27 proprietary interest of ten percent or more in the
28 applicant, (ii) of each officer and director of a corporate
29 applicant, (iii) of each trustee and beneficiary of an
30 applicant which is a trust, and (iv) where a corporation
31 has a proprietary interest of fifty percent or more in an
32 applicant, the name, address and principal occupation
33 of each officer and director of such corporation;

34 (3) The name and address of the owner of the
35 premises of the facility or proposed facility, if he is a
36 different person from the applicant, and in such case,
37 the name and address (i) of each person who, as a
38 stockholder or otherwise, has a proprietary interest of
39 ten percent or more in such owner, (ii) of each officer
40 and director of a corporate applicant, (iii) of each trustee
41 and beneficiary of such owner if he is a trust, and (iv)

42 where a corporation has a proprietary interest of fifty
43 percent or more in such owner, the name and address
44 of each officer and director of such corporation;

45 (4) Where the applicant is the lessee or the assignee
46 of the facility or the premises of the proposed facility,
47 a signed copy of the lease and any assignment thereof;

48 (5) The name and address of the facility or the
49 premises of the proposed facility;

50 (6) The type of institution to be operated;

51 (7) The proposed bed quota of the facility and the
52 proposed bed quota of each unit thereof;

53 (8) (i) An organizational plan for the facility indicat-
54 ing the number of persons employed or to be employed,
55 the positions and duties of all employees, (ii) the name
56 and address of the individual who is to serve as
57 administrator, and (iii) such evidence of compliance
58 with applicable laws and regulations governing zoning,
59 buildings, safety, fire prevention and sanitation as the
60 director may require;

61 (9) Such additional information as the director may
62 require; and

63 (10) Assurances that the nursing home was reviewed
64 and found to be needed under the provisions of article
65 two-d of this chapter.

66 (b) Upon receipt and review of an application for
67 license made pursuant to subdivision (a) of this section,
68 and inspection of the applicant facility pursuant to
69 section ten of this article, the director shall issue a
70 license if he finds:

71 (1) That an individual applicant, and every partner,
72 trustee, officer, director and controlling person of an
73 applicant which is not an individual, be a person
74 responsible and suitable to operate or to direct or
75 participate in the operation of a facility by virtue of
76 financial capacity, appropriate business or professional
77 experience, a record of compliance with lawful orders
78 of the department (if any) and lack of revocation of a
79 license during the previous five years;

80 (2) That the facility be under the supervision of an
81 administrator who is qualified by training and expe-
82 rience: *Provided*, That every facility classified as a
83 nursing home shall have an administrator licensed
84 pursuant to the provisions of article twenty-five, chapter
85 thirty of this code; and

86 (3) That the facility is in substantial compliance with
87 standards established pursuant to section five of this
88 article, and such other requirements for a license as the
89 board of health may establish by regulation under this
90 article.

91 Any license granted by the director shall state the
92 maximum bed capacity for which it is granted, the date
93 the license was issued, the expiration date, and the
94 rating assigned to the facility pursuant to section five
95 of this article. Such licenses shall be issued for a period
96 not to exceed fifteen months for nursing homes and for
97 a period of not to exceed one year for personal care
98 homes and residential board and care homes: *Provided*,
99 That any such license in effect for which timely
100 application for renewal, together with payment of the
101 proper fee has been made to the state department of
102 health in conformance with the provisions of this article
103 and the rules and regulations issued thereunder, and
104 prior to the expiration date of such license, shall
105 continue in effect until (a) one year following the
106 expiration date of such license, or (b) the date of the
107 revocation or suspension of such license pursuant to the
108 provisions of this article, or (c) the date of issuance of
109 a new license, whichever date first occurs. Each license
110 shall be issued only for the premises and persons named
111 in the application and shall not be transferable or
112 assignable: *Provided, however*, That in the case of the
113 transfer of ownership of a facility with an unexpired
114 license, the application of the new owner for a license
115 shall have the effect of a license for a period of three
116 months when filed with the director. Every license shall
117 be posted in a conspicuous place in the facility for which
118 it is issued so as to be accessible to and in plain view
119 of all patients and visitors of the facility.

120 (c) An original license shall be renewable, conditioned

121 upon the licensee filing timely application for the
122 extension of the term of the license accompanied by the
123 fee, and contingent upon evidence of compliance with
124 the provisions of this article and regulations promul-
125 gated by the board of health hereunder. Any such
126 application for renewal of a license shall include a
127 report by the licensee in such form and containing such
128 information as shall be prescribed by the director,
129 including the following:

130 (1) A balance sheet of the facility as of the end of its
131 fiscal year, setting forth assets and liabilities at such
132 date, including all capital, surplus, reserve, depreciation
133 and similar accounts;

134 (2) A statement of operations of the facility for such
135 licensing term, setting forth all revenues, expenses,
136 taxes, extraordinary items and other credits or charges;
137 and

138 (3) A statement of any changes in the name, address,
139 management or ownership information on file with the
140 director. All holders of facility licenses as of the effective
141 date of this article shall include, in the first application
142 for renewal filed thereafter, such information as is
143 required for initial applicants under the provisions of
144 subsection (a) of this section.

145 (d) In the case of an application for a renewal license,
146 if all requirements of section five of this article are not
147 met, the director may in his discretion issue a provi-
148 sional license, provided that care given in the facility is
149 adequate to patient needs and the facility has demon-
150 strated improvement and evidences potential for
151 substantial compliance within the term of said license:
152 *Provided*, That a provisional renewal may not be issued
153 for a period greater than one year, shall not be renewed,
154 and that no such license shall be issued to any facility
155 with uncorrected violations of any Class I standard, as
156 defined in subsection (c), section five of this article.

157 (e) A nonrefundable application fee in the amount of
158 one hundred dollars for an original nursing home license
159 or fifty dollars for an original personal care facility or
160 residential board and care home license shall be paid at

161 the time application is made for such license. Direct
162 costs of initial licensure inspections or inspections for
163 changes in licensed bed capacity shall be borne by the
164 applicant and shall be received by the director prior to
165 the issuance of an initial or amended license. The license
166 fee for renewal of a license shall be at the rate of eight
167 dollars per year per bed for nursing homes, and four
168 dollars per bed per year for personal care homes, and
169 two dollars per bed per year for residential board and
170 care homes, except the annual rate per bed may be
171 assessed for licenses issued for less than one year. The
172 director may annually adjust the licensure fees for
173 inflation based upon the consumer price index. The bed
174 capacity for the holder of each license shall be deter-
175 mined by the director. All such license fees shall be due
176 and payable to the director, annually, and in such
177 manner set forth in the rules and regulations promul-
178 gated by the board of health. Such fee and application
179 shall be submitted to the director who shall retain both
180 the application and fee pending final action on the
181 application. All fees received by the director under the
182 provisions of this article shall be deposited in accordance
183 with section thirteen, article one of this chapter.

§16-5C-9. Inspections.

1 The director and any duly designated employee or
2 agent thereof shall have the right to enter upon and into
3 the premises of any facility for which a license has been
4 issued, for which an application for license has been
5 filed with the director, or which the director has reason
6 to believe is being operated or maintained as a nursing
7 home or personal care home without a license. If such
8 entry is refused by the owner or person in charge of any
9 such facility, the director shall apply to the circuit court
10 of the county in which the facility is located or the
11 circuit court of Kanawha County for a warrant autho-
12 rizing inspection, and such court shall issue an approp-
13 riate warrant if it finds good cause for inspection.

14 The director, by the director's authorized employees
15 or agents, shall conduct at least one inspection prior to
16 issuance of a license pursuant to section six of this
17 article, and shall conduct periodic unannounced inspec-

18 tions thereafter, to determine compliance by the facility
19 with applicable statutes and regulations promulgated
20 thereunder. The state fire marshal, by his employees or
21 authorized agents, shall make all fire, safety and like
22 inspections: *Provided*, That in facilities with less than
23 four beds, where all residents are capable of self-
24 preservation, the state fire marshal shall not require
25 sprinkler systems if such facilities conform with
26 alternative fire safety measures as adopted by the state
27 fire commission. The director may provide for such
28 other inspections as the director may deem necessary to
29 carry out the intent and purpose of this article.

§16-5C-17. Licenses and regulations in force.

1 All licenses for nursing homes and personal care
2 homes which are in force on the first day of July, one
3 thousand nine hundred eighty-eight, shall continue in
4 full force and effect during the period for which issued
5 unless sooner revoked as provided in this article.

6 All regulations in effect on the first day of July, one
7 thousand nine hundred eighty-eight, which were
8 adopted by the board relating to licensing nursing
9 homes or personal care homes, shall remain in full force
10 and effect until altered, amended or repealed by the
11 board of health.

ARTICLE 5E. REGISTRATION OF SERVICE PROVIDERS IN LEGALLY UNLICENSED HEALTH CARE FACILITIES.

§16-5E-2. Definitions.

§16-5E-6. Enforcement; criminal penalties.

§16-5E-2. Definitions.

1 As used in this article, unless a different meaning
2 appears from the context:

3 (a) The term "consumer" means an individual who is
4 provided services, whether or not for a fee, by a service
5 provider, but consumer does not include a person
6 receiving services provided by another who is related to
7 him or her or the spouse thereof by blood or marriage,
8 within the degree of consanguinity of second cousin;

9 (b) The term "director" means the director of the
10 West Virginia state department of health or his
11 designee;

12 (c) The term "nursing care" means those procedures
13 commonly employed in providing for the physical,
14 emotional and rehabilitational needs of the ill or
15 otherwise incapacitated which require technical skills
16 and knowledge beyond that which the untrained person
17 possesses, including, but not limited to, such procedures
18 as: Irrigations; catheterization; special procedures
19 contributing to rehabilitation; and administration of
20 medication by any method prescribed by a physician
21 which involves a level of complexity and skill in
22 administration not possessed by the untrained person;

23 (d) The term "personal assistance" means personal
24 services, including, but not limited to, the following:
25 Help in walking, bathing, dressing, feeding or getting
26 in or out of bed, or supervision required because of the
27 age or physical or mental impairment of the resident;

28 (e) The term "service provider" means the individual
29 administratively responsible for providing to consumers
30 for a period of more than twenty-four hours, whether for
31 compensation or not, services of personal assistance for
32 one or two consumers.

§16-5E-6. Enforcement; criminal penalties.

1 (a) Any service provider who fails to register with the
2 director shall be guilty of a misdemeanor, and, upon
3 conviction thereof, shall be fined not less than five
4 hundred dollars or more than twenty-five hundred
5 dollars or imprisoned in the county jail not less than ten
6 days, or more than thirty days: *Provided*, That prior to
7 the first day of July, one thousand nine hundred eighty-
8 nine, no such penalty shall be imposed upon a service
9 provider until thirty days after notice by certified mail
10 by the director to such service provider at the require-
11 ments of this article.

12 (b) Any person who interferes with or impedes in any
13 way the lawful enforcement of the provisions of this
14 article is guilty of a misdemeanor, and, upon conviction

15 thereof, shall be fined not less than five hundred dollars
16 or more than twenty-five hundred dollars or imprisoned
17 in the county jail not less than ten days, or more than
18 thirty: *Provided*, That prior to the first day of July, one
19 thousand nine hundred eighty-nine, no such penalty
20 shall be imposed upon a service provider until thirty
21 days after notice by certified mail by the director to
22 such service provider at the requirements of this article.

23 (c) The director may in his discretion bring an action
24 to enforce compliance with the provisions of this article.

25 (d) The circuit court of Kanawha County or the circuit
26 court of the county in which the conduct occurred shall
27 have jurisdiction in all civil enforcement actions brought
28 under this article and may order equitable relief
29 without bond.

ARTICLE 5H. RESIDENTIAL BOARD AND CARE HOMES.

§16-5H-1. Definitions.

§16-5H-2. License from director of health; application; regulations;
revocation, assistance from department of human services.

§16-5H-2a. Fire protection.

§16-5H-3. Enforcement; criminal penalties; injunction.

§16-5H-1. Definitions.

1 (a) The term "residential board and care home"
2 means any residence or any part or unit thereof,
3 however named, in this state which is advertised,
4 offered, maintained or operated by the ownership or
5 management, whether for a consideration or not, for the
6 express or implied purpose of providing accommoda-
7 tions, personal assistance and supervision, for a period
8 of more than twenty-four hours, to three to eight persons
9 who are not related to the owner or manager by blood
10 or marriage, within the degree of consanguinity of
11 second cousin, and who are dependent upon the services
12 of others by reason of physical or mental impairment,
13 but who do not require nursing services and who are
14 capable of self-preservation.

15 (b) The term "self-preservation" means that a person
16 is, at least, capable of removing his or her physical self
17 from situations involving imminent danger, such as fire.

§16-5H-2. License from director of health; application; regulations; revocations; assistance from department of human services.

1 No residential board and care home shall be estab-
2 lished, maintained or operated unless a license therefor
3 shall be first obtained from the director of health. The
4 application for such license shall contain such data and
5 facts as the director may reasonably require. The
6 director may promulgate reasonable regulations for the
7 operation of such facilities, and to carry out the
8 requirements of this article, in accordance with the
9 requirements of article three, chapter twenty-nine-a of
10 this code. The director shall have the authority to
11 investigate and inspect any such facility and may revoke
12 the license of any such facility for good cause after
13 notice and hearing. The department of human services
14 shall cooperate with and assist the director of health in
15 carrying out any requirements of this section, upon
16 request of the director.

§16-5H-2a. Fire protection.

1 Each residential board and care home shall install an
2 automatic fire sprinkler system which meets the
3 requirements of the national fire code standard thirteen-
4 d as adopted by the state fire commission: *Provided,*
5 That such systems shall not be required in homes with
6 four or less clients in residence where all such clients
7 are capable of self-preservation and the home conforms
8 with the alternative fire safety measures adopted by the
9 state fire commission for such homes. The requirements
10 of this section shall not be effective until the first day
11 of July, one thousand nine hundred and ninety.

§16-5H-3. Enforcement; criminal penalties; injunction.

1 (a) Whoever establishes, maintains or operates, or is
2 engaged in establishing, maintaining or operating a
3 residential board and care home without a license
4 granted under section two of this article, or who
5 prevents, interferes with or impedes in any way the
6 lawful enforcement of this article shall be guilty of a
7 misdemeanor, and, upon conviction thereof, shall be
8 punished for the first offense by a fine of not more than

9 one hundred dollars, or by imprisonment in the county
10 jail for a period of not more than ninety days, or by both
11 such fine and imprisonment, at the discretion of the
12 court. For each subsequent offense, the fine may be
13 increased to not more than two hundred fifty dollars,
14 with imprisonment in the county jail for a period of not
15 more than ninety days, or both such fine and imprison-
16 ment, at the discretion of the court. Each day of a
17 continuing violation after conviction shall be considered
18 a separate offense. No person shall be subject to
19 criminal liability under this section for establishing,
20 operating or maintaining a residential board and care
21 home without a license until the first day of January,
22 one thousand nine hundred eighty-nine: *Provided*, That
23 any person who files a complete license application with
24 the director for a residential board and care home
25 before the first day of January, one thousand nine
26 hundred eighty-nine, shall not be subject to any criminal
27 liability for establishing, operating or maintaining such
28 a home without a license until the first day of July, one
29 thousand nine hundred eighty-nine.

30 (b) The director may in his discretion bring an action
31 to enforce compliance with this article or any rule,
32 regulation or order hereunder, whenever it shall appear
33 to the director that any person has engaged in, or is
34 engaging in, an act or practice in violation of this
35 article, or any rule, regulation or order hereunder, or
36 whenever it shall appear to the director that any person
37 has aided, abetted or caused, or is aiding, abetting or
38 causing such an act or practice: *Provided*, That no action
39 to close such a home for operating without a license shall
40 be taken until after the first day of January, one
41 thousand nine hundred eighty-nine: *Provided, however*,
42 That any person who files a complete application with
43 the director for a residential board and care home
44 before the first day of January, one thousand nine
45 hundred eighty-nine, shall be permitted to operate such
46 a home without a license until the first day of July, one
47 thousand nine hundred eighty-nine. Upon application by
48 the director, the circuit court of the county in which the
49 conduct has occurred or the circuit court of Kanawha
50 County shall have jurisdiction to grant, without bond, a

51 permanent or temporary injunction, decree or restrain-
 52 ing order.

CHAPTER 65

(H. B. 4143—By Delegates Otte and Givens)

[Passed March 12, 1988; 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 five-a, relating to substituted consent for nursing home and personal care home health care services; patient's representatives; rules and regulations.

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 five-a, to read as follows:

ARTICLE 5C. NURSING AND PERSONAL CARE HOMES AND RESIDENTIAL BOARD AND CARE HOMES.

§16-5C-5a. Substituted consent for nursing home and personal care home health care services.

1 (a) For purposes of this section, "physical or mental
 2 incapacity" or like words shall mean the inability,
 3 because of physical or mental impairment, of a nursing
 4 home or personal care home patient to appreciate the
 5 nature and implications of a health care decision, to
 6 make an informed choice regarding the alternatives
 7 presented, and to communicate that choice in an
 8 unambiguous manner.

9 (b) Where there has been no adjudication of incompe-
 10 tence of a patient or appointment of a guardian for such
 11 patient and where there is no applicable durable power
 12 of attorney for such patient but where such patient is
 13 unable to grant informed consent for nursing home or
 14 personal care home health care services or to acknowl-
 15 edge notification by a nursing home or personal care

16 home of his or her rights, responsibilities, and any
17 applicable rules and regulations of the nursing home or
18 personal care home due to physical or mental incapacity,
19 as documented in such patient's health care records by
20 two physicians licensed to practice medicine in this state
21 under the provisions of article three or article fourteen,
22 both of chapter thirty of this code, or one such physician
23 and one licensed psychologist, the following persons
24 shall be deemed the patient's representative authorized
25 to consent to nursing home or personal care home health
26 care services for such patient, to acknowledge notifica-
27 tion by a nursing home or personal care home of such
28 patient's rights, responsibilities and any applicable rules
29 and regulations of the nursing home or personal care
30 home, in the order of class priority set forth below:

31 (1) The patient's spouse;

32 (2) An adult child of the patient;

33 (3) A parent of the patient;

34 (4) An adult sibling of the patient;

35 (5) The nearest living relative of the patient;

36 (6) Such other persons or classes of persons including,
37 but not limited to, such public agencies, public
38 guardians, other public officials, public and private
39 corporations, protective service agencies and other
40 representatives as the board of health may from time
41 to time designate in its rules and regulations promul-
42 gated pursuant to chapter twenty-nine-a of this code:
43 *Provided*, That there is no reason to believe that such
44 health care services are contrary to the patient's
45 religious beliefs and there is no actual notice of
46 opposition by a member of the same or a prior class.

47 (c) A nursing home or personal care home, as appli-
48 cable, shall document its good faith efforts to contact
49 permitted representatives in the order of class priority
50 and its efforts to contact all members of a class before
51 the next class is contacted but shall suffer no liability
52 or deficiency for any failure to apprise the proper
53 persons of the requirements of this section, so long as
54 it has acted reasonably and in good faith. A nursing

55 home or personal care home, as applicable, may rely on
56 the apparent authority of one member of a class to speak
57 for that class.

58 (d) The determination of incapacity hereunder shall
59 expire after six months or upon the patient's earlier
60 discharge from the nursing home or personal care home.
61 At the end of every such six-month period, if the patient
62 remains admitted to the nursing home or personal care
63 home the patient shall be reexamined by two physicians
64 licensed to practice medicine in this state as set forth
65 in subsection (b), or by one such physician and one
66 licensed psychologist, who shall render a determination
67 whether or not the patient remains physically or
68 mentally incapacitated, and such determination shall be
69 documented in the patient's health care records. The
70 authority of the representatives provided in subsection
71 (b) above shall terminate unless upon such reevaluation
72 the examining physicians, or the physician and the
73 psychologist, as the case may be, shall certify that the
74 patient remains physically or mentally incapacitated.

75 (e) In addition to the reevaluations required by
76 subsection (d) above, a nursing home or personal care
77 home, as applicable, upon request of any interested
78 person, or upon its own initiative if it shall have reason
79 to believe that the patient has regained his or her
80 capacity, shall permit or obtain a reevaluation at any
81 time by one or more physicians licensed to practice
82 medicine in this state as set forth in subsection (b), of
83 a prior determination of capacity or incapacity: *Pro-*
84 *vided*, That no patient shall be required to be reevalu-
85 ated within three months of a prior evaluation except
86 for good cause shown. A physician's determination of
87 capacity upon such reevaluation shall terminate any
88 authority of a patient's representative under this section.

89 (f) The board of health shall adopt rules and regula-
90 tions pursuant to the provisions of chapter twenty-nine-
91 a of this code setting forth a procedure by which any
92 interested person may obtain an administrative review
93 of any determination of capacity or incapacity made
94 pursuant to this section. Nothing contained in this
95 section shall preclude an interested person from seeking

- 96 a determination of competency or incompetency under
97 the provisions of article eleven, chapter twenty-seven of
98 this code in an appropriate case or from seeking any
99 form of judicial review.

CHAPTER 66

(H. B. 4026—By Delegate Givens)

[Passed February 11, 1988; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section twenty-five, article six, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to posting signs warning that microwave ovens are in use.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. HOTELS AND RESTAURANTS.

§1. Repeal of section relating to posting signs warning that microwave ovens are in use.

- 1 Section twenty-five, article six, chapter sixteen of the
2 code of West Virginia, one thousand nine hundred
3 thirty-one, as amended, is hereby repealed.

CHAPTER 67

(Com. Sub. for H. B. 4647—By Mr. Speaker, Mr. Chambers,
and Delegate Humphreys)

[Passed March 10, 1988; in effect July 1, 1988. Approved by the Governor.]

AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article thirty-two, relating to public health; legislative finding; definitions; powers and duties of the director of the department of health; licensure of asbestos abatement project designers, inspectors, contractors, management planners, workers and supervisors; special revenue

account; exemptions from notification and licensure; approval of asbestos courses; department must provide training courses for licensure; reciprocity; prohibiting employer discrimination; notice to employees; violations; reprimands; suspensions or revocation of license; orders; hearings; and penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 32. LICENSURE OF ASBESTOS ABATEMENT PROJECT DESIGNER, INSPECTORS, CONTRACTORS, MANAGEMENT PLANNERS, WORKERS AND SUPERVISORS.

- §16-32-1. Legislative findings.
- §16-32-2. Definitions.
- §16-32-3. Powers and duties of the director of health.
- §16-32-4. Asbestos management planner's license required.
- §16-32-5. Asbestos abatement project designer's license required.
- §16-32-6. Asbestos contractor's license required.
- §16-32-7. Asbestos abatement supervisor's license required.
- §16-32-8. Asbestos inspector's license required.
- §16-32-9. Asbestos worker's license required.
- §16-32-10. Special revenue account.
- §16-32-11. Exemptions from notification and licensure.
- §16-32-12. Approval of asbestos courses; requiring the department to provide training courses for licensure.
- §16-32-13. Reciprocity.
- §16-32-14. Prohibiting employer discrimination; notice to employees.
- §16-32-15. Reprimands; suspension or revocation of license; orders; hearings.
- §16-32-16. Penalties.

§16-32-1. Legislative findings.

1 The Legislature hereby finds and declares that
 2 asbestos is a dangerous toxic substance and harmful to
 3 the citizens of this state. Therefore to ensure the
 4 protection of the citizens of this state, persons who come
 5 into contact with asbestos through abatement, removal,
 6 enclosure or encapsulation, should be trained and
 7 licensed professionals who know how to deal with
 8 asbestos.

9 It is the intent of the Legislature that this article shall

10 be in addition to all other statutes, rules, and regulations
11 concerning asbestos.

§16-32-2. Definitions.

1 (a) "Asbestos" means the asbestiform varieties of
2 serpentinite (chrysotile), riebeckite (crocidolite), cum-
3 mingtonite-grunerite, anthophyllite, and actinolite-
4 tremolite, and which material contains more than one
5 percent asbestos by weight.

6 (b) "Asbestos abatement project designer" means a
7 person who specifies engineering methods and work
8 practices to be used during asbestos abatement projects.

9 (c) "Asbestos abatement supervisor" means a person
10 responsible for direction of asbestos abatement projects.

11 (d) "Asbestos contractor" means a person who enters
12 into contract for a project to abate, enclose, remove or
13 encapsulate asbestos.

14 (e) "Asbestos inspector" means a person employed to
15 inspect for presence of asbestos containing materials,
16 evaluate condition of such materials and collect samples
17 for asbestos content confirmation.

18 (f) "Asbestos management planner" means a person
19 employed to interpret survey results, make hazard
20 assessment, evaluation, and selection of control options
21 or develop an operation and maintenance plan.

22 (g) "Asbestos project" means an activity involving the
23 inspection for abatement, removal, enclosure or encap-
24 sulation of asbestos.

25 (h) "Asbestos worker" means a person who works on
26 an asbestos project for abatement, removal, enclosure or
27 encapsulation of asbestos.

28 (i) "Contained work area" means designated rooms,
29 spaces, or other areas where asbestos abatement
30 activities are being performed, including decontamina-
31 tion structures. The contained work area is separated
32 from the uncontaminated environment by polyethylene
33 sheeting or other materials used in conjunction with the
34 existing floors, ceilings and walls of the structure.

- 35 (j) "Department" means the department of health.
- 36 (k) "Director" means the director of the department
37 of health or the director's duly authorized
38 representative.
- 39 (l) "Encapsulate" means the application of any
40 material onto any asbestos containing material to bridge
41 or penetrate the material to prevent fiber release.
- 42 (m) "Enclosure" means the permanent confinement of
43 friable asbestos containing materials with an airtight
44 barrier in an area not used or designed as an air
45 plenum.
- 46 (n) "Friable" means material which is capable of
47 being crumbled, pulverized or reduced to powder by
48 hand pressure of which under normal use or mainte-
49 nance emits or can be expected to emit asbestos fibers
50 into the air.
- 51 (o) "Good faith report" means a report of conduct
52 defined in this act as wrongdoing or waste which is
53 made without malice or consideration of personal
54 benefit and which the person making the report has
55 reasonable cause to believe is true.
- 56 (p) "License" means a document authorizing a person
57 to perform certain specific asbestos related work
58 activities.
- 59 (q) "Person" means a corporation, partnership, sole
60 proprietorship, firm, enterprise, franchise, association
61 or any individual or entity.
- 62 (r) "Waste" means an employer's conduct or omissions
63 which result in substantial abuse, misuse, destruction or
64 loss of funds or resources belonging to or derived from
65 federal, state or political subdivision sources.
- 66 (s) "Wrongdoing" means a violation which is not of a
67 merely technical or minimal nature of a federal or state
68 statute or regulation, of a political subdivision ordinance
69 or regulation or of a code of conduct or ethics designed
70 to protect the interest of the public or the employer.

§16-32-3. Powers and duties of the director of health.

1 The director of health shall administer and enforce
2 this article. The director has the following powers and
3 duties:

4 (a) To issue licenses and assess fees pursuant to this
5 article and the rules and regulations promulgated
6 thereunder.

7 (b) To promulgate rules and regulations necessary to
8 carry out the requirements of this article in accordance
9 with the provisions of chapter twenty-nine-a of this code,
10 to include, but not limited to, the required training, the
11 prescription of fees and procedures for the issuance and
12 renewal of licenses.

13 (c) To approve the training courses administered to
14 licensure applicants and develop an examination and
15 grading system for testing applicants.

16 (d) The director shall implement a plan, which shall
17 be subject to legislative review in accordance with the
18 provisions of chapter twenty-nine-a of this code, for the
19 issuance and renewal of asbestos abatement project
20 designer's, contractor's, inspector's, management plan
21 developer's, worker's and supervisor's licenses by the
22 first day of July, one thousand nine hundred eighty-
23 eight. Such plan shall meet all federal guidelines.

**§16-32-4. Asbestos management planner's license
required.**

1 (a) After the first day of July, one thousand nine
2 hundred eighty-nine, it shall be unlawful for an
3 individual who does not possess a valid asbestos
4 management planner's license to design a building's or
5 facility's asbestos management plan.

6 (b) To qualify for an asbestos management planner's
7 license, an applicant shall:

8 (1) Satisfactorily complete a United States environ-
9 mental protection agency approved training course for
10 asbestos management planners;

11 (2) Possess a valid asbestos inspector's license;

12 (3) Demonstrate to the satisfaction of the director that

13 the applicant is familiar with, and capable of complying
14 fully, with all applicable requirements, procedures and
15 standards of the United States environmental protection
16 agency, the United States occupational safety and health
17 administration, the state departments of health, natural
18 resources and labor, and the state air pollution control
19 commission covering any part of an asbestos project; and

20 (4) Meet the requirements otherwise set forth by the
21 director.

22 (c) Applicants for an asbestos management planner's
23 license shall submit an application and a certificate that
24 shows satisfactory completion of the United States
25 environmental protection agency training course for
26 asbestos management planners to the department and
27 shall pay the applicable fee. The director may deny a
28 license if there has been a failure to comply with the
29 application procedures or if the applicant fails to satisfy
30 the application criteria. Written notice of such denial
31 and an opportunity for reapplication shall be afforded
32 to all applicants.

**§16-32-5. Asbestos abatement project designer's license
required.**

1 (a) After the first day of July, one thousand nine
2 hundred eighty-nine, it shall be unlawful for any person
3 who does not possess a valid asbestos abatement project
4 designer's license to specify engineering methods and
5 work practices under asbestos abatement contract to
6 another person.

7 (b) To qualify for an asbestos abatement project
8 designer's license, an applicant shall:

9 (1) Satisfactorily complete a United States environ-
10 mental protection agency approved training course for
11 abatement project designers;

12 (2) Demonstrate to the satisfaction of the director that
13 the applicant is familiar with and capable of complying
14 fully with all applicable requirements, procedures and
15 standards of the United States environmental protection
16 agency, the United States occupational safety and health
17 administration, the state departments of health, natural

18 resources and labor, and the state air pollution control
19 commission covering any part of an asbestos project;

20 (3) Meet the requirements otherwise set forth by the
21 director.

22 (c) Applicants for an asbestos abatement project
23 designer's license shall submit an application and a
24 certificate that shows satisfactory completion of the
25 United States environmental protection agency training
26 course for asbestos abatement project designers to the
27 department on the required form and shall pay the
28 applicable fee to the department. The director may deny
29 a license if there has been a failure to comply with the
30 application procedure or if the applicant fails to satisfy
31 the application criteria. Written notice of denial and an
32 opportunity for reapplication shall be afforded to all
33 applicants.

§16-32-6. Asbestos contractor's license required.

1 (a) After the first day of July, one thousand nine
2 hundred eighty-nine, it shall be unlawful for any person
3 who does not possess a valid asbestos contractor's license
4 to contract with another person to abate, enclose, remove
5 or encapsulate asbestos.

6 (b) To qualify for an asbestos contractor's license, an
7 applicant shall:

8 (1) Satisfactorily complete a United States environ-
9 mental protection agency approved training course for
10 contractors;

11 (2) Demonstrate to the satisfaction of the director that
12 the applicant and the applicant's employees or agents
13 are familiar with and are capable of complying fully
14 with all applicable requirements, procedures and
15 standards of the United States environmental protection
16 agency, the United States occupational safety and health
17 administration, the state departments of health, natural
18 resources and labor, and the state air pollution control
19 commission covering any part of an asbestos project;

20 (3) Meet the requirements otherwise set forth by the
21 director.

22 (c) Applicants for an asbestos contractor's license shall
23 submit an application and a certificate that shows
24 satisfactory completion of the United States environ-
25 mental protection agency asbestos training course for
26 contractors to the department on the required form and
27 shall pay the applicable fee to the department. The
28 director may deny a license if there has been a failure
29 to comply with the application procedure or if the
30 applicant fails to satisfy the application criteria. Written
31 notice of denial and an opportunity for reapplication
32 shall be afforded to all applicants.

33 (d) Licensed asbestos contractors shall carry out the
34 following duties:

35 (1) Ensure that each of the applicant's employees or
36 agents who will come into contact with asbestos or who
37 will be responsible for an asbestos project is licensed as
38 an asbestos worker;

39 (2) Ensure that each asbestos project is supervised by
40 a licensed asbestos abatement supervisor;

41 (3) Notify the department and all other entities as may
42 be required by state or federal law at least twenty days
43 prior to commencement of each asbestos project.
44 Notification shall be sent by certified mail or hand-
45 delivered to the department;

46 (4) A licensed asbestos contractor shall keep a record
47 of each asbestos project and shall make the record
48 available to the state departments of health, natural
49 resources and labor, and the state air pollution control
50 commission upon request. Records required by this
51 section shall be kept for at least thirty years. The
52 records shall include:

53 (A) The name, address and asbestos worker's license
54 number of the individual who supervised the asbestos
55 project and each employee or agent who worked on the
56 project;

57 (B) The location and a description of the project and
58 the amount of asbestos material that was removed;

59 (C) The starting and completion dates of each project

60 and a summary of the procedures that were used to
61 comply with all federal and state standards; and

62 (D) The name and address of each asbestos disposal
63 site where waste containing asbestos was deposited and
64 the disposal site receipts.

**§16-32-7. Asbestos abatement supervisor's license
required.**

1 (a) After the first day of July, one thousand nine
2 hundred eighty-nine, it shall be unlawful for an
3 individual who does not possess a valid asbestos
4 abatement supervisor's license to direct an asbestos
5 abatement project.

6 (b) To qualify for an asbestos abatement supervisor's
7 license, an applicant shall:

8 (1) Satisfactorily complete a United States environ-
9 mental protection agency approved training course for
10 asbestos abatement supervisors;

11 (2) Demonstrate to the satisfaction of the director that
12 the applicant is familiar with and capable of complying
13 fully with all applicable requirements, procedures and
14 standards of the United States environmental protection
15 agency, United States occupational safety and health
16 administration, the state departments of health, natural
17 resources and labor, and the state air pollution control
18 commission covering any part of an asbestos project; and

19 (3) Meet the requirements otherwise set forth by the
20 director.

21 (c) Applicants for an asbestos inspector's license shall
22 submit an application and a certificate that shows
23 satisfactory completion of the United States environ-
24 mental protection agency training course for asbestos
25 abatement supervisors to the department and shall pay
26 the applicable fee. The director may deny a license if
27 there has been a failure to comply with the application
28 procedures or if the applicant fails to satisfy the
29 application criteria. Written notice of such denial and
30 an opportunity for reapplication shall be afforded to all
31 applicants.

§16-32-8. Asbestos inspector's license required.

1 (a) After the first day of July, one thousand nine
2 hundred eighty-nine, it shall be unlawful for an
3 individual who does not possess a valid asbestos
4 inspector's license to work as an asbestos inspector on
5 an asbestos project.

6 (b) To qualify for an asbestos inspector's license, an
7 applicant shall:

8 (1) Satisfactorily complete a United States environ-
9 mental protection agency approved training course for
10 asbestos inspectors;

11 (2) Demonstrate to the satisfaction of the director that
12 the applicant is familiar with and capable of complying
13 fully with all applicable requirements, procedures and
14 standards of the United States environmental protection
15 agency, United States occupational safety and health
16 administration, the state departments of health, natural
17 resources and labor, and the state air pollution control
18 commission covering any part of an asbestos project; and

19 (3) Meet the requirements otherwise set forth by the
20 director.

21 (c) Applicants for an asbestos inspector's license shall
22 submit an application and a certificate that shows
23 satisfactory completion of the United States environ-
24 mental protection agency training course for asbestos
25 inspectors to the department and shall pay the applica-
26 ble fee. The director may deny a license if there has been
27 a failure to comply with the application procedures or
28 if the applicant fails to satisfy the application criteria.
29 Written notice of such denial and an opportunity for
30 reapplication shall be afforded to all applicants.

§16-32-9. Asbestos worker's license required.

1 (a) After the first day of July, one thousand nine
2 hundred eighty-nine, it shall be unlawful for an
3 individual who does not possess a valid asbestos worker's
4 license to work as an asbestos worker on an asbestos
5 project.

6 (b) To qualify for an asbestos worker's license an

7 individual shall:

8 (1) Satisfactorily complete a United States environ-
9 mental protection agency approved training course for
10 asbestos workers.

11 (2) Demonstrate to the satisfaction of the director that
12 the applicant and the applicant's employees or agents
13 are familiar with and are capable of complying fully
14 with all applicable requirements, procedures and
15 standards of the United States environmental protection
16 agency, the United States occupational safety and health
17 administration, the state departments of health, natural
18 resources and labor, and the state air pollution control
19 commission covering any part of an asbestos project.

20 (3) Meet the requirements otherwise set forth by the
21 director.

22 (c) Applicants for an asbestos worker's license shall
23 submit an application and a certificate that shows
24 satisfactory completion of the United States environ-
25 mental protection agency training course for asbestos
26 workers to the department and shall pay the applicable
27 fee. The director may deny a license if there has been
28 a failure to comply with the application procedures or
29 if the applicant fails to satisfy the application criteria.
30 Written notice of such denial and an opportunity for
31 reapplication shall be afforded to all applicants.

§16-32-10. Special revenue account.

1 The funds collected from the fees applicable in this
2 article shall be deposited in a special revenue account
3 in the state treasury to be used by the director of the
4 department of health and dedicated to the purposes of
5 this article which include, but are not limited to,
6 licensing, training, enforcement and program develop-
7 ment for asbestos.

§16-32-11. Exemptions from notification and licensure.

1 In an emergency that results from a sudden unex-
2 pected event that is not a planned renovation or
3 demolition, the director may waive the requirement of
4 twenty days prior notification by licensed asbestos

5 contractors.

6 Facilities presently operating under federal O.S.H.A.
7 standards for removing and handling asbestos on owned
8 premises, shall be exempt.

**§16-32-12. Approval of asbestos courses; requiring the
department to provide training courses for
licensure.**

1 A person or organization may apply for department
2 and United States environmental protection agency
3 approval of a course on the health and safety aspects of
4 asbestos abatement, removal, enclosure and encapsula-
5 tion, by submitting a full description of the curriculum
6 and a written application on forms prescribed by the
7 department.

8 The department shall make available complete
9 training courses for every license required under this
10 article. During the first year of implementation of this
11 article, the department shall offer all the training
12 courses for licenses in every congressional district in this
13 state. After the first day of July, one thousand nine
14 hundred eighty-nine, the department shall annually
15 offer all the training courses for licenses in at least one
16 location in this state. The director can charge reasonable
17 fees to offset costs of the courses offered.

§16-32-13. Reciprocity.

1 The director may set standards for accepting licenses
2 issued by other state boards of licensure. The director
3 may grant licenses to individuals from other states if
4 that other state has as stringent licensing requirements
5 as West Virginia.

**§16-32-14. Prohibiting employer discrimination; notice to
employees.**

1 (a) No employer may discharge, threaten or otherwise
2 discriminate or retaliate against an employee by
3 changing the employee's compensation, terms, condi-
4 tions, location or privileges of employment because the
5 employee, acting on his own volition, or a person acting
6 on behalf of or under the direction of the employee,

7 makes a good faith report or is about to report, verbally
8 or in writing, to the employer or appropriate authority
9 an instance of wrongdoing or waste; or because the
10 employee is requested or subpoenaed by an appropriate
11 authority to participate in an investigation, hearing or
12 inquiry held by an appropriate authority or in a court
13 action.

14 (b) An employer shall post notices and use other
15 appropriate means to notify employees and keep them
16 informed of protections and obligations set forth in the
17 provisions of this section.

**§16-32-15. Reprimands; suspension or revocation of
license; orders; hearings.**

1 (a) The director shall reprimand, suspend or revoke
2 the license of an asbestos project designer, inspector,
3 contractor, management planner, worker or supervisor,
4 if the licensee:

5 (1) Fraudulently or deceptively obtains or attempts to
6 obtain a license;

7 (2) Fails at any time to meet the qualifications for a
8 license or to comply with the requirements of this article
9 or any applicable rules or regulations adopted by the
10 director;

11 (3) Fails to meet applicable federal or state standards
12 for abatement, enclosure, removal or encapsulation of
13 asbestos; or

14 (4) Employs or permits an individual without an
15 asbestos worker's license to work on an asbestos project.

16 (b) The director shall investigate all alleged violations
17 reported to the department. Upon the finding of a
18 violation in connection with any project involving the
19 abatement, enclosure, removal, or encapsulation of
20 asbestos, the director shall issue a cease and desist order
21 directing that all work on the project be halted
22 forthwith. Posting of the cease and desist order on the
23 project site shall constitute notice of its contents to the
24 property owner and all persons working on the asbestos
25 removal project. Where practicable, however, the

26 director shall deliver a copy of such order by certified
 27 mail, return receipt requested, to the property owner
 28 and to the contractor.

29 (c) Hearings regarding violations of this article shall
 30 be conducted in accordance with the administrative
 31 procedures act of chapter twenty-nine-a of this code.

§16-32-16. Penalties.

1 Notwithstanding any other provision of this code, any
 2 person who violates any provision of this article or any
 3 rule or regulation related hereto shall be guilty of a
 4 misdemeanor.

5 In any case where a person fails to halt work following
 6 the issuance of a cease and desist order by the director,
 7 the violation shall be presumed to be willful and shall
 8 be assessed a civil penalty of not less than ten thousand
 9 dollars nor more than twenty-five thousand dollars for
 10 an initial violation and not less than twenty-five
 11 thousand dollars nor more than fifty thousand dollars
 12 for each subsequent violation.

CHAPTER 68

(S. B. 737—Originating in the Senate Committee on Finance)

[Passed March 12, 1988; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, authorizing the racing commission to expend funds from the "unredeemed pari-mutuel tickets" special account for continuation of racing days and for educational and promotional activities in connection with the West Virginia thoroughbred development fund purposes.

Be it enacted by the Legislature of West Virginia:

That section thirteen, 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.

§19-23-13. Disposition of funds for payment of outstanding and unredeemed pari-mutuel tickets; publication of notice; irredeemable tickets; stake races for dog tracks.

1 (a) All moneys held by any licensee for the payment
2 of outstanding and unredeemed pari-mutuel tickets, if
3 not claimed within ninety days after the close of the
4 horse or dog race meeting in connection with which the
5 tickets were issued, shall be turned over by the licensee
6 to the racing commission within fifteen days after the
7 expiration of such ninety-day period, and the licensee
8 shall give such information as the racing commission
9 may require concerning such outstanding and unre-
10 deemed tickets. All such moneys shall be deposited by
11 the racing commission in a banking institution of its
12 choice in a special account to be known as "West
13 Virginia Racing Commission Special Account — Unre-
14 deemed Pari-Mutuel Tickets." Notice of the amount,
15 date and place of such deposit shall be given by the
16 racing commission, in writing, to the state treasurer.
17 The racing commission shall then cause to be published
18 a notice to the holders of such outstanding and unre-
19 deemed pari-mutuel tickets, notifying them to present
20 such tickets for payment at the principal office of the
21 racing commission within ninety days from the date of
22 the publication of such notice. Such notice shall be
23 published within fifteen days following the receipt of
24 said moneys by the commission from the licensee as a
25 Class I legal advertisement in compliance with the
26 provisions of article three, chapter fifty-nine of this code,
27 and the publication area for such publication shall be
28 the county in which such horse or dog race meeting was
29 held.

30 (b) Any such pari-mutuel tickets that shall not be
31 presented for payment within ninety days from the date
32 of the publication of the notice shall thereafter be
33 irredeemable, and the moneys theretofore held for the

34 redemption of such pari-mutuel tickets shall become the
35 property of the racing commission, and shall be
36 expended as follows:

37 (1) To the owner of the winning horse in any horse
38 race at a horse race meeting held or conducted by any
39 licensee, provided that the owner of such horse is at the
40 time of such horse race a bona fide resident of this state,
41 a sum equal to ten percent of the purse won by such
42 horse. The commission may require proof that the owner
43 was, at the time of the race, a bona fide resident of this
44 state. Upon proof by the owner that he filed a personal
45 income tax return in this state for the previous two
46 years and that he owned real or personal property in
47 this state and paid taxes in this state on said property
48 for the two previous years, he shall be presumed to be
49 a bona fide resident of this state; and

50 (2) To the breeder (that is, the owner of the mare) of
51 the winning horse in any horse race at a horse race
52 meeting held or conducted by any licensee, provided
53 that the mare foaled in this state, a sum equal to ten
54 percent of the purse won by such horse; and

55 (3) To the owner of the stallion which sired the
56 winning horse in any horse race at a horse race meeting
57 held or conducted by any licensee, provided that the
58 mare which foaled such winning horse was served by
59 a stallion standing and registered in this state, a sum
60 equal to ten percent of the purse won by such horse; and

61 (4) When the moneys in the special account, known as
62 the "West Virginia Racing Commission Special Account
63 — Unredeemed Pari-Mutuel Tickets" will more than
64 satisfy the requirements of subdivisions (1), (2) and (3),
65 subsection (b) of this section, the West Virginia racing
66 commission shall have the authority to expend the
67 excess moneys from unredeemed horse racing pari-
68 mutuel tickets as purse money in any race conditioned
69 exclusively for West Virginia bred or sired horses, and
70 to expend the excess moneys from unredeemed dog
71 racing pari-mutuel tickets in supplementing purses and
72 establishing dog racing handicaps at the dog tracks:
73 *Provided*, That for the fiscal year one thousand nine

74 hundred eighty-eight only, the commission may expend
75 up to one hundred seventy-five thousand dollars of such
76 excess moneys for the purpose of continuing racing days
77 at tracks under its jurisdiction, and may expend up to
78 one hundred thousand dollars of such excess moneys,
79 over and above funds otherwise available, for the
80 purpose of educational and promotional activities in
81 connection with the West Virginia thoroughbred
82 development fund as set forth in section thirteen-b of
83 this article. Prior to the expenditure thereof, the
84 commission shall submit to the commissioner of finance
85 and administration and the legislative auditor an
86 expenditure schedule containing the information re-
87 quired in such schedules by the provisions of article two,
88 chapter five-a of this code. Beginning with the fiscal
89 year one thousand nine hundred eighty-nine, and in each
90 fiscal year thereafter, the commission shall submit to
91 the legislative auditor a quarterly report and accounting
92 of the income, expenditures and unobligated balance in
93 the special account created by this section.

94 (c) Nothing contained in this article shall prohibit one
95 person from qualifying for all or more than one of the
96 aforesaid awards, or for awards under section thirteen-
97 b of this article.

98 (d) The cost of publication of the notice provided for
99 in this section shall be paid from the funds in the hands
100 of the state treasurer collected from the pari-mutuel
101 pools tax provided for in section ten of this article, when
102 not otherwise provided in the budget; but no such costs
103 shall be paid unless an itemized account thereof, under
104 oath, be first filed with the state auditor.

CHAPTER 69

(H. B. 4484—By Delegate Schwartz)

[Passed March 12, 1988; in effect July 1, 1988. Approved by the Governor.]

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

nine hundred thirty-one, as amended, relating to the hotel occupancy tax and redefining "hotel."

Be it enacted by the Legislature of West Virginia:

That section three, article eighteen, 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 18. HOTEL OCCUPANCY TAX.

§7-18-3. Definitions.

1 For the purposes of this article:

2 (a) "Consideration paid" or "consideration" means the
3 amount received in money, credits, property or other
4 consideration for or in exchange for the right to occupy
5 a hotel room as herein defined.

6 (b) "Consumer" means a person who pays the consid-
7 eration for the use or occupancy of a hotel room. The
8 term "consumer" shall not be construed to mean the
9 government of the United States of America, its
10 agencies or instrumentalities, or the government of the
11 state of West Virginia or political subdivisions thereof.

12 (c) "Hotel" means any facility, building or buildings,
13 publicly or privately owned (including a facility located
14 in a state, county or municipal park), in which the
15 public may, for a consideration, obtain sleeping accom-
16 modations. The term shall include, but not be limited
17 to, boarding houses, hotels, motels, inns, courts, condom-
18 iniums, lodges, cabins and tourist homes. The term
19 "hotel" shall include state, county and city parks
20 offering accommodations as herein set forth. The term
21 "hotel" shall not be construed to mean any hospital,
22 sanitarium, extended care facility, nursing home or
23 university or college housing unit, or any facility
24 providing fewer than three rooms in private homes, not
25 exceeding a total of ten days in a calendar year, nor any
26 tent, trailer or camper campsites: *Provided*, That where
27 a university or college housing unit provides sleeping
28 accommodations for the general nonstudent public for
29 a consideration, the term "hotel" shall, if otherwise
30 applicable, apply to such accommodations for the

31 purposes of this tax.

32 (d) "Hotel operator" means the person who is proprie-
33 tor of a hotel, whether in the capacity of owner, lessee,
34 mortgagee in possession, licensee, trustee in possession,
35 trustee in bankruptcy, receiver, executor or in any other
36 capacity. Where the hotel operator performs his func-
37 tions through a managing agent of any type or character
38 other than an employee, the managing agent shall also
39 be deemed a hotel operator for the purposes of this
40 article and shall have the same duties and liabilities as
41 his principal. Compliance with the provisions of this
42 article by either the principal or the managing agent
43 shall, however, be considered to be compliance by both.

44 (e) "Hotel room" means any room or suite of rooms or
45 other facility affording sleeping accommodations to the
46 general public and situated within a hotel. The term
47 "hotel room" shall not be construed to mean a banquet
48 room, meeting room or any other room not primarily
49 used for, or in conjunction with, sleeping
50 accommodations.

51 (f) "Person" means any individual, firm, partnership,
52 joint venture, association, syndicate, social club, frater-
53 nal organization, joint stock company, receiver, corpo-
54 ration, guardian, trust, business trust, trustee, commit-
55 tee, estate, executor, administrator or any other group
56 or combination acting as a unit.

57 (g) "State park" means any state-owned facility which
58 is part of this state's park and recreation system
59 established pursuant to this code. For purposes of this
60 article, any recreational facility otherwise qualifying as
61 a "hotel" and situated within a state park shall be
62 deemed to be solely within the county in which the
63 building or buildings comprising said facility are
64 physically situated, notwithstanding the fact that the
65 state park within which said facility is located may lie
66 within the jurisdiction of more than one county.

67 (h) "Tax," "taxes" or "this tax" means the hotel
68 occupancy tax authorized by this article.

69 (i) "Taxing authority" means a municipality or county

- 70 levying or imposing the tax authorized by this article.
- 71 (j) "Taxpayer" means any person liable for the tax
72 authorized by this article.

CHAPTER 70

(Com. Sub. for S. B. 508—By Senators Tonkovich, Mr. President, by request,
and Harman)

[Passed March 11, 1988; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal article nine, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to enact in lieu thereof a new article nine of said chapter, relating to the West Virginia manufactured housing construction and safety standards act; defining pertinent terms; creating the West Virginia board of manufactured housing and construction safety and providing for the appointment, qualifications, terms, oath, etc., of its members; providing when such members are disqualified and for their compensation; setting forth the general powers and duties of the board; affording adversely affected parties an opportunity for a hearing; designating the board as the agency charged with administering and enforcing certain federal standards regarding manufactured housing construction and safety; authorizing the board to enter any factory, warehouse or establishment to determine compliance with standards; requiring the payment of certain monitoring fees; requiring that persons involved with manufactured housing maintain and permit the board to inspect records and other information; requiring each manufacturer, dealer, distributor and contractor to obtain annual license, pay a license fee and provide a bond or other form of assurance of financial responsibility; creating a special revenue fund; providing for recovery under bond or other form of assurance; authorizing the board to approve, disapprove, revoke or suspend such a license; authorizing the board to act as primary inspection agency; providing civil penalties for violation of

particular provisions and exempting certain persons from civil penalties; and providing criminal penalties for violation of certain provisions.

Be it enacted by the Legislature of West Virginia:

That article nine, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed and a new article nine be enacted in lieu thereof, to read as follows:

ARTICLE 9. MANUFACTURED HOUSING CONSTRUCTION AND SAFETY STANDARDS.

- §21-9-1. Short title.
- §21-9-2. Definitions.
- §21-9-3. Board created; appointment, qualifications, terms, oath, etc., of members; quorum; meetings; when members disqualified from participation; compensation; records, office space; personnel.
- §21-9-4. General powers and duties; persons adversely affected entitled to hearing.
- §21-9-5. Board designated as state administrative agency for manufactured home construction and safety standards; board to administer and enforce act.
- §21-9-7. Monitoring inspection fee.
- §21-9-8. Maintenance and production of records and other information.
- §21-9-9. License required; fees; form of license; display of license; denial, suspension or revocation.
- §21-9-10. Licensee to furnish bond or other form of assurance.
- §21-9-11. State may act as primary inspection agency.
- §21-9-12. Civil penalties; criminal penalties.

§21-9-1. Short title.

- 1 This article shall be known as "The West Virginia
- 2 Manufactured Housing Construction and Safety Stand-
- 3 ards Act."

§21-9-2. Definitions.

- 1 (a) "Board" means the West Virginia manufactured
- 2 housing construction and safety board created in this
- 3 article.
- 4 (b) "Commissioner" means the commissioner of the
- 5 West Virginia state department of labor.
- 6 (c) "Contractor" means any person who performs
- 7 operations in this state at the occupancy site which
- 8 render a manufactured home fit for habitation. This

9 definition does not include persons who do work on a
10 manufactured home which is owned or leased by such
11 person doing the work. Such operations include, without
12 limitation, installation or construction of the foundation,
13 positioning, blocking, leveling, supporting, tying down,
14 connecting utility systems, making minor adjustments
15 or assembling multiple or expandable units. Such
16 operations also include transporting the unit to the
17 occupancy site by other than a motor carrier regulated
18 by the West Virginia public service commissioner.

19 (d) "Dealer" means any person engaged in this state
20 in the sale, leasing or distribution of new manufactured
21 homes, primarily to persons who in good faith purchase
22 or lease a manufactured home for purposes other than
23 resale.

24 (e) "Defect" includes any defect in the performance,
25 construction, components or material of a manufactured
26 home that renders the home or any part thereof not fit
27 for the ordinary use for which it was intended.

28 (f) "Distributor" means any person engaged in this
29 state in the sale and distribution of manufactured homes
30 for resale.

31 (g) "Federal standards" means the National Manufac-
32 tured Housing Construction and Safety Standards Act
33 of 1974 (42 U.S.C. §§ 5401, et seq.), and federal
34 manufactured home construction and safety standards
35 and regulations promulgated by the secretary of HUD
36 to implement such act.

37 (h) "HUD" means the United States Department of
38 Housing and Urban Development.

39 (i) "Manufacturer" means any person engaged in
40 manufacturing or assembling manufactured homes,
41 including any person engaged in importing manufac-
42 tured homes for resale.

43 (j) "Manufactured home" means a structure, transpor-
44 table in one or more sections, which in the traveling
45 mode is eight body feet or more in width or forty body
46 feet or more in length or, when erected on site, is three
47 hundred twenty or more square feet, and which is built

48 on a permanent chassis and designed to be used as a
49 dwelling with or without a permanent foundation when
50 connected to the required utilities, and includes the
51 plumbing, heating, air-conditioning and electrical
52 systems contained therein; except that such term shall
53 include any structure which meets all the requirements
54 of this definition except the size requirements and with
55 respect to which the manufacturer voluntarily files a
56 certificate which complies with the applicable federal
57 standards. Calculations used to determine the number
58 of square feet in a structure will be based on the
59 structure's exterior dimensions measured at the largest
60 horizontal projections when erected on site.

61 (k) "Purchaser" means the first person purchasing a
62 manufactured home in good faith for purposes other
63 than resale.

§21-9-3. Board created; appointment, qualifications, terms, oath, etc., of members; quorum; meetings; when members disqualified from participation; compensation; records; office space; personnel.

1 (a) There is hereby created the West Virginia board
2 of manufactured housing construction and safety, which
3 shall consist of six members and the commissioner, who
4 shall be chairman. At least two of the six members of
5 the said board shall represent and be consumers who are
6 not related or employed in the manufactured housing
7 and construction industry. The six members shall be
8 appointed by the governor by and with the advice and
9 consent of the Senate. No more than three of the
10 members so appointed may be of the same political
11 party.

12 (b) The members of the board shall be appointed for
13 overlapping terms of six years, except that of the
14 original appointments, two members shall be appointed
15 for a term of two years, two members shall be appointed
16 for a term of four years and two members shall be
17 appointed for a term of six years, and in every instance
18 until their respective successors have been appointed
19 and qualified. Before entering upon the performance of

20 his duties, each member shall take and subscribe to the
21 oath required by section 5, article IV of the Constitution
22 of the state of West Virginia, and shall certify that he
23 is and during the term of his appointment shall remain
24 free of any conflict of interest. The governor shall,
25 within sixty days following the occurrence of a vacancy
26 on the board, fill the same by appointing a person for
27 the unexpired term of the person vacating said office.
28 Any member may be removed by the governor in case
29 of incompetency, neglect of duty, gross immorality or
30 malfeasance in office.

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

50 (d) The board shall keep an accurate record of all its
51 proceedings and make certificates thereupon as may be
52 required by law. The commissioner shall make available
53 necessary office space and secretarial and other assist-
54 ance as the board may reasonably require.

**§21-9-4. General powers and duties; persons adversely
affected entitled to hearing.**

- 1 (a) The board shall have the power to:
- 2 (1) Regulate its own procedure and practice;

3 (2) Promulgate reasonable rules to implement any
4 provision of this article or of the federal standards, such
5 rules to be promulgated in accordance with the provi-
6 sions of article three, chapter twenty-nine-a of this code;

7 (3) Advise the commissioner in all matters within his
8 jurisdiction under this article;

9 (4) Prepare and submit to HUD a state plan applica-
10 tion seeking the designation of the board as a state
11 administrative agency for the purpose of administering
12 and enforcing the federal standards and take all other
13 action necessary to enable the board to serve as such a
14 state administrative agency;

15 (5) Study and report to the governor and the Legis-
16 lature on matters pertinent to the manufacture, distri-
17 bution and sale of manufactured housing in this state
18 and recommend such changes in the law as the board
19 may determine to be necessary to promote consumer
20 safety and protect purchasers of manufactured housing;

21 (6) Conduct hearings and presentations of views
22 consistent with its rules and regulations and the federal
23 standards;

24 (7) Approve or disapprove applications for licenses to
25 manufacturers, dealers, distributors and contractors in
26 accordance with section nine of this article, and revoke
27 or suspend such licenses in accordance with such
28 section, and set the amounts of license fees and bonds
29 or other forms of assurance in accordance with sections
30 nine and ten of this article;

31 (8) Realizing the inability of the citizens of the state
32 of West Virginia to obtain fire insurance on manufac-
33 tured housing, the Legislature directs the board to
34 conduct a study in regard to this crisis and to report to
35 the Legislature by the fifth day of February, one
36 thousand nine hundred eighty-nine. The report shall
37 include specific recommendations to correct this crisis
38 and improve the availability and reduce the cost of fire
39 insurance;

40 (9) Delegate to and authorize the commissioner to
41 exercise such powers and duties of the board as the

42 board may from time to time determine, including,
43 without limitation, the authority to approve, disapprove,
44 revoke or suspend licenses in accordance with section
45 nine of this article.

46 (b) Any person adversely affected by a decision of the
47 board or the commissioner shall be afforded an oppor-
48 tunity for hearing before the board in accordance with
49 section one, article five, chapter twenty-nine-a of this
code.

**§21-9-5. Board designated as state administrative agency
for manufactured home construction and
safety standards; board to administer and
enforce act.**

1 The board is hereby designated as the state adminis-
2 trative agency for the administration and enforcement
3 of the federal standards and is charged with the
4 adoption, administration and enforcement of manufac-
5 tured home construction and safety standards. The
6 standards to be adopted shall be identical to the federal
7 standards. The board shall discharge such duties
8 consistent with the rules and regulations promulgated
9 by HUD.

§21-9-6. Inspection of certain facilities.

1 The board, by its authorized representatives, may
2 enter, at reasonable times, any factory, warehouse or
3 establishment in which manufactured homes are
4 manufactured, stored or held for sale, for the purpose
5 of ascertaining whether the federal standards and the
6 standards promulgated by the board have been and are
7 being met.

§21-9-7. Monitoring inspection fee.

1 The board shall establish a monitoring inspection fee
2 in an amount established by HUD. Such fee shall be
3 paid by the manufacturer for each manufactured home
4 produced in this state to the secretary of HUD, who
5 shall distribute the fees collected from all manufactured
6 home manufacturers among the approved and condition-
7 ally approved states based on the number of new
8 manufactured homes whose first location after leaving

9 the manufacturing plant is on the premises of a
10 distributor, dealer or purchaser in that state.

§21-9-8. Maintenance and production of records and other information.

1 Each manufacturer, dealer, distributor and contrac-
2 tor shall establish and maintain such records, make such
3 reports and provide such information as the board or the
4 secretary of HUD may reasonably require in order to
5 be able to determine whether such manufacturer,
6 dealer, distributor or contractor has acted or is acting
7 in compliance with this article, the rules and regulations
8 promulgated by the board pursuant to this article or the
9 federal standards and shall, upon request of a person
10 duly designated by the board or the secretary of HUD,
11 permit such person to inspect appropriate books, papers,
12 records and documents relevant to determining whether
13 such manufacturer, dealer, distributor or contractor has
14 acted or is acting in compliance with this article and the
15 federal standards.

§21-9-9. License required; fees; form of license; display of license; denial, suspension or revocation.

1 (a) No manufacturer, dealer, distributor or contractor
2 shall engage in business in this state without first
3 having applied for and received a license pursuant to
4 this section. The license shall authorize the holder to
5 engage in the business permitted by the license. All
6 license applications shall be accompanied by the
7 required fee and surety bond or other form of assurance
8 as required by rule or regulation promulgated by the
9 board.

10 (b) All licenses shall be granted or refused within
11 thirty days after proper and complete application. All
12 licenses shall expire on the thirtieth day of June of each
13 year, unless sooner revoked or suspended. Applications
14 shall be deemed valid for a period of thirty days.

15 (c) The annual license fees shall be in the amounts
16 prescribed from time to time by rules and regulations
17 promulgated by the board but in no event less than the
18 following amounts:

- 19 (1) For manufacturers, \$300;
20 (2) For dealers, \$100;
21 (3) For distributors, \$100; and
22 (4) For contractors, \$50.
- 23 (d) The board shall prescribe the form of license and
24 each license shall have affixed thereon the seal of the
25 state department of labor.
- 26 (e) Each licensee shall conspicuously display the
27 license in its established place of business.
- 28 (f) Pursuant to such rules and regulations as may be
29 promulgated by the board, the board may deny the
30 issuance of a license or revoke or suspend any license.
- 31 (g) The proceeds of such fees shall be deposited in a
32 special account in the state treasury to be used by the
33 department of labor for the administration of the
34 provisions of this article.

**§21-9-10. Licensee to furnish bond or other form of
assurance.**

- 1 (a) Each manufacturer, dealer, distributor or contrac-
2 tor which applies for a license under the preceding
3 section shall, at the time of making application therefor,
4 furnish a surety bond or such other form of assurance
5 of the applicant's financial responsibility as the board
6 may by rule or regulation permit, such surety bond or
7 other form of assurance to be in such amount as the
8 board may by rule or regulation prescribe. In the event
9 of forfeiture of any such bond or security, the proceeds
10 thereof shall be deposited in the special account created
11 under section nine of this article.
- 12 (b) The bond or other form of assurance shall cover
13 any misappropriation of funds of a purchaser or
14 prospective purchaser of a manufactured home, any
15 deception or false or fraudulent representations or
16 deceitful practices in selling or representing a product,
17 any failure by a licensee, because of bankruptcy,
18 insolvency or other reason, to fulfill warranty obliga-
19 tions and any failure of the licensee, its agents or

20 employees, to comply with the federal standards, this
21 article or any rules or regulations promulgated by the
22 board pursuant to this article.

§21-9-11. State may act as primary inspection agency.

1 This state, acting through the board, is hereby
2 granted all powers and authority necessary to act as a
3 primary inspection agency and to perform the functions
4 of a "design approval primary inspection agency" and
5 a "production inspection primary inspection agency," as
6 such terms are defined in the federal standards. The
7 board may apply to the secretary of HUD on behalf of
8 this state to act as such a primary inspection agency
9 including application for approval to act as the exclusive
10 production inspection primary inspection agency in this
11 state. The board shall promulgate such rules and
12 regulations as are necessary to enable the board to act
13 on behalf of this state as such a primary inspection
agency.

§21-9-12. Civil penalties; criminal penalties.

1 (a) Any person who violates any of the following
2 provisions relating to manufactured homes or any rule
3 or regulation promulgated by the board pursuant to this
4 article shall be liable to the state for a penalty as
5 determined by the court of not to exceed one thousand
6 dollars for each violation. Each such violation shall
7 constitute a separate violation with respect to each
8 manufactured home, except that the maximum penalty
9 shall not exceed one million dollars for any related series
10 of violations occurring within one year from the date of
11 the first violation. No person shall:

12 (1) Manufacture for sale, lease, sell, offer for sale or
13 lease, or introduce or deliver, or import into this state
14 any manufactured home which is manufactured on or
15 after the effective date of any applicable standard
16 established by rule or regulation promulgated by the
17 board pursuant to this article, or any applicable federal
18 standard, which does not comply with any such
19 standard.

20 (2) Fail or refuse to permit access to or copying of

21 records, or fail to make reports or provide information
22 or fail or refuse to permit entry or inspection as
23 required by section six of this article.

24 (3) Fail to furnish notification of any defect as
25 required by 42 U.S.C. §5414.

26 (4) Fail to issue a certification required by 42 U.S.C.
27 §5415 or issue a certification to the effect that a
28 manufactured home conforms to all applicable federal
29 standards, if such person knows or in the exercise of due
30 care has reason to know that such certification is false
31 or misleading in a material respect.

32 (5) Fail to establish and maintain such records, make
33 such reports, and provide such information as the board
34 may reasonably require to enable the board to deter-
35 mine whether there is compliance with the federal
36 standards; or fail to permit, upon request of a person
37 duly authorized by the board, the inspection of approp-
38 riate books, papers, records and documents relative to
39 determining whether a manufacturer, dealer, distribu-
40 tor or contractor has acted or is acting in compliance
41 with this article or the federal standards.

42 (6) Issue a certification pursuant to 42 U.S.C. §5403(a),
43 if said person knows or in the exercise of due care has
44 reason to know that said certification is false or
45 misleading in a material respect.

46 (b) Subdivision (1), subsection (a) of this section shall
47 not apply to (i) the sale or the offer for sale of any
48 manufactured home after the first purchase of it in good
49 faith for purposes other than resale, (ii) any person who
50 establishes that he did not have reason to know in the
51 exercise of due care that such manufactured home is not
52 in conformity with applicable federal standards or (iii)
53 any person who, prior to such first purchase, holds a
54 certificate by the manufacturer or importer of such
55 manufactured home to the effect that such manufac-
56 tured home conforms to all applicable federal standards,
57 unless such person knows that such manufactured home
58 does not so conform.

59 (c) Any manufacturer, dealer, distributor and con-

60 tractor who engages in business in this state without a
61 current license as required by section seven of this
62 article or without furnishing a bond or other form of
63 assurance as required by section eight of this article is
64 guilty of a misdemeanor, and, upon conviction thereof,
65 shall be fined not more than fifty dollars for each day
66 such violation continues.

67 (d) Any person or officer, director, partner or agent
68 of a corporation, partnership or other entity who
69 willfully or knowingly violates any of the provisions
70 listed in subsection (a) of this section, in any manner
71 which threatens the health or safety of any purchaser,
72 is guilty of a misdemeanor, and, upon conviction thereof,
73 shall be fined not more than one thousand dollars or
74 imprisoned in the county jail not more than one year,
75 or both fined and imprisoned: *Provided*, That nothing in
76 this article shall apply to any bank or financial
77 institution engaged in the disposal of foreclosed or
78 repossessed manufactured home(s).

CHAPTER 71

(S. B. 271—By Senator Spears)

[Passed February 24, 1988; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article eighteen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the board of directors of the housing development fund.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 18. WEST VIRGINIA HOUSING DEVELOPMENT FUND.

§31-18-4. Composition; board of directors; appointment, term, etc., of private members; chairman and vice chairman; quorum.

1 (a) There is continued as a governmental instrumen-
2 tality of the state of West Virginia, a public body
3 corporate to be known as the West Virginia housing
4 development fund.

5 (b) The housing development fund is created and
6 established to serve a public corporate purpose and to
7 act for the public benefit and as a governmental
8 instrumentality of the state of West Virginia, to act on
9 behalf of the state and its people in improving and
10 otherwise promoting their health, welfare and
11 prosperity.

12 (c) The housing development fund shall be governed
13 by a board of directors, consisting of eleven members,
14 four of whom shall be the governor, the attorney
15 general, the commissioner of agriculture, and the state
16 treasurer, or their designated representatives as public
17 directors, and seven of whom shall be chosen from the
18 general public residing in the state, as private directors.
19 No more than four of the private directors shall be from
20 the same political party.

21 (d) Upon organization of the housing development
22 fund, the governor shall appoint, by and with the advice
23 and consent of the Senate, the seven private directors
24 to take office and to exercise all powers thereof
25 immediately, with two each appointed for terms of two
26 years and three years, and with three each appointed for
27 terms of four years, respectively, as the governor shall
28 designate; at the expiration of said terms and for all
29 succeeding terms, the governor shall appoint a successor
30 to the office of private director for a term of four years
31 in each case.

32 (e) In cases of any vacancy in the office of a private
33 director, such vacancy shall be filled by appointment by
34 the governor for the unexpired term.

35 (f) The governor may remove any private director
36 whom he may appoint in case of incompetency, neglect
37 of duty, gross immorality, or malfeasance in office; and
38 he may declare his office vacant and may appoint a
39 person for such vacancy as provided in other cases of
40 vacancy.

41 (g) The chairman and vice chairman of the board of
42 directors shall be designated by the governor from
43 among the directors.

44 (h) Six members of the board of directors shall
45 constitute a quorum. No vacancy in the membership of
46 the board shall impair the right of a quorum to exercise
47 all the rights and perform all the duties of the board
48 of directors.

49 (i) No action shall be taken by the board of directors
50 except upon the affirmative vote of at least six of the
51 directors.

52 (j) The directors, including the chairman, vice chair-
53 man and the treasurer of the board of directors, and the
54 secretary of the board of directors, shall receive no
55 compensation for their services but shall be entitled to
56 their reasonable and necessary expenses actually
57 incurred in discharging their duties under this article.

CHAPTER 72

(S. B. 459—By Senators Tonkovich, Mr. President, by request, and Harman)

[Passed March 11, 1988; in effect January 1, 1989. Approved by the Governor.]

AN ACT to repeal section forty-two, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections thirty-nine, forty, forty-a, forty-three, forty-four-a, forty-five, forty-six-b and forty-six-c, article two, chapter twenty; to further amend said article two by adding thereto five new sections, designated sections forty-six-i, forty-six-j, forty-six-k, forty-six-l and forty-six-m; to amend and reenact sections seven and eight, article two-b, chapter twenty; and to further amend said article two-b by adding thereto a new section, designated section nine, all relating to modifications or annual fee increases or both in the Class A resident statewide hunting and trapping license, Class B resident statewide fishing license, Class A and Class B exemption from fees for Class Q license holders, Class AB

combination resident statewide hunting, trapping and fishing license, Class E nonresident hunting license, Class EE nonresident bear hunting license, Class F nonresident fishing license, Class G family fishing license, Class H nonresident small game hunting license, Class I national forest hunting, trapping and fishing license, Class K nonresident six-day statewide fishing license, Class N special deer hunting license, Class O resident and nonresident trout fishing license, Class A-L lifetime resident statewide hunting and trapping license, Class AB-L lifetime resident combination statewide hunting, fishing and trapping license, Class B-L lifetime resident statewide fishing license, Class O-L lifetime resident statewide trout fishing license; and creating Class U resident and Class UU nonresident archery deer hunting licenses, Class V resident and Class VV nonresident muzzle-loading deer hunting licenses, Class W resident and Class WW nonresident turkey hunting licenses, Class X and Class XJ sportsman's hunting, fishing and trapping license; and a conservation stamp.

Be it enacted by the Legislature of West Virginia:

That section forty-two, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections thirty-nine, forty, forty-a, forty-three, forty-four-a, forty-five, forty-six-b and forty-six-c, article two of said chapter twenty be amended and reenacted; that said article two be further amended by adding thereto five new sections, designated sections forty-six-i, forty-six-j, forty-six-k, forty-six-l and forty-six-m; that sections seven and eight, article two-b, chapter twenty be amended and reenacted; and that said article two-b be further amended by adding thereto a new section, designated section nine, all to read as follows:

Article

2. Wildlife Resources.

2B. Wildlife Endowment Fund.

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-39. Class A resident statewide hunting and trapping license.

§20-2-40. Class B resident statewide fishing license.

- §20-2-40a. Class AB combination resident statewide hunting, trapping and fishing license.
- §20-2-43. Class E, Class EE, Class F, Class G and Class H licenses for nonresidents.
- §20-2-44a. Class I national forest hunting, trapping and fishing license.
- §20-2-45. Class K nonresident six-day, statewide, fishing license.
- §20-2-46b. Class N special deer hunting license.
- §20-2-46c. Class O resident and nonresident trout fishing license.
- §20-2-46i. Class U resident and Class UU nonresident archery deer hunting licenses.
- §20-2-46j. Class V resident and Class VV nonresident muzzle-loading deer hunting licenses.
- §20-2-46k. Class W resident and Class WW nonresident turkey hunting licenses.
- §20-2-46l. Class X sportsman's hunting, fishing and trapping license.
- §20-2-46m. Class XJ junior sportsman's hunting, fishing and trapping license.

§20-2-39. Class A resident statewide hunting and trapping license.

1 On and after the first day of January, one thousand
2 nine hundred eighty-nine, a Class A license shall be a
3 resident statewide hunting and trapping license and
4 shall entitle the licensee to hunt and trap all legal
5 species of wild animals and wild birds in all counties
6 of the state, except as prohibited by rules or regulations
7 of the director or when additional licenses or permits
8 are required. It shall be issued only to citizens of the
9 United States or Canada and to unnaturalized persons
10 who possess the permit referred to in section twenty-
11 nine of this article who are residents of this state:
12 *Provided*, That those residents who qualify for a Class
13 Q license shall not be liable for such fee. The fee therefor
14 shall be eleven dollars.

§20-2-40. Class B resident statewide fishing license.

1 On and after the first day of January, one thousand
2 nine hundred eighty-nine, a Class B license shall be a
3 resident statewide fishing license and shall entitle the
4 licensee to fish for all legal fish in all counties of the
5 state, except as prohibited by rules or regulations of the
6 director or when additional licenses or permits are
7 required. It shall be issued only to citizens of the United
8 States or Canada and unnaturalized persons possessing
9 the permit mentioned in section twenty-nine of this

10 article who are residents of this state: *Provided*, That
11 those residents who qualify for a Class Q license shall
12 not be liable for such fee. The fee therefor shall be
13 eleven dollars.

14 Trout fishing is not permitted with a Class B license
15 unless such license has affixed thereto an appropriate
16 trout stamp as prescribed by the department of natural
17 resources. The fee for a trout stamp shall be seven
18 dollars and fifty cents. The trout stamp is in addition
19 to a Class B license.

**§20-2-40a. Class AB combination resident statewide
hunting, trapping and fishing license.**

1 On and after the first day of January, one thousand
2 nine hundred eighty-nine, a Class AB combination
3 license shall be a resident statewide hunting, trapping
4 and fishing license and shall entitle the licensee to hunt
5 and trap for all legal species of wild animals and wild
6 birds and to fish for all legal species of fish, except trout,
7 and frogs in all counties of the state, except as prohi-
8 bited by rules or regulations of the director or when
9 additional licenses or permits are required. It shall be
10 issued only to citizens of the United States or Canada
11 and to unnaturalized persons who possess the permit
12 referred to in section twenty-nine of this article who are
13 residents of this state. The fee therefor shall be
14 seventeen dollars.

15 Trout fishing is not permitted with a Class AB license
16 unless such license has affixed thereto an appropriate
17 trout stamp as prescribed by the department of natural
18 resources. The fee for a trout stamp shall be seven
19 dollars and fifty cents. The trout stamp is in addition
20 to a Class AB license.

**§20-2-43. Class E, Class EE, Class F, Class G and Class H
licenses for nonresidents.**

1 A Class E license shall be a nonresident hunting
2 license and shall entitle the licensee to hunt all legal
3 species of wild animals and wild birds in all counties
4 of the state, except when other licenses or permits are
5 required. It shall be issued only to citizens of the United

6 States or Canada and to unnaturalized persons who
7 possess the permit referred to in section twenty-nine of
8 this article who are not residents of this state. The fee
9 therefor shall be seventy dollars except that the fee for
10 residents of Kentucky, Maryland, Ohio, Pennsylvania
11 and Virginia shall be seventy dollars or an amount equal
12 to the fee which the applicant's state of residence
13 charges residents of West Virginia for a similar license
14 to hunt in that state, whichever is greater.

15 A Class EE license shall be a nonresident bear
16 hunting license and shall entitle the licensee to hunt
17 bear in all counties of the state, except when additional
18 licenses or permits are required, on and after the first
19 day of July, one thousand nine hundred eighty-nine. It
20 shall be issued only to citizens of the United States or
21 Canada and to unnaturalized persons who possess the
22 permit referred to in section twenty-nine of this article
23 who are not residents of this state. The fee therefor shall
24 be one hundred-twenty dollars.

25 A Class F license shall be a nonresident fishing license
26 and shall entitle the licensee to fish for all fish in all
27 counties of the state except when additional licenses or
28 permits are required. It shall be issued only to citizens
29 of the United States or Canada and to unnaturalized
30 persons who possess the permit referred to in section
31 twenty-nine of this article who are not residents of this
32 state. The fee therefor shall be twenty-five dollars.

33 Trout fishing is not permitted with a Class F license
34 unless such license has affixed thereto an appropriate
35 trout stamp as prescribed by the department of natural
36 resources.

37 A Class G license shall be a family fishing license and
38 shall entitle the licensee and members of his family to
39 fish within the territorial limits of state parks and state
40 forests and in the waters of streams bounding same, for
41 a distance of not to exceed one hundred yards from the
42 exterior boundary of any state park or state forest,
43 except when additional licenses or permits are required,
44 for a period not to exceed one week. It may be issued
45 to any adult resident or nonresident who is temporarily

46 residing in any state park or forest as tenant or lessee
47 of the state. The fee therefor shall be ten dollars for the
48 head of the family, plus two dollars additional for each
49 member of his family to whom the privileges of such
50 license are extended. Class G licenses may be issued in
51 such manner and under such regulations as the director
52 may see fit to prescribe.

53 Trout fishing is not permitted with a Class G license
54 unless such license has affixed thereto an appropriate
55 trout stamp as prescribed by the department of natural
56 resources. The trout stamp must be affixed to the license
57 of the head of the family only.

58 A Class H license shall be a nonresident small game
59 hunting license and shall entitle the licensee to hunt
60 small game in all counties of the state, except when
61 additional licenses or permits are required, for a period
62 of six days beginning with the date it is issued. It shall
63 be issued only to citizens of the United States or Canada
64 who are not residents of this state. The fee therefor shall
65 be twenty dollars. As used in this section, "small game"
66 means all game except bear, deer, wild turkey and wild
67 boar.

§20-2-44a. Class I national forest hunting, trapping and fishing license.

1 A Class I license shall be a national forest hunting,
2 trapping and fishing license. It shall entitle the licensee,
3 when within national forest land in West Virginia, to
4 hunt legal species in season; to trap all fur-bearing
5 animals in season; and to fish in the waters therein. The
6 license shall be issued only to a nonresident holding a
7 Class E, EE, F, H or K license, or to a resident holding
8 a Class A, B, AB, X or XJ license. The fee therefor shall
9 be two dollars.

§20-2-45. Class K nonresident six-day, statewide, fishing license.

1 A Class K license shall be a nonresident fishing license
2 and shall entitle the licensee to fish for all fish except
3 trout in all counties of the state for a period not to
4 exceed six days. It shall be issued only to citizens of the

5 United States or Canada and to unnaturalized persons
6 possessing the permit required by section twenty-nine of
7 this article who are not residents of this state. The fee
8 therefor shall be ten dollars.

9 Trout fishing is not permitted with a Class K license
10 unless such license has affixed thereto an appropriate
11 trout stamp as prescribed by the department of natural
12 resources. The fee for a trout stamp shall be seven
13 dollars and fifty cents. The trout stamp is in addition
14 to a Class K license.

§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 it
8 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 deer
13 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
16 a county, that season shall be set by the natural
17 resources commission as provided for in section seven-
18 teen, article one of this chapter.

19 Bona fide resident landowners or their resident
20 children, bona fide resident tenants of such land, and
21 any bona fide resident stockholder of resident corpora-
22 tions which are formed for the primary purpose of
23 hunting or fishing and which are the fee simple owners
24 of no less than one thousand acres of land upon which
25 such antlerless deer may be hunted are not required to
26 have a Class N license in their possession while hunting
27 antlerless deer on their own land during the Class N
28 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 A-L, Class
31 AB, Class AB-L, Class X or Class XJ license issued for
32 the current calendar year or a resident of West Virginia
33 who is not required to obtain a license or permit to hunt
34 as provided in section twenty-eight, article two of this
35 chapter, except that this requirement shall not apply to
36 persons under the age of fifteen. The director shall
37 require proof of age before issuing a Class N license, and
38 such license shall contain a space for recording the
39 number of the valid Class A, Class A-L, Class AB, Class
40 AB-L, Class X or Class XJ license. If at any time prior
41 to the Class N deer hunting season the director
42 determines that there is a surplus of Class N licenses
43 after the demand for such licenses by residents of this
44 state has been met, such surplus licenses may be issued
45 to nonresidents who hold a valid Class E hunting license.
46 The fee for a Class N license issued to a nonresident
47 shall be twenty dollars.

§20-2-46c. Class O resident and nonresident trout fishing license.

1 On and after the first day of January, one thousand
2 nine hundred eighty-nine, a Class O license shall be a
3 resident and nonresident statewide trout fishing license
4 and shall entitle the licensee to fish for trout in all
5 counties of the state, except as prohibited by rules or
6 regulations of the director.

7 The fee shall be seven dollars and fifty cents. The
8 revenue derived from the sale of this license shall be
9 deposited in the state treasury and credited to the
10 department of natural resources and shall be used and
11 paid out, upon order of the director, for state trout
12 hatchery production.

13 This license shall be issued in the form of a stamp
14 prescribed by the director, shall be in addition to a Class
15 AB, AB-L, B, B-L, F, G, K, X or XJ license and shall
16 be valid only when affixed thereto.

§20-2-46i. Class U resident and Class UU nonresident archery deer hunting licenses.

1 On or after the first day of January, one thousand nine
2 hundred eighty-nine, a Class U license shall be a
3 resident statewide archery deer hunting license. A Class
4 UU license shall be a nonresident statewide archery
5 deer hunting license. A Class U or Class UU license
6 shall entitle the licensee to hunt for and kill deer with
7 a bow during the archery deer season in all counties of
8 the state, except as prohibited by the rules and
9 regulations of the director or commission. The fee for
10 the Class U archery deer license shall be five dollars.
11 The fee for the Class UU license shall be ten dollars.

12 The licenses shall be issued in a form prescribed by
13 the director, shall be in addition to a Class A, Class AB
14 or Class E license and shall be valid only when
15 accompanied thereby.

**§20-2-46j. Class V resident and Class VV nonresident
muzzle-loading deer hunting licenses.**

1 There shall be a special season of at least three days
2 each year for the taking of deer with muzzle-loading
3 rifles to be set at such time and to be of such duration
4 as determined by the commission: *Provided*, That such
5 special season shall not be set prior to the regular season
6 for the taking of deer with firearms. For a minimum
7 of two days during this season, deer of either sex may
8 be taken with muzzle-loading rifles in all counties open
9 for the taking of antlerless deer as provided in section
10 forty-six-b of this article. Antlered deer only may be
11 taken in all other counties open for the taking of deer
12 with firearms.

13 Only single shot muzzle-loading rifles with iron sights
14 having a bore diameter of no less than forty-four one-
15 hundredths inch shall be legal firearms for the taking
16 of deer during the special season provided herein.

17 In a calendar year, a hunter who has previously killed
18 more than one deer may hunt for and take only antlered
19 deer during the special season provided herein.

20 The special season provided herein shall be concurrent
21 with all other seasons designated for the taking of game.

22 Any person wishing to hunt for and kill deer during

23 the special muzzle-loading season must possess a valid
24 Class V or Class VV license, except that this require-
25 ment shall not apply to a resident of West Virginia who
26 is not required to obtain a license or permit to hunt as
27 provided in this chapter. A Class V license shall be a
28 resident muzzle-loading deer hunting license. A Class
29 VV license shall be a nonresident muzzle-loading deer
30 hunting license. The licenses shall be issued in a form
31 prescribed by the director, shall be in addition to a Class
32 A, Class AB or Class E license and shall be valid only
33 when accompanied thereby. The fee for the Class V
34 license shall be five dollars. The fee for the Class VV
35 license shall be ten dollars.

§20-2-46k. Class W resident and Class WW nonresident turkey hunting licenses.

1 On or after the first day of January, one thousand nine
2 hundred eighty-nine, a Class W license shall be a
3 resident turkey hunting license, and a Class WW license
4 shall be a nonresident turkey hunting license. A Class
5 W or Class WW license shall entitle the licensee to hunt
6 for and kill turkey during any turkey hunting season,
7 except as prohibited by the rules and regulations of the
8 director or commission. The fee for the Class W turkey
9 hunting license shall be five dollars. The fee for the
10 Class WW license shall be ten dollars.

11 The licenses shall be issued in a form prescribed by
12 the director, shall be in addition to a Class A, Class AB
13 or Class E license and shall be valid only when
14 accompanied thereby.

§20-2-46l. Class X sportsman's hunting, fishing and trapping license.

1 On or after the first day of January, one thousand nine
2 hundred eighty-nine, a Class X license shall be a
3 resident sportsman's hunting, fishing and trapping
4 license and shall entitle the licensee to hunt and trap for
5 all legal species of wild animals and wild birds, to fish
6 for all legal species of fish and to take frogs in all
7 counties of the state, except as prohibited by the rules
8 and regulations of the director or when additional
9 licenses or permits are required.

10 No additional fees shall be required of Class X
11 licensees for Class I, U, V or W licenses or for the
12 conservation stamp required by section nine, article two-
13 b of this chapter in order for the Class X licensee to
14 participate in the seasons for which said licenses are
15 required. Trout fishing is not permitted with a Class X
16 license unless said licensee possesses a valid Class O or
17 Class O-L trout license.

18 The Class X license shall be issued only to citizens of
19 the United States or Canada and to unnaturalized
20 persons who possess the permit referred to in section
21 twenty-nine of this article who are residents of this state.
22 The fee for the Class X license shall be twenty-five
23 dollars of which three dollars shall be designated as
24 conservation stamp revenue and expended pursuant to
25 section nine, article two-b of this said chapter.

**§20-2-46m. Class XJ junior sportsman's hunting, fishing
and trapping license.**

1 On or after the first day of January, one thousand nine
2 hundred eighty-nine, a Class XJ license shall be a
3 resident junior sportsman's hunting, fishing and trap-
4 ping license and shall entitle the licensee to hunt and
5 trap for all legal species of wild animals and wild birds,
6 to fish for all legal species of fish and to take frogs in
7 all counties of the state, except as prohibited by the rules
8 and regulations of the director or when additional
9 licenses and permits are required.

10 No additional fees shall be required of Class XJ
11 licensees for a Class I, U, V or W license or for the
12 conservation stamp required by section nine, article two-
13 b of this chapter in order for the Class XJ licensee to
14 participate in the seasons for which said licenses are
15 required. Trout fishing is not permitted with a Class XJ
16 license unless said licensee possesses a valid Class O or
17 Class O-L trout license.

18 The Class XJ license shall be issued only to citizens
19 of the United States or Canada and to unnaturalized
20 persons who possess the permit referred to in section
21 twenty-nine of this article who are residents of this state
22 and who have not reached their eighteenth birthday and

23 who are otherwise required to purchase a license
 24 pursuant to this article and chapter. The fee for the
 25 Class XJ license shall be fifteen dollars, of which three
 26 dollars shall be designated as conservation stamp
 27 revenue and expended pursuant to section nine, article
 28 two-b of this said chapter.

ARTICLE 2B. WILDLIFE ENDOWMENT FUND.

§20-2B-7. Lifetime hunting, fishing and trapping licenses created.

§20-2B-8. Privileges of lifetime licensees.

§20-2B-9. Conservation stamp; purposes, etc.

§20-2B-7. Lifetime hunting, fishing and trapping licenses created.

1 Pursuant to section three of this article the following
 2 lifetime hunting, fishing and trapping licenses are
 3 hereby created and, for the lifetime of the licensee, shall
 4 serve in lieu of the equivalent annual license:

5 (a) A Class A-L lifetime resident statewide hunting
 6 and trapping license, the fee for which shall be two
 7 hundred dollars;

8 (b) A Class AB-L lifetime resident combination
 9 statewide hunting, fishing and trapping license, the fee
 10 for which shall be three hundred dollars;

11 (c) A Class B-L lifetime resident statewide fishing
 12 license, the fee for which shall be two hundred dollars;
 13 and

14 (d) A Class O-L lifetime resident trout fishing license,
 15 the fee for which shall be one hundred dollars.

§20-2B-8. Privileges of lifetime licensees.

1 Pursuant to section seven of this article, lifetime
 2 licensees shall be entitled to the same privileges and
 3 subject to the same restrictions as licensees possessing
 4 the equivalent annual license with the following
 5 exceptions:

6 (a) Class A-L, AB-L, B-L and O-L licenses shall be
 7 valid for the lifetime of the licensee;

8 (b) A Class O-L lifetime resident trout fishing license
 9 shall be issued only to residents of the state and shall
 10 be valid only when accompanied by a Class AB, AB-L,

11 B, B-L, X or XJ license;

12 (c) Class A-L, AB-L and B-L licenses shall include all
13 of the privileges of a Class I national forest license as
14 described in section forty-four-a, article two of this
15 chapter; and

16 (d) No additional fees shall be required of Class A-L
17 and AB-L licensees for a Class U, V or W license in
18 order for the said licensees to participate in the seasons
19 for which said licenses are required. No additional fee
20 shall be required of Class A-L, AB-L or B-L licensees
21 for the conservation stamp required by section nine of
22 this article.

§20-2B-9. Conservation stamp; purposes, etc.

1 On or after the first day of January, one thousand nine
2 hundred eighty-nine, any hunter, fisherman or trapper
3 licensed to hunt, fish or trap in this state shall, in
4 addition to a hunting, fishing or trapping license of
5 Class A, AB, B, X or XJ in the case of a resident or
6 Class E, EE, F, G, H or K in the case of a nonresident,
7 have a conservation stamp which shall be issued by the
8 department of natural resources and which shall be sold
9 at places where hunting, fishing or trapping licenses are
10 sold. The fee for the conservation stamp shall be three
11 dollars for a resident of West Virginia and five dollars
12 for a nonresident of West Virginia.

13 The revenue derived from the sale of conservation
14 stamps shall be deposited in the state treasury and shall
15 be credited to the department of natural resources. Said
16 revenue shall be used and paid out, upon order of the
17 director, for capital improvements and land purchases
18 or leases benefiting wildlife except that at the discretion
19 of the director, a maximum of twenty percent of said
20 revenue may be used for the operation and maintenance
21 of said capital improvements and lands: *Provided*, That
22 none of this revenue shall be expended for the purchase
23 of wetlands, or for land to be flooded so as to create
24 wetlands, to attract migratory waterfowl within sixty
25 air miles of any established poultry industry: *Provided*,
26 *however*, That no expenditures of the revenue derived
27 from the sale of the conservation stamps shall be made

28 for recreational facilities or activities that are used by
29 or for the benefit of the general public rather than by
30 or for purchasers of hunting, fishing or trapping
31 licenses. Any unexpended moneys derived from the sale
32 of conservation stamps shall be carried forward to the
33 next fiscal year.

CHAPTER 73

(Com. Sub. for H. B. 4094—By Mr. Speaker, Mr. Chambers, and Delegate Swann,
by request of the Executive)

[Passed January 29, 1988; in effect from passage. Approved by the Governor.]

AN ACT to repeal article two, chapter five-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact article one of said chapter five-c, all relating to the creation of the "West Virginia Industry and Jobs Development Corporation"; setting forth legislative findings and intent; defining certain terms; creating the West Virginia industry and jobs development corporation; providing for severability in the case of an adjudication of unconstitutionality or invalidity; providing for a board of directors; establishing the number of directors, their appointment, terms of office, qualifications and compensation; prohibiting members from having certain financial interests; defining a misdemeanor offense for officers, members and employees to have a financial interest in a contract or sale of property to or from the corporation and providing penalties therefor; providing for the appointment of the advisory members from the Legislature; describing the management and control of the corporation by the board and the officers of the corporation; exempting corporate directors and officers from personal liability for debts and obligations created by the corporation; authorizing the board to employ personnel, fix their compensation and define their duties; setting forth the powers of the corporation; creating an investment fund for the investment and reinvestment of corporate funds; describing how such

fund must be administered by the board; setting forth sources of the fund; authorizing the corporation to invest funds; describing the conditions under which the corporation may finance projects; providing for the confidentiality of certain information or data made or received by the corporation; describing the terms and conditions under which loans may be made by the corporation to enterprises; authorizing the governor to transfer to the corporation the use, possession and control of real and personal property of the state; providing the location of a principal office; requiring the maintenance of records; requiring board members to subscribe to an oath of office; authorizing the board of investments to be ex officio board of investments for funds of the consolidated fund for investments in accordance with the provisions of said article one; setting forth the authority of the board of investments to invest moneys; describing certain loan limitations on such authority; authorizing certain inspections, audits and investigations; permitting certain tax credits for enterprises which borrow under the provisions of said article one; requiring the corporation to make an annual report to the Legislature; setting forth the requirements of such report; and exempting certain property from ad valorem taxes.

Be it enacted by the Legislature of West Virginia:

That article two, chapter five-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that article one of said chapter five-c, as amended, be amended and reenacted, to read as follows:

ARTICLE 1. WEST VIRGINIA INDUSTRY AND JOBS DEVELOPMENT CORPORATION.

- §5C-1-1. Purpose and intent.
- §5C-1-2. Definitions.
- §5C-1-3. Creation of the West Virginia industry and jobs development corporation.
- §5C-1-4. Severability.
- §5C-1-5. Directors, number, appointments, terms of office, compensation, and interest in competing business forbidden; penalty.
- §5C-1-6. Management and control of the corporation, officers, and liability.
- §5C-1-7. Officers, employees and wages.

- §5C-1-8. Corporate powers.
- §5C-1-9. Investment fund.
- §5C-1-10. Financing of projects.
- §5C-1-11. Documentary materials concerning trade secrets, commercial or financial information, and confidentiality.
- §5C-1-12. Terms and conditions of loans.
- §5C-1-13. Transfer of state property to the corporation.
- §5C-1-14. Principal office of the corporation, account books and directors' oath of office.
- §5C-1-15. West Virginia board of investments to act as board of investments for purposes of this article.
- §5C-1-16. Authority of the board of investments.
- §5C-1-17. Limitations on loan authority.
- §5C-1-18. Inspection, audit and investigation.
- §5C-1-19. Tax credit for enterprises.
- §5C-1-20. Reports to the Legislature.
- §5C-1-21. Liability for ad valorem property taxes.

§5C-1-1. Purpose and intent.

1 The Legislature finds and declares that West Virgi-
2 nia's economy can be rejuvenated; that bringing new
3 industry and trade to the state will serve as a catalyst
4 for increasing industrial and commercial activities
5 within this state; that increasing such activities will
6 form the nucleus for a growing and prosperous economy,
7 offering new job opportunities both in industry and
8 trade; and that new jobs and investments, higher income
9 and profits, and rising property values will support
10 better education and superior public services.

11 Therefore, it is the intent of the Legislature to create
12 a governmental instrumentality for the purpose of
13 increasing industry and developing and preserving jobs
14 in the state of West Virginia.

§5C-1-2. Definitions.

1 For the purposes of this chapter:

2 (a) The term "board of investments" means the board
3 of investments established by article six, chapter twelve
4 of this code;

5 (b) The term "business plan" means a document
6 detailing the sales, production and distribution plans of
7 an enterprise, together with the expenditures necessary
8 to carry out those plans (including budget and cash flow
9 projections) on an annual basis, and an employment plan

10 setting forth steps to be taken by the enterprise to retain
11 jobs or reduce unemployment in this state;

12 (c) The term "corporation" means the West Virginia
13 industry and jobs development corporation, unless the
14 context in which such term is used clearly indicates that
15 reference is made to some other corporation;

16 (d) The term "enterprise" means an entity which is or
17 proposes to be engaged in this state in any business
18 activity for profit. The entity may be owned, operated,
19 controlled, or under the management of a person,
20 partnership, corporation, trust, community-based
21 development organization or council, local commerce
22 group, employee stock ownership plan, pension or profit-
23 sharing plan, trust, a group of participating employees
24 who desire to own an entity which does not presently
25 exist, or any similar entity or organization;

26 (e) The term "financing plan" means a plan designed
27 to meet the financing needs of an enterprise as reflected
28 in the business plan;

29 (f) The term "primary employment" means work
30 which pays at least the prevailing wage in the industry
31 and offers adequate fringe benefits;

32 (g) The term "project" means a commercial or
33 industrial undertaking and all of the assets reasonably
34 and necessarily required therefor.

**§5C-1-3. Creation of the West Virginia industry and jobs
development corporation.**

1 (a) For the purpose of aiding the establishment,
2 expansion and retention of industry and jobs in this
3 state, encouraging and increasing the use of energy
4 derived from sources located within this state, develop-
5 ing and maintaining properties owned or acquired by
6 the state of West Virginia, and improving employment
7 opportunities in this state, there is created a body
8 corporate, denominated the "West Virginia Industry
9 And Jobs Development Corporation" (hereinafter
10 referred to as the "corporation").

11 (b) The corporation is created and established as a

12 governmental instrumentality of the state of West
13 Virginia to serve a public corporate purpose, to act for
14 the public benefit and to act on behalf of the state and
15 its people in improving their economic welfare and
16 prosperity.

17 (c) The corporation shall be the corporate successor to
18 both the West Virginia industry assistance corporation
19 and the West Virginia industrial and trade jobs
20 development corporation and is hereby vested with all
21 rights, title and interests of each such corporation in and
22 to all property, rights and choses in action heretofore
23 owned by or vested in either of them. As of the effective
24 date of this legislation, the West Virginia industry
25 assistance corporation and the West Virginia industrial
26 and trade jobs development corporation shall cease to
27 exist and all rights and interests heretofore vested in
28 either such corporation shall be vested in the West
29 Virginia industry and jobs development corporation.

§5C-1-4. Severability.

1 If any section, subsection, subdivision, subparagraph,
2 sentence or clause of this article is adjudged to be
3 unconstitutional or invalid, such adjudication shall not
4 affect the validity of the remaining portions of this
5 article, and, to this end, the provisions of this article are
6 hereby declared to be severable.

§5C-1-5. Directors, number, appointments, terms of office, compensation, and interest in competing business forbidden; penalty.

1 (a) The board of directors of the corporation (hereinafter
2 referred to as the "board") shall be composed of three
3 members, to be appointed by the governor, by and with
4 the advice and consent of the Senate. No more than two
5 of the directors shall be from the same political party.
6 In appointing the board, the governor shall designate
7 the chairman, vice chairman and treasurer. All other
8 officials, agents and employees shall be designated and
9 selected by the board.

10 (b) Upon the effective date of this article, the governor
11 shall forthwith appoint members of the board of the

12 corporation. The terms of office of the board members
13 first taking office on or after the effective date of this
14 legislation shall expire as designated by the governor at
15 the time of nomination, one at the end of the second year,
16 one at the end of the fourth year, and one at the end
17 of the sixth year, after the first day of July, one thousand
18 nine hundred eighty-eight. A successor to a member of
19 the board shall be appointed in the same manner as the
20 original members and shall have a term of office
21 expiring six years from the date of the expiration of the
22 term for which his predecessor was appointed.

23 (c) In cases of any vacancy in the office of director,
24 such vacancy shall be filled by appointment by the
25 governor. Any member appointed to fill a vacancy in the
26 board occurring prior to the expiration of the term for
27 which his predecessor was appointed shall be appointed
28 for the remainder of such term.

29 (d) The governor may remove a director in the case
30 of incompetence, neglect of duty, gross immorality or
31 malfeasance in office, and may declare such director's
32 office vacant and appoint a person for such vacancy as
33 provided in other cases of vacancy.

34 (e) Vacancies in the board, so long as there shall be
35 two members in office, shall not impair the powers of
36 the board to execute the functions of the corporation,
37 and two of the members in office shall constitute a
38 quorum for the transaction of the business of the board.

39 (f) Each of the members of the board shall be a
40 resident of the state of West Virginia. The compensation
41 of each member of the board shall be paid by the
42 corporation as current expenses. Members of the board
43 shall be reimbursed by the corporation for actual
44 expenses (including traveling and subsistence expenses)
45 incurred by them in the performance of the duties
46 vested in the board by this article.

47 (g) No officer, member or employee of the corporation
48 shall be financially interested, directly or indirectly, in
49 any contract of any person with the corporation, or in
50 the sale of any property, real or personal to or from the
51 corporation. This section does not apply to contracts or

52 purchases of property, real or personal, between the
53 corporation and any governmental agency. Any officer,
54 member or employee of the corporation who has such
55 financial interest in a contract or sale of property
56 prohibited hereby, shall be guilty of a misdemeanor,
57 and, upon conviction thereof, shall be fined not more
58 than one thousand dollars, or confined in the county jail
59 not more than one year, or both fined and imprisoned.

60 (h) Additionally, two advisory, nonvoting members of
61 the board shall be appointed from the membership of
62 the Legislature, one member to be appointed from the
63 Senate by the President of the Senate and one member
64 to be appointed from the House of Delegates by the
65 Speaker of the House of Delegates. The terms of the
66 advisory members shall be at the discretion of the
67 President of the Senate and Speaker of the House of
68 Delegates, respectively. The advisory members shall
69 report monthly to the joint committee on government
70 and finance and the legislative auditor on the activities
71 of the corporation. Their report shall contain such
72 information as the President of the Senate and the
73 Speaker of the House of Delegates may deem appropri-
74 ate. The advisory members shall receive no compen-
75 sation or expenses for their services.

**§5C-1-6. Management and control of the corporation,
officers, and liability.**

1 (a) The board shall direct the exercise of all the
2 powers of the corporation.

3 (b) The chairman shall be the chief executive officer
4 of the corporation, and, in his absence, the vice
5 chairman shall act as chief executive officer.

6 (c) The board shall annually elect a secretary, who
7 need not be a member of the board, to keep a record
8 of the proceedings of the board and perform such other
9 duties as may be determined appropriate by the board.

10 (d) The treasurer of the corporation shall be custodian
11 of all funds of the corporation, and shall be bonded in
12 such amount as the other members of the board may
13 designate.

14 (e) The directors and officers of the corporation shall
15 not be personally liable for any debt or obligation
16 created by the corporation.

§5C-1-7. Officers, employees and wages.

1 The board shall, without regard to the provisions of
2 civil service laws applicable to officers and employees
3 of the state of West Virginia, appoint such managers,
4 assistant managers, officers, employees, attorneys and
5 agents as are necessary for the transaction of its
6 business, fix their compensation, define their duties and
7 provide a system of organization to fix responsibility
8 and promote efficiency. Any appointee of the board may
9 be removed at the discretion of the board.

§5C-1-8. Corporate powers.

1 In order to foster employment and expand industry
2 and trade in this state, the corporation is authorized and
3 empowered to:

4 (a) Make, adopt, amend and repeal bylaws, and
5 promulgate rules and regulations in accordance with the
6 provisions of chapter twenty-nine-a of this code;

7 (b) Sue and be sued in its corporate name;

8 (c) Adopt and use a corporate seal;

9 (d) Borrow money to carry out and effectuate its
10 corporate purposes and issue notes as evidence of any
11 such borrowing in such principal amounts and upon
12 such terms as shall be necessary to provide sufficient
13 funds for achieving its corporate purposes, except that
14 no notes shall be issued to mature more than twenty
15 years from the date of issuance;

16 (e) Pledge and encumber its assets and property as
17 security for the repayment of borrowed money or to
18 guarantee the performance of any obligation of the
19 corporation;

20 (f) Issue renewal notes, except that no such renewal
21 notes shall be issued to mature more than ten years from
22 the maturity date of the notes renewed;

23 (g) Apply the proceeds from the sale of renewal notes

24 to the purchase, redemption or payment of the notes to
25 be renewed;

26 (h) Acquire, construct, maintain, improve, repair,
27 replace and operate industrial and business sites and
28 facilities within this state, streets, roads, alleys,
29 sidewalks, crosswalks and other means of ingress and
30 egress to and from industrial and business sites and
31 facilities located within this state;

32 (i) Acquire, construct, maintain, improve, repair and
33 replace and operate pipelines, electric transmission
34 lines, waterlines, sewer lines, electric power substations,
35 waterworks systems, sewage treatment and disposal
36 facilities and any combinations thereof for the use and
37 benefit of any enterprise located within this state;

38 (j) Acquire watersheds, water and riparian rights,
39 rights-of-way, easements, licenses and any and all other
40 property, property rights and appurtenances for the use
41 and benefit of any enterprise located within this state;

42 (k) Acquire, by purchase, lease, donation or eminent
43 domain, any real or personal property, or any right or
44 interest therein, as may be necessary or convenient to
45 carry out the purposes of the corporation. Title to all
46 property, property rights and interests acquired by the
47 corporation shall be taken in the name of the
48 corporation;

49 (l) Accept any and all gifts, donations, grants,
50 bequests and devises, conditional or otherwise, of money,
51 property, service or other things of value which may be
52 received from the United States or any agency thereof,
53 any governmental agency or any institution, person,
54 firm or corporation, public or private, to be held, used
55 or applied for any or all of the purposes specified in this
56 article, in accordance with the terms and conditions of
57 any such grant;

58 (m) Sell, license, lease, mortgage, assign, pledge or
59 donate its property, both real and personal, or any right
60 or interest therein to another or authorize the possession,
61 occupancy or use of such property or any right or
62 interest therein by another;

63 (n) Dispose of any real or personal property or any
64 right or interest therein as in the opinion of the board
65 is not required for the purposes of the corporation;

66 (o) Loan money or extend credit to any enterprise, by
67 such means and upon such terms as the corporation
68 shall deem appropriate, to finance, in whole or in part,
69 any project located within the state of West Virginia;

70 (p) Guarantee the repayment of money and the
71 performance of any obligation by another;

72 (q) Apply to the West Virginia economic development
73 authority for the issuance of bonds, in accordance with
74 the provisions of article fifteen, chapter thirty-one of this
75 code;

76 (r) Maintain such sinking funds and reserves as the
77 board shall determine appropriate for the purposes of
78 meeting the future monetary obligations and needs of
79 the corporation;

80 (s) Consent, subject to the provisions of any contract
81 with noteholders, whenever it deems necessary or
82 desirable in the fulfillment of the purposes of the
83 corporation, to the modification, with respect to the rate
84 of interest, time of payment of any installment of
85 principal or interest, or any other term of any contract
86 or agreement of any kind to which the corporation is a
87 party;

88 (t) Participate with the state and federal agencies in
89 efforts to promote the expansion of commercial and
90 industrial development in this state;

91 (u) Finance, organize, conduct, sponsor, participate
92 and assist in the conduct of special institutes, conferen-
93 ces, demonstrations and studies relating to the stimula-
94 tion and formation of business, industry and trade
95 endeavors;

96 (v) Conduct, finance and participate in technological,
97 business, financial and other studies related to business
98 and economic development;

99 (w) Conduct, sponsor, finance, participate and assist
100 in the preparation of business plans, financing plans and

101 other proposals of new or established businesses suitable
102 for support by the corporation;

103 (x) Prepare, publish and distribute, with or without
104 charge as the corporation may determine, such technical
105 studies, reports, bulletins and other materials as it
106 deems appropriate, subject only to the maintenance and
107 respect for confidentiality of client proprietary
108 information;

109 (y) Appear in its own behalf before boards, commis-
110 sions, departments or other agencies of municipal,
111 county, state or federal government;

112 (z) Take title by conveyance or foreclosure to any
113 enterprise or project where acquisition is necessary to
114 protect any investment or financing previously made by
115 the corporation, and to sell or lease such enterprise or
116 project, or any part thereof, to any responsible buyer;

117 (aa) Participate in any reorganization proceeding
118 pending pursuant to the United States Bankruptcy Code
119 (being the act of Congress, establishing a uniform
120 system of bankruptcy throughout the United States, as
121 amended) or in any receivership proceeding in a state
122 or federal court for the reorganization or liquidation of
123 any enterprise. The corporation may file its claim and
124 participate in any of the foregoing proceedings, and may
125 compromise or reduce the amount of any indebtedness
126 owing to it as a part of any such reorganization or
127 liquidation proceeding;

128 (bb) Sell interests in the loan portfolio of the corpo-
129 ration. Such interests shall be evidenced by instruments
130 issued by the corporation. Proceeds from the sale of such
131 interests may be utilized in the same manner and for
132 the same purposes as note revenues;

133 (cc) Procure insurance against any losses in connection
134 with its property, operations or assets in such amounts
135 and from such insurers as the corporation deems
136 desirable;

137 (dd) Take and hold security for the payment of money
138 or the performance of obligations owed to the
139 corporation;

140 (ee) Make and enter into any contracts, agreements
141 and arrangements as may be necessary or convenient to
142 carry out the purposes of the corporation and sell,
143 pledge and assign any such contract, agreement or
144 arrangement to another, with or without recourse, as
145 may be necessary or convenient to carry out the
146 purposes of the corporation;

147 (ff) Exercise such other and additional powers as may
148 be necessary or appropriate for the exercise of the
149 powers herein conferred; and

150 (gg) Exercise all of the powers which a public
151 corporation may lawfully exercise under the laws of this
152 state.

153 (hh) The bonds, notes and other instruments evidenc-
154 ing indebtedness issued by the corporation pursuant to
155 the provisions of this article shall contain on their face
156 a statement to the effect that: (1) Neither the state of
157 West Virginia nor any agency, political corporation or
158 political subdivision of the state of West Virginia is
159 obligated to pay the principal of or interest on the bonds,
160 notes or other instruments evidencing indebtedness
161 except as provided in this article; and (2) neither the
162 faith and credit nor the taxing power of the state of
163 West Virginia or any agency, political corporation or
164 political subdivision of the state of West Virginia is
165 pledged to the payment of the principal of or interest
166 on the bonds, notes or other instruments evidencing
167 indebtedness except as provided by this article.

§5C-1-9. Investment fund.

1 There is hereby established an investment fund to
2 which shall be credited any state appropriations or other
3 moneys made available to the corporation.

4 The corporation shall hold the investment fund in an
5 account or accounts separate from other funds. The
6 corporation shall invest and reinvest the fund and the
7 income thereof, temporarily pending use for the pur-
8 poses of this article, in a manner consistent with the
9 investment of temporary state funds.

10 All funds may be used to pay for the proper general

11 expenses of the corporation.

12 All moneys of the corporation from whatever source
13 derived shall be paid to the treasurer of the corporation.

14 Funds in said accounts shall be paid out on the
15 warrant or other order of the treasurer of the corpora-
16 tion and such other person or persons as the board may
17 authorize to execute such warrants or order.

18 The fund shall operate as a revolving fund whereby
19 all appropriations and payments thereto may be applied
20 and reapplied by the corporation for the purposes of this
21 article. The corporation shall requisition from the fund
22 such amounts as are necessary to accomplish the
23 purposes of the corporation.

24 Whenever the corporation determines that the balance
25 in the fund is in excess of its immediate requirements,
26 it may direct that such excess be invested until needed.
27 In such case such excess shall be invested in a manner
28 consistent with the investment of temporary state funds.
29 Interest earned on any money invested pursuant to this
30 section shall be credited to the fund.

31 If the corporation determines that funds held in the
32 fund are in excess of the amount needed to accomplish
33 the purposes of this article, it shall take such action as
34 is necessary to release such excess and transfer it to the
35 general fund of the state treasury.

36 The fund shall consist of the following:

37 (a) Moneys collected and deposited in the state
38 treasury which are specifically designated by acts of the
39 Legislature for use by the corporation;

40 (b) Contributions, grants and gifts from any source,
41 both public and private, which may be used by the
42 corporation for any project or projects;

43 (c) All interest earned on investments made by the
44 state from moneys deposited in the fund;

45 (d) The proceeds from the issuance of any revenue
46 bonds issued by the economic development authority in
47 accordance with the provisions of article fifteen, chapter

48 thirty-one of this code; and

49 (e) The proceeds, repayments, lease or rental receipts,
50 sale proceeds, liquidation proceeds, and any other
51 receipts from investments and financings made pursu-
52 ant to the authority granted by this article.

§5C-1-10. Financing of projects.

1 (a) The corporation may finance projects after:

2 (1) Receipt of an application from the enterprise
3 which contains a description of the enterprise and its
4 management, products or services and markets, a
5 business plan, a financing plan, a description of the
6 project, a statement of the amount, timing and projected
7 use of the funds, a statement of the potential economic
8 impact of the project and such other information as the
9 board may request;

10 (2) Approval of the financing by the board based upon
11 the application submitted by the enterprise and such
12 additional investigation as the board shall make, which
13 approval shall include specific findings by the board
14 that:

15 (A) The proceeds of the financing will be used for the
16 project;

17 (B) The project has a reasonable chance of success;

18 (C) The project has the reasonable potential to create
19 or preserve primary employment within the state;

20 (D) The principals of the enterprise have made or will
21 make a financial or management commitment to the
22 project;

23 (E) Binding commitments have been made to the
24 corporation by the enterprise for the adequate reporting
25 of financial information including, but not limited to, an
26 annual report or other periodic audit of the books of the
27 enterprise by a qualified independent public accountant,
28 and, in the discretion of the board, the right of access
29 to the financial and other records of the enterprise; and

30 (F) The enterprise has agreed for as long as unpaid
31 balances of principal and interest are outstanding on a

32 loan issued under this article to prepare and deliver to
33 the corporation within one hundred twenty days
34 following the close of each fiscal year, an analysis
35 reconciling the actual performance of the enterprise in
36 preserving or generating employment in this state with
37 the projected employment set forth in the business plan.

38 Such findings when made by the board shall be
39 incorporated in its minutes and shall be conclusive.

40 (b) The corporation may not finance projects in excess
41 of one hundred percent of the project costs.

42 (c) None of the proceeds of a loan made under the
43 provisions of this article shall be used to repay credit
44 extended or committed prior to the date the loan is made
45 under the provisions of this article.

46 (d) Any such financing, or proposed financing, by the
47 corporation, and by all others involved in the project,
48 shall be exempt transactions under the provisions of
49 section four hundred two, article four, chapter thirty-
50 two of this code.

**§5C-1-11. Documentary materials concerning trade
secrets, commercial or financial informa-
tion, and confidentiality.**

1 Any information or data made or received by the
2 corporation in connection with assistance to an enter-
3 prise, to the extent that such information or data
4 consists of trade secrets or commercial or financial
5 information regarding the operation of such enterprise,
6 shall not be considered public records and shall be
7 exempt from disclosure pursuant to the provisions of
8 chapter twenty-nine-b of this code. Any discussion or
9 consideration of such trade secrets or commercial or
10 financial information by the corporation may be in
11 executive session, closed to the public, notwithstanding
12 the provisions of article nine-a, chapter six of this code.

§5C-1-12. Terms and conditions of loans.

1 (a) Loans made under the provisions of this article
2 shall be payable in full not later than twenty years from
3 the date the loans are made.

4 (b) The corporation shall require security for a loan
5 made under this article at the time the loan is made,
6 and such security shall be in an amount equal to or
7 greater than the amount of the loan, as the corporation
8 may determine. Any agreement to make a loan under
9 the provisions of this article shall contain such affirma-
10 tive and negative covenants and other provisions as the
11 board shall deem appropriate.

12 (c) The corporation may, in its discretion, include
13 within the terms of the loan agreement minimum
14 project operating periods, liquidated damage provisions
15 for cessation of operations prior to the end of the loan
16 period, loan acceleration provisions, project equipment
17 purchase options in the event of early closure, recapture
18 of tax credits granted under this article for closure prior
19 to the end of the loan period, and other provisions to
20 protect the jobs intended to be created by the project.

21 (d) The enterprise shall pay such loan fees as may be
22 prescribed by the board of investments from time to
23 time. The board of investments shall prescribe and
24 collect no less frequently than annually a loan fee in
25 connection with each loan made under the provisions of
26 this article. Such fee shall be sufficient to compensate
27 the board of investments for all of the administrative
28 expenses of the board of investments related to the loan,
29 but in no case shall such fee be less than one half of one
30 percent per annum of the outstanding principal amount
31 of the loan computed daily. All amounts collected by the
32 board of investments pursuant to this subsection shall
33 be deposited in the state treasury as general revenue.

§5C-1-13. Transfer of state property to the corporation.

1 The governor is authorized to provide for the transfer
2 to the corporation of the use, possession and control of
3 such real or personal property of the state of West
4 Virginia as he may from time to time deem useful to
5 the corporation in the conduct of its activities as
6 authorized by this article.

§5C-1-14. Principal office of the corporation, account books and directors' oath of office.

- 1 (a) The corporation shall maintain its principal office
2 in the city of Charleston, West Virginia.
- 3 (b) The corporation shall at all times maintain
4 complete and accurate corporate minutes, financial
5 records and books of accounts.
- 6 (c) Each member of the board, before entering upon
7 the duties of his or her office, shall subscribe to an oath
8 or affirmation to support the constitution of the state of
9 West Virginia and to faithfully and impartially perform
10 the duties imposed upon him or her by this article.

**§5C-1-15. West Virginia board of investments to act as
board of investments for purposes of this
article.**

1 The West Virginia state board of investments as
2 heretofore created and constituted under the provisions
3 of article six, chapter twelve of this code, shall be ex
4 officio a board of investments for funds of the special
5 account for the common investment of state funds
6 designated as the state account within the special
7 investment fund designated as the consolidated fund, as
8 they are made available for investment in accordance
9 with the provisions of this article, and as such, the board
10 of investments may exercise all of the powers and
11 functions granted to it pursuant to the provisions of said
12 article six in carrying out the duties assigned to it under
13 the provisions of this article.

§5C-1-16. Authority of the board of investments.

1 Subject to the provisions of this article, the board of
2 investments, on such terms and conditions as it deems
3 appropriate, may invest moneys, securities, and other
4 assets of the special account for the common investment
5 of state funds designated as the state account within the
6 special investment fund designated as the consolidated
7 fund established under the provisions of subsection (b),
8 section eight, article six, chapter twelve of this code, in
9 the form of interest-bearing loans to the corporation,
10 provided that:

- 11 (1) The loan is needed to assist the enterprise or to
12 enable the corporation to assist the enterprise to develop

13 a project in this state;

14 (2) The board of investments has received adequate
15 assurances regarding the availability of all financing,
16 both public and private, contemplated by the financing
17 plan and that such financing is adequate to meet the
18 projected financial needs of the enterprise;

19 (3) The prospective earning power of the enterprise,
20 together with the character and value of any security
21 pledged, furnish reasonable assurance of repayment of
22 the loan in accordance with its terms; and

23 (4) The loan will bear interest at a rate determined
24 by the board of investments to be reasonable, taking into
25 account the current average yield on outstanding
26 investments of the consolidated fund established under
27 the provisions of subsection (b), section eight, article six,
28 chapter twelve of this code.

29 (5) There exists an employment plan which focuses
30 upon the need to retain or increase the number of jobs
31 available in this state and can be carried out by the
32 enterprise.

33 (6) The enterprise has submitted to the corporation a
34 satisfactory business plan demonstrating the ability of
35 the enterprise to retain employment or generate
36 additional employment in this state and to maintain
37 such level of employment.

§5C-1-17. Limitations on loan authority.

1 The authority of the board of investments to make
2 loans under the provisions of this article shall not at any
3 time exceed one hundred fifty million dollars in the
4 aggregate principal amount outstanding in investments
5 made from the consolidated fund. In determining the
6 aggregate principal amounts outstanding in such
7 investments, the board of investments shall include in
8 such amounts the principal amounts outstanding under
9 loans made in accordance with the provisions of the
10 former enactments of this article and article two of this
11 chapter.

§5C-1-18. Inspection, audit and investigation.

1 (a) The accounts of an enterprise under this article
2 shall be audited annually in accordance with generally
3 accepted accounting standards by independent certified
4 public accountants or independent licensed public
5 accountants, certified or licensed by a regulatory
6 authority of this state or a sister state.

7 (b) At any time an application for financing under this
8 article is pending or a financing under this article is
9 outstanding, the corporation may request a report of
10 such independent audit. The report shall set forth the
11 scope of the audit and include such statements as are
12 necessary to present fairly the assets and liabilities of
13 the enterprise, surplus or deficit with an analysis of
14 changes therein during the year, supplemented in
15 reasonable detail by a statement of the income and
16 expenses of the enterprise during the year, together
17 with independent auditor's opinion of those statements.

18 (c) The corporation is empowered to investigate and
19 shall investigate all allegations of fraud, dishonesty,
20 incompetence, misconduct, or irregularity in the
21 management of the affairs of an enterprise which are
22 material to the ability of the enterprise to repay a
23 financing made under the provisions of this article.

§5C-1-19. Tax credit for enterprises.

1 (a) There shall be allowed to every enterprise under
2 the provisions of this article, as a credit against the
3 corporation net income tax imposed by article twenty-
4 four of said chapter eleven of this code, the amount
5 determined under subsection (b) of this section. The
6 liability of such enterprise for and corporation net
7 income tax for the taxable year shall be the tax imposed
8 by said chapter eleven for such taxes, reduced by the
9 sum of the credit allowable under subsection (b) of this
10 section.

11 (b) The amount of credit allowed by subsection (a) for
12 the taxable year shall be equal to the amount of
13 principal and interest paid by the enterprise during the
14 taxable year on a loan made under this article, subject
15 to the limitations set forth in subsection (c) of this
16 section.

17 (c) Notwithstanding subsection (b) of this section, the

18 amount of the credit allowed by this section shall not
19 exceed the liability of the enterprise for corporation net
20 income tax for the taxable year. The tax credit granted
21 under the provisions of this section shall not extend
22 beyond a period of five taxable years. The tax credit
23 granted under the provisions of this section shall be in
24 addition to the credits provided for in articles thirteen-
25 c, thirteen-d and thirteen-e, chapter eleven of this code.
26 There shall be no carryback of unused tax credit to
27 taxable years preceding the tax year, nor shall there be
28 a carryover to taxable years following the tax year.

§5C-1-20. Reports to the Legislature.

1 The corporation shall submit to the Legislature, on or
2 before the first day of December of each year following
3 the effective date of this section, a full report of its
4 activities under this article. The report shall include an
5 evaluation of the long-term employment impact of its
6 activities under the provisions of this article, with
7 findings, conclusions and recommendations for legisla-
8 tive and administrative actions considered appropriate
9 to future activities under this article or under similar
10 industry and jobs development programs which might
11 be foreseen. The report shall also contain a list of all
12 corporation employees, stating their position, annual
13 salary and amount claimed by each in travel expenses
14 in the twelve-month period covered by the report,
15 information correlating travel expenses and production
16 of jobs in West Virginia, and an accounting of all income
17 received and expenditures made by the corporation.

§5C-1-21. Liability for ad valorem property taxes.

1 (a) The corporation shall be exempt from the im-
2 position of ad valorem taxes upon its property by any
3 political subdivision of the state of West Virginia.

4 (b) When title to real or personal property is trans-
5 ferred to the corporation, the ad valorem property taxes,
6 if any, assessed against such property shall be appor-
7 tioned between the transferor and the corporation on a
8 calendar year basis as of the date of the transfer, and
9 neither the transferor nor the corporation shall be liable
10 for the payment of that portion of the ad valorem
11 property taxes apportioned to the part of the year

12 following the transfer, but the transferor shall continue
13 to be liable for the payment of that portion of the taxes
14 apportioned to the part of the year preceding and
15 including the date of transfer.

16 (c) When title to real or personal property is trans-
17 ferred by the corporation to a transferee not exempt
18 from the payment of ad valorem property taxes, ad
19 valorem property taxes shall be assessed against such
20 property, as of the date of the transfer, by extension of
21 the applicable levy rate, notwithstanding that the
22 corporation was the owner of such property on the last
23 past date of assessment, and the transferee shall be
24 liable for the payment of the property taxes so assessed
25 for that portion of the calendar year following the date
26 of the transfer from the corporation.

27 (d) In negotiating the terms of an agreement between
28 the corporation and an enterprise for the financing of
29 a project under the provisions of this article, if the
30 agreement contemplates continued ownership by the
31 corporation of real property and the use and occupancy
32 of such real property by the enterprise, whether by
33 lease, lease-back or other device, with the result that the
34 real property would not be subject to ad valorem
35 property taxes, the corporation and the enterprise may
36 include within the terms and conditions of such agree-
37 ment a requirement that the enterprise pay, to such
38 political subdivisions as would otherwise benefit from
39 the receipt of ad valorem property taxes if the real
40 property were not owned by the corporation, sums of
41 money agreed upon by the corporation and the enter-
42 prise, in the form of annual payments in lieu of ad
43 valorem property taxes.

CHAPTER 74

(Com. Sub. for H. B. 4057—By Mr. Speaker, Mr. Chambers, and Delegate Hatcher)

[Passed February 16, 1988; in effect ninety days from passage. Approved by the Governor.]

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

of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new sections, designated sections thirteen and fourteen, relating to the establishment of furlough programs for inmates under the control of the department of corrections in accordance with legislative rules promulgated by such department; authorizing the use of electronic monitoring devices for such purpose; requiring that such furloughed inmates pay reasonable fees to assist in defraying the cost of such program and providing for certain exceptions with respect thereto; establishing a special fund within the state treasury for the purposes of the program; defining certain terminology used; and providing for certain limitations as to the use of such monitoring equipment.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. ORGANIZATION AND INSTITUTIONS.

§25-1-13. Furlough programs.

§25-1-14. Electronic monitoring of inmates, special account established.

§25-1-13. Furlough programs.

1 The commissioner is hereby authorized to establish a
2 furlough program for inmates under his control and
3 custody. Such program may provide that selected
4 inmates be permitted to reside outside an institution
5 operated by the department of corrections under
6 legislative rules promulgated by the commissioner
7 pursuant to chapter twenty-nine-a of this code.

**§25-1-14. Electronic monitoring of inmates; special
account established.**

1 The commissioner is authorized to use electronic
2 monitoring equipment to aid in the supervision of
3 inmates. Inmates subject to supervision by means of
4 electronic monitoring equipment shall be charged a
5 reasonable fee, to be established under a legislative rule
6 promulgated by the commissioner pursuant to chapter

8 purchase and use of such equipment: *Provided*, That an
9 inmate's inability to pay a fee will not preclude the
10 inmate from being eligible for this program.

11 All moneys collected as such fees shall be deposited
12 in a special account which is hereby created in the state
13 treasury. Such account shall be designated as the
14 "electronic monitoring program account" and the funds
15 deposited in such account shall be used by the commis-
16 sioner only for the operation of the program.

17 "Electronic monitoring equipment" means an elec-
18 tronic device or apparatus approved by the department
19 of corrections which is limited in capability to recording
20 or transmitting information as to the furloughed
21 inmate's presence or nonpresence in a designated area.
22 Such device must be minimally intrusive. The depart-
23 ment of corrections shall not approve any monitoring
24 device which is capable of recording or transmitting (i)
25 visual images, (ii) oral or wire communications or any
26 auditory sound, or (iii) information as to the furloughed
27 inmate's activities while he or she is within the
28 designated area.

CHAPTER 75

(Com. Sub. for S. B. 86—By Senators Kaufman, Jackson and Fanning)

[Passed March 12, 1988; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty-one, article six, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to motor vehicle insurance; omnibus clause; uninsured and underinsured motorists' coverage; conditions for recovery; rights and liabilities of insurer; setoff prohibited; and specific exclusion by restrictive endorsement effective regarding cancellation of policy for specified reasons and mandatory liability requirement of section two, article four, chapter seventeen-d of the code.

Be it enacted by the Legislature of West Virginia:

That section thirty-one, article six, 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 6. THE INSURANCE POLICY.

§33-6-31. Motor vehicle policy; omnibus clause; uninsured and underinsured motorists' coverage; conditions for recovery under endorsement; rights and liabilities of insurer.

1 (a) No policy or contract of bodily injury liability
2 insurance, or of property damage liability insurance,
3 covering liability arising from the ownership, mainte-
4 nance or use of any motor vehicle, shall be issued or
5 delivered in this state to the owner of such vehicle, or
6 shall be issued or delivered by any insurer licensed in
7 this state upon any motor vehicle for which a certificate
8 of title has been issued by the department of motor
9 vehicles of this state, unless it shall contain a provision
10 insuring the named insured and any other person,
11 except a bailee for hire and any persons specifically
12 excluded by any restrictive endorsement attached to the
13 policy, responsible for the use of or using the motor
14 vehicle with the consent, expressed or implied, of the
15 named insured or his spouse against liability for death
16 or bodily injury sustained, or loss or damage occasioned
17 within the coverage of the policy or contract as a result
18 of negligence in the operation or use of such vehicle by
19 the named insured or by such person: *Provided*, That in
20 any such automobile liability insurance policy or
21 contract, or endorsement thereto, if coverage resulting
22 from the use of a nonowned automobile is conditioned
23 upon the consent of the owner of such motor vehicle, the
24 word "owner" shall be construed to include the custodian
25 of such nonowned motor vehicles. Notwithstanding any
26 other provision of this code, if the owner of a policy
27 receives a notice of cancellation pursuant to article six-
28 a of this chapter and the reason for the cancellation is
29 a violation of law by a person insured under the policy,
30 said owner may by restrictive endorsement specifically
31 exclude the person who violated the law and the
32 restrictive endorsement shall be effective in regard to
33 the total liability coverage provided under the policy,

34 including coverage provided pursuant to the mandatory
35 liability requirements of chapter seventeen-d, article
36 four, section two of this code, but nothing in such
37 restrictive endorsement shall be construed to abrogate
38 the "family purpose doctrine."

39 (b) Nor shall any such policy or contract be so issued
40 or delivered unless it shall contain an endorsement or
41 provisions undertaking to pay the insured all sums
42 which he shall be legally entitled to recover as damages
43 from the owner or operator of an uninsured motor
44 vehicle, within limits which shall be no less than the
45 requirements of section two, article four, chapter
46 seventeen-d of the code of West Virginia, as amended
47 from time to time: *Provided*, That such policy or
48 contract shall provide an option to the insured with
49 appropriately adjusted premiums to pay the insured all
50 sums which he shall be legally entitled to recover as
51 damages from the owner or operator of an uninsured
52 motor vehicle up to an amount of one hundred thousand
53 dollars because of bodily injury to or death of one person
54 in any one accident, and, subject to said limit for one
55 person, in the amount of three hundred thousand dollars
56 because of bodily injury to or death of two or more
57 persons in any one accident, and in the amount of fifty
58 thousand dollars because of injury to or destruction of
59 property of others in any one accident: *Provided*,
60 *however*, That such endorsement or provisions may
61 exclude the first three hundred dollars of property
62 damage resulting from the negligence of an uninsured
63 motorist: *Provided further*, That such policy or contract
64 shall provide an option to the insured with appropriately
65 adjusted premiums to pay the insured all sums which
66 he shall legally be entitled to recover as damages from
67 the owner or operator of an uninsured or underinsured
68 motor vehicle up to an amount not less than limits of
69 bodily injury liability insurance and property damage
70 liability insurance purchased by the insured without
71 setoff against the insured's policy or any other policy.
72 "Underinsured motor vehicle" means a motor vehicle
73 with respect to the ownership, operation, or use of which
74 there is liability insurance applicable at the time of the
75 accident, but the limits of that insurance are either (i)

76 less than limits the insured carried for underinsured
77 motorists' coverage, or (ii) has been reduced by pay-
78 ments to others injured in the accident to limits less than
79 limits the insured carried for underinsured motorists'
80 coverage. No sums payable as a result of underinsured
81 motorists' coverage shall be reduced by payments made
82 under the insured's policy or any other policy.

83 (c) As used in this section, the term "bodily injury"
84 shall include death resulting therefrom, and the term
85 "named insured" shall mean the person named as such
86 in the declarations of the policy or contract and shall
87 also include such person's spouse if a resident of the
88 same household, and the term "insured" shall mean the
89 named insured, and, while resident of the same house-
90 hold, the spouse of any such named insured, and
91 relatives of either, while in a motor vehicle or otherwise,
92 and any person, except a bailee for hire, who uses, with
93 the consent, expressed or implied, of the named insured,
94 the motor vehicle to which the policy applies or the
95 personal representative of any of the above; and the
96 term "uninsured motor vehicle" shall mean a motor
97 vehicle as to which there is no (i) bodily injury liability
98 insurance and property damage liability insurance both
99 in the amounts specified by section two, article four,
100 chapter seventeen-d, as amended from time to time, or
101 (ii) there is such insurance, but the insurance company
102 writing the same denies coverage thereunder, or (iii)
103 there is no certificate of self-insurance issued in
104 accordance with the provision of section two, article six,
105 chapter seventeen-d of the code of West Virginia. A
106 motor vehicle shall be deemed to be uninsured if the
107 owner or operator thereof be unknown: Provided, That
108 recovery under the endorsement or provisions shall be
109 subject to the conditions hereinafter set forth.

110 (d) Any insured intending to rely on the coverage
111 required by subsection (b) of this section shall, if any
112 action be instituted against the owner or operator of an
113 uninsured or underinsured motor vehicle, cause a copy
114 of the summons and a copy of the complaint to be served
115 upon the insurance company issuing the policy, in the
116 manner prescribed by law, as though such insurance

117 company were a named party defendant; such company
118 shall thereafter have the right to file pleadings and to
119 take other action allowable by law in the name of the
120 owner, or operator, or both, of the uninsured or
121 underinsured motor vehicle or in its own name.

122 Nothing in this subsection shall prevent such owner
123 or operator from employing counsel of his own choice
124 and taking any action in his own interest in connection
125 with such proceeding.

126 (e) If the owner or operator of any motor vehicle
127 which causes bodily injury or property damage to the
128 insured be unknown, the insured, or someone in his
129 behalf, in order for the insured to recover under the
130 uninsured motorist endorsement or provision, shall:

131 (i) Within twenty-four hours after the insured dis-
132 cover, and being physically able to report the occurrence
133 of such accident, the insured, or someone in his behalf,
134 shall report the accident to a police, peace or judicial
135 officer, or to the commissioner of motor vehicles, unless
136 the accident shall already have been investigated by a
137 police officer; and

138 (ii) Notify the insurance company, within sixty days
139 after such accident, that the insured or his legal
140 representative has a cause or causes of action arising out
141 of such accident for damages against a person or persons
142 whose identity is unknown and setting forth the facts in
143 support thereof; and, upon written request of the
144 insurance company communicated to the insured not
145 later than five days after receipt of such statement, shall
146 make available for inspection the motor vehicle which
147 the insured was occupying at the time of the accident;
148 and

149 (iii) Upon trial establish that the motor vehicle, which
150 caused the bodily injury or property damage, whose
151 operator is unknown, was a "hit and run" motor vehicle,
152 meaning a motor vehicle which causes damage to the
153 property of the insured arising out of physical contact
154 of such motor vehicle therewith, or which causes bodily
155 injury to the insured arising out of physical contact of
156 such motor vehicle with the insured or with a motor

157 vehicle which the insured was occupying at the time of
158 the accident. If the owner or operator of any motor
159 vehicle causing bodily injury or property damage be
160 unknown, an action may be instituted against the
161 unknown defendant as "John Doe," in the county in
162 which the accident took place or in any other county in
163 which such action would be proper under the provisions
164 of article one, chapter fifty-six of this code; service of
165 process may be made by delivery of a copy of the
166 complaint and summons or other pleadings to the clerk
167 of the court in which the action is brought, and service
168 upon the insurance company issuing the policy shall be
169 made as prescribed by law as though such insurance
170 company were a party defendant. The insurance
171 company shall have the right to file pleadings and take
172 other action allowable by law in the name of John Doe.

173 (f) An insurer paying a claim under the endorsement
174 or provisions required by subsection (b) of this section
175 shall be subrogated to the rights of the insured to whom
176 such claim was paid against the person causing such
177 injury, death or damage to the extent that payment was
178 made. The bringing of an action against the unknown
179 owner or operator as John Doe or the conclusion of such
180 an action shall not constitute a bar to the insured, if the
181 identity of the owner or operator who caused the injury
182 or damages complained of, becomes known, from
183 bringing an action against the owner or operator
184 theretofore proceeded against as John Doe. Any recovery
185 against such owner or operator shall be paid to the
186 insurance company to the extent that such insurance
187 company shall have paid the insured in the action
188 brought against such owner or operator as John Doe,
189 except that such insurance company shall pay its
190 proportionate part of any reasonable costs and expenses
191 incurred in connection therewith, including reasonable
192 attorney's fees. Nothing in an endorsement or provision
193 made under this subsection, nor any other provision of
194 law, shall operate to prevent the joining, in an action
195 against John Doe, of the owner or operator of the motor
196 vehicle causing injury as a party defendant, and such
197 joinder is hereby specifically authorized.

198 (g) No such endorsement or provisions shall contain
199 any provision requiring arbitration of any claim arising
200 under any such endorsement or provision, nor may
201 anything be required of the insured except the establish-
202 ment of legal liability, nor shall the insured be restricted
203 or prevented in any manner from employing legal
204 counsel or instituting legal proceedings.

205 (h) The provisions of subsections (a) and (b) of this
206 section shall not apply to any policy of insurance to the
207 extent that it covers the liability of an employer to his
208 employees under any workers' compensation law.

209 (i) The commissioner of insurance shall formulate and
210 require the use of standard policy provisions for the
211 insurance required by this section, but use of such
212 standard policy provisions may be waived by the
213 commissioner in the circumstances set forth in section
214 ten of this article.

215 (j) A motor vehicle shall be deemed to be uninsured
216 within the meaning of this section, if there has been a
217 valid bodily injury or property damage liability policy
218 issued upon such vehicle, but which policy is uncollect-
219 ible in whole or in part, by reason of the insurance
220 company issuing such policy upon such vehicle being
221 insolvent or having been placed in receivership. The
222 right of subrogation granted insurers under the provi-
223 sions of subsection (f) of this section shall not apply as
224 against any person or persons who is or becomes an
225 uninsured motorist for the reasons set forth in this
226 subsection.

227 (k) Nothing contained herein shall prevent any
228 insurer from also offering benefits and limits other than
229 those prescribed herein, nor shall this section be
230 construed as preventing any insurer from incorporating
231 in such terms, conditions and exclusions as may be
232 consistent with the premium charged.

233 (l) The insurance commissioner shall review on an
234 annual basis the rate structure for uninsured and
235 underinsured motorist's coverage as set forth in subsec-
236 tion (b) of this section, and shall report to the Legisla-
237 ture on said rate structure on or before the fifteenth day

238 of January, one thousand nine hundred eighty-three, and
239 on or before the fifteenth day of January of each of the
240 next two succeeding years.

CHAPTER 76

(Com. Sub. for H. B. 4010—By Delegate Fullen)

[Passed March 12, 1988; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article twelve, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to insurance and licensing qualifications for agents, brokers, solicitors or excess line brokers; requiring a certain minimum education standard prior to licensing; and providing for certification of minimum standard.

Be it enacted by the Legislature of West Virginia:

That section two, article twelve, 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 12. AGENTS, BROKERS, SOLICITORS AND EXCESS LINE.

§33-12-2. Qualifications.

1 For the protection of the people of West Virginia, the
2 commissioner shall not issue, renew or permit to exist
3 any agent's, broker's or solicitor's license except to an
4 individual who:

5 (a) Is eighteen years of age or more.

6 (b) Is a resident of West Virginia, except that a
7 broker's license shall be issued only to nonresidents, and
8 except for nonresident life and accident and sickness
9 agents as provided in section eight of this article.

10 (c) Is, in the case of an agent applicant, appointed as
11 agent by a licensed insurer for the kind or kinds of
12 insurance for which application is made, subject to
13 issuance of license, or, in the case of a solicitor applicant,

14 appointed as solicitor by a licensed resident agent,
15 subject to issuance of license.

16 (d) Does not intend to use the license principally for
17 the purpose, in the case of life or accident and sickness
18 insurance, of procuring insurance on himself, members
19 of his family or his relatives; or, as to insurance other
20 than life and accident and sickness, upon his property
21 or insurable interests of those of his family or his
22 relatives or those of his employer, employees or firm, or
23 corporation in which he owns a substantial interest, or
24 of the employees of such firm or corporation, or on
25 property or insurable interests for which the applicant
26 or any such relative, employer, firm or corporation is the
27 trustee, bailee or receiver. For the purposes of this
28 provision, a vendor's or lender's interest in property sold
29 or being sold under contract or which is the security for
30 any loan, shall not be deemed to constitute property or
31 an insurable interest of such vendor or lender.

32 (e) Satisfies the commissioner that he is trustworthy
33 and competent. The commissioner may test the compet-
34 ency of an applicant for a license under this section by
35 examination. Each examinee shall pay a twenty-five
36 dollar examination fee for each examination to the
37 commissioner who shall deposit said examination fee
38 into the state treasury for the benefit of the state fund,
39 general revenue. The commissioner may, at his discre-
40 tion, designate an independent testing service to prepare
41 and administer such examination subject to direction
42 and approval by the commissioner, and examination fees
43 charged by such service shall be paid by the applicant.

44 (f) For new agents first licensed on or after the first
45 day of July, one thousand nine hundred eighty-nine,
46 completes a program of insurance education as estab-
47 lished below.

48 There is hereby created the board of insurance agent
49 education. The board of insurance agent education shall
50 consist of the commissioner of insurance and six
51 members appointed by the commissioner. The members
52 appointed by the commissioner shall be two licensed
53 property and casualty insurance agents, one licensed life

54 insurance agent, one licensed health and accident
55 insurance agent, one representative of a domestic
56 insurance company, and one representative of a foreign
57 insurance company. Each member shall serve a term of
58 three years and shall be eligible for reappointment.

59 (1) The board of insurance agent education shall
60 establish the criteria for a program of insurance
61 education and submit the proposal for the approval of
62 the commissioner on or before the thirty-first day of
63 December of each year.

64 (2) The commissioner and the board, under standards
65 established by the board, may approve any course or
66 program of instruction developed or sponsored by an
67 authorized insurer, accredited college or university,
68 agents association, insurance trade association, or
69 independent program of instruction that presents the
70 criteria and the number of hours that the board and
71 commissioner determine appropriate for the purpose of
72 this article: *Provided*, That any person who was a
73 licensed agent, broker or solicitor on the first day of
74 July, one thousand nine hundred eighty-nine, and who
75 subsequently terminates the contractual relationship
76 with the insurer or employing agent, may have that
77 license renewed within five years of such termination
78 without complying with the competency testing provi-
79 sions of subdivision (e) or the education provisions of
80 subdivision (f) of this section.

CHAPTER 77

(Com. Sub. for H. B. 4084—By Delegate Anderson)

[Passed March 12, 1988; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twelve-b, relating to insurance; requiring insurance adjusters to be licensed; qualifications; fees; applications; renewal of license; violations; and

penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12B. ADJUSTERS.

§33-12B-1. "Adjuster" defined.

§33-12B-2. "Company" and "public" adjuster defined.

§33-12B-3. Company, public adjusters; concurrency; direct conflict prohibited.

§33-12B-4. License required.

§33-12B-5. Qualifications.

§33-12B-6. Application.

§33-12B-7. Issuance of license.

§33-12B-8. License fee.

§33-12B-9. Licensing of nonresident adjusters.

§33-12B-10. Expiration of license; renewal.

§33-12B-11. Revocation, suspension or refusal to renew license; penalty in lieu thereof.

§33-12B-12. Rules and regulations.

§33-12B-13. Effective date.

§33-12B-1. "Adjuster" defined.

1 (a) An "adjuster" is any individual who, for compen-
2 sation, fee or commission, investigates and settles claims
3 arising under property casualty or surety insurance
4 contracts, on behalf solely of either the insurer or
5 insured.

6 (b) A licensed attorney who is qualified to practice
7 law in this state is deemed not to be an adjuster for the
8 purposes of this article.

§33-12B-2. "Company" and "public" adjuster defined.

1 (a) "Company adjuster" means an adjuster represent-
2 ing the interests of the insurer, including independent
3 contractors with and salaried employee of the insurer.

4 (b) "Public adjuster" means an independent contrac-
5 tor representing solely the financial interests of the
6 insured named in the policy as an adjuster.

§33-12B-3. Company, public adjusters; concurrency;

direct conflict prohibited.

1 The commissioner shall license an individual as either
2 a company adjuster or a public adjuster. An individual
3 may be licensed concurrently under the same license or
4 separate licenses as a company adjuster and as a public
5 adjuster but shall not act as a company adjuster and a
6 public adjuster with respect to the same claim.

§33-12B-4. License required.

1 No person shall in West Virginia act as or hold
2 himself out to be an adjuster unless then licensed
3 therefor pursuant to this article.

§33-12B-5. Qualifications.

1 For the protection of the people of West Virginia, the
2 commissioner shall not issue, renew or permit to exist
3 any adjuster's license except to an individual who:

4 (a) Is eighteen years of age or more.

5 (b) Is a resident of West Virginia, except for nonres-
6 ident adjusters as provided in section nine of this article.

7 (c) Satisfies the commissioner that he is trustworthy
8 and competent. The commissioner may, at his discretion,
9 test the competency of an applicant for a license under
10 this section by examination. If such examination is
11 required by the commissioner, each examinee shall pay
12 a twenty-five dollar examination fee for each examina-
13 tion to the commissioner which fees shall be used for the
14 purposes set forth in section thirteen, article three of
15 this chapter. The commissioner may, at his discretion,
16 designate an independent testing service to prepare and
17 administer such examination subject to direction and
18 approval by the commissioner, and examination fees
19 charged by such service shall be paid by the applicant.

20 (d) Any applicant who is engaged in the practice of
21 professional insurance adjusting prior to the first day of
22 July, one thousand nine hundred eighty-nine shall be
23 exempt from the examination requirement of subdivi-
24 sion (c) of this section.

§33-12B-6. Application.

1 (a) Application for an adjuster's license or renewal
2 thereof shall be made to the commissioner upon a form
3 prescribed by him and shall contain such information
4 and be accompanied by such supporting documents as
5 the commissioner may require, and the commissioner
6 may require such application to be made under the
7 applicant's oath.

8 (b) Willful misrepresentation of any fact in any such
9 application or any documents in support thereof is a
10 violation of this chapter.

§33-12B-7. Issuance of license.

1 The commissioner may issue a license to any individ-
2 ual as an adjuster who complies with the applicable
3 provisions of this chapter and who in the opinion of the
4 commissioner is trustworthy and competent.

§33-12B-8. License fee.

1 The fee for an adjuster's license shall be twenty-five
2 dollars as provided in section thirteen, article three of
3 this chapter, except that when any other state imposes
4 a tax, bond, fine, penalty, license fee or other obligation
5 or prohibition on adjusters resident in this state, the
6 same tax, bond, fine, penalty, license fee or other
7 obligation or prohibition shall be imposed upon adjust-
8 ers (where licensing of nonresident adjusters is
9 permitted under this article) of each other state licensed
10 or seeking a license in this state. All fees and moneys
11 so collected shall be used for the purposes set forth in
12 section thirteen, article three of this chapter.

§33-12B-9. Licensing of nonresident adjusters.

1 An individual otherwise complying with the provi-
2 sions of this chapter, who is a resident of another state
3 and who is a licensed adjuster of such state, may be
4 licensed as a nonresident adjuster in this state, if the
5 state of resident of such nonresident has established, by
6 law or regulation like requirements for the licensing of
7 a resident of this state as a nonresident adjuster.

§33-12B-10. Expiration of license; renewal.

1 All licenses of adjusters shall expire at midnight on

- 2 the May thirty-first next following the date of issuance.
- 3 The commissioner shall renew annually the license of all
- 4 such licensees who qualify and make application
- 5 therefor.

§33-12B-11. Revocation, suspension or refusal to renew license; penalty in lieu thereof.

- 1 Whenever, after notice and hearing, the commissioner
- 2 is satisfied that any adjuster has violated any provision
- 3 of this chapter, or is incompetent or untrustworthy, he
- 4 shall revoke, suspend, or, if renewal of license is
- 5 pending, refuse to renew the license of such adjuster. In
- 6 addition to revoking, suspending or refusing to renew
- 7 such license, the commissioner may in his discretion
- 8 order such licensee to pay to the state of West Virginia
- 9 an administrative penalty in a sum not to exceed one
- 10 thousand dollars.

§33-12B-12. Rules and regulations.

- 1 The commissioner is authorized to promulgate such
- 2 rules and regulations as are necessary to effectuate the
- 3 provisions of this article. Such rules and regulations
- 4 shall be promulgated and adopted pursuant to the
- 5 provisions of chapter twenty-nine-a of this code.

§33-12B-13. Effective date.

- 1 The provisions of the article shall become effective on
- 2 the first day of July, one thousand nine hundred eighty-
- 3 nine except that the commissioner may on and after the
- 4 first day of July, one thousand nine hundred eighty-
- 5 eight, promulgate rules and regulations pursuant to
- 6 section twelve of this article.

CHAPTER 78

(S. B. 257—By Senators Hylton and Williams)

[Passed March 10, 1988; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty-four, article twenty-three, chapter thirty-three of the code of West

Virginia, one thousand nine hundred thirty-one, as amended, relating to insurance; increasing amount of death benefits exemption for certain societies.

Be it enacted by the Legislature of West Virginia:

That section thirty-four, article twenty-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 23. FRATERNAL BENEFIT SOCIETIES.

§33-23-34. Exemption of certain societies.

1 (a) Nothing contained in this article shall be so
2 construed as to affect or apply to:

3 (1) Grand or subordinate lodges of societies, orders or
4 associations now doing business in this state which
5 provide benefits exclusively through local or subordi-
6 nate lodges;

7 (2) Orders, societies or associations which admit to
8 membership only persons engaged in one or more crafts
9 or hazardous occupations, in the same or similar lines
10 of business insuring only their own members, their
11 families and descendants of members and the ladies'
12 societies or ladies' auxiliaries to such orders, societies or
13 associations;

14 (3) Domestic societies which limit their membership
15 to employees of a particular city or town, designated
16 firm, business house or corporation which provide for a
17 death benefit of not more than four hundred dollars or
18 disability benefits of not more than three hundred fifty
19 dollars to any person in any one year, or both; or

20 (4) Domestic societies or associations of a purely
21 religious, charitable or benevolent description, which
22 provide for a death benefit of not more than two
23 thousand dollars or for disability benefits of not more
24 than three hundred fifty dollars to any one person in any
25 one year, or both.

26 (b) Any such society or association described in
27 subdivision (3) or (4), subsection (a) of this section, which

28 provides for death or disability benefits for which
29 benefit certificates are issued, and any such society or
30 association included in subdivision (4) which has more
31 than one thousand members, shall not be exempted from
32 the provisions of this article but shall comply with all
33 requirements thereof.

34 (c) No society which, by the provisions of this section,
35 is exempt from the requirements of this article, except
36 any society described in subdivision (2), subsection (a)
37 of this section, shall give or allow, or promise to give
38 or allow to any person any compensation for procuring
39 new members.

40 (d) Every society which provides for benefits in case
41 of death or disability resulting solely from accident, and
42 which does not obligate itself to pay natural death or
43 sick benefits shall have all of the privileges and be
44 subject to all the applicable provisions and rules of this
45 article except that the provisions thereof relating to
46 medical examination, valuations of benefit certificates,
47 and incontestability, shall not apply to such society.

48 (e) The commissioner may require from any society or
49 association, by examination or otherwise, such informa-
50 tion as will enable him to determine whether such
51 society or association is exempt from the provisions of
52 this article.

53 (f) Societies, exempted under the provisions of this
54 section, shall also be exempt from all other provisions
55 of this chapter.

CHAPTER 79

(Com. Sub. for S. B. 331—By Senators Jackson and Tucker)

[Passed March 11, 1988; in effect July 1, 1988. Approved by the Governor.]

AN ACT to amend and reenact section five-d, article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend article one, chapter fifty-one of said code by

adding thereto a new section, designated section twenty; to amend and reenact sections three, five, six, seven, eight, fifteen and sixteen, article one, chapter fifty-two of said code; to further amend said article one by adding thereto two new sections, designated sections five-a and seven-a; and to amend and reenact sections three and four, article two of said chapter fifty-two, all relating to jury selection generally; creating an exception to the confidentiality of tax returns and requiring the tax commissioner to provide lists of individuals filing state personal income tax returns for purposes of jury selection; providing for a feasibility study by the supreme court of appeals of a one day, one trial jury selection system; defining certain terms to be used in the selection of jurors; providing for the compiling of a master list of residents of the county from which prospective jurors are to be chosen; describing the lists of names to be used in compiling the master list; requiring persons on the master list to complete a juror qualification form and describing the contents thereof; defining penalties for willfully misrepresenting a material fact on a juror qualification form for the purpose of avoiding or securing service as a juror; mandating the maintenance of a jury box or jury wheel; prescribing a formula for determining the minimum number of names to be included in a jury box or jury wheel; providing for the random selection of names to be placed in the jury box or jury wheel; providing for the random drawing of names from the jury box or jury wheel of panels for juries; defining a civil penalty for prospective jurors who fail to appear or fail to show good cause for failure to appear; authorizing the optional use of computerized selection; describing the circumstances under which a prospective juror is disqualified from jury service; providing the filing of motions which allege a substantial failure to comply with applicable procedures for selecting a jury; establishing limitations on the preservation of records; requiring reports by the jury commissioners to the supreme court of appeals and the Legislature; prescribing the method for selecting grand jurors and alternate grand jurors; and establishing the number of grand jurors attending a session of the grand

jury necessary for a quorum.

Be it enacted by the Legislature of West Virginia:

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

Chapter

11. Taxation.

51. Courts and Their Officers.

52. Juries.

CHAPTER 11. TAXATION.

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-5d. Confidentiality and disclosure of returns and return information.

1 (a) *General rule.* — Except when required in an
 2 official investigation by the tax commissioner into the
 3 amount of tax due under any article administered under
 4 this article or in any proceeding in which the tax
 5 commissioner is a party before a court of competent
 6 jurisdiction to collect or ascertain the amount of such
 7 tax and except as provided in subsections (d) through
 8 (n) of this section, it shall be unlawful for any officer
 9 or employee of this state to divulge or make known in
 10 any manner the tax return, or any part thereof, of any
 11 person or disclose information concerning the personal
 12 affairs of any individual or the business of any single
 13 firm or corporation, or disclose the amount of income,
 14 or any particulars set forth or disclosed in any report,
 15 declaration or return required to be filed with the tax
 16 commissioner by any article of this chapter imposing
 17 any tax administered under this article or by any rule
 18 or regulation of the tax commissioner issued thereunder,

19 or disclosed in any audit or investigation conducted
20 under this article.

21 (b) *Definitions.* — For purposes of this section:

22 (1) *Background file document.* — The term “back-
23 ground file document,” with respect to a written
24 determination, includes the request for that written
25 determination, any written material submitted in
26 support of the request and any communication (written
27 or otherwise) between the state tax department and any
28 person outside the state tax department in connection
29 with the written determination received before issuance
30 of the written determination.

31 (2) *Disclosure.* — The term “disclosure” means the
32 making known to any person in any manner whatsoever
33 a return or return information.

34 (3) *Inspection.* — The terms “inspection” and “in-
35 spected” mean any examination of a return or return
36 information.

37 (4) *Return.* — The term “return” means any tax or
38 information return or report, declaration of estimated
39 tax, claim or petition for refund or credit, or petition
40 for reassessment that is required by, or provided for, or
41 permitted, under the provisions of this article (or any
42 article of this chapter administered under this article)
43 which is filed with the tax commissioner by, on behalf
44 of, or with respect to any person, and any amendment
45 or supplement thereto, including supporting schedules,
46 attachments, or lists which are supplemental to, or part
47 of, the return so filed.

48 (5) *Return information.* — The term “return informa-
49 tion” means:

50 (A) A taxpayer’s identity; the nature, source or
51 amount of his income, payments, receipts, deductions,
52 exemptions, credits, assets, liabilities, net worth, tax
53 liability, tax withheld, deficiencies, overassessments or
54 tax payments, whether the taxpayer’s return was, is
55 being, or will be examined or subject to other investi-
56 gation or processing, or any other data received by,
57 recorded by, prepared by, furnished to or collected by

58 the tax commissioner with respect to a return or with
59 respect to the determination of the existence, or possible
60 existence, of liability (or the amount thereof) or by any
61 person under the provisions of this article (or any article
62 of this chapter administered under this article) for any
63 tax, additions to tax, penalty, interest, fine, forfeiture,
64 or other imposition or offense; and

65 (B) Any part of any written determination or any
66 background file document relating to such written
67 determination. "Return information" does not include,
68 however, data in a form which cannot be associated
69 with, or otherwise identify, directly or indirectly, a
70 particular taxpayer. Nothing in the preceding sentence,
71 or in any other provision of this code, shall be construed
72 to require the disclosure of standards used or to be used
73 for the selection of returns for examination, or data used
74 or to be used for determining such standards.

75 (6) *Tax administration.* — The term "tax administra-
76 tion" means:

77 (A) The administration, management, conduct, direc-
78 tion and supervision of the execution and application of
79 the tax laws or related statutes of this state, and the
80 development and formulation of state tax policy relating
81 to existing or proposed state tax laws, and related
82 statutes of this state, and

83 (B) Includes assessment, collection, enforcement,
84 litigation, publication and statistical gathering functions
85 under the laws of this state.

86 (7) *Taxpayer identity.* — The term "taxpayer identity"
87 means the name of a person with respect to whom a
88 return is filed, his mailing address, his taxpayer
89 identifying number or a combination thereof.

90 (8) *Taxpayer return information.* — The term "tax-
91 payer return information" means return information as
92 defined in subdivision (5) of this subsection (b) which is
93 filed with, or furnished to, the tax commissioner by or
94 on behalf of the taxpayer to whom such return informa-
95 tion relates.

96 (9) *Written determination.* — The term "written

97 determination” means a ruling, determination letter,
98 technical advice memorandum or letter or administra-
99 tive decision issued by the tax commissioner.

100 (c) *Criminal penalty.* — Any officer or employee (or
101 former officer or employee) of this state who violates this
102 section shall be guilty of a misdemeanor, and, upon
103 conviction thereof, shall be fined not more than one
104 thousand dollars or imprisoned for not more than one
105 year, or both, together with costs of prosecution.

106 (d) *Disclosure to designee of taxpayer.* — Any person
107 protected by the provisions of this article may, in
108 writing, waive the secrecy provisions of this section for
109 such purpose and such period as he shall therein state.
110 The tax commissioner may, subject to such require-
111 ments and conditions as he may prescribe, thereupon
112 release to designated recipients such taxpayer’s return
113 or other particulars filed under the provisions of the tax
114 articles administered under the provisions of this
115 article, but only to the extent necessary to comply with
116 a request for information or assistance made by the
117 taxpayer to such other person. However, return infor-
118 mation shall not be disclosed to such person or persons
119 if the tax commissioner determines that such disclosure
120 would seriously impair administration of this state’s tax
121 laws.

122 (e) *Disclosure of returns and return information for*
123 *use in criminal investigations.*

124 (1) *In general.* — Except as provided in subdivision (3)
125 of this subsection, any return or return information with
126 respect to any specified taxable period or periods shall,
127 pursuant to and upon the grant of an ex parte order by
128 a federal district court judge, federal magistrate or
129 circuit court judge of this state, under subdivision (2) of
130 this subsection, be open (but only to the extent necessary
131 as provided in such order) to inspection by, or disclosure
132 to, officers and employees of any federal agency, or of
133 any agency of this state, who personally and directly
134 engaged in:

135 (A) Preparation for any judicial or administrative
136 proceeding pertaining to the enforcement of a specifi-

137 cally designated state or federal criminal statute to
138 which this state, the United States or such agency is or
139 may be a party;

140 (B) Any investigation which may result in such a
141 proceeding; or

142 (C) Any state or federal grand jury proceeding
143 pertaining to enforcement of such a criminal statute to
144 which this state, the United States or such agency is or
145 may be a party.

146 Such inspection or disclosure shall be solely for the use
147 of such officers and employees in such preparation,
148 investigation, or grand jury proceeding.

149 (2) *Application of order.* — Any United States attor-
150 ney, any special prosecutor appointed under Section 593
151 of Title 28, United States Code, or any attorney in
152 charge of a United States justice department criminal
153 division organized crime strike force established
154 pursuant to Section 510 of Title 28, United States Code,
155 may authorize an application to a circuit court judge or
156 magistrate, as appropriate, for the order referred to in
157 subdivision (1) of this subsection. Any prosecuting
158 attorney of this state may authorize an application to a
159 circuit court judge of this state for the order referred
160 to in subdivision (1) of this subsection. Upon such
161 application, such judge or magistrate may grant such
162 order if he determines on the basis of the facts
163 submitted by the applicant that:

164 (A) There is reasonable cause to believe, based upon
165 information believed to be reliable, that a specific
166 criminal act has been committed;

167 (B) There is reasonable cause to believe that the
168 return or return information is or may be relevant to
169 a matter relating to the commission of such act; and

170 (C) The return or return information is sought
171 exclusively for use in a state or federal criminal
172 investigation or proceeding concerning such act, and the
173 information sought to be disclosed cannot reasonably be
174 obtained, under the circumstances, from another source.

175 (3) The tax commissioner shall not disclose any return
176 or return information under subdivision (1) of this
177 subsection if he determines and certifies to the court
178 that such disclosure would identify a confidential
179 informant or seriously impair a civil or criminal tax
180 investigation.

181 (f) *Disclosure to person having a material interest.* —
182 The tax commissioner may, pursuant to legislative
183 regulations promulgated by him, and upon such terms
184 as he may require, disclose a return or return informa-
185 tion to a person having a material interest therein:
186 *Provided,* That such disclosure shall only be made if the
187 tax commissioner determines, in his discretion, that
188 such disclosure would not seriously impair administra-
189 tion of this state's tax laws.

190 (g) *Statistical use.* — This section shall not be
191 construed to prohibit the publication or release of
192 statistics so classified as to prevent the identification of
193 particular returns and the items thereof.

194 (h) *Disclosure of amount of outstanding lien.* — If
195 notice of lien has been recorded pursuant to section
196 twelve of this article, the amount of the outstanding
197 obligation secured by such lien may be disclosed to any
198 person who furnishes written evidence satisfactory to
199 the tax commissioner that such person has a right in the
200 property subject to such lien or intends to obtain a right
201 in such property.

202 (i) *Reciprocal exchange.* — The tax commissioner may,
203 pursuant to written agreement, permit the proper
204 officer of the United States, or the District of Columbia
205 or any other state, or any political subdivision of this
206 state, or his authorized representative, who is charged
207 by law with responsibility for administration of a
208 similar tax, to inspect reports, declarations or returns
209 filed with the tax commissioner or may furnish to such
210 officer or representative a copy of any such document,
211 provided such other jurisdiction grants substantially
212 similar privileges to the tax commissioner or to the
213 attorney general of this state. Such disclosure shall be
214 only for the purpose of, and only to the extent necessary

215 in, the administration of tax laws: *Provided*, That such
216 information shall not be disclosed to the extent that the
217 tax commissioner determines that such disclosure would
218 identify a confidential informant or seriously impair any
219 civil or criminal tax investigation.

220 (j) *Inspection of business and occupation tax returns by*
221 *municipalities.* — The tax commissioner shall, upon the
222 written request of the mayor ~~of any~~ West Virginia
223 municipality having a business and occupation tax or
224 privilege tax, allow the duly authorized agent of such
225 municipality to inspect and make copies of the state
226 business and occupation tax return filed by taxpayers
227 of such municipality. Such inspection or copying shall
228 only be for the purposes of securing information for
229 municipal tax purposes and shall only be allowed if such
230 municipality allows the tax commissioner the right to
231 inspect or make copies of the municipal business and
232 occupation tax returns of such municipality.

233 (k) *Release of administrative decisions.* — The tax
234 commissioner shall release to the public his administra-
235 tive decisions, or a summary thereof: *Provided*, That
236 unless the taxpayer appeals the administrative decision
237 to circuit court or waives in writing his rights to
238 confidentiality, any identifying characteristics or facts
239 about the taxpayer shall be omitted or modified to such
240 an extent so as to not disclose the name or identity of
241 the taxpayer.

242 (l) *Release of taxpayer information.*

243 (1) If the tax commissioner believes that enforcement
244 of the tax laws administered under this article will be
245 facilitated and enhanced thereby, he shall disclose, upon
246 request, the names and address of persons:

247 (A) Who have a current business registration
248 certificate.

249 (B) Who are licensed employment agencies.

250 (C) Who are licensed collection agencies.

251 (D) Who are licensed to sell drug paraphernalia.

252 (E) Who are distributors of gasoline or special fuel.

- 253 (F) Who are contractors.
- 254 (G) Who are transient vendors.
- 255 (H) Who are authorized by law to issue a sales or use
256 tax exemption certificate.
- 257 (I) Who are required by law to collect sales or use
258 taxes.
- 259 (J) Who are foreign vendors authorized to collect use
260 tax.
- 261 (K) Whose business registration certificate has been
262 suspended or canceled or not renewed by the tax
263 commissioner.
- 264 (L) Against whom a tax lien has been recorded under
265 section twelve of this article (including any particulars
266 stated in the recorded lien).
- 267 (M) Against whom criminal warrants have been
268 issued for a criminal violation of this state's tax laws.
- 269 (N) Who have been convicted of a criminal violation
270 of this state's tax laws.
- 271 (m) *Disclosure of return information to office of child*
272 *advocate.*
- 273 (1) *State return information.* — The tax commissioner
274 may, upon written request, disclose to the director of the
275 office of child advocate created by article two, chapter
276 forty-eight-a of this code:
- 277 (A) Available return information from the master
278 files of the tax department relating to the social security
279 account number, address, filing status, amounts and
280 nature of income, and the number of dependents
281 reported on any return filed by or with respect to, any
282 individual with respect to whom child support obliga-
283 tions are sought to be enforced, and
- 284 (B) Available state return information reflected on
285 any state return filed by, or with respect to any
286 individual described in paragraph (A) of this subdivi-
287 sion (1) relating to the amount of such individual's gross
288 income, but only if such information is not reasonably

289 available from any other source.

290 (2) *Restrictions on disclosure.* — The tax commis-
291 sioner shall disclose return information under subdivi-
292 sion (1) of this subsection only for purposes of, and to
293 the extent necessary in, collecting child support obliga-
294 tions from, and locating individuals owing such
295 obligations.

296 (n) *Disclosure of names and addresses for purposes of*
297 *jury selection.*

298 The tax commissioner shall, at the written request of
299 a circuit court or the chief judge thereof, provide to the
300 circuit court within thirty calendar days a list of the
301 names and addresses of individuals residing in the
302 county or counties comprising the circuit who have filed
303 a state personal income tax return for the preceding tax
304 year. The list provided shall set forth names and
305 addresses only. The request shall be limited to counties
306 within the jurisdiction of the requesting court.

307 The court, upon receiving the list or lists, shall direct
308 the jury commission of the appropriate county to merge
309 the names and addresses with other lists used in
310 compiling a master list of residents of the county from
311 which prospective jurors are to be chosen. Immediately
312 after the master list is compiled, the jury commission
313 shall cause the list provided by the tax commissioner
314 and all copies thereof to be destroyed and shall certify
315 to the circuit court and to the tax commissioner that the
316 lists have been destroyed.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 1. SUPREME COURT OF APPEALS.

§51-1-20. Feasibility study of one day-one trial jury selection system.

1 The supreme court of appeals shall conduct a study
2 to determine the feasibility of a system of jury selection
3 for petit juries in West Virginia wherein those prospec-
4 tive jurors who are called for jury duty are required to
5 report for duty for not more than one day or until the
6 completion of one trial for which they are chosen on that

7 day. The supreme court shall designate a judicial circuit
8 within this state and direct the court of that circuit to
9 order the jury commission of each county within the
10 circuit to employ this a jury selection system in whole,
11 or in part, from the first day of July, one thousand nine
12 hundred eighty-eight, to the thirtieth day of June, one
13 thousand nine hundred eighty-nine.

14 Before the first day of September, one thousand nine
15 hundred eighty-nine, the jury commission shall prepare
16 and deliver a report to the supreme court of appeals
17 relating the cost, efficiency, effectiveness and general
18 acceptance of the system. The supreme court of appeals
19 shall report to the Legislature on the feasibility of the
20 system before the first day of January, one thousand
21 nine hundred ninety. The supreme court of appeals shall
22 fund those expenses necessary to conduct this study out
23 of the budget of the court.

CHAPTER 52. JURIES.

Article

1. Petit Juries.
2. Grand Juries.

ARTICLE 1. PETIT JURIES.

§52-1-3. Definitions.

§52-1-5. Master list; method for compilation; additional freeholder list; lists to be available to public.

§52-1-5a. Jury qualification form; contents; procedure for use; penalties.

§52-1-6. Jury wheel or jury box; random selection of names from master list for jury wheel or jury box.

§52-1-7. Drawings from the jury wheel or jury box; notice of jury duty; penalties.

§52-1-7a. Alternate procedure for selection of jury by electronic data processing methods.

§52-1-8. Disqualification from jury service.

§52-1-15. Challenging compliance with selection procedures.

§52-1-16. Preservation of records.

§52-1-3. Definitions.

1 As used in this article:

2 (1) "The court" means the circuit and magistrate
3 courts of this state, and includes, when the context
4 requires, any judge of the court;

5 (2) "Clerk" means clerk of the circuit court and

6 includes any deputy circuit clerk;

7 (3) "Master list" means the master list of residents of
8 the county from which prospective jurors are to be
9 chosen, and which is compiled in accordance with the
10 provisions of section five of this article;

11 (4) "Persons who are registered to vote" means
12 persons whose names appear on the official records of
13 the clerk of the county commission as persons registered
14 to vote in the most recent general election;

15 (5) "Drivers' license lists" means the official records
16 of persons licensed by the state to operate motor vehicles
17 and who reside within the county and have applied for
18 a driver's license or renewal of a driver's license within
19 the preceding two years. The department of motor
20 vehicles shall furnish such a list upon request of the
21 clerk of the circuit court;

22 (6) "Jury wheel" means any electronic system in
23 which are placed names or identifying numbers of
24 prospective jurors taken from the master list and from
25 which names are drawn at random for jury panels;

26 (7) "Jury box" means any physical, nonelectronic
27 device in which are placed names or identifying
28 numbers of prospective jurors taken from the master list
29 and from which names are drawn at random for jury
30 panels.

**§52-1-5. Master list; method for compilation; additional
freeholder list; lists to be available to public.**

1 (a) In each county, the jury commission shall compile
2 and maintain a master list of residents of the county
3 from which prospective jurors are to be chosen. The
4 master list shall be a list of individuals compiled by
5 whatever random key number system the commission
6 may choose from not less than two of the following
7 source lists:

8 (1) Persons who have filed a state personal income tax
9 return for the preceding tax year;

10 (2) Persons who are registered to vote in the county;

11 (3) Persons who hold a valid motor vehicle operator's
12 or chauffeur's license as determined from the drivers'
13 license lists provided by the department of motor
14 vehicles.

15 The jury commission shall take randomly a sample of
16 names from each source used. The same percentage of
17 names must be selected from each list. One source list
18 shall be designated a primary source, and the names
19 selected from that source shall be compared with the list
20 of names from the second source. Duplicate names shall
21 be removed from the second source sample, and the
22 remaining names shall be combined with the sample of
23 names selected from the primary source to form the
24 master list. If more than two source lists are used, this
25 process shall be repeated, using the previously combined
26 list for comparison with the third source list, and so on.

27 (b) In addition to the master list required to be
28 compiled under the provisions of subsection (a) of this
29 section, the jury commission shall compile a list of
30 persons who pay real property taxes to compile and
31 maintain a list of freeholders to be used as jurors in
32 condemnation cases.

33 (c) Any public officer of an agency, department or
34 political subdivision of this state having custody,
35 possession or control of any of the source lists designated
36 to be used in compiling the master list, shall make the
37 source list available to the jury commission for inspec-
38 tion, reproduction and copying at all reasonable times:
39 *Provided*, That the tax commissioner shall be exempt
40 from this requirement. The master list and the free-
41 holder list shall be open to the public for examination.

**§52-1-5a. Jury qualification form; contents; procedure
for use; penalties.**

1 (a) Not less than twenty days before the date for
2 which persons are to report for jury duty, the clerk may,
3 if directed by the court, serve by first class mail, upon
4 each person listed on the master list, a juror qualifica-
5 tion form accompanied by instructions necessary for its
6 completion: *Provided*, That the clerk may, if directed by
7 the court, mail the juror qualification form to only those

8 prospective jurors drawn for jury service under the
9 provisions of section seven of this article. Each prospec-
10 tive juror shall be directed to complete the form and
11 return it by mail to the clerk within ten days after its
12 receipt. The juror qualification form is subject to
13 approval by the circuit court as to matters of form and
14 shall elicit the following information concerning the
15 prospective juror:

16 (1) The juror's name, sex, race, age and marital
17 status;

18 (2) The juror's level of educational attainment,
19 occupation and place of employment;

20 (3) If married, the name of the juror's spouse, and the
21 occupation and place of employment of the spouse;

22 (4) The juror's residence address and the juror's
23 mailing address if different from the residence address;

24 (5) The number of children which the juror has and
25 their ages;

26 (6) Whether the juror is a citizen of the United States
27 and a resident of the county;

28 (7) Whether the juror is able to read, speak and
29 understand the English language;

30 (8) Whether the juror has any physical or mental
31 disability substantially impairing the capacity to render
32 satisfactory jury service;

33 (9) Whether the juror has, within the preceding two
34 years, been summoned to serve as a petit juror, grand
35 juror or magistrate court juror, and has actually
36 attended sessions of the magistrate or circuit court and
37 been compensated as a juror;

38 (10) Whether the juror has lost the right to vote
39 because of a criminal conviction; and

40 (11) Whether the juror has been convicted of perjury,
41 false swearing or other infamous offense.

42 The juror qualification form may also request infor-
43 mation concerning the prospective juror's religious

44 preferences and organizational affiliations, except that
45 the form and the accompanying instructions shall
46 clearly inform the juror that this information need not
47 be provided if the juror declines to answer such
48 inquiries.

49 (b) The juror qualification form shall contain the
50 prospective juror's declaration that the responses are
51 true to the best of the prospective juror's knowledge and
52 an acknowledgment that a willful misrepresentation of
53 a material fact may be punished by a fine of not more
54 than five hundred dollars or imprisonment for not more
55 than thirty days, or both fine and imprisonment.
56 Notarization of the juror qualification form shall not be
57 required. If the prospective juror is unable to fill out the
58 form, another person may assist the prospective juror in
59 the preparation of the form and indicate that such
60 person has done so and the reason therefor. If an
61 omission, ambiguity or error appear in a returned form,
62 the clerk shall again send the form with instructions to
63 the prospective juror to make the necessary addition,
64 clarification or correction and to return the form to the
65 clerk within ten days after its second receipt.

66 (c) Any prospective juror who fails to return a
67 completed juror qualification form as instructed shall be
68 directed by the jury commission to appear forthwith
69 before the clerk to fill out the juror qualification form.
70 At the time of the prospective juror's appearance for
71 jury service, or at the time of any interview before the
72 court or clerk, any prospective juror may be required
73 to fill out another juror qualification form in the
74 presence of the court or clerk. At that time the
75 prospective juror may be questioned, with regard to the
76 responses to questions contained on the form and the
77 grounds for the prospective juror's excuse or disquali-
78 fication. Any information thus acquired by the court or
79 clerk shall be noted on the juror qualification form.

80 (d) Any person who willfully misrepresents a material
81 fact on a juror qualification form or during any
82 interview described in subsection (c) of this section, for
83 the purpose of avoiding or securing service as a juror,
84 is guilty of a misdemeanor, and, upon conviction, shall

85 be fined not more than five hundred dollars or imprisoned not more than thirty days, or both fined and imprisoned.

§52-1-6. Jury wheel or jury box; random selection of names from master list for jury wheel or jury box.

1 (a) At the direction of the circuit court, the jury
2 commission for each county shall maintain a jury wheel
3 or jury box, into which the commission shall place the
4 names or identifying numbers of prospective jurors
5 taken from the master list. The choice of employing a
6 jury wheel or jury box shall be at the discretion of the
7 circuit court or the chief judge thereof.

8 (b) In counties having a population of less than fifteen
9 thousand persons according to the last available census,
10 the jury wheel or jury box shall include at least two
11 hundred names; in counties having a population of at
12 least fifteen thousand but less than fifty thousand, at
13 least four hundred names; a population of at least fifty
14 thousand but less than ninety thousand, at least eight
15 hundred names; and a population of ninety thousand or
16 more, at least one thousand six hundred names. From
17 time to time a larger or additional number may be
18 determined by the jury commission or ordered by the
19 circuit court to be placed in the jury wheel or jury box.
20 The jury commission shall take measures to ensure that
21 a sufficient number of additional jurors are drawn from
22 time to time so that the jury wheel or jury box is refilled
23 and additional jurors may be drawn therefrom. In
24 October of each even-numbered year, or at such other
25 time as the court may direct, the jury commission shall
26 remove from the jury box or jury wheel the names of
27 all persons who have, within the preceding two years,
28 been summoned to serve as petit jurors, grand jurors or
29 magistrate court jurors, and who have actually attended
30 sessions of the magistrate or circuit court and been
31 compensated as jurors pursuant to the provisions of
32 section twenty-one of this article, section thirteen, article
33 two of this chapter, or under any applicable rule or
34 regulation of the supreme court of appeals promulgated
35 pursuant to the provisions of section eight, article five,

36 chapter fifty of this code.

37 (c) The names or identifying numbers of prospective
38 jurors to be placed in the jury wheel or jury box shall
39 be selected by the jury commission at random from the
40 master list in the following manner: The total number
41 of names on the master list shall be divided by the
42 number of names to be placed in or added to the jury
43 wheel or jury box and the whole number next greater
44 than the quotient shall be the "key number," except that
45 the key number shall never be less than two. A "starting
46 number" for making the selection shall then be deter-
47 mined by a random method from the numbers from one
48 to the key number, both inclusive. The required number
49 of names shall then be selected from the master list by
50 taking in order the first name on the master list
51 corresponding to the starting number and then succes-
52 sively the names appearing in the master list at
53 intervals equal to the key number, recommencing if
54 necessary at the start of the list until the required
55 number of names has been selected. Upon recommenc-
56 ing at the start of the list, or if additional names are
57 subsequently to be selected for the jury wheel or jury
58 box, names previously selected from the master list shall
59 be disregarded in selecting the additional names. The
60 jury commission is not required to, but may, use an
61 electronic or mechanical system or device in carrying
62 out its duties. (For example, assume a county with a
63 master list of eight thousand nine hundred eighty
64 names, a population of less than fifteen thousand, and
65 a desired jury box or wheel containing two hundred
66 names. Eight thousand nine hundred eighty names divided
67 by two hundred is forty-four and nine-tenths percent.
68 The next whole number is forty-five. The commission
69 would take every forty-fifth name on the list, using a
70 random starting number between one and forty-five.)

**§52-1-7. Drawings from the jury wheel or jury box;
notice of jury duty; penalties.**

1 (a) The chief judge of the circuit, or the judge in a
2 single judge circuit, shall provide by order rules
3 relating to the random drawing by the jury commission

4 of panels from the jury wheel or jury box for juries in
5 the circuit and magistrate courts. The rules may allow
6 for the drawing of panels at any time. Upon receipt of
7 the direction and in the manner prescribed by the court,
8 the jury commission shall publicly draw at random from
9 the jury wheel or jury box the number of jurors
10 specified.

11 (b) If a jury is ordered to be drawn, the clerk
12 thereafter shall cause each person drawn for jury
13 service to be notified not less than twenty days before
14 the date for which the persons are to report for jury duty
15 with a summons and juror qualification form, if such
16 form has not already been completed, by personal
17 service or first class mail addressed to the person at his
18 or her usual residence, business or post-office address,
19 requiring him or her to report for jury service at a
20 specified time and place.

21 (c) A prospective juror who fails to appear as directed
22 by the summons issued pursuant to subsection (b) of this
23 section shall be ordered by the court to appear and show
24 cause for failure to appear as directed. If the prospective
25 juror fails to appear pursuant to the court's order or
26 fails to show good cause for failure to appear as directed
27 by the summons, he or she is guilty of civil contempt
28 and shall be fined not more than one thousand dollars.

**§52-1-7a. Alternate procedure for selection of jury by
electronic data processing methods.**

1 Notwithstanding any provision of this article to the
2 contrary, the court may, after conferring with the clerk
3 and the jury commissioners, direct the use of electronic
4 data processing methods, or a combination of manual
5 and machine methods, for any combination of the
6 following tasks:

7 (a) Recording in machine readable form names that
8 are initially selected manually from source lists autho-
9 rized by this article.

10 (b) Copying of names from source lists authorized by
11 this article, from any counties or other sources that
12 maintain those lists in machine readable form such as

13 punched cards, magnetic tapes or magnetic discs.

14 (c) Selecting names from source lists for inclusion in
15 the jury list.

16 (d) Selecting names from the jury list for the list of
17 jurors summoned to attend at any term of court.

18 (e) Sorting or alphabetizing lists of names, deleting
19 duplicate selections of names and deleting names of
20 persons exempt, disqualified or excused from jury
21 service.

22 (f) Selecting and copying names for the creation of
23 any papers, records or correspondence necessary to
24 recruit, select and pay jurors and for other clerical
25 tasks.

26 If the court elects to use electronic machine methods
27 for any tasks described above, the selection system shall
28 be planned and programmed in order to ensure that any
29 group of names chosen will represent all segments of
30 source files from which drawn and that the mathemat-
31 ical odds of any single name being picked are substan-
32 tially equal.

33 When machine methods for jury selection are em-
34 ployed, both the jury list and the jury list as recorded
35 in machine readable form shall be safely kept in a
36 secure location with the office of the clerk of the circuit
37 court. Any selection of jurors from a source list or jury
38 list shall be made in the presence of the jury commis-
39 sioners.

§52-1-8. Disqualification from jury service.

1 (a) The court, upon request of the jury commission or
2 a prospective juror or on its own initiative, shall
3 determine on the basis of information provided on the
4 juror qualification form or interview with the prospec-
5 tive juror or other competent evidence whether the
6 prospective juror is disqualified for jury service. The
7 clerk shall enter this determination in the space
8 provided on the juror qualification form and on the
9 alphabetical lists of names drawn from the jury wheel
10 or jury box.

11 (b) A prospective juror is disqualified to serve on a
12 jury if the prospective juror:

13 (1) Is not a citizen of the United States, at least
14 eighteen years old and a resident of the county;

15 (2) Is unable to read, speak and understand the
16 English language;

17 (3) Is incapable, by reason of substantial physical or
18 mental disability, of rendering satisfactory jury service;
19 but a person claiming this disqualification may be
20 required to submit a physician's certificate as to the
21 disability and the certifying physician is subject to
22 inquiry by the court at its discretion;

23 (4) Has, within the preceding two years, been sum-
24 moned to serve as a petit juror, grand juror or magis-
25 trate court juror, and has actually attended sessions of
26 the magistrate or circuit court and been compensated
27 as a juror pursuant to the provisions of section twenty-
28 one of this article, section thirteen, article two of this
29 chapter, or pursuant to an applicable rule or regulation
30 of the supreme court of appeals promulgated pursuant
31 to the provisions of section eight, article five, chapter
32 fifty of this code;

33 (5) Has lost the right to vote because of a criminal
34 conviction; or

35 (6) Has been convicted of perjury, false swearing or
36 other infamous offense.

37 (c) A prospective juror sixty-five years of age or older
38 is not disqualified from serving, but shall be excused
39 from service by the court upon the juror's request.

40 (d) A prospective grand juror is disqualified to serve
41 on a grand jury if the prospective grand juror is an
42 officeholder under the laws of the United States or of
43 this state except that the term "officeholder" does not
44 include notaries public.

**§52-1-15. Challenging compliance with selection
procedures.**

1 (a) Within seven days after the moving party discov-

2 ers, or by the exercise of due diligence could have
3 discovered, the grounds therefor, and in any event
4 before the petit jury is sworn to try the case, a party
5 may move to stay the proceedings, quash the indictment
6 or move for other relief as may be appropriate under
7 the circumstances or the nature of the case. The motion
8 shall set forth the facts which support the party's
9 contention that there has been a substantial failure to
10 comply with this article in selecting the jury.

11 (b) Upon motion filed under subsection (a) of this
12 section containing a sworn statement of facts which, if
13 true, would constitute a substantial failure to comply
14 with this article, the moving party is entitled to present,
15 in support of the motion, the testimony of the jury
16 commissioners or the clerk, any relevant records and
17 papers not public or otherwise available used by the jury
18 commissioners or the clerk, and any other relevant
19 evidence. The clerk or the jury commissioners may
20 identify the lists utilized in compiling the master list,
21 but may not be required to divulge the contents of such
22 lists. If the court determines that in selecting a jury
23 there has been a substantial failure to comply with this
24 article, the court shall stay the proceedings pending the
25 selection of the jury in conformity with this article,
26 quash an indictment or grant such other relief as the
27 court may deem appropriate.

28 (c) In the absence of fraud, the procedures prescribed
29 by this section are the exclusive means by which a
30 person accused of a crime, the state or a party in a civil
31 case, may challenge a jury on the ground that the jury
32 was not selected in conformity with this article.

§52-1-16. Preservation of records.

1 All records and papers compiled and maintained by
2 the jury commissioners or the clerk in connection with
3 selection and service of jurors from the master list, the
4 jury box or the jury wheel shall be preserved by the
5 clerk for at least four years after such jurors were
6 selected, or for any longer period ordered by the court.

7 The jury commission of each county shall make an
8 annual report no later than the first day of March of

9 each year to the supreme court of appeals setting forth
10 the following information: Whether the commission
11 employed a jury box or jury wheel for the year reported,
12 and the age, race, and gender of each person for whom
13 a juror qualification form has been received. The
14 supreme court of appeals shall provide this information
15 to the president of the Senate and the speaker of the
16 House on an annual basis, no later than the first day of
17 April of each year.

ARTICLE 2. GRAND JURIES.

§52-2-3. Selection and summoning of jurors.

§52-2-4. Quorum.

§52-2-3. Selection and summoning of jurors.

1 The jury commissioners of any court requiring a
2 grand jury shall, at least thirty days before the term of
3 court, draw and assign persons for the grand jury, but
4 the court, or judge thereof, may require the jury
5 commissioners to appear forthwith, or at any specified
6 time and draw and assign grand jurors for either a
7 regular, special or adjourned term of court. On the day
8 appointed, the jury commissioners shall appear and
9 draw the names of sixteen persons from the jury wheel
10 or jury box, and the persons so drawn shall constitute
11 the grand jury, and, at the same time the jury commis-
12 sioners shall draw the names of such additional numbers
13 of persons from the jury wheel or jury box, as the chief
14 judge of the circuit, or the judge in a single judge circuit
15 shall by prior order direct, and the persons so drawn
16 shall constitute alternate jurors for the grand jury and
17 the judge may replace any absent members of the grand
18 jury from among the alternate grand jurors in the order
19 in which the alternate jurors were drawn. The jury
20 commissioners shall enter the names of all persons so
21 drawn in a book kept for that purpose, and they shall
22 issue summonses to the persons so drawn in the same
23 manner as that provided for petit jurors in subsection
24 (b), section seven, article one of this chapter.

§52-2-4. Quorum.

1 Of the sixteen grand jurors chosen from the grand
2 jurors and alternate grand jurors summoned, fifteen or

- 3 more of the grand jurors attending shall be a competent
4 grand jury.

CHAPTER 80

(Com. Sub. for H. B. 4696—By Mr. Speaker, Mr. Chambers, and Delegate Swann,
by request of the Executive)

[Passed March 11, 1988; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article nine, chapter fifteen of the code of West Virginia, one thousand nine hundred and thirty-one, as amended, by adding thereto a new section, designated section two, relating to inspections of juvenile facilities by the governor's committee on crime, delinquency and correction; and inspections made pursuant to compliance with the Juvenile Justice and Delinquency Act of 1974.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9. GOVERNOR'S COMMITTEE ON CRIME, DELINQUENCY AND CORRECTION.

§15-9-2. Facility inspection.

- 1 The governor's committee on crime, delinquency and
2 correction shall annually visit and inspect jails, deten-
3 tion facilities, correctional facilities, facilities which
4 may hold juveniles involuntarily or any other juvenile
5 facility which may temporarily house juveniles on a
6 voluntary or involuntary basis for the purpose of
7 compliance with the Juvenile Justice and Delinquency
8 Prevention Act of 1974, as amended, on the effective
9 date of this section.

CHAPTER 81

(H. B. 4255—By Delegates Givens and Leggett)

[Passed March 11, 1988; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article one, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the department of labor following an audit by the joint committee on government operations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. STATE DEPARTMENT OF LABOR.

§21-1-5. Reestablishment of department; findings.

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

CHAPTER 82

(S. B. 275—By Senators Jackson and Tucker)

[Passed March 11, 1988; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twelve, relating to creating the West Virginia law institute.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. ESTABLISHMENT OF A WEST VIRGINIA LAW INSTITUTE.

- §4-12-1. Authority of Legislature to establish West Virginia law institute.
- §4-12-2. Purposes and duties.
- §4-12-3. Governing council and members.
- §4-12-4. Compensation of members of the council of the West Virginia law institute, director and assistants.
- §4-12-5. Adoption of membership plan.
- §4-12-6. Institute to act in advisory capacity only; distribution of reports, studies, and recommended publications.

§4-12-1. Authority of Legislature to establish West Virginia law institute.

- 1 The West Virginia Legislature creates and establishes
- 2 a state law institute, to be known as the "West Virginia
- 3 Law Institute," as an official advisory law revision and
- 4 law reform agency of the state of West Virginia and to
- 5 be located at the West Virginia University college of
- 6 law.

§4-12-2. Purposes and duties.

- 1 The general purposes of the West Virginia law
- 2 institute are to promote and encourage the clarification
- 3 and simplification of the law of West Virginia, to
- 4 improve the better administration of justice and to
- 5 conduct scholarly legal research and scientific legal
- 6 work. To that end it shall be the duty of the West
- 7 Virginia law institute to:
 - 8 (a) Consider needed improvements in both substantive
 - 9 and procedural law and to make recommendations
 - 10 concerning the same to the Legislature;
 - 11 (b) Examine and study the law of West Virginia to
 - 12 discover defects and inequities and of recommending
 - 13 needed reforms;
 - 14 (c) Receive and consider suggestions from judges,
 - 15 justices, public officials, lawyers and the public gener-

16 ally as to defects and anachronisms in the law;

17 (d) Recommend from time to time such changes in the
18 law as it deems necessary to modify or eliminate
19 antiquated and inequitable rules of law;

20 (e) Render annual reports to the Legislature and, if
21 it deems so advisable, accompany its reports with
22 proposed bills to carry out any of its recommendations;

23 (f) Recommend the repeal of obsolete statutes and
24 suggest needed amendments, additions and deletions;
25 and

26 (g) Organize and conduct an annual meeting within
27 the state for scholarly discussions of current problems
28 in West Virginia law, bringing together representatives
29 of the Legislature, practicing attorneys, members of the
30 judiciary and West Virginia state bar and representa-
31 tives of the law teaching profession.

§4-12-3. Governing council and members.

1 (a) The institute shall have such members and
2 committees as the governing body of the West Virginia
3 law institute may direct. The governing body shall also
4 elect a president, secretary and any other officers as it
5 determines necessary.

6 (b) The governing body of the institute shall be a
7 council composed of ex officio members and elected
8 members as follows:

9 (1) One justice of the West Virginia supreme court of
10 appeals to be selected by the justices thereof;

11 (2) One circuit court judge, selected by the West
12 Virginia judicial association;

13 (3) One federal judge residing in West Virginia,
14 selected by the federal judges residing in West Virginia;

15 (4) The attorney general of the state of West Virginia;

16 (5) One legal counsel to the governor of the state of
17 West Virginia;

18 (6) The chairperson of the judiciary committees of the
19 Senate and the House of Delegates of the West Virginia

20 Legislature, or an attorney member of the respective
21 committees appointed by the chairperson of the
22 committee;

23 (7) One member each from the majority and minority
24 parties of the Senate and the House of Delegates of the
25 West Virginia Legislature to be selected by the Presi-
26 dent of the Senate and the Speaker of the House of
27 Delegates, respectively;

28 (8) The director of West Virginia legislative services;

29 (9) The chairperson of the West Virginia commission
30 on uniform state laws;

31 (10) The president and first vice president of the West
32 Virginia state bar;

33 (11) The chairperson of the young lawyers section of
34 the West Virginia state bar;

35 (12) The dean of the West Virginia University college
36 of law;

37 (13) Two attorneys appointed by the governor of the
38 state of West Virginia for terms to run concurrently
39 with the term of the governor;

40 (14) The director of the continuing legal education
41 program sponsored by the West Virginia state bar and
42 the West Virginia University college of law; and

43 (15) The editor-in-chief of the *West Virginia Law*
44 *Review*.

45 (c) The elected membership shall consist of two
46 faculty members who shall be elected from the members
47 of the faculty of the West Virginia University college of
48 law and three practicing attorneys from each of the four
49 congressional districts in the state who shall be selected
50 by the board of governors of the West Virginia state bar.

51 (d) All ex officio members of the council shall hold
52 their positions during their respective terms of office.
53 The term of office of the elected members of the council
54 shall be four years. The terms of office of the first
55 elected practicing attorney members shall be appointed
56 by the board of governors of the West Virginia state bar

57 such that four shall be appointed for two years, four for
58 three years and four for four years. Thereafter, appoint-
59 ments shall be for four years. Elected members of the
60 council shall be eligible for reelection.

61 (e) Vacancies in the elected membership created by
62 death, resignation or otherwise than by the expiration
63 of the terms of office shall be filled by the council under
64 such rules as it may adopt.

**§4-12-4. Compensation of members of the council of the
West Virginia law institute, director and
assistants.**

1 The members of the council of the West Virginia law
2 institute shall serve without any compensation for
3 services as such. The council may employ and fix and
4 pay reasonable compensation to the director of the
5 institute and the director's assistants, and may pay
6 honoraria to members of the council who perform
7 professional services for the institute, as authorized by
8 the council. The compensation provided for in this
9 section shall come from private funding and no state
10 funds are to be provided for this institute.

§4-12-5. Adoption of membership plan.

1 The council of the West Virginia law institute shall
2 adopt a plan or plans of membership in the West
3 Virginia law institute so designated as to encourage and
4 invite the cooperation of all members of the legal
5 profession in the work of the institute.

**§4-12-6. Institute to act in advisory capacity only; distri-
bution of reports, studies, and recommended
publications.**

1 The West Virginia law institute, in submitting reports
2 to the Legislature, shall act solely in an advisory
3 capacity. Its reports, studies and recommended publica-
4 tions shall be printed and shall be distributed by the
5 institute in a manner as directed by the council.

CHAPTER 83

(H. B. 2224—By Mr. Speaker, Mr. Chambers, and Delegate Metheny)

[Passed March 11, 1988; in effect July 1, 1988. 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 seven, relating to placing limits on the number of printed materials to be printed or transmitted to members of the Legislature; lists of available printed materials are to be compiled by the commissioner of the department of finance and administration for selection of desired materials and number thereof by legislator's; transmission of copies; and satisfaction of legal duties accomplished by furnishing just such number to requesting legislators.

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 seven, to read as follows:

ARTICLE 1. DEPARTMENT OF FINANCE AND ADMINISTRATION.

§5A-1-7. Printed materials to be transmitted to members of the Legislature.

- 1 (a) The commissioner shall compile biannually a list
- 2 of all material scheduled or anticipated to be printed in
- 3 the succeeding six months, which materials are required
- 4 by statute or administrative rule to be transmitted to
- 5 members of the Legislature. The commissioner shall
- 6 transmit such list to each member of the Legislature
- 7 and request each member to indicate which, if any, of
- 8 the listed materials the member elects to receive and
- 9 further indicate if the material is to be mailed to the
- 10 member's home address or delivered to the member's
- 11 office at the capitol. Thirty days after transmitting such
- 12 list to members of the Legislature, the commissioner
- 13 shall compute the total number of copies of the listed

14 materials requested by members of the Legislature and
15 communicate such total to the department, commission,
16 agency or other subdivision of state government charged
17 with the preparation of such material for printing.

18 (b) No department, commission, agency or other
19 subdivision of state government may request or cause
20 the printing or compilation of any materials for
21 distribution to members of the Legislature in excess of
22 the total number of copies requested by such members
23 as communicated by the commissioner pursuant to
24 subsection (a) of this section except that such depart-
25 ment, commission, agency or other subdivision of state
26 government may request or cause the printing of up to
27 ten additional copies of such materials and retain such
28 additional copies to provide to members of the Legisla-
29 ture upon their direct request. Nothing in this section
30 prohibits or restricts the printing or compilation of
31 materials for distribution other than to members of the
32 Legislature.

33 (c) Any statute or administrative rule requiring
34 printed materials to be transmitted to members of the
35 Legislature shall be considered satisfied by the trans-
36 mission of the total number of copies requested by such
37 members.

38 (d) The commissioner of the department of finance
39 and administration is authorized to promulgate rules
40 and regulations pursuant to chapter twenty-nine-a of
41 this code in order to implement this section.

CHAPTER 84

(Com. Sub. for H. B. 3146—By Mr. Speaker, Mr. Chambers,
and Delegate Buchanan)

[Passed March 12, 1988; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three-e and three-f,
article one, chapter seven of the code of West Virginia,
one thousand nine hundred thirty-one, as amended; to
amend article five of said chapter by adding thereto a

new section, designated section twenty-two; to amend article sixteen of said chapter by adding thereto a new section, designated section nine; to amend and reenact sections four, six and eight, article twenty-six, chapter sixteen of said code; to amend article two-a, chapter seventeen of said code by adding thereto a new section, designated section twenty-one; to amend and reenact sections two, four and eight, article twenty-three of said chapter; to amend article ten, chapter seventeen-a of said code by adding thereto a new section, designated section fifteen; to amend and reenact section fifteen, article five, chapter twenty of said code; to amend and reenact sections one, two, four and five, article five-f of said chapter; to further amend said article five-f of said chapter by adding thereto five new sections, designated sections four-a, five-a, five-b, five-c and five-d; to amend and reenact sections twenty-five and twenty-six, article seven of said chapter; to further amend said article by adding thereto a new section, designated section twenty-seven; to further amend said chapter twenty by adding thereto a new article, designated article nine; to amend and reenact section three, article one, chapter twenty-four of said code; to amend article two of said chapter by adding thereto two new sections, designated sections one-b and one-c; to amend and reenact sections thirteen and thirteen-b, article five, chapter forty-nine of said code; to amend and reenact section seventeen, article eleven, chapter sixty-one of said code; to amend and reenact section one, article eleven-a, chapter sixty-two of said code; and to amend and reenact sections three and thirteen, article twelve of said chapter, all relating generally to the collection of solid waste and litter; expiring authority of county commissions to acquire land for landfills; expiring county commissions authority to operate landfills; expiring authority of county commissions to establish and operate solid waste disposal services; authorizing solid waste assessment fees to be assessed by counties; expiration of the authority of county solid waste authorities; creation of the West Virginia resource recovery—solid waste disposal authority; board of directors; director of the department of natural resources to be a member of the

board; a person with knowledge of environmental laws as a member of the board; powers, duties and responsibilities of the resource recovery—solid waste disposal authority; designation of solid waste disposal sheds; standards for creating sheds; exemption of authority from legislative rule-making in creating sheds; authorizing the commissioner of the department of highways to contract with the department of natural resources to implement litter control program; definitions; standards for salvage yards; prohibition against locating salvage yards in certain places; requirements for screening salvage yards from sight of roadways; authority of the commissioner of the department of highways to remove certain salvage yards; additional fee to be added to motor vehicle registration fee; dedication of fee to highway litter control fund; prohibition against littering along or in streams or other waterways; criminal penalties; transfer of the solid waste management from department of health to department of natural resources; legislative findings; definitions; definition of solid waste disposal shed; powers and duties of the director of the department of natural resources as to the solid waste management act; director's powers and authorities in granting permits for solid waste disposal authorities; background and personal history of the applicant as grounds for denying a permit application; requirement that all persons dumping solid waste and all solid waste disposal facilities operators file records with the department of natural resources; use of litter control fund moneys to assist county and regional authorities in establishing comprehensive litter plans; approval permit required for certain landfills; procedure for obtaining approval permits; fee for approval permits; prohibition against open dumps; compliance schedules for illegal dumps; prohibition against adding to existing dumps; expiration of department of health permits to operate landfills; issuance of landfill permits by the director of the department of natural resources; renewal permits; imposition of solid waste assessment fee; collection of fees; exemption from fees; criminal penalties; dedication of proceeds of fees; creation of the solid waste enforcement fund; creation of the resource

recovery—solid waste disposal authority reserve fund; creation of the solid waste reclamation and environmental response fund; legislative findings; severability of article; performance bonds for solid waste disposal facility applicants; bonding requirements; period of liability under performance bonding; alternative forms for performance bonds; forfeiture or release of performance bonds; pre-siting notice; pre-siting notice procedures; limitations on permits; provisions for optional recycling of solid waste materials; prohibition against transloading of solid waste within a municipality; West Virginia litter control program; grants for establishment and operation of solid waste disposal authorities to county and regional authorities; dedication of funds to the litter control fund; unlawful disposal of litter; rebuttable inference of improper disposal; civil and criminal penalties continued; establishment of inmate litter clean-up programs by county commissions in the regional jail authority; voluntary recycling programs by county or regional solid waste authorities; restrictions on certain beverage containers; penalties; director of the department of natural resources to report to the Legislature regarding the effectiveness of the litter control program; creation of county and regional solid waste authorities; legislative findings; definitions; management of solid waste authorities; submission of comprehensive litter in solid waste control plan by county and regional authorities; mandatory disposal of solid waste; civil penalties; general powers of authorities; study and report of the public service commission; use of inmates, parolees and persons on probation in the litter control program.

Be it enacted by the Legislature of West Virginia:

That sections three-e and three-f, article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that article five of said chapter be amended by adding thereto a new section, designated section twenty-two; that article sixteen of said chapter be amended by adding thereto a new section, designated section nine; that sections four, six and eight,

article twenty-six, chapter sixteen of said code be amended and reenacted; that article two-a, chapter seventeen of said code be amended by adding thereto a new section, designated section twenty-one; that sections two, four and eight, article twenty-three of said chapter be amended and reenacted; that article ten, chapter seventeen-a be amended by adding thereto a new section, designated section fifteen; that section fifteen, article five, chapter twenty of said code be amended and reenacted; that sections one, two, four and five, article five-f of said chapter be amended and reenacted; that said article five-f be further amended by adding thereto five new sections, designated sections four-a, five-a, five-b, five-c and five-d; that sections twenty-five and twenty-six, article seven of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section twenty-seven; that said chapter twenty be further amended by adding thereto a new article, designated article nine; that section three, article one, chapter twenty-four of said code be amended and reenacted; that article two of said chapter be amended by adding thereto two new sections, designated sections one-b and one-c; that sections thirteen and thirteen-b, article five, chapter forty-nine of said code be amended and reenacted; that section seventeen, article eleven, chapter sixty-one of said code be amended and reenacted; that section one, article eleven-a, chapter sixty-two of said code be amended and reenacted; and that sections three and thirteen, article twelve of said chapter be amended and reenacted, all to read as follows:

Chapter

- 7. County Commissions and Officers.**
- 16. Public Health.**
- 17. Roads and Highways.**
- 17A. Motor Vehicle Administration, Registration, Certificate of Title, and Antitheft Provisions.**
- 20. Natural Resources.**
- 24. Public Service Commission.**
- 49. Child Welfare.**
- 61. Crimes and Their Punishment.**
- 62. Criminal Procedure.**

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

Article

1. County Commissions Generally.
5. Fiscal Affairs.
16. County Solid Waste Authorities.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3e. Acquisition of land for, and operation of, public refuse dumps and sanitary landfills.

§7-1-3f. Establishment and operation of garbage and refuse collection and disposal services.

§7-1-3e. Acquisition of land for, and operation of, public refuse dumps and sanitary landfills.

1 In addition to all other powers and duties now
2 conferred by law upon county commissions, such
3 commissions are hereby empowered to acquire, by
4 purchase, right of eminent domain, lease, gift, or
5 otherwise, land for the establishment of public refuse
6 dumps and sanitary landfills, and to operate and
7 maintain such dumps and fills, and to pay for such land,
8 and the operation and maintenance of such dumps and
9 fills, in whole or part, either out of general funds in the
10 county treasury, or out of special funds to be derived
11 from fees paid by users of such facilities: *Provided*, That
12 the authority granted by this section expires on the first
13 day of January, one thousand nine hundred eighty-nine.

§7-1-3f. Establishment and operation of garbage and refuse collection and disposal services.

1 In addition to all other powers and duties now
2 conferred by law upon county commissions, such
3 commissions are hereby empowered to establish, operate
4 and maintain, either directly or by contract, garbage
5 and refuse collection and disposal services, and to pay
6 for the establishment, operation and maintenance of
7 such collection and disposal services, in whole or in part,
8 either out of general funds in the county treasury, or out
9 of special funds to be derived from fees charged to and
10 paid by the users of such services or a combination of
11 both such general revenue or special fund: *Provided*,
12 That the power and authority hereby conferred upon
13 county courts shall not be exercised in territory included
14 within the boundaries of any municipal corporation,
15 except as provided herein. Any county commission for

16 the purpose of implementing this section is hereby
17 authorized to enter into such contract or contracts with
18 any municipality or county within this state for the
19 purposes of carrying out the powers vested in such
20 county commissions by this section, and all said county
21 commissions may, pursuant to such contract, exercise
22 the authority herein granted within such contracting
23 municipality: *Provided, however,* That where an area is
24 furnished garbage and refuse collection service by an
25 existing carrier under authority issued by the public
26 service commission of West Virginia, the county
27 commission may enter into contracts or agreements with
28 such carrier to supplement such existing service, but
29 shall not enter into any competing service without
30 authority being granted by the public service
31 commission.

32 The term "users" as used herein shall mean and
33 include any person to whom such services are made
34 available under the provisions of this section.

35 The authority granted by this section expires on the
36 first day of January, one thousand nine hundred eighty-
37 nine.

ARTICLE 5. FISCAL AFFAIRS.

§7-5-22. County solid waste assessment fees authorized.

1 Each county commission is hereby authorized to
2 impose, on and after the first day of July, one thousand
3 nine hundred eighty-eight, a similar solid waste
4 assessment fee to that imposed by section five-a, article
5 five-f, chapter twenty of this code at a rate not to exceed
6 fifty cents per ton or part thereof upon the disposal of
7 solid waste in that county. Net proceeds of the fee
8 authorized by this section shall be expended solely for
9 public capital improvements.

ARTICLE 16. COUNTY SOLID WASTE AUTHORITIES.

§7-16-9. Expiration of authority.

1 The authority granted by this article expires on the
2 first day of January, one thousand nine hundred eighty-
3 nine.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 26. WEST VIRGINIA RESOURCE RECOVERY — SOLID WASTE DISPOSAL AUTHORITY.

§16-26-4. West Virginia resource recovery—solid waste disposal authority and board created; organization of authority and board; appointment and qualification of board members; their term of office, compensation and expenses; director of authority.

§16-26-6. Powers, duties and responsibilities of authority generally.

§16-26-8. Development and designation of solid waste disposal sheds by authority.

§16-26-4. West Virginia resource recovery — solid waste disposal authority and board created; organization of authority and board; appointment and qualification of board members; their term of office, compensation and expenses; director of authority.

1 The West Virginia resource recovery — solid waste
2 disposal authority is hereby created. The authority is a
3 governmental instrumentality of the state and a body
4 corporate. The exercise by the authority of the powers
5 conferred on it by this article and the carrying out of
6 its purposes and duties are essential governmental
7 functions and are for a public purpose.

8 The authority shall be controlled, managed and
9 operated by a six-member board known as the West
10 Virginia resource recovery — solid waste disposal
11 authority board which is hereby created. The director
12 of the department of health and the director of the
13 department of natural resources shall be members ex
14 officio of the board. The other five members of the board
15 shall be appointed by the governor, by and with the
16 advice and consent of the Senate, for terms of one, two,
17 three, four and five years, respectively. One appointee
18 shall be a member of the West Virginia association of
19 county officials, one a member of the West Virginia
20 municipal league and a resident of a municipality as
21 defined in section two, article one, chapter eight of this
22 code, one a member of a regional council as defined in
23 section two, article twenty-five, chapter eight of this
24 code, one a contract solid waste hauler who holds a valid
25 certificate of convenience and necessity issued by the
26 public service commission and one person knowledge-
27 able in environmental law. The successor of each such

28 appointed member shall be appointed for a term of four
29 years in the same manner the original appointments
30 were made and so that the representation on the board
31 as set forth in this section is preserved, except that any
32 person appointed to fill a vacancy occurring prior to the
33 expiration of the term for which his predecessor was
34 appointed shall be appointed only for the remainder of
35 such term. Each board member shall serve until the
36 appointment and qualification of his successor.

37 No more than three of the appointed board members
38 may at any one time be from the same congressional
39 district or belong to the same political party. No
40 appointed board member may be an officer or employee
41 of the United States or this state. Appointed board
42 members may be reappointed to serve additional terms.
43 All members of the board shall be citizens of the state.
44 Each appointed member of the board, before entering
45 upon his duties, shall comply with the requirements of
46 article one, chapter six of this code and give bond in the
47 sum of twenty-five thousand dollars. Appointed
48 members may be removed from the board only for the
49 same causes as elective state officers may be removed.

50 Annually the board shall elect one of its appointed
51 members as chairman, another as vice chairman and
52 appoint a secretary-treasurer, who need not be a
53 member of the board. Four members of the board shall
54 constitute a quorum and the affirmative vote of four
55 members shall be necessary for any action taken by vote
56 of the board. No vacancy in the membership of the
57 board shall impair the rights of a quorum by such vote
58 to exercise all the rights and perform all the duties of
59 the board and the authority. The person appointed as
60 secretary-treasurer shall give bond in the sum of fifty
61 thousand dollars. If a board member is appointed as
62 secretary-treasurer, he shall give bond in the sum of
63 twenty-five thousand dollars in addition to the bond
64 required in the preceding paragraph.

65 The ex officio members of the board shall not receive
66 any compensation for serving as a board member. Each
67 of the five appointed members of the board shall receive
68 compensation of fifty dollars for each day actually spent

69 in attending meetings of the board or in the discharge
70 of his duties as a member of the board, but not to exceed
71 two thousand five hundred dollars in any fiscal year.
72 Each of the seven board members shall be reimbursed
73 for all reasonable and necessary expenses actually
74 incurred in the performance of his duties as a member
75 of the board. All such compensation and expenses
76 incurred by board members shall be payable solely from
77 funds of the authority or from funds appropriated for
78 such purpose by the Legislature and no liability or
79 obligation shall be incurred by the authority beyond the
80 extent to which moneys are available from funds of the
81 authority or from such appropriation.

82 The board shall meet at least four times annually and
83 at any time upon the call of its chairman or upon the
84 request in writing to the chairman of four board
85 members.

86 The board shall appoint a director of the authority.
87 The director shall have successfully completed one full
88 year of graduate school and, in addition, shall have two
89 years of work experience in solid waste management.

§16-26-6. Powers, duties and responsibilities of authority generally.

1 The West Virginia resource recovery — solid waste
2 disposal authority may exercise all powers necessary or
3 appropriate to carry out and effectuate its corporate
4 purpose. The authority may:

5 (1) Adopt, and from time to time, amend and repeal
6 bylaws necessary and proper for the regulation of its
7 affairs and the conduct of its business, and rules and
8 regulations, promulgated pursuant to the provisions of
9 chapter twenty-nine-a of this code, to implement and
10 make effective its powers and duties.

11 (2) Adopt an official seal.

12 (3) Maintain a principal office which shall be in
13 Kanawha County, and, if necessary, regional suboffices
14 at locations properly designated or provided.

15 (4) Sue and be sued in its own name and plead and

16 be impleaded in its own name, and particularly to
17 enforce the obligations and covenants made under
18 sections ten, eleven and sixteen of this article. Any
19 actions against the authority shall be brought in the
20 circuit court of Kanawha County.

21 (5) Make loans and grants to persons and to govern-
22 mental agencies for the acquisition or construction of
23 solid waste disposal projects and adopt rules and
24 procedures for making such loans and grants.

25 (6) Acquire, construct, reconstruct, enlarge, improve,
26 furnish, equip, maintain, repair, operate, lease or rent
27 to, or contract for operation by a governmental agency
28 or person, solid waste disposal projects, and, in accor-
29 dance with chapter twenty-nine-a of this code, adopt
30 rules and regulations for the use of such projects.

31 (7) Make available the use or services of any solid
32 waste disposal project to one or more persons, one or
33 more governmental agencies, or any combination
34 thereof.

35 (8) Issue solid waste disposal revenue bonds and notes
36 and solid waste disposal revenue refunding bonds of the
37 state, payable solely from revenues as provided in
38 section nine of this article unless the bonds are refunded
39 by refunding bond, for the purpose of paying all or any
40 part of the cost of or financing by loans to governmental
41 agencies one or more solid waste disposal projects or
42 parts thereof.

43 (9) Acquire by gift or purchase, hold and dispose of
44 real and personal property in the exercise of its powers
45 and the performance of its duties as set forth in this
46 article.

47 (10) Acquire in the name of the state, by purchase or
48 otherwise, on such terms and in such manner as it
49 deems proper, or by the exercise of the right of eminent
50 domain in the manner provided in chapter fifty-four of
51 this code, such public or private lands, or parts thereof
52 or rights therein, rights-of-way, property, rights,
53 easements and interests it deems necessary for carrying
54 out the provisions of this article, but excluding the

55 acquisition by the exercise of the right of eminent
56 domain of any solid waste disposal facility operated
57 under permits issued pursuant to the provisions of
58 article five-f, chapter twenty of this code and owned by
59 any person or governmental agency. This article does
60 not authorize the authority to take or disturb property
61 or facilities belonging to any public utility or to a
62 common carrier, which property or facilities are
63 required for the proper and convenient operation of such
64 public utility or common carrier, unless provision is
65 made for the restoration, relocation or duplication of
66 such property or facilities elsewhere at the sole cost of
67 the authority.

68 (11) Make and enter into all contracts and agreements
69 and execute all instruments necessary or incidental to
70 the performance of its duties and the execution of its
71 powers. When the cost under any such contract or
72 agreement, other than compensation for personal
73 services, involves an expenditure of more than two
74 thousand dollars, the authority shall make a written
75 contract with the lowest responsible bidder after public
76 notice published as a Class II legal advertisement in
77 compliance with the provisions of article three, chapter
78 fifty-nine of this code, the publication area for such
79 publication to be the county wherein the work is to be
80 performed or which is affected by the contract, which
81 notice shall state the general character of the work and
82 the general character of the materials to be furnished,
83 the place where plans and specifications therefor may
84 be examined and the time and place of receiving bids.
85 A contract or lease for the operation of a solid waste
86 disposal project constructed and owned by the authority
87 or an agreement for cooperation in the acquisition or
88 construction of a solid waste disposal project pursuant
89 to section sixteen of this article is not subject to the
90 foregoing requirements and the authority may enter
91 into such contract or lease or such agreement pursuant
92 to negotiation and upon such terms and conditions and
93 for such period as it finds to be reasonable and proper
94 under the circumstances and in the best interests of
95 proper operation or of efficient acquisition or construc-
96 tion of such project. The authority may reject any and

97 all bids. A bond with good and sufficient surety,
98 approved by the authority, shall be required of all
99 contractors in an amount equal to at least fifty percent
100 of the contract price, conditioned upon the faithful
101 performance of the contract.

102 (12) Employ managers, superintendents, engineers,
103 accountants, auditors and other employees, and retain or
104 contract with consulting engineers, financial consul-
105 tants, accounting experts, architects, attorneys and such
106 other consultants and independent contractors as are
107 necessary in its judgment to carry out the provisions of
108 this article, and fix the compensation or fees thereof. All
109 expenses thereof shall be payable solely from the
110 proceeds of solid waste disposal revenue bonds or notes
111 issued by the authority, from revenues and from funds
112 appropriated for such purpose by the Legislature.

113 (13) Receive and accept from any federal agency,
114 subject to the approval of the governor, grants for or in
115 aid of the construction of any solid waste disposal project
116 or for research and development with respect to solid
117 waste disposal projects and solid waste disposal sheds
118 and receive and accept from any source aid or contri-
119 butions of money, property, labor or other things of
120 value, to be held, used and applied only for the purposes
121 for which such grants and contributions are made.

122 (14) Engage in research and development with
123 respect to solid waste disposal projects and solid waste
124 disposal sheds.

125 (15) Purchase fire and extended coverage and liability
126 insurance for any solid waste disposal project and for
127 the principal office and suboffices of the authority,
128 insurance protecting the authority and its officers and
129 employees against liability, if any, for damage to
130 property or injury to or death of persons arising from
131 its operations and any other insurance the authority may
132 agree to provide under any resolution authorizing the
133 issuance of solid waste disposal revenue bonds or in any
134 trust agreement securing the same.

135 (16) Charge, alter and collect rentals and other
136 charges for the use or services of any solid waste

137 disposal project as provided in this article, and charge
138 and collect reasonable interest, fees and other charges
139 in connection with the making and servicing of loans to
140 governmental agencies in furtherance of the purposes of
141 this article.

142 (17) Establish or increase reserves from moneys
143 received or to be received by the authority to secure or
144 to pay the principal of and interest on the bonds and
145 notes issued by the authority pursuant to this article.

146 (18) Do all acts necessary and proper to carry out the
147 powers expressly granted to the authority in this article.

**§16-26-8. Development and designation of solid waste
disposal sheds by authority.**

1 Prior to beginning or raising the cost of the first solid
2 waste disposal project and within one year of the
3 effective date of this article, the authority shall divide
4 the state into geographical areas for solid waste
5 management which shall be known as solid waste
6 disposal sheds. Before it designates the sheds, the
7 authority shall consult with the governing bodies of the
8 counties and municipalities in the state and obtain and
9 evaluate their opinions as to how many sheds there
10 should be and where their boundaries should be located.
11 The authority shall then cause informational gathering
12 studies and feasibility and cost studies to be made in
13 order for it to designate the solid waste disposal sheds
14 within each of which the most dependable, effective,
15 efficient and economical solid waste disposal projects
16 may be established. The sheds shall not overlap and
17 shall cover the entire state.

18 The authority shall designate the sheds so that:

19 (1) The goal of providing solid waste collection and
20 disposal service to each household, business and industry
21 in the state can reasonably be achieved.

22 (2) The total cost of solid waste collection and disposal
23 and the cost of solid waste collection and disposal within
24 each shed and per person can be kept as low as possible.

25 (3) Solid waste collection and disposal service, facil-

26 ities and projects can be integrated in the most feasible,
27 dependable, effective, efficient and economical manner.

28 (4) No county is located in more than one shed.

29 The authority, in developing and designating solid
30 waste disposal sheds, is exempt from the provisions of
31 chapter twenty-nine-a. On or before the first day of July,
32 one thousand nine hundred eighty-eight, the authority
33 shall file a report designating the composition and
34 boundaries of all of the sheds in the state register.

CHAPTER 17. ROAD AND HIGHWAYS.

Article

2A. West Virginia Commissioner of Highways.

23. Salvage Yards.

ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.

§17-2A-21. Commissioner authorized to contract for implementation of litter control programs.

1 In addition to all other powers granted and duties
2 imposed upon the commissioner, he or she shall contract
3 with the director of the department of natural resources
4 and expend moneys from the highway litter control fund
5 to implement the litter control program and litter
6 control maintenance of the highways pursuant to article
7 seven, chapter twenty of this code.

ARTICLE 23. SALVAGE YARDS.

§17-23-2. Definitions.

§17-23-4. Areas where establishment prohibited; screening requirements; existing licensed yards; approval permit required; issuance; county planning commission criteria satisfied; fee.

§17-23-8. Authority of commissioner to remove or purchase certain yards; restrictions on relicensing at location where yard terminated.

§17-23-2. Definitions.

1 As used in this article:

2 (a) "Salvage" means old or scrap copper, brass, rope,
3 rags, batteries, paper, rubber, trash, waste, junked,
4 dismantled or wrecked machinery, machine or motor
5 vehicles or any parts of any junked, dismantled or
6 wrecked machinery, machines or motor vehicles, iron,
7 steel and other old or scrap ferrous or nonferrous

8 materials.

9 (b) "Salvage yard" means any place which is main-
10 tained, operated or used for the storing, keeping,
11 buying, selling or processing of salvage, or for the
12 operation and maintenance of a motor vehicle
13 graveyard.

14 (c) "Abandoned salvage yards" means any unlicensed
15 salvage yard or any salvage yard that was previously
16 licensed but upon which the license has not been
17 renewed for more than one year.

18 (d) "Fence" means an enclosure, barrier or screen
19 constructed of materials or consisting of plantings,
20 natural objects or other appropriate means approved by
21 the commissioner and located, placed or maintained so
22 as effectively to screen at all times salvage yards and
23 the salvage therein contained from the view of persons
24 passing upon the public roads of this state.

25 (e) "Owner or operator" includes an individual, firm,
26 partnership, association or corporation or the plural
27 thereof.

28 (f) "Commissioner" means the commissioner of the
29 West Virginia department of highways.

30 (g) "Residential community" means an area wherein
31 five or more occupied private residences are located
32 within any one thousand foot radius.

33 (i) "Occupied private residence" means a private
34 residence which is occupied for at least six months each
35 year.

**§17-23-4. Areas where establishment prohibited; screen-
ing requirements; existing licensed yards;
approval permit required; issuance; county
planning commission criteria satisfied; fee.**

1 On and after the effective date of this article, (1) no
2 license shall be issued to establish a salvage yard or any
3 part thereof within one thousand feet of the nearest edge
4 of the right-of-way of any road within the state road
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
8 classified or redesignated and reclassified for purposes
9 of allocation of federal highway funds as part of the
10 federal-aid interstate or primary systems: *Provided*,
11 That this limitation shall not apply to landfills estab-
12 lished and maintained by the state or any county or
13 municipality if such landfill is effectively screened and
14 obscured by natural objects, plantings, fences or other
15 appropriate means so as not to be visible from the main
16 traveled way of the system, and (2) no license shall be
17 issued to establish a salvage yard or any part thereof
18 within five hundred feet of the nearest edge of the right-
19 of-way of any state local service road, unless the view
20 thereof from such state local service road shall be
21 effectively screened and obscured by fences: *Provided*,
22 *however*, That this limitation shall not apply to landfills
23 established and maintained by the state or any county
24 or municipality if such landfill is effectively screened
25 and obscured by natural objects, plantings, fences or
26 other appropriate means so as not to be visible from the
27 main traveled way of the system, and (3) no license may
28 be issued allowing a salvage yard within one thousand
29 feet of the nearest occupied private residence, unless
30 waived by the owner of such residence, or within five
31 thousand feet of the nearest occupied private residence
32 which is part of a residential community. The provisions
33 of this paragraph, as amended, shall apply only to
34 salvage yards licensed after the first day of April, one
35 thousand nine hundred eighty-eight.

36 The license of any salvage yard duly issued under the
37 former provisions of this article, which salvage yard or
38 any part thereof on the effective date of this article, is
39 (1) within one thousand feet of the nearest edge of the
40 right-of-way of any road within the state road system
41 designated and classified or redesignated and reclassi-
42 fied as expressway, trunkline or feeder, or any road
43 within the state road system designated and classified
44 or redesignated and reclassified for purposes of alloca-
45 tion of federal highway funds as part of the federal-aid
46 interstate or primary systems or is (2) within five
47 hundred feet of the nearest edge of the right-of-way of
48 any state local service road, or is (3) within one

49 thousand feet of the nearest occupied private residence
50 or within five thousand feet of the nearest occupied
51 private residence which is part of a residential commun-
52 ity, may be renewed only if the view of the said salvage
53 yard and all parts thereof are effectively screened from
54 the adjacent road by natural objects, plantings, fences
55 or other appropriate means or a waiver is obtained from
56 the owner of an occupied private residence. The
57 provisions of this paragraph, as amended, shall apply
58 only to salvage yards licensed after the first day of
59 April, one thousand nine hundred eighty-eight.

60 Any salvage yard which, on the effective date of this
61 article, is duly licensed under the former provisions of
62 this article may be established or continue to be
63 operated and maintained without screening by natural
64 objects, plantings, fences or other appropriate means so
65 long as any part of such salvage yard is (1) not located
66 within one thousand feet of any road within the state
67 road system designated and classified or redesignated
68 and reclassified as expressway, trunkline or feeder, or
69 any road within the state road system designated and
70 classified or redesignated and reclassified for the
71 purposes of allocation of federal highway funds as part
72 of the federal-aid interstate or primary systems or is
73 (2) not located within five hundred feet of the nearest
74 edge of the right-of-way of any state local service road,
75 or is (3) not located within one thousand feet of the
76 nearest residence or within five thousand feet of the
77 nearest occupied private residence which is part of a
78 residential community.

79 On or after the first day of July, one thousand nine
80 hundred eighty-four, any owner or operator establish-
81 ing, operating or maintaining a salvage yard for which
82 a license is required under the provisions of this article
83 is hereby required to first obtain an approval permit
84 from the county planning commission, or if the county
85 does not have a county planning commission, from an
86 appropriate office or agency designated by the county
87 commission, in which the salvage yard is located. The
88 county planning commission or designated agency or
89 office shall promulgate such reasonable rules including,

90 but not limited to, determining the effect of the proposed
91 salvage yard on residential, business or commercial
92 property investment and values, establishing a quota for
93 the number of salvage yards in the county, and the
94 social, economic and environmental impact on commu-
95 nity growth and development in utilities, health, educa-
96 tion, recreation, safety, welfare and convenience, if any,
97 before issuing such approval permit. These rules shall
98 conform to guidelines established in rules promulgated
99 by the commissioner. The fee for the approval permit
100 shall be twenty-five dollars, payable upon the filing of
101 the application on forms to be designated and approved
102 by the county planning commission or designated office
103 or agency.

104 Upon the granting of an approval permit by the
105 county planning commission, the owner or operator shall
106 then apply to the commissioner for a license to operate.
107 The commissioner may issue a license to the applicant,
108 but only after an approval permit has issued in the first
109 instance and the location of the salvage yard is in
110 compliance with the location requirements of section
111 four of this article. The approval permit requirement of
112 this section does not apply to any owner or operator who
113 has established, or is operating or maintaining, a
114 salvage yard prior to the first day of July, one thousand
115 nine hundred eighty-four.

§17-23-8. Authority of commissioner to remove or purchase certain yards; restrictions on relicensing at location where yard terminated.

1 Whenever a salvage yard is so situated that it or any
2 part thereof is or shall be required to be effectively
3 screened by fences as provided in section four of this
4 article, and the said salvage yard or any part thereof
5 cannot, in the opinion of the commissioner, be effectively
6 screened by fences to comply with the provisions of this
7 article, so that the owner or operator of the salvage yard
8 cannot lawfully continue to operate and do business in
9 compliance with the terms hereof, or if a salvage yard
10 has been abandoned, then and only in such events, the
11 commissioner, in addition to all other powers herein
12 conferred, may (1) with the consent of said owner or

13 operator pay the cost of removal of all salvage and
14 equipment from such salvage yard to such other location
15 as the said owner or operator may direct whereon a
16 salvage yard business may be conducted in compliance
17 with the provisions of this article, or (2) purchase at
18 private sale or acquire by proceeding in eminent
19 domain, in accordance with the provisions of chapter
20 fifty-four of this code, all such property rights and
21 interests, other than title to real property, as are
22 necessary and required to effect a lawful termination of
23 the salvage business conducted on any such salvage
24 yard, or on any part thereof.

25 If any salvage yard at any location is terminated
26 under the provisions of this section or by court order as
27 provided in section nine of this article, the commissioner
28 shall not thereafter license any salvage yard at any such
29 location if such location or any part thereof is (1) within
30 one thousand feet of the nearest edge of the right-of-way
31 of any road within the state road system designated and
32 classified or redesignated and reclassified as express-
33 way, trunk line or feeder, or any road within the state
34 road system designated and classified or redesignated
35 and reclassified for purposes of allocation of federal
36 highway funds as part of the federal-aid interstate or
37 primary systems or (2) within five hundred feet of the
38 nearest edge of the right-of-way of any state local service
39 road unless and until the view of such salvage yard or
40 any part thereof from such state local service road is
41 screened by fences as provided in this article.

**CHAPTER 17A. MOTOR VEHICLE
ADMINISTRATION, REGISTRATION,
CERTIFICATE OF TITLE, AND
ANTITHEFT PROVISIONS.**

ARTICLE 10. FEES FOR REGISTRATION, LICENSING, ETC.

**§17A-10-15. Additional fee for contribution to the high-
way litter control fund.**

1 In addition to each fee provided for in this article, an
2 additional one dollar fee shall be imposed on the
3 issuance of each certificate of registration and renewal
4 thereof issued pursuant to article three of this chapter.

5 All money collected under this section shall be deposited
6 in the state treasury and credited to a fund to be
7 established within the department of highways, named
8 the "Highway Litter Control Fund" for litter control
9 maintenance of the highways. The additional fee
10 provided herein shall be imposed for each application
11 for such certificate and renewal thereof made on or after
12 the first day of July, one thousand nine hundred eighty-
13 eight.

CHAPTER 20. NATURAL RESOURCES.

Article

- 5. Water Resources.
- 5F. Solid Waste Management Act.
- 7. Law Enforcement, Motorboating, Litter.
- 9. County and Regional Solid Waste Authorities.

ARTICLE 5. WATER RESOURCES.

§20-5-15. Litter along streams, criminal penalties, enforcement.

1 It shall be unlawful to place, deposit, dump or throw,
2 or cause to be placed, deposited, dumped or thrown, any
3 litter as defined in section twenty-four, article seven of
4 this chapter and also any garbage, refuse, trash, can,
5 bottle, paper, ashes, carcass of any dead animal or any
6 part thereof, offal or any other offensive or unsightly
7 matter into any river, stream, creek, branch, brook, lake
8 or pond, or upon the surface of any land within one
9 hundred yards thereof, or in such location that high
10 water or normal drainage conditions will cause any such
11 materials or substances to be washed into any river,
12 stream, creek, branch, brook, lake or pond.

13 No portion of this section shall be construed to restrict
14 an owner, renter or lessee in the use of his own private
15 property or rented or leased property or to prohibit the
16 disposal of any industrial and other wastes into waters
17 of this state in a manner consistent with the provisions
18 of article five-a of this chapter. But if any owner, renter
19 or lessee, private or otherwise, knowingly permits any
20 such materials or substances to be placed, deposited,
21 dumped or thrown in such location that high water or
22 normal drainage conditions will cause any such mate-

23 rials or substances to wash into any river, stream, creek,
24 branch, brook, lake or pond, it shall be deemed prima
25 facie evidence that such owner, renter or lessee intended
26 to violate the provisions of this section.

27 In addition to enforcement by the director, the chief
28 of the division of water resources, and the department's
29 chief law-enforcement officer, the provisions of this
30 section may be enforced by all other proper law-
31 enforcement agencies.

32 Any person violating any provision of this section shall
33 be guilty of a misdemeanor, and, upon his or her first
34 conviction, shall be fined not less than fifty nor more
35 than five hundred dollars and may be required, in the
36 discretion of the court, to pick up and remove from any
37 area of a bank of any river, stream, creek, branch,
38 brook, lake or pond, or other property with prior
39 permission of the owner, the area to be specified by the
40 court, any and all litter, garbage, refuse, trash, cans,
41 bottles, papers, ashes, carcass of any dead animal or any
42 part thereof, offal or any other offensive or unsightly
43 matter placed, deposited, dumped or thrown contrary to
44 the provisions of this section by anyone prior to the date
45 of such conviction. Upon his or her second conviction,
46 such person shall be fined not less than two hundred
47 fifty dollars nor more than one thousand dollars and
48 imprisoned in the county jail not less than twenty-four
49 hours nor more than six months. Upon such person's
50 third and successive conviction, he or she shall be fined
51 not less than five hundred dollars nor more than two
52 thousand dollars and imprisoned in the county jail not
53 less than forty-eight hours nor more than one year.

ARTICLE 5F. SOLID WASTE MANAGEMENT ACT.

- §20-5F-1. Purpose and legislative findings.
- §20-5F-2. Definitions.
- §20-5F-4. Powers and duties, rules and rule making.
- §20-5F-4a. Approval permits required for certain solid waste disposal facilities; fee required.
- §20-5F-5. Prohibitions; permits required.
- §20-5F-5a. Solid waste assessment fee; penalties.
- §20-5F-5b. Performance bonds; amount and method of bonding; bonding requirements; period of bond liability.
- §20-5F-5c. Pre-siting notice.

§20-5F-5d. Limitations on permits; encouragement of recycling.

§20-5F-1. Purpose and legislative findings.

1 (a) The purpose of this article is to transfer jurisdic-
2 tion over the management of solid waste under section
3 nine, article one, chapter sixteen of the code from the
4 department of health to the department of natural
5 resources and to establish a comprehensive program of
6 controlling solid waste disposal.

7 (b) The Legislature finds that uncontrolled, inade-
8 quately controlled and improper collection, transporta-
9 tion, processing and disposal of solid waste (1) is a
10 public nuisance and a clear and present danger to
11 people; (2) provides harborages and breeding places for
12 disease-carrying, injurious insects, rodents and other
13 pests harmful to the public health, safety and welfare;
14 (3) constitutes a danger to livestock and domestic
15 animals; (4) decreases the value of private and public
16 property, causes pollution, blight and deterioration of
17 the natural beauty and resources of the state and has
18 adverse economic and social effects on the state and its
19 citizens; (5) results in the squandering of valuable
20 nonrenewable and nonreplenishable resources contained
21 in solid waste; (6) that resource recovery and recycling
22 reduces the need for landfills and extends their life; and
23 that (7) proper disposal, resource recovery or recycling
24 of solid waste is for the general welfare of the citizens
25 of this state.

26 (c) The Legislature further finds that disposal of solid
27 waste from unknown origins in West Virginia threatens
28 the environment and the public health, safety and
29 welfare, and therefore, it is in the interest of the public
30 to identify the type, amount and origin of solid waste
31 accepted for disposal at West Virginia solid waste
32 facilities.

33 (d) The Legislature further finds that other states of
34 these United States of America have imposed stringent
35 standards for the proper collection and disposal of solid
36 waste and that the relative lack of such standards and
37 enforcement for such activities in West Virginia has
38 resulted in the importation and disposal in the state of

39 increasingly large amounts of infectious, dangerous and
40 undesirable solid wastes and hazardous waste from
41 other states by persons and firms who wish to avoid the
42 costs and requirements for proper, effective and safe
43 disposal of such wastes in the states of origin.

§20-5F-2. Definitions.

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

3 (a) "Approved solid waste facility" means a solid
4 waste facility or practice which has a valid permit
5 under this article;

6 (b) "Director", "board", "chief", "person", "persons",
7 "applicant", "water", "waters", "water resources",
8 "sewage", "point source", "code" and "department" shall
9 have the same meaning as defined in section two, article
10 five-a, chapter twenty of the code;

11 (c) "Open dump" means any solid waste disposal
12 which does not have a permit under this article, or is
13 in violation of state law, or where solid waste is disposed
14 in a manner that 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
19 or 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
22 plant, water supply treatment plant or air pollution
23 control facility, other discarded material, including
24 carcasses of any dead animal or any other offensive or
25 unsightly matter, solid, liquid, semisolid or contained
26 liquid or gaseous material resulting from industrial,
27 commercial, mining or from community activities but
28 does not include solid or dissolved material in sewage,
29 or solid or dissolved materials in irrigation return flows
30 or industrial discharges which are point sources and
31 have permits under article five-a, chapter twenty of the
32 code, or source, special nuclear or by-product material
33 as defined by the Atomic Energy Act of 1954, as

34 amended, or a hazardous waste either identified or
35 listed under article five-e, chapter twenty of the code or
36 refuse, slurry and overburden regulated under article
37 six, chapter twenty of the code;

38 (f) "Solid waste disposal" means the practice of
39 disposing solid waste including placing, depositing,
40 dumping or throwing or causing to be placed, deposited,
41 dumped or thrown any solid waste;

42 (g) "Solid waste facility" means any system, facility,
43 land, contiguous land, improvements on the land,
44 structures or other appurtenances or methods used for
45 processing, recycling or disposing of solid waste,
46 including landfills, transfer stations, resource recovery
47 facilities and other such facilities not herein specified;

48 (h) "Commercial solid waste facility" means any solid
49 waste facility which accepts solid waste generated by
50 sources other than the owner or operator of the facility
51 and shall not include an approved solid waste facility
52 owned and operated by a person for the sole purpose of
53 disposing of solid wastes created by that person or such
54 person and other persons on a cost-sharing or nonprofit
55 basis; and

56 (i) "Solid waste disposal shed" means the geographical
57 area which the resource recovery — solid waste disposal
58 authority designates and files in the state register
59 pursuant to section eight, article twenty-six, chapter
60 sixteen of this code.

§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
3 chief in the code and elsewhere described by law, they
4 are hereby empowered as follows:

5 (a) The director shall 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
9 and establishing permit application fees up to an
10 amount sufficient to defray the costs of permit review.
11 In promulgating rules and regulations the director shall

12 consider and establish requirements based on the
13 quantity 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
16 tons of solid waste per day, the environmental impact
17 of solid waste disposal, the nature, origin or character-
18 istics of the solid waste, potential for contamination of
19 public water supply, requirements for public roadway
20 standards and design for access to the facilities with
21 approval by the commissioner of the department of
22 highways, public sentiment, the financial capability of
23 the applicant, soil and geological considerations and
24 other natural resource considerations. All existing rules
25 and regulations of the department of health relating to
26 solid waste disposal shall remain valid and be enforce-
27 able by the department of natural resources on the
28 effective date of this article until changed or modified
29 by the director, in compliance with chapter twenty-nine-
30 a of the code.

31 (b) The chief, after public notice and opportunity for
32 public hearing near the affected community, may issue
33 a permit with reasonable terms and conditions for
34 installation, establishment, modification, operation or
35 abandonment of a solid waste facility: *Provided*, That
36 the director may deny the issuance of a permit on the
37 basis of information in the application or from other
38 sources including public comment, if the solid waste
39 facility may cause adverse impacts on the natural
40 resources and environmental concerns under the direc-
41 tor's purview in chapter twenty of the code, destruction
42 of aesthetic values, destruction or endangerment of the
43 property of others or is significantly adverse to the
44 public sentiment of the area where the solid waste
45 facility is, or will be, located. The director may also
46 prohibit the installation or establishment of specific
47 types and sizes of solid waste facilities in a specified
48 geographical area of the state based on the above cited
49 factors and may delete such geographical area from
50 consideration for that type and size solid waste facility.

51 (c) The director may refuse to grant any permit if he
52 has reasonable cause to believe, as indicated by docu-

53 mented evidence, that the applicant, or any officer,
54 director or manager, thereof, or shareholder owning
55 twenty percent or more of its capital stock, beneficial
56 or otherwise, or other person conducting or managing
57 the affairs of the applicant or of the proposed licensed
58 premises, in whole or part:

59 (1) Has demonstrated, either by his police record or
60 by his record as a former permittee under chapter
61 twenty of the code, a lack of respect for law and order,
62 generally, or for the laws and rules governing the
63 disposal of solid wastes;

64 (2) Has misrepresented a material fact in applying to
65 the director for a permit;

66 (3) Has been convicted of a felony or other crime
67 involving moral turpitude;

68 (4) Has exhibited a pattern of violating environmental
69 laws in any state or the United States or combination
70 thereof; or

71 (5) Has had any permit revoked under the environ-
72 mental laws of any state or the United States.

73 (d) For the purpose of this section, the conduct and
74 reputation of any owner may be imputed to the
75 applicant.

76 (e) The director, chief or any authorized representa-
77 tive, employee or agent of the department, may at
78 reasonable times, enter onto any approved solid waste
79 facility, open dump or property where solid waste is
80 present for the purpose of making an inspection or
81 investigation of solid waste disposal.

82 (f) The director, chief or any authorized representa-
83 tive, employee or agent of the department may, at
84 reasonable times, enter any approved solid waste
85 facility, open dump or property where solid waste is
86 present and take samples of the waste, soils, air or water
87 or may, upon issuance of an order, require any person
88 to take and analyze samples of such waste, soil, air or
89 water.

90 (g) The director or chief may also perform or require

91 a person, by order, to perform any and all acts necessary
92 to carry out the provisions of this article or the rules
93 promulgated thereunder.

94 (h) The chief or his authorized representative, em-
95 ployee or agent shall make periodic inspections at every
96 approved solid waste facility to effectively implement
97 and enforce the requirements of this article or its rules
98 and regulations and may, in coordination with the
99 commissioner of the department of highways, conduct at
100 weigh stations or any other adequate site or facility
101 inspections of solid waste in transit.

102 (i) The director or chief shall require and set the
103 amount of performance bonds for persons engaged in
104 the practice of solid waste disposal in this state,
105 pursuant to section five-b of this article.

106 (j) The director shall require (1) that persons dispos-
107 ing of solid waste at commercial solid waste facilities
108 within the state file with the operator of the commercial
109 solid waste facility records concerning the type, amount
110 and origin of solid waste disposed of by them; and
111 (2) that operators of commercial solid waste facilities
112 within the state maintain records and file them with the
113 director concerning the type, amount and origin of solid
114 waste accepted by them.

115 (k) The director may expend funds from the litter
116 control fund established pursuant to section twenty-six,
117 article seven, chapter twenty of this code to assist county
118 and regional solid waste authorities in the formulation
119 of their comprehensive litter and solid waste control
120 plans pursuant to section seven, article eight, chapter
121 twenty and in the construction and maintenance of
122 approved commercial solid waste facilities and collec-
123 tion equipment, including the provision of grants as well
124 as bonding assistance for those authorities which would
125 in the opinion of the director be unable to construct or
126 maintain an approved commercial solid waste facility
127 without grant funds.

**§20-5F-4a. Approval permits required for certain solid
waste disposal facilities; fee required.**

1 (a) *Approval permit required.* —

2 (1) For each commercial solid waste disposal permit
3 or similar renewal permit application filed with the
4 department of natural resources on and after the first
5 day of January, one thousand nine hundred eighty-nine,
6 prior to filing said application, a class A applicant shall
7 first obtain an approval permit from the county or
8 regional solid waste authority, as the case may be,
9 established in accordance with article nine of this
10 chapter, covering the geographic area in which the solid
11 waste disposal facility is to be located.

12 (2) For each such solid waste permit or renewal
13 permit application filed with the department of natural
14 resources after the effective date of this act but before
15 the first day of January, one thousand nine hundred
16 eighty-nine, a class A applicant shall first obtain an
17 approval permit from the county commission of the
18 county in which the solid waste disposal facility is to be
19 located.

20 (3) For each such solid waste permit or renewal
21 permit application pending before the department of
22 natural resources on the effective date of this act, a class
23 A applicant shall within thirty days of the effective date
24 of this act obtain an approval permit from the county
25 commission of the county in which the solid waste
26 disposal facility is to be located.

27 (4) Notwithstanding anything in this section to the
28 contrary, nothing contained in this section shall be
29 construed to require an applicant for such a solid waste
30 disposal permit or renewal permit to obtain more than
31 one approval permit from the county or authority
32 relating to the same solid waste disposal facility.

33 (b) *Class A applicant defined.* —

34 (1) In General. — For purposes of this section, the
35 term “class A applicant” means an applicant that
36 applies for a commercial solid waste disposal permit or
37 similar renewal permit, the effect of which would
38 authorize such applicant to handle an aggregate of ten
39 thousand tons or more of solid waste per month at one

40 or more commercial solid waste disposal facilities in the
41 county (or region if said county participates in a
42 regional solid waste authority pursuant to article nine
43 of this chapter) in which the solid waste disposal facility
44 is to be located.

45 (2) Applicant. — For purposes of paragraph (1) of
46 this subsection (b), the term “applicant” means the
47 person applying for a commercial solid waste disposal
48 permit or similar renewal permit and any person
49 related to such person by virtue of common ownership,
50 common management or family relationships as the
51 director of the department of natural resources may
52 specify including the following: Spouses, parents and
53 children and siblings.

54 (c) The fee for the approval permit is twenty-five
55 dollars payable upon the filing of the application
56 therefor with the county, county solid waste authority
57 or regional solid waste authority, as the case may be.

58 (d) Each county commission and authority shall as
59 soon as practicable promulgate reasonable rules includ-
60 ing, but not limited to, rules for determining the effect
61 of the proposed solid waste facility on residential,
62 business or commercial property investment and values,
63 and the social, economic, aesthetic and environmental
64 impact on community growth and development in
65 utilities, health, education, recreation, safety, welfare
66 and convenience, if any, before issuing any approval
67 permit pursuant to this section. Each county commission
68 and authority may deny an approval permit based upon
69 said rules and regulations or upon a finding of adverse
70 public sentiment.

71 (e) Any person adversely affected by a decision of a
72 county commission or authority under the provisions of
73 this section may appeal that decision to the circuit court
74 for the county in which the proposed facility is to be
75 located.

§20-5F-5. Prohibitions; permits required.

1 (a) Open dumps are prohibited and it shall be
2 unlawful for any person to create, contribute to or

3 operate an open dump or for any landowner to allow an
4 open dump to exist on his property unless that open
5 dump is under a compliance schedule approved by the
6 chief. Such compliance schedule shall contain an
7 enforceable sequence of actions leading to compliance
8 and shall not exceed two years. Open dumps operated
9 prior to the first day of April, one thousand nine
10 hundred eighty-eight, by a landowner or tenant for the
11 disposal of solid waste generated by the landowner or
12 tenant at his or her residence or farm shall not be
13 deemed to constitute a violation of this section if such
14 open dump did not constitute a violation of law on the
15 first day of January, one thousand nine hundred eighty-
16 eight, and unauthorized dumps which were created by
17 unknown persons shall not constitute a violation of this
18 section: *Provided*, That no person shall contribute
19 additional solid waste to any such dump after the first
20 day of April, one thousand nine hundred eighty-eight,
21 except that the owners of the land on which unautho-
22 rized dumps have been or are being made shall not be
23 liable for such unauthorized dumping unless such
24 landowners refuse to cooperate with the department of
25 natural resources in stopping such unauthorized
26 dumping.

27 (b) It shall be unlawful for any person, unless he holds
28 a valid permit from the division to install, establish,
29 construct, modify, operate or abandon any solid waste
30 facility. All approved solid waste facilities shall be
31 installed, established, constructed, modified, operated or
32 abandoned in accordance with this article, plans,
33 specifications, orders, instructions and rules in effect.

34 (c) Any permit issued under this article shall be
35 issued in compliance with the requirements of this
36 article, its rules and article five-a and the rules
37 promulgated thereunder, so that only a single permit
38 shall be required of a solid waste facility under these
39 two articles. Each permit issued under this article shall
40 have a fixed term not to exceed five years: *Provided*,
41 That the chief may administratively extend a permit
42 beyond its five year term if the approved solid waste
43 facility is in compliance with this article, its rules and

44 article five-a of this chapter and the rules promulgated
45 thereunder: *Provided, however,* That such administra-
46 tive extension may not be for more than one year. Upon
47 expiration of a permit, renewal permits may be issued
48 in compliance with rules and regulations promulgated
49 by the director of the department of natural resources.

50 (d) All existing permits of the department of health
51 for solid waste facilities under section nine, article one,
52 chapter sixteen of the code shall continue in full force
53 and effect until a permit is issued for that approved
54 solid waste facility under this article: *Provided,* That all
55 such existing permits of the department of health shall
56 expire within five years of the effective date of this
57 article. Within four years of the effective date of this
58 article, all persons holding such department of health
59 permits shall apply to the chief for a permit under this
60 article: *Provided, however,* That the chief may require
61 persons holding such existing health department
62 permits to reapply under this section prior to four years
63 from the effective date of this article if persistent
64 violations of this article, any permit term or condition,
65 orders or rules promulgated under this article, exist at
66 that facility. Notwithstanding any other provision
67 contained in this subsection, the department of natural
68 resources may enter an extension order for a period of
69 two years while an application for a permit pursuant to
70 this article is pending.

71 (e) No person may dispose in the state of any solid
72 waste, whether such waste originates in-state or out-of-
73 state, in a manner which endangers the environment or
74 the public health, safety or welfare as determined by the
75 director of the department of natural resources. Upon
76 request by the director of the department of natural
77 resources, the director of the department of health shall
78 provide technical advice concerning the disposal of solid
79 waste within the state.

80 The director of the department of natural resources
81 shall promulgate rules pursuant to chapter twenty-nine-
82 a of this code which reflect the purposes as set forth in
83 this article.

§20-5F-5a. Solid waste assessment fee; penalties.

1 (a) *Imposition.*—A solid waste assessment fee is
2 hereby levied and imposed upon the disposal of solid
3 waste at any solid waste disposal facility in this state
4 to be collected and paid as follows: (1) One dollar and
5 twenty-five cents per ton or part thereof of solid waste;
6 and (2) one additional dollar per ton or part thereof of
7 solid waste for solid waste generated from sources
8 outside the solid waste disposal shed in which the solid
9 waste disposal facility is located. The fee imposed by this
10 section shall be in addition to all other fees and taxes
11 levied by law and shall be added to and constitute part
12 of any other fee charged by the operator or owner of the
13 solid waste disposal facility.

14 (b) *Collection, return, payment and records.*—The fee
15 herein imposed shall be paid by the person disposing of
16 solid waste at a solid waste disposal facility and shall
17 be collected by the operator of the solid waste disposal
18 facility and remitted to the state tax commissioner. The
19 fee accrues at the time the solid waste is disposed of in
20 this state. The fee imposed by this section shall be due
21 and payable on or before the fifteenth day of the month
22 next succeeding the month in which the fee accrued
23 together with a return on such form or forms as
24 prescribed by the state tax commissioner. Each person
25 disposing of solid waste at a solid waste disposal facility
26 and each person required to collect the fee imposed by
27 this section shall keep complete and accurate records in
28 such form as the state tax commissioner may by
29 regulation require.

30 (c) *Regulated motor carriers.*—The fee imposed by this
31 section and section twenty-two, article five, chapter
32 seven of this code shall be considered a necessary and
33 reasonable cost for motor carriers of solid waste subject
34 to the jurisdiction of the public service commission
35 under chapter twenty-four-a of this code.
36 Notwithstanding any provision of law to the contrary,
37 upon the filing of a petition by an affected motor carrier,
38 the public service commission shall, within fourteen
39 days, reflect the cost of said fee in said motor carrier's
40 rates for solid waste removal service.

41 (d) *Definition of solid waste disposal facility.*—For
42 purposes of this section, the term “solid waste disposal
43 facility” means any approved solid waste facility or open
44 dump in this state. Nothing herein shall be construed
45 to authorize in any way the creation or operation of or
46 contribution to an open dump.

47 (e) *Exemptions.*—The following transactions shall be
48 exempt from the fee imposed by this section:

49 (1) Disposal of solid waste at a solid waste disposal
50 facility by the person who owns, operates or leases the
51 solid waste disposal facility if the facility is used
52 exclusively to dispose of waste originally produced by
53 such person in such person’s regular business or
54 personal activities or by persons utilizing the facility on
55 a cost-sharing or nonprofit basis;

56 (2) Reuse or recycling of any solid waste; and

57 (3) Disposal of residential solid waste by an individual
58 not in the business of hauling or disposing of solid waste
59 on such days and times as designated by the director of
60 the department of natural resources by regulation as
61 exempt from the solid waste assessment fee.

62 (f) *Procedure and administration.*—Each and every
63 provision of the “West Virginia Tax Procedure and
64 Administration Act” set forth in article ten, chapter
65 eleven of this code shall apply to the fee imposed by this
66 section with like effect as if said act were applicable
67 only to the fee imposed by this section and were set forth
68 in extenso herein.

69 (g) *Criminal penalties.*—Notwithstanding section two,
70 article nine, chapter eleven of this code, sections three
71 through seventeen, article nine, chapter eleven of this
72 code shall apply to the fee imposed by this section with
73 like effect as if said sections were applicable only to the
74 fee imposed by this section and were set forth in extenso
75 herein.

76 (h) *Dedication of proceeds.*—The net proceeds of the
77 fee collected pursuant to this section shall be transferred
78 to an account designated by the director of the depart-
79 ment of natural resources as such proceeds are received

80 by the state tax commissioner. Twenty-five cents for
81 each ton of solid waste disposed of in this state upon
82 which the fee imposed by this section is collected shall
83 be deposited into the "Solid Waste Reclamation and
84 Environmental Response Fund" hereinafter created for
85 the purposes hereinafter specified. The first fifty
86 thousand dollars of the remaining net proceeds of the
87 fee imposed by this section shall be transferred to the
88 public service commission for the purposes of conduct-
89 ing the study required by section one-b, article two,
90 chapter twenty-four of this code. The next one million
91 dollars of the net proceeds of the fee imposed by this
92 section in each fiscal year shall be deposited in the
93 "Solid Waste Enforcement Fund" hereinafter created
94 and for the purposes hereinafter specified. The next two
95 hundred fifty thousand dollars of the net proceeds of the
96 fee imposed by this section in each fiscal year shall be
97 deposited in the "Resource Recovery — Solid Waste
98 Disposal Authority Reserve Fund" hereinafter created
99 for the purposes hereinafter specified. The director of
100 the department of natural resources shall allocate the
101 remainder (if any) of said net proceeds among the
102 following three special revenue accounts for the purpose
103 of maintaining a reasonable balance in each special
104 revenue account, which are hereby created in the state
105 treasury:

106 (1) The "Solid Waste Enforcement Fund" which shall
107 be expended by the director of the department of
108 natural resources for administration, inspection, en-
109 forcement and permitting activities established pursu-
110 ant to this article;

111 (2) The "Resource Recovery — Solid Waste Disposal
112 Authority Reserve Fund" which shall be exclusively
113 dedicated to providing a reserve fund for the issuance
114 and security of solid waste disposal revenue bonds issued
115 by the resource recovery — solid waste disposal
116 authority pursuant to article twenty-six, chapter sixteen
117 of this code;

118 (3) The "Solid Waste Reclamation and Environmental
119 Response Fund" which may be expended by the director
120 of the department of natural resources for the purposes

121 of reclamation, clean-up and remedial actions intended
122 to minimize or mitigate damage to the environment,
123 natural resources, public water supplies, water resour-
124 ces and the public health, safety and welfare which may
125 result from open dumps or solid waste not disposed of
126 in a proper or lawful manner.

127 (i) *Findings*.—In addition to the purposes and legis-
128 lative findings set forth in section one of this article, the
129 Legislature finds as follows:

130 (1) In-state and out-of-state locations producing solid
131 waste should bear the responsibility of disposing of said
132 solid waste or compensate other localities for costs
133 associated with accepting such solid waste;

134 (2) The costs of maintaining and policing the streets
135 and highways of the state and its communities are
136 increased by long distance transportation of large
137 volumes of solid waste; and

138 (3) Local approved solid waste facilities are being
139 prematurely depleted by solid waste originating from
140 other locations.

141 (j) *Severability*.—If any provision of this section or the
142 application thereof shall for any reason be adjudged by
143 any court of competent jurisdiction to be invalid, such
144 judgment shall not affect, impair or invalidate the
145 remainder of this section, but shall be confined in its
146 operation to the provision thereof directly involved in
147 the controversy in which such judgment shall have been
148 rendered, and the applicability of such provision to other
149 person or circumstances shall not be affected thereby.

150 (k) *Effective date*.—This section is effective on the first
151 day of July, one thousand nine hundred eighty-eight.

**§20-5F-5b. Performance bonds; amount and method of
bonding; bonding requirements; period of
bond liability.**

1 (a) After a solid waste permit application has been
2 approved pursuant to this article, but before a permit
3 has been issued, each operator of a commercial solid
4 waste facility shall furnish bond, on a form to be

5 prescribed and furnished by the director, payable to the
6 state of West Virginia and conditioned upon the
7 operator faithfully performing all of the requirements
8 of this article, regulations promulgated hereunder and
9 the permit. The amount of the bond required shall be
10 one thousand dollars per acre and may include an
11 additional amount determined by the director based
12 upon the total estimated cost to the state of completing
13 final closure according to the permit granted to such
14 facility and such measures as are necessary to prevent
15 adverse effects upon the environment; such measures
16 shall include, but not be limited to, satisfactory
17 monitoring, post-closure care and remedial measures:
18 *Provided*, That the amount of the bond shall not exceed
19 eight thousand dollars per acre. All permits shall be
20 bonded for at least ten thousand dollars. The bond shall
21 cover either (1) the entire area to be used for the
22 disposal of solid waste, or (2) that increment of land
23 within the permit area upon which the operator will
24 initiate and conduct commercial solid waste facility
25 operations within the initial term of the permit pursuant
26 to rules and regulations promulgated by the director
27 pursuant to chapter twenty-nine-a of this code. If the
28 operator chooses to use incremental bonding, as succeed-
29 ing increments of commercial solid waste facility
30 operations are to be initiated and conducted within the
31 permit area, the operator shall file with the director an
32 additional bond or bonds to cover such increments in
33 accordance with this section: *Provided*, That once the
34 operator has chosen to proceed with bonding either the
35 entire area to be used for the disposal of solid waste or
36 with incremental bonding, the operator shall continue
37 bonding in that manner for the term of the permit.

38 (b) The period of liability for performance bond
39 coverage shall commence with issuance of a permit and
40 continue for the full term of the permit and for a period
41 of up to ten full years after final closure of the permit
42 site: *Provided*, That any further time period necessary
43 to achieve compliance with the requirements in the
44 closure plan of the permit shall be considered an
45 additional liability period.

46 (c) The form of the performance bond shall be
47 approved by the director and may include, at the option
48 of the director, surety bonding, collateral bonding
49 (including cash and securities), establishment of an
50 escrow account, letters of credit, performance bonding
51 fund participation (as established by the director), self-
52 bonding or a combination of these methods. If collateral
53 bonding is used, the operator may elect to deposit cash,
54 or collateral securities or certificates as follows: Bonds
55 of the United States or its possessions, of the federal
56 land bank, or of the homeowners' loan corporation; full
57 faith and credit general obligation bonds of the state of
58 West Virginia, or other states, and of any county,
59 district or municipality of the state of West Virginia or
60 other states; or certificates of deposit in a bank in this
61 state, which certificates shall be in favor of the
62 department. The cash deposit or market value of such
63 securities or certificates shall be equal to or greater than
64 the sum of the bond. The director shall, upon receipt of
65 any such deposit of cash, securities or certificates,
66 promptly place the same with the treasurer of the state
67 of West Virginia whose duty it shall be to receive and
68 hold the same in the name of the state in trust for the
69 purpose for which the deposit is made when the permit
70 is issued. The operator making the deposit shall be
71 entitled from time to time to receive from the state
72 treasurer, upon the written approval of the director, the
73 whole or any portion of any cash, securities or certifi-
74 cates so deposited, upon depositing with him in lieu
75 thereof, cash or other securities or certificates of the
76 classes herein specified having value equal to or greater
77 than the sum of the bond.

78 (d) Within twelve months prior to the expiration of
79 the ten-year period following final closure, the depart-
80 ment will conduct a final inspection of the facility. The
81 purpose of the inspection shall be to determine com-
82 pliance with this article, the department's regulations,
83 the terms and conditions of the permit, orders of the
84 department and the terms and conditions of the bond.
85 Based upon this determination, the department will
86 either forfeit the bond prior to the expiration of the ten-
87 year period following final closure, or release the bond

88 at the expiration of the ten-year period following final
89 closure. Bond release requirements shall be provided in
90 regulations promulgated by the director.

91 (e) If the operator of a commercial solid waste facility
92 abandons the operation of a solid waste disposal facility
93 for which a permit is required by this article or if the
94 permittee fails or refuses to comply with the require-
95 ments of this article in any respect for which liability
96 has been charged on the bond, the director shall declare
97 the bond forfeited and shall certify the same to the
98 attorney general which shall proceed to enforce and
99 collect the amount of liability forfeited thereon, and
100 where the operation has deposited cash or securities as
101 collateral in lieu of corporate surety, the secretary shall
102 declare said collateral forfeited and shall direct the state
103 treasurer to pay said funds into a waste management
104 fund to be used by the director to effect proper closure
105 and to defray the cost of administering this article.
106 Should any corporate surety fail to promptly pay, in full,
107 forfeited bond, it shall be disqualified from writing any
108 further surety bonds under this article.

§20-5F-5c. Pre-siting notice.

1 (a) Any person investigating an area for the purpose
2 of siting a commercial solid waste facility where no
3 current solid waste permit exists, in order to determine
4 a feasible, approximate location, shall prior to filing an
5 application for a solid waste permit publish a Class II
6 legal advertisement in a qualified newspaper serving
7 the county where the proposed site is to be located. Such
8 notice shall inform the public of the location, nature and
9 other details of the proposed activity as prescribed in
10 rules and regulations to be promulgated as soon as
11 practicable by the director. Within five days of such
12 publication such person shall file with the director a
13 pre-siting notice, which shall be made in writing on
14 forms prescribed by the director and shall be signed and
15 verified by the applicant. Such notice shall contain a
16 certification of publication from a qualified newspaper,
17 description of the area, the period of investigative
18 review, a United States geological survey topographic
19 map and a map showing the location of property

20 boundaries of the area proposed for siting and other
21 such information as required by rules and regulations
22 promulgated pursuant to this section. The director, in
23 his discretion, may hold a public hearing on the pre-
24 siting notice if he receives information or public
25 comment which warrants such a hearing. The director
26 shall define pre-siting activities by promulgating rules
27 and regulations pursuant to chapter twenty-nine-a of
28 this code.

29 (b) On or after the first day of January, one thousand
30 nine hundred eighty-nine, the pre-siting notice, as
31 prescribed by the director, shall also be filed with the
32 county or regional solid waste authority, established
33 pursuant to article nine, chapter twenty of this code, in
34 which the proposed site is located within five days of the
35 publication of the notice provided for in subsection (a).
36 Within ninety days of receiving such pre-siting notice
37 the county or regional solid waste authority shall submit
38 its comments and may make a recommendation to the
39 director on the proposed siting of the solid waste facility
40 based on the impacts such a site and facility would have
41 upon transportation facilities, public water supplies,
42 land use patterns, commercial, agricultural and residen-
43 tial real estate values, environmental quality, aesthetics
44 and socioeconomic conditions. The authority may hold
45 public hearings and solicit public comment for the
46 purposes of this section.

47 (c) The director may deny pre-siting activities under
48 subsection (a) and may deny issuance of a permit for a
49 solid waste facility under this article on the basis of the
50 siting recommendation of the county or regional solid
51 waste authority.

§20-5F-5d. Limitations on permits; encouragement of recycling.

1 (a) The director shall by rules and regulations
2 promulgated in accordance with chapter twenty-nine-a
3 of this code establish standards and criteria applicable
4 to commercial solid waste facilities for the visual
5 screening of such facilities from any interstate highway,
6 turnpike, federal and state primary highway or scenic

7 parkway. The director and the chief shall not issue a
8 permit under this article to install, establish, construct
9 or operate any commercial solid waste facility without
10 proper visual screening from any interstate highway,
11 turnpike, federal or state primary highway or scenic
12 parkway: *Provided*, That the director and the chief may
13 renew such permits, and may also issue permits to
14 renew those certificates of approval previously issued by
15 the director of the department of health, for those solid
16 waste facilities holding such a valid permit or certificate
17 pursuant to this article on the first day of July, one
18 thousand nine hundred eighty-eight: *Provided, however*,
19 That no such permits or certificates of approval shall be
20 renewed for a period extending beyond the first day of
21 July, one thousand nine hundred ninety-three.

22 (b) The director and the chief shall give substantial
23 deference and consideration to the county or regional
24 litter and solid waste control plan approved pursuant to
25 article nine of this chapter and to the comprehensive
26 county plan adopted by the county commission pursuant
27 to article seventeen, chapter eight of this code in the
28 issuance or the renewal of any permit under this article:
29 *Provided*, That the authority and discretion of the
30 director and the chief under this article shall not be
31 diminished or modified by this subsection.

32 (c) On or before the first day of July, one thousand
33 nine hundred ninety-one, the director is authorized and
34 directed to promulgate legislative rules and regulations
35 pursuant to chapter twenty-nine-a of this code encourag-
36 ing each commercial solid waste facility and each
37 person, partnership, corporation and governmental
38 agency engaged in the commercial collection, transpor-
39 tation, processing and disposal of solid waste to recycle
40 paper, glass, plastic and aluminum materials and such
41 other solid wastes as the director may specify.

42 (d) On or before the first day of July, one thousand
43 nine hundred ninety-one, and concurrently with the
44 promulgation of regulations pursuant to subsection (c)
45 hereof, the director is authorized and directed to
46 promulgate legislative rules and regulations pursuant to
47 chapter twenty-nine-a of this code encouraging each

48 person, partnership, corporation and governmental
 49 agency subscribing to solid waste collection services to
 50 segregate paper, glass, plastic and aluminum material,
 51 and such other solid waste material as the director may
 52 specify, prior to collection of such wastes at their source
 53 for purposes of recycling.

54 (e) Under no condition shall transloading solid waste
 55 materials be permitted within a municipality except
 56 those facilities owned or operated on behalf of the
 57 municipality in which the facility is located.

ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.

§20-7-25. West Virginia litter control and recycling programs; additional duties of director; grants to counties and municipalities; and regulations relating thereto.

§20-7-26. Unlawful disposal of litter; civil and criminal penalties; litter control fund; evidence; notice of violations; litter receptacle placement; penalties; duty to enforce violations.

§20-7-27. Litter pickup and removal; education; government recycling responsibilities; monitoring and evaluation; study commission; repeal; restrictions on beverage containers; report to Legislature.

§20-7-25. West Virginia litter control and recycling programs; additional duties of director; grants to counties and municipalities; and regulations relating thereto.

1 (a) In addition to all other powers, duties and respon-
 2 sibilities granted and assigned to the director of the
 3 department of natural resources in this chapter and
 4 elsewhere by law, the director, in the administration of
 5 the West Virginia litter control program created by this
 6 section, shall:

7 (1) Coordinate all industry and business organizations
 8 seeking to aid in the litter control and recycling effort;

9 (2) Cooperate with all local governments to accomp-
 10 lish coordination of local litter control and recycling
 11 efforts;

12 (3) Encourage, organize, coordinate and increase
 13 public awareness of and participation in all voluntary
 14 litter control and recycling campaigns, including citizen
 15 litter watch programs, seeking to focus the attention of

17 of the state and local governments and of private
18 recycling centers;

19 (4) Recommend to local governing bodies that they
20 adopt ordinances similar to the provisions of section
21 twenty-six of this article;

22 (5) Investigate the methods and success of techniques
23 of litter control, removal and disposal utilized in other
24 states, and develop, encourage, organize and coordinate
25 local litter control programs funded by grants awarded
26 pursuant to subsection (b) of this section utilizing such
27 successful techniques;

28 (6) Investigate the availability of, and apply for, funds
29 available from any and all private or public sources to
30 be used in the litter control program created by this
31 section;

32 (7) Promulgate regulations pursuant to article three,
33 chapter twenty-nine-a of this code establishing criteria
34 for the awarding of direct and/or matching grants for
35 the study of available research and development in the
36 fields of litter control, removal and disposal, methods for
37 the implementation of such research and development,
38 and the development of public educational programs
39 concerning litter control;

40 (8) Promulgate regulations pursuant to article three,
41 chapter twenty-nine-a of this code designating public
42 areas where litter receptacles shall be placed in
43 accordance with subsection (d), section twenty-six of this
44 article. The director is further authorized to specify
45 within such regulations the minimum number of litter
46 receptacles required to be placed at each designated
47 public area;

48 (9) Attract to the state persons or industries that
49 purchase, process or use recyclable materials; and

50 (10) Contract for the development, production and
51 broadcast of radio and television messages promoting
52 the West Virginia litter control program. The messages
53 should increase public awareness of and promote citizen
54 responsibility toward the reduction of litter. The
55 director shall undertake the activities authorized in this

56 subdivision no later than the fifteenth day of September,
57 one thousand nine hundred eighty-eight.

58 (b) Commencing on the first day of July, one thousand
59 nine hundred eighty-six, the director shall expend
60 annually at least fifty percent of the moneys credited to
61 the "litter control fund" in the previous fiscal year for
62 matching grants to counties and municipalities for the
63 initiation and administration of litter control programs.
64 The director may promulgate regulations pursuant to
65 article three, chapter twenty-nine-a of this code estab-
66 lishing criteria for the awarding of matching grants.

67 (c) The director of the department of natural resour-
68 ces in cooperation with the commissioner of highways,
69 the department of commerce, the department of public
70 safety, the United States forestry service, and other
71 local, state and federal law-enforcement agencies, shall
72 be responsible for the administration and enforcement
73 of all laws and regulations relating to the maintenance
74 of cleanliness and improvement of appearances on and
75 along highways, roads, streets, alleys and any other
76 private or public areas of the state and these other
77 agencies shall make recommendations to the director
78 from time to time concerning means and methods of
79 accomplishing litter control consistent with the provi-
80 sions of this chapter. Such cooperation shall include, but
81 not be limited to, contracts with the commissioner of
82 highways to operate the litter control program.

83 (d) All other state agencies and local governments
84 shall cooperate with the director in effecting the
85 purposes of the litter control program.

§20-7-26. Unlawful disposal of litter; civil and criminal penalties; litter control fund; evidence; notice of violations; litter receptacle placement; penalties; duty to enforce violations.

1 (a) Any person who places, deposits, dumps or throws
2 or causes to be placed, deposited, dumped or thrown any
3 litter as defined in section twenty-four, article seven of
4 this chapter, in or upon any public or private highway,
5 road, street or alley, or upon any private property
6 without the consent of the owner, or in or upon any

7 public park or other public property other than in such
8 place as may be set aside for such purpose by the
9 governing body having charge thereof, is guilty of a
10 misdemeanor, and, upon his or her first conviction, shall
11 be fined not less than fifty nor more than five hundred
12 dollars and may be required, in the discretion of the
13 court, to pick up and remove from any public highway,
14 road, street, alley or any other public park or public
15 property as designated by the court, any and all litter,
16 garbage, refuse, trash, cans, bottles, papers, ashes,
17 carcass of any dead animal or any part thereof, offal or
18 any other offensive or unsightly matter placed, depos-
19 ited, dumped or thrown contrary to the provisions of this
20 section by anyone prior to the date of such conviction.
21 Upon his or her second conviction, such person shall be
22 fined not less than two hundred fifty dollars nor more
23 than one thousand dollars and imprisoned in the county
24 jail not less than twenty-four hours nor more than six
25 months. Upon such person's third and successive
26 conviction, he or she shall be fined not less than five
27 hundred dollars nor more than two thousand dollars and
28 imprisoned in the county jail not less than forty-eight
29 hours nor more than one year.

30 If any litter be thrown or cast from a motor vehicle
31 or boat, such action is prima facie evidence that the
32 driver of such motor vehicle or boat intended to violate
33 the provisions of this section. If any litter be dumped
34 or discharged from a motor vehicle or boat, such action
35 is prima facie evidence that the owner and driver of
36 such motor vehicle or boat intended to violate the
37 provisions of this section.

38 (b) Any litter found on any public or private property
39 with any indication of ownership on it will be evidence
40 creating a rebuttable inference it was deposited improper-
41 ly by the person whose identity is indicated, and any
42 person who improperly disposes of litter shall be subject
43 to either a civil fine of up to five hundred dollars for
44 such litter or required to pay the costs of removal of
45 such litter if the removal of such litter is required to
46 be done by the department, at the discretion of the
47 director. All such fines and costs shall be deposited to

48 the litter control fund: *Provided*, That no inference shall
49 be drawn solely from the presence of any logo, trade-
50 mark, trade name or other similar mass reproduced
51 identifying character appearing on litter found.

52 (c) Every person who is convicted of or pleads guilty
53 to disposing of litter in violation of subsection (a) of this
54 section shall pay the sum of not less than fifty dollars
55 nor more than five hundred dollars as costs for cleanup,
56 investigation and prosecution in such case, in addition
57 to any other court costs that the court is otherwise
58 required by law to impose upon such convicted person.
59 The clerk of the circuit court, magistrate court or
60 municipal court wherein such additional costs are
61 imposed shall, on or before the last day of each month,
62 transmit all such costs received under this subsection to
63 the state treasurer for deposit in the state treasury to
64 the credit of a special revenue fund to be known as the
65 litter control fund which is hereby created. All moneys
66 collected and received under this subsection and paid
67 into the state treasury and credited to the litter control
68 fund in the manner prescribed by section two, article
69 two, chapter twelve of this code, shall be kept and
70 maintained for expenditure by the director for the
71 specific purposes as provided by law, and shall not be
72 treated by the state auditor and treasurer as part of the
73 general revenue of the state. At the end of each fiscal
74 year, any unexpended balance of the litter control fund
75 shall not be transferred to the general revenue fund, but
76 shall remain in the litter control fund.

77 (d) The commissioner of motor vehicles, upon regis-
78 tering a motor vehicle or issuing an operator's or
79 chauffeur's license, shall issue to the owner or licensee,
80 as the case may be, a copy of subsection (a) of this
81 section.

82 The commissioner of highways may cause appropriate
83 signs to be placed at the state boundary on each primary
84 and secondary road, and at other locations throughout
85 the state, informing those entering the state of the
86 maximum penalty provided for disposing of litter in
87 violation of subsection (a) of this section.

88 (e) Any state agency or political subdivision that
89 owns, operates or otherwise controls any public area as
90 may be designated by the director by regulation
91 promulgated pursuant to subdivision (8), subsection (a),
92 section twenty-five of this article, shall procure and
93 place litter receptacles at his own expense upon his
94 premises and shall remove and dispose of litter collected
95 in such litter receptacles. After receiving two written
96 warnings from any law-enforcement officer or officers
97 to comply with this subsection or the said regulations
98 of the director, any person who fails to place and
99 maintain such litter receptacles upon his premises in
100 violation of this subsection or the regulations of the
101 director shall be fined fifteen dollars per day of such
102 violation.

103 (f) No portion of this section shall be construed to
104 restrict a private owner in the use of his own private
105 property in any manner otherwise authorized by law.

106 (g) Any law-enforcement officer who shall observe a
107 person violating the provisions of this section shall have
108 a mandatory duty to arrest or otherwise prosecute the
109 violator to the limits provided herein. The West Virginia
110 department of highways shall investigate and cause to
111 be prosecuted violations of this section occurring upon
112 the highways of the state as the term "highways" is
113 defined in chapter seventeen of this code.

**§20-7-27. Litter pickup and removal; education; govern-
ment recycling responsibilities; monitoring
and evaluation; study commission; repeal;
restrictions on beverage containers; report to
Legislature.**

1 (a) *Litter pickup and removal.*—(1) Each county
2 commission and the regional jail authority may establish
3 a jail or prison inmate program including a regular
4 litter pickup work regimen under proper supervision
5 pursuant to section four, article fifteen, chapter seven-
6 teen of this code. Funding for said programs shall be
7 from the litter control fund. Funding requirements may
8 include salaries for additional personnel needed for the
9 program. Said program may include the cooperative

10 help of the department of highways or any other
11 voluntary state, local, private, civic or public agency for
12 personnel, equipment, or materials in establishing a
13 county- or region-wide, continual program of inmate
14 litter pickup. Upon final approval of the projected cost
15 of the program for a given fiscal year, the director of
16 the department of natural resources shall disburse the
17 approved amount to the county or regional authority.
18 The funds will be used by the authority to reimburse
19 the county commission or regional jail authority for its
20 expenses related to the program and to pay other costs
21 related to the use of inmates for litter pickup. Nothing
22 contained herein shall preclude a county or counties
23 from expending whatever additional funds its commis-
24 sion or commissions may deem appropriate from any
25 other revenue source in furtherance of said program.

26 (2) All persons involved with litter pickup may
27 separate identifiable recyclable materials from other
28 litter collected. The funds resulting from the sale of
29 those recyclable materials shall be returned to the litter
30 control fund.

31 (3) The county or regional solid waste authority may
32 also contract with local governments, civic organizations
33 or chief correctional officers in any county to implement
34 litter pickup and removal pursuant to this act when the
35 state offender work force is not available. In such cases,
36 the contract provisions shall require that identifiable
37 recyclable materials shall be separated from other litter
38 collected, with resulting funds returned to the litter
39 control fund. Priority shall be given to those contracts
40 that maximize the use of community service hours by
41 inmates and youth employment programs.

42 (b) *Education.*—(1) The department of education in
43 cooperation with the department of natural resources
44 shall distribute educational materials to the schools
45 based on the goals of litter cleanup and proper solid
46 waste disposal, the rationale for said goals, and how
47 primary and secondary school students can contribute
48 to the achievement of such goals. The department of
49 education shall further incorporate such information
50 into the curriculum of the public school system as

51 appropriate.

52 (2) The department of commerce, the department of
53 highways and local governments shall conduct public
54 awareness programs to notify the public of the provi-
55 sions of this law and how they can participate, to inform
56 them as to the rationale behind the provisions of this
57 law, to advise them of other avenues for achievement of
58 the noted goals and to encourage their participation.

59 (3) The department of natural resources and the
60 resource recovery — solid waste authority shall provide
61 technical assistance to local governments in the imple-
62 mentation of this law.

63 (c) *Government recycling responsibilities.*—(1) All
64 state agencies and regional planning councils may
65 establish and implement aluminum container, glass and
66 paper recycling programs at their public facilities. To
67 the extent practicable, programs for other metals,
68 plastics, rubber and other recyclable materials may be
69 established and implemented. The moneys collected
70 from the sale of such materials shall be deposited and
71 accounted for in the litter control fund pursuant to the
72 authority of section twenty-six, article seven, chapter
73 twenty of this code.

74 (2) To further promote recycling and reduction of the
75 waste stream, county and municipal governments shall
76 consider the establishment of recycling programs as
77 provided for in this section in the operation of their
78 facilities and shall evaluate the cost-effectiveness of:

79 (A) Procedures that separate identifiable recyclable
80 materials from solid waste collected; and

81 (B) Programs that provide for:

82 (i) The establishment of a collection place for recyc-
83 lables at all landfills and other interim solid waste
84 collection sites and arrangements for the material
85 collected to be recycled;

86 (ii) Public notification of such places and encourage-
87 ment to participate;

88 (iii) The use of rate differentials at landfills to

89 facilitate public participation in on-site recycling
90 programs.

91 (d) *Monitoring and evaluation.*—Each affected agency
92 and local government shall monitor and evaluate the
93 programs implemented pursuant to this law.

94 (e) *Restrictions on beverage containers.*—(1) After the
95 first day of January, one thousand nine hundred eighty-
96 nine, no beverage shall be sold at retail within the state
97 in a metal container designed and constructed so that
98 the container is opened by detaching a metal ring or tab,
99 unless the tab is made of tape, foil or other soft material.
100 For the purposes of this section, “beverage” means
101 alcoholic beverages, including beer or other malt
102 beverages, liquor, wine, vermouth and sparkling wine,
103 and nonalcoholic beverages, including fruit juice,
104 mineral water and soda water and similar nonalcoholic
105 carbonated drinks intended for human consumption.

106 (2) The department of natural resources shall impose
107 an assessment of one hundred dollars for each violation
108 of the provisions of subdivision (1) of this subsection. If
109 the violation is of a continuing nature, each day during
110 which such violation occurs shall constitute a separate
111 and distinct offense and shall be subject to a separate
112 assessment. All contested cases under this subdivision
113 shall be subject to the provisions of chapter twenty-nine-
114 a.

115 (3) Assessments collected pursuant to subdivision
116 (2) of this subsection shall be deposited into the litter
117 control fund.

118 (f) *Report to the Legislature.*—The director of the
119 department of natural resources shall submit a report
120 to the Speaker of the House and the President of the
121 Senate not later than the first day of March, one
122 thousand nine hundred ninety, and every five years
123 thereafter regarding the effectiveness of the programs
124 authorized by this law.

ARTICLE 9. COUNTY AND REGIONAL SOLID WASTE AUTHORITIES.

§20-9-1. Legislative findings and purposes.

§20-9-2. Definitions.

- §20-9-3. Creation of county solid waste authority; appointment to board of directors; vacancies.
- §20-9-4. Establishment of regional solid waste authorities authorized; successor to county solid waste authorities; appointments to board of directors; vacancies.
- §20-9-5. Authorities as successor to county commissions and former county solid waste authorities.
- §20-9-6. Management of authority vested in board of directors; expenses paid by county commissions, procedure.
- §20-9-7. Authority to develop litter and solid waste control plan; contents of plan; approval by resource recovery — solid waste disposal authority; development of plan by director, advisory rules.
- §20-9-8. Assistance of department of natural resources and the department of health to solid waste authorities.
- §20-9-9. Mandatory disposal; proof required; penalty imposed.
- §20-9-10. Acquisition of land; operation of public solid waste landfills and other facilities; restrictions on solid wastes generated outside authority area; fees.
- §20-9-11. Use of prisoners for litter pick-up; funds provided from litter control fund; county commission, regional jail authority and sheriff to cooperate with solid waste authority.
- §20-9-12. Powers, duties and responsibilities of authority generally.
- §20-9-13. Liberal construction, provisions severable.

§20-9-1. Legislative findings and purposes.

1 The Legislature finds that the improper and uncontrolled collection, transportation, processing and disposal of domestic and commercial garbage, refuse and other solid wastes in the state of West Virginia results in: (1) A public nuisance and a clear and present danger to the citizens of West Virginia, (2) the degradation of the state's environmental quality including both surface and ground waters which provide essential and irreplaceable sources of domestic and industrial water supplies, (3) provides harborages and breeding places for disease-carrying, injurious insects, rodents and other pests harmful to the public health, safety and welfare, (4) decreases public and private property values and results in the blight and deterioration of the natural beauty of the state, (5) has adverse social and economic effects on the state and its citizens, and (6) results in the waste and squandering of valuable nonrenewable resources contained in such solid wastes which can be recovered through proper recycling and resource-recovery techniques with great social and economic benefits for the state.

22 The Legislature further finds that the proper collec-
23 tion, transportation, processing, recycling and disposal
24 of solid waste is for the general welfare of the citizens
25 of the state and that the lack of proper and effective
26 solid waste collection services and disposal facilities
27 demands that the state of West Virginia and its political
28 subdivisions act promptly to secure such services and
29 facilities in both the public and private sectors.

30 The Legislature further finds that other states of these
31 United States of America have imposed stringent
32 standards for the proper collection and disposal of solid
33 waste and that the relative lack of such standards and
34 enforcement for such activities in West Virginia has
35 resulted in the importation and disposal into the state
36 of increasingly large amounts of infectious, dangerous
37 and undesirable solid waste and hazardous waste from
38 other states by persons and firms who wish to avoid the
39 costs and requirements for proper, effective and safe
40 disposal of such wastes in the states of origin.

41 Therefore, it is the purpose of the Legislature to
42 protect the public health and welfare by providing for
43 a comprehensive program of solid waste collection,
44 processing, recycling and disposal to be implemented by
45 state and local government in cooperation with the
46 private sector. The Legislature intends to accomplish
47 this goal by establishing county and regional solid waste
48 authorities throughout the state to develop and imple-
49 ment litter and solid waste control plans. It is the
50 further purpose of the Legislature to restrict and
51 regulate persons and firms from exploiting and endan-
52 gering the public health and welfare of the state by
53 disposing of solid wastes and other dangerous materials
54 which would not be accepted for disposal in the location
55 where such wastes or materials were generated.

§20-9-2. Definitions.

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

3 (a) "Approved solid waste facility" means a commer-
4 cial solid waste facility or practice which has a valid
5 permit under this article.

6 (b) "Director", "board", "chief", "person", "persons",
7 "applicant", "water", "waters", "water resources",
8 "sewage", "point source", "code" and "department" shall
9 have the same meaning as defined in section two, article
10 five-a, chapter twenty of the code;

11 (c) "Open dump" means any solid waste disposal
12 which does not have a permit under this article, or is
13 in violation of state law, or where solid waste is disposed
14 in a manner that 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
19 or 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
22 plant, water supply treatment plant or air pollution
23 control facility, other discarded material, including
24 carcasses of any dead animal or any other offensive or
25 unsightly matter, solid, liquid, semisolid or contained
26 liquid or gaseous material resulting from industrial,
27 commercial, mining or from community activities but
28 does not include solid or dissolved material in sewage,
29 or solid or dissolved materials in irrigation return flows
30 or industrial discharges which are point sources and
31 have permits under article five-a, chapter twenty of the
32 code, or source, special nuclear or by-product material
33 as defined by the Atomic Energy Act of 1954, as
34 amended, or a hazardous waste either identified or
35 listed under article five-e, chapter twenty of the code or
36 refuse, slurry and overburden regulated under article
37 six, chapter twenty of the code;

38 (f) "Solid waste disposal" means the practice of
39 disposing solid waste including placing, depositing,
40 dumping or throwing or causing to be placed, deposited,
41 dumped or thrown any solid waste;

42 (g) "Solid waste facility" means any system, facility,
43 land, contiguous land, improvements on the land,
44 structures or other appurtenances or methods used for
45 processing, recycling or disposing of solid waste,

46 including landfills, transfer stations, resource recovery
47 facilities and other such facilities not herein specified;

48 (h) "Commercial solid waste facility" means any solid
49 waste facility which accepts solid waste generated by
50 the sources other than the owner or operator of the
51 facility and shall not include an approved solid waste
52 facility owned and operated by a person for the sole
53 purpose of disposing of solid wastes created by that
54 person or such person and other persons on a cost-
55 sharing or nonprofit basis; and

56 (i) "Solid waste disposal shed" means the geographical
57 area which the resource recovery — solid waste disposal
58 authority designates and files in the state register
59 pursuant to section eight, article twenty-six, chapter
60 sixteen of this code.

**§20-9-3. Creation of county solid waste authority; appoint-
ment to board of directors; vacancies.**

1 (a) Each and every county solid waste authority
2 authorized and created by the county commission of any
3 county pursuant to former article sixteen, chapter seven
4 of this code is hereby abolished on and after the first
5 day of January, one thousand nine hundred eighty-nine.
6 On and after the first day of January, one thousand nine
7 hundred eighty-nine, a new county solid waste authority
8 is hereby created and established as a public agency in
9 every county of the state and shall be the successor to
10 each county solid waste authority which may have been
11 created by the county commission: *Provided*, That such
12 county solid waste authorities shall not be established or
13 shall cease to exist, as the case may be, in those counties
14 which establish a regional solid waste authority pursu-
15 ant to section four of this article. The resource recovery
16 — solid waste disposal authority may require a county
17 solid waste authority to cooperate and participate in
18 programs with other authorities if the need arises.

19 (b) The authority board of directors shall be com-
20 prised of five members who shall be appointed as
21 follows: One by the director of the department of natural
22 resources, two by the county commission, one by the
23 director of the department of health and one by the

24 board of supervisors for the soil conservation district in
25 which the county is situated. The members of the board
26 shall be appointed for terms of four years for which the
27 initial terms shall start on the first day of July, one
28 thousand nine hundred eighty-eight: *Provided*, That the
29 first two members appointed by the county commission
30 shall be appointed to initial terms of two and four years,
31 respectively, and for terms of four years for each
32 appointment thereafter. The members of the board shall
33 receive no compensation for their service thereon but
34 shall be reimbursed for their actual expenses incurred
35 in the discharge of their duties. Vacancies in the office
36 of member of the board of directors shall be filled for
37 the balance of the remaining term by the appropriate
38 appointing authority within sixty days after such
39 vacancy occurs. No member may have any financial
40 interest in the collection, transportation, processing,
41 recycling or the disposal of refuse, garbage, solid waste
42 or hazardous waste.

**§20-9-4. Establishment of regional solid waste authorities
authorized; successor to county solid waste
authorities; appointments to board of direc-
tors; vacancies.**

1 (a) On and after the first day of January, one
2 thousand nine hundred eighty-nine, any two or more
3 counties within the same solid waste shed and with the
4 approval of the resource recovery — solid waste disposal
5 authority, may establish a regional solid waste author-
6 ity. Such a regional solid waste authority shall be a
7 public agency and shall be the successor to any county
8 solid waste authority existing on the date of said
9 approval by the resource recovery — solid waste
10 disposal authority. The resource recovery — solid waste
11 disposal authority may require a county authority to
12 cooperate and participate in programs with other county
13 and regional authorities if the need arises.

14 (b) The board of directors of the regional solid waste
15 authority shall be comprised and appointed as follows:
16 One by the director of the department of natural
17 resources, two by the county commission of each county
18 participating therein, one by the director of the

19 department of health, one appointed by the board of
20 supervisors for each soil conservation district in which
21 a county of the region is situated and two municipal
22 representatives from each county having one or more
23 participating municipality to be selected by the mayors
24 of the participating municipality from each such county.
25 The members of the board shall be appointed for terms
26 of four years for which the initial terms shall start on
27 the first day of July, one thousand nine hundred eighty-
28 eight: *Provided*, That the members appointed by the
29 county commission shall be appointed to initial terms of
30 two and four years, respectively, and to terms of four
31 years after the expiration of each such initial term. The
32 members of the board shall receive no compensation for
33 their service thereon but shall be reimbursed their
34 actual expenses incurred in the discharge of their
35 duties. Vacancies in the office of member of the board
36 of directors shall be filled for the balance of the
37 remaining term by the appropriate appointing authority
38 within sixty days after such vacancy occurs. No member
39 may have any financial interest in the collection,
40 transportation, processing, recycling or the disposal of
41 refuse, garbage, solid waste or hazardous waste.

**§20-9-5. Authorities as successor to county commissions
and former county solid waste authorities.**

1 The county and regional solid waste authorities
2 created herein, as the case may be, shall be successor
3 to the county commissions of each county, or the solid
4 waste authority previously created by said commission
5 and abolished as of the first day of January, one
6 thousand nine hundred eighty-nine, by this article, in
7 the ownership, operation and maintenance of such
8 dumps, landfills and other solid waste facilities, solid
9 waste collection services and litter and solid waste
10 control programs. The county commission of each
11 county, or the solid waste authority thereof, shall, on the
12 first day of January, one thousand nine hundred eighty-
13 nine, transfer all ownership, operation, control and other
14 rights, title and interests in such solid waste facilities,
15 services and programs, and the properties, funds,
16 appropriations and contracts related thereto to the

17 county or regional solid waste authority established
18 pursuant to this article.

**§20-9-6. Management of authority vested in board of
directors; expenses paid by county commis-
sions, procedure.**

1 (a) The management and control of the authority, its
2 property, operations and affairs of any nature shall be
3 vested in and governed by the board of directors.

4 (b) The expenses of any county solid waste authority
5 incurred for necessary secretarial and clerical assist-
6 ance, office supplies and general administrative ex-
7 penses, in the development of the litter and solid waste
8 control plan under section seven of this article and to
9 provide solid waste collection and disposal services
10 under section nine of this article shall be paid by the
11 county commission from the general funds in the county
12 treasury to the extent that such expenses are not paid
13 by fees, grants and funds received by the authority from
14 other sources. The county commission shall have the
15 authority to determine the amount to be allocated
16 annually to the authority.

17 (c) The expenses of any regional solid waste authority
18 incurred for necessary secretarial and clerical assist-
19 ance, office supplies and general administrative ex-
20 penses, or for the development of the litter and solid
21 waste control plan under section seven of this article, or
22 to provide solid waste collection and disposal services
23 under section eight of this article shall be paid by the
24 county commissions of each participating county from
25 general funds in the county treasury to the extent that
26 such expenses are not paid by fees, grants and funds
27 from other sources received by the authority. Each
28 county participating in the regional solid waste author-
29 ity shall pay a pro rata share of such expenses based
30 upon the population of said county in the most recent
31 decennial census conducted by the United States Census
32 Bureau. Prior to any county becoming liable for any
33 expenses of the authority under this subsection, the
34 authority's annual budget must first be approved by the
35 resource recovery — solid waste disposal authority.

36 (d) An organizational meeting of each board of
37 directors shall be held as soon as practicable at which
38 time a chairman and vice chairman shall be elected
39 from among the members of the board to serve a term
40 of one year after which such officers shall be elected
41 annually. The board of directors shall also appoint a
42 secretary-treasurer, who need not be a member of the
43 board of directors, and who shall give bond in a sum
44 determined adequate to protect the interests of the
45 authority by the director of the department of natural
46 resources. The board shall meet at such times and places
47 as it or the chairman may determine. It shall be the duty
48 of the chairman to call a meeting of the board upon the
49 written request of a majority of the members thereof.
50 The board shall maintain an accurate record and
51 minutes of all its proceedings and shall be subject to the
52 provisions of the freedom of information act and the
53 open governmental proceedings. A majority of the board
54 shall constitute a quorum for the transaction of business.

§20-9-7. Authority to develop litter and solid waste control plan; contents of plan; approval by resource recovery — solid waste disposal authority; development of plan by director; advisory rules.

1 (a) Each county and regional solid waste authority
2 shall be required to develop a comprehensive litter and
3 solid waste control plan for its geographic area and to
4 submit said plan to the resource recovery — solid waste
5 disposal authority on or before the first day of July, one
6 thousand nine hundred ninety. Each authority shall
7 submit a draft litter and solid waste control plan to the
8 resource recovery — solid waste disposal authority by
9 the thirty-first day of March, one thousand nine hundred
10 ninety. The comments received by the county or regional
11 solid waste authority at public hearings, two of which
12 shall be required, shall be considered in developing the
13 final plan.

14 (b) Each litter and solid waste control plan shall
15 include provisions for:

16 (1) An assessment of litter and solid waste problems

17 in the county;

18 (2) The establishment of solid waste collection and
19 disposal services for all county residents at their
20 residences, where practicable, or the use of refuse
21 collection stations at disposal access points in areas
22 where residential collection is not practicable. In
23 developing such collection services, primacy shall be
24 given to private collection services currently operating
25 with a certificate of convenience and necessity from the
26 motor carrier division of the public service commission;

27 (3) The evaluation of the feasibility of requiring or
28 encouraging the separation of residential or commercial
29 solid waste at its source prior to collection for the
30 purpose of facilitating the efficient and effective
31 recycling of such wastes and the reduction of those
32 wastes which must be disposed of in landfills or by other
33 nonrecycling means;

34 (4) The establishment of an appropriate mandatory
35 garbage disposal program which shall include methods
36 whereby residents must prove either (i) payment of
37 garbage collection fee or (ii) proper disposal at an
38 approved solid waste facility or in an otherwise lawful
39 manner;

40 (5) A recommendation for the siting of one or more
41 properly permitted public or private solid waste
42 landfills and other facilities, whether existing or
43 proposed, to serve the solid waste needs of the county
44 or the region, as the case may be, consistent with the
45 comprehensive county plan prepared by the county
46 planning commission;

47 (6) A timetable for the implementation of said plan;

48 (7) A program for the cleanup, reclamation and
49 stabilization of any open and unpermitted dumps;

50 (8) The coordination of the plan with the related solid
51 waste collection and disposal services of municipalities
52 and, if applicable, other counties;

53 (9) A program to enlist the voluntary assistance of
54 private industry and civic groups in volunteer cleanup

55 efforts to the maximum practicable extent;

56 (10) Innovative incentives to promote recycling
57 efforts;

58 (11) A program to identify the disposal of solid wastes
59 which are not generated by sources situated within the
60 boundaries of the county or the region established
61 pursuant to this section;

62 (12) Coordination with the department of highways
63 and other local, state and federal agencies in the control
64 and removal of litter and the cleanup of open and
65 unpermitted dumps;

66 (13) Establishment of a program to encourage and
67 utilize those individuals incarcerated in the county jail
68 and those adults and juveniles sentenced to probation for
69 the purposes of litter pickup; and

70 (14) Provision for the safe and sanitary disposal of all
71 refuse from commercial and industrial sources within
72 the county or region, as the case may be, including
73 refuse from commercial and industrial sources, but
74 excluding refuse from sources owned or operated by the
75 state or federal governments.

76 (c) The resource recovery — solid waste disposal
77 authority shall establish advisory rules to guide and
78 assist the counties in the development of the plans
79 required by this section.

80 (d) Each plan prepared under this section shall be
81 subject to approval by the resource recovery — solid
82 waste disposal authority. Any plan rejected by the
83 resource recovery — solid waste disposal authority shall
84 be returned to the regional or county solid waste
85 authority with a statement of the insufficiencies in such
86 plan. The authority shall revise the plan to eliminate the
87 insufficiencies and submit it to the director within
88 ninety days.

89 (e) The resource recovery — solid waste disposal
90 authority shall develop a litter and solid waste control
91 plan for any county or regional solid waste authority
92 which fails to submit such a plan on or before the first

93 day of July, one thousand nine hundred ninety:
94 *Provided*, That in preparing such plans the director may
95 determine in his discretion whether to prepare a
96 regional or county based plan for those counties which
97 fail to complete such a plan.

§20-9-8. Assistance of department of natural resources and the department of health to solid waste authorities.

1 The director of the department of natural resources,
2 the resource recovery — solid waste disposal authority
3 and the director of the department of health shall
4 provide such technical assistance to each county and
5 regional solid waste authority as reasonable and
6 practicable within the existing resources and appropri-
7 ations of each agency available for such purposes.

§20-9-9. Mandatory disposal; proof required; penalty imposed.

1 Each person occupying a residence or operating a
2 business establishment in this state shall either
3 (i) subscribe to and use a solid waste collection service
4 and pay the fees established therefor or (ii) provide
5 proper proof that said person properly disposes of solid
6 waste at approved solid waste facilities or in any other
7 lawful manner. The director of the department of
8 natural resources shall promulgate rules pursuant to
9 chapter twenty-nine-a of this code regarding an ap-
10 proved method or methods of supplying such proper
11 proof. A civil penalty of one hundred fifty dollars shall
12 be assessed to the person receiving solid waste collection
13 services in addition to the unpaid fees for every year
14 that a fee is not paid.

§20-9-10. Acquisition of land; operation of public solid waste landfills and other facilities; restrictions on solid wastes generated outside authority area; fees.

1 Upon approval of the litter and solid waste control
2 plan by the resource recovery — solid waste disposal
3 authority, the authority may acquire, by purchase, lease,
4 gift, or otherwise, land for the establishment of solid

5 waste landfills and other solid waste facilities and is
6 authorized to construct, operate, maintain and contract
7 for the operation of such landfills and facilities. The
8 authority may pay for lease or acquisition of such lands
9 and the construction, operation and maintenance of such
10 solid waste facilities from such fees, grants, financing
11 by the solid waste program of the department of natural
12 resources or funds from other sources as may be
13 available to the authority. The authority may prohibit
14 the deposit of any solid waste in such solid waste
15 landfills and other facilities owned, leased or operated
16 by the authority which have originated from sources
17 outside the geographic limits of the county or region.
18 The authority board of directors shall establish and
19 charge reasonable fees for the use of such landfills and
20 facilities operated by the authority.

§20-9-11. Use of prisoners for litter pickup; funds provided from litter control fund; county commission, regional jail authority and sheriff to cooperate with solid waste authority.

1 Upon the approval of the litter and solid waste control
2 plan as provided in section seven hereof, each county
3 and regional solid waste authority is hereby authorized
4 and directed to implement a program to utilize those
5 individuals incarcerated in the county or regional jails
6 for litter pickup within the limits of available funds.
7 Such program shall be funded from those moneys
8 allocated to the authority by the director of the
9 department of natural resources from the litter control
10 fund pursuant to section twenty-seven, article four,
11 chapter twenty of this code. The authority may expend
12 such additional funds for this program as may be
13 available from other sources. The county commission
14 and the sheriff of each county and the regional jail
15 authority shall cooperate with the county or regional
16 solid waste authority in implementing this program
17 pursuant to section one, article eleven-a, and sections
18 three and thirteen, article twelve, chapter sixty-two of
19 this code.

§20-9-12. Powers, duties and responsibilities of authority generally.

1 The authority may exercise all powers necessary or
2 appropriate to carry out the purposes and duties
3 provided in this article, including the following:

4 (1) Sue and be sued, plead and be impleaded and have
5 and use a common seal.

6 (2) To conduct its business in the name of the county
7 solid waste authority or the regional solid waste
8 authority, as the case may be, in the names of the
9 appropriate counties.

10 (3) The authority board of directors shall promulgate
11 rules and regulations to implement the provisions of
12 sections eight and nine of this article and is authorized
13 to promulgate rules and regulations for purposes of this
14 article and the general operation and administration of
15 authorities affairs.

16 (4) Adopt, and from time to time, amend and repeal
17 bylaws necessary and proper for the conduct of its
18 affairs consistent with this article.

19 (5) To promulgate such rules and regulations as may
20 be proper and necessary to implement the purposes and
21 duties of this article.

22 (6) Acquire, construct, reconstruct, enlarge, improve,
23 furnish, equip, maintain, repair, operate, lease or rent
24 to, or contract for the operation by any person, partner-
25 ship, corporation or governmental agency, any solid
26 waste facility or collection, transportation and process-
27 ing facilities related thereto.

28 (7) Make available the use or services of any solid
29 waste facility collection, transportation and processing
30 facilities related thereto, to any person, partnership,
31 corporation or governmental agency consistent with this
32 article.

33 (8) Acquire by gift or purchase, hold and dispose of
34 real and personal property in the exercise of its powers
35 and duties.

36 (9) Make and enter all contracts, leases and agree-
37 ments and to execute all instruments necessary or
38 incidental to the performance of its duties and powers.

39 (10) Employ managers, engineers, accountants, attor-
40 neys, planners and such other professional and support
41 personnel as are necessary in its judgment to carry out
42 the provisions of this article.

43 (11) Receive and accept from any source such grants,
44 fees, real and personal property, contributions and funds
45 of any nature as may become available to the authority
46 in order to carry out the purposes of this article.

47 (12) Cooperate with and make such recommendations
48 to local, state and federal government and the private
49 sector in the technical, planning and public policy
50 aspects of litter control and solid waste management as
51 the authority may find appropriate and effective to
52 carry out the purposes of this article.

53 (13) Charge, alter and collect rentals, fees, service
54 charges and other charges for the use or services of any
55 solid waste facilities or any solid waste collection,
56 transportation and processing services provided by the
57 authority.

58 (14) Do all acts necessary and proper to carry out the
59 powers expressly granted to the authority by the article
60 and powers conferred upon the authority by this article.

61 All rules and regulations promulgated by the author-
62 ity pursuant to this article are exempt from the
63 provisions of article three, chapter twenty-nine-a of the
64 code.

§20-9-13. Liberal construction, provisions severable.

1 The provisions of this article shall be liberally
2 construed as giving the authority full and complete
3 power reasonably required to give effect to the purposes
4 hereof. The several sections and provisions of this article
5 are severable, and if any section or provision hereof shall
6 be held unconstitutional, all the remaining sections and
7 provisions of the article shall nevertheless remain valid.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

Article

- 1. General Provisions.**
- 2. Powers and Duties of Public Service Commission.**

ARTICLE 1. GENERAL PROVISIONS.

§24-1-3. Commission continued; membership; chairman; compensation.

1 (a) The public service commission of West Virginia,
2 heretofore established, is continued and directed as
3 provided by this chapter, chapter twenty-four-a and
4 chapter twenty-four-b. In addition, after having con-
5 ducted a performance audit through its joint committee
6 on government operations, pursuant to section nine,
7 article ten, chapter four of this code, the Legislature
8 hereby finds and declares that the public service
9 commission should be continued and reestablished.
10 Accordingly, notwithstanding the provisions of section
11 four, article ten, chapter four of this code, the public
12 service commission shall continue to exist until the first
13 day of July, one thousand nine hundred ninety-two. The
14 public service commission may sue and be sued by that
15 name. Such public service commission shall consist of
16 three members who shall be appointed by the governor
17 with the advice and consent of the Senate. The commis-
18 sioners shall be citizens and residents of this state and
19 at least one of them shall be duly licensed to practice
20 law in West Virginia, of not less than ten years' actual
21 experience at the bar. No more than two of said
22 commissioners shall be members of the same political
23 party. Each commissioner shall, before entering upon
24 the duties of his office, take and subscribe to the oath
25 provided by section five, article IV of the constitution,
26 which oath shall be filed in the office of the secretary
27 of state. The governor shall designate one of the
28 commissioners to serve as chairman at the governor's
29 will and pleasure. The chairman shall be the chief
30 administrative officer of the commission. The governor
31 may remove any commissioner only for incompetency,
32 neglect of duty, gross immorality, malfeasance in office
33 or violation of subsection (c) of this section.

34 (b) The unexpired term of members of the public
35 service commission at the time this subsection becomes
36 effective are continued through the thirtieth day of
37 June, one thousand nine hundred seventy-nine. In
38 accordance with the provisions of subsection (a) of this

39 section, the governor shall appoint three commissioners,
40 one for a term of two years, one for a term of four years
41 and one for a term of six years, all the terms beginning
42 on the first day of July, one thousand nine hundred
43 seventy-nine. All future appointments are for terms of
44 six years, except that an appointment to fill a vacancy
45 is for the unexpired term only. The commissioners
46 whose terms are terminated by the provisions of this
47 subsection are eligible for reappointment.

48 (c) No person while in the employ of, or holding any
49 official relation to, any public utility subject to the
50 provisions of this chapter, or holding any stocks or bonds
51 thereof, or who is pecuniarily interested therein, may
52 serve as a member of the commission or as an employee
53 thereof. Nor may any such commissioner be a candidate
54 for or hold public office, or be a member of any political
55 committee, while acting as such commissioner; nor may
56 any commissioner or employee of said commission
57 receive any pass, free transportation or other thing of
58 value, either directly or indirectly, from any public
59 utility or motor carrier subject to the provisions of this
60 chapter. In case any of the commissioners becomes a
61 candidate for any public office or a member of any
62 political committee, the governor shall remove him from
63 office and shall appoint a new commissioner to fill the
64 vacancy created.

65 (d) Effective the first day of July, one thousand nine
66 hundred eighty-four, and in light of the assignment of
67 new, substantial additional duties embracing new areas
68 and fields of activity under certain legislative enact-
69 ments, each commissioner shall receive a salary of
70 thirty-nine thousand two hundred forty dollars a year
71 to be paid in monthly installments from the special
72 funds in such amounts as follows:

73 (1) From the public service commission fund collected
74 under the provisions of section six, article three of this
75 chapter, thirty thousand two hundred ten dollars;

76 (2) From the public service commission motor carrier
77 fund collected under the provisions of section six, article
78 six, chapter twenty-four-a of this code, seven thousand

79 five hundred twenty-five dollars; and

80 (3) From the public service commission gas pipeline
81 safety fund collected under the provisions of section
82 three, article five, chapter twenty-four-b of this code,
83 one thousand five hundred five dollars.

84 In addition to this salary provided for all commission-
85 ers, the chairman of the commission shall receive three
86 thousand five hundred dollars a year to be paid in
87 monthly installments from the public service commis-
88 sion fund collected under the provisions of section six,
89 article three of this chapter, on and after the first day
90 of July, one thousand nine hundred eighty-four.

91 (e) Effective the first day of July, one thousand nine
92 hundred eighty-five, and in light of the assignment of
93 new, substantial additional duties embracing new areas
94 and fields of activity under certain legislative enact-
95 ments, each commissioner shall receive a salary of forty-
96 one thousand dollars a year to be paid in monthly
97 installments from the special funds in such amounts as
98 follows:

99 (1) From the public service commission fund collected
100 under the provisions of section six, article three of this
101 chapter, thirty-one thousand six hundred dollars;

102 (2) From the public service commission motor carrier
103 fund collected under the provisions of section six, article
104 six, chapter twenty-four-a of this code, seven thousand
105 nine hundred dollars; and

106 (3) From the public service commission gas pipeline
107 safety fund collected under the provisions of section
108 three, article five, chapter twenty-four-b of this code,
109 one thousand five hundred dollars.

110 In addition to this salary provided for all commission-
111 ers, the chairman of the commission shall receive three
112 thousand six hundred seventy-five dollars a year to be
113 paid in monthly installments from the public service
114 commission fund collected under the provisions of
115 section six, article three of this chapter, on and after the
116 first day of July, one thousand nine hundred eighty-five.

117 (f) Effective the first day of July, one thousand nine
 118 hundred eighty-eight, and in light of the assignment of
 119 new, substantial additional duties embracing new areas
 120 and fields of activity under certain legislative enact-
 121 ments, each commissioner shall receive a salary of forty-
 122 four thousand dollars a year to be paid in monthly
 123 installments from the special funds in such amounts as
 124 follows:

125 (1) From the public service commission fund collected
 126 under the provisions of section six, article three of this
 127 chapter, thirty-three thousand nine hundred dollars;

128 (2) From the public service commission motor carrier
 129 fund collected under the provisions of section six, article
 130 six, chapter twenty-four-a of this code, eight thousand
 131 five hundred dollars; and

132 (3) From the public service commission gas pipeline
 133 safety fund collected under the provisions of section
 134 three, article five, chapter twenty-four-b of this code,
 135 one thousand six hundred dollars.

136 In addition to this salary provided for all commission-
 137 ers, the chairman of the commission shall receive three
 138 thousand six hundred seventy-five dollars a year to be
 139 paid in monthly installments from the public service
 140 commission fund collected under the provisions of
 141 section six, article three of this chapter, on and after the
 142 first day of July; one thousand nine hundred eighty-
 143 eight.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-1b. Additional jurisdiction of commission.

§24-2-1c. Study and report by commission.

§24-2-1b. Additional jurisdiction of commission.

1 Effective the first day of July, one thousand nine
 2 hundred eighty-eight, in addition to all other powers and
 3 duties of the commission as defined in this article, the
 4 commission shall establish, prescribe and enforce rates
 5 and fees charged by commercial solid waste facilities,
 6 as defined in section two, article five-f, chapter twenty
 7 of this code, that are owned or under the direct control

8 of persons or entities who are regulated under section
9 five, article two, chapter twenty-four-a of this code. The
10 commission shall establish, prescribe and enforce rules
11 and regulations providing for the safe transportation of
12 solid waste in the state.

§24-2-1c. Study and report by commission.

1 The public service commission, in cooperation with
2 the department of natural resources and after opportunit-
3 ity for public comment, shall study the feasibility of
4 mandatory separation of solid waste for recycling
5 purposes and shall study the impact of said mandatory
6 separation and recycling on costs incurred by regulated
7 motor carriers. The results of the study shall be reported
8 to the joint committee on government and finance on or
9 before the first day of January, one thousand nine
10 hundred eighty-nine.

CHAPTER 49. CHILD WELFARE.

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-13. Disposition; appeal.

§49-5-13b. Authority of the courts to order fines; revocation of vehicle privileges and restitution.

***§49-5-13. Disposition; appeal.**

1 (a) In aid of disposition, the juvenile probation officer
2 or state department worker assigned to the court shall,
3 upon request of the court, make an investigation of the
4 environment of the child and the alternative dispositions
5 possible. The court, upon its own motion, or upon
6 request of counsel, may order a psychological examina-
7 tion of the child. The report of such examination and
8 other investigative and social reports shall not be made
9 available to the court until after the adjudicatory
10 hearing. Unless waived, copies of the report shall be
11 provided to counsel for the petitioner and counsel for the
12 child no later than seventy-two hours prior to the
13 dispositional hearing.

14 (b) Following the adjudication, the court shall conduct

*Clerk's Note: This section was also amended by SB 614, which passed subsequent to this act.

15 the dispositional proceeding, giving all parties an
16 opportunity to be heard. In disposition the court shall
17 not be limited to the relief sought in the petition and
18 shall give precedence to the least restrictive of the
19 following alternatives consistent with the best interests
20 and welfare of the public and the child:

21 (1) Dismiss the petition;

22 (2) Refer the child and the child's parent or custodian
23 to a community agency for needed assistance and
24 dismiss the petition;

25 (3) Upon a finding that the child is in need of extra-
26 parental supervision (A) place the child under the
27 supervision of a probation officer of the court or of the
28 court of the county where the child has its usual place
29 of abode, or other person while leaving the child in
30 custody of his parent or custodian and (B) prescribe a
31 program of treatment or therapy or limit the child's
32 activities under terms which are reasonable and within
33 the child's ability to perform, including participation in
34 the litter control program established pursuant to
35 section twenty-five, article seven, chapter twenty;

36 (4) Upon a finding that a parent or custodian is not
37 willing or able to take custody of the child, that a child
38 is not willing to reside in the custody of his parent or
39 custodian, or that a parent or custodian cannot provide
40 the necessary supervision and care of the child, the court
41 may place the child in temporary foster care or
42 temporarily commit the child to the state department or
43 a child welfare agency;

44 (5) Upon a finding that no less restrictive alternative
45 would accomplish the requisite rehabilitation of the
46 child, and upon an adjudication of delinquency pursuant
47 to subdivision (1), section four, article one of this
48 chapter, commit the child to an industrial home or
49 correctional institution for children. Commitments shall
50 not exceed the maximum term for which an adult could
51 have been sentenced for the same offense, with discre-
52 tion as to discharge to rest with the director of the
53 institution, who may release the child and return him
54 to the court for further disposition;

55 (6) Upon an adjudication of delinquency pursuant to
56 subsection (3) or (4), section four, article one of this
57 chapter, and upon a finding that the child is so totally
58 unmanageable, ungovernable and antisocial that the
59 child is amenable to no treatment or restraint short of
60 incarceration, commit the child to a rehabilitative
61 facility devoted exclusively to the custody and rehabil-
62 itation of children adjudicated delinquent pursuant to
63 said subsection (3) or (4). Commitments shall not exceed
64 the maximum period of one year with discretion as to
65 discharge to rest with the director of the institution, who
66 may release the child and return him to the court for
67 further disposition; or

68 (7) After a hearing conducted under the procedures
69 set out in subsections (c) and (d), section four, article
70 five, chapter twenty-seven of the code, commit the child
71 to a mental health facility in accordance with the child's
72 treatment plan; the director may release a child and
73 return him to the court for further disposition.

74 (c) The disposition of the child shall not be affected
75 by the fact that the child demanded a trial by jury or
76 made a plea of denial. Any dispositional order is subject
77 to appeal to the supreme court of appeals.

78 (d) Following disposition, it shall be inquired of the
79 respondent whether or not appeal is desired and the
80 response transcribed; a negative response shall not be
81 construed as a waiver. The evidence shall be transcribed
82 as soon as practicable and made available to the child
83 or his counsel, if the same is requested for purposes of
84 further proceedings. A judge may grant a stay of
85 execution pending further proceedings.

86 (e) Notwithstanding any other provision of this code
87 to the contrary, in the event a child charged with
88 delinquency under this chapter is transferred to adult
89 jurisdiction and there tried and convicted, the court may
90 nevertheless, in lieu of sentencing such person as an
91 adult, make its disposition in accordance with this
92 section.

**§49-5-13b. Authority of the courts to order fines; revoca-
tion of vehicle privileges and restitution.**

1 (a) In addition to the methods of disposition provided
2 in section thirteen of this article, the court may enter
3 an order imposing one or more of the following penal-
4 ties, conditions and limitations:

5 (1) Impose a fine not to exceed one hundred dollars
6 upon such child;

7 (2) Require the child to make restitution or reparation
8 to the aggrieved party or parties for actual damages or
9 loss caused by the offense for which the child was found
10 to be delinquent;

11 (3) Require the child to participate in a public service
12 project under such conditions as the court prescribes,
13 including participation in the litter control program
14 established pursuant to the authority of section twenty-
15 five, article seven, chapter twenty of this code;

16 (4) When the child is fifteen years of age or younger
17 and has been adjudged delinquent, the court may order
18 that the child is not eligible to be issued a junior
19 probationary operator's license or when the child is
20 between the ages of sixteen and eighteen years and has
21 been adjudged delinquent, the court may order that the
22 child is not eligible to operate a motor vehicle in this
23 state, and any junior or probationary operator's license
24 shall be surrendered to the court. Such child's driving
25 privileges shall be suspended for a period not to exceed
26 two years, and the clerk of the court shall notify the
27 commissioner of the department of motor vehicles of
28 such order.

29 (b) Nothing herein stated shall limit the discretion of
30 the court in disposing of a juvenile case: *Provided*, That
31 the juvenile shall not be denied probation or any other
32 disposition pursuant to this article because the juvenile
33 is financially unable to pay a fine or make restitution
34 or reparation: *Provided, however*, That all penalties,
35 conditions and limitations imposed under this section
36 shall be based upon a consideration by the court of the
37 seriousness of the offense, the child's ability to pay, and
38 a program of rehabilitation consistent with the best
39 interests of the child.

40 (c) Notwithstanding any other provisions of this code
41 to the contrary, in the event a child charged with
42 delinquency under this chapter is transferred to adult
43 jurisdiction and there convicted, the court may never-
44 theless, in lieu of sentencing such person as an adult,
45 make its disposition in accordance with this section.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.

§61-11-17. Court to fix imprisonment and fine for misdemeanor.

1 The term of confinement in jail of a person found
2 guilty of a misdemeanor, where that punishment is
3 prescribed, shall, unless otherwise provided, be ascer-
4 tained by the court, and the amount of the fine, where
5 the punishment is by fine, shall, except where it is
6 otherwise provided, be assessed by the court, so far as
7 the term of confinement and the amount of the fine are
8 not fixed by law. In addition to or in lieu of any other
9 punishment prescribed herein, the court may require
10 the person found guilty of such misdemeanor to partic-
11 ipate in the litter control program.

CHAPTER 62. CRIMINAL PROCEDURE.

Article

- 11A. Release for Work and Other Purposes.
- 12. Probation and Parole.

ARTICLE 11A. RELEASE FOR WORK AND OTHER PURPOSES.

§62-11A-1. Release for work and other purposes by courts of record with criminal jurisdiction.

1 (1) When a defendant is sentenced or committed for
2 a term of one year or less by a court of record having
3 criminal jurisdiction, such court may in its order grant
4 to such defendant the privilege of leaving the jail during
5 necessary and reasonable hours for any of the following
6 purposes:

- 7 (a) To work at his employment;
- 8 (b) To seek employment;
- 9 (c) To conduct his own business or to engage in other

10 self-employment, including, in the case of a woman,
11 housekeeping and attending to the needs of her family;

12 (d) To attend an educational institution;

13 (e) To obtain medical treatment;

14 (f) To devote time to any other purpose approved of
15 or ordered by the court, including participation in the
16 litter control program of the county unless the court
17 specifically finds that this alternative service would be
18 inappropriate.

19 (2) Whenever an inmate who has been granted the
20 privilege of leaving the jail under this section is not
21 engaged in the activity for which such leave is granted,
22 he shall be confined in jail.

23 (3) An inmate sentenced to ordinary confinement may
24 petition the court at any time after sentence for the
25 privilege of leaving jail under this section and may
26 renew his petition in the discretion of the court. The
27 court may withdraw the privilege at any time by order
28 entered with or without notice.

29 (4) If the inmate has been granted permission to leave
30 the jail to seek or take employment, the court's probation
31 officers, or if none, the state's division of correction shall
32 assist him in obtaining suitable employment and in
33 making certain that employment already obtained is
34 suitable. Employment shall not be deemed suitable if
35 the wages or working conditions or other circumstances
36 present a danger of exploitation or of interference in a
37 labor dispute in the establishment in which the inmate
38 would be employed.

39 (5) If an inmate is employed for wages or salary, the
40 clerk of the court shall collect the same, or shall require
41 the inmate to turn over his wages or salary in full when
42 received, and shall deposit the same in a trust account
43 and shall keep a ledger showing the status of the account
44 of each inmate. Earnings levied upon pursuant to writ
45 of attachment or execution or in other lawful manner
46 shall be collected from the employer and shall not be
47 collected hereunder, but when the clerk has requested
48 transmittal of earnings prior to levy, such request shall

49 have priority. When an employer transmits such
50 earnings to the clerk pursuant to this subsection he shall
51 have no liability to the inmate for such earnings. From
52 such earnings the clerk shall pay the inmate's board and
53 personal expenses both inside and outside the jail and
54 shall deduct installments on fines, if any, and, to the
55 extent directed by the court, shall pay the support of the
56 inmate's dependents: *Provided*, That at least twenty-five
57 percent of the earnings collected by the clerk on behalf
58 of an inmate shall be paid for the support of such
59 inmate's dependents, if any. If sufficient funds are
60 available after making the foregoing payments, the
61 clerk may, with the consent of the inmate, pay, in whole
62 or in part, any unpaid debts of the inmate. Any balance
63 shall be retained, and shall be paid to the inmate at the
64 time of his discharge.

65 (6) An inmate who is serving his sentence pursuant
66 to this section shall be eligible for a reduction of his
67 term for good behavior and faithful performance of
68 duties in the same manner as if he had served his term
69 in ordinary confinement.

70 (7) The court shall not make an order granting the
71 privilege of leaving the institution under this section
72 unless it is satisfied that there are adequate facilities for
73 the administration of such privilege in the jail or other
74 institution in which the defendant will be confined.

ARTICLE 12. PROBATION AND PAROLE.

§62-12-3. Suspension of sentence and release on probation.

§62-12-13. Powers and duties of board; eligibility for parole; procedure for granting parole.

§62-12-3. Suspension of sentence and release on probation.

1 Whenever, upon the conviction of any person eligible
2 for probation under the preceding section, it shall
3 appear to the satisfaction of the court that the character
4 of the offender and the circumstances of the case
5 indicate that he is not likely again to commit crime and
6 that the public good does not require that he be fined
7 or imprisoned, the court, upon application or of its own
8 motion, may suspend the imposition or execution of

9 sentence and release the offender on probation for such
10 period and upon such conditions as are provided by this
11 article; but in no case, except as provided by the
12 following section, shall the court have authority to
13 suspend the execution of a sentence after the convicted
14 person has been imprisoned for sixty days under the
15 sentence. Any person released on probation must
16 participate as a condition of probation in the litter
17 control program of the county to the extent directed by
18 the court, unless the court specifically finds that this
19 alternative service would be inappropriate.

**§62-12-13. Powers and duties of board; eligibility for
parole; procedure for granting parole.**

1 (a) The board of parole, whenever it is of the opinion
2 that the best interests of the state and of the prisoner
3 will be subserved thereby, and subject to the limitations
4 hereinafter provided, shall release any such prisoner on
5 parole for such terms and upon such conditions as are
6 provided by this article. Any prisoner of a penitentiary
7 of this state, to be eligible for parole:

8 (1)(A) Shall have served the minimum term of his or
9 her indeterminate sentence, or shall have served one
10 fourth of his or her definite term sentence, as the case
11 may be, except that in no case shall any person who
12 committed, or attempted to commit a felony with the
13 use, presentment or brandishing of a firearm, be eligible
14 for parole prior to serving a minimum of three years of
15 his or her sentence or the maximum sentence imposed
16 by the court, whichever is less: *Provided*, That any
17 person who committed, or attempted to commit, any
18 violation of section twelve, article two, chapter sixty-one
19 of this code, with the use, presentment or brandishing
20 of a firearm, shall not be eligible for parole prior to
21 serving a minimum of five years of his or her sentence
22 or one third of his or her definite term sentence,
23 whichever shall be the greater. Nothing in this section
24 shall apply to an accessory before the fact or a principal
25 in the second degree who has been convicted as if he or
26 she were a principal in the first degree if, in the
27 commission of or in the attempted commission of the
28 felony, only the principal in the first degree used,

29 presented or brandished a firearm. No person is
30 ineligible for parole under the provisions of this
31 subdivision because of the commission or attempted
32 commission of a felony with the use, presentment or
33 brandishing of a firearm unless such fact is clearly
34 stated and included in the indictment or presentment by
35 which such person was charged and was either (i) found
36 by the court at the time of trial upon a plea of guilty
37 or nolo contendere, or (ii) found by the jury, upon
38 submitting to such jury a special interrogatory for such
39 purpose if the matter was tried before a jury, or
40 (iii) found by the court, if the matter was tried by the
41 court without a jury.

42 For the purpose of this section, the term "firearm"
43 shall mean any instrument which will, or is designed to,
44 or may readily be converted to, expel a projectile by the
45 action of an explosive, gunpowder or any other similar
46 means.

47 (B) The amendments to this subsection adopted in the
48 year one thousand nine hundred eighty-one:

49 (i) Shall apply to all applicable offenses occurring on
50 or after the first day of August of that year;

51 (ii) Shall apply with respect to the contents of any
52 indictment or presentment returned on or after the first
53 day of August of that year irrespective of when the
54 offense occurred;

55 (iii) Shall apply with respect to the submission of a
56 special interrogatory to the jury and the finding to be
57 made thereon in any case submitted to such jury on or
58 after the first day of August of that year or to the
59 requisite findings of the court upon a plea of guilty or
60 in any case tried without a jury: *Provided*, That the state
61 shall give notice in writing of its intent to seek such
62 finding by the jury or court, as the case may be, which
63 notice shall state with particularity the grounds upon
64 which such finding shall be sought as fully as such
65 grounds are otherwise required to be stated in an
66 indictment, unless the grounds therefor are alleged in
67 the indictment or presentment upon which the matter
68 is being tried;

69 (iv) Shall not apply with respect to cases not affected
70 by such amendment and in such cases the prior
71 provisions of this section shall apply and be construed
72 without reference to such amendment.

73 Insofar as such amendments relate to mandatory
74 sentences restricting the eligibility for parole, all such
75 matters requiring such sentence shall be proved beyond
76 a reasonable doubt in all cases tried by the jury or the
77 court.

78 (2) Shall not be under punishment or in solitary
79 confinement for any infraction of prison rules;

80 (3) Shall have maintained a record of good conduct in
81 prison for a period of at least three months immediately
82 preceding the date of his or her release on parole;

83 (4) Shall have submitted to the board a written parole
84 release plan setting forth proposed plans for his or her
85 place of residence, employment and, if appropriate, his
86 or her plans regarding education and post-release
87 counseling and treatment, said parole release plan
88 having been approved by the commissioner of correc-
89 tions or his or her authorized representative;

90 (5) Shall have satisfied the board that if released on
91 parole he or she will not constitute a danger to the
92 community.

93 Except in the case of one serving a life sentence, no
94 person who has been previously twice convicted of a
95 felony may be released on parole until he or she has
96 served the minimum term provided by law for the crime
97 for which he or she was convicted. No person sentenced
98 for life may be paroled until he or she has served ten
99 years, and no person sentenced for life who has been
100 previously twice convicted of a felony may be paroled
101 until he or she has served fifteen years. In the case of
102 a person sentenced to any penal institution of this state,
103 it shall be the duty of the board, as soon as such person
104 becomes eligible, to consider the advisability of his or
105 her release on parole. If, upon such consideration, parole
106 be denied, the board shall at least once a year reconsider
107 and review the case of every prisoner so eligible, which

108 reconsideration and review shall be by the entire board.
109 If parole be denied, the prisoner shall be promptly
110 notified.

111 (b) In the case of any person sentenced to or confined
112 under sentence in any city or county jail in this state,
113 the board shall act only upon written application for
114 parole. If such jail prisoner is under sentence on a felony
115 conviction, the provisions hereof relating to penitentiary
116 prisoners shall apply to and control his or her release
117 on parole. If such person is serving time on a misdemea-
118 nor conviction, he or she is eligible for parole consider-
119 ation, upon receipt of his or her written parole appli-
120 cation and after time for probation release by the
121 sentencing court or judge has expired.

122 (c) The board shall, with the approval of the governor,
123 adopt rules and regulations governing the procedure in
124 the granting of parole. No provision of this article and
125 none of the rules and regulations adopted hereunder are
126 intended or shall be construed to contravene, limit or
127 otherwise interfere with or affect the authority of the
128 governor to grant pardons and reprieves, commute
129 sentences, remit fines or otherwise exercise his or her
130 constitutional powers of executive clemency.

131 The board shall be charged with the duty of super-
132 vising all probationers and parolees whose supervision
133 may have been undertaken by this state by reason of any
134 interstate compact entered into pursuant to the uniform
135 act for out of state parolee supervision.

136 (d) When considering a penitentiary prisoner for
137 release on parole, the board of parole shall have before
138 it an authentic copy of or report on the prisoner's
139 current criminal record as provided through the
140 department of public safety of West Virginia, the
141 United States department of justice or other reliable
142 criminal information sources and written reports of the
143 warden or superintendent of the penitentiary, as the
144 case may be, to which such prisoner is sentenced:

145 (1) On the prisoner's conduct record while in prison,
146 including a detailed statement showing any and all
147 infractions of prison rules by the prisoner and the

148 nature and extent of discipline and punishment admin-
149 istered therefor;

150 (2) On improvement or other changes noted in the
151 prisoner's mental and moral condition while in prison,
152 including a statement expressive of the prisoner's
153 current attitude toward society in general, toward the
154 judge who sentenced him or her, toward the prosecuting
155 attorney who prosecuted him or her, toward the
156 policeman or other officer who arrested the prisoner and
157 toward the crime for which he or she is under sentence
158 and his or her previous criminal record;

159 (3) On the prisoner's industrial record while in prison,
160 showing the nature of his or her prison work or
161 occupation and the average number of hours per day he
162 or she has been employed in prison industry and
163 recommending the nature and kinds of employment
164 which he or she is best fitted to perform and in which
165 the prisoner is most likely to succeed when he or she
166 leaves prison;

167 (4) On physical, mental and psychiatric examinations
168 of the prisoner conducted, insofar as practicable, within
169 the two months next preceding parole consideration by
170 the board.

171 The board may waive the requirement of any such
172 report when not available or not applicable as to any
173 prisoner considered for parole but, in every such case,
174 shall enter in the record thereof its reason for such
175 waiver: *Provided*, That in the case of a prisoner who is
176 incarcerated because such prisoner has been found
177 guilty of, or has pleaded guilty to a felony under the
178 provisions of section twelve, article eight, chapter sixty-
179 one of this code or under the provisions of article eight-
180 b or eight-c of chapter sixty-one, the board may not
181 waive the report required by this subsection and the
182 report shall include a study and diagnosis which shall
183 include an on-going treatment plan requiring active
184 participation in sexual abuse counseling at an approved
185 mental health facility or through some other approved
186 program: *Provided, however*, That nothing disclosed by
187 the person during such study or diagnosis shall be made

188 available to any law-enforcement agency, or other party
189 without that person's consent, or admissible in any court
190 of this state, unless such information disclosed shall
191 indicate the intention or plans of the parolee to do harm
192 to any person, animal, institution, or to property.
193 Progress reports of outpatient treatment shall be made
194 at least every six months to the parole officer supervising
195 such person. In addition, in such cases, the parole
196 board shall inform the prosecuting attorney of the
197 county in which the person was convicted of the parole
198 hearing and shall request that the prosecuting attorney
199 inform the parole board of the circumstances surrounding
200 a conviction or plea of guilty, plea bargaining and
201 other background information that might be useful in
202 its deliberations. The board shall also notify the victim,
203 or the parents or guardian of the victim if the victim
204 is still a minor, of the person being considered for parole
205 in such a case.

206 Before releasing any penitentiary prisoner on parole,
207 the board of parole shall arrange for the prisoner to
208 appear in person before the board and the board may
209 examine and interrogate him or her on any matters
210 pertaining to his or her parole, including reports before
211 the board made pursuant to the provisions hereof. The
212 board shall reach its own written conclusions as to the
213 desirability of releasing such prisoner on parole. The
214 warden or superintendent shall furnish all necessary
215 assistance and cooperate to the fullest extent with the
216 board of parole. All information, records and reports
217 received by the board shall be kept on permanent file.

218 The board and its designated agents shall at all times
219 have access to inmates imprisoned in any penal or
220 correctional institutions of this state or in any city or
221 county jail in this state, and shall have the power to
222 obtain any information or aid necessary to the performance
223 of their duties from other departments and
224 agencies of the state or from any political subdivision
225 thereof.

226 The board shall, if so requested by the governor,
227 investigate and consider all applications for pardon,
228 reprieve or commutation and shall make recommenda-

229 tion thereon to the governor.

230 Prior to making such recommendation and prior to
231 releasing any penitentiary person on parole, the board
232 shall notify the sentencing judge and prosecuting
233 attorney at least ten days before such recommendation
234 or parole. Any person released on parole shall partici-
235 pate as a condition of parole in the litter control
236 program of the county to the extent directed by the
237 board, unless the board specifically finds that this
238 alternative service would be inappropriate.

CHAPTER 85

(S. B. 378—By Senators Tucker and Loehr)

[Passed March 12, 1988; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article ten, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section two-a; to amend and reenact sections six and nine, article three, chapter seventeen-b of said code; to further amend said article three by adding thereto a new section, designated section three-a; to amend article two, chapter twenty of said code by adding thereto a new section, designated section thirty-eight-a; and to amend article three, chapter fifty of said code by adding thereto a new section, designated section two-a, all relating to collection of fines by magistrate courts and municipal courts; payment by credit cards or by installments; and revocation of hunting, fishing, operator's or chauffeur's license for failure to pay such fines or appear in court.

Be it enacted by the Legislature of West Virginia:

That article ten, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section two-a; that sections six and nine, article three, chapter seventeen-b of said code be amended and reenacted; that said

article three be further amended by adding thereto a new section, designated section three-a; that article two, chapter twenty of said code be amended by adding thereto a new section, designated section thirty-eight-a; and that article three, chapter fifty of said code be amended by adding thereto a new section, designated section two-a, all to read as follows:

Chapter

- 8. Municipal Corporations.
- 17B. Motor Vehicle Operators' and Chauffeurs' Licenses.
- 20. Natural Resources.
- 50. Magistrate Courts.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 10. POWERS AND DUTIES OF CERTAIN OFFICERS.

§8-10-2a. Payment of fines by credit cards or payment plan; suspension of driver's license for failure to pay motor vehicle violation fines or to appear in court.

1 (a) A municipal court may accept credit cards in
2 payment of all costs, fines, forfeitures or penalties. A
3 municipal court may collect a substantial portion of all
4 costs, fines, forfeitures or penalties at the time such
5 amount is imposed by the court so long as the court
6 requires the balance to be paid within ninety days and
7 in accordance with a payment plan which specifies: (1)
8 The number of additional payments to be made; (2) the
9 dates on which such payments and amounts shall be
10 made; and (3) amounts due on such dates.

11 (b) If costs, fines, forfeitures or penalties imposed by
12 the municipal court for motor vehicle violations as
13 described in section three-a, article three, chapter
14 seventeen-b of this code are not paid within ninety days,
15 or if a person who committed any such violation defaults
16 on a payment plan as described in subsection (a) of this
17 section, or if a person fails to appear or otherwise
18 respond in court when charged with a motor vehicle
19 violation as defined in section three-a, article three,
20 chapter seventeen-b of this code, the municipal court
21 must notify the commissioner of the department of
22 motor vehicles of such failure to pay or failure to appear.

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

**ARTICLE 3. CANCELLATION, SUSPENSION OR REVOCATION
OF LICENSES.**

§17B-3-3a. Suspending license for failure to pay fines or penalties imposed by magistrate court or municipal court.

§17B-3-6. Authority of department to suspend or revoke license; hearing.

§17B-3-9. Surrender and return of license; willful refusal to return; additional fee for reinstatement.

§17B-3-3a. Suspending license for failure to pay fines or penalties imposed by magistrate court or municipal court.

1 The department shall suspend the license of any
2 resident of this state or the privilege of a nonresident
3 to drive a motor vehicle in this state upon receiving
4 notice from a magistrate court or municipal court of this
5 state, pursuant to subsection (b), section two-a, article
6 three, chapter fifty or subsection (b), section two-a,
7 article ten, chapter eight of the code of West Virginia,
8 that such person has defaulted on the payment of costs,
9 fines, forfeitures or penalties, which were imposed on
10 the person by the magistrate court or municipal court
11 upon conviction of any motor vehicle violation, after
12 ninety days following such conviction, or that such
13 person has failed to appear in court when charged with
14 a motor vehicle violation. For the purposes of this
15 section, section two-a, article three, chapter fifty and
16 section two-a, article ten, chapter eight, "motor vehicle
17 violation" shall be defined as any violation designated in
18 chapters seventeen-a, seventeen-b, seventeen-c and
19 seventeen-d of this code, or the violation of any munic-
20 ipal ordinance relating to the operation of a motor
21 vehicle for which the violation thereof would result in
22 a fine or penalty: *Provided*, That any parking violation
23 or other violation for which a citation may be issued to
24 an unattended vehicle shall not be considered a motor
25 vehicle violation for the purposes of this section, section
26 two-a, article three, chapter fifty or section two-a, article
27 ten, chapter eight of this code.

§17B-3-6. Authority of department to suspend or revoke

license; hearing.

1 The department is hereby authorized to suspend the
2 license of an operator or chauffeur without preliminary
3 hearing upon a showing by its records or other sufficient
4 evidence that the licensee:

5 (1) Has committed an offense for which mandatory
6 revocation of license is required upon conviction;

7 (2) Has by reckless or unlawful operation of a motor
8 vehicle, caused or contributed to an accident resulting
9 in the death or personal injury of another or property
10 damage;

11 (3) Has been convicted with such frequency of serious
12 offenses against traffic regulations governing the
13 movement of vehicles as to indicate a disrespect for
14 traffic laws and a disregard for the safety of other
15 persons on the highways;

16 (4) Is an habitually reckless or negligent driver of a
17 motor vehicle;

18 (5) Is incompetent to drive a motor vehicle;

19 (6) Has permitted an unlawful or fraudulent use of
20 such license;

21 (7) Has committed an offense in another state which
22 if committed in this state would be a ground for
23 suspension or revocation;

24 (8) Has failed to pay or has defaulted on a plan for
25 the payment of all costs, fines, forfeitures or penalties
26 imposed by a magistrate court or municipal court
27 within ninety days, as required by section two-a, article
28 three, chapter fifty or section two-a, article ten, chapter
29 eight of this code; or

30 (9) Has failed to appear or otherwise respond before
31 a magistrate court or municipal court when charged
32 with a motor vehicle violation as defined in section
33 three-a, article three, chapter seventeen-b of this code.

34 The operator's or chauffeur's license of any person
35 having his or her license suspended shall be reinstated

36 if:

37 (A) The license was suspended under the provisions of
38 subdivision (8) of this section and the payment of costs,
39 fines, forfeitures or penalties imposed by the applicable
40 court has been made; or

41 (B) The license was suspended under the provisions of
42 subdivision (9) of this section, and the person having his
43 or her license suspended has appeared in court and has
44 prevailed against the motor vehicle violations charged,
45 or such person has paid any and all costs, fines,
46 forfeitures or penalties imposed by the applicable court.

47 Any reinstatement of a license under paragraph (A)
48 or (B) of this subdivision shall be subject to a reinstatement
49 fee designated in section nine of this chapter.

50 Upon suspending the license of any person as herein-
51 before in this section authorized, the department shall
52 immediately notify the licensee in writing, sent by
53 certified mail to the address given by the licensee in
54 applying for license, and upon his request shall afford
55 him an opportunity for a hearing as early as practical
56 after receipt of such request in the county wherein the
57 licensee resides unless the department and the licensee
58 agree that such hearing may be held in some other
59 county. Upon such hearing the commissioner or his duly
60 authorized agent may administer oaths and may issue
61 subpoenas for the attendance of witnesses and the
62 production of relevant books and papers and may
63 require a reexamination of the licensee. Upon such
64 hearing the department shall either rescind its order of
65 suspension or, good cause appearing therefor, may
66 extend the suspension of such license or revoke such
67 license.

**§17B-3-9. Surrender and return of license; willful refusal
to return; additional fee for reinstatement.**

1 The department, upon suspending or revoking a
2 license shall require that such license shall be surren-
3 dered to and be retained by the department: *Provided,*
4 That before such license may be reinstated, the licensee
5 shall pay a fee of fifteen dollars, in addition to all other

6 fees and charges, which fee shall be collected by the
7 department and deposited in a special revolving fund to
8 be appropriated to the department for use in the
9 enforcement of the provisions of this section. If any
10 person shall willfully fail to return to the department
11 such suspended or revoked license, the commissioner
12 shall secure possession thereof through the department
13 of public safety, a local law-enforcement agency, or
14 other lawful means and return same to the department.
15 Said superintendent of the department of public safety
16 or local law-enforcement agency shall make a report in
17 writing to the commissioner as to the result of his efforts
18 to secure the possession and return of such license. For
19 each license which shall have been suspended or revoked
20 and which the holder thereof shall have willfully failed
21 to return to the department within ten days from the
22 time that such suspension or revocation becomes
23 effective and which shall have been certified to the
24 superintendent of the department of public safety as
25 aforesaid, the holder thereof, before the same may be
26 reinstated, in addition to all other fees and charges, shall
27 pay a fee of fifty dollars, which shall be collected by the
28 department of motor vehicles and paid into the state
29 treasury and credited to the general fund to be approp-
30 riated to the department of public safety for application
31 in the enforcement of road laws.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-38a. Suspension of license or permit for failure to pay fines or penalties imposed by magistrate court.

1 The director shall suspend the license or permit of any
2 person to whom a license or permit has been granted
3 upon receiving notice from a magistrate court of this
4 state, pursuant to subsection (b), section two-a, article
5 three, chapter fifty of this code, that such person has
6 defaulted on the payment of costs, fines, forfeitures or
7 penalties which were imposed on the person by the
8 magistrate court upon conviction of any hunting or
9 fishing violation, after ninety days following such

10 conviction.

11 Any reinstatement of a license or permit under this
12 section shall be subject to a reinstatement fee, in an
13 amount to be prescribed by the director of the depart-
14 ment of natural resources, which fee shall be collected
15 by the department of natural resources and deposited
16 into the law-enforcement division account to be utilized
17 by the law-enforcement division in administering the
18 provisions of this section.

CHAPTER 50. MAGISTRATE COURTS.

ARTICLE 3. COSTS, FINES AND RECORDS.

§50-3-2a. Payment of fines by credit card or payment plan; suspension of licenses for failure to pay fines.

1 (a) A magistrate court may accept credit cards in
2 payment of all costs, fines, forfeitures or penalties. The
3 supreme court of appeals shall adopt rules and regula-
4 tions regarding the use of credit cards to pay fines, and
5 such rules and regulations shall state that any charges
6 made by the credit company shall be paid by the person
7 responsible for paying the fine. A magistrate court may
8 collect a substantial portion of all costs, fines, forfeitures
9 or penalties at the time such amount is imposed by the
10 court so long as the court requires the balance to be paid
11 within ninety days and in accordance with a payment
12 plan which specifies: (1) The number of additional
13 payments to be made; (2) the dates on which such
14 payments and amounts shall be made; and (3) amounts
15 due on such dates.

16 (b) If costs, fines, forfeitures or penalties imposed by
17 the magistrate court for hunting or fishing violations as
18 described in chapter twenty of this code, or for motor
19 vehicle violations as described in section three-a, article
20 three, chapter seventeen-b of this code are not paid
21 within ninety days, or if a person who committed any
22 such violation defaults on a payment plan as described
23 in subsection (a) of this section, or if the person fails to
24 appear or otherwise respond in court when charged with
25 a motor vehicle violation as defined in section three-a,

26 article three, chapter seventeen-b of this code, the
27 magistrate court must notify the director of the
28 department of natural resources or the department of
29 motor vehicles, whichever is applicable, of such failure
30 to pay if:

31 (1) Within the ninety-day period, the action is not set
32 for trial pursuant to the requirements of section ten,
33 article four of this chapter; or

34 (2) Within the ninety-day period, the action is not
35 removed to circuit court pursuant to the requirements
36 of section eight, article four of this chapter; or

37 (3) Within the ninety-day period, the action is not
38 appealed, timely filed in the circuit court and granted
39 for appeal by the circuit court pursuant to the require-
40 ments of section twelve or thirteen, article five of this
41 chapter.

42 Upon such notice, the department of motor vehicles
43 shall suspend the operator's or chauffeur's license and
44 the director of the department of natural resources shall
45 suspend the hunting or fishing license of the person
46 defaulting on payment until such time that the costs,
47 fines, forfeitures or penalties are paid.

48 In every criminal case which involves a misdemeanor
49 violation, a magistrate may order restitution when
50 rendering judgment.

CHAPTER 86

(H. B. 4242—By Delegates White and Wells)

[Passed February 26, 1988; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article five, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto three new sections, designated sections fourteen, fifteen and sixteen, all relating to the medicaid program; maternity and infant

care; health care facilities financed by bonds and rules regarding reimbursement of capital costs; drug formulary and drug utilization review; health care provider reimbursement study by department; hearings; report to Legislature.

Be it enacted by the Legislature of West Virginia:

That section twelve, article five, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto three new sections, designated sections fourteen, fifteen and sixteen, all to read as follows:

CHAPTER 9. HUMAN SERVICES.

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§9-5-12. Medicaid program; maternity and infant care.

§9-5-14. Medicaid program; health care facilities financed by bonds; rules regarding reimbursement of capital costs.

§9-5-15. Medicaid program; drug formulary and drug utilization review.

§9-5-16. Medicaid program; legislative purpose; health care provider reimbursement study by department; hearings; report.

§9-5-12. Medicaid program; maternity and infant care.

1 (a) The Legislature finds that high rates of infant
2 mortality and morbidity are costly to the state in terms
3 of human suffering and of expenditures for long-term
4 institutionalization, special education and medical care.
5 It is well documented that appropriate care during
6 pregnancy and delivery can prevent many of the
7 expensive, disabling problems our children experience.
8 There exists a crisis in this state relating to the
9 availability of obstetrical services, particularly to
10 patients in rural areas, and to the cost patients must pay
11 for obstetrical services. The availability of obstetrical
12 service for medicaid patients enables these patients to
13 receive quality medical care and to give birth to
14 healthier babies and, consequently, improve the health
15 status of the next generation.

16 The Legislature further recognizes that public and
17 private insurance mechanisms remain inadequate, and
18 poor women and children are among the most likely to

19 be without insurance. Generally, low-income, uninsured
20 children receive half as much health care as their
21 insured counterparts. The state is now investing millions
22 to care for sick infants whose deaths and disabilities
23 could have been avoided.

24 It is the intent of the Legislature that the department
25 of human services participate in the medicaid program
26 for indigent children and pregnant women established
27 by Congress under the Consolidated Omnibus Budget
28 Reconciliation Act (COBRA), Public Law 99-272, the
29 Sixth Omnibus Budget Reconciliation Act (SOBRA),
30 Public Law 99-504, and the Omnibus Budget Reconcili-
31 ation Act (OBRA), Public Law 100-203.

32 (b) The department of human services shall:

33 (1) Extend the medicaid coverage to pregnant women
34 and their newborn infants to one hundred fifty percent
35 of the federal poverty level, effective the first day of
36 July, one thousand nine hundred eighty-eight.

37 (2) As provided under COBRA, SOBRA, and OBRA,
38 effective the first day of July, one thousand nine
39 hundred eighty-eight, infants shall be included under
40 the medicaid coverage with all children eligible for
41 medicaid coverage born on or after the first day of
42 October, one thousand nine hundred eighty-three, whose
43 family incomes are at or below one hundred percent of
44 the federal poverty level and continuing until such
45 children reach the age of eight years.

46 (3) Elect the federal options provided under COBRA,
47 SOBRA, and OBRA, impacting pregnant women and
48 children below the poverty level: *Provided, however,*
49 That no provision in this article shall restrict the
50 department of human services in exercising new options
51 provided by or to be in compliance with new federal
52 legislation that further expands eligibility for children
53 and pregnant women.

54 (4) Enter into an inter-agency agreement with the
55 department of health whereby the department of health
56 shall be responsible for the implementation and pro-
57 gram design for a maternal and infant health care

58 system to reduce infant mortality in West Virginia. The
59 health system design shall include quality assurance
60 measures, case management and patient outreach
61 activities. The department of human services shall
62 assume responsibility for claims processing in accor-
63 dance with established fee schedules, and financial
64 aspects of the program necessary to receive available
65 federal dollars and to meet federal rules and
66 regulations.

67 (5) The department of health shall transfer to the
68 department of human services through inter-agency
69 agreement such state funds as are necessary to imple-
70 ment this program to the department of human services
71 medical services account; and the department of human
72 services shall, through inter-program transfer, provide
73 such state funds as are necessary to implement this
74 program.

75 (6) Beginning the first day of July, one thousand nine
76 hundred eighty-eight, the state department of human
77 services shall increase to no less than six hundred
78 dollars the reimbursement rates under the medicaid
79 program for prenatal care, delivery and post-partum
80 care.

81 (c) In order to be in compliance with the provisions
82 of OBRA, through rules and regulations the department
83 shall ensure that pregnant women and children whose
84 incomes are above the Aid to Families and Dependent
85 Children (AFDC) payment level are not required to
86 apply for entitlements under the AFDC program as a
87 condition of eligibility for medicaid coverage. Further,
88 the department shall develop a short, simplified
89 pregnancy/pediatric application of no more than three
90 pages, paralleling the simplified OBRA standards.

91 (d) Any woman who establishes eligibility under this
92 section shall continue to be treated as an eligible
93 individual without regard to any change in income of
94 the family of which she is a member until the end of
95 the sixty day period beginning on the last day of her
96 pregnancy.

97 (e) Nothing in this section shall be construed to give

98 the department of health any jurisdiction over the
99 medicaid program or its operations.

§9-5-14. Medicaid program; health care facilities financed by bonds; rules regarding reimbursement of capital costs.

1 (a) The Legislature finds and declares that a number
2 of health care facilities have been financed by public
3 bonded indebtedness, and as a result of policies, rules,
4 regulations and standards which may be in conflict, the
5 facilities and the health and welfare of those citizens
6 served by such facilities are in jeopardy. The provisions
7 of subsection (b) are enacted for the purpose of address-
8 ing this problem as a short term solution.

9 (b) As to any health care facility licensed under
10 article five-c, chapter sixteen of this code constructed
11 after the first day of April, one thousand nine hundred
12 eighty-one, and affected on or after that date by the
13 reimbursement methodology implemented by the de-
14 partment regarding standard appraised value, begin-
15 ning on the first day of April, one thousand nine
16 hundred eighty-eight, and for a one year period only,
17 ending on the thirty-first day of March, one thousand
18 nine hundred eighty-nine, all in compliance with federal
19 rules and regulations, the department shall reimburse
20 such health care facilities no less than any actual annual
21 capital costs including, but not limited to, debt service,
22 lease payments or costs of comparable financing
23 arrangements incurred in connection with any capital
24 expenditure approved pursuant to article two-d, chapter
25 sixteen of this code, or any rule or regulation promul-
26 gated thereunder or in conjunction with the financing
27 of such capital expenditure pursuant to article two-c,
28 chapter thirteen of this code, whichever is greater; and
29 in no event, for the purpose of reimbursement of such
30 capital costs, shall the value of any health care facility
31 licensed pursuant to article five-c, chapter sixteen of this
32 code, be deemed to be less than the greater of the
33 aggregate principal amount of any public bond issue
34 undertaken pursuant to the provisions of article two-c,
35 chapter thirteen of this code or the maximum capital
36 expenditure approved pursuant to article two-d, chapter

37 sixteen of this code, or any rule or regulation promul-
38 gated thereunder, and any appraisal made by the
39 department in connection therewith shall include costs
40 related to the financing of the bond issue or the
41 maximum capital expenditure approved pursuant to
42 article two-d, chapter sixteen of this code, as applicable:
43 *Provided*, That said values may be reduced by (a) any
44 functional obsolescence which is determined and
45 identified annually pursuant to any rule or regulation
46 promulgated hereunder and (b) the pro rata share of
47 such value which is attributable to capital expenditures
48 incurred with respect to facilities which provide services
49 which are not eligible for reimbursement under Title
50 XIX of the Social Security Act: *Provided, however*, That
51 the department shall not exceed the medicare upper
52 payment limit for medicaid in making any reimburse-
53 ment pursuant to this section.

54 As to any such health care facility constructed after
55 the first day of April, one thousand nine hundred eighty-
56 one, and affected on or after that date by the reimbur-
57 sement methodology implemented by the department
58 regarding standard appraised value, with respect to
59 reimbursement to the state by such health care facility
60 arising from adjustment of projected rates, the depart-
61 ment shall provide for the adjustment of projected rates
62 based upon values which are consistent with the
63 provisions of this section and based upon the actual
64 occupancy experience of the health care facility during
65 the projected rate period, all in compliance with federal
66 rules and regulations.

67 (c) The medicaid payments that a long-term care
68 facility would otherwise receive shall not be reduced in
69 any manner as a result of the operation of this section.

**§9-5-15. Medicaid program; drug formulary and drug
utilization review.**

1 The drug formulary committee of the department of
2 human services shall meet no less than four times each
3 year and be responsible for the development of a drug
4 formulary which shall consist of cost effective federal
5 food and drug administration approved generic drugs,

6 when applicable. Medicaid shall pay for only these
7 generic products, when applicable, in accordance with
8 federal medicaid regulations and guidelines.

9 The commissioner shall implement a drug utilization
10 review program to assure that prescribing and dispens-
11 ing of drug products result in the most rational cost-
12 effective medication therapy for medicaid patients.

**§9-5-16. Medicaid program; legislative purpose; health
care provider reimbursement study by de-
partment; hearings; report.**

1 (a) It is the purpose of the Legislature in enacting
2 this section to encourage the long-term well planned
3 development of fair and equitable reimbursement
4 methodologies and systems for all health care providers
5 reimbursed under the medicaid program in its entirety,
6 and to ensure that reimbursement for services of all
7 such health care providers is determined without undue
8 discrimination or preference and with full consideration
9 of adequate and reasonable compensation to such health
10 care providers for the costs of providing such services.

11 (b) In order that the Legislature become better
12 informed as to these matters, and appropriately ap-
13 praise and balance the interests among all such health
14 care providers and between all such health care
15 providers and the interests of all the state's citizenry, the
16 Legislature hereby directs the commissioner of the
17 department of human services to identify, explore, study
18 and consider the potential benefits and risks associated
19 with the adoption of alternative and emerging and state-
20 of-the-art concepts in reimbursement methodology for
21 such health care providers.

22 (c) Toward this end, the commissioner shall conduct
23 inquiries and hold hearings in order to provide all
24 health care providers and other interested persons the
25 opportunity to comment. In carrying out the provisions
26 of this section, the commissioner shall have jurisdiction
27 over such persons, whether such health care providers
28 or not, as may be in the opinion of the commissioner
29 necessary to the exercise of the mandate set forth in this
30 section, and may compel attendance before the depart-

31 ment, take testimony under oath and compel the
32 production of papers or other documents. Upon reason-
33 able requests by the commissioner, all other state
34 agencies shall cooperate in carrying out the provisions
35 of this section.

36 (d) The commissioner shall make monthly reports to
37 the Joint Committee on Government and Finance,
38 created by article three, chapter four of this code, or a
39 subcommittee designated by the Joint Committee, and
40 at the completion of such identification, exploration,
41 study and consideration, present to the Joint Committee
42 or its subcommittee, no later than the first day of
43 December, one thousand nine hundred eighty-eight, a
44 summary report which shall set forth all activities
45 pursuant to the mandate of the Legislature as set forth
46 herein, any policy decisions reached and initiatives
47 undertaken and findings and conclusions as well as any
48 recommendations for legislation. The commissioner
49 shall also make such full report to the Legislature no
50 later than the first day of the regular session of the
51 Legislature in the year one thousand nine hundred
52 eighty-nine.

53 (e) Nothing in this section shall be construed to give
54 the Legislature any jurisdiction over the medicaid
55 program or its operations.

CHAPTER 87

(Com. Sub. for S. B. 199—By Senators Craigo, Sharpe and Fanning)

[Passed March 12, 1988; in effect April 1, 1988. Approved by the Governor.]

AN ACT to repeal section six, article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred nine hundred thirty-one, as amended; to amend and reenact sections three, seven, eight, nine, ten, twelve and thirteen of said article one; to further amend said article one by adding thereto three new sections, designated sections eight-a, nine-a and ten-a; to amend and reenact sections four-b and four-c, article six of said chapter

twenty-two; to amend and reenact sections one and two, article one, chapter twenty-two-a of said code; to further amend said article one by adding thereto a new section, designated section three; to amend and reenact sections one, two, three, four, five and nineteen, article one-a of said chapter twenty-two-a; to amend and reenact sections seven, eight, nineteen and forty, article three of said chapter; and to amend and reenact sections two and twenty-nine, article one, chapter twenty-two-b of said code, all relating to deputy commissioner of the department of energy; divisions within the department of energy; creation of division of health, safety and training; creation of the division of abandoned mine lands; general powers and duties of the divisions of the department of energy; appointment, training, salary and eligibility of division directors; creation of separate budget accounts in the general revenue fund for appropriations to the board of coal mine health and safety and the state coal mine safety and technical review committee; divisions of mines and minerals, and health, safety and training; director of the division of mines and minerals; director of the division of health, safety and training; definitions; eligibility, salary; request for approval on prospecting operations to remove more than two hundred fifty tons of coal; application requirements for such requests; application fee for such approval; increasing filing fee for permit applications; establishing a permit renewal fee; establishing amounts for permit and renewal filing fees for NPDES permits; removing the requirement that permit fees be deposited in the general treasury and establishing a special operating permit and processing fund.

Be it enacted by the Legislature of West Virginia:

That section six, article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections three, seven, eight, nine, ten, twelve and thirteen of said article one be amended and reenacted; that said article one be further amended by adding thereto three new sections, designated sections eight-a, nine-a and ten-a; that sections four-b and four-c, article six of said chapter twenty-two be amended and reenacted; that sections

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

Chapter

22. Energy.

22A. Mines and Minerals.

22B. Oil and Gas.

CHAPTER 22. ENERGY.

Article

1. Title; Purposes; Department of Energy.

6. Board of Coal Mine Health and Safety.

ARTICLE 1. TITLE; PURPOSES; DEPARTMENT OF ENERGY.

§22-1-3. Definitions.

§22-1-7. Divisions within department.

§22-1-8. Director of the division of mines and minerals; appointment; eligibility; salary.

§22-1-8a. General powers and duties of the director of the division of mines and minerals.

§22-1-9. Director of the division of health, safety and training; appointment; eligibility; salary.

§22-1-9a. General powers and duties of the director of the division of health, safety and training.

§22-1-10. Director of the division of abandoned mine lands and reclamation; appointment; eligibility; salary.

§22-1-10a. General powers and duties of the director of the division of abandoned mine lands and reclamation.

§22-1-12. General powers and duties of director of the division of oil and gas and commissioner.

§22-1-13. Oath and bond.

§22-1-3. Definitions.

1 (a) Unless the context, in which used, clearly requires
 2 a different meaning, the following definitions shall
 3 apply in this chapter:

4 (1) "Commissioner" means the commissioner of the

5 department of energy;

6 (2) "Department" means the state department of
7 energy;

8 (3) "Division of abandoned mine lands and reclama-
9 tion" means the division of abandoned mine lands and
10 reclamation of the department of energy;

11 (4) "Division of health, safety and training" means the
12 division of health, safety and training of the department
13 of energy;

14 (5) "Division of mines and minerals" means the
15 division of mines and minerals of the department of
16 energy; and

17 (6) "Division of oil and gas" means the division of oil
18 and gas of the department of energy.

19 (b) Unless the context clearly indicates otherwise, the
20 use of the word "and" and the word "or" shall be
21 interchangeable, as, for example, "oil and gas" shall
22 mean oil or gas or both.

§22-1-7. Divisions within department.

1 (a) Divisions of mines and minerals, abandoned mine
2 lands and reclamation, oil and gas, and health, safety
3 and training are hereby created and established within
4 the department. Subject to provisions of law, the
5 commissioner shall allocate the functions and services of
6 the department to the divisions, offices and activities
7 thereof and may from time to time establish and abolish
8 other divisions, offices and activities within the depart-
9 ment in order to carry out fully and in an orderly
10 manner the powers, duties and responsibilities of his
11 office as commissioner. The commissioner shall select
12 and designate a competent and qualified person to be
13 director of each division. The director of a division shall
14 be the principal administrative officer of that division
15 and shall be accountable and responsible for the orderly
16 and efficient performance of the duties, functions and
17 services thereof.

18 (b) The division of mines and minerals shall be
19 responsible for surface and underground mining

20 permits, administration of the division, and coal
21 reclamation inspections under the provisions of articles
22 three and four, chapter twenty-two-a of this code.

23 (c) The division of health, safety and training shall be
24 responsible for all matters relating to health, safety and
25 training for coal mines and other facilities, for admin-
26 istration of the division, and for surface and under-
27 ground safety inspections of coal mines under the
28 provisions of articles one-a, two, five and six, chapter
29 twenty-two-a of this code.

30 (d) The division of oil and gas shall be responsible for
31 administration, permits, inspections and for other duties
32 of the department under the provisions of chapter
33 twenty-two-b of this code.

34 (e) The division of abandoned mine lands and recla-
35 mation shall be responsible for all duties of the
36 department under the provisions of article three of this
37 chapter.

**§22-1-8. Director of the division of mines and minerals—
Appointment; eligibility; salary.**

1 (a) There shall be a director of the division of mines
2 and minerals who shall be appointed by the commis-
3 sioner to serve at the will and pleasure of the commis-
4 sioner and whose salary shall be set by the commis-
5 sioner. The director of the division of mines and
6 minerals shall have full charge of the administration of
7 the division of mines and minerals and of such other
8 matters as are delegated and assigned to the director of
9 the division of mines and minerals by the commissioner
10 relating to such mines and minerals matters relating to
11 surface and underground mining permits and coal mine
12 reclamation inspections set out in this chapter and in
13 chapter twenty-two-a of this code, subject always to the
14 direct supervision and control of the commissioner.

15 (b) The director of the division of mines and minerals
16 shall be a citizen of West Virginia, shall be a competent
17 person of good repute and temperate habits with
18 demonstrated interest and experience in coal mining.
19 The director of the division of mines and minerals shall

20 devote all of his time to his duties and shall not be
21 directly or indirectly interested financially in any mine
22 in this state.

§22-1-8a. General powers and duties of the director of the division of mines and minerals.

1 The director of the division of mines and minerals is
2 hereby empowered and it shall be his duty to execute
3 and carry out, administer and enforce such provisions
4 of this chapter and chapter twenty-two-a of the code
5 relating to surface and underground mining permits
6 and coal mine reclamation inspections as are expressly
7 conferred upon him by such provisions or delegated to
8 him by the commissioner relating to mines and miner-
9 als.

§22-1-9. Director of the division of health, safety and training; appointment; eligibility; salary.

1 (a) There shall be a director of the division of health,
2 safety and training who shall be appointed by the
3 commissioner to serve at the will and pleasure of the
4 commissioner and whose salary shall be set by the
5 commissioner. The director of the division of health,
6 safety and training shall be responsible for surface and
7 underground safety inspections of coal mines, the
8 administration of the division of health, safety and
9 training and of such other matters as are delegated and
10 assigned to the director of the division of health, safety
11 and training by the commissioner.

12 (b) The director of the division of health, safety and
13 training shall be a citizen of West Virginia, shall be a
14 competent person of good repute and temperate habits
15 with demonstrated interest and five years experience in
16 underground coal mining. The director of the division
17 of health, safety and training shall devote all of his time
18 to his duties and shall not be directly or indirectly
19 interested financially in any mine in this state.

§22-1-9a. General powers and duties of the director of the division of health, safety and training.

1 The director of the division of health, safety and
2 training is hereby empowered, and it shall be his duty

3 to administer and enforce such provisions of this chapter
4 and articles one-a, two, five and six, chapter twenty-two-
5 a of this code as expressly relate to health and safety
6 inspections and enforcement and training in surface and
7 underground coal mines, underground clay mines, open
8 pit mines, cement manufacturing plants and under-
9 ground limestone and sandstone mines. The director of
10 the division of health, safety and training shall replace
11 the commissioner and the director of the division of
12 mines and minerals on those boards as set forth in
13 article eleven of chapter twenty-two.

**§22-1-10. Director of the division of abandoned mine
lands and reclamation; appointment; eligibil-
ity; salary.**

1 (a) There shall be a director of the division of
2 abandoned mine lands and reclamation who shall be
3 appointed by the commissioner to serve at the will and
4 pleasure of the commissioner and whose salary shall be
5 set by the commissioner. The director of the division of
6 abandoned mine lands and reclamation shall be respon-
7 sible for the administration of the abandoned mine lands
8 and reclamation act in article three of this chapter and
9 of such other matters as are delegated and assigned to
10 the director by the commissioner.

11 (b) The director of the division of abandoned mine
12 lands and reclamation shall be a citizen of West
13 Virginia, shall be a competent person of good repute and
14 temperate habits with demonstrated interest and
15 experience in land reclamation. The director of the
16 division of abandoned mine lands and reclamation shall
17 devote all of his time to his duties and shall not be
18 directly or indirectly interested financially in any mine
19 or land reclamation projects in this state.

**§22-1-10a. General powers and duties of the director of
the division of abandoned mine lands and
reclamation.**

1 The director of the division of abandoned mine lands
2 and reclamation is hereby empowered, and it shall be
3 his duty to execute and carry out, administer and
4 enforce the provisions of the abandoned mine lands and

5 reclamation act in article three of this chapter.

**§22-1-12. General powers and duties of director of the
division of oil and gas and commissioner.**

1 (a) Except for the authority of the shallow gas well
2 review board under article seven of this chapter and of
3 the oil and gas conservation commission under article
4 eight of this chapter and of the oil and gas inspectors
5 examining board under article thirteen of this chapter,
6 and subject to the rule review provisions of subsection
7 (b) of this section and the appellate review provisions of
8 section fourteen of this article, the director of the
9 division of oil and gas is hereby empowered and it shall
10 be his duty to execute and carry out, administer and
11 enforce the provisions of this chapter and chapter
12 twenty-two-b of the code in the manner provided herein
13 as they relate to oil and gas. Subject to the provisions
14 of this chapter and chapter twenty-two-b of the code, the
15 director of the division of oil and gas shall have
16 jurisdiction and authority over all persons and property
17 necessary therefor.

18 (b) The director of the division of oil and gas is
19 authorized to propose or promulgate such rules and
20 regulations as are necessary to carry out and implement
21 the provisions of this chapter and chapter twenty-two-
22 b of this code as are specifically authorized in said
23 chapter twenty-two-b of this code. Except where
24 specifically exempted in chapter twenty-two-b of this
25 code, the provisions of chapter twenty-nine-a of this code
26 shall apply to the proposal or promulgation of any such
27 rules and regulations. No rules and regulations shall be
28 finally proposed or promulgated by the director of the
29 division of oil and gas for purposes of chapter twenty-
30 nine-a of this code, unless and until the commissioner
31 has approved such rules and regulations as provided
32 herein. To the extent that the commissioner approves
33 only a portion thereof, only that portion so approved may
34 be finally proposed or promulgated by the director of
35 the division of oil and gas. The commissioner shall
36 determine whether he will review the rules and
37 regulations within thirty days from the date the same
38 are filed with the commissioner by the director of the

39 division of oil and gas. If the commissioner decides to
40 make such a review, he shall file a notice of review with
41 the director of the division of oil and gas within the
42 thirty day time period. Failure by the commissioner to
43 file a notice of review shall be considered to be
44 commissioner approval of such rules and regulations, or
45 parts thereof. If the commissioner files a notice of
46 review, he shall act to approve, disapprove or rewrite
47 such rules and regulations or parts thereof within sixty
48 days from the filing of the notice of review. Failure by
49 the commissioner to act within the sixty day time period
50 shall be considered to be commissioner approval of such
51 rules and regulations, or parts thereof. Those rules and
52 regulations specifically approved, approved by failure to
53 act, or rewritten shall be proposed or promulgated
54 under the provisions of chapter twenty-nine-a of this
55 code.

§22-1-13. Oath and bond.

1 The directors of the division of mines and minerals,
2 the division of abandoned mine lands and reclamation,
3 the division of health, safety and training and the
4 division of oil and gas, shall, before entering upon the
5 discharge of their duties, take the oath of office
6 prescribed by section five, article four of the constitution
7 of West Virginia, and shall execute a bond in the penalty
8 of two thousand dollars, with security to be approved by
9 the governor, conditioned upon the faithful discharge of
10 their duties, a certificate of which oath and which bond
11 shall be filed in the office of the secretary of state.

ARTICLE 6. BOARD OF COAL MINE HEALTH AND SAFETY.

§22-6-4b. Health and safety administrator; qualifications; duties; employees; compensation.

§22-6-4c. Coal mine safety and technical review committee; membership; method of nomination and appointment; meetings; quorum; powers and duties of the board of coal mine health and safety.

§22-6-4b. Health and safety administrator; qualifications; duties; employees; compensation.

1 (a) The governor shall appoint the health and safety
2 administrator of the board for a term of employment of
3 one year. The health and safety administrator shall be

4 entitled to have his contract of employment renewed on
5 an annual basis except where such renewal is denied for
6 cause: *Provided*, That the governor shall have the power
7 at any time to remove the health and safety administra-
8 tor for misfeasance, malfeasance or nonfeasance:
9 *Provided, however*, That the board shall have the power
10 to remove the health and safety administrator without
11 cause upon the concurrence of five members of the
12 board.

13 (b) The health and safety administrator shall work at
14 the direction of the board, independently of the commis-
15 sioner of the department of energy, and shall have such
16 authority and perform such duties as may be required
17 or necessary to effectuate this article.

18 (c) In addition to the health and safety administrator,
19 there shall be such other research employees hired by
20 the health and safety administrator as the board
21 determines to be necessary. The health and safety
22 administrator shall provide supervision and direction to
23 the other research employees of the board in the
24 performance of their duties.

25 (d) The employees of the board shall be compensated
26 at rates determined by the board. The salary of the
27 health and safety administrator shall be fixed by the
28 governor: *Provided*, That the salary of the health and
29 safety administrator shall not be reduced during his
30 annual term of employment or upon the renewal of his
31 contract for an additional term. Such salary shall be
32 fixed for any renewed term at least ninety days before
33 the commencement thereof.

34 (e) Appropriations for the salaries of the health and
35 safety administrator and any other employees of the
36 board and for necessary office and operating expenses
37 shall be made to a budget account hereby established
38 for those purposes in the general revenue fund. Such
39 account shall be separate from any accounts or appro-
40 priations for the department of energy.

41 (f) The health and safety administrator shall review
42 all coal mining fatalities and major causes of injuries as
43 mandated by section four of this article. An analysis of

44 such fatalities and major causes of injuries shall be
45 prepared for consideration by the board within ninety
46 days of the occurrence of the accident.

47 (g) At the direction of the board, the administrator
48 shall also conduct an annual study of occupational health
49 issues relating to employment in and around coal mines
50 of this state and submit a report to the board with
51 findings and proposals to address the issues raised in
52 such study. The administrator shall be responsible for
53 preparing the annual reports required by subsection (e),
54 section four of this article and section six of this article.

§22-6-4c. Coal mine safety and technical review committee; membership; method of nomination and appointment; meetings; quorum; powers and duties of the committee; powers and duties of the board of coal mine health and safety.

1 (1) There is hereby established a state coal mine
2 safety and technical review committee. The purposes of
3 this committee are to:

4 (a) Assist the board of coal mine health and safety in
5 the development of technical data relating to mine
6 safety issues, including related mining technology;

7 (b) Provide suggestions and technical data to the
8 board and propose rules and regulations with general
9 mining industry application;

10 (c) Accept and consider petitions submitted by
11 individual mine operators or miners seeking site-specific
12 rule-making pertaining to individual mines and make
13 recommendations to the board concerning such rule-
14 making; and

15 (d) Provide a forum for the resolution of technical
16 issues encountered by the board.

17 (2) The committee shall consist of two members who
18 shall be residents of this state, and who shall be
19 appointed as hereinafter specified in this section:

20 (a) The governor shall appoint one member to repres-
21 ent the viewpoint of the coal operators in this state from
22 a list containing one or more nominees submitted by the

23 major trade association representing coal operators in
24 this state within thirty days of submission of such
25 nominee or nominees.

26 (b) The governor shall appoint one member to repres-
27 ent the viewpoint of the working miners of this state
28 from a list containing one or more nominees submitted
29 by the highest ranking official within the major
30 employee organization representing coal mines within
31 this state within thirty days of submission of the
32 nominee or the nominees.

33 (c) The members appointed in accordance with the
34 provisions of subdivisions (a) and (b) of this subsection
35 shall be initially appointed to serve a term of three
36 years.

37 (d) The members appointed in accordance with the
38 provisions of subdivisions (a) and (b) of this subsection
39 may be, but are not required to be, members of the
40 board of coal mine health and safety, and shall be
41 compensated on a per diem basis in the same amount
42 as provided in section seven of this article, plus all
43 reasonable expenses.

44 (3) The committee shall meet at least once during
45 each calendar month, or more often as may be
46 necessary.

47 (4) A quorum of the committee shall require both
48 members, and the committee may only act officially by
49 a quorum.

50 (5) The committee may review any matter relative to
51 mine safety and mining technology, and may pursue
52 development and resolution of issues related thereto.
53 The committee may make recommendations to the
54 board for the promulgation of rules and regulations with
55 general mining industry application. Upon receipt of a
56 unanimous recommendation for rule-making from the
57 committee and only thereon, the board may adopt or
58 reject such rule or regulations, without modification
59 except as approved by the committee: *Provided*, That
60 any adopted rule or regulation shall not reduce or
61 compromise the level of safety or protection below the

62 level of safety or protection afforded by applicable
63 statutes and regulations. When so promulgated, such
64 rules or regulations shall be effective, notwithstanding
65 the provisions of applicable statutes or regulations.

66 (6)(a) Upon application of a coal mine operator, or on
67 its own motion, the committee has the authority to
68 accept requests for site-specific rule-making on a mine-
69 by-mine basis, and make unanimous recommendations
70 to the board for site-specific rules and regulations
71 thereon. The committee has authority to approve a
72 request if it concludes that the request does not reduce
73 or compromise the level of safety or protection afforded
74 miners below the level of safety or protection afforded
75 by any applicable statutes or regulations. Upon receipt
76 of a request for site-specific rule-making, the committee
77 may conduct an investigation of the conditions in the
78 specific mine in question, which investigation shall
79 include consultation with the mine operator and
80 authorized representatives of the miners. Such autho-
81 rized representatives of the miners shall include any
82 person designated by the employees at the mine, persons
83 employed by an employee organization representing one
84 or more miners at the mine, or a person designated as
85 a representative by one or more persons at the mine.

86 (b) If the committee determines to recommend a
87 request made pursuant to subdivision (a) of this
88 subsection, the committee shall provide the results of its
89 investigation to the board of coal mine health and safety
90 along with recommendations for the development of the
91 site-specific rules and regulations applicable to the
92 individual mine, which recommendations may include a
93 written proposal containing draft rules and regulations.

94 (c) Within thirty days of receipt of the committee's
95 recommendation, the board shall adopt or reject,
96 without modification, except as approved by the
97 committee, the committee's recommendation to promul-
98 gate site-specific regulations applicable to an individual
99 mine adopting such site-specific regulations only if it
100 determines that the application of the requested rule to
101 such mine will not reduce or compromise the level of
102 safety or protection afforded miners below that level of

103 safety or protection afforded by any applicable statutes
104 or regulations. When so promulgated, such rules or
105 regulations shall be effective notwithstanding the
106 provisions of applicable statutes or regulations.

107 (7) The board shall consider all regulations proposed
108 by the coal mine safety and technical review committee
109 and adopt or reject, without modification, except as
110 approved by the committee, such rules and regulations,
111 dispensing with the preliminary procedures set forth in
112 subdivisions (1) through (7), subsection (a), section four-
113 a; and, in addition, with respect to site-specific regula-
114 tions also dispensing with the procedures set forth in
115 subdivisions (4) through (8), subsection (c), section four
116 of this article.

117 (8) In performing its functions, the committee shall
118 have access to the services of the coal mine health and
119 safety administrator appointed under section four-b of
120 this article. The commissioner shall make clerical
121 support and assistance available in order that the
122 committee can carry out its duties. Upon the request of
123 both members of the committee, the health and safety
124 administrator shall draft proposed regulations and
125 reports or make investigations.

126 (9) The powers and duties provided for in this section
127 for the committee are not intended to replace or
128 precondition the authority of the board of coal mine
129 health and safety to act in accordance with sections one
130 through four-b and five through seven of this article.

131 (10) Appropriations for the funding of the committee
132 and to effectuate this section shall be made to a budget
133 account hereby established for that purpose in the
134 general revenue fund. Such account shall be separate
135 from any accounts or appropriations for the department
136 of energy.

CHAPTER 22A. MINES AND MINERALS.

Article

1. Divisions of Mines and Minerals, and Health, Safety and Training.
- 1A. Administration; Enforcement.
3. West Virginia Surface Coal Mining and Reclamation Act.

ARTICLE 1. DIVISIONS OF MINES AND MINERALS, AND HEALTH, SAFETY AND TRAINING.

§22A-1-1. Divisions of mines and minerals and health, safety and training.

§22A-1-2. Director of division of mines and minerals.

§22A-1-3. Director of division of health, safety and training.

§22A-1-1. Divisions of mines and minerals and health, safety and training.

1 The divisions of mines and minerals, and health,
2 safety and training created under the provisions of
3 section seven, article one, chapter twenty-two of this
4 code, are hereby charged with the duties and responsi-
5 bilities set out in chapter twenty-two of this code and
6 this chapter, relating to the exploration for and
7 development, production and conservation of coal and all
8 other minerals, except oil and gas and those minerals
9 found in association therewith as provided in chapter
10 twenty-two-b of this code and abandoned mine lands and
11 reclamation provided in article three, chapter twenty-
12 two of this code. All legislative findings and policies
13 stated in chapter twenty-two of this code in relation to
14 these minerals apply to the operations of these divisions
15 and the provisions of this chapter.

§22A-1-2. Director of division of mines and minerals.

1 The director of the division of mines and minerals, as
2 provided in sections eight and eight-a, article one,
3 chapter twenty-two of this code shall have the respon-
4 sibility and duties in administration of the division of
5 mines and minerals as are provided in said chapter
6 twenty-two and articles three and four of this chapter.

§22A-1-3. Director of division of health, safety and training.

1 The director of the division of health, safety and
2 training, as provided in sections nine and nine-a, article
3 one, chapter twenty-two of this code, shall have the
4 responsibility and duties and administration of the
5 division of health, safety and training as are provided
6 in said chapter twenty-two and articles one-a, two, five
7 and six of this chapter.

ARTICLE 1A. ADMINISTRATION; ENFORCEMENT.

- §22A-1A-1. Definitions.
§22A-1A-2. Division of health, safety and training; purposes; rules and regulations.
§22A-1A-3. Director of division of health, safety and training—Appointment.
§22A-1A-4. Same—Powers and duties.
§22A-1A-5. Same—Eligibility; salary.
§22A-1A-19. Penalties.

§22A-1A-1. Definitions.

1 Unless the context in which used clearly requires a
2 different meaning, the following definitions shall apply
3 to this chapter:

4 (a) *General.*

5 (1) Accident: The term “accident” means any mine
6 explosion, mine ignition, mine fire, or mine inundation,
7 or injury to, or death of any person.

8 (2) Agent: The term “agent” means any person
9 charged with responsibility for the operation of all or
10 a part of a mine or the supervision of the miners in a
11 mine.

12 (3) Approved: The term “approved” means in strict
13 compliance with mining law, or, in the absence of law,
14 accepted by a recognized standardizing body or organ-
15 ization whose approval is generally recognized as
16 authoritative on the subject.

17 (4) Commissioner or commissioner of energy: The
18 terms “commissioner” or “commissioner of energy”
19 means the commissioner of the department of energy as
20 provided in chapter twenty-two of this code.

21 (5) Face equipment: The term “face equipment” shall
22 mean mobile or portable mining machinery having
23 electric motors or accessory equipment normally
24 installed or operated in by the last open crosscut in an
25 entry or room.

26 (6) Imminent danger: The term “imminent danger”
27 means the existence of any condition or practice in a coal
28 mine which could reasonably be expected to cause death
29 or serious physical harm before such condition or
30 practice can be abated.

31 (7) Mine: The term "mine" includes the shafts, slopes,
32 drifts or inclines connected with, or intended in the
33 future to be connected with, excavations penetrating
34 coal seams or strata, which excavations are ventilated
35 by one general air current or divisions thereof, and
36 connected by one general system of mine haulage over
37 which coal may be delivered to one or more points
38 outside the mine, and the surface structures or equip-
39 ment connected or associated therewith which contrib-
40 ute directly or indirectly to the mining, preparation or
41 handling of coal, or construction thereof.

42 (8) Miner: The term "miner" means any individual
43 working in a coal mine.

44 (9) Operator: The term "operator" means any firm,
45 corporation, partnership or individual operating any
46 coal mine or part thereof, or engaged in the construction
47 of any facility associated with a coal mine.

48 (10) Permissible: The term "permissible" means any
49 equipment, device or explosive that has been approved
50 as permissible by the federal mine safety and health
51 administration and/or the United States Bureau of
52 Mines and meets all requirements, restrictions, excep-
53 tions, limitations and conditions attached to such
54 classification by that agency or the bureau.

55 (11) Person: The term "person" means any individual,
56 partnership, association, corporation, firm, subsidiary of
57 a corporation or other organization.

58 (12) Work of preparing the coal: The term "work of
59 preparing the coal" means the breaking, crushing,
60 sizing, cleaning, washing, drying, mixing, storing and
61 loading of bituminous coal or lignite, and such other
62 work of preparing such coal as is usually done by the
63 operator of the coal mine.

64 (b) *Division of health, safety and training.*

65 (1) Board of appeals: The term "board of appeals"
66 means as provided for in article five, chapter twenty-
67 two of this code.

68 (2) Division: The term "division" means the state

69 division of health, safety and training provided for in
70 article one, section one of this chapter and article one,
71 chapter twenty-two of this code.

72 (3) Director: The term "director" means the director
73 of the division of health, safety and training provided
74 for in section three, article one of this chapter, and
75 article one, chapter twenty-two of this code.

76 (4) Mine inspector: The term "mine inspector" means
77 a state mine inspector provided for in section seven of
78 this article.

79 (5) Mine inspectors' examining board: The term
80 "mine inspectors' examining board" shall mean the mine
81 inspectors' examining board provided for in article
82 eleven, chapter twenty-two of this code.

83 (c) *Mine areas.*

84 (1) Abandoned workings: The term "abandoned
85 workings" means excavation, either caved or sealed, that
86 is deserted and in which further mining is not intended,
87 or open workings which are ventilated and not inspected
88 regularly.

89 (2) Active workings: The term "active workings"
90 means all places in a mine that are ventilated and
91 inspected regularly.

92 (3) Drift: The term "drift" means a horizontal or
93 approximately horizontal opening through the strata or
94 in a coal seam and used for the same purposes as a shaft.

95 (4) Excavations and workings: The term "excavations
96 and workings" means any or all parts of a mine
97 excavated or being excavated, including shafts, slopes,
98 drifts, tunnels, entries, rooms and working places,
99 whether abandoned or in use.

100 (5) Inactive workings: The term "inactive workings"
101 includes all portions of a mine in which operations have
102 been suspended for an indefinite period, but have not
103 been abandoned.

104 (6) Mechanical working section: The term "mechani-
105 cal working section" means an area of a mine (A) in

106 which coal is loaded mechanically, (B) which is com-
107 prised of a number of working places that are generally
108 contiguous, and (C) which is of such size to permit
109 necessary supervision during shift operation, including
110 pre-shift and on-shift examinations and tests required
111 by law.

112 (7) Panel: The term "panel" means workings that are
113 or have been developed off of submain entries which do
114 not exceed three thousand feet in length.

115 (8) Return air: The term "return air" means a volume
116 of air that has passed through and ventilated all the
117 working places in a mine section.

118 (9) Shaft: The term "shaft" means a vertical opening
119 through the strata that is or may be used for the purpose
120 of ventilation, drainage, and the hoisting and transpor-
121 tation of men and material, in connection with the
122 mining of coal.

123 (10) Slope: The term "slope" means a plane or incline
124 roadway, usually driven to a coal seam from the surface
125 and used for the same purposes as a shaft.

126 (11) Working face: The term "working face" means
127 any place in a coal mine in which work of extracting
128 coal from its natural deposit in the earth is performed
129 during the mining cycle.

130 (12) Working place: The term "working place" means
131 the area of a coal mine in by the last open crosscut.

132 (13) Working section: The term "working section"
133 means all areas of the coal mine from the loading point
134 of the section to and including the working faces.

135 (14) Working unit: The term "working unit" means an
136 area of a mine in which coal is mined with a set of
137 production equipment; a conventional mining unit by a
138 single loading machine; a continuous mining unit by a
139 single continuous mining machine, which is comprised
140 of a number of working places.

141 (d) *Mine personnel.*

142 (1) Assistant mine foreman: The term "assistant mine

143 foreman" means a certified person designated to assist
144 the mine foreman in the supervision of a portion or the
145 whole of a mine or of the persons employed therein.

146 (2) Certified electrician: The term "certified electrician"
147 means any person who is qualified as a mine
148 electrician and who has passed an examination given by
149 the division, or has at least three years of experience in
150 performing electrical work underground in a coal mine,
151 in the surface work areas of an underground coal mine,
152 in a surface coal mine, in a noncoal mine, in the mine
153 equipment manufacturing industry, or in any other
154 industry using or manufacturing similar equipment,
155 and has satisfactorily completed a coal mine electrical
156 training program approved by the division.

157 (3) Certified person: The term "certified person,"
158 when used to designate the kind of person to whom the
159 performance of a duty in connection with the operation
160 of a mine shall be assigned, means a person who is
161 qualified under the provisions of this law to perform
162 such duty.

163 (4) Interested persons: The term "interested persons"
164 includes the operator, members of any mine safety
165 committee at the mine affected and other duly authorized
166 representatives of the mine workers and the
167 department.

168 (5) Mine foreman: The term "mine foreman" means
169 the certified person whom the operator or superintendent
170 shall place in charge of the inside workings of the
171 mine and of the persons employed therein.

172 (6) Qualified person: The term "qualified person"
173 means a person who has completed an examination and
174 is considered qualified on record by the division.

175 (7) Shot firer: The term "shot firer" means any person
176 having had at least two years of practical experience in
177 coal mines, who has a knowledge of ventilation, mine
178 roof and timbering, and who has demonstrated his
179 knowledge of mine gases, the use of a flame safety lamp,
180 and other approved detecting devices by examination
181 and certification given him by the division.

182 (8) Superintendent: The term "superintendent" means
183 the person who shall have, on behalf of the operator,
184 immediate supervision of one or more mines.

185 (9) Supervisor: The term "supervisor" means a
186 superintendent, mine foreman, assistant mine foreman,
187 or any person specifically designated by the superin-
188 tendent or mine foreman to supervise work or employees
189 and who is acting pursuant to such specific designation
190 and instructions.

191 (e) *Electrical.*

192 (1) Armored cable: The term "armored cable" means
193 a cable provided with a wrapping of metal, usually steel
194 wires or tapes, primarily for the purpose of mechanical
195 protection.

196 (2) Borehole cable: The term "borehole cable" means
197 a cable designed for vertical suspension in a borehole or
198 shaft and used for power circuits in the mine.

199 (3) Branch circuit: The term "branch circuit" means
200 any circuit, alternating current or direct current,
201 connected to and leading from the main power lines.

202 (4) Cable: The term "cable" means a standard conduc-
203 tor (single conductor cable) or a combination of conduc-
204 tors insulated from one another (multiple conductor
205 cable).

206 (5) Circuit breaker: The term "circuit breaker" means
207 a device for interrupting a circuit between separable
208 contacts under normal or abnormal conditions.

209 (6) Delta connected: The term "delta connected"
210 means a power system in which the windings or
211 transformers or a.c. generators are connected to form a
212 triangular phase relationship, and with phase conduc-
213 tors connected to each point of the triangle.

214 (7) Effectively grounded: The term "effectively
215 grounded" is an expression which means grounded
216 through a grounding connection of sufficiently low
217 impedance (inherent or intentionally added or both) so
218 that fault grounds which may occur cannot build up
219 voltages in excess of limits established for apparatus,

220 circuits or systems so grounded.

221 (8) Flame-resistant cable, portable: The term "flame-
222 resistant cable, portable" means a portable flame-
223 resistant cable that has passed the flame tests of the
224 Federal Mine Safety and Health Administration.

225 (9) Ground or grounding conductor (mining): The
226 term "ground or grounding conductor (mining)," also
227 referred to as a safety ground conductor, safety ground
228 and frame ground, means a metallic conductor used to
229 connect the metal frame or enclosure of any equipment,
230 device or wiring system with a mine track or other
231 effective grounding medium.

232 (10) Grounded (earthed): The term "grounded
233 (earthed)" means that the system, circuit or apparatus
234 referred to is provided with a ground.

235 (11) High voltage: The term "high voltage" means
236 voltages of more than one thousand volts.

237 (12) Lightning arrester: The term "lightning arres-
238 tor" means a protective device for limiting surge voltage
239 on equipment by discharging or by passing surge
240 current; it prevents continued flow of follow current to
241 ground and is capable of repeating these functions as
242 specified.

243 (13) Low voltage: The term "low voltage" means up to
244 and including six hundred sixty volts.

245 (14) Medium voltage: The term "medium voltage"
246 means voltages from six hundred sixty-one to one
247 thousand volts.

248 (15) Mine power center or distribution center: The
249 term "mine power center or distribution center" means
250 a combined transformer or distribution unit, complete
251 within a metal enclosure from which one or more low-
252 voltage power circuits are taken.

253 (16) Neutral (derived): The term "neutral (derived)"
254 means a neutral point or connection established by the
255 addition of a "zig-zag" or grounding transformer to a
256 normally underground power system.

257 (17) Neutral point: The term "neutral point" means
258 the connection point of transformer or generator
259 windings from which the voltage to ground is nominally
260 zero, and is the point generally used for system
261 groundings in wye-connected a.c. power system.

262 (18) Portable (trailing) cable: The term "portable
263 (trailing) cable" means a flexible cable or cord used for
264 connecting mobile, portable or stationary equipment in
265 mines to a trolley system or other external source of
266 electric energy where permanent mine wiring is
267 prohibited or is impracticable.

268 (19) Wye-connected: The term "wye-connected" means
269 a power system connection in which one end of each
270 phase windings or transformers or a.c. generators are
271 connected together to form a neutral point, and a
272 neutral conductor may or may not be connected to the
273 neutral point, and the neutral point may or may not be
274 grounded.

275 (20) Zig-zag transformer (grounding transformer):
276 The term "zig-zag transformer (grounding trans-
277 former)" means a transformer intended primarily to
278 provide a neutral point for grounding purposes.

**§22A-1A-2. Division of health, safety and training;
purposes; rules and regulations.**

1 The division of health, safety and training shall have
2 as its purpose the supervision of the execution and
3 enforcement of the provisions of this chapter and, in
4 carrying out the aforesaid purposes, it shall give prime
5 consideration to the protection of the safety and health
6 of persons employed within or at the mines of this state.
7 In addition, the division shall, consistent with the
8 aforesaid prime consideration, protect and preserve
9 mining property and property used in connection
10 therewith.

11 The division is hereby given authority, where autho-
12 rized and in the manner prescribed in this chapter, to
13 enact such rules and regulations as may be necessary
14 to effectuate the above stated purposes, all under the
15 supervision, review and approval of the commissioner.

§22A-1A-3. Director of division of health, safety and training—Appointment.

1 There shall be a director of the division, who shall be
2 appointed by the commissioner of the department of
3 energy as provided for in section nine, article one of
4 chapter twenty-two.

§22A-1A-4. Same—Powers and duties.

1 The director of the division of health, safety and
2 training shall have full charge of the division. He shall
3 have the power and duty to:

4 (1) Supervise and direct the execution and enforce-
5 ment of the provisions of this article.

6 (2) Employ such assistants, clerks, stenographers and
7 other employees as may be necessary to fully and
8 effectively carry out his responsibilities and fix their
9 compensation, except as otherwise provided in this
10 article.

11 (3) Assign mine inspectors hired by the commissioner
12 to divisions or districts in accordance with the provisions
13 of section seven of this article as may be necessary to
14 fully and effectively carry out the provisions of this law,
15 including the training of inspectors for the specialized
16 requirements of surface mining, shaft and slope sinking
17 and surface installations and to supervise and direct
18 such mine inspectors in the performance of their duties.

19 (4) Suspend, for good cause, any such mine inspector
20 without compensation for a period not exceeding thirty
21 days in any calendar year.

22 (5) Prepare report forms to be used by mine inspec-
23 tors in making their findings, orders and notices, upon
24 inspections made in accordance with this article.

25 (6) Hear and determine applications made by mine
26 operators for the annulment or revision of orders made
27 by mine inspectors, and to make inspections of mines,
28 in accordance with the provisions of this article.

29 (7) Cause a properly indexed permanent and public
30 record to be kept of all inspections made by himself or

31 by mine inspectors.

32 (8) Make annually a full and complete written report
33 of the administration of his division to the commissioner,
34 the governor and the Legislature of the state for the year
35 ending the thirtieth day of June. Such report shall
36 include the number of visits and inspections of mines in
37 the state by mine inspectors, the quantity of coal, coke
38 and other minerals (excluding oil and gas) produced in
39 the state, the number of men employed, number of
40 mines in operation, statistics with regard to health and
41 safety of persons working in the mines including the
42 causes of injuries and deaths, improvements made,
43 prosecutions, the total funds of the division from all
44 sources identifying each source of such funds, the
45 expenditures of the division, the surplus or deficit of the
46 division at the beginning and end of the year, the
47 amount of fines collected, the amount of fines imposed,
48 the value of fines pending, the number and type of
49 violations found, the amount of fines imposed, levied and
50 turned over for collection, the total amount of fines
51 levied but not paid during the prior year, the titles and
52 salaries of all inspectors and other officials of the
53 division, the number of inspections made by each
54 inspector, the number and type of violations found by
55 each inspector: *Provided*, That no inspector shall be
56 identified by name in this report. Such reports shall be
57 filed with the commissioner, the governor and the
58 Legislature on or before the thirty-first day of December
59 of the same year for which it was made, and shall upon
60 proper authority be printed and distributed to inter-
61 ested persons.

62 (9) Call or subpoena witnesses, for the purpose of
63 conducting hearings into mine fires, mine explosions or
64 any mine accident; to administer oaths and to require
65 production of any books, papers, records or other
66 documents relevant or material to any hearing, inves-
67 tigation or examination of any mine permitted by this
68 chapter. Any witness so called or subpoenaed shall
69 receive forty dollars per diem and shall receive mileage
70 at the rate of fifteen cents for each mile actually
71 traveled, which shall be paid out of the state treasury

72 upon a requisition upon the state auditor, properly
73 certified by such witness.

74 (10) Institute civil actions for relief, including per-
75 manent or temporary injunctions, restraining orders, or
76 any other appropriate action in the appropriate federal
77 or state court whenever any operator or his agent
78 violates or fails or refuses to comply with any lawful
79 order, notice or decision issued by the director or his
80 representative.

81 (11) Perform all other duties which are expressly
82 imposed upon him by the provisions of this chapter.

83 (12) Make all records of the division open for inspec-
84 tion of interested persons and the public.

85 (13) In conjunction with the commissioner of the
86 department of energy, adopt programs, regulations and
87 procedures designed to assist the small coal operator
88 with obtaining permits and meeting the environmental
89 protection performance standards for surface and
90 underground coal mining operations within the state.
91 For the purposes of this subdivision, a small coal
92 operator is one who is anticipated to mine less than two
93 hundred thousand tons per year, but the division in
94 determining tonnage shall consider wholly owned
95 subsidiaries to be the same operation as the parent
96 corporation.

§22A-1A-5. Same—Eligibility; salary.

1 The director shall be a citizen of West Virginia, shall
2 be a competent person of good repute and temperate
3 habits with demonstrated interest and five years
4 experience in underground coal mining. The director
5 shall devote all of his time to the duties of his office and
6 shall not be directly or indirectly interested financially
7 in any mine. The salary of the director shall be set by
8 the commissioner, with reimbursement for traveling
9 expenses incurred in the discharge of his official duties,
10 which shall be paid out of the state treasury upon a
11 requisition upon the state auditor, properly certified by
12 the commissioner.

§22A-1A-19. Penalties.

1 (a)(1) Any operator of a coal mine in which a violation
2 occurs of any health or safety rule or regulation or who
3 violates any other provisions of this law, shall be
4 assessed a civil penalty by the commissioner under
5 subdivision (3) of this subsection, which penalty shall be
6 not more than three thousand dollars, for each such
7 violation. Each such violation shall constitute a separate
8 offense. In determining the amount of the penalty, the
9 commissioner shall consider the operator's history of
10 previous violations, the appropriateness of such penalty
11 to the size of the business of the operator charged, the
12 gravity of the violation and the demonstrated good faith
13 of the operator charged in attempting to achieve rapid
14 compliance after notification of a violation.

15 (2) Any miner who knowingly violates any health or
16 safety provision of this chapter or health or safety rule
17 or regulation promulgated pursuant to this chapter shall
18 be subject to a civil penalty assessed by the commis-
19 sioner under subdivision (3) of this subsection which
20 penalty shall not be more than two hundred fifty dollars
21 for each occurrence of such violation.

22 (3) A civil penalty shall be assessed by the commis-
23 sioner only after the person charged with a violation
24 under this chapter or rule or regulation promulgated
25 pursuant to this chapter has been given an opportunity
26 for a public hearing and the commissioner has deter-
27 mined, by a decision incorporating his findings of fact
28 therein, that a violation did occur, and the amount of
29 the penalty which is warranted, and incorporating,
30 when appropriate, an order therein requiring that the
31 penalty be paid. Any hearing under this section shall be
32 of record.

33 (4) If the person against whom a civil penalty is
34 assessed fails to pay the penalty within the time
35 prescribed in such order, the commissioner shall file a
36 petition for enforcement of such order in any approp-
37 riate circuit court. The petition shall designate the
38 person against whom the order is sought to be enforced
39 as the respondent. A copy of the petition shall forthwith
40 be sent by certified mail, return receipt requested, to the
41 respondent and to the representative of the miners at the

42 affected mine or the operator, as the case may be, and
43 thereupon the commissioner shall certify and file in such
44 court the record upon which such order sought to be
45 enforced was issued. The court shall have jurisdiction to
46 enter a judgment enforcing, modifying, and enforcing as
47 so modified, or setting aside in whole or in part the
48 order and decision of the commissioner or it may
49 remand the proceedings to the commissioner for such
50 further action as it may direct. The court shall consider
51 and determine de novo all relevant issues, except issues
52 of fact which were or could have been litigated in review
53 proceedings before a circuit court under section eight-
54 een of this article, and upon the request of the respond-
55 ent, such issues of fact which are in dispute shall be
56 submitted to a jury. On the basis of the jury's findings
57 the court shall determine the amount of the penalty to
58 be imposed. Subject to the direction and control of the
59 attorney general, attorneys appointed for the commis-
60 sioner may appear for and represent him in any action
61 to enforce an order assessing civil penalties under this
62 subdivision.

63 (b) Any operator who knowingly violates a health or
64 safety provision of this chapter or health or safety rule
65 or regulation promulgated pursuant to this chapter, or
66 knowingly violates or fails or refuses to comply with any
67 order issued under section thirteen of this article, or any
68 order incorporated in a final decision issued under this
69 article, except an order incorporated in a decision under
70 subsection (a) of this section or subsection (b), section
71 twenty of this article, shall be assessed a civil penalty
72 by the commissioner under subdivision (3), subsection
73 (a) of this section, of not more than five thousand dollars,
74 and for a second or subsequent violation assessed a civil
75 penalty of not more than ten thousand dollars.

76 (c) Whenever a corporate operator knowingly violates
77 a health or safety provision of this chapter or health or
78 safety rules or regulations promulgated pursuant to this
79 chapter, or knowingly violates or fails or refuses to
80 comply with any order issued under this law or any
81 order incorporated in a final decision issued under this
82 law, except an order incorporated in a decision issued

83 under subsection (a) of this section or subsection (b),
84 section twenty of this article, any director, officer or
85 agent of such corporation who knowingly authorized,
86 ordered or carried out such violation, failure or refusal,
87 shall be subject to the same civil penalties that may be
88 imposed upon a person under subsections (a) and (b) of
89 this section.

90 (d) Whoever knowingly makes any false statement,
91 representation or certification in any application,
92 record, report, plan or other document filed or required
93 to be maintained pursuant to this law or any order or
94 decision issued under this law, shall be guilty of a
95 misdemeanor, and, upon conviction thereof, shall be
96 fined not more than five thousand dollars or imprisoned
97 in the county jail not more than six months, or both
98 fined and imprisoned. The conviction of any person
99 under this subsection shall result in the revocation of
100 any certifications held by him under this chapter which
101 certified him or authorized him to direct other persons
102 in coal mining by operation of law and shall bar him
103 from being issued any such license under this chapter,
104 except a miner's certification, for a period of not less
105 than one year or for such longer period as may be
106 determined by the commissioner.

107 (e) Whoever willfully distributes, sells, offers for sale,
108 introduces or delivers in commerce any equipment for
109 use in a coal mine, including, but not limited to,
110 components and accessories of such equipment, who
111 willfully misrepresents such equipment as complying
112 with the provisions of this law, or with any specification
113 or regulation of the commissioner applicable to such
114 equipment, and which does not so comply, shall be guilty
115 of a misdemeanor, and, upon conviction thereof, shall be
116 subject to the same fine and imprisonment that may be
117 imposed upon a person under subsection (d) of this
118 section.

119 (f) There is hereby created under the treasury of the
120 state of West Virginia a special health, safety and
121 training fund. All civil penalty assessments collected
122 under section nineteen of this article shall be collected
123 by the commissioner and deposited with the treasurer

124 of the state of West Virginia to the credit of the special
125 health, safety and training fund. The fund shall be used
126 by the commissioner and he is authorized to expend the
127 moneys in the fund for the administration of this
128 chapter and chapter twenty-two of this code.

ARTICLE 3. WEST VIRGINIA SURFACE COAL MINING AND RECLAMATION ACT.

- §22A-3-7. Notice of intention to prospect, requirements therefor; bonding; commissioner's authority to deny or limit; postponement of reclamation; prohibited acts; exceptions.
- §22A-3-8. Prohibition of surface mining without a permit; permit requirements; successor in interest; duration of permits; proof of insurance; termination of permits; permit fees.
- §22A-3-19. Permit revision and renewal requirements; requirements for transfer; assignment and sale of permit rights; and operator reassignment.
- §22A-3-40. Consolidation of permitting, enforcement and rule-making authority for surface-mining operations; National Pollutant Discharge Elimination System; effective date of section.

§22A-3-7. Notice of intention to prospect, requirements therefor; bonding; commissioner's authority to deny or limit; postponement of reclamation; prohibited acts; exceptions.

1 (a) Any person intending to prospect for coal in an
2 area not covered by a surface-mining permit, in order
3 to determine the location, quantity or quality of a
4 natural coal deposit, making feasibility studies or for
5 any other purpose, shall file with the commissioner, at
6 least fifteen days prior to commencement of any
7 disturbance associated with prospecting, a notice of
8 intention to prospect, which notice shall include a
9 description of the prospecting area, the period of
10 supposed prospecting and such other information as
11 required by rules or regulations promulgated pursuant
12 to this section: *Provided*, That prior to the commence-
13 ment of such prospecting, the commissioner may issue
14 an order denying or limiting permission to prospect
15 where he finds that prospecting operations will damage
16 or destroy a unique natural area, or will cause serious
17 harm to water quality, or that the operator has failed
18 to satisfactorily reclaim other prospecting sites, or that
19 there has been an abuse of prospecting by previous

20 prospecting operations in the area.

21 (b) Notice of intention to prospect shall be made in
22 writing on forms prescribed by the commissioner and
23 shall be signed and verified by the applicant. The notice
24 shall be accompanied by (1) a United States geological
25 survey topographic map showing by proper marking the
26 crop line and the name, where known, of the seam or
27 seams to be prospected, and (2) a bond, or cash, or
28 collateral securities or certificates of the same type and
29 form and in the same manner as provided in section
30 eleven of this article, in the amount of five hundred
31 dollars per acre or fraction thereof for the total
32 estimated disturbed area. If such bond is used, it shall
33 be payable to the state of West Virginia and conditioned
34 that the operator shall faithfully perform the require-
35 ments of this article as they relate to backfilling and
36 revegetation of the disturbed area.

37 (c) Any person prospecting under the provisions of
38 this section shall ensure that such prospecting operation
39 is conducted in accordance with the performance
40 standards in section twelve of this article for all lands
41 disturbed in explorations, including excavations, roads,
42 drill holes, and the removal of necessary facilities and
43 equipment.

44 (d) Information submitted to the commissioner pursu-
45 ant to this section as confidential, concerning trade
46 secrets or privileged commercial or financial informa-
47 tion, which relates to the competitive rights of the
48 person or entity intended to prospect the described area,
49 shall not be available for public examination.

50 (e) Any person who conducts any prospecting activi-
51 ties which substantially disturb the natural land surface
52 in violation of this section or regulations issued pursuant
53 thereto shall be subject to the provisions of sections
54 sixteen and seventeen of this article.

55 (f) No operator shall remove more than two hundred
56 fifty tons of coal without the specific written approval
57 of the commissioner. Such approval shall be requested
58 by the operator on forms prescribed by the commis-
59 sioner. The commissioner shall promulgate regulations

60 governing such operations and setting forth information
61 required in the application for approval. Each such
62 application shall be accompanied by a two thousand
63 dollar filing fee.

64 (g) The bond accompanying said notice of intention to
65 prospect shall be released by the commissioner when the
66 operator demonstrates that a permanent species of
67 vegetative cover is established.

68 (h) In the event an operator desires to mine the area
69 currently being prospected, and has requested and
70 received an appropriate surface mine application
71 (S.M.A.) number, the commissioner may permit the
72 postponement of the reclamation of the area prospected.
73 Any part of a prospecting operation, where reclamation
74 has not been postponed as provided above, shall be
75 reclaimed within a period of three months from
76 disturbance.

77 (i) For the purpose of this section, the word "prospect"
78 or "prospecting" does not include core drilling related
79 solely to taxation or highway construction.

§22A-3-8. Prohibition of surface mining without a permit; permit requirements; successor in interest; duration of permits; proof of insurance; termination of permits; permit fees.

1 No person may engage in surface-mining operations
2 unless such person has first obtained a permit from the
3 commissioner in accordance with the following:

4 (a) Within two months after the secretary of the
5 interior approves a permanent state program for West
6 Virginia, all surface-mining operators shall file an
7 application for a permit or modification of a valid
8 existing permit or underground opening approval
9 relating to those lands to be mined eight months after
10 that approval.

11 (b) No later than eight months after the secretary's
12 approval of a permanent state program for West
13 Virginia, no person may engage in or carry out, on lands
14 within this state, any surface-mining operations unless
15 such person has first obtained a permit from the

16 commissioner: *Provided*, That those persons conducting
17 such operations under a permit or underground opening
18 approval issued in accordance with section 502 (c) of
19 Public Law 95-87, and in compliance therewith, may
20 conduct such operations beyond such period if an
21 application for a permit or modification of a valid
22 existing permit or underground opening approval was
23 filed within two months after the secretary's approval,
24 and the administrative decision pertaining to the
25 granting or denying of such permit has not been made
26 by the commissioner.

27 (c) All permits issued pursuant to the requirements of
28 this article shall be issued for a term not to exceed five
29 years: *Provided*, That if the applicant demonstrates that
30 a specified longer term is reasonably needed to allow the
31 applicant to obtain necessary financing for equipment
32 and the opening of the operation, and if the application
33 is full and complete for such specified longer term, the
34 commissioner may extend a permit for such longer
35 term: *Provided, however*, That subject to the prior
36 approval of the commissioner, a successor in interest to
37 a permittee who applies for a new permit within thirty
38 days of succeeding to such interest, and who is able to
39 obtain the bond coverage of the original permittee, may
40 continue surface-mining and reclamation operations
41 according to the approved mining and reclamation plan
42 of the original permittee until such successor's applica-
43 tion is granted or denied.

44 (d) Proof of insurance shall be required on an annual
45 basis.

46 (e) A permit shall terminate if the permittee has not
47 commenced the surface-mining operations covered by
48 such permit within three years of the date the permit
49 was issued: *Provided*, That the commissioner may grant
50 reasonable extensions of time upon a showing that such
51 extensions are necessary by reason of litigation preclud-
52 ing such commencement, or threatening substantial
53 economic loss to the permittee, or by reason of conditions
54 beyond the control and without the fault or negligence
55 of the permittee: *Provided, however*, That with respect
56 to coal to be mined for use in a synthetic fuel facility

57 or specific major electric generating facility, the
58 permittee shall be deemed to have commenced surface-
59 mining operations at such time as the construction of the
60 synthetic fuel or generating facility is initiated.

61 (f) Each application for a new surface-mining permit
62 filed pursuant to this article shall be accompanied by
63 a fee of one thousand dollars. All permit fees and
64 renewal fees provided for in this section or elsewhere in
65 this article shall be collected by the commissioner and
66 deposited with the treasurer of the state of West
67 Virginia to the credit of the operating permit fees fund
68 and shall be used, upon requisition of the commissioner,
69 for the administration of this article.

70 (g) Prior to the issuance of any permit, the commis-
71 sioner of energy shall ascertain from the commissioner
72 of labor compliance with section fourteen, article five,
73 chapter twenty-one of this code. Upon issuance of the
74 permit, the commissioner of energy shall forward a copy
75 to the commissioner of labor, who shall assure continued
76 compliance under such permit.

**§22A-3-19. 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
4 of the existing permit. The holders of the permit may
5 apply for renewal and the renewal shall be issued:
6 *Provided*, That on application for renewal, the burden
7 shall be on the opponents of renewal, unless it is
8 established that and written findings by the commis-
9 sioner are made that: (A) The terms and conditions of
10 the existing permit are not being satisfactorily met:
11 *Provided, however*, That if the permittee is required to
12 modify operations pursuant to mining or reclamation
13 requirements which become applicable after the origi-
14 nal date of permit issuance, the permittee shall be
15 provided an opportunity to submit a schedule allowing
16 a reasonable period to comply with such revised

17 requirements; (B) the present surface-mining operation
18 is not in compliance with the applicable environmental
19 protection standards of this article; (C) the renewal
20 requested substantially jeopardizes the operator's
21 continuing responsibility on existing permit areas; (D)
22 the operator has not provided evidence that the perfor-
23 mance bond in effect for said operation will continue in
24 effect for any renewal requested as required pursuant
25 to section eleven of this article; or (E) any additional
26 revised or updated information as required pursuant to
27 rules and regulations promulgated by the commissioner
28 has not been provided.

29 (2) If an application for renewal of a valid permit
30 includes a proposal to extend the surface-mining
31 operation beyond the boundaries authorized in the
32 existing permit, except incidental boundary revisions,
33 the applicant shall apply for a new permit. Incidental
34 boundary revisions shall include, but not be limited to,
35 additional areas of disturbance ancillary to permitted
36 surface effects of underground mining operations,
37 provided that the operator has submitted (A) adequate
38 bond, (B) a map showing the disturbed area and
39 facilities, and (C) a reclamation plan.

40 (3) Any permit renewal shall be for a term not to
41 exceed the period of time for which the original permit
42 was issued. Application for permit renewal shall be
43 made at least one hundred twenty days prior to the
44 expiration of the valid permit.

45 (4) Any renewal application for an active permit shall
46 be on forms prescribed by the commissioner and shall
47 be accompanied by a filing fee of two thousand dollars.
48 The application shall contain such information as the
49 commissioner requires pursuant to rule or regulation.

50 (b)(1) During the term of the permit, the permittee
51 may submit to the commissioner an application for a
52 revision of the permit, together with a revised reclama-
53 tion plan.

54 (2) An application for a significant revision of a
55 permit shall be subject to all requirements of this article
56 and regulations promulgated pursuant thereto.

57 (3) Any extension to an area already covered by the
58 permit, except incidental boundary revisions, shall be
59 made by application for another permit.

60 (c) The commissioner shall review outstanding per-
61 mits of a five-year term before the end of the third year
62 of the permit. Other permits shall be reviewed within
63 the time established by regulations. The commissioner
64 may require reasonable revision or modification of the
65 permit following review: *Provided*, That such revision or
66 modification shall be based upon written findings and
67 shall be preceded by notice to the permittee of an
68 opportunity for hearing.

69 (d) No transfer, assignment or sale of the rights
70 granted under any permit issued pursuant to this article
71 shall be made without the prior written approval of the
72 commissioner.

**§22A-3-40. 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
3 the chief of the division of water resources under article
4 five-a, chapter twenty of this code with respect to all
5 coal mines, preparation plants and all refuse and waste
6 therefrom subject to said article five-a, chapter twenty
7 of this code are hereby transferred to the commissioner.
8 The commissioner shall have sole authority to issue,
9 amend, transfer, renew or revoke all permits required
10 under article five-a, chapter twenty of this code with
11 respect to all coal mines, preparation plants and all
12 refuse and waste therefrom subject to said article five-
13 a. Each permit application shall be accompanied by a
14 filing fee of five hundred dollars and each renewal
15 application shall be accompanied by a filing fee of one
16 hundred dollars. The procedures for issuance, amend-
17 ment, transferal, renewal and revocation of such
18 permits shall be governed by regulations promulgated
19 pursuant to subsection (b). The commissioner shall

20 consolidate the various permit programs under article
21 five-a, chapter twenty of this code and article three of
22 this chapter applicable to all coal mines, preparation
23 plants and all refuse and waste therefrom. All provi-
24 sions of article five-a, chapter twenty of this code
25 heretofore applicable to coal mines, preparation plants
26 and all refuse and waste therefrom shall be continued
27 under this section.

28 (b) Notwithstanding any provisions of this chapter to
29 the contrary, the commissioner shall have sole authority
30 to promulgate rules and regulations necessary or proper
31 to implement the provisions of article five-a, chapter
32 twenty of this code with respect to all coal mines,
33 preparation plants and all refuse and waste therefrom,
34 except that the water resources board shall have the sole
35 authority pursuant to section three-a, article five-a,
36 chapter twenty of this code to promulgate rules and
37 regulations setting standards of water quality applica-
38 ble to the waters of the state. To the extent feasible, the
39 commissioner shall promulgate rules and regulations
40 consolidating the various regulatory programs under
41 this chapter applicable to all coal mines, preparation
42 plants and all refuse and waste therefrom. The promul-
43 gation of such rules and regulations shall be governed
44 by the provisions of this article.

45 (c) Notwithstanding any provisions of this chapter to
46 the contrary, the commissioner shall have the sole
47 authority to enforce and shall enforce the rules and
48 regulations promulgated under this article by the
49 commissioner and the rules and regulations of the water
50 resources board setting water quality standards for the
51 waters of the state as they apply to all coal mines,
52 preparation plants and all refuse and waste therefrom.
53 Rules and regulations adopted by the commissioner,
54 pursuant to the requirements of article five-a, chapter
55 twenty of this code shall be enforceable by the commis-
56 sioner under the provisions of sections seventeen and
57 nineteen, article five-a, chapter twenty of this code, as
58 though the regulations were promulgated by the water
59 resources board: *Provided*, That the commissioner's
60 authority to enforce such rules and regulations under

61 article five-a, chapter twenty of this code shall not
62 preclude the commissioner or any person from invoking
63 the remedies otherwise provided by article three of this
64 chapter and shall not preclude the commissioner from
65 enforcing the provisions of this article.

66 (d) Notwithstanding any provisions of this chapter to
67 the contrary, any permit of the commissioner issued
68 pursuant to subsection (a) of this section, or any order
69 issued under article five-a, chapter twenty of this code,
70 or for the purpose of implementing the "National
71 Pollutant Discharge Elimination System" established
72 under the federal Clean Water Act, shall be appealable
73 only to the state water resources board and such appeal
74 shall be governed by the provisions of section fifteen,
75 article five-a, chapter twenty of this code.

76 (e) This section shall become effective upon a procla-
77 mation by the governor stating that final approval of the
78 partial transfer of the National Pollutant Discharge
79 Elimination System established under the federal Clean
80 Water Act contemplated by this section has been given
81 by the Administrator of the United States Environmen-
82 tal Protection Agency.

CHAPTER 22B. OIL AND GAS.

ARTICLE 1. DIVISION OF OIL AND GAS; OIL AND GAS WELLS; ADMINISTRATION; ENFORCEMENT.

§22B-1-2. Director—Powers and duties generally; departmental records open to public; inspectors.

§22B-1-29. Operating permit and processing fund; special reclamation fund; fees.

§22B-1-2. Director — Powers and duties generally; departmental records open to public; inspectors.

1 (a) The director of the division of oil and gas shall
2 have as his duty the supervision of the execution and
3 enforcement of matters related to oil and gas set out in
4 this article and in articles three and four of this chapter,
5 subject to review and approval of the commissioner.

6 (b) The director of the division of oil and gas is
7 authorized to enact rules and regulations necessary to

8 effectuate the above stated purposes, subject to review
9 and approval by the commissioner.

10 (c) The director shall have full charge of the oil and
11 gas matters set out in this article and in articles three
12 and four of this chapter, subject always to the direct
13 supervision and control of the commissioner of the
14 department of energy. In addition to all other powers
15 and duties conferred upon him, the director shall have
16 the power and duty to:

17 (1) Supervise and direct the activities of the division
18 of oil and gas and see that the purposes set forth in
19 subsections (a) and (b) of this section are carried out;

20 (2) Employ a supervising oil and gas inspector and oil
21 and gas inspectors upon approval by the commissioner;

22 (3) Supervise and direct such oil and gas inspectors
23 and supervising inspector in the performance of their
24 duties;

25 (4) Suspend for good cause any oil and gas inspector
26 or supervising inspector without compensation for a
27 period not exceeding thirty days in any calendar year;

28 (5) Prepare report forms to be used by oil and gas
29 inspectors or the supervising inspector in making their
30 findings, orders and notices, upon inspections made in
31 accordance with this chapter;

32 (6) Employ a hearing officer and such clerks, steno-
33 graphers and other employees, as may be necessary to
34 carry out his duties and the purposes of the division of
35 oil and gas and fix their compensation;

36 (7) Hear and determine applications made by owners,
37 well operators and coal operators for the annulment or
38 revision of orders made by oil and gas inspectors or the
39 supervising inspector, and to make inspections, in
40 accordance with the provisions of this article and
41 articles three and four of this chapter;

42 (8) Cause a properly indexed permanent and public
43 record to be kept of all inspections made by himself or
44 by oil and gas inspectors or the supervising inspector;

45 (9) Make annually a full and complete written report
46 to the commissioner as he may from time to time
47 request, so that the commissioner can complete the
48 preparation of the commissioner's annual report to the
49 governor of the state;

50 (10) Conduct such research and studies as the com-
51 missioner shall deem necessary to aid in protecting the
52 health and safety of persons employed within or at
53 potential or existing oil or gas production fields within
54 this state, to improve drilling and production methods
55 and to provide for the more efficient protection and
56 preservation of oil and gas-bearing rock strata and
57 property used in connection therewith;

58 (11) Perform any and all acts necessary to carry out
59 and implement the state requirements established by 92
60 Statutes at Large 3352, et seq., the "Natural Gas Policy
61 Act of 1978," which are to be performed by a designated
62 state jurisdictional agency regarding determinations
63 that wells within the state qualify for a maximum
64 lawful price under certain categories of natural gas as
65 set forth by the provisions of the said "Natural Gas
66 Policy Act of 1978";

67 (12) Collect a filing and processing fee of forty dollars
68 for each well, for which a determination of qualification
69 to receive a maximum lawful price under the provisions
70 of the "Natural Gas Policy Act of 1978" is sought from
71 the director;

72 (13) Collect a permit fee of two hundred fifty dollars
73 for each permit application filed: *Provided*, That no
74 permit application fee shall be required when an
75 application is submitted solely for the plugging or
76 replugging of a well. All application fees required
77 hereunder shall be in addition to any other fees required
78 by the provisions of this article;

79 (14) Perform all other duties which are expressly
80 imposed upon him by the provisions of this chapter, as
81 well as duties assigned to him by the commissioner;

82 (15) Perform all duties as the permit issuing authority
83 for the state in all matters pertaining to the exploration,

84 development, production, storage and recovery of this
85 state's oil and gas in accordance with section thirteen,
86 article one, chapter twenty-two of this code;

87 (16) Adopt rules and regulations in accordance with
88 section thirteen, article one, chapter twenty-two of this
89 code with respect to the issuance, denial, retention,
90 suspension or revocation of permits, authorizations and
91 requirements of this chapter, which rules and regula-
92 tions shall assure that the regulations, permits and
93 authorizations issued by the director are adequate to
94 satisfy the purposes of this chapter and chapter twenty-
95 two of this code particularly with respect to the
96 consolidation of the various state and federal programs
97 which place permitting requirements on the explora-
98 tion, development, production, storage and recovery of
99 this state's oil and gas: *Provided*, That notwithstanding
100 any provisions of this chapter or chapter twenty-two of
101 this code to the contrary, the water resources board shall
102 have the sole authority pursuant to section three-a,
103 article five-a, chapter twenty of this code to promulgate
104 rules and regulations setting standards of water quality
105 applicable to waters of the state;

106 (17) Perform such acts as may be necessary or
107 appropriate to secure to this state the benefits of federal
108 legislation establishing programs relating to the
109 exploration, development, production, storage and
110 recovery of this state's oil and gas, which programs are
111 assumable by the state.

112 (d) The director shall have authority to visit and
113 inspect any well or well site and any other oil or gas
114 facility in this state and may call for the assistance of
115 any oil and gas inspector or inspectors or supervising
116 inspector whenever such assistance is necessary in the
117 inspection of any such well or well site or any other oil
118 or gas facility. Similarly, all oil and gas inspectors and
119 the supervising inspector shall have authority to visit
120 and inspect any well or well site and any other oil or
121 gas facility in this state. Any well operator, coal
122 operator operating coal seams beneath the tract of land,
123 or the coal seam owner or lessee, if any, if said owner
124 or lessee is not yet operating said coal seams beneath

125 said tract of land may request the director to have an
126 immediate inspection made. The operator or owner of
127 every well or well site or any other oil or gas facility
128 shall cooperate with the director, all oil and gas
129 inspectors and the supervising inspector in making
130 inspections or obtaining information.

131 (e) Oil and gas inspectors shall devote their full time
132 and undivided attention to the performance of their
133 duties, and they shall be responsible for the inspection
134 of all wells or well sites or other oil or gas facilities in
135 their respective districts as often as may be required in
136 the performance of their duties.

137 (f) All records of the division shall be open to the
138 public.

§22B-1-29. Operating permit and processing fund; special reclamation fund; fees.

1 (a) There is hereby created within the treasury of the
2 state of West Virginia a special fund to be known as the
3 oil and gas operating permit and processing fund, and
4 the director shall deposit with the state treasurer to the
5 credit of such special fund all fees collected under the
6 provisions of subdivisions twelve and thirteen, subsection
7 (c), section two of this article.

8 The oil and gas operating permit and processing fund
9 shall be administered by the director for the purposes
10 of carrying out the provisions of this chapter.

11 The director shall make an annual report to the
12 governor and to the Legislature on the use of the fund,
13 and shall make a detailed accounting of all expenditures
14 from the oil and gas operating permit and processing
15 fund.

16 (b) In addition to any other fees required by the
17 provisions of this article, every applicant for a permit
18 to drill a well shall, before the permit is issued, pay to
19 the director a special reclamation fee of one hundred
20 dollars for each well to be drilled. Such special
21 reclamation fee shall be paid at the time the application
22 for a drilling permit is filed with the director and the
23 payment of such reclamation fee shall be a condition

24 precedent to the issuance of said permit.

25 There is hereby created within the treasury of the
26 state of West Virginia a special fund to be known as the
27 oil and gas reclamation fund, and the director shall
28 deposit with the state treasurer to the credit of such
29 special fund all special reclamation fees collected. The
30 proceeds of any bond forfeited under the provisions of
31 this article shall inure to the benefit of and shall be
32 deposited in such oil and gas reclamation fund.

33 The oil and gas reclamation fund shall be adminis-
34 tered by the director. The director shall cause to be
35 prepared plans for the reclaiming and plugging of
36 abandoned wells which have not been reclaimed or
37 plugged or which have been improperly reclaimed or
38 plugged. The director, as funds become available in the
39 oil and gas reclamation fund, shall reclaim and properly
40 plug wells in accordance with said plans and specifica-
41 tions and in accordance with the provisions of this
42 article relating to the reclaiming and plugging of wells
43 and all rules and regulations promulgated thereunder.
44 Such funds may also be utilized for the purchase of
45 abandoned wells, where such purchase is necessary, and
46 for the reclamation of such abandoned wells, and for any
47 engineering, administrative and research costs as may
48 be necessary to properly effectuate the reclaiming and
49 plugging of all wells, abandoned or otherwise.

50 The director may avail himself of any federal funds
51 provided on a matching basis that may be made
52 available for the purpose of reclaiming or plugging any
53 wells.

54 The director shall make an annual report to the
55 governor and to the Legislature setting forth the
56 number of wells reclaimed or plugged through the use
57 of the oil and gas reclamation fund provided for herein.
58 Such report shall identify each such reclamation and
59 plugging project, state the number of wells reclaimed
60 or plugged thereby, show the county wherein such wells
61 are located and shall make a detailed accounting of all
62 expenditures from the oil and gas reclamation fund.

63 All wells shall be reclaimed or plugged by contract

64 entered into by the director on a competitive bid basis
65 as provided for under the provisions of article three,
66 chapter five-a of this code and the rules and regulations
67 promulgated thereunder.

CHAPTER 88

(Com. Sub. for S. B. 616—By Senators Tucker, Craigo and Manchin)

[Passed March 12, 1988; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article one; sections two and four, article three; section one, article four-a; and sections one, two, three, four, five, six, ten and thirteen, article six, all of chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the registration of motor vehicles, including recreational vehicles and the licensing of motor vehicle dealers, including recreational vehicle dealers; defining certain terms; requiring the registration of recreational vehicles except for motorboats, all-terrain vehicles and snowmobiles, effective date of provisions regarding registration of recreational vehicles; subjecting recreational vehicles to certificate of title tax and exempting those acquired prior to a certain date; requiring certificates of title to show liens or encumbrances; providing legislative findings and declaration of public policy; requiring license certificates for dealers; requiring dealers to have an established place of business; increasing minimum levels of insurance necessary to obtain a license certificate; providing license certificate exemption; refusal or issuance of license certificate; initial application and renewal fees for dealers and refund of fees; issuance of special plates; and use of special plates.

Be it enacted by the Legislature of West Virginia:

That section one, article one; sections two and four, article three; section one, article four-a; and sections one, two, three, four, five, six, ten and thirteen, article six, all of chapter seventeen-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. **Words and Phrases Defined.**
3. **Original and Renewal of Registration; Issuance of Certificates of Title.**
- 4A. **Liens and Encumbrances on Vehicles to be Shown on Certificate of Title; Notice to Creditors and Purchasers.**
6. **Licensing of Dealers and Wreckers or Dismantlers; Special Plates; Temporary Plates or Markers, etc.**

ARTICLE 1. WORDS AND PHRASES DEFINED.

§17A-1-1. Definitions.

1 Except as otherwise provided in this chapter the
2 following words and phrases when used in this chapter
3 shall have the meanings respectively ascribed to them
4 in this article:

5 (a) "Vehicle" means every device in, upon or by which
6 any person or property is or may be transported or
7 drawn upon a highway, excepting devices moved by
8 human power or used exclusively upon stationary rails
9 or tracks.

10 (b) "Motor vehicle" means every vehicle which is self-
11 propelled and every vehicle which is propelled by
12 electric power obtained from overhead trolley wires, but
13 not operated upon rails.

14 (c) "Motorcycle" means every motor vehicle, including
15 motor-driven cycles and mopeds as defined in sections
16 five and five-a, article one, chapter seventeen-c of this
17 code, having a saddle for the use of the rider and
18 designed to travel on not more than three wheels in
19 contact with the ground but excluding a tractor.

20 (d) "School bus" means every motor vehicle owned by
21 a public governmental agency and operated for the
22 transportation of children to or from school or privately
23 owned and operated for compensation for the transpor-
24 tation of children to or from school.

25 (e) "Bus" means every motor vehicle designed for
26 carrying more than seven passengers and used for the
27 transportation of persons; and every motor vehicle, other
28 than a taxicab, designed and used for the transportation
29 of persons for compensation.

30 (f) "Truck tractor" means every motor vehicle de-
31 signed and used primarily for drawing other vehicles
32 and not so constructed as to carry a load other than a
33 part of the weight of the vehicle and load so drawn.

34 (g) "Farm tractor" means every motor vehicle de-
35 signed and used primarily as a farm implement for
36 drawing plows, mowing machines, and other imple-
37 ments of husbandry.

38 (h) "Road tractor" means every motor vehicle de-
39 signed, used or maintained for drawing other vehicles
40 and not so constructed as to carry any load thereon
41 either independently or any part of the weight of a
42 vehicle or load so drawn.

43 (i) "Truck" means every motor vehicle designed, used
44 or maintained primarily for the transportation of
45 property.

46 (j) "Trailer" means every vehicle with or without
47 motive power designed for carrying persons or property
48 and for being drawn by a motor vehicle and so con-
49 structed that no part of its weight rests upon the towing
50 vehicle but excluding recreational vehicles.

51 (k) "Semitrailer" means every vehicle with or without
52 motive power designed for carrying persons or property
53 and for being drawn by a motor vehicle and so con-
54 structed that some part of its weight and that of its load
55 rests upon or is carried by another vehicle.

56 (l) "Pole trailer" means every vehicle without motive
57 power designed to be drawn by another vehicle and
58 attached to the towing vehicle by means of a reach, or
59 pole, or by being boomed or otherwise secured to the
60 towing vehicle, and ordinarily used for transporting
61 long or irregularly shaped loads such as poles, pipes, or
62 structural members capable, generally, of sustaining
63 themselves as beams between the supporting

64 connections.

65 (m) "Specially constructed vehicles" means every
66 vehicle of a type required to be registered hereunder not
67 originally constructed under a distinctive name, make,
68 model or type by a generally recognized manufacturer
69 of vehicles and not materially altered from its original
70 construction.

71 (n) "Reconstructed vehicle" means every vehicle of a
72 type required to be registered hereunder materially
73 altered from its original construction by the removal,
74 addition or substitution of essential parts, new or used.

75 (o) "Essential parts" means all integral and body
76 parts of a vehicle of a type required to be registered
77 hereunder, the removal, alteration or substitution of
78 which would tend to conceal the identity of the vehicle
79 or substantially alter its appearance, model, type or
80 mode of operation.

81 (p) "Foreign vehicle" means every vehicle of a type
82 required to be registered hereunder brought into this
83 state from another state, territory or country other than
84 in the ordinary course of business by or through a
85 manufacturer or dealer and not registered in this state.

86 (q) "Implement of husbandry" means every vehicle
87 which is designed for or adapted to agricultural
88 purposes and used by the owner thereof primarily in the
89 conduct of his agricultural operations, including, but not
90 limited to, trucks used for spraying trees and plants:
91 *Provided*, That said vehicle shall not be let for hire at
92 any time.

93 (r) "Special mobile equipment" means every self-
94 propelled vehicle not designed or used primarily for the
95 transportation of persons or property and incidentally
96 operated or moved over the highways, including,
97 without limitation, farm equipment, implements of
98 husbandry, road construction or maintenance machin-
99 ery, ditch-digging apparatus, stone crushers, air
100 compressors, power shovels, cranes, graders, rollers,
101 well-drillers, wood-sawing equipment, asphalt spread-
102 ers, bituminous mixers, bucket loaders, ditchers,

103 leveling graders, finishing machines, motor graders,
104 road rollers, scarifiers, earth-moving carryalls, scrap-
105 ers, drag lines, rock-drilling equipment and earth-
106 moving equipment. The foregoing enumeration shall be
107 deemed partial and shall not operate to exclude other
108 such vehicles which are within the general terms of this
109 subdivision.

110 (s) "Pneumatic tire" means every tire in which
111 compressed air is designed to support the load.

112 (t) "Solid tire" means every tire of rubber or other
113 resilient material which does not depend upon com-
114 pressed air for the support of the load.

115 (u) "Metal tire" means every tire the surface of which
116 in contact with the highway is wholly or partly of metal
117 or other hard, nonresilient material.

118 (v) "Commissioner" means the commissioner of motor
119 vehicles of this state.

120 (w) "Department" means the department of motor
121 vehicles of this state acting directly or through its duly
122 authorized officers and agents.

123 (x) "Person" means every natural person, firm,
124 copartnership, association or corporation.

125 (y) "Owner" means a person who holds the legal title
126 to a vehicle, or in the event a vehicle is the subject of
127 an agreement for the conditional sale or lease thereof
128 with the right of purchase upon performance of the
129 conditions stated in the agreement and with an imme-
130 diate right of possession vested in the conditional vendee
131 or lessee, or in the event a mortgagor of a vehicle is
132 entitled to possession, then such conditional vendee or
133 lessee or mortgagor shall be deemed the owner for the
134 purpose of this chapter.

135 (z) "Nonresident" means every person who is not a
136 resident of this state.

137 (aa) "Dealer" or "dealers" is a general term meaning,
138 depending upon the context in which used, either a new
139 motor vehicle dealer, used motor vehicle dealer, house
140 trailer dealer, recreational vehicle dealer, trailer dealer

141 or motorcycle dealer, as defined in section one, article
142 six of this chapter, or all of such dealers or a combina-
143 tion thereof, and in some instances a new motor vehicle
144 dealer or dealers in another state.

145 (bb) "Registered dealer" or "registered dealers" is a
146 general term meaning, depending upon the context in
147 which used, either a new motor vehicle dealer, used
148 motor vehicle dealer, house trailer dealer, trailer dealer,
149 recreational vehicle dealer or motorcycle dealer, or all
150 of such dealers or a combination thereof, licensed under
151 the provisions of article six of this chapter.

152 (cc) "Licensed dealer" or "licensed dealers" is a
153 general term meaning, depending upon the context in
154 which used, either a new motor vehicle dealer, used
155 motor vehicle dealer, house trailer dealer, trailer dealer,
156 recreational vehicle dealer or motorcycle dealer, or all
157 of such dealers or a combination thereof, licensed under
158 the provisions of article six of this chapter.

159 (dd) "Transporter" means every person engaged in
160 the business of delivering vehicles of a type required to
161 be registered hereunder from a manufacturing, assem-
162 bling or distributing plant to dealers or sales agents of
163 a manufacturer.

164 (ee) "Manufacturer" means every person engaged in
165 the business of constructing or assembling vehicles of a
166 type required to be registered hereunder at a place of
167 business in this state which is actually occupied either
168 continuously or at regular periods by such manufacturer
169 where his books and records are kept and a large share
170 of his business is transacted.

171 (ff) "Street" or "highway" means the entire width
172 between boundary lines of every way publicly main-
173 tained when any part thereof is open to the use of the
174 public for purposes of vehicular travel.

175 (gg) "Motorboat" means any vessel propelled by an
176 electrical, steam, gas, diesel or other fuel propelled or
177 driven motor, whether or not such motor is the principal
178 source of propulsion, but shall not include a vessel which
179 has a valid marine document issued by the bureau of

180 customs of the United States government or any federal
181 agency successor thereto.

182 (hh) "Motorboat trailer" means every vehicle designed
183 for or ordinarily used for the transportation of a
184 motorboat.

185 (ii) "All-terrain vehicle" (ATV) means any motor
186 vehicle designed for off-highway use and designed for
187 operator use only with no passengers, having a seat or
188 saddle designed to be straddled by the operator, and
189 handlebars for steering control.

190 (jj) "Travel trailer" means every vehicle, mounted on
191 wheels, designed to provide temporary living quarters
192 for recreational, camping or travel use of such size or
193 weight as not to require special highway movement
194 permits when towed by a motor vehicle and of gross
195 trailer area less than four hundred square feet.

196 (kk) "Fold down camping trailer" means every vehicle
197 consisting of a portable unit mounted on wheels and
198 constructed with collapsible partial sidewalls which fold
199 for towing by another vehicle and unfold at the camp
200 site to provide temporary living quarters for recrea-
201 tional, camping or travel use.

202 (ll) "Motor home" means every vehicle, designed to
203 provide temporary living quarters, built into an integral
204 part of or permanently attached to a self-propelled
205 motor vehicle, chassis or van including: (1) Type A
206 motor home built on an incomplete truck chassis with
207 the truck cab constructed by the second stage manufac-
208 turer; (2) Type B motor home consisting of a van-type
209 vehicle which has been altered to provide temporary
210 living quarters; and (3) Type C motor home built on an
211 incomplete van or truck chassis with a cab constructed
212 by the chassis manufacturer.

213 (mm) "Snowmobile" means a self-propelled vehicle
214 intended for travel primarily on snow and driven by a
215 track or tracks in contact with the snow and steered by
216 a ski or skis in contact with the snow.

217 (nn) "Recreational vehicle" means a motorboat,
218 motorboat trailer, all-terrain vehicle, travel trailer, fold

219 down camping trailer, motor home or snowmobile.

**ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION;
ISSUANCE OF CERTIFICATES OF TITLE.**

§17A-3-2. Every motor vehicle, etc., subject to registration and certificate of title provisions; exceptions.

§17A-3-4. Application for certificate of title; tax for privilege of certification of title; penalty for false swearing.

§17A-3-2. Every motor vehicle, etc., subject to registration and certificate of title provisions; exceptions.

1 Every motor vehicle, trailer, semitrailer, pole trailer,
2 and recreational vehicle when driven or moved upon a
3 highway shall be subject to the registration and
4 certificate of title provisions of this chapter except:

5 (1) Any such vehicle driven or moved upon a highway
6 in conformance with the provisions of this chapter
7 relating to manufacturers, transporters, dealers, lien-
8 holders, or nonresidents or under a temporary registra-
9 tion permit issued by the department as hereinafter
10 authorized;

11 (2) Any implement of husbandry upon which is
12 securely attached a machine for spraying fruit trees and
13 plants of the owner or lessee or for any other implement
14 of husbandry which is used exclusively for agricultural
15 or horticultural purposes on lands owned or leased by
16 the owner thereof and which is not operated on or over
17 any public highway of this state for any other purpose
18 other than for the purpose of operating it across a
19 highway or along a highway other than an expressway
20 as designated by the state road commissioner from one
21 point of the owner's land to another part thereof,
22 irrespective of whether or not the tracts adjoin:
23 *Provided*, That the distance between the points shall not
24 exceed fifteen miles, or for the purpose of taking it or
25 other fixtures thereto attached, to and from a repair
26 shop for repairs. The foregoing exemption from registra-
27 tion and license requirements shall also apply to any
28 vehicle hereinbefore described or to any farm trailer
29 owned by the owner or lessee of the farm on which such

30 trailer is used, when such trailer is used by the owner
31 thereof for the purpose of moving farm produce and
32 livestock from such farm along a public highway for a
33 distance not to exceed ten miles to a storage house or
34 packing plant, when such use is a seasonal operation.

35 The exemptions contained in this section shall also
36 apply to farm machinery and tractors: *Provided*, That
37 such machinery and tractors may use the highways in
38 going from one tract of land to another tract of land
39 regardless of whether such land be owned by the same
40 or different persons.

41 Any vehicle exempted hereunder from the require-
42 ments of annual registration certificate and license
43 plates shall be permitted to use the highways as herein
44 provided whether such exempt vehicle is self-propelled,
45 towed by another exempt vehicle or towed by another
46 vehicle for which registration is required.

47 Any vehicle used as an implement of husbandry
48 exempt hereunder must have the words "farm use"
49 affixed to both sides of the implement in ten inch letters;

50 (3) Any vehicle which is propelled exclusively by
51 electric power obtained from overhead trolley wires
52 though not operated upon rails;

53 (4) Any vehicle of a type subject to registration owned
54 by the government of the United States;

55 (5) Any wrecked or disabled vehicle which is being
56 towed by a licensed wrecker or dealer on the public
57 highways of this state;

58 (6) The following recreational vehicles shall be
59 exempt from the requirements of annual registration,
60 license plates and fees, unless otherwise specified by
61 law, but shall be subject to the certificate of title
62 provisions of this chapter regardless of highway use:
63 motorboats, all-terrain vehicles and snowmobiles.

64 The provisions of this article relating to recreational

69 vehicles shall become effective on the first day of July,
70 one thousand nine hundred eighty-nine.

**§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-
2 tion plates therefor, whether original issues or dupli-
3 cates, shall not be issued or furnished by the department
4 of motor vehicles or any other officer charged with the
5 duty, unless the applicant therefor already has received,
6 or 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
10 a 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 hereby
19 imposed upon the privilege of effecting the certification
20 of title of each vehicle in the amount equal to five
21 percent of the value of said motor vehicle at the time
22 of such certification. If the vehicle is new, the actual
23 purchase price or consideration to the purchaser thereof
24 shall be the value of the vehicle; if the vehicle is a used
25 or secondhand vehicle, the present market value at time
26 of transfer or purchase shall be considered the value
27 thereof for the purposes of this section: *Provided*, That
28 so much of the purchase price or consideration as is
29 represented by the exchange of other vehicles on which
30 the tax herein imposed has been paid by the purchaser
31 shall be deducted from the total actual price or
32 consideration paid for the vehicle, whether the same be
33 new or secondhand; if the vehicle be acquired through
34 gift, or by any manner whatsoever, unless specifically
35 exempted in this section, the present market value of the
36 vehicle at the time of the gift or transfer shall be

37 considered the value thereof for the purposes of this
38 section. No certificate of title for any vehicle shall be
39 issued to any applicant unless the applicant shall have
40 paid to the department of motor vehicles the tax
41 imposed by this section which shall be five percent of
42 the true and actual value of said vehicle whether the
43 vehicle be acquired through purchase, by gift or by any
44 other manner whatsoever except gifts between husband
45 and wife or between parents and children: *Provided,*
46 *however,* That the husband or wife, or the parents or
47 children previously have paid the tax on the vehicles so
48 transferred to the state of West Virginia: *Provided*
49 *further,* That the department of motor vehicles may
50 issue a certificate of registration and title to an
51 applicant 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
61 dealership 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
64 S vehicles, as defined in section one, article ten of this
65 chapter, which are used or to be used in interstate
66 commerce, nor shall the tax imposed by this section
67 apply to titling of vehicles by a registered dealer of this
68 state for resale only, nor shall the tax imposed by this
69 section apply to titling of vehicles by this state or any
70 political subdivision thereof, or by any volunteer fire
71 department or duly chartered rescue or ambulance
72 squad organized and incorporated under the laws of the
73 state of West Virginia as a nonprofit corporation for
74 protection of life or property. The total amount of
75 revenue collected by reason of this tax shall be paid into
76 the state road fund and expended by the commissioner
77 of highways for matching federal funds allocated for
78 West Virginia. In addition to said tax, there shall be a

79 charge of five dollars for each original certificate of title
80 or duplicate certificate of title so issued: *Provided*, That
81 this state or any political subdivision thereof, or any
82 volunteer fire department, or duly chartered rescue
83 squad, shall be exempted from payment of such charge.

84 Such certificate shall be good for the life of the
85 vehicle, so long as the same is owned or held by the
86 original holder of such certificate, and need not be
87 renewed annually, or any other time, except as herein
88 provided.

89 If, by will or direct inheritance, a person becomes the
90 owner of a motor vehicle and the tax herein imposed
91 previously has been paid, to the department of motor
92 vehicles, on that vehicle, he shall not be required to pay
93 such tax.

94 A person who has paid the tax imposed by this section
95 shall not be required to pay the tax a second time for
96 the same motor vehicle, but he shall be required to pay
97 a charge of five dollars for the certificate of retitling of
98 that motor vehicle, except that the tax shall be paid by
99 the person when the title to the vehicle has been
100 transferred either in this or another state from such
101 person to another person and transferred back to such
102 person.

103 Notwithstanding any provisions of this code to the
104 contrary, the owners of trailers, semitrailers, recrea-
105 tional vehicles and other vehicles not subject to the
106 certificate of title tax prior to the enactment of this
107 chapter shall be subject to the privilege tax imposed by
108 this section: *Provided*, That the certification of title of
109 any recreational vehicle owned by the applicant on the
110 thirtieth day of June, one thousand nine-hundred eighty-
111 nine, shall not be subject to the tax imposed by this
112 section: *Provided, however*, That mobile homes, house
113 trailers, modular homes and similar nonmotive pro-
114 pelled vehicles, except recreational vehicles, susceptible
115 of being moved upon the highways but primarily
116 designed for habitation and occupancy, rather than for
117 transporting persons or property, or any vehicle
118 operated on a nonprofit basis and used exclusively for

119 the transportation of mentally retarded or physically
120 handicapped children when the application for certifi-
121 cate of registration for such vehicle is accompanied by
122 an affidavit stating that such vehicle will be operated
123 on a nonprofit basis and used exclusively for the
124 transportation of mentally retarded and physically
125 handicapped children, shall not be subject to the tax
126 imposed by this section, but shall be taxable under the
127 provisions of articles fifteen and fifteen-a, chapter
128 eleven of this code.

129 If any person making any affidavit required under
130 any provision of this section, shall therein knowingly
131 swear falsely, or if any person shall counsel, advise, aid
132 or abet another in the commission of false swearing, he
133 shall on first offense be guilty of a misdemeanor, and,
134 upon conviction thereof, shall be fined not more than
135 five hundred dollars or be imprisoned in the county jail
136 for a period not to exceed six months, or in the discretion
137 of the court be subject to both such fine and imprison-
138 ment; for a second or any subsequent conviction within
139 five years he shall be guilty of a felony, and, upon
140 conviction thereof, shall be fined not more than five
141 thousand dollars or be imprisoned in the penitentiary
142 for not less than one year nor more than five years or
143 in the discretion of the court be subject to both fine and
144 imprisonment.

**ARTICLE 4A. LIENS AND ENCUMBRANCES ON VEHICLES TO
BE SHOWN ON CERTIFICATE OF TITLE; NO-
TICE TO CREDITORS AND PURCHASERS.**

§17A-4A-1. Certificate to show liens or encumbrances.

1 The department upon receiving an application for a
2 certificate of title to a vehicle, trailer, semitrailer, pole
3 trailer or recreational vehicle for which a certificate of
4 title is required under article three of this chapter, all
5 of which are hereinafter in this article referred to as
6 vehicles, showing liens or encumbrances upon such
7 vehicle, shall, upon issuing to the owner thereof a
8 certificate of title therefor, show upon the face of the
9 certificate of title all liens or encumbrances disclosed by
10 such application. All such liens or encumbrances shall
11 be shown in the order of their priority being according

12 to the information contained in such application. When
 13 such an application shows liens and encumbrances, such
 14 information as evidence of the lien in connection
 15 therewith as the department may deem necessary shall
 16 also be furnished. Such information shall include the
 17 name and address of the lienholder, the nature and kind
 18 of his lien, the date thereof, and the amount thereby
 19 secured. However, only the name and address of the
 20 lienholder will be endorsed on the title certificate. Upon
 21 issuing the certificate, the department shall thereupon
 22 send or deliver it to the holder of the first lien.

**ARTICLE 6. LICENSING OF DEALERS AND WRECKERS OR
 DISMANTLERS; SPECIAL PLATES; TEMPORARY
 PLATES OR MARKERS, ETC.**

**PART I. DEFINITIONS; LEGISLATIVE FINDINGS
 AND PUBLIC POLICY.**

- §17A-6-1. Definitions.
- §17A-6-2. Legislative findings and declaration of public policy.
- §17A-6-3. License certificate required; engaging in more than one business; established place of business required; existing licenses.
- §17A-6-4. Application for license certificate; insurance; bonds; investigation; information confidential.
- §17A-6-5. License certificate exemption.
- §17A-6-6. Refusal or issuance of license certificate; license certificate not transferable.
- §17A-6-10. Fee required for license certificate; dealer special plates.
- §17A-6-13. Use of special plates; records to be maintained by dealer.

§17A-6-1. Definitions.

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

3 (1) "New motor vehicle dealer" means every person
 4 (other than his agents and employees, if any, while
 5 acting within the scope of their authority or employ-
 6 ment), engaged in, or who holds himself out to the public
 7 to be engaged in, the business in this state of selling five
 8 or more new motor vehicles or new and used motor
 9 vehicles in any fiscal year of a type required to be
 10 registered under the provisions of this chapter, except,
 11 for the purposes of this article only, motorcycles.

12 (2) "Used motor vehicle dealer" means every person
 13 (other than his agents and employees, if any, while

14 acting within the scope of their authority or employ-
15 ment), engaged in, or holds himself out to the public to
16 be engaged in, the business in this state of selling five
17 or more used motor vehicles in any fiscal year of a type
18 required to be registered under the provisions of this
19 chapter, except, for the purposes of this article only,
20 motorcycles.

21 (3) "House trailer dealer" means every person (other
22 than his agents and employees, if any, while acting
23 within the scope of their authority or employment),
24 engaged in, or who holds himself out to the public to be
25 engaged in, the business in this state of selling new
26 and/or used house trailers, or new and/or used house
27 trailers and trailers.

28 (4) "Trailer dealer" means every person (other than
29 his agents and employees, if any, while acting within the
30 scope of their authority or employment), engaged in, or
31 who holds himself out to the public to be engaged in,
32 the business in this state of selling new and/or used
33 trailers.

34 (5) "Motorcycle dealer" means every person (other
35 than his agents and employees, if any, while acting
36 within the scope of their authority or employment),
37 engaged in, or who holds himself out to the public to be
38 engaged in, the business in this state of selling new
39 and/or used motorcycles.

40 (6) "Used parts dealer" means every person (other
41 than his agents and employees, if any, while acting
42 within the scope of their authority or employment),
43 engaged in, or who holds himself out to the public to be
44 engaged in, the business in this state of selling any used
45 appliance, accessory, member, portion or other part of
46 any vehicle.

47 (7) "Wrecker or dismantler" means every person
48 (other than his agents and employees, if any, while
49 acting within the scope of their authority or employ-
50 ment), engaged in, or who holds himself out to the public
51 to be engaged in, the business in this state of dealing
52 in wrecked or damaged motor vehicles or motor vehicle
53 parts for the purpose of selling the parts thereof or scrap

54 therefrom.

55 (8) "New motor vehicles" means all motor vehicles,
56 except motorcycles and used

57 motor vehicles, of a type required to be registered
58 under the provisions of this chapter.

59 (9) "Used motor vehicles" means all motor vehicles,
60 except motorcycles, of a type required to be registered
61 under the provisions of this chapter which have been
62 sold and operated, or which have been registered or
63 titled, in this or any other state or jurisdiction.

64 (10) "House trailers" means all trailers designed or
65 intended for human occupancy and commonly referred
66 to as mobile homes or house trailers, but shall not
67 include fold down camping and travel trailers.

68 (11) "Trailers" means all types of trailers other than
69 house trailers, and shall include, but not be limited to,
70 pole trailers and semitrailers but excluding recreational
71 vehicles.

72 (12) "Sales instrument" means any document result-
73 ing from the sale of a vehicle, which shall include, but
74 not be limited to, a bill of sale, invoice, conditional sales
75 contract, chattel mortgage, chattel trust deed, security
76 agreement or similar document.

77 (13) "Sell," "sale" or "selling" shall, in addition to the
78 ordinary definitions of such terms, include offering for
79 sale, soliciting sales of, negotiating for the sale of,
80 displaying for sale, or advertising for sale, any vehicle,
81 whether at retail, wholesale or at auction. "Selling"
82 shall, in addition to the ordinary definition of that term,
83 also include buying and exchanging.

84 (14) "Applicant" means any person making applica-
85 tion for an original or renewal license certificate under
86 the provisions of this article.

87 (15) "Licensee" means any person holding any license
88 certificate issued under the provisions of this article.

89 (16) "Predecessor" means the former owner or owners
90 or operator or operators of any new motor vehicle dealer

91 business or used motor vehicle dealer business.

92 (17) "Established place of business" shall, in the case
93 of a new motor vehicle dealer, mean a permanent
94 location, not a temporary stand or other temporary
95 quarters, owned or leased by the licensee or applicant
96 and actually occupied or to be occupied by him, as the
97 case may be, which is or is to be used exclusively for
98 the purpose of selling new motor vehicles or new and
99 used motor vehicles, which shall have space under roof
100 for the display of at least one new motor vehicle and
101 facilities and space therewith for the servicing and
102 repair of at least one motor vehicle, which servicing and
103 repair facilities and space shall be adequate and suitable
104 to carry out servicing and to make repairs necessary to
105 keep and carry out all representations, warranties and
106 agreements made or to be made by such dealer with
107 respect to motor vehicles sold by him, which shall be
108 easily accessible to the public, which shall conform to
109 all applicable laws of the state of West Virginia and the
110 ordinances of the municipality in which it is located, if
111 any, which shall display thereon at least one permanent
112 sign, clearly visible from the principal public street or
113 highway nearest said location and clearly stating the
114 business which is or shall be conducted thereat, and
115 which shall have adequate facilities to keep, maintain
116 and preserve records, papers and documents necessary
117 to carry on such business and to make the same
118 available to inspection by the commissioner at all
119 reasonable times: *Provided*, That the requirement of
120 exclusive use shall be met even though (i) some new and
121 any used motor vehicles sold or to be sold by such dealer
122 or sold or are to be sold at a different location or
123 locations not meeting the definition of an established
124 place of business of a new motor vehicle dealer, if each
125 such location is or is to be served by other facilities and
126 space of such dealer for the servicing and repair of at
127 least one motor vehicle, adequate and suitable as
128 aforesaid, and each such location used for the sale of
129 some new and any used motor vehicles otherwise meets
130 the definition of an established place of business of a
131 used motor vehicle dealer; (ii) house trailers, trailers
132 and/or motorcycles are sold or are to be sold thereat, if,

133 subject to the provisions of section five of this article,
134 a separate license certificate is obtained for each such
135 type of vehicle business, which license certificate
136 remains unexpired, unsuspended and unrevoked; (iii)
137 farm machinery is sold thereat; and (iv) accessory,
138 gasoline and oil, or storage departments are maintained
139 thereat, if such departments are operated for the
140 purpose of furthering and assisting in the licensed
141 business or businesses.

142 (18) "Farm machinery" means all machines and tools
143 used in the production, harvesting or care of farm
144 products.

145 (19) "Established place of business" shall, in the case
146 of a used motor vehicle dealer, mean a permanent
147 location, not a temporary stand or other temporary
148 quarters, owned or leased by the licensee or applicant
149 and actually occupied or to be occupied by him, as the
150 case may be, which is or is to be used exclusively for
151 the purpose of selling used motor vehicles, which shall
152 have facilities and space therewith for the servicing and
153 repair of at least one motor vehicle, which servicing and
154 repair facilities and space shall be adequate and suitable
155 to carry out servicing and to make repairs necessary to
156 keep and carry out all representations, warranties and
157 agreements made or to be made by such dealer with
158 respect to used motor vehicles sold by him, which shall
159 be easily accessible to the public, shall conform to all
160 applicable laws of the state of West Virginia, and the
161 ordinances of the municipality in which it is located, if
162 any, which shall display thereon at least one permanent
163 sign, clearly visible from the principal public street or
164 highway nearest said location and clearly stating the
165 business which is or shall be conducted thereat, and
166 which shall have adequate facilities to keep, maintain
167 and preserve records, papers and documents necessary
168 to carry on such business and to make the same
169 available to inspection by the commissioner at all
170 reasonable times: *Provided*, That if a used motor vehicle
171 dealer has entered into a written agreement or agree-
172 ments with a person or persons owning or operating a
173 servicing and repair facility or facilities adequate and

174 suitable as aforesaid, the effect of which agreement or
175 agreements is to provide such servicing and repair
176 services and space in like manner as if said servicing
177 and repair facilities and space were located in or on said
178 dealer's place of business, then, so long as such an
179 agreement or agreements are in effect, it shall not be
180 necessary for such dealer to maintain such servicing and
181 repair facilities and space at his place of business in
182 order for such place of business to be an established
183 place of business as herein defined: *Provided, however,*
184 That the requirement of exclusive use shall be met even
185 though (i) house trailers, trailers and/or motorcycles are
186 sold or are to be sold thereat, if, subject to the provisions
187 of section five of this article, a separate license
188 certificate is obtained for each such type of vehicle
189 business, which license certificate remains unexpired,
190 unsuspended and unrevoked; (ii) farm machinery is sold
191 thereat; and (iii) accessory, gasoline and oil, or storage
192 departments are maintained thereat, if such depart-
193 ments are operated for the purpose of furthering and
194 assisting in the licensed business or businesses.

195 (20) "Established place of business" shall, in the case
196 of a house trailer dealer, trailer dealer, recreational
197 vehicle dealer, motorcycle dealer, used parts dealer and
198 wrecker or dismantler, mean a permanent location, not
199 a temporary stand or other temporary quarters, owned
200 or leased by the licensee or applicant and actually
201 occupied or to be occupied by him, as the case may be,
202 which shall be easily accessible to the public, which
203 shall conform to all applicable laws of the state of West
204 Virginia and the ordinances of the municipality in
205 which it is located, if any, which shall display thereon
206 at least one permanent sign, clearly visible from the
207 principal public street or highway nearest said location
208 and clearly stating the business which is or shall be
209 conducted thereat, and which shall have adequate
210 facilities to keep, maintain and preserve records, papers
211 and documents necessary to carry on such business and
212 to make the same available to inspection by the
213 commissioner at all reasonable times.

214 (21) "Manufacturer" means every person engaged in

215 the business of reconstructing, assembling or reassem-
216 bling vehicles with a special type body required by the
217 purchaser if said vehicle is subject to the title and
218 registration provision of the code.

219 (22) "Transporter" means every person engaged in the
220 business of transporting vehicles to or from a manufac-
221 turing, assembling or distributing plant to dealers or
222 sales agents of a manufacturer, or purchasers.

223 (23) "Recreational vehicle dealer" means every person
224 (other than his agents and employees, if any, while
225 acting within the scope of their authority or employ-
226 ment), engaged in, or who holds himself out to the public
227 to be engaged in, the business in this state of selling new
228 and/or used recreational vehicles.

229 (24) "Motorboat" means any vessel propelled by an
230 electrical, steam, gas, diesel or other fuel propelled or
231 driven motor, whether or not such motor is the principal
232 source of propulsion, but shall not include a vessel which
233 has a valid marine document issued by the bureau of
234 customs of the United States government or any federal
235 agency successor thereto.

236 (25) "Motorboat trailer" means every vehicle designed
237 for or ordinarily used for the transportation of a
238 motorboat.

239 (26) "All-terrain vehicle" (ATV) means any motor
240 vehicle designed for off-highway use and designed for
241 operator use only with no passengers, having a seat or
242 saddle designed to be straddled by the operator, and
243 handlebars for steering control.

244 (27) "Travel trailer" means every vehicle, mounted on
245 wheels, designed to provide temporary living quarters
246 for recreational, camping or travel use of such size or
247 weight as not to require special highway movement
248 permits when towed by a motor vehicle and of gross
249 trailer area less than four hundred square feet.

250 (28) "Fold down camping trailer" means every vehicle
251 consisting of a portable unit mounted on wheels and
252 constructed with collapsible partial sidewalls which fold
253 for towing by another vehicle and unfold at the camp

254 site to provide temporary living quarters for recrea-
255 tional, camping or travel use.

256 (29) "Motor home" means every vehicle, designed to
257 provide temporary living quarters, built into an integral
258 part of or permanently attached to a self-propelled
259 motor vehicle, chassis or van including: (1) Type A
260 motor home built on an incomplete truck chassis with
261 the truck cab constructed by the second stage manufac-
262 turer; (2) Type B motor home consisting of a van-type
263 vehicle which has been altered to provide temporary
264 living quarters; and (3) Type C motor home built on an
265 incomplete van or truck chassis with a cab constructed
266 by the chassis manufacturer.

267 (30) "Snowmobile" means a self-propelled vehicle
268 intended for travel primarily on snow and driven by a
269 track or tracks in contact with the snow and steered by
270 a ski or skis in contact with the snow.

271 (31) "Recreational vehicle" means a motorboat,
272 motorboat trailer, all-terrain vehicle, travel trailer, fold
273 down camping trailer, motor home or snowmobile.

274 (b) Under no circumstances whatever shall the terms
275 "new motor vehicle dealer," "used motor vehicle dealer,"
276 "house trailer dealer," "trailer dealer," "recreational
277 vehicle dealer," "motorcycle dealer," "used parts dealer"
278 or "wrecker or dismantler" be construed or applied
279 under this article in such a way as to include a banking
280 institution, insurance company, finance company, or
281 other lending or financial institution, or other person,
282 the state or any agency or political subdivision thereof,
283 or any municipality, who or which owns or shall come
284 in possession or ownership of, or acquire contract rights,
285 or security interests in or to, any vehicle or vehicles or
286 any part thereof and shall sell such vehicle or vehicles
287 or any part thereof for purposes other than engaging in
288 and holding himself or itself out to the public to be
289 engaged in the business of selling vehicles or any part
290 thereof.

291 (c) It is recognized that throughout this code the term
292 "trailer" or "trailers" is used to include, among other
293 types of trailers, house trailers. It is also recognized that

294 throughout this code the term "trailer" or "trailers" is
295 seldom used to include semitrailers or pole trailers.
296 However, for the purposes of this article only, the term
297 "trailers" shall have the meaning ascribed to it in
298 subsection (a) of this section.

§17A-6-2. Legislative findings and declaration of public policy.

1 The Legislature hereby determines and finds that in
2 the past some few persons engaged in the business of
3 selling new or used motor vehicles, house trailers,
4 trailers, recreational vehicles, motorcycles, or used
5 motor vehicle parts, and in the business of wrecking or
6 dismantling motor vehicles, have not had the necessary
7 qualifications, staff, equipment or facilities to ade-
8 quately serve the public; that some few persons engaged
9 in said businesses have made false and deceptive claims
10 and advertisements to the public and have engaged in
11 fraud and other illegal conduct; that certain citizens of
12 this state have sustained financial losses as a result
13 thereof; and that in some of said cases there has been
14 no adequate means to prevent said conduct or protect
15 the interests of the citizens of West Virginia. It is,
16 therefore, declared to be the public policy of this state
17 that the business of new motor vehicle dealer, used
18 motor vehicle dealer, house trailer dealer, trailer dealer,
19 recreational vehicle dealer, motorcycle dealer, used
20 parts dealer, or wrecker or dismantler, affects the
21 general welfare of this state and its citizens; that
22 persons without the necessary qualifications, staff,
23 equipment or facilities to adequately serve the public,
24 and persons not of good character or who have or are
25 likely to attempt to misrepresent their product or
26 engage in fraudulent or other illegal conduct should not
27 engage in such businesses; and that such evils may best
28 be prevented and the interests of the public best served
29 by requiring persons in such businesses to meet the
30 qualifications set forth in this article and to be licensed
31 by the commissioner of motor vehicles as provided in
32 this article.

33 The provisions of this article relating to recreational
34 vehicles and recreational vehicle dealers shall become

35 effective on the first day of July, one thousand nine-
36 hundred eighty-nine.

PART II. LICENSE CERTIFICATE PROVISIONS.

§17A-6-3. License certificate required; engaging in more than one business; established place of business required; existing licenses.

1 (a) No person shall engage or represent or advertise
2 that he is engaged or intends to engage in the business
3 of new motor vehicle dealer, used motor vehicle dealer,
4 house trailer dealer, trailer dealer, recreational vehicle
5 dealer, motorcycle dealer, used parts dealer, or wrecker
6 or dismantler, in this state, unless and until he shall first
7 obtain a license certificate therefor as provided in this
8 article, which license certificate remains unexpired,
9 unsuspended and unrevoked. Any person desiring to
10 engage in more than one such business must, subject to
11 the provisions of section five of this article, apply for and
12 obtain a separate license certificate for each such
13 business.

14 (b) Except for the qualification contained in subdivi-
15 sion (17), subsection (a), section one of this article with
16 respect to a new motor vehicle dealer, each place of
17 business of a new motor vehicle dealer, used motor
18 vehicle dealer, house trailer dealer, trailer dealer,
19 recreational vehicle dealer, motorcycle dealer, used
20 parts dealer and wrecker or dismantler, must be an
21 established place of business as defined for such
22 business in said section one.

23 (c) Any license certificate and special plates issued by
24 the commissioner under the former provisions of article
25 six or article seven or section six, article ten of this
26 chapter, and which have not been canceled, suspended
27 or revoked prior to the effective date of this article shall
28 be governed by the provisions of this article and shall
29 remain valid until their expiration, unless such license
30 certificate is sooner suspended or revoked in accordance
31 with the provisions of this article.

§17A-6-4. Application for license certificate; insurance; bonds; investigation; information confidential.

1 (a) Application for any license certificate required by
2 section three of this article shall be made on such form
3 as may be prescribed by the commissioner. There shall
4 be attached to the application a certificate of insurance
5 certifying that the applicant has in force an insurance
6 policy issued by an insurance company authorized to do
7 business in this state insuring the applicant and any
8 other person, as insured, using any vehicle or vehicles
9 owned by the applicant with the express or implied
10 permission of such named insured, against loss from the
11 liability imposed by law for damages arising out of the
12 ownership, operation, maintenance or use of such vehicle
13 or vehicles, subject to minimum limits, exclusive of
14 interest and costs, with respect to each such vehicle, as
15 follows: Twenty thousand dollars because of bodily
16 injury to or death of one person in any one accident and,
17 subject to said limit for one person, forty thousand
18 dollars because of bodily injury to or death of two or
19 more persons in any one accident, and ten thousand
20 dollars because of injury to or destruction of property
21 of others in any one accident.

22 (b) In the case of an application for a license certifi-
23 cate to engage in the business of new motor vehicle
24 dealer, used motor vehicle dealer or house trailer dealer,
25 such application shall disclose, but not be limited to, the
26 following:

27 (1) The type of business for which a license certificate
28 is sought;

29 (2) If the applicant be an individual, the full name
30 and address of the applicant and any trade name under
31 which he will engage in said business;

32 (3) If the applicant be a copartnership, the full name
33 and address of each partner therein, the name of the
34 copartnership, its post-office address and any trade
35 name under which it will engage in said business;

36 (4) If the applicant be a corporation, its name, the
37 state of its incorporation, its post-office address and the
38 full name and address of each officer and director
39 thereof;

40 (5) The location of each place in this state at which
41 the applicant will engage in said business and whether
42 the same is owned or leased by the applicant;

43 (6) Whether the applicant, any partner, officer or
44 director thereof has previously engaged in said business
45 or any other business required to be licensed under the
46 provisions of this article and if so, with or for whom,
47 at what location and for what periods of time;

48 (7) Whether the applicant, any partner, officer,
49 director or employer thereof has previously applied for
50 a license certificate under the provisions of this article
51 or a similar license certificate in this or any other state,
52 and if so, whether such license certificate was issued or
53 refused, and, if issued, whether it was ever suspended
54 or revoked;

55 (8) A statement of previous general business expe-
56 rience and past history of the applicant; and

57 (9) Such other information as the commissioner may
58 reasonably require which may include information
59 relating to any contracts, agreements or understandings
60 between the applicant and other persons respecting the
61 transaction of said business, and any criminal record of
62 the applicant if an individual, or of each partner if a
63 copartnership, or of each officer and director, if a
64 corporation.

65 (c) In the case of an application for a license certifi-
66 cate to engage in the business of new motor vehicle
67 dealer, such application shall, in addition to the matters
68 outlined in subsection (b) of this section disclose:

69 (1) The make or makes of new motor vehicles which
70 the applicant will offer for sale in this state during the
71 ensuing fiscal year; and

72 (2) The exact number of new motor vehicles, if any,
73 sold at retail in this state by such applicant or his
74 predecessor, if any, during the preceding fiscal year,
75 and if no new motor vehicles were sold at retail in this
76 state by such applicant or his predecessor, if any, during
77 the preceding fiscal year, the number of new motor
78 vehicles the applicant reasonably expects to sell at retail

79 in this state during the ensuing fiscal year.

80 (d) In the case of an application for a license certifi-
81 cate to engage in the business of used motor vehicle
82 dealer, such application shall in addition to the matters
83 outlined in subsection (b) of this section, disclose the
84 exact number of used motor vehicles, if any, sold at
85 retail in this state by such applicant or his predecessor,
86 if any, during the preceding fiscal year, and if no used
87 motor vehicles were sold at retail in this state by such
88 applicant or his predecessor, if any, during the preced-
89 ing fiscal year, the number of used motor vehicles the
90 applicant reasonably expects to sell at retail in this state
91 during the ensuing fiscal year.

92 (e) In the case of an application for a license certifi-
93 cate to engage in the business of trailer dealer,
94 recreational vehicle dealer, motorcycle dealer, used
95 parts dealer, or wrecker or dismantler, such application
96 shall disclose such information as the commissioner may
97 reasonably require.

98 (f) Such application shall be verified by the oath or
99 affirmation of the applicant, if an individual, or if the
100 applicant is a copartnership or corporation, by a partner
101 or officer thereof, as the case may be. Such application
102 must be accompanied by a bond of the applicant in the
103 penal sum of two thousand dollars, in such form as may
104 be prescribed by the commissioner, conditioned that the
105 applicant will not in the conduct of his business practice
106 any fraud which, or make any fraudulent representation
107 which, shall cause a financial loss to any purchaser,
108 seller or financial institution or agency, or the state of
109 West Virginia, with a corporate surety thereon autho-
110 rized to do business in this state, which bond shall be
111 effective as of the date on which the license certificate
112 sought is issued.

113 (g) Upon receipt of any such fully completed applica-
114 tion, together with any bond required as aforesaid, the
115 certificate of insurance as aforesaid and the appropriate
116 fee as hereinafter provided in section ten of this article,
117 the commissioner may conduct such investigation, as he
118 deems necessary to determine the accuracy of any

119 statements contained in such application and the
120 existence of any other facts which he deems relevant in
121 considering such application. To facilitate such investi-
122 gation, the commissioner may withhold issuance or
123 refusal of the license certificate for a period not to
124 exceed twenty days.

125 (h) Any application for a license certificate under the
126 provisions of this article and any information submitted
127 therewith shall be confidential for the use of the
128 department. No person shall divulge any information
129 contained in any such application or any information
130 submitted therewith except in response to a valid
131 subpoena or subpoena duces tecum issued pursuant to
132 law.

§17A-6-5. License certificate exemption.

1 Any new motor vehicle dealer, used motor vehicle
2 dealer, house trailer dealer, trailer dealer, recreational
3 vehicle dealer or motorcycle dealer receiving a vehicle
4 in trade of a type other than that he is licensed to sell
5 hereunder may sell such vehicle without obtaining a
6 license certificate to engage in the business of selling
7 vehicles of such type and without being considered to be
8 a dealer in vehicles of such type.

**§17A-6-6. Refusal or issuance of license certificate;
license certificate not transferable.**

1 (a) Upon the basis of the application and all other
2 information before him, the commissioner shall make
3 and enter an order denying the application for a license
4 certificate and refusing the license certificate sought,
5 which denial and refusal shall be final and conclusive
6 unless an appeal is taken in accordance with the
7 provisions of section twenty-one of this article, if the
8 commissioner finds that the applicant (individually, if
9 an individual, or the partners, if a copartnership, or the
10 officers and directors, if a corporation):

11 (1) Has failed to furnish the required bond;

12 (2) Has failed to furnish the required certificate of
13 insurance;

- 14 (3) Has knowingly made false statement of a material
15 fact in his application;
- 16 (4) Has habitually defaulted on financial obligations;
- 17 (5) Has been convicted of a felony within five years
18 immediately preceding receipt of the application by the
19 commissioner;
- 20 (6) So far as can be ascertained, has not complied with
21 and will not comply with the registration and title laws
22 of this state;
- 23 (7) Does not or will not have and/or maintain at each
24 place of business (subject to the qualification contained
25 in subdivision (17), subsection (a), section one of this
26 article with respect to a new motor vehicle dealer) an
27 established place of business as defined for the business
28 in question in said section one;
- 29 (8) Has been guilty of any fraudulent act in connec-
30 tion with the business of new motor vehicle dealer, used
31 motor vehicle dealer, house trailer dealer, trailer dealer,
32 recreational vehicle dealer, motorcycle dealer, used
33 parts dealer, or wrecker or dismantler; or
- 34 (9) Has done any act or has failed or refused to
35 perform any duty for which the license certificate
36 sought could be suspended or revoked were it then
37 issued and outstanding.
- 38 Otherwise, the commissioner shall issue to the
39 applicant the appropriate license certificate which shall
40 entitle the licensee to engage in the business of new
41 motor vehicle dealer, used motor vehicle dealer, house
42 trailer dealer, trailer dealer, recreational vehicle dealer,
43 motorcycle dealer, used parts dealer, or wrecker or
44 dismantler, as the case may be, during the period, unless
45 sooner suspended or revoked, for which the license
46 certificate is issued.
- 47 (b) A license certificate issued in accordance with the
48 provisions of this article shall not be transferable.

PART III. FEES AND DEALER
SPECIAL PLATES GENERALLY.

§17A-6-10. Fee required for license certificate; dealer special plates.

1 (a) The initial application fee for a license certificate
2 to engage in the business of a new motor vehicle dealer,
3 used motor vehicle dealer, house trailer dealer, trailer
4 dealer, motorcycle dealer, recreational vehicle dealer, or
5 used parts dealer, or wrecker or dismantler, shall be two
6 hundred and fifty dollars: *Provided*, That if an applica-
7 tion for a license certificate is denied or refused in
8 accordance with section six of this article, one hundred
9 twenty-five dollars shall be refunded to the applicant.
10 The initial application fee shall entitle the licensee to
11 dealer special plates as prescribed by subsections (b), (c),
12 (d) and (e) of this section.

13 (b) The annual renewal fee required for a license
14 certificate to engage in the business of new motor
15 vehicle dealer shall be one hundred dollars. This fee
16 shall also entitle such licensee to one dealer's special
17 plate which shall be known as a Class D special plate.
18 Up to nine additional Class D special plates shall be
19 issued to any such licensee upon application therefor on
20 a form prescribed by the commissioner for such purpose
21 and the payment of a fee of five dollars for each
22 additional Class D special plate. Any such licensee who
23 obtains a total of ten Class D special plates as aforesaid
24 shall be entitled to receive additional Class D special
25 plates on a formula basis, that is, one additional Class
26 D special plate per twenty new motor vehicles sold at
27 retail in this state by such licensee or his predecessor
28 during the preceding fiscal year, upon application
29 therefor on a form prescribed by the commissioner for
30 such purpose and the payment of a fee of five dollars
31 for each such additional Class D special plate: *Provided*,
32 That in the case of a licensee who did not own or operate
33 such business during such preceding fiscal year and who
34 has no predecessor who owned or operated such business
35 during the preceding fiscal year, additional Class D
36 special plates shall be issued, for the ensuing fiscal year
37 only, on a formula basis of one additional Class D special
38 plate per twenty new motor vehicles which such licensee
39 estimates on his application for his license certificate he

40 will sell at retail in this state during said ensuing fiscal
41 year. Any such licensee may obtain Class D special
42 plates in addition to the ten plates authorized above and
43 any authorized on a formula basis, but the cost of each
44 such Class D special plate shall be thirty dollars.

45 (c) The annual renewal fee required for a license
46 certificate to engage in the business of used motor
47 vehicle dealer shall be one hundred dollars. This fee
48 shall also entitle such licensee to one dealer's special
49 plate which shall be known as a Class D-U/C special
50 plate. Up to four additional Class D-U/C special plates
51 shall be issued to any such licensee upon application
52 therefor on a form prescribed by the commissioner for
53 such purpose and the payment of a fee of five dollars
54 for each additional Class D-U/C special plate. Any such
55 licensee who obtains a total of five Class D-U/C special
56 plates as aforesaid shall be entitled to receive additional
57 Class D-U/C special plates on a formula basis, that is,
58 one additional Class D-U/C special plate per thirty used
59 motor vehicles sold at retail in this state by such licensee
60 or his predecessor during the preceding fiscal year,
61 upon application therefor on a form prescribed by the
62 commissioner for such purpose and the payment of a fee
63 of five dollars for each such additional Class D-U/C
64 special plate: *Provided*, That in the case of a licensee
65 who did not own or operate such business during such
66 preceding fiscal year and who has no predecessor who
67 owned or operated such business during the preceding
68 fiscal year, additional Class D-U/C special plates shall
69 be issued, for the ensuing fiscal year only, on a formula
70 basis of one additional Class D-U/C special plate per
71 thirty used motor vehicles which such licensee estimates
72 on his application for his license certificate he will sell
73 at retail in this state during said ensuing fiscal year.
74 Any such licensee may obtain Class D-U/C special plates
75 in addition to the five plates authorized above and any
76 authorized on a formula basis, but the cost of each such
77 Class D-U/C special plate shall be thirty dollars.

78 (d) The annual renewal fee required for a license
79 certificate to engage in the business of house trailer
80 dealer or trailer dealer, as the case may be, shall be

81 twenty-five dollars. This fee shall also entitle such
82 licensee to four dealer's special plates which shall be
83 known as Class D-T/R special plates. Additional Class
84 D-T/R special plates shall be issued to any such licensee
85 upon application therefor on a form prescribed by the
86 commissioner for such purpose and the payment of a fee
87 of five dollars for each such additional Class D-T/R
88 special plate.

89 (e) The annual renewal fee required for a license
90 certificate to engage in the business of recreational
91 vehicle dealer shall be one hundred dollars. This fee
92 shall also entitle such licensee to four dealer special
93 plates which shall be known as Class D-R/V special
94 plates. Additional Class D-R/V special plates shall be
95 issued to any such licensee upon application therefor on
96 a form prescribed by the commissioner for such purpose
97 on the payment of a fee of twenty-five dollars for each
98 such additional Class D-R/V special plate.

99 (f) The annual renewal fee required for a license
100 certificate to engage in the business of motorcycle dealer
101 shall be ten dollars. This fee shall also entitle such
102 licensee to two dealer's special plates which shall be
103 known as Class F special plates. Additional Class F
104 special plates shall be issued to any such dealer upon
105 application therefor on a form prescribed by the
106 commissioner for such purpose and the payment of a fee
107 of five dollars for each such additional Class F special
108 plate.

109 (g) The annual renewal fee required for a license
110 certificate to engage in the business of used parts dealer,
111 or wrecker or dismantler, as the case may be, shall be
112 fifteen dollars. Upon payment of the fee for said license
113 certificate, a licensee shall be entitled to up to four
114 special license plates which shall be known as Class WD
115 special plates. Such plates shall be issued to any such
116 licensee upon application therefor on a form prescribed
117 by the commissioner for such purpose and the payment
118 of a fee of twenty-five dollars for each such plate. Such
119 plate issued under the provisions of this subsection shall
120 have the words "Towing Only" affixed thereon.

121 (h) All of the special plates provided for in this section
122 shall be of such form and design and contain such other
123 distinguishing marks or characteristics as the commis-
124 sioner may prescribe.

**§17A-6-13. Use of special plates; records to be maintained
by dealer.**

1 (a) The Class D special plates and the Class D-U/C
2 special plates herein authorized may be used for any
3 purpose on any motor vehicle owned by the dealer to
4 whom issued and which is being operated with his
5 knowledge and consent and not otherwise: *Provided,*
6 That under no circumstances whatever shall a Class D
7 special plate or Class D-U/C special plate be used on any
8 work or service vehicle owned by a dealer, on any
9 vehicle owned by a dealer and offered for hire or lease,
10 or on any vehicle which has been sold by a dealer to a
11 customer.

12 (b) Under no circumstances whatever shall a Class D-
13 T/R special plate be used for the purpose of operating
14 a motor vehicle upon the streets and highways, or on any
15 house trailer or other trailer owned by a dealer and
16 offered for hire or lease, or on any house trailer or other
17 trailer which has been sold by a dealer to a customer:
18 *Provided,* That notwithstanding such sale or any
19 provision of this code to the contrary, a Class D-T/R
20 special plate may be used in moving a house trailer sold
21 by a house trailer dealer to a customer for one trip only
22 from the house trailer dealer's established place of
23 business to a place designated by such customer.

24 (c) Under no circumstances whatever shall a Class D-
25 R/V special plate be used for the purpose of operating
26 a motor vehicle upon the streets and highways, or on any
27 recreational vehicle owned by a dealer and offered for
28 hire or lease, or on any recreational vehicle which has
29 been sold by a dealer to a customer: *Provided,* That
30 notwithstanding any provision of this code to the
31 contrary, a Class D-R/V special plate may be used upon
32 the streets and highways for demonstration purposes
33 only on those recreational vehicles that are subject to

34 registration under article three of this chapter.

35 (d) Under no circumstances whatever shall a Class F
36 special plate be used for the purpose of operating any
37 type of motor vehicle other than a motorcycle on the
38 streets and highways, or on a motorcycle owned by a
39 dealer and offered for hire or lease, or on any motorcycle
40 which has been sold by a dealer to a customer.

41 (e) Every dealer entitled to and issued a special plate
42 or plates under the provisions of this article shall keep
43 a written record of the salesman, mechanic, employee,
44 agent, officer, or other person, to whom a special plate
45 or plates have been assigned by such dealer. Every such
46 record shall be open to inspection by the commissioner
47 or his representatives or any law-enforcement officer.

CHAPTER 89

(Com. Sub. for S. B. 552—By Senators Karras and Tucker)

[Passed March 3, 1988; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, four and five, article four; section four, article four-a; and section fifteen, article six, all of chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to extending the time for filing an application for a certificate of title showing a deferred purchase money lien or a deferred purchase money encumbrance from thirty to sixty days after purchase of vehicle; transfer of title or interest; expiration of registration; raising time for operation of vehicle from forty to sixty days after application for transfer of registration plates is made; extending times on transfers by owners; transfers to dealers and transfers by operation of law to sixty days; and extending time that temporary registration plates or markers are valid from forty to sixty days.

Be it enacted by the Legislature of West Virginia:

That sections one, two, four and five, article four; section

four, article four-a; and section fifteen, article six, all of chapter seventeen-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

- 4. **Transfers of Title or Interest.**
- 4A. **Liens and Encumbrances on Vehicles to be Shown on Certificate of Title; Notice to Creditors and Purchasers.**
- 6. **Licensing of Dealers and Wreckers or Dismantlers; Special Plates; Temporary Plates or Markers, Etc.**

ARTICLE 4. TRANSFERS OF TITLE OR INTEREST.

- §17A-4-1. Registration expires on transfer by owner; transfers, surrender or retention of plates.
- §17A-4-2. Endorsement of certificate of title upon transfer by owner.
- §17A-4-4. Transfers to dealers and others.
- §17A-4-5. Transfer by operation of law.

§17A-4-1. Registration expires on transfer by owner; transfer, surrender or retention of plates.

1 Whenever the owner of a registered vehicle transfers
 2 or assigns his title, or interest thereto, the registration
 3 of such vehicle shall expire: *Provided*, That such owner,
 4 if he has made application to the department within
 5 sixty days from the date of purchase to have said
 6 registration plates transferred to be used on another
 7 vehicle owned by said owner, may then operate the other
 8 vehicle for a period of sixty days, but in no event longer
 9 than sixty days from the date of original transfer. Upon
 10 such transfer, it shall be the duty of the original owner
 11 to retain the registration plates issued therefor and to
 12 immediately notify the commissioner of such transfer
 13 upon such form as may be provided therefor and to
 14 deliver to him the certificate of registration, whereupon
 15 the commissioner shall, upon the payment of a fee of five
 16 dollars, issue a new certificate showing the use to be
 17 made of such plates. Such plates may then be used by
 18 such owner on another vehicle of the same class as the
 19 vehicle for which they were originally issued if such
 20 other vehicle does not require a greater license fee than
 21 was required for such original vehicle. If such other
 22 vehicle requires a greater license fee than such original
 23 vehicle, then such plates may be used by paying such

24 difference to the commissioner. When such transfer of
25 ownership is made to a licensed dealer in motor vehicles
26 it shall be the duty of such dealer to immediately
27 execute notification of transfer, in triplicate, and to have
28 this notification properly signed by the owner making
29 the transfer. The dealer shall immediately forward to
30 the department the original copy of the notification of
31 transfer. One copy of the notification of transfer shall
32 be given to the owner and one shall be retained by the
33 dealer. The owner shall immediately send to the
34 department the transfer fee of five dollars with any
35 additional fee that may be required under the terms of
36 this chapter. The owner's copy, properly signed by the
37 dealer, will be the owner's identification until he
38 receives a new registration card from the department.

39 The owner of a set of registration plates may sur-
40 render them to the commissioner together with the
41 registration card and, upon the payment of five dollars
42 as an exchange fee and upon the payment of such
43 additional fees as are necessary to equalize the value of
44 the plates surrendered with the value of registration
45 plates desired, receive in exchange a set of plates and
46 registration card for a vehicle of a different class.

**§17A-4-2. Endorsement of certificate of title upon
transfer by owner.**

1 Whenever the owner of a registered vehicle transfers
2 or assigns his title, he shall endorse an assignment and
3 warranty of title upon the certificate of title for such
4 vehicle with a statement of all liens and encumbrances
5 thereon, which statement shall be verified under oath by
6 the owner, and he shall within sixty days from date of
7 sale deliver the certificate of title to the purchaser or
8 transferee, except in the case of a vehicle sold as scrap
9 or to be dismantled.

§17A-4-4. Transfers to dealers and others.

1 When the transferee of a vehicle is a dealer who holds
2 the same for resale and lawfully operates the same
3 under dealer's plates, such dealer shall not be required
4 to obtain a new registration of said vehicle or be
5 required to forward the certificate of title to the

6 department, but such dealer upon transferring his title
7 or interest to another person shall execute and acknowl-
8 edge an assignment and warranty of title upon the
9 certificate of title and deliver the same not later than
10 sixty days from date of sale to the person to whom such
11 transfer is made.

12 When the transferee of a vehicle does not drive such
13 vehicle or permit it to be driven upon the highways,
14 such transferee shall not be required to obtain a new
15 registration of said vehicle, but such transferee shall be
16 required within sixty days from the date of such
17 transfer to forward the certificate of title to the
18 department accompanied by an application for a new
19 certificate of title in his name.

§17A-4-5. Transfer by operation of law.

1 Whenever the title or interest of an owner in or to a
2 registered vehicle shall pass to another otherwise than
3 by voluntary transfer, the registration thereof shall
4 expire and the vehicle shall not be operated upon the
5 highways unless and until the person entitled to
6 possession of such vehicle shall apply for and obtain the
7 registration thereof, except that such vehicle may be
8 operated by the person entitled to its possession or his
9 legal representative upon the highways for a distance
10 not exceeding seventy-five miles upon displaying upon
11 such vehicle the registration plates issued to the former
12 owner, or in the event title has become vested in the
13 person holding a lien or encumbrance upon said vehicle,
14 such person may apply to the department for and obtain
15 special plates as may be issued under this chapter to
16 dealers or others and may operate any said repossessed
17 vehicle under such special plates only for purposes of
18 transporting the same to a garage or warehouse or for
19 purposes of demonstrating or selling the same: *Provided,*
20 That the commissioner is authorized to transfer the
21 plates and registration of a deceased person to his legal
22 heir or legatee without payment of any fee and the legal
23 heir or legatee may keep and use the same license plate
24 until it regularly expires.

25 Upon any transfer the new owner may secure a new

26 registration and certificate of title upon proper applica-
27 tion and upon presentation of the last certificate of title,
28 if available, and such instruments or documents of
29 authority or certified copies thereof as may be sufficient
30 or required by law to evidence or effect a transfer of
31 title or interest in or to chattels in such case. In the event
32 title has become vested in the person or financial
33 institution holding a lien or encumbrance upon said
34 vehicle, such person or institution need not obtain a new
35 registration of said vehicle or forward the certificate of
36 title to the department in order to sell the vehicle, but
37 the person or institution upon transfer of title or interest
38 to another shall execute and acknowledge an assignment
39 and warranty of title upon the certificate of title and
40 deliver the same not later than sixty days from the date
41 of sale to the purchaser. The person or institution
42 holding a lien or encumbrance upon the vehicle who
43 acquires the vehicle as a result of the lien or encum-
44 brance and subsequently, within sixty days, sells the
45 vehicle in satisfaction of the debt creating the lien or
46 encumbrance, shall not be subject to any privilege tax
47 or personal property tax on the vehicle imposed by any
48 other section.

**ARTICLE 4A. LIENS AND ENCUMBRANCES ON VEHICLES TO
BE SHOWN ON CERTIFICATE OF TITLE; NO-
TICE TO CREDITORS AND PURCHASERS.**

**§17A-4A-4. Deferred purchase money lien or encum-
brance may be filed within sixty days
after purchase.**

1 If application for a certificate of title showing a
2 deferred purchase money lien or deferred purchase
3 money encumbrance to be placed upon a vehicle be filed
4 in the office of the department within sixty days from
5 the date of such applicant's purchase of such vehicle, it
6 shall be as valid as to all persons, whomsoever, including
7 the state, as if such filing had been done on the day such
8 lien or encumbrance was acquired.

**ARTICLE 6. LICENSING OF DEALERS AND WRECKERS OR
DISMANTLERS; SPECIAL PLATES; TEMPORARY
PLATES OR MARKERS, ETC.**

§17A-6-15. Temporary registration plates or markers.

1 (a) In order to permit a vehicle which is sold to a
2 purchaser by a dealer to be operated on the streets and
3 highways pending receipt of the annual registration
4 plate from the department for such vehicle, the commis-
5 sioner may, subject to the limitations and conditions
6 hereinafter set forth, deliver temporary vehicle registra-
7 tion plates or markers to dealers who in turn may,
8 subject to the limitations and conditions hereinafter set
9 forth, issue the same to purchasers of vehicles, but such
10 purchasers must comply with the pertinent provisions
11 of this section.

12 (b) Application by a dealer to the commissioner for
13 such temporary registration plates or markers shall be
14 made on the form prescribed and furnished by the
15 commissioner for such purpose and shall be accompan-
16 ied by a fee of three dollars for each such temporary
17 registration plate or marker. No refund or credit of fees
18 paid by dealers to the commissioner for temporary
19 registration plates or markers shall be allowed, except
20 that in the event the commissioner discontinues the
21 issuance of such temporary plates or markers, dealers
22 returning temporary registration plates or markers to
23 the commissioner may petition for and be entitled to a
24 refund or a credit thereof. No temporary registration
25 plates or markers shall be delivered by the commis-
26 sioner to any dealer in house trailers only, and no such
27 temporary plates or markers shall be issued for or used
28 on any house trailer for any purpose.

29 (c) Every dealer who has made application for and
30 received temporary registration plates or markers shall
31 maintain in permanent form a record of all temporary
32 registration plates or markers delivered to him, a record
33 of all temporary registration plates or markers issued
34 by him, and a record of any other information pertain-
35 ing to the receipt or the issuance of temporary registra-
36 tion plates or markers which the commissioner may
37 require. Each such record shall be kept for a period of
38 at least three years from the date of the making thereof.
39 Every dealer who issues a temporary registration plate
40 or marker shall, within five working days after he issues
41 such plate or marker, send to the department a copy of

42 the temporary registration plate or marker certificate
43 properly executed by such dealer and the purchaser. No
44 temporary registration plates or markers may be
45 delivered to any dealer until such dealer has fully
46 accounted to the commissioner for the temporary
47 registration plates or markers last delivered to such
48 dealer, by showing the number issued to purchasers by
49 such dealer and any on hand.

50 (d) A dealer shall not issue, assign, transfer or deliver
51 a temporary registration plate or marker to anyone
52 other than the bona fide purchaser of the vehicle to be
53 registered; nor shall a dealer issue a temporary
54 registration plate or marker to anyone possessed of an
55 annual registration plate for a vehicle which has been
56 sold or exchanged, except a dealer may issue a temporary
57 registration plate or marker to the bona fide
58 purchaser of a vehicle to be registered who possesses an
59 annual registration plate of a different class and makes
60 application to the department to exchange such annual
61 registration plate of a different class in accordance with
62 the provisions of section one, article four of this chapter;
63 nor shall a dealer lend to anyone, or use on any vehicle
64 which he may own, a temporary registration plate or
65 marker. It shall be unlawful for any dealer to issue any
66 temporary registration plate or marker knowingly
67 containing any misstatement of fact, or knowingly to
68 insert any false information upon the face thereof.

69 (e) Every dealer who issues temporary registration
70 plates or markers shall affix or insert clearly and
71 indelibly on the face of each temporary registration
72 plate or marker the date of issuance and expiration
73 thereof, and the make and motor or serial number of the
74 vehicle for which issued.

75 (f) If the commissioner finds that the provisions of this
76 section or his directions are not being complied with by
77 a dealer, he may suspend the right of such dealer to
78 issue temporary registration plates or markers.

79 (g) Every person to whom a temporary registration
80 plate or marker has been issued shall permanently
81 destroy such temporary registration plate or marker

82 immediately upon receiving the annual registration
83 plate for such vehicle from the department: *Provided,*
84 That if the annual registration plate is not received
85 within sixty days of the issuance of the temporary
86 registration plate or marker, the owner shall, notwith-
87 standing the fact that the annual registration plate has
88 not been received, immediately and permanently
89 destroy the temporary registration plate or marker:
90 *Provided, however,* That not more than one temporary
91 registration plate or marker shall be issued to the same
92 bona fide purchaser for the same vehicle.

93 (h) A temporary registration plate or marker shall
94 expire and become void upon the receipt of the annual
95 registration plate from the department or upon the
96 rescission of the contract to purchase the vehicle in
97 question, or upon the expiration of sixty days from the
98 date of issuance, depending upon whichever event shall
99 first occur.

CHAPTER 90

(Com. Sub. for S. B. 253—By Senators Jackson, Tomblin, Williams and Felton)

[Passed March 12, 1988; 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 forty-seven, relating to requiring commercial towing vehicles to employ safety chains when towing wrecked or disabled vehicles.

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 forty-seven, to read as follows:

ARTICLE 15. EQUIPMENT.

§17C-15-47. Commercial towing vehicles to employ safety chains.

1 Every vehicle used in any business in West Virginia

2 for towing wrecked or disabled vehicles shall carry a
3 safety chain at all times. No such towing vehicle may
4 tow a wrecked or disabled vehicle unless a safety chain
5 is securely in place coupling the towing vehicle to the
6 vehicle being towed. For purposes of this section, safety
7 chain means chain or cable of sufficient strength to keep
8 the towing and towed vehicles connected in the event
9 that the towing sling or other primary connection fails.

CHAPTER 91

(H. B. 4189—By Delegates Leary and Pitrolo)

[Passed March 12, 1988; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal article three, chapter seventeen-d of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections three, four and seven, article two-a of said chapter, relating to security upon motor vehicles.

Be it enacted by the Legislature of West Virginia:

That article three, chapter seventeen-d of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections three, four and seven, article two-a of said chapter be amended and reenacted, all to read as follows:

ARTICLE 2A. SECURITY UPON MOTOR VEHICLES.

§17D-2A-3. Required security; exceptions.

§17D-2A-4. Certificate of insurance.

§17D-2A-7. Suspension or revocation of license, registration; reinstatement.

§17D-2A-3. Required security; exceptions.

1 Every owner or registrant of a motor vehicle required
2 to be registered and licensed in this state shall maintain
3 security as hereinafter provided in effect continuously
4 throughout the registration or licensing period except in
5 case of a periodic use or seasonal vehicle, in which case
6 the owner or registrant is required to maintain security
7 upon the vehicle only for the portion of the year the
8 vehicle is in actual use. As used in this section, a

9 periodic use or seasonal vehicle means a recreational
10 vehicle, antique motor vehicle, motorcycle or other
11 motor vehicle which is stored part of the year and used
12 seasonally.

13 Every nonresident owner or registrant of a motor
14 vehicle, which is operated upon any road or highway of
15 this state, and which has been physically present within
16 this state for more than thirty days during the preced-
17 ing three hundred sixty-five days, shall thereafter
18 maintain security as hereinafter provided in effect
19 continuously throughout the period such motor vehicle
20 remains within this state.

21 No person shall knowingly drive or operate upon any
22 road or highway in this state any motor vehicle upon
23 which security is required by the provisions of this
24 article unless such security is in effect.

25 Such security shall be provided by one of the following
26 methods:

27 (a) By an insurance policy delivered or issued for the
28 delivery in this state by an insurance company autho-
29 rized to issue vehicle liability and property insurance
30 policies in this state within limits which shall be no less
31 than the requirements of section two, article four,
32 chapter seventeen-d of this code; or

33 (b) By any other method approved by the commis-
34 sioner of the department of motor vehicles of this state
35 as affording security equivalent to that offered by a
36 policy of insurance, including qualification as a self-
37 insurer under the provisions of section two, article six,
38 chapter seventeen-d; or

39 (c) By depositing with the state treasurer such cash
40 or other securities in the manner set forth in section
41 sixteen, article four, chapter seventeen-d of this code.

42 The requirements of this section apply to every
43 registered and licensed vehicle upon the next applica-
44 tion for renewal of license following the effective date
45 of this section: *Provided*, That this article shall not apply
46 to any motor vehicle owned by the state or by a political
47 subdivision of this state, nor to any motor vehicle owned

48 by the federal government.

§17D-2A-4. Certificate of insurance.

1 (a) All insurance carriers transacting insurance in
2 this state shall supply a certificate to the insured or to
3 any person subject to the registration provisions of
4 article three, chapter seventeen-a of this code, certifying
5 that there is in effect a motor vehicle liability policy
6 upon such motor vehicle in accordance with the provi-
7 sions of article three, chapter seventeen-a of this code.
8 The certificate shall give its effective date and the
9 effective date of the policy and, unless the policy is
10 issued to a person who is not the owner of a motor
11 vehicle, must designate by explicit description, in such
12 detail as the commissioner of the department of motor
13 vehicles shall by rule require, all motor vehicles covered
14 and all replacement vehicles of similar classification:
15 *Provided*, That on and after the first day of July, one
16 thousand nine hundred eighty-four, insurance compan-
17 ies shall supply a certificate of insurance in duplicate
18 for each policy term and for each vehicle included in a
19 policy, except for those listed in a fleet policy. Each such
20 certificate of insurance shall list the name of the
21 policyholder and the name of the vehicle owner if
22 different from the policyholder.

23 The certificate must specify for each vehicle listed
24 therein, that there is a minimum liability insurance
25 coverage not less than the requirements of section two,
26 article four, chapter seventeen-d of this code.

27 (b) The certificate provided pursuant to the provisions
28 of this section or other proof of insurance shall be
29 carried by the insured in the appropriate vehicle for use
30 as proof of security, and must be presented at the time
31 of vehicle inspection as required by article sixteen,
32 chapter seventeen-c of this code: *Provided*, That an
33 insured shall not be guilty of a violation of this
34 subsection (b) if he furnishes proof that such insurance
35 was in effect within seven days of being cited for not
36 carrying such certificate or other proof in such vehicle.
37 As used in this section, proof of insurance means a
38 certificate of insurance, an insurance policy, a mechan-

39 ically reproduced copy of an insurance policy or a
40 certificate of self-insurance.

§17D-2A-7. Suspension or revocation of license, registration; reinstatement.

1 (a) Any owner of a motor vehicle, subject to the
2 provisions of this article, who fails to have the required
3 security in effect at the time such vehicle is being
4 operated upon the roads or highways of this state, shall
5 have his operator's or chauffeur's license suspended by
6 the commissioner of the department of motor vehicles
7 for a period of ninety days and shall have his motor
8 vehicle registration revoked until such time as he shall
9 present to the department of motor vehicles the proof
10 of security required by this article.

11 (b) Any person who knowingly operates a motor
12 vehicle upon the roads or highways of this state, which
13 does not have the security required by the provisions of
14 this article, shall have his operator's or chauffeur's
15 license suspended by the commissioner of the depart-
16 ment of motor vehicles for a period of ninety days.

17 (c) No person shall have his operator's or chauffeur's
18 license or motor vehicle registration suspended or
19 revoked under any provisions of this section unless he
20 shall first be given written notice of such suspension or
21 revocation sent by certified mail, at least twenty days
22 prior to the effective date of such suspension or
23 revocation, and upon such person's written request, sent
24 by certified mail, he shall be afforded an opportunity for
25 a hearing thereupon as well as a stay of the commissioner's
26 order of suspension or revocation and an opportunity
27 for judicial review of such hearing. Upon affirmation of
28 the commissioner's order, the owner or operator, as the
29 case may be, shall surrender such revoked license
30 and/or registration or have the same impounded in the
31 manner set forth in the provisions of section seven,
32 article nine, chapter seventeen-a of the code.

33 (d) Such suspended operator's or chauffeur's license
34 shall be reinstated following the period of suspension
35 upon compliance with the conditions set forth in this
36 article and such revoked motor vehicle registration shall

37 be reissued only upon lawful compliance with the
38 provisions of this article.

CHAPTER 92

(H. B. 3154—By Delegates Roop and Hale)

[Passed February 2, 1988; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article thirteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to municipal business and occupation or privilege taxes; and providing that no business and occupation tax imposed by a municipality upon public utility services may be effective unless the municipality provides written notice of the same to said public utility at least sixty days prior to the effective date of the tax.

Be it enacted by the Legislature of West Virginia:

That section five, article thirteen, 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 13. TAXATION AND FINANCE.

PART I. POWERS OF TAXATION.

§8-13-5. Business and occupation or privilege tax; limitation on rates; effective date of tax; exemptions; activity in two or more municipalities; administrative provisions.

1 (a) *Authorization to impose tax.* — Whenever any
2 business activity or occupation, for which the state
3 imposed its annual business and occupation or privilege
4 tax under article thirteen, chapter eleven of this code,
5 prior to July one, one thousand nine hundred eighty-
6 seven, is engaged in or carried on within the corporate
7 limits of any municipality, the governing body thereof
8 shall have plenary power and authority, unless prohi-
9 bited by general law, to impose a similar business and

10 occupation tax thereon for the use of the municipality.

11 (b) *Maximum tax rates.* — In no case shall the rate
12 of such municipal business and occupation or privilege
13 tax on a particular activity exceed the maximum rate
14 imposed by the state, exclusive of surtaxes, upon any
15 business activities or privileges taxed under sections
16 two-a, two-b, two-c, two-d, two-e, two-g, two-h, two-i and
17 two-j, article thirteen of said chapter eleven, as such
18 rates were in effect under said article thirteen, on
19 January one, one thousand nine hundred fifty-nine, or
20 in excess of one percent of gross income under section
21 two-k of said article thirteen, or in excess of three tenths
22 of one percent of gross value or gross proceeds of sale
23 under section two-m of said article thirteen.

24 (c) *Effective date of local tax.* — Any taxes levied
25 pursuant to the authority of this section may be made
26 operative as of the first day of the then current fiscal
27 year or any date thereafter: *Provided,* That any new
28 imposition of tax or any increase in the rate of tax upon
29 any business, occupation or privilege taxed under
30 section two-e of said article thirteen shall apply only to
31 gross income derived from contracts entered into after
32 the effective date of such imposition of tax or rate
33 increase, and which effective date shall not be retroac-
34 tive in any respect: *Provided, however,* That no tax
35 imposed or revised under this section upon public utility
36 services may be effective unless and until the munici-
37 pality provides written notice of the same by certified
38 mail to said public utility at least sixty days prior to the
39 effective date of said tax or revision thereof.

40 (d) *Exemptions.* — A municipality shall not impose its
41 business and occupation or privilege tax on any activity
42 that was exempt from the state's business and occupa-
43 tion tax under the provisions of section three, article
44 thirteen of said chapter eleven, prior to July one, one
45 thousand nine hundred eighty-seven, and determined
46 without regard to any annual or monthly monetary
47 exemption also specified therein.

48 (e) *Activity in two or more municipalities.* — When-
49 ever the business activity or occupation of the taxpayer

50 is engaged in or carried on in two or more municipal-
51 ities of this state, the amount of gross income, or gross
52 proceeds of sales, taxable by each municipality shall be
53 determined in accordance with such legislative regula-
54 tions as the tax commissioner may prescribe. It being
55 the intent of the Legislature that multiple taxation of
56 the same gross income, or gross proceeds of sale, under
57 the same classification by two or more municipalities
58 shall not be allowed, and that gross income, or gross
59 proceeds of sales, derived from activity engaged in or
60 carried on within this state, that is presently subject to
61 state tax under section two-c or two-h, article thirteen,
62 chapter eleven of this code, which is not taxed or taxable
63 by any other municipality of this state, may be included
64 in the measure of tax for any municipality in this state,
65 from which the activity was directed, or in the absence
66 thereof, the municipality in this state in which the
67 principal office of the taxpayer is located. Nothing in
68 this subsection (e) shall be construed as permitting any
69 municipality to tax gross income or gross proceeds of
70 sales in violation of the constitution and laws of this state
71 or the United States, or as permitting a municipality to
72 tax any activity that has a definite situs outside its
73 taxing jurisdiction.

74 (f) Where the governing body of a municipality
75 imposes a tax authorized by this section, such governing
76 body shall have the authority to offer tax credits from
77 such tax as incentives for new and expanding businesses
78 located within the corporate limits of the municipality.

79 (g) *Administrative provisions.* — The ordinance of a
80 municipality imposing a business and occupation or
81 privilege tax shall provide procedures for the assess-
82 ment and collection of such tax, which shall be similar
83 to those procedures in article thirteen, chapter eleven of
84 this code, as in existence on June thirtieth, one thousand
85 nine hundred seventy-eight, or to those procedures in
86 article ten, chapter eleven of this code, and shall
87 conform with such provisions as they relate to waiver
88 of penalties and additions to tax.

CHAPTER 93

(H. B. 4196—By Delegates Farley and Seacrist)

[Passed March 11, 1988; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-six, article twenty-two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to municipal corporations; policemen's and firemen's pension and relief fund; death benefits; and monthly payment of death benefits to physically and mentally disabled children over eighteen years of age.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 22. RETIREMENT BENEFITS GENERALLY; POLICEMEN'S PENSION AND RELIEF FUND; FIREMEN'S PENSION AND RELIEF FUND; PENSION PLANS FOR EMPLOYEES OF WATERWORKS SYSTEM, SEWERAGE SYSTEM OR COMBINED WATERWORKS AND SEWERAGE SYSTEM.

§8-22-26. Death benefits.

- 1 (a) In case:
- 2 (1) Any member of a paid police or fire department
- 3 who has been in continuous service for more than five
- 4 years dies from any cause other than as specified in
- 5 subsection (b) of this section before retirement on a
- 6 disability pension under the provisions of, prior to the
- 7 first day of July, one thousand nine hundred eighty-one,
- 8 section twenty-four of this article, or after the thirtieth
- 9 day of June, one thousand nine hundred eighty-one,
- 10 sections twenty-three-a and twenty-four of this article or
- 11 a retirement pension under the provisions of subsection
- 12 (a) or both subsections (a) and (b), section twenty-five of
- 13 this article, leaving in either case surviving a spouse, or
- 14 any dependent child or children under the age of
- 15 eighteen years, or dependent father or mother or both,
- 16 or any dependent brothers or sisters or both under the
- 17 age of eighteen years, or any dependent child over the
- 18 age of eighteen years of age who is totally physically or

19 mentally disabled so long as such condition exists; or

20 (2) Any former member of any such department who
21 is on a disability pension prior to the first day of July,
22 one thousand nine hundred eighty-one, under section
23 twenty-four of this article, or after the thirtieth day of
24 June, one thousand nine hundred eighty-one, under
25 sections twenty-three-a and twenty-four of this article,
26 or is receiving or is entitled to receive retirement
27 pension benefits under the provisions of subsection (a)
28 or both subsections (a) and (b), section twenty-five of this
29 article, dies from any cause other than as specified in
30 subsection (b) of this section leaving in either case
31 surviving a spouse or any dependent child or children
32 under the age of eighteen years or dependent father or
33 mother or both, or any dependent brothers or sisters or
34 both under the age of eighteen years, or any dependent
35 child over the age of eighteen years of age who is totally
36 physically or mentally disabled so long as such condition
37 exists; then in any of the cases set forth above in (1) and
38 (2) the board of trustees of such pension and relief fund
39 shall, immediately following the death of such member,
40 pay to or for each of such entitled surviving dependents
41 the following pension benefits: To such spouse, until
42 death or remarriage, a sum per month equal to sixty
43 percent of such member's pension or, in the event such
44 member was not receiving a pension at the time of his
45 death, a sum per month equal to sixty percent of the
46 monthly retirement pension such member would have
47 been entitled to receive pursuant to section twenty-five
48 of this article on the date of his death if such member
49 had then been eligible for a retirement pension there-
50 under, or the sum of three hundred dollars per month,
51 whichever is greater; to each such dependent child, a
52 sum per month equal to twenty percent of such
53 member's pension or, in the event such member was not
54 receiving a pension on the date of his death, a sum per
55 month equal to twenty percent of the monthly retire-
56 ment pension such member would have been entitled to
57 receive pursuant to section twenty-five of this article on
58 the date of his death if such member had then been
59 eligible for a retirement pension thereunder, or until
60 such child attains the age of eighteen years or marries,

61 whichever first occurs; to each such dependent orphaned
62 child, a sum per month equal to twenty-five percent of
63 such member's pension or, in the event such member
64 was not receiving a pension at the time of his death, a
65 sum per month equal to twenty-five percent of the
66 monthly retirement pension such member would have
67 been entitled to receive pursuant to section twenty-five
68 of this article on the date of his death if such member
69 had then been eligible for a retirement pension there-
70 under, until such child attains the age of eighteen years
71 or marries, whichever first occurs; to each such
72 dependent orphaned child, a sum per month equal to
73 twenty-five percent of such member's pension or, in the
74 event such member was not receiving a pension on the
75 date of his death, a sum per month equal to twenty-five
76 percent of the monthly retirement pension such member
77 would have been entitled to receive pursuant to section
78 twenty-five of this article on the date of his death if such
79 member had then been eligible for a retirement pension
80 thereunder, until such child attains the age of eighteen
81 years or marries, whichever first occurs; to each such
82 dependent father or mother, a sum per month for each
83 equal to ten percent of such member's pension or, in the
84 event such member was not receiving a pension on the
85 date of his death, a sum per month equal to ten percent
86 of the monthly retirement pension such member would
87 have been entitled to receive pursuant to section twenty-
88 five of this article on the date of his death if such
89 member had then been eligible for a retirement pension
90 thereunder; to each such dependent brother or sister, the
91 sum of fifty dollars per month until such individual
92 attains the age of eighteen years or marries, whichever
93 first occurs, but in no event shall the aggregate amount
94 paid to such brothers and sisters exceed one hundred
95 dollars per month. If at any time, because of the number
96 of dependents, all such dependents cannot be paid in full
97 as herein provided, then each dependent shall receive
98 his pro rata share of such payments. In no case shall the
99 payments to the surviving spouse and children be cut
100 below sixty-five percent of the total amount paid to all
101 dependents.

102 (b) The surviving spouse, child or children, or

103 dependent father or mother, or dependent brothers or
104 sisters, of any such member who dies by reason of
105 service rendered in the performance of such member's
106 duties shall, regardless of the length of such member's
107 service and irrespective of whether such member was
108 or was not entitled to receive, or was or was not
109 receiving, disability pension or temporary disability
110 payments at the time of his death, receive the death
111 benefits provided for in subsection (a) of this section. If
112 such member had less than three years' service at the
113 time of his death, the member's pension shall be
114 computed on the basis of the actual number of years of
115 service.

116 (c) If a member dies without leaving a spouse,
117 dependent child or children, or dependent father or
118 mother, or dependent brothers or sisters, his contribu-
119 tions to the fund plus six percent interest shall be
120 refunded to his named beneficiary or, if no beneficiary
121 has been named, to his estate to the extent that such
122 contributions plus interest exceed any disability or
123 retirement benefits that he may have received before his
124 death.

125 (d) The provisions of this section shall not be
126 construed as creating or establishing any contractual or
127 vested rights in favor of any individual who may be or
128 become qualified as a beneficiary of the death benefits
129 herein authorized to be made, all the provisions hereof
130 and benefits provided for hereunder being expressly
131 subject to such subsequent legislative enactments as
132 may provide for any change, modification or elimination
133 of the beneficiaries or benefits specified herein.

CHAPTER 94

(Com. Sub. for S. B. 267—By Senators Boettner, Jones
and Tonkovich, Mr. President)

[Passed March 12, 1988; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three and thirty-nine,
article twenty-four, chapter eight of the code of West

Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact article twenty-six-a of said chapter; to amend and reenact sections one, two, five, six and seven, article one, chapter twenty-nine of said code; to further amend said article one by adding thereto a new section, designated section fourteen; and to amend and reenact section five, article three of said chapter, all relating to municipal corporations; planning and zoning; definitions; urban and rural zoning—zoning generally; zoning authority generally; municipal and county historic landmarks commissions; legislative determinations; definitions; legislative intent; conflict between regulations of zoning district and historic district and properties; municipality or county may establish historic landmarks commission; appointments; detailed provisions to be provided by ordinance or order; appropriation of funds; powers and duties of commission; designation; report; certificate of appropriateness; scope of review; standards of review; review procedures; variances; appeals; court action or proceedings to prevent improper changes or illegal acts or conduct; violations of this article; penalties; notice to county assessor of designation of historic district; assistance of state agencies; coordination; annual reports; creation of department of culture and history; divisions and commissions; purposes; definitions; effective date; general powers of commissioner; archives and history division; director; archives and history commission; protection of historic and prehistoric sites; penalties; voluntary endangered historic properties check-off program; and promulgation of regulations and state fire code.

Be it enacted by the Legislature of West Virginia:

That sections three and thirty-nine, article twenty-four, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that article twenty-six-a of said chapter be amended and reenacted; that sections one, two, five, six and seven, article one, chapter twenty-nine of said code be amended and reenacted; that said article one be further amended by adding thereto a new section, designated section fourteen; and that

section five, article three of said chapter be amended and reenacted, all to read as follows:

Chapter

8. Municipal Corporations.

29. Miscellaneous Boards and Officers.

CHAPTER 8. MUNICIPAL CORPORATIONS.

Article

24. Planning and Zoning.

26A. Municipal and County Historic Landmarks Commissions.

ARTICLE 24. PLANNING AND ZONING.

§8-24-3. Definitions.

§8-24-39. Zoning authority generally.

§8-24-3. Definitions.

1 As used in this article:

2 (a) "Commission or planning commission" shall mean
3 a municipal planning commission or a county planning
4 commission, as the case may be;

5 (b) "Comprehensive plan" shall mean a complete
6 comprehensive plan or any of its parts such as a
7 comprehensive plan of land use and zoning, of thorough-
8 fares, of sanitation, of recreation and other related
9 matters, and including such ordinance or ordinances as
10 may be deemed necessary to implement such complete
11 comprehensive plan or parts thereof by legislative
12 approval and provision for such rules and regulations as
13 are deemed necessary and their enforcement;

14 (c) "Exterior architectural features" includes the
15 architectural character and general composition of the
16 exterior of a structure, including, but not limited to, the
17 kind, color and texture of the building material, and the
18 type, design and character of all windows, doors, light
19 fixtures, signs, other appurtenant elements and natural
20 features when they are integral to the significance of the
21 site, all of which are subject to public view from a public
22 street, way or place;

23 (d) "Historic district" is a geographically definable
24 area possessing a significant concentration, linkage or

25 continuity of sites, buildings, structures or objects
26 united historically or aesthetically by plan or physical
27 development;

28 (e) "Historic landmark" is a site, building, structure
29 or object designated as a "Landmark" either on a
30 national, state or local register;

31 (f) "Historic site" is the location of a significant event,
32 a prehistoric or historic occupation or activity, or a
33 building or structure whether standing, ruined or
34 vanished, where the location itself possesses historical,
35 cultural or archaeological value regardless of the value
36 of any existing structure;

37 (g) "Public place" includes any tracts owned by the
38 state or its subdivisions;

39 (h) "Streets" includes streets, avenues, boulevards,
40 highways, roads, lanes, alleys and all public ways;

41 (i) "Unit of government" means any federal, state,
42 regional, county or municipal government or govern-
43 mental corporation; and

44 (j) "Utility" means any facility used in rendering
45 service which the public has a right to demand.

PART VIII. URBAN AND RURL ZONING—
ZONING GENERALLY.

§8-24-39. Zoning authority generally.

1 As an integral part of the planning of areas so that
2 adequate light, air, convenience of access, and safety
3 from fire, flood and other danger may be secured; that
4 congestion in the public streets may be lessened or
5 avoided; that the public health, safety, comfort, morals,
6 convenience and general public welfare may be pro-
7 moted; that the preservation of historic landmarks, sites,
8 districts and buildings be promoted; and that the
9 objective set forth in section one of this article may be
10 further accomplished, the governing body of a munic-
11 ipality or a county commission shall have the following
12 powers:

13 (a) To classify, regulate and limit the height, area,

- 14 bulk and use of buildings hereafter to be erected;
- 15 (b) To regulate the height, area, bulk, exterior
16 architectural features and use of buildings hereafter to
17 be erected within designated historic districts;
- 18 (c) To regulate the alteration of exterior architectural
19 features of buildings within historic districts and to
20 regulate the alteration of historic landmarks and sites;
- 21 (d) To regulate and determine the area of front, rear
22 and side yards, courts and other open spaces about such
23 buildings;
- 24 (e) To regulate and determine the use and intensity
25 of use of land and lot areas;
- 26 (f) To classify, regulate and restrict the location of
27 trades, callings, industries, commercial enterprises and
28 the location of buildings designed for specified uses;
- 29 (g) To regulate and control, or prohibit in certain
30 areas, junk yards, salvage yards, used parts yards,
31 dumps or automobile or appliance graveyards, or the
32 maintenance and operation of secondhand stores or
33 outlets in residential areas;
- 34 (h) To classify and designate the rural lands among
35 agricultural, industrial, commercial, residential and
36 other uses and purposes; and
- 37 (i) To divide the municipality or county into districts
38 of such kind, character, number, shape and area as may
39 be deemed necessary to carry out the purposes of this
40 section.

**ARTICLE 26A. MUNICIPAL AND COUNTY HISTORIC LAND-
MARKS COMMISSIONS.**

- §8-26A-1. Legislative determinations.
- §8-26A-2. Definitions.
- §8-26A-3. Legislative intent; conflict between regulations of zoning district and historic district and properties.
- §8-26A-4. Municipality or county may establish historic landmarks commission; appointments; detailed provisions to be provided by ordinance or order; appropriation of funds.
- §8-26A-5. Powers and duties of commission.
- §8-26A-6. Designation; report.
- §8-26A-7. Certificate of appropriateness; scope of review; standards of review; review procedures; variances, appeals.

§8-26A-8. Court action or proceedings to prevent improper changes or illegal acts or conduct.

§8-26A-9. Violations of this article; penalties.

§8-26A-10. Notice to county assessor of designation of historic district.

§8-26A-11. Assistance of state agencies; coordination; annual reports.

§8-26A-1. Legislative determinations.

1 It is hereby declared as a matter of legislative
2 determination:

3 (a) That the state of West Virginia is richly endowed
4 with numerous historic buildings, structures, sites and
5 districts which represent the historical, architectural
6 and cultural heritage of this state;

7 (b) That West Virginia heritage, represented by such
8 historic buildings, structures, sites and districts can best
9 be identified, studied, preserved and protected for the
10 general welfare of residents of this state and this nation
11 by authorizing and empowering action for this purpose
12 at the local level;

13 (c) That the preservation and protection of such
14 historic buildings, structures, sites and districts aid
15 economic development through revitalization of this
16 state's central business districts, improvement of
17 property values and enhancement of this state's historic
18 attractions to tourists and visitors; and aid the develop-
19 ment of education of this state by preservation of such
20 heritage for future generations;

21 (d) That the preservation of this heritage is essential
22 to the promotion of the prosperity, education and
23 general welfare of the people; and

24 (e) That the Legislature hereby finds that it is the
25 public policy and the public interest of this state to
26 engage in a comprehensive program of historic preser-
27 vation, undertaken at all levels of government, along
28 with the private sector, to promote the use and preser-
29 vation of such heritage for the education and general
30 welfare of the people of this state; and, accordingly, this
31 article shall be broadly construed in order to accomplish
32 the purposes herein set forth.

§8-26A-2. Definitions.

1 As used in this article:

2 (a) "Exterior architectural features" include the
3 architectural character and general composition of the
4 exterior of a structure, including, but not limited to, the
5 kind, color and texture of the building material and the
6 type, design and character of all windows, doors, light
7 fixtures, signs, other appurtenant elements and natural
8 features when they are integral to the significance of the
9 site, all of which are subject to public view from a public
10 street, way or place.

11 (b) "Historic district" is a geographically definable
12 area possessing a significant concentration, linkage or
13 continuity of sites, buildings, structures or objects
14 united historically or aesthetically by plan or physical
15 development.

16 (c) "Historic landmark" is a site, building, structure
17 or object designated as a "Landmark" either on a
18 national, state or local register.

19 (d) "Historic site" is the location of a significant event,
20 a prehistoric or historic occupation or activity, or a
21 building or structure, whether standing, ruined or
22 vanished, where the location itself possesses historical,
23 cultural or archaeological value regardless of the value
24 of any existing structure.

§8-26A-3. Legislative intent; conflict between regulations of zoning district and historic district and properties.

1 The historic district and property regulation provided
2 in this article is intended to identify, study, preserve and
3 protect historic buildings and structures, sites and
4 districts, some of which are located in zoning districts.
5 Historic properties and districts lying within the
6 boundaries of a zoning district are subject to the
7 regulations for both the zoning district and historic
8 district and properties. If there is a conflict between the
9 requirements of the zoning district and the require-
10 ments of the historic district or property, the zoning
11 district requirements apply.

§8-26A-4. Municipality or county may establish historic landmarks commission; appointments; detailed provisions to be provided by ordinance or order; appropriation of funds.

1 Any municipality by ordinance and any county by
2 order of the county commission entered of record may,
3 if it so desires, establish a municipal historic landmarks
4 commission or county historic landmarks commission,
5 hereinafter in this article referred to as the commission,
6 to consist of five members, appointed by the mayor or
7 county commission, as the case may be.

8 In any such ordinance or order, the governing body
9 shall include provisions specifying (a) the terms of the
10 members of such commission; (b) a method of filling
11 vacancies; (c) whether the members of the commission
12 are to be reimbursed for all reasonable and necessary
13 expenses actually incurred in the performance of their
14 duties; (d) the officers of the commission to be elected
15 from the membership thereof; (e) requirements as to
16 meetings of the commission; (f) requirements as to a
17 quorum of the commission; (g) requirements as to voting
18 by members of the commission; and (h) such other
19 matters as may be deemed necessary or desirable for the
20 proper functioning of the commission. In the event the
21 ordinance or order establishing such commission shall
22 authorize the commission to issue certificates of appro-
23 priateness, the ordinance or order shall require a
24 majority of the members to have demonstrated special
25 interest, experience or education in history, architec-
26 ture, planning, real estate or law, to the extent such
27 persons are available in the community. In establishing
28 such a commission and making appointments to it, a
29 local governing body may seek the advice of any
30 national, state or local historical agency, society or
31 organization.

32 Any such commission may also be authorized and
33 empowered by any such ordinance or order to employ,
34 within the limits of funds available therefor, such
35 employees, assistants, technical personnel and consul-
36 tants as are necessary to discharge the duties and
37 responsibilities of the commission.

38 Any municipality or county establishing any such
39 commission shall have plenary power and authority to
40 appropriate funds to such commission for expenditure
41 by the commission for the purposes of this article.

§8-26A-5. Powers and duties of commission.

1 Any such commission shall be authorized, but not
2 required, within the jurisdictional limits of the munic-
3 ipality or county, as the case may be, and within the
4 limits of available funds, to:

5 (a) Make a survey of, and designate as historic
6 landmarks, buildings, structures and districts which
7 constitute the principal historical and architectural sites
8 which are of local, regional, statewide or national
9 significance in accordance with section six of this
10 article;

11 (b) Prepare a register of buildings, structures, sites
12 and districts which meet the requirements of subsection
13 (a) of this section, publish lists of such properties and,
14 with the consent of the property owners, inspect such
15 properties from time to time and publish a register
16 thereof from time to time setting forth appropriate
17 information concerning the registered buildings, struc-
18 tures, sites and districts;

19 (c) Review applications for certificates of appropriate-
20 ness and grant or deny the same in accordance with
21 section seven of this article;

22 (d) With the consent of the property owners, mark
23 with appropriately designed markers, buildings, struc-
24 tures and sites which it has registered;

25 (e) Establish standards for the care and management
26 of designated historic landmarks and withdraw such
27 certification for failure to maintain the standards so
28 prescribed;

29 (f) Acquire by purchase, gift or lease and administer
30 registered landmarks and easements and interests
31 therein, both real and personal;

32 (g) Lease or sell property so acquired under terms
33 and conditions designed to ensure the proper preserva-

34 tion of the historic landmark in question;

35 (h) Aid and encourage the municipality or county in
36 which the district or landmark is located to adopt
37 ordinances and resolutions for the preservation of
38 landmarks and historic districts, their buildings,
39 structures and character;

40 (i) Prepare and place historical markers on or along
41 the highway or street closest to the location which is
42 intended to be identified by such marker;

43 (j) Seek the advice and assistance of individuals,
44 groups and departments and agencies of government
45 who or which are conducting historical preservation
46 programs and coordinate the same insofar as possible;

47 (k) Seek and accept gifts, bequests, endowments and
48 funds from any and all sources for the accomplishment
49 of the functions of the commission;

50 (l) Adopt rules and regulations concerning the oper-
51 ation of the commission, the functions and responsibil-
52 ities of its officers, employees, assistants and other
53 personnel and such other matters as may be necessary
54 to carry out the purposes of this article; and

55 (m) Adopt such other rules and regulations as may be
56 deemed necessary to effectuate the purposes of this
57 article, but no such rules and regulations shall be
58 inconsistent with any plan of the planning commission
59 of such municipality or county: *Provided*, That in no case
60 shall such rules and regulations take precedence over
61 locally adopted ordinances.

§8-26A-6. Designation; report.

1 Prior to designation of an historic landmark or
2 historic district, the commission shall make or cause to
3 be made a report on the historical, cultural, architectu-
4 ral significance of each building, structure, site and
5 district proposed for designation, based upon the
6 following standards:

7 No building, structure, site or district shall be deemed
8 to be an historic one unless it has been prominently
9 identified with or best represents, some major aspect of

10 the cultural, political, economic, military or social
11 history of the locality, region, state or nation, or has had
12 a major relationship with the life of an historic
13 personage or event representing some major aspect of,
14 or ideals related to, the history of the locality, region,
15 state or nation. In the case of buildings or structures
16 which are to be so designated, they shall embody the
17 principal or unique features of an architectural type or
18 demonstrate the style of a period of our history or
19 method of construction, or serve as an illustration of the
20 work of a master builder, designer or architect whose
21 genius influenced the period in which he worked or has
22 significance in current times.

23 The commission shall submit such report, including
24 maps and photographs as necessary, to the West
25 Virginia department of culture and history. In the case
26 of a report for a proposed historic district, the commis-
27 sion shall submit with the report a map showing
28 boundaries of the proposed district. The West Virginia
29 department of culture and history may prepare written
30 comments within forty-five days on the report.

31 In the event that any such ordinance or order
32 establishing the commission has authorized the commis-
33 sion to issue certificates of appropriateness, the local
34 governing body shall hold a public hearing on the
35 proposed designation of the historic property or historic
36 district, and any proposed regulations and requirements
37 for the historic district. Notice of the hearing shall be
38 published at least two times in the principal newspaper
39 of general circulation within the municipality or county
40 in which the property or properties to be designated are
41 located; and written notice of the hearing shall be
42 mailed by certified mail with signed return receipt
43 required by the commission to all owners and occupants
44 of such properties. All the notices shall be published or
45 mailed not less than ten nor more than twenty days
46 prior to the date set for the public hearing. Following
47 the public hearing, unless the owner of a proposed
48 property or fifty percent of the ownership interest in a
49 proposed district objects to such designation or regula-
50 tions and requirements within thirty days following the

51 public hearing, the local governing body may designate
52 the property or properties as historic, and approve,
53 amend or reject the proposed regulations or require-
54 ments. Within thirty days following such designation or
55 approval, the owners and occupants of each designated
56 historic property shall be given written notification of
57 such designation or approval by the local governing
58 body, which notice shall apprise said owners and
59 occupants of the necessity of obtaining a certificate of
60 appropriateness prior to undertaking any material
61 change in the appearance of the historic landmark
62 designated or within an historic district.

63 In the event any such order or ordinance establishing
64 a commission does not authorize the commission to
65 regulate historic properties through issuance of a
66 certificate of appropriateness, the survey report may be
67 adopted by the commission, with any recommended
68 amendments or changes by the state agency, and the
69 historic landmark or historic district shall be designated
70 as historic.

71 Any such designated historic landmark or district
72 designated by this article shall be shown on the official
73 zoning map of the county or municipality or, that in the
74 absence of an official zoning map, the designated
75 property be shown on a map of the county or municipi-
76 tality and kept by the county or municipality as a public
77 record to provide notice of such designation in addition
78 to other such notification requirements of this section.

**§8-26A-7. Certificate of appropriateness; scope of review;
standards of review; review procedures;
variances, appeals.**

1 In the event that any commission shall exercise
2 authority to issue a certificate of appropriateness to
3 regulate new construction, alteration, removal or
4 demolition of buildings, sites or structures within an
5 historic district or individually designated as an historic
6 landmark, the commission shall have plenary power and
7 authority to regulate such properties, according to the
8 following provisions:

9 No private building, site or structure shall be erected,

10 altered, restored, moved or demolished until after an
11 application for a certificate of appropriateness as to
12 exterior architectural features has been submitted to
13 and approved by the commission, except as otherwise
14 provided by the governing body in the ordinance or
15 order establishing such commission or as provided by
16 rules, regulations, policies, procedures and standards
17 adopted and published by said commission. For the
18 purposes of this article, "exterior architectural features"
19 shall include such portion of the exterior of a structure
20 as is open to view from a public street, way or place.
21 Similarly, if earthworks of historical or archaeological
22 importance exist in the historic district there shall be
23 no excavating or moving of earth, rock or subsoil or any
24 development upon or around earthworks without a
25 certificate of appropriateness. The style, material, size
26 and location of outdoor advertising signs and bill posters
27 shall be under the control of such commission.

28 (1) The commission may request such plans, eleva-
29 tions, specifications, drawings, photographs and other
30 information as may be reasonably deemed necessary by
31 the commission to enable it to make a determination on
32 the application for a certificate of appropriateness.

33 (2) The commission shall hold a public hearing upon
34 each application for a certificate of appropriateness.
35 Notice of the time and place of said hearing shall be
36 given by publication in a newspaper having general
37 circulation in the area served by the governmental unit,
38 provided it has one, at least seven days before such
39 hearing, and by posting such notice on or near the main
40 entrance of any hall or room where the commission
41 usually meets. The commission shall take such action as
42 required to inform the owners of any property likely to
43 be affected by the application and shall give the
44 applicant and such owners an opportunity to be heard.

45 (3) The commission shall approve or reject an appli-
46 cation for a certificate of appropriateness within forty-
47 five days after the filing thereof by the owner or
48 occupant of a historic property or a building, site or
49 structure located within a historic district. Evidence of
50 approval shall be by a certificate of appropriateness

51 issued by the commission.

52 (4) In passing upon the appropriateness of proposed
53 action, the commission shall consider, in addition to any
54 other pertinent factors, the historical and architectural
55 integrity and significance; architectural style; design,
56 arrangement, texture and materials of exterior architec-
57 tural features; and the relationship and general compat-
58 ibility thereof to the historical value and exterior
59 architectural style and pertinent features of other
60 structures in the surrounding area.

61 (5) The commission shall approve the application and
62 issue a certificate of appropriateness if it finds that the
63 proposed action would be appropriate. In the event the
64 commission rejects an application, such commission
65 shall place upon its records and shall transmit a record
66 of such action and reasons therefor, in writing, to the
67 applicant. In such written record, the commission may
68 make recommendations relative to design, arrangement,
69 texture, material and similar features. The applicant, if
70 he so desires, may make modifications to the plans and
71 may resubmit the application at any time after doing
72 so.

73 (6) In cases where the application covers a material
74 change in the appearance of a structure which would
75 require the issuance of a building permit, the rejection
76 of an application for a certificate of appropriateness by
77 the commission shall be binding upon the building
78 inspector or other administrative office charged with
79 issuing building permits.

80 (7) Where such action is authorized by the local
81 governing body and is reasonably necessary or approp-
82 riate for the preservation of a unique historic property,
83 the commission may enter into negotiations with the
84 owner for the acquisition by gift, purchase, exchange or
85 otherwise of the property or any interest therein.

86 (8) If the strict application of any provision of this
87 article would result in exceptional practical difficulty or
88 undue economic hardship upon any owner of any
89 specific property, the commission, in passing upon
90 applications, shall have the power to vary or modify

91 strict adherence to the provisions or to interpret the
92 meaning of the provision so as to relieve such difficulty
93 or hardship: *Provided*, That such variance, modification
94 or interpretation shall remain in harmony with the
95 general purpose and intent of the provisions so that
96 architectural or historical integrity or character of the
97 property shall be conserved and substantial justice done.
98 In granting variations, the commission may impose such
99 reasonable and additional stipulations and conditions as
100 will in its judgment best fulfill the purpose of this
101 article.

102 (9) The commission shall keep a record of all appli-
103 cations for certificates of appropriateness and of all its
104 proceedings.

105 (10) Any person adversely affected by any determina-
106 tions made by the commission relative to the issuance
107 or denial of a certificate of appropriateness may appeal
108 such determination to the circuit court in the county in
109 which said commission is located.

110 (11) Nothing in this article shall be construed to
111 prevent the ordinary maintenance or repair of any
112 exterior architectural feature in or on an historic
113 property, which maintenance or repair does not involve
114 a material change in design, material or outer appear-
115 ance thereof, nor to prevent any property owner from
116 making any use of his property not prohibited by other
117 laws, ordinances or regulations.

118 (12) Undertakings permitted, funded, licensed or
119 otherwise assisted by the state shall be reviewed in
120 accordance with subsection (e), section five, article one,
121 chapter twenty-nine of this code and shall be considered
122 exempt from review for certification of appropriateness
123 as described in this section.

**§8-26A-8. Court action or proceedings to prevent im-
proper changes or illegal acts or conduct.**

1 The municipal or county governing body or the
2 historic landmarks commission shall be authorized to
3 institute any appropriate action or proceeding in a court
4 of competent jurisdiction to prevent any material

5 change in the appearance of a designated historic
6 property or historic district, except those changes made
7 in compliance with the provisions of this article or to
8 prevent any illegal acts or conduct with respect to such
9 historic property or historic district.

§8-26A-9. Violations of this article; penalties.

1 Violations of any such ordinance adopted in confor-
2 mity with this article shall be punishable by a fine up
3 to ten percent of the total cost of the project requiring
4 a certificate of appropriateness or five hundred dollars,
5 whichever is greater, or imprisoned in the county jail
6 not more than six months, or both fined and imprisoned.

§8-26A-10. Notice to county assessor of designation of historic district.

1 When any such commission establishes an historic
2 district, it shall notify the county assessor of the county
3 in which such district or any part thereof is located of
4 the fact of such establishment and the boundaries of the
5 district, together with the restrictions which are
6 applicable to the properties located in such district. The
7 county assessor shall take such factors into consideration
8 in assessing the properties therein.

§8-26A-11. Assistance of state agencies; coordination; annual reports.

1 Upon the request of any such commission, all agencies
2 of the state shall assist such commission in the discharge
3 of its duties and functions.

4 Every such commission shall cooperate and coordinate
5 its activities with the West Virginia historical society
6 and the West Virginia department of culture and
7 history with the view of developing a unified program
8 for the identification, study, preservation and protection
9 of all historic buildings, structures and sites in this
10 state. Such commissions shall submit a brief annual
11 report to the West Virginia department of culture and
12 history summarizing commission activities. In addition,
13 the commissions shall submit reports as required in
14 other sections of this article and any other reports
15 required by rule, regulation or agreement.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

Article

1. Department of Culture and History.
3. Fire Prevention and Control Act.

ARTICLE 1. DEPARTMENT OF CULTURE AND HISTORY.

- §29-1-1. Creation of department of culture and history; divisions and commissions; purposes; definitions; effective date.
- §29-1-2. General powers of commissioner.
- §29-1-5. Archives and history division; director.
- §29-1-6. Archives and history commission.
- §29-1-7. Protection of historic and prehistoric sites; penalties.
- §29-1-14. Voluntary endangered historic properties check-off program.

§29-1-1. Creation of department of culture and history; divisions and commissions; purposes; definitions; effective date.

1 Effective the first day of July, one thousand nine
2 hundred seventy-seven, there is hereby created a
3 department of culture and history and the office of
4 commissioner of culture and history. The governor shall
5 nominate, and by and with the advice and consent of the
6 Senate, appoint the commissioner, who shall be the chief
7 executive officer of the department and shall be paid an
8 annual salary and be governed by the provisions of
9 section two-a, article seven, chapter six of this code. The
10 commissioner so appointed shall have: (1) A bachelor's
11 degree in one of the fine arts, social sciences, library
12 science or a related field; or (2) four years' experience
13 in the administration of museum management, public
14 administration, history or a related field.

15 The department shall consist of two divisions and two
16 corresponding citizens commissions:

17 (1) An archives and history division, and an archives
18 and history commission; and

19 (2) An arts and humanities division, and an arts and
20 humanities commission.

21 The commissioner shall exercise control and supervi-
22 sion of the department and shall be responsible for the
23 projects, programs and actions of each of its divisions.

24 The purpose and duty of the department is to advance,
25 foster and promote the creative and performing arts and
26 crafts, including both indoor and outdoor exhibits and
27 performances; to advance, foster, promote, identify,
28 register, acquire, mark and care for historical, prehis-
29 torical, archaeological and significant architectural
30 sites, structures and objects in the state; to encourage
31 the promotion, preservation and development of signif-
32 icant sites, structures and objects through the use of
33 economic development activities such as loans, subsidies,
34 grants and other incentives; to coordinate all cultural,
35 historical and artistic activities in the state government
36 and at the state-owned facilities; to acquire, preserve
37 and classify books, documents and memorabilia of
38 historical interest or importance; and, in general, to do
39 all things necessary or convenient to preserve and
40 advance the culture of the state.

41 The department shall have jurisdiction and control of
42 all space in the building presently known as the West
43 Virginia science and culture center, including the deck
44 and courtyards forming an integral part thereof; the
45 building presently known as West Virginia Independ-
46 ence Hall in Wheeling, including all the grounds and
47 appurtenances thereof; "Washington Carver Camp" in
48 Fayette County, as transferred in section thirteen,
49 article one of this chapter; and any other sites as may
50 be transferred to or acquired by the department.

51 For the purposes of this article "commissioner" means
52 the commissioner of culture and history, and "depart-
53 ment" means the department of culture and history.

§29-1-2. General powers of commissioner.

1 The commissioner shall assign and allocate space in
2 all facilities assigned to the department and all space
3 in the building presently known as the West Virginia
4 science and culture center, and any other buildings or
5 sites under the control of the commissioner, and may
6 prescribe rules and regulations for the use and occu-
7 pancy of said facilities, including tours.

8 The commissioner shall coordinate the operations and
9 affairs of the divisions and commissions of the depart-

10 ment and assign each division or commission responsi-
11 bilities according to criteria he deems most efficient,
12 productive and best calculated to carry out the purposes
13 of this article. He shall provide to the fullest extent
14 possible for centralization and coordination of the
15 bookkeeping, personnel, purchasing, printing, duplicat-
16 ing, binding and other services which can be efficiently
17 combined. If the commissioner finds it necessary, he
18 may establish an administrative division and other
19 divisions for such purposes as he deems necessary, and
20 may appoint directors thereof. The commissioner may
21 appoint a director of the West Virginia science and
22 culture center.

23 After consultation with the directors of the divisions
24 of the department and the commissions, the commis-
25 sioner shall prepare a proposed departmental budget for
26 submission to the governor for each fiscal year.

27 No contract, agreement or undertaking may be
28 entered into by any division of the department which
29 involves the expenditure of funds without the express
30 written approval of the commissioner as to fiscal
31 responsibility.

32 The commissioner shall prepare and submit to the
33 governor an annual report in accordance with the
34 provisions of section twenty, article one, chapter five of
35 this code, which report shall include a detailed account
36 of the activities of each division and commission of the
37 department.

38 The commissioner shall employ all personnel for the
39 divisions, except for persons in the professional positions
40 established within the divisions as provided in this
41 article; and shall supply support services to the commis-
42 sions and to the governor's mansion advisory committee.

§29-1-5. Archives and history division; director.

1 (a) The purposes and duties of the archives and
2 history division are to locate, survey, investigate,
3 register, identify, excavate, preserve, protect, restore
4 and recommend to the commissioner for acquisition
5 historic, architectural, archaeological and cultural sites,

6 structures, documents and objects worthy of preserva-
7 tion, relating to the state of West Virginia and the
8 territory included therein from the earliest times to the
9 present, upon its own initiative or in cooperation with
10 any private or public society, organization or agency; to
11 conduct a continuing survey and study throughout the
12 state to develop a state plan to determine the needs and
13 priorities for the preservation, restoration or develop-
14 ment of such sites, structures, documents and objects; to
15 direct, protect, excavate, preserve, study or develop such
16 sites, structures and documents; to review all undertak-
17 ings permitted, funded, licensed or otherwise assisted,
18 in whole or in part, by the state for the purposes of
19 furthering the duties of the department; to carry out the
20 duties and responsibilities enumerated in the National
21 Historic Preservation Act of 1966, as amended, as they
22 pertain to the duties of the department; to develop and
23 maintain a West Virginia state register of historic
24 places for use as a planning tool for state and local
25 government; to operate and maintain a state library for
26 the preservation of all public records, state papers,
27 documents and reports of all three branches of state
28 government including all boards, commissions, depart-
29 ments and agencies as well as any other private or
30 public papers, books or documents of peculiar or historic
31 interest or significance; to preserve and protect all
32 battle or regimental flags borne by West Virginians and
33 other memorabilia of historic interest; to designate
34 appropriate monuments, tablets or markers for historic,
35 architectural and scenic sites within the state and to
36 arrange for the purchase, replacement, care of and
37 maintenance of such monuments, tablets and markers
38 and to formulate and prepare suitable copy for them; to
39 operate and maintain a state museum, and to coordinate
40 activities with other museums in the state; to cooperate
41 with state and federal agencies in archaeological work;
42 to edit and publish a quarterly historical magazine
43 devoted to the history, biography, bibliography and
44 genealogy of West Virginia; and to perform such other
45 duties as may be assigned to the division by the
46 commissioner.

47 (b) With the advice and consent of the commission, in

48 addition to the duties above set forth, the division shall
49 determine the whereabouts of and require the return of
50 furnishings, objects and documents missing from the
51 capitol building and other state owned or controlled
52 buildings, including, but not limited to, furnishings
53 chosen or purchased for the capitol by its architect, Cass
54 Gilbert. No furnishings from the capitol may be sold or
55 disposed of except under the direction of the director of
56 surplus state property pursuant to section three-a,
57 article eight, chapter five-a of this code. If furnishings
58 originally designated as capitol building furnishings
59 have been sold or otherwise disposed of without the
60 requisite sale procedures, such furnishings shall be
61 returned to the capitol and, upon presentation of proof
62 of the amount paid, the current owner shall be reim-
63 bursed for the cost of the furnishing less any approp-
64 priate depreciation or wear and tear.

65 (c) With the advice and consent of the archives and
66 history commission, the commissioner shall appoint a
67 director of the archives and history division, who shall
68 have: (1) A graduate degree in one of the social sciences,
69 or equivalent training and experience in the fields of
70 West Virginia history, history, historic preservation,
71 archaeology, or in records, library or archives manage-
72 ment; and (2) three years' experience in administration
73 in the fields of West Virginia history, history, historic
74 preservation, archaeology, or in records, library or
75 archives management. Notwithstanding these qualifica-
76 tions, the person serving as the state historian and
77 archivist on the date of enactment of this article shall
78 be eligible for appointment as the director of the
79 archives and history division. The director of the
80 archives and history division shall serve as the state
81 historian and archivist, and shall be the state historic
82 preservation officer or a deputy state historic preserva-
83 tion officer.

84 (d) With the approval of the commissioner, the
85 director shall establish professional positions within the
86 division and develop appropriate organizational struc-
87 tures to carry out the duties of the division. The director
88 shall employ the personnel with applicable professional

89 qualifications to fill positions within the organizational
90 structure with the minimum professional qualifications
91 necessary to carry out the provisions of the National
92 Historic Preservation Act of 1966, as amended. At the
93 minimum, the following professions shall be represented
94 within the division staff: Historian, architectural
95 historian, a licensed architect who specializes in
96 historical preservation, archaeologist specializing in
97 historic and prehistoric archaeology, archivist, librarian
98 and technical and clerical positions as are required.

99 (e) The director shall promulgate rules and regula-
100 tions with the approval of the archives and history
101 commission and in accordance with the state adminis-
102 trative procedures act concerning: (1) The professional
103 policies and functions of the archives and history
104 division; (2) the review of all undertakings permitted,
105 funded, licensed or otherwise assisted, in whole or in
106 part, by the state as indicated in subsection (a) of this
107 section, in order to carry out the duties and responsi-
108 bilities of the division; (3) the establishment and
109 maintenance of a West Virginia state register of historic
110 places, including the criteria for eligibility of buildings,
111 structures, sites, districts and objects for the state
112 register and procedures for nominations to the state
113 register and protection of nominated and listed proper-
114 ties; (4) the review of historic structures in accordance
115 with compliance alternatives and other provisions in any
116 state fire regulation and shall coordinate standards with
117 the appropriate regulatory officials regarding their
118 application; (5) review of historic structures in conjunc-
119 tion with existing state or local building codes, and shall
120 coordinate standards with the appropriate regulatory
121 officials for their application; and (6) the expenditure of
122 funds provided for threatened and endangered historic
123 properties by the voluntary check-off program estab-
124 lished under section fourteen, article one of this chapter
125 and such other rules and regulations as may be deemed
126 necessary to effectuate the purposes of this article.

§29-1-6. Archives and history commission.

- 1 The West Virginia antiquities commission established
- 2 by article twelve, chapter five of this code shall continue

3 in existence until the first day of July, one thousand nine
4 hundred seventy-seven, at which time it shall be
5 abolished and replaced by an archives and history
6 commission which is hereby created and which shall be
7 composed of nine appointed members.

8 The governor shall nominate, and by and with the
9 advice and consent of the Senate, appoint the members
10 of the commission for staggered terms of three years.
11 A person appointed to fill a vacancy shall be appointed
12 only for the remainder of that term. Of the members of
13 the archives and history commission first appointed,
14 three shall be appointed for a term ending the thirtieth
15 day of June, one thousand nine hundred seventy-eight,
16 and three each for terms ending one and two years
17 thereafter: *Provided*, That each person serving as a
18 member of the West Virginia antiquities commission,
19 for a term which has not expired on the effective date
20 of this article, shall be appointed by the governor
21 without Senate confirmation to the archives and history
22 commission, as one of the nine appointed members, for
23 the term ending the thirtieth day of June in the year
24 in which his term would expire as a member of the West
25 Virginia antiquities commission.

26 No more than five of the appointed members may be
27 of the same political party. Members of the commission
28 shall be appointed so as to fairly represent both sexes,
29 the ethnic and cultural diversity of the state and the
30 geographic regions of the state. The archives and history
31 commission shall contain the required professional
32 representation necessary to carry out the provisions of
33 the National Historic Preservation Act of 1966, as
34 amended, and shall be considered to be the "state review
35 board" and shall follow all rules and regulations as
36 specified therein. This representation shall include the
37 following professions: Historian, architectural historian,
38 historical architect, archaeologist specializing in historic
39 and prehistoric archaeology.

40 The commission shall elect one of its members
41 chairman. It shall meet at such time as shall be specified
42 by the chairman. Notice of each meeting shall be given
43 to each member by the chairman at least five days in

44 advance of the meeting. A majority of the members shall
45 constitute a quorum for the transaction of business. The
46 director of the archives and history division shall be an
47 ex officio nonvoting member of the commission and shall
48 serve as secretary. The director, or a majority of the
49 members, may also call a meeting upon such notice as
50 provided in this section.

51 Each member or ex officio member of the commission
52 shall serve without compensation, but shall be reim-
53 bursed for all reasonable and necessary expenses
54 actually incurred in the performance of his duties;
55 except that in the event the expenses are paid, or are
56 to be paid, by a third party, the member or ex officio
57 member, as the case may be, shall not be reimbursed
58 by the state.

59 In addition to the nine appointed members, the
60 president of the state historical society and the president
61 of the state historical association of college and univer-
62 sity teachers shall serve as ex officio voting members of
63 the archives and history commission. The director of the
64 state geological and economic survey and the state
65 historic preservation officer shall serve as ex officio
66 nonvoting members of the archives and history division.

67 The commission shall have the following powers:

68 (a) To advise the commissioner and the director of the
69 archives and history division concerning the accomplish-
70 ment of the purposes of that division and to establish a
71 state plan with respect thereto;

72 (b) To approve and distribute grants-in-aid and
73 awards from federal and state funds relating to the
74 purposes of the archives and history division;

75 (c) To request, accept or expend federal funds to
76 accomplish the purposes of the archives and history
77 division when federal law or regulations would prohibit
78 the same by the commissioner or division director, but
79 would permit the same to be done by the archives and
80 history commission;

81 (d) To otherwise encourage and promote the purposes
82 of the archives and history division;

83 (e) To approve rules and regulations concerning the
84 professional policies and functions of the division as
85 promulgated by the director of the archives and history
86 division;

87 (f) To advise and consent to the appointment of the
88 director by the commissioner; and

89 (g) To review and approve nominations to the state
90 register of historic places.

**§29-1-7. Protection of historic and prehistoric sites;
penalties.**

1 Historic and prehistoric landmarks, sites and dis-
2 tricts, identified by the archives and history division, on
3 lands owned or leased by the state, or on private lands
4 where investigation and development rights have been
5 acquired by the state by lease or contract, shall not be
6 disturbed, or destroyed except as permitted under
7 section five of this article.

8 Any person violating the provisions of this section
9 shall be guilty of a misdemeanor, and, upon conviction
10 thereof, shall be fined not more than five hundred
11 dollars, or imprisoned in the county jail not more than
12 six months, or both fined and imprisoned.

**§29-1-14. Voluntary endangered historic properties
check-off program.**

1 It is in the public interest to preserve, protect and
2 perpetuate all historic and prehistoric sites for the use
3 and benefit of the citizens of West Virginia. The intent
4 of this legislation is to provide emergency funding for
5 the preservation of threatened and endangered historic
6 and prehistoric structures and sites.

7 The financing of these programs will be derived from
8 a voluntary check-off and contribution designation on
9 state personal income tax return forms of a portion or
10 all of a taxpayer's refund. The funding provided shall
11 be supplemental to existing revenues.

12 Each West Virginia personal income tax return form
13 shall contain a designation as follows:

14 "West Virginia Endangered Historic Properties
15 Fund.

16 Check if you wish to designate a portion of your tax
17 refund to this program:

18 \$1 () \$5 () \$10 () Other \$ _____ ()

19 If joint return, check if spouse wishes to designate a
20 portion of tax refund:

21 \$1 () \$5 () \$10 () Other \$ _____ ()"

22 Each individual taxpayer desiring to contribute to the
23 endangered historic properties program may so desig-
24 nate by placing an "X" in the appropriate box on the
25 state personal income tax return form. His contribution
26 shall be credited to said program.

27 The tax department shall determine by the first day
28 of July of each year the total amount designated
29 pursuant to this legislation and shall report such amount
30 to the state treasurer who shall credit such amount to
31 a special department of culture and history interest
32 bearing account. At the end of each fiscal year unex-
33 pended funds in this account shall be reappropriated for
34 the subsequent year.

35 The funds shall be used for the purpose of emergency
36 action to save threatened and endangered historic
37 properties, upon the recommendations of the archives
38 and history commission: *Provided*, That such designated
39 funds shall be used for architectural services, engineer-
40 ing services, actual construction, reconstruction, repair
41 and similar activities but not for administrative
42 purposes. The commissioner shall on the fifteenth day
43 of January each year furnish the Legislature with a
44 report stating the amount of money that has been
45 provided and how such moneys have been expended.

46 The provisions of this section shall apply to tax return
47 forms filed on and after the first day of January, one
48 thousand nine hundred eighty-nine.

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-5. Promulgation of regulations and state fire code.

1 (a) The state fire commission shall have the power to
2 promulgate, amend and repeal regulations for the
3 safeguarding of life and property from the hazards of
4 fire and explosion pursuant to the provisions of chapter
5 twenty-nine-a of this code. Such regulations, amend-
6 ments or repeals thereof shall be in accordance with
7 standard safe practice as embodied in widely recognized
8 standards of good practice for fire prevention and fire
9 protection and shall have the force and effect of law in
10 the several counties, municipalities and political
11 subdivisions of the state.

12 (b) Pursuant to the provisions of chapter twenty-nine-
13 a of this code, the state fire commission, by the first day
14 of January, one thousand nine hundred seventy-seven,
15 shall promulgate comprehensive regulations for the
16 safeguarding of life and property from the hazards of
17 fire and explosion to be known as the state fire code.
18 Regulations embodied in the state fire code shall be in
19 accordance with standard safe practice as embodied in
20 widely recognized standards of good practice for fire
21 prevention and fire protection and shall have the force
22 and effect of law in the several counties, municipalities
23 and political subdivisions of the state. Whenever any
24 other state law, county or municipal ordinance or
25 regulation of any fire codes published by the national
26 protection association: *Provided*, That such rules shall be
27 effective as emergency rules when so promulgated until
28 acted upon by the Legislature: *Provided, however*, That
29 the state fire marshal shall provide compliance alterna-
30 tives for historic structures as provided for in section
31 five, article one of this chapter, which compliance
32 alternatives shall take into account the historic integrity
33 of said historic structures; and shall coordinate with the
34 director of the archives and history division the
35 application of the rules and regulations of that division.

36 (c) In interpretation and application, the state fire
37 code shall be held to be the minimum requirements for
38 the safeguarding of life and property from the hazards
39 of fire and explosion: *Provided*, That the state fire
40 marshal shall provide compliance alternatives for
41 historic structures and sites as provided for in section

42 five, article one of this chapter, which compliance
43 alternatives shall take into account the historic integrity
44 of said historic structures and sites. Whenever any other
45 state law, county or municipal ordinance or regulation
46 of any agency thereof is more stringent or imposes a
47 higher standard than is required by the state fire code,
48 the provisions of such state law, county or municipal
49 ordinance or regulation of any agency thereof shall
50 govern, provided they are not inconsistent with the laws
51 of West Virginia and are not contrary to recognized
52 standards and good engineering practices. In any
53 question, the decision of the state fire commission
54 determines the relative priority of any such state law,
55 county or municipal ordinance or regulation of any
56 agency thereof and determines compliance with state
57 fire regulations by officials of the state, counties,
58 municipalities and political subdivisions of the state.

CHAPTER 95

(H. B. 4503—By Mr. Speaker, Mr. Chambers, and Delegate Humphreys)

[Passed March 9, 1988; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article thirty-two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to intergovernmental relations; providing that county commissions may participate in area development corporations as provided by law.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 32. INTERGOVERNMENTAL RELATIONS—CONTRIBUTIONS TO OR INVOLVEMENT WITH NONSTOCK, NONPROFIT CORPORATIONS OR HEALTH INSTITUTIONS FOR PUBLIC PURPOSES.

PART II. AREA DEVELOPMENT CORPORATIONS.

§8-32-2. Membership and participation in area development corporations.

1 Every municipality and county commission is hereby
2 empowered and authorized to become associated with
3 and to participate as a member of any area development
4 corporation chartered as a nonstock, nonprofit corpora-
5 tion under the laws of this state for the purposes of
6 promoting, developing and advancing the business
7 prosperity and economic welfare of the area embraced,
8 its citizens and its industrial complex; encouraging and
9 assisting through loans, investments or other business
10 transactions in locating new business and industry
11 within such area and rehabilitating and assisting
12 existing businesses and industries therein; stimulating
13 and promoting the expansion of all kinds of business and
14 industrial activity which will tend to advance, develop
15 and maintain economic stability and provide maximum
16 opportunities for employment in such area; cooperating
17 and acting in conjunction with other organizations,
18 federal, state or local, in the promotion and advance-
19 ment of industrial, commercial, agricultural and
20 recreational developments within such area; and
21 furnishing money and credit, land and industrial sites,
22 technical assistance and such other aid as may be
23 deemed requisite for the promotion, development and
24 conduct of all types of business, agricultural and
25 recreational activities within each area: *Provided*, That
26 it is specified in the charter of such corporation that no
27 member trustee or member of the board of directors (by
28 whatever name the same may be called) of the corpo-
29 ration shall receive any compensation, gain or profit
30 from such corporation, and such corporation is operated
31 in compliance with all charter provisions. The Legisla-
32 ture hereby finds that the aforesaid purposes of such
33 nonstock, nonprofit area development corporations are
34 for the general welfare of the public and are public
35 purposes. This section is enacted in view of this finding
36 and shall be liberally construed in the light thereof.

37 Every municipality and county commission is hereby
38 empowered and authorized to contribute to the cost of
39 the operations and projects of such area development

40 corporation by appropriating for such purposes money
41 from its general funds not otherwise appropriated.
42 Every municipality and county commission is hereby
43 empowered and authorized, notwithstanding any other
44 provision of this chapter to the contrary, to transfer and
45 convey to such area development corporation property
46 of any kind heretofore acquired by such municipality or
47 county commission for or adaptable to use in industrial
48 and economic development, such transfers or conveyan-
49 ces to be without consideration or for such price and
50 upon such terms and conditions as such municipality or
51 county commission shall deem proper.

52 Every municipality or county commission shall
53 require as a condition of any such appropriation,
54 transfer or conveyance that the area development
55 corporation receiving the same shall upon demand at
56 any time by such municipality or county commission
57 make a full and complete accounting thereto of all
58 receipts and disbursements and shall in every event
59 without demand, within thirty days after the close of the
60 quarter, make to such municipality or county commis-
61 sion a report containing an itemized statement of its
62 receipts and disbursements during the preceding
63 quarter, and make available to audit and examination
64 by the office of the state tax commissioner and any other
65 proper public official or body its books, records and
66 accounts.

67 Under no circumstances whatever shall any action
68 taken by any municipality or county commission under
69 the authority of this section give rise to or create any
70 indebtedness on the part of the municipality or county
71 commission, the governing body of such municipality or
72 county commission, any member of such governing body
73 or any municipal or county commission official or
74 employee: *Provided*, That any public entity holding title
75 to real property, and considering transfer of such real
76 property to any municipality or county commission for
77 the purpose of conveying real property to any such area
78 development corporation will publish notice by a Class
79 II-O legal advertisement in compliance with the
80 provisions of article three, chapter fifty-nine of this code,

81 and the publication area will be the municipality or
82 county involved. This notice will include the property to
83 be transferred, the area development corporation
84 receiving such property, and the date, time, and place
85 when such public entity will conduct an open hearing
86 to consider public comment regarding the intended
87 transfer. Such notice shall be published initially at least
88 sixty days prior to the published date of the public
89 hearing.

CHAPTER 96

(H. B. 4140—By Delegates Pitrolo and Overington)

[Passed February 15, 1988; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifty-four, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to licenses for privately owned commercial shooting preserves.

Be it enacted by the Legislature of West Virginia:

That section fifty-four, 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.

§20-2-54. License for privately-owned commercial shooting preserves.

1 (1) The director may issue a license for privately-
2 owned commercial shooting preserves to any person who
3 meets the following requirements:

4 (a) Each commercial shooting preserve shall contain
5 a minimum of three hundred acres in one tract of leased
6 or owned land (including water area, if any) and shall
7 be restricted to no more than three thousand contiguous
8 acres (including water area, if any), except that
9 preserves confined to the releasing of ducks only shall
10 be authorized to operate with a minimum of fifty

11 contiguous acres (including water area); and

12 (b) The exterior boundaries of each commercial
13 shooting preserve shall be clearly defined and posted
14 with signs erected around the extremity at intervals of
15 one hundred fifty yards or less.

16 (2) The director shall designate the game which may
17 be hunted under this section on which a more liberal
18 season may be allowed.

19 (3) The operating licenses or permits issued by the
20 director shall entitle holders thereof, and their guests or
21 customers, to recover not more than eighty percent of
22 the total number of each species of game bird released
23 on the premises each year, except mallard, black duck,
24 ringnecked pheasant, chukar partridge, and other
25 nonnative game species upon which a one hundred
26 percent recovery may be allowed.

27 (4) Except for the required compliance with the
28 restriction on the maximum number of released birds
29 that may be recovered from each preserve each year, as
30 provided in subsections three and eight, shooting
31 preserve operators may establish their own shooting
32 limitations and restrictions on the age, sex and number
33 of birds that may be taken by each person.

34 (5) In order to give a reasonable opportunity for a fair
35 return on a sizeable investment, a liberal season shall
36 be designated by the director during the eight-month
37 period, beginning September first and ending April
38 thirtieth.

39 (6) All harvested game shall be tagged prior to being
40 either consumed on the premises or removed therefrom,
41 such tags to remain affixed until the game actually is
42 delivered to the point of consumption. The director shall
43 furnish numbered tags at nominal cost to shooting
44 preserve operators.

45 (7) Each shooting preserve operator shall maintain a
46 registration book listing all names, addresses, and
47 hunting license numbers of all shooters; the date on
48 which they hunted; the amount of game and the species
49 taken; and the tag numbers affixed to each carcass. An

50 accurate record likewise must be maintained of the total
51 number, by species, of game birds and ducks raised
52 and/or purchased, and the date and number of all
53 species released. These records shall be open to inspec-
54 tion by a delegated representative of the director at any
55 reasonable time, and shall be the basis upon which the
56 game recovery limits in subsection three hereof shall be
57 determined.

58 (8) Any wild game found on commercial shooting
59 preserves may be harvested in accordance with appli-
60 cable game and hunting laws pertaining to open seasons,
61 bag and possession limits, and so forth, as are estab-
62 lished regularly by the director and the United States
63 fish and wildlife service.

64 (9) State hunting licenses shall be required of all
65 persons, except nonresidents, hunting or shooting on
66 shooting preserves.

67 (10) The fee for such commercial shooting preserve
68 license shall be fifty dollars per fiscal year for the first
69 three hundred acres of the shooting preserve area, plus
70 twenty-five dollars per fiscal year for each additional
71 three hundred acres or part thereof.

CHAPTER 97

(Com. Sub. for S. B. 85—By Senator Kaufman)

[Passed March 12, 1988; 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-h, relating to regulation of underground storage tanks; making legislative declarations and findings; providing definitions; designating the department of natural resources as lead agency for implementing federal program; specifying powers and duties of director of said department; requiring director to promulgate rules, regulations and performance standards; creating advisory committee; imposing

certain notification and registration requirements; specifying confidentiality of certain information; creating crime and criminal penalty for violation of confidentiality requirements; providing for inspections, monitoring and testing of underground storage tanks; authorizing director to take corrective action in certain circumstances and specifying procedures for same; providing for administrative orders and enforcement procedure; imposing civil penalties upon violators of said article; providing for public participation in administrative proceedings; providing for administrative appeals and judicial review; requiring disclosure of certain information in deeds and leases; providing for assessment and collection of certain fees; creating certain special funds from proceeds of such fees; specifying the purposes of such funds and procedure for expenditures therefrom; and stating legislative intent in event of conflicting provisions.

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-h, to read as follows:

ARTICLE 5H. WEST VIRGINIA UNDERGROUND STORAGE TANK ACT.

- §20-5H-1. Short title.
- §20-5H-2. Declaration of policy and purpose.
- §20-5H-3. Definitions.
- §20-5H-4. Designation of department of natural resources as the state underground storage tank program lead agency.
- §20-5H-5. Powers and duties of director; integration with other acts.
- §20-5H-6. Promulgation of rules, regulations and standards by director.
- §20-5H-7. Underground storage tank advisory committee created; purpose.
- §20-5H-8. Notification requirements.
- §20-5H-9. Registration requirements; undertaking activities without registration.
- §20-5H-10. Financial responsibility.
- §20-5H-11. Performance standards for new underground storage tanks.
- §20-5H-12. Confidentiality.
- §20-5H-13. Inspections, monitoring and testing.
- §20-5H-14. Corrective action for underground petroleum storage tanks.
- §20-5H-15. Administrative orders; injunctive relief; requests for reconsideration.
- §20-5H-16. Civil penalties.

- §20-5H-17. Public participation.
§20-5H-18. Appeal to water resources board; notice; hearings, orders.
§20-5H-19. Disclosures required in deeds and leases.
§20-5H-20. Appropriation of funds; underground storage tank administrative fund created.
§20-5H-21. Leaking underground storage tank response fund created.
§20-5H-22. Underground storage tank insurance fund.
§20-5H-23. Conflicting provisions.

§20-5H-1. Short title.

- 1 This article may be known and cited as the "West
2 Virginia Underground Storage Tank Act."

§20-5H-2. Declaration of policy and purpose.

1 The Legislature recognizes that large quantities of
2 petroleum and hazardous substances are stored in
3 underground storage tanks within the state of West
4 Virginia and that emergency situations involving these
5 substances can and will arise which may present a
6 hazard to human health, safety or the environment. The
7 Legislature also recognizes that some of these substan-
8 ces have been stored in underground storage tanks in
9 the state in a manner insufficient to protect human
10 health, safety or the environment. The Legislature
11 further recognizes that the federal government has
12 enacted Subtitle I of the federal Resource Conservation
13 and Recovery Act of 1976, as amended, which provides
14 for a federal program to remove the threat and remedy
15 the effects of releases from leaking underground storage
16 tanks and authorizes federal assistance to respond to
17 releases of petroleum from underground storage tanks.
18 The Legislature declares that the state of West Virginia
19 desires to produce revenue for matching the federal
20 assistance provided under the federal act; to create a
21 program to control the installation, operation and
22 abandonment of underground storage tanks and to
23 provide for corrective action to remedy releases of
24 regulated substances from these tanks. Therefore, the
25 Legislature hereby enacts the West Virginia under-
26 ground storage tank act to create an underground
27 storage tank program and to assume regulatory pri-
28 macy for such federal programs in this state.

§20-5H-3. Definitions.

1 (a) "Change in status" means causing an underground
2 storage tank to be no longer in use or a change in the
3 reported uses, contents or ownership of an underground
4 storage tank.

5 (b) "Director" means the director of the West Virginia
6 department of natural resources or his authorized
7 representative.

8 (c) "Operator" means any person in control of, or
9 having responsibility for, the daily operation of an
10 underground storage tank.

11 (d) "Nonoperational storage tank" means an under-
12 ground storage tank in which regulated substances will
13 not be deposited or from which regulated substances
14 will not be dispensed after the eighth day of November,
15 one thousand nine hundred eighty-four.

16 (e) "Owner" means:

17 (1) In the case of an underground storage tank in use
18 on the eighth day of November, one thousand nine
19 hundred eighty-four, or brought into use after that date,
20 a person who owns an underground storage tank used
21 for the storage, use or dispensing of a regulated
22 substance.

23 (2) In the case of an underground storage tank in use
24 before the eighth day of November, one thousand nine
25 hundred eighty-four, but no longer in use on that date,
26 a person who owned such a tank immediately before the
27 discontinuation of its use.

28 (f) "Person" means any individual, trust, firm, joint
29 stock company, corporation (including government
30 corporations), partnership, association, state, municipal-
31 ity, commission, political subdivision of a state, inter-
32 state body, consortium, joint venture, commercial entity
33 and the United States government.

34 (g) "Petroleum" means petroleum, including crude oil
35 or any fraction thereof which is liquid at a temperature
36 of sixty degrees Fahrenheit and a pressure of fourteen
37 and seven-tenths pounds per square inch absolute.

38 (h) "Regulated substance" means:

39 (1) Any substance defined in section 101 (14) of the
40 Comprehensive Environmental Response, Compensation
41 and Liability Act of 1980, but not including any
42 substance regulated as a hazardous waste under
43 Subtitle C of the federal Resource Conservation and
44 Recovery Act of 1976, as amended;

45 (2) Petroleum.

46 (i) "Release" means any spilling, leaking, emitting,
47 discharging, escaping, leaching or disposing from an
48 underground storage tank into groundwater, surface
49 water or subsurface soils.

50 (j) "Subtitle I" means Subtitle I of the federal
51 Resource Conservation and Recovery Act of 1976, as
52 amended.

53 (k) "Underground storage tank" means one tank or a
54 combination of tanks, and the underground pipes
55 connected thereto, which is used to contain an accum-
56 ulation of regulated substances and the volume of which,
57 including the volume of the underground pipes con-
58 nected thereto, is ten percent or more beneath the
59 surface of the ground, but does not include:

60 (1) Farm or residential tanks with a capacity of
61 eleven hundred gallons or less and used for storing
62 motor fuel for noncommercial purposes;

63 (2) Tanks used for storing heating oil for consumptive
64 use on the premises where stored;

65 (3) Septic tanks;

66 (4) A pipeline facility, including gathering lines,
67 regulated under the Natural Gas Pipeline Safety Act of
68 1968, or the Hazardous Liquid Pipeline Safety Act of
69 1968, or an intrastate pipeline facility regulated under
70 state laws comparable to the provisions of either of those
71 acts;

72 (5) Surface impoundments, pits, ponds or lagoons;

73 (6) Storm water or waste water collection systems;

74 (7) Flow-through process tanks;

75 (8) Liquid traps or associated gathering lines directly
76 related to oil or gas production and gathering opera-
77 tions; or

78 (9) Storage tanks situated in an underground area
79 such as a basement, cellar, mineworking, drift, shaft or
80 tunnel, if the storage tank is situated upon or above the
81 surface of the floor.

82 The term "underground storage tank" shall not
83 include any pipes connected to any tank which is
84 described in subparagraphs (1) through (9).

§20-5H-4. Designation of department of natural resources as the state underground storage tank program lead agency.

1 The department of natural resources is hereby
2 designated as the state underground storage tank
3 program lead agency for purposes of Subtitle I and is
4 hereby authorized to take all actions necessary or
5 appropriate to secure to this state the benefits of said
6 legislation. In carrying out the purposes of this article,
7 the director is hereby authorized to cooperate with the
8 United States environmental protection agency, other
9 agencies of the federal government, agencies of this
10 state or other states, and other interested persons in all
11 matters relating to underground storage tank regula-
12 tion.

§20-5H-5. Powers and duties of director; integration with other acts.

1 (a) In addition to all other powers and duties pres-
2 cribed in this article or otherwise by law, and unless
3 otherwise specifically set forth in this article, the
4 director shall perform any and all acts necessary to
5 carry out the purposes and requirements of Subtitle I
6 as of the effective date of this article.

7 (b) The director shall cooperate with and may receive
8 and expend money from the federal government or other
9 source.

10 (c) The director may enter into any agreements,
11 including reimbursement for services rendered, con-

12 tracts and cooperative arrangements under such terms
13 and conditions as he deems appropriate, with other state
14 agencies, educational institutions or other organizations
15 and individuals as necessary to implement the provi-
16 sions of this article.

**§20-5H-6. Promulgation of rules, regulations and stand-
ards by director.**

1 (a) The director has overall responsibility for the
2 promulgation of rules and regulations under this article.
3 In promulgating and revising such rules and regulations
4 the director shall comply with the provisions of chapter
5 twenty-nine-a of this code. Such rules and regulations
6 shall be no more stringent than the rules and regula-
7 tions promulgated by the United States environmental
8 protection agency pursuant to Subtitle I.

9 (b) The director shall promulgate rules and regula-
10 tions applicable to owners or operators of underground
11 storage tanks or other affected persons, as appropriate,
12 as follows:

13 (1) A requirement for a yearly registration fee for
14 underground storage tanks;

15 (2) A requirement that an owner or operator register
16 with the director each underground storage tank after
17 the effective date of the regulations and that an owner
18 or operator report annually on changes in status of any
19 underground storage tank;

20 (3) Such release detection, prevention and correction
21 rules applicable to underground storage tanks as may
22 be necessary to protect human health and the
23 environment;

24 (4) Requirements for maintaining a leak detection
25 system, inventory control systems together with tank
26 testing, or a comparable system or method designed to
27 identify releases from underground storage tanks in a
28 manner consistent with the protection of human health
29 and the environment;

30 (5) Requirements for maintaining records of any
31 monitoring or leak detection system or inventory control

32 system or tank testing system;

33 (6) Regulations for procedures and amount of fees to
34 be assessed for the underground storage tank adminis-
35 trative fund, the leaking underground storage tank
36 response fund and the underground storage tank
37 insurance fund established pursuant to this article:
38 *Provided*, That except for those regulations assessing
39 fees for calendar year one thousand nine hundred
40 eighty-eight, none of the regulations authorized under
41 this subsection shall become effective until one hundred
42 and eighty days after the date of final promulgation:
43 *Provided, however*, That fees assessed pursuant to said
44 regulations shall be consolidated so that no more than
45 one payment shall be due from any tank owner or
46 operator in any one year;

47 (7) Procedures for making expenditures from the
48 underground storage tank administrative fund, the
49 leaking underground storage tank response fund and
50 the underground storage tank insurance fund;

51 (8) Acceptable methods by which an owner or operator
52 may demonstrate financial responsibility;

53 (9) Requirements for reporting of releases and correc-
54 tive action taken in response to a release;

55 (10) Requirements for taking corrective action in
56 response to a release from an underground storage tank;

57 (11) Requirements for the closure of tanks to prevent
58 future releases of regulated substances to the
59 environment;

60 (12) Requirements for certification of installation,
61 removal, retrofit, testing and inspection of underground
62 storage tanks and leak detection systems by a registered
63 professional engineer or other qualified person;

64 (13) Requirements for public participation in the
65 enforcement of the state underground storage tank
66 program;

67 (14) Procedures establishing when and how the
68 director shall determine if information obtained by any
69 agency under this article is confidential;

70 (15) Standards of performance for new underground
71 storage tanks; or

72 (16) Any other rules, regulations or standards neces-
73 sary and appropriate for the effective implementation
74 and administration of this article.

**§20-5H-7. Underground storage tank advisory committee
created; purpose.**

1 There is hereby established an underground storage
2 tank advisory committee. The committee shall be
3 composed of seven members, which shall include a
4 member of the West Virginia petroleum council, a
5 member of the West Virginia service station dealers
6 association, a member of the West Virginia petroleum
7 marketers association, the director of the department of
8 natural resources, a member of the West Virginia
9 manufacturers association, the West Virginia insurance
10 commissioner, and a representative from the citizenry-
11 at-large who shall be appointed by the governor.

12 The committee shall be advisory to the director and
13 the department of natural resources regarding the
14 expenditure of funds from the leaking underground
15 storage tank response fund and the underground storage
16 tank insurance fund created by this article. The director
17 shall deliver to the committee annually a report on
18 expenditures made from each fund. The committee shall
19 consider any matter brought before it by the director
20 or any member of the committee and may consider any
21 matter referred to it by a person not a member of the
22 committee. At the conclusion of its consideration of any
23 proposal, the committee shall make its recommendation
24 to the director. The director is not bound by any
25 recommendations of the committee. The committee may
26 also formulate general or long-range plans for improve-
27 ments in the administration of the funds for the
28 consideration of the director.

29 By the second Wednesday of January of each year the
30 committee shall prepare and deliver to the director of
31 the department of natural resources and to the Legis-
32 lature a report of all matters it considered, recommen-
33 dations it made and plans it formulated during the

34 preceding calendar year. The report shall include any
35 recommendation it may have for changes in the law
36 which would be necessary to implement any of its
37 administrative recommendations.

§20-5H-8. Notification requirements.

1 (a) Underground storage tank owners shall notify the
2 director of any underground storage tank brought into
3 use on or after the effective date of this article within
4 thirty days of such use, on a form prescribed by the
5 director. The notice shall specify the date of tank
6 installation, tank location, type of construction, size and
7 age of such tank and the type of regulated substance to
8 be stored therein. If, at the time this information is
9 required to be submitted, the director has not prepared
10 the form required by this section, the owner shall
11 nevertheless submit the information in writing to the
12 director.

13 (b) A person who sells a tank intended to be used as
14 an underground storage tank shall reasonably notify the
15 owner or operator of such tank of the owner's notifica-
16 tion requirements of this section.

17 (c) A new owner of any underground storage tank
18 shall notify the director in writing of the transfer of
19 ownership of any underground storage tank. The new
20 owner shall upon the effective date of such transfer
21 become subject to all provisions of this article. The
22 director may prescribe by regulation the appropriate
23 form and timing for such notification.

§20-5H-9. Registration requirements; undertaking activities without registration.

1 (a) No person may operate any underground storage
2 tank for the purpose of storing any regulated substance
3 identified or listed under this article without registering
4 with the director and paying a registration fee for such
5 underground storage tank.

6 (b) No person may install any underground storage
7 tank after the effective date of this article without first
8 registering said tank in a form and manner prescribed
9 by the director.

10 (c) Subsections (a) and (b) of this section shall not
11 become operative prior to promulgation of rules and
12 regulations governing registration procedures and
13 forms, as provided in section six of this article.

§20-5H-10. Financial responsibility.

1 The director shall promulgate rules, as provided in
2 section six of this article, containing requirements for
3 maintaining evidence of financial responsibility as
4 deemed necessary and desirable for taking reasonable
5 corrective action and for compensating third parties for
6 bodily injury and property damage caused by sudden
7 and nonsudden accidental releases arising from operat-
8 ing an underground storage tank. Such means of
9 financial responsibility may include, but not be limited
10 to, insurance, guarantee, surety bond, letter of credit,
11 proof of assets or qualification as a self-insurer. In
12 promulgating rules under this section, the director is
13 authorized to specify policy or other contractual terms,
14 conditions or defenses which are necessary or are
15 unacceptable in establishing such evidence of financial
16 responsibility in order to effectuate the purposes of this
17 article.

**§20-5H-11. Performance standards for new under-
ground storage tanks.**

1 (a) The director shall promulgate performance stand-
2 ards for new underground storage tanks as provided in
3 section six of this article. The performance standards for
4 new underground storage tanks shall include, but not be
5 limited to, design, construction, installation, release
6 detection and compatibility standards.

7 (b) New underground storage tank construction
8 standards must include at least the following
9 requirements:

10 (1) That an underground storage tank will prevent
11 releases of regulated substances stored therein, which
12 may occur as a result of corrosion or structural failure,
13 for the operational life of the tank;

14 (2) That an underground storage tank will be cathod-
15 ically protected against corrosion, constructed of

16 noncorrosive material, steel clad with a noncorrosive
17 material or designed in a manner to prevent the release
18 or threatened release of stored regulated substances;
19 and

20 (3) That materials used in the construction or lining
21 of an underground storage tank are compatible with the
22 regulated substances to be stored therein.

§20-5H-12. Confidentiality.

1 (a) Any records, reports or information obtained from
2 any persons under this article shall be available to the
3 public, except that upon a showing satisfactory to the
4 director by any person that records, reports or informa-
5 tion, or a particular part thereof, to which the director
6 or any officer, employee, or representative thereof has
7 access under this section, if made public, would divulge
8 information entitled to protection under section 1905 of
9 title 18 of the United States Code, such information or
10 particular portion thereof shall be considered confiden-
11 tial in accordance with the purposes of this section,
12 except that such record, report, document, or informa-
13 tion may be disclosed to other officers, employees, or
14 authorized representatives of this state implementing
15 the provisions of this article.

16 (b) Any person who knowingly and willfully divulges
17 or discloses any information entitled to protection under
18 this section is guilty of a misdemeanor, and, upon
19 conviction thereof, shall be fined not more than five
20 thousand dollars, or imprisoned in the county jail for not
21 more than one year, or both fined and imprisoned.

22 (c) In submitting data under this article, a person
23 required to provide such data may designate the data
24 which he believes is entitled to protection under this
25 section and submit such designated data separately
26 from other data submitted under this article. A
27 designation under this subsection shall be made in
28 writing and in such manner as the director may
29 prescribe.

§20-5H-13. Inspections, monitoring and testing.

1 (a) For the purposes of developing or assisting in the

2 development of any regulation, conducting any study,
3 taking any corrective action or enforcing the provisions
4 of this article, any owner or operator of an underground
5 storage tank shall, upon request of the director, furnish
6 information relating to such tanks, their associated
7 equipment and contents, conduct reasonable monitoring
8 or testing, permit the director or his authorized
9 representative at all reasonable times to have access to,
10 and to copy all records relating to such tanks and permit
11 the director or his authorized representative to have
12 access to the underground storage tank for corrective
13 action.

14 (b) For the purposes of developing or assisting in the
15 development of any regulation, conducting any study,
16 taking corrective action or enforcing the provisions of
17 this article, the director or his authorized representative
18 may:

19 (1) Enter at reasonable times any establishment or
20 other place where an underground storage tank is
21 located;

22 (2) Inspect and obtain samples from any person of any
23 regulated substances contained in such tank;

24 (3) Conduct monitoring or testing of the tanks,
25 associated equipment, contents or surrounding soils, air,
26 surface, water or groundwater; and

27 (4) Take corrective action as specified in this article.

28 Each such inspection shall be commenced and com-
29 pleted with reasonable promptness.

**§20-5H-14. Corrective action for underground petroleum
storage tanks.**

1 (a) Prior to the effective date of regulations promul-
2 gated pursuant to subdivision (9) or (10), subsection (b),
3 section six of this article, the director is authorized to:

4 (1) Require the owner or operator of an underground
5 storage tank to undertake corrective action with respect
6 to any release of petroleum from said tank when the
7 director determines that such corrective action shall be
8 done properly and promptly by the owner or operator

9 if, in the judgment of the director, such action is
10 necessary to protect human health and the environment;
11 or

12 (2) Undertake corrective action with respect to any
13 release of petroleum into the environment from an
14 underground storage tank if, in the judgment of the
15 director, such action is necessary to protect human
16 health and the environment.

17 The corrective action undertaken or required under
18 this subsection shall be such as may be necessary to
19 protect human health and the environment. The director
20 shall use funds in the leaking underground storage tank
21 response fund established pursuant to this article for
22 payment of costs incurred for corrective action taken
23 under subparagraph (2) of this subsection in the manner
24 set forth in subsection (e), section twenty-one of this
25 article. The director shall give priority in undertaking
26 corrective actions under this subsection, and in issuing
27 orders requiring owners or operators to undertake such
28 actions, to releases of petroleum from underground
29 storage tanks which pose the greatest threat to human
30 health and the environment and where the director
31 cannot identify a solvent owner or operator of the tank
32 who will undertake action properly.

33 (b) Following the effective date of regulations promul-
34 gated under subdivision (9) or (10), subsection (b),
35 section six of this article, all actions or orders of the
36 director described in subsection (a) of this section shall
37 be in conformity with such regulations. Following such
38 effective date the director may undertake corrective
39 action with respect to any release of petroleum into the
40 environment from an underground storage tank only if,
41 in the judgment of the director, such action is necessary
42 to protect human health and environment and one or
43 more of the following situations exists:

44 (1) If no person can be found within ninety days, or
45 such shorter period as may be necessary to protect
46 human health and the environment, who is an owner or
47 operator of the tank concerned, subject to such correc-
48 tive action regulations and capable of carrying out such

49 corrective action properly.

50 (2) A situation exists which requires prompt action by
51 the director under this subsection to protect human
52 health and the environment.

53 (3) Corrective action costs at a facility exceed the
54 amount of coverage required pursuant to the provisions
55 of section ten of this article and, considering the class
56 or category of underground storage tank from which the
57 release occurred, expenditures from the leaking under-
58 ground storage tank response fund are necessary to
59 assure an effective corrective action.

60 (4) The owner or operator of the tank has failed or
61 refused to comply with an order of the director under
62 this section or of the board under section eighteen of this
63 article to comply with the corrective action regulations.

64 (c) The director is authorized to draw upon the
65 leaking underground storage tank response fund in
66 order to take action under subdivision (1) or (2),
67 subsection (b) of this section if the director has made
68 diligent good faith efforts to determine the identity of
69 the party or parties responsible for the release or
70 threatened release and:

71 (1) He is unable to determine the identity of the
72 responsible party or parties in a manner consistent with
73 the need to take timely corrective action; or

74 (2) The party or parties determined by the director to
75 be responsible for the release or threatened release have
76 been informed in writing of the director's determination
77 and have been requested by the director to take
78 appropriate corrective action but are unable or unwill-
79 ling to take such action in a timely manner.

80 (d) The written notice to a responsible party must
81 inform the responsible party that if that party is
82 subsequently found liable for releases pursuant to
83 subsections (a) or (b) of this section, he will be required
84 to reimburse the leaking underground storage tank
85 response fund for the costs of the investigation, informa-
86 tion gathering and corrective action taken by the
87 director.

88 (e) If the director determines that immediate response
89 to an imminent threat to public health and welfare or
90 the environment is necessary to avoid substantial injury
91 or damage to persons, property or resources, corrective
92 action may be taken pursuant to subsections (a) and (b)
93 of this section without the prior written notice required
94 by subdivision (2), subsection (c) of this section. In such
95 a case the director must give subsequent written notice
96 to the responsible party within fifteen days after the
97 action is taken describing the circumstances which
98 required the action to be taken without prior notice.

**§20-5H-15. Administrative orders; injunctive relief;
requests for reconsideration.**

1 (a) Whenever on the basis of any information, the
2 director determines that any person is in violation of any
3 requirement of this article, he may issue an order
4 stating with reasonable specificity the nature of the
5 violation and requiring compliance within a reasonable
6 specified time period or the director may commence a
7 civil action in the circuit court of the county in which
8 the violation occurred or in the circuit court of Kanawha
9 County for appropriate relief, including a temporary or
10 permanent injunction. The director may, except as
11 provided in subsection (b) of this section, stay any order
12 he issues upon application, until the order is reviewed
13 by the water resources board.

14 (b) Any person issued an order may file a notice of
15 request for reconsideration with the director not more
16 than seven days from the issuance of such order. The
17 notice of request for reconsideration shall identify the
18 order to be reconsidered and shall set forth in detail the
19 reasons for which reconsideration is requested. The
20 director shall grant or deny the request for reconsideration
21 within twenty days of the filing of the notice of
22 request of reconsideration.

§20-5H-16. Civil penalties.

1 (a) Any violator who fails to comply with an order of
2 the director issued under subsection (a), section fifteen
3 of this article within the time specified in the order shall
4 be liable for a civil penalty of not more than twenty-five

5 thousand dollars for each day of continued
6 noncompliance.

7 (b) Any owner who knowingly fails to register or
8 knowingly submits false information pursuant to this
9 article shall be liable for a civil penalty not to exceed
10 ten thousand dollars for each tank which is not regis-
11 tered or for which false information is submitted.

12 (c) Any owner or operator of an underground storage
13 tank who fails to comply with any requirement or
14 standard promulgated by the director under section six
15 of this article shall be subject to a civil penalty not to
16 exceed ten thousand dollars for each tank for each day
17 of violation.

§20-5H-17. Public participation.

1 Any adversely affected person may intervene in any
2 civil or administrative proceeding under this article
3 when such person claims an interest relating to the
4 property or transaction which is the subject of the action
5 and such person is so situated that the disposition of the
6 action may as a practical matter impair or impede his
7 ability to protect that interest.

**§20-5H-18. Appeal to water resources board; notice;
hearings, orders.**

1 (a) Any person aggrieved or adversely affected by an
2 order of the director made and entered in accordance
3 with the provisions of this article may appeal to the
4 water resources board for an order vacating or modi-
5 fying such order, or for such order, action or terms and
6 conditions as such person believes that the director
7 should have entered, taken or imposed. The person so
8 appealing is the appellant and the director is the
9 appellee.

10 (b) An appeal is perfected by filing a notice of appeal
11 on the form prescribed by the water resources board for
12 such purpose with such board within thirty days after
13 the date upon which the appellant received the copy of
14 such order. The filing of the notice of appeal does not
15 stay or suspend the execution of the order appealed
16 from. If it appears to the water resources board that an

17 unjust hardship to the appellant will result from the
18 execution of the director's order pending determination
19 of the appeal, the board may grant a suspension of such
20 order and fix its terms. The notice of appeal shall set
21 forth the order, action or terms and conditions com-
22 plained of, the grounds upon which the appeal is based
23 and the action sought by the appellant. A copy of the
24 notice of appeal shall be filed by the water resources
25 board with the director within three days after the
26 notice of appeal is filed with such board.

27 (c) Within ten days after receipt of his copy of the
28 notice of appeal, the director shall prepare and certify
29 to the water resources board a complete record of the
30 proceedings out of which the appeal arises, including all
31 documents and correspondence in the possession of the
32 director relating to the matter in question. With the
33 consent of the board and upon such terms and conditions
34 as the board may prescribe, any person affected by any
35 such activity may by petition intervene as a party
36 appellant or appellee. The board shall hear the appeal
37 de novo and evidence may be offered on behalf of the
38 appellant, the appellee and by any intervenors.

39 (d) All of the pertinent provisions of article five,
40 chapter twenty-nine-a of this code apply to and govern
41 the hearing on appeal authorized by this section and the
42 administrative procedures in connection with and
43 following such hearing, with like effect as if the
44 provisions of article five were set forth in extenso in this
45 section, with the following modifications or exceptions:

46 (1) Unless the board directs otherwise, the appeal
47 hearing shall be held in or near the city of Charleston,
48 Kanawha County; and

49 (2) In accordance with the provisions of section one,
50 article five of said chapter twenty-nine-a, all of the
51 testimony at any such hearing shall be recorded by
52 stenographic notes and characters or by mechanical
53 means. Such reported testimony in every appeal hearing
54 under this article shall be transcribed.

55 (e) Any such appeal hearing shall be conducted by a
56 quorum of the board but the parties by stipulation may

57 agree to take evidence before a hearing examiner
58 employed by the board. For the purpose of conducting
59 such appeal hearing, any member of the board and the
60 secretary thereof may issue subpoenas and subpoenas
61 duces tecum. Such subpoenas shall be issued and served
62 within the time and for the fees and shall be enforced
63 as specified in section one, article five of chapter twenty-
64 nine-a and all of the provisions of section one of said
65 article dealing with subpoenas and subpoenas duces
66 tecum shall apply to subpoenas and subpoenas duces
67 tecum issued for the purpose of an appeal hearing
68 hereunder.

69 (f) Any such hearing shall be held within twenty days
70 after the date upon which the board received the notice
71 of appeal unless there is a postponement or continuance.
72 The board may postpone or continue any hearing upon
73 its own motion or upon application of the appellant, the
74 appellee or any intervenors for good cause shown. The
75 director shall be represented at any such hearing by the
76 attorney general or his assistants, or the director, with
77 the written approval of the attorney general, may
78 employ counsel to represent him. At any such hearing
79 the appellant and any intervenor may represent himself
80 or be represented by an attorney-at-law admitted to
81 practice before any circuit court of this state.

82 (g) After such hearing and consideration of all the
83 testimony, evidence and record in the case, the board
84 shall make and enter an order affirming, modifying or
85 vacating the order of the director or, shall make and
86 enter such order as the director should have entered, or
87 shall make and enter an order taking such action as the
88 director should have taken.

89 (h) Such order shall be accompanied by findings of
90 fact and conclusions of law as specified in section three,
91 article five, chapter twenty-nine-a of this code, and a
92 copy of such order and accompanying findings and
93 conclusions shall be served upon the appellant, the
94 appellee, any intervenors and their respective attorneys
95 of record, if any, in person or by registered or certified
96 mail.

97 (i) The board shall also cause a notice to be served
98 with the copy of such order, which notice shall advise
99 the appellant, the appellee and any intervenors of their
100 right to judicial review. The order of the board is final
101 unless vacated or modified upon judicial review.

§20-5H-19. Disclosures required in deeds and leases.

1 (a) The grantor in any deed or other instrument of
2 conveyance or any lessor in any lease or other instru-
3 ment whereby any real property is let for a period of
4 time shall disclose in such deed, lease or other instru-
5 ment the fact that such property, or the substrata of
6 such property whether or not the grantor or lessor is at
7 time of such conveyance or lease the owner of such
8 substrata, contains an underground storage tank. The
9 provisions of this subsection only apply to those grantors
10 or lessors who owned or had an interest in the real
11 property when the same or the substrata thereof
12 contained an underground storage tank which was
13 being actively used for storing any regulated substance
14 or who have actual knowledge or reason to believe that
15 such real property or the substrata thereof contains an
16 underground storage tank.

17 (b) Any lessee of real estate or of any substratum
18 underlying said real estate who intends to install an
19 underground storage tank in the leased real estate or
20 any substratum underlying the same shall disclose in
21 writing at the time of such lease, or within thirty days
22 prior to such installation, such fact to the lessor of such
23 real estate or substratum. Such disclosure shall describe
24 the proposed location upon said property where the tank
25 is to be located and all other information required by
26 the director.

§20-5H-20. Appropriation of funds; underground storage tank administrative fund created.

1 (a) The director shall collect annual registration fees
2 from owners of underground storage tanks. The regis-
3 tration fee collected under this section shall not exceed
4 twenty-five dollars per tank per year. All such registra-
5 tion fees and the net proceeds of all fines, penalties and
6 forfeitures collected under this article including accrued

7 interest shall be paid into the state treasury into a
8 special fund designated "the underground storage tank
9 administrative fund" to be used to defray the cost of
10 administering this article in accordance with regula-
11 tions promulgated pursuant to section six of this article.

12 (b) For the year one thousand nine hundred eighty-
13 eight, the total fee assessed pursuant to subsection (a)
14 of this section shall be sufficient to assure an initial
15 balance in the underground storage tank administrative
16 fund not to exceed fifty thousand dollars at the begin-
17 ning of the next calendar year. For the year one
18 thousand nine hundred eighty-nine, the total fee
19 assessed shall be sufficient to assure a balance in the
20 fund not to exceed one hundred fifty thousand dollars
21 at the beginning of the next calendar year. For the year
22 one thousand nine hundred ninety, the total fee assessed
23 shall be sufficient to assure a balance in the fund of not
24 to exceed two hundred fifty thousand dollars at the
25 beginning of the next calendar year. For the year one
26 thousand nine hundred ninety-one, and each year
27 thereafter, the total fee assessed shall be sufficient to
28 assure a balance in the fund of not to exceed four
29 hundred thousand dollars at the beginning of each
30 subsequent year.

31 (c) Any amount received pursuant to subsection (a) of
32 this section which exceeds the annual balance required
33 in subsection (b) of this section shall be deposited into
34 the leaking underground storage tank response fund
35 established pursuant to this article to be used for the
36 purposes set forth therein.

37 (d) The net proceeds of all fines, penalties and
38 forfeitures collected under this article shall be appropri-
39 ated as directed by article XII, section 5 of the
40 constitution of West Virginia. For the purposes of this
41 section, the net proceeds of such fines, penalties and
42 forfeitures are the proceeds remaining after deducting
43 therefrom those sums appropriated by the Legislature
44 for defraying the cost of administering this article. In
45 making the appropriation for defraying the cost of
46 administering this article, the Legislature shall first
47 take into account the sums included in such special fund

48 prior to deducting such additional sums as may be
49 needed from the fines, penalties and forfeitures collected
50 pursuant to this article. At the end of each fiscal year
51 any unexpended balance of such collected fines, penal-
52 ties, forfeitures and registration fees shall not be
53 transferred to the general revenue fund but shall
54 remain in the fund.

**§20-5H-21. Leaking underground storage tank response
fund created.**

1 (a) Each underground petroleum storage tank owner
2 within this state shall pay an annual fee, if assessed by
3 the director, to establish a fund to assure adequate
4 response to leaking underground petroleum storage
5 tanks. The fees assessed pursuant to this section shall
6 not exceed twenty-five dollars per tank per year. The
7 proceeds of such assessment shall be paid into the state
8 treasury into a special fund designated "the leaking
9 underground storage tank response fund."

10 (b) Each owner of an underground petroleum storage
11 tank subject to a fee assessment under subsection (a) of
12 this section shall pay a fee based on the number of
13 underground petroleum storage tanks he owns. For the
14 year one thousand nine hundred eighty-eight, the total
15 fee assessed shall be sufficient to assure a balance of two
16 hundred fifty thousand dollars, taking into account those
17 amounts deposited in the fund pursuant to subsection
18 (c), section twenty of this article. For the year one
19 thousand nine hundred eighty-nine, the total fee
20 assessed shall be sufficient to assure a balance of five
21 hundred thousand dollars taking into account those
22 amounts deposited in the fund pursuant to subsection
23 (c), section twenty of this article. For subsequent years,
24 the director shall vary the fees annually to a level
25 necessary to produce a fund of at least seven hundred
26 fifty thousand dollars at the beginning of each calendar
27 year taking into account those amounts deposited in the
28 fund pursuant to subsection (c), section twenty of this
29 article. In no event shall the fees assessed in this section
30 be set to produce revenues exceeding two hundred fifty
31 thousand dollars in any year.

32 (c) When the unobligated balance of the leaking
33 underground storage tank response fund exceeds one
34 million dollars at the end of a calendar year, fee
35 assessment under this section shall cease until such time
36 as the unobligated balance at the end of any year is less
37 than seven hundred fifty thousand dollars.

38 (d) At the end of each fiscal year, any unexpended
39 balance including accrued interest of such collected fees
40 shall not be transferred to the general revenue fund but
41 shall remain in the fund.

42 (e) The director is authorized to enter into agreements
43 and contracts and to expend the moneys in the fund for
44 the following purposes:

45 (1) Responding to underground petroleum storage
46 tank releases when, based on readily available informa-
47 tion, the director determines that immediate action may
48 prevent or mitigate significant risk of harm to human
49 health, safety or the environment from regulated
50 substances in situations for which no federal funds are
51 immediately available for such response, cleanup or
52 containment: *Provided*, That the director shall apply for
53 and diligently pursue available federal funds for such
54 releases at the earliest possible time.

55 (2) Reimbursing any person for reasonable cleanup
56 costs incurred with the authorization of the director in
57 responding to an underground petroleum storage tank
58 release.

59 (3) Reimbursing any person for reasonable costs
60 incurred with the authorization of the director respond-
61 ing to perceived, potential or threatened releases from
62 underground petroleum storage tanks where response
63 activities do not indicate that any release has occurred.

64 (4) Financing the nonfederal share of the cleanup and
65 site reclamation activities pursuant to Subtitle I of the
66 federal Resource Conservation and Recovery Act, as
67 amended, as well as future operation and maintenance
68 costs for these sites: *Provided*, That no portion of the
69 moneys in the leaking underground storage tank
70 response fund shall be used for defraying the costs of

71 administering this article.

72 (5) Financing the nonfederal share of costs incurred
73 in compensating third parties, including payment of
74 judgments, for bodily injury and property damage,
75 caused by release of petroleum into the environment
76 from an underground storage tank.

§20-5H-22. Underground storage tank insurance fund.

1 (a) The director may establish an underground
2 storage tank insurance fund for the purpose of satisfying
3 the financial responsibility requirements established
4 pursuant to section ten of this article. The director shall
5 promulgate rules and regulations establishing an annual
6 financial responsibility assessment to be assessed on and
7 paid by owners or operators of underground storage
8 tanks who are unable to obtain insurance or otherwise
9 meet the financial responsibility requirements estab-
10 lished pursuant to section ten of this article. Such
11 assessments shall be paid into the state treasury into a
12 special fund designated "the underground storage tank
13 insurance fund."

14 (b) At the end of each fiscal year, any unexpended
15 balance of such assessment shall not be transferred to
16 the general revenue fund but shall remain in the
17 underground storage tank insurance fund.

§20-5H-23. Conflicting provisions.

1 This article is intended to supplement existing law
2 and it is not the intention of the Legislature in enacting
3 this article to repeal, expressly or by implication, any
4 other provision of this code. In the event that some
5 provision herein is inconsistent with any other provi-
6 sions of the code, making it impossible to comply with
7 both, the provisions of this article shall control:
8 *Provided,* That no enforcement proceeding brought
9 pursuant to this article may be duplicated by an
10 enforcement proceeding subsequently commenced under
11 some other article of this code with respect to the same
12 transaction or event unless such subsequent proceeding
13 involves the violation of a permit or permitting require-
14 ment of such other article.

CHAPTER 98

(Com. Sub. for H. B. 4707—By Delegate Faircloth)

[Passed March 12, 1988; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article seven, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eight, relating to the licensing of private clubs generally; authorizing the alcohol beverage control commissioner to issue permits to certain private clubs for holding nonalcoholic entertainment events for persons under age twenty-one.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

§60-7-8. Application for permit to hold special nonalcoholic entertainment events for persons under age twenty-one.

1 (a) A private club, as defined in subsection (a), section
2 two of this article, may make application for a permit
3 to hold nonalcoholic entertainment events for which
4 persons under the age of twenty-one years may be
5 admitted to the premises of such private club.
6 Application for a permit shall be made on a form
7 prescribed by the commissioner and a separate form
8 shall be submitted for each such event. A private club
9 may make application for any number of such events.

10 (b) Such entertainment events shall be chaperoned.

11 (c) Private club members may use the club during
12 such events: *Provided*, That such events are held in
13 sections of the premises which are separate and distinct
14 from sections used by the private members and where
15 any beer or alcoholic beverages are sold.

16 (d) The commissioner shall promulgate such legisla-
17 tive rules as may be necessary to execute and enforce
18 this section, in accordance with the provisions of article
19 three, chapter twenty-nine-a of this code. The commis-
20 sioner shall, in such legislative rule or rules, establish
21 criteria for determining those persons who shall act as
22 chaperones at events authorized under the provisions of
23 this section.

CHAPTER 99

(Com. Sub. for S. B. 574—By Senator Warner)

[Passed March 2, 1988; in effect from passage. Approved by the Governor.]

AN ACT to repeal section eight-a, article fourteen, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to disallowing resident physicians holding a temporary certificate to obtain a permanent license.

Be it enacted by the Legislature of West Virginia:

ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.

§1. **Repeal of section relating to allowing resident physicians holding a temporary certificate to obtain a permanent license.**

1 Section eight-a, article fourteen, chapter thirty of the
2 code of West Virginia, one thousand nine hundred
3 thirty-one, as amended, is hereby repealed.

CHAPTER 100

(Com. Sub. for H. B. 4367—By Delegates Rollins and Burk)

[Passed March 12, 1988; in effect July 1, 1988. Approved by the Governor.]

AN ACT to amend and reenact section three, article five, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and

reenact sections twenty-seven, twenty-nine, thirty-three, thirty-four, thirty-five and thirty-six, article two, chapter fifteen of said code; and to further amend said article two by adding thereto two new sections, designated sections twenty-seven-a and thirty-five-a, all relating to department of public safety death, disability and retirement benefits; treatment of optional lump sum payments for annual leave for purposes of retirement; increasing retirement and disability benefits; creating annuity adjustment for certain members; enabling surviving spouse of member who dies in performance of duty to continue to receive benefits upon remarriage; increasing benefits to dependents and single receipt thereof; providing scholarship for certain dependents; and authorizing death, disability and retirement board to continue benefits to certain dependents regardless of age.

Be it enacted by the Legislature of West Virginia:

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

Chapter

5. **General Powers and Authority of the Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, Etc.**
15. **Public Safety.**

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 5. SALARY INCREASE FOR STATE EMPLOYEES; LUMP SUM PAYMENTS FOR ANNUAL LEAVE AT RETIREMENT.

§5-5-3. Optional payment to employee in lump sum amount for accrued and unused annual leave at termination of employment; no withholding of any employee contribution deduction; exception.

1 Every eligible employee, as defined in section one of
 2 this article, at the time his or her active employment
 3 ends due to resignation, death, retirement or otherwise,
 4 may be paid in a lump sum amount, at his or her option,
 5 for accrued and unused annual leave at the employee's
 6 usual rate of pay at such time. The lump sum payment
 7 shall be made by the time of what would have been the
 8 employee's next regular pay day had his employment
 9 continued. In determining the amount of annual leave
 10 entitlement, weekends, holidays or other periods of
 11 normal, noncountable time shall be excluded, and no
 12 deductions may be made for contributions toward
 13 retirement from lump sum payments for unused,
 14 accrued annual leave, since no period of service credit
 15 is granted in relation thereto; however, such lump sum
 16 payment is to be a part of final average salary compu-
 17 tation; and where any such deduction of employee
 18 contribution may have been heretofore made, a refund
 19 of such shall be granted the former employee and made
 20 by the head of the respective former employer spending
 21 unit: *Provided*, That the superintendent of the depart-
 22 ment of public safety shall make deductions for retire-
 23 ment contributions of members of the department, since
 24 retirement benefits are based on cumulative earnings
 25 rather than period of service.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.

- §15-2-27. Retirement; awards and benefits.
- §15-2-27a. Retirement annual annuity adjustments.
- §15-2-29. Awards and benefits for disability -- Incurred in performance of duty.
- §15-2-33. Awards and benefits to dependents of members -- When member dies in performance of duty, etc.; dependent child scholarship and amount.
- §15-2-34. Same -- When member dies from nonservice-connected causes.
- §15-2-35. Same -- When member dies after retirement or after serving twenty years.

§15-2-35a. Authority to continue payments to certain dependents.

§15-2-36. Awards and benefits to dependents of member — Termination.

§15-2-27. Retirement; awards and benefits.

1 (a) The retirement board shall retire any member of
2 the department of public safety when the member has
3 both attained the age of fifty-five years and completed
4 twenty-five years of service as a member of the
5 department, including military service credit granted
6 under the provisions of section twenty-eight of this
7 article.

8 (b) The retirement board shall retire any member of
9 the department of public safety who has lodged with the
10 secretary of the retirement board his voluntary petition
11 in writing for retirement, and:

12 (1) Has or shall have completed twenty-five years of
13 service as a member of the department (including
14 military service credit granted under the provisions of
15 section twenty-eight of this article);

16 (2) Has or shall have attained the age of fifty years
17 and has or shall have completed twenty years of service
18 as a member of the department (excluding military
19 service credit granted under section twenty-eight of this
20 article); or

21 (3) Being under the age of fifty years has or shall have
22 completed twenty years of service as a member of the
23 department (excluding military service credit granted
24 under section twenty-eight of this article).

25 (c) When the retirement board retires any member
26 under any of the provisions of this section, the board
27 shall, by order in writing, make an award directing that
28 the member shall be entitled to receive annually and
29 that there shall be paid to the member from the death,
30 disability and retirement fund in equal monthly
31 installments during the natural lifetime of the member
32 while in status of retirement one or the other of two
33 amounts, whichever is the greater:

34 (1) An amount equal to five and one-half percent of
35 the aggregate of salary paid to the member during the
36 whole period of service as a member of the department

37 of public safety; or

38 (2) The sum of six thousand dollars.

39 When a member has or shall have served twenty years
40 or longer but less than twenty-five years as a member
41 of the department and shall be retired under any of the
42 provisions of this section before he shall have attained
43 the age of fifty years, payment of monthly installments
44 of the amount of retirement award to such member shall
45 commence on the date he attains the age of fifty years.

§15-2-27a. Retirement annual annuity adjustments.

1 Every member of the department of public safety who
2 is fifty-six years of age or older and who is retired by
3 the retirement board shall be eligible to receive an
4 annual retirement annuity adjustment equal to three
5 and seventy-five hundredths percent of their retirement
6 award. Such adjustments shall not be retroactive.
7 Yearly adjustments shall begin upon the first day of
8 July, one thousand nine hundred eighty-eight. The
9 annuity adjustments shall be awarded and paid to the
10 members from the death, disability and retirement fund
11 in equal monthly installments while the member is in
12 status of retirement. The annuity adjustments shall
13 supplement the retirement awards and benefits as
14 provided in this article.

15 Every member retired by the retirement board and
16 receiving from the death, disability and retirement fund
17 an amount equal to more than eight percent of the total
18 salary which would have been earned by such member
19 during twenty-five years of service or actual service if
20 more than twenty-five years of service in said depart-
21 ment based on the average earnings of such member
22 while employed as a member of said department, shall
23 be eligible to receive the retirement annuity adjustment
24 at the time such member attains the age of sixty-five
25 years or older. The annuity adjustments shall be paid
26 to the members beneficiaries during the period that the
27 members beneficiaries have attained fifty-six years of
28 age or older and are receiving a payment or an award
29 from the death, disability and retirement fund. The
30 annuity adjustments shall supplement the retirement

31 awards and benefits as provided in this article.

§15-2-29. Awards and benefits for disability — Incurred in performance of duty.

1 Any member of said department who has been or shall
2 become physically or mentally permanently disabled by
3 injury, illness or disease resulting from any occupational
4 risk or hazard inherent in or peculiar to the services
5 required of members of said department and incurred
6 pursuant to or while such member was or shall be
7 engaged in the performance of his duties as a member
8 of said department shall, if, in the opinion of the
9 retirement board, he is by reason of such cause unable
10 to perform adequately the duties required of him as a
11 member of said department, be retired from active
12 service by the retirement board and thereafter such
13 member shall be entitled to receive annually and there
14 shall be paid to such member from the death, disability
15 and retirement fund in equal monthly installments
16 during the natural lifetime of such member or until
17 such disability shall sooner terminate, one or the other
18 of two amounts, whichever is greater:

19 (1) An amount equal to five and one-half percent of
20 the total salary which would have been earned during
21 twenty-five years or actual service if more than twenty-
22 five years in said department based on the average
23 earnings of such member while employed as a member
24 of said department; or

25 (2) The sum of six thousand dollars.

26 If such disability shall be permanent and total to the
27 extent that such member is or shall be incapacitated
28 ever to engage in any gainful employment, such member
29 shall be entitled to receive annually and there shall be
30 paid to such member from the death, disability and
31 retirement fund in equal monthly installments during
32 the natural lifetime of such member or until such
33 disability shall sooner terminate, an amount equal to
34 eight and one-half percent of the total salary which
35 would have been earned by such member during
36 twenty-five years or actual service if more than twenty-
37 five years of service in said department based on the

38 average earnings of such member while employed as a
39 member of said department.

40 The superintendent is authorized to expend moneys
41 from funds appropriated for the department in payment
42 of medical, surgical, laboratory, X-ray, hospital, ambu-
43 lance and dental expenses and fees, and reasonable costs
44 and expenses incurred in purchase of artificial limbs
45 and other approved appliances which may be reasonably
46 necessary for any member of said department who has
47 or shall become temporarily, permanently or totally
48 disabled by injury, illness or disease resulting from any
49 occupational risk or hazard inherent in or peculiar to
50 the service required of members of said department and
51 incurred pursuant to or while such member was or shall
52 be engaged in the performance of duties as a member
53 of said department. Whenever the superintendent shall
54 determine that any disabled member is ineligible to
55 receive any of the aforesaid benefits at public expense
56 the superintendent shall, at the request of such disabled
57 member, refer such matter to the retirement board for
58 hearing and final decision.

**§15-2-33. Awards and benefits to dependents of member
— When member dies in performance of
duty, etc.; dependent child scholarship and
amount.**

1 The surviving spouse or the dependent child or
2 children or dependent parent or parents of any member
3 who has lost or shall lose his life by reason of injury,
4 illness or disease resulting from an occupational risk or
5 hazard inherent in or peculiar to the service required
6 of members while such member was or shall be engaged
7 in the performance of his duties as a member of said
8 department or if said member shall die from any cause
9 after having been retired pursuant to the provisions of
10 section twenty-nine of this article, shall be entitled to
11 receive and shall be paid from the death, disability and
12 retirement fund benefits as follows: To the surviving
13 spouse annually, in equal monthly installments during
14 his or her lifetime one or the other of two amounts,
15 whichever shall be the greater, namely:

16 (1) An amount equal to five and one-half percent of
17 the total salary which would have been earned by said
18 deceased member during twenty-five years of service in
19 said department based on the average earnings of such
20 member while employed as a member of said depart-
21 ment; or

22 (2) The sum of six thousand dollars.

23 In addition thereto such surviving spouse shall be
24 entitled to receive and there shall be paid to such person
25 one hundred dollars monthly for each dependent child
26 or children. If such surviving spouse shall die or if there
27 be no surviving spouse there shall be paid monthly to
28 each such dependent child or children from the death,
29 disability and retirement fund a sum equal to twenty-
30 five percent of the surviving spouse's entitlement. If
31 there be no surviving spouse and no dependent child or
32 children, there shall be paid annually in equal monthly
33 installments from said death, disability and retirement
34 fund to the dependent parents of said deceased member
35 during their joint lifetimes a sum equal to the amount
36 which a surviving spouse, without children, would have
37 received: *Provided*, That when there shall be but one
38 dependent parent surviving, such parent shall be
39 entitled to receive during his or her lifetime one half the
40 amount which both parents, if living, would have been
41 entitled to receive.

42 Any person qualified as a surviving dependent child
43 under this section shall in addition to any other benefits
44 due under this or other sections of this article, be
45 entitled to receive a scholarship to be applied to the
46 career development education of said person. This sum
47 up to but not exceeding seven thousand five hundred
48 dollars shall be paid from the death, disability and
49 retirement fund to any university or college in this state
50 or to any trade or vocational school or other entity in
51 this state approved by the board, to offset the expenses
52 of tuition, room and board, books, fees or other costs
53 incurred in a course of study at any of said institutions
54 so long as the recipient makes application to the board
55 on an approved form and under such rules and regu-
56 lations as the board may provide, and maintains

57 scholastic eligibility as defined by the institution or the
58 board. The board may by appropriate rules and
59 regulations define age requirements, physical and
60 mental requirements, scholastic eligibility, disburse-
61 ment methods, institutional qualifications and other
62 requirements as necessary and not inconsistent with this
63 section.

64 Awards and benefits for a surviving spouse or
65 dependents of a member received under any section or
66 any of the provisions of this retirement system shall be
67 in lieu of receipt of any such benefits for such persons
68 under the provisions of any other state retirement
69 system, and receipt of such benefits under any other
70 state retirement system shall be in lieu of any right to
71 receive any such benefits under this retirement system,
72 so that only a single receipt of such benefits shall occur.

**§15-2-34. Same — When member dies from nonservice-
connected causes.**

1 In any case where a member while in active service
2 of said department, before having completed twenty
3 years of service as a member of said department, has
4 died or shall die from any cause other than those
5 specified in this article and not due to vicious habits,
6 intemperance or willful misconduct on his part, there
7 shall be paid annually in equal monthly installments
8 from said death, disability and retirement fund to the
9 surviving spouse of such member during his or her
10 natural lifetime or until such time as said surviving
11 spouse remarries a sum equal to two and three-quarters
12 percent of the total salary which would have been
13 earned by said member during twenty-five years of
14 service in said department based on his or her average
15 earnings while employed as a member of said depart-
16 ment. If there be no surviving spouse or the surviving
17 spouse dies or remarries there shall be paid monthly to
18 each such dependent child or children from the death,
19 disability and retirement fund a sum equal to twenty-
20 five percent of the surviving spouse's entitlement. If
21 there be no surviving spouse and no dependent child or
22 children there shall be paid annually in equal monthly
23 installments from said fund to the dependent parents of

24 said deceased member during their joint lifetimes a sum
25 equal to the amount which a surviving spouse would
26 have been entitled to receive: *Provided*, That when there
27 shall be but one dependent parent surviving then such
28 dependent parent shall be entitled to receive during his
29 or her lifetime one half the amount which both parents,
30 if living, would have been entitled to receive.

**§15-2-35. Same — When member dies after retirement or
after serving twenty years.**

1 When any member of said department has heretofore
2 completed or hereafter shall complete twenty years of
3 service or longer as a member of said department and
4 has died or shall die from any cause or causes other than
5 those specified in this article before having been retired
6 by the retirement board, and when a member in
7 retirement status has died or shall die after having been
8 retired by the retirement board under the provisions of
9 this article, there shall be paid annually in equal
10 monthly installments from said fund to the surviving
11 spouse of said member, commencing on the date of the
12 death of said member and continuing during the
13 lifetime or until remarriage of said surviving spouse an
14 amount equal to three-fourths the retirement benefits
15 said deceased member was receiving while in status of
16 retirement, or would have been entitled to receive to the
17 same effect as if such member had been retired under
18 the provisions of this article immediately prior to the
19 time of his death and in no event to be less than five
20 thousand dollars and in addition thereto said surviving
21 spouse shall be entitled to receive and there shall be paid
22 to such surviving spouse from said fund the sum of one
23 hundred dollars monthly for each dependent child or
24 children. If such surviving spouse die, or remarry, or if
25 there be no surviving spouse there shall be paid monthly
26 from said fund to each dependent child or children of
27 said deceased member a sum equal to twenty-five
28 percent of the surviving spouse's entitlement. If there be
29 no surviving spouse or no surviving spouse eligible to
30 receive benefits and no dependent child or children
31 there shall be paid annually in equal monthly install-
32 ments from said fund to the dependent parents of said

33 deceased member during their joint lifetimes a sum
 34 equal to the amount which a surviving spouse without
 35 children would have been entitled to receive: *Provided,*
 36 That when there shall be but one dependent parent
 37 surviving, such parent shall be entitled to receive during
 38 his or her lifetime one half the amount which both
 39 parents, if living, would have been entitled to receive.

§15-2-35a. Authority to continue payments to certain dependents.

1 The board may continue payments of a surviving
 2 spouse's entitlement in full to any dependent children
 3 who continue to be dependent by reason of mental or
 4 physical incapacity as determined by the board notwith-
 5 standing the age of the dependent child or other
 6 provisions of this article.

§15-2-36. Awards and benefits to dependents of member — Termination.

1 When any surviving spouse of a member shall die or
 2 remarry while receiving or being entitled to receive any
 3 benefits under any section except section thirty-three of
 4 this article, such surviving spouse shall not from the
 5 date of such remarriage, nor shall the estate from the
 6 date of death of such surviving spouse be entitled to
 7 receive any benefits hereunder whatsoever: *Provided,*
 8 That in any case where under the terms of this article
 9 benefits are provided for a child or children surviving
 10 the death or remarriage of such surviving spouse,
 11 payment of such benefits to such child or children shall
 12 be calculated for payment from the date such surviving
 13 spouse shall die or remarry.

CHAPTER 101

(Com. Sub. for H. B. 4672—By Mr. Speaker, Mr. Chambers, and Delegate Swann,
 by request of the Executive)

[Passed March 12, 1988; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections fourteen, eighteen and
 thirty-one-a, article ten, chapter five of the code of West

Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article ten by adding thereto two new sections, designated sections twenty-two-c and fifty-three; to further amend said chapter five by adding thereto a new article, designated article ten-d; to amend article seven-a, chapter eighteen of said code, by adding thereto two new sections, designated sections thirty-five-b and thirty-six; to amend and reenact section four-a, article twenty-three of said chapter eighteen; and to amend and reenact section two, article two, chapter eighteen-a of said code, all relating to the state teachers' retirement system and the public employees retirement system; changing number of years for acquiring service credits; reducing the number of years a person must be reemployed to reenter retirement system and providing for terms of repayment upon returning to employment; providing temporary early retirement incentives for state employees electing early retirement; cancelling certain vacant positions resulting from early retirement; expressing the intent of the Legislature in requiring the transfer of certain public employees to the public employees retirement system II; establishing the public employees retirement act II; defining certain terms; establishing retirement system II; providing for article to be liberally construed; providing for effective date of system; creating a board of trustees, establishing powers and duties, composition and other provisions relating to board of trustees; providing for actuarial investigations and evaluations; providing for service credit, including military service credit; providing for when and how political subdivision becomes participating public employer; providing for membership in retirement system; providing an exception for employees of board of regents; providing for termination of membership; providing for employers to file information as to employee's service; providing for voluntary retirement; providing for deferred and early retirement; providing for retirement annuity; providing for terminal payment, annuity options, and disability retirement; providing for reexamination for disability retirants, reemployment and adjustment of annuity for earnings; providing for nonduty death annuities;

establishing divisions of retirement system and funds; creating members' deposit fund and establishing contributions; providing for refund of accumulated contributions; creating employers accumulation fund and establishing contributions; providing for retroactive contributions to the retirement system; providing for appropriations for state contributions to retirement system and contributions for members paid from special funds or by other employers; providing for contributions by other participating public employers and withholding state money to satisfy delinquencies; providing for transfer to retirement reserve fund; creating retirement reserve fund and providing for transfers from fund on reemployment; creating income fund; establishing expense fund; providing for investment of moneys; prohibiting trustee to benefit from investments of system; restricting use of retirement system moneys; allowing regular interest on balances in funds; requiring fiscal year of retirement system to coincide with fiscal year of the state; providing for pro rata reduction of annuities; providing for correction of errors; providing for fraud and penalties; providing that benefits shall not be subject to execution; prohibiting assignments of benefits; allowing deductions for group insurance and authorizing setoffs for fraud; exempting benefits from taxes; providing for reemployment after retirement and option for holder of elected public office; providing for removal of member from office for certain reasons; providing for severability clause; expressing the intent of the Legislature in requiring the transfer of certain education employees to the public employees retirement system; providing for temporary early retirement incentives for employees participating in state teachers retirement system; providing for prompt consideration of terminations in respect of reduction in work force; establishing a date after which a member of the state teachers retirement system cannot change an election to choose a retirement system and a retirement plan; and specifying certain effective dates.

Be it enacted by the Legislature of West Virginia:

That sections fourteen, eighteen and thirty-one-a, article ten, chapter five of the code of West Virginia, one thousand nine

hundred thirty-one, as amended, be amended and reenacted; that said article ten be further amended by adding thereto two new sections, designated sections twenty-two-c and fifty-three; that said chapter five be further amended by adding thereto a new article, designated article ten-d; that article seven-a, chapter eighteen of said code, be amended by adding thereto two new sections, designated sections thirty-five-b and thirty-six; that section four-a, article twenty-three of said chapter eighteen be amended and reenacted; and that section two, article two, chapter eighteen-a of said code be amended and reenacted, all to read as follows:

Chapter

- 5. **General Powers and Authority of the Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Officers, Programs, Etc.**
- 18. **Education.**
- 18A. **School Personnel.**

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

Article

- 10. **West Virginia Public Employees Retirement Act.**
- 10D. **West Virginia Public Employees Retirement Act II.**

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

- §5-10-14. **Service credit.**
- §5-10-18. **Termination of membership; reentry.**
- §5-10-22c. **Temporary incentive for early retirement; cancellation of positions; increased annuity for extended service.**
- §5-10-31a. **Retroactive contributions to the retirement system for retroactive service credit granted; one year period for application.**
- §5-10-53. **Transfer to public employees retirement system II.**

§5-10-14. **Service credit.**

- 1 (a) The board of trustees shall credit each member
- 2 with the prior service and contributing service to which
- 3 he is entitled based upon such rules and regulations as
- 4 the board of trustees shall from time to time adopt:

5 *Provided*, That in no case shall less than ten days of
6 service rendered by a member in any calendar month
7 be credited as a month of service; nor shall less than ten
8 months of service rendered in any calendar year be
9 credited as a year of service; nor shall more than one
10 year of service be credited any member for all service
11 rendered by him in any calendar year; nor shall any
12 member who was not in the employ of a political
13 subdivision within a period of thirty years immediately
14 preceding the date the political subdivision became a
15 participating public employer be credited with prior
16 service: *Provided, however*, That said member is not
17 required to have been employed by a participating
18 public employer of this state within a period of fifteen
19 years subsequent to the date that participating public
20 employer elected to become a participating employer.

21 (b) The board of trustees shall grant service credit to
22 employees of boards of health, the clerk of the House of
23 Delegates and the clerk of the state Senate, or to any
24 former and present member of the state teachers
25 retirement system who have been contributing members
26 for more than three years, for service previously
27 credited by the state teachers retirement system, and
28 shall require the transfer of the member's contributions
29 to the system, and shall also require a deposit, with
30 interest, of any withdrawals of contributions any time
31 prior to said member's retirement. Repayment of
32 withdrawals shall be as directed by the board of
33 trustees.

34 (c) Court reporters who are acting in an official
35 capacity, although paid by funds other than the county
36 commission or state auditor, may receive prior service
37 credit for such time as served in such capacity.

38 (d) Employees of the state Legislature whose term of
39 employment is otherwise classified as temporary and
40 who are employed to perform services required by the
41 Legislature for its regular sessions or during the interim
42 between regular sessions and who have been or are so
43 employed during regular sessions or during the interim
44 between sessions for eight or more years, may receive
45 service credit for such time as served in that capacity.

§5-10-18. Termination of membership; reentry.

1 When a member of the retirement system retires or
2 dies, he ceases to be a member. When a member leaves
3 the employ of a participating public employer for any
4 other reason, he ceases to be a member and forfeits
5 service credited to him at that time. If he becomes
6 reemployed by a participating public employer he shall
7 be reinstated as a member of the retirement system and
8 his credited service last forfeited by him shall be
9 restored to his credit: *Provided*, That he must be
10 reemployed for a period of one year or longer to have
11 such service restored: *Provided, however*, That he
12 returns to the members' deposit fund the amount, if any,
13 he withdrew therefrom, together with regular interest
14 thereon from the date of withdrawal to the date of
15 repayment, and that such repayment begins within two
16 years of the return to employment and that the full
17 amount be repaid within five years of the return to
18 employment.

**§5-10-22c. Temporary incentive for early retirement;
cancellation of positions; increased annuity
for extended service.**

1 (a) That beginning on the first day of April, one
2 thousand nine hundred eighty-eight, and continuing
3 through June thirtieth, one thousand nine hundred
4 eighty-nine, members retiring may elect any one of the
5 three following incentive options: *Provided*, That any
6 employee participating in this retirement incentive
7 program is not eligible to accept further employment
8 from the state or any of its political subdivisions.

9 Retirement incentive option one:

10 For the purpose of computing the member's annuity,
11 the normal final average salary shall be computed and
12 one-eighth thereof shall be added thereto in arriving at
13 the true final average salary for use in actual compu-
14 tation of retirement benefit.

15 Retirement incentive option two:

16 A member may elect a lump sum payment, in addition
17 to his regular retirement annuity, equal to ten percent

18 of his final average salary not to exceed five thousand
19 dollars.

20 Retirement incentive option three:

21 A person shall be credited with an additional two
22 years of contributing service and an additional two
23 years of age. The years credited under this option shall
24 in no way add to a member's final average salary factor
25 of computation.

26 The additional annuity allowed for temporary early
27 retirement under these options is intended to be paid
28 from the retirement incentive account hereby created as
29 a special account in the state treasury and from the
30 funds therein established with moneys required to be
31 transferred by heads of spending units from the unused
32 portion of salary and fringe benefits in their budgets
33 accruing in respect of such positions vacated and
34 subsequently canceled under this temporary early
35 retirement program. Salary and fringe benefit moneys
36 actually saved in a particular fiscal year or deemed to
37 be saved on a continuing basis in any subsequent fiscal
38 year, once occurring, shall constitute the fund source.
39 No such additional annuity shall be disallowed even
40 though initial receipts may not be sufficient.

41 (b) The executive secretary of the retirement system
42 shall provide forms for applicants. Such forms shall
43 include a detailed description of the incentive plan
44 options.

45 The executive secretary of the retirement system shall
46 file a report to the Legislature no later than the fifteenth
47 day of February, one thousand nine hundred eighty-
48 nine, and quarterly thereafter, detailing the number of
49 retirees who have elected to accept early retirement
50 incentive options, the dollar cost to date by option
51 selected, and the projected annual cost through the year
52 two thousand.

53 (c) Within every spending unit, department, board,
54 corporation, committee, division, or any other agency or
55 entity wherein two or multiples of two members elect
56 to retire under the temporary early retirement incen-
57 tives set forth above, no more than one of the vacant

58 positions may be filled, with the second position being
59 abolished upon the effective day of the member's
60 retirement. The retirant's employing entity shall decide
61 as to which of the vacated positions made available
62 through special early retirement are to be abolished and
63 the head of the spending unit shall immediately notify
64 the state auditor, the legislative auditor, and the
65 commissioner of the department of finance and admin-
66 istration of the decisions and shall then transfer all
67 remaining salary and fringe benefit appropriations
68 remaining after the employee's termination date.
69 *Provided*, That because the Legislature finds that due
70 to insufficient employees therein, this provision for
71 abolishing one of each two vacancies created by special
72 early retirement shall not apply to: conservation officers
73 in the department of natural resources, employees of the
74 forestry division in the department of agriculture,
75 employees in the department of corrections and bona
76 fide meat inspectors in the the department of
77 agriculture.

78 (d) *Special rule.*—Any member of the retirement
79 system may retire under the special early retirement
80 provisions with full pension rights, without reduction of
81 benefits if the sum of such member's age plus years of
82 contributing service equals or exceeds eighty: *Provided*,
83 That such person has at least twenty years of contribut-
84 ing service, and with military service of up to two years
85 to be deemed such contributing service for the purpose
86 of this special rule and early retirement thereunder.

§5-10-31a. Retroactive contributions to the retirement system for retroactive service credit granted; one year period for application.

1 Those public employers who are participating in the
2 West Virginia public employees retirement system and
3 elected to participate after the first day of July, one
4 thousand nine hundred sixty-one, and those employers
5 who are eligible but who have not elected to participate,
6 may elect to cover their employees retroactive for the
7 period of their prior employment by such employer to
8 the first day of July, one thousand nine hundred sixty-
9 one, under the following terms and rules and regulations

10 to be promulgated by the board of trustees of the
11 retirement system:

12 (a) The participating employer, in order to provide
13 the benefits set forth herein, shall pay an additional
14 contribution to the retirement system as shall be the
15 actuarial equivalent of the amount which would have
16 been contributed, together with earnings thereon, by the
17 employer had the employee who is to receive retroactive
18 credit been covered during the period of the retroactive
19 service credit. This contribution may be made by the
20 employer either in one lump sum or, at the election of
21 the employer, by level term payments over a period not
22 in excess of fifteen years or by both lump sum payments
23 and level term payments, as determined by the em-
24 ployer and the board of trustees under rules and
25 regulations promulgated by the board;

26 (b) The additional service credit shall be applicable to
27 employees working for the participating employer on
28 the effective date of the change of date of participation;

29 (c) There shall be no increase in benefits and annui-
30 ties paid to former members of the system who were
31 retired prior to the effective date of this section;

32 (d) Employees entitled to such retroactive service
33 credit under the provisions of this section shall make
34 such additional contribution to the retirement system
35 equal to the actuarial equivalent of the amount which
36 would have been contributed, together with earnings
37 thereon, by the employee had the employee been covered
38 during the period of the retroactive service credit;

39 (e) Each employer and employee shall be required to
40 pay into the retirement system in the manner hereinaf-
41 ter provided the amount necessary for the additional
42 service credit provided by this section, based upon an
43 actuarial study of each employer that elects to partic-
44 ipate in the retirement system under this section and as
45 determined by the board of trustees;

46 (f) The actuarial basis for determining the additional
47 contributions shall be that currently in effect for the
48 valuation of the retirement system on the effective date
49 of the employer's election;

50 (g) Any new participating employer and any partic-
51 ipating employer which is currently a participant and
52 who began participating after the first day of July, one
53 thousand nine hundred sixty-one, who desires additional
54 service credit must elect to provide such service credit
55 within one year following the effective date of this
56 section;

57 (h) Any participating employer requesting additional
58 service credit as provided by this section shall provide
59 such employee data as may be requested from the board
60 of trustees of the retirement system for the determina-
61 tion of the employer's contributions;

62 (i) The consulting actuary's fees for computing the
63 additional contribution rates under this section shall be
64 paid directly by the participating employer to the
65 consulting actuary selected by the board of trustees of
66 the retirement system; and

67 (j) For the purpose of reopening the effectiveness of
68 the provisions of this section for a period of one year
69 following the effective date of the amendment to this
70 section, and for the purpose of granting, retroactively
71 service credit to current employees of employers
72 participating in the public employees retirement system
73 during such period, this section is hereby renewed and
74 reestablished; but any such credited service granted
75 hereunder shall be on the actuarially sound basis for
76 determining required additional contributions, of both
77 employer and employee, required in light of benefits
78 that would be computed in respect of such later point
79 in time and such subsequent final average salary
80 amount.

§5-10-53. Transfer to public employees retirement system II.

1 To ensure retirement benefits for all the state's public
2 employees, to promote the fiscal soundness of the public
3 employees retirement system, to provide an adequately-
4 funded retirement system for future generations, and to
5 enhance the state's credit rating, any person whose
6 employment would constitute entry into the public
7 employees retirement system created by this article and

8 as the same was in effect on the thirtieth day of June,
 9 one thousand nine hundred eighty-eight, but whose
 10 employment was effected on or after the first day of
 11 July, one thousand nine hundred eighty-eight, shall
 12 participate in the retirement system provided for in
 13 article ten-d, chapter five of this code.

ARTICLE 10D. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT II.

- §5-10D-1. Short title.
- §5-10D-2. Definitions.
- §5-10D-3. Retirement system II created and established; body corporate.
- §5-10D-3a. Article to be liberally construed; supplements federal social security.
- §5-10D-4. Effective date of system.
- §5-10D-5. Board of trustees created; powers and duties generally; composition.
- §5-10D-6. Actuarial investigations and valuations.
- §5-10D-7. Service credit.
- §5-10D-8. Military service credit.
- §5-10D-9. When and how political subdivision becomes participating public employer.
- §5-10D-10. Retirement system membership.
- §5-10D-10a. Options of education employees of the Board of Regents to elect between public employees retirement system II and a retirement plan other than the public employees retirement system II.
- §5-10D-11. Termination of membership; reentry.
- §5-10D-12. Employers to file information as to employees' service.
- §5-10D-13. Voluntary retirement.
- §5-10D-14. Deferred retirement and early retirement.
- §5-10D-15. Retirement annuity.
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- §5-10D-17. Annuity options.
- §5-10D-18. Disability retirement.
- §5-10D-19. Reexamination of disability retirants; reemployment; adjustment of annuity for the earnings.
- §5-10D-20. Nonduty health annuities.
- §5-10D-21. Divisions of retirement system; funds.
- §5-10D-22. Members' deposit fund; members' contribution.
- §5-10D-23. Refund of accumulated contributions.
- §5-10D-24. Employers accumulation fund; employers contributions.
- §5-10D-24a. Retroactive contributions to the retirement system.
- §5-10D-25. Appropriations for state contributions to retirement system; contributions for members paid from special funds or by other employers.
- §5-10D-26. Contributions by other participating public employers; withholding state money to satisfy delinquencies.
- §5-10D-27. Transfers to retirement reserve fund.

- §5-10D-28. Retirement reserve fund created; transfers from fund on reemployment.
- §5-10D-29. Income fund.
- §5-10D-30. Expense fund; state and other employers to share expenses.
- §5-10D-31. Investment of moneys.
- §5-10D-32. No trustee, etc., shall gain from investments of system.
- §5-10D-33. Restricted use of retirement system moneys.
- §5-10D-34. Allowance of regular interest on business in funds.
- §5-10D-35. Fiscal year of retirement system.
- §5-10D-36. Pro rata reduction of annuities.
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- §5-10D-41. Reemployment after retirement; option for holder of elected public office.
- §5-10D-42. Removal from office.
- §5-10D-43. Severability.

§5-10D-1. Short title.

- 1 The short title by which this article may be referred
- 2 to is "West Virginia Public Employees Retirement Act
- 3 II."

§5-10D-2. Definitions.

- 1 The following words and phrases as used in this
- 2 article, unless a different meaning is clearly indicated
- 3 by the context, shall have the following meanings:
- 4 (1) "State" means the state of West Virginia;
- 5 (2) "Retirement system" or "system" means the West
- 6 Virginia public employees retirement system created
- 7 and established by this article;
- 8 (3) "Board of trustees" or "board" means the board of
- 9 trustees of the West Virginia public employees retire-
- 10 ment system as provided for in article ten of this
- 11 chapter;
- 12 (4) "Political subdivision" means the state of West
- 13 Virginia, a county, city or town in the state; a county
- 14 board of education; any separate corporation or instru-
- 15 mentality established by one or more counties, cities or
- 16 towns, as permitted by law; any corporation or instru-
- 17 mentality supported in most part by counties, cities or
- 18 towns; any public corporation charged by law with the

19 performance of a governmental function and whose
20 jurisdiction is coextensive with one or more counties,
21 cities or towns, any agency or organization established
22 by, or approved by the department of mental health for
23 the provision of community health or mental retardation
24 services, and which is supported in part by state, county
25 or municipal funds;

26 (5) "Participating public employer" means the state of
27 West Virginia, any board, commission, department,
28 institution or spending unit, and includes any agency
29 created by rule of the supreme court of appeals having
30 full-time employees, which for the purposes of this
31 article shall be deemed a department of state govern-
32 ment; and any political subdivision in the state which
33 has elected to cover its employees, as defined in this
34 article, under the West Virginia public employees
35 retirement system;

36 (6) "Employee" means any person whose employment
37 is effected on or after July one, one thousand nine
38 hundred eighty-eight, and who serves regularly as an
39 officer or employee, full-time, on a salary basis, whose
40 tenure is not restricted as to temporary or provisional
41 appointment, in the service of, and whose compensation
42 is payable, in whole or in part, by any political
43 subdivision, and shall include any regular education
44 employee or an officer or employee whose compensation
45 is calculated on a daily basis and paid monthly or on
46 completion of assignment, including technicians and
47 other personnel employed by the West Virginia national
48 guard whose compensation, in whole or in part, is paid
49 by the federal government: *Provided*, That members of
50 the state Legislature, the clerk of the House of Dele-
51 gates, the clerk of the state Senate, employees of the
52 state Legislature whose term of employment is other-
53 wise classified as temporary and who are employed to
54 perform services required by the Legislature for its
55 regular sessions or during the interim between regular
56 sessions and who have been or are so employed during
57 regular sessions or during the interim between regular
58 sessions for eight or more years, members of the
59 legislative body of any political subdivision and judges
60 of the state court of claims shall be considered to be

61 employees, anything contained herein to the contrary
62 notwithstanding. In any case of doubt as to who is an
63 employee within the meaning of this article the board
64 of trustees shall decide the question;

65 (7) "Education employee" means any employee who is
66 hired by a political subdivision that is participating in
67 the state teachers retirement system on the first day of
68 July, one thousand nine hundred eighty-eight, in
69 accordance with the provisions of article seven-a,
70 chapter eighteen of this code who was not a member of
71 the state teachers retirement system at any time prior
72 to the first day of July, one thousand nine hundred
73 eighty-eight, and shall include persons hired after the
74 first day of July, one thousand nine hundred eighty-
75 eight, by any county board of education, the state board
76 of education, the state teachers retirement board, the
77 board of regents except as to employees whose retire-
78 ment is in accordance with the provisions of section ten-
79 a of this article, and shall further include any person
80 hired for the provision of educational services by the
81 departments of human services and corrections if such
82 persons would have been members of the state teachers
83 retirement system if hired prior to the first day of July,
84 one thousand nine hundred eighty-eight. Any employee
85 whose contributions to the state teachers retirement
86 system have ceased for a period of at least five years
87 next preceding the date such employee is hired by a
88 political subdivision named in this subsection for a
89 position which would have required participation in the
90 state teachers retirement system prior to the first day
91 of July, one thousand nine hundred eighty-eight, may
92 also be deemed an education employee at the employee's
93 option;

94 (8) "Member" means any person who is included in
95 the membership of the retirement system;

96 (9) "Retirant" means any member who retires with an
97 annuity payable by the retirement system;

98 (10) "Beneficiary" means any person, except a reti-
99 rant, who is entitled to, or will be entitled to, an annuity
100 or other benefit payable by the retirement system;

101 (11) "Service" means personal service rendered to a
102 participating public employer by an employee, as
103 defined in this article, of a participating public
104 employer;

105 (12) "Prior service" means service rendered prior to
106 July one, one thousand nine hundred eighty-eight, to the
107 extent credited a member as provided in this article;

108 (13) "Contributing service" means service rendered by
109 a member from and after the date of his entrance in the
110 retirement system, to the extent credited him as
111 provided in this article;

112 (14) "Credited service" means the sum of a member's
113 prior service credit and contributing service credit
114 standing to his credit as provided in this article;

115 (15) "Compensation" means the remuneration paid a
116 member by a participating public employer for personal
117 services rendered by him to the participating public
118 employer. In the event a member's remuneration is not
119 all paid in money, his participating public employer
120 shall fix the value of the portion of his remuneration
121 which is not paid in money;

122 (16) "Final average salary" means either (a) the
123 average of the highest annual compensation received by
124 a member (including a member of the Legislature who
125 participates in the retirement system in the year one
126 thousand nine hundred eighty-eight or thereafter) dur-
127 ing any period of three consecutive years of his credited
128 service contained within his ten years of credited service
129 immediately preceding the date his employment with a
130 participating public employer last terminated, or (b) if
131 he has less than five years of credited service, the
132 average of the annual rate of compensation received by
133 him during his total years of credited service; and in
134 determining the annual compensation, under either
135 (a) or (b) of this subdivision (16), of a member of the
136 Legislature who participates in the retirement system
137 as a member of the Legislature in the year one thousand
138 nine hundred eighty-eight or in any year thereafter, his
139 actual legislative compensation (the total of all compen-
140 sation paid under sections two, three, four and five,

141 article two-a, chapter four of this code) in the year one
142 thousand nine hundred eighty-eight, or in any year
143 thereafter, plus any other compensation he receives in
144 any such year from any other participating public
145 employer including the state of West Virginia, without
146 any multiple in excess of one times his actual legislative
147 compensation as aforesaid and other compensation, shall
148 be used;

149 (17) "Accumulated contributions" means, in the case
150 of education employees, the sum of all amounts deducted
151 from the compensations of a member and credited to his
152 individual account in the member's deposit fund, plus
153 the sum of all amounts deducted from the compensations
154 of a member and credited to his individual account in
155 the teachers' accumulation fund of the state teachers'
156 retirement system established pursuant to article seven-
157 a, chapter eighteen of this code. For all other members
158 accumulated contributions means the sum of all
159 amounts deducted from the compensations of a member
160 and credited to his individual account in the members'
161 deposit fund, together with regular interest thereon;

162 (18) "Regular interest" means such rate or rates of
163 interest per annum, compounded annually, as the board
164 of trustees shall from time to time adopt;

165 (19) "Annuity" means an annual amount payable by
166 the retirement system throughout the life of a person.
167 All annuities shall be paid in equal monthly install-
168 ments, using the upper cent for any fraction of a cent;

169 (20) "Annuity reserve" means the present value of all
170 payments to be made to a retirant or beneficiary of a
171 retirant on account of any annuity, computed upon the
172 basis of such mortality and other tables of experience,
173 and regular interest, as the board of trustees shall from
174 time to time adopt;

175 (21) "Retirement" means a member's withdrawal
176 from the employ of a participating public employer with
177 an annuity payable by the retirement system;

178 (22) "Actuarial equivalent" means a benefit of equal
179 value computed upon the basis of such mortality table
180 and regular interest as the board of trustees shall from

181 time to time adopt; and

182 (23) The masculine gender shall include the feminine
183 gender, and words of the singular number with respect
184 to persons shall include the plural number, and vice
185 versa.

**§5-10D-3. Retirement system II created and established;
body corporate.**

1 The West Virginia public employees retirement
2 system II is hereby created and established to provide
3 for the orderly retirements of employees of the state and
4 the other participating public employers, who become
5 superannuated because of age or total and permanent
6 disability, and to provide certain survivor benefits. The
7 retirement system shall constitute a body corporate. All
8 business of the system shall be transacted in the name
9 of West Virginia public employees retirement system II.

**§5-10D-3a. Article to be liberally construed; supplements
federal social security.**

1 The provisions of this article shall be liberally
2 construed so as to provide a general retirement system
3 for the employees of the state herein made eligible for
4 such retirement: *Provided*, That nothing in this article
5 shall be construed as permitting any governmental unit,
6 its officers or employees, to substitute the retirement
7 plan herein authorized for federal social security, now
8 in force in West Virginia.

9 The purpose of this article is to provide a state pension
10 plan which supplements the federal social security
11 pension plan now in force and heretofore authorized by
12 law for all officers and employees of the state.

§5-10D-4. Effective date of system.

1 The effective date of the West Virginia public
2 employees retirement system II shall be July one, one
3 thousand nine hundred eighty-eight.

**§5-10D-5. Board of trustees created; powers and duties
generally; composition.**

1 The board of trustees of the West Virginia public
2 employees retirement system II shall be the board of

3 trustees created pursuant to section five, article ten of
4 this chapter. The administration and management of the
5 retirement system, the responsibility for making
6 effective the provisions of this article, and the authority
7 to make all rules and regulations therefor, are hereby
8 vested in the said board of trustees, except as is
9 otherwise specifically provided in this article. The
10 provisions of sections six, seven, eight, nine, ten, eleven
11 and twelve, article ten of this chapter shall apply to this
12 article as if fully set out herein.

§5-10D-6. Actuarial investigations and valuations.

1 (a) The board of trustees shall keep, or cause to be
2 kept, such data as shall be necessary for the preparation
3 of mortality, service, and retirement tables, and for the
4 compilation of such other data as shall be required for
5 an actuarial valuation of the assets and liabilities of the
6 retirement system.

7 (b) Beginning in one thousand nine hundred ninety-
8 three, and in each five-year period thereafter, the
9 actuary shall make actuarial investigations into the
10 experiences of the members, retirants and beneficiaries
11 of the retirement system. Based upon such investiga-
12 tions the board of trustees shall adopt for the system
13 rates of mortality, withdrawal from service, superan-
14 nation retirement and disability retirement, and salary
15 scales for final average salary.

16 (c) Beginning in one thousand nine hundred eighty-
17 nine, and at least once in each three-year period
18 thereafter, the actuary shall make an actuarial valua-
19 tion of the assets and liabilities of the retirement system:
20 *Provided*, That until the first actuarial investigations
21 are made, the valuations shall be based upon decrement
22 assumptions which are, in the opinion of the actuary,
23 applicable to the members, retirants and beneficiaries
24 of the system.

25 (d) Beginning in one thousand nine hundred eighty-
26 nine, the actuary shall compute annually the annuity
27 reserve liabilities for annuities being paid retirants and
28 beneficiaries.

§5-10D-7. Service credit.

1 (a) The board of trustees shall credit each member
2 with the prior service and contributing service to which
3 he is entitled based upon such rules and regulations as
4 the board of trustees shall from time to time adopt:
5 *Provided*, That in no case shall less than ten days of
6 service rendered by a member in any calendar month
7 be credited as a month of service; nor shall less than ten
8 months of service rendered in any calendar year be
9 credited as a year of service; nor shall more than one
10 year of service be credited any member for all service
11 rendered by him in any calendar year; nor shall any
12 member who was not in the employ of a political
13 subdivision within a period of thirty years immediately
14 preceding the date the political subdivision became a
15 participating public employer be credited with prior
16 service.

17 (b) The board of trustees shall grant service credit to
18 employees of boards of health, the clerk of the House of
19 Delegates and the clerk of the state Senate, or to any
20 former and present member of the state teachers
21 retirement system or the public employees retirement
22 system established pursuant to article ten of this chapter
23 who have been contributing members of the public
24 employees retirement system II for more than three
25 years, for service previously credited by the state
26 teachers retirement system or the public employees
27 retirement system established pursuant to article ten of
28 this chapter, and shall require the transfer of the
29 member's contributions from the state teachers retire-
30 ment system or the public employees retirement system
31 established pursuant to article ten of this chapter to the
32 public employees retirement system II, and shall also
33 require a deposit, with interest, of any withdrawals of
34 contributions any time prior to said member's retire-
35 ment. Repayment of withdrawals shall be as directed by
36 the board of trustees.

37 (c) Court reporters who are acting in an official
38 capacity, although paid by funds other than the county
39 commission or state auditor, may receive prior service
40 credit for such time as served in such capacity.

41 (d) Employees of the state Legislature whose term of

42 employment is otherwise classified as temporary and
43 who are employed to perform services required by the
44 Legislature for its regular sessions or during the interim
45 between regular sessions and who have been or are so
46 employed during regular sessions or during the interim
47 between sessions for eight or more years, may receive
48 service credit for such time as served in that capacity.

49 (e) Education employees shall be granted service
50 credit for service as a teacher in the employment of the
51 federal government, or a state or territory of the United
52 States, or a governmental subdivision of such state or
53 territory. Such service credit shall also be granted for
54 service as a teacher in an elementary or secondary
55 parochial or private school located within this state and
56 fully accredited by the West Virginia department of
57 education: *Provided*, That the education employee shall
58 pay to the system an amount equal to the amount
59 contributed by such employee during the first full year
60 as an education employee plus the employer contribution
61 amount required by section twenty-four of this article,
62 times the number of years for which credit is granted,
63 plus regular interest at a rate to be determined by the
64 retirement board, which interest shall begin to accrue
65 on the first day of employment as an education em-
66 ployee. Such interest shall be deposited in the income
67 fund, and service credit so granted at the time of
68 retirement shall not exceed the lesser of ten years of out-
69 of-state service and ten years of parochial or private
70 school credit, or fifty percent of the member's credited
71 service as an education employee. Any transfer of out-
72 of-state or parochial or private school service credit, as
73 provided for in this subsection, shall not be used to
74 establish eligibility for a retirement allowance, and the
75 board shall grant credit for such transfer as additional
76 service only: *Provided, however*, That a transfer of such
77 service credit is prohibited if such service is used to
78 obtain a retirement benefit from another retirement
79 system: *Provided further*, That salaries paid to members
80 for such service shall not be used to compute the average
81 final salary of such member under the retirement
82 system.

83 (f) No education employee shall be deemed absent

84 from service while serving as a member or employee of
85 the Legislature of the state of West Virginia during any
86 duly constituted session of that body or while serving as
87 an elected member of a county commission during any
88 duly constituted session of that body: *Provided*, That the
89 education employee makes contributions to the system
90 equal to what would have been contributed during the
91 period of absence had the education duties been
92 performed.

93 No education employee shall be deemed absent from
94 service as a teacher while serving on leave of absence
95 as an officer with a statewide professional teaching
96 association, or who has served in such capacity:
97 *Provided*, That the period of service credit granted for
98 such service on leave of absence shall not exceed two
99 years: *Provided, however*, That an education employee
100 who is serving or has served as an officer of a statewide
101 professional teaching association shall make contribu-
102 tions for the time of any such absence, in an amount
103 equal to the amount which such employee would have
104 contributed had the education duties been performed,
105 plus the contribution of the participating public
106 employer required by section twenty-four of this article.

§5-10D-8. Military service credit.

1 Any member of the retirement system who entered or
2 enters the active service of the armed forces of the
3 United States during any period of compulsory military
4 service shall receive credited service for said time spent
5 in the armed forces of the United States, not to exceed
6 five years if such member pays to the members' deposit
7 fund the amount he may have withdrawn therefrom,
8 together with regular interest from the date of with-
9 drawal to the date of repayment. In any case of doubt
10 as to the period of service to be so credited a member,
11 the board of trustees shall have final power to determine
12 such period. During the period of such armed service
13 and until his return to the employ of a participating
14 public employer, his contributions to the retirement
15 system shall be suspended and any balance remaining
16 to his credit in the members' deposit fund shall be
17 accumulated at regular interest.

§5-10D-9. When and how political subdivision becomes participating public employer.

1 The state of West Virginia shall become a participat-
2 ing public employer effective July one, one thousand
3 nine hundred eighty-eight. An employer of education
4 employees shall become a participating public employer
5 effective July one, one thousand nine hundred eighty-
6 eight. Any other political subdivision may, by a three-
7 fifths vote of its governing body, or by a majority vote
8 of its electors, elect to become a participating public
9 employer and thereby include its employees in the
10 membership of the retirement system. It shall be the
11 duty of the clerk or secretary of each such political
12 subdivision electing to become a participating public
13 employer to certify the determination of the political
14 subdivision to the board of trustees within ten days from
15 and after the vote of the governing body or the canvass
16 of votes upon such action: *Provided*, That an employee
17 whose employment is effected on or after July one, one
18 thousand nine hundred eighty-eight, by a political
19 subdivision which has previously elected to become a
20 participating public employer under the provisions of
21 article ten of this chapter shall participate in the
22 retirement system created by this article.

§5-10D-10. Retirement system membership.

1 The membership of the retirement system shall
2 consist of the following persons:

3 (a) All employees, as defined in section two of this
4 article, who are in the employ of a political subdivision
5 the day preceding the date it becomes a participating
6 public employer and who continue in the employ of the
7 said participating public employer on and after the said
8 date shall become members of the retirement system;
9 and all persons who become employees of a participating
10 public employer on or after the said date shall thereupon
11 become members of the system.

12 (b) All education employees, as defined in subdivision
13 seven, section two of this article.

14 (c) The membership of the retirement system shall
15 not include any person who is a member of, or who has

16 been retired by, the state teachers retirement system, on
17 the thirtieth day of June, one thousand nine hundred
18 eighty-eight, unless such person has not been a contri-
19 buting member of such system for five years next
20 preceding employment as an education employee, has
21 not retired, and chooses to be employed as an education
22 employee pursuant to this article or unless such person
23 is hired in such a capacity as would have rendered the
24 employee a contributing member of the public em-
25 ployees retirement system prior to the first day of July,
26 one thousand nine hundred eighty-eight: *Provided*, That
27 nothing herein shall affect other authorized transfers
28 between the state teachers retirement system and the
29 public employees retirement system, or reciprocal
30 service credit pursuant to article thirteen of this
31 chapter.

32 (d) The membership of the retirement system shall
33 not include any person who is a member of, or has been
34 retired by, the judges retirement system, the retirement
35 system of the department of public safety, or any
36 municipal retirement system for either, or both,
37 policemen or firemen: *Provided*, That such exclusions of
38 membership shall not apply to any member of the state
39 Legislature, the clerk of the House of Delegates, the
40 clerk of the state Senate or to any member of the
41 legislative body of any political subdivision provided he
42 once becomes a contributing member of the retirement
43 system: *Provided, however*, That any retired member of
44 the retirement system of the department of public
45 safety, and any retired member of any municipal
46 retirement system for either, or both, policemen or
47 firemen may on and after the effective date of this
48 section become a member of the retirement system as
49 provided in this article, without receiving credit for
50 prior service as a municipal policeman or fireman or as
51 a member of the department of public safety.

52 (e) On or after July one, one thousand nine hundred
53 eighty-eight, any member of the state Legislature, the
54 clerk of the House of Delegates, the clerk of the state
55 Senate, any employee of the state Legislature whose
56 employment is otherwise classified as temporary and
57 who is employed to perform services required by the

58 Legislature for its regular sessions or during the interim
59 between regular sessions and who has been or is so
60 employed during regular sessions or during the interim
61 between sessions for eight or more years, or any member
62 of the legislative body of any other political subdivision
63 shall become a member of the retirement system
64 provided he notifies the retirement system in writing of
65 his intention to be a member of the system and files a
66 membership enrollment form as the board of trustees
67 shall prescribe, and each person, upon filing his written
68 notice to participate in the retirement system, shall by
69 said act authorize the clerk of the House of Delegates
70 or the clerk of the state Senate or such person or
71 legislative agency as the legislative body of any other
72 political subdivision shall designate to deduct such
73 member's contribution, as provided in subsection (b),
74 section twenty-two of this article, and after said
75 deductions have been made from said member's com-
76 pensation, such deductions shall be forwarded to the
77 appropriate retirement system as provided by subsec-
78 tion (c), section twenty-two of this article.

79 (f) Should any question arise regarding the member-
80 ship status of any employee, the board of trustees has
81 the final power to decide the question.

**§5-10D-10a. Options of education employees of the Board
of Regents to elect between public em-
ployees retirement system II and a retire-
ment plan other than the public em-
ployees retirement system II.**

1 Notwithstanding any other provisions of this article to
2 the contrary, any education employee of the West
3 Virginia board of regents may elect a retirement plan
4 in accordance with the provisions of section four-a,
5 article twenty-three, chapter eighteen of this code. Once
6 a member has elected a retirement plan established by
7 the board of regents, such member cannot thereafter
8 change such election.

§5-10D-11. Termination of membership; reentry.

1 When a member of the retirement system retires or
2 dies, he ceases to be a member. When a member leaves

3 the employ of a participating public employer for any
4 other reason, he ceases to be a member and forfeits
5 service credited to him at that time. If he becomes
6 reemployed by a participating public employer he shall
7 be reinstated as a member of the retirement system and
8 his credited service last forfeited by him shall be
9 restored to his credit: *Provided*, That he must be
10 reemployed for a period of one year or longer to have
11 such service restored: *Provided, however*, That he
12 returns to the members' deposit fund the amount, if any,
13 he withdrew therefrom, together with regular interest
14 thereon from the date of withdrawal to the date of
15 repayment, and that such repayment begins within two
16 years of the return to employment and that the full
17 amount be repaid within five years of the return to
18 employment.

§5-10D-12. Employers to file information as to employees' service.

1 Each participating public employer shall file with the
2 board of trustees, in such form as the board shall from
3 time to time prescribe, a detailed statement of all
4 service rendered to participating public employers by
5 each of its employees, and such other information as the
6 board shall require in the operation of the retirement
7 system.

§5-10D-13. Voluntary retirement.

1 Any member who has attained or attains age sixty
2 years and has five or more years of credited service in
3 force, may retire upon his written application filed with
4 the board of trustees setting forth at what time, not less
5 than thirty days nor more than ninety days subsequent
6 to the execution and filing thereof he desires to be
7 retired: *Provided*, That any person who becomes a
8 member of this retirement system shall, in qualifying
9 for retirement hereunder, have five or more years of
10 service, all of which years shall be actual, contributory
11 ones. Upon retirement, the member shall receive an
12 annuity provided for in section fifteen of this article.

§5-10D-14. Deferred retirement and early retirement.

1 (a) Any member, who has five or more years contri-

2 buting service, and who leaves the employ of a partic-
3 ipating public employer prior to his attainment of age
4 sixty years, for any reason except his disability retire-
5 ment or death, shall be entitled to an annuity computed
6 according to section fifteen of this article, as the said
7 section was in force as of the date of his said separation
8 from the employ of a participating public employer:
9 *Provided*, That he does not withdraw his accumulated
10 contributions from the members' deposit fund. His said
11 annuity shall begin the first day of the calendar month
12 next following the month in which his application for
13 same is filed with the board of trustees on or after his
14 attainment of age sixty-two years.

15 (b) Any member who qualifies for deferred retire-
16 ment benefits in accordance with subsection (a) of this
17 section, and has ten or more years of credited service
18 in force and who has attained age fifty-five as of the date
19 of his separation may, prior to the effective date of his
20 retirement, but not thereafter, elect to receive the
21 actuarial equivalent of his deferred retirement annuity
22 as a reduced annuity commencing on the first day of any
23 calendar month between his date of separation and his
24 attainment of age sixty-two years and payable through-
25 out his life.

26 (c) Any member who qualifies for deferred retire-
27 ment benefits in accordance with subsection (a) of this
28 section, and has twenty or more years of credited service
29 in force, may elect to receive the actuarial equivalent of
30 his deferred retirement annuity as a reduced annuity
31 commencing on the first day of any calendar month
32 between his fifty-fifth birthday and his attainment of
33 age sixty-two years and payable throughout his life.

34 (d) Notwithstanding any of the other provisions of this
35 section or of this article and pursuant to regulations
36 promulgated by the board, any member who has thirty
37 or more years of credited service in force, at least three
38 of which are contributing service, and who elects to take
39 early retirement, which for the purposes of this
40 subsection shall mean retirement prior to age sixty,
41 whether an active employee or a separated employee at
42 the time of application, shall be entitled to the full

43 computation of annuity according to section fifteen of
44 this article, as the said section was in force as of the date
45 of retirement application, but with the reduced actuarial
46 equivalent of the annuity the member would have
47 received if his benefit had commenced at age sixty when
48 he would have been entitled to full computation of
49 benefit without any reduction.

50 (e) Notwithstanding any of the other provisions of this
51 section or of this article, any member of the retirement
52 system may retire with full pension rights, without
53 reduction of benefits, if such member is at least fifty-
54 five years of age and the sum of his or her age plus years
55 of contributing service equals or exceeds eighty.

§5-10D-15. Retirement annuity.

1 Upon a member's retirement, as provided in this
2 article, he shall receive a straight life annuity equal to
3 two percent of his final average salary multiplied by the
4 number of years, and fraction of a year, of his credited
5 service in force at the time of his retirement. In either
6 event, upon his retirement he shall have the right to
7 elect an option provided for in section seventeen of this
8 article. All annuity payments shall commence effective
9 the first of the month following the month in which a
10 member retires or a member dies leaving a beneficiary
11 entitled to benefits and shall continue to the end of the
12 month in which said retirant or beneficiary dies, and
13 said annuity payments shall not be prorated for any
14 portion of a month in which a member retires or
15 retirant or beneficiary dies.

§5-10D-16. Terminal payment.

1 In the event a retirant dies before he has received in
2 straight life annuity payments an aggregate amount
3 equal to his accumulated contributions standing to his
4 credit in the appropriate members deposit fund at the
5 time of his retirement, the difference between his said
6 accumulated contributions and the said aggregate
7 amount of straight life annuity payments received by
8 him shall be paid to such person or persons as he shall
9 have nominated by written designation duly executed
10 and filed with the board of trustees. If there be no such

11 designated person or persons surviving the said retirant,
12 such difference, if any, shall be paid to his estate. In no
13 case shall any benefits be paid under this section on
14 account of the death of a retirant if he was receiving
15 an annuity under option A or B provided for in section
16 twenty-four hereof.

§5-10D-17. Annuity options.

1 Prior to the effective date of his retirement, but not
2 thereafter, a member may elect to receive his annuity
3 as a straight life annuity payable throughout his life, or
4 he may elect to receive the actuarial equivalent, at the
5 time, of his straight life annuity in a reduced annuity
6 payable throughout his life, and nominate a beneficiary,
7 in accordance with option A or B set forth below:

8 Option A — *Joint and survivor annuity.* — Upon the
9 death of a retirant, who elected option A, his reduced
10 annuity shall be continued throughout the life of and
11 paid to such person, having an insurable interest in his
12 life, as he shall have nominated by written designation
13 duly executed and filed with the board of trustees prior
14 to the effective date of his retirement; or

15 Option B — *Modified joint and survivor annuity.* —
16 Upon the death of a retirant who elected option B, one
17 half of his reduced annuity shall be continued through-
18 out the life of and paid to such person, having an
19 insurable interest in his life, as he shall have nominated
20 by written designation duly executed and filed with the
21 board of trustees prior to the effective date of his
22 retirement.

§5-10D-18. Disability retirement.

1 (a) Upon the application of a member or former
2 member of the retirement system, or his present or past
3 employing authority, any member or former member
4 who (1) is or was in the employ of a participating public
5 employer, (2) has ten or more years of credited service
6 of which three years is contributing service, and (3)
7 becomes totally and permanently incapacitated for
8 employment, by reason of a personal injury or disease,
9 may be retired by the board of trustees if after a
10 medical examination of the said member or former

11 member, made by or under the direction of a medical
12 committee consisting of two physicians, one of whom
13 shall be named by the board, and one by the said
14 member or former member, the said medical committee
15 reports, in writing, to the board that (1) the said
16 member or former member is physically or mentally
17 totally incapacitated for employment, (2) that such
18 incapacity will probably be permanent, and (3) that the
19 said member or former member should be retired. In
20 the event the two above mentioned physicians do not
21 agree in their findings, then the board of trustees may,
22 at its discretion, appoint a third physician to examine
23 said member or former member and, based upon the
24 third physician's report in writing, the board may retire
25 said member or former member.

26 (b) A member with less than ten years of credited
27 service shall have the service requirement provided for
28 in subsection (a) above (including the requirement of
29 three years contributing service) waived in the event (1)
30 the board of trustees finds his total and permanent
31 disability to be the natural and proximate result of a
32 personal injury or disease arising out of and in the
33 course of his actual performance of duty in the employ
34 of a participating public employer, and (2) he is in
35 receipt of workers' compensation on account of such
36 physical or mental disability.

**§5-10D-19. Reexamination of disability retirants; reem-
ployment; adjustment of annuity for
earnings.**

1 (a) At least once each year during the first five years
2 following the retirement of a member on account of
3 disability, as provided in section eighteen hereof, and at
4 least once in each three-year period thereafter, the
5 board of trustees may, and upon the retirant's applica-
6 tion shall, require a disability retirant, who has not
7 attained the age of sixty years, to undergo a medical
8 examination to be made by or under the direction of a
9 physician designated by the board. Should the said
10 retirant refuse to submit to such medical examination
11 in any such period his disability annuity may be
12 discontinued by the board until his withdrawal of such

13 refusal. Should such refusal continue for one year all his
14 rights in and to his annuity may be revoked by the
15 board. If upon such medical examination of a disability
16 retirant, the said physician reports to the board that the
17 retirant is physically able and capable of resuming
18 employment with a participating public employer he
19 shall be returned to the employ of the participating
20 public employer from whose employment he retired and
21 his disability annuity shall terminate: *Provided*, That
22 the report of the said physician is concurred in by the
23 board.

24 (b) A disability retirant who is returned to the employ
25 of a participating public employer shall again become
26 a member of the retirement system and his credited
27 service in force at the time of his retirement shall be
28 restored to his credit.

29 (c) If a disability retirant, who has not attained the
30 age of sixty years, becomes engaged in a gainful
31 occupation, business or employment, and the sum of his
32 earnings from such occupation, business or employment,
33 and his disability annuity exceeds his annual rate of
34 compensation at the time of his retirement, his disability
35 annuity shall be reduced to an amount which when
36 added to the amount so earned by him shall equal his
37 said annual rate of compensation. If his earnings are
38 later changed, his disability annuity shall be corres-
39 pondingly adjusted.

§5-10D-20. Nonduty death annuities.

1 (a) In the event any member who has ten or more
2 years of credited service, or any former member with
3 ten or more years of credited service and who is entitled
4 to a deferred annuity, pursuant to section fourteen
5 hereof, may at any time prior to the effective date of his
6 retirement, by written declaration duly executed and
7 filed with the board of trustees, in the same manner as
8 if he were then retiring from the employ of a partici-
9 pating public employer, elect option A provided for in
10 section seventeen hereof, and nominate a beneficiary
11 whom the board finds to have had an insurable interest
12 in the life of said member. Prior to the effective date
13 of his retirement a member may revoke his said election

14 of option A and nomination of beneficiary and he may
15 again prior to his retirement elect the said option A and
16 nominate a beneficiary as provided in this subsection.
17 Upon the death of a member who has an option A
18 election in force, his beneficiary, if living, shall
19 immediately receive an annuity computed in the same
20 manner in all respects as if the same member had
21 retired the day preceding the date of his death,
22 notwithstanding that he might not have attained age
23 sixty years, and elected the said option A. If at the time
24 of his retirement a member has an option A election in
25 force, his said election of option A and nomination of
26 beneficiary shall thereafter continue in force.

27 (b) In the event any member who has ten or more
28 years of credited service, or any former member with
29 ten or more years of credited service and who is entitled
30 to a deferred annuity, pursuant to section fourteen
31 hereof, (1) dies, and (2) leaves a surviving spouse, the
32 surviving spouse shall immediately receive an annuity
33 computed in the same manner in all respects as if the
34 said member had (1) retired the day preceding the date
35 of his death, notwithstanding that he might not have
36 attained age sixty or sixty-two years, as the case may
37 be, (2) elected option A provided for in section seventeen
38 hereof, and (3) nominated a surviving spouse as
39 beneficiary.

40 (c) In the event any member who has ten or more
41 years of credited service, or any former member with
42 ten or more years of credited service and who is entitled
43 to a deferred annuity, pursuant to section fourteen
44 hereof (1) dies without leaving a surviving spouse, but
45 (2) leaves a surviving infant child or children, and
46 (3) does not have a beneficiary nominated as provided
47 in subsection (a) of this section, said infant child or
48 children shall be entitled to an annuity to be calculated
49 as follows: The annuity reserve shall be calculated as
50 though said member had retired as of the date of his
51 decease and elected a straight life annuity, and the
52 amount of said annuity reserve shall be paid in equal
53 monthly installments to said member's infant child or
54 children until said child or children attain age twenty-
55 one or sooner marry or become emancipated; however,

56 in no event shall any child or children receive more than
57 two hundred fifty dollars per month each. The said
58 annuity payments shall be computed as of the date of
59 the death of the said member and the amount of said
60 annuity shall remain constant during the period of
61 payment. The annual amount of the annuities payable
62 by this section shall not exceed sixty percent of said
63 deceased member's final average salary.

§5-10D-21. Divisions of retirement system; funds.

1 For financing and accounting purposes the West
2 Virginia public employees retirement system II shall
3 consist of two divisions, namely, the state and education
4 division for the participation of state employees and
5 education employees, and the public employer division
6 for the participation of the public employees who are not
7 state or education employees. Separate accounting of the
8 retirement system transactions shall be maintained for
9 each division showing the equities of each division in the
10 assets of the system. The retirement system funds shall
11 be (1) the members deposit fund, (2) the employers
12 accumulation fund, (3) the retirement reserve fund,
13 (4) the income fund, and (5) the expense fund. Each
14 such fund shall be maintained by the board of trustees
15 for the state and education division and the public
16 employer division, respectively. Nothing contained in
17 this section shall be interpreted to mean that the assets
18 of the system are to be segregated between the divisions
19 or the funds.

§5-10D-22. Members' deposit fund; members' contributions.

1 (a) The members' deposit fund is hereby created. It
2 shall be the fund in which shall be accumulated, at
3 regular interest, the contributions deducted from the
4 compensation of members, and from which refunds of
5 accumulated contributions shall be paid and transfers
6 made as provided in this section.

7 (b) The contributions of a member to the retirement
8 system (including any member of the Legislature) shall
9 be a sum of not less than three and five-tenths percent
10 of his annual compensations but not more than four and

11 five-tenths percent of his annual compensations, as
12 determined by the board of trustees, except that in the
13 case of education employees the contribution shall be not
14 less than six percent. The said contributions shall be
15 made notwithstanding that the minimum salary or
16 wages provided by law for any member shall be thereby
17 changed. Each member shall be deemed to consent and
18 agree to the deductions made and provided for herein.
19 Payment of a member's compensation less said deduc-
20 tions shall be a full and complete discharge and
21 acquittance of all claims and demands whatsoever for
22 services rendered by him to a participating public
23 employer, except as to benefits provided by this article.

24 (c) The officer or officers responsible for making up
25 the payrolls for payroll units of the state government
26 and for each of the other participating public employers
27 shall cause the contributions, provided for in subsection
28 (b) above, to be deducted from the compensations of each
29 member in the employ of the participating public
30 employer, on each and every payroll, for each and every
31 payroll period, from the date the member enters the
32 retirement system to the date his membership termi-
33 nates. When deducted, each of said amounts shall be
34 paid by the participating public employer to the
35 retirement system, except that in the case of education
36 employees, four and one-half percent of their annual
37 compensation shall be paid to the public employees
38 retirement system created by this article and one and
39 one-half percent of their annual compensation shall be
40 paid to the teachers' accumulation fund of the state
41 teachers' retirement system established pursuant to
42 article seven-a, chapter eighteen of this code; said
43 payments to be made in such manner and form, and in
44 such frequency, and shall be accompanied by such
45 supporting data, as the boards of trustees of both
46 retirement systems shall from time to time prescribe.
47 When paid to the appropriate retirement system, each
48 of said amounts shall be credited to the members'
49 deposit fund account of the member from whose
50 compensations said contributions were deducted.

51 (d) In addition to the contributions deducted from the
52 compensations of a member, as heretofore provided, a

53 member shall deposit in the members' deposit fund, by
54 a single contribution or by an increased rate of
55 contribution as approved by the board of trustees, the
56 amounts he may have withdrawn therefrom and not
57 repaid thereto, together with regular interest from the
58 date of withdrawal to the date of repayment. In no case
59 shall a member be given credit for service rendered
60 prior to the date he withdrew his contributions or
61 accumulated contributions, as the case may be, until he
62 returns to the appropriate members' deposit fund all
63 amounts due the said funds by him.

64 (e) Upon the retirement of a member, or if a survivor
65 annuity becomes payable on account of his death, in
66 either event his accumulated contributions standing to
67 his credit in the appropriate members' deposit fund
68 shall be transferred to the appropriate retirement
69 reserve fund.

70 (f) In the event an employee's membership in the
71 retirement system terminates and no annuity becomes
72 or will become payable on his account, any accumulated
73 contributions standing to his credit in the appropriate
74 members' deposit fund, unclaimed by the said employee,
75 or his legal representative, within three years from and
76 after the date his membership terminated, shall be
77 transferred to the income fund.

§5-10D-23. Refund of accumulated contributions.

1 (a) In the event a member leaves the employ of a
2 participating public employer prior to the date he
3 becomes entitled to retire with an annuity payable by
4 the retirement system, he shall be paid, upon his written
5 application filed with the board of trustees, his accum-
6 ulated contributions standing to his credit in the
7 appropriate members deposit fund, if his separation
8 from the employ of a participating public employer
9 occurs subsequent to a period of two years from and
10 after the date he last became a member of the system.
11 If his said separation from the employ of a participating
12 public employer occurs within a period of two years
13 from and after the date he last became a member of the
14 system, he shall be paid his accumulated contributions
15 standing to his credit in the appropriate members

16 deposit fund less the total interest credited to his
17 individual account therein; and the said total interest
18 credit shall be transferred to the appropriate income
19 fund.

20 (b) In the event a member dies and does not leave a
21 beneficiary entitled to an annuity payable by the
22 retirement system, his accumulated contributions
23 standing to his credit in the appropriate members
24 deposit fund at the time of his death shall be paid to
25 such person or persons as he shall have nominated by
26 written designation duly executed and filed with the
27 board of trustees. If there be no such designated person
28 or persons surviving the said member, his said accum-
29 ulated contributions shall be paid to his estate.

30 (c) Refunds of a member's contributions or accumu-
31 lated contributions, as the case may be, may be made
32 in equal installments according to such rules and
33 regulations as the board of trustees may from time to
34 time adopt.

35 (d) In the event a member dies and a refund of his
36 accumulated contributions is due to be made to an infant
37 child or children by reason of being the person or
38 persons nominated by written designation duly executed
39 and filed with the retirement system, and the amount
40 of said refund is less than one thousand dollars, then,
41 and in said event, the board of trustees may make said
42 refund, upon written application, to the closest relative
43 or natural guardian for the use of said infant child or
44 children. The board of trustees may, at its discretion,
45 require that said relative or natural guardian post bond
46 with the retirement system to ensure that said money
47 will be used for the benefit of said infant child or
48 children. In any event, before said refund is made to
49 said relative or natural guardian of the said infant or
50 infants, said relative or natural guardian shall give the
51 retirement system an indemnifying release of said sums
52 so paid over.

§5-10D-24. Employers accumulation fund; employers contributions.

1 (a) The employers accumulation fund is hereby

2 created. It shall be the fund in which shall be accum-
3 ulated the contributions made by the participating
4 public employers to the retirement system, and from
5 which transfers shall be made as provided in this
6 section.

7 (b) Based upon the provisions of section six of this
8 article, the participating public employers contributions
9 to the retirement system shall be determined, according
10 to subdivisions one, two, three and four below, for the
11 state as the state and education division, and for the
12 other participating public employers as the public
13 employer division.

14 (1) The participating public employers contributions
15 for members' current service shall be a percent of the
16 members' annual compensation which will equal an
17 amount which if paid annually by the participating
18 public employers during the members' future service
19 will be sufficient to provide, at the time annuities will
20 become payable on their account, the difference between
21 the annuity reserves for the future service portions of
22 the annuities to be paid and the present value of the
23 members' future net contributions.

24 (2) The participating public employers contributions
25 for members' accrued service shall be a percent of the
26 members' annual compensation which will equal an
27 amount which if paid annually by the participating
28 public employers over a period of years, to be deter-
29 mined by the board of trustees, will amortize, at regular
30 interest, the unfunded annuity reserves for the accrued
31 portions of the annuities to be paid on account of
32 members.

33 (3) The participating public employers contributions
34 for annuities being paid retirants and beneficiaries shall
35 be a percent of the members' annual compensations
36 which will equal an amount which if paid annually by
37 the participating public employers over a period of
38 years, to be determined by the board of trustees, will
39 amortize, at regular interest, the unfunded annuity
40 reserves for annuities being paid retirants and
41 beneficiaries.

42 (4) In no year shall the total of the contributions,
43 provided for in subdivisions one, two and three above,
44 to be paid by any participating public employer exceed
45 ten and five-tenths percent of the total payroll for the
46 members in the employ of such participating public
47 employer for the preceding fiscal year.

§5-10D-24a. Retroactive contributions to the retirement system.

1 Those public employers who are participating in the
2 West Virginia public employees retirement system II
3 and elected to participate after the first day of July, one
4 thousand nine hundred eighty-eight, and those employ-
5 ers who are eligible but who have not elected to
6 participate, may elect to cover their employees retroac-
7 tively for the period of their prior employment by such
8 employer to the first day of July, one thousand nine
9 hundred eighty-eight, under the following terms and
10 rules and regulations to be promulgated by the board
11 of trustees of the retirement system:

12 (a) The participating employer, in order to provide
13 the benefits set forth herein, shall pay an additional
14 contribution to the retirement system as shall be the
15 actuarial equivalent of the amount which would have
16 been contributed, together with earnings thereon, by the
17 employer had the employee who is to receive retroactive
18 credit been covered during the period of the retroactive
19 service credit. This contribution may be made by the
20 employer either in one lump sum or, at the election of
21 the employer, by level term payments over a period not
22 in excess of fifteen years or by both lump sum payments
23 and level term payments, as determined by the em-
24 ployer and the board of trustees under rules and
25 regulations promulgated by the board;

26 (b) The additional service credit shall be applicable to
27 employees working for the participating employer on
28 the effective date of the change of date of participation;

29 (c) Employees entitled to such retroactive service
30 credit under the provisions of this section shall make
31 such additional contribution to the retirement system
32 equal to the actuarial equivalent of the amount which

33 would have been contributed, together with earnings
34 thereon, by the employee had the employee been covered
35 during the period of the retroactive service credit;

36 (d) Each employer and employee shall be required to
37 pay into the retirement system in the manner hereinaf-
38 ter provided the amount necessary for the additional
39 service credit provided by this section, based upon an
40 actuarial study of each employer that elects to partic-
41 ipate in the retirement system under this section and as
42 determined by the board of trustees;

43 (e) The actuarial basis for determining the additional
44 contributions shall be that currently in effect for the
45 valuation of the retirement system on the effective date
46 of the employer's election;

47 (f) Any new participating employer and any partici-
48 pating employer who is currently a participant and who
49 began participating after the first day of July, one
50 thousand nine hundred eighty-eight, who desires
51 additional service credit must elect to provide such
52 service credit within one year following the effective
53 date of this section;

54 (g) Any participating employer requesting additional
55 service credit as provided by this section shall provide
56 such employee data as may be requested from the board
57 of trustees of the retirement system for the determina-
58 tion of the employer's contributions; and

59 (h) The consulting actuary's fees for computing the
60 additional contribution rates under this section shall be
61 paid directly by the participating employer to the
62 consulting actuary selected by the board of trustees of
63 the retirement system.

**§5-10D-25. Appropriations for state contributions to
retirement system; contributions for
members paid from special funds or by
other employers.**

1 (a) At least thirty days prior to each regular session
2 of the Legislature, the board of trustees shall certify to
3 the governor the contributions, determined according to
4 section twenty-four hereof, to be made by the state to

5 the retirement system for the next following fiscal year;
6 the said contributions to be based upon the state's total
7 payroll for the preceding twelve calendar months. The
8 amounts so ascertained shall be included in the appro-
9 priation bill to be submitted to the Legislature. In the
10 event the state's contributions for the fiscal year are less
11 than they would have been based upon the state's actual
12 payroll for the fiscal year, the amount of the insuffi-
13 ciency shall be included in the appropriation bill for the
14 next following fiscal year. The said contributions shall
15 be paid to the retirement system quarterly and when
16 paid shall be credited to the employers accumulation
17 fund.

18 (b) In the case of any member whose compensation is
19 paid out of moneys derived in whole or in part out of
20 any special fund, or from any source other than the
21 state, then contributions on behalf of such member in
22 any year shall be paid out of such special fund or by
23 such other source in proportion to that part of the
24 member's compensation derived therefrom for that year.
25 The governing body of each participating public
26 employer is hereby authorized to make such contribu-
27 tions from funds of the participating public employer as
28 shall be necessary to pay its proportionate share of
29 contributions on account of each state employee whose
30 compensation is paid by such participating public
31 employer.

**§5-10D-26. Contributions by other participating public
employers; withholding state money to
satisfy delinquencies.**

1 (a) The board of trustees shall certify annually to each
2 participating public employer, other than the state, the
3 employer contribution rate, determined in section
4 twenty-four hereof, for the public employer division.
5 Each participating public employer shall pay to the
6 state treasurer, for credit to the retirement system, the
7 contributions equal to the said contribution rate applied
8 to each and every payroll of the participating public
9 employer. The said payments shall be made in such
10 manner and form, and in such frequency, and shall be
11 accompanied by such supporting data, as the board shall

12 from time to time prescribe. When paid, the said
13 contributions shall be credited to the employers accum-
14 ulation fund.

15 (b) If any participating public employer, other than
16 the state, fails to make any payment due the retirement
17 system for a period of sixty days after the payment is
18 due, the participating public employer shall become
19 delinquent, and such delinquency shall be certified to
20 the state auditor by the board of trustees. If any
21 participating public employer becomes delinquent, as
22 provided herein, the state auditor is authorized and
23 directed to withhold any money due such participating
24 public employer by the state until such delinquency,
25 together with regular interest thereon, from the date
26 due, is satisfied. Such money so withheld by the state
27 auditor shall be paid to the retirement system.

§5-10D-27. Transfers to retirement reserve fund.

1 Upon the retirement of a member, or if an annuity
2 becomes payable on account of the death of a member,
3 the difference between the annuity reserve and the
4 member's accumulated contributions standing to his
5 credit in the appropriate members deposit fund at the
6 time of his retirement or death, as the case may be, shall
7 be transferred to the retirement reserve fund.

§5-10D-28. Retirement reserve fund created; transfers from fund on reemployment.

1 The retirement reserve fund is hereby created. It shall
2 be the fund from which shall be paid all annuities
3 payable as provided in this article. If a disability
4 retirant returns to the employ of a participating public
5 employer, his annuity reserve at that time shall be
6 transferred from the retirement reserve fund to the
7 members deposit fund and the employers accumulation
8 fund in the same proportions as the annuity reserve was
9 originally transferred to the retirement reserve fund.
10 The amount so transferred to the members deposit fund
11 shall be credited to his individual account therein.

§5-10D-29. Income fund.

1 The income fund is hereby created. It shall be the

2 fund to which shall be credited all interest, dividends
3 and other income from investments of the retirement
4 system, all transfers from the members deposit fund by
5 reason of lack of claimant or forfeiture of interest
6 credits, and all other moneys received by the retirement
7 system, the disposition of which is not specifically
8 provided for in this article. The board of trustees may
9 accept gifts and bequests and same shall be credited to
10 the income fund. There shall be paid or transferred
11 from the income fund all amounts required to credit
12 regular interest to the members deposit fund, employers
13 accumulation fund, and the retirement reserve fund, as
14 provided in this article. Whenever the board determines
15 that the balance in the income fund is more than
16 sufficient to cover the current charges to the fund, the
17 board may, by resolution, provide for contingency
18 reserves, or for the transfer of such excess, or portions
19 thereof, to cover the needs of the other funds of the
20 retirement system.

§5-10D-30. Expense fund; state and other employers to share expenses.

1 The expense fund shall be the fund from which shall
2 be paid the expenses incurred in the administration of
3 the retirement system. The cost of administering the
4 system shall be paid by the state and the other
5 participating public employers on a proportionate basis
6 to be determined by the board of trustees. The board
7 shall certify annually to the governor the state's
8 proportionate share of the cost of administration and to
9 each of the other participating public employers their
10 respective shares, and each of said participating public
11 employers shall pay the amounts due by them to the
12 state treasurer for credit to the expense fund.

§5-10D-31. Investment of moneys.

1 All moneys of the retirement system not currently
2 required for the payment of annuities or other benefits
3 shall be invested in the same manner and under the
4 same conditions as moneys of the public employees
5 retirement system created under article ten of this
6 chapter are invested.

§5-10D-32. No trustee, etc., shall gain from investments of system.

1 Except as otherwise provided in this article, no
2 trustee, no member of the board of public works, and
3 no employee of the board of trustees shall have any
4 interest, direct or indirect, in the gains or profits arising
5 from any investment or reinvestment of retirement
6 system moneys. No trustee, no member of the board of
7 public works, and no employee of the board of trustees
8 shall, directly or indirectly, for himself or as an agent
9 or partner of others, in any manner use the same, except
10 to make current and necessary payments as are auth-
11 orized by the board of trustees. No trustee, no member
12 of the board of public works, and no employee of the
13 board of trustees shall become an endorser or surety or
14 become in any manner an obligor for moneys loaned or
15 borrowed by the retirement system. Nothing contained
16 herein shall be construed to impair the rights of any
17 member of the retirement system to benefits provided
18 by the system.

§5-10D-33. Restricted use of retirement system moneys.

1 The moneys, investments and all other assets of the
2 retirement system shall be used for the sole purpose of
3 meeting the disbursements for annuities and other
4 payments authorized by this article, and shall be used
5 for no other purpose whatsoever.

§5-10D-34. Allowance of regular interest on balances in funds.

1 The board of trustees shall, at the end of each fiscal
2 year, allow and credit regular interest on the balance
3 at the beginning of the said fiscal year in each member's
4 individual account in the members deposit fund, and on
5 the mean balances in the employers accumulation fund
6 and the retirement reserve fund. The interest so allowed
7 and credited shall be charged to the income fund.

§5-10D-35. Fiscal year of retirement system.

1 The fiscal year of the retirement system shall coincide
2 with the fiscal year of the state.

§5-10D-36. Pro rata reduction of annuities.

1 Any provision in this article to the contrary notwithstanding,
2 if at the end of any fiscal year the total of the
3 annuities paid from the retirement reserve fund during
4 the said fiscal year is more than ten percent of the sum
5 of the balances in the employers accumulation fund and
6 the retirement reserve fund at the end of the said fiscal
7 year, the said annuities payable in the next ensuing
8 fiscal year shall be reduced, pro rata, so that the sum
9 of the annuities so reduced shall not exceed ten percent
10 of the sum of the said balances in the employers
11 accumulation fund and the retirement reserve fund. The
12 said pro rata reduction shall be applied to all annuities
13 payable in the said ensuing fiscal year.

§5-10D-37. Correction of errors.

1 Should any change or error in the records of any
2 participating public employer or the retirement system
3 result in any person receiving from the system more or
4 less than he would have been entitled to receive had the
5 records been correct, the board of trustees shall correct
6 such error, and as far as is practicable, shall adjust the
7 payment of the benefit in such manner that the actuarial
8 equivalent of the benefit to which such person was
9 correctly entitled shall be paid.

§5-10D-38. Fraud; penalty.

1 Any person who shall knowingly make any false
2 statement or shall falsify or permit to be falsified any
3 record or records of the retirement system in any
4 attempt to defraud the system shall be guilty of a
5 misdemeanor, and, upon conviction thereof, shall be
6 punished accordingly.

**§5-10D-39. Right to benefits not subject to execution, etc.;
assignments prohibited; deductions for
group insurance; setoffs for fraud.**

1 The right of a person to any benefit provided for in
2 this article shall not be subject to execution, attachment,
3 garnishment, the operation of bankruptcy or insolvency
4 laws, or other process whatsoever, nor shall any
5 assignment thereof be enforceable in any court:
6 *Provided,* That should a member be covered by a group
7 insurance or prepayment plan participated in by a

8 participating public employer, and should he be
9 permitted to, and elect to, continue such coverage as a
10 retirant, he may authorize the board of trustees to have
11 deducted from his annuity the payments required of him
12 to continue coverage under such group insurance or
13 prepayment plan: *Provided, however,* That a participat-
14 ing public employer shall have the right of setoff for any
15 claim arising from embezzlement by, or fraud of, a
16 member, retirant or beneficiary.

§5-10D-40. Benefits exempt from taxes.

1 The annuities and other benefits provided by this
2 article, and the assets of the retirement system, are
3 exempt from state, county and municipal taxes as
4 provided elsewhere in this code.

§5-10D-41. Reemployment after retirement; option for holder of elected public office.

1 (a) In the event a retirant becomes employed by a
2 participating public employer, payment of his or her
3 annuity shall be suspended during the period of his or
4 her reemployment and he or she shall become a
5 contributing member to the retirement system. If his or
6 her reemployment is for a period of one year or longer,
7 his or her annuity shall be recalculated and he or she
8 shall be granted an increased annuity due to such
9 additional employment, said annuity to be computed
10 according to section fifteen of this article. A retirant
11 may accept temporary employment from a participating
12 employer so long as he or she does not receive compen-
13 sation in excess of six thousand dollars.

14 (b) In the event a retirant is elected to a public office
15 or appointed to hold an elected public office, he or she
16 has the option, notwithstanding subsection (a) of this
17 section, to either:

18 (1) Continue to receive payment of his or her annuity
19 while holding such public office, in addition to the salary
20 he or she may be entitled to as such office holder; or

21 (2) Suspend the payment of his or her annuity and
22 become a contributing member of the retirement system
23 as provided in subsection (a) of this section.

§5-10D-42. Removal from office.

1 Any member of the retirement system who has been
2 removed from office or his office shall have been vacated
3 for official misconduct, incompetence, neglect of duty,
4 gross immorality, malfeasance or misfeasance shall
5 immediately have his membership in the retirement
6 system terminated permanently by the board of trustees
7 and shall never become eligible for an annuity; however,
8 any such member so terminated by virtue of this section
9 shall be entitled to a refund of his contributions with
10 regular interest as provided in section twenty-three
11 hereof.

§5-10D-43. Severability.

1 If any part of this article is declared unconstitutional
2 by a court of competent jurisdiction, such decision shall
3 not affect the validity of the remaining provisions of this
4 article, or the article in its entirety.

CHAPTER 18. EDUCATION.**Article**

7A. State Teachers Retirement System.

**23. Additional Powers, Duties and Responsibilities of Governing
Boards of State Institutions of Higher Education.**

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-35b. Temporary early retirement incentives.

§18-7A-36. Transfer to public employees retirement system II.

§18-7A-35b. Temporary early retirement incentives.

1 That beginning on the first day of April, one thousand
2 nine hundred eighty-eight, and continuing through the
3 thirtieth day of June, one thousand nine hundred eighty-
4 nine, members retiring may elect any one of the
5 following three incentive options: *Provided*, That any
6 employee participating in this retirement incentive
7 program is not eligible to accept further employment
8 from the state or any of its political subdivisions.

9 Retirement incentive option one:

10 For the purpose of computing the member's annuity,
11 the normal final average salary shall be computed and
12 one-eighth thereof shall be added thereto in arriving at

13 the true final average salary for use in actual compu-
14 tation of retirement benefit.

15 Retirement incentive option two:

16 A member may elect a lump sum payment, in addition
17 to his regular retirement annuity, equal to ten percent
18 of his final average salary not to exceed five thousand
19 dollars.

20 Retirement incentive option three:

21 A person shall be credited with an additional two
22 years of contributing service and an additional two
23 years of age. The years credited under this option shall
24 in no way add to a member's final average salary factor
25 of computation.

26 The additional annuity allowed for temporary early
27 retirement under these options is intended to be paid
28 from the retirement incentive account hereby created as
29 a special account in the state treasury and from the
30 funds therein established with moneys required to be
31 transferred by heads of spending units from the unused
32 portion of salary and fringe benefits in their budgets
33 accruing in respect of such positions vacated and
34 subsequently canceled under this temporary early
35 retirement program. Salary and fringe benefit moneys
36 actually saved in a particular fiscal year or deemed to
37 be saved on a continuing basis in any subsequent fiscal
38 year, once occurring, shall constitute the fund source.
39 No such additional annuity shall be disallowed even
40 though initial receipts may not be sufficient.

41 The executive secretary of the retirement system shall
42 provide forms for applicants. Such forms shall include
43 a detailed description of the three incentive plan options
44 outlined above.

45 The executive secretary of the retirement system shall
46 file a report to the Legislature no later than the fifteenth
47 day of February, one thousand nine hundred eighty-
48 nine, and quarterly thereafter, detailing the number of
49 members who have elected to accept early retirement
50 incentive options, the dollar cost to date by option
51 selected and the projected annual cost through the year

52 two thousand.

53 Within every spending unit, department, board,
54 corporation, committee, division or any other agency or
55 entity wherein two or multiples of two members elect
56 to retire under the temporary early retirement incen-
57 tives set forth above no more than one of the vacant
58 positions may be filled, with the second position being
59 abolished upon the effective day of the member's
60 retirement: *Provided*, That county boards of education
61 in replacing employees leaving under this temporary
62 early retirement incentive program shall be eligible to
63 replace in that number as authorized by the basic school
64 aid formula and pursuant to those guidelines in respect
65 of number of positions lost or projected to be lost due
66 to declining enrollment, changes in statutes, changes in
67 state appropriations and the other guidelines set forth
68 and contained within said basic school aid formula. The
69 head of the spending unit shall immediately notify the
70 state auditor, the legislative auditor, and the commis-
71 sioner of the department of finance and administration
72 of the decisions and shall transfer all remaining salary
73 and fringe benefit appropriations remaining after the
74 employee's termination date: *Provided, however*, That
75 because the Legislature finds that due to insufficient
76 employees therein, the provision for abolishing one of
77 each two vacancies created by special early retirement
78 shall not apply to the board of regents, but instead a
79 ratio of three vacancies occurring and with one to be
80 deemed abolished and canceled shall obtain.

81 *Special rule.*—Any member of the retirement system
82 may retire under the special early retirement provisions
83 with full pension rights, without reduction of benefits if
84 the sum of such member's age plus years of contributing
85 service equals or exceeds eighty: *Provided*, That such
86 person has at least twenty years of contributing service,
87 and with military service of up to two years to be
88 deemed such contributing service for the purpose of this
89 special rule and early retirement thereunder. The
90 savings which have accrued from the implementation of
91 this temporary early retirement incentive shall, after
92 determination of the special early incentive program, be
93 deemed to continue in such amount and be budgeted to

94 provide for the payment of the retirement incentive
95 account needs and any excess thereof to be directed as
96 additional funding to the teachers retirement system.

§18-7A-36. Transfer to public employees retirement system II.

1 To ensure retirement benefits for all the state's
2 education employees, to promote the fiscal soundness of
3 the state teachers retirement system, to provide an
4 adequately-funded retirement system for future gener-
5 ations, to abandon the tendency to increase retirement
6 benefits in years that salaries are not increased or to
7 fund inadequately the state teachers retirement system
8 in order to provide such salary increase, and to enhance
9 the state's credit rating, any person whose employment
10 would constitute entry into the state teachers retirement
11 system as the same was in effect on the thirtieth day
12 of June, one thousand nine hundred eighty-eight, but
13 whose employment was effected on or after the first day
14 of July, one thousand nine hundred eighty-eight, shall
15 participate in such retirement system as shall be
16 provided for in article ten-d, chapter five of this code.

ARTICLE 23. ADDITIONAL POWERS, DUTIES AND RESPONSIBILITIES OF GOVERNING BOARDS OF STATE INSTITUTIONS OF HIGHER EDUCATION.

§18-23-4a. Supplemental and additional retirement plans for employees; payroll deductions; authority to match employee contributions.

1 The governing boards shall have the authority to
2 contract for a supplemental retirement plan for any or
3 all of its employees to supplement the benefits such
4 employees will receive under the state teachers retire-
5 ment system. The governing boards shall have the
6 authority to make additional periodic deductions from
7 the salary payments due such employees in the amount
8 they are required to contribute for the supplemental
9 retirement plan selected by the board. The additional
10 deductions shall not exceed five percent of the salary of
11 employees under thirty-five years of age, six percent of
12 the salary of those thirty-five through forty-four years
13 of age, and seven and one-half percent of the salary of
14 those forty-five years of age and above, and shall not

15 cover any portion of an employee's salary which is
16 covered by the state teachers retirement system.

17 The governing boards shall also have the authority to
18 contract for an additional retirement plan for any of its
19 employees who elect to participate solely in such a
20 retirement plan selected by the governing boards
21 without participating in the state retirement system.
22 The governing boards shall have the authority to make
23 periodic deductions from the salary payments due such
24 employees in the amount they are required to contribute
25 to the additional plan, which deductions shall be the
26 same percentage of the participating employees' salaries
27 as that deducted from the salaries of members of the
28 state retirement system.

29 The board is further authorized, by way of additional
30 compensation to such employees, to pay an amount equal
31 to the contributions of such employees into either the
32 supplemental or additional retirement plan from funds
33 appropriated to it for personal services. Each participat-
34 ing employee shall have a full and immediate vested
35 interest in the retirement and death benefits accrued
36 from all the moneys paid into such supplemental or
37 additional retirement plan for his benefit. Upon proper
38 requisition of the board, the auditor shall periodically
39 issue a warrant, payable as specified in the requisition,
40 for the total contributions so withheld from the salaries
41 of all participating employees and for the governing
42 board's matching funds.

43 Notwithstanding any provisions contained in article
44 seven-a and article twenty-three of this chapter, once a
45 member has elected one of the options contained in
46 section fourteen-a, article seven-a of this chapter and
47 this section, he cannot thereafter change such election
48 after June thirtieth, one thousand nine hundred eighty-
49 nine.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-2. Employment of teachers; contracts; continuing contract status; how terminated; dismissal for lack of need; released time; failure of

teacher to perform contract or violation thereof; prompt coordination in reduction of employment force.

1 Before entering upon their duties, all teachers shall
2 execute a contract with their boards of education, which
3 contract shall state the salary to be paid and shall be
4 in the form prescribed by the state superintendent of
5 schools. Every such contract shall be signed by the
6 teacher and by the president and secretary of the board
7 of education, and when so signed shall be filed, together
8 with the certificate of the teacher, by the secretary of
9 the office of the board.

10 A teachers' contract, under this section, shall be for
11 a term of not less than one nor more than three years;
12 and if, after three years of such employment, the teacher
13 who holds a professional certificate, based on at least a
14 bachelor's degree, has met the qualifications for the
15 same, and the board of education enter into a new
16 contract of employment, it shall be a continuing
17 contract: *Provided*, That any teacher holding a valid
18 certificate with less than a bachelor's degree who is
19 employed in a county beyond the said three-year
20 probationary period shall upon qualifying for said
21 professional certificate based upon a bachelor's degree,
22 if reemployed, be granted continuing contract status:
23 *Provided, however*, That a teacher holding continuing
24 contract status with one county shall be granted
25 continuing contract status with any other county upon
26 completion of one year of acceptable employment if such
27 employment is during the next succeeding school year
28 or immediately following an approved leave of absence
29 extending no more than one year.

30 The continuing contract of any teacher shall remain
31 in full force and effect except as modified by mutual
32 consent of the school board and the teacher, unless and
33 until terminated (1) by a majority vote of the full
34 membership of the board before April first of the then
35 current year, after written notice, served upon the
36 teacher, return receipt requested, stating cause or
37 causes, and an opportunity to be heard at a meeting of
38 the board prior to the board's action thereon, or (2) by

39 written resignation of the teacher before that date. Such
40 termination shall take effect at the close of the school
41 year in which the contract is so terminated: *Provided,*
42 That the contract may be terminated at any time by
43 mutual consent of the school board and the teacher, and
44 that this section shall not affect the powers of the school
45 board to suspend or dismiss a principal or teacher
46 pursuant to section eight of this article: *Provided,*
47 *however,* That a continuing contract for any teacher
48 holding a certificate valid for more than one year and
49 in full force and effect during the school year one
50 thousand nine hundred eighty-four and one thousand
51 nine hundred eighty-five shall remain in full force and
52 effect: *Provided further,* That a continuing contract shall
53 not operate to prevent a teacher's dismissal based upon
54 the lack of need for the teacher's services pursuant to
55 the provisions of law relating to the allocation to
56 teachers and pupil-teacher ratios. But in case of such
57 dismissal, the teachers so dismissed shall be placed upon
58 a preferred list in the order of their length of service
59 with that board, and no teacher shall be employed by
60 the board until each qualified teacher upon the pre-
61 ferred list, in order, shall have been offered the
62 opportunity for reemployment: *And provided further,*
63 That he has not accepted a teaching position elsewhere.
64 Such reemployment shall be upon a teacher's preexist-
65 ing continuing contract and shall have the same effect
66 as though the contract had been suspended during the
67 time the teacher was not employed.

68 In the assignment of position or duties of a teacher
69 under said continuing contract, the board shall have
70 authority to provide for released time of a teacher for
71 any special professional or governmental assignment
72 without jeopardizing the contractual rights of such
73 teacher or any other rights, privileges or benefits under
74 the provisions of this chapter.

75 Any teacher who fails to fulfill his contract with the
76 board, unless prevented from so doing by personal
77 illness or other just cause, or unless released from such
78 contract by the board, or who violates any lawful
79 provision thereof, shall be disqualified to teach in any
80 other public school in the state for a period of the next

81 ensuing school year, and the state department of
82 education or board may hold all papers and credentials
83 of such teacher on file for a period of one year for such
84 violation: *Provided*, That marriage of a teacher shall not
85 be considered a failure to fulfill, or violation of, the
86 contract.

87 Notwithstanding the provisions of sections two and
88 seven, article two, chapter eighteen-a and section eight-
89 b, article four, chapter eighteen-a of this code for the
90 school year one thousand nine hundred eighty-seven—
91 one thousand nine hundred eighty-eight only, employees
92 recommended by the county superintendent of schools
93 for termination or transfer of employment because of
94 reductions-in-force shall be notified by the first day of
95 May, one thousand nine hundred eighty-eight. All
96 hearings held at the employees request shall be com-
97 pleted and final board action taken by the thirtieth day
98 of May, one thousand nine hundred eighty-eight.

CHAPTER 102

(Com. Sub. for H. B. 4222—By Mr. Speaker, Mr. Chambers, and Delegate Swann,
by request of the Executive)

[Passed March 4, 1988; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the "West Virginia Public Employees Insurance Act" and insurance program, and declaring the same to be for a public purpose; providing definitions; specifying termination of public employees insurance board on specified date and replacement thereof by public employees insurance agency, a new entity, and director thereof as primary administrator; providing for sunset of agency; creating public employees insurance advisory board to make recommendations for operation and administration to the director; appointments, qualifications and composition in respect of or applicable to director and advisory board; required civil service coverage of agency employees, but not of director and one secretary; author-

ization to establish plan or plans and program of insurance coverages; procedures required for operation and administration; insurance program conditions, including reasonable and customary expenses, cash incentive plans, "wellness" program and limiting spouse and dependent coverage to excess coverage in certain cases; powers for contract execution and enforcement; prohibition in respect of fraud or misrepresentations and civil penalties therefor; extended insurance coverage after retirement; eligibility therefor including certain higher education employees, limitation for new employees and alternative benefits in respect thereof; payments of deductibles by employees required after specified date, authority of director to adjust amounts with certain limitations; employee percentage payment for X rays and laboratory outpatient services after specified date; optional dental, optical, mental health, disability and prepaid retirement plan to be made available by director to employees, with employee to bear full premium cost thereof with separate funds established and required; preferred provider plan or system to be established in reduction of costs, with director authorized to renegotiate contracts in respect thereof; noncoverage of preexisting conditions of injury, sickness, pregnancy or other health condition within specified period prior to effective coverage, exceptions; data and budget employer line item requirement; employer withdrawal payments required; new employee contribution requirement on percentage basis with limitations on and after specified date; designation of funds and authorization to accept moneys; director authorized to impose employee premium subject to maximum amount by rulemaking without emergency rules; prohibition against direct or indirect benefitting from contracts by specified officials, members, or employees, with criminal penalties and exception for certain contracts; participation in insurance program not mandatory, with exceptions; members of Legislature eligible for coverage upon payment of full coverage costs; eligible employees specified; overcharge discovery awards to employees; requirements of employers in respect of notices to employees; general exemption from

administrative procedures act; reserved fund for budget excess; required quarterly report to joint committee on government and finance; and severability section.

Be it enacted by the Legislature of West Virginia:

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

**CHAPTER 5. GENERAL POWERS AND AUTHORITY
OF THE GOVERNOR, SECRETARY OF STATE AND
ATTORNEY GENERAL; BOARD OF PUBLIC WORKS;
MISCELLANEOUS AGENCIES, COMMISSIONS,
OFFICES, PROGRAMS, ETC.**

**ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSU-
RANCE ACT.**

- §5-16-1. Short title; legislative intent.
- §5-16-2. Definitions.
- §5-16-3. Public employees insurance board created and established; body corporate; board to terminate on specified date.
- §5-16-3a. Public employees insurance advisory board created and established.
- §5-16-3b. Public employees insurance agency created and established after specified date, and in replacement of public employees insurance board; appointment, qualification, compensation, and duties of director of agency; employees; civil service coverage; director vested after specified date with powers of public employees insurance board; expiration of agency.
- §5-16-4. First meeting of public employees insurance board; effective date of program.
- §5-16-5. Composition of public employees insurance board; powers and duties of public employees insurance board generally; expenses.
- §5-16-5a. Composition of advisory board; powers and duties of board generally; expenses.
- §5-16-6. Chairman of public employees insurance board; executive secretary.
- §5-16-7. Authorization to establish group hospital and surgical insurance plan, group major medical insurance plan and group life and accidental death insurance plan; rules and regulations for administration of plans; what plans may provide; optional plans; separate rating for claims experience purposes.
- §5-16-8. Conditions of insurance program.
- §5-16-9. Authorization to execute contracts for group hospital and surgical insurance, group major medical insurance, and group life and accidental death insurance; limitations; awarding of contracts; reinsurance; certificates for covered employees; discontinuance of contracts.

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- §5-16-12a. Payment of deductible by employees; annual review of deductible; required deductible option.
- §5-16-12b. Employee percentage payment for outpatient X rays and laboratory services; maximum payment specified.
- §5-16-12c. Optional dental, optical, mental health, disability and prepaid retirement plan.
- §5-16-12d. Preferred provider plan.
- §5-16-12e. Preexisting conditions not covered; defined.
- §5-16-13. Payment of costs by employer; schedule of insurance; special funds created; duties of treasurer with respect thereto.
- §5-16-13a. Authorization to assess premiums and adjust rates; maximum amount established; procedure for imposition.
- §5-16-14. Authorization to take advantage of acts of Congress; accept gifts, grants and matching funds.
- §5-16-15. Expense fund.
- §5-16-16. No member or employee of public employees insurance agency shall gain directly or indirectly from any contract or contracts provided for hereunder; criminal penalties.
- §5-16-17. Permissive participation; exemptions.
- §5-16-17a. Members of Legislature may be covered, if cost of the entire coverage is paid by such members.
- §5-16-18. Rules and regulations for administration of article; eligibility of certain retired employees and dependents of deceased members for coverage; employees on medical leave of absence entitled to coverage; life insurance.
- §5-16-19. Reserve fund.
- §5-16-20. Quarterly report.
- §5-16-21. Severability.

§5-16-1. Short title; legislative intent.

- 1 The short title by which this article may be referred
- 2 to is "West Virginia Public Employees Insurance Act"
- 3 and it is the express intent of the Legislature to
- 4 encourage and promote a uniform partnership relation
- 5 between all employers and employees participating in

6 the insurance plan or plans formulated under the
7 provisions of this article and constituting the insurance
8 program, and to hereby declare such insurance program
9 to be for a public purpose.

§5-16-2. Definitions.

1 The following words and phrases as used in this
2 article, unless a different meaning is clearly indicated
3 by the context, shall have the following meanings:

4 (1) "Public employees insurance board" means the
5 existing board created by this article, and on and after
6 the first day of July, one thousand nine hundred eighty-
7 eight, whenever the term "public employees insurance
8 board" shall appear in this article, the same shall mean
9 the director of the public employees insurance agency
10 unless a different meaning is clearly indicated by the
11 context.

12 (2) "Agency" means the public employees insurance
13 agency created by this article, after specified date, in
14 replacement of the board.

15 (3) "Employee" means any person, including elected
16 officers, who works regularly full time in the service of
17 the state of West Virginia and, for the purpose of this
18 article only, the term "employee" shall also mean any
19 person, including elected officers, who works regularly
20 full time in the service of a county board of education;
21 a county, city or town in the state; any separate
22 corporation or instrumentality established by one or
23 more counties, cities or towns, as permitted by law; any
24 corporation or instrumentality supported in most part
25 by counties, cities or towns; any public corporation
26 charged by law with the performance of a governmental
27 function and whose jurisdiction is coextensive with one
28 or more counties, cities or towns; any agency or
29 organization established by, or approved by the depart-
30 ment of mental health for the provision of community
31 health or mental retardation services, and which is
32 supported in part by state, county or municipal funds;
33 any person who works regularly full time in the service
34 of the West Virginia board of regents; and any person
35 who works regularly full time in the service of a

36 combined city-county health department created pursu-
37 ant to article two, chapter sixteen of the code. Any
38 matters of doubt as to who is an employee within the
39 meaning of this article shall be decided by the public
40 employees insurance board.

41 (4) "Retired employee" shall mean an employee of the
42 state who retired after the twenty-ninth day of April,
43 one thousand nine hundred seventy-one, and an em-
44 ployee of the West Virginia board of regents and a
45 county board of education who retires on or after the
46 twenty-first day of April, one thousand nine hundred
47 seventy-two, and all additional eligible employees who
48 retire on or after the effective date of this article and
49 meet the minimum eligibility requirements for their
50 respective state retirement system: *Provided*, That for
51 the purposes of this article such employees who are not
52 covered by a state retirement system shall, in the case
53 of education employees, meet the minimum eligibility
54 requirements of the state teachers retirement system,
55 and in all other cases, meet the minimum eligibility
56 requirements of the public employees retirement
57 system.

58 (5) "Employer" means the state of West Virginia, its
59 boards, agencies, commissions, departments, institutions
60 or spending units; a county board of education; a county,
61 city or town in the state; any separate corporation or
62 instrumentality established by one or more counties,
63 cities or towns, as permitted by law; any corporation or
64 instrumentality supported in most part by counties,
65 cities or towns; any public corporation charged by law
66 with the performance of a governmental function and
67 whose jurisdiction is coextensive with one or more
68 counties, cities or towns; any agency or organization
69 established by, or approved by the department of mental
70 health for the provision of community health or mental
71 retardation services, and which is supported in part by
72 state, county or municipal funds; and a combined city-
73 county health department created pursuant to article
74 two, chapter sixteen of the code. Any matters of doubt
75 as to who is an "employer" within the meaning of this
76 article shall be decided by the public employees
77 insurance board. The term "employer" shall not include

78 within its meaning the national guard.

79 (6) "Advisory board" means the public employees
80 advisory board created by this article, after specified
81 date.

82 (7) "Director" means the director of the public
83 employees insurance agency, created by this article
84 after a specified date.

§5-16-3. Public employees insurance board created and established; body corporate; board to terminate on specified date.

1 The West Virginia public employees insurance board
2 is hereby created and established to provide group
3 hospital and surgical insurance, group major medical
4 insurance, and group life and accidental death insu-
5 rance for all employees in the manner as hereinafter
6 provided. The public employees insurance board shall
7 constitute a body corporate. All business of the public
8 employees insurance board shall be transacted in the
9 name of the West Virginia public employees insurance
10 board.

11 After having conducted a performance audit through
12 its joint committee on government operations, pursuant
13 to section nine, article ten, chapter four of this code, the
14 Legislature hereby finds and declares that the public
15 employees insurance board should be continued and
16 reestablished. Accordingly, notwithstanding the provi-
17 sions of section four, article ten, chapter four of this
18 code, the public employees insurance board shall
19 continue to exist until the first day of July, one thousand
20 nine hundred eighty-eight.

§5-16-3a. Public employees insurance advisory board created and established.

1 On and after the first day of July, one thousand nine
2 hundred eighty-eight, the public employees insurance
3 board is hereby abolished and the public employees
4 advisory board is hereby created and established to
5 provide advice and make recommendations to the
6 director concerning group hospital and surgical insu-
7 rance, group major medical insurance, and group life

8 and accidental death insurance for all employees in the
9 manner as hereinafter provided. All business of the
10 advisory board shall be transacted in the name of West
11 Virginia public employees insurance advisory board.

12 Notwithstanding any other provisions of this article,
13 the public employees insurance board shall continue to
14 exist until the first day of July, one thousand nine
15 hundred eighty-eight.

**§5-16-3b. Public employees insurance agency created
and established after specified date, and in
replacement of public employees insurance
board; appointment, qualification, compen-
sation, and duties of director of agency;
employees; civil service coverage; director
vested after specified date with powers of
public employees insurance board; expira-
tion of agency.**

1 (a) On and after the first day of July, one thousand
2 nine hundred eighty-eight, there is hereby created a
3 state agency known as the "Public Employees Insurance
4 Agency," which agency shall consist of the director, the
5 advisory board and such employees as may be autho-
6 rized by law. The director shall be appointed by the
7 governor, with the advice and consent of the Senate. He
8 or she shall serve at the will and pleasure of the
9 governor, unless earlier removed from office for cause
10 as provided by law. The director shall have at least three
11 years experience in health insurance administration
12 prior to appointment as director. The director shall
13 receive an annual salary established by the governor not
14 to exceed fifty-five thousand dollars and actual expenses
15 incurred in the performance of official business. The
16 director shall employ such administrative, technical and
17 clerical employees as shall be required for the proper
18 administration of the insurance programs herein
19 provided. The director shall perform such duties as are
20 required of him under the provisions of this article and
21 shall be the chief administrative officer of the public
22 employees insurance agency.

23 (b) All positions in the agency, except for the director
24 and his or her personal secretary, shall be included in

25 the classified service of the civil service system pursuant
26 to article six, chapter twenty-nine of this code. Any
27 person required to be included in the classified service
28 by the provisions of this subsection who was employed
29 in any of the positions included herein on or after the
30 effective date of this article, shall not be required to take
31 and pass qualifying or competitive examinations upon
32 or as a condition to being added to the classified service:
33 *Provided*, That no person required to be included in the
34 classified service by the provisions of this section who
35 was employed in any of the positions included herein as
36 of the effective date of this section, shall be thereafter
37 severed, removed or terminated in his or her employ-
38 ment prior to his or her entry into the classified service
39 except for cause as if such person had been in the
40 classified service when severed, removed or terminated.

41 (c) On and after the first day of July, one thousand
42 nine hundred eighty-eight, the director shall be vested
43 with and have the authority previously granted herein
44 to the public employees insurance board.

45 (d) Notwithstanding the provisions of section four,
46 article ten, chapter four of this code, the public
47 employees insurance agency shall continue to exist until
48 the first day of July, one thousand nine hundred ninety-
49 two.

§5-16-4. First meeting of public employees insurance board; effective date of program.

1 The public employees insurance board shall meet as
2 soon as possible after the effective date of this article
3 for the purpose of negotiating and contracting to provide
4 group insurance for those employees herein made
5 eligible, such insurance coverage to be effective July
6 one, one thousand nine hundred seventy-one, or as soon
7 thereafter as practicable.

§5-16-5. Composition of public employees insurance board; powers and duties of public employees insurance board generally; expenses.

1 The public employees insurance board shall consist of:
2 (a) The auditor of the state by virtue of his office;

3 (b) The workers' compensation commissioner;

4 (c) The treasurer of the state by virtue of his office.

5 The public employees insurance board shall hold a
6 meeting at least twice each year and shall designate the
7 time and place. Two public employees insurance board
8 members shall constitute a quorum at any meeting of
9 the public employees insurance board. Each public
10 employees insurance board member shall be entitled to
11 one vote on each question before the public employees
12 insurance board. A majority of the quorum present shall
13 be required for a decision by the public employees
14 insurance board at its meetings. The public employees
15 insurance board shall adopt its own rules of procedure
16 and shall keep a record of its proceedings.

17 The public employees insurance board shall be
18 responsible for the administration and management of
19 the public employees insurance system as provided for
20 in this article and in connection therewith shall have the
21 power and authority to make all rules and regulations
22 necessary to effectuate the provisions of this article,
23 except as is otherwise specifically provided in this
24 article.

25 No member of the public employees insurance board
26 shall receive any compensation for serving as such;
27 however, each member of the public employees insu-
28 rance board shall be reimbursed for all reasonable and
29 necessary expenses actually incurred by him in carrying
30 out his duties as a member of the public employees
31 insurance board.

**§5-16-5a. Composition of advisory board; powers and
duties of board generally; expenses.**

1 The advisory board shall consist of nine members who
2 are citizens of the United States and residents of this
3 state as follows:

4 (a) One representative of the West Virginia medical
5 association, appointed by the governor, with the advice
6 and consent of the Senate;

7 (b) One representative of the West Virginia hospital
8 association, appointed by the governor, with the advice

9 and consent of the Senate;

10 (c) Five members covered by the public employees
11 insurance plan and program, appointed by the governor,
12 with the advice and consent of the Senate, and selected
13 so as to represent as broadly as possible all elements of
14 the employees covered by the plan: *Provided*, That such
15 members shall not be (1) employees of or contractors to
16 any health care facility; (2) licensed health care
17 professionals; (3) members of the immediate family of
18 licensed health care professionals; or (4) an employee of
19 or contractor to any such licensed health care
20 professionals;

21 (d) The insurance commissioner or his or her
22 designee;

23 (e) One representative of the West Virginia health
24 care cost review authority, appointed by the governor,
25 with the advice and consent of the Senate.

26 No more than five of such nine members shall be of
27 the same political party and each member shall be from
28 a different state senatorial district.

29 Of the members first appointed by the governor to the
30 advisory board, the member who is the representative
31 of the West Virginia medical association shall be
32 appointed for a term of two years; the member who is
33 the representative of the West Virginia hospital associ-
34 ation shall be appointed for a term of four years; the
35 member who is the representative of the West Virginia
36 health care cost review authority shall be appointed for
37 a term of three years; and the five members who are
38 participants in the public employees insurance plan
39 shall be appointed to terms of one, two, three, four and
40 five years respectively. Subsequent appointed members
41 shall be appointed to five-year terms except for
42 members appointed to fill vacancies who shall serve for
43 the remainder of the vacant term. Members of the
44 advisory board are eligible for reappointment upon the
45 expiration of their terms but may not serve more than
46 two full five-year terms consecutively. Members' terms
47 shall commence on the first day of September of the
48 year of appointment and end on the thirty-first day of

49 August in the year in which the term expires. The term
50 of the members first appointed shall commence on the
51 first day of September, one thousand nine hundred
52 eighty-eight, with the governor to have made the
53 appointments of such members by such date.

54 The advisory board shall hold a meeting at least twice
55 each year and shall designate the time and place of such
56 meeting. Five advisory board members shall constitute
57 a quorum at any meeting of the advisory board. Each
58 advisory board member shall be entitled to one vote on
59 each question before the advisory board. A majority of
60 the quorum present shall be required for a decision by
61 the advisory board at its meetings. The advisory board
62 shall keep a record of its proceedings.

63 The advisory board shall be responsible for advising
64 and making recommendations to the director regarding
65 the administration and management of the public
66 employees insurance agency as provided for in this
67 article. Under no circumstances, however, will the
68 decisions, advice or recommendations of the advisory
69 board be controlling or binding on the director.

70 No member of the advisory board shall receive any
71 compensation for serving as such; however, each
72 member of the advisory board shall be reimbursed for
73 all reasonable and necessary expenses actually incurred
74 by him in carrying out his duties as a member of the
75 advisory board.

**§5-16-6. Chairman of public employees insurance board;
executive secretary.**

1 The public employees insurance board shall elect from
2 its own number a chairman who shall serve for one year,
3 or until a successor is elected.

4 The public employees insurance board shall appoint
5 an executive secretary of the West Virginia public
6 employees insurance board, and said executive secretary
7 shall be the chief administrative officer of the public
8 employees insurance board. He shall perform such
9 duties as are required of him under the provisions of this
10 article and as the public employees insurance board
11 shall delegate to him from time to time. The compen-

12 sation of the executive secretary shall be fixed by the
13 public employees insurance board. The executive
14 secretary shall, with the approval of the public em-
15 ployees insurance board, employ such administrative,
16 technical and clerical employees as shall be required for
17 the proper administration of the insurance program
18 herein provided.

§5-16-7. Authorization to establish group hospital and surgical insurance plan, group major medical insurance plan and group life and accidental death insurance plan; rules and regulations for administration of plans; what plans may provide; optional plans; separate rating for claims experience purposes.

1 The public employees insurance board is hereby
2 empowered and authorized to establish a group hospital
3 and surgical insurance plan or plans, a group major
4 medical insurance plan or plans, and a group life and
5 accidental death insurance plan or plans for those
6 employees herein made eligible, and to establish and
7 promulgate rules and regulations for the administration
8 of such plans, subject to the limitations contained in this
9 article. Such plans may provide for group hospital and
10 surgical and group major medical insurance against the
11 financial cost of hospitalization, surgical and medical
12 treatment and care, and may also include, among other
13 things, prescribed drugs, medicines, prosthetic applian-
14 ces, hospital inpatient and outpatient service benefits,
15 and medical expenses and indemnifying benefits, and
16 group life and accidental death insurance, and such
17 other coverage and benefits deemed appropriate and
18 desirable by the public employees insurance board.

19 The public employees insurance board shall make
20 available to each employee herein made eligible, at full
21 cost to the employee, the opportunity to purchase
22 optional group life and accidental death insurance in an
23 amount not to exceed fifty thousand dollars for life
24 insurance and fifty thousand dollars for accidental death
25 insurance as established under the rules and regulations
26 of the public employees insurance board. In addition,
27 each employee shall be entitled to have his spouse and

28 dependents, as defined by the rules and regulations of
29 the public employees insurance board, included in such
30 optional coverage, at full cost to the employee, in an
31 amount not to exceed five thousand dollars for life
32 insurance and five thousand dollars for accidental death
33 insurance for the spouse and not to exceed two thousand
34 dollars in life insurance and two thousand dollars in
35 accidental death insurance for each eligible dependent;
36 and with full authorization hereby to the public
37 employees insurance board to make the same available
38 and provide such opportunity of purchase to each
39 employee.

40 The public employees insurance board may cause to
41 be separately rated for claims experience purposes (1)
42 all employees of the state of West Virginia, (2) all
43 teaching and professional employees of the West
44 Virginia board of regents and county boards of educa-
45 tion, (3) all nonteaching employees of the West Virginia
46 board of regents and county boards of education, or (4)
47 any other categorization which would ensure the
48 stability of the overall program.

§5-16-8. Conditions of insurance program.

1 The insurance plans herein provided for shall be
2 designed by the public employees insurance board:

3 (1) To provide a reasonable relationship between the
4 hospital, surgical and medical benefits to be included
5 and the expected reasonable and customary hospital,
6 surgical and medical expenses as established by the
7 director to be incurred by the affected employee, his
8 spouse and his dependents. The establishment of
9 reasonable and customary expenses by the public
10 employees insurance board pursuant to the preceding
11 sentence is not subject to the state administrative
12 procedures act in chapter twenty-nine-a of this code.

13 (2) To include reasonable controls which may include
14 deductible and coinsurance provisions applicable to
15 some or all of the benefits, and shall include other
16 provisions including, but not limited to, copayments,
17 preadmission certification, case management programs,
18 statewide preferred provider arrangements and pres-

19 cription drug programs.

20 (3) To prevent unnecessary utilization of the various
21 hospital, surgical and medical services available.

22 (4) To provide reasonable assurance of stability in
23 future years for the plans.

24 (5) To provide major medical insurance for said
25 employees.

26 (6) To provide certain group life and accidental death
27 insurance for the employees covered under this article.

28 (7) To include provisions for the coordination of
29 benefits payable by the terms of such plans with the
30 benefits to which such employee, or his spouse or his
31 dependents may be entitled by the provisions of any
32 other group hospital, surgical or medical or group major
33 medical insurance or any combination thereof.

34 (8) To provide a cash incentive plan for employees,
35 spouses, and dependents by the thirty-first day of
36 December, one thousand nine hundred eighty-eight, to
37 increase utilization of, and to encourage the use of, lower
38 cost alternative health care facilities, health care
39 providers and generic drugs. Such plan shall be
40 reviewed annually by the director and the advisory
41 board.

42 (9) To provide a "wellness" program which will
43 include, but not be limited to, an aggressive campaign
44 against tobacco, alcohol and chemical abuse and an
45 educational program to encourage proper diet and
46 exercise. In establishing a "wellness" program, the
47 division of vocational rehabilitation shall cooperate with
48 the public employees insurance board in establishing a
49 statewide wellness program and with such division of
50 vocational rehabilitation to contact county boards of
51 education for the use of facilities, equipment or any
52 service related to such purpose, at the request of the
53 director, under the authority hereby granted to contract
54 therefor. Boards of education shall be limited to
55 charging only the cost of janitorial service and increased
56 utilities for the use of the gymnasium and related
57 equipment. The cost of the exercise program shall be

58 paid by county boards of education, the public em-
59 ployees insurance board, the public employees insurance
60 agency, or participating employees, their spouses or
61 dependents. All exercise programs shall be made
62 available to all employees, their spouses or dependents
63 and shall not be limited to employees of county boards
64 of education.

65 (10) To provide a program, to be administered by the
66 director, for a patient audit plan with reimbursement
67 up to a maximum of one thousand dollars annually, to
68 employees for discovery of health care provider or
69 hospital overcharges when the affected employee brings
70 such overcharge to the attention of the plan. The
71 hospital or health care provider shall certify to the
72 director that it has provided, prior to or simultaneously
73 with the submission of the statement of charges for
74 payments, an itemized statement of the charges to the
75 employee participant for which payment is requested of
76 the plan.

77 (11) To require that all employers give written notice
78 to each covered employee prior to institution of any
79 changes in benefits to employees, and to include
80 appropriate penalty for any employer not providing the
81 required information to any employee.

**§5-16-9. Authorization to execute contracts for group
hospital and surgical insurance, group major
medical insurance, and group life and accid-
ental death insurance; limitations; awarding
of contracts; reinsurance; certificates for
covered employees; discontinuance of
contracts.**

1 The public employees insurance board is hereby given
2 exclusive authorization to execute such contract or
3 contracts as are necessary to carry out the provisions of
4 this article and to provide the plan or plans of group
5 hospital and surgical insurance coverage, group major
6 medical insurance coverage, and group life and accid-
7 ental death insurance coverage selected in accordance
8 with the provisions of this article, such contract or
9 contracts to be executed with one or more agencies,
10 corporations, insurance companies or service organiza-

11 tions licensed to sell group hospital and surgical
12 insurance, group major medical insurance, and group
13 life and accidental death insurance in this state.

14 The group life and accidental death insurance herein
15 provided for shall be in the amount of ten thousand
16 dollars for every employee. The amount of the group life
17 and accidental death insurance to which an employee
18 would otherwise be entitled shall be reduced to five
19 thousand dollars upon such employee attaining age
20 sixty-five.

21 All of the insurance coverage to be provided for under
22 this article may be included in one or more similar
23 contracts issued by the same or different carriers.

24 The provisions of article three, chapter five-a of this
25 code, relating to the division of purchases of the
26 department of finance and administration, shall not
27 apply to any contracts for any insurance coverage
28 authorized to be executed under the provisions of this
29 article; however, before entering into any contract for
30 any insurance coverage, as herein authorized, said
31 public employees insurance board shall invite competent
32 bids from all qualified and licensed insurance compan-
33 ies or carriers, who may wish to offer plans for the
34 insurance coverage desired. The public employees
35 insurance board shall deal directly with insurers in
36 presenting specifications and receiving quotations for
37 bid purposes. No commission or finder's fee, or any
38 combination thereof, shall be paid to any individual or
39 agent; but this shall not preclude an underwriting
40 insurance company or companies, at their own expense,
41 from appointing a licensed resident agent, within this
42 state, to service the companies' contracts awarded under
43 the provisions of this article. Commissions reasonably
44 related to actual service rendered for such agent or
45 agents may be paid by the underwriting company or
46 companies: *Provided*, That in no event shall payment be
47 made to any agent or agents when no actual services are
48 rendered or performed. The public employees insurance
49 board shall award such contract or contracts on a
50 competitive basis. In awarding the contract or contracts
51 the public employees insurance board shall take into

52 account the experience of the offering agency, corpora-
53 tion, insurance company or service organization in the
54 group hospital and surgical insurance field, group major
55 medical insurance field, and group life and accidental
56 death insurance field, and its facilities for the handling
57 of claims. In evaluating these factors, the public
58 employees insurance board may employ the services of
59 impartial, professional insurance analysts or actuaries
60 or both. Any contract executed by the public employees
61 insurance board with a selected carrier shall be a
62 contract to govern all eligible employees subject to the
63 provisions of this article. Nothing contained in this
64 article shall prohibit any insurance carrier from
65 soliciting employees covered hereunder to purchase
66 additional hospital and surgical, major medical or life
67 and accidental death insurance coverage.

68 The public employees insurance board may authorize
69 the carrier with whom a primary contract is executed
70 to reinsure portions of such contract with other carriers
71 which elect to be a reinsurer and who are legally
72 qualified to enter into a reinsurance agreement under
73 the laws of this state.

74 Each employee who is covered under any such
75 contract or contracts shall receive a certificate setting
76 forth a fee schedule of the hospital, surgical or medical
77 benefits to which such employee, his spouse and his
78 dependents are entitled hereunder, to whom such
79 benefits shall be payable, to whom claims shall be
80 submitted, and a summary of the provisions of any such
81 contract or contracts as they affect the employee, his
82 spouse and his dependents.

83 The public employees insurance board may at the end
84 of any contract period discontinue any contract or
85 contracts it has executed with any carrier and replace
86 the same with a contract or contracts with any other
87 carrier or carriers meeting the requirements of this
88 article.

**§5-16-10. Contract provisions for group hospital and
surgical, group major medical, and group
life and accidental death insurance for
retiring employees, their spouses and
dependents.**

1 Any contract or contracts entered into hereunder may
2 provide for group hospital and surgical, group major
3 medical, and group life and accidental death insurance
4 for retiring employees and their spouses and dependents
5 as defined by rules and regulations of the public
6 employees insurance board, and on such terms as the
7 public employees insurance board may deem
8 appropriate.

9 In the event the public employees insurance board
10 provides the above benefits for retiring employees, their
11 spouses and dependents, the public employees insurance
12 board shall adopt rules and regulations prescribing the
13 conditions under which retiring employees may elect to
14 participate in or withdraw from the plan or plans. Any
15 contract or contracts herein provided for shall supple-
16 ment any hospital, surgical, major medical or health
17 insurance plan administered by the United States
18 department of health, education, and welfare to which
19 the employee, spouse or dependent may be eligible
20 under any law or regulation of the United States.

§5-16-11. To whom benefits paid.

1 Any benefits payable under any group hospital and
2 surgical and group major medical plan or plans may be
3 paid either directly to the attending physician, hospital,
4 medical group, or other person, firm, association or
5 corporation furnishing the service upon which the claim
6 is based, or to the insured upon presentation of valid
7 bills for such service, subject to such provisions designed
8 to facilitate payments as may be made by the public
9 employees insurance board.

**§5-16-11a. Misrepresentation by employee or provider;
penalty.**

1 Any person who shall knowingly secure or attempt to
2 secure benefits payable under this article to which the
3 person is not entitled, or who shall knowingly secure or
4 attempt to secure greater benefits than those to which
5 the person is entitled, by willfully misrepresenting the
6 presence or extent of benefits to which the person is
7 entitled under a collateral insurance source, or by

8 willfully misrepresenting any material fact relating to
9 any other information requested by the director or
10 public employees insurance board, or by willfully
11 overcharging for services provided, or by willfully
12 misrepresenting the diagnosis or nature of the service
13 provided, may be found to be overpaid and shall be
14 civilly liable for any overpayment. In addition to the
15 civil remedy provided herein, the director, or public
16 employees insurance board prior to the first day of July,
17 one thousand nine hundred eighty-eight, shall withhold
18 payment of any benefits due to that person until any
19 overpayment has been recovered or may directly set off,
20 after holding internal administrative proceedings to
21 assure due process, any such overcharges or improperly
22 derived payment against benefits due such person
23 hereunder. Nothing in this section shall be construed to
24 limit any other remedy or civil or criminal penalty
25 provided by law.

§5-16-12. Payment of costs by employer and employee; coverage for employee's spouse and dependents generally; short term continuance of coverage for involuntary employee termination; extended insurance coverage for retired employees with accrued annual leave and sick leave; increased retirement benefits for retired employees with accrued annual and sick leave; additional eligible retired employees; option for health insurance coverage without life insurance coverage made available to retirees; health insurance for surviving dependents of deceased employees.

1 (a) The public employees insurance board is hereby
2 authorized to provide under any contract or contracts
3 entered into under the provisions of this article that the
4 costs of any such group hospital and surgical insurance,
5 group major medical insurance, group life and acciden-
6 tal death insurance benefit plan or plans may be paid
7 by the employer and employee. In addition, each
8 employee shall be entitled to have his spouse and
9 dependents, as defined by the rules and regulations of
10 the public employees insurance board, included in any

11 group hospital and surgical insurance or group major
12 medical insurance coverage: *Provided*, That such spouse
13 and dependent coverage shall be limited to excess
14 coverage for each spouse and dependent who has
15 primary coverage from any other source. For purposes
16 of this section, the term "primary coverage" shall mean
17 individual or group hospital and surgical insurance
18 coverage or individual or group major medical insu-
19 rance coverage in which the spouse or dependent is the
20 named insured or certificate holder. The public em-
21 ployees insurance board may require proof regarding
22 spouse and dependent primary coverage and shall adopt
23 rules and regulations governing the nature, discontinu-
24 ance and resumption of any employee's coverage for his
25 spouse and dependents. The public employees insurance
26 board shall adopt rules and regulations governing the
27 discontinuance and resumption of any employees
28 coverage for his or her spouse and dependents.

29 (b) Should a participating employee be terminated
30 from employment involuntarily or in reduction of work
31 force, the employee's insurance coverage provided under
32 this article shall continue for a period of three months
33 at no additional cost to the employee: *Provided*, That an
34 employee discharged for misconduct shall not be eligible
35 for extended benefits under this section: *Provided*,
36 *however*, That coverage may be extended up to the
37 maximum period of three months, while administrative
38 remedies contesting the charge of misconduct are
39 pursued: *Provided further*, That should the discharge for
40 misconduct be upheld, the full cost of the extended
41 coverage shall be reimbursed by the employee. If the
42 employee is again employed or recalled to active
43 employment within twelve months of his prior termina-
44 tion, he shall not be considered a new enrollee and shall
45 not be required to again contribute his share of the
46 premium cost, if he had already fully contributed such
47 share during the prior period of employment.

48 (c) Except as otherwise provided in subsection (f) for
49 higher education full-time faculty employed on an
50 annual contract basis other than for twelve months,
51 when a participating employee, who has elected to

52 participate in the plan before the first day of July, one
53 thousand nine hundred eighty-eight, is compelled or
54 required by law to retire before reaching the age of
55 sixty-five, or when a participating employee voluntarily
56 retires as provided by law, that employee's accrued
57 annual leave and sick leave, if any, shall be credited
58 toward an extension of the insurance coverage provided
59 by this article, according to the following formulae:
60 Such insurance coverage for a retired employee shall
61 continue one additional month for every two days of
62 annual leave or sick leave, or both, which the employee
63 had accrued as of the effective date of his retirement.
64 For a retired employee, his spouse and dependents, such
65 insurance coverage shall continue one additional month
66 for every three days of annual leave or sick leave, or
67 both, which the employee had accrued as of the effective
68 date of his retirement.

69 (d) Notwithstanding the preceding subsection, except
70 as otherwise provided in subsection (f) for higher
71 education full-time faculty employed on an annual
72 contract basis other than for twelve months, when a
73 participating employee who elects to participate in the
74 plan on and after the first day of July, one thousand nine
75 hundred and eighty-eight, is compelled or required by
76 law to retire before reaching the age of sixty-five, or
77 when such a participating employee voluntarily retires
78 as provided by law, that employee's annual leave or sick
79 leave, if any, shall be credited toward one-half of the
80 premium cost of the insurance provided by this article,
81 for periods and scope of coverage determined according
82 to the following formulae: (1) One additional month of
83 single retiree coverage for every two days of annual
84 leave or sick leave, or both, which the employee had
85 accrued as of the effective date of his or her retirement;
86 (2) One additional month of coverage for a retiree, his
87 or her spouse and dependents for every three days of
88 annual leave or sick leave, or both, which the employee
89 had accrued as of the effective date of his or her
90 retirement. The remaining premium cost shall be borne
91 by such retired employee if he or she elects such
92 coverage. For purposes of this subsection, an employee
93 who has been a participant under spouse or dependent

94 coverage and who reenters the plan within twelve
95 months after termination of his or her prior coverage,
96 shall be considered to have elected to participate in the
97 plan as of the date of commencement of the prior
98 coverage. For purposes of this subsection, an employee
99 shall not be considered a new employee after returning
100 from extended authorized leave on or after the first day
101 of July, one thousand nine hundred eighty-eight.

102 (e) In the alternative to the extension of insurance
103 coverage through premium payment provided in the two
104 preceding subsections, on and after the first day of July,
105 one thousand nine hundred eighty-eight, the participat-
106 ing employee's accrued annual leave and sick leave may
107 be applied, on the basis of two days retirement service
108 credit for each one day of accrued annual and sick leave,
109 toward an increase in the employee's retirement benefits
110 with such days constituting additional credited service
111 in computation of such benefits under any state retire-
112 ment system. However, such credited service shall not
113 be used in meeting initial eligibility for retirement
114 criteria, but only as additional service credited in excess
115 thereof.

116 (f) When a participating employee, who is a higher
117 education full-time faculty member employed on an
118 annual contract basis other than for twelve months, is
119 compelled or required by law to retire, on or after the
120 first day of August, one thousand nine hundred eighty-
121 eight, before reaching the age of sixty-five, or when such
122 a participating employee voluntarily retires as provided
123 by law, on or after the first day of August, one thousand
124 nine hundred eighty-eight, that employee's insurance
125 coverage, as provided by this article, shall be extended
126 according to the following formulae: Such insurance
127 coverage for a retired higher education full-time faculty
128 member, formerly employed on an annual contract basis
129 other than for twelve months, shall continue beyond the
130 effective date of his retirement one additional year for
131 each three and one-third years of teaching service, as
132 determined by uniform guidelines established by the
133 West Virginia board of regents, for individual coverage,
134 or one additional year for each five years of teaching

135 service for "family" coverage.

136 (g) Any employee who retired prior to the twenty-first
137 of April, one thousand nine hundred seventy-two, and
138 who also otherwise meets the conditions of the "retired
139 employee" definition in section two of this article, shall
140 be eligible for insurance coverage under the same terms
141 and provisions of this article. The premium cost for any
142 such coverage as established by the public employees
143 insurance board shall be borne by such retired
144 employee.

145 (h) All retirees under the provisions of this article,
146 including those defined in section two of this article;
147 those retiring prior to the twenty-first day of April, one
148 thousand nine hundred seventy-two; and those hereafter
149 retiring, shall be eligible for and permitted to obtain
150 health insurance coverage. The premium cost for any
151 such coverage as established by the public employees
152 insurance board, shall be borne by such retired
153 employee.

154 (i) A surviving spouse and dependents of a deceased
155 employee, who was either an active or retired employee
156 just prior to such decease, shall be entitled to be
157 included in any group insurance coverage provided
158 under this article, and such spouse and dependents shall
159 bear the premium cost of such insurance coverage. The
160 public employees insurance board shall establish the
161 premium cost of any such coverage.

162 (j) In construing the provisions of this section or any
163 other provisions of this code, the Legislature declares
164 that it is not now nor has it ever been the Legislature's
165 intent that elected public officials be provided any sick
166 leave, annual leave or personal leave, and the enactment
167 of this section is based upon the fact and assumption
168 that no statutory or inherent authority exists extending
169 sick leave, annual leave or personal leave to elected
170 public officials and the very nature of such positions
171 preclude the arising or accumulation of such, so as to
172 be thereafter usable as premium paying credits for
173 which such officials may claim extended insurance
174 benefits.

§5-16-12a. Payment of deductible by employees; annual review of deductible; required deductible option.

1 For each calendar year beginning on and after the
2 first day of January, one thousand nine hundred eighty-
3 eight, each employee and dependent with public
4 employees insurance coverage shall pay a deductible of
5 one hundred dollars per individual per calendar year
6 upon admission to a hospital. The maximum total
7 hospitalization deductible per calendar year shall be one
8 hundred dollars for an employee with individual
9 coverage and two hundred dollars for an employee with
10 "family" coverage.

11 For each calendar year beginning on and after the
12 first day of January, one thousand nine hundred eighty-
13 eight, in addition to the employee percentage payment
14 provisions of the present major medical insurance
15 coverage for amounts exceeding the deductible, each
16 employee and dependent with public employees insu-
17 rance coverage shall pay major medical deductible,
18 excluding outpatient surgery, of one hundred fifty
19 dollars per individual per calendar year with an
20 aggregate of three hundred dollars per family per
21 calendar year.

22 Beginning on the first day of January, one thousand
23 nine hundred eighty-nine, these deductible limits may
24 be reviewed and increased by the director in order to
25 maintain the efficient and solvent operation of the public
26 employees insurance system, except that the major
27 medical maximum will be two hundred dollars per
28 individual per calendar year and the "family" major
29 medical aggregate will be four hundred dollars per
30 calendar year. The increase in deductibles pursuant to
31 the preceding sentence is not subject to the state
32 administrative procedures act in chapter twenty-nine-a
33 of this code and any increase in deductibles shall be
34 effective no sooner than sixty consecutive days after
35 being filed in the state register.

36 The director shall develop, implement and have in
37 place by the thirty-first day of December, one thousand

38 nine hundred eighty-eight, further deductible and
39 employee premium programs which qualify for favor-
40 able federal income tax treatment under section 125 of
41 the Internal Revenue Code to allow employees to choose
42 either deductible limits or deductible withholding from
43 wages payments based upon their individual needs.

**§5-16-12b. Employee percentage payment for outpatient
X rays and laboratory services; maximum
payment specified.**

1 On and after first day of April, one thousand nine
2 hundred eighty-eight, each employee covered by the
3 public employees insurance plan shall pay ten percent,
4 not to exceed one hundred dollars per calendar year, of
5 the cost of any outpatient X rays or outpatient labora-
6 tory services.

**§5-16-12c. Optional dental, optical, mental health, disabili-
ty and prepaid retirement plan.**

1 On and after the first day of July, one thousand nine
2 hundred eighty-nine, the director shall make available
3 to participants in the public employees insurance system
4 (1) a dental insurance plan; (2) an optical insurance plan;
5 (3) an out-patient mental health counseling insurance
6 plan providing for not to exceed twelve visits per year
7 to a professional mental health provider; (4) a disability
8 insurance plan; and (5) a prepaid retirement insurance
9 plan. Public employees insurance participants may elect
10 to participate in any one of these plans separately or in
11 combination. Notwithstanding anything in this article to
12 the contrary, all actuarial and administrative costs of
13 each plan shall be totally borne by the premium
14 payments of the participants or local governing bodies
15 electing to participate in that plan. The director is
16 authorized to employ such administrative practices and
17 procedures with respect to these optional plans as are
18 authorized for the administration of other plans under
19 this article. The director shall establish separate funds
20 (1) for deposit of dental insurance premiums and
21 payment of dental insurance claims, (2) for deposit of
22 optical insurance premium payments and payment of
23 optical insurance claims, (3) for deposit of mental health

24 insurance premium payments and payment of mental
25 health claims, (4) for deposit of disability insurance
26 premium payments and payment of disability insurance
27 claims. Such funds shall not be supplemented by nor be
28 used to supplement any other funds.

§5-16-12d. Preferred provider plan.

1 The public employees insurance board shall, on or
2 before the first day of April, one thousand nine hundred
3 eighty-eight, or as soon as practicable, establish a
4 preferred provider system for the delivery of health care
5 to plan participants by all health care providers,
6 including, but not limited to, medical doctors, chiroprac-
7 tors, physicians, osteopathic physicians, surgeons,
8 hospitals, clinics, nursing homes, pharmacies and
9 pharmaceutical companies.

10 The public employees insurance board shall establish
11 the terms of the preferred provider system and the
12 incentives therefor. The terms and incentives may
13 include multi-year renewal options as are not prohibited
14 by the constitution of this state.

§5-16-12e. Preexisting conditions not covered; defined.

1 A preexisting condition is an injury, sickness or
2 pregnancy, or any condition relating to that injury,
3 sickness or pregnancy, for which a participant receives
4 treatment, incurs expenses or manifest symptoms
5 within three months prior to the effective date of
6 coverage: *Provided*, That a preexisting condition shall
7 not include a condition which meets the definition of
8 handicap as provided in section three, article eleven,
9 chapter five of the code.

10 For all participants enrolling in the plan after the
11 effective date of this section, no payment shall be made
12 for expenses incurred for or in connection with a
13 preexisting condition unless the expenses are incurred
14 after the expiration of a one-year period during which
15 the participant is continuously participating in the plan:
16 *Provided*, That these provisions shall not apply to
17 employees who return from extended authorized leave
18 on or after the effective date of this section.

§5-16-13. Payment of costs by employer; schedule of insurance; special funds created; duties of treasurer with respect thereto.

1 All employers operating from state general revenue or
2 special revenue funds or federal funds or any combina-
3 tion thereof shall budget the cost of insurance coverage
4 provided by the public employees insurance agency to
5 current and retired employees of the employer as a
6 separate line item, titled PEI, in its respective annual
7 budget and shall be responsible for the transfer of funds
8 to the director for the cost of insurance for employees
9 covered by the plan. Each spending unit shall pay to the
10 director its proportionate share from each source of
11 funds. Any agency wishing to charge general revenue
12 funds for insurance benefits for retirees under section
13 twelve of this article must provide documentation to the
14 director that such benefits cannot be paid for by any
15 special revenue account or that the retiring employee
16 has been paid solely with general revenue funds for
17 twelve months prior to retirement.

18 All other employers not operating from the state
19 general revenue fund shall pay to the public employees
20 insurance board their share of premium costs from their
21 respective budgets. The public employees insurance
22 board shall establish such employers' share of premium
23 costs to reflect and pay the actual costs of such coverage:
24 *Provided*, That the difference between premium costs
25 charged to such employers on the effective date of this
26 section and the actual costs to be established by the
27 public employees insurance board shall be eliminated
28 over the two fiscal years next succeeding the effective
29 date of this section.

30 In the event an employer not operating from the state
31 general revenue fund terminates its participation in the
32 plan, said employer shall pay to the public employees
33 insurance board an estimated sum of all incurred but
34 not reported claims relating to coverage of employees of
35 said employer. Said estimate of incurred but not
36 reported claims shall be determined by the public
37 employees insurance board pursuant to standard
38 insurance industry procedures and practices.

39 Unless otherwise provided, the state's contribution for
40 employees of the state of West Virginia, its boards,
41 agencies, commissions, departments, institutions or
42 spending units and county boards of education, shall be,
43 effective July one, one thousand nine hundred seventy-
44 four, all or that portion of the total costs of premiums
45 for each employee's complete insurance and medical
46 benefits package as follows:

47 (a) For each employee who has elected to participate
48 in the plan prior to July one, one thousand nine hundred
49 seventy-four, and is currently employed on and after the
50 first day of July, one thousand nine hundred seventy-
51 four, as an employee of an employer as hereinabove
52 specified, the state's contribution shall be one hundred
53 percent of the total costs of premiums;

54 (b) For each employee of employers as hereinabove
55 specified, who elects to participate in the plan on and
56 after the first day of July, one thousand nine hundred
57 seventy-four, but before the first day of July, one
58 thousand nine hundred eighty-eight, the state's contri-
59 bution shall be seventy percent of the total costs of
60 premiums for a period of one year from the date of such
61 election and shall be one hundred percent of the total
62 costs of premiums for all periods thereafter.

63 (c) For each employee of employers as hereinabove
64 specified, who elects to participate in the plan on and
65 after the first day of July, one thousand nine hundred
66 eighty-eight, the state's contribution shall be seventy
67 percent of the total costs of premiums for a period of
68 one year from the date of such election, eighty percent
69 of the total costs of premiums for the second year after
70 the date of such election, ninety percent of the total costs
71 of premiums for the third year from the date of such
72 election and for all periods thereafter: *Provided*, That
73 the maximum contribution of any participating em-
74 ployee after the second year after the date of such
75 election shall be no more than an amount equal to one
76 and one-half percent of the participating employee's
77 gross annual wage and the remainder of the total
78 premium shall be contributed by the state. For the
79 purposes of this paragraph, any employee shall not be

80 considered a new employee, for purposes of these
81 contribution limits, after returning from extended
82 authorized leave on or after the first day of July, one
83 thousand nine hundred eighty-eight.

84 The contribution of other employers (namely: a
85 county, city or town in the state; any separate corpora-
86 tion or instrumentality established by one or more
87 counties, cities or towns, as permitted by law; any
88 corporation or instrumentality supported in most part
89 by counties, cities or towns; any public corporation
90 charged by law with the performance of a governmental
91 function and whose jurisdiction is coextensive with one
92 or more counties, cities or towns; any organization or
93 agency established by, or approved by the department
94 of mental health for the provision of community health
95 or mental retardation services, and which is supported
96 in part by state, county or municipal funds; and a
97 combined city-county health department created pursu-
98 ant to article two, chapter sixteen of the code) shall be
99 such percentage of the cost of the employees' insurance
100 package as the employers deem reasonable and proper
101 under their own particular circumstances.

102 The employee's proportionate share of the premium or
103 cost shall be withheld or deducted by the employer from
104 such employee's salary or wages as and when paid and
105 such sums shall be forwarded to the public employees
106 insurance board with such supporting data as the public
107 employees insurance board may require.

108 All moneys received by the public employees insu-
109 rance board shall be deposited in a special fund or funds
110 as are necessary in the state treasury and the treasurer
111 of the state shall be custodian of such fund or funds and
112 shall administer such fund or funds in accordance with
113 the provisions of this article or as the director may from
114 time to time direct. The treasurer shall pay all warrants
115 issued by the state auditor against such fund or funds
116 as the director may direct in accordance with the
117 provisions of this article. On and after the first day of
118 July, one thousand nine hundred eighty-eight, all
119 payments previously required to be made to the public
120 employees insurance board shall be made to the public

121 employees insurance agency.

§5-16-13a. Authorization to assess premiums and adjust rates; maximum amount established; procedure for imposition.

1 (a) *Authorization.*—Notwithstanding any provisions
2 in this article to the contrary the director is authorized
3 pursuant to limitations provided in this section to assess
4 a monthly health insurance premium which shall
5 provide differing rates for family and individual
6 coverage not to exceed the maximum amount, as
7 specified in subsection (b), upon each employee of the
8 state of West Virginia, its boards, agencies, commis-
9 sions, departments, institutions or spending units and
10 county boards of education who has elected to partici-
11 pate in the plan and to similarly adjust the premium
12 rates charged to other employers (namely: a county, city
13 or town in the state, any separate corporation or
14 instrumentality established by one or more counties,
15 cities or towns, as permitted by law; any corporation or
16 instrumentality supported in most part by counties,
17 cities or towns; any public corporation charged by law
18 with the performance of a governmental function and
19 whose jurisdiction is coextensive with one or more
20 counties, cities or towns; any organization or agency
21 established by or approved by the department of mental
22 health for the provision of community mental health or
23 mental retardation services, and which is supported in
24 part by state, county or municipal funds; and a
25 combined city-county health department created pursu-
26 ant to article two, chapter sixteen of the code) who may
27 elect to pass through such premium rate adjustment to
28 their employees who have elected to participate in the
29 plan.

30 (b) *Maximum amount.*—For purposes of subsection (a)
31 the maximum amount shall be one and one-half percent
32 of the participating employee's gross monthly wage:
33 *Provided,* That the maximum amount shall be reduced
34 but not below zero by such employee's monthly share of
35 health insurance premium costs incurred pursuant to
36 section thirteen of this article.

37 (c) *Rules and regulations.*—Premium assessments
38 established or increased pursuant to this section shall be
39 implemented by rules and regulations of the director
40 promulgated in accordance with chapter twenty-nine-a
41 of this code: *Provided*, That notwithstanding anything in
42 article three, chapter twenty-nine-a of this code to the
43 contrary, it is hereby deemed that an emergency does
44 not and will not hereafter exist with respect to imple-
45 menting by rule and regulation employee premiums
46 authorized by this section.

47 (d) *Collection.*—The premium assessment shall be
48 withheld or deducted by the employer from such
49 employee's salary or wages as and when paid and such
50 funds shall be forwarded to the director with such
51 supporting data as the director may require.

§5-16-14. Authorization to take advantage of acts of Congress, accept gifts, grants and matching funds.

1 The public employees insurance board is authorized
2 to take full advantage of the benefits and provisions of
3 any acts of Congress and to accept any and all gifts,
4 grants and matching funds, whether in the form of
5 money or services.

§5-16-15. Expense fund.

1 The Legislature shall annually appropriate such sums
2 as may be necessary to pay the proportionate share of
3 the administrative costs for the state as an employer,
4 and each division, agency, board, commission or
5 department of the state which operates out of special
6 revenue funds or federal funds or both shall pay its
7 proportionate share of the administrative costs of the
8 insurance plan or plans authorized under the provisions
9 of this article. All other employers not operating from
10 the state general revenue fund shall pay their propor-
11 tionate share of the administrative costs of the insurance
12 plan or plans authorized under the provisions of this
13 article.

§5-16-16. No member or employee of public employees insurance agency shall gain directly or

indirectly from any contract or contracts provided for hereunder; criminal penalties.

1 No elected or appointed official of the state of West
2 Virginia; nor any member, officer, or employees of the
3 Legislature; nor any officer, agent, servant or employee
4 in the executive branch of state government shall have
5 any interest, direct or indirect, in the gain or profits
6 arising from any contract or contracts provided for in
7 this article. Any such person who shall gain, directly or
8 indirectly, from any contract or contracts herein
9 provided for, except as an insured beneficiary thereof,
10 shall be guilty of a misdemeanor, and, upon conviction
11 thereof, shall be punished by a fine not exceeding one
12 thousand dollars, or by imprisonment in the county jail
13 for a period not exceeding one year, or by both, in the
14 discretion of the court: *Provided*, That nothing in this
15 section shall be construed to prohibit an elected or
16 appointed official of this state, nor an employee of the
17 legislative, judicial or executive branches from provid-
18 ing health care or entering into contracts provided for
19 in section twelve-d of this article.

§5-16-17. Permissive participation; exemptions.

1 The provisions of this article shall not be mandatory
2 upon any employee or employer who is not an employee
3 of or is not the state of West Virginia, its boards,
4 agencies, commissions, departments, institutions or
5 spending units or a county board of education, and
6 nothing contained in this article shall be construed so
7 as to compel any employee or employer to enroll in or
8 subscribe to, any insurance plan authorized by the
9 provisions of this article.

10 Those employees enrolled in the insurance program
11 authorized under the provisions of article two-b, chapter
12 twenty-one-a of this code shall not be required to enroll
13 in or subscribe to an insurance plan or plans authorized
14 by the provisions of this article, and the employees of
15 any department which has an existing insurance
16 program for its employees to which the government of
17 the United States contributes any part or all of the
18 premium or cost thereof may be exempted from the

19 provisions of this article. Any employee or employer
20 exempted under the provisions of this paragraph may
21 enroll in any insurance program authorized by the
22 provisions of this article at any time, to the same extent
23 as any other qualified employee or employer, but any
24 such employee or employer shall not remain enrolled in
25 both such programs. The provisions of articles fourteen,
26 fifteen and sixteen, chapter thirty-three of the code,
27 relating to group life insurance, accident and sickness
28 insurance, and group accident and sickness insurance,
29 shall not be applicable to the provisions of this article
30 whenever the provisions of said articles and chapter are
31 in conflict with or contrary to any provision set forth
32 herein.

33 Employers, other than the state of West Virginia, its
34 boards, agencies, commissions, departments, institu-
35 tions, spending units, or a county board of education
36 shall be exempt from participating in the insurance
37 program provided for by the provisions of this article
38 unless participation by the employer has been approved
39 by a majority vote of the employer's governing body. It
40 shall be the duty of the clerk or secretary of the
41 governing body of an employer who by such majority
42 vote becomes a participant in the insurance program to
43 notify the public employees insurance board not later
44 than ten days after such vote.

**§5-16-17a. Members of Legislature may be covered, if
cost of the entire coverage is paid by such
members.**

1 Notwithstanding the definition of the term "employee"
2 contained in section two of this article and notwithstand-
3 ing any other provision of this article to the contrary,
4 members of the Legislature may participate in and be
5 covered by any insurance plan or plans authorized
6 hereunder for state officers and employees, except that
7 all members of the Legislature who elect to participate
8 in or to be covered by any such plan or plans shall pay
9 their proportionate individual share of the full cost for
10 all group coverage on themselves and their spouses and
11 dependents, so that there will be no cost to the state for
12 the coverage of any such members, spouses and depend-

13 ents.

§5-16-18. Rules and regulations for administration of article; eligibility of certain retired employees and dependents of deceased members for coverage; employees on medical leave of absence entitled to coverage; life insurance.

1 The public employees insurance board or director
2 shall promulgate such rules and regulations as may be
3 required for the effective administration of the provi-
4 sions of this article. Unless otherwise specifically
5 provided, all rules and regulations of the public
6 employees insurance board or director and all hearings
7 held by the public employees insurance board or
8 director shall be exempt from the provisions of chapter
9 twenty-nine-a of the code. Any rules and regulations
10 now in existence promulgated by the public employees
11 insurance board shall remain in full force and effect
12 until they are amended or replaced by the public
13 employees insurance board pursuant to law.

14 Such regulations shall provide that any employee of
15 the state who has been compelled or required by law to
16 retire before reaching the age of sixty-five years shall
17 be eligible to participate in the public employees' health
18 insurance program at his own expense for the cost of
19 coverage after any extended coverage to which he, his
20 spouse and dependents may be entitled by virtue of his
21 accrued annual leave or sick leave, pursuant to the
22 provisions of section twelve of this article, has expired.
23 The dependents of any deceased member shall be
24 entitled to continue their participation and coverage
25 upon payment of the total cost for such coverage. Any
26 employee who voluntarily retires, as provided by law,
27 shall be eligible to participate in the public employees'
28 health insurance program at his own expense for the
29 cost of coverage after any extended coverage to which
30 he, his spouse and dependents may be entitled by virtue
31 of his accrued annual leave or sick leave, pursuant to
32 the provisions of section twelve of this article, has
33 expired.

34 Any employee who is on a medical leave of absence,
35 approved by his employer, shall, subject to the following
36 provisions of this paragraph, be entitled to continue his
37 coverage until he returns to his employment, and such
38 employee and employer shall continue to pay their
39 proportionate share of premium costs as provided by
40 this article: *Provided*, That the employer shall be
41 obligated to pay its proportionate share of the premium
42 cost only for a period of one year: *Provided, however*,
43 That during the period of such leave of absence, the
44 employee shall, at least once each month, submit to the
45 employer the statement of a qualified physician certifying
46 that the employee is unable to return to work.

47 Any retiree, retiring heretofore or hereafter, shall be
48 eligible to participate in the public employees' life
49 insurance program, including the optional life insurance
50 coverage as already available to active employees under
51 this article, at his own expense for the cost of coverage,
52 based upon actuarial experience; and the public em-
53 ployees insurance board shall prepare, by rule and
54 regulation, for such participation and coverages under
55 declining term insurance and optional additional
56 coverage for such retirees.

§5-16-19. Reserve fund.

1 In the event that the budgeted allocation to the public
2 employees insurance board or agency exceeds actual
3 costs in any given month, the public employees insu-
4 rance board or director shall deposit those moneys in a
5 reserve fund maintained by the public employees
6 insurance board or director, for the exclusive purpose
7 of offsetting any future increases in health care costs.

§5-16-20. Quarterly report.

1 By the thirtieth day of October, one thousand nine
2 hundred eighty-eight, and on or before the thirtieth day
3 of January, April, July and October of each year
4 thereafter, the director shall prepare and present to the
5 joint committee on government and finance a quarterly
6 report setting forth:

7 (a) A summary of the cost to the plan of health care

8 claims incurred in the preceding calendar quarter;

9 (b) A summary of the funds accrued to the plan by
10 legislative appropriation, employer and employee
11 premiums or otherwise in the preceding calendar
12 quarter for payment of health care claims;

13 (c) An explanation of all health care cost containment
14 measures, increased premium rates and any other plan
15 changes adopted by the director in the preceding
16 calendar quarter and estimated cost savings and
17 enhanced revenues resulting therefrom, and a certifica-
18 tion that the director made a good faith effort to develop
19 and implement all reasonable health care cost contain-
20 ment alternatives;

21 (d) Expected claim costs for the next calendar year;

22 (e) Such other information as the director deems
23 appropriate; and

24 (f) Any other financial or other information as may be
25 requested by the joint committee on government and
26 finance.

§5-16-21. Severability.

1 If any provision of this article or the application
2 thereof to any person or circumstance is held unconsti-
3 tutional or invalid, such unconstitutionality or invalidity
4 shall not affect other provisions or applications of the
5 article, and to this end the provisions of this article are
6 declared to be severable.

CHAPTER 103

(Com. Sub. for S. B. 130—By Senator Tucker)

[Passed March 11, 1988; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twelve, relating to leave of absence for public officials in order to perform official public duties; exceptions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. TERMS OF OFFICE; MATTERS AFFECTING THE RIGHT TO HOLD OFFICE.

§6-5-12. Leave of absence for public officials for performing public duties.

1 Any persons elected to a part-time public office or
2 appointed to a part-time elected public office shall be
3 entitled to a leave of absence from his or her private
4 employment except when such employment is with an
5 employer employing five or fewer persons on a full-time
6 basis on the days or portion of any day during which
7 he or she is engaged in performing the duties of his or
8 her public office. The leave of absence shall not result
9 in any penalty being imposed upon the persons entitled
10 to the leave of absence: *Provided*, That such leave of
11 absence may be without pay by the private employer.

CHAPTER 104

(H. B. 4364—By Delegate Kelly)

[Passed March 11, 1988; in effect July 1, 1988. 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 six-c, relating to public employees; defining terms applicable to article; prohibiting discrimination or retaliation against a public employee, or "whistle-blower," who reports an actual or suspected violation of state, local or federal law or who participates in any hearing, investigation, legislative inquiry or court action; allowing the whistle-blower to seek redress in a civil action charging discrimination or retaliation; providing a time limitation on civil action; placing on the whistle-blower the

burden of proof in a civil action; providing that justification of the acts complained of is a defense; allowing evidence of retaliation or discrimination to be presented in civil service proceedings; providing alternative remedies for whistle-blower prevailing in civil action; providing for a civil fine and allowing suspension from public service for violations; placing limitations on the scope of construction of this article; and requiring notice by employer to employee of the protections afforded whistle-blowers.

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 six-c, to read as follows:

CHAPTER 6C. PUBLIC EMPLOYEES.

ARTICLE 1. WHISTLE-BLOWER LAW.

§6C-1-1. Short title.

§6C-1-2. Definitions.

§6C-1-3. Discriminatory and retaliatory actions against whistle-blowers prohibited.

§6C-1-4. Civil action by whistle-blower for violation; limitation on actions; burden of proof; defense; use of evidence in civil service proceeding.

§6C-1-5. Redress for whistle-blower.

§6C-1-6. Civil penalty; suspension from public service.

§6C-1-7. Limitations on scope of construction.

§6C-1-8. Notice to employees of protection of whistle-blowers.

§6C-1-1. Short title.

- 1 This article shall be known, and may be cited, as the
- 2 "Whistle-blower Law."

§6C-1-2. Definitions.

- 1 The following words and phrases when used in this
- 2 article have the meanings given to them in this section
- 3 unless the context clearly indicates otherwise:

- 4 (a) "Appropriate authority" means a federal, state,
- 5 county or municipal government body, agency or
- 6 organization having jurisdiction over criminal law
- 7 enforcement, regulatory violations, professional conduct
- 8 or ethics, or waste; or a member, officer, agent,

10 agency or organization. The term includes, but is not
11 limited to, the office of the attorney general, the office
12 of the state auditor, the commission on special investi-
13 gations, the Legislature and committees of the Legisla-
14 ture having the power and duty to investigate criminal
15 law enforcement, regulatory violations, professional
16 conduct or ethics, or waste.

17 (b) "Employee" means a person who performs a full
18 or part-time service for wages, salary, or other remun-
19 eration under a contract of hire, written or oral, express
20 or implied, for a public body.

21 (c) "Employer" means a person supervising one or
22 more employees, including the employee in question, a
23 superior of that supervisor, or an agent of a public body.

24 (d) "Good faith report" means a report of conduct
25 defined in this article as wrongdoing or waste which is
26 made without malice or consideration of personal
27 benefit and which the person making the report has
28 reasonable cause to believe is true.

29 (e) "Public body" means any of the following:

30 (1) A department, division, officer, agency, bureau,
31 board, commission, court in its nonjudicial functions
32 only, council, institution, spending unit, authority or
33 other instrumentality of the state of West Virginia;

34 (2) A commission, council, department, agency, board,
35 court, in its nonjudicial functions only, official, special
36 district, corporation or other instrumentality of a county
37 or a municipality or a regional or joint governing body
38 of one or more counties or municipalities; or

39 (3) Any other body which is created by state or
40 political subdivision authority or which is funded by
41 thirty-five percent or more by or through state or
42 political subdivision authority, or a member or employee
43 of that body.

44 (f) "Waste" means an employer or employee's conduct
45 or omissions which result in substantial abuse, misuse,
46 destruction or loss of funds or resources belonging to or
47 derived from federal, state or political subdivision

48 sources.

49 (g) "Whistle-blower" means a person who witnesses or
50 has evidence of wrongdoing or waste while employed
51 with a public body and who makes a good faith report
52 of, or testifies to, the wrongdoing or waste, verbally or
53 in writing, to one of the employee's superiors, to an
54 agent of the employer or to an appropriate authority.

55 (h) "Wrongdoing" means a violation which is not of a
56 merely technical or minimal nature of a federal or state
57 statute or regulation, of a political subdivision ordinance
58 or regulation or of a code of conduct or ethics designed
59 to protect the interest of the public or the employer.

**§6C-1-3. Discriminatory and retaliatory actions against
whistle-blowers prohibited.**

1 (a) No employer may discharge, threaten or otherwise
2 discriminate or retaliate against an employee by
3 changing the employee's compensation, terms, condi-
4 tions, location or privileges of employment because the
5 employee, acting on his own volition, or a person acting
6 on behalf of or under the direction of the employee,
7 makes a good faith report or is about to report, verbally
8 or in writing, to the employer or appropriate authority
9 an instance of wrongdoing or waste.

10 (b) No employer may discharge, threaten or otherwise
11 discriminate or retaliate against an employee by
12 changing the employee's compensation, terms, condi-
13 tions, location or privileges of employment because the
14 employee is requested or subpoenaed by an appropriate
15 authority to participate in an investigation, hearing or
16 inquiry held by an appropriate authority or in a court
17 action.

**§6C-1-4. Civil action by whistle-blower for violation;
limitation on actions; burden of proof; de-
fense; use of evidence in civil service
proceeding.**

1 (a) A person who alleges that he is a victim of a
2 violation of this article may bring a civil action in a
3 court of competent jurisdiction for appropriate injunc-
4 tive relief or damages, or both, within one hundred

5 eighty days after the occurrence of the alleged violation.

6 (b) An employee alleging a violation of this article
7 must show by a preponderance of the evidence that,
8 prior to the alleged reprisal, the employee, or a person
9 acting on behalf of or under the direction of the
10 employee, had reported or was about to report in good
11 faith, verbally or in writing, an instance of wrongdoing
12 or waste to the employer or an appropriate authority.

13 (c) It shall be a defense to an action under this section
14 if the defendant proves by a preponderance of the
15 evidence that the action complained of occurred for
16 separate and legitimate reasons, which are not merely
17 pretexts.

18 (d) An employee covered by the civil service system
19 who contests a civil service action, believing it to be
20 motivated by his having made a disclosure of informa-
21 tion may submit as admissible evidence any or all
22 material relating to the action as whistle-blower and to
23 the resulting alleged reprisal.

§6C-1-5. Redress for whistle-blower.

1 A court, in rendering a judgment for the complainant
2 in an action brought under this article, shall order, as
3 the court considers appropriate, reinstatement of the
4 employee, the payment of back wages, full reinstatement
5 of fringe benefits and seniority rights, actual
6 damages or any combination of these remedies. A court
7 may also award the complainant all or a portion of the
8 costs of litigation, including reasonable attorney fees
9 and witness fees, if the court determines that the award
10 is appropriate.

§6C-1-6. Civil penalty; suspension from public service.

1 A person who, as an employer or under color of an
2 employer's authority, violates this article is liable for a
3 civil fine of not more than five hundred dollars.
4 Additionally, except where the person holds a public
5 office by election or appointment, if the court specifically
6 finds that the person, while in the employment of
7 the state or a political subdivision, committed a violation
8 of section three of this article with the intent to

9 discourage the disclosure of information, the court may
10 order the person's suspension from public service for not
11 more than six months. A civil fine which is collected
12 under this section shall be paid to the state treasurer
13 for deposit into the general fund.

§6C-1-7. Limitations on scope of construction.

1 The provisions of this article shall not be construed to
2 require an employer to compensate an employee for
3 participation in an investigation, hearing or inquiry
4 held by an appropriate authority or impair the rights
5 of any person under a collective bargaining or other
6 labor management agreement.

§6C-1-8. Notice to employees of protection of whistle-blowers.

1 An employer shall post notices and use other approp-
2 riate means to notify employees and keep them informed
3 of protections and obligations set forth in the provisions
4 of this article.

CHAPTER 105

(Com. Sub. for H. B. 4527—By Mr. Speaker, Mr. Chambers, and Delegate Swann,
by request of the Executive)

[Passed March 9, 1988; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, five, six, eight, twelve, thirteen, fourteen and fifteen, article one, chapter five-d of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the public energy authority; purposes; definitions; authorizing the acquisition, lease, lease with an option to purchase by the lessee, or sale of electric power projects and natural gas transmission projects; authorizing the financing of such electric power projects and natural gas transmission projects by loans from the authority; authority contracts for facilities leased to persons other than governmental agencies; authorizing the issuance of bonds by the authority under certain circumstances;

providing for the method for issuing bonds; providing for the security for and payment of bonds; providing for the sale of property; and adding by-products of coal as a source of fuel for electric power projects.

Be it enacted by the Legislature of West Virginia:

That sections two, three, five, six, eight, twelve, thirteen, fourteen and fifteen, article one, chapter five-d of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 1. PUBLIC ENERGY AUTHORITY OF THE STATE OF WEST VIRGINIA.

§5D-1-2. Purpose and intent.

§5D-1-3. Definitions.

§5D-1-5. Powers, duties and responsibilities of authority generally.

§5D-1-6. Authority may construct, finance, lease, sell, maintain, etc., electric power projects and transmission facilities.

§5D-1-8. Annual report to governor and Legislature; audit.

§5D-1-12. Maintenance, operation and repair of projects.

§5D-1-13. Bonds lawful investments.

§5D-1-14. Exemption from taxation.

§5D-1-15. Acquisition of property by authority—Acquisition by purchase, lease or eminent domain; governmental agencies authorized to convey, etc., property by authority.

§5D-1-2. Purpose and intent.

1 The Legislature finds and declares:

2 (a) That the long-term health and economy of the
3 United States will depend upon the availability of
4 reliable sources of energy;

5 (b) That the state of West Virginia has abundant
6 reserves of coal, natural gas and other natural resources;

7 (c) That the economy of the state of West Virginia
8 needs a reliable and dependable market for the state's
9 coal, natural gas and other natural resources and the by-
10 products thereof;

11 (d) That the state of West Virginia needs to encourage
12 the efficient utilization and disposition of by-products
13 resultant from the production of natural resources;

14 (e) That, with all due regard to the protection of the
15 environment and husbandry of the natural resources of

16 this state, the health, happiness, safety, right of gainful
17 employment and general welfare of the citizens of this
18 state will be promoted by the establishment and
19 operation of coal fired electric generating plants and
20 transmission facilities and the establishment and
21 operation of natural gas transmission projects and/or
22 other energy projects; and

23 (f) That the means and measures herein authorized
24 for the financing, building and operation of the facilities
25 described in subsection (e) are, as a matter of public
26 policy, for the public purpose of the state.

27 Accordingly, the public energy authority created
28 herein shall be authorized to initiate such directives and
29 take such measures as may be necessary to effectuate
30 the public purpose of this chapter.

§5D-1-3. Definitions.

1 As used in this article, unless the context clearly
2 requires a different meaning:

3 (1) "Authority" means the West Virginia public
4 energy authority created in section four of this article,
5 the duties, powers, responsibilities and functions of
6 which are specified in this article.

7 (2) "Board" means the West Virginia public energy
8 authority board created in section four of this article,
9 which shall manage and control the West Virginia
10 public energy authority.

11 (3) "Bond" means a revenue bond, or note or other
12 evidence of indebtedness, including, but not limited to,
13 a taxable bond and commercial paper, issued by the
14 West Virginia economic development authority or by the
15 authority to effect the intents and purposes of this
16 article.

17 (4) "Construction" includes construction, acquisition,
18 reconstruction, enlargement, improvement and provid-
19 ing furnishings or equipment.

20 (5) "Cost" as applied to natural gas transmission
21 projects, electric power projects or other energy projects
22 authorized by the authority includes, but is not limited

23 to: The cost of their acquisition and construction,
24 including all costs pertaining to pipelines; the cost of
25 acquisition of all land, rights-of-way, property rights,
26 easements, franchise rights, contract rights, lease rights
27 and other rights or interests required by the authority
28 for such acquisition and construction; the cost of
29 demolishing or removing any pipeline, buildings or
30 structures on land so acquired, including the cost of
31 acquiring any lands to which such pipelines, buildings
32 or structures may be moved; the cost of acquiring or
33 constructing and equipping a principal office and
34 suboffices of the authority; the cost of diverting
35 highways, interchange of highways and access roads to
36 private property, including the cost of land or easements
37 therefor; the cost of all machinery, furnishings and
38 equipment, all financing charges, and interest prior to
39 and during construction and after completion of
40 construction; the cost of all engineering services and all
41 expenses of research and development with respect to
42 natural gas transmission projects, electric power
43 projects, and related facilities; the cost of all legal
44 services and expenses; the cost of all plans, specifica-
45 tions, surveys and estimates of cost and revenues; all
46 working capital and other expenses necessary or
47 incident to determining the feasibility or practicability
48 of acquiring or constructing any such projects; all
49 administrative expenses and such other expenses as may
50 be necessary or incident to the acquisition or construc-
51 tion of any such projects; the financing of such acqui-
52 sition or construction, and the cost of financing of the
53 placing of any such project in operation. Any obligation
54 or expenses incurred after the effective date of this
55 article by any person, with the approval of the authority,
56 for surveys, borings, preparation of plans and specifica-
57 tions and other engineering services in connection with
58 the acquisition or construction of a project shall be
59 regarded as a part of the cost of such project and shall
60 be reimbursed out of the proceeds of loans or bonds as
61 authorized by the provisions of this article.

62 (6) "End-user" means any person who consumes or
63 uses natural gas in connection with any industrial,
64 commercial, residential or other use, except that such

65 term shall not include any person purchasing such
66 natural gas for resale to another person. For purposes
67 of this article, the term end-user shall include local
68 distribution companies and intrastate pipelines as
69 defined in article three, chapter twenty-four of this code.

70 (7) "Electric power project" means the complex of
71 structures, machinery and associated equipment for the
72 generation or transmission of electricity including the
73 production and distribution of other energy produced
74 from coal, natural gas and by-products of coal occurring
75 as a result of the production of coal, and all facilities
76 related or incidental thereto.

77 (8) "Governmental agency" means the state govern-
78 ment or any agency, department, division or unit
79 thereof; counties; municipalities; public service districts;
80 regional governmental authorities and any other
81 governmental agency, entity, political subdivision,
82 public corporation or agency; the United States govern-
83 ment or any agency, department, division or unit
84 thereof; and any agency, commission or authority
85 established pursuant to an interstate compact or
86 agreement.

87 (9) "Local distribution company" means any person,
88 other than any interstate pipeline or any intrastate
89 pipeline, engaged in transportation or local distribution
90 of natural gas and the sale of natural gas for ultimate
91 consumption.

92 (10) "Natural gas transmission project" means any
93 natural gas pipeline and all facilities necessary or
94 incident to the transportation of natural gas to or for the
95 benefit of industrial or other end-users in West Virginia,
96 the acquisition or construction of which is financed, in
97 whole or in part, by the West Virginia public energy
98 authority or the acquisition or construction of which is
99 financed, in whole or in part, from funds made available
100 by grant, loan or any other source by, or through, the
101 authority as provided in this article, including facilities,
102 the acquisition or construction of which is authorized,
103 in whole or in part, by the West Virginia public energy
104 authority or the acquisition or construction of which is

105 financed, in whole or in part, from funds made available
106 by grant, loan or any other source by, or through, the
107 authority as provided in this article, including all
108 pipelines, buildings and facilities which the authority
109 deems necessary for the operation of the project,
110 together with all property, rights, easements and
111 interests which may be required for the operation of the
112 project.

113 (11) "Owner" includes all persons having any title or
114 interest in any property rights, easements and interests
115 authorized to be acquired by this article.

116 (12) "Person" means any public or private corpora-
117 tion, institution, association, firm or company organized
118 or existing under the laws of this or any other state or
119 country; the United States or the state of West Virginia;
120 any federal or state governmental agency; political
121 subdivision; county commission; municipality; industry;
122 public service district; partnership; trust; estate; person
123 or individual; and group of persons or individuals acting
124 individually or as a group or any other legal entity
125 whatever.

126 (13) "Pipeline" or "pipelines" means any actual lines
127 of pipe for the transmission and distribution of natural
128 gas together with all appurtenances, facilities, struc-
129 tures, equipment, machinery and other items related to
130 the transmission and distribution of gas through lines
131 of pipe.

132 (14) "Revenue" means any money or thing of value
133 collected by, or paid to, the West Virginia public energy
134 authority as rents, loan payments, installment pay-
135 ments, or other proceeds of sale, rates, user fees, service
136 charges or other charges for the electric power produced
137 by, for the use of, for the lease, the lease with an option
138 to purchase or the purchase of, or in connection with any
139 electric power project; or as rent, use, transportation or
140 service fee or charge for use of, or in connection with,
141 any natural gas transmission project; or other money or
142 property from any source which is received and may be
143 expended for or pledged as revenues pursuant to this
144 article.

§5D-1-5. Powers, duties and responsibilities of authority generally.

1 The West Virginia public energy authority is hereby
2 granted, has and may exercise all powers necessary or
3 appropriate to carry out and effectuate its corporate
4 purpose. The authority shall have the power and
5 capacity to:

6 (1) Adopt, and from time to time, amend and repeal
7 bylaws necessary and proper for the regulation of its
8 affairs and the conduct of its business and rules and
9 regulations to implement and make effective its powers
10 and duties, such rules and regulations to be promul-
11 gated in accordance with the provisions of chapter
12 twenty-nine-a of this code.

13 (2) Adopt and use an official seal and alter the same
14 at pleasure.

15 (3) Maintain a principal office and, if necessary,
16 regional suboffices at locations properly designated or
17 provided.

18 (4) Sue and be sued in its own name and plead and
19 be impleaded in its own name, and particularly to
20 enforce the obligations and covenants made under this
21 article. Any actions against the authority shall be
22 brought in the circuit court of Kanawha County.

23 (5) Acquire, whether by purchase, construction, gift,
24 lease, lease-purchase or otherwise, any electric power
25 project or natural gas transmission project. In the event
26 that an electric power project to be constructed pursu-
27 ant to this article is designed to utilize coal wastes for
28 the generation of electricity or the production of other
29 energy, such project shall also be capable of using coal
30 as its primary energy input: *Provided*, That it shall be
31 demonstrated to the authority's satisfaction that quan-
32 tities of coal wastes exist in amounts sufficient to
33 provide energy input for such project for the term of the
34 bonds or notes issued by the authority to finance the
35 project and are accessible to the project.

36 (6) Lease, lease with an option by the lessee to
37 purchase, sell, by installment sale or otherwise, or

38 otherwise dispose of, to persons other than governmental
39 agencies, any or all of its electric power projects or
40 natural gas transmission projects for such rentals or
41 amounts and upon such terms and conditions as the
42 public energy authority board may deem advisable.

43 (7) Finance one or more electric power projects or
44 natural gas transmission projects by making secured
45 loans to persons other than governmental agencies to
46 provide funds for the acquisition, by purchase, construc-
47 tion or otherwise, of any such project or projects.

48 (8) Issue bonds for the purpose of financing the cost
49 of acquisition and construction of one or more electric
50 power projects or natural gas transmission projects or
51 any additions, extensions or improvements thereto
52 which will be sold, leased with an option by the lessee
53 to purchase, leased or otherwise disposed of to persons
54 other than governmental agencies or for the purpose of
55 loaning the proceeds thereof to persons other than
56 governmental agencies for the acquisition and construc-
57 tion of said projects or both. Such bonds shall be issued
58 and the payment of such bonds secured in the manner
59 provided by the applicable provisions of sections seven,
60 eight, nine, ten, eleven, twelve, thirteen and seventeen,
61 article two-c, chapter thirteen of this code: *Provided,*
62 That the principal and interest on such bonds shall be
63 payable out of the revenues derived from the lease, lease
64 with an option by the lessee to purchase, sale or other
65 disposition of or from loan payments in connection with
66 the electric power project or natural gas transmission
67 project for which the bonds are issued, or any other
68 revenue derived from such electric power project or
69 natural gas transmission project.

70 (9) In the event that the electric power project or
71 natural gas transmission project is to be constructed or
72 owned by a governmental agency, apply to the economic
73 development authority for the issuance of bonds payable
74 solely from revenues as provided in article fifteen,
75 chapter thirty-one of this code: *Provided,* That the
76 economic development authority shall not issue any such
77 bonds except by an act of general law: *Provided,*
78 *however,* That the authority shall require that in the

79 construction of any such project, prevailing wages shall
80 be paid as part of a project specific agreement which
81 also takes into account terms and conditions contained
82 in the West Virginia-Ohio valley market retention and
83 recovery agreement or a comparable agreement.

84 (10) Acquire by gift or purchase, hold and dispose of
85 real and personal property in the exercise of its powers
86 and the performance of its duties as set forth in this
87 article.

88 (11) Acquire in the name of the state, by purchase or
89 otherwise, on such terms and in such manner as it
90 deems proper, or by the exercise of the right of eminent
91 domain in the manner provided in chapter fifty-four of
92 this code, such real property or parts thereof or rights
93 therein, rights-of-way, property, rights, easements and
94 interests it deems necessary for carrying out the
95 provisions of this article, and compensation shall be paid
96 for public or private lands so taken; and the authority
97 may sell any of the real property or parts thereof or
98 rights therein, rights-of-way, property, rights, ease-
99 ments and interests acquired hereunder in such manner
100 and upon such terms and conditions as the authority
101 deems proper: *Provided*, That if the authority deter-
102 mines that land or an interest therein acquired by the
103 authority through the exercise of the power of eminent
104 domain for the purpose of this article is no longer
105 necessary or useful for such purposes, and if the
106 authority desires to sell such land or interest therein, the
107 authority shall first offer to sell such land or interest to
108 the owner or owners from whom it was acquired, at a
109 price equal to its fair market value: *Provided, however*,
110 That if the prior owner or owners shall decline to
111 reacquire the land or interest therein, the authority
112 shall be authorized to dispose of such property by direct
113 sale, auction, or competitive bidding. In no case shall
114 such land or an interest therein acquired under this
115 subdivision be sold for less than its fair market value.
116 This article does not authorize the authority to take or
117 disturb property or facilities belonging to any public
118 utility or to a common carrier, which property or
119 facilities are required for the proper and convenient

120 operation of such public utility or common carrier,
121 except for the acquisition of easements or rights-of-way
122 which will not unreasonably interfere with the operation
123 of the property or facilities of such public utility or
124 common carrier, and in the event of the taking or
125 disturbance of property or facilities of public utility or
126 common carrier, provision shall be made for the
127 restoration, relocation or duplication of such property or
128 facilities elsewhere at the sole cost of the authority.

129 The term "real property" as used in this article is
130 defined to include lands, structures, franchises and
131 interests in land, including lands under water and
132 riparian rights, and any and all other things and rights
133 usually included within the said term, and includes also
134 any and all interests in such property less than full title,
135 such as easements, rights-of-way, uses, leases, licenses
136 and all other incorporeal hereditaments and every
137 estate, interest or right, legal or equitable, including
138 terms for years and liens thereon by way of judgments,
139 mortgages or otherwise, and also all claims for damages
140 for such real estate.

141 For the purposes of this section "fair market value"
142 shall be determined by an appraisal made by an
143 independent person or firm chosen by the authority. The
144 appraisal shall be performed using the principles
145 contained in the "Uniform Appraisal Standards for
146 Federal Land Acquisitions" published under the auspi-
147 ces of the Interagency Land Acquisition Conference,
148 United States Government Printing Office, 1972.

149 (12) Make and enter into all contracts and agreements
150 and execute all instruments necessary or incidental to
151 the performance of its duties and the execution of its
152 powers: *Provided*, That if any electric power project or
153 natural gas transmission project is to be constructed by
154 a person other than a governmental agency, and with
155 whom the authority has contracted to lease, sell or
156 finance such project upon its completion, then the
157 authority shall not be required to comply with the
158 provisions of article twenty-two, chapter five of this code
159 requiring the solicitation of competitive bids for the
160 construction of such a project.

161 (13) Employ managers, superintendents and other
162 employees, and retain or contract with consulting
163 engineers, financial consultants, accountants, architects,
164 attorneys, and such other consultants and independent
165 contractors as are necessary in its judgment to carry out
166 the provisions of this article, and fix the compensation
167 or fees thereof. All expenses thereof shall be payable
168 solely from the proceeds of bonds issued by the economic
169 development authority, from the proceeds of bonds
170 issued by or loan payments, lease payments or other
171 payments received by the authority, from revenues and
172 from funds appropriated for such purpose by the
173 Legislature.

174 (14) Receive and accept from any federal agency, or
175 any other source, grants for or in aid of the construction
176 of any project or for research and development with
177 respect to electric power projects, natural gas transmis-
178 sion projects or other energy projects, and receive and
179 accept aid or contribution from any source of money,
180 property, labor or other things of value to be held, used
181 and applied only for the purpose for which such grants
182 and contributions are made.

183 (15) Purchase property coverage and liability insu-
184 rance for any electric power project or natural gas
185 transmission project or other energy project and for the
186 principal office and suboffices of the authority, insu-
187 rance protecting the authority and its officers and
188 employees against liability, if any, for damage to
189 property or injury to or death of persons arising from
190 its operations and any other insurance which may be
191 provided for under a resolution authorizing the issuance
192 of bonds or in any trust agreement securing the same.

193 (16) Charge, alter and collect transportation fees and
194 other charges for the use or services of any natural gas
195 transmission project as provided in this article.

196 (17) Charge and collect fees or other charges from any
197 energy project undertaken as a result of this article.

198 (18) When the electric power project is owned and
199 operated by the authority, charge reasonable fees in
200 connection with the making and providing of electric

- 201 power and the sale thereof to corporations, states,
202 municipalities or other entities in the furtherance of the
203 purposes of this article.
- 204 (19) Purchase and sell electricity or other energy
205 produced by an electric power project in and out of the
206 state of West Virginia.
- 207 (20) Enter into wheeling contracts for the transmis-
208 sion of electric power over the authority's or another
209 party's lines.
- 210 (21) Make and enter into contracts for the construc-
211 tion of a project facility and joint ownership with
212 another utility, and the provisions of this article shall
213 not constrain the authority from participating as a joint
214 partner therein.
- 215 (22) Make and enter into joint ownership agreements.
- 216 (23) Establish or increase reserves from moneys
217 received or to be received by the authority to secure or
218 to pay the principal of and interest on the bonds issued
219 by the economic development authority pursuant to the
220 provisions of article fifteen, chapter thirty-one of this
221 code or bonds issued by the authority.
- 222 (24) Broker the purchase of natural gas for resale to
223 end-users: *Provided*, That whenever there are local
224 distribution company pipelines already in place the
225 authority shall arrange to transport the gas through
226 such pipelines at the rates approved by the public
227 service commission of West Virginia.
- 228 (25) Engage in market research, feasibility studies,
229 commercial research, and other studies and research
230 pertaining to electric power projects and natural gas
231 transmission projects or any other functions of the
232 authority pursuant to this article.
- 233 (26) Enter upon any lands, waters and premises in the
234 state for the purpose of making surveys and examina-
235 tions as it may deem necessary or convenient for the
236 purpose of this article, and such entry shall not be
237 deemed a trespass, nor shall an entry for such purposes
238 be deemed an entry under any condemnation proceed-

239 ings which may be then pending, and the authority shall
240 make reimbursement for any actual damages resulting
241 to such lands, waters and premises as a result of such
242 activities.

243 (27) Participate in any reorganization proceeding
244 pending pursuant to the United States Code (being the
245 act of Congress establishing a uniform system of
246 bankruptcy throughout the United States, as amended)
247 or any receivership proceeding in a state or federal
248 court for the reorganization or liquidation of a respon-
249 sible buyer or responsible tenant. The authority may file
250 its claim against any such responsible buyer or respon-
251 sible tenant in any of the foregoing proceedings, vote
252 upon any question pending therein, which requires the
253 approval of the creditors participating in any reorgan-
254 ization proceeding or receivership, exchange any
255 evidence of such indebtedness for any property, security
256 or evidence of indebtedness offered as a part of the
257 reorganization of such responsible buyer or responsible
258 tenant or of any entity formed to acquire the assets
259 thereof and may compromise or reduce the amount of
260 any indebtedness owing to it as a part of any such
261 reorganization.

262 (28) Make or enter into management contracts with
263 a second party or parties to operate any electric power
264 project or any gas transmission project and associated
265 facilities, or other related energy project, either during
266 construction or permanent operation.

267 (29) Do all acts necessary and proper to carry out the
268 powers expressly granted to the authority in this article.

269 (30) Nothing herein shall be construed to permit the
270 transportation of gas produced outside of this state
271 through a natural gas transmission project.

**§5D-1-6. Authority may construct, finance, lease, sell,
maintain, etc., electric power projects and
transmission facilities.**

1 To accomplish the public policies and purposes and to
2 meet the responsibility of the state as set forth in this
3 article, the West Virginia public energy authority may

4 initiate, acquire, construct, maintain, lease, lease with
5 an option for the lessee to purchase, sell, by installment
6 sale or otherwise, or otherwise dispose of, repair and
7 operate electric power generating projects and trans-
8 mission facilities, and may issue bonds for the purpose
9 of financing the cost of acquisition and construction of
10 electric power projects and transmission facilities which
11 will be sold, leased, leased with an option by the lessee
12 to purchase or otherwise disposed of to person other than
13 governmental agencies or for the purpose of loaning the
14 proceeds thereof to persons other than governmental
15 agencies for the acquisition and construction of said
16 projects or both; or if the electric power project is to be
17 owned by a governmental agency request the issuance
18 of bonds by the economic development authority,
19 payable solely from revenues, to pay the cost or finance
20 in whole or in part such projects: *Provided*, That the
21 economic development authority shall not be authorized
22 to issue any such bonds except by an act of general law,
23 as provided in article fifteen, chapter thirty-one of this
24 code. An electric power project shall not be undertaken
25 unless it has been determined by the authority that the
26 project will be consistent with the purposes set out in
27 this article. Any resolution providing for acquiring or
28 constructing such projects shall include a finding by the
29 authority that such determinations have been made.

30 The authority is authorized and directed:

31 (1) To cooperate with the appropriate agencies and
32 officials of the United States government to the end that
33 any electric power project shall be so planned and
34 constructed as to be adaptable to the plans of the United
35 States.

36 (2) To apply to the appropriate agencies and officials
37 of the United States government including the federal
38 energy regulatory commission for such licenses, permits
39 or approval of its plans or projects as it may deem
40 necessary or advisable, and in its discretion and upon
41 such terms and conditions as it may deem appropriate,
42 to accept such licenses, permits or approvals as may be
43 tendered to it by such agencies or officials and such
44 federal or other public or governmental assistance as is

45 now or may hereafter become available to it; and to
46 enter into contracts with such agencies or officials
47 relating to the construction or operation of any project
48 authorized by this article.

49 (3) To proceed with the physical construction or
50 completion of any project authorized by this article,
51 including the erection of the necessary power houses and
52 other facilities, instrumentalities and things necessary
53 or convenient to that end, and including also the erection
54 of such transmission lines as may be necessary to
55 conduct the electricity; and including also the acquisi-
56 tion or construction of transmission lines or the use of
57 such transmission lines, available or which may be made
58 available, to conduct electricity to such point or points
59 at which the electricity is sold by the authority to any
60 person, corporation or association, public or private.

61 (4) To cooperate with and, when the board deems it
62 feasible and advisable, to enter into contractual arran-
63 gements with utility companies.

64 (5) To purchase, when available, coal, natural gas or
65 the by-products of coal produced in this state as the fuel
66 source for all electric power projects.

**§5D-1-8. Annual report to governor and Legislature;
audit.**

1 The authority shall make an annual report, as soon as
2 possible after the close of each fiscal year, of its
3 activities for the preceding fiscal year to the governor
4 and the Legislature. Each such report shall set forth a
5 complete operating and financial statement covering the
6 authority's operations during the preceding fiscal year.
7 The authority shall cause an audit of its books and
8 accounts to be made at least once each fiscal year by
9 certified public accountants and the cost thereof may be
10 treated as a part of the cost of financing, of construction
11 or of operations of its projects.

§5D-1-12. Maintenance, operation and repair of projects.

1 Each electric power project, each natural gas trans-
2 mission project or other energy project owned and
3 operated by the authority, when constructed and placed

4 in operation, shall be maintained and kept in good
5 condition and repair by the authority. Each such project
6 owned and operated by the authority shall be operated
7 by such operating employees as the authority employs
8 or pursuant to a contract or lease with a governmental
9 agency or person. All public or private property
10 damaged or destroyed in carrying out the provisions of
11 this article and in the exercise of the powers granted
12 hereunder with regard to any project shall be restored
13 or repaired and placed in its original condition, as
14 nearly as practicable, or adequate compensation made
15 therefor out of funds provided in accordance with the
16 provisions of this article.

§5D-1-13. Bonds lawful investments.

1 The provisions of sections nine and ten, article six,
2 chapter twelve of this code to the contrary notwithstand-
3 ing, all bonds issued by either the West Virginia
4 economic development authority or the authority for the
5 purposes of this article shall be lawful investments for
6 the West Virginia state board of investments and shall
7 also be lawful investments for banking institutions,
8 societies for savings, building and loan associations,
9 savings and loan associations, deposit guarantee associ-
10 ations, trust companies, and insurance companies,
11 including domestic for life and domestic not for life
12 insurance companies.

§5D-1-14. Exemption from taxation.

1 The exercise of the powers granted to the authority
2 by this article will be in all respects for the benefit of
3 the people of the state, for the improvement of their
4 health, safety, convenience and welfare and for the
5 enhancement of their residential, agricultural, recrea-
6 tional, economic, commercial and industrial opportuni-
7 ties and is a public purpose. As the ownership, operation
8 and maintenance of natural gas transmission projects
9 and electric power projects and other energy projects
10 owned and/or operated by the authority will constitute
11 the performance of essential governmental functions,
12 the authority shall not be required to pay any taxes or
13 assessments upon any such project or upon any property

14 acquired or used by the authority or upon the income
15 therefrom. Natural gas transmission projects and
16 electric power projects and other energy projects owned
17 or leased by persons other than governmental agencies
18 shall be subject to any taxes or assessments upon any
19 such project or projects. Bonds issued by either the West
20 Virginia economic development authority or the author-
21 ity and all interest and income thereon shall be exempt
22 from all taxation by this state, or any county, municipi-
23 pality, political subdivision or agency thereof, except
24 inheritance taxes: *Provided*, That the authority shall
25 require a fee in substitution of any ad valorem tax
26 exemption to be negotiated by said authority.

**§5D-1-15. Acquisition of property by authority—Acquisi-
tion by purchase, lease or eminent domain;
governmental agencies authorized to con-
vey, etc., property; sale of property by
authority.**

1 The authority may acquire by purchase, or otherwise,
2 as authorized by this article whenever it deems such
3 acquisition expedient, any land, property, rights, rights-
4 of-way, franchises, easements, leases and other interests
5 in lands it deems necessary or convenient for the
6 construction and operation of any natural gas transmis-
7 sion project, any electric power project, or other energy
8 project.

9 All governmental agencies, notwithstanding any
10 contrary provision of law, may lease, lend, grant or
11 convey to the authority, at its request, upon such terms
12 as the proper authorities of such governmental agencies
13 deem reasonable and fair, any real property or interest
14 therein, including improvements thereto or personal
15 property which is necessary or convenient to the
16 effectuation of the authorized purposes of the authority,
17 including public roads and other real property or
18 interests therein, including improvements thereto or
19 personal property already devoted to public use.

20 The authority may sell any land, property, rights,
21 rights-of-way, franchises, easements, leases and other
22 interests in land acquired under the provisions of this

23 section in such manner and upon such terms and
24 conditions as it deems proper.

CHAPTER 106

(H. B. 4572—By Mr. Speaker, Mr. Chambers, and Delegate Swann,
by request of the Executive)

[Passed March 11, 1988; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-six, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the department of public safety death, disability and retirement fund; providing for certain specified collections, fees and charges to be paid into such fund.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.

§15-2-26. Continuation of death, disability and retirement fund; retirement board.

1 There shall be continued the death, disability and
2 retirement fund heretofore created for the benefit of
3 members of the department of public safety and any
4 dependent of a retired or deceased member thereof.

5 There shall be deducted from the monthly payroll of
6 each member of the department of public safety and
7 paid into such fund six percent of the amount of his
8 salary, and an additional twelve percent of the monthly
9 salary of each member of said department shall be paid
10 by the state of West Virginia monthly into such fund out
11 of the annual appropriation for said department. There
12 shall also be paid into the fund, such amounts as have
13 previously been collected by the superintendent of the
14 department of public safety on account of payments to
15 members for court attendance and mileage, rewards for

16 apprehending wanted persons, fees for traffic accident
17 reports and photographs, fees for criminal investigation
18 reports and photographs, fees for criminal history
19 record checks, fees for criminal history record reviews
20 and challenges or from any other sources designated by
21 the superintendent. All moneys payable into such fund
22 shall be deposited in the state treasury, and the
23 treasurer and auditor shall keep a separate account
24 thereof on their respective books.

25 The moneys in this fund, and the right of a member
26 to a retirement allowance, to the return of contributions,
27 or to any benefit under the provisions of this article, are
28 hereby exempt from any state or municipal tax; shall
29 not be subject to the execution, garnishment, attachment
30 or any other process whatsoever; and shall be unassign-
31 able except as is provided in this article.

32 The death, disability and retirement fund shall be
33 administered by a retirement board which shall consist
34 of the attorney general, state treasurer, the superintend-
35 ent and two members in active service of the depart-
36 ment: *Provided*, That members of said retirement board
37 shall not be entitled to receive any compensation in
38 addition to the salary of their respective offices for any
39 service rendered as a member of said retirement board:
40 *Provided, however*, That the superintendent may pay out
41 of funds appropriated for operation of said department
42 the reasonable expenses of members of said board
43 necessarily incurred in connection with dispatch of any
44 business properly before such board. The two members
45 of said department shall be elected to membership on
46 the retirement board by vote of the members of the
47 department of public safety; such election to be held on
48 the first Tuesday in June next following the passage of
49 this article and on the first Tuesday in June each two
50 years thereafter. The attorney general, state treasurer
51 and the superintendent of the department of public
52 safety shall promulgate any and all necessary rules and
53 regulations for holding in a fair and impartial manner
54 the election on the first Tuesday in June next following
55 the passage of this article and thereafter the retirement
56 board consisting of the attorney general, state treasurer,

57 superintendent and the two duly elected members of
58 said department shall have authority to promulgate and,
59 from time to time, revise rules and regulations for
60 holding all subsequent elections in a fair and impartial
61 manner. All elections shall be held under the direction
62 of the superintendent of said department in accordance
63 with said rules and regulations. The members of the
64 department chosen to serve on said retirement board
65 shall hold office for a period of two years commencing
66 on the first day of July next following the date of such
67 election. When any member elected to the retirement
68 board shall die, resign from the board, resign or be
69 discharged from service in the department, make
70 application for retirement, be retired, or become
71 disabled, the office of such member of the retirement
72 board shall be declared vacant by the superintendent of
73 said department, and said superintendent, to fill such
74 vacancy, shall appoint the member in active service of
75 said department who as an unsuccessful candidate at the
76 preceding election of members to said retirement board
77 received the greatest number of votes. No member of the
78 retirement board shall participate in any hearing at
79 which his own petition for retirement or the petition of
80 any member of said department who is related to him
81 by blood or marriage shall be presented for
82 consideration.

83 At its first meeting following each election of
84 members to the retirement board said board shall elect
85 one of its members to serve as chairman and a second
86 member to serve as secretary thereof. The retirement
87 board shall have the power to make rules and regula-
88 tions, not inconsistent with the provisions hereof,
89 governing procedure and order and manner of business
90 by and before such board. The retirement board shall
91 have the power to make awards and to revise and
92 terminate awards previously made for such times and
93 under such terms and conditions as are hereinafter
94 provided. The votes of a majority of the five members
95 of the board shall be necessary to decision of any matter
96 by the board. Decisions made by the board shall be
97 supreme and final and there shall be no appeal there-
98 from.

99 It shall be the duty of the retirement board on or
100 before the first day of July of each year to cause all
101 future awards from such fund to be valued and, to the
102 extent that moneys shall be available, reserves based on
103 sound actuarial principles for payment thereof to be
104 carried on the fund's account as a liability against the
105 reserve fund. The board shall have the authority to
106 employ an actuary for such purpose. The board shall
107 cause a system of accounting to be installed and
108 maintained to reflect currently and truly all transac-
109 tions or developments pertaining to age of members and
110 eligible dependents surviving deceased members,
111 periods of service and aggregate earnings of all
112 members eligible to participate in said fund and any
113 other matter relating to maintenance of said fund or
114 administration thereof, and each year to cause to be
115 made and submitted to each member of said department
116 a statement of the condition of said fund. Costs and
117 expenses incurred in making actuarial studies, audits
118 and installations and maintenance of such accounting
119 system shall be paid by the superintendent from funds
120 appropriated for operation of the department of public
121 safety.

122 All moneys paid into and accumulated in said death,
123 disability and retirement fund, except such amounts as
124 shall be designated or set aside by the retirement board
125 for payments of death, disability and retirement benefits
126 and awards, shall be invested by the state board of
127 investments as provided by law.

CHAPTER 107

(S. B. 595—By Senators Jones, Sharpe and Shaw)

[Passed March 11, 1988; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eleven-a, article two, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requiring the installation of line marking for utility lines traversing the Ohio River.

Be it enacted by the Legislature of West Virginia:

That section eleven-a, 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.

§24-2-11a. Requirement for certificate of public convenience and necessity before beginning construction of high voltage transmission line; contents of application; notice; hearing; criteria for granting or denying certificate; regulations.

1 (a) No public utility, person or corporation shall begin
2 construction of a high voltage transmission line of two
3 hundred thousand volts or over, which line is not an
4 ordinary extension of an existing system in the usual
5 course of business as defined by the public service
6 commission, unless and until it or he shall have obtained
7 from the public service commission a certificate of
8 public convenience and necessity approving the con-
9 struction and proposed location of such transmission
10 line.

11 (b) The application for such certificate shall be in
12 such form as the commission may prescribe and shall
13 contain:

14 (1) A description, in such detail as the commission
15 may prescribe, of the location and type of line facilities
16 which the applicant proposes to construct;

17 (2) A statement justifying the need for such facilities;

18 (3) A statement of the environmental impact of such
19 line facilities; and

20 (4) Such other information as the applicant may deem
21 relevant or the commission may require.

22 (c) Upon the filing of such application, the applicant
23 shall publish, in such form as the commission shall
24 direct, as a Class II legal advertisement in compliance
25 with the provisions of article three, chapter fifty-nine of
26 this code, the publication area for such publication to be

27 each county in which any portion of the proposed
28 transmission line is to be constructed, a notice of the
29 filing of such application and that the commission may
30 approve the same unless within fifteen days after
31 completion of publication a written request for a
32 hearing thereon has been received by the commission
33 from a person or persons alleging that the proposed
34 transmission line or its location is against the public
35 interest. If such request be timely received, the commis-
36 sion shall set the matter for hearing on a date within
37 sixty days from completion of said publication, and shall
38 require the applicant to publish notice of the time and
39 place of hearing in the same manner as is herein
40 required for the publication of notice of the filing of the
41 application.

42 (d) Within sixty days after the filing of said applica-
43 tion, or if hearing shall be held thereon, within ninety
44 days after final submission on oral argument or brief,
45 the commission may approve the application if it shall
46 find and determine that the proposed transmission line:

47 (1) Will economically, adequately and reliably con-
48 tribute to meeting the present and anticipated require-
49 ments for electric power of the customers served by the
50 applicant or is necessary and desirable for present and
51 anticipated reliability of service for electric power for
52 its service area or region; and

53 (2) Will result in an acceptable balance between
54 reasonable power needs and reasonable environmental
55 factors.

56 (e) The commission may impose conditions upon its
57 approval of the application, or modify the applicant's
58 proposal, to achieve an acceptable balance between
59 reasonable power needs and reasonable environmental
60 factors.

61 (f) The provisions of this section shall not apply to the
62 construction of line facilities which will be part of a
63 transmission line for which any right-of-way has been
64 acquired prior to the first day of January, one thousand
65 nine hundred seventy-three.

66 (g) The commission shall prescribe such rules and
 67 regulations as it may deem proper for the administra-
 68 tion and enforcement of the provisions of this section,
 69 which rules and regulations shall be promulgated in
 70 accordance with the applicable provisions of chapter
 71 twenty-nine-a of this code as if the same were set forth
 72 herein in extenso.

73 (h) Notwithstanding any other provision of the law to
 74 the contrary, the commission shall determine, in its
 75 discretion, which transmission line or lines crossing
 76 above the Ohio River must be marked to be made visible
 77 to airborne traffic flying in any area where such lines
 78 exist, and shall, within one hundred twenty days of the
 79 effective date of this section, promulgate rules requiring
 80 that all public utilities or persons who install or
 81 maintain such lines make the necessary markings.

CHAPTER 108

(Com. Sub. for H. B. 4233—By Delegates Ashley and Love)

[Passed March 11, 1988; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article twelve, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the West Virginia real estate commission following an audit by the joint committee on government operations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. REAL ESTATE COMMISSION, BROKERS AND SALESMEN.

§47-12-3. Commission created; powers generally; membership; appointment and removal of members; qualifications; terms; organization; salaries and expenses; executive secretary and assistants; seal; admissibility of and inspection of records; termination of

commission.

1 There shall be a commission known as the "West
2 Virginia Real Estate Commission," which commission
3 shall be a corporation and as such may sue and be sued,
4 may contract and be contracted with and shall have a
5 common seal. The commission shall consist of three
6 persons to be appointed by the governor by and with the
7 advice and consent of the Senate. Two of such appointees
8 each shall have been a resident and a citizen of this state
9 for at least six years prior to his or her appointment and
10 whose vocation for at least ten years shall have been that
11 of a real estate broker or real estate salesman and the
12 third shall be a representative of the public generally.
13 Members in office on the date this section becomes
14 effective shall continue in office until their respective
15 terms expire. The term of the members of said commis-
16 sion shall be for four years and until their successors are
17 appointed and qualify. No more than two members of
18 such commission shall belong to the same political party.
19 No member shall be a candidate for or hold any other
20 public office or be a member of any political committee
21 while acting as such commissioner. In case any commis-
22 sioner be a candidate for or hold any other public office
23 or be a member of any political committee, his office as
24 such commissioner shall ipso facto be vacated. Members
25 to fill vacancies shall be appointed by the governor for
26 the unexpired term. No member may be removed from
27 office by the governor except for official misconduct,
28 incompetency, neglect of duty, gross immorality or other
29 good cause shown and then only in the manner pres-
30 cribed by law for the removal by the governor of state
31 elective officers. The governor shall designate one
32 member of the commission as the chairman thereof and
33 the members shall choose one of the members thereof
34 as secretary. Two members of the commission shall
35 constitute a quorum for the conduct of official business.

36 (a) The commission shall do all things necessary and
37 convenient for carrying into effect the provisions of this
38 article and may from time to time promulgate reasona-
39 ble, fair and impartial rules and regulations in accor-
40 dance with the provisions of article three, chapter
41 twenty-nine-a of this code. Each member of the commis-

42 sion shall receive as full compensation for his services
43 the sum of one hundred dollars per day for each full day
44 actually spent on the work of the commission and his
45 actual and necessary expenses incurred in the perfor-
46 mance of duties pertaining to his office.

47 (b) The commission shall employ an executive secre-
48 tary and such clerks, investigators and assistants as it
49 shall deem necessary to discharge the duties imposed by
50 the provisions of this article and to effect its purposes,
51 and the commission shall determine the duties and fix
52 the compensation of such executive secretary, clerks,
53 investigators and assistants, subject to the general laws
54 of the state.

55 (c) The commission shall adopt a seal by which it shall
56 authenticate its proceedings. Copies of all records and
57 papers in the office of the commission, duly certified and
58 authenticated by the seal of said commission, shall be
59 received in evidence in all courts equally and with like
60 effect as the original. All records kept in the office of
61 the commission under authority of this article shall be
62 open to public inspection under reasonable rules and
63 regulations as shall be prescribed by the commission.

64 (d) After having conducted a performance and fiscal
65 audit through its joint committee on government
66 operations, pursuant to section nine, article ten, chapter
67 four of this code, the Legislature hereby finds and
68 declares that the West Virginia real estate commission
69 should be continued and reestablished. Accordingly,
70 notwithstanding the provisions of section four, article
71 ten, chapter four of this code, the West Virginia real
72 estate commission shall continue to exist until the first
73 day of July, one thousand nine hundred ninety-four.

CHAPTER 109

(Com. Sub. for S. B. 115—By Senator Tonkovich, Mr. President)

[Passed February 22, 1988; in effect ninety days from passage. Approved by the Governor.]

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

adding thereto a new article, designated article twenty-five, relating to resident trustee accounts for residents of certain state institutions; requiring reports and a management accounting system; declaring money not part of the state fund and making such money a claim against the state.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 25. RESIDENT TRUSTEE ACCOUNTS.

- §5-25-1. Resident trustee accounts required, reports.
- §5-25-2. Management accounting system required.
- §5-25-3. Money not part of state fund.
- §5-25-4. Resident trustee accounts claim against the state.

§5-25-1. Resident trustee accounts required, reports.

1 All state institutions including, but not limited to,
2 those institutions under the control of the department of
3 veterans affairs, the department of health, or the
4 department of human services which provide custodial
5 care for any person for any purpose whatsoever shall
6 establish resident trustee accounts for all persons
7 resident at the institution who request such accounts or
8 who are unable to manage their own funds. The
9 administrator in charge of the institution shall take
10 possession of all money or other valuables on the person
11 of or sent to each resident for whom a trustee account
12 has been established: *Provided*, That this article shall
13 not apply to state institutions under the control of the
14 department of corrections or where there is a legal
15 representative appointed for such person.

16 The administrator shall credit such money and
17 valuables to the resident entitled thereto and shall keep
18 an accurate record of all moneys and valuables received
19 or disbursed. This account is subject to examination by
20 the head of the department which controls the institu-
21 tion. The administrator shall deposit such fiduciary
22 funds received with the state board of investments,

23 except for those funds required to be kept locally. The
24 local funds shall be deposited in one or more responsible
25 banks. The accounts shall be designated "resident
26 trustee account."

27 The administrator shall ensure that proper disburse-
28 ments are made from the "resident trustee account"
29 when required for the maintenance of the resident or
30 when agreed to by the resident.

31 The administrator shall deliver to the resident, or to
32 the resident's responsible representative payee when
33 applicable, at the time the resident leaves the institution
34 all valuables or moneys then credited to the resident or,
35 in the case of the death of a resident before leaving the
36 institution, the administrator shall deliver such property
37 to the resident's representative.

38 The administrator of the institution shall submit a
39 monthly report to the head of the department control-
40 ling the institution. This report shall provide a recon-
41 ciliation of each resident trustee account or other
42 fiduciary account maintained by the institution.

43 The director of any department who receives these
44 monthly reports shall submit each month to the legis-
45 lative auditor a record of the reconciliations for each
46 institution.

§5-25-2. Management accounting system required.

1 (a) The commissioner of finance and administration
2 shall within ninety days after this article initially goes
3 into effect develop a system of management accounting
4 for all bank accounts held by each state institution
5 where funds are held in a fiduciary capacity for
6 residents of the institution. The management accounting
7 system shall include a method of internal management
8 accounting control for funds held in a fiduciary capacity
9 for residents of public institutions.

10 (b) The commissioner of finance and administration
11 shall deliver proper instructions for instituting the
12 system of management accounting to the heads of all
13 departments which control state institutions where
14 funds are held in a fiduciary capacity for residents. The

15 department heads shall institute the system of
16 management accounting at each institution under their
17 control.

§5-25-3. Money not part of state fund.

1 Money held in a fiduciary capacity for residents in
2 state institutions in resident trustee accounts shall not
3 be credited to the state fund nor treated by the state
4 auditor or state treasurer as part of the general revenue
5 fund of the state.

§5-25-4. Resident trustee accounts claim against the state.

1 Any money held in a resident trustee account in any
2 state institution which is in any manner misappropriated
3 from that account may be recovered by the
4 resident or the resident's legal representative under the
5 provisions of article two, chapter fourteen of this code
6 and such money is hereby specifically made a claim
7 against the state for the purposes of such article.

CHAPTER 110

(Com. Sub. for H. B. 4237—By Mr. Speaker, Mr. Chambers, and Delegate Swann)

[Passed March 4, 1988: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nineteen, article two-a, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the authority of the commissioner of highways with respect to the sale, lease, exchange or lease of certain real property acquired by the West Virginia department of highways; sale, lease or use of former railroad rights-of-way and those properties which were formerly used as turnpikes and in which the department of highways has a property interest; and permitting those properties to be first sold to abutting property owners without the necessity of public auction.

Be it enacted by the Legislature of West Virginia:

That section nineteen, article two-a, 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 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.

§17-2A-19. Sale, exchange, or lease of real property.

1 The department of highways, subject to the conditions
2 herein, may sell, exchange, or lease real property, or any
3 interest or right therein, held by the department of
4 highways.

5 When the real property, or any interest or right
6 therein, is being held for future road purposes, it may
7 be leased. When the real property, or any part thereof,
8 or any interest or right therein, is deemed by the
9 commissioner not necessary, or desirable for present or
10 presently foreseeable future state road purposes, it may
11 be exchanged for other real property, or any interest or
12 right therein, deemed by the commissioner to be
13 necessary or desirable for present or presently foresee-
14 able future state road purposes, or it may be sold. In
15 addition the department may exchange real property, or
16 any part thereof, or any interest or right therein, even
17 though it may be necessary or desirable for present or
18 presently foreseeable future state road purposes, if the
19 exchange is made for other real property, or any interest
20 or right therein, in close proximity thereto which the
21 commissioner deems of equal or superior useful value
22 for present or presently foreseeable future state road
23 purposes. In making exchanges the department may
24 make allowances for differences in the value of the
25 properties being exchanged and may move or pay the
26 cost of moving buildings, structures, or appurtenances
27 in connection with the exchange.

28 Every such sale of real property, or any interest or
29 right therein or structure thereon, shall be at public
30 auction in the county in which the real property, or the
31 greater part thereof in value, is located, and the
32 department shall advertise, by publication or otherwise,
33 the time, place, and terms of such sale at least twenty
34 days prior thereto. The property shall be sold in the
35 manner which will bring the highest and best price
36 therefor. The department may reject any or all bids

37 received at the sale. The commissioner shall keep a
38 record, open to public inspection, indicating the manner
39 in which such real property, or any interest or right
40 therein or structure thereon, was publicly advertised for
41 sale, the highest bid received therefor and from whom,
42 the person to whom sold, and payment received therefor.
43 Such record shall be kept for a period of five years and
44 may thereafter be destroyed.

45 The commissioner may transfer, sell, or otherwise
46 dispose of those portions of former railroad right-of-way
47 properties owned by or to be acquired by the depart-
48 ment of highways and those properties formerly used for
49 turnpike roads which the commissioner in his sole
50 discretion shall determine are not necessary or desirable
51 for present or presently foreseeable future state road
52 purposes by first offering the same to the principal
53 abutting landowners without following the procedure
54 for public auction hereinbefore set forth in this section.

55 The commissioner shall adopt and promulgate rules
56 in accordance with the provisions of article three,
57 chapter twenty-nine-a of this code governing and
58 controlling the making of any leases or sales pursuant
59 to the provisions of this section, which rules may provide
60 for the giving of preferential treatment in making leases
61 to the persons from whom the properties or rights or
62 interests therein were acquired, or their heirs or assigns
63 and shall also provide for granting a right of first
64 refusal to abutting landowners at fair market value in
65 the sale or lease of former railroad right-of-way
66 properties and former turnpike roads owned by the
67 department of highways.

68 The commissioner may insert in any deed or convey-
69 ance, whether it involves an exchange, lease, or sale,
70 such conditions as are in the public interest and have
71 been approved in advance by the governor.

72 All moneys received from the exchange, sale, or lease
73 of real property, or any right or interest therein, shall
74 be paid into the state treasury and credited to the state
75 road fund.

76 Notwithstanding the provisions of this section, no such

77 property shall be transferred, sold or otherwise disposed
78 of unless the commissioner finds that such right-of-way
79 or other property has no significant value to the state
80 as a hiking trail and does not serve as a link between
81 two or more state owned properties, except that any
82 such property that lies within six hundred feet of any
83 dwelling house may be transferred, sold or otherwise
84 disposed of without such a finding pursuant to the
85 provisions of this section.

CHAPTER 111

(Com. Sub. for H. B. 4439—By Mr. Speaker, Mr. Chambers, and Delegate Swann,
by request of the Executive)

[Passed March 12, 1988; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty, article two-a, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one, three and four, article three, chapter fifty-four of said code, all relating to implementing the 1987 amendments to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, which amendments are contained in Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987, and designating department of highways as lead agency in the promulgation of rules.

Be it enacted by the Legislature of West Virginia:

That section twenty, article two-a, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections one, three and four, article three, chapter fifty-four of said code be amended and reenacted, all to read as follows:

Chapter

- 17. Roads and Highways.
- 54. Eminent Domain.

CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.**§17-2A-20. Relocation assistance to and replacement housing costs for persons dislocated by highway construction.**

1 The payment of relocation costs and replacement
2 housing costs to persons dislocated by highway construc-
3 tion is hereby declared to be a cost of highway construc-
4 tion and may be paid from the state road fund, subject
5 to the provisions of this section. The commissioner of
6 highways shall make the payments authorized by this
7 section to reduce hardships to persons so dislocated. In
8 addition, the commissioner shall render advisory
9 assistance to persons affected and shall call upon and
10 coordinate the services of such other agencies of state
11 and local government as may be capable of rendering
12 such assistance to reduce hardships to persons affected
13 and to reduce delays in highway construction. In
14 rendering such advisory assistance, the commissioner
15 may accumulate and maintain lists of various kinds of
16 properties available to which persons affected may be
17 relocated, and acquire and file such other information
18 and take such other action as may be necessary to
19 render such advisory assistance. With respect to persons
20 dislocated by federal-aid highway projects, the commis-
21 sioner shall provide a relocation assistance program
22 which will comply with and implement the federal laws
23 and regulations relating to relocation assistance to
24 displaced persons as set forth in the Uniform Relocation
25 Assistance and Real Property Acquisition Policy Act of
26 1970, being Public Law 91-646 enacted by the Ninety-
27 first Congress of the United States of America, and the
28 1987 amendments thereto known as Title IV of the
29 Surface Transportation and Uniform Relocation Assist-
30 ance Act of 1987, being Public Law 100-17 enacted by
31 the One Hundredth Congress of the United States of
32 America.

33 Any individual, family, business concern (including
34 the operation of a farm) or nonprofit organization to be
35 displaced by a highway construction project shall be
36 compensated consistent with the provisions and limita-
37 tions of federal acts for reasonable and necessary costs

38 to be incurred in consequence of being so displaced.
39 When a family is displaced, no additional payment shall
40 be made to individuals who are members of such family;
41 but, if two or more displaced families occupy the same
42 dwelling or comprise a single household, each family
43 within such dwelling or household may receive reloca-
44 tion costs as provided in this section. Payments under
45 this section are subject to the limitations provided
46 herein and to any rules and regulations made by the
47 commissioner as herein provided.

48 With respect to state highway projects and federal-aid
49 highway projects, the commissioner shall have authority
50 to make such payments for relocation costs, reestablish-
51 ment costs, replacement housing costs, including the
52 increased interest costs which the displaced person is
53 required to pay for financing the acquisition of a
54 comparable replacement dwelling, and reasonable
55 expenses incurred by such displaced person for evidence
56 of title, recording fees, and other closing costs incident
57 to the purchase of the replacement dwelling, and
58 expenses incidental to the transfer of property as are
59 authorized by the abovementioned Uniform Relocation
60 Assistance and Real Property Acquisition Policies Act
61 of 1970, being Public Law 91-646 enacted by the Ninety-
62 first Congress of the United States of America, and the
63 1987 amendments thereto known as Title IV of the
64 Surface Transportation and Uniform Relocation Assist-
65 ance Act of 1987, being Public Law 100-17 enacted by
66 the One Hundredth Congress of the United States of
67 America.

68 The commissioner shall establish by rules and regu-
69 lations a procedure for the payment of relocation costs
70 within the limits of and consistent with the policies of
71 this section and the aforesaid federal laws and regula-
72 tions. Such rules and regulations may authorize lump
73 sum payments to individuals or families, in lieu of their
74 respective provable costs, based upon the size of the
75 dwelling being vacated or the number of persons being
76 affected or any other reasonable basis. The commis-
77 sioner may authorize the obligations of or payment of
78 relocation costs in advance of expenditure for relocation

79 by any person, firm or organization eligible to receive
80 such payment where such advance obligation or pay-
81 ment would speed the clearance of highway construction
82 sites or reduce hardships.

83 With respect to state highway projects and federal-aid
84 highway projects, the commissioner shall also have
85 authority to comply with the aforesaid federal laws and
86 regulations relating to providing last-resort replacement
87 housing.

88 Nothing contained in this section or in the federal
89 laws and regulations relating to relocation assistance
90 and payments to displaced person shall be construed as
91 creating in any condemnation proceedings brought
92 under the power of eminent domain, any element of
93 damages not in existence on the effective date of this
94 section or of the federal laws and regulations relating
95 to relocation assistance and payments to displaced
96 persons.

CHAPTER 54. EMINENT DOMAIN.

ARTICLE 3. IMPLEMENTATION OF UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970 AND THE 1987 AMENDMENTS THERETO KNOWN AS TITLE IV OF THE SURFACE TRANSPORTATION AND UNIFORM RELOCATIONASSISTANCE ACT OF 1987.

§54-3-1. Definitions.

§54-3-3. Implementation of federal act; powers of state agencies; payments under act not considered income or resources for certain purposes.

§54-3-4. Construction of article; assistance for dislocation, etc., occurring prior to effective date.

§54-3-1. Definitions.

1 As used in this article, the term:

2 (1) "Federal act" means the "Uniform Relocation
3 Assistance and Real Property Acquisition Policies Act
4 of 1970," being Public Law 91-646, enacted by the
5 Ninety-first Congress of the United States of America,
6 and the 1987 amendments thereto known as Title IV of
7 the Surface Transportation and Uniform Relocation
8 Assistance Act of 1987 being Public Law 100-17 enacted

9 by the One Hundredth Congress of the United States of
10 America.

11 (2) "Acquiring agency" means the state of West
12 Virginia or any department, agency or instrumentality
13 thereof, or any county, municipality or other political
14 subdivision thereof or any department, agency or
15 instrumentality of two or more states or of two or more
16 political subdivisions of a state or states, and any person
17 who has the authority to acquire property by eminent
18 domain under state law.

19 (3) "Person" means any individual, partnership,
20 association or corporation.

**§54-3-3. Implementation of federal act; powers of state
agencies; payments under act not considered
income or resources for certain purposes.**

1 In order to accomplish the purposes set forth in
2 section two of this article and to satisfy the requirements
3 of adequately compensating displaced persons under
4 such federal acts, each acquiring agency is hereby
5 required and is hereby granted plenary power and
6 authority to adopt rules and regulations, which shall
7 have the force and effect of law, to implement the
8 provisions of such federal acts and make applicable to
9 such acquiring agency the policies and requirements of
10 such federal acts which are pertinent to the mission and
11 functions of such acquiring agency, including, without
12 in any way limiting the generality of the foregoing, the
13 carrying out of all procedures and the making of all
14 financial assistance payments, relocation assistance
15 payments, replacement housing payments, loans and
16 expense reimbursement payments required by such
17 federal acts, subject only to any restrictions or limita-
18 tions imposed by the constitution of the state of West
19 Virginia. The department of highways is hereby
20 designated as the lead agency to develop, publish and
21 issue such regulations to implement the provisions of
22 this act and also to coordinate and provide policy and
23 interpretations where necessary.

24 No payment of any type required by such federal acts
25 and received by any person under this article and such

26 rules and regulations shall be considered as income or
27 resources for the purpose of determining the eligibility
28 or extent of eligibility of any person for assistance under
29 any state law, or under any state or local tax law or
30 ordinance, and no such payment shall be considered as
31 income or resources of any recipient of public assistance
32 and no such payment shall be deducted from the amount
33 of aid to which the recipient would otherwise be entitled.

**§54-3-4. Construction of article; assistance for dislocation,
etc., occurring prior to effective date.**

1 Neither the provisions of this article nor any rules and
2 regulations promulgated pursuant to section three of
3 this article are intended to abrogate or derogate the
4 provisions of section twenty, article two-a, chapter
5 seventeen of this code, and, to the extent not in conflict
6 with said section twenty, the West Virginia department
7 of highways shall be considered to be an acquiring
8 agency within the meaning of this article. To the extent
9 that such department may expend funds or make
10 payments pursuant to the provisions of this article and
11 such rules and regulations, such expenditures or
12 payments are hereby declared to be a cost of highway
13 construction and may be expended and paid from the
14 state road fund.

15 Neither the provisions of this article nor any rules and
16 regulations promulgated pursuant to section three of
17 this article shall be construed or interpreted so as to
18 create any element of value or damage not in existence
19 prior to the effective date of this article in any
20 condemnation proceedings brought under the power of
21 eminent domain exercised by any state agency except
22 to the extent, if any, required by applicable law of the
23 United States; but, notwithstanding any other provision
24 of law, whenever an acquiring agency in a condemna-
25 tion proceeding pays a sum into court as representing
26 the fair market value of property to be acquired, the
27 amount of the award or verdict pertaining to such
28 property shall not be less than such sum.

29 Any acquiring agency may provide assistance as
30 contemplated in such federal act even though the

31 dislocation or acquisition occasioning the same occurred
32 prior to the effective date of this article if federal funds
33 are available for the payment of any such assistance.

CHAPTER 112

(S. B. 397—By Senator Tucker)

[Passed March 12, 1988; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections eleven (ten) (five), sixteen (two-d) (eight), seventeen (two-a) (eight), seventeen (four) (nineteen), seventeen-a (two) (nine), nineteen (two) (five), nineteen (nine) (two), nineteen (twenty-three) (six), twenty (one) (seven), twenty (five-a) (three), twenty (five-e) (six), twenty (five-e) (seven), twenty (five-f) (four), twenty-one (three) (seven), twenty-two (nine) (six), twenty-nine-a (two) (six), thirty (three) (seven), thirty (thirteen) (five) and thirty-three (two) (ten), article two, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto twenty-five new sections, designated sections five-b (one) (thirteen-a), sixteen (two-d) (four), sixteen (three) (four), sixteen (four-c) (twenty-two), sixteen (thirty-one) (eight), nineteen (two) (ten), twenty (two) (twenty-three), twenty (seven) (twenty-two), twenty-one (three-a) (seven), twenty-one (five) (thirteen), twenty-one (five) (fourteen), twenty-two (one) (fifteen), twenty-two-a (three) (four), twenty-nine (twenty-two) (five), twenty-nine-a (two) (seven), twenty-nine-b (one) (three), thirty (thirteen-a), (four), thirty (sixteen) (four), thirty-one (twenty) (nine), thirty-three (twenty-a) (three), thirty-three (twenty-b) (six), forty-seven (one) (nineteen), forty-seven (fourteen) (five), forty-eight-a (two) (seven) and forty-eight-a (two) (eight), all relating generally to the promulgation of administrative rules and regulations by the various executive or administrative agencies and the procedures relating thereto; the legislative mandate or authorization for the promulgation of certain legislative and procedural rules by various executive and adminis-

trative agencies of the state; authorizing certain of such agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of such agencies to promulgate legislative rules as amended by the Legislature; authorizing certain of such agencies to promulgate certain legislative and procedural rules with various modifications presented to and recommended by the legislative rule-making review committee; directing certain of such agencies to promulgate certain legislative rules filed in the office of the secretary of state during the regular session of the Legislature held in the year one thousand nine hundred eighty-eight; authorizing the commissioner of commerce to promulgate certain legislative rules relating to the public use of West Virginia state parks, forests and hunting and fishing areas, as modified with certain amendments thereto; authorizing the state tax commissioner to promulgate certain legislative rules relating to the telecommunications tax, as modified; authorizing the state tax commissioner to promulgate certain legislative rules relating to the business franchise tax; authorizing the state tax commissioner to promulgate certain legislative rules relating to consumers sales and service and use tax, as modified; authorizing the state tax commissioner to promulgate certain legislative rules relating to appraisal of property for periodic statewide reappraisals for ad valorem property tax purposes, as modified; authorizing the state tax commissioner to promulgate certain legislative rules relating to the severance tax, as modified; authorizing the West Virginia health care cost review authority to promulgate certain legislative rules relating to exemptions from certificate of need review, as modified; authorizing the director of the department of health to promulgate certain legislative rules relating to immunization criteria for transfer students; authorizing the director of the department of health to promulgate certain legislative rules relating to trauma center or facility designation; authorizing the director of the department of health to promulgate certain legislative rules governing hazardous substances with certain amendments thereto; authorizing the commissioner of

highways to promulgate certain legislative rules relating to traffic and safety rules and regulations, as modified, and with certain amendments thereto; authorizing the commissioner of highways to promulgate certain legislative rules relating to construction and reconstruction of state roads; authorizing the commissioner of motor vehicles to promulgate certain legislative rules relating to denial, suspension, revocation or renewal of driving privileges, as modified, and with certain amendments thereto; authorizing the commissioner of agriculture to promulgate certain legislative rules relating to a schedule of charges for inspection services: fruit; authorizing the commissioner of agriculture to promulgate certain legislative rules relating to animal disease control, as modified; authorizing the West Virginia racing commission to promulgate certain legislative rules governing greyhound racing, as modified; authorizing the West Virginia racing commission to promulgate certain legislative rules governing thoroughbred racing, as modified, and with certain amendments thereto; authorizing the department of natural resources to promulgate certain legislative rules relating to WV/NPDES regulations for coal mining facilities; authorizing the director of the department of natural resources to promulgate certain legislative rules governing outfitters and guides with certain amendments thereto; authorizing the water resources board to promulgate certain legislative rules governing water quality standards; authorizing the department of natural resources to promulgate certain legislative rules relating to hazardous waste management; authorizing the commissioner of highways to promulgate certain legislative rules relating to transportation of hazardous wastes upon the roads and highways, as modified; authorizing the department of natural resources to promulgate certain legislative rules relating to solid waste management, as modified; authorizing the director of natural resources to promulgate certain legislative rules relating to boating regulations, as modified, and with certain amendments thereto; authorizing the commissioner of labor to promulgate certain legislative rules relating to a steam

boiler inspection fee schedule; authorizing the commissioner of labor to promulgate certain legislative rules relating to the West Virginia occupational safety and health act, adoption of federal standards; authorizing the commissioner of labor to promulgate certain legislative rules relating to the wage payment and collection act, as modified; authorizing the commissioner of the department of energy to promulgate certain legislative rules governing roof control; authorizing the commissioner of the department of energy to promulgate certain legislative rules relating to blasters certification for surface coal mines and surface areas of underground coal mines, as modified; authorizing the commissioner of the department of energy to promulgate certain legislative rules governing performance standards for blasting on surface mines; authorizing the state lottery commission to promulgate certain legislative rules governing the state lottery, as modified; authorizing the secretary of state to promulgate certain legislative rules relating to standard size and format for rules and procedures for publication of the state register or parts of the state register, as modified; authorizing and directing the department of energy to promulgate certain procedural rules governing requests for information, with certain amendments thereto; authorizing the board of medicine to promulgate certain legislative rules governing fees for services rendered by the board of medicine; authorizing the West Virginia state board of registration for professional engineers to promulgate certain legislative rules relating to the West Virginia state board of registration for professional engineers, as modified; authorizing the West Virginia board of chiropractic examiners to promulgate legislative rules governing the West Virginia board of chiropractic examiners, as modified; authorizing the state board of examiners of land surveyors to promulgate certain legislative rules governing the practice of land surveying in West Virginia, as modified; authorizing the jail and prison standards commission to promulgate legislative rules relating to West Virginia minimum standards for construction, operation and maintenance of jails;

authorizing the insurance commissioner to promulgate certain legislative rules relating to the West Virginia essential property insurance association; authorizing the insurance commissioner to promulgate certain legislative rules relating to medical malpractice annual reporting requirements; authorizing the insurance commissioner to promulgate certain legislative rules relating to medical malpractice loss experience and loss expense reporting requirements, as modified; authorizing the commissioner of the department of labor to promulgate certain legislative rules governing standards for weights and measures inspectors—adoption of NBS Handbook 130, 1987; authorizing the attorney general to promulgate certain legislative rules relating to the administration of preneed burial contracts, as modified, and with amendments thereto; and authorizing and directing the director of the child advocate office of the department of human services to promulgate certain legislative rules relating to guidelines for child support awards.

Be it enacted by the Legislature of West Virginia:

That sections eleven (ten) (five), sixteen (two-d) (eight), seventeen (two-a) (eight), seventeen (four) (nineteen), seventeen-a (two) (nine), nineteen (two) (five), nineteen (nine) (two), nineteen (twenty-three) (six), twenty (one) (seven), twenty (five-a) (three), twenty (five-e) (six), twenty (five-e) (seven), twenty (five-f) (four), twenty-one (three) (seven), twenty-two (nine) (six), twenty-nine-a (two) (six), thirty (three) (seven), thirty (thirteen) (five) and thirty-three (two) (ten), article two, chapter sixty-four 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 twenty-five new sections, designated sections five-b (one) (thirteen-a), sixteen (two-d) (four), sixteen (three) (four), sixteen (four-c) (twenty-two), sixteen (thirty-one) (eight), nineteen (two) (ten), twenty (two) (twenty-three), twenty (seven) (twenty-two), twenty-one (three-a) (seven), twenty-one (five) (thirteen), twenty-one (five) (fourteen), twenty-two (one) (fifteen), twenty-two-a (three) (four), twenty-nine (twenty-two) (five), twenty-nine-a (two) (seven), twenty-nine-b (one) (three), thirty (thirteen-a) (four), thirty (sixteen) (four), thirty-one

(twenty) (nine), thirty-three (twenty-a) (three), thirty-three (twenty-b) (six), forty-seven (one) (nineteen), forty-seven (fourteen) (five), forty-eight-a (two) (seven) and forty-eight-a, (two) (eight), all to read as follows:

CHAPTER 64. LEGISLATIVE RULES.

ARTICLE 2. EXECUTIVE AGENCY AUTHORIZATION TO PROMULGATE LEGISLATIVE RULES.

- §64-2-5b(1)(13a). Commissioner of commerce.
 §64-2-11(10)(5). State tax commissioner.
 §64-2-16(2d)(4). West Virginia health care cost review authority.
 §64-2-16(2d)(8). State board of health; West Virginia health care cost review authority.
 §64-2-16(3)(4). Director of the department of health.
 §64-2-16(4c)(22). Director of the department of health.
 §64-2-16(31)(8). Director of the department of health.
 §64-2-17(2a)(8). Commissioner of highways.
 §64-2-17(4)(19). Commissioner of highways.
 §64-2-17a(2)(9). Commissioner of motor vehicles.
 §64-2-19(2)(5). Commissioner of agriculture.
 §64-2-19(2)(10). Commissioner of agriculture.
 §64-2-19(9)(2). Commissioner of agriculture.
 §64-2-19(23)(6). West Virginia racing commission.
 §64-2-20(1)(7). Department of natural resources.
 §64-2-20(2)(23). Director of the department of natural resources.
 §64-2-20(5a)(3). Water resources board.
 §64-2-20(5e)(6). Department of natural resources.
 §64-2-20(5e)(7). Commissioner of highways.
 §64-2-20(5f)(4). Department of natural resources.
 §64-2-20(7)(22). Director of the department of natural resources.
 §64-2-21(3)(7). Commissioner of labor.
 §64-2-21(3a)(7). Commissioner of labor.
 §64-2-21(5)(13). Commissioner of labor.
 §64-2-21(5)(14). Commissioner of labor.
 §64-2-22(1)(15). Commissioner of the department of energy.
 §64-2-22(9)(6). Commissioner of the department of energy.
 §64-2-22a(3)(4). Commissioner of the department of energy.
 §64-2-29(22)(5). State lottery commission.
 §64-2-29a(2)(6). Secretary of state.
 §64-2-29a(2)(7). Secretary of state.
 §64-2-29b(1)(3). Freedom of information act; department of energy.
 §64-2-30(3)(7). Board of medicine.
 §64-2-30(13)(5). West Virginia state board of registration for professional engineers.
 §64-2-30(13a)(4). State board of examiners of land surveyors.
 §64-2-30(16)(4). State boards of examination or registration; West Virginia board of chiropractic examiners.
 §64-2-31(20)(9). Jail and prison standards commission.
 §64-2-33(2)(10). Insurance commissioner.

- §64-2-33(20a)(3). Insurance commissioner.
§64-2-33(20b)(6). Insurance commissioner.
§64-2-47(1)(19). Commissioner of the department of labor.
§64-2-47(14)(5). Attorney general.
§64-2-48a(2)(7). Department of human services; director of the child advocate office.
§64-2-48a(2)(8). Department of human services; director of the child advocate office.

§64-2-5b(1)(13a). Commissioner of commerce.

1 The legislative rules filed in the state register on the
2 eighteenth day of February, one thousand nine hundred
3 eighty-seven, modified by the commissioner of com-
4 merce to meet the objections of the legislative rule-
5 making review committee and refiled in the state
6 register on the ninth day of October, one thousand nine
7 hundred eighty-seven, relating to the commissioner of
8 commerce (public use of West Virginia state parks,
9 forests, and hunting and fishing areas) are authorized
10 with the amendments as set forth below:

11 On page 1, section 2.1 after the words "fishing area."
12 add "This rule does not apply to the erection of
13 temporary blinds or tree stands in public hunting
14 areas."

15 And, on page 3, section 2.12 after the word "guests"
16 by adding "licensed hunters and fishermen while
17 hunting or fishing".

18 And, on page 5, section 2.22 by adding at the end of
19 the section the following sentence:

20 "Any person may apply to the Superintendent of the
21 park for a special event permit and pay an application
22 fee for use of firearms during historical reenactments,
23 or the use of hay, straw, boughs, pine needles or similar
24 materials for special events. The Park Superintendent
25 may issue a permit to limit areas of use of any of these
26 exceptions and require damage assessments, if
27 necessary."

28 On page 8, section 4.5 by deleting the word "water"
29 and inserting in lieu thereof the words "swimming pool"
30 and on page 9 section 4.5 after the word "water." add
31 the following "These restrictions do not apply to

32 swimming areas which are natural bodies of water.”

§64-2-11(10)(5). State tax commissioner.

1 (a) The legislative rules filed in the state register on
2 the twenty-eighth day of September, one thousand nine
3 hundred eighty-four, relating to the state tax commis-
4 sioner (estimated personal income tax), are authorized
5 with the amendments set forth below:

6 55.02(a)(2)(on page 182.2) line 18, after the word
7 “profession” strike the words “on his own account” and
8 the comma(,).

9 55.12(b)(1)(page 182.35) at the end of the section,
10 change the period to a comma, and add the following
11 language: “and in the case of a court appointed agent,
12 a copy of the court order of appointment is sufficient.”

13 55.12(c)(page 182.36) after the word “for,” strike the
14 word “erroneous.”

15 (b) The legislative rules filed in the state register on
16 the twenty-eighth day of September, one thousand nine
17 hundred eighty-four, modified by the state tax commis-
18 sioner to meet the objections of the legislative rule-
19 making review committee and refiled in the state
20 register on the fourteenth day of November, one
21 thousand nine hundred eighty-four, and on the twenty-
22 first day of March, one thousand nine hundred eighty-
23 five, relating to the state tax commissioner (estimated
24 corporation net income tax), are authorized.

25 (c) The legislative rules filed in the state register on
26 the fourth day of February, one thousand nine hundred
27 eighty-six, modified by the state tax commissioner to
28 meet the objection of the legislative rule-making review
29 committee and refiled in the state register on the
30 fourteenth day of January, one thousand nine hundred
31 eighty-seven, relating to the state tax commissioner
32 (business and occupation tax), are authorized.

33 (d) The legislative rules filed in the state register on
34 the fourteenth day of August, one thousand nine
35 hundred eighty-seven, modified by the state tax commis-
36 sioner to meet the objections of the legislative rule-

37 making review committee and refiled in the state
38 register on the fourth day of November, one thousand
39 nine hundred eighty-seven, relating to the state tax
40 commissioner (telecommunications tax) are authorized.

41 (e) The legislative rules filed in the state register on
42 the fourteenth day of August, one thousand nine
43 hundred eighty-seven, relating to the state tax commis-
44 sioner (business franchise tax) are authorized.

45 (f) The legislative rules filed in the state register on
46 the seventeenth day of August, one thousand nine
47 hundred eighty-seven, modified by the state tax commis-
48 sioner to meet the objections of the legislative rule-
49 making review committee and refiled in the state
50 register on the twenty-second day of January, one
51 thousand nine hundred eighty-eight, relating to the state
52 tax commissioner (consumers sales and service tax and
53 use tax) are authorized.

54 (g) The legislative rules filed in the state register on
55 the fourteenth day of August, one thousand nine
56 hundred eighty-seven, modified by the state tax commis-
57 sioner to meet the objections of the legislative rule-
58 making review committee and refiled in the state
59 register on the thirteenth day of January, one thousand
60 nine hundred eighty-eight, relating to the state tax
61 commissioner (appraisal of property for periodic
62 statewide reappraisals for ad valorem property tax
63 purposes) are authorized.

64 (h) The legislative rules filed in the state register on
65 the fourteenth day of August, one thousand nine
66 hundred eighty-seven, modified by the state tax commis-
67 sioner to meet the objections of the legislative rule-
68 making review committee and refiled in the state
69 register on the twelfth day of January, one thousand
70 nine hundred eighty-eight, relating to the state tax
71 commissioner (severance tax) are authorized.

**§64-2-16(2d)(4). West Virginia health care cost review
authority.**

1 The legislative rules filed in the state register on the
2 third day of September, one thousand nine hundred

3 eighty-seven, modified by the West Virginia health care
4 cost review authority to meet the objections of the
5 legislative rule-making review committee and refiled in
6 the state register on the twenty-seventh day of January,
7 one thousand nine hundred eighty-eight, relating to the
8 West Virginia health care cost review authority (exemp-
9 tions from certificate of need review) are authorized.
10 These rules were proposed by the health care cost
11 review authority pursuant to sections four and eight,
12 article two-d, chapter sixteen of this code.

§64-2-16(2d)(8). State board of health; West Virginia health care cost review authority.

1 (a) The rules authorized by the Legislature in subsec-
2 tion (a), section sixteen (2d)(5) of this article were also
3 proposed by the state board of health pursuant to section
4 eight, article two-d, chapter sixteen of this code.

5 (b) The legislative rules filed in the state register on
6 the twenty-fifth day of November, one thousand nine
7 hundred eighty-five, modified by the West Virginia
8 health care cost review authority to meet the objections
9 of the legislative rule-making review committee and
10 refiled in the state register on the twenty-eighth day of
11 January, one thousand nine hundred eighty-six, relating
12 to the West Virginia health care cost review authority
13 (interim standards for lithotripsy services) are
14 authorized.

15 (c) The legislative rules authorized by the Legislature
16 in section sixteen (two-d) (four) of this article were also
17 proposed by the West Virginia health care cost review
18 authority pursuant to section eight, article two-d,
19 chapter sixteen of this code.

§64-2-16(3)(4). Director of the department of health.

1 The legislative rules filed in the state register on the
2 eleventh day of September, one thousand nine hundred
3 eighty-seven, relating to the director of the department
4 of health (immunization criteria for transfer students)
5 are authorized.

§64-2-16(4c)(22). Director of the department of health.

1 The legislative rules filed in the state register on the
2 eighteenth day of November, one thousand nine hundred
3 eighty-seven, relating to the director of the department
4 of health (trauma center or facility designation) are
5 authorized.

§64-2-16(31)(8). Director of the department of health.

1 The legislative rules filed in the state register on the
2 sixteenth day of November, one thousand nine hundred
3 eighty-seven, relating to the director of the department
4 of health (hazardous substances) are authorized with the
5 amendment set forth below:

6 Page 33, section 8, line 8 (unnumbered) by adding at
7 the end of section 8 the following proviso: "*Provided,*
8 That the owner's or operator's submissions are based on
9 the threshold reporting requirements contained in
10 section 5, article 31, chapter 16."

§64-2-17(2a)(8). Commissioner of highways.

1 (a) The legislative rules filed in the state register on
2 the tenth day of August, one thousand nine hundred
3 eighty-four, relating to the commissioner of highways
4 (construction and reconstruction of state roads), are
5 authorized with the amendments set forth below:

6 Page 16, Sec. 8.08, line 21, (unnumbered), by inserting
7 after the word "all" the following language: "reasonable
8 and necessary" and after the word "project" inserting
9 the following language: "by the Railroad".

10 Page 16, Sec. 8.08, line 22, (unnumbered), after the
11 word "the" by striking the words "Railroad's Chief".

12 Page 19, Sec. 8.08, line 25, (unnumbered), by striking
13 "Railroad's Chief" and adding the following new
14 language:

15 Any approval by the Department of any activity by
16 the Contractor upon the right-of-way or premises of any
17 Railroad which is provided for in this Section (8.08)
18 (including, but not limited to, approval of work,
19 methods, or procedures of work to be done, and the
20 condition of premises after completion of work by the
21 Contractor) shall in no way create any liability by the

22 Department to the Railroad except to the extent
23 provided otherwise by law and the Contractor shall,
24 during all periods of construction and thereafter,
25 indemnify and save harmless the department from any
26 and all liability to the Railroad or any third parties for
27 any damages as a result of the work of the Contractor,
28 the methods and procedures for performing work, the
29 failure of the Contractor to properly remove equipment,
30 surplus material and other debris upon the Railroad
31 premises, or the condition of the premises of the
32 Railroad during construction or after completion of
33 construction by the Contractor as approved by the
34 Department or otherwise.

35 Page 18, Sec. 8.08, subdivision (a), line 22, (unnum-
36 bered), by striking the words "single limit" and
37 inserting in lieu thereof the following language: "per
38 occurrence".

39 Page 19, Sec. 8.08, subdivision (b), line 8, (unnum-
40 bered), by striking the words "single limit" and
41 inserting in lieu thereof the following language: "per
42 occurrence".

43 Page 19, Sec. 8.08 (c), line 18, (unnumbered), by
44 inserting after the word "occurrence" the following
45 language: "of"; and after the word "injury" insert a
46 comma and strike the word "or".

47 (b) The legislative rules filed in the state register on
48 the first day of December, one thousand nine hundred
49 eighty-seven, modified by the commissioner of highways
50 to meet the objections of the legislative rule-making
51 review committee and refiled in the state register on the
52 fourteenth day of January, one thousand nine hundred
53 eighty-eight, relating to the commissioner of highways
54 (traffic and safety rules and regulations) are authorized
55 with the amendment set forth below:

56 On page 8, section 7.2, line 9, (unnumbered), by
57 striking everything after the word "structures".

58 (c) The legislative rules filed in the state register on
59 the first day of December, one thousand nine hundred
60 eighty-seven, relating to the commissioner of highways

61 (construction and reconstruction of state roads) are
62 authorized. These rules were proposed by the commis-
63 sioner of highways pursuant to section eight, article two-
64 a and section nineteen, article four, chapter seventeen
65 of this code.

§64-2-17(4)(19). Commissioner of highways.

1 (a) The legislative rules filed in the state register on
2 the fourteenth day of August, one thousand nine
3 hundred eighty-four, modified by the commissioner of
4 highways to meet the objections of the legislative rule-
5 making review committee and refiled in the state
6 register on the fifth day of October, one thousand nine
7 hundred eighty-four, relating to the commissioner of
8 highways (disqualification and suspension of prequali-
9 fied contractors) are authorized.

10 (b) The legislative rules authorized by the Legislature
11 in section seventeen (two-a) (eight) of this article were
12 also proposed by the commissioner of highways pursu-
13 ant to section nineteen, article four, chapter seventeen
14 of this code.

§64-2-17a(2)(9). Commissioner of motor vehicles.

1 (a) The legislative rules filed in the state register on
2 the second day of December, one thousand nine hundred
3 eighty-two, relating to the commissioner of motor
4 vehicles (denial of driving privileges), are authorized
5 with the amendments set forth below:

6 By inserting the words "licensed in the United States"
7 after the phrase "physician of the applicant's choice," on
8 page five, line two, and page seven, line one; and by
9 striking out the words "licensed vision specialist" and
10 inserting in lieu thereof the words "an optometrist or
11 ophthalmologist licensed in the United States," on page
12 five, line three, and on page seven, line two.

13 These rules were proposed by the commissioner
14 pursuant to section nine, article two, chapter seventeen-
15 a and section six, article three-c, chapter seventeen-b of
16 this code.

17 (b) The legislative rules filed in the state register on

18 the twentieth day of November, one thousand nine
19 hundred eighty-four, relating to the commissioner of
20 motor vehicles (titling a vehicle), are authorized.

21 (c) The legislative rules filed in the state register on
22 the fifth day of August, one thousand nine hundred
23 eighty-five, modified by the commissioner of motor
24 vehicles to meet the objections of the legislative rule-
25 making review committee and refiled in the state
26 register on the fourth day of October, one thousand nine
27 hundred eighty-five, relating to the commissioner of
28 motor vehicles (eligibility for reinstatement following
29 suspension or revocation of driving privileges), are
30 authorized.

31 (d) The legislative rules filed in the state register on
32 the twenty-fifth day of July, one thousand nine hundred
33 eighty-six, modified by the commissioner of motor
34 vehicles to meet the objections of the legislative rule-
35 making review committee and refiled in the state
36 register on the ninth day of October, one thousand nine
37 hundred eighty-six, relating to the commissioner of
38 motor vehicles (seizure of a driver's license and issuance
39 of a temporary driver's license), are authorized.

40 (e) The legislative rules filed in the state register on
41 the twenty-fifth day of July, one thousand nine hundred
42 eighty-six, modified by the commissioner of motor
43 vehicles to meet the objections of the legislative rule-
44 making review committee and refiled in the state
45 register on the ninth day of October, one thousand nine
46 hundred eighty-six, relating to the commissioner of
47 motor vehicles (federal safety standards inspection
48 program), are authorized.

49 (f) The legislative rules filed in the state register on
50 the seventeenth day of August, one thousand nine
51 hundred eighty-seven, modified by the commissioner of
52 motor vehicles to meet the objections of the legislative
53 rule-making review committee and refiled in the state
54 register on the twenty-second day of September, one
55 thousand nine hundred eighty-seven, relating to the
56 commissioner of motor vehicles (denial, suspension,
57 revocation or renewal of driving privileges) are autho-

58 rized with the amendment set forth below:

59 On page 7, section 7.2 after the words "75 m.p.h.," add
60 the words "except on highways where the established
61 speed limit is 65 m.p.h., and conviction was in excess
62 of 80 m.p.h.",

63 And,

64 On page 14, section 8.1 by inserting the words "not
65 to exceed fifteen hours" after the word "course" and in
66 section 8.2 by inserting the words "not to exceed fifteen
67 hours" after the word "course".

§64-2-19(2)(5). Commissioner of agriculture.

1 (a) The legislative rules filed in the state register on
2 the sixth day of April, one thousand nine hundred
3 eighty-three, relating to the commissioner of agriculture
4 (schedule of charges for inspection services: fruit) are
5 authorized.

6 (b) The legislative rules authorized by the Legislature
7 in section nineteen (two) (ten) of this article were also
8 proposed by the commissioner of agriculture pursuant
9 to section five, article two, chapter nineteen of this code.

§64-2-19(2)(10). Commissioner of agriculture.

1 The legislative rules filed in the state register on the
2 tenth day of April, one thousand nine hundred eighty-
3 seven, relating to the commissioner of agriculture
4 (schedule of charges for inspection services: fruit) are
5 authorized. These rules were proposed by the commis-
6 sioner of agriculture pursuant to sections five and ten,
7 article two, chapter nineteen of this code.

§64-2-19(9)(2). Commissioner of agriculture.

1 (a) The legislative rules filed in the state register on
2 the fourth day of June, one thousand nine hundred
3 eighty-four, relating to the commissioner of agriculture
4 (animal disease control) are authorized.

5 (b) The legislative rules filed in the state register on
6 the thirteenth day of August, one thousand nine hundred
7 eighty-seven, modified by the commissioner of agricul-
8 ture to meet the objections of the legislative rule-making

9 review committee and refiled in the state register on the
10 eighth day of September, one thousand nine hundred
11 eighty-seven, relating to the commissioner of agriculture
12 (animal disease control) are authorized.

§64-2-19(23)(6). West Virginia racing commission.

1 (a) The legislative rules filed in the state register on
2 the twenty-third day of April, one thousand nine
3 hundred eighty-two, relating to the West Virginia
4 racing commission (Rule 795), are authorized.

5 (b) The legislative rules filed in the state register on
6 the twenty-third day of April, one thousand nine
7 hundred eighty-two, relating to the West Virginia
8 racing commission (Rule 107), are authorized.

9 (c) The legislative rules filed with the legislative rule-
10 making review committee on the tenth day of January,
11 one thousand nine hundred eighty-three, relating to the
12 West Virginia racing commission (Rule 471), are
13 authorized.

14 (d) The legislative rules filed in the state register on
15 the tenth day of January, one thousand nine hundred
16 eighty-three, relating to the West Virginia racing
17 commission (Rule 526), are authorized.

18 (e) The legislative rules filed in the state register on
19 the twenty-third day of April, one thousand nine
20 hundred eighty-two, relating to the West Virginia
21 racing commission (Rule 819), are authorized.

22 (f) The legislative rules filed in the state register on
23 the twentieth day of September, one thousand nine
24 hundred eighty-three, relating to the West Virginia
25 racing commission (Rule 107) greyhound racing, are
26 authorized.

27 (g) The legislative rules filed in the state register on
28 the twentieth day of September, one thousand nine
29 hundred eighty-three, relating to the West Virginia
30 racing commission (Rule 108) greyhound racing are
31 authorized with the amendment set forth below:

32 Following the word "Association" insert a period and
33 strike the remainder of the sentence.

34 (h) The legislative rules filed in the state register on
35 the twentieth day of September, one thousand nine
36 hundred eighty-three, relating to the West Virginia
37 racing commission (Rule 108) thoroughbred racing are
38 authorized with the amendment set forth below:

39 Following the word "Association" insert a period and
40 strike the remainder of the sentence.

41 (i) The legislative rules filed in the state register on
42 the twentieth day of September, one thousand nine
43 hundred eighty-three, relating to the West Virginia
44 racing commission (Rule 392) greyhound racing, are
45 authorized.

46 (j) The legislative rules filed in the state register on
47 the twentieth day of September, one thousand nine
48 hundred eighty-three, relating to the West Virginia
49 racing commission (Rule 455) greyhound racing are
50 authorized.

51 (k) The legislative rules filed in the state register on
52 the twentieth day of September, one thousand nine
53 hundred eighty-three, relating to the West Virginia
54 racing commission (Rule 609A) greyhound racing are
55 authorized.

56 (l) The legislative rules filed in the state register on
57 the twentieth day of September, one thousand nine
58 hundred eighty-three, relating to the West Virginia
59 racing commission (Rule 627) greyhound racing are
60 authorized.

61 (m) The legislative rules filed in the state register on
62 the twentieth day of September, one thousand nine
63 hundred eighty-three, relating to the West Virginia
64 racing commission (Rule 845) thoroughbred racing are
65 authorized.

66 (n) The legislative rules filed in the state register on
67 the ninth day of November, one thousand nine hundred
68 eighty-four, relating to the West Virginia racing
69 commission (greyhound racing — Rule 628), are
70 authorized.

71 (o) The legislative rules filed in the state register on

72 the twenty-fifth day of September, one thousand nine
73 hundred eighty-four, relating to the West Virginia
74 racing commission (greyhound racing — Rule 672) are
75 authorized.

76 (p) The legislative rules filed in the state register on
77 the ninth day of November, one thousand nine hundred
78 eighty-four, relating to the West Virginia racing
79 commission (thoroughbred racing — Rule 808), are
80 authorized.

81 (q) The legislative rules filed in the state register on
82 the twenty-fifth day of September, one thousand nine
83 hundred eighty-four, relating to the West Virginia
84 racing commission (thoroughbred racing — Rule 843),
85 are authorized.

86 (r) The legislative rules filed in the state register on
87 the sixth day of August, one thousand nine hundred
88 eighty-four, relating to the West Virginia racing
89 commission (greyhound racing — Rule 845-I) are
90 authorized.

91 (s) The legislative rules filed in the state register on
92 the third day of September, one thousand nine hundred
93 eighty-seven, modified by the West Virginia racing
94 commission to meet the objections of the legislative rule-
95 making review committee and refiled in the state
96 register on the twenty-first day of December, one
97 thousand nine hundred eighty-seven, relating to the
98 West Virginia racing commission (greyhound racing)
99 are authorized.

100 (t) The legislative rules filed in the state register on
101 the thirty-first day of July, one thousand nine hundred
102 eighty-seven, modified by the West Virginia racing
103 commission to meet the objections of the legislative rule-
104 making review committee and refiled in the state
105 register on the eighteenth day of December, one
106 thousand nine hundred eighty-seven, relating to the
107 West Virginia racing commission (thoroughbred racing)
108 are authorized with the amendments set forth below:

109 On page fifty-five, Section 61.3(f), by striking all of
110 subsection (f) and inserting in lieu thereof the existing

111 provisions of subsection (f) as contained in 178 CSR 1,
112 which reads as follows:

113 All moneys held by any licensee for the payment of
114 outstanding and unredeemed pari-mutuel tickets, if not
115 claimed within ninety (90) days after the close of the
116 horse race meeting in connection with which the tickets
117 were issued, shall be turned over by the licensee to the
118 Racing Commission within fifteen (15) days after the
119 expiration of such ninety (90) day period and the
120 licensee shall give such information as the Racing
121 Commission may require concerning such outstanding
122 and unredeemed tickets; viz. The outs ledger enumer-
123 ating all outstanding tickets at the close of each meeting,
124 to contain a record of all tickets redeemed in the ninety
125 (90) day following period, together with all redeemed
126 tickets which shall bear the stamp of the cashier(s)
127 making redemption: A stamp indicating "Outs Ticket."
128 In addition, a statement to accompany said ledger and
129 tickets, setting forth the quantity and amount of each
130 denomination redeemed in the ninety (90) day period,
131 with a grand total indicating the sum paid in "Outs."
132 This sum subtracted from the outs on the closing day
133 to equal the remittance of the Association in settlement
134 of the "Out" account for the meeting.

§64-2-20(1)(7). Department of natural resources.

1 (a) The legislative rules filed in the state register on
2 the twenty-sixth day of September, one thousand nine
3 hundred eighty-four, relating to the department of
4 natural resources (public use of state parks, forests,
5 hunting and fishing areas), are authorized.

6 (b) The legislative rules filed in the state register on
7 the ninth day of September, one thousand nine hundred
8 eighty-five, relating to the department of natural
9 resources (WV/NPDES regulations for the coal mining
10 point source category and related sewage facilities), are
11 authorized.

12 (c) The legislative rules filed in the state register on
13 the thirtieth day of December, one thousand nine
14 hundred eighty-six, relating to the department of
15 natural resources (WV/NPDES program for coal mines

16 and preparation plants, and the refuse and waste
17 therefrom), are authorized with the amendments set
18 forth below:

19 On page four, § 1.9.1.a by inserting the words "five
20 thousand dollars or" after the words "'significant
21 portion of income' means" and

22 On page four, § 1.9.1.a by inserting the words
23 "whichever is less," after the words "ten percent or more
24 of gross personal income for a calendar year". -

25 (d) The legislative rules filed in the state register on
26 the twelfth day of August, one thousand nine hundred
27 eighty-seven, relating to the department of natural
28 resources (WV/NPDES regulations for coal mining
29 facilities) are authorized.

30 (e) The legislative rules authorized by the Legislature
31 in section twenty (seven) (twenty-two) of this article
32 were also proposed by the director of the department of
33 natural resources pursuant to section seven, article one,
34 chapter twenty of this code.

**§64-2-20(2)(23). Director of the department of natural
resources.**

1 The legislative rules filed in the state register on the
2 tenth day of June, one thousand nine hundred eighty-
3 seven, relating to the director of the department of
4 natural resources (outfitters and guides) are authorized.

§64-2-20(5a)(3). Water resources board.

1 (a) The legislative rules filed in the state register on
2 the sixth day of January, one thousand nine hundred
3 eighty-three, relating to the state water resources board
4 (underground injection control program), are
5 authorized.

6 (b) The legislative rules filed in the state register on
7 the fifteenth day of November, one thousand nine
8 hundred eighty-three, relating to the state water
9 resources board (special regulations), are authorized.

10 (c) The legislative rules filed in the state register on
11 the third day of August, one thousand nine hundred

12 eighty-three, relating to the state water resources board
13 (groundwater protection standards), are authorized.

14 (d) The legislative rules filed in the state register on
15 the fifteenth day of November, one thousand nine
16 hundred eighty-three, relating to the state water
17 resources board (state national pollutant discharge
18 elimination system (NPDES) program), are authorized.

19 (e) The Legislature hereby authorizes and directs the
20 state water resources board to promulgate rules relating
21 to water quality standards in exact conformity with the
22 rules relating to water quality standards tendered to the
23 secretary of state on the seventh day of March, one
24 thousand nine hundred eighty-four, by the executive
25 secretary of the state water resources board, to be
26 received and filed for inclusion in the state register by
27 the secretary of state.

28 (f) The legislative rules filed in the state register on
29 the seventh day of January, one thousand nine hundred
30 eighty-five, modified by the water resources board to
31 meet the objections of the legislative rule-making review
32 committee and refiled in the state register on the
33 thirteenth day of February, one thousand nine hundred
34 eighty-five, relating to the water resources board (water
35 quality standards), are authorized.

36 (g) The legislative rules filed in the state register on
37 the seventeenth day of October, one thousand nine
38 hundred eighty-five, modified by the state water
39 resources board to meet the objections of the legislative
40 rule-making review committee and refiled in the state
41 register on the eighth day of January, one thousand nine
42 hundred eighty-seven, and further modified by the state
43 water resources board to meet the objections of the
44 legislative rule-making review committee and refiled in
45 the state register on the twenty-fourth day of February,
46 one thousand nine hundred eighty-seven, relating to the
47 state water resources board (water quality standards),
48 are authorized.

49 (h) The legislative rules filed in the state register on
50 the seventeenth day of October, one thousand nine
51 hundred eighty-five, modified by the state water

52 resources board to meet the objections of the legislative
53 rule-making review committee and refiled in the state
54 register on the eighth day of January, one thousand nine
55 hundred eighty-seven, and further modified by the state
56 water resources board to meet the objections of the
57 legislative rule-making review committee and refiled in
58 the state register on the twenty-fourth day of February,
59 one thousand nine hundred eighty-seven, relating to the
60 state water resources board (state national pollutant
61 discharge elimination system (NPDES) program), are
62 authorized.

63 (i) The legislative rules filed in the state register on
64 the seventeenth day of October, one thousand nine
65 hundred eighty-five, and modified by the state water
66 resources board to meet the objections of the legislative
67 rule-making review committee and refiled in the state
68 register on the twenty-fourth day of February, one
69 thousand nine hundred eighty-seven, relating to the
70 state water resources board (underground injection
71 control program), are authorized.

72 (j) The legislative rules filed in the state register on
73 the seventeenth day of October, one thousand nine
74 hundred eighty-five, and modified by the state water
75 resources board to meet the objections of the legislative
76 rule-making review committee and refiled in the state
77 register on the twenty-fourth day of February, one
78 thousand nine hundred eighty-seven, relating to the
79 state water resources board (special regulations), are
80 authorized. These rules were proposed by the state
81 water resources board pursuant to section three, article
82 five-a, and section five, article five, chapter twenty of
83 this code.

84 (k) The legislative rules filed in the state register on
85 the thirtieth day of June, one thousand nine hundred
86 eighty-seven, relating to the water resources board
87 (water quality standards) are authorized.

§64-2-20(5e)(6). Department of natural resources.

1 (a) The legislative rules filed in the state register on
2 the sixth day of January, one thousand nine hundred
3 eighty-four, relating to the department of natural

4 resources (hazardous waste management), are
5 authorized.

6 (b) The legislative rules filed in the state register on
7 the sixth day of January, one thousand nine hundred
8 eighty-four, relating to the air pollution control commis-
9 sion (to prevent and control air pollution from hazardous
10 waste treatment, storage or disposal facilities)(series
11 XXV), are authorized with the amendments set forth
12 below:

13 Page 3, §1.06, change the § title from "Enforcement"
14 to "Procedure"; place an "(a)" in front of the existing
15 paragraph and add the following:

16 "(b) Permit applications filed pursuant to this regu-
17 lation shall be processed in accordance with the
18 permitting procedures as set forth in code §20-5E of this
19 regulation. Permit procedures set forth in code §16-20
20 and any other regulation of this commission are not
21 applicable to any permit application filed pursuant to
22 this regulation."

23 Such rules shall also include a section which shall
24 read as follows:

25 "The commission shall report to the legislative rule-
26 making review committee as required by that commit-
27 tee, but in no event later than the first day of the regular
28 session of the Legislature in the year one thousand nine
29 hundred eighty-five. Such report shall include informa-
30 tion regarding the commission's data gathering efforts,
31 the development of compliance programs, the progress
32 in implementation, and such other matters as the
33 committee may require, pertaining to the regulations
34 hereby authorized."

35 (c) The legislative rules filed in the state register on
36 the third day of December, one thousand nine hundred
37 eighty-four, modified by the department of natural
38 resources to meet the objections of the legislative rule-
39 making review committee and refiled in the state
40 register on the thirteenth day of February, one thousand
41 nine hundred eighty-five, relating to the department of
42 natural resources (hazardous waste management), are

43 authorized.

44 (d) The legislative rules filed in the state register on
45 the eleventh day of December, one thousand nine
46 hundred eighty-five, modified by the department of
47 natural resources to meet the objections of the legislative
48 rule-making review committee and refiled in the state
49 register on the twentieth day of February, one thousand
50 nine hundred eighty-six, relating to the department of
51 natural resources (hazardous waste management), are
52 authorized.

53 (e) The legislative rules filed in the state register on
54 the fifth day of March, one thousand nine hundred
55 eighty-six, relating to the department of natural
56 resources (hazardous waste management), are
57 authorized.

58 (f) The legislative rules filed in the state register on
59 the tenth day of October, one thousand nine hundred
60 eighty-five, relating to the department of natural
61 resources (hazardous waste management: small quantity
62 generators and waste minimization certification), are
63 authorized with the amendments set forth below:

64 On page 1, §3.1.4b, delete the word "or" in the
65 reference to "paragraph (g) or (j)" and insert in lieu
66 thereof the words "and, if applicable."

67 (g) The legislative rules filed in the state register on
68 the twenty-sixth day of September, one thousand nine
69 hundred eighty-six, modified by the department of
70 natural resources to meet the objections of the legislative
71 rule-making review committee and refiled in the state
72 register on the ninth day of December, one thousand
73 nine hundred eighty-six, relating to the department of
74 natural resources (hazardous waste management regu-
75 lations), are authorized.

76 (h) The legislative rules filed in the state register on
77 the ninth day of January, one thousand nine hundred
78 eighty-seven, relating to the department of natural
79 resources (hazardous waste management regulations),
80 are authorized.

81 (i) The legislative rules filed in the state register on

82 the fifth day of March, one thousand nine hundred
83 eighty-seven, relating to the department of natural
84 resources (hazardous waste management regulations,
85 series 35), are authorized.

86 (j) The legislative rules filed in the state register on
87 the seventh day of December, one thousand nine
88 hundred eighty-seven, relating to the department of
89 natural resources (hazardous waste management regu-
90 lations, series 35) are authorized.

§64-2-20(5e)(7). Commissioner of highways.

1 (a) The legislative rules filed in the state register on
2 the twenty-first day of October, one thousand nine
3 hundred eighty-three, relating to the commissioner of
4 highways (transportation of hazardous waste by high-
5 way transporters) are authorized with the amendments
6 set forth below:

7 Pages 3 and 7 after "40 CFR part 262" add the words
8 "as amended through March 8, 1986,"

9 Page 7 after "49 CFR parts 171-179" add the words
10 "as amended through March 8, 1986," and

11 Page 11 after "49 CFR part 171.16" add the words "as
12 amended through March 8, 1986."

13 (b) The legislative rules filed in the state register on
14 the seventh day of September, one thousand nine
15 hundred eighty-four, modified by the commissioner of
16 highways to meet the objections of the legislative rule-
17 making review committee and refiled in the state
18 register on the fifth day of October, one thousand nine
19 hundred eighty-four, relating to the commissioner of
20 highways (transportation of hazardous waste) are
21 authorized with the amendment set forth below:

22 Page 5, by amending § 3.01 by adding thereto a new
23 subsection, designated subsection (4), to read as follows:
24 "(4) Before accepting hazardous waste from a rail
25 transporter, a highway transporter must sign and date
26 the manifest and provide a copy to the rail transporter."

27 (c) The legislative rules filed in the state register on
28 the twelfth day of December, one thousand nine hundred

29 eighty-five, relating to the commissioner of highways
30 (transportation of hazardous wastes by vehicle upon the
31 roads and highways of this state) are authorized with
32 the amendments set forth below:

33 On page 18, the first line of § 3.03 shall read as
34 follows:

35 "3.03. Transporters who only accept Hazardous Waste
36 from".

37 (d) The legislative rules filed in the state register on
38 the twenty-fifth day of February, one thousand nine
39 hundred eighty-seven, modified by the commissioner of
40 highways to meet the objections of the legislative rule-
41 making review committee and refiled in the state
42 register on the twenty-third day of November, one
43 thousand nine hundred eighty-seven, relating to the
44 commissioner of highways (transportation of hazardous
45 wastes upon the roads and highways) are authorized.

§64-2-20(5f)(4). Department of natural resources.

1 (a) The legislative rules filed in the state register on
2 the twentieth day of January, one thousand nine
3 hundred eighty-four, relating to the department of
4 natural resources (solid waste management) are autho-
5 rized with the amendments set forth below:

6 Page 9, section 4.04, line five, add the following
7 paragraph:

8 "Upon request of any applicant, the division shall
9 meet with the applicant for prefiling review of the
10 application. The division, with the cooperation of the
11 solid waste authority, shall assist the applicant in
12 preparing a complete and proper application which
13 would not be rejected as incomplete."

14 On page 15, section 6.03 (c) (1) in the first full
15 sentence, after the word "cease", strike the remainder
16 of the sentence and insert in lieu thereof the words
17 "within fifteen (15) days of receipt of an order of
18 suspension" and in the second sentence strike the word
19 "recommence" and insert the words "continue beyond
20 fifteen (15) days"; (c)(2) in the first full sentence, after

21 the word "cease" by striking out the remainder of the
22 sentence and insert in lieu thereof the words "imme-
23 diately upon receipt of an order of revocation."

24 (b) The legislative rules filed in the state register on
25 the sixteenth day of December, one thousand nine
26 hundred eighty-seven, modified by the department of
27 natural resources to meet the objections of the legislative
28 rule-making review committee and refiled in the state
29 register on the fourteenth day of January, one thousand
30 nine hundred eighty-eight, relating to the department of
31 natural resources (solid waste management) are autho-
32 rized.

§64-2-20(7)(22). Director of the department of natural resources.

1 The legislative rules filed in the state register on the
2 twenty-eighth day of July, one thousand nine hundred
3 eighty-seven, modified by the director of the department
4 of natural resources to meet the objections of the
5 legislative rule-making review committee and refiled in
6 the state register on the seventh day of August, one
7 thousand nine hundred eighty-seven, relating to the
8 director of the department of natural resources (boating
9 regulations) are authorized with the amendment set
10 forth below:

11 On page 16, section 6.2, line 3 by inserting following
12 the period "This regulation does not apply to licensed
13 outfitters and guides." These rules were proposed by the
14 director of the department of natural resources pursu-
15 ant to section seven, article one and section twenty-two,
16 article seven, chapter twenty of this code.

§64-2-21(3)(7). Commissioner of labor.

1 (a) The legislative rules filed in the state register on
2 the tenth day of May, one thousand nine hundred eighty-
3 two, relating to the commissioner of labor (steam boiler
4 rules) as modified by the legislative rule-making review
5 committee are authorized.

6 (b) The legislative rules filed in the state register on
7 the twelfth day of January, one thousand nine hundred
8 eighty-eight, relating to the commissioner of labor

9 (steam boiler inspection fee schedule) are authorized.

§64-2-21(3a)(7). Commissioner of labor.

1 The legislative rules filed in the state register on the
2 twenty-second day of December, one thousand nine
3 hundred eighty-seven, relating to the commissioner of
4 labor (West Virginia occupational safety and health act)
5 are authorized.

§64-2-21(5)(13). Commissioner of labor.

1 The legislative rules filed in the state register on the
2 twenty-second day of December, one thousand nine
3 hundred eighty-seven, modified by the commissioner of
4 labor to meet the objections of the legislative rule-
5 making review committee and refiled in the state
6 register on the twentieth day of January, one thousand
7 nine hundred eighty-eight, relating to the commissioner
8 of labor (wage payment and collection act) are autho-
9 rized. These rules were proposed by the commissioner
10 of labor pursuant to sections thirteen and fourteen,
11 article five, chapter twenty-one of this code.

§64-2-21(5)(14). Commissioner of labor.

1 The legislative rules authorized by the Legislature in
2 section twenty-one (five) (thirteen) of this article were
3 also proposed by the commissioner of labor pursuant to
4 section fourteen, article five, chapter twenty-one of this
5 code.

§64-2-22(1)(15). Commissioner of the department of energy.

1 The legislative rules filed in the state register on the
2 twentieth day of April, one thousand nine hundred
3 eighty-seven, relating to the commissioner of the
4 department of energy (roof control) are authorized.

§64-2-22(9)(6). Commissioner of the department of energy.

1 (a) The legislative rules filed in the state register on
2 the fourteenth day of November, one thousand nine
3 hundred eighty-six, modified by the commissioner of the
4 department of energy to meet the objections of the

5 legislative rule-making review committee and refiled in
6 the state register on the sixteenth day of December, one
7 thousand nine hundred eighty-six, relating to the
8 commissioner of the department of energy (standards
9 for certification of coal mine electricians), are
10 authorized.

11 (b) The legislative rules filed in the state register on
12 the fifteenth day of December, one thousand nine
13 hundred eighty-six, modified by the commissioner of the
14 department of energy to meet the objections of the
15 legislative rule-making review committee and refiled in
16 the state register on the twenty-first day of January, one
17 thousand nine hundred eighty-seven, relating to the
18 commissioner of the department of energy (safety
19 training program for prospective underground coal
20 miners in West Virginia), are authorized.

21 (c) The legislative rules filed in the state register on
22 the fifteenth day of December, one thousand nine
23 hundred eighty-six, modified by the commissioner of the
24 department of energy to meet the objections of the
25 legislative rule-making review committee and refiled in
26 the state register on the twenty-first day of January, one
27 thousand nine hundred eighty-seven, relating to the
28 commissioner of the department of energy (safety
29 training program for prospective surface coal miners in
30 West Virginia), are authorized.

31 (d) The legislative rules filed in the state register on
32 the third day of April, one thousand nine hundred
33 eighty-seven, relating to the commissioner of the
34 department of energy (standards for certification of
35 underground belt examiners for underground coal
36 mines), are authorized.

37 (e) The legislative rules filed in the state register on
38 the twelfth day of May, one thousand nine hundred
39 eighty-seven, modified by the commissioner of the
40 department of energy to meet the objections of the
41 legislative rule-making review committee and refiled in
42 the state register on the fourteenth day of August, one
43 thousand nine hundred eighty-seven, relating to the
44 commissioner of the department of energy (blasters

45 certification for surface coal mines and surface areas of
46 coal mines) are authorized.

§64-2-22a(3)(4). Commissioner of the department of energy.

1 The legislative rules filed in the state register on the
2 ninth day of April, one thousand nine hundred eighty-
3 seven, relating to the commissioner of the department
4 of energy (performance standards for blasting on
5 surface mines) are authorized.

§64-2-29(22)(5). State lottery commission.

1 The legislative rules filed in the state register on the
2 twenty-first day of April, one thousand nine hundred
3 eighty-seven, modified by the state lottery commission
4 to meet the objections of the legislative rule-making
5 review committee and refiled in the state register on the
6 fourteenth day of August, one thousand nine hundred
7 eighty-seven, relating to the state lottery commission
8 (state lottery) are authorized.

§64-2-29a(2)(6). Secretary of state.

1 (a) The legislative rules filed in the state register on
2 the fifteenth day of April, one thousand nine hundred
3 eighty-five, modified by the secretary of state to meet
4 the objections of the legislative rule-making review
5 committee and refiled in the state register on the eighth
6 day of October, one thousand nine hundred eighty-five,
7 relating to the secretary of state (standard size and
8 format for rules and related documents filed in the
9 secretary of state's office) are authorized.

10 (b) The legislative rules filed in the state register on
11 the seventeenth day of August, one thousand nine
12 hundred eighty-seven, modified by the secretary of state
13 to meet the objections of the legislative rule-making
14 review committee and refiled in the state register on the
15 twenty-third day of September, one thousand nine
16 hundred eighty-seven, relating to the secretary of state
17 (standard size and format for rules and procedures for
18 publication of the state register or parts of the state
19 register) are authorized. These rules were proposed by
20 the secretary of state pursuant to sections six and seven,

21 article two, chapter twenty-nine-a of this code.

§64-2-29a(2)(7). Secretary of state.

1 The legislative rules authorized by the Legislature in
2 section twenty-nine-a (two) (six) of this article were also
3 proposed by the secretary of state pursuant to section
4 seven, article two, chapter twenty-nine-a of this code.

**§64-2-29b(1)(3). Freedom of information act; department
of energy.**

1 The Legislature hereby authorizes and directs the
2 department of energy to promulgate the procedural
3 rules filed in the state register on the twenty-first day
4 of October, one thousand nine hundred eighty-seven,
5 relating to the department of energy (requests for
6 information) with the amendments set forth below:

7 On page two, subsection 3.1, by striking subdivision
8 (d) and renumbering the remaining subdivisions, and

9 On page three, section 6, by striking all of subsection
10 6.1 and inserting in lieu thereof, the following:

11 "6.1 The department shall establish fixed rate fees
12 for reproduction of documents, records, and files on the
13 basis of the actual cost of such reproduction and shall
14 document such costs: *Provided*, That where total costs
15 are less than five dollars, no fee shall be charged."

§64-2-30(3)(7). Board of medicine.

1 (a) The legislative rules filed in the state register on
2 the twelfth day of May, one thousand nine hundred
3 eighty-three, relating to the board of medicine (licens-
4 ing, disciplinary and complaint procedures; podiatry;
5 physicians assistants) are authorized with the modifica-
6 tions set forth below:

7 "§24.12.

8 (b) It shall be the responsibility of the supervising
9 physician to obtain consent in writing from the patient
10 before Type A physician assistants employed in a
11 satellite clinic may render general medical or surgical
12 services, except in emergencies.

13 §24.16.

14 (p) No physician assistant shall render nonemergency
15 outpatient medical services until the patient has been
16 informed that the individual providing care is a
17 physician assistant."

18 (b) The legislative rules filed in the state register on
19 the twenty-sixth day of November, one thousand nine
20 hundred eighty-five, modified by the board of medicine
21 to meet the objections of the legislative rule-making
22 review committee and refiled in the state register on the
23 seventeenth day of January, one thousand nine hundred
24 eighty-six, relating to the board of medicine (licensing,
25 disciplinary and complaint procedures; podiatry; physi-
26 cians assistants) are authorized. These rules were
27 proposed by the board of medicine pursuant to sections
28 seven and sixteen, article three, chapter thirty of this
29 code.

30 (c) The legislative rules filed in the state register on
31 the eighth day of March, one thousand nine hundred
32 eighty-five, modified by the West Virginia board of
33 medicine to meet the objections of the legislative rule-
34 making review committee and refiled in the state
35 register on the eighteenth day of December, one
36 thousand nine hundred eighty-five, relating to the West
37 Virginia board of medicine (rules governing the
38 approval of medical schools not accredited by the liaison
39 committee on medical education) are authorized. These
40 rules were proposed by the West Virginia board of
41 medicine pursuant to sections seven and ten, article
42 three, chapter thirty of this code.

43 (d) The legislative rules filed in the state register on
44 the third day of June, one thousand nine hundred eighty-
45 seven, relating to the board of medicine (fees for services
46 rendered by the board of medicine) are authorized.

**§64-2-30(13)(5). West Virginia state board of registration
for professional engineers.**

1 (a) The legislative rules filed in the state register on
2 the twenty-ninth day of November, one thousand nine
3 hundred eighty-five, modified by the West Virginia

4 state board of registration for professional engineers to
5 meet the objections of the legislative rule-making review
6 committee and refiled in the state register on the
7 twenty-eighth day of January, one thousand nine
8 hundred eighty-six, relating to the West Virginia state
9 board of registration for professional engineers (legisla-
10 tive rules governing the West Virginia state board of
11 registration for professional engineers) are authorized.

12 (b) The legislative rules filed in the state register on
13 the twenty-third day of December, one thousand nine
14 hundred eighty-seven, modified by the West Virginia
15 state board of registration for professional engineers to
16 meet the objections of the legislative rule-making review
17 committee and refiled in the state register on the
18 twenty-ninth day of January, one thousand nine hundred
19 eighty-eight, relating to the West Virginia state board
20 of registration for professional engineers (rules of the
21 West Virginia state board of registration for profes-
22 sional engineers) are authorized.

**§64-2-30(13a)(4). State board of examiners of land
surveyors.**

1 The legislative rules filed in the state register on the
2 thirty-first day of July, one thousand nine hundred
3 eighty-seven, modified by the state board of examiners
4 of land surveyors to meet the objections of the legislative
5 rule-making review committee and refiled in the state
6 register on the twenty-eighth day of January, one
7 thousand nine hundred eighty-eight, relating to the state
8 board of examiners of land surveyors (practice of land
9 surveying in West Virginia) are authorized.

**§64-2-30(16)(4). State boards of examination or registra-
tion; West Virginia board of chiroprac-
tic examiners.**

1 The legislative rules filed in the state register on the
2 twenty-sixth day of October, one thousand nine hundred
3 eighty-seven, modified by the West Virginia board of
4 chiropractic examiners to meet the objections of the
5 legislative rule-making review committee and refiled in
6 the state register on the twenty-seventh day of January,
7 one thousand nine hundred eighty-eight, relating to the

8 West Virginia board of chiropractic examiners (West
9 Virginia board of chiropractic examiners) are autho-
10 rized.

§64-2-31(20)(9). Jail and prison standards commission.

1 The legislative rules filed in the state register on the
2 fifth day of November, one thousand nine hundred
3 eighty-seven, relating to the jail and prison standards
4 commission (West Virginia minimum standards for
5 construction, operation, and maintenance of jails) are
6 authorized.

§64-2-33(2)(10). Insurance commissioner.

1 (a) The legislative rules filed in the state register on
2 the eighteenth day of October, one thousand nine
3 hundred eighty-three, relating to the insurance commis-
4 sioner (excess line brokers), are authorized.

5 (b) The legislative rules filed in the state register on
6 the eighteenth day of August, one thousand nine
7 hundred eighty-six, modified by the insurance commis-
8 sioner to meet the objection of the legislative rule-
9 making review committee and refiled in the state
10 register on the twelfth day of December, one thousand
11 nine hundred eighty-six, relating to the insurance
12 commissioner (examiners' compensation, qualification
13 and classification), are authorized.

14 (c) The legislative rules authorized by the Legislature
15 in section thirty-three (twenty-a) (three) of this article
16 were also proposed by the insurance commissioner
17 pursuant to section ten, article two, chapter thirty-three
18 of this code.

19 (d) The legislative rules authorized by the Legislature
20 in section thirty-three (twenty-b) (six) of this article
21 were also proposed by the insurance commissioner
22 pursuant to section ten, article two, chapter thirty-three
23 of this code.

§64-2-33(20a)(3). Insurance commissioner.

1 The legislative rules filed in the state register on the
2 twentieth day of February, one thousand nine hundred
3 eighty-seven, relating to the insurance commissioner

4 (West Virginia essential property insurance association)
5 are authorized. These rules were proposed by the
6 insurance commissioner pursuant to section ten, article
7 two and section three, article twenty-a, chapter thirty-
8 three of this code.

§64-2-33(20b)(6). Insurance commissioner.

1 (a) The legislative rules filed in the state register on
2 the twenty-ninth day of May, one thousand nine hundred
3 eighty-seven, relating to the insurance commissioner
4 (medical malpractice annual reporting requirements)
5 are authorized. These rules were proposed by the
6 insurance commissioner pursuant to section ten, article
7 two and section six, article twenty-b, chapter thirty-
8 three of this code.

9 (b) The legislative rules filed in the state register on
10 the thirty-first day of July, one thousand nine hundred
11 eighty-seven, modified by the insurance commissioner to
12 meet the objections of the legislative rule-making review
13 committee and refiled in the state register on the
14 seventh day of November, one thousand nine-hundred
15 eighty-seven, relating to the insurance commissioner
16 (medical malpractice loss experience and loss expense
17 reporting requirements) are authorized. These rules
18 were proposed by the insurance commissioner pursuant
19 to section ten, article two and section six, article twenty-
20 b, chapter thirty-three of this code.

§64-2-47(1)(19). Commissioner of the department of labor.

1 The legislative rules filed in the state register on the
2 sixteenth day of November, one thousand nine hundred
3 eighty-seven, relating to the commissioner of the
4 department of labor (standards for weights and mea-
5 sures inspectors—adoption of NBS Handbook 130, 1987)
6 are authorized.

§64-2-47(14)(5). Attorney general.

1 The legislative rules filed in the state register on the
2 twenty-third day of September, one thousand nine
3 hundred eighty-seven, modified by the attorney general
4 to meet the objections of the legislative rule-making

5 review committee and refiled in the state register on the
6 twenty-fifth day of November, one thousand nine
7 hundred eighty-seven, relating to the attorney general
8 (administration of preneed burial contracts) are autho-
9 rized with the following amendments set forth below:

10 On page 9, section 8.2 by striking the words "within
11 thirty days after the death of a contract beneficiary,"
12 and inserting in lieu thereof the following: "On or before
13 the first day of January and the first day of July of each
14 year," and after the word "provided" by striking the
15 comma and inserting in lieu thereof "after the death of
16 any contract beneficiary during the previous six-month
17 period,"

18 And,

19 On page 12, section 9.7 by striking all of 9.7,

20 And,

21 Beginning on page 15, by striking the entirety of
22 section 15,

23 And,

24 Beginning on page 18, by striking the entirety of
25 section 16, and by renumbering the remaining sections.

**§64-2-48a(2)(7). Department of human services; director
of the child advocate office.**

1 The legislative rules authorized by the Legislature in
2 section forty-eight-a (two) (eight) of this article were also
3 proposed by the director of the child advocate office
4 pursuant to section seven, article two, chapter forty-
5 eight-a of this code.

**§64-2-48a(2)(8). Department of human services; director
of the child advocate office.**

1 The Legislature hereby authorizes and directs the
2 director of the child advocate office of the department
3 of human services to promulgate rules relating to
4 guidelines for child support awards in exact conformity
5 with the rules relating to guidelines for child support

- 6 awards tendered to the secretary of state by the Senate
7 committee on the judiciary on the twelfth day of March,
8 one thousand nine hundred eighty-eight.

CHAPTER 113

(S. B. 117—By Senator Tonkovich, Mr. President)

[Passed March 12, 1988; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact article one-g, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to service medals; procedure for award of distinguished service medal or legion of merit; adjutant general to establish other awards; precedence of medals; creation and appointment of military awards board; terms and expenses for board members; design of medals; multiple decorations; and procurement of decorations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1G. SERVICE MEDALS.

§15-1G-1. The West Virginia distinguished service medal.

§15-1G-2. West Virginia legion of merit.

§15-1G-3. Procedure for award of distinguished service medal and legion of merit.

§15-1G-4. Other West Virginia awards and decorations.

§15-1G-5. Precedence of medals.

§15-1G-6. Board of awards.

§15-1G-7. Design of medals.

§15-1G-8. Devices for the award of multiple West Virginia decorations.

§15-1G-9. Procurement of West Virginia decorations.

§15-1G-1. The West Virginia distinguished service medal.

1 The "West Virginia distinguished service medal" may
2 be awarded:

3 (a) To former or present governors of the state of West

4 Virginia as commanders in chief of the West Virginia
5 national guard;

6 (b) To such officers and enlisted men in the West
7 Virginia national guard as may have, or may hereafter
8 render conspicuous or distinguished service in the line
9 of duty, or who have displayed, or may hereafter
10 display, conspicuous courage and gallantry while on
11 duty with the West Virginia national guard;

12 (c) To individuals serving in the West Virginia
13 national guard who are holders of congressional medals
14 of honor, United States distinguished service medals,
15 United States distinguished service cross or equivalent
16 awards of the United States navy;

17 (d) To West Virginians who served in the armed
18 forces of the United States in time of war and who have
19 rendered conspicuous or distinguished service in the line
20 of duty;

21 (e) To not more than two civilians in any one year
22 who shall have rendered, in the judgment of the military
23 board of the state^o of West Virginia, conspicuous or
24 distinguished service to the West Virginia national
25 guard, the state of West Virginia or the United States
26 of America.

27 The West Virginia distinguished service medal may
28 be awarded posthumously to the next of kin of any
29 officer, enlisted man or civilian entitled thereto under
30 the foregoing subdivisions.

§15-1G-2. West Virginia legion of merit.

1 The "West Virginia legion of merit" may be awarded
2 for exceptional meritorious service, achievement or
3 bravery:

4 (a) To present or former officers and enlisted
5 members of the West Virginia national guard;

6 (b) To present or former members of active military
7 components, national guard members of other states and
8 other reserve components;

9 (c) To civilians who have rendered conspicuous or

10 distinguished service to the West Virginia national
11 guard, the state of West Virginia or the United States
12 of America.

§15-1G-3. Procedure for award of distinguished service medal and legion of merit.

1 The military awards board hereinafter established
2 shall recommend to the governor the approval or
3 disapproval of all nominations for the award of the
4 distinguished service medal or the legion of merit. If the
5 justification contained in a nomination for the distin-
6 guished service medal does not meet the criteria
7 established for such award, the board may recommend
8 in lieu thereof the approval of the legion of merit.

§15-1G-4. Other West Virginia awards and decorations.

1 The adjutant general is authorized to establish other
2 West Virginia awards and decorations to recognize
3 officers and members of the West Virginia national
4 guard or other individuals as may be deemed
5 appropriate.

6 Such awards and decorations will be established by
7 the issuance of appropriate orders by the adjutant
8 general and furnished at the expense of the state. The
9 adjutant general shall establish procedures for the
10 granting of such awards or decorations.

§15-1G-5. Precedence of medals.

1 The order of precedence for wearing West Virginia
2 medals is as follows:

3 (1) West Virginia distinguished service medal;

4 (2) West Virginia legion of merit;

5 (3) Other West Virginia awards and decorations in
6 the order of precedence as established by the adjutant
7 general.

§15-1G-6. Board of awards.

1 The governor, as commander in chief of the West
2 Virginia national guard, shall appoint a permanent

3 board of awards to be known as the military awards
4 board of the state of West Virginia to consist of three
5 members, at least two of whom shall be members of the
6 West Virginia national guard on active duty. The term
7 of office for these members shall be four years or until
8 their successors are appointed.

9 The members of this board shall receive no salary or
10 other compensation for their services, but each member
11 shall be allowed and paid for actual expenses in
12 traveling and other personal expense incurred in the
13 performance of their duty. The board shall select a
14 secretary who shall make and keep a record of its
15 proceedings, which record is to be lodged in the adjutant
16 general's office and is to be preserved therein as a part
17 of the permanent military records of the state of West
18 Virginia.

§15-1G-7. Design of medals.

1 The military awards board of the state of West
2 Virginia shall design, or have designed, the distin-
3 guished service medal, the legion of merit, and other
4 West Virginia awards and decorations and shall submit
5 the designs and bids thereon, together with its recom-
6 mendations thereon, to the governor for final approval.

§15-1G-8. Devices for the award of multiple West Virginia decorations.

1 In the event any person shall render service or
2 perform acts entitling such person to the award of a
3 West Virginia decoration, and the award of such
4 decoration has previously been made, the person shall,
5 for each subsequent award be entitled to wear a bronze
6 oak leaf cluster. A silver oak leaf cluster shall be used
7 in lieu of five bronze oak leaf clusters.

§15-1G-9. Procurement of West Virginia decorations.

1 The adjutant general shall annually submit to the
2 Legislature a request for an appropriation sufficient to
3 cover the cost of all West Virginia decorations estab-
4 lished in accordance with this article.

CHAPTER 114

(Com. Com. for H. B. 4385—By Mr. Speaker, Mr. Chambers, and Delegate Swann,
by request of the Executive)

[Passed March 11, 1988; in effect July 1, 1988. Approved by the Governor.]

AN ACT to amend and reenact section three-n, article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section thirteen, article twelve, chapter eight of said code; and to amend article three, chapter twenty-nine of said code by adding thereto a new section, designated section five-b, relating to the state fire commission; promulgation of rules and regulations to be known as the state building code; permitting counties and municipalities to adopt the state building code; and voiding existing county and municipal building codes.

Be it enacted by the Legislature of West Virginia:

That section three-n, article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section thirteen, article twelve, chapter eight of said code be amended and reenacted; and that article three, chapter twenty-nine 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.
29. Miscellaneous Boards and Officers.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3n. Authority of certain counties as to building and housing codes; state building code.

- 1 (a) In addition to all other powers and duties now
- 2 conferred by law upon county commissions, county
- 3 commissions are hereby authorized and empowered, by
- 4 order duly entered of record, to adopt building and
- 5 housing codes establishing and regulating minimum

6 building and housing standards for the purpose of
7 improving the health, safety and well-being of its
8 citizens. Such codes may be adopted either for the entire
9 county, or for any portion or portions of such county
10 which may constitute an effective area or areas for such
11 purposes, without the necessity of adopting such codes
12 for any other portion of such county. Notwithstanding
13 any other provision of this subsection to the contrary, no
14 such code shall apply to or affect any territory within
15 the boundaries of any municipal corporation which has
16 adopted and in effect a housing and building code,
17 unless and until such municipal corporation so provides
18 by ordinance, or to structures on parcels of land used
19 primarily for agricultural purposes.

20 (b) Notwithstanding the provisions of subsection (a),
21 all existing county building codes are void one year after
22 the promulgation of a state building code by the state
23 fire commission as provided in chapter twenty-nine,
24 article three, section five-b of this code.

25 Upon the voidance of the county's existing building
26 code, if the county commission votes to adopt a building
27 code, it must be the state building code promulgated
28 pursuant to chapter twenty-nine, article three, section
29 five-b of this code.

30 (c) In addition to all other powers and duties now
31 conferred by law upon county commissions, county
32 commissions are hereby authorized and empowered, by
33 order duly entered of record, to adopt such state
34 building code upon promulgation by the state fire
35 commission. However, such state building code shall not
36 apply to or affect any territory within the boundaries
37 of any municipal corporation which has not adopted the
38 state building code.

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.

§8-12-13. Building regulation; general and special codes; state building code.

1 (a) The governing body of every municipality shall
2 have plenary power and authority by ordinance or a
3 code of ordinances to:

4 (1) Regulate the erection, construction, repair or
5 alteration of structures of every kind within the
6 corporate limits of the municipality, prohibit, within
7 specified territorial limits, the erection, construction,
8 repair or alteration of structures of wood or other
9 combustible material, and regulate excavations upon
10 private property;

11 (2) Regulate electric wiring by prescribing minimum
12 specifications to be followed in the installation, altera-
13 tion or repair thereof; and

14 (3) Regulate plumbing by prescribing the minimum
15 specifications to be followed in the installation, altera-
16 tion or repair of plumbing, including equipment, water
17 and sewer pipe, traps, drains, cesspools and septic tanks.

18 (b) Notwithstanding the provisions of subsection (a),
19 all existing municipal building codes are void one year
20 after the promulgation of a state building code by the
21 state fire commission as provided in chapter twenty-
22 nine, article three, section five-b of this code.

23 Upon the voidance of the municipality's existing
24 building code, if the municipality votes to adopt a
25 building code, it must be the state building code
26 promulgated pursuant to chapter twenty-nine, article
27 three, section five-b of this code.

28 (c) The governing body of every municipality shall
29 have plenary power and authority by ordinance or a
30 code of ordinances to adopt such state building code
31 promulgated by the state fire commission.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-5b. Promulgation of rules, regulations, and state-wide building code.

1 (a) The state fire commission shall promulgate and
2 repeal rules and regulations to safeguard life and
3 property and to ensure the quality of construction of all
4 structures erected or renovated throughout this state
5 pursuant to the provisions of chapter twenty-nine-a of
6 this code through the adoption of a state building code.
7 Such rules, regulations, amendments, or repeals thereof
8 shall be in accordance with standard safe practices so
9 embodied in widely recognized standards of good
10 practice for building construction and all aspects related
11 thereto and shall have force and effect in those counties
12 and municipalities adopting the state building code.

13 (b) Pursuant to the provisions of chapter twenty-nine-a
14 of this code, on the first day of July, 1988, the state
15 fire commission shall commence promulgation of
16 comprehensive rules and regulations regarding building
17 construction, renovation, and all other aspects as related
18 to the construction and mechanical operations of a
19 structure. Upon the completion of the promulgation of
20 the rules and regulations, such rules and regulations
21 shall be known as the "State Building Code".

22 (c) For the purpose of this section the term "building
23 code" is intended to include all aspects of safe building
24 construction and mechanical operations and all safety
25 aspects related thereto: *Provided*, That the state fire
26 marshal shall provide compliance alternatives for
27 historic structures and sites as provided for in section
28 five, article one of this chapter, which compliance
29 alternatives shall take into account the historic integrity
30 of said historic structures and sites. Whenever any other
31 state law, county or municipal ordinance or regulation
32 of any agency thereof is more stringent or imposes a
33 higher standard than is required by the state fire code,
34 the provisions of such state law, county or municipal
35 ordinance or regulation of any agency thereof shall
36 govern, provided they are not inconsistent with the laws
37 of West Virginia and are not contrary to recognized
38 standards and good engineering practices. In any
39 question, the decision of the state fire commission
40 determines the relative priority of any such state law,
41 county or municipal ordinance or regulation of any

42 agency thereof and determines compliance with state
43 fire regulations by officials of the state, counties,
44 municipalities and political subdivisions of the state. A
45 copy of the state fire code and any amendments thereto,
46 upon promulgation by the state fire commission, shall
47 be filed with the county clerk and shall be made
48 available for public information in each county court-
49 house in the state.

50 (d) Enforcement of the provisions of the state building
51 code is the responsibility of the respective local jurisdic-
52 tion. Also, any county or municipality may enter into an
53 agreement with any other county or municipality to
54 provide inspection and enforcement services.

55 (e) After the state fire commission has promulgated
56 rules and regulations as provided herein, each county or
57 municipality intending to adopt the state building code
58 shall notify the state fire commission of its intent.

59 The state fire commission may conduct public meet-
60 ings in each county or municipality adopting the state
61 building code to explain the provisions of such rules and
62 regulations.

CHAPTER 115

(H. B. 4225—By Delegates Givens and Love)

[Passed March 11, 1988; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal article twenty-three, chapter five of the
code of West Virginia, one thousand nine hundred
thirty-one, as amended, relating to abolishing the West
Virginia commission on mass transportation.

Be it enacted by the Legislature of West Virginia:

ARTICLE 23. COMMISSION ON MASS TRANSPORTATION.

**§1. Repeal of article creating West Virginia commission
on mass transportation.**

1 Article twenty-three, chapter five of the code of West
2 Virginia, one thousand nine hundred thirty-one, as
3 amended, is hereby repealed.

CHAPTER 116

(Com. Sub. for S. B. 238—By Senators Tonkovich, Mr. President,
Williams, Tomblin, Spears, Jarrell, Chernenko, Shaw, Tucker,
Karras, Jackson and Whitlow)

[Passed March 12, 1988; in effect July 1, 1988. Approved by the Governor.]

AN ACT to amend article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fourteen-a; and to amend chapter twenty-nine of said code by adding thereto a new article, designated article one-i, relating to tax refund check-off programs; providing expiration date for all such programs; creating new check-off program to finance construction of a veterans memorial at the capitol complex; and designating commissioner of culture and history to supervise and implement said construction.

Be it enacted by the Legislature of West Virginia:

That article ten, 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 fourteen-a; and that chapter twenty-nine of said code be amended by adding thereto a new article, designated article one-i, to read as follows:

Chapter

11. Taxation.

29. Miscellaneous Boards and Officers.

CHAPTER 11. TAXATION.

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-14a. Expiration of tax refund check-off programs.

- 1 Notwithstanding any other provision of law to the
- 2 contrary, all voluntary tax refund check-off programs
- 3 shall expire and not apply to any personal income tax
- 4 returns required to be filed after the thirtieth day of
- 5 June, one thousand nine hundred ninety-one: *Provided,*
- 6 That if any such program has an earlier expiration date
- 7 specifically provided by law, such earlier expiration

8 date shall apply.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 11. VOLUNTARY VETERANS MEMORIAL CHECK-OFF PROGRAM.

§29-11-1. Legislative intent.

§29-11-2. Voluntary check-off designation.

§29-11-3. Contributions credited to special fund.

§29-11-4. Use of funds.

§29-11-5. Effective date.

§29-11-1. Legislative intent.

1 The intent of this legislation is to authorize and
2 provide funding for the design, construction and
3 maintenance of a veterans memorial on the grounds of
4 the state capitol complex in Charleston.

5 The funding of this memorial shall be derived from
6 a voluntary check-off and contribution designation on
7 state personal income tax return forms of a portion or
8 all of a taxpayer's refund. The funding so provided shall
9 be supplemental to any other revenues obtained for the
10 memorial.

§29-11-2. Voluntary check-off designation.

1 The tax commissioner shall cause each West Virginia
2 personal income tax return form to contain a provision
3 whereby the taxpayer (and his spouse if a joint return)
4 may designate a portion or all of his tax refund to the
5 West Virginia voluntary veterans memorial check-off
6 program. The contribution so made shall be credited to
7 said program.

§29-11-3. Contributions credited to special fund.

1 The tax department shall determine by the first day
2 of July of each year the total amount designated
3 pursuant to this article and shall report such amount to
4 the state treasurer who shall credit such amount to a
5 special department of culture and history fund.

§29-1I-4. Use of funds.

1 The funds shall be used for the purpose of designing,
 2 constructing and maintaining a veterans memorial on
 3 the grounds of the state capitol complex in Charleston
 4 under the supervision of the commissioner of culture
 5 and history with the advice of the department of
 6 veterans' affairs and the governor. The commissioner of
 7 culture and history shall on the fifteenth day of January
 8 each year furnish the Legislature with a report stating
 9 the amount of money that has been provided and how
 10 such moneys have been expended.

§29-1I-5. Effective date.

1 This article shall apply to all personal income tax
 2 returns required to be filed on and after the first day
 3 of July, one thousand nine hundred eighty-eight, and
 4 before the first day of July, one thousand nine hundred
 5 ninety-one.

CHAPTER 117

(Com. Sub. for S. B. 90—By Senators Jarrell and Shaw)

[Passed March 8, 1988; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article eleven, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seventeen-a, relating to procedure for release of tax lien on real property of a nonresident decedent in absence of ancillary administration.

Be it enacted by the Legislature of West Virginia:

That article eleven, 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 seventeen-a, to read as follows:

ARTICLE 11. ESTATE TAXES.

§11-11-17a. Release of lien on nonresident decedent's real property in absence of ancillary administration.

1 The domiciliary personal representative of a nonres-
2 ident decedent may apply to the tax commissioner for
3 a certificate releasing all real property situate in this
4 state from any lien imposed by section seventeen of this
5 article. In the absence of ancillary administration in this
6 state, the tax commissioner may consider reliable and
7 satisfactory evidence furnished by the personal repre-
8 sentative regarding the value of such real property and
9 the amount of tax liability or that no tax liability
10 pursuant to this article on any such real property exists.
11 If the tax commissioner determines that such reliable
12 and satisfactory evidence exists, an affidavit of value
13 submitted by the personal representative made pursu-
14 ant to and in conjunction with such evidence shall be
15 marked as inspected by the commissioner and shall be
16 filed in the county or counties where the real property
17 is situate. In determining tax liability the tax commis-
18 sioner may also consider an appraisal of the real
19 property submitted in writing to the tax commissioner,
20 paid for by the personal representative and made at his
21 or her request. Such appraisal shall be performed by an
22 appraiser appointed by the tax commissioner and it
23 shall be filed in the county or counties where such real
24 property is situate. If the tax commissioner is satisfied
25 that no tax liability exists, or that the tax liability of
26 the estate has been fully discharged, he shall issue a
27 certificate under subsection (d), section seventeen of this
28 article or a certificate under section twenty-seven of this
29 article.

CHAPTER 118

(S. B. 276—By Senator Jarrell)

[Passed March 12, 1988; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section twenty-five, article eleven, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section twenty-eight of said article eleven; to amend and reenact sections sixteen-a and twenty-seven, article two, chapter forty-four of said code; and to amend and

reenact section eighteen, article three-a of said chapter forty-four, all relating to making technical corrections in estate and estate tax laws; and providing a method for apportionment of state estate taxes.

Be it enacted by the Legislature of West Virginia:

That section twenty-five, article eleven, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section twenty-eight of said article eleven be amended and reenacted; that sections sixteen-a and twenty-seven, article two, chapter forty-four of said code be amended and reenacted; and that section eighteen, article three-a of said chapter forty-four be amended and reenacted, all to read as follows:

Chapter

11. Taxation.

44. Administration of Estates and Trusts.

CHAPTER 11. TAXATION.

ARTICLE 11. ESTATE TAXES.

§11-11-28. Apportionment of West Virginia estate taxes; deduction of taxes by the fiduciary from shares of beneficiaries.

1 Whenever there is an estate tax levied or assessed
2 under the provisions of any estate tax law of this state
3 heretofore or hereafter enacted, the amount of the tax
4 so paid shall be prorated among the persons interested
5 in the estate to whom such property is or may be
6 transferred or to whom any benefit accrues in conform-
7 mity with the provisions of section sixteen-a, article two,
8 chapter forty-four of this code.

CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.

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.

§44-2-16a. Apportionment of federal and state taxes; fiduciary to deduct

taxes from shares of beneficiaries.

§44-2-27. When distributees and legatees may be sued on claims; extent of liability; costs.

§44-2-16a. Apportionment of federal and state estate taxes; fiduciary to deduct taxes from shares of beneficiaries.

1 (1) For the purposes of this section the term "persons
2 interested in the estate" shall include all persons, firms
3 and corporations who may be entitled to receive or who
4 have received any property or interest which is required
5 to be included in the gross estate of a decedent, or any
6 benefit whatsoever with respect to any such property or
7 interest, whether under a will or intestacy, or by reason
8 of any transfer, trust, estate, interest, right, power or
9 relinquishment of power, taxable under any estate tax
10 law of the United States or this state heretofore or
11 hereafter enacted.

12 (2) Whenever it appears upon any settlement of
13 accounts or in any other appropriate action or proceed-
14 ing, that an executor, administrator, curator or other
15 person acting in a fiduciary capacity, has paid an estate
16 tax levied or assessed under the provisions of any estate
17 tax law of the United States or this state heretofore or
18 hereafter enacted, upon or with respect to any property
19 required to be included in the gross estate of a decedent
20 under the provisions of any such law, the amount of the
21 tax so paid shall be prorated among the persons
22 interested in the estate to whom such property is or may
23 be transferred or to whom any benefit accrues. Such
24 apportionment shall be made in the proportion that the
25 value of the property, interest or benefit of each such
26 person bears to the total value of the property, interests
27 and benefits received by all such persons interested in
28 the estate, except that in making such proration each
29 such person shall have the benefit of any exemptions,
30 deductions and exclusions allowed by such law in
31 respect of such person or the property passing to him;
32 and except that notwithstanding the preceding provi-
33 sions of this sentence in cases where a trust is created,
34 or other provision made whereby any person is given an
35 interest in income, or an estate for years, or for life, or

36 other temporary interest in any property or fund, the
37 tax on both such temporary interest and on the re-
38 mainder thereafter shall be charged against and paid
39 out of the corpus of such property or fund without
40 apportionment between remainders and temporary
41 estates.

42 (3) In all cases in which any property required to be
43 included in the gross estate does not come into the
44 possession of the executor, administrator or other
45 fiduciary as such, he shall be entitled, and it shall be
46 his duty, to recover from whomever is in possession, or
47 from the persons interested in the estate, the proportion-
48 ate amount of such tax payable by the persons interested
49 in the estate with which such persons interested in the
50 estate are chargeable under the provisions of this
51 section.

52 (4) No executor, administrator or other person acting
53 in a fiduciary capacity shall be required to transfer, pay
54 over or distribute any fund or property with respect to
55 which a federal or West Virginia estate tax is imposed
56 until the amount of such tax or taxes due from the
57 devisee, legatee, distributee or other person to whom
58 such property is transferred is paid to such fiduciary,
59 or, if the apportionment of tax has not been determined,
60 adequate security is furnished by the transferee for such
61 payment.

62 (5) But it is expressly provided that the foregoing
63 provisions of this section are subject to the following
64 qualification, that none of such provisions shall in any
65 way impair the right or power of any person by will or
66 by written instrument executed inter vivos to make
67 direction for the payment of such estate taxes, and to
68 designate the fund or funds or property out of which
69 such payment shall be made, and in every such case the
70 provisions of the will or of such written instrument
71 executed inter vivos shall be given effect to the same
72 extent as if this section had not been enacted.

73 (6) The provisions of this section shall be applicable
74 to estates of decedents dying after the enactment of this
75 section.

§44-2-27. When distributees and legatees may be sued on claims; extent of liability; costs.

1 (a) Every creditor who has not presented his claim to
2 the fiduciary commissioner before distribution of the
3 surplus by the personal representative, or before that
4 time has not instituted a civil action or suit thereon
5 against the personal representative, may, if not barred
6 by limitation, bring a civil action against the distribu-
7 tees and legatees, jointly or severally, at any time within
8 two years after such distribution. But no distributee or
9 legatee shall be required to pay to creditors suing by
10 virtue of this section a greater sum than the value of
11 what was received by him out of the decedent's estate,
12 nor shall any distributee or legatee be required to pay
13 to any one creditor a greater proportion of such
14 creditor's debt than the value of what was received by
15 such distributee or legatee bears to the total estate
16 distributed. A creditor suing by virtue of this section
17 shall not recover against such distributees and legatees
18 the costs of his civil action.

19 (b) Any creditor of a deceased person upon whose
20 estate there is no administration pursuant to subsection
21 (b), section one of this article, may, if not barred by
22 limitation, bring a civil action against the sole benefi-
23 ciary at any time within two years after recordation of
24 the appraisalment.

**ARTICLE 3A. OPTIONAL PROCEDURE FOR PROOF AND ALLO-
WANCE OF CLAIMS AGAINST ESTATES OF
DECEDENTS; COUNTY OPTION.**

**§44-3A-18. Apportionment of federal and state estate
taxes; fiduciary to deduct taxes from
shares of beneficiaries.**

1 (a) For the purposes of this section the term "persons
2 interested in the estate" shall include all persons, firms
3 and corporations who may be entitled to receive or who
4 have received any property or interest which is required
5 to be included in the gross estate of a decedent, or any
6 benefit whatsoever with respect to any such property or
7 interest, whether under a will or intestacy, or by reason
8 of any transfer, trust, estate, interest, right, power or

9 relinquishment of power, taxable under any estate tax
10 law of the United States or this state heretofore or
11 hereafter enacted.

12 (b) Whenever it appears upon any settlement of
13 accounts or in any other appropriate action or proceed-
14 ing, that an executor, administrator, curator, trustee or
15 other person acting in a fiduciary capacity, has paid an
16 estate tax levied or assessed under the provisions of any
17 estate tax law of the United States or this state
18 heretofore or hereafter enacted, upon or with respect to
19 any property required to be included in the gross estate
20 of a decedent under the provisions of any such law, the
21 amount of the tax so paid shall be prorated among the
22 persons interested in the estate to whom such property
23 is or may be transferred or to whom any benefit accrues.
24 Such apportionment shall be made in the proportion
25 that the value of the property, interest or benefit of each
26 such person bears to the total value of the property,
27 interests and benefits received by all such persons
28 interested in the estate, except that in making such
29 proration each such person shall have the benefit of any
30 exemptions, deductions and exclusions allowed by such
31 law in respect of such person or the property passing
32 to him; and except that notwithstanding the preceding
33 provisions of this sentence in cases where a trust is
34 created, or other provision made whereby any person is
35 given an interest in income, or an estate for years, or
36 for life, or other temporary interest in any property or
37 fund, the tax on both such temporary interest and on
38 the remainder thereafter shall be charged against and
39 paid out of the corpus of such property or fund without
40 apportionment between remainders and temporary
41 estates.

42 (c) In all cases in which any property required to be
43 included in the gross estate does not come into the
44 possession of the executor, administrator or other
45 fiduciary as such, he shall be entitled, and it shall be
46 his duty, to recover from whomever is in possession, or
47 from the persons interested in the estate, the proportion-
48 ate amount of such tax payable by the persons interested
49 in the estate with which such persons interested in the

50 estate are chargeable under the provisions of this
51 section.

52 (d) No executor, administrator or other person acting
53 in a fiduciary capacity shall be required to transfer, pay
54 over or distribute any fund or property with respect to
55 which a federal or West Virginia estate tax is imposed
56 until the amount of such tax or taxes, due from the
57 devisee, legatee, distributee or other person to whom
58 such property is transferred, is paid to such fiduciary,
59 or, if the apportionment of tax has not been determined,
60 adequate security is furnished by the transferee for such
61 payment.

62 (e) But it is expressly provided that the foregoing
63 provisions of this section are subject to the following
64 qualification, that none of such provisions shall in any
65 way impair the right or power of any person by will or
66 by written instrument executed inter vivos to make
67 direction for the payment of such estate taxes, and to
68 designate the fund or funds or property out of which
69 such payment shall be made, and in every such case the
70 provisions of the will or of such written instrument
71 executed inter vivos shall be given effect to the same
72 extent as if this section had not been enacted.

73 (f) The provisions of this section shall be applicable to
74 estates of decedents dying after the enactment of this
75 section.

CHAPTER 119

(Com. Sub. for H. B. 4475—By Mr. Speaker, Mr. Chambers, and Delegate Swann,
by request of the Executive)

[Passed March 12, 1988; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven-a, article thirteen-c, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections three, four, five, six, seven and nine-a, article twenty-four of said chapter eleven; and to further amend said article twenty-four by adding

thereto a new section, designated section forty-two, all relating generally to business tax credits and the corporation net income tax; making technical correction in definition of small business; updating the meaning of certain terms to bring them into conformity with their meaning for federal income tax purposes and making such update retroactive for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six; deleting certain obsolete language and clarifying certain language for improved administration; requiring certain increasing and decreasing modifications to be made to federal taxable income; providing a West Virginia net operating loss deduction; providing rules for allocation and apportionment of adjusted federal taxable income in the case of corporations subject to a tax on net income imposed by more than one state; and providing effective dates.

Be it enacted by the Legislature of West Virginia:

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

Article

13C. Business Investment and Jobs Expansion Credit.

24. Corporation Net Income Tax.

ARTICLE 13C. BUSINESS INVESTMENT AND JOBS EXPANSION CREDIT.

§11-13C-7a. Small business credit.

- 1 (a) "Small business" defined. — For purposes of this
- 2 section, the term "small business" means a business
- 3 which has an annual payroll of one million five hundred
- 4 thousand dollars or less, or annual gross sales of not
- 5 more than five million dollars: *Provided*, That beginning
- 6 the first day of January, one thousand nine hundred
- 7 eighty-nine, and each first day of January thereafter,
- 8 the tax commissioner shall prescribe amounts which
- 9 shall apply in lieu of the above amounts during that

10 calendar year. These amounts shall be prescribed by
11 increasing the amount of each by the cost-of-living
12 adjustment for such calendar year.

13 (1) *Cost-of-living adjustment.* — For purposes of
14 subsection (a), the cost-of-living adjustment for any
15 calendar year is the percentage (if any) by which:

16 (A) The consumer price index for the preceding
17 calendar year exceeds

18 (B) The consumer price index for the calendar year
19 one thousand nine hundred eighty-seven.

20 (2) *Consumer price index for any calendar year.* —
21 For purposes of subdivision (1), the consumer price
22 index for any calendar year is the average of the
23 Federal Consumer Price Index as of the close of the
24 twelve-month period ending on the thirty-first day of
25 August of such calendar year.

26 (3) *Consumer price index.* — For purposes of subdi-
27 vision (2), the term “Federal Consumer Price Index”
28 means the last consumer price index for all urban
29 consumers published by the United States department
30 of labor.

31 (4) *Rounding.* — If any increase under subdivision
32 (1) is not a multiple of fifty dollars, such increase shall
33 be rounded to the next lowest multiple of fifty dollars.

34 (b) *Amount of credit allowed.*

35 (1) *Credit allowed.* — An eligible small business
36 taxpayer shall be allowed a credit against the portion
37 of taxes imposed by this state that are attributable to
38 and the direct consequence of the eligible small business
39 taxpayer’s qualified investment in a new or expanded
40 business in this state which results in the creation of at
41 least ten new jobs. The amount of this credit shall be
42 determined as provided in this section.

43 (2) *Amount of credit.* — The amount of credit allow-
44 able under this section is determined by dividing the
45 amount of the eligible small business taxpayer’s
46 “qualified investment” (determined under section six) in
47 “property purchased for business expansion” (as defined

48 in section three) by ten. The amount of qualified
49 investment so apportioned to each year of the ten-year
50 credit period shall be the annual measure against which
51 taxpayer's annual new jobs percentage (determined
52 under subsection (d)) is applied. The product of this
53 calculation establishes the maximum amount of credit
54 allowable each year for ten consecutive years under this
55 section due to the qualified investment.

56 (3) *Application of credit.* — The annual credit allow-
57 ance must be taken beginning with the taxable year in
58 which the taxpayer places the qualified investment into
59 service or use in this state, unless the taxpayer elects
60 to delay the beginning of the ten-year credit period until
61 the next succeeding taxable year. This election shall be
62 made in the annual income tax return filed under this
63 chapter by the taxpayer for the taxable year in which
64 the qualified investment is placed in service or use. Once
65 made, this election cannot be revoked. The annual credit
66 allowance shall be taken and applied in the manner
67 prescribed in section five.

68 (c) *New jobs.* — The term "new jobs" has the meaning
69 ascribed to it in subdivision (14), subsection (b), section
70 three of this article: *Provided*, That the median compen-
71 sation of such new jobs shall not be less than eleven
72 thousand dollars per year and that beginning the first
73 day of January, one thousand nine hundred eighty-nine,
74 and each first day of January thereafter, the tax
75 commissioner shall adjust the median annual compen-
76 sation specified in this subsection by increasing the
77 amount thereof by the annual cost-of-living adjustment
78 determined under subsection (a).

79 (1) The term "new employee" shall have the meaning
80 ascribed to it in subdivision (13), subsection (b), section
81 three of this article: *Provided*, That such term shall not
82 include employees filling new jobs who:

83 (A) Are related individuals, as defined in subsection
84 (i), section 51 of the Internal Revenue Code of 1986, or
85 a person who owns ten percent or more of the business
86 with such ownership interest to be determined under
87 rules set forth in subsection (b), section 267 of said

88 Internal Revenue Code; or

89 (B) Worked for the taxpayer during the six-month
90 period ending on the date taxpayer's qualified invest-
91 ment is placed in service or use and is rehired by the
92 taxpayer during the six-month period beginning on the
93 date taxpayer's qualified investment is placed in service
94 or use.

95 (2) *When a job is attributable.* — An employee's
96 position is directly attributable to the qualified invest-
97 ment if:

98 (A) The employee's service is performed or his base
99 of operations is at the new or expanded business facility;

100 (B) The position did not exist prior to the construc-
101 tion, renovation, expansion or acquisition of the business
102 facility and the making of the qualified investment; and

103 (C) But for the qualified investment, the position
104 would not have existed.

105 (d) *New jobs percentage.* — The annual new jobs
106 percentage is based on the number of new jobs created
107 in this state by the taxpayer that is directly attributable
108 to taxpayer's qualified investment.

109 (1) If at least ten new jobs are created and filled
110 during the taxable year in which the qualified invest-
111 ment is placed in service or use, the applicable new jobs
112 percentage shall be thirty percent: *Provided*, That for
113 each new job over ten, up to forty such additional new
114 jobs, the applicable new jobs percentage shall be
115 increased by adding thereto one half of one percent, with
116 the maximum new jobs percentage not to exceed fifty
117 percent.

118 (2) During each of the remaining nine years of the
119 ten-year credit period, the annual new jobs percentage
120 shall be based on the average number of new jobs that
121 were filled during that taxable year: *Provided*, That for
122 purposes of estimating the new jobs percentage that will
123 be applicable for each subsequent credit year, the
124 taxpayer shall use the new jobs percentage allowable for
125 the taxable year immediately prior thereto, and in the

126 annual income tax return filed under this chapter for
127 the then current tax year, taxpayer shall redetermine
128 his allowable new jobs percentage for that year based
129 on the average number of new employees employed in
130 new jobs during that year (determined on a monthly
131 basis) created as the direct result of taxpayer's qualified
132 investment.

133 (e) *Certification of new jobs.* — With the annual
134 income tax return filed under this chapter for each
135 taxable year during the ten-year credit period, the
136 taxpayer shall certify:

137 (1) The new jobs percentage for that taxable year;

138 (2) The amount of the credit allowance for that year;

139 (3) If the business is a partnership or electing small
140 business corporation, the amount of credit allocated to
141 the partners or shareholders, as the case may be;

142 (4) That qualified investment property continue to be
143 used in the business, or if any of it was disposed of
144 during the year the date of disposition and that such
145 property was not disposed of prior to expiration of its
146 useful life, as determined under section six;

147 (5) That the new jobs created by the qualified
148 investment continue to exist and are filled by persons
149 who meet the definition of new employee (as defined in
150 subdivision (1), subsection (c) of this section) and are
151 paid an average annual compensation equal to or
152 greater than the minimum average annual compensa-
153 tion required by this section.

154 (f) *Small business project.* — A small business may
155 apply to the tax commissioner under section four-b for
156 certification of subdivision (1), subsection (a), section
157 four-b project if that project will create at least ten new
158 jobs.

159 (g) *Regulations.* — The tax commissioner shall pres-
160 cribe such regulations as he may deem necessary in
161 order to determine the amount of credit allowed under
162 this section to a taxpayer; to verify taxpayer's continued
163 entitlement to claim such credit; and to verify proper

164 application of the credit allowed. The tax commissioner
165 may, by regulation, require a taxpayer intending to
166 claim credit under this section to file with the tax
167 commissioner a notice of intent to claim this credit,
168 before the taxpayer begins reducing his monthly or
169 quarterly installment payments of estimated tax for the
170 credit provided in this section.

171 (h) *Effective date.* — The credit provided in this
172 section shall be allowed for qualified investment
173 property purchased or leased after the thirtieth day of
174 June, one thousand nine hundred eighty-seven.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-3. Meaning of terms; general rule.

§11-24-4. Imposition of primary tax and the rate thereof; effective and termination dates.

§11-24-5. Corporations exempt from tax.

§11-24-6. Adjustments in determining West Virginia taxable income.

§11-24-7. Allocation and apportionment.

§11-24-9a. Credits against primary tax; election of taxpayer.

§11-24-42. Effective date.

§11-24-3. Meaning of terms; general rule.

1 (a) Any term used in this article shall have the same
2 meaning as when used in a comparable context in the
3 laws of the United States relating to 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 shall mean
7 the provisions of the Internal Revenue Code of 1986, as
8 amended, and such other provisions of the laws of the
9 United States as relate to the determination of income
10 for federal income tax purposes. All amendments made
11 to the laws of the United States prior to the first day
12 of January, one thousand nine hundred eighty-eight,
13 shall be given effect in determining the taxes imposed
14 by this article for any taxable year beginning the first
15 day of January, one thousand nine hundred eighty-
16 seven, and thereafter, but no amendment to the laws of
17 the United States effective on or after the first day of
18 January, one thousand nine hundred eighty-eight, shall
19 be given any effect.

20 (b) The term "Internal Revenue Code of 1986" means

21 the Internal Revenue Code of the United States enacted
22 by the "Federal Tax Reform Act of 1986" and includes
23 the provisions of law formerly known as the Internal
24 Revenue Code of 1954, as amended, and in effect when
25 the "Federal Tax Reform Act of 1986" was enacted, that
26 were not amended or repealed by the "Federal Tax
27 Reform Act of 1986." Except when inappropriate, any
28 references in any law, executive order, or other
29 document:

30 (1) To the Internal Revenue Code of 1954 shall include
31 reference to the Internal Revenue Code of 1986, and

32 (2) To the Internal Revenue Code of 1986 shall include
33 a reference to the provisions of law formerly known as
34 the Internal Revenue Code of 1954.

**§11-24-4. Imposition of primary tax and rate thereof;
effective and termination dates.**

1 *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
9 this state or deriving income from property, activity or
10 other sources in this state, except corporations exempt
11 under section five.

12 (2) In the case of taxable periods beginning on or after
13 the first day of January, one thousand nine hundred
14 eighty-three, and ending prior to the first day of July,
15 one thousand nine hundred eighty-seven, a tax is hereby
16 imposed for each taxable year on the West Virginia
17 taxable income of every domestic or foreign corporation
18 engaging in business in this state or deriving income
19 from property, activity or other sources in this state,
20 except corporations exempt under section five of this
21 article, and any banks, banking associations or corpora-
22 tions, trust companies, building and loan associations,
23 and savings and loan associations, at the rates which

24 follow:

25 (A) On taxable income not in excess of fifty thousand
26 dollars, the rate of six percent; and

27 (B) On taxable income in excess of fifty thousand
28 dollars, the rate of seven percent.

29 (3) In the case of taxable periods beginning on or after
30 the first day of July, one thousand nine hundred eighty-
31 seven, a tax is hereby imposed for each taxable year on
32 the West Virginia taxable income of every domestic or
33 foreign corporation engaging in business in this state or
34 deriving income from property, activity or other sources
35 in this state, except corporations exempt under section
36 five of this article, at the rate of nine and three quarters
37 percent. Beginning the first day of July, one thousand
38 nine hundred eighty-eight, and on each first day of July
39 thereafter for four successive calendar years, the rate
40 shall be reduced by fifteen one hundredths of one
41 percent per year, with such rate to be nine percent on
42 and after the first day of July, one thousand nine
43 hundred ninety-two.

§11-24-5. Corporations exempt from tax.

1 The following corporations shall be exempt from the
2 tax imposed by this article to the extent provided in this
3 section:

4 (a) Corporations which by reason of their purposes or
5 activities are exempt from federal income tax: *Provided,*
6 That this exemption shall not apply to the unrelated
7 business income, as defined in the Internal Revenue
8 Code, of any such corporation if such income is subject
9 to federal income tax.

10 (b) Insurance companies which pay this state a tax
11 upon premiums.

12 (c) Production credit associations organized under the
13 provisions of the federal "Farm Credit Act of 1933":
14 *Provided,* That the exemption shall not apply to
15 corporations or associations organized under the provi-
16 sions of article four, chapter nineteen of this code.

17 (d) Corporations electing to be taxed under subchap-

18 ter S of the Internal Revenue Code of one thousand nine
19 hundred eighty-six, as amended: *Provided*, That said
20 corporations shall file the information return required
21 by section thirteen-b of this article.

22 (e) Trusts established pursuant to section one hundred
23 eighty-six, chapter seven, title twenty-nine of the code
24 of the laws of the United States (enacted as section three
25 hundred two (c) of the labor management relations act,
26 one thousand nine hundred forty-seven), as amended
27 prior to the first day of January, one thousand nine
28 hundred sixty-seven.

§11-24-6. Adjustments in determining West Virginia taxable income.

1 (a) *General.* — In determining West Virginia taxable
2 income of a corporation, its taxable income as defined
3 for federal income tax purposes shall be adjusted and
4 determined before the apportionment provided by
5 section seven of this article, by the items specified in this
6 section.

7 (b) *Adjustments increasing federal taxable income.* —
8 There shall be added to federal taxable income, unless
9 already included in the computation of federal taxable
10 income, the following items:

11 (1) Interest or dividends on obligations or securities of
12 any state or of a political subdivision or authority
13 thereof;

14 (2) Interest or dividends (less related expenses to the
15 extent not deducted in determining federal taxable
16 income) on obligations or securities of any authority,
17 commission or instrumentality of the United States
18 which the laws of the United States exempt from federal
19 income tax but not from state income taxes;

20 (3) Income taxes and other taxes, including franchise
21 and excise taxes, which are based on, measured by, or
22 computed with reference to net income, imposed by this
23 state or any other taxing jurisdiction, to the extent
24 deducted in determining federal taxable income;

25 (4) Taxes imposed by this state for which credit

26 against the taxes imposed by section four of this article,
27 is allowed by section nine or nine-a of this article and
28 taken by the taxpayer, to the extent deducted in
29 determining federal taxable income; and

30 (5) The deferral value of certain income that is not
31 recognized for federal tax purposes, which value shall
32 be an amount equal to a percentage of the amount
33 allowed as a deduction in determining federal taxable
34 income pursuant to the accelerated cost recovery system
35 under section 168 of the Internal Revenue Code for the
36 federal taxable year, with the percentage of the federal
37 deduction to be added as follows with respect to the
38 following recovery property: Three-year property — no
39 modifications; five-year property — ten percent; ten-
40 year property — fifteen percent; fifteen-year public
41 utility property — twenty-five percent; and fifteen-year
42 or eighteen-year real property — thirty-five percent:
43 *Provided*, That this modification shall not apply to any
44 person whose federal deduction is determined by the use
45 of the straight line method, or to any taxable year
46 beginning after the thirtieth day of June, one thousand
47 nine hundred eighty-seven;

48 (6) The amount of unrelated business taxable income
49 as defined by section 512 of the Internal Revenue Code
50 of 1986, as amended, of a corporation which by reason
51 of its purposes is generally exempt from federal income
52 taxes; and

53 (7) The amount of any net operating loss deduction
54 taken for federal income tax purposes under section 172
55 of the Internal Revenue Code of 1986, as amended.

56 (c) *Adjustments decreasing federal taxable income.* —
57 There shall be subtracted from federal taxable income
58 to the extent included therein:

59 (1) Any gain from the sale or other disposition of
60 property having a higher fair market value on the first
61 day of July, one thousand nine hundred sixty-seven, than
62 the adjusted basis at said date for federal income tax
63 purposes: *Provided*, That the amount of this adjustment
64 is limited to that portion of any such gain which does
65 not exceed the difference between such fair market

- 66 value and such adjusted basis;
- 67 (2) The amount of any refund or credit for overpay-
68 ment of income taxes and other taxes, including
69 franchise and excise taxes, which are based on, mea-
70 sured by, or computed with reference to net income,
71 imposed by this state or any other taxing jurisdiction,
72 to the extent properly included in gross income for
73 federal income tax purposes;
- 74 (3) The amount of dividends received, to the extent
75 included in federal taxable income: *Provided*, That this
76 modification shall not be made for taxable years
77 beginning after the thirtieth day of June, one thousand
78 nine hundred eighty-seven;
- 79 (4) Thirty-seven and one-half percent of the excess of
80 net long-term capital gain over net short-term capital
81 loss as defined in the laws of the United States:
82 *Provided*, That this modification shall not be made for
83 taxable years beginning after the thirtieth day of June,
84 one thousand nine hundred eighty-seven;
- 85 (5) The amount added to federal taxable income due
86 to the elimination of the reserve method for computation
87 of the bad debt deduction;
- 88 (6) The full amount of interest expense actually
89 disallowed in determining federal taxable income which
90 was incurred or continued to purchase or carry obliga-
91 tions or securities of any state or of any political
92 subdivision thereof;
- 93 (7) The amount required to be added to federal
94 taxable income as a dividend received from a foreign
95 (non-United States) corporation under section 78 of the
96 Internal Revenue Code of 1986, as amended, by a
97 corporation electing to take the foreign tax credit for
98 federal income tax purposes;
- 99 (8) The amount of salary expenses disallowed as a
100 deduction for federal income tax purposes due to
101 claiming the federal jobs credit under section 51 of the
102 Internal Revenue Code of 1986, as amended;
- 103 (9) The amount included in federal adjusted gross

104 income by the operation of section 951 of the Internal
105 Revenue Code of 1986, as amended; and

106 (10) Any amount included in federal adjusted gross
107 income which is foreign source income. Foreign source
108 income includes:

109 (A) Interest and dividends, other than those derived
110 from sources within the United States;

111 (B) Rents, royalties, license, and technical fees from
112 property located or services performed without the
113 United States or from any interest in such property,
114 including rents, royalties, or fees for the use of or the
115 privilege of using without the United States any patents,
116 copyrights, secret process and formulas, good will,
117 trademarks, trade brands, franchises and other like
118 properties; and

119 (C) Gains, profits, or other income from the sale of
120 intangible or real property located without the United
121 States.

122 In determining the source of "foreign source income,"
123 the provisions of sections 861, 862 and 863 of the
124 Internal Revenue Code of 1986, as amended, shall be
125 applied.

126 (d) *Net operating loss deduction.* — Except as other-
127 wise provided in this subsection, there shall be allowed
128 as a deduction for the taxable year an amount equal to
129 the aggregate of (1) the West Virginia net operating loss
130 carryovers to such year plus (2) the net operating loss
131 carrybacks to such year. For purposes of this subsection,
132 the term "West Virginia net operating loss deduction"
133 means the deduction allowed by this subsection, deter-
134 mined in accordance with section 172 of the Internal
135 Revenue Code of 1986, as amended.

136 (1) *Special rules:*

137 (A) When the corporation further adjusts its adjusted
138 federal taxable income under section seven of this
139 article, the West Virginia net operating loss deduction
140 allowed by this subsection (d) shall be deducted after
141 the section seven adjustments are made;

142 (B) The tax commissioner shall prescribe such tran-
143 sition regulations as he deems necessary for fair and
144 equitable administration of this subsection as amended
145 by this act.

146 (2) *Effective date.* — The provisions of this subsection
147 (d), as amended by this act, shall apply to all taxable
148 years ending after the thirtieth of June, one thousand
149 nine hundred eighty-eight; and to all loss carryovers
150 from taxable years ending on or before said thirtieth
151 day of June.

152 (e) *Special adjustments for expenditures for water and*
153 *air pollution control facilities.*

154 (1) If the taxpayer so elects under subdivision (2) of
155 this subsection, there shall be:

156 (A) Subtracted from federal taxable income the total
157 of the amounts paid or incurred during the taxable year
158 for the acquisition, construction or development within
159 this state of water pollution control facilities or air
160 pollution control facilities as defined in section 169 of the
161 Internal Revenue Code, and

162 (B) Added to federal taxable income the total of the
163 amounts of any allowances for depreciation and amor-
164 tization of such water pollution control facilities or air
165 pollution control facilities, as so defined, to the extent
166 deductible in determining federal taxable income.

167 (2) The election referred to in subdivision (1) of this
168 subsection shall be made in the return filed within the
169 time prescribed by law (including extensions there-
170 of) for the taxable year in which such amounts were
171 paid or incurred. Such election shall be made in such
172 manner, and the scope of application of such election
173 shall be defined, as the tax commissioner may by
174 regulations prescribe, and shall be irrevocable when
175 made as to all amounts paid or incurred for any
176 particular water pollution control facility or air
177 pollution control facility.

178 (3) Notwithstanding any other provisions of this
179 subsection or of section seven to the contrary, if the
180 taxpayer's federal taxable income is subject to allocation

181 and apportionment under section seven, the adjustments
182 prescribed in paragraphs (A) and (B), subdivision (1) of
183 this subsection shall (instead of being made to the
184 taxpayer's federal taxable income before allocation and
185 apportionment thereof as provided in section seven) be
186 made to the portion of the taxpayer's net income,
187 computed without regard to such adjustments, allocated
188 and apportioned to this state in accordance with section
189 seven.

190 (f) *Allowance for certain government obligations and*
191 *obligations secured by residential property.* — The West
192 Virginia taxable income of a taxpayer subject to this
193 article as adjusted in accordance with parts (b), (c),
194 (d) and (e) of this section shall be further adjusted by
195 multiplying such taxable income after such adjustment
196 by parts (b), (c), (d) and (e) by a fraction equal to one
197 minus a fraction:

198 (1) The numerator of which is the sum of the average
199 of the monthly beginning and ending account balances
200 during the taxable year (account balances to be deter-
201 mined at cost in the same manner that such obligations,
202 investments and loans are reported on Schedule L of the
203 Federal Form 1120) of the following:

204 (A) Obligations or securities of the United States, or
205 of any agency, authority, commission or instrumentality
206 of the United States and any other corporation or entity
207 created under the authority of the United States
208 Congress for the purpose of implementing or furthering
209 an objective of national policy;

210 (B) Obligations or securities of this state and any
211 political subdivision or authority thereof;

212 (C) Investments or loans primarily secured by mort-
213 gages, or deeds of trust, on residential property located
214 in this state and occupied by nontransients; and

215 (D) Loans primarily secured by a lien or security
216 agreement on residential property in the form of a
217 mobile home, modular home or double-wide, located in
218 this state and occupied by nontransients.

219 (2) The denominator of which is the average of the

220 monthly beginning and ending account balances of the
221 total assets of the taxpayer which are shown on Schedule
222 L of Federal Form 1120, which are filed by the taxpayer
223 with the Internal Revenue Service.

§11-24-7. Allocation and apportionment.

1 (a) *General.* — Any taxpayer having income from
2 business activity which is taxable both in this state and
3 in another state shall allocate and apportion its net
4 income as provided in this section. For purposes of this
5 section, the term “net income” means the taxpayer’s
6 federal taxable income adjusted as provided in section
7 six.

8 (b) *“Taxable in another state” defined.* — For purposes
9 of allocation and apportionment of net income under this
10 section, a taxpayer is taxable in another state if:

11 (1) In that state the taxpayer is subject to a net
12 income tax, a franchise tax measured by net income, a
13 franchise tax for the privilege of doing business, or a
14 corporation stock tax, or

15 (2) That state has jurisdiction to subject the taxpayer
16 to a net income tax, regardless of whether, in fact, that
17 state does or does not subject the taxpayer to such tax.

18 (c) *Business activities entirely within West Virginia.*
19 — If the business activities of a taxpayer take place
20 entirely within this state, the entire net income of such
21 taxpayer is subject to the tax imposed by this article.
22 The business activities of a taxpayer shall be deemed to
23 have taken place in their entirety within this state if
24 such taxpayer is not “taxable in another state.”

25 (d) *Business activities partially within and partially*
26 *without West Virginia; allocation of nonbusiness income.*
27 — If the business activities of a taxpayer take place
28 partially within and partially without this state and
29 such taxpayer is also taxable in another state, rents and
30 royalties from real or tangible personal property, capital
31 gains, interest, dividends or patent or copyright
32 royalties, to the extent that they constitute nonbusiness
33 income of the taxpayer, shall be allocated as provided
34 in subdivisions (1) through (4).

35 (1) *Net rents and royalties.*

36 (A) Net rents and royalties from real property located
37 in this state are allocable to this state.

38 (B) Net rents and royalties from tangible personal
39 property are allocable to this state:

40 (i) If and to the extent that the property is utilized in
41 this state, or

42 (ii) In their entirety if the taxpayer's commercial
43 domicile is in this state and the taxpayer is not
44 organized under the laws of or taxable in the state in
45 which the property is utilized.

46 (C) The extent of utilization of tangible personal
47 property in a state is determined by multiplying the
48 rents and royalties by a fraction, the numerator of which
49 is the number of days of physical location of the property
50 in the state during the rental or royalty period in the
51 taxable year and the denominator of which is the
52 number of days of physical location of the property
53 everywhere during all rental or royalty periods in the
54 taxable year. If the physical location of the property
55 during the rental or royalty period is unknown or
56 unascertainable by the taxpayer, tangible personal
57 property is utilized in the state in which the property
58 was located at the time the rental or royalty payer
59 obtained possession.

60 (2) *Capital gains.*

61 (A) Capital gains and losses from sales of real
62 property located in this state are allocable to this state.

63 (B) Capital gains and losses from sales of tangible
64 personal property are allocable to this state if:

65 (i) The property had a situs in this state at the time
66 of the sale, or

67 (ii) The taxpayer's commercial domicile is in this state
68 and the taxpayer is not taxable in the state in which the
69 property had a situs.

70 (C) Capital gains and losses from sales of intangible
71 personal property are allocable to this state if the

- 72 taxpayer's commercial domicile is in this state.
- 73 (D) Gains pursuant to section 631 (a) and (b) of the
74 Internal Revenue Code of 1986, as amended, from sales
75 of natural resources severed in this state shall be
76 allocated to this state if they are nonbusiness income.
- 77 (3) *Interest and dividends are allocable to this state if*
78 *the taxpayer's commercial domicile is in this state.*
- 79 (4) *Patent and copyright royalties.*
- 80 (A) Patent and copyright royalties are allocable to
81 this state:
- 82 (i) If and to the extent that the patent or copyright
83 is utilized by the payer in this state, or
- 84 (ii) If and to the extent that the patent or copyright
85 is utilized by the payer in a state in which the taxpayer
86 is not taxable and the taxpayer's commercial domicile
87 is in this state.
- 88 (B) A patent is utilized in a state to the extent that
89 it is employed in production, fabrication, manufacturing
90 or other processing in the state or to the extent that a
91 patented product is produced in the state. If the basis
92 of receipts from patent royalties does not permit
93 allocation to states or if the accounting procedures do
94 not reflect states of utilization, the patent is utilized in
95 the state in which the taxpayer's commercial domicile
96 is located.
- 97 (C) A copyright is utilized in a state to the extent that
98 printing or other publication originates in the state. If
99 the basis of receipts from copyright royalties does not
100 permit allocation to states or if the accounting proce-
101 dures do not reflect states of utilization, the copyright
102 is utilized in the state in which the taxpayer's commer-
103 cial domicile is located.
- 104 (5) *Corporate partner's distributive share.*
- 105 (A) Persons carrying on business as partners in a
106 partnership, as defined in section 761 of the Internal
107 Revenue Code of 1986, as amended, are liable for income
108 tax only in their separate or individual capacities.

109 (B) A corporate partner's distributive share of in-
110 come, gain, loss, deduction or credit of a partnership
111 shall be modified as provided in section six of this article
112 for each partnership. Such distributive share shall then
113 be allocated and apportioned as provided in section
114 seven of this article, using the corporation's proportion-
115 ate share of the partnership's property, payroll and sales
116 factors. The sum of that portion of the distributive share
117 allocated and apportioned to this state shall then be
118 treated as distributive share allocated to this state; and
119 that portion of distributive share allocated or apporti-
120 oned outside this state shall be treated as distributive
121 share allocated outside this state, unless the taxpayer
122 requests or the tax commissioner, under subsection
123 (h) of this section requires that such distributive share
124 be treated differently.

125 (e) *Business activities partially within and partially*
126 *without this state; apportionment of business income.* —
127 All net income, after deducting those items specifically
128 allocated under subsection (d), shall be apportioned to
129 this state by multiplying such net income by a fraction,
130 the numerator of which is the property factor plus the
131 payroll factor plus two times the sales factor, and the
132 denominator of which is four, reduced by the number
133 of factors, if any, having no denominator.

134 (1) *Property factor.* — The property factor is a
135 fraction, the numerator of which is the average value
136 of the taxpayer's real and tangible personal property
137 owned or rented and used by it in this state during the
138 taxable year and the denominator of which is the
139 average value of all the taxpayer's real and tangible
140 personal property owned or rented and used by the
141 taxpayer during the taxable year, which is reported on
142 Schedule L Federal Form 1120, plus the average value
143 of all real and tangible personal property leased and
144 used by the taxpayer during the taxable year.

145 (2) *Value of property.* — Property owned by the
146 taxpayer shall be valued at its original cost, adjusted by
147 subsequent capital additions or improvements thereto
148 and partial disposition thereof, by reason of sale,
149 exchange, abandonment, etc.: *Provided, That where*

150 records of original cost are unavailable or cannot be
151 obtained without unreasonable expense, property shall
152 be valued at original cost as determined under regula-
153 tions of the tax commissioner. Property rented by the
154 taxpayer from others shall be valued at eight times the
155 annual rental rate. The term "net annual rental rate"
156 is the annual rental paid, directly or indirectly, by the
157 taxpayer, or for its benefit, in money or other consid-
158 eration for the use of property and includes:

159 (A) Any amount payable for the use of real or tangible
160 personal property, or any part thereof, whether desig-
161 nated as a fixed sum of money or as a percentage of
162 sales, profits or otherwise.

163 (B) Any amount payable as additional rent or in lieu
164 of rents, such as interest, taxes, insurance, repairs or
165 any other items which are required to be paid by the
166 terms of the lease or other arrangement, not including
167 amounts paid as service charges, such as utilities,
168 janitor services, etc. If a payment includes rent and
169 other charges unsegregated, the amount of rent shall be
170 determined by consideration of the relative values of the
171 rent and the other items.

172 (3) *Movable property.* — The value of movable tang-
173 ible personal property used both within and without this
174 state shall be included in the numerator to the extent
175 of its utilization in this state. The extent of such
176 utilization shall be determined by multiplying the
177 original cost of such property by a fraction, the
178 numerator of which is the number of days of physical
179 location of the property in this state during the taxable
180 period, and the denominator of which is the number of
181 days of physical location of the property everywhere
182 during the taxable year. The number of days of physical
183 location of the property may be determined on a
184 statistical basis or by such other reasonable method
185 acceptable to the tax commissioner.

186 (4) *Leasehold improvements.* — Leasehold improve-
187 ments shall, for purposes of the property factor, be
188 treated as property owned by the taxpayer regardless
189 of whether the taxpayer is entitled to remove the

190 improvements or the improvements revert to the lessor
191 upon expiration of the lease. Leasehold improvements
192 shall be included in the property factor at their original
193 cost.

194 (5) *Average value of property.* — The average value of
195 property shall be determined by averaging the values
196 at the beginning and ending of the taxable year:
197 *Provided,* That the tax commissioner may require the
198 averaging of monthly values during the taxable year if
199 substantial fluctuations in the values of the property
200 exist during the taxable year, or where property is
201 acquired after the beginning of the taxable year, or is
202 disposed of, or whose rental contract ceases, before the
203 end of the taxable year.

204 (6) *Payroll factor.* — The payroll factor is a fraction,
205 the numerator of which is the total compensation paid
206 in this state during the taxable year by the taxpayer for
207 compensation, and the denominator of which is the total
208 compensation paid by the taxpayer during the taxable
209 year, as shown on the taxpayer's federal income tax
210 return as filed with the Internal Revenue Service, as
211 reflected in the schedule of wages and salaries and that
212 portion of cost of goods sold which reflects compensa-
213 tion, or as shown on a pro forma return.

214 (7) *Compensation.* — The term "compensation" means
215 wages, salaries, commissions and any other form of
216 remuneration paid to employees for personal services.
217 Payments made to an independent contractor or to any
218 other person not properly classifiable as an employee
219 shall be excluded. Only amounts paid directly to
220 employees are included in the payroll factor. Amounts
221 considered as paid directly to employees include the
222 value of board, rent, housing, lodging and other benefits
223 or services furnished to employees by the taxpayer in
224 return for personal services, provided such amounts
225 constitute income to the recipient for federal income tax
226 purposes.

227 (8) *Employee.* — The term "employee" means:

228 (A) Any officer of a corporation; or

229 (B) Any individual who, under the usual common-law
230 rule applicable in determining the employer-employee
231 relationship, has the status of an employee.

232 (9) *Compensation.* — Compensation is paid or accrued
233 in this state if:

234 (A) The employee's service is performed entirely
235 within this state; or

236 (B) The employee's service is performed both within
237 and without this state, but the service performed
238 without the state is incidental to the individual's service
239 within this state. The word "incidental" means any
240 service which is temporary or transitory in nature, or
241 which is rendered in connection with an isolated
242 transaction; or

243 (C) Some of the service is performed in this state and

244 (i) The employee's base of operations or, if there is no
245 base of operations, the place from which the service is
246 directed or controlled is in the state, or

247 (ii) The base of operations or the place from which the
248 service is directed or controlled is not in any state in
249 which some part of the service is performed, but the
250 employee's residence is in this state.

251 The term "base of operations" is the place of more or
252 less permanent nature from which the employee starts
253 his work and to which he customarily returns in order
254 to receive instructions from the taxpayer or communi-
255 cations from his customers or other persons or to
256 replenish stock or other materials, repair equipment, or
257 perform any other functions necessary to the exercise of
258 his trade or profession at some other point or points. The
259 term "place from which the service is directed or
260 controlled" refers to the place from which the power to
261 direct or control is exercised by the taxpayer.

262 (10) *Sales factor.* — The sales factor is a fraction, the
263 numerator of which is the gross receipts of the taxpayer
264 derived from transactions and activity in the regular
265 course of its trade or business in this state during the
266 taxable year (business income), less returns and allow-

267 ances. The denominator of the fraction shall be the total
268 gross receipts derived by the taxpayer from transactions
269 and activity in the regular course of its trade or business
270 during the taxable year (business income), and reflected
271 in its gross income reported and as appearing on the
272 taxpayer's Federal Form 1120, and consisting of those
273 certain pertinent portions of the (gross income) elements
274 set forth: *Provided*, That if either the numerator or the
275 denominator includes interest or dividends from obliga-
276 tions of the United States government which are exempt
277 from taxation by this state, the amount of such interest
278 and dividends, if any, shall be subtracted from the
279 numerator or denominator in which it is included.

280 (11) *Allocation of sales of tangible personal prop-*
281 *erty.* — (A) Sales of tangible personal property are in
282 this state if:

283 (i) The property is received in this state by the
284 purchaser, other than the United States government,
285 regardless of the f.o.b. point or other conditions of the
286 sale. In the case of delivery by common carrier or other
287 means of transportation, the place at which such
288 property is ultimately received after all transportation
289 has been completed shall be considered as the place at
290 which such property is received by the purchaser.
291 Direct delivery in this state, other than for purposes of
292 transportation, to a person or firm designated by the
293 purchaser, constitutes delivery to the purchaser in this
294 state, and direct delivery outside this state to a person
295 or firm designated by the purchaser does not constitute
296 delivery to the purchaser in this state, regardless of
297 where title passes or other conditions of sale; or

298 (ii) The property is shipped from an office, store,
299 warehouse, factory or other place of storage in this state
300 and the purchaser is the United States government.

301 (B) All other sales of tangible personal property
302 delivered or shipped to a purchaser within a state in
303 which the taxpayer is not taxed (as defined in subsection
304 (b) of this section) shall be excluded from the denom-
305 inator of the sales factor.

306 (12) *Allocation of other sales.* — Sales, other than sales

307 of tangible personal property are in this state if:

308 (A) The income-producing activity is performed in
309 this state; or

310 (B) The income-producing activity is performed both
311 in and outside this state and a greater proportion of the
312 income-producing activity is performed in this state
313 than in any other state, based on costs of performance.

314 (f) *Income-producing activity.* — The term “income-
315 producing activity” applies to each separate item of
316 income and means the transactions and activity directly
317 engaged in by the taxpayer in the regular course of its
318 trade or business for the ultimate purpose of obtaining
319 gain or profit. Such activity does not include transac-
320 tions and activities performed on behalf of the taxpayer,
321 such as those conducted on its behalf by an independent
322 contractor. “Income-producing activity” includes, but is
323 not limited to, the following:

324 (1) The rendering of personal services by employees
325 with utilization of tangible and intangible property by
326 the taxpayer in performing a service;

327 (2) The sale, rental, leasing, licensing or other use of
328 real property;

329 (3) The sale, rental, leasing, licensing or other use of
330 tangible personal property; or

331 (4) The sale, licensing or other use of intangible
332 personal property.

333 The mere holding of intangible personal property is
334 not, in itself, an income-producing activity.

335 (g) *Cost of performance.* — The term “cost of perfor-
336 mance” means direct costs determined in a manner
337 consistent with generally accepted accounting principles
338 and in accordance with accepted conditions or practices
339 in the trade or business of the taxpayer.

340 (h) *Other methods of allocation and apportionment.*

341 (1) *General.* — If the allocation and apportionment
342 provisions of subsections (d) and (e) of this section do not
343 fairly represent the extent of the taxpayer’s business

344 activities in this state, the taxpayer may petition for or
345 the tax commissioner may require, in respect to all or
346 any part of the taxpayer's business activities, if
347 reasonable:

348 (A) Separate accounting;

349 (B) The exclusion of one or more of the factors;

350 (C) The inclusion of one or more additional factors
351 which will fairly represent the taxpayer's business
352 activity in this state; or

353 (D) The employment of any other method to effectuate
354 an equitable allocation or apportionment of the taxpay-
355 er's income. Such petition shall be filed no later than the
356 due date of the annual return for the taxable year for
357 which the alternative method is requested, determined
358 without regard to any extension of time for filing such
359 return, and the petition shall include a statement of the
360 petitioner's objections and of such alternative method of
361 allocation or apportionment as it believes to be proper
362 under the circumstances with such detail and proof as
363 the tax commissioner may require.

364 (2) *Alternative method for public utilities.* — If the
365 taxpayer is a public utility and if the allocation and
366 apportionment provisions of subsections (d) and (e) do
367 not fairly represent the taxpayer's business activities in
368 this state, the taxpayer may petition for, or the tax
369 commissioner may require, as an alternative to the other
370 methods provided for in paragraph (1) of this subsection,
371 the allocation and apportionment of the taxpayer's net
372 income in accordance with any system of accounts
373 prescribed by the public service commission of this state
374 pursuant to the provisions of section eight, article two,
375 chapter twenty-four of this code, provided the allocation
376 and apportionment provisions of such system of accounts
377 fairly represent the extent of the taxpayer's business
378 activities in this state for the purposes of the tax
379 imposed by this article.

380 (3) *Burden of proof.* — In any proceeding before the
381 tax commissioner or in any court in which employment
382 of one of the methods of allocation or apportionment

383 provided for in paragraph (1) or (2) of this subsection
384 is sought, on the ground that the allocation and
385 apportionment provisions of subsections (d) and (e) do
386 not fairly represent the extent of the taxpayer's business
387 activities in this state, the burden of proof shall:

388 (A) If the tax commissioner seeks employment of one
389 of such methods, be on the tax commissioner, or

390 (B) If the taxpayer seeks employment of one of such
391 other methods, be on the taxpayer.

§11-24-9a. Credits against primary tax; election of taxpayer.

1 *Credit for primary taxes imposed under article*
2 *thirteen-a, chapter eleven of this code.* — A credit shall
3 be allowed against the primary tax imposed by this
4 article equal to the amount of the liability of the
5 taxpayer for the taxable year for the severance tax
6 imposed under article thirteen-a, chapter eleven of this
7 code: *Provided*, That the amount of such severance tax
8 credit shall not exceed fifty percent of the primary tax
9 liability of the taxpayer under this article, which is
10 attributable to the West Virginia taxable income
11 derived by the taxpayer for the taxable year from the
12 activities with respect to which said tax under article
13 thirteen-a was imposed, and shall not in any event
14 exceed fifty percent of the primary tax liability of the
15 taxpayer under this article for such taxable year:
16 *Provided, however*, That the entire amount of the
17 severance tax liability of the taxpayer, which was taken
18 as a deduction in determining its federal taxable income
19 for the taxable year, shall be an adjustment increasing
20 federal taxable income under section six of this article:
21 *Provided further*, That the taxpayer may at its option
22 elect, in lieu of claiming the credit allowable by this
23 subsection, to not increase its federal taxable income
24 under section six of this article and thereby take as a
25 full deduction under this article for the taxable year the
26 amount of its severance tax liability for the taxable year,
27 which was taken as a deduction on its federal return for
28 such taxable year.

29 For purposes of this section, the tax imposed under

30 article thirteen-a, chapter eleven of this code shall be the
31 amount of the liability of the taxpayer for such tax
32 under said article thirteen-a computed without reduc-
33 tion for the tax credit for coal loading facilities or for
34 industrial expansion or revitalization allowed for such
35 year.

§11-24-42. Effective date.

1 The provisions of this article as amended or added by
2 this act shall take effect on the first day of July, one
3 thousand nine hundred eighty-eight, and apply to all
4 taxable years ending after that date: *Provided*, That if
5 an effective date is expressly provided in such provision,
6 that specific effective date shall control in lieu of this
7 general effective date provision.

CHAPTER 120

(Com. Sub. for H. B. 4472—By Mr. Speaker, Mr. Chambers, and Delegate Swann,
by request of the Executive)

[Passed March 12, 1988; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections nine, twelve, sixteen, thirty-six and forty, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto four new sections, designated sections seventeen-a, thirty-seven-a, fifty-one-a and ninety-four-a, all relating to personal income tax; updating references to the Internal Revenue Code; and making such updating retroactive to taxable years beginning on or after the first day of January, one thousand nine hundred eighty-seven; providing a decreasing modification to federal adjusted gross income for interest paid on obligations of the state of West Virginia, its agencies and subdivisions that is exempt from personal income tax by law; clarifying certain decreasing modifications by setting for the requirement that the income must be from a West Virginia public employees retirement system, a West Virginia teachers retirement system, all forms of military retirement, a West Virginia department of public safety retirement system, West Virginia

police or West Virginia firemen's systems, including those at a political subdivision level, in order to take the decreasing modification; providing a definition of surviving spouse; providing a personal exemption for certain individuals denied one on a federal return; providing resident and nonresident S corporation shareholder's modifications; limiting the personal exemption of a nonresident individual; providing that credit for income tax of state of residence may only be allowed pursuant to a written agreement between the state tax commissioner and the nonresident's state of residence; allowing the filing of composite returns; and providing effective dates.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 11. TAXATION.

ARTICLE 21. PERSONAL INCOME TAX.

- §11-21-9. Meaning of terms.
- §11-21-12. West Virginia adjusted gross income of resident individual.
- §11-21-16. West Virginia personal exemptions of resident individual.
- §11-21-17a. Resident shareholders of S Corporations.
- §11-21-36. West Virginia personal exemptions of a nonresident individual.
- §11-21-37a. Nonresident S corporation shareholders.
- §11-21-40. Credit for income tax of state of residence.
- §11-21-51a. Composite returns.
- §11-21-94a. Effective date.

§11-21-9. Meaning of terms.

- 1 Any term used in this article shall have the same
- 2 meaning as when used in a comparable context in the
- 3 laws of the United States relating to income taxes,
- 4 unless a different meaning is clearly required. Any
- 5 reference in this article to the laws of the United States
- 6 shall mean the provisions of the Internal Revenue Code
- 7 of 1986, as amended, and such other provisions of the
- 8 laws of the United States as relate to the determination

9 of income for federal income tax purposes. All amend-
10 ments made to the laws of the United States prior to
11 the first day of January, one thousand nine hundred
12 eighty-eight, shall be given effect in determining the
13 taxes imposed by this article for any taxable year
14 beginning the first day of January, one thousand nine
15 hundred eighty-seven, or thereafter, but no amendment
16 to the laws of the United States made on or after the
17 first day of January, one thousand nine hundred eighty-
18 eight, shall be given effect.

**§11-21-12. West Virginia adjusted gross income of resi-
dent individual.**

1 (a) *General.*—The West Virginia adjusted gross
2 income of a resident individual means his federal
3 adjusted gross income as defined in the laws of the
4 United States for the taxable year with the modifica-
5 tions specified in this section.

6 (b) *Modifications increasing federal adjusted gross*
7 *income.*—There shall be added to federal adjusted gross
8 income unless already included therein the following
9 items:

10 (1) Interest income on obligations of any state other
11 than this state, or of a political subdivision of any such
12 other state unless created by compact or agreement to
13 which this state is a party;

14 (2) Interest or dividend income on obligations or
15 securities of any authority, commission or instrumentality
16 of the United States, which the laws of the United
17 States exempt from federal income tax but not from
18 state income taxes;

19 (3) Income taxes imposed by this state or any other
20 taxing jurisdiction, to the extent deductible in determin-
21 ing federal adjusted gross income and not credited
22 against federal income tax: *Provided*, That this modifi-
23 cation shall not be made for taxable years beginning
24 after the thirty-first day of December, one thousand nine
25 hundred eighty-six;

26 (4) Interest on indebtedness incurred or continued to
27 purchase or carry obligations or securities the income
28 from which is exempt from tax under this article, to the

29 extent deductible in determining federal adjusted gross
30 income;

31 (5) Interest on a depository institution tax-exempt
32 savings certificate which is allowed as an exclusion from
33 federal gross income under section 128 of the Internal
34 Revenue Code, for the federal taxable year;

35 (6) The amount allowed as a deduction from federal
36 gross income under section 221 of the Internal Revenue
37 Code by married couples who file a joint federal return
38 for the federal taxable year: *Provided*, That this
39 modification shall not be made for taxable years
40 beginning after the thirty-first day of December, one
41 thousand nine hundred eighty-six; and

42 (7) The deferral value of certain income that is not
43 recognized for federal tax purposes, which value shall
44 be an amount equal to a percentage of the amount
45 allowed as a deduction in determining federal adjusted
46 gross income pursuant to the accelerated cost recovery
47 system under section 168 of the Internal Revenue Code
48 for the federal taxable year, with the percentage of the
49 federal deduction to be added as follows with respect to
50 the following recovery property: Three-year property—
51 no modification; five-year property—ten percent; ten-
52 year property—fifteen percent; fifteen-year public
53 utility property—twenty-five percent; and fifteen-year
54 real property—thirty-five percent: *Provided*, That this
55 modification shall not apply to any person whose federal
56 deduction is determined by the use of the straight line
57 method: *Provided, however*, That this modification shall
58 not be made for taxable years beginning after the thirty-
59 first day of December, one thousand nine hundred
60 eighty-six;

61 (c) *Modifications reducing federal adjusted gross*
62 *income.*—There shall be subtracted from federal ad-
63 justed gross income to the extent included therein:

64 (1) Interest income on obligations of the United States
65 and its possessions to the extent includible in gross
66 income for federal income tax purposes;

67 (2) Interest or dividend income on obligations or
68 securities of any authority, commission or instrumental-

69 ity of the United States or of the state of West Virginia
70 to the extent includible in gross income for federal
71 income tax purposes but exempt from state income
72 taxes under the laws of the United States or of the state
73 of West Virginia, including federal interest or dividends
74 paid to shareholders of a regulated investment company,
75 under section 852 of the Internal Revenue Code for
76 taxable years ending after the thirtieth day of June, one
77 thousand nine hundred eighty-seven;

78 (3) Any gain from the sale or other disposition of
79 property having a higher fair market value on the first
80 day of January, one thousand nine hundred sixty-one,
81 than the adjusted basis at said date for federal income
82 tax purposes: *Provided*, That the amount of this
83 adjustment is limited to that portion of any such gain
84 which does not exceed the difference between such fair
85 market value and such adjusted basis: *Provided*,
86 *however*, That if such gain is considered a long-term
87 capital gain for federal income tax purposes, the
88 modification shall be limited to forty percent of such
89 portion of the gain: *Provided further*, That this modifi-
90 cation shall not be made for taxable years beginning
91 after the thirty-first day of December, one thousand nine
92 hundred eighty-six;

93 (4) The amount of any refund or credit for overpay-
94 ment of income taxes imposed by this state, or any other
95 taxing jurisdiction, to the extent properly included in
96 gross income for federal income tax purposes;

97 (5) Annuities, retirement allowances, returns of
98 contributions and any other benefit received under the
99 West Virginia public employees retirement system, the
100 West Virginia state teachers retirement system and all
101 forms of military retirement, including regular armed
102 forces, reserves and national guard, including any
103 survivorship annuities derived therefrom, to the extent
104 includible in gross income for federal income tax
105 purposes: *Provided*, That notwithstanding any provi-
106 sions in this code to the contrary this modification shall
107 be limited to the first two thousand dollars of benefits
108 received under the West Virginia public employees
109 retirement system, the West Virginia state teachers

110 retirement system and all forms of military retirement
111 including regular armed forces, reserves and national
112 guard, including any survivorship annuities derived
113 therefrom, to the extent includible in gross income for
114 federal income tax purposes for taxable years beginning
115 after the thirty-first day of December, one thousand nine
116 hundred eighty-six;

117 (6) Retirement income received in the form of pen-
118 sions and annuities after the thirty-first day of De-
119 cember, one thousand nine hundred seventy-nine, under
120 any West Virginia police, West Virginia firemen's
121 retirement system or the West Virginia department of
122 public safety death, disability and retirement fund,
123 including any survivorship annuities derived therefrom,
124 to the extent includible in gross income for federal
125 income tax purposes;

126 (7) Federal adjusted gross income in the amount of
127 eight thousand dollars received from any source after
128 the thirty-first day of December, one thousand nine
129 hundred eighty-six, by any person who has attained the
130 age of sixty-five on or before the last day of the taxable
131 year, or by any person certified by proper authority as
132 permanently and totally disabled, regardless of age, on
133 or before the last day of the taxable year, to the extent
134 includible in federal adjusted gross income for federal
135 tax purposes: *Provided*, That if a person has a medical
136 certification from a prior year and he is still perman-
137 ently and totally disabled, a copy of the original
138 certificate is acceptable as proof of disability. A copy of
139 the form filed for the federal disability income tax
140 exclusion is acceptable: *Provided, however*, That

141 (i) Where the total modification under subdivisions
142 (1), (2), (5) and (6) of this subsection is eight thousand
143 dollars per person or more, no deduction shall be
144 allowed under this subdivision, and

145 (ii) Where the total modification under subdivisions
146 (1), (2), (5) and (6) of this subsection is less than eight
147 thousand dollars per person, the total modification
148 allowed under this subdivision for all gross income
149 received by such person shall be limited to the differ-
150 ence between eight thousand dollars and the sum of

151 modifications under such subdivisions;

152 (8) Federal adjusted gross income in the amount of
153 eight thousand dollars received from any source after
154 the thirty-first day of December, one thousand nine
155 hundred eighty-six, by the surviving spouse of any
156 person who had attained the age of sixty-five or who had
157 been certified as permanently and totally disabled, to
158 the extent includible in federal adjusted gross income
159 for federal tax purposes: *Provided*, That

160 (i) Where the total modification under subdivisions
161 (1), (2), (5), (6) and (7) of this subsection is eight thousand
162 dollars or more, no deduction shall be allowed under this
163 subdivision, and

164 (ii) Where the total modification under subdivisions
165 (1), (2), (5), (6) and (7) of this subsection is less than eight
166 thousand dollars per person, the total modification
167 allowed under this subdivision for all gross income
168 received by such person shall be limited to the differ-
169 ence between eight thousand dollars and the sum of such
170 subdivisions;

171 (9) Any pay or allowances received, after the thirty-
172 first day of December, one thousand nine hundred
173 seventy-nine, by West Virginia residents who have not
174 attained the age of sixty-five, as compensation for active
175 service in the armed forces of the United States:
176 *Provided*, That such deduction shall be limited to an
177 amount not to exceed four thousand dollars: *Provided*,
178 *however*, That this modification shall not be made for
179 taxable years beginning after the thirty-first day of
180 December, one thousand nine hundred eighty-six;

181 (10) Gross income to the extent included in federal
182 adjusted gross income under section 86 of the Internal
183 Revenue Code for federal income tax purposes:
184 *Provided*, That this modification shall not be made for
185 taxable years beginning after the thirty-first day of
186 December, one thousand nine hundred eighty-six;

187 (11) The amount of any lottery prize awarded by the
188 West Virginia state lottery commission, to the extent
189 properly included in gross income for federal income tax
190 purposes; and

191 (12) Any other income which this state is prohibited
192 from taxing under the laws of the United States.

193 (d) *Modification for West Virginia fiduciary adjust-*
194 *ment.*—There shall be added to or subtracted from
195 federal adjusted gross income, as the case may be, the
196 taxpayer's share, as beneficiary of an estate or trust, of
197 the West Virginia fiduciary adjustment determined
198 under section nineteen of this article.

199 (e) *Partners and S corporation shareholders.*—The
200 amounts of modifications required to be made under this
201 section by a partner or an S corporation shareholder,
202 which relate to items of income, gain, loss or deduction
203 of a partnership or an S corporation, shall be deter-
204 mined under section seventeen of this article.

205 (f) *Husband and wife.*—If husband and wife deter-
206 mine their federal income tax on a joint return but
207 determine their West Virginia income taxes separately,
208 they shall determine their West Virginia adjusted gross
209 incomes separately as if their federal adjusted gross
210 incomes had been determined separately.

§11-21-16. West Virginia personal exemptions of resident individual.

1 (a) *General.*—For any tax imposed under the provi-
2 sions of this article with respect to any taxable year
3 prior to the first day of January, one thousand nine
4 hundred eighty-three, a resident individual shall be
5 allowed a West Virginia exemption of six hundred
6 dollars for each exemption for which he is entitled to
7 a deduction for the taxable year for federal income tax
8 purposes. With respect to any taxable year beginning on
9 or after the first day of January, one thousand nine
10 hundred eighty-three, and prior to the first day of
11 January, one thousand nine hundred eighty-four, said
12 exemption shall be seven hundred dollars; with respect
13 to any taxable year beginning on or after the first day
14 of January, one thousand nine hundred eighty-four, said
15 exemption shall be eight hundred dollars; and with
16 respect to any taxable year beginning on or after the
17 first day of January, one thousand nine hundred eighty-
18 seven, said exemption shall be two thousand dollars.

19 (b) *Husband and wife.*—If the West Virginia income
20 taxes of a husband and wife are separately determined
21 but their federal income tax is determined on a joint
22 return, each of them shall be separately entitled, with
23 respect to any taxable year prior to the first day of
24 January, one thousand nine hundred eighty-three, to a
25 West Virginia exemption of six hundred dollars for each
26 federal exemption to which he would be separately
27 entitled for the taxable year if their federal income
28 taxes had been determined on separate returns. With
29 respect to any taxable year beginning on or after the
30 first day of January, one thousand nine hundred eighty-
31 three, and prior to the first day of January, one thousand
32 nine hundred eighty-four, said exemption shall be seven
33 hundred dollars; with respect to any taxable year
34 beginning on or after the first day of January, one
35 thousand nine hundred eighty-four, said exemption shall
36 be eight hundred dollars; and with respect to any
37 taxable year beginning on or after the first day of
38 January, one thousand nine hundred eighty-seven, said
39 exemption shall be two thousand dollars.

40 (c) *Surviving spouse.*—For taxable years beginning
41 after the thirty-first day of December, one thousand nine
42 hundred eighty-six, a surviving spouse shall be allowed
43 one additional exemption of two thousand dollars for the
44 two taxable years beginning after the year of death of
45 the deceased spouse.

46 For purposes of this section and section twelve of this
47 article, a surviving spouse means a taxpayer whose
48 spouse died during the taxable year prior to the taxable
49 year for which the annual return is being filed and who
50 has not remarried at any time before the end of the
51 taxable year for which the annual return is being filed.

52 (d) *Certain dependents.*—Notwithstanding any provi-
53 sions in this section, for taxable years beginning after
54 the thirty-first day of December, one thousand nine
55 hundred eighty-six, a resident individual whose exemp-
56 tion amount for federal tax purposes is zero by virtue
57 of section 151(d)(2) of the Internal Revenue Code of 1986,
58 shall be allowed a single West Virginia exemption in the
59 amount of five hundred dollars.

§11-21-17a. Resident shareholders of S corporations.

1 (a) *S corporation shareholder's modifications.* — In
2 determining West Virginia adjusted gross income and
3 West Virginia taxable income of a resident S corpora-
4 tion shareholder, any modification described in section
5 twelve (b), (c) or (d), which relates to an item of income,
6 gain, loss or deduction shall be made in accordance with
7 the S corporation shareholder's pro rata share, for
8 federal income tax purposes, of the items to which the
9 modifications relate. Where a shareholder's pro rata
10 share of any such item is not required to be taken into
11 account separately for federal income tax purposes, the
12 shareholder's pro rata share of such item shall be his
13 pro rata share for federal income tax purposes of S
14 corporation taxable income or loss generally.

15 (b) *Character of items.*—Each item of S corporation
16 income, gain, loss or deduction shall have the same
17 character for a shareholder under this article as for
18 federal income tax purposes. Where an item is not
19 characterized for federal income tax purposes, it shall
20 have the same character for a shareholder as if realized
21 directly from the source from which realized by the S
22 corporation, or incurred in the same manner as incurred
23 by the S corporation.

§11-21-36. West Virginia personal exemptions of a nonresident individual.

1 A nonresident individual shall be allowed the same
2 West Virginia exemptions as are allowed by section
3 sixteen to a resident individual: *Provided,* That for
4 taxable years beginning after the thirty-first day of
5 December, one thousand nine hundred eighty-seven,
6 such exemptions shall, in the case of nonresident
7 individuals, be the product of the amount allowed as a
8 personal exemption for a West Virginia resident
9 multiplied by the ratio the nonresident individual's West
10 Virginia source income bears to that nonresident
11 individual's federal adjusted gross income for the
12 taxable year.

§11-21-37a. Nonresident S corporation shareholders.

1 In determining West Virginia adjusted gross income

2 of a nonresident shareholder of any S corporation, there
3 shall be included only the portion derived from or
4 connected with West Virginia sources of such share-
5 holders pro rata share, for federal income tax purposes,
6 of items of income, gain, loss and deduction, as such
7 portion shall be determined under regulations of the tax
8 commissioner consistent with the applicable rules of
9 section thirty-two. In determining West Virginia
10 taxable income of a nonresident shareholder of any S
11 corporation, there shall be attributed to him or her his
12 or her pro rata share, for federal income tax purposes,
13 of those S corporation items of deduction which are
14 deductible by him under the applicable rules of section
15 thirty-five.

§11-21-40. Credit for income tax of state of residence.

1 (a) *General.*—A nonresident shall be allowed a credit
2 against the tax otherwise due under this article for any
3 income tax imposed for the taxable year by another
4 state of the United States or by the District of Columbia,
5 of which the taxpayer is a resident.

6 (b) *Limitation.*—The credit under this section shall
7 not exceed either:

8 (1) The percentage of the other tax determined by
9 dividing the portion of the taxpayer's West Virginia
10 income which is also subject to the other tax by the total
11 amount of his income subject to such other tax, or

12 (2) The percentage of the tax otherwise due under this
13 article, determined by dividing the portion of the
14 taxpayer's West Virginia income which is also subject
15 to the other tax by the total amount of the taxpayer's
16 West Virginia income.

17 (c) *Exceptions.*—No credit may be allowed under this
18 section for a taxable year beginning after the thirty-first
19 day of December, one thousand nine hundred eighty-
20 seven, except pursuant to a written agreement between
21 this state and the nonresident individual's state of
22 residence. The state tax commissioner is hereby auth-
23 orized to enter into such agreements necessary to
24 effectuate the purpose of this section when he deter-
25 mines that such agreements are in the best interest of

26 this state and its residents.

27 (d) *Definition.*—For purposes of this section West
28 Virginia income means:

29 (1) The West Virginia adjusted gross income of an
30 individual, or

31 (2) The income derived from West Virginia sources by
32 an estate or trust, determined in accordance with the
33 applicable rules of section thirty-two as in the case of
34 a nonresident individual.

§11-21-51a. Composite returns.

1 (a) Any return required by this article for nonresident
2 individuals who are:

3 (1) Partners in a partnership deriving income from a
4 West Virginia source or sources, or

5 (2) Shareholders of a corporation which made an
6 election under 26 U.S.C. §1362(a) (S corporations) for
7 the taxable year, or

8 (3) Who have received a distribution from an estate
9 or trust having income from a West Virginia source or
10 sources, may, upon payment of a composite return
11 processing fee of fifty dollars, file a composite return in
12 accordance with the provisions of this section.

13 (b) In filing a composite return and determining the
14 tax due thereon, no personal exemptions may be
15 utilized, and the rate of tax shall be six and one-half
16 percent of the taxable income determined in accordance
17 with the applicable provisions of this article. The entity
18 or entities, to which the composite return relates are
19 responsible for collection and remittance of all income
20 tax due at the time the return is filed: *Provided*, That
21 credit is allowed for severance taxes paid by the
22 partnership, trust, estate or corporation electing S
23 status pursuant to 26 U.S.C. §1362(a) for the taxable
24 year.

25 (c) The composite return shall be filed in a manner
26 and form acceptable to and in accordance with instruc-
27 tions from the commissioner, and need not be signed by
28 all nonresident individuals on whose behalf the return
29 is filed: *Provided*, That the return is signed by a partner,

30 in the case of a partnership, a corporate officer, in the
31 case of a corporation, by a trustee, in the case of a trust
32 or by an executor or administrator in the case of an
33 estate.

34 (d) For the purposes of this section a composite return
35 means a return filed on a group basis as though there
36 was one taxpayer, and sets forth the name, address,
37 taxpayer identification number and percent ownership
38 or interest of each nonresident individual in addition to
39 return information as that term is defined in section
40 five-d, article ten of this chapter; the term includes
41 block filing: *Provided*, That nothing in this section shall
42 prohibit a nonresident from also filing a separate
43 nonresident personal income tax return for the taxable
44 year and such return shall be filed if the nonresident
45 has income from any other West Virginia source.

§11-21-94a. Effective date.

1 The provisions of this article as amended or added by
2 this act shall take effect on the first day of July, one
3 thousand nine hundred eighty-eight, and apply to all
4 taxable years ending after that date: *Provided*, That if
5 an effective date is expressly provided in such provision,
6 that specific effective date shall control in lieu of this
7 general effective date provision.

CHAPTER 121

(H. B. 4511—By Mr. Speaker, Mr. Chambers, and Delegate Swann,
by request of the Executive)

[Passed March 12, 1988; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, five, six, seven and seventeen, article twenty-three, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article twenty-three by adding thereto two new sections, designated sections three-a and twenty-six, all relating generally to the business franchise tax; defining terms; updating references to federal internal revenue code; apportioning tax base; imposing tax; exempting certain

businesses from tax; allowing certain credits against tax; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 23. BUSINESS FRANCHISE TAX.

§11-23-3. Meaning of terms; specific terms defined.

§11-23-3a. Specific terms defined.

§11-23-5. Apportionment of tax base.

§11-23-6. Imposition of tax.

§11-23-7. Persons and organizations exempt from tax.

§11-23-17. Credits against tax.

§11-23-26. Effective date.

§11-23-3. Meaning of terms; specific terms defined.

1 (a) *General.* — When used in this article, or in the
2 administration of this article, terms defined in this
3 section shall have the meanings ascribed to them herein
4 unless a different meaning is clearly required by either
5 the context in which the term is used, or by specific
6 definition in this article.

7 (b) *Terms defined.*

8 (1) *Business income.* — The term “business income”
9 means income arising from transactions and activity in
10 the regular course of the taxpayer’s trade or business
11 and includes income from tangible and intangible
12 property if the acquisition, management and disposition
13 of the property constitute integral parts of the taxpay-
14 er’s regular trade or business operations.

15 (2) *Capital.* — The term “capital” of a taxpayer shall
16 mean:

17 (A) *Corporations.* — In the case of a corporation,
18 except an electing small business corporation, the
19 average of the beginning and ending year balances of
20 the sum of the following entries from Schedule L of

21 Federal Form 1120, as filed by the taxpayer with the
22 internal revenue service for the taxable year:

23 (i) The value of all common stock and preferred stock
24 of the taxpayer;

25 (ii) The amount of paid-in or capital surplus;

26 (iii) The amount of retained earnings, appropriated
27 and unappropriated;

28 (iv) Less the cost of treasury stock.

29 (B) *S Corporations*. — In the case of an electing small
30 business corporation, the average of the beginning and
31 ending year balances of the sum of the following entries
32 from Schedule L of Federal Form 1120S, as filed by the
33 taxpayer with the internal revenue service for the
34 taxable year:

35 (i) The value of all common stock and preferred stock
36 of the taxpayer;

37 (ii) The amount of paid-in or capital surplus;

38 (iii) Retained earnings, appropriated and
39 unappropriated;

40 (iv) The amount of shareholders' undistributed tax-
41 able income;

42 (v) The amount of the accumulated adjustments
43 account;

44 (vi) The amount of the other adjustments account;

45 (vii) Less the cost of treasury stock.

46 (C) *Partnerships*. — In the case of a partnership, the
47 average of the beginning and ending year balances of
48 the value of partner's capital accounts from Schedule L
49 of Federal Form 1065, as filed by the taxpayer with the
50 internal revenue service for the taxable year.

51 (D) *Additional items in capital*. — The term "capital"
52 for purposes of this article shall include such additional
53 items from the accounts of the taxpayer as the tax
54 commissioner may by regulation prescribe, which fairly
55 represent the net equity of the taxpayer as defined in

56 accordance with generally accepted accounting
57 principles.

58 (E) *Allowance for certain government obligations and*
59 *obligations secured by residential property.* — As to both
60 corporations and partnerships, capital shall be multip-
61 lied by a fraction equal to one minus a fraction:

62 (i) The numerator of which is the sum of the average
63 of the beginning and ending account balances for the
64 taxable year (account balances to be determined at cost
65 in the same manner that such obligations, investments
66 and loans are reported on Schedule L of the Federal
67 Form 1120 or Federal Form 1065) of the following:

68 (I) Obligations and securities of the United States, or
69 of any agency, authority, commission or instrumentality
70 of the United States and any other corporation or entity
71 created under the authority of the United States
72 Congress for the purpose of implementing or furthering
73 an objective of national policy;

74 (II) Obligations of this state and any political subdivi-
75 sion of this state;

76 (III) Investments or loans primarily secured by
77 mortgages, or deeds of trust, on residential property
78 located in this state and occupied by nontransients; and

79 (IV) Loans primarily secured by a lien or security
80 agreement on residential property in the form of a
81 mobile home, modular home or double-wide, located in
82 this state and occupied by nontransients.

83 (ii) The denominator of which is the average of the
84 beginning and ending year balances of the total assets
85 of the taxpayer as shown on Schedule L of the Federal
86 Form 1120, as filed by the taxpayer with the internal
87 revenue service or, in the case of partnerships, Schedule
88 L of Federal Form 1065, as filed by the taxpayer with
89 the internal revenue service.

90 (3) *Commercial domicile.* — The term “commercial
91 domicile” means the principal place from which the
92 trade or business of the taxpayer is directed or
93 managed.

94 (4) *Commissioner or tax commissioner.* — The terms
95 “commissioner” or “tax commissioner” are used inter-
96 changeably herein and mean the tax commissioner of
97 the state of West Virginia, or his delegate.

98 (5) *Compensation.* — The term “compensation” means
99 wages, salaries, commissions and any other form of
100 remuneration paid to employees for personal services.

101 (6) *Corporation.* — The term “corporation” includes
102 any corporation, S corporation, joint-stock company and
103 any association or other organization which is taxable
104 as a corporation under federal income tax laws or the
105 income tax laws of this state.

106 (7) *Delegate.* — The term “delegate” in the phrase “or
107 his delegate,” when used in reference to the tax
108 commissioner, means any officer or employee of the
109 state tax department duly authorized by the tax
110 commissioner directly, or indirectly by one or more
111 redelegations of authority, to perform the functions
112 mentioned or described in this article or regulations
113 promulgated thereunder.

114 (8) *Doing business.* — The term “doing business”
115 means any activity of a corporation or partnership
116 which enjoys the benefits and protection of the govern-
117 ment and laws of this state, except the activity of
118 agriculture and farming, which shall mean the produc-
119 tion of food, fiber and woodland products (but not
120 timbering activity) by means of cultivation, tillage of the
121 soil and by the conduct of animal, livestock, dairy,
122 apiary, equine or poultry husbandry, horticulture, or
123 any other plant or animal production and all farm
124 practices related, usual or incidental thereto, including
125 the storage, packing, shipping and marketing, but not
126 including any manufacturing, milling or processing of
127 such products by persons other than the producer
128 thereof.

129 The activity of agriculture and farming shall mean
130 such activity, as above defined, occurring on not less
131 than five acres of land and the improvements thereon,
132 used in the production of the aforementioned activities,
133 and shall mean the production of at least one thousand

134 dollars of products per annum through the conduct of
135 such principal business activities as set forth in section
136 ten, article one-a, chapter eleven of this code.

137 (9) *Domestic corporation.* — The term “domestic
138 corporation” means a corporation organized under the
139 laws of this state, and certain corporations organized
140 under the laws of the state of Virginia before the
141 twentieth day of June, one thousand eight hundred
142 sixty-three. Every other corporation is a foreign
143 corporation.

144 (10) *Federal Form 1120.* — The “Federal Form 1120”
145 means the annual federal income tax return of any
146 corporation made pursuant to the United States Internal
147 Revenue Code of 1986, as amended, or in successor
148 provisions of the laws of the United States, in respect
149 to the taxable income of a corporation, and filed with
150 the federal internal revenue service. In the case of a
151 corporation that elects to file a federal income tax
152 return as part of an affiliated group, but files as a
153 separate corporation under this article, then as to such
154 corporation Federal Form 1120 means its pro forma
155 Federal Form 1120.

156 (11) *Federal Form 1065.* — The term “Federal Form
157 1065” means the annual federal income tax return of a
158 partnership made pursuant to Section 6031 of the
159 United States Internal Revenue Code of 1986, as
160 amended, or renumbered, or in successor provisions of
161 the laws of the United States, in respect to the taxable
162 income of a partnership, and filed with the federal
163 internal revenue service.

164 (12) *Fiduciary.* — The term “fiduciary” means, and
165 includes, a guardian, trustee, executor, administrator,
166 receiver, conservator or any person acting in any
167 fiduciary capacity for any person.

168 (13) *Financial organization.* — The term “financial
169 organization” includes any bank, banking association,
170 trust company, industrial loan company, small loan
171 company or licensee, building and loan association,
172 savings and loan association, finance company, invest-
173 ment company, investment broker or dealer, and any

174 other similar business organization at least ninety
175 percent of the assets of which consist of intangible
176 personal property and at least ninety percent of the
177 gross receipts of which consist of dividends, interest and
178 other charges derived from the use of money or credit.

179 (14) *Fiscal year.* — The term “fiscal year” means an
180 accounting period of twelve months ending on any day
181 other than the last day of December, and on the basis
182 of which the taxpayer is required to report for federal
183 income tax purposes.

184 (15) *Includes and including.* — The term “includes”
185 and “including” when used in a definition contained in
186 this article shall not be deemed to exclude other things
187 otherwise within the meaning of the term being defined.

188 (16) *Parent and subsidiary corporations.* — A corpo-
189 ration which owns on average during the taxable year
190 more than fifty percent of the stock of all classes of
191 another corporation is defined to be the “parent
192 corporation” and the corporation which is so owned by
193 the parent is defined to be a “subsidiary corporation.”

194 (17) *Partnership and partner.* — The term “partner-
195 ship” includes a syndicate, group, pool, joint venture or
196 other unincorporated organization through or by means
197 of which any business, financial operation or venture is
198 carried on, and which is not a trust or estate, a
199 corporation, a sole proprietorship, or an unincorporated
200 organization which under Section 761 of the internal
201 revenue code and is not treated as a partnership for the
202 taxable year for federal income tax purposes. The term
203 “partner” includes a member in such a syndicate, group,
204 pool, joint venture or other unincorporated organization
205 which is a “partnership.”

206 (18) *Person.* — The term “person” includes any
207 corporation or partnership.

208 (19) *Pro forma return.* — The term “pro forma return”
209 when used in this article means the return which the
210 taxpayer would have filed with the internal revenue
211 service had it not elected to file federally as part of a
212 consolidated group.

213 (20) *Sales*. — The term “sales” means all gross
214 receipts of the taxpayer that are “business income,” as
215 defined in this section.

216 (21) *State*. — The term “state” means a state of the
217 United States, the District of Columbia, the Common-
218 wealth of Puerto Rico, or any territory or possession of
219 the United States.

220 (22) *Stock*. — The term “stock” includes shares in a
221 corporation, association or joint-stock company. It shall
222 not include nonvoting stock which is limited and
223 preferred as to dividends, or treasury stock. “Stock
224 owned by a corporation” shall include stock owned
225 directly by such corporation and stock which is subject
226 to an option to acquire stock.

227 (23) *Taxable year*. — The term “taxable year” means
228 the calendar year, or the fiscal year ending during such
229 calendar year, upon the basis of which tax liability is
230 computed under this article. “Taxable year” means, in
231 case of a return made for a fractional part of a year
232 (short taxable year) under the provisions of this article,
233 or under regulations promulgated by the tax commis-
234 sioner, the period for which such return is made.

235 (24) *Taxable in another state*. — The term “taxable in
236 another state” for purposes of apportionment under this
237 article, means a taxpayer who:

238 (A) Is subject to a net income tax, a franchise tax
239 measured by net income, a franchise tax for the
240 privilege of doing business or a corporate stock tax; or

241 (B) Would be subject to a net income tax if such other
242 state imposed such a tax.

243 (25) *Taxpayer*. — The term “taxpayer” means any
244 person (as defined in this section) subject to the tax
245 imposed by this article.

246 (26) *This code*. — The term “this code” means the code
247 of West Virginia, one thousand nine hundred thirty-one,
248 as amended.

249 (27) *This state*. — The term “this state” means the
250 state of West Virginia.

251 (28) *Treasury stock*. — The term “treasury stock”
252 means shares of a corporation which have been issued
253 and have been subsequently acquired by and belong to
254 such corporation, and have not been canceled or restored
255 to the status of authorized but unissued shares. Treasury
256 stock is deemed to be issued shares, but not outstanding
257 shares.

§11-23-3a. Specific terms defined.

1 Any term used in this article shall have the meaning
2 as when used in a comparable context in the laws of the
3 United States relating to federal income taxes, unless a
4 different meaning is clearly required by the context or
5 by definition of this article. Any reference in this article
6 to the laws of the United States, or to the internal
7 revenue code, or to the federal income tax law shall
8 mean the provisions of the laws of the United States as
9 related 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-eight, 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-eight, 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-eight, shall be given effect.

§11-23-5. Apportionment of tax base.

1 (a) A taxpayer subject to the tax imposed by this
2 article and also taxable in another state shall, for the
3 purposes of this tax, apportion its tax base to this state
4 by multiplying its tax base by a fraction, the numerator
5 of which is the sum of the property factor, plus the
6 payroll factor, plus two times the sales factor, all of
7 which shall be determined as hereinafter provided in
8 this section, and the denominator of which is four.

9 (b) *Property factor*. — The property factor is a
10 fraction, the numerator of which is the average value
11 of the taxpayer's real and tangible personal property
12 owned or rented and used by it in this state during the
13 taxable year, and the denominator of which is the

14 average value of all real and tangible personal property
15 owned or rented by the taxpayer and used by it during
16 the taxable year, which is reported on Schedule L of
17 Federal Form 1120 (or 1065 for partnerships), plus the
18 average value of all real and tangible personal property
19 leased and used by the taxpayer during the taxable
20 year.

21 (c) *Value of property.* — Property owned by the
22 taxpayer shall be valued at its original cost, adjusted by
23 subsequent capital additions or improvements thereto
24 and partial disposition thereof, by reason of sale,
25 exchange, abandonment, etc.: *Provided,* That where
26 records of original cost are unavailable or cannot be
27 obtained without unreasonable expense, property shall
28 be valued at original cost as determined under regula-
29 tions of the tax commissioner. Property rented by the
30 taxpayer from others shall be valued at eight times the
31 net annual rental rate. Net annual rental rate is the
32 annual rental paid, directly or indirectly, by the
33 taxpayer, or for its benefit, in money or other consid-
34 eration for the use of the property and includes:

35 (1) Any amount payable for the use of real or tangible
36 personal property, or any part thereof, whether desig-
37 nated as a fixed sum of money or as a percentage of
38 sales, profits or otherwise.

39 (2) Any amount payable as additional rent or in lieu
40 of rents, such as interest, taxes, insurance, repairs or
41 any other items which are required to be paid by the
42 terms of the lease or other arrangement, not including
43 amounts paid as service charges, such as utilities,
44 janitor services, etc. If a payment includes rent and
45 other charges unsegregated, the amount of rent shall be
46 determined by consideration of the relative values of the
47 rent and the other items.

48 (d) *Movable property.* — The value of movable tangi-
49 ble personal property used both within and without this
50 state shall be included in the numerator to the extent
51 of its utilization in this state. The extent of such
52 utilization shall be determined by multiplying the
53 original cost of such property by a fraction, the

54 numerator of which is the number of days of physical
55 location of the property in this state during the taxable
56 period, and the denominator of which is the number of
57 days of physical location of the property everywhere
58 during the taxable year. The number of days of physical
59 location of the property may be determined on a
60 statistical basis or by such other reasonable method
61 acceptable to the tax commissioner.

62 (e) *Leasehold improvements.* — Leasehold improve-
63 ments shall, for the purposes of the property factor, be
64 treated as property owned by the lessee regardless of
65 whether the lessee is entitled to remove the improve-
66 ments or the improvements revert to the lessor upon
67 expiration of the lease. Leasehold improvements shall be
68 included in the property factor at their original cost.

69 (f) *Average value of property.* — The average value of
70 property shall be determined by averaging the values
71 at the beginning and ending of the taxable year:
72 *Provided,* That the tax commissioner may require the
73 averaging of monthly values during the taxable year if
74 substantial fluctuations in the values of the property
75 exist during the taxable year, or where property is
76 acquired after the beginning of the taxable year, or is
77 disposed of, or whose rental contract ceases, before the
78 end of the taxable year.

79 (g) *Payroll factor.* — The payroll factor is a fraction,
80 the numerator of which is the total compensation paid
81 in this state during the taxable year by the taxpayer,
82 and the denominator of which is the total compensation
83 paid by the taxpayer during the taxable year as shown
84 on the taxpayer's federal income tax return as filed with
85 the internal revenue service, as reflected in the schedule
86 of wages and salaries and that portion of cost of goods
87 sold which reflects compensation, or as shown on a pro
88 forma return.

89 (h) *Compensation.* — The term "compensation" means
90 wages, salaries, commissions and any other form of
91 remuneration paid to employees for personal services.
92 Payments made to an independent contractor or to any
93 other person not properly classifiable as an employee

94 shall be excluded. Only the amounts paid directly to
95 employees shall be included in the payroll factor.
96 Amounts considered paid directly to employees include
97 the value of board, rent, housing, lodging, and other
98 benefits or services furnished to employees by the
99 taxpayer in return for personal services, provided such
100 amounts constitute income to the recipient for federal
101 income tax purposes.

102 (i) *Employee.* — The term “employee” means:

103 (1) Any officer of a corporation; or

104 (2) Any individual who, under the usual common-law
105 rules applicable in determining the employer-employee
106 relationship, has the status of an employee.

107 (j) *Compensation paid in this state.* — Compensation
108 is paid in this state if:

109 (1) The employee’s service is performed entirely
110 within the state;

111 (2) The employee’s service is performed both within
112 and without the state, but the service performed without
113 the state is incidental to the individual’s service within
114 the state. The word “incidental” means any service
115 which is temporary or transitory in nature, or which is
116 rendered in connection with an isolated transaction; or

117 (3) Some of the service is performed in the state and:

118 (A) The employee’s base of operations or, if there is
119 no base of operations, the place from which the service
120 is directed or controlled is in the state, or

121 (B) The base of operations or the place from which the
122 service is directed or controlled is not in any state in
123 which some part of the service is performed, but the
124 employee’s residence is in this state.

125 The term “base of operations” is the place of more or
126 less permanent nature from which the employee starts
127 his work and to which he customarily returns in order
128 to receive instructions from the taxpayer or communi-
129 cations from his customers or other persons or to
130 replenish stock or other materials, repair equipment, or

131 perform any other functions necessary to the exercise of
132 his trade or profession at some other point or points. The
133 term "place from which the service is directed or
134 controlled" refers to the place from which the power to
135 direct or control is exercised by the taxpayer.

136 (k) *Sales factor.* — The sales factor is a fraction, the
137 numerator of which is the gross receipts of the taxpayer
138 derived from transactions and activity in the regular
139 course of its trade or business in this state during the
140 taxable year, (business income) less returns and allo-
141 wances. The denominator of the fraction shall be the
142 total gross receipts derived by the taxpayer from
143 transactions and activity in the regular course of its
144 trade or business during the taxable year (business
145 income), and reflected in its gross income reported and
146 as appearing on the taxpayer's Federal Form 1120 or
147 1065, and consisting of those certain pertinent portions
148 of the (gross income) elements set forth: *Provided*, That
149 if either the numerator or the denominator includes
150 interest or dividends from obligations of the United
151 States government which are exempt from taxation by
152 this state, the amount of such interest and dividends, if
153 any, shall be subtracted from the numerator or denom-
154 inator in which it is included.

155 (l) *Allocation of sales of tangible personal property.* —

156 (1) Sales of tangible personal property are in this
157 state if:

158 (A) The property is received in this state by the
159 purchaser, other than the United States government,
160 regardless of the f.o.b. point or other conditions of the
161 sale. In the case of delivery by common carrier or other
162 means of transportation, the place at which such
163 property is ultimately received after all transportation
164 has been completed shall be considered as the place at
165 which such property is received by the purchaser.
166 Direct delivery in this state, other than for purposes of
167 transportation, to a person or firm designated by the
168 purchaser, constitutes delivery to the purchaser in this
169 state, and direct delivery outside this state to a person
170 or firm designated by the purchaser does not constitute

171 delivery to the purchaser in this state, regardless of
172 where title passes or other conditions of sale; or

173 (B) The property is shipped from an office, store,
174 warehouse, factory or other place of storage in this state
175 and the purchaser is the United States government.

176 (2) All other sales of tangible personal property
177 delivered or shipped to a purchaser within a state in
178 which the taxpayer is not taxed as defined in subsection
179 (b), section seven, article twenty-four of this chapter
180 shall be excluded from the denominator of the sales
181 factor.

182 (m) *Allocation of other sales.* — Sales, other than sales
183 of tangible personal property, are in this state if:

184 (1) The income-producing activity is performed in this
185 state; or

186 (2) The income-producing activity is performed both
187 in and outside this state and a greater proportion of the
188 income-producing activity is performed in this state
189 than in any other state, based on costs of performance.

190 (n) *Other methods of allocation.*

191 (1) *General.* — If the allocation and apportionment
192 provisions of subsection (a) do not fairly represent the
193 extent of the taxpayer's business activities in this state,
194 the taxpayer may petition for, or the tax commissioner
195 may require, in respect to all or any part of the
196 taxpayer's business activities, if reasonable:

197 (A) Separate accounting;

198 (B) The exclusion of one of the factors;

199 (C) The inclusion of one or more additional factors
200 which will fairly represent the taxpayer's business
201 activity in this state; or

202 (D) The employment of any other method to effectuate
203 an equitable allocation or apportionment of the taxpay-
204 er's tax base. Such petition shall be filed no later than
205 the due date of the annual return for the taxable year
206 for which the alternative method is requested, deter-
207 mined without regard to any extension of time for filing

208 such return, and the petition shall include a statement
209 of the petitioner's objections and of such alternative
210 method of allocation or apportionment as it believes to
211 be proper under the circumstances with such detail and
212 proof as the tax commissioner may require.

213 (2) *Burden of proof.* — In any proceeding before the
214 tax commissioner or in any court in which employment
215 of one of the methods of allocation or apportionment
216 provided for in subdivision (1) of this subsection is
217 sought, on the ground that the allocation and apportion-
218 ment provisions of subsection (a) do not fairly represent
219 the extent of the taxpayer's business activities in this
220 state, the burden of proof shall:

221 (A) If the tax commissioner seeks employment of one
222 of such methods, be on the tax commissioner, or

223 (B) If the taxpayer seeks employment of one of such
224 other methods, be on the taxpayer.

§11-23-6. Imposition of tax.

1 (a) *General.* — An annual business franchise tax is
2 hereby imposed on the privilege of doing business in this
3 state and in respect of the benefits and protections
4 conferred. Such tax shall be collected from every
5 corporation having its commercial domicile in this state,
6 every foreign or domestic corporation owning or leasing
7 real or tangible personal property located in this state
8 or doing business in this state and from every partner-
9 ship owning or leasing property located in this state or
10 doing business in this state, effective on and after the
11 first day of July, one thousand nine hundred eighty-
12 seven.

13 (b) *Amount of tax and rate; effective date.* — On and
14 after the first day of July, one thousand nine hundred
15 eighty-seven, the amount of tax shall be the greater of
16 fifty dollars or fifty-five one hundredths of one percent
17 of the value of the tax base, as determined under this
18 article: *Provided,* That when the taxpayer's first taxable
19 year under this article is a short taxable year, the
20 taxpayer's liability shall be prorated based upon the
21 ratio which the number of months in which such short
22 taxable year bears to twelve.

§11-23-7. Persons and organizations exempt from tax.

1 The following organizations and persons shall be
2 exempt from the tax imposed by this article to the
3 extent provided in this section:

4 (a) Natural persons doing business in this state that
5 are not doing business in the form of a partnership (as
6 defined in section three of this article) or in the form
7 of a corporation (as defined in section three of this
8 article). Such person include persons doing business as
9 sole proprietors, sole practitioners and other self-
10 employed person.

11 (b) Corporations and organizations which by reason of
12 their purposes or activities are exempt from federal
13 income tax: *Provided*, That this exemption shall not
14 apply to that portion of their capital (as defined in
15 section three of this article) which is used, directly or
16 indirectly, in the generation of unrelated business
17 income (as defined in the Internal Revenue Code) of any
18 such corporation or organization if the unrelated
19 business income is subject to federal income tax.

20 (c) Insurance companies which pay this state a tax
21 upon premiums.

22 (d) Production credit associations organized under the
23 provisions of the federal "Farm Credit Act of 1933":
24 *Provided*, That this exemption shall not apply to
25 corporations or associations organized under the provi-
26 sions of article four, chapter nineteen of this code.

27 (e) Any trust established pursuant to section one
28 hundred eighty-six, chapter seven, title twenty-nine of
29 the code of the laws of the United States (enacted section
30 three hundred two (c) of the labor management rela-
31 tions act, one thousand nine hundred forty-seven), as
32 amended prior to the first day of January, one thousand
33 nine hundred eighty-five.

34 (f) Any credit union organized under the provisions of
35 chapter thirty-one, or any other chapter of this code:
36 *Provided*, That this exemption shall not apply to
37 corporations or cooperative associations organized under
38 the provisions of article four, chapter nineteen of this

39 code.

40 (g) Any corporation organized under this code which
41 is a political subdivision of the state of West Virginia,
42 or is an instrumentality of a political subdivision of this
43 state, and was created pursuant to this code.

44 (h) Any corporation or partnership engaged in the
45 activity of agriculture and farming, as defined in
46 paragraph (8), subsection (b), section three of this
47 article: *Provided*, That if a corporation or partnership
48 is not exclusively engaged in such activity, its tax base
49 under this article shall be apportioned, in accordance
50 with regulations promulgated by the tax commissioner,
51 among its several activities and only that portion
52 attributable to the activity of agriculture and farming
53 shall be exempt from tax under this article.

54 (i) Any corporation or partnership licensed under
55 article twenty-three, chapter nineteen of this code, to
56 conduct horse or dog racing meetings or a pari-mutuel
57 system of wagering: *Provided*, That if such corporation
58 or partnership is not exclusively engaged in such
59 activity, its tax base under this article shall be appor-
60 tioned, in accordance with regulations promulgated by
61 the tax commissioner, among its several activities and
62 only that portion attributable to the activity of conduct-
63 ing a horse or dog racing meeting or a pari-mutuel
64 system of wagering shall be exempt from tax under this
65 article.

§11-23-17. Credits against tax.

1 (a) A credit shall be allowed against the tax imposed
2 by this article equal to the amount of franchise tax
3 liability due under this article, for the taxable year
4 (determined before application of other allowable
5 credits) multiplied by a fraction, the numerator of which
6 is the gross income of the business subject to tax under
7 article thirteen-a of this chapter and the denominator of
8 which is the total amount of gross receipts derived from
9 or attributable to all of taxpayer's activity in West
10 Virginia: *Provided*, That on or after the first day of July,
11 one thousand nine hundred eighty-eight,

12 (b) For taxable years ending after the thirtieth day
13 of June, one thousand nine hundred eighty-eight, a
14 credit shall be allowed against the tax imposed by this
15 article equal to the amount of franchise tax liability due
16 under this article, for the taxable year (determined
17 before application of other allowable credits) multiplied
18 by a fraction, the numerator of which is the gross
19 income of the business subject to tax under article
20 thirteen of this chapter and the denominator of which
21 is the total amount of gross receipts derived from or
22 attributable to all of taxpayer's activity in West
23 Virginia: *Provided*, That such credit shall be prorated
24 and only that amount attributable to months of the
25 taxable year beginning after June thirtieth, one thou-
26 sand nine hundred eighty-eight, shall be allowed as a
27 credit.

28 (c) A parent taxpayer who files a separate return
29 under this article shall be allowed a credit against such
30 taxpayer's liability for the tax under this article for the
31 amount of net taxes that would have been paid without
32 regard to the adjustment required by subparagraph (D),
33 paragraph (2), subsection (b), section three of this article
34 for the taxable year by a subsidiary corporation or
35 partnership: *Provided*, That the amount of credit
36 allowed shall not exceed the amount of tax that would
37 have been paid, without regard to such adjustment,
38 under this article by the subsidiary or partnership,
39 multiplied by the percentage of the parent's ownership
40 of the subsidiary corporation or partnership. In the case
41 of corporations, this percentage shall be equal to the
42 percentage of stock of all classes owned by the parent.
43 In no case shall any credit allowable by this section,
44 which is not used on an annual return, be carried
45 forward or back, but instead the same shall be forfeited.

46 (d) A credit shall be allowed against the tax imposed
47 by this article for the taxable year equal to the amount
48 of liability of the taxpayer for the taxable year for the
49 full amount of any tax imposed pursuant to article eight
50 of this chapter on the capital of the business, as
51 determined under sections fourteen and fourteen-a,
52 article three of this chapter.

§11-23-26. Effective date.

1 The provisions of this article as amended or added by
 2 this act shall take effect on the first day of July, one
 3 thousand nine hundred eighty-eight, and apply to all
 4 taxable years ending after that date: *Provided*, That if
 5 an effective date is expressly provided in such provision,
 6 that specific effective date shall control in lieu of this
 7 general effective date provision.

CHAPTER 122

(Com. Sub. for H. B. 4073—By Delegates Flanigan and Basham)

[Passed March 12, 1988; in effect July 1, 1988. Approved by the Governor.]

AN ACT to amend chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-four, relating to creating a tourist train and transportation board; legislative findings and intent; board created; appointment; terms in office; director; powers and duties; and termination of board.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 24. TOURIST TRAIN AND TRANSPORTATION BOARD.

§29-24-1. Legislative findings and intent.

§29-24-2. Tourist train and transportation board created; appointment; terms in office; and expenses.

§29-24-3. Director of board.

§29-24-4. Powers and duties.

§29-24-5. Termination of board.

§29-24-1. Legislative findings and intent.

1 The Legislature finds and declares that the purpose
 2 of this article is to establish and implement a tourist
 3 train and transportation board to initiate preservation

4 of railroad facilities, promote economic development and
5 tourism of a specific nature in this state and in
6 cooperation with other similar out-of-state entities.

**§29-24-2. Tourist train and transportation board created;
appointment; terms in office; and expenses.**

1 The West Virginia tourist train and transportation
2 board is hereby created to establish, supervise and
3 coordinate the regional, statewide and interstate tourist
4 train system. The board shall consist of seven members,
5 five of whom shall be appointed by the governor, by and
6 with the advice and consent of the Senate.

7 Four members of the board shall be from the private
8 sector with one member from each of the congressional
9 districts of the state as of the effective date of this
10 article, with experience involving tourism, railroads or
11 finance. At least two of the four members shall have
12 knowledge of railroads. Such members shall generally
13 represent the public interest. The governor shall appoint
14 two members with terms to expire on the first day of
15 July, one thousand nine hundred eighty-nine, and two
16 members with terms to expire on the first day of July,
17 one thousand nine hundred ninety. Any vacancy occur-
18 ring shall be filled by the governor for the unexpired
19 term. Successor terms shall be for a period of three
20 years.

21 One member of the board shall be a representative of
22 regional travel councils in the state of West Virginia.
23 Such member shall have a three year term.

24 One member of the board shall be the state historic
25 preservation director, ex officio.

26 One member of the board shall be the commissioner
27 of the department of commerce, ex officio.

28 No more than four board members shall be of the
29 same political party.

30 The board shall meet upon the call of its chairperson.
31 A majority of its members shall constitute a quorum for
32 the transaction of its business. Members of the board
33 shall not be entitled to compensation for their services

34 but may be reimbursed for actual expenses necessarily
35 incurred in the performance of their duties. The
36 governor shall appoint board members no later than the
37 first day of July, one thousand nine hundred eighty-
38 eight.

§29-24-3. Director of board.

1 The board may employ a director, who may hire staff
2 as deemed necessary by the board. Compensation of the
3 director and staff shall be fixed by the board. The
4 director shall have administrative control and supervi-
5 sion of the staff.

§29-24-4. Powers and duties.

1 The tourist train and transportation board shall have
2 the authority to:

3 (a) Designate on a yearly basis from the board
4 members, a chairperson;

5 (b) Initiate preservation of railroad facilities, promote
6 economic development and tourism of a specific nature
7 in this state;

8 (c) Meet and cooperate with similar authorities or
9 bodies of any of the several states contiguous with this
10 state, whose purpose in their respective states is to
11 establish an interstate tourist train and transportation
12 board;

13 (d) Work specifically to establish a tourist train
14 network in the area encompassed by U.S. Route 52 from
15 Bluefield, West Virginia, to Bramwell, West Virginia,
16 along West Virginia State Route 120 to Pocahontas,
17 Virginia;

18 (e) Enter into agreement or other transactions with
19 any federal, state, county, municipal agency or private
20 entity;

21 (f) Accept any and all donations, grants, bequests and
22 devises, conditional or otherwise, of money, property,
23 service or other things of value which may be received
24 from the United States or any agency thereof, any
25 governmental agency or any institution, person, firm or

26 corporation, public or private, to be held, used or
27 applied for any or all of the purposes specified in this
28 article, in accordance with the terms and conditions of
29 any such moneys;

30 (g) Negotiate an operating agreement with the
31 railroad to use existing tracks, rent railroad vehicles
32 and obtain other necessary equipment or facilities;

33 (h) Direct the operations of the tourist train network
34 and report annually to the Legislature by the first day
35 of January on the status of projects, operations, financial
36 condition and other necessary information relating to
37 the tourist train and transportation board;

38 (i) Establish an office for the transaction of its
39 business at such place or places, as in the opinion of the
40 board, shall be advisable or necessary in carrying out
41 the purposes of this article;

42 (j) Acquire rights-of-way and the property necessary
43 for the construction of administration buildings, equip-
44 ment, servicing facilities, terminal railways and struc-
45 tures, railway crossings, bridges and causeways; and

46 (k) To do any and all things necessary to carry out and
47 accomplish the purposes of this article.

§29-24-5. Termination of board.

1 The tourist train and transportation board shall be
2 terminated pursuant to the provisions of article ten,
3 chapter four of this code, on the first day of July, one
4 thousand nine hundred ninety-four, unless sooner
5 terminated or unless continued or reestablished pursu-
6 ant to this article.

CHAPTER 123

(Com. Sub. for H. B. 4513—By Mr. Speaker, Mr. Chambers, and Delegate Swann,
by request of the Executive)

[Passed March 12, 1988; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article one;
section seven, article five; sections three, ten and eleven,
article six; and sections four and five, article six-a, all

of chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to unemployment compensation.

Be it enacted by the Legislature of West Virginia:

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

Article

1. Department of Employment Security.
5. Employer Coverage and Responsibility.
6. Employee Eligibility; Benefits.
- 65A. Extended Benefits Program.

ARTICLE 1. DEPARTMENT OF EMPLOYMENT SECURITY.

§21A-1-3. Definitions.

1 As used in this chapter, unless the context clearly
2 requires otherwise:

3 "Administration fund" means the employment secur-
4 ity administration fund, from which the administrative
5 expenses under this chapter shall be paid.

6 "Annual payroll" means the total amount of wages for
7 employment paid by an employer during a twelve-
8 month period ending with June thirty of any calendar
9 year.

10 "Average annual payroll" means the average of the
11 last three annual payrolls of an employer.

12 "Base period" means the first four out of the last five
13 completed calendar quarters immediately preceding the
14 first day of the individual benefit year.

15 "Base period employer" means any employer who in
16 the base period for any benefit year paid wages to an
17 individual who filed claim for unemployment compen-
18 sation within such benefit year.

19 "Base period wages" means wages paid to an individ-
20 ual during the base period by all his base period
21 employers.

22 "Benefit year" with respect to an individual means the

23 fifty-two-week period beginning with the first day of the
24 calendar week in which a valid claim is effective, and
25 thereafter the fifty-two-week period beginning with the
26 first day of the calendar week in which such individual
27 next files a valid claim for benefits after the termination
28 of his last preceding benefit year; however, if a claim
29 is effective on the first day of a quarter, the benefit year
30 will be fifty-three weeks, in order to prevent an
31 overlapping of the base period wages. An initial claim
32 for benefits filed in accordance with the provisions of
33 this chapter shall be deemed to be a valid claim within
34 the purposes of this definition if the individual has been
35 paid wages in his base period sufficient to make him
36 eligible for benefits under the provisions of this chapter.

37 "Benefits" means the money payable to an individual
38 with respect to his unemployment.

39 "Board" means board of review.

40 "Calendar quarter" means the period of three consec-
41 utive calendar months ending on March thirty-one, June
42 thirty, September thirty or December thirty-one, or the
43 equivalent thereof as the commissioner may by regula-
44 tion prescribe.

45 "Commissioner" means the employment security
46 commissioner.

47 "Computation date" means June thirty of the year
48 immediately preceding the January one on which an
49 employer's contribution rate becomes effective.

50 "Employing unit" means an individual, or type of
51 organization, including any partnership, association,
52 trust, estate, joint-stock company, insurance company,
53 corporation (domestic or foreign), state or political
54 subdivision thereof, or their instrumentalities, as
55 provided in paragraph (b), subdivision (9) of the
56 definition of "employment" in this section, institution of
57 higher education, or the receiver, trustee in bankruptcy,
58 trustee or successor thereof, or the legal representative
59 of a deceased person, which has on January first, one
60 thousand nine hundred thirty-five, or subsequent
61 thereto, had in its employ one or more individuals

62 performing service within this state.

63 "Employer" means:

64 (1) Until January one, one thousand nine hundred
65 seventy-two, any employing unit which for some portion
66 of a day, not necessarily simultaneously, in each of
67 twenty different calendar weeks, which weeks need not
68 be consecutive, within either the current calendar year,
69 or the preceding calendar year, has had in employment
70 four or more individuals irrespective of whether the
71 same individuals were or were not employed on each of
72 such days;

73 (2) Any employing unit which is or becomes a liable
74 employer under any federal unemployment tax act;

75 (3) Any employing unit which has acquired or ac-
76 quires the organization, trade or business, or substan-
77 tially all the assets thereof, of an employing unit which
78 at the time of such acquisition was an employer subject
79 to this chapter;

80 (4) Any employing unit which, after December thirty-
81 one, one thousand nine hundred sixty-three, and until
82 January one, one thousand nine hundred seventy-two, in
83 any one calendar quarter, in any calendar year, has in
84 employment four or more individuals and has paid
85 wages for employment in the total sum of five thousand
86 dollars or more, or which, after such date, has paid
87 wages for employment in any calendar year in the sum
88 total of twenty thousand dollars or more;

89 (5) Any employing unit which, after December thirty-
90 one, one thousand nine hundred sixty-three, and until
91 January one, one thousand nine hundred seventy-two, in
92 any three-week period, in any calendar year, has in
93 employment ten or more individuals;

94 (6) For the effective period of its election pursuant to
95 section three, article five of this chapter, any employing
96 unit which has elected to become subject to this chapter;

97 (7) Any employing unit which, after December thirty-
98 one, one thousand nine hundred seventy-one, (i) in any
99 calendar quarter in either the current or preceding

100 calendar year paid for service in employment wages of
101 one thousand five hundred dollars or more, or (ii) for
102 some portion of a day in each of twenty different
103 calendar weeks, whether or not such weeks were
104 consecutive, in either the current or the preceding
105 calendar year had in employment at least one individual
106 (irrespective of whether the same individual was in
107 employment in each such day) except as provided in
108 subdivisions eleven and twelve hereof;

109 (8) Any employing unit for which service in employ-
110 ment, as defined in subdivision (9) of the definition of
111 "employment" in this section, is performed after
112 December thirty-one, one thousand nine hundred
113 seventy-one;

114 (9) Any employing unit for which service in employ-
115 ment, as defined in subdivision (10) of the definition of
116 "employment" in this section, is performed after
117 December thirty-one, one thousand nine hundred
118 seventy-one;

119 (10) Any employing unit for which service in employ-
120 ment, as defined in paragraphs (b) and (c) of subdivision
121 (9) of the definition of "employment" in this section, is
122 performed after December thirty-one, one thousand nine
123 hundred seventy-seven;

124 (11) Any employing unit for which agricultural labor,
125 as defined in subdivision (12) of the definition of
126 "employment" in this section, is performed after
127 December thirty-one, one thousand nine hundred
128 seventy-seven;

129 (12) Any employing unit for which domestic service
130 in employment, as defined in subdivision (13) of the
131 definition of "employment" in this section, is performed
132 after December thirty-one, one thousand nine hundred
133 seventy-seven.

134 "Employment," subject to the other provisions of this
135 section, means:

136 (1) Service, including service in interstate commerce,
137 performed for wages or under any contract of hire,
138 written or oral, express or implied;

139 (2) Any service performed prior to January one, one
140 thousand nine hundred seventy-two, which was employ-
141 ment as defined in this section prior to such date and,
142 subject to the other provisions of this section, service
143 performed after December thirty-one, one thousand nine
144 hundred seventy-one, by an employee, as defined in
145 section 3306(i) of the Federal Unemployment Tax Act,
146 including service in interstate commerce;

147 (3) Any service performed prior to January one, one
148 thousand nine hundred seventy-two, which was employ-
149 ment as defined in this section prior to such date and,
150 subject to the other provisions of this section, service
151 performed after December thirty-one, one thousand nine
152 hundred seventy-one, including service in interstate
153 commerce, by any officer of a corporation;

154 (4) An individual's entire service, performed within or
155 both within and without this state if: (a) The service is
156 localized in this state or (b) the service is not localized
157 in any state but some of the service is performed in this
158 state and (i) the base of operations, or, if there is no base
159 of operations, then the place from which such service is
160 directed or controlled, is in this state; or (ii) the base of
161 operations or place from which such service is directed
162 or controlled is not in any state in which some part of
163 the service is performed but the individual's residence
164 is in this state;

165 (5) Service not covered under paragraph (4) of this
166 subdivision and performed entirely without this state
167 with respect to no part of which contributions are
168 required and paid under an unemployment compensa-
169 tion law of any other state or of the federal government,
170 shall be deemed to be employment subject to this
171 chapter if the individual performing such services is a
172 resident of this state and the commissioner approves the
173 election of the employing unit for whom such services
174 are performed that the entire service of such individual
175 shall be deemed to be employment subject to this
176 chapter;

177 (6) Service shall be deemed to be localized within a
178 state, if: (a) The service is performed entirely within

179 such state; or (b) the service is performed both within
180 and without such state, but the service performed
181 without such state is incidental to the individual's
182 service within this state, as, for example, is temporary
183 or transitory in nature or consists of isolated
184 transactions;

185 (7) Services performed by an individual for wages
186 shall be deemed to be employment subject to this
187 chapter unless and until it is shown to the satisfaction
188 of the commissioner that: (a) Such individual has been
189 and will continue to be free from control or direction
190 over the performance of such services, both under his
191 contract of service and in fact; and (b) such service is
192 either outside the usual course of the business for which
193 such service is performed or that such service is
194 performed outside of all the places of business of the
195 enterprise for which such service is performed; and (c)
196 such individual is customarily engaged in an independ-
197 ently established trade, occupation, profession or
198 business;

199 (8) All service performed by an officer or member of
200 the crew of an American vessel (as defined in section
201 three hundred five of an act of Congress entitled Social
202 Security Act Amendment of 1946, approved August
203 tenth, one thousand nine hundred forty-six), on or in
204 connection with such vessel, provided that the operating
205 office, from which the operations of such vessel operat-
206 ing on navigable waters within and without the United
207 States is ordinarily and regularly supervised, managed,
208 directed and controlled, is within this state;

209 (9) (a) Service performed after December thirty-one,
210 one thousand nine hundred seventy-one, by an individual
211 in the employ of this state or any of its instrumentalities
212 (or in the employ of this state and one or more other
213 states or their instrumentalities) for a hospital or
214 institution of higher education located in this state:
215 *Provided*, That such service is excluded from "employ-
216 ment" as defined in the Federal Unemployment Tax Act
217 solely by reason of section 3306 (c) (7) of that act and
218 is not excluded from "employment" under subdivision
219 (11) of the exclusion from employment;

220 (b) Service performed after December thirty-one, one
221 thousand nine hundred seventy-seven, in the employ of
222 this state or any of its instrumentalities or political
223 subdivisions thereof or any of its instrumentalities or
224 any instrumentality of more than one of the foregoing
225 or any instrumentality of any foregoing and one or more
226 other states or political subdivisions: *Provided*, That
227 such service is excluded from "employment" as defined
228 in the Federal Unemployment Tax Act by section 3306
229 (c) (7) of that act and is not excluded from "employment"
230 under subdivision (15) of the exclusion from employment
231 in this section; and

232 (c) Service performed after December thirty-one, one
233 thousand nine hundred seventy-seven, in the employ of
234 a nonprofit educational institution which is not an
235 institution of higher education;

236 (10) Service performed after December thirty-one,
237 one thousand nine hundred seventy-one, by an individual
238 in the employ of a religious, charitable, educational or
239 other organization but only if the following conditions
240 are met:

241 (a) The service is excluded from "employment" as
242 defined in the Federal Unemployment Tax Act solely by
243 reason of section 3306(c) (8) of that act; and

244 (b) The organization had four or more individuals in
245 employment for some portion of a day in each of twenty
246 different weeks, whether or not such weeks were
247 consecutive, within either the current or preceding
248 calendar year, regardless of whether they were em-
249 ployed at the same moment of time;

250 (11) Service of an individual who is a citizen of the
251 United States, performed outside the United States
252 after December thirty-one, one thousand nine hundred
253 seventy-one (except in Canada and in the case of Virgin
254 Islands after December thirty-one, one thousand nine
255 hundred seventy-one, and before January one of the year
256 following the year in which the secretary of labor
257 approves for the first time an unemployment insurance
258 law submitted to him by the Virgin Islands for approval
259 in the employ of an American employer (other than

260 service which is deemed "employment" under the
261 provisions of subdivision (4), (5) or (6) of this definition
262 of "employment" or the parallel provisions of another
263 state's law) if:

264 (a) The employer's principal place of business in the
265 United States is located in this state; or

266 (b) The employer has no place of business in the
267 United States, but (i) the employer is an individual who
268 is a resident of this state; or (ii) the employer is a
269 corporation which is organized under the laws of this
270 state; or (iii) the employer is a partnership or a trust
271 and the number of the partners or trustees who are
272 residents of this state is greater than the number who
273 are residents of any one other state; or

274 (c) None of the criteria of subparagraphs (a) and (b)
275 of this subdivision (11) is met but the employer has
276 elected coverage in this state or, the employer having
277 failed to elect coverage in any state, the individual has
278 filed a claim for benefits, based on such service, under
279 the law of this state.

280 An "American employer," for purposes of this subdi-
281 vision (11), means a person who is (i) an individual who
282 is a resident of the United States; or (ii) a partnership
283 if two thirds or more of the partners are residents of
284 the United States; or (iii) a trust, if all of the trustees
285 are residents of the United States; or (iv) a corporation
286 organized under the laws of the United States or of any
287 state;

288 (12) Service performed after December thirty-one,
289 one thousand nine hundred seventy-seven, by an individ-
290 ual in agricultural labor as defined in subdivision (5) of
291 the exclusions from employment in this section when:

292 (a) Such service is performed for a person who (i)
293 during any calendar quarter in either the current or the
294 preceding calendar year paid remuneration in cash of
295 twenty thousand dollars or more to individuals em-
296 ployed in agricultural labor including labor performed
297 by an alien referred to in paragraph (b) of this
298 subdivision (12); or (ii) for some portion of a day in each

299 of twenty different calendar weeks, whether or not such
300 weeks were consecutive, in either the current or the
301 preceding calendar year, employed in agricultural
302 labor, including labor performed by an alien referred
303 to in paragraph (b) of this subdivision (12), ten or more
304 individuals, regardless of whether they were employed
305 at the same moment of time;

306 (b) Such service is not performed in agricultural
307 labor if performed before January one, one thousand
308 nine hundred ninety-three, by an individual who is an
309 alien admitted to the United States to perform service
310 in agricultural labor pursuant to sections 214 (c) and 101
311 (a) (15) (H) of the Immigration and Nationality Act;

312 (c) For the purposes of the definition of employment,
313 any individual who is a member of a crew furnished by
314 a crew leader to perform service in agricultural labor
315 for any other person shall be treated as an employee of
316 such crew leader (i) if such crew leader holds a valid
317 certificate of registration under the Migrant and
318 Seasonal Agricultural Worker Protection Act; or
319 substantially all the members of such crew operate or
320 maintain tractors, mechanized harvesting or crop-
321 dusting equipment, or any other mechanized equipment,
322 which is provided by such crew leader; and (ii) if such
323 individual is not an employee of such other person
324 within the meaning of subdivision (7) of the definition
325 of employer;

326 (d) For the purposes of this subdivision (12), in the
327 case of any individual who is furnished by a crew leader
328 to perform service in agricultural labor for any other
329 person and who is not treated as an employee of such
330 crew leader under subparagraph (c) of this subdivision
331 (12), (i) such other person and not the crew leader shall
332 be treated as the employer of such individual; and (ii)
333 such other person shall be treated as having paid cash
334 remuneration to such individual in an amount equal to
335 the amount of cash remuneration paid to such individual
336 by the crew leader (either on his own behalf or on behalf
337 of such other person) for the service in agricultural
338 labor performed for such other person;

339 (e) For the purposes of this subdivision (12), the term
340 "crew leader" means an individual who (i) furnishes
341 individuals to perform service in agricultural labor for
342 any other person, (ii) pays (either on his own behalf or
343 on behalf of such other person) the individuals so
344 furnished by him for the service in agricultural labor
345 performed by them, and (iii) has not entered into a
346 written agreement with such other person under which
347 such individual is designated as an employee of such
348 other person;

349 (13) The term "employment" shall include domestic
350 service after December thirty-one, one thousand nine
351 hundred seventy-seven, in a private home, local college
352 club or local chapter of a college fraternity or sorority
353 performed for a person who paid cash remuneration of
354 one thousand dollars or more after December thirty-one,
355 one thousand nine hundred seventy-seven, in any
356 calendar quarter in the current calendar year or the
357 preceding calendar year to individuals employed in such
358 domestic service.

359 Notwithstanding the foregoing definition of "employ-
360 ment," if the services performed during one half or more
361 of any pay period by an employee for the person
362 employing him constitute employment, all the services
363 of such employee for such period shall be deemed to be
364 employment; but if the services performed during more
365 than one half of any such pay period by an employee for
366 the person employing him do not constitute employment,
367 then none of the services of such employee for such
368 period shall be deemed to be employment.

369 The term "employment" shall not include:

370 (1) Service performed in the employ of this state or
371 any political subdivision thereof, or any instrumentality
372 of this state or its subdivisions, except as otherwise
373 provided herein until December thirty-one, one thou-
374 sand nine hundred seventy-seven;

375 (2) Service performed directly in the employ of
376 another state, or its political subdivisions, except as
377 otherwise provided in paragraph (a), subdivision (9) of
378 the definition of "employment," until December thirty-

379 one, one thousand nine hundred seventy-seven;

380 (3) Service performed in the employ of the United
381 States or any instrumentality of the United States
382 exempt under the constitution of the United States from
383 the payments imposed by this law, except that to the
384 extent that the Congress of the United States shall
385 permit states to require any instrumentalities of the
386 United States to make payments into an unemployment
387 fund under a state unemployment compensation law, all
388 of the provisions of this law shall be applicable to such
389 instrumentalities and to service performed for such
390 instrumentalities in the same manner, to the same
391 extent and on the same terms as to all other employers,
392 employing units, individuals and services: *Provided,*
393 That if this state shall not be certified for any year by
394 the secretary of labor under section 1603(c) of the
395 Federal Internal Revenue Code, the payments required
396 of such instrumentalities with respect to such year shall
397 be refunded by the commissioner from the fund in the
398 same manner and within the same period as is provided
399 in section nineteen, article five of this chapter, with
400 respect to payments erroneously collected;

401 (4) Service performed after June thirty, one thousand
402 nine hundred thirty-nine, with respect to which unem-
403 ployment compensation is payable under the Railroad
404 Unemployment Insurance Act and service with respect
405 to which unemployment benefits are payable under an
406 unemployment compensation system for maritime
407 employees established by an act of Congress. The
408 commissioner may enter into agreements with the
409 proper agency established under such an act of Congress
410 to provide reciprocal treatment to individuals who, after
411 acquiring potential rights to unemployment compensa-
412 tion under an act of Congress, or who have, after
413 acquiring potential rights to unemployment compensa-
414 tion under an act of Congress, acquired rights to benefit
415 under this chapter. Such agreement shall become
416 effective ten days after such publications which shall
417 comply with the general rules of the department;

418 (5) Service performed by an individual in agricultural
419 labor, except as provided in subdivision (12) of the

420 definition of "employment" in this section. For purposes
421 of this subdivision (5), the term "agricultural labor"
422 includes all services performed:

423 (a) On a farm, in the employ of any person, in
424 connection with cultivating the soil, or in connection
425 with raising or harvesting any agricultural or horticultural
426 commodity, including the raising, shearing,
427 feeding, caring for, training and management of
428 livestock, bees, poultry, and fur-bearing animals and
429 wildlife;

430 (b) In the employ of the owner or tenant or other
431 operator of a farm, in connection with the operation,
432 management, conservation, improvement or maintenance
433 of such farm and its tools and equipment, or in
434 salvaging timber or clearing land of brush and other
435 debris left by a hurricane, if the major part of such
436 service is performed on a farm;

437 (c) In connection with the production or harvesting of
438 any commodity defined as an agricultural commodity in
439 section fifteen (g) of the Agricultural Marketing Act, as
440 amended, or in connection with the ginning of cotton,
441 or in connection with the operation or maintenance of
442 ditches, canals, reservoirs or waterways, not owned or
443 operated for profit, used exclusively for supplying and
444 storing water for farming purposes;

445 (d) (i) In the employ of the operator of a farm in
446 handling, planting, drying, packing, packaging, process-
447 ing, freezing, grading, storing or delivering to storage
448 or to market or to a carrier for transportation to market,
449 in its unmanufactured state, any agricultural or
450 horticultural commodity; but only if such operator
451 produced more than one half of the commodity with
452 respect to which such service is performed; or (ii) in the
453 employ of a group of operators of farms (or a cooperative
454 organization of which such operators are members) in
455 the performance of service described in clause (i), but
456 only if such operators produced more than one half of
457 the commodity with respect to which such service is
458 performed; but the provisions of clauses (i) and (ii) shall
459 not be deemed to be applicable with respect to service

460 performed in connection with commercial canning or
461 commercial freezing or in connection with any agricul-
462 tural or horticultural commodity after its delivery to a
463 terminal market for distribution for consumption;

464 (e) On a farm operated for profit if such service is not
465 in the course of the employer's trade or business or is
466 domestic service in a private home of the employer. As
467 used in this subdivision (5), the term "farm" includes
468 stock, dairy, poultry, fruit, fur-bearing animals, truck
469 farms, plantations, ranches, greenhouses, ranges and
470 nurseries, or other similar land areas or structures used
471 primarily for the raising of any agricultural or horti-
472 cultural commodities;

473 (6) Domestic service in a private home except as
474 provided in subdivision (13) of the definition of "employ-
475 ment" in this section;

476 (7) Service performed by an individual in the employ
477 of his son, daughter or spouse;

478 (8) Service performed by a child under the age of
479 eighteen years in the employ of his father or mother;

480 (9) Service as an officer or member of a crew of an
481 American vessel, performed on or in connection with
482 such vessel, if the operating office, from which the
483 operations of the vessel operating on navigable waters
484 within or without the United States are ordinarily and
485 regularly supervised, managed, directed and controlled,
486 is without this state;

487 (10) Service performed by agents of mutual fund
488 broker-dealers or insurance companies, exclusive of
489 industrial insurance agents, or by agents of investment
490 companies, who are compensated wholly on a commis-
491 sion basis;

492 (11) Service performed (i) in the employ of a church
493 or convention or association of churches, or an organi-
494 zation which is operated primarily for religious pur-
495 poses and which is operated, supervised, controlled or
496 principally supported by a church or convention or
497 association of churches; or (ii) by a duly ordained,
498 commissioned or licensed minister of a church in the

499 exercise of his ministry or by a member of a religious
500 order in the exercise of duties required by such order;
501 or (iii) prior to January one, one thousand nine hundred
502 seventy-eight, in the employ of a school which is not an
503 institution of higher education; or (iv) in a facility
504 conducted for the purpose of carrying out a program of
505 rehabilitation for individuals whose earning capacity is
506 impaired by age or physical or mental deficiency or
507 injury or providing remunerative work for individuals
508 who because of their impaired physical or mental
509 capacity cannot be readily absorbed in the competitive
510 labor market by an individual receiving such rehabil-
511 itation or remunerative work; or (v) as part of an
512 unemployment work-relief or work-training program
513 assisted or financed in whole or in part by any federal
514 agency or an agency of a state or political subdivision
515 thereof, by an individual receiving such work relief or
516 work training; or (vi) prior to January one, one thousand
517 nine hundred seventy-eight, for a hospital in a state
518 prison or other state correctional institution by an
519 inmate of the prison or correctional institution, and after
520 December thirty-one, one thousand nine hundred
521 seventy-seven, by an inmate of a custodial or penal
522 institution;

523 (12) Service performed in the employ of a school,
524 college or university, if such service is performed (i) by
525 a student who is enrolled and is regularly attending
526 classes at such school, college or university, or (ii) by the
527 spouse of such a student, if such spouse is advised, at
528 the time such spouse commences to perform such
529 service, that (I) the employment of such spouse to
530 perform such service is provided under a program to
531 provide financial assistance to such student by such
532 school, college or university, and (II) such employment
533 will not be covered by any program of unemployment
534 insurance;

535 (13) Service performed by an individual who is
536 enrolled at a nonprofit or public educational institution
537 which normally maintains a regular faculty and
538 curriculum and normally has a regularly organized
539 body of students in attendance at the place where its

540 educational activities are carried on as a student in a
541 full-time program, taken for credit at such institution,
542 which combines academic instruction with work expe-
543 rience, if such service is an integral part of such
544 program, and such institution has so certified to the
545 employer, except that this subdivision shall not apply to
546 service performed in a program established for or on
547 behalf of an employer or group of employers;

548 (14) Service performed in the employ of a hospital, if
549 such service is performed by a patient of the hospital,
550 as defined in this section;

551 (15) Service in the employ of a governmental entity
552 referred to in subdivision (9) of the definition of
553 "employment" in this section if such service is per-
554 formed by an individual in the exercise of duties (i) as
555 an elected official; (ii) as a member of a legislative body,
556 or a member of the judiciary, of a state or political
557 subdivision; (iii) as a member of the state national guard
558 or air national guard; (iv) as an employee serving on a
559 temporary basis in case of fire, storm, snow, earthquake,
560 flood or similar emergency; (v) in a position which,
561 under or pursuant to the laws of this state, is designated
562 as (I) a major nontenured policy-making or advisory
563 position, or (II) a policy-making or advisory position the
564 performance of the duties of which ordinarily does not
565 require more than eight hours per week.

566 Notwithstanding the foregoing exclusions from the
567 definition of "employment," services, except agricultural
568 labor and domestic service in a private home, shall be
569 deemed to be in employment if with respect to such
570 services a tax is required to be paid under any federal
571 law imposing a tax against which credit may be taken
572 for contributions required to be paid into a state
573 unemployment compensation fund, or which as a
574 condition for full tax credit against the tax imposed by
575 the Federal Unemployment Tax Act are required to be
576 covered under this chapter.

577 "Employment office" means a free employment office
578 or branch thereof, operated by this state, or any free
579 public employment office maintained as a part of a state

580 controlled system of public employment offices in any
581 other state.

582 "Fund" means the unemployment compensation fund
583 established by this chapter.

584 "Hospital" means an institution which has been
585 licensed, certified or approved by the state department
586 of health as a hospital.

587 "Institution of higher education" means an educational
588 institution which:

589 (1) Admits as regular students only individuals
590 having a certificate of graduation from a high school,
591 or the recognized equivalent of such a certificate;

592 (2) Is legally authorized in this state to provide a
593 program of education beyond high school;

594 (3) Provides an educational program for which it
595 awards a bachelor's or higher degree, or provides a
596 program which is acceptable for full credit toward such
597 a degree, or provides a program of post-graduate or
598 post-doctoral studies, or provides a program of training
599 to prepare students for gainful employment in a
600 recognized occupation; and

601 (4) Is a public or other nonprofit institution.

602 Notwithstanding any of the foregoing provisions of
603 this definition all colleges and universities in this state
604 are institutions of higher education for purposes of this
605 section.

606 "Payments" means the money required to be paid or
607 that may be voluntarily paid into the state unemploy-
608 ment compensation fund as provided in article five of
609 this chapter.

610 "Separated from employment" means, for the pur-
611 poses of this chapter, the total severance, whether by
612 quitting, discharge or otherwise, of the employer-
613 employee relationship.

614 "State" includes, in addition to the states of the United
615 States, Puerto Rico, District of Columbia and the Virgin
616 Islands.

617 "Total and partial unemployment" means:

618 (1) An individual shall be deemed totally unemployed
619 in any week in which such individual is separated from
620 employment for an employing unit and during which he
621 performs no services and with respect to which no wages
622 are payable to him.

623 (2) An individual who has not been separated from
624 employment shall be deemed to be partially unemployed
625 in any week in which due to lack of full-time work
626 wages payable to him are less than his weekly benefit
627 amount plus twenty-five dollars: *Provided*, That said
628 individual must have earnings of at least twenty-six
629 dollars.

630 "Wages" means all remuneration for personal service,
631 including commissions, gratuities customarily received
632 by an individual in the course of employment from
633 persons other than the employing unit, as long as such
634 gratuities equal or exceed an amount of not less than
635 twenty dollars each month and which are required to
636 be reported to the employer by the employee, bonuses,
637 and the cash value of all remuneration in any medium
638 other than cash except for agricultural labor and
639 domestic service: *Provided*, That the term "wages" shall
640 not include:

641 (1) That part of the remuneration which, after
642 remuneration equal to three thousand dollars has been
643 paid to an individual by an employer with respect to
644 employment during any calendar year, is paid after
645 December thirty-one, one thousand nine hundred thirty-
646 nine, and prior to January one, one thousand nine
647 hundred forty-seven, to such individual by such em-
648 ployer with respect to employment during such calendar
649 year; or that part of the remuneration which, after
650 remuneration equal to three thousand dollars with
651 respect to employment after one thousand nine hundred
652 thirty-eight, has been paid to an individual by an
653 employer during any calendar year after one thousand
654 nine hundred forty-six, is paid to such individual by
655 such employer during such calendar year, except that
656 for the purposes of sections one, ten, eleven and thirteen,

657 article six of this chapter, all remuneration earned by
658 an individual in employment shall be credited to the
659 individual and included in his computation of base
660 period wages: *Provided*, That notwithstanding the
661 foregoing provisions, on and after January one, one
662 thousand nine hundred sixty-two, the term "wages" shall
663 not include:

664 That part of the remuneration which, after remuneration
665 equal to three thousand six hundred dollars has
666 been paid to an individual by an employer with respect
667 to employment during any calendar year, is paid during
668 any calendar year after one thousand nine hundred
669 sixty-one; and shall not include that part of remuneration
670 which, after remuneration equal to four thousand
671 two hundred dollars is paid during a calendar year after
672 one thousand nine hundred seventy-one; and shall not
673 include that part of remuneration which, after remuneration
674 equal to six thousand dollars is paid during a
675 calendar year after one thousand nine hundred seventy-
676 seven; and shall not include that part of remuneration
677 which, after remuneration equal to eight thousand
678 dollars is paid during a calendar year after one
679 thousand nine hundred eighty, to an individual by an
680 employer or his predecessor with respect to employment
681 during any calendar year, is paid to such individual by
682 such employer during such calendar year unless that
683 part of the remuneration is subject to a tax under a
684 federal law imposing a tax against which credit may be
685 taken for contributions required to be paid into a state
686 unemployment fund. For the purposes of this subdivision
687 (1), the term "employment" shall include service
688 constituting employment under any unemployment
689 compensation law of another state; or which as a
690 condition for full tax credit against the tax imposed by
691 the Federal Unemployment Tax Act is required to be
692 covered under this chapter; and, except, that for the
693 purposes of sections one, ten, eleven and thirteen, article
694 six of this chapter, all remuneration earned by an
695 individual in employment shall be credited to the
696 individual and included in his computation of base
697 period wages: *Provided*, That the remuneration paid to
698 an individual by an employer with respect to employ-

699 ment in another state or other states upon which
700 contributions were required of and paid by such
701 employer under an unemployment compensation law of
702 such other state or states shall be included as a part of
703 the remuneration equal to the amounts of three thou-
704 sand six hundred dollars or four thousand two hundred
705 dollars or six thousand dollars or eight thousand dollars
706 herein referred to. In applying such limitation on the
707 amount of remuneration that is taxable, an employer
708 shall be accorded the benefit of all or any portion of such
709 amount which may have been paid by its predecessor
710 or predecessors: *Provided, however,* That if the definition
711 of the term "wages" as contained in section 3306(b) of
712 the Internal Revenue Code of 1954 as amended, is
713 amended: (a) Effective prior to January one, one
714 thousand nine hundred sixty-two, to include remunera-
715 tion in excess of three thousand dollars, or (b) effective
716 on or after January one, one thousand nine hundred
717 sixty-two, to include remuneration in excess of three
718 thousand six hundred dollars, or (c) effective on or after
719 January one, one thousand nine hundred seventy-two, to
720 include remuneration in excess of four thousand two
721 hundred dollars, or (d) effective on or after January one,
722 one thousand nine hundred seventy-eight, to include
723 remuneration in excess of six thousand dollars, or (e)
724 effective on or after January one, one thousand nine
725 hundred eighty, to include remuneration in excess of
726 eight thousand dollars, paid to an individual by an
727 employer under the Federal Unemployment Tax Act
728 during any calendar year, wages for the purposes of this
729 definition shall include remuneration paid in a calendar
730 year to an individual by an employer subject to this
731 article or his predecessor with respect to employment
732 during any calendar year up to an amount equal to the
733 amount of remuneration taxable under the Federal
734 Unemployment Tax Act;

735 (2) The amount of any payment made after December
736 thirty-one, one thousand nine hundred fifty-two (includ-
737 ing any amount paid by an employer for insurance or
738 annuities, or into a fund, to provide for any such
739 payment), to, or on behalf of, an individual in its employ
740 or any of his dependents, under a plan or system

741 established by an employer which makes provision for
742 individuals in its employ generally (or for such individ-
743 uals and their dependents), or for a class or classes of
744 such individuals (or for a class or classes of such
745 individuals and their dependents), on account of (A)
746 retirement, or (B) sickness or accident disability
747 payments made to an employee under an approved state
748 workers' compensation law, or (C) medical or hospital-
749 ization expenses in connection with sickness or accident
750 disability, or (D) death;

751 (3) Any payment made after December thirty-one, one
752 thousand nine hundred fifty-two, by an employer to an
753 individual in its employ (including any amount paid by
754 an employer for insurance or annuities, or into a fund,
755 to provide for any such payment) on account of
756 retirement;

757 (4) Any payment made after December thirty-one, one
758 thousand nine hundred fifty-two, by an employer on
759 account of sickness or accident disability, or medical or
760 hospitalization expenses in connection with sickness or
761 accident disability, to, or on behalf of, an individual in
762 its employ after the expiration of six calendar months
763 following the last calendar month in which such
764 individual worked for such employer;

765 (5) Any payment made after December thirty-one, one
766 thousand nine hundred fifty-two, by an employer to, or
767 on behalf of, an individual in its employ or his benefi-
768 ciary (A) from or to a trust described in section 401(a)
769 which is exempt from tax under section 501(a) of the
770 Federal Internal Revenue Code at the time of such
771 payments unless such payment is made to such individ-
772 ual as an employee of the trust as remuneration for
773 services rendered by such individual and not as a
774 beneficiary of the trust, or (B) under or to an annuity
775 plan which, at the time of such payment, is a plan
776 described in section 403(a) of the Federal Internal
777 Revenue Code;

778 (6) The payment by an employer of the tax imposed
779 upon an employer under section 3101 of the Federal
780 Internal Revenue Code with respect to remuneration

781 paid to an employee for domestic service in a private
782 home or the employer of agricultural labor;

783 (7) Remuneration paid by an employer after De-
784 cember thirty-one, one thousand nine hundred fifty-two,
785 in any medium other than cash to an individual in its
786 employ for service not in the course of the employer's
787 trade or business;

788 (8) Any payment (other than vacation or sick pay)
789 made by an employer after December thirty-one, one
790 thousand nine hundred fifty-two, to an individual in its
791 employ after the month in which he attains the age of
792 sixty-five, if he did not work for the employer in the
793 period for which such payment is made;

794 (9) Payments, not required under any contract of hire,
795 made to an individual with respect to his period of
796 training or service in the armed forces of the United
797 States by an employer by which such individual was
798 formerly employed;

799 (10) Vacation pay, severance pay or savings plans
800 received by an individual before or after becoming
801 totally or partially unemployed but earned prior to
802 becoming totally or partially unemployed: *Provided,*
803 That the term totally or partially unemployed shall not
804 be interpreted to include (1) employees who are on
805 vacation by reason of the request of the employees or
806 their duly authorized agent, for a vacation at a specific
807 time, and which request by the employees or their agent
808 is acceded to by their employer, (2) employees who are
809 on vacation by reason of the employer's request provided
810 they are so informed at least ninety days prior to such
811 vacation, or (3) employees who are on vacation by reason
812 of the employer's request where such vacation is in
813 addition to the regular vacation and the employer
814 compensates such employee at a rate equal to or
815 exceeding their regular daily rate of pay during the
816 vacation period.

817 The reasonable cash value of remuneration in any
818 medium other than cash shall be estimated and deter-
819 mined in accordance with rules prescribed by the
820 commissioner, except for remuneration other than cash

821 for services performed in agricultural labor and
822 domestic service.

823 "Week" means a calendar week, ending at midnight
824 Saturday, or the equivalent thereof, as determined in
825 accordance with the regulations prescribed by the
826 commissioner.

827 "Weekly benefit rate" means the maximum amount of
828 benefit an eligible individual will receive for one week
829 of total unemployment.

830 "Year" means a calendar year or the equivalent
831 thereof, as determined by the commissioner.

ARTICLE 5. EMPLOYER COVERAGE AND RESPONSIBILITY.

§21A-5-7. Joint and separate accounts.

1 (1) The commissioner shall maintain a separate
2 account for each employer, and shall credit his account
3 with all contributions paid by him prior to July first,
4 one thousand nine hundred sixty-one. On and after July
5 first, one thousand nine hundred sixty-one, the commis-
6 sioner shall maintain a separate account for each
7 employer, and shall credit said employer's account with
8 all contributions of such employer in excess of seven
9 tenths of one percent of taxable wages; and on and after
10 July first, one thousand nine hundred seventy-one, the
11 commissioner shall maintain a separate account for each
12 employer, and shall credit said employer's account with
13 all contributions of such employer in excess of four
14 tenths of one percent of taxable wages: *Provided*, That
15 any adjustment made in any employer's account after
16 the computation date shall not be used in the computa-
17 tion of the balance of an employer until the next
18 following computation date: *Provided, however*, That
19 nothing in this chapter shall be construed to grant an
20 employer or individual in his service prior claims or
21 rights to the amounts paid by him into the fund, either
22 on his behalf or on behalf of such individuals. The
23 account of any employer which had been inactive for a
24 period of four consecutive calendar years shall be
25 terminated for all purposes.

26 (2) Benefits paid to an eligible individual for regular

27 and extended total or partial unemployment beginning
28 after the effective date of this article shall be charged
29 to the account of the last employer with whom he has
30 been employed as much as thirty working days, whether
31 or not such days are consecutive: *Provided*, That no
32 employer's account shall be charged with benefits paid
33 to any individual who has been separated from a
34 noncovered employing unit in which he was employed
35 as much as thirty days, whether or not such days are
36 consecutive: *Provided, however*, That no employer's
37 account shall be charged with more than fifty percent
38 of the benefits paid to an eligible individual as extended
39 benefits under the provisions of article six-a of this
40 chapter: *Provided further*, That state and local govern-
41 ment employers shall be charged with one hundred
42 percent of the benefits paid to an eligible individual as
43 extended benefits. Beginning on July one, one thousand
44 nine hundred eighty-four, benefits paid to an individual
45 are to be charged to the accounts of his employers in
46 the base period, the amount of such charges, chargeable
47 to the account of each such employer, to be that portion
48 of the total benefits paid such individual as the wages
49 paid him by such employer in the base period are to the
50 total wages paid him during his base period for insured
51 work by all his employers in the base period. For the
52 purposes of this section, no base period employer's
53 account shall be charged for benefits paid under this
54 chapter to a former employee, provided such base period
55 employer furnishes separation information within
56 fourteen days from the date the notice was mailed or
57 delivered, which results in a disqualification under the
58 provision set forth in subsection one, section three,
59 article six, or subsection two, section three, article six
60 of this chapter or would have resulted in a disqualifi-
61 cation under such subsection except for a subsequent
62 period of covered employment by another employing
63 unit. Further, no contributory base period employer's
64 experience rating account shall be charged for benefits
65 paid under this chapter to an individual who has been
66 continuously employed by that employer on a part-time
67 basis, if the part-time employment continues while the
68 individual is separated from other employment and is

69 otherwise eligible for benefits. One half of extended
70 benefits paid to an individual after July one, one
71 thousand nine hundred eighty-four, and subsequent
72 years are to be charged to the accounts of his employers,
73 except state and local government employers, in the
74 base period in the same manner provided for the
75 charging of regular benefits. Effective the first day of
76 January, one thousand nine hundred eighty-eight, the
77 entire state share of extended benefits paid to an
78 individual shall be charged to the accounts of his base
79 period employers.

80 (3) The commissioner shall, for each calendar year
81 hereafter, classify employers in accordance with their
82 actual experience in the payment of contributions on
83 their own behalf and with respect to benefits charged
84 against their accounts, with a view of fixing such
85 contribution rates as will reflect such experiences. For
86 the purpose of fixing such contribution rates for each
87 calendar year, the books of the department shall be
88 closed on July thirty-one of the preceding calendar year,
89 and any contributions thereafter paid, as well as
90 benefits thereafter paid with respect to compensable
91 weeks ending on or before June thirty of the preceding
92 calendar year, shall not be taken into account until the
93 next annual date for fixing contribution rates: *Provided,*
94 That if an employer has failed to furnish to the
95 commissioner on or before July thirty-one of such
96 preceding calendar year the wage information for all
97 past periods necessary for the computation of the
98 contribution rate, such employer's rate shall be, if it is
99 immediately prior to such July thirty-one, less than
100 three and three-tenths percent, increased to three and
101 three-tenths percent: *Provided, however,* That any
102 payment made or any information necessary for the
103 computation of a reduced rate furnished on or before the
104 termination of an extension of time for such payment or
105 reporting of such information granted pursuant to a
106 regulation of the commissioner authorizing such exten-
107 sion, shall be taken into account for the purposes of
108 fixing contribution rates: *Provided further,* That when
109 the time for filing any report or making any payment
110 required hereunder falls on Saturday, Sunday, or a legal

111 holiday, the due date shall be deemed to be the next
112 succeeding business day: *And provided further*, That
113 whenever, through mistake or inadvertence, erroneous
114 credits or charges are found to have been made to or
115 against the reserved account of any employer, the rate
116 shall be adjusted as of January one of the calendar year
117 in which such mistake or inadvertence is discovered, but
118 payments, made under any rate assigned prior to
119 January one of such year, shall not be deemed to be
120 erroneously collected.

121 (4) The commissioner may prescribe regulations for
122 the establishment, maintenance and dissolution of joint
123 accounts by two or more employers, and shall, in
124 accordance with such regulations and upon application
125 by two or more employers to establish such an account,
126 or to merge their several individual accounts in a joint
127 account, maintain such joint account as if it constituted
128 a single employer's account.

129 (5) State and local government employers are hereby
130 authorized to enter into joint accounts and to maintain
131 such joint account or accounts as if it or they constituted
132 a single employer's account or accounts.

133 (6) Effective on and after July one, one thousand nine
134 hundred eighty-one, if an employer has failed to furnish
135 to the commissioner on or before August thirty-one of
136 one thousand nine hundred eighty, and each year
137 thereafter, with the exception of one thousand nine
138 hundred eighty-one, which due date shall be September
139 thirty, one thousand nine hundred eighty-one, the wage
140 information for all past periods necessary for the
141 computation of the contribution rate, such employer's
142 rate shall be, if it is immediately prior to July one, one
143 thousand nine hundred eighty-one, less than seven and
144 five-tenths percent, increased to seven and five-tenths
145 percent.

ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.

§21A-6-3. Disqualification for benefits.

§21A-6-10. Benefit rate — Total unemployment; annual computation and publication of rates.

§21A-6-11. Benefit rate — Partical unemployment.

§21A-6-3. Disqualification for benefits.

1 Upon the determination of the facts by the commis-
2 sioner, 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
5 part of the employer and until the individual returns to
6 covered employment and has been employed in covered
7 employment at least thirty working days.

8 For the purpose of this subdivision (1), an individual
9 shall not be deemed to have left his most recent work
10 voluntarily without good cause involving fault on the
11 part of the employer, if such individual leaves his most
12 recent work with an employer and if he in fact, within
13 a fourteen-day calendar period, does return to employ-
14 ment with the last preceding employer with whom he
15 was previously employed within the past year prior to
16 his return to work day, and which last preceding
17 employer, after having previously employed such
18 individual for thirty working days or more, laid off such
19 individual because of lack of work, which layoff
20 occasioned the payment of benefits under this chapter
21 or could have occasioned the payment of benefits under
22 this chapter had such individual applied for such
23 benefits. It is the intent of this paragraph to cause no
24 disqualification for benefits for such an individual who
25 complies with the foregoing set of requirements and
26 conditions. Further, for the purpose of this subdivision,
27 an individual shall not be deemed to have left his most
28 recent work voluntarily without good cause involving
29 fault on the part of the employer, if such individual was
30 compelled to leave his work for his own health-related
31 reasons and presents certification from a licensed
32 physician that his work aggravated, worsened, or will
33 worsen the individual's health problem.

34 (2) For the week in which he was discharged from his
35 most recent work for misconduct and the six weeks
36 immediately following such week; or for the week in
37 which he was discharged from his last thirty-day
38 employing unit for misconduct and the six weeks
39 immediately following such week. Such disqualification

40 shall carry a reduction in the maximum benefit amount
41 equal to six times the individual's weekly benefit.
42 However, if the claimant returns to work in covered
43 employment for thirty days during his benefit year,
44 whether or not such days are consecutive, the maximum
45 benefit amount shall be increased by the amount of the
46 decrease imposed under the disqualification; except
47 that:

48 If he were discharged from his most recent work for
49 one of the following reasons, or if he were discharged
50 from his last thirty days employing unit for one of the
51 following reasons: Misconduct consisting of willful
52 destruction of his employer's property; assault upon the
53 person of his employer or any employee of his employer;
54 if such assault is committed at such individual's place
55 of employment or in the course of employment; report-
56 ing to work in an intoxicated condition, or being
57 intoxicated while at work; arson, theft, larceny, fraud
58 or embezzlement in connection with his work; or any
59 other gross misconduct; he shall be and remain disqual-
60 ified for benefits until he has thereafter worked for at
61 least thirty days in covered employment: *Provided*, That
62 for the purpose of this subdivision the words "any other
63 gross misconduct" shall include, but not be limited to,
64 any act or acts of misconduct where the individual has
65 received prior written warning that termination of
66 employment may result from such act or acts.

67 (3) For the week in which he failed without good
68 cause to apply for available, suitable work, accept
69 suitable work when offered, or return to his customary
70 self-employment when directed to do so by the commis-
71 sioner, and for the four weeks which immediately follow
72 for such additional period as any offer of suitable work
73 shall continue open for his acceptance. Such disqualifi-
74 cation shall carry a reduction in the maximum benefit
75 amount equal to four times the individual's weekly
76 benefit amount.

77 (4) For a week in which his total or partial unemploy-
78 ment is due to a stoppage of work which exists because
79 of a labor dispute at the factory, establishment or other
80 premises at which he was last employed, unless the

81 commissioner is satisfied that he was not (one) partic-
82 ipating, financing, or directly interested in such dispute,
83 and (two) did not belong to a grade or class of workers
84 who were participating, financing or directly interested
85 in the labor dispute which resulted in the stoppage of
86 work. No disqualification under this subdivision shall be
87 imposed if the employees are required to accept wages,
88 hours or conditions of employment substantially less
89 favorable than those prevailing for similar work in the
90 locality, or if employees are denied the right of collective
91 bargaining under generally prevailing conditions, or if
92 an employer shuts down his plant or operation or
93 dismisses his employees in order to force wage reduc-
94 tion, changes in hours or working conditions.

95 For the purpose of this subdivision, if any stoppage
96 of work continues longer than four weeks after the
97 termination of the labor dispute which caused stoppage
98 of work, there shall be a rebuttable presumption that
99 part of the stoppage of work which exists after said
100 period of four weeks after the termination of said labor
101 dispute did not exist because of said labor dispute; and
102 in such event the burden shall be upon the employer or
103 other interested party to show otherwise.

104 (5) For a week with respect to which he is receiving
105 or has received:

106 (a) Wages in lieu of notice;

107 (b) Compensation for temporary total disability under
108 the workers' compensation law of any state or under a
109 similar law of the United States;

110 (c) Unemployment compensation benefits under the
111 laws of the United States or any other state.

112 (6) For the week in which an individual has voluntar-
113 ily quit employment to marry or to perform any marital,
114 parental or family duty, or to attend to his or her
115 personal business or affairs and until the individual
116 returns to covered employment and has been employed
117 in covered employment at least thirty working days.

118 (7) Benefits shall not be paid to any individual on the
119 basis of any services, substantially all of which consist

120 of participating in sports or athletic events or training
121 or preparing to so participate, for any week which
122 commences during the period between two successive
123 sport seasons (or similar periods) if such individual
124 performed such services in the first of such seasons (or
125 similar periods) and there is a reasonable assurance that
126 such individual will perform such services in the later
127 of such seasons (or similar periods).

128 (8) (a) Benefits shall not be paid on the basis of
129 services performed by an alien unless such alien is an
130 individual who has been lawfully admitted for perman-
131 ent residence or otherwise is permanently residing in
132 the United States under color of law (including an alien
133 who is lawfully present in the United States as a result
134 of the application of the provisions of section 203 (a) (7)
135 or section 212 (d) (5) of the Immigration and Nationality
136 Act): *Provided*, That any modifications to the provisions
137 of section 3304 (a) (14) of the Federal Unemployment
138 Tax Act as provided by Public Law 94-566 which
139 specify other conditions or other effective date than
140 stated herein for the denial of benefits based on services
141 performed by aliens and which modifications are
142 required to be implemented under state law as a
143 condition for full tax credit against the tax imposed by
144 the Federal Unemployment Tax Act shall be deemed
145 applicable under the provisions of this section;

146 (b) Any data or information required of individuals
147 applying for benefits to determine whether benefits are
148 not payable to them because of their alien status shall
149 be uniformly required from all applicants for benefits;

150 (c) In the case of an individual whose application for
151 benefits would otherwise be approved, no determination
152 that benefits to such individual are not payable because
153 of his alien status shall be made except upon a prepond-
154 erance of the evidence.

155 (9) For each week in which an individual is unem-
156 ployed because, having voluntarily left employment to
157 attend a school, college, university or other educational
158 institution, he is attending such school, college, univer-
159 sity or other educational institution, or is awaiting

160 entrance thereto or is awaiting the starting of a new
161 term or session thereof, and until the individual returns
162 to covered employment.

163 (10) For each week in which he is unemployed
164 because of his request, or that of his duly authorized
165 agent, for a vacation period at a specified time that
166 would leave the employer no other alternative but to
167 suspend operations.

168 (11) For each week with respect to which he is
169 receiving or has received benefits under Title II of the
170 Social Security Act or similar payments under any act
171 of Congress and/or remuneration in the form of an
172 annuity, pension or other retirement pay from a base
173 period and/or chargeable employer or from any trust or
174 fund contributed to by a base period and/or chargeable
175 employer, the weekly benefit amount payable to such
176 individual for such week shall be reduced (but not below
177 zero) by the prorated weekly amount of said benefits,
178 payments and/or remuneration: *Provided*, That if such
179 amount of benefits is not a multiple of one dollar, it shall
180 be computed to the next lowest multiple of one dollar:
181 *Provided, however*, That there shall be no disqualifica-
182 tion if in the individual's base period there are no wages
183 which were paid by the base period and/or chargeable
184 employer paying such remuneration, or by a fund into
185 which the employer has paid during said base period.
186 Claimant may be required to certify as to whether or
187 not he is receiving or has been receiving remuneration
188 in the form of an annuity, pension or other retirement
189 pay from a base period and/or chargeable employer or
190 from a trust fund contributed to by a base period and/or
191 chargeable employer.

192 (12) For each week in which and for fifty-two weeks
193 thereafter, beginning with the date of the decision, if the
194 commissioner finds such individual who within twenty-
195 four calendar months immediately preceding such
196 decision, has made a false statement or representation
197 knowing it to be false or knowingly fails to disclose a
198 material fact, to obtain or increase any benefit or
199 payment under this article: *Provided*, That disqualifica-
200 tion under this subdivision shall not preclude prosecu-

201 tion under section seven, article ten of this chapter.

***§21A-6-10. Benefit rate — Total unemployment; annual computation and publication of rates.**

1 Each eligible individual who is totally unemployed in
2 any week shall be paid benefits with respect to that
3 week at the weekly rate appearing in Column (C) in the
4 Benefit Table in this paragraph, on the line on which
5 in Column (A) there is indicated the employee's wage
6 class, except as otherwise provided under the term "total
7 and partial unemployment" in section three, article one
8 of this chapter. The employee's wage class shall be
9 determined by his base period wages as shown in
10 Column (B) in the Benefit Table. The right of an
11 employee to receive benefits shall not be prejudiced nor
12 the amount thereof be diminished by reason of failure
13 by an employer to pay either the wages earned by the
14 employee or the contribution due on such wages. An
15 individual who is totally unemployed but earns in excess
16 of twenty-five dollars as a result of odd-job or subsidiary
17 work, or is paid a bonus in any benefit week shall be
18 paid benefits for such week in accordance with the
19 provisions of this chapter pertaining to benefits for
20 partial unemployment.

21 The maximum benefit for each wage class shall be
22 equal to twenty-six times the weekly benefit rate.

23 On and after July one, one thousand nine hundred
24 eighty-five, and until July one, one thousand nine
25 hundred eighty-nine, the maximum weekly benefit rate
26 shall be seventy percent of the average weekly wage in
27 West Virginia, which average weekly wage shall not
28 exceed three hundred twenty-two dollars per week;
29 thereafter, the maximum benefit rate shall be sixty-six
30 and two-thirds percent of the average weekly wage in
31 West Virginia.

32 Beginning on July one, one thousand nine hundred
33 eighty-nine, and on the first day of July of each
34 succeeding year thereafter, the commissioner shall
35 determine the maximum weekly benefit rate upon the
36 basis of the formula set forth above and shall establish
37 wage classes as are required, increasing or decreasing

*Clerk's Note: This section was also amended by S. B. 522, which passed prior to this act.

38 the amount of the base period wages required for each
 39 wage class by one hundred fifty dollars, establishing the
 40 weekly benefit rate for each wage class by rounded
 41 dollar amount to be fifty-five percent of one fifty-second
 42 of the median dollar amount of wages in the base period
 43 for such wage class, and establishing the maximum
 44 benefit for each wage class as an amount equal to
 45 twenty-six times the weekly benefit rate. The maximum
 46 weekly benefit rate, when computed by the commis-
 47 sioner, in accordance with the foregoing provisions, shall
 48 be rounded to the next lowest multiple of one dollar.

49

BENEFIT TABLE

| 50 | | | | Maximum |
|----|-------|------------------------|------------|--------------|
| 51 | | | | Benefit in |
| 52 | | | | Benefit Year |
| 53 | | | | for Total |
| 54 | A | B | C | and/or |
| 55 | Wage | Wages in | Weekly | Partial Un- |
| 56 | Class | Base Period | Benefit | employment |
| | | | Rate | |
| 57 | | Under \$ 2,200.00 | Ineligible | |
| 58 | 1 | \$ 2,200.00 - 2,349.99 | \$ 24.00 | \$ 624.00 |
| 59 | 2 | 2,350.00 - 2,499.99 | 25.00 | 650.00 |
| 60 | 3 | 2,500.00 - 2,649.99 | 27.00 | 702.00 |
| 61 | 4 | 2,650.00 - 2,799.99 | 28.00 | 728.00 |
| 62 | 5 | 2,800.00 - 2,949.99 | 30.00 | 780.00 |
| 63 | 6 | 2,950.00 - 3,099.99 | 31.00 | 806.00 |
| 64 | 7 | 3,100.00 - 3,249.99 | 33.00 | 858.00 |
| 65 | 8 | 3,250.00 - 3,399.99 | 35.00 | 910.00 |
| 66 | 9 | 3,400.00 - 3,549.99 | 36.00 | 936.00 |
| 67 | 10 | 3,550.00 - 3,699.99 | 38.00 | 988.00 |
| 68 | 11 | 3,700.00 - 3,849.99 | 39.00 | 1,014.00 |
| 69 | 12 | 3,850.00 - 3,999.99 | 41.00 | 1,066.00 |
| 70 | 13 | 4,000.00 - 4,149.99 | 43.00 | 1,118.00 |
| 71 | 14 | 4,150.00 - 4,299.99 | 44.00 | 1,144.00 |
| 72 | 15 | 4,300.00 - 4,449.99 | 46.00 | 1,196.00 |
| 73 | 16 | 4,450.00 - 4,599.99 | 47.00 | 1,222.00 |
| 74 | 17 | 4,600.00 - 4,749.99 | 49.00 | 1,274.00 |
| 75 | 18 | 4,750.00 - 4,899.99 | 51.00 | 1,326.00 |
| 76 | 19 | 4,900.00 - 5,049.99 | 52.00 | 1,352.00 |
| 77 | 20 | 5,050.00 - 5,199.99 | 54.00 | 1,404.00 |
| 78 | 21 | 5,200.00 - 5,349.99 | 55.00 | 1,430.00 |
| 79 | 22 | 5,350.00 - 5,499.99 | 57.00 | 1,482.00 |

| | | | | | |
|-----|----|-------------|-----------|--------|----------|
| 80 | 23 | 5,500.00 - | 5,649.99 | 58.00 | 1,508.00 |
| 81 | 24 | 5,650.00 - | 5,799.99 | 60.00 | 1,560.00 |
| 82 | 25 | 5,800.00 - | 5,949.99 | 62.00 | 1,612.00 |
| 83 | 26 | 5,950.00 - | 6,099.99 | 63.00 | 1,638.00 |
| 84 | 27 | 6,100.00 - | 6,249.99 | 65.00 | 1,690.00 |
| 85 | 28 | 6,250.00 - | 6,399.99 | 66.00 | 1,716.00 |
| 86 | 29 | 6,400.00 - | 6,549.99 | 68.00 | 1,768.00 |
| 87 | 30 | 6,550.00 - | 6,699.99 | 70.00 | 1,820.00 |
| 88 | 31 | 6,700.00 - | 6,849.99 | 71.00 | 1,846.00 |
| 89 | 32 | 6,850.00 - | 6,999.99 | 73.00 | 1,898.00 |
| 90 | 33 | 7,000.00 - | 7,149.99 | 74.00 | 1,924.00 |
| 91 | 34 | 7,150.00 - | 7,299.99 | 76.00 | 1,976.00 |
| 92 | 35 | 7,300.00 - | 7,449.99 | 78.00 | 2,028.00 |
| 93 | 36 | 7,450.00 - | 7,599.99 | 79.00 | 2,054.00 |
| 94 | 37 | 7,600.00 - | 7,749.99 | 81.00 | 2,106.00 |
| 95 | 38 | 7,750.00 - | 7,899.99 | 82.00 | 2,132.00 |
| 96 | 39 | 7,900.00 - | 8,049.99 | 84.00 | 2,184.00 |
| 97 | 40 | 8,050.00 - | 8,199.99 | 85.00 | 2,210.00 |
| 98 | 41 | 8,200.00 - | 8,349.99 | 87.00 | 2,262.00 |
| 99 | 42 | 8,350.00 - | 8,499.99 | 89.00 | 2,314.00 |
| 100 | 43 | 8,500.00 - | 8,649.99 | 90.00 | 2,340.00 |
| 101 | 44 | 8,650.00 - | 8,799.99 | 92.00 | 2,392.00 |
| 102 | 45 | 8,800.00 - | 8,949.99 | 93.00 | 2,418.00 |
| 103 | 46 | 8,950.00 - | 9,099.99 | 95.00 | 2,470.00 |
| 104 | 47 | 9,100.00 - | 9,249.99 | 97.00 | 2,522.00 |
| 105 | 48 | 9,250.00 - | 9,399.99 | 98.00 | 2,548.00 |
| 106 | 49 | 9,400.00 - | 9,549.99 | 100.00 | 2,600.00 |
| 107 | 50 | 9,550.00 - | 9,699.99 | 101.00 | 2,626.00 |
| 108 | 51 | 9,700.00 - | 9,849.99 | 103.00 | 2,678.00 |
| 109 | 52 | 9,850.00 - | 9,999.99 | 104.00 | 2,704.00 |
| 110 | 53 | 10,000.00 - | 10,149.99 | 106.00 | 2,756.00 |
| 111 | 54 | 10,150.00 - | 10,299.99 | 108.00 | 2,808.00 |
| 112 | 55 | 10,300.00 - | 10,449.99 | 109.00 | 2,834.00 |
| 113 | 56 | 10,450.00 - | 10,599.99 | 111.00 | 2,886.00 |
| 114 | 57 | 10,600.00 - | 10,749.99 | 112.00 | 2,912.00 |
| 115 | 58 | 10,750.00 - | 10,899.99 | 114.00 | 2,964.00 |
| 116 | 59 | 10,900.00 - | 11,049.99 | 116.00 | 3,016.00 |
| 117 | 60 | 11,050.00 - | 11,199.99 | 117.00 | 3,042.00 |
| 118 | 61 | 11,200.00 - | 11,349.99 | 119.00 | 3,094.00 |
| 119 | 62 | 11,350.00 - | 11,499.99 | 120.00 | 3,120.00 |
| 120 | 63 | 11,500.00 - | 11,649.99 | 122.00 | 3,172.00 |
| 121 | 64 | 11,650.00 - | 11,799.99 | 124.00 | 3,224.00 |

| | | | | | |
|-----|-----|-------------|-----------|--------|----------|
| 122 | 65 | 11,800.00 - | 11,949.99 | 125.00 | 3,250.00 |
| 123 | 66 | 11,950.00 - | 12,099.99 | 127.00 | 3,302.00 |
| 124 | 67 | 12,100.00 - | 12,249.99 | 128.00 | 3,328.00 |
| 125 | 68 | 12,250.00 - | 12,399.99 | 130.00 | 3,380.00 |
| 126 | 69 | 12,400.00 - | 12,549.99 | 131.00 | 3,406.00 |
| 127 | 70 | 12,550.00 - | 12,699.99 | 133.00 | 3,458.00 |
| 128 | 71 | 12,700.00 - | 12,849.99 | 135.00 | 3,510.00 |
| 129 | 72 | 12,850.00 - | 12,999.99 | 136.00 | 3,536.00 |
| 130 | 73 | 13,000.00 - | 13,149.99 | 138.00 | 3,588.00 |
| 131 | 74 | 13,150.00 - | 13,299.99 | 139.00 | 3,614.00 |
| 132 | 75 | 13,300.00 - | 13,449.99 | 141.00 | 3,666.00 |
| 133 | 76 | 13,450.00 - | 13,599.99 | 143.00 | 3,718.00 |
| 134 | 77 | 13,600.00 - | 13,749.99 | 144.00 | 3,744.00 |
| 135 | 78 | 13,750.00 - | 13,899.99 | 146.00 | 3,796.00 |
| 136 | 79 | 13,900.00 - | 14,049.99 | 147.00 | 3,822.00 |
| 137 | 80 | 14,050.00 - | 14,199.99 | 149.00 | 3,874.00 |
| 138 | 81 | 14,200.00 - | 14,349.99 | 150.00 | 3,900.00 |
| 139 | 82 | 14,350.00 - | 14,499.99 | 152.00 | 3,952.00 |
| 140 | 83 | 14,500.00 - | 14,649.99 | 154.00 | 4,004.00 |
| 141 | 84 | 14,650.00 - | 14,799.99 | 155.00 | 4,030.00 |
| 142 | 85 | 14,800.00 - | 14,949.99 | 157.00 | 4,082.00 |
| 143 | 86 | 14,950.00 - | 15,099.99 | 158.00 | 4,108.00 |
| 144 | 87 | 15,100.00 - | 15,249.99 | 160.00 | 4,160.00 |
| 145 | 88 | 15,250.00 - | 15,399.99 | 162.00 | 4,212.00 |
| 146 | 89 | 15,400.00 - | 15,549.99 | 163.00 | 4,238.00 |
| 147 | 90 | 15,550.00 - | 15,699.99 | 165.00 | 4,290.00 |
| 148 | 91 | 15,700.00 - | 15,849.99 | 166.00 | 4,316.00 |
| 149 | 92 | 15,850.00 - | 15,999.99 | 168.00 | 4,368.00 |
| 150 | 93 | 16,000.00 - | 16,149.99 | 170.00 | 4,420.00 |
| 151 | 94 | 16,150.00 - | 16,299.99 | 171.00 | 4,446.00 |
| 152 | 95 | 16,300.00 - | 16,449.99 | 173.00 | 4,498.00 |
| 153 | 96 | 16,450.00 - | 16,599.99 | 174.00 | 4,524.00 |
| 154 | 97 | 16,600.00 - | 16,749.99 | 176.00 | 4,576.00 |
| 155 | 98 | 16,750.00 - | 16,899.99 | 177.00 | 4,602.00 |
| 156 | 99 | 16,900.00 - | 17,049.99 | 179.00 | 4,654.00 |
| 157 | 100 | 17,050.00 - | 17,199.99 | 181.00 | 4,706.00 |
| 158 | 101 | 17,200.00 - | 17,349.99 | 182.00 | 4,732.00 |
| 159 | 102 | 17,350.00 - | 17,499.99 | 184.00 | 4,784.00 |
| 160 | 103 | 17,500.00 - | 17,649.99 | 185.00 | 4,810.00 |
| 161 | 104 | 17,650.00 - | 17,799.99 | 187.00 | 4,862.00 |
| 162 | 105 | 17,800.00 - | 17,949.99 | 189.00 | 4,914.00 |
| 163 | 106 | 17,950.00 - | 18,099.99 | 190.00 | 4,940.00 |

| | | | | | |
|-----|-----|-------------|-----------|--------|----------|
| 164 | 107 | 18,100.00 - | 18,249.99 | 192.00 | 4,992.00 |
| 165 | 108 | 18,250.00 - | 18,399.99 | 193.00 | 5,018.00 |
| 166 | 109 | 18,400.00 - | 18,549.99 | 195.00 | 5,070.00 |
| 167 | 110 | 18,550.00 - | 18,699.99 | 196.00 | 5,096.00 |
| 168 | 111 | 18,700.00 - | 18,849.99 | 198.00 | 5,148.00 |
| 169 | 112 | 18,850.00 - | 18,999.99 | 200.00 | 5,200.00 |
| 170 | 113 | 19,000.00 - | 19,149.99 | 201.00 | 5,226.00 |
| 171 | 114 | 19,150.00 - | 19,299.99 | 203.00 | 5,278.00 |
| 172 | 115 | 19,300.00 - | 19,449.99 | 204.00 | 5,304.00 |
| 173 | 116 | 19,450.00 - | 19,599.99 | 206.00 | 5,356.00 |
| 174 | 117 | 19,600.00 - | 19,749.99 | 208.00 | 5,408.00 |
| 175 | 118 | 19,750.00 - | 19,899.99 | 209.00 | 5,434.00 |
| 176 | 119 | 19,900.00 - | 20,049.99 | 211.00 | 5,486.00 |
| 177 | 120 | 20,050.00 - | 20,199.99 | 212.00 | 5,512.00 |
| 178 | 121 | 20,200.00 - | 20,349.99 | 214.00 | 5,564.00 |
| 179 | 122 | 20,350.00 - | 20,499.99 | 216.00 | 5,616.00 |
| 180 | 123 | 20,500.00 - | 20,649.99 | 217.00 | 5,642.00 |
| 181 | 124 | 20,650.00 - | 20,799.99 | 219.00 | 5,694.00 |
| 182 | 125 | 20,800.00 - | 20,949.99 | 220.00 | 5,720.00 |
| 183 | 126 | 20,950.00 - | 21,099.99 | 222.00 | 5,772.00 |
| 184 | 127 | 21,100.00 - | 21,249.99 | 223.00 | 5,798.00 |
| 185 | 128 | 21,250.00 - | AND OVER | 225.00 | 5,850.00 |

186 After he has established such wage classes, the
 187 commissioner shall prepare and publish a table setting
 188 forth such information.

189 Average weekly wage shall be computed by dividing
 190 the number of employees in West Virginia earning
 191 wages in covered employment into the total wages paid
 192 to employees in West Virginia in covered employment,
 193 and by further dividing said result by fifty-two, and
 194 shall be determined from employer wage and contribu-
 195 tion reports for the previous calendar year which are
 196 furnished to the department on or before June one
 197 following such calendar year. The average weekly wage,
 198 as determined by the commissioner, shall be rounded to
 199 the next higher dollar.

200 The computation and determination of rates as
 201 aforesaid shall be completed annually before July one,
 202 and any such new wage class, with its corresponding
 203 wages in base period, weekly benefit rate, and maxi-
 204 mum benefit in a benefit year established by the

205 commissioner in the foregoing manner effective on a
206 July one, shall apply only to a new claim established by
207 a claimant on and after said July one, and shall not
208 apply to continued claims of a claimant based on his new
209 claim established before said July one.

§21A-6-11. Benefit rate — Partial unemployment.

1 An eligible individual who is partially unemployed in
2 any week shall, upon claim therefor filed within such
3 time and in such manner as the commissioner may by
4 regulation prescribe, be paid benefits for such partial
5 unemployment in an amount equal to his weekly benefit
6 rate, as determined in accordance with section ten of
7 this article, less that part of wages from any source
8 payable or bonus paid to him with respect to such week
9 which is in excess of twenty-five dollars (notwithstand-
10 ing the reference to fifteen dollars in the definition of
11 partial unemployment contained in section three, article
12 one of this chapter): *Provided*, That such amount of
13 benefits if not a multiple of one dollar shall be computed
14 to the next lowest multiple of one dollar. Such partial
15 benefits shall be paid to such individual for the week
16 for which he is claiming benefits without regard to the
17 provisions of subdivision (1), section one of this article.

ARTICLE 6A. EXTENDED BENEFITS PROGRAM.

§21A-6A-4. Weekly extended benefit amount.

§21A-6A-5. Total extended benefit amount.

§21A-6A-4. Weekly extended benefit amount.

1 The weekly extended benefit amount payable to an
2 individual for a week of total unemployment in his
3 eligibility period shall be an amount equal to the weekly
4 benefit amount payable to him during his applicable
5 benefit year: *Provided*, That for any week during a
6 period in which federal payments to states under section
7 204 of the Federal-State Extended Unemployment
8 Compensation Act of 1970 are reduced under an order
9 issued under section 252 of the Balanced Budget and
10 Emergency Deficit Control Act of 1985, the weekly
11 extended benefit amount payable to an individual for a
12 week of total unemployment in his eligibility period
13 shall be reduced by a percentage equivalent to the

14 percentage of the reduction in the federal payment.
15 Such reduced weekly extended benefit amount, if not a
16 full dollar amount, shall be rounded to the nearest lower
17 full dollar amount.

§21A-6A-5. Total extended benefit amount.

1 The total extended benefit amount payable to any
2 eligible individual with respect to his applicable benefit
3 year shall be the least of the following amounts:

4 (1) Fifty percent of the total amount of regular
5 benefits which were payable to him under this chapter
6 in his applicable benefit year;

7 (2) Thirteen times his weekly benefit amount which
8 was payable to him under this chapter for a week of
9 total unemployment in the applicable benefit year:
10 *Provided*, That an individual filing for extended benefits
11 through the interstate benefit payment plan and
12 residing in a state where an extended benefit period is
13 not in effect shall be limited to payment for only the first
14 two weeks of such extended benefits: *Provided, however*,
15 That during any fiscal year in which federal payments
16 to states under section 204 of the Federal-State Ex-
17 tended Unemployment Compensation Act of 1970 are
18 reduced under an order issued under section 252 of the
19 Balanced Budget and Emergency Deficit Control Act of
20 1985, the total extended benefit amount payable to an
21 individual with respect to his applicable benefit year
22 shall be reduced by an amount equal to the aggregate
23 of the reductions under section four, article six-a of this
24 chapter in the weekly amounts paid to the individual.

CHAPTER 124

(Com. Sub. for S. B. 522—By Senators Tonkovich, Mr. President,
by request, and Harman)

[Passed March 2, 1988; in effect July 1, 1988. Approved by the Governor.]

AN ACT to amend and reenact section ten, article five; and
section ten, article six, all of chapter twenty-one-a of the
code of West Virginia, one thousand nine hundred

thirty-one, as amended, all relating to unemployment compensation; extending surtax on debit balance employers; and extending cap on maximum weekly benefits.

Be it enacted by the Legislature of West Virginia:

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

Article

5. **Employer Coverage and Responsibility.**
6. **Employee Eligibility; Benefits.**

ARTICLE 5. EMPLOYER COVERAGE AND RESPONSIBILITY.

***§21A-5-10. Experience ratings; decreased rates; adjustment of accounts and rates; debit balance account rates.**

1 On and after July one, one thousand nine hundred
2 eighty-one, an employer's payment shall remain two and
3 seven-tenths percent, until:

4 (1) There have elapsed thirty-six consecutive months
5 immediately preceding the computation date throughout
6 which an employer's account was chargeable with
7 benefits.

8 (2) His payments credited to his account for all past
9 years exceed the benefits charged to his account by an
10 amount equal to at least the percent of his average
11 annual payroll as shown in Column B of Table II. His
12 rate shall be the amount appearing in Column C of
13 Table II on line with the percentage in Column B.

14 When the total assets of the fund as of January one
15 of a calendar year equal or exceed one hundred percent
16 but are less than one hundred twenty-five percent of the
17 average benefit payments from the trust fund for the
18 three preceding calendar years, an employer's rate shall
19 be the amount appearing in Column D of Table II on
20 line with the percentage in Column B.

21 When the total assets of the fund as of January one
22 of a calendar year equal or exceed one hundred twenty-

*Clerk's Note: This section was also amended by HB 4513, which passed subsequent to this act.

23 five percent but are less than one hundred fifty percent,
 24 an employer's rate shall be the amount appearing in
 25 Column E of Table II on line with the percentage in
 26 Column B.

27 When the total assets of the fund as of January one
 28 of a calendar year equal or exceed one hundred fifty
 29 percent, an employer's rate shall be the amount
 30 appearing in Column F of Table II on line with the
 31 percentage in Column B.

32

TABLE II

| 33 | Col. A | Col. B | Col. C | Col. D | Col. E | Col. F |
|----|--------|----------------|------------|--------|--------|--------|
| 34 | | Percentage of | | | | |
| 35 | | Average | | | | |
| 36 | | Annual Payroll | | | | |
| 37 | | By which | | | | |
| 38 | Rate | Credits Exceed | Employer's | | | |
| 39 | Class | Charges | Rate | | | |
| 40 | (1) | 0.0 to 6.0 | 4.5 | 3.5 | 2.5 | 1.5 |
| 41 | (2) | 6.0 | 4.1 | 3.1 | 2.1 | 1.1 |
| 42 | (3) | 7.0 | 3.9 | 2.9 | 1.9 | 0.9 |
| 43 | (4) | 8.0 | 3.7 | 2.7 | 1.7 | 0.7 |
| 44 | (5) | 9.0 | 3.5 | 2.5 | 1.5 | 0.5 |
| 45 | (6) | 10.0 | 3.3 | 2.3 | 1.3 | 0.3 |
| 46 | (7) | 10.5 | 3.1 | 2.1 | 1.1 | 0.1 |
| 47 | (8) | 11.0 | 2.9 | 1.9 | 0.9 | 0.0 |
| 48 | (9) | 11.5 | 2.7 | 1.7 | 0.7 | 0.0 |
| 49 | (10) | 12.0 | 2.5 | 1.5 | 0.5 | 0.0 |
| 50 | (11) | 12.5 | 2.3 | 1.3 | 0.3 | 0.0 |
| 51 | (12) | 13.0 | 2.1 | 1.1 | 0.1 | 0.0 |
| 52 | (13) | 14.0 | 1.9 | 0.9 | 0.0 | 0.0 |
| 53 | (14) | 16.0 | 1.7 | 0.7 | 0.0 | 0.0 |
| 54 | (15) | 18.0 and over | 1.5 | 0.5 | 0.0 | 0.0 |

55 All employer accounts in which charges for all past
 56 years exceed credits for such past years shall be
 57 adjusted effective June thirty, one thousand nine
 58 hundred sixty-seven, so that as of said date, for the
 59 purpose of determining such employer's rate of contri-
 60 bution, the credits for all past years shall be deemed to
 61 equal the charges to such accounts.

62 Effective on and after the computation date of June
 63 thirty, one thousand nine hundred eighty-four, the

64 noncredited contribution identified in section seven of
65 this article shall not be added to the employer's debit
66 balance to determine the employer contribution rate.

67 Effective on and after the computation date of June
68 thirty, one thousand nine hundred sixty-seven, all
69 employers with a debit balance account in which the
70 benefits charged to their account for all past years
71 exceed the payments credited to their account for such
72 past years by an amount up to and including ten percent
73 of their average annual payroll, shall make payments to
74 the unemployment compensation fund at the rate of
75 three percent of wages paid by them with respect to
76 employment; except that effective on and after July one,
77 one thousand nine hundred eighty-one, all employers
78 with a debit balance account in which the benefits
79 charged to their account for all past years exceed the
80 payments credited to their account for such past years
81 by an amount up to and including five percent of their
82 average annual payroll, shall make payments to the
83 unemployment compensation fund at the rate of five and
84 five-tenths percent of wages paid by them with respect
85 to employment.

86 Effective on or after July one, one thousand nine
87 hundred eighty-one, all employers with a debit balance
88 account in which the benefits charged to their account
89 for all past years exceed the payments credited to their
90 account for such past years by an amount in excess of
91 five percent but less than ten percent of their average
92 annual payroll, shall make payments to the unemploy-
93 ment compensation fund at the rate of six and five-
94 tenths percent of wages paid by them with respect to
95 employment.

96 Effective on and after the computation date of June
97 thirty, one thousand nine hundred sixty-seven, all
98 employers with a debit balance account in which the
99 benefits charged to their account for all past years
100 exceed the payments credited to their account for such
101 past years by an amount of ten percent or above of their
102 average annual payroll, shall make payments to the
103 unemployment compensation fund at the rate of three
104 and three-tenths percent of wages paid by them with

105 respect to employment; except that effective on and
106 after July one, one thousand nine hundred eighty-one,
107 such payments to the unemployment compensation fund
108 shall be at the rate of seven and five-tenths percent of
109 wages paid by them with respect to employment or at
110 such other rate authorized by this article.

111 "Debit balance account" for the purposes of this
112 section means an account in which the benefits charged
113 for all past years exceed the payments credited for such
114 past years.

115 "Credit balance account" for the purposes of this
116 section means an account in which the payments
117 credited for all past years exceed the benefits charged
118 for such past years.

119 Once a debit balance account rate is established for
120 an employer's account for a year, it shall apply for the
121 entire year.

122 "Due date" means the last day of the month next
123 following a calendar quarter. In determining the
124 amount in the fund on any due date, contributions
125 received, but not benefits paid, for such month next
126 following the end of a calendar quarter shall be
127 included.

128 (a) Notwithstanding any other provision of this
129 section, every employer subject to the provisions of this
130 chapter shall, in addition to any other tax provided for
131 in this section, pay contributions at the rate of one
132 percent surtax on wages paid by him with respect to
133 employment, beginning January first, one thousand nine
134 hundred eighty-one, until such time that the commis-
135 sioner determines that the fund assets equal or exceed
136 the average benefits payments from the fund for the
137 preceding three calendar years at which time such
138 surtax shall be discontinued, and the commissioner shall
139 so notify the employers subject to the provisions of this
140 chapter.

141 (b) Notwithstanding any other provision of this
142 section, every debit balance employer subject to the
143 provisions of this chapter, and any foreign corporation

144 or business entity engaged in the construction trades
145 which has not been an employer in the state of West
146 Virginia for thirty-six consecutive months ending on the
147 computation date, shall, in addition to any other tax
148 provided for in this section, pay contributions at the rate
149 of one percent surtax on wages paid by him with respect
150 to employment for a period of four years, beginning
151 January first, one thousand nine hundred eighty-six.

152 (c) Effective June thirty, one thousand nine hundred
153 eighty-five, and each computation date thereafter, the
154 reserve balance of a debit balance employer shall be
155 reduced to fifteen percent if such balance exceeds fifteen
156 percent. The amount of noncredited tax shall be reduced
157 by an amount equal to the eliminated charges. If the
158 eliminated charges exceed the amount of noncredited
159 tax, the noncredited tax shall be reduced to zero.

ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.

§21A-6-10. Benefit rate — Total unemployment; annual computation and publication of rates.

1 Each eligible individual who is totally unemployed in
2 any week shall be paid benefits with respect to that
3 week at the weekly rate appearing in Column (C) in the
4 Benefit Table in this paragraph, on the line on which
5 in Column (A) there is indicated the employee's wage
6 class, except as otherwise provided under the term "total
7 and partial unemployment" in section three, article one
8 of this chapter. The employee's wage class shall be
9 determined by his base period wages as shown in
10 Column (B) in the Benefit Table. The right of an
11 employee to receive benefits shall not be prejudiced nor
12 the amount thereof be diminished by reason of failure
13 by an employer to pay either the wages earned by the
14 employee or the contribution due on such wages. An
15 individual who is totally unemployed but earns in excess
16 of twenty-five dollars as a result of odd-job or subsidiary
17 work in any benefit week shall be paid benefits for such
18 week in accordance with the provisions of this chapter
19 pertaining to benefits for partial unemployment.

20 The maximum benefit for each wage class shall be
21 equal to twenty-six times the weekly benefit rate.

22 On and after July one, one thousand nine hundred
 23 eighty-five, and until July one, one thousand nine
 24 hundred eighty-nine, the maximum weekly benefit rate
 25 shall be seventy percent of the average weekly wage in
 26 West Virginia, which average weekly wage shall not
 27 exceed three hundred and twenty-two dollars per week;
 28 thereafter, the maximum benefit rate shall be sixty-six
 29 and two-thirds percent of the average weekly wage in
 30 West Virginia.

31 Beginning on July one, one thousand nine hundred
 32 eighty-nine, the commissioner shall determine the
 33 maximum weekly benefit rate upon the basis of the
 34 formula set forth above and shall establish wage classes
 35 as are required, increasing or decreasing the amount of
 36 the base period wages required for each wage class by
 37 one hundred fifty dollars, establishing the weekly
 38 benefit rate for each wage class by rounded dollar
 39 amount to be fifty-five percent of one fifty-second of the
 40 median dollar amount of wages in the base period for
 41 such wage class, and establishing the maximum benefit
 42 for each wage class as an amount equal to twenty-six
 43 times the weekly benefit rate. The maximum weekly
 44 benefit rate, when computed by the commissioner, in
 45 accordance with the foregoing provisions, shall be
 46 rounded to the next lowest multiple of one dollar.

47

BENEFIT TABLE

| 48 | | | | | Maximum |
|----|-------|---------------|-------------|----------|--------------|
| 49 | | | | | Benefit in |
| 50 | | | | | Benefit Year |
| 51 | | | | | for Total |
| 52 | A | B | | C | and/or |
| 53 | Wage | Wages in | | Weekly | Partial Un- |
| 54 | Class | Base Period | | Benefit | employment |
| | | | | Rate | |
| 55 | | Under | \$ 2,200.00 | | Ineligible |
| 56 | 1 | \$ 2,200.00 - | 2,349.99 | \$ 24.00 | \$ 624.00 |
| 57 | 2 | 2,350.00 - | 2,499.99 | 25.00 | 650.00 |
| 58 | 3 | 2,500.00 - | 2,649.99 | 27.00 | 702.00 |
| 59 | 4 | 2,650.00 - | 2,799.99 | 28.00 | 728.00 |
| 60 | 5 | 2,800.00 - | 2,949.99 | 30.00 | 780.00 |
| 61 | 6 | 2,950.00 - | 3,099.99 | 31.00 | 806.00 |
| 62 | 7 | 3,100.00 - | 3,249.99 | 33.00 | 858.00 |

| | | | | | |
|-----|----|------------|----------|--------|----------|
| 63 | 8 | 3,250.00 - | 3,399.99 | 35.00 | 910.00 |
| 64 | 9 | 3,400.00 - | 3,549.99 | 36.00 | 936.00 |
| 65 | 10 | 3,550.00 - | 3,699.99 | 38.00 | 988.00 |
| 66 | 11 | 3,700.00 - | 3,849.99 | 39.00 | 1,014.00 |
| 67 | 12 | 3,850.00 - | 3,999.99 | 41.00 | 1,066.00 |
| 68 | 13 | 4,000.00 - | 4,149.99 | 43.00 | 1,118.00 |
| 69 | 14 | 4,150.00 - | 4,299.99 | 44.00 | 1,144.00 |
| 70 | 15 | 4,300.00 - | 4,449.99 | 46.00 | 1,196.00 |
| 71 | 16 | 4,450.00 - | 4,599.99 | 47.00 | 1,222.00 |
| 72 | 17 | 4,600.00 - | 4,749.99 | 49.00 | 1,274.00 |
| 73 | 18 | 4,750.00 - | 4,899.99 | 51.00 | 1,326.00 |
| 74 | 19 | 4,900.00 - | 5,049.99 | 52.00 | 1,352.00 |
| 75 | 20 | 5,050.00 - | 5,199.99 | 54.00 | 1,404.00 |
| 76 | 21 | 5,200.00 - | 5,349.99 | 55.00 | 1,430.00 |
| 77 | 22 | 5,350.00 - | 5,499.99 | 57.00 | 1,482.00 |
| 78 | 23 | 5,500.00 - | 5,649.99 | 58.00 | 1,508.00 |
| 79 | 24 | 5,650.00 - | 5,799.99 | 60.00 | 1,560.00 |
| 80 | 25 | 5,800.00 - | 5,949.99 | 62.00 | 1,612.00 |
| 81 | 26 | 5,950.00 - | 6,099.99 | 63.00 | 1,638.00 |
| 82 | 27 | 6,100.00 - | 6,249.99 | 65.00 | 1,690.00 |
| 83 | 28 | 6,250.00 - | 6,399.99 | 66.00 | 1,716.00 |
| 84 | 29 | 6,400.00 - | 6,549.99 | 68.00 | 1,768.00 |
| 85 | 30 | 6,550.00 - | 6,699.99 | 70.00 | 1,820.00 |
| 86 | 31 | 6,700.00 - | 6,849.99 | 71.00 | 1,846.00 |
| 87 | 32 | 6,850.00 - | 6,999.99 | 73.00 | 1,898.00 |
| 88 | 33 | 7,000.00 - | 7,149.99 | 74.00 | 1,924.00 |
| 89 | 34 | 7,150.00 - | 7,299.99 | 76.00 | 1,976.00 |
| 90 | 35 | 7,300.00 - | 7,449.99 | 78.00 | 2,028.00 |
| 91 | 36 | 7,450.00 - | 7,599.99 | 79.00 | 2,054.00 |
| 92 | 37 | 7,600.00 - | 7,749.99 | 81.00 | 2,106.00 |
| 93 | 38 | 7,750.00 - | 7,899.99 | 82.00 | 2,132.00 |
| 94 | 39 | 7,900.00 - | 8,049.99 | 84.00 | 2,184.00 |
| 95 | 40 | 8,050.00 - | 8,199.99 | 85.00 | 2,210.00 |
| 96 | 41 | 8,200.00 - | 8,349.99 | 87.00 | 2,262.00 |
| 97 | 42 | 8,350.00 - | 8,499.99 | 89.00 | 2,314.00 |
| 98 | 43 | 8,500.00 - | 8,649.99 | 90.00 | 2,340.00 |
| 99 | 44 | 8,650.00 - | 8,799.99 | 92.00 | 2,392.00 |
| 100 | 45 | 8,800.00 - | 8,949.99 | 93.00 | 2,418.00 |
| 101 | 46 | 8,950.00 - | 9,099.99 | 95.00 | 2,470.00 |
| 102 | 47 | 9,100.00 - | 9,249.99 | 97.00 | 2,522.00 |
| 103 | 48 | 9,250.00 - | 9,399.99 | 98.00 | 2,548.00 |
| 104 | 49 | 9,400.00 - | 9,549.99 | 100.00 | 2,600.00 |

| | | | | | |
|-----|----|-------------|-----------|--------|----------|
| 105 | 50 | 9,550.00 - | 9,699.99 | 101.00 | 2,626.00 |
| 106 | 51 | 9,700.00 - | 9,849.99 | 103.00 | 2,678.00 |
| 107 | 52 | 9,850.00 - | 9,999.99 | 104.00 | 2,704.00 |
| 108 | 53 | 10,000.00 - | 10,149.99 | 106.00 | 2,756.00 |
| 109 | 54 | 10,150.00 - | 10,299.99 | 108.00 | 2,808.00 |
| 110 | 55 | 10,300.00 - | 10,449.99 | 109.00 | 2,834.00 |
| 111 | 56 | 10,450.00 - | 10,599.99 | 111.00 | 2,886.00 |
| 112 | 57 | 10,600.00 - | 10,749.99 | 112.00 | 2,912.00 |
| 113 | 58 | 10,750.00 - | 10,899.99 | 114.00 | 2,964.00 |
| 114 | 59 | 10,900.00 - | 11,049.99 | 116.00 | 3,016.00 |
| 115 | 60 | 11,050.00 - | 11,199.99 | 117.00 | 3,042.00 |
| 116 | 61 | 11,200.00 - | 11,349.99 | 119.00 | 3,094.00 |
| 117 | 62 | 11,350.00 - | 11,499.99 | 120.00 | 3,120.00 |
| 118 | 63 | 11,500.00 - | 11,649.99 | 122.00 | 3,172.00 |
| 119 | 64 | 11,650.00 - | 11,799.99 | 124.00 | 3,224.00 |
| 120 | 65 | 11,800.00 - | 11,949.99 | 125.00 | 3,250.00 |
| 121 | 66 | 11,950.00 - | 12,099.99 | 127.00 | 3,302.00 |
| 122 | 67 | 12,100.00 - | 12,249.99 | 128.00 | 3,328.00 |
| 123 | 68 | 12,250.00 - | 12,399.99 | 130.00 | 3,380.00 |
| 124 | 69 | 12,400.00 - | 12,549.99 | 131.00 | 3,406.00 |
| 125 | 70 | 12,550.00 - | 12,699.99 | 133.00 | 3,458.00 |
| 126 | 71 | 12,700.00 - | 12,849.99 | 135.00 | 3,510.00 |
| 127 | 72 | 12,850.00 - | 12,999.99 | 136.00 | 3,536.00 |
| 128 | 73 | 13,000.00 - | 13,149.99 | 138.00 | 3,588.00 |
| 129 | 74 | 13,150.00 - | 13,299.99 | 139.00 | 3,614.00 |
| 130 | 75 | 13,300.00 - | 13,449.99 | 141.00 | 3,666.00 |
| 131 | 76 | 13,450.00 - | 13,599.99 | 143.00 | 3,718.00 |
| 132 | 77 | 13,600.00 - | 13,749.99 | 144.00 | 3,744.00 |
| 133 | 78 | 13,750.00 - | 13,899.99 | 146.00 | 3,796.00 |
| 134 | 79 | 13,900.00 - | 14,049.99 | 147.00 | 3,822.00 |
| 135 | 80 | 14,050.00 - | 14,199.99 | 149.00 | 3,874.00 |
| 136 | 81 | 14,200.00 - | 14,349.99 | 150.00 | 3,900.00 |
| 137 | 82 | 14,350.00 - | 14,499.99 | 152.00 | 3,952.00 |
| 138 | 83 | 14,500.00 - | 14,649.99 | 154.00 | 4,004.00 |
| 139 | 84 | 14,650.00 - | 14,799.99 | 155.00 | 4,030.00 |
| 140 | 85 | 14,800.00 - | 14,949.99 | 157.00 | 4,082.00 |
| 141 | 86 | 14,950.00 - | 15,099.99 | 158.00 | 4,108.00 |
| 142 | 87 | 15,100.00 - | 15,249.99 | 160.00 | 4,160.00 |
| 143 | 88 | 15,250.00 - | 15,399.99 | 162.00 | 4,212.00 |
| 144 | 89 | 15,400.00 - | 15,549.99 | 163.00 | 4,238.00 |
| 145 | 90 | 15,550.00 - | 15,699.99 | 165.00 | 4,290.00 |
| 146 | 91 | 15,700.00 - | 15,849.99 | 166.00 | 4,316.00 |

| | | | | |
|-----|-----|-----------------------|--------|----------|
| 147 | 92 | 15,850.00 - 15,999.99 | 168.00 | 4,368.00 |
| 148 | 93 | 16,000.00 - 16,149.99 | 170.00 | 4,420.00 |
| 149 | 94 | 16,150.00 - 16,299.99 | 171.00 | 4,446.00 |
| 150 | 95 | 16,300.00 - 16,449.99 | 173.00 | 4,498.00 |
| 151 | 96 | 16,450.00 - 16,599.99 | 174.00 | 4,524.00 |
| 152 | 97 | 16,600.00 - 16,749.99 | 176.00 | 4,576.00 |
| 153 | 98 | 16,750.00 - 16,899.99 | 177.00 | 4,602.00 |
| 154 | 99 | 16,900.00 - 17,049.99 | 179.00 | 4,654.00 |
| 155 | 100 | 17,050.00 - 17,199.99 | 181.00 | 4,706.00 |
| 156 | 101 | 17,200.00 - 17,349.99 | 182.00 | 4,732.00 |
| 157 | 102 | 17,350.00 - 17,499.99 | 184.00 | 4,784.00 |
| 158 | 103 | 17,500.00 - 17,649.99 | 185.00 | 4,810.00 |
| 159 | 104 | 17,650.00 - 17,799.99 | 187.00 | 4,862.00 |
| 160 | 105 | 17,800.00 - 17,949.99 | 189.00 | 4,914.00 |
| 161 | 106 | 17,950.00 - 18,099.99 | 190.00 | 4,940.00 |
| 162 | 107 | 18,100.00 - 18,249.99 | 192.00 | 4,992.00 |
| 163 | 108 | 18,250.00 - 18,399.99 | 193.00 | 5,018.00 |
| 164 | 109 | 18,400.00 - 18,549.99 | 195.00 | 5,070.00 |
| 165 | 110 | 18,550.00 - 18,699.99 | 196.00 | 5,096.00 |
| 166 | 111 | 18,700.00 - 18,849.99 | 198.00 | 5,148.00 |
| 167 | 112 | 18,850.00 - 18,999.99 | 200.00 | 5,200.00 |
| 168 | 113 | 19,000.00 - 19,149.99 | 201.00 | 5,226.00 |
| 169 | 114 | 19,150.00 - 19,299.99 | 203.00 | 5,278.00 |
| 170 | 115 | 19,300.00 - 19,449.99 | 204.00 | 5,304.00 |
| 171 | 116 | 19,450.00 - 19,599.99 | 206.00 | 5,356.00 |
| 172 | 117 | 19,600.00 - 19,749.99 | 208.00 | 5,408.00 |
| 173 | 118 | 19,750.00 - 19,899.99 | 209.00 | 5,434.00 |
| 174 | 119 | 19,900.00 - 20,049.99 | 211.00 | 5,486.00 |
| 175 | 120 | 20,050.00 - 20,199.99 | 212.00 | 5,512.00 |
| 176 | 121 | 20,200.00 - 20,349.99 | 214.00 | 5,564.00 |
| 177 | 122 | 20,350.00 - 20,499.99 | 216.00 | 5,616.00 |
| 178 | 123 | 20,500.00 - 20,649.99 | 217.00 | 5,642.00 |
| 179 | 124 | 20,650.00 - 20,799.99 | 219.00 | 5,694.00 |
| 180 | 125 | 20,800.00 - 20,949.99 | 220.00 | 5,720.00 |
| 181 | 126 | 20,950.00 - 21,099.99 | 222.00 | 5,772.00 |
| 182 | 127 | 21,100.00 - 21,249.99 | 223.00 | 5,798.00 |
| 183 | 128 | 21,250.00 - AND OVER | 225.00 | 5,850.00 |

184 After he has established such wage classes, the
 185 commissioner shall prepare and publish a table setting
 186 forth such information.

187 Average weekly wage shall be computed by dividing

188 the number of employees in West Virginia earning
189 wages in covered employment into the total wages paid
190 to employees in West Virginia in covered employment,
191 and by further dividing said result by fifty-two, and
192 shall be determined from employer wage and contribu-
193 tion reports for the previous calendar year which are
194 furnished to the department on or before June one
195 following such calendar year. The average weekly wage,
196 as determined by the commissioner, shall be rounded to
197 the next higher dollar.

198 The computation and determination of rates as
199 aforesaid shall be completed annually before July one,
200 and any such new wage class, with its corresponding
201 wages in base period, weekly benefit rate, and maxi-
202 mum benefit in a benefit year established by the
203 commissioner in the foregoing manner effective on July
204 one, shall apply only to a new claim established by a
205 claimant on and after said July one, and shall not apply
206 to continued claims of a claimant based on his new claim
207 established before said July one.

CHAPTER 125

(H. B. 4258—By Delegates Love and Givens)

[Passed March 11, 1988; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article one, chapter nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the veterans' council following an audit by the joint committee on government operations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DEPARTMENT OF VETERANS' AFFAIRS.

§9A-1-2. Veterans' council; administration of department.

1 There shall be a "veterans' council" which shall consist
2 of seven members who shall be citizens and residents of
3 this state, who have served in and been honorably
4 discharged or separated under honorable conditions
5 from the armed forces of the United States and whose
6 service was within a time of war as defined by the laws
7 of the United States, either Public Law No. 2 — 73rd
8 Congress or Public Law No. 346 — 78th Congress, and
9 any and all amendments thereto. At least one member
10 of the council shall be a veteran of World War II, at least
11 one member of the council shall be a veteran of the
12 Korean Conflict and at least two members of the council
13 shall be veterans of the Vietnam era. The members of
14 the veterans' council shall be selected with special
15 reference to their ability and fitness to effectuate the
16 purposes of this article.

17 After having conducted a performance and fiscal
18 audit through its joint committee on government
19 operations, pursuant to section nine, article ten, chapter
20 four of this code, the Legislature hereby finds and
21 declares that the veterans' council should be continued
22 and reestablished. Accordingly, notwithstanding the
23 provisions of section four, article ten, chapter four of this
24 code, the veterans' council shall continue to exist until
25 the first day of July, one thousand nine hundred ninety-
26 four.

27 The West Virginia department of veterans' affairs
28 shall be administered by a director, and such deputy
29 directors, assistants and employees as may be deemed
30 advisable.

CHAPTER 126

(Com. Sub. for S. B. 507—By Senators Jarrell, Chernenko,
Felton, Spears, Tucker and Whitlow)

[Passed March 8, 1988; in effect ninety days from passage. Approved by the Governor.]

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

thousand nine hundred thirty-one, as amended, relating to expanding admission standards for veterans' homes based on the definition of "qualified veteran."

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. STATE HOMES FOR VETERANS.

§9A-2-1. State homes for veterans.

1 In consultation with the governor and other appropriate state agencies, the department of veterans' affairs
2 shall establish and maintain throughout the state a
3 home or homes for qualified veterans. The present
4 Soldiers Home at Weston State Hospital shall be
5 reidentified as Veterans Unit of Weston State Hospital
6 and continued as formerly constituted. As used in this
7 article the term "qualified veteran" means a disabled
8 veteran as determined by the department of veterans'
9 affairs, who: (a) Is ambulatory and is able to attend to
10 his personal needs, dress himself and attend a general
11 mess; (b) served on active duty in the armed forces of
12 the United States of America or a nation allied
13 therewith during wartime; (c) is a resident of the state
14 of West Virginia for one year or more prior to the filing
15 for admission; and (d) who was discharged or separated
16 with an honorable discharge or with a general discharge
17 under honorable conditions.
18

19 A veteran who meets conditions (b), (c) and (d) but due
20 to worsening conditions of health cannot meet condition
21 (a), and therefore requires a higher level of health care,
22 shall be deemed a qualified veteran.

23 In the event that the veteran served during peacetime
24 and attained the age of sixty-five years, he shall be
25 deemed a qualified veteran if he has met conditions (c)
26 and (d).

27 In the event that the veteran is under sixty-five years
28 of age with a service incurred or aggravated disability
29 and is eligible for hospital-domiciliary benefits admin-

30 istered by the veterans' administration pursuant to the
31 provisions of Title 38, United States Code, he shall be
32 deemed a qualified veteran if he has met conditions (c)
33 and (d).

CHAPTER 127

(Com. Sub. for H. B. 4027—By Delegate Knight)

[Passed January 28, 1988; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article four, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to exempting the promulgation of the medical fee schedule by the workers' compensation commissioner from the legislative rule-making review process; and penalties for violation.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

§23-4-3. Schedule of maximum disbursements for medical, surgical, dental and hospital treatment; legislative approval; charges in excess of scheduled amounts not to be made; contract by employer with hospital, physician, etc., prohibited; penalties for violation.

1 The commissioner shall establish and alter from time
2 to time as he may determine to be appropriate a
3 schedule of the maximum reasonable amounts to be paid
4 to chiropractic physicians, medical physicians, osteopa-
5 thic physicians, podiatrists, optometrists, vocational
6 rehabilitation specialists, pharmacists, ophthalmologists,
7 and others practicing medicine and surgery, surgeons,
8 hospitals or other persons, firms or corporations for the
9 rendering of treatment to injured employees under this
10 chapter. The commissioner also, on the first day of each
11 regular session, and also from time to time, as the

12 commissioner may consider appropriate, shall submit
13 the schedule, with any changes thereto, to the Legisla-
14 ture. The promulgation of the schedule is not subject to
15 the legislative rule-making review procedures estab-
16 lished in sections eleven through fifteen, article three,
17 chapter twenty-nine-a of this code.

18 The commissioner shall disburse and pay from the
19 fund for such personal injuries to such employees as may
20 be entitled thereto hereunder as follows:

21 (a) Such sums for medicines, medical, surgical, dental
22 and hospital treatment, crutches, artificial limbs and
23 such other and additional approved mechanical applian-
24 ces and devices, as may be reasonably required.

25 (b) Payment for such medicine, medical, surgical,
26 dental and hospital treatment, crutches, artificial limbs
27 and such other and additional approved mechanical
28 appliances and devices authorized under subdivision (a)
29 hereof may be made to the injured employee, or to the
30 person, firm or corporation who or which has rendered
31 such treatment or furnished any of the items specified
32 above, or who has advanced payment for same, as the
33 commissioner may deem proper, but no such payments
34 or disbursements shall be made or awarded by him
35 unless duly verified statements on forms prescribed by
36 the commissioner shall be filed with the commissioner
37 within two years after the cessation of such treatment
38 or the delivery of such appliances: *Provided*, That no
39 payment hereunder shall be made unless such verified
40 statement shows no charge for or with respect to such
41 treatment or for or with respect to any of the items
42 specified above has been or will be made against the
43 injured employee or any other person, firm or corpora-
44 tion, and when an employee covered under the provi-
45 sions of this chapter is injured in the course of and as
46 a result of his employment and is accepted for medical,
47 surgical, dental or hospital treatment, the person, firm
48 or corporation rendering such treatment is hereby
49 prohibited from making any charge or charges therefor
50 or with respect thereto against the injured employee or
51 any other person, firm or corporation which would
52 result in a total charge for the treatment rendered in

53 excess of the maximum amount set forth therefor in the
54 commissioner's schedule established as aforesaid.

55 (c) No employer shall enter into any contracts with
56 any hospital, its physicians, officers, agents or employees
57 to render medical, dental or hospital service or to give
58 medical or surgical attention therein to any employee
59 for injury compensable within the purview of this
60 chapter, and no employer shall permit or require any
61 employee to contribute, directly or indirectly, to any
62 fund for the payment of such medical, surgical, dental
63 or hospital service within such hospital for such
64 compensable injury. Any employer violating this section
65 shall be liable in damages to his employees as provided
66 in section eight, article two of this chapter, and any
67 employer or hospital or agent or employee thereof
68 violating the provisions of this section shall be guilty of
69 a misdemeanor, and, upon conviction thereof, shall be
70 punished by a fine not less than one hundred dollars nor
71 more than one thousand dollars or by imprisonment not
72 exceeding one year, or both.

73 (d) When an injury has been reported to the commis-
74 sioner by the employer without protest, the commis-
75 sioner may pay, or order an employer who or which
76 made the election and who or which received the
77 permission mentioned in section nine, article two of this
78 chapter to pay, within the maximum amount provided
79 by schedule established by the commissioner as afore-
80 said, bills for medical or hospital services without
81 requiring the injured employee to file an application for
82 benefits.

83 (e) The commissioner shall provide for the replace-
84 ment of artificial limbs, crutches, hearing aids, eye-
85 glasses and all other mechanical appliances provided in
86 accordance with this section which later wear out, or
87 which later need to be refitted because of the progres-
88 sion of the injury which caused the same to be originally
89 furnished, or which are broken in the course of and as
90 a result of the employee's employment. The fund or self-
91 insured employer shall pay for these devices, when
92 needed, notwithstanding any time limits provided by
93 law.

CHAPTER 128

(Com. Sub. for S. B. 591—By Senator Tucker)

[Passed March 12, 1988; in effect from passage. Approved by the Governor.]

AN ACT to amend article four, 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 three-a, relating to workers' compensation generally; defining the misdemeanor offense of fraudulently securing or attempting to secure payment from the workers' compensation fund, and establishing a penalty therefor; defining the term "health care provider"; and barring persons convicted of such offense from providing services or receiving payment for services.

Be it enacted by the Legislature of West Virginia:

That article four, 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 three-a, to read as follows:

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

§23-4-3a. Wrongfully seeking payment for services or supplies.

1 (a) If any person who is a health care provider shall
2 knowingly, and with intent to defraud, secure or
3 attempt to secure payment from the workers' compen-
4 sation fund for services or supplies when such person is
5 not entitled to such payment or is entitled to some lesser
6 amount of payment, such person shall be guilty of a
7 misdemeanor, and, upon conviction thereof, shall be
8 fined not more than ten thousand dollars, or imprisoned
9 in the county jail not more than twelve months, or both
10 fined and imprisoned.

11 (b) For the purposes of this section, the term "person
12 who is a health care provider" shall mean any person
13 who has rendered, or who represents that he has
14 rendered, any treatment to an injured employee under

15 this chapter, or any person who has supplied, or who
16 represents that he has supplied, any medication or any
17 crutches, artificial limbs and other mechanical applian-
18 ces and devices for such injured employee. The term
19 shall include, but not be limited to, persons practicing
20 medicine and surgery, podiatry, dentistry, nursing,
21 pharmacy, optometry, osteopathic medicine and
22 surgery, chiropractic, physical therapy, psychology,
23 radiologic technology, occupational therapy or voca-
24 tional rehabilitation, and shall also include hospitals,
25 professional corporations, and other corporations, firms
26 and business entities.

27 (c) Any person convicted under the provisions of this
28 section shall, from and after such conviction, be barred
29 from providing future services or supplies to injured
30 employees under this chapter and shall cease to receive
31 payment for such services or supplies.

CHAPTER 129

(S. B. 544—By Senator Tucker)

[Passed March 11, 1988; in effect July 1, 1988. Approved by the Governor.]

AN ACT to amend and reenact sections eight-c and fifteen-b, article four, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the period allowed for protests to be filed in occupational pneumoconiosis claims.

Be it enacted by the Legislature of West Virginia:

That sections eight-c and fifteen-b, 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.

§23-4-8c. Occupational pneumoconiosis board—Reports and distribution thereof; presumption; findings required of board; objection to findings; procedure thereon.

§23-4-15b. Determination of nonmedical questions by commissioner; claims for occupational pneumoconiosis; hearing.

§23-4-8c. Occupational pneumoconiosis board—Reports and distribution thereof; presumption; find-

**ings required of board; objection to findings;
procedure thereon.**

1 (a) The occupational pneumoconiosis board, as soon as
2 practicable, after it has completed its investigation,
3 shall make its written report, to the commissioner, of its
4 findings and conclusions on every medical question in
5 controversy, and the commissioner shall send one copy
6 thereof to the employee or claimant and one copy to the
7 employer, and the board shall also return to and file
8 with the commissioner all the evidence as well as all
9 statements under oath, if any, of the persons who appear
10 before it on behalf of the employee or claimant, or
11 employer and also all medical reports and X-ray
12 examinations produced by or on behalf of the employee
13 or claimant, or employer.

14 (b) If it can be shown that the claimant or deceased
15 employee has been exposed to the hazard of inhaling
16 minute particles of dust in the course of and resulting
17 from his employment for a period of ten years during
18 the fifteen years immediately preceding the date of his
19 last exposure to such hazard and that such claimant or
20 deceased employee has sustained a chronic respiratory
21 disability, then it shall be presumed that such claimant
22 is suffering or such deceased employee was suffering at
23 the time of his death from occupational pneumoconiosis
24 which arose out of and in the course of his employment.
25 This presumption shall not be conclusive.

26 (c) The findings and conclusions of the board shall set
27 forth, among other things, the following:

28 (1) Whether or not the claimant or the deceased
29 employee has contracted occupational pneumoconiosis,
30 and if so, the percentage of permanent disability
31 resulting therefrom.

32 (2) Whether or not the exposure in the employment
33 was sufficient to have caused the claimant's or deceased
34 employee's occupational pneumoconiosis or to have
35 perceptibly aggravated an existing occupational pneu-
36 moconiosis, or other occupational disease.

37 (3) What, if any, physician appeared before the board
38 on behalf of the claimant or employer, and what, if any,

39 medical evidence was produced by or on behalf of the
40 claimant or employer.

41 If either party objects to the whole or any part of such
42 findings and conclusions of the board, he shall file with
43 the commissioner, within thirty days from receipt of
44 such copy to him, unless for good cause shown, the
45 commissioner extends such time, his objections thereto
46 in writing, specifying the particular statements of the
47 board's findings and conclusions to which he objects.
48 The filing of an objection within the time specified is
49 hereby declared to be a condition of the right to litigate
50 such findings and hence jurisdictional. After the time
51 has expired for the filing of objections to the findings
52 and conclusions of the board, the commissioner shall
53 proceed to act as provided in this chapter. If after the
54 time has expired for the filing of objections to the
55 findings and conclusions of the board no objections have
56 been filed, the report of a majority of the board of its
57 findings and conclusions on any medical question shall
58 be taken to be plenary and conclusive evidence of the
59 findings and conclusions therein stated. If objection has
60 been filed to the findings and conclusions of the board,
61 notice thereof shall be given to the board, and the
62 members thereof joining in such findings and conclu-
63 sions shall appear at the time fixed by the commissioner
64 for the hearing to submit to examination and cross-
65 examination in respect to such findings and conclusions.
66 At such hearing, evidence to support or controvert the
67 findings and conclusions of the board shall be limited
68 to examination and cross-examination of the members
69 of the board, and to the taking of testimony of other
70 qualified physicians and roentgenologists.

**§23-4-15b. Determination of nonmedical questions by
commissioner; claims for occupational
pneumoconiosis; hearing.**

1 If a claim for occupational pneumoconiosis benefits be
2 filed by an employee within three years from and after
3 the last day of the last continuous period of sixty days
4 exposure to the hazards of occupational pneumoconiosis,
5 the commissioner shall determine whether the claimant
6 was exposed to the hazards of occupational pneumoco-

7 niosis for a continuous period of not less than sixty days
8 while in the employ of the employer within three years
9 prior to the filing of his claim, whether in the state of
10 West Virginia the claimant was exposed to such hazard
11 over a continuous period of not less than two years
12 during the ten years immediately preceding the date of
13 his last exposure thereto and whether the claimant was
14 exposed to such hazard over a period of not less than
15 ten years during the fifteen years immediately preced-
16 ing the date of his last exposure thereto. If a claim for
17 occupational pneumoconiosis benefits be filed by an
18 employee within three years from and after the em-
19 ployee's occupational pneumoconiosis was made known
20 to him by a physician or otherwise should have reason-
21 ably been known to him, the commissioner shall
22 determine whether the claimant filed his application
23 within said period and whether in the state of West
24 Virginia the claimant was exposed to such hazard over
25 a continuous period of not less than two years during
26 the ten years immediately preceding the date of last
27 exposure thereto and whether the claimant was exposed
28 to such hazard over a period of not less than ten years
29 during the fifteen years immediately preceding the date
30 of last exposure thereto. If a claim for occupational
31 pneumoconiosis benefits be filed by a dependent of a
32 deceased employee, the commissioner shall determine
33 whether the deceased employee was exposed to the
34 hazards of occupational pneumoconiosis for a continuous
35 period of not less than sixty days while in the employ
36 of the employer within ten years prior to the filing of
37 the claim, whether in the state of West Virginia the
38 deceased employee was exposed to such hazard over a
39 continuous period of not less than two years during the
40 ten years immediately preceding the date of his last
41 exposure thereto and whether the claimant was exposed
42 to such hazard over a period of not less than ten years
43 during the fifteen years immediately preceding the date
44 of his last exposure thereto. The commissioner shall also
45 determine such other nonmedical facts as may in his
46 opinion be pertinent to a decision on the validity of the
47 claim.

48 The commissioner shall enter an order with respect

49 to such nonmedical findings within ninety days follow-
50 ing receipt by the commissioner of both the claimant's
51 application for occupational pneumoconiosis benefits
52 and the physician's report filed in connection therewith,
53 and shall give each interested party notice in writing of
54 these findings with respect to all such nonmedical facts
55 and such findings and such actions of the commissioner
56 shall be final unless the employer, employee, claimant
57 or dependent shall, within thirty days after receipt of
58 such notice, object to such findings, and unless an
59 objection is filed within such thirty-day period, such
60 findings shall be forever final, such time limitation
61 being hereby declared to be a condition of the right to
62 litigate such findings and hence jurisdictional. Upon
63 receipt of such objection, the commissioner shall set a
64 hearing as provided in section one, article five of this
65 chapter. In the event of an objection to such findings by
66 the employer, the claim, shall, notwithstanding the fact
67 that one or more hearings may be held with respect to
68 such objection, mature for reference to the occupational
69 pneumoconiosis board with like effect as if the objection
70 had not been filed. If the commissioner concludes after
71 the protest hearings that the claim should be dismissed,
72 a final order of dismissal shall be entered, which final
73 order shall be subject to appeal in accordance with the
74 provisions of section one, article five of this chapter. If
75 the commissioner concludes after such protest hearings
76 that the claim should be referred to the occupational
77 pneumoconiosis board for its review, the order entered
78 shall be interlocutory only and may be appealed only in
79 conjunction with an appeal from a final order with
80 respect to the findings of the occupational pneumoconi-
81 osis board.

CHAPTER 130

(Com. Sub. for S. B. 505—By Senators Boley, Tucker, Burdette,
Tomblin, Craigo and Shaw)

[Passed March 11, 1988; in effect ninety days from passage. Approved by the Governor.]

AN ACT to authorize the withdrawal from the public

employees retirement system of the Calhoun General Hospital Company.

Be it enacted by the Legislature of West Virginia:

**CALHOUN GENERAL HOSPITAL COMPANY WITHDRAWAL
FROM PUBLIC EMPLOYEES RETIREMENT SYSTEM.**

§1. Withdrawal by Calhoun General Hospital Company.

1 (a) Calhoun General Hospital Company, which is a
2 participating public employer in the public employees
3 retirement system and which has reorganized as a
4 private corporation may withdraw from participation in
5 the system.

6 (b) This withdrawal from the public employees
7 retirement system shall be without further additional
8 liability to either the Calhoun General Hospital Com-
9 pany or the public employees retirement system. When
10 effective, the withdrawal from the system does not
11 entitle the hospital to recover excess contributions made,
12 if any, and inadequate contributions, if any, shall be
13 forgiven. However, any current retirement obligations
14 or retirement rights which are vested, will not be
15 affected by this provision.

16 (c) The board of trustees of the public employees
17 retirement system shall establish procedures and
18 timetables for orderly withdrawal.

CHAPTER 131

(H. B. 4264—By Delegates Ryan and Lewis)

[Passed March 11, 1988; in effect ninety days from passage. Approved by the Governor.]

AN ACT to establish a multicounty economic development authority for the counties of Fayette, Nicholas, Raleigh and Summers, as well as participating municipalities; to provide such authority with power to plan and coordinate economic development within these counties; to provide for a board to manage and control the authority; to provide for appointment of representatives

to the board, and to provide for the support and operation of the authority.

Be it enacted by the Legislature of West Virginia:

FAYETTE, NICHOLAS, RALEIGH AND SUMMERS MULTICOUNTY ECONOMIC DEVELOPMENT AUTHORITY.

§1. Economic development authority for Fayette, Nicholas, Raleigh and Summers Counties created; functions; existing county development authorities abolished.

§2. Definitions.

§3. Board; directors; appointment; terms; removal; compensation.

§4. Authority to be public corporation.

§5. Funding for support, maintenance and operations; audit.

§6. Powers.

§1. **Economic development authority for Fayette, Nicholas, Raleigh and Summers Counties created; functions; existing county development authorities abolished.**

1 There is hereby created a multicounty economic
2 development authority, consisting of the counties of
3 Fayette, Nicholas, Raleigh and Summers, as well as any
4 participating municipalities, as hereinafter defined,
5 which shall plan and coordinate economic development
6 within these counties. The Beckley/Raleigh County
7 economic development authority and the Nicholas
8 County economic development authority are hereby
9 abolished and their powers are transferred to the
10 multicounty economic development authority created by
11 this act.

12 No member may withdraw from this authority
13 without an amendment to this act.

§2. **Definitions.**

1 (a) "Member" means one of the four counties desig-
2 nated in section one or a participating municipality.

3 (b) "Participating municipality" means any munici-
4 pality located wholly or partly within one or more of the
5 four county members, which elects to participate in the
6 multicounty economic development authority hereby
7 created. Municipalities, so electing, shall contribute to
8 the authority at the same rate and the same fashion as

9 the four county members as set forth below, shall be
10 entitled to participate in the selection of the board of
11 directors, as set forth in section three, and shall be
12 permanent members of the authority: *Provided*, That no
13 participating municipality may participate in the
14 selection of the initial board of directors unless it
15 becomes a member of the authority within thirty days
16 of the effective date of this act.

**§3. Board; directors; appointment; terms; removal;
compensation.**

1 The management and control of the authority, its
2 property, operations, business and affairs is lodged in a
3 board of directors, consisting of thirteen directors, all to
4 be considered at-large and to be appointed by the county
5 commissions of the member counties and the mayors of
6 any participating municipalities. Within thirty days
7 after the effective date of this act, the members of the
8 multicounty economic development authority shall begin
9 meeting and selecting directors. Any member, county
10 commissioner or mayor of a participating municipality
11 may nominate any resident of any of the members to the
12 board of directors. Any member, county commissioner
13 or mayor of a participating municipality may veto any
14 person nominated. Those persons nominated and not
15 objected to shall be appointed to the board of directors
16 and the selection process shall continue until thirteen
17 directors are so chosen. The board of directors shall not
18 be authorized to act until all thirteen directors have
19 been chosen.

20 Directors shall serve three-year terms, except that the
21 initial terms shall be staggered so that five of the initial
22 directors serve for one year, four of the initial directors
23 serve for two years and four of the initial directors serve
24 for three years. Directors may be reappointed to
25 additional terms. Directors shall continue to serve until
26 their successors have been chosen. Directors may be
27 removed by unanimous vote of the members.

28 No director of the authority shall receive any compen-
29 sation for his services as such board member.

§4. Authority to be public corporation.

1 The authority constitutes a public corporation to be
2 known by the name chosen by the initial members
3 sitting in open meeting, a quorum present, and as such
4 has perpetual succession, may contract and be con-
5 tracted with, sue and be sued, plead and be pleaded, and
6 have and use a common seal.

**§5. Funding for support, maintenance and operation;
audit.**

1 In order to provide for the support, maintenance and
2 operation of the authority hereby created, beginning the
3 first day of July, one thousand nine hundred eighty-
4 eight, each member shall contribute annually at least
5 one dollar and five cents per capita, as based on the most
6 recent decennial census, for those residing within its
7 corporate boundaries. The state tax commissioner shall
8 not approve the budget of any member of the authority
9 which does not contain the funding hereinabove set
10 forth.

11 In addition to the aforesaid amounts, any member
12 may support the authority with any other general or
13 special revenues or excess levies at any time after the
14 effective date of this act.

15 The books, records and accounts of the authority shall
16 be audited annually by the state tax commissioner.

§6. Powers.

1 Except as otherwise specially provided in this act, the
2 authority has the powers and duties which are conferred
3 and imposed, respectively, upon county or municipal
4 development authorities by sections seven, seven-a,
5 eight, nine, ten, eleven, twelve, thirteen and fourteen,
6 article twelve, chapter seven of the code of West
7 Virginia, as amended.

8 In addition to the powers referred to above, the
9 authority has the power to maintain such office or
10 offices as it deems necessary to carry out its responsi-
11 bilities, and to staff and equip such office or offices.

CHAPTER 132

(H. B. 4649—By Delegates Minard and Ashcraft)

[Passed March 12, 1988; in effect from passage. Approved by the Governor.]

AN ACT to extend the time for the county commission of Harrison County, West Virginia, to meet as a levy body for the purpose of presenting to the voters of the county an election to extend the additional county levy for bus services in Harrison County from between the seventh and twenty-eighth days of March until the first Thursday in June, one thousand nine hundred eighty-eight.

Be it enacted by the Legislature of West Virginia:

HARRISON COUNTY COMMISSION MEETING AS LEVYING BODY EXTENDED TO CONTINUE ADDITIONAL LEVY FOR BUS SERVICES.

§1. **Extending time for Harrison County commission to meet as levying body for election to continue additional levy for bus services.**

1 Notwithstanding the provision of article eight,
2 chapter eleven of the code of West Virginia, one
3 thousand nine hundred thirty-one, as amended, to the
4 contrary, the county commission of Harrison County is
5 hereby authorized to extend the time for its meeting as
6 a levying body and certifying its actions to the state tax
7 commissioner from between the seventh and twenty-
8 eighth days of March until the first Thursday in June,
9 one thousand nine hundred eighty-eight, for the purpose
10 of submitting to the voters of Harrison County the
11 extension of the additional county levy for bus services
12 in Harrison County.

CHAPTER 133

(S. B. 435—By Senator Manchin)

[Passed February 26, 1988; in effect from passage. Approved by the Governor.]

AN ACT to extend the time for the county commission of Marion County, West Virginia, to meet as a levying body

for the purpose of presenting to the voters of the county an election to extend the additional county levy for mass transit, parks and recreation, and library services and equipment in Marion County from between the seventh and twenty-eighth days of March until the first Thursday in June, one thousand nine hundred eighty-eight.

Be it enacted by the Legislature of West Virginia:

MARION COUNTY COMMISSION MEETING AS LEVYING BODY EXTENDED TO CONTINUE ADDITIONAL LEVY FOR MASS TRANSIT, PARKS AND RECREATION, AND LIBRARY SERVICES AND EQUIPMENT.

§1. Extending time for Marion County commission to meet as levying body for election to continue additional levy for mass transit, parks and recreation, and library services and equipment.

1 Notwithstanding the provisions of article eight,
2 chapter eleven of the code of West Virginia, one
3 thousand nine hundred thirty-one, as amended, to the
4 contrary, the county commission of Marion County is
5 hereby authorized to extend the time for its meeting as
6 a levying body and certifying its actions to the state tax
7 commissioner from between the seventh and twenty-
8 eighth days of March until the first Thursday in June,
9 one thousand nine hundred eighty-eight, for the purpose
10 of submitting to the voters of Marion County the
11 extension of the additional county levy for mass transit,
12 parks and recreation, and library services and equip-
13 ment in Marion County.

CHAPTER 134

(S. B. 712—By Senators Whitlow and Parker)

[Passed March 11, 1988; in effect ninety days from passage. Approved by the Governor.]

AN ACT to authorize the Mercer County commission to create the Mercer County Labor-Management Advisory Council; appointment, terms, vacancies, chairman, quorum of the labor-management council; objective of the council; providing powers, duties and functions of the council; and requiring annual reports.

Be it enacted by the Legislature of West Virginia:

MERCER COUNTY LABOR-MANAGEMENT ADVISORY COUNCIL.

- §1. Appointment, terms, vacancies, chairman, quorum of the labor-management council.
- §2. Objectives of the council.
- §3. Powers, duties and functions of the council; annual reports.

§1. Appointment, terms, vacancies, chairman, quorum of the labor-management council.

1 The county commission of Mercer County is hereby
2 authorized to create the Mercer County labor-manage-
3 ment advisory council. The council shall consist of
4 twelve members appointed in the following manner:
5 Three members shall be appointed who have been
6 nominated by the chambers of commerce in Mercer
7 County; one member shall be appointed who has been
8 nominated by the members of the West Virginia
9 Manufacturers Association in Mercer County; four
10 members shall be appointed who have been nominated
11 by the labor unions in Mercer County; one person shall
12 be appointed who has been nominated by the Mercer
13 County Economic Development Authority; one person
14 shall be appointed who has been nominated by the
15 presidents of the institutions of higher education located
16 in Mercer County; one person shall be appointed who
17 has been nominated by the organizations of public school
18 teachers and service personnel in Mercer County; and
19 one appointment shall be made at large. The at-large
20 member of the council shall serve as chairman of the
21 council and shall have no vote except to break a tie.

22 Of the first appointments, two of those nominated by
23 the labor unions and two of those nominated by the
24 chambers of commerce shall serve for a term of one
25 year; one member nominated by the chambers of
26 commerce, the member nominated by the Mercer
27 County members of the West Virginia Manufacturers
28 Association, and two members nominated by labor
29 unions shall serve for a term of two years; and the four
30 remaining members shall serve for a term of three
31 years. As the terms of those members first appointed
32 expire, those appointed to succeed them shall be
33 nominated by the same organizations as the original

34 members and shall be appointed for terms of three
35 years.

36 If members resign before the completion of their
37 terms, the commission shall ask for nominations in the
38 same manner as the original appointments and shall fill
39 the unexpired term within sixty days of the occurrence
40 of the vacancy.

41 The council shall meet at least four times each year
42 and at other times on call of the chairman or a majority
43 of the members. A majority of members of the council
44 shall constitute a quorum for the transaction of business.

§2. Objectives of the council.

1 It is the objective of this article to improve labor-
2 management relations within Mercer County, in order
3 both to improve the present convenience, economic
4 development and welfare of the citizens of Mercer
5 County, and to attract and encourage new and existing
6 industry in the state. To this end, the council shall act
7 as advisor and consultant to the county commission, and
8 to labor and management within Mercer County, to
9 promote better labor-management relations within
10 Mercer County; develop and encourage methods of
11 improved communications and mutual respect between
12 labor and management; endeavor to narrow ideological
13 differences between labor and management; develop
14 and encourage innovative techniques to resolve labor-
15 management conflicts through cooperative teamwork
16 rather than confrontation; and encourage both labor and
17 management to recognize their common ground and
18 common purpose.

§3. Powers, duties and functions of the council; annual reports.

1 On or before the first day of September, one thousand
2 nine hundred eighty-nine, the council shall submit to the
3 county commission a preliminary plan for the imple-
4 mentation of programs designed to improve labor-
5 management relations and economic development
6 within Mercer County. Such plan shall include, but need
7 not be limited to, programs to:

8 (a) Conduct seminars and other programs designed to

9 promote better labor-management relations and greater
10 productivity, including the provision of training in
11 specialized skills required by management and by
12 employee representatives, in cooperation with institu-
13 tions of higher and secondary education within Mercer
14 County;

15 (b) Develop a resource network through which labor
16 and management can be made aware of available
17 experts and other resources for resolving labor-manage-
18 ment disputes and improving labor-management
19 relations;

20 (c) Develop a method of compiling, analyzing and
21 publicizing fair and honest information about the
22 characteristics of the work force in Mercer County,
23 including its productivity and loyalty, in cooperation
24 with other county or state agencies and educational
25 institutions;

26 (d) Conduct and publicize, in cooperation with the
27 West Virginia labor-management advisory council, case
28 studies which identify examples of successful business
29 operations in the state with excellent labor-management
30 relations, and which document the specific characteris-
31 tics of labor-management relations in each such
32 business;

33 (e) Establish forums for dialogue between labor and
34 management;

35 (f) Hold public hearings, and solicit comment and
36 suggestions from interested parties and the public in
37 general, concerning the development of a long-term plan
38 for improving labor-management relations within the
39 county;

40 (g) Develop a long-term plan for improving labor-
41 management relations within the county;

42 (h) Submit a preliminary operation report to the
43 county commission by the first day of September, one
44 thousand nine hundred eighty-nine, at such other times
45 as the council may find desirable, or as directed by the
46 commission, which report shall reflect the plan of
47 operation of the council and contain such recommenda-
48 tions as it shall see fit as to structure, functions and

49 financing; and

50 (i) Cooperate with other agencies, organizations and
51 institutions, both public and private, and in particular
52 with institutions of higher and secondary education
53 within the county and state and with regional advisory
54 committees established in performing the duties and
55 functions of the council and is authorized to enter into
56 agreements with any such agencies, organizations and
57 institutions for the purpose of carrying out the provi-
58 sions of this article.

59 The council is authorized and empowered to apply for,
60 receive and utilize appropriations, gifts, bequests or
61 grants, in money or in kind, from any person, organi-
62 zation, governmental agency or entity whatsoever to
63 assist in achieving the public purposes of this article.
64 The council may decline to receive gifts, bequests or
65 grants from private sources which are restricted in a
66 manner which to the opinion of the council would benefit
67 either labor or management over the other. All funds
68 received by the council shall be deposited with the
69 county treasurer of Mercer County and dispersed by the
70 council to be used exclusively for carrying out the
71 provisions of this article: *Provided*, That any appropri-
72 ations, gifts, bequests or grants received by the council
73 with any restriction or restrictions on the use thereof
74 shall be expended by the council in accordance with
75 such restriction or restrictions.

CHAPTER 135

(Com. Sub. for H. B. 3107—By Delegates Murphy and Mezzatesta)

[Passed March 12, 1988; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, chapter one hundred seventy-eight, Acts of the Legislature, regular session, one thousand nine hundred forty-seven, as last amended in chapter one hundred eighty-six, Acts of the Legislature, regular session, one thousand nine hundred eighty-four, relating to the composition of the board of

directors of the Morgan County War Memorial Hospital.

Be it enacted by the Legislature of West Virginia:

That section two, chapter one hundred seventy-eight, Acts of the Legislature, regular session, one thousand nine hundred forty-seven, as last amended in chapter one hundred eighty-six, Acts of the Legislature, regular session, one thousand nine hundred eighty-four, be amended and reenacted to read as follows:

**WAR MEMORIAL HOSPITAL TO THE VETERANS OF THE WORLD
WARS FROM MORGAN COUNTY.**

§2. Board of directors.

1 On the first day of July, one thousand nine hundred
2 eighty-eight, the terms of all members of the board of
3 directors of the Morgan County War Memorial Hospital
4 shall expire. The board of directors of the Morgan
5 County War Memorial Hospital shall be appointed by
6 the Morgan County commission and shall be comprised
7 of not less than five members, plus the president of the
8 hospital medical staff, who shall be a voting member,
9 and the hospital administrator or superintendent, who
10 shall be an ex officio member without voting authority.
11 The members appointed by the commission shall serve
12 for terms of three years from the first day of July
13 following their appointment, except that effective the
14 first day of July, one thousand nine hundred eighty-
15 eight, one third of the members, or as close thereto as
16 possible, shall be appointed for one year, one third of the
17 members, or as close thereto as possible, for two years,
18 and one third of the members, or as close thereto as
19 possible, for three years. Thereafter, such members
20 shall be appointed for regular three year terms. The
21 terms of the president of the hospital medical staff and
22 the hospital administrator shall be concurrent with their
23 appointment. No person shall be ineligible to appoint-
24 ment by reason of sex, political or religious affiliations.
25 The board may act as its own treasurer. Vacancies in
26 the board shall be reported to the county commission
27 and filled by appointment in like manner as original
28 appointments for the unexpired term. The county
29 commission may remove any director for misconduct or

30 neglect of duty. No compensation shall be paid or
31 allowed any director.

CHAPTER 136

(H. B. 4353—By Delegates Roop and Ryan)

[Passed March 12, 1988; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, chapter one hundred seventy-six, acts of the Legislature, regular session, one thousand nine hundred eighty-five, as last amended and reenacted by chapter one hundred fifty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-seven; and to amend chapter one hundred seventy-six, acts of the Legislature, regular session, one thousand nine hundred eighty-five, by adding thereto a new section, designated section two-a, all relating to the New River Parkway Authority; authorizing the parkway authority to set performance standards for land-use regulations along the parkway corridor; and requiring governmental entities within the corridor to adopt and enforce such standards.

Be it enacted by the Legislature of West Virginia:

That section two, chapter one hundred seventy-six, acts of the Legislature, regular session, one thousand nine hundred eighty-five, as last amended and reenacted by chapter one hundred fifty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-seven, be amended and reenacted; and that chapter one hundred seventy-six, acts of the Legislature, regular session, one thousand nine hundred eighty-five, be amended by adding thereto a new section, designated section two-a, all to read as follows:

NEW RIVER PARKWAY AUTHORITY.

- §2. Members; appointment; powers and duties generally; officers; bylaws; rules and regulations; compensation.
- §2a. Setting of minimum standards for the regulation of the use of property within the parkway corridor; definition of corridor; presentation of

standards to governmental entities; requirement that governmental entities adopt and enforce standards.

§2. Members; appointment; powers and duties generally; officers; bylaws; rules and regulations; compensation.

1 (a) The authority consists of nine voting members and
2 four to six ex officio nonvoting members.

3 (b) Three voting members shall be appointed by the
4 Mercer County Commission. Three voting members
5 shall be appointed by the Raleigh County Commission.
6 Three voting members shall be appointed by the
7 Summers County Commission. No more than two of the
8 three voting members appointed by a county commis-
9 sion may be members of the same political party, which
10 said members shall not be elected to, appointed to or
11 hold any other public office during their tenure as
12 members of said authority. The regular term of a voting
13 member shall be three years, provided that the terms
14 of the voting members initially appointed by a county
15 commission are as follows: One member shall be
16 appointed for a term of one year, one member shall be
17 appointed for a term of two years and one member shall
18 be appointed for a term of three years. Should a vacancy
19 occur, the person appointed to fill the vacancy shall
20 serve only for the unexpired portion thereof. All voting
21 members are eligible for reappointment. Any voting
22 member may be removed for cause by the appointing
23 county commission.

24 (c) The ex officio nonvoting members are the commis-
25 sioner of highways or his designee, the director of
26 natural resources or his designee, the commissioner of
27 agriculture or his designee, the commissioner of
28 commerce or his designee, and, if they choose to serve,
29 the district engineer of the Huntington District of the
30 United States Army Corps of Engineers or his designee
31 and the superintendent of the New River Gorge Na-
32 tional River or his designee. Any designee serving as a
33 nonvoting member may be removed at the will and
34 pleasure of the officer designating the member.

35 (d) Each voting member of the authority may be
36 compensated monthly by the county commission which
37 appointed such member in an amount to be fixed by said
38 county commission.

39 (e) There shall be an annual meeting of the authority
40 on the second Monday in July in each year and a
41 monthly meeting on a day and at such time as the
42 authority may designate in its bylaws. A special meeting
43 may be called by the president, the secretary or any
44 three voting members of the authority and may be held
45 only after all voting and nonvoting members are given
46 notice thereof in writing. Five voting members consti-
47 tute a quorum for all meetings. At each annual meeting
48 of the authority, it shall elect a president, vice president,
49 secretary and treasurer. The authority shall adopt such
50 bylaws. Rules and regulations are necessary for its own
51 operation and management. The authority has all but
52 only those powers necessary, incidental, convenient and
53 advisable for the following purposes:

54 (1) The preparation of a plan or plans for the New
55 River Parkway;

56 (2) Advocating actions consistent with that plan or its
57 provisions to or before any governmental entity or any
58 private person or entity; and

59 (3) Otherwise acting in an advisory capacity with
60 regard to any aspect of the New River Parkway upon
61 or without request to any governmental entity or private
62 person or entity. The authority shall not own or hold any
63 real estate or real property and shall not operate or
64 maintain the parkway.

**§2a. Setting of minimum standards for the regulation of
the use of property within the parkway corridor;
definition of corridor; presentation of standards to
governmental entities; requirement that govern-
mental entities adopt and enforce standards.**

1 (a) The authority may develop and set for land-use
2 regulations minimum performance standards which are
3 necessary to implement the authority's plan or plans and

4 which are consistent with the purpose of this chapter.
5 Such standards shall apply to the New River Parkway
6 corridor. For purposes of this chapter, "New River
7 Parkway Corridor" or "corridor" means that area within
8 five hundred feet of either side of the roadway. Areas
9 which the standards may address include:

10 (1) Buffer areas between the roadway and paved
11 parking areas;

12 (2) Landscaping or vegetation requirements;

13 (3) Land coverage, frontage, setback, design and
14 building height for new structures;

15 (4) Siting of new structures to enhance the scenic
16 qualities of the parkway and avoid visual intrusions;

17 (5) Design and placement of on-site advertising signs
18 along the parkway;

19 (6) The dumping or storing of refuse to prevent
20 deterioration of the natural or traditional parkway
21 scene: *Provided*, That such standards shall not discour-
22 age constructive development and uses of such property
23 which are consistent with the purpose of this chapter;
24 and

25 (7) Any other area, if regulation over such area is
26 consistent with the purpose of this chapter. Standards
27 which are developed by the authority shall not apply to
28 structures on property owned in the corridor existing
29 prior to the effective date of this section.

30 (b) Upon the development of standards, the authority
31 shall present such standards to relevant governmental
32 entities within the corridor. Such presentation shall
33 include relevant findings as to whether the plans of
34 development which relate to counties or municipalities
35 within the corridor conform with the authority's
36 performance standards, as well as specifications of each,
37 if any, deviation from the performance standards.

38 (c) Within thirty days of the presentation of the
39 authority's minimum performance standards, the

- 40 relevant governmental entities shall adopt and enforce
41 such standards in the corridor.

CHAPTER 137

(S. B. 603—By Senators Harman and Felton)

[Passed March 11, 1988; in effect ninety days from passage. Approved by the Governor.]

AN ACT to reform, alter and modify the county commission of the county of Preston, so as to make the same composed of three commissioners, in all respects as provided by section thirteen, article nine of the constitution of West Virginia.

Be it enacted by the Legislature of West Virginia:

PRESTON COUNTY COMMISSION.

- §1. Declaration of legislative findings.
§2. Reformation, alteration and modification of the county commission of the county of Preston; composition; application of laws.
§3. Election of county commissioners; terms of office; exception.
§4. Submission to voters of question of reformation; alteration and modification of the county commission.
§5. Effect of result of vote on modification of the county commission.
§6. Repeal of inconsistent provisions.

§1. Declaration of legislative findings.

1 The Legislature hereby finds and declares that, by a
2 petition presented to the county commission of the
3 county of Preston, at least ten percent of the registered
4 voters of said county have requested the reformation,
5 alteration and modification of the county commission of
6 said county pursuant to the provisions of section
7 thirteen, article nine of the constitution, so as to make
8 the county commission composed of three commissioners
9 as provided by section nine, article nine of the consti-
10 tution, elected by the voters of said county and to hold
11 their office in the manner provided in section ten of said
12 article. The language of the petition therefor is set out
13 as follows:

14 "PETITION TO REFORM, ALTER AND MODIFY
15 THE TRIBUNAL IN LIEU OF THE COUNTY COM-

16 MISSION OF PRESTON COUNTY NOW COM-
17 POSED OF EIGHT (8) COMMISSIONERS ELECTED
18 BY THE VOTERS OF THE MAGISTERIAL DIS-
19 TRICT WHEREIN THE COMMISSIONER RESIDES,
20 AND TO PROVIDE FOR A COUNTY COMMISSION
21 CONSISTING OF THREE (3) COMMISSIONERS
22 ELECTED BY THE VOTERS OF PRESTON
23 COUNTY IN THE MANNER PROVIDED IN ARTI-
24 CLE IX, SECTIONS 9 AND 10 OF THE CONSTITU-
25 TION OF WEST VIRGINIA.

26 TO THE COUNTY COMMISSION OF PRESTON
27 COUNTY:

28 We, the undersigned citizens, residents and registered
29 legal voters of Preston County, West Virginia, hereby
30 petition the County Commission of Preston County
31 pursuant to Article IX, Section 13 of the Constitution of
32 West Virginia, to reform, alter and modify the tribunal
33 in lieu of County Commission of Preston County created
34 pursuant to Chapter X of the 1887 Acts of the West
35 Virginia Legislature, and to request the Legislature of
36 the State of West Virginia, at its next regular session,
37 to enact an act reforming, altering and modifying the
38 tribunal in lieu of the County Commission of Preston
39 County, and establish in lieu thereof another tribunal for
40 the transaction of the business required to be performed
41 by the tribunal now acting in lieu of the County
42 Commission of Preston County, such act to take effect
43 upon the assent of the voters of Preston County and to
44 provide for a County Commission consisting of three (3)
45 Commissioners elected by the voters of Preston County
46 in the manner provided in Article IX, Sections 9 and
47 10 of the Constitution of West Virginia."

48 The Legislature further finds and declares that, by a
49 letter dated the sixteenth day of April, one thousand
50 nine hundred eighty-seven, the county commission of the
51 county of Preston has verified that the petition is proper
52 and has requested the Legislature to so reform, alter
53 and modify said county commission, as required by the
54 provisions of section thirteen, article nine of the
55 constitution of this state. The Legislature further finds
56 and declares that it fulfills the mandatory requirements

57 of said petition and of said section thirteen of the
58 constitution by the provisions of this act.

§2. Reformation, alteration and modification of the county commission of the county of Preston; composition; application of laws.

1 That on and after the first day of January, one
2 thousand nine hundred ninety-one, the county commis-
3 sion of the county of Preston shall be composed of three
4 commissioners, and shall be in all respects such county
5 commission, with such powers, duties and responsibil-
6 ities, as is provided for under sections nine, ten and
7 eleven, article nine of the constitution of this state, and
8 all of the provisions of the constitution and general laws
9 of this state, relating to county commissions composed
10 of three commissioners shall apply to said county
11 commission.

§3. Election of county commissioners; terms of office; exception.

1 At the general election to be held in the year one
2 thousand nine hundred ninety, there shall be elected by
3 the voters of the county of Preston three commissioners
4 of said county commission, no two of whom shall be
5 residents of the same magisterial district, and county
6 commissioners shall hold their office for a term of six
7 years, except that at the first meeting of said commis-
8 sioners elected in the year one thousand nine hundred
9 ninety, they shall designate by lot, or otherwise in such
10 manner as they may determine, one of their number,
11 who shall hold his office for a term of two years, one
12 for four years and one for six years so that one shall be
13 elected every two years. If two or more persons residing
14 in the same district shall receive the greater number of
15 votes cast at any election then only the one of such
16 persons receiving the highest number shall be declared
17 elected, and the person living in another district, who
18 shall receive the next highest number of votes, shall be
19 declared elected.

§4. Submission to voters of question of reformation, alteration and modification of the county commission.

1 At the general election to be held in the year one
 2 thousand nine hundred eighty-eight, the question of
 3 assent to or rejection of the creation by reformation,
 4 alteration and modification of the county commission as
 5 is provided by this act shall be submitted to the voters
 6 of the county of Preston voting at such election. Notice
 7 of such election on the question shall be given by
 8 publication of this act in each weekly or daily newspaper
 9 as a Class II-O legal advertisement in compliance with
 10 the provisions of article three, chapter fifty-nine of the
 11 code of West Virginia, one thousand nine hundred
 12 thirty-one, as amended, in said county once in each week
 13 for two successive weeks immediately preceding said
 14 election. Said election shall be conducted and the result
 15 ascertained and declared as provided by law for general
 16 elections. The board of ballot commissioners of said
 17 county shall place upon, and at the foot of, the official
 18 ballot to be voted at the general election, under the
 19 heading "Ballot on Modification of the County Commis-
 20 sion," a summary of the purpose of such ballot and the
 21 words "For modification of the county commission" and
 22 "Against modification of the county commission," and
 23 the same shall be printed in form and content as follows:

24 "Ballot on Modification of the County Commission

25 To reform, alter and modify the County Commission
 26 of Preston County, now composed of eight commission-
 27 ers elected by the voters of the magisterial district
 28 wherein the commissioner resides, and to provide for a
 29 county commission composed of three commissioners, no
 30 two of which may reside in the same magisterial
 31 district, elected by the voters of the county at large in
 32 the manner provided in sections nine and ten of the
 33 Constitution of West Virginia.

34

35 For modification of the county commission.

36 Against modification of the county commission."

§5. Effect of result of vote on modification of the county commission.

1 If a majority of the votes cast upon the question be

2 for modification of the county commission, this act shall
3 be and remain in full force and effect; but, if a majority
4 of said votes be against modification of said county
5 commission, said act shall be void and of no further
6 force and effect.

§6. Repeal of inconsistent provisions.

1 So much and such parts of chapter ten, of the acts of
2 the Legislature of West Virginia, one thousand eight
3 hundred eighty-seven, as are inconsistent herewith, are
4 hereby repealed.

CHAPTER 138

(Com. Sub. for S. B. 326—By Senator Harman)

[Passed March 12, 1988; in effect from passage. Approved by the Governor.]

AN ACT authorizing the department of corrections to enter into a lease for the surface mining of coal on a certain parcel of land at Pruntytown correction center.

Be it enacted by the Legislature of West Virginia:

AUTHORIZATION FOR SURFACE MINING AT PRUNTYTOWN CORRECTION CENTER.

§1. Authorization for surface mining at Pruntytown Correction Center.

1 Notwithstanding any other provision of law to the
2 contrary, the commissioner of the department of
3 corrections is hereby authorized to enter into a contract
4 or lease for the extraction; removal of coal, by stripping
5 or auger methods; and reclamation of a certain parcel
6 of land consisting of approximately twenty-four and
7 sixteen one-hundredths acres situated west of U. S.
8 Route 250, lying in and generally known as the southw-
9 eastern corner of the Pruntytown correction center in the
10 courthouse district of Taylor County: *Provided*, That
11 before entering into any such contract or lease the

12 commissioner of corrections shall solicit competitive
13 bids in the same manner as required and authorized for
14 purchases under section twelve, article three, chapter
15 five-a of the code of West Virginia, one thousand nine
16 hundred thirty-one, as amended.

17 The commissioner shall award such contract or lease
18 to the highest bidder after such contract or lease has
19 been reviewed and approved by the Attorney General as
20 having complied with the requirements of this section.

21 No bid shall be accepted from a vendor who has been
22 found guilty of violating any environmental or coal mine
23 health and safety laws or reclamation laws within two
24 years prior to the date bids are solicited.

25 The contract or lease shall provide, as a minimum, the
26 following provisions:

27 (a) Compliance with all existing requirements to
28 obtain a valid surface mining permit.

29 (b) Compliance with all applicable state and federal
30 statutes and rules relating to coal mine health and safety
31 and reclamation.

32 (c) A detailed reclamation plan and schedule.

33 (d) Payment monthly to the state of no less than one
34 dollar per ton of coal extracted.

35 (e) Establishment of a performance bond in an
36 amount sufficient to cover operations and reclamation.

37 Upon completion of the contract, the department of
38 energy shall submit a report on all requirements of the
39 contract or lease to the Legislature.

40 All proceeds accruing to the state under such contract
41 or lease are hereby dedicated to the repair and alter-
42 ation of the buildings and grounds at Pruntytown
43 correction center and may be expended for these
44 provisions upon compliance with article two, chapter
45 five-a of the code of West Virginia, one thousand nine
46 hundred thirty-one, as amended.

CHAPTER 139

(H. B. 2708—By Delegates Rollins and Childers)

[Passed February 15, 1988; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, chapter one hundred forty-two, acts of the Legislature, regular session, one thousand nine hundred forty-nine, relating generally to the Tri-State Airport Authority and specifically to the powers of such authority.

Be it enacted by the Legislature of West Virginia:

That section five, chapter one hundred forty-two, acts of the Legislature, regular session, one thousand nine hundred forty-nine, be amended and reenacted to read as follows:

TRI-STATE AIRPORT AUTHORITY.

§5. Powers.

- 1 The Tri-State Airport Authority is hereby given
- 2 power and authority as follows:
- 3 (1) To make and adopt all necessary bylaws, rules and
- 4 regulations for its organization and operations not
- 5 inconsistent with law;
- 6 (2) To increase the number of members of the
- 7 authority;
- 8 (3) To elect its own officers, to appoint committees
- 9 and to employ and fix the compensation for personnel
- 10 necessary for its operation;
- 11 (4) To enter into contracts with any person, firm or
- 12 corporation, and generally to do anything necessary for
- 13 the purpose of acquiring, equipping, constructing,
- 14 maintaining and operating an airport as aforesaid;
- 15 (5) To delegate any authority given to it by law to any
- 16 of its officers, committees, agents or employees;
- 17 (6) To apply for, receive and use grants in aid,
- 18 donations and contributions from any sources;
- 19 (7) To take or acquire lands by purchase, holding title

20 thereto in its own name; or failing to agree with the
21 owner or owners thereof the authority may exercise the
22 power of eminent domain in the manner provided for
23 condemnation proceedings by chapter fifty-four of the
24 code of West Virginia;

25 (8) To purchase, own, hold, sell and dispose of
26 personal property and to sell and dispose of any real
27 estate which it may have acquired and may determine
28 not to be needed for its purposes;

29 (9) To borrow money;

30 (10) To raise funds by the issuance and sale of revenue
31 bonds in the manner provided by the applicable
32 provisions of article four-a, chapter eight of the code of
33 West Virginia, it being hereby expressly provided that
34 the Tri-State Airport Authority is a "municipal author-
35 ity" within the definition of that term as used in said
36 article four-a, chapter eight of the code;

37 (11) To extend its funds in the execution of the powers
38 and authority hereby given; and

39 (12) To retain to itself or to grant to others exclusive
40 rights to sell, distribute, supply or otherwise provide
41 goods or services, limited only by applicable contractual
42 commitments.

CHAPTER 140

(H. B. 4267—By Delegates Burk and Criss)

[Passed March 11, 1988; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections five and twelve, chapter one hundred fifty-six of the acts of the Legislature, regular session, one thousand nine hundred eighty-seven, relating to levies for support, maintenance and operation of the Parkersburg and Wood County public library and the Vienna public library, both located in Wood County, West Virginia; and increasing the amount of levy authorized.

Be it enacted by the Legislature of West Virginia:

PARKERSBURG AND WOOD COUNTY PUBLIC LIBRARY.

§5. Levies for support, maintenance and operation.

§12. Levies for support, maintenance and operation.

§5. Levies for support, maintenance and operation.

1 In order to provide for the support, maintenance, and
2 operations of the Parkersburg and Wood County public
3 library and any branches thereof, the said supporting
4 governing authorities shall, upon written request by the
5 board of directors of the public library, levy annually
6 within the respective taxing districts of the governing
7 authorities, on each one hundred dollars of assessed
8 valuation of the respective classes of property taxable in
9 the area served by it according to the last assessment
10 for state and county purposes, up to the following
11 amounts beginning with the fiscal year beginning on the
12 first day of July, one thousand nine hundred eighty-
13 seven:

14 (a) The county commission of Wood County, for the
15 first year and annually thereafter not to exceed:

16 Class I, fifty hundredths cents;

17 Class II, seventy hundredths cents; and

18 Class III and IV, one cent.

19 (b) The board of education of the county of Wood for
20 the first year and annually thereafter not to exceed:

21 Class I, fifty hundredths cents;

22 Class II, ninety hundredths cents; and

23 Class III and IV, one and seventy hundredths cents.

24 (c) The city of Parkersburg for the first year and
25 annually thereafter not to exceed:

26 Class I, ninety hundredths cents;

27 Class II, one and ninety hundredths cents; and

28 Class III and IV, two and ninety hundredths cents.

29 Each year the board of directors shall request each
30 of the three supporting authorities to levy within the

31 rates prescribed above, at the rates specified by the
32 board, on each one hundred dollars of assessed valuation
33 of property of the same class; and each of the three
34 supporting authorities shall levy at the rates requested
35 by the aforesaid board. In addition, each supporting
36 authority may contribute to the public library any other
37 general or specific revenues or excess levies.

§12. Levies for support, maintenance and operation.

1 In order to provide for the support, maintenance and
2 operations of the Vienna public library, the said
3 supporting governing authorities shall, upon written
4 request by the board of directors of the public library,
5 levy annually within the respective taxing districts of
6 the governing authorities, on each one hundred dollars
7 of assessed valuation of the respective classes of property
8 taxable in the area served by it according to the last
9 assessment for state and county purposes, up to the
10 following amounts beginning with the fiscal year
11 beginning on the first day of July, one thousand nine
12 hundred eighty-seven:

13 (a) The county commission of Wood County, for the
14 first year and annually thereafter not to exceed:

15 Class I, ten hundredths cents;

16 Class II, twenty hundredths cents; and

17 Class III and IV, twenty hundredths cents.

18 (b) The board of education of the county of Wood for
19 the first year and annually thereafter not to exceed:

20 Class I, ten hundredths cents;

21 Class II, twenty hundredths cents; and

22 Class III and IV, twenty hundredths cents.

23 (c) The city of Vienna for the first year and annually
24 thereafter not to exceed:

25 Class I, four cents;

26 Class II, six cents; and

27 Class III and IV, nine cents.

28 Each year the board of directors shall request each
29 of the three supporting authorities to levy within the
30 rates prescribed above, at the rates specified by the
31 board, on each one hundred dollars of assessed valuation
32 of property of the same class; and each of the three
33 supporting authorities shall levy at the rates requested
34 by the aforesaid board. In addition, each supporting
35 authority may contribute to the public library any other
36 general or specific revenues or excess levies.

RESOLUTIONS

(Only resolutions of general interest are included herein.)

HOUSE CONCURRENT RESOLUTION 4

(By Delegates Childers and Given)

[Adopted March 12, 1988.]

Requesting the West Virginia congressional delegation to support legislation correcting the inequities in the Social Security notch year benefit calculation.

WHEREAS, Under the present Social Security notch year benefit calculation, those persons born between the years 1917-1921 are receiving a substantially smaller monthly social security benefit than those persons born before 1917 and after 1921; and

WHEREAS, The Social Security notch year benefit calculation is adversely affecting large numbers of West Virginians born between the years 1917-1921; and

WHEREAS, Large numbers of World War II veterans were born between the years 1917-1921 and are thus adversely affected; and

WHEREAS, It is the Legislature's desire that such inequities resulting from the Social Security notch year benefit calculation be corrected; therefore, be it

Resolved by the Legislature of West Virginia:

That the West Virginia congressional delegation is hereby requested to support legislation to correct inequities in the Social Security notch year benefit calculation; and, be it

Further Resolved, That a copy of this resolution be sent to the members of the West Virginia congressional delegation.

HOUSE JOINT RESOLUTION 6

(By Delegate McKinley)

[Adopted March 10, 1988.]

Ratifying the proposed amendment to the Constitution of the

United States relative to raising salaries for members of Congress.

WHEREAS, The First Congress of the United States of America passed a Bill of Rights containing twelve constitutional amendments and sent these amendments to the states for ratification; and

WHEREAS, Ten of these amendments have become part of the United States Constitution but one that has not as yet been ratified and for which no deadline for ratification was imposed, reads as follows:

“Article the second . . . No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened.”

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 Archivist of the United States, 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.

HOUSE RESOLUTION 2

(By Mr. Speaker, Mr. Chambers, and Delegate Swann)

[Adopted January 15, 1988.]

Amending the Rules of the House of Delegates, by adding thereto a new Rule 92a, relating to bill carryover.

Resolved by the House of Delegates:

That the Rules of the House of Delegates be amended by adding thereto a new rule, designated House Rule 92a, to read

as follows:

Bill Carryover

92a. Any bill or joint resolution pending in the House at the time of *sine die* adjournment of the First Regular Session of a Legislature, or extended First Regular Session thereof, which has not been rejected, laid on the table or postponed indefinitely by the House, shall carry over in its original form to the Second Regular Session only at the request of the sponsor or cosponsors of the bill or resolution, such request to be made to the Clerk of the House not later than ten days prior to the commencement of the session.

Any such bill or joint resolution shall retain its original number and shall be deemed to be reintroduced on the first day of the Second Regular Session and shall, except as otherwise directed by the Speaker, be treated as referred to the committee or committees to which it was originally referred.

In the case of any house bill or joint resolution which has been passed or adopted by the House, such bill or resolution shall likewise be deemed to be reintroduced and referred, except as otherwise directed by the Speaker, to the committee or committees to which it was originally referred.

This rule shall not apply to any bill or joint resolution solely sponsored by a former member, to supplemental appropriation or budget bills, to bills which promulgate legislative rules, to bills which expire or continue state agencies pursuant to the West Virginia Sunset Law, to bills of a local nature, or to any bill or joint resolution introduced during any extraordinary session.

HOUSE RESOLUTION 13

(By Delegates Phillips and White)

[Adopted February 12, 1988.]

Amending the Rules of the House of Delegates, relating to introduction of bills by request.

Resolved by the House of Delegates:

That the Standing Rules of the House of Delegates be

amended by adding thereto a new rule as follows:

Introduction of Bills by Request

94a. A bill may be introduced by request. All bills introduced by request shall bear the words "by request," following the designation of the name or names of the bill sponsor or sponsors.

COMMITTEE SUBSTITUTE
FOR
HOUSE RESOLUTION 14
(By Delegate Louisos)

[Adopted February 12, 1988.]

Amending House Rule No. 95a relating to Fiscal Notes.

Resolved by the House of Delegates:

That House Rule No. 95a be amended as follows:

Fiscal Notes

95a. Prior to consideration, by the House or by any committee thereof, of any bill which either increases or decreases the revenue or fiscal liability of the State or any county, municipality or other subdivision of the State, or in any manner changes or modifies any existing tax or rate of taxation, such bill shall have attached thereto a fiscal note, which "fiscal note" shall conform to the requirements as to form and content prescribed by the "Fiscal Note Manual", prepared and adopted by the Committee on Rules to govern preparation of fiscal notes to bills introduced in the House of Delegates.

In the case of a bill which either increases or decreases the revenue or fiscal liability of the State or any county, municipality or other subdivision of the State, nothing herein shall prohibit consideration of such a bill if, in the opinion of the chairman of the committee to which the bill has been referred, or in the opinion of the Speaker, a reasonable time has elapsed since a fiscal note was requested and no fiscal note or an incomplete fiscal note has been furnished.

It shall be the responsibility of the legislator introducing a bill to obtain such note when required. Such note shall be

attached to the bill when filed for introduction, if at all possible, and shall accompany any bill requiring such note when the same is reported from committee.

A legislator introducing a bill requiring an increase in the revenue or fiscal liability of the State or any county, municipality or other subdivision of the State, should have attached thereto the legislator's specific plan, idea, method or manner for generating the revenue needed or required by the proposed bill.

The jackets of all measures with fiscal notes attached or requiring such notes shall have the words "Fiscal Note" or the initials "FN" clearly stamped or endorsed thereon.

Rule 95a, as amended herein, shall not take effect until January 15, 1989.

No act shall be void or voidable for noncompliance with this rule.

SENATE CONCURRENT RESOLUTION 1

(By Senators Tonkovich, Mr. President, Boettner and Harman)

[Adopted January 15, 1988.]

Repealing Joint Rule No. 30 of the Senate and House of Delegates, relating to bill carryover.

Resolved by the Legislature of West Virginia:

That Joint Rule No. 30 of the Senate and House of Delegates is hereby repealed.

SENATE CONCURRENT RESOLUTION 2

(By Senators Tonkovich, Mr. President, Boettner and Harman)

[Adopted January 15, 1988.]

Amending Joint Rule No. 5 of the Senate and House of Delegates, relating to Bill Processing.

Resolved by the Legislature of West Virginia:

That Joint Rule No. 5 of the Senate and House of Delegates be amended to read as follows:

Bill Processing

5. (a) In every regular session beginning after the effective date of this rule, legislation recommended by the Governor or by executive departments or agencies is requested to be filed in the respective Clerks' offices and a copy sent to Legislative Services, no later than the tenth day of each regular session of a Legislature.

(b) No bill or joint resolution shall be considered on third reading in its house of origin after the fifty-third day, unless authorization shall be granted by a concurrent resolution adopted by a two-thirds vote of the members present of both houses: *Provided*, That the budget bill, or any salary or supplementary appropriation bills may be considered at any time.

(c) This rule may be suspended by adopting a concurrent resolution approved by a two-thirds majority of those present and voting in each house. A house desiring to suspend this rule may adopt a concurrent resolution and proceed as if the concurrent resolution had been adopted in both houses and the rule suspended. Any bill or joint resolution passed pursuant to such concurrent resolution may be communicated to the other house with the concurrent resolution or at any time after the concurrent resolution has been communicated to the other house. The other house may proceed to consider such bill or joint resolution only after adopting the concurrent resolution.

The provisions of this rule shall not apply to any extended regular session or to any extraordinary session.

SENATE CONCURRENT RESOLUTION 6

(By Senators Tucker, Tonkovich, Mr. President, Jarrell,
Sharpe, Fanning and Brackenrich)

[Adopted March 8, 1988.]

Urging the West Virginia congressional delegation to oppose all legislation which bans the private possession of firearms.

WHEREAS, The Second Amendment to the United States Constitution guarantees each law-abiding individual the right to keep and bear all types of firearms; and

WHEREAS, Article three, section twenty-two of the West Virginia Constitution, which was approved by 83.6 percent of the good citizens of West Virginia, plainly expresses the view of the State of West Virginia on the right to keep and bear arms; and

WHEREAS, There is currently legislation pending in the United States Senate and the House of Representatives which would ban the private possession of certain types of firearms; and

WHEREAS, A ban on the private possession of firearms cannot and will not prevent crime; and

WHEREAS, A congressional ban on the private possession of firearms would deprive law-abiding individuals of firearms useful for protection of self, family, home and state, and for hunting and recreation; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature of West Virginia urges all members of the West Virginia congressional delegation to oppose actively all legislation which bans the private possession of any type of firearm.

SENATE CONCURRENT RESOLUTION 27
(By Senators Whitacre, Lucht, Harman and Felton)

[Adopted March 10, 1988.]

Directing the West Virginia Department of Natural Resources to do a study of deer crop damage.

WHEREAS, Laws may need to be changed to control the overabundance of deer crop damage in West Virginia; therefore, be it

Resolved by the Legislature of West Virginia:

That the West Virginia Department of Natural Resources is hereby directed to do a study to determine if laws need to be changed to control the overabundance of deer crop damage in West Virginia.

SENATE JOINT RESOLUTION 17

(Originating in the Senate Committee on Education)

[Adopted March 12, 1988.]

Proposing an amendment to the Constitution of the State of West Virginia, amending section eight, article ten thereof, relating to increasing the amount of bonded indebtedness a county, city, school district or municipal corporation may incur; 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-eight, which proposed amendment is that section eight, article ten thereof be amended to read as follows:

ARTICLE X. TAXATION AND FINANCE.**§8. Bonded indebtedness of counties, etc.**

1 No county, city, school district or municipal corpora-
2 tion, except in cases where such corporations have
3 already authorized their bonds to be issued, shall
4 hereafter be allowed to become indebted, in any manner,
5 or for any purpose to an amount, including existing
6 indebtedness, in the aggregate, exceeding ten per
7 centum on the value of the taxable property therein to
8 be ascertained by the last assessment for State and
9 county taxes, previous to the incurring of such indebted-
10 ness; nor without, at the same time, providing for the
11 collection of a direct annual tax on all taxable property
12 therein, in the ratio, as between the several classes or
13 types of such taxable property, specified in section one
14 of this article, separate and apart from and in addition
15 to all other taxes for all other purposes, sufficient to pay,
16 annually, the interest on such debt, and the principal
17 thereof, within, and not exceeding thirty-four years.
18 Such tax, in an amount sufficient to pay the interest and
19 principal on bonds issued by any school district not
20 exceeding in the aggregate three per centum of such

21 assessed value, may be levied outside the limits fixed by
 22 section one of this article: *Provided*, That no debt shall
 23 be contracted under this section, unless all questions
 24 connected with the same, shall have been first submitted
 25 to a vote of the people, and have received three-fifths of
 26 all the votes cast for and against the same.

27 *Resolved further*, That in accordance with the provi-
 28 sions of article eleven, chapter three of the code of West
 29 Virginia, one thousand nine hundred thirty-one, as
 30 amended, such proposed amendment is hereby num-
 31 bered "Amendment No. 1 or as to be designated by the
 32 Secretary of State" and designated as the "Bond
 33 Enhancement Amendment" and the purpose of the
 34 proposed amendment is summarized as follows: "To
 35 increase the amount of bonded indebtedness which a
 36 county, city, school district or municipal corporation
 37 may incur from five per centum to ten per centum on
 38 the value of taxable property."

SENATE RESOLUTION 14

(By Senators Brackenrich and Chernenko)

[Adopted February 4, 1988.]

Designating U. S. Route 60 from White Sulphur Springs,
 Greenbrier County, through Greenbrier and Fayette
 Counties, to Port Amherst, Kanawha County, as a scenic
 highway.

WHEREAS, U. S. Route 60 has long served as a primary east-
 west highway in southern West Virginia; and

WHEREAS, U. S. Route 60 traverses some of the most scenic
 areas in the United States of America; and

WHEREAS, All users of West Virginia highways and espe-
 cially the users of U. S. Route 60 should be encouraged to
 observe and protect the extraordinary scenic beauty of this
 State; therefore, be it

Resolved by the Senate:

That U. S. Route 60 from White Sulphur Springs, Green-
 brier County, through Greenbrier and Fayette Counties, to Port

Amherst, Kanawha County, be hereby designated the "East-West Scenic Highway" and appropriate markers to so indicate and designate the route be placed and maintained by the Department of Highways; and, be it

Resolved further, That the Clerk is hereby directed to forward a copy of this resolution to the Commissioner of the West Virginia Department of Highways, to the County Commissioners of the counties of Greenbrier and Fayette, and to each of the Mayors of the cities through which such designated scenic route will traverse.

SENATE RESOLUTION 17

(By Senators Kaufman and Holliday)

[Adopted February 22, 1988.]

Providing for tribute to be paid to the countless Native Americans or "real Indians" living in the United States and West Virginia who are struggling to maintain their identity and culture, by setting aside an "American Indian Day" in West Virginia.

WHEREAS, Only a small percentage of our entire population has been taught in public schools about the great civilizations of our Native Americans, and too few Americans know that much of our knowledge about botanical medicines and our early pharmacopeia, among other important sciences, came from the American Indian; and

WHEREAS, Americans should be aware that many Native Americans are living in substandard, indecent and inhumane conditions imposed to some degree upon them by the people they once fed, medicated and nurtured, led safely through the wilderness and fought alongside through several wars; and

WHEREAS, Through immense courage, hard work and persistence, some Native Americans have broken free from this inherited poverty, frustration and degradation to help turn the eyes of the world upon the tragedy of the American Indian; and

WHEREAS, Native Americans or ancestors of Native Americans live in all parts of West Virginia and are contributing members of our technological and agrarian society; and

WHEREAS, Many rivers and streams are named for or were named by our Native Americans in West Virginia such as Cheat River, Monongahela River, New River, Gauley River and the Kanawha River; therefore, be it

Resolved by the Senate:

That the renaissance of the Native American is inevitable in West Virginia and in America and we believe it will be for the greater good of the country and the world; and, be it

Further resolved, That to aid in the education of the general public, and especially West Virginians because of our Native American heritage in this State; to commemorate the role the Native American has had in the overall state and national development; and to recognize that the Native American has a proper and past due place in the greatness and documented history of the United States and in West Virginia, we hereby set aside a special day for this purpose, September 18, 1988, and it shall be called "American Indian Day"; and, be it

Further resolved, That the Clerk is hereby directed to forward a copy of this resolution to Linda A. Karus, Arthur Garretson and Wes Holden, three West Virginians who have contributed significantly to our knowledge and appreciation for this beautiful heritage.

SENATE RESOLUTION 23

(By Senators Kaufman and Boettner)

[Adopted March 11, 1988.]

Supporting Funding of the National Childhood Vaccine Injury Compensation Law to Compensate Children Vaccine Injured Prior to October, 1988.

WHEREAS, The safety of the pertussis vaccine against whooping cough is the topic of current national debate and, while reasonable minds differ on more effective treatment, opponents and proponents both agree that a safer and more effective vaccine is needed; and

WHEREAS, The pertussis vaccine is known to have caused seizures, brain damage, mental retardation, deafness, blindness, muscle paralysis and even death in young children; and

WHEREAS, It is important that parents be informed about diseases and vaccines against these diseases, it is equally important that parents be informed about adverse reactions to vaccines so that "high risk children" can be identified and screened out of the vaccination process; therefore, be it

Resolved by the Senate:

That funding of the National Childhood Vaccine Injury Compensation Law passed by the United States Congress in 1986 which includes compensation for children injured by childhood vaccines prior to October, 1988, is hereby supported; and, be it

Further resolved, That the Clerk is hereby directed to forward copies of this resolution to each of the six members of the Congressional Delegation from West Virginia, to the President of the United States, to the Vice President of the United States and to the Speaker of the U. S. House of Representatives.



LEGISLATURE OF WEST VIRGINIA

ACTS

FIRST EXTRAORDINARY SESSION, 1988

CHAPTER 1

(S. B. 4—By Senators Tonkovich, Mr. President,
by request, and Harman)

[Passed March 22, 1988; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, creating a new special account and authorizing deposits, withdrawals, disbursements and transfers, including repayment transfers into and from such special account, all pursuant to section eight-a, article four-b, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, for Governor's Office—Pneumoconiosis Fund Transfers, Account No. 8428-18, supplementing chapter one hundred twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-seven, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That Account No. 8428-18, Governor's Office—Pneumoconiosis Fund Transfers, a special account be created, supplementing chapter one hundred twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-seven, known as the budget bill, as follows:

- 1 TITLE 2. APPROPRIATIONS.
- 2 Section 3. Appropriations from other funds.
- 3 112b—Governor's Office—
- 4 Pneumoconiosis Fund Transfers

5 (WV Code Chapter 23)

6 Acct. No. 8428-18

7 TO BE PAID FROM SPECIAL ACCOUNT

8 Authority is hereby granted for the making of all
9 deposits, withdrawals, disbursements or transfers,
10 including transfers from the state general revenue fund
11 into this special account and transfer repayments from
12 this special account pursuant to section eight-a, article
13 four-b, chapter twenty-three of the code of West
14 Virginia, one thousand nine hundred thirty-one, as
15 amended.

16 The purpose of this supplementary appropriation bill
17 is to supplement the budget act of the state for current
18 fiscal year 1987-88 by creating a new special account
19 therein for the purpose of granting transfer and
20 spending authority and ultimate repayment to the
21 pneumoconiosis fund and for the purpose of lawfully
22 providing for all required deposits, withdrawals,
23 disbursements or transfers in respect of public moneys
24 transferred from such fund pursuant to the above
25 legislation. The budgetary authorization set forth herein
26 shall be available immediately upon the effective date
27 of this bill.

CHAPTER 2

(H. B. 101—By Mr. Speaker, Mr. Chambers, and Delegate Swann,
by request of the Executive)

[Passed March 22, 1988; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine-b, article six, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to extending the time for final repayment of certain transfers from the board of investments consolidated fund.

Be it enacted by the Legislature of West Virginia:

That section nine-b, article six, 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 6. WEST VIRGINIA BOARD OF INVESTMENTS.

§12-6-9b. Transfers to the state; maximum amount of transfer authorization; purposes for use of moneys; terms, conditions, and repayment, with interest; creation of special account in state treasury.

1 Whenever the governor determines that the general
2 revenues available for expenditure are insufficient for
3 timely payments for government operations, the board
4 shall transfer money from the consolidated fund and
5 that portion thereof designated "state account" and
6 involving only state funds, to the special account created
7 by this section in the state treasury, in the amounts
8 determined by the governor to be sufficient and
9 necessary to meet such payments. The total of the
10 transfers may not exceed fifty million dollars, and the
11 transfers are subject to the payment of interest equal to
12 the interest rate earned by the consolidated fund on the
13 day of each transfer for the period of each transfer until
14 repayment.

15 Any such transfer may be used only for the following
16 purposes:

17 (1) Payments of state aid to public schools; and

18 (2) Payments to or from the public employees insur-
19 ance board for claims.

20 The Legislature finds and declares that moneys
21 transferred pursuant to this section can be repaid by the
22 end of this current fiscal year by (i) the Legislature
23 enacting measures expiring and reducing appropri-
24 ations of spending units for the current fiscal year 1987-
25 88; (ii) the governor causing additional money to expire
26 through executive action in the current fiscal year,
27 including spending reductions which he may institute
28 under the authority granted him and by one of the
29 methods in article two, chapter five-a of this code; and
30 (iii) improved and deferred receipts of general revenues

31 in the remainder of the current fiscal year enabling the
32 state to meet the governor's revenue estimate.
33 Repayment of transfers are therefore to be made by the
34 governor from such expired moneys and deferred
35 receipts of general revenues relating to the current
36 fiscal year and no later than the thirty-first day of July,
37 one thousand nine hundred eighty-eight, when all
38 reconciliations of receipts and expenses in respect of
39 fiscal year 1987-88 have been made, through transfer
40 from the state general revenue fund to the special
41 account created herein and thence with transfer from
42 such special account to the consolidated fund: *Provided,*
43 That at least five million dollars of such transfers shall
44 be repaid no later than the thirtieth day of June, one
45 thousand nine hundred eighty-eight.

46 The governor is hereby granted new authority and a
47 new method, in addition to the authority and methods
48 granted him in article two, chapter five-a of this code,
49 in respect of instituting spending reductions, to provide
50 for and institute reductions of expenditures by spending
51 units, but excluding therefrom any reductions in respect
52 of public schools, higher education, the public employees
53 insurance board, or medicaid; to accomplish full
54 repayment of transfers to the consolidated fund.

55 If sufficient revenues are nevertheless not received
56 during this fiscal year to meet such revenue estimate
57 and to enable full repayment of all transfers by the end
58 of this fiscal year, the governor shall, if he has not
59 already done so, place into effect required reductions of
60 expenditures by spending units from the general
61 revenue fund by one of the methods hereinbefore
62 authorized and set forth, and with such spending
63 reductions to be placed in effect in any event not later
64 than the thirty-first day of July, one thousand nine
65 hundred eighty-eight (the close of the period for
66 reconciliation of receipts and expenses of fiscal year
67 1987-88). Full repayment of any and all transfers shall
68 then be made by the close of fiscal year 1988-89, on the
69 thirtieth day of June, one thousand nine hundred eighty-
70 nine, by the governor. The governor shall submit his
71 schedule for repayment, both as to sources and amounts,

72 to the board of investments and a copy thereof at the
73 same time to the legislative auditor.

74 Any repayment of transfers shall not be deemed to
75 renew, restore or increase in any way the maximum
76 amount of fifty million dollars of transfers herein
77 authorized.

78 There is hereby created in the state treasury a special
79 account for the deposits, withdrawals and repayments
80 transferred and made pursuant to this section and to be
81 used in connection with invoking the applicability of the
82 special fund doctrine in respect of budgetary activities
83 involving more than one fiscal year.

84 The authority of the board to make and of the
85 governor to request transfers pursuant to this section
86 shall expire on the thirtieth day of June, one thousand
87 nine hundred eighty-eight.

CHAPTER 3

(H. B. 102—By Mr. Speaker, Mr. Chambers, and Delegate Swann,
by request of the Executive)

[Passed March 22, 1988; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section nine, article thirteen-a of said chapter eleven; and to amend and reenact section six, article thirteen-b of said chapter eleven, all relating to the time for paying installments of business and occupation, severance and telecommunications taxes; and accelerating from June thirtieth to June fifteenth the due date of installment payments due during the month of June each year.

Be it enacted by the Legislature of West Virginia:

That section four, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section nine, article

thirteen-a of said chapter eleven be amended and reenacted; and that section six, article thirteen-b of said chapter eleven be amended and reenacted, all to read as follows:

Article

13. **Computation of tax; payment.**

13A. **Severance Taxes.**

13B. **Telecommunications Tax.**

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-4. Computation of tax; payment.

1 The taxes levied hereunder shall be due and payable
2 as follows:

3 (a) For taxpayers whose estimated tax under this
4 article exceeds one thousand dollars per month, the tax
5 shall be due and payable in monthly installments on or
6 before the last day of the month following the month in
7 which the tax accrued. Each such taxpayer shall, on or
8 before the last day of each month, make out an estimate
9 of the tax for which he is liable for the preceding month,
10 sign the same and mail it together with a remittance,
11 in the form prescribed by the tax commissioner, of the
12 amount of tax to the office of the commissioner:
13 *Provided*, That the installment payment otherwise due
14 under this subdivision on or before the thirtieth day of
15 June each year shall be remitted to the tax commis-
16 sioner on or before the fifteenth day of June each year,
17 beginning June fifteenth, one thousand nine hundred
18 eighty-eight. In estimating the amount of tax due for
19 each month, the taxpayer may deduct one twelfth of any
20 applicable tax credits allowable for the taxable year and
21 one twelfth of the total exemption allowed for such year.

22 (b) For taxpayers whose estimated tax under this
23 article does not exceed one thousand dollars per month,
24 the tax shall be due and payable in quarterly install-
25 ments within one month from the expiration of each
26 quarter in which the tax accrued. Each such taxpayer
27 shall, within one month from the expiration of each
28 quarter, make out an estimate of the tax for which he
29 is liable for such quarter, sign the same and mail it
30 together with a remittance, in the form prescribed by
31 the tax commissioner, of the amount of tax to the office

32 of the commissioner. In estimating the amount of tax
33 due for each quarter, the taxpayer may deduct one
34 fourth of any applicable tax credits allowable for the
35 taxable year and one fourth of the total exemption
36 allowed for such year.

37 (c) When the total tax for which any person is liable
38 under this article does not exceed two hundred dollars
39 in any year, the taxpayer may pay the same quarterly
40 as aforesaid, or, with the consent in writing of the tax
41 commissioner, at the end of the month next following the
42 close of the tax year.

43 (d) The above provisions of this section notwithstand-
44 ing, the tax commissioner, if he deems it necessary to
45 ensure payment of the tax, may require the return and
46 payment under this section for periods of shorter
47 duration than those prescribed above.

ARTICLE 13A. SEVERANCE TAXES.

§11-13A-9. Periodic installment payments of tax.

1 (a) *General rule.* — Taxes levied under this article
2 shall be due and payable in periodic installments as
3 follows:

4 (1) *Tax of more than \$1,000 per month.* — For
5 taxpayers whose estimated tax liability under this
6 article exceeds one thousand dollars per month, the tax
7 shall be due and payable in monthly installments on or
8 before the last day of the month following the month in
9 which the tax accrued: *Provided*, That the installment
10 payment otherwise due under this subdivision on or
11 before the thirtieth day of June each year shall be
12 remitted to the tax commissioner on or before the
13 fifteenth day of June each year, beginning June
14 fifteenth, one thousand nine hundred eighty-eight.

15 (A) Each such taxpayer shall, on or before the last
16 day of each month, make out an estimate of the tax for
17 which the taxpayer is liable for the preceding month,
18 sign the same and mail it together with a remittance,
19 in the form prescribed by the tax commissioner, of the
20 amount of tax due to the office of the tax commissioner:
21 *Provided*, That the installment payment otherwise due

22 under this paragraph on or before the thirtieth day of
23 June each year shall be remitted to the tax commis-
24 sioner on or before the fifteenth day of June, beginning
25 June fifteenth, one thousand nine hundred eighty-eight.

26 (B) In estimating the amount of tax due for each
27 month, the taxpayer may deduct one twelfth of any
28 applicable tax credits allowable for the taxable year,
29 and one twelfth of any annual exemption allowed for
30 such year.

31 (2) *Tax of \$1,000 per month or less.* — For taxpayers
32 whose estimated tax liability under this article is one
33 thousand dollars per month or less, the tax shall be due
34 and payable in quarterly installments on or before the
35 last day of the month following the quarter in which the
36 tax accrued:

37 (A) Each such taxpayer shall, on or before the last
38 day of the fourth, seventh and tenth months of the
39 taxable year, make out an estimate of the tax for which
40 the taxpayer is liable for the preceding quarter, sign the
41 same and mail it together with a remittance, in the form
42 prescribed by the tax commissioner, of the amount of
43 tax due to the office of the tax commissioner.

44 (B) In estimating the amount of tax due for each
45 quarter, the taxpayer may deduct one fourth of any
46 applicable tax credits allowable for the taxable year,
47 and one fourth of any annual exemption allowed for such
48 year.

49 (b) *Exception.* — Notwithstanding the provisions of
50 subsection (a) of this section, the tax commissioner, if he
51 deems it necessary to ensure payment of the tax, may
52 require the return and payment under this section for
53 periods of shorter duration than those prescribed in
54 subsection (a) of this section.

ARTICLE 13B. TELECOMMUNICATIONS TAX.

§11-13B-6. Periodic installment payments of tax.

1 (a) *General rule.* — Taxes levied under this article
2 shall be due and payable in periodic installments as
3 follows:

4 (1) *Tax of more than \$1,000 per month.* — For
5 taxpayers whose estimated tax liability under this
6 article exceeds one thousand dollars per month, the tax
7 shall be due and payable in monthly installments on or
8 before the last day of the month following the month in
9 which the tax accrued: *Provided,* That the installment
10 payment otherwise due under this subdivision on or
11 before the thirtieth day of June each year shall be
12 remitted to the tax commissioner on or before the
13 fifteenth day of June each year, beginning June
14 fifteenth, one thousand nine hundred eighty-eight.

15 (A) Each such taxpayer shall, on or before the last
16 day of each month, make out an estimate of the tax for
17 which the taxpayer is liable for the preceding month,
18 sign the same and mail it together with a remittance,
19 in the form prescribed by the tax commissioner, of the
20 amount of tax due to the office of the tax commissioner:
21 *Provided,* That the installment payment otherwise due
22 under this paragraph on or before the thirtieth day of
23 June each year shall be remitted to the tax commis-
24 sioner on or before the fifteenth day of June each year,
25 beginning June fifteenth, one thousand nine hundred
26 eighty-eight.

27 (B) In estimating the amount of tax due for each
28 month, the taxpayer may deduct one twelfth of any
29 applicable tax credits allowable for the taxable year and
30 one twelfth of any annual exemption allowed for such
31 year.

32 (2) *Tax of \$1,000 per month or less.* — For taxpayers
33 whose estimated tax liability under this article is one
34 thousand dollars per month or less, the tax shall be due
35 and payable in quarterly installments on or before the
36 last day of the month following the quarter in which the
37 tax accrued.

38 (A) Each such taxpayer shall, on or before the last
39 day of the fourth, seventh and tenth months of the
40 taxable year, make out an estimate of the tax for which
41 the taxpayer is liable for the preceding quarter, sign the
42 same and mail it together with a remittance, in the form
43 prescribed by the tax commissioner, of the amount of

44 the tax due to the office of the tax commissioner.

45 (B) In estimating the amount of tax due for each
46 quarter, the taxpayer may deduct one fourth of any
47 applicable tax credits allowable for the taxable year and
48 one fourth of any annual exemption allowed for such
49 year.

50 (b) *Exception.* — Notwithstanding the provisions of
51 subsection (a) of this section, the tax commissioner, if he
52 deems it necessary to ensure payment of the tax, may
53 require the return and payment under this section for
54 periods of shorter duration than those prescribed in
55 subsection (a) of this section.

CHAPTER 4

(S. B. 3—By Senators Tonkovich, Mr. President, by request, and Harman)

[Passed March 22, 1988; in effect 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 three-a; to amend and reenact section two, article fifteen-a of said chapter eleven; and to amend article four-b, chapter twenty-three of said code by adding thereto a new section, designated section eight-a, all relating to increasing state revenues, cash flow, money transfers and repayments; authorizing transfers from coal-workers' pneumoconiosis fund upon request of the governor and as needed for timely payment for government operations; specifying the maximum amount of transfer authorization and purpose for which such moneys as transferred may be disbursed and expended; providing terms and conditions for repayment of all such transfers, including interest; specifying that the rate of premiums to be paid for coverage by the coal-workers' pneumoconiosis fund shall be determined with like effect as if such transfers had not taken place; creating a special account in the state treasury for activities of deposit, withdrawal and repayment

transfers and for invoking applicability of the special fund doctrine with respect to budget activities beyond one fiscal year for casual debt; providing for temporary increase in the rates of the consumers sales tax and complementary use tax laws for specified period, with reversion thereafter to prior rates, to enhance revenue receipts, cash flow and repayment transfers; exclusions from temporary rate increases; requiring portion of tax receipts to be allocated and directed by tax commissioner into special accounts for repayment of coal-workers pneumoconiosis fund debt, payable over five-fiscal-year period, and other portion to be allocated and directed for payment of public employees health insurance claims; and specifying effective dates.

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 three-a; that section two, article fifteen-a of said chapter eleven be amended and reenacted; and that article four-b, chapter twenty-three of said code be amended by adding thereto a new section, designated section eight-a, all to read as follows:

Chapter

- 11. Taxation.
- 23. Workers' Compensation.

CHAPTER 11. TAXATION.

Article

- 15. Consumers Sales Tax.
- 15A. Use Tax.

ARTICLE 15. CONSUMERS SALES TAX.

§11-15-3a. Temporary one cent increase in rate of tax for period beginning June 1, 1988, and ending June 30, 1989; exclusions from increase; portion of taxes required to be allocated and directed by tax commissioner into special accounts for repayment of pneumoconiosis fund debt and for payment of public employees health insurance claims.

1 For the privilege of selling tangible personal property
2 or dispensing certain selected services defined in this
3 article, the vendor shall collect from the purchaser the
4 tax as provided under this article and shall pay the
5 amount of tax to the tax commissioner in accordance
6 with the provisions of this article.

7 (a) Beginning on the first day of June, one thousand
8 nine hundred eighty-eight, and ending after the thirtieth
9 day of June, one thousand nine hundred eighty-
10 nine, the general consumers sales and service tax
11 imposed by this article shall be at the rate of six cents
12 on the dollar of sales, excluding gasoline and special fuel
13 sales, which remain taxable at the rate in section three,
14 and excluding sales of mobile homes, which remain
15 taxable at the rate in section nine of this article. After
16 the thirtieth day of June, one thousand nine hundred
17 eighty-nine, the rate of tax shall revert to the prior rate
18 as provided in section three of this article, subject to
19 such exclusions.

20 There shall be no tax on sales where the monetary
21 consideration is five cents or less. The amount of tax
22 specified in this section at the six cents rate shall be
23 computed as follows:

24 (1) On each sale, where the monetary consideration is
25 from six cents to sixteen cents, both inclusive, one cent.

26 (2) On each sale, where the monetary consideration is
27 from seventeen cents to thirty-three cents, both inclu-
28 sive, two cents.

29 (3) On each sale, where the monetary consideration is
30 from thirty-four cents to fifty cents, both inclusive, three
31 cents.

32 (4) On each sale, where the monetary consideration is
33 from fifty-one cents to sixty-seven cents, both inclusive,
34 four cents.

35 (5) On each sale, where the monetary consideration is
36 from sixty-eight cents to eighty-four cents, both inclu-
37 sive, five cents.

38 (6) On each sale, where the monetary consideration is

39 from eighty-five cents to one dollar, both inclusive, six
40 cents.

41 (7) If the sale price is in excess of one dollar, six cents
42 on each whole dollar of sale price, and upon any
43 fractional part of a dollar in excess of whole dollars, as
44 follows: One cent on the fractional part of the dollar if
45 less than seventeen cents; two cents on the fractional
46 part of the dollar if in excess of sixteen cents but less
47 than thirty-four cents; three cents on the fractional part
48 of the dollar if in excess of thirty-three cents but less
49 than fifty-one cents; four cents on the fractional part of
50 the dollar if in excess of fifty cents but less than sixty-
51 eight cents; five cents on the fractional part of the dollar
52 if in excess of sixty-seven cents but less than eighty-five
53 cents; and six cents on the fractional part of the dollar
54 if in excess of eighty-four cents. For example, the tax
55 on sales from one dollar and one cent to one dollar and
56 sixteen cents, both inclusive, seven cents; on sales from
57 one dollar and seventeen cents to one dollar and thirty-
58 three cents, both inclusive, eight cents; on sales from one
59 dollar and thirty-four cents to one dollar and fifty cents,
60 both inclusive, nine cents; on sales from one dollar and
61 fifty-one cents to one dollar and sixty-seven cents, both
62 inclusive, ten cents; on sales from one dollar and sixty-
63 eight cents to one dollar and eighty-four cents, both
64 inclusive, eleven cents; and on sales from one dollar and
65 eighty-five cents to two dollars, both inclusive, twelve
66 cents.

67 Separate sales, such as daily or weekly deliveries,
68 shall not be aggregated for the purpose of computation
69 of the tax even though such sales are aggregated in the
70 billing or payment therefor. Notwithstanding any other
71 provision, coin-operated amusement and vending ma-
72 chine sales shall be aggregated for the purpose of
73 computation of this tax.

74 (b) *Allocation of tax and transfers.* — Of the taxes
75 collected under the provisions of this article for the
76 period beginning on the first day of June, one thousand
77 nine hundred eighty-eight, and ending after the thir-
78 tieth day of June, one thousand nine hundred eighty-
79 nine, the portion of such taxes representing just the

80 temporary rate of increase (the additional one cent)
81 receivable by the tax commissioner during such period
82 or thereafter, shall be allocated by him on reasonable
83 basis and with allowance for refunds; and the tax
84 commissioner shall, initially or by transfer, deposit a
85 part of such portion of allocated taxes into the special
86 account created in the treasury by section eight-a,
87 article four-b, chapter twenty-three of this code, and
88 being the amount sufficient for making timely repay-
89 ment of the principal and interest under the first
90 payment due, by the thirtieth day of June, one thousand
91 nine hundred eighty-nine, in repayment for the moneys
92 previously transferred from such pneumoconiosis fund.
93 The other four repayment transfers required for full
94 repayment of the pneumoconiosis fund debt, payable in
95 the four succeeding fiscal years shall be made by the tax
96 commissioner, timely and in the aforesaid manner, from
97 all taxes collected under this article in such fiscal years.
98 The remainder of such allocated portion of the tempor-
99 ary tax increase (the additional one cent) aforesaid, after
100 receipt, shall be, initially or by transfer, deposited by
101 the tax commissioner, monthly, directly into the special
102 revenue fund of the Public Employees Insurance
103 Agency, designated "Basic Insurance Premium Fund,"
104 Account No. 8265-05, for payment of health insurance
105 claims.

ARTICLE 15A. USE TAX.

§11-15A-2. Imposition of tax; additional temporary one percent increase in rate of tax for period beginning June 1, 1988, and ending June 30, 1989; exclusions from increase; portion of taxes required to be allocated and directed by tax commissioner into special accounts for repayment of pneumoconiosis fund debt and for payment of public employees health insurance claims; inclusion of services as taxable on and after July 1, 1987.

1 (a) An excise is hereby levied and imposed on the use
2 in this state of tangible personal property or taxable
3 services, to be collected and paid as hereinafter

4 provided, at the rate of five percent of the purchase
5 price of such property or taxable services, with such
6 rate being hereby temporarily increased to a rate of six
7 percent for the period beginning on the first day of June,
8 one thousand nine hundred eighty-eight, and ending
9 after the thirtieth day of June, one thousand nine
10 hundred eighty-nine, excluding gasoline and special fuel
11 sales and excluding sales of mobile homes, which shall
12 remain taxable at prior rates. "Taxable services," for the
13 purposes of this article, means services of the nature
14 that are subject to the tax imposed by article fifteen of
15 this chapter. In this article, wherever the words
16 "tangible personal property" or "property" appear, the
17 same shall include the words "or taxable services,"
18 where the context so requires.

19 (b) Of the taxes collected under the provisions of this
20 section and article for the period beginning on the first
21 day of June, one thousand nine hundred eighty-eight,
22 and ending after the thirtieth day of June, one thousand
23 nine hundred eighty-nine, the portion of such taxes
24 representing just the temporary rate of increase (the
25 additional one percent) receivable by the tax commis-
26 sioner, during such period or thereafter, shall be
27 allocated by him on reasonable basis and with allowance
28 for refunds; and the tax commissioner shall, initially or
29 by transfer, deposit a part of such portion of allocated
30 taxes into the special account created in the state
31 treasury by section eight-a, article four-b, chapter
32 twenty-three of this code, and being the amount
33 sufficient, together with the moneys similarly dedicated
34 by section three-a, article fifteen of this chapter, for
35 making timely repayment of the principal and interest
36 under the first payment due, by the thirtieth day of
37 June, one thousand nine hundred eighty-nine, in
38 repayment for the moneys prior-borrowed from such
39 pneumoconiosis fund. The other four repayment
40 transfers required for full repayment of the pneumoco-
41 niosis fund debt, payable in the four succeeding fiscal
42 years, shall be made by the tax commissioner, timely
43 and in the aforesaid manner, from any taxes collected
44 under this article in such fiscal years. The remainder
45 of such allocated portion of the temporary tax increase

46 (the additional one percent) aforesaid, after receipt,
47 shall be, initially or by transfer, deposited by the tax
48 commissioner, quarterly, directly into the special
49 revenue fund of the Public Employees Insurance
50 Agency designated "Basic Insurance Premium Fund,"
51 Account No. 8265-05, for payment of health insurance
52 claims.

53 (c) Such tax is hereby imposed upon every person
54 using tangible personal property or taxable services
55 within this state. That person's liability is not extin-
56 guished until such tax has been paid. A receipt with the
57 tax separately stated thereon issued by a retailer
58 engaged in business in this state, or by a foreign retailer
59 who is authorized by the tax commissioner to collect the
60 tax imposed by this article, relieves the purchaser from
61 further liability for the tax to which the receipt refers.

62 (d) Purchases of tangible personal property or taxable
63 services made for the government of the United States
64 or any of its agencies by ultimate consumers shall be
65 subject to the tax imposed by this section. Industrial
66 materials and equipment owned by the federal govern-
67 ment within the state of West Virginia of a character
68 not ordinarily readily obtainable within the state, shall
69 not be subject to use tax when sold, if such industrial
70 materials and equipment would not be subject to use
71 taxes if such were sold outside of the state for use in
72 West Virginia.

73 (e) This article shall not apply to purchases made by
74 counties or municipal corporations.

75 (f) The provisions of this section, as amended, shall
76 apply on and after the first day of June, one thousand
77 nine hundred eighty-eight, except where other internal
78 specific effective date controls.

CHAPTER 23. WORKERS' COMPENSATION.

ARTICLE 4B. COAL-WORKERS' PNEUMOCONIOSIS FUND.

§23-4B-8a. Legislative findings; transfers to the state; maximum transfer authorization; purpose for which moneys transferred may be disbursed and expended; maximum

amount of transfer authorization; terms and conditions for repayment; premiums to be set without regard to transfers; creation of special account in state treasury.

1 (a) The Legislature hereby finds and declares that
2 there is a casual deficit in the general revenue fund of
3 this state because of the failure of the state's taxation
4 program to produce the estimated revenues, such deficit
5 condition having come into existence from ordinary
6 expenses of the state without design and unexpectedly;
7 that there is a large surplus of moneys in the coal-
8 workers' pneumoconiosis fund; that transfers not to
9 exceed thirty million dollars from the coal-workers'
10 pneumoconiosis fund will assist in financing government
11 operations, without in any way affecting the solvency of
12 the coal-workers' pneumoconiosis fund; and that the
13 interest being earned on the coal-workers' pneumoconi-
14 osis fund each year has for some time exceeded thirty
15 million dollars. This section is enacted in view of these
16 findings.

17 (b) Whenever the governor determines that the
18 general revenue fund available for expenditure is
19 insufficient for the timely payment for government
20 operations, the treasurer, state board of investments and
21 the commissioner shall transfer moneys from the coal-
22 workers' pneumoconiosis fund to the special account
23 created in the state treasury by subsection (f) of this
24 section, in the amounts determined by the governor to
25 be sufficient and necessary to meet such payments. The
26 total of the amounts transferred may not exceed thirty
27 million dollars, and the transfers shall be subject to the
28 payment of interest equal to the actual interest rate
29 earned by the coal-workers' pneumoconiosis fund on the
30 day of each transfer for the period of each transfer until
31 repayment.

32 (c) Any such transfer may be used only for payments
33 for medicaid reimbursement.

34 (d) Full repayment of all transfers, with interest,
35 shall be made to the coal-workers' pneumoconiosis fund
36 by budget action as first priority from the moneys

37 available for each fiscal year as follows: At least one
38 fifth of the outstanding amount with interest shall be
39 repaid no later than the thirtieth day of June, one
40 thousand nine hundred eighty-nine; at least one fourth
41 of the outstanding amount with interest shall be repaid
42 no later than the thirtieth day of June, one thousand
43 nine hundred ninety; at least one third of the outstand-
44 ing amount with interest shall be repaid no later than
45 the thirtieth day of June, one thousand nine hundred
46 ninety-one; at least one half of the outstanding amount
47 with interest shall be repaid no later than the thirtieth
48 day of June, one thousand nine hundred ninety-two; and
49 the balance of the remaining amount transferred shall
50 be repaid with interest no later than the thirtieth day
51 of June, one thousand nine hundred ninety-three.
52 Repayment transfers, shall be made by budget action as
53 first priority from the moneys available for each fiscal
54 year and as made, shall not be deemed to renew, restore
55 or increase in any way the maximum amount of thirty
56 million dollars herein authorized.

57 (e) The rates of premiums to be paid for coverage by
58 the coal-workers' pneumoconiosis fund shall be deter-
59 mined by the commissioner with like effect as if all such
60 transfers had not been made but had, together with the
61 interest earned thereon, been available for use by the
62 coal-workers' pneumoconiosis fund.

63 (f) There is hereby created in the state treasury a
64 special account for the deposit, withdrawal and repay-
65 ment of moneys transferred pursuant to this section and
66 to invoke the applicability of the special fund doctrine
67 with respect to budgetary transfer activities involving
68 more than one fiscal year.

LEGISLATURE OF WEST VIRGINIA

ACTS

SECOND EXTRAORDINARY SESSION, 1988

CHAPTER 1

(Com. Sub for S. B. 6—By Senators Tonkovich, Mr. President,
by request, and Harman)

[Passed June 3, 1988: 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-eight, to the Auditor's Office-Social Security, Account No. 1510, supplementing chapter one hundred twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-seven, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That Account No. 1510, chapter one hundred twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-seven, 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 13—Auditor's Office-Social Security

- 5 (WV Code Chapter 12)
 6 Account No. 1510
 7 1 To Match Contributions
 8 2 of State Employees for
 9 3 Social Security — Total \$ 3, 108,434
 10 Any unexpended balances remaining in the above
 11 appropriation at the close of the fiscal year 1987-88 are
 12 hereby reappropriated for expenditure during the fiscal
 13 year 1988-89.

CHAPTER 2

(Com. Sub. for S. B. 5—By Senators Tonkovich, Mr. President,
 by request, and Harman)

[Passed June 10, 1988; in effect from passage. Approved by the Governor with deletions.]

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 expenditures.
- §5. Maximum expenditures.

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

1 **Sec. 2. Definitions.**—For the purpose of this act:
 2 “Governor” shall mean the governor of the state of

3 West Virginia.

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

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

8 The "fiscal year one thousand nine hundred eighty-
9 nine" shall mean the period from July first, one
10 thousand nine hundred eighty-eight, through June
11 thirtieth, one thousand nine hundred eighty-nine.

12 "From collections" shall mean that part of the total
13 appropriation which must be collected by the spending
14 unit to be available for expenditure. If the authorized
15 amount of collections is not collected, the total appropri-
16 ation for the spending unit shall be reduced automat-
17 ically by the amount of the deficiency in the collections.
18 If the amount collected exceeds the amount designated
19 "from collections," the excess shall be set aside in a
20 special surplus fund and may be expended for the
21 purpose of the spending unit as provided by article two,
22 chapter five-a of the code.

1 **Sec. 3. Classification of appropriations.**—An ap-
2 propriation for:

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

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

13 Unless otherwise specified, appropriations for per-
14 sonal services shall include salaries of heads of spending
15 units.

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

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

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

25 Each spending unit shall be responsible for all
26 contributions, payments or other costs related to
27 coverage and claims of its employees for unemployment
28 compensation. Such expenditures shall be considered a
29 current expense.

30 Each spending unit shall be responsible for and
31 charged monthly for all postage meter service and shall
32 reimburse the appropriate revolving fund monthly for
33 all such amounts. Such expenditures shall be considered
34 a current expense.

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

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

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

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

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

52 Moneys appropriated in account no. 1510 for "social
53 security matching" and in account no. 6150 for "public
54 employees health insurance costs" shall be expended to
55 pay a portion of the costs of such purposes. The
56 remainder of such costs shall be paid by each spending

57 unit operating from the general revenue of the state
 58 from its "unclassified" line item or "personal services"
 59 line item of moneys constituting such spending unit's
 60 proportionate share of such remainder. Each such
 61 spending unit is hereby authorized and required to
 62 make such payments.

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

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

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

1 * * *

2 * * *

3 * * *

1 **Sec. 6. Maximum expenditures.**—No authority or
 2 requirement of law shall be interpreted as requiring or
 3 permitting an expenditure in excess of the appropria-
 4 tions set out in this act.

TITLE 2. APPROPRIATIONS.

§1. Appropriations from general revenue.

§2. Appropriations of federal funds.

AGRICULTURE

| | |
|---|------|
| Department of agriculture—Acct. No. 5100 | 1037 |
| Department of agriculture (agricultural awards)— Acct. No. 5150 | 1038 |
| Department of agriculture (division of rural resources)—Acct. No. 5130 | 1038 |
| Department of agriculture (forestry division)— Acct. No. 5160 | 1039 |
| Department of agriculture (meat inspection)— Acct. No. 5140 | 1038 |
| Department of agriculture (soil conservation committee)—Acct. No. 5120 | 1037 |
| Farm management commission—Acct. No. 5110 | 1037 |

Clerk's Note: The Governor deleted Sec. 5, which read as follows: "Sec. 5. Monthly reports by governor.—Within ten days after the end of each month in the fiscal year, the governor shall report to the legislative auditor all bills or other state obligations outstanding at the end of that month."

BOARD AND COMMISSIONS

| | |
|---|------|
| Education and state employees grievance board— | |
| Acct. No. 6015 | 1043 |
| Human rights commission—Acct. No. 5980 | 1043 |
| Insurance commissioner—Acct. No. 6160 | 1045 |
| State fire commission—Acct. No. 6170 | 1045 |
| West Virginia civil service commission—Acct. No. 5840 | 1042 |
| West Virginia public employees insurance agency | |
| Acct. No. 6150 | 1044 |
| West Virginia public employees retirement board— | |
| Acct. No. 6140 | 1044 |
| West Virginia public legal services council— | |
| Acct. No. 5900 | 1042 |
| Women's commission—Acct. No. 6000 | 1043 |

BUSINESS AND INDUSTRIAL RELATIONS

| | |
|--|------|
| Board of coal mine health and safety—Acct. No. 4775-20 | 1036 |
| Coal mine safety and technical review | |
| committee—Acct. No. 4775-21 | 1036 |
| Department of commerce—Acct. No. 4625 | 1034 |
| Department of energy—Acct. No. 4775 | 1036 |
| Department of labor—Acct. No. 4500 | 1034 |
| Interstate commission on Potomac river basin— | |
| Acct. No. 4730 | 1035 |
| Ohio river valley water sanitation commission— | |
| Acct. No. 4740 | 1035 |
| State athletic commission—Acct. No. 4790 | 1036 |
| West Virginia air pollution control commission— | |
| Acct. No. 4760 | 1035 |
| West Virginia nonintoxicating beer commissioner— | |
| Acct. No. 4900 | 1036 |
| West Virginia racing commission—Acct. No. 4950 | 1037 |

CONSERVATION AND DEVELOPMENT

| | |
|--|------|
| Blennerhassett historical park commission— | |
| Acct. No. 5660 | 1040 |
| Department of natural resources—Acct. No. 5650 | 1040 |
| Geological and economic survey—Acct. No. 5200 | 1039 |
| Water development authority—Acct. No. 5670 | 1040 |
| Water resources board—Acct. No. 5640 | 1040 |
| West Virginia railroad maintenance authority— | |
| Acct. No. 5690 | 1041 |

CORRECTIONS

| | |
|--|------|
| Board of probation and parole—Acct. No. 3650 | 1028 |
| Department of corrections (central office)— | |
| Acct. No. 3680 | 1029 |
| Department of corrections (correctional units)— | |
| Acct. No. 3770 | 1029 |

EDUCATIONAL

| | |
|---|------|
| Department of culture and history—Acct. No. 3510 | 1027 |
| Educational broadcasting authority—Acct. No. 2910 | 1026 |
| Marshall university (medical school)—Acct. No. 2840 | 1025 |
| State board of education (vocational division)— | |
| Acct. No. 2890 | 1025 |
| State department of education—Acct. No. 2860 | 1025 |
| State department of education (aid for exceptional | |
| children)—Acct. No. 2960 | 1026 |
| State department of education (school lunch | |
| program)—Acct. No. 2870 | 1025 |
| State department of education (state aid to schools)— | |
| Acct. No. 2950 | 1026 |
| State FFA-FHA camp and conference center—Acct. No. 3360 | 1027 |

| | |
|---|------|
| Teachers retirement board—Acct. No. 2980 | 1026 |
| West Virginia board of regents—Acct. No. 2800 | 1024 |
| West Virginia board of regents (control)—Acct. No. 2790 | 1024 |
| West Virginia library commission—Acct. No. 3500 | 1027 |
| West Virginia school of osteopathic medicine— Acct. No. 2810 | 1025 |
| West Virginia schools for the deaf and the blind— Acct. No. 3330 | 1027 |
| West Virginia University (schools of health sciences)— Acct. No. 2850 | 1025 |
| EXECUTIVE | |
| Governor's office—Acct. No. 1200 | 1017 |
| Governor's office (board of investments)—Acct. No. 1250 | 1019 |
| Governor's office (civil contingent fund)—Acct. No. 1240 | 1018 |
| Governor's office (custodial fund)—Acct. No. 1230 | 1018 |
| Office of community and industrial development— Acct. No. 1210 | 1017 |
| Office of economic and community development emergency employment, training and education— Acct. No. 1220 | 1018 |
| Office of emergency services—Acct. No. 1300 | 1019 |
| FISCAL | |
| Auditor's office (general administration) Acct. No. 1500 | 1019 |
| Auditor's office (social security) Acct. No. 1510 | 1019 |
| Department of finance and administration—Acct. No. 2100 | 1021 |
| Municipal bond commission—Acct. No. 1700 | 1021 |
| State board of insurance—Acct. No. 2250 | 1022 |
| State tax department—Acct. No. 1800 | 1021 |
| Treasurer's office—Acct. No. 1600 | 1020 |
| Treasurer's office (school building sinking fund)—Acct. No. 1650 | 1020 |
| HEALTH AND HUMAN SERVICES | |
| Consolidated medical service fund—Acct. No. 4190 | 1033 |
| Department of human services—Acct. No. 4050 | 1032 |
| Department of veterans affairs—Acct. No. 4040 | 1031 |
| Department of veterans affairs (veterans home)— Acct. No. 4010 | 1031 |
| Resource-recovery solid waste disposal authority— Acct. No. 4020 | 1031 |
| State board of rehabilitation (division of rehabilitation services)—Acct. No. 4405 | 1034 |
| State commission on aging—Acct. No. 4060 | 1032 |
| State department of health (central office)— Acct. No. 4000 | 1030 |
| INCORPORATING AND RECORDING | |
| Secretary of state—Acct. No. 2500 | 1024 |
| State elections commission—Acct. No. 2600 | 1024 |
| JUDICIAL | |
| Supreme Court—General Judicial—Acct. No. 1110 | 1016 |
| LEGAL | |
| Attorney general—Acct. No. 2400 | 1023 |
| Commission on uniform state laws—Acct. No. 2450 | 1023 |
| LEGISLATIVE | |
| House of Delegates—Acct. No. 1020 | 1014 |
| Joint expenses—Acct. No. 1030 | 1015 |

| | |
|--|------|
| Senate—Acct. No. 1010 | 1012 |
| PROTECTION | |
| Adjutant general (state militia)—Acct. No. 5800 | 1042 |
| Department of public safety—Acct. No. 5700 | 1041 |
| §3. Appropriations from other funds. | |
| §4. Appropriations of federal funds. | |
| PAYABLE FROM FEDERAL FUNDS | |
| State department of education (veterans education)— Acct. No. 7979 | 1048 |
| PAYABLE FROM MEDICAL SCHOOL FUND | |
| West Virginia University (schools of health sciences)— Acct. No. 9280 | 1062 |
| PAYABLE FROM SPECIAL REVENUE FUND | |
| Auditor's office (land department operating fund)— Acct. No. 8120 | 1050 |
| Board of barbers and beauticians—Acct. No. 8220 | 1052 |
| Crime victims compensation fund—Acct. No. 8412 | 1056 |
| Department of agriculture—Acct. No. 8180 | 1051 |
| Department of banking—Acct. No. 8395 | 1056 |
| Department of finance and administration (division of purchasing—revolving fund)—Acct. No. 8140 | 1050 |
| Department of finance and administration (information systems services division fund)—Acct. No. 8151 | 1051 |
| Department of natural resources—Acct. No. 8300 | 1054 |
| Department of public safety (drunk driving prevention fund)—Acct. No. 8355 | 1056 |
| Department of public safety (inspection fees)— Acct. No. 8350 | 1055 |
| General John McCausland Memorial Farm— Acct. No. 8194 | 1052 |
| Geological and economic development—Acct. No. 8589 | 1058 |
| Insurance commissioner—Acct. No. 8016 | 1049 |
| Health care cost review authority—Acct. No. 8564 | 1058 |
| Public service commission—Acct. No. 8280 | 1052 |
| Public service commission (consumer advocate)— Acct. No. 8295 | 1054 |
| Public service commission (gas pipeline division)— Acct. No. 8285 | 1053 |
| Public service commission (motor carrier division)— Acct. No. 8290 | 1053 |
| Real estate commission—Acct. No. 8010 | 1048 |
| Regional jail and prison authority—Acct. No. 8051 | 1049 |
| State board of rehabilitation (division of rehabilitation services—West Virginia rehabilitation center—special account)— Acct. No. 8137 | 1050 |
| State health department—hospital services revenue account (special fund) (capital improvement, renovation and operation)—Acct. No. 8500 | 1057 |
| Treasurer's office (abandoned and unclaimed property)—Acct. No. 8000 | 1048 |
| West Virginia alcohol beverage control commissioner— Acct. No. 9270 | 1061 |
| West Virginia board of regents (special capital improvement fund)—Acct. No. 8830 | 1058 |
| West Virginia board of regents (state system registration fee—revenue bond construction fund)— Acct. No. 8845 | 1059 |

| | |
|--|------|
| West Virginia board of regents (state system registration fee—special capital improvements fund—capital improvement and bond retirement fund)—Acct. No. 8835 | 1059 |
| West Virginia board of regents (state system tuition fee—revenue bond construction fund)—Acct. No. 8860 | 1060 |
| West Virginia board of regents (state system tuition fee—special capital improvement fund—capital improvement and bond retirement fund)—Acct. No. 8855 | 1060 |
| West Virginia hospital finance authority—Acct. No. 8330 | 1055 |
| West Virginia racing commission—Acct. No. 8080 | 1049 |

PAYABLE FROM STATE ROAD FUND

| | |
|---|------|
| Department of motor vehicles—Acct. No. 6710 | 1047 |
| West Virginia department of highways—Acct. No. 6700 | 1046 |

PAYABLE FROM WORKER'S COMPENSATION FUND

| | |
|---|------|
| Workers' compensation commissioner—Acct. No. 9000 | 1060 |
|---|------|

§5. Awards for claims against the state.

§6. Appropriations and reappropriations—revenue sharing trust fund.

| | |
|---|------|
| Department of agriculture (soil conservation commission)—Acct. No. 9771 | 1064 |
| Department of commerce—Acct. No. 9708 | 1064 |
| Department of human services—Acct. No. 9750 | 1064 |
| Department of natural resources—Acct. No. 9725 | 1064 |
| Office of community and industrial development—Acct. No. 9720 | 1063 |
| State board of education (vocational division)—Acct. No. 9780 | 1063 |
| West Virginia department of highways—Acct. No. 9705 | 1064 |

§7. Appropriations from federal block grants.

| | |
|--|------|
| Department of human services (energy assistance)—Acct. No. 9147 | 1066 |
| Department of human services (social services)—Acct. No. 9161 | 1067 |
| Office of community and industrial development (community development)—Acct. No. 8029 | 1065 |
| Office of community and industrial development (community service)—Acct. No. 8031 | 1065 |
| Office of community and industrial development (job partnership training act)—Acct. No. 8030 | 1065 |
| Office of community and industrial development (justice assistance)—Acct. No. 8032 | 1065 |
| State department of education (education grant)—Acct. No. 8242 | 1065 |
| State department of health (alcohol, drug abuse and mental health)—Acct. No. 8503 | 1066 |
| State department of health (alcohol and drug abuse treatment)—Acct. No. 8510 | 1066 |
| State department of health (maternal and child health)—Acct. No. 8502 | 1066 |
| State department of health (mental health services for the homeless)—Acct. No. 8508 | 1066 |
| State department of health (preventive health)—Acct. No. 8506 | 1066 |

- § 8. Special revenue appropriations.
- § 9. State improvement fund appropriations.
- §10. Specific funds and collection accounts.
- §11. Appropriations for refunding erroneous payment.
- §12. Sinking fund deficiencies.
- §13. Appropriations to pay costs of publication of delinquent corporations.
- §14. Appropriations for local governments.
- §15. Total appropriations.
- §16. General school fund.

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

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

8 Any unexpended cash balances remaining in federal
 9 funds at the close of the fiscal year 1987-88 are hereby
 10 reappropriated for expenditure during the fiscal year
 11 1988-89 and brought forward to such 1988-89 fiscal
 12 year; further, the amount of total appropriations made
 13 in fiscal years prior to 1988-89 are hereby expired and
 14 such ledger entries closed.

LEGISLATIVE

1—Senate

Acct. No. 1010

| | Federal Funds Fiscal Year 1988-89 | | General Revenue Fund Fiscal Year 1988-89 |
|-----------------------------------|--|----|---|
| 1 Compensation of Members .. \$ | — | \$ | 275,000* |

| | | | |
|----|-------------------------------|------|--------------|
| 2 | Compensation and Per | | |
| 3 | Diem of Officers | | |
| 4 | and Employees | — | 1,101,838 |
| 5 | Expenses of Members | — | 215,000 |
| 6 | Repairs and Alterations | — | 50,000 |
| 7 | Current Expenses and | | |
| 8 | Contingent Fund | — | 522,500 |
| 9 | Computer Supplies | — | 25,000 |
| 10 | Computer Systems | — | 100,000 |
| 11 | Printing Blue Book | — | —0— |
| 12 | Total | \$ — | \$ 2,289,338 |

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

13 The appropriations for the senate for the fiscal year
 14 1987-88 are to remain in full force and effect and are
 15 hereby reappropriated to June 30, 1989. Any balances
 16 so reappropriated may be transferred and credited to
 17 the 1988-89 accounts.

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

22 The clerk of the senate, with the approval of the
 23 president, is authorized to draw his requisitions upon
 24 the auditor, payable out of the Current Expenses and
 25 Contingent Fund of the senate, for any bills for supplies
 26 and services that may have been incurred by the senate
 27 and not included in the appropriation bill, for supplies
 28 and services incurred in preparation for the opening, the
 29 conduct of the business and after adjournment of any
 30 regular or extraordinary session, and for the necessary
 31 operation of the senate offices, the requisitions for the
 32 same to be accompanied by bills to be filed with the
 33 auditor.

34 The clerk of the senate, with the written approval of
 35 the president, or the president of the senate shall have
 36 authority to employ such staff personnel during any
 37 session of the Legislature as shall be needed in addition
 38 to staff personnel authorized by the senate resolution
 39 adopted during any such session. The clerk of the senate,

40 with the written approval of the president, or the
 41 president of the senate shall have authority to employ
 42 such staff personnel between sessions of the Legislature
 43 as shall be needed, the compensation of all staff
 44 personnel during and between sessions of the Legisla-
 45 ture, notwithstanding any such senate resolution, to be
 46 fixed by the president of the senate. The clerk is hereby
 47 authorized to draw his requisitions upon the auditor for
 48 the payment of all such staff personnel for such services,
 49 payable out of the appropriation for Compensation and
 50 Per Diem of Officers and Employees or Current
 51 Expenses and Contingent Fund of the senate.

52 For duties imposed by law and the senate, the clerk
 53 of the senate shall be paid a monthly salary as provided
 54 in the senate resolution adopted January 1988 and
 55 payable out of the amount appropriated for Compensa-
 56 tion and Per Diem of Officers and Employees.

2—House of Delegates

Acct. No. 1020

| | | | | |
|---|-------------------------------|----|----|--------------|
| 1 | Compensation of Members .. \$ | — | \$ | 850,630* |
| 2 | Compensation and Per | | | |
| 3 | Diem of Officers | | | |
| 4 | and Employees | — | | 538,899 |
| 5 | Expenses of Members | — | | 630,750 |
| 6 | Current Expenses and | | | |
| 7 | Contingent Fund | — | | 1,153,015 |
| 8 | Total | \$ | — | \$ 3,173,294 |

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

9 The appropriations for the house of delegates for the
 10 fiscal year 1987-88 are to remain in full force and effect
 11 and are hereby reappropriated to June 30, 1989. Any
 12 balances so reappropriated may be transferred and
 13 credited to the 1988-89 accounts.

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

18 The clerk of the house of delegates, with the approval

19 of the speaker, is authorized to draw his requisitions
20 upon the auditor, payable out of the Current Expenses
21 and Contingent Fund of the house of delegates, for any
22 bills for supplies and services that may have been
23 incurred by the house of delegates and not included in
24 the appropriation bill, for bills for services and supplies
25 incurred in preparation for the opening of the session
26 and after adjournment, and for the necessary operation
27 of the house of delegates' offices, the requisitions for the
28 same to be accompanied by bills to be filed with the
29 auditor.

30 The speaker of the house of delegates, upon approval
31 of the house committee on rules, shall have authority to
32 employ such staff personnel during and between
33 sessions of the Legislature as shall be needed, in addition
34 to personnel designated in the house resolution, and the
35 compensation of all personnel shall be as fixed in such
36 house resolution for the session, or fixed by the speaker,
37 with the approval of the house committee on rules,
38 during and between sessions of the Legislature, notwith-
39 standing such house resolution. The clerk of the house
40 is hereby authorized to draw requisitions upon the
41 auditor for such services, payable out of the appropri-
42 ation for the Compensation and Per Diem of Officers
43 and Employees Fund or Current Expenses and Conting-
44 ent Fund of the house of delegates.

45 For duties imposed by law and by the house of
46 delegates, including salary allowed by law as keeper of
47 the rolls, the clerk of the house of delegates shall be paid
48 a monthly salary as provided in the house resolution,
49 unless increased between sessions under the authority of
50 the speaker, with the approval of the house committee
51 on rules, and payable out of the appropriation for
52 Compensation and Per Diem of Officers and Employees
53 or Current Expenses and Contingent Fund of the house
54 of delegates.

3—Joint Expenses

Acct. No. 1030

(WV Code Chapter 4)

1 Unclassified—Total \$ — \$ 5,116,435

2 The appropriation for Joint Expenses for the fiscal
3 year 1987-88 is to remain in full force and effect and
4 is hereby reappropriated to June 30, 1989. Any balances
5 so reappropriated may be transferred and credited to
6 the 1988-89 accounts.

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

JUDICIAL

4—Supreme Court—General Judicial

Acct. No. 1110

| | | | | | |
|---|-----------------------------|----|---|----|-------------|
| 1 | Personal Services | \$ | — | \$ | 17,634,506* |
| 2 | Annual Increment | | — | | 157,788 |
| 3 | Other Expenses | | — | | 3,775,024 |
| 4 | Judges' Retirement System.. | | — | | 1,174,400 |
| 5 | Other Court Costs..... | | — | | 2,300,000 |
| 6 | Judicial Training Program.. | | — | | 200,000 |
| 7 | Mental Hygiene Fund..... | | — | | 375,000 |
| 8 | Total..... | \$ | — | \$ | 25,616,718 |

*Includes salaries of supreme court judges at \$55,000 each per annum.

9 Any unexpended balances remaining in this appropri-
10 ation at the close of the fiscal year 1987-88 are hereby
11 reappropriated for expenditure during the fiscal year
12 1988-89. Any balances so reappropriated may be
13 transferred and credited to the 1988-89 accounts.

14 The appropriation shall be administered by the
15 administrative director of the supreme court of appeals,
16 who shall draw his requisitions for warrants in payment
17 in the form of payrolls, making deductions therefrom as
18 required by law for taxes and other items.

19 The appropriation for Judges' Retirement System is
 20 to be transferred to the judges' retirement fund, in
 21 accordance with the law relating thereto, upon requisition
 22 of the administrative director of the supreme court
 23 of appeals.

EXECUTIVE

5—Governor's Office

(WV Code Chapter 5)

Acct. No. 1200

| | | | | | |
|---|-------------------------------|----|---|----|-----------|
| 1 | Salary of Governor | \$ | — | \$ | 72,000 |
| 2 | Other Personal Services | | — | | 980,700 |
| 3 | Annual Increment | | — | | 8,700 |
| 4 | Current Expenses | | — | | 138,500 |
| 5 | Equipment | | — | | 1,500 |
| 6 | Total | \$ | — | \$ | 1,201,400 |

6—Office of Community and Industrial Development

(WV Code Chapter 5B)

Acct. No. 1210

| | | | | | |
|---|--------------------------|--------------|---|----|-----------|
| 1 | Personal Services | \$ | — | \$ | 1,682,589 |
| 2 | Annual Increment | | — | | 22,986 |
| 3 | Unclassified | 12,512,100 | | | 2,721,146 |
| 4 | Partnership Grants | | — | | 1,000,000 |
| 5 | Total | \$12,512,100 | | \$ | 5,426,721 |

6 Any unexpended balances remaining in the appropri-
 7 ations for Partnership Grants (account no. 1210-15), Fire
 8 Departments (account no. 1210-16), Coal Development
 9 Authority (account no. 1210-17), Emergency Assistance
 10 (account no. 1210-18), Flood (account no. 1210-19) and
 11 Aeronautics Commission—Airport Matching (account
 12 no. 1210-23) at the close of the fiscal year 1987-88 are
 13 hereby reappropriated for expenditure during the fiscal
 14 year 1988-89.

15 Any partnership grant program commenced but not
 16 completed during fiscal year 1987-88 shall be given first

- 17 priority consideration for completion of the program
18 from the above line item for Partnership Grants.

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

(WV Code Chapter 5)

Acct. No. 1220

- 1 Any unexpended balances remaining in the appropri-
2 ations for Emergency Jobs Program—Public Service
3 Jobs (account no. 1220-04) and Emergency Jobs Pro-
4 gram—Public Service Jobs (account no. 1220-05) at the
5 close of the fiscal year 1987-88 are hereby reapprop-
6 riated for expenditure during the fiscal year 1988-89.

8—Governor's Office—Custodial Fund

(WV Code Chapter 5)

Acct. No. 1230

1 Unclassified—Total \$ — \$ 323,949

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

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

(WV Code Chapter 5)

Acct. No. 1240

1 Unclassified—Total \$ — \$ 750,000

- 2 Any unexpended balance remaining in the appropri-
3 ation (account no. 1240-06) at the close of the fiscal year
4 1987-88 is hereby reappropriated for expenditure
5 during the fiscal year 1988-89.

- 6 From this appropriation there may be expended, at
7 the discretion of the governor, an amount not to exceed
8 \$1,000 as West Virginia's contribution to the interstate
9 oil compact commission.

10—Governor's Office—Board of Investments

(WV Code Chapter 12)

Acct. No. 1250

| | | | | | |
|---|---|----|---|----|-----|
| 1 | Payment—Total | \$ | — | \$ | —0— |
| 2 | To be paid to the consolidated investment fund | | | | |
| 3 | pursuant to enrolled house bill 101, acts, Legislature, | | | | |
| 4 | first extraordinary session, 1988. | | | | |

11—Office of Emergency Services

(WV Code Chapter 15)

Acct. No. 1300

| | | | | | |
|---|-----------------------------|----|-----------|----|----------|
| 1 | Personal Services | \$ | — | \$ | 221,097* |
| 2 | Annual Increment | | — | | 5,868 |
| 3 | Unclassified | | 1,614,586 | | 24,535 |
| 4 | Integrated Flood Observance | | | | |
| 5 | Warning System..... | | 65,214 | | —0— |
| 6 | Total | \$ | 1,679,800 | \$ | 251,500 |

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

FISCAL*12—Auditor's Office—General Administration*

(WV Code Chapter 12)

Acct. No. 1500

| | | | | | |
|---|------------------------------|----|---|----|-----------|
| 1 | Salary of Auditor | \$ | — | \$ | 46,800 |
| 2 | Other Personal Services..... | | — | | 1,496,743 |
| 3 | Annual Increment | | — | | 28,440 |
| 4 | Unclassified | | — | | 675,709 |
| 5 | Total | \$ | — | \$ | 2,247,692 |

13—Auditor's Office—Social Security

(WV Code Chapter 12)

Acct. No. 1510

| | |
|---|----------------------------|
| 1 | To Match Contributions of |
| 2 | State Employees for Social |

3 Security—Total..... \$ — \$ 10,988,850

4 The above appropriation is intended to cover a portion
 5 of the state's share of social security costs for those
 6 spending units operating from the general revenue fund,
 7 with the remainder of such costs to be paid by such
 8 respective spending units from their accounts as
 9 provided in TITLE I—GENERAL PROVISION, Sec. 3
 10 of this act. The West Virginia department of highways,
 11 department of motor vehicles, workers' compensation
 12 commissioner, public service commission and other
 13 departments operating from special revenue funds
 14 and/or federal funds shall pay their proportionate share
 15 of the social security cost for their respective divisions.

14—Treasurer's Office

(WV Code Chapter 12)

Acct. No. 1600

| | | | | | |
|---|-------------------------------|----|---|----|---------|
| 1 | Salary of Treasurer | \$ | — | \$ | 50,400 |
| 2 | Other Personal Services | | — | | 523,323 |
| 3 | Annual Increment | | — | | 7,128 |
| 4 | Unclassified | | — | | 250,168 |
| 5 | Total | \$ | — | \$ | 831,019 |

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

(WV Code Chapter 12)

Acct. No. 1650

1 Total..... \$ — \$ 13,786,500

2 Any unexpended balance remaining in the appropri-
 3 ation for Treasurer's Office—School Building Sinking
 4 Fund (account no. 1650-06) at the close of the fiscal year
 5 1987-88 is hereby reappropriated for expenditure
 6 during the fiscal year 1988-89.

16—Municipal Bond Commission

(WV Code Chapter 13)

Acct. No. 1700

| | | | | | |
|---|-------------------------|----|---|----|---------|
| 1 | Personal Services | \$ | — | \$ | 77,677 |
| 2 | Annual Increment | | — | | 1,044 |
| 3 | Unclassified | | — | | 23,491 |
| 4 | Total | \$ | — | \$ | 102,212 |

17—State Tax Department

(WV Code Chapter 11)

Acct. No. 1800

| | | | | | |
|---|-------------------------|----|---|----|-------------|
| 1 | Personal Services | \$ | — | \$ | 10,061,401* |
| 2 | Annual Increment | | — | | 175,000 |
| 3 | Unclassified | | — | | 4,390,599 |
| 4 | Total | \$ | — | \$ | 14,627,000 |

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

5 Any unexpended balance remaining in the appropri-
 6 ation for Other Expenses (account no. 1800-07) at the
 7 close of the fiscal year 1987-88 is hereby reappropriated
 8 for expenditure during the fiscal year 1988-89.

9 In order to pay the cost of employees conducting
 10 investigations while outside West Virginia pursuant to
 11 section five-a, article ten, chapter eleven of the code,
 12 from the Unclassified line item above \$125,000 is to be
 13 expended for current expenses and from the Personal
 14 Services line item above \$600,000 is to be expended for
 15 this statutory purpose.

*18—Department of Finance
and Administration*

(WV Code Chapter 5A)

Acct. No. 2100

| | | | | | |
|---|-------------------------|----|-----------|----|------------|
| 1 | Personal Services | \$ | — | \$ | 2,197,007* |
| 2 | Annual Increment | | — | | 40,000 |
| 3 | Unclassified | | 2,230,900 | | 1,530,130 |
| 4 | Council of State | | | | |
| 5 | Governments | | — | | 48,700 |
| 6 | National Governors' | | | | |
| 7 | Association | | — | | 54,150 |
| 8 | Southern States | | | | |

| | | | |
|----|-----------------------------|--------------|--------------|
| 9 | Energy Board | — | 23,938 |
| 10 | Public Transportation | — | 410,000 |
| 11 | Total | \$ 2,230,900 | \$ 4,303,925 |

*Includes salary of the commissioner at \$45,500 per annum.

12 Any unexpended balance remaining in the appropri-
 13 ation Retrofit Governor's Elevator (account no. 2100-28)
 14 at the close of the fiscal year 1987-88 is hereby
 15 reappropriated for expenditure during the fiscal year
 16 1988-89 and redesignated to (1) Retrofit Elevator in
 17 Attorney General's Section and (2) Retrofit Other
 18 Elevators in the Capitol Building.

19 There is hereby established a revolving fund for
 20 postage meter service requirements for all spending
 21 units operating from the general revenue fund, from
 22 special revenue funds or receiving reimbursement for
 23 postage from the federal government.

24 Each spending unit shall be charged monthly for all
 25 postage meter service and shall reimburse the revolving
 26 fund monthly for all such amounts.

27 The West Virginia department of highways shall
 28 reimburse account no. 8148-42 for all actual expenses
 29 incurred pursuant to the provisions of section thirteen,
 30 article two-a, chapter seventeen of the code.

19—State Board of Insurance

(WV Code Chapter 29)

Acct. No. 2250

| | | | |
|---|-------------------------|------|--------------|
| 1 | Personal Services | \$ — | \$ 95,900 |
| 2 | Annual Increment | — | 936 |
| 3 | Unclassified | — | 3,603,272 |
| 4 | Total | \$ — | \$ 3,700,108 |

5 The Unclassified item of appropriation herein in-
 6 cludes funding for the purpose of paying premiums, self-
 7 insurance losses, loss adjustment expenses and loss
 8 prevention engineering fees for property, casualty and
 9 fidelity insurance for the various state agencies, except
 10 those operating from special revenue funds, with such

11 special revenue fund agencies to be billed by the state
 12 board of insurance and with such costs to be a proper
 13 charge against such spending units.

14 These funds may be transferred to a special account
 15 for the payment of premiums, self-insurance losses, loss
 16 adjustment expenses and loss prevention engineering
 17 fees and may be transferred to a special account for
 18 disbursement for payment of premiums and insurance
 19 losses.

LEGAL

20—Attorney General

(WV Code Chapters 5, 14, 46 and 47)

Acct. No. 2400

| | | | | |
|---|-------------------------------|----|---|--------------|
| 1 | Salary of Attorney | | | |
| 2 | General | \$ | — | \$ 50,400 |
| 3 | Other Personal Services | | — | 1,993,820 |
| 4 | Annual Increment | | — | 15,480 |
| 5 | Unclassified | | — | 451,142 |
| 6 | Paralegal Program | | — | —0— |
| 7 | Total | \$ | — | \$ 2,510,842 |

8 Any unexpended balance remaining in the appropri-
 9 ation for Publication of Reports and Opinions (account
 10 no. 2400-05) at the close of the fiscal year 1987-88 is
 11 hereby reappropriated for expenditure during the fiscal
 12 year 1988-89.

13 When legal counsel or secretarial help is appointed by
 14 the attorney general for any state spending unit, this
 15 account shall be reimbursed from such unit's approp-
 16 riated account.

21—Commission on Uniform State Laws

(WV Code Chapter 29)

Acct. No. 2450

| | | | | |
|---|---|----|---|-----------|
| 1 | Unclassified—Total | \$ | — | \$ 11,000 |
| 2 | To pay expenses of members of the commission on | | | |
| 3 | uniform state laws. | | | |

INCORPORATING AND RECORDING

22—Secretary of State

(WV Code Chapters 3, 5 and 59)

Acct. No. 2500

| | | | | |
|---|-------------------------------|----|---|------------|
| 1 | Salary of Secretary | | | |
| 2 | of State | \$ | — | \$ 43,200 |
| 3 | Other Personal Services | | — | 484,530 |
| 4 | Annual Increment | | — | 4,248 |
| 5 | Unclassified | | — | 187,822 |
| 6 | Total | \$ | — | \$ 719,800 |

23—State Elections Commission

(WV Code Chapter 3)

Acct. No. 2600

| | | | | |
|---|--------------------------|--|--|-----------|
| 1 | Unclassified—Total | | | \$ 12,000 |
|---|--------------------------|--|--|-----------|

EDUCATIONAL

24—West Virginia Board of Regents (Control)

(WV Code Chapter 18)

Acct. No. 2790

| | | | | |
|---|--------------------------|--|--|----------------|
| 1 | Unclassified—Total | | | \$ 157,142,886 |
|---|--------------------------|--|--|----------------|

- 2 Out of the above appropriation for Unclassified,
 3 \$100,000 shall be used in accordance with article
 4 twenty-two-a, chapter eighteen of the code.

25—West Virginia Board of Regents

(WV Code Chapter 18)

Acct. No. 2800

| | | | | |
|---|--------------------------|--|--|--------------|
| 1 | Unclassified—Total | | | \$ 5,326,593 |
|---|--------------------------|--|--|--------------|

26—West Virginia School of Osteopathic Medicine

(WV Code Chapter 18)

Acct. No. 2810

1 Unclassified—Total \$ — \$ 4,347,894

27—Marshall University—Medical School

(WV Code Chapter 18)

Acct. No. 2840

1 Unclassified—Total \$ — \$ 7,215,351

*28—West Virginia University—
Schools of Health Sciences*

(WV Code Chapter 18)

Acct. No. 2850

1 Unclassified—Total \$ — \$ 27,643,290

2 May be transferred to West Virginia university—
3 medical school fund upon requisition of the governor.

29—State Department of Education

(WV Code Chapters 18 and 18A)

Acct. No. 2860

1 Unclassified—Total \$ 937,900 \$ 4,688,588

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

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

(WV Code Chapters 18 and 18A)

Acct. No. 2870

1 Unclassified—Total \$48,477,000 \$ 2,048,804

*31—State Board of Education—
Vocational Division*

(WV Code Chapters 18 and 18A)

Acct. No. 2890

1 Unclassified—Total \$ 9,621,200 \$ 14,857,779

32—Educational Broadcasting Authority

(WV Code Chapter 10)

Acct. No. 2910

| | | | | | |
|---|-------------------------|----|-----------|----|-----------|
| 1 | Personal Services | \$ | — | \$ | 99,984 |
| 2 | Annual Increment | | — | | 648 |
| 3 | Unclassified | | 1,351,250 | | 4,594,140 |
| 4 | Total | \$ | 1,351,250 | \$ | 4,694,772 |

5 The Unclassified appropriation includes funding for
6 the construction and operation of regional ETV and
7 radio stations. These funds may be transferred to special
8 revenue accounts for matching college, university, city,
9 county, federal and/or other generated revenues.

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

(WV Code Chapters 18 and 18A)

Acct. No. 2950

| | | | | | |
|---|--------------------------|----|---|----|-------------|
| 1 | Unclassified—Total | \$ | — | \$ | 718,749,213 |
|---|--------------------------|----|---|----|-------------|

2 The Unclassified item of appropriation in this account
3 includes all elements of public school support and the
4 total state basic foundation program and state aid
5 allowances, with such appropriation to be allocated as
6 required by law and such elements as set forth in
7 chapters eighteen and eighteen-a of the code.

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

(WV Code Chapters 18 and 18A)

Acct. No. 2960

| | | | | | |
|---|--------------------------|----|------------|----|-----------|
| 1 | Unclassified—Total | \$ | 24,072,100 | \$ | 9,412,379 |
|---|--------------------------|----|------------|----|-----------|

35—Teachers' Retirement Board

(WV Code Chapter 18)

Acct. No. 2980

| | | | | | |
|---|--------------------------|----|---|----|------------|
| 1 | Unclassified—Total | \$ | — | \$ | 23,240,910 |
|---|--------------------------|----|---|----|------------|

2 The board shall transfer monthly to the public
 3 employees insurance agency (account no. 8265) from
 4 employee contribution moneys, employer contribution
 5 moneys, accumulated reserves or investment income an
 6 amount of money sufficient to reimburse the public
 7 employees insurance agency for the cost of the state's
 8 share of health care claims of retired teacher retirement
 9 system members who have elected health care coverage
 10 through the public employees insurance agency pursu-
 11 ant to section twelve, article sixteen, chapter five of the
 12 code.

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

(WV Code Chapters 18 and 18A)

Acct. No. 3330

1 Unclassified—Total \$ — \$ 5,371,235

37—State FFA-FHA Camp and Conference Center

(WV Code Chapters 18 and 18A)

Acct. No. 3360

1 Unclassified—Total \$ — \$ 220,339

38—West Virginia Library Commission

(WV Code Chapter 10)

Acct. No. 3500

| | | | |
|---|-----------------------------|--------------|--------------|
| 1 | Personal Services | \$ — | \$ 1,034,680 |
| 2 | Annual Increment | — | 24,408 |
| 3 | Unclassified | 1,152,830 | 6,504,638 |
| 4 | Total | \$ 1,152,830 | \$ 7,563,726 |

39—Department of Culture and History

(WV Code Chapter 29)

Acct. No. 3510

| | | | |
|---|-----------------------------|---------|---------------|
| 1 | Personal Services | \$ — | \$ 1,226,444* |
| 2 | Annual Increment | — | 13,806 |
| 3 | Unclassified | 911,000 | 1,893,725 |

| | | | |
|---|--------------------------------|------------|--------------|
| 4 | Arts and Humanities | | |
| 5 | Fund—Grants and | | |
| 6 | Contractual Services | — | 750,000 |
| 7 | Total | \$ 911,000 | \$ 3,883,975 |

*Includes salary of the commissioner at \$36,500 per annum.

8 Any unexpended balance remaining in the appropri-
 9 ation for Washington Carver Camp (account no. 3510-
 10 05) at the close of the fiscal year 1987-88 is hereby
 11 reappropriated for expenditure during the fiscal year
 12 1988-89.

13 The Unclassified appropriation includes funding for
 14 the Arts and Humanities Fund (account nos. 3515-00, -
 15 01, -05), Department Programming Funds (account nos.
 16 3520-06, -07, -08), Grants, Fairs and Festivals (account
 17 no. 3510-04) and Washington Carver Camp (account no.
 18 3510-05) and shall be expended only upon authorization
 19 of the department of culture and history and in
 20 accordance with the provisions of chapter five-a and
 21 article three, chapter twelve of the code.

22 All federal moneys received as reimbursement to the
 23 department of culture and history for moneys expended
 24 from the general revenue fund for the Arts and
 25 Humanities Fund and Historical Preservation are
 26 hereby reappropriated for the purposes as originally
 27 made, including personal services, current expenses and
 28 equipment.

CORRECTIONS

40—Board of Probation and Parole

(WV Code Chapter 62)

Acct. No. 3650

| | | | |
|---|-----------------------------------|------|------------|
| 1 | Salaries of Members | | |
| 2 | of Board of Proba- | | |
| 3 | tion and Parole | \$ — | \$ 81,000* |
| 4 | Other Personal Services | — | 54,152 |
| 5 | Annual Increment | — | 1,188 |
| 6 | Unclassified | — | 26,000 |
| 7 | Total | \$ — | \$ 162,340 |

*Three members at \$27,000 each per annum.

*41—Department of Corrections—
Central Office*

(WV Code Chapters 25, 28, 29 and 62)

Acct. No. 3680

| | | | | | |
|---|-------------------------|----|---|----|----------|
| 1 | Personal Services | \$ | — | \$ | 426,039* |
| 2 | Annual Increment | | — | | 6,408 |
| 3 | Unclassified | | — | | 200,228 |
| 4 | Total | \$ | — | \$ | 632,675 |

*Includes salary of the commissioner at \$36,500 per annum.

*42—Department of Corrections—
Correctional Units*

(WV Code Chapters 25, 28, 29 and 62)

Acct. No. 3770

| | | | | | |
|---|-----------------------------|----|---|----|------------|
| 1 | Personal Services | \$ | — | \$ | 12,700,058 |
| 2 | Annual Increment | | — | | 182,818 |
| 3 | Unclassified | | — | | 9,190,497 |
| 4 | Pruntytown Operations | | — | | —0— |
| 5 | Total | \$ | — | \$ | 22,073,373 |

6 Any unexpended balances remaining in the appropri-
7 ations for Capital Outlay (account no. 3770-04) and
8 Pruntytown Facility— Unclassified (account no. 3770-
9 07) at the close of the fiscal year 1987-88 are hereby
10 reappropriated for expenditure during the fiscal year
11 1988-89.

12 The commissioner of corrections, prior to the begin-
13 ning of the fiscal year, shall file with the legislative
14 auditor an expenditure schedule for each formerly
15 separate spending unit which has been consolidated into
16 the above account and which receives a portion of the
17 above appropriation. He shall also, within fifteen days
18 after the close of each six-month period of said fiscal
19 year, file with the legislative auditor an itemized report
20 of expenditures made during the preceding six-month
21 period. Such report shall include the total of expendi-

- 22 tures made for personal services, annual increment,
 23 current expenses (inmate medical expenses and other),
 24 repairs and alternations and equipment.

HEALTH AND HUMAN SERVICES

*43—State Department of Health—
 Central Office*

(WV Code Chapter 16)

Acct. No. 4000

| | | | | | |
|----|-------------------------------|----|---|----|------------|
| 1 | Personal Services | \$ | — | \$ | 5,756,325* |
| 2 | Annual Increment | | — | | 132,848 |
| 3 | Current Expenses | | — | | 4,432,499 |
| 4 | Repairs and Alterations | | — | | 4,000 |
| 5 | Equipment | | — | | 166,915 |
| 6 | Special Olympics | | — | | 28,000 |
| 7 | Foster Grandparents | | | | |
| 8 | Stipends/Travel | | — | | 62,370 |
| 9 | Hemophiliac Assistance | | | | |
| 10 | Program | | — | | 132,412 |
| 11 | Annual Increment | | — | | 760 |
| 12 | Poison Control Hot Line | | — | | 200,000 |
| 13 | Corporate Nonprofit | | | | |
| 14 | Community Health | | | | |
| 15 | Centers—F.M.H.A. | | | | |
| 16 | Mortgage Finance | | — | | 105,913 |
| 17 | Unclassified | | — | | —0— |
| 18 | Total | \$ | — | \$ | 11,022,042 |

*Includes salary of the director at \$54,500 per annum.

- 19 Any unexpended balances remaining in the appropri-
 20 ations for Placement Programs for the Developmentally
 21 Disabled (account no. 4000-13), Agent Orange (account
 22 no. 4000-17) and Reimbursement to Community Mental
 23 Health and Mental Retardation Centers (account no.
 24 4201-18) at the close of the fiscal year 1987-88 are
 25 hereby reappropriated for expenditure during the fiscal
 26 year 1988-89:

*44—Department of Veterans' Affairs—
 Veterans' Home*

(WV Code Chapter 9A)

Acct. No. 4010

| | | | | | |
|---|-------------------------|----|---------|----|---------|
| 1 | Personal Services | \$ | — | \$ | 929,946 |
| 2 | Annual Increment | | — | | 19,656 |
| 3 | Unclassified | | 406,400 | | —0— |
| 4 | Total | \$ | 406,400 | \$ | 949,602 |

5 Any unexpended balances remaining in the appropri-
 6 ations for Repairs and Alterations (account no. 4010-02)
 7 and Equipment (account no. 4010-03) at the close of the
 8 fiscal year 1987-88 are hereby reappropriated for
 9 expenditure during the fiscal year 1988-89.

*45—Resource Recovery—
 Solid Waste Disposal Authority*

(WV Code Chapter 16)

Acct. No. 4020

| | | | | | |
|---|-------------------------|----|---|----|---------|
| 1 | Personal Services | \$ | — | \$ | 71,124 |
| 2 | Annual Increment | | — | | 972 |
| 3 | Unclassified | | — | | 31,314 |
| 4 | Total | \$ | — | \$ | 103,410 |

46—Department of Veterans' Affairs

(WV Code Chapter 9A)

Acct. No. 4040

| | | | | | |
|---|---------------------------|----|---|----|----------|
| 1 | Personal Services | \$ | — | \$ | 680,732* |
| 2 | Annual Increment | | — | | 13,104 |
| 3 | Unclassified | | — | | 131,864 |
| 4 | In Aid of Veterans Day | | | | |
| 5 | Patriotic Exercises | | — | | 7,500 |
| 6 | Total | \$ | — | \$ | 833,200 |

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

47—Department of Human Services

(WV Code Chapters 9, 48 and 49)

Acct. No. 4050

| | | | |
|---|-------------------------|---------------|----------------|
| 1 | Personal Services | \$ — | \$ 11,196,245* |
| 2 | Annual Increment | — | 520,000 |
| 3 | Unclassified | 390,078,000 | 51,387,255 |
| 4 | Medical Services | — | 65,000,000 |
| 5 | FEMA—IFG Grant..... | — | 2,266,477 |
| 6 | Total | \$390,078,000 | \$ 130,369,977 |

*Includes salary of the commissioner at \$45,500 per annum.

7 In addition to the amounts in the Medical Services line
 8 item above, an amount up to \$9,500,000 in the line item
 9 designated Medical Services-Medicaid Match of account
 10 no. 8500 is authorized for use for Title XIX waiver,
 11 personal care option, maternity and infant care, ICF-
 12 MR group homes, clinic services option and case
 13 management option. An equal sum within Medical
 14 Services is authorized for Title XIX waiver, personal
 15 care option, maternity and infant care, ICF-MR group
 16 homes, clinic services option and case management
 17 option.

48—State Commission on Aging

(WV Code Chapter 29)

Acct. No. 4060

| | | | |
|---|-------------------------------|--------------|--------------|
| 1 | Personal Services | \$ — | \$ 186,734 |
| 2 | Annual Increment | — | 3,204 |
| 3 | Unclassified | 10,639,000 | 3,499,700 |
| 4 | Continuum of Care Program | — | 800,000 |
| 5 | Silver Haired Legislature ... | — | 20,000 |
| 6 | Total | \$10,639,000 | \$ 4,509,638 |

7 Any unexpended balance remaining in the appropri-
 8 ation for Senior Citizen Centers—Land Acquisition,
 9 Const./R and A (account no. 4060-10) at the close of the
 10 fiscal year 1987-88 is hereby reappropriated for expen-
 11 diture during the fiscal year 1988-89.

49—Consolidated Medical Service Fund

Acct. No. 4190

| | | | |
|----|-----------------------------|-------------------|---------------|
| 1 | Institutional Facilities | | |
| 2 | Operations | \$ — | \$ 48,571,100 |
| 3 | Reimbursement to | | |
| 4 | Community Mental | | |
| 5 | Health and Mental | | |
| 6 | Retardation Centers | — | 20,283,932 |
| 7 | Reimbursement to | | |
| 8 | Community Behavioral | | |
| 9 | Health Programs | | |
| 10 | for Social Services | — | 1,532,950 |
| 11 | MH/MR Special Projects | — | 1,900,000 |
| 12 | State Aid to | | |
| 13 | Local Agencies | — | 6,527,898 |
| 14 | Maternal and Child | | |
| 15 | Health Clinics, Clinicians | | |
| 16 | and Medical Contracts | | |
| 17 | and Fees | — | 2,600,000 |
| 18 | Placement Programs for | | |
| 19 | the Developmentally | | |
| 20 | Disabled | — | 3,822,120 |
| 21 | Primary Care Contracts to | | |
| 22 | Community Health | | |
| 23 | Centers | — | 2,705,587 |
| 24 | Agent Orange | — | 107,077 |
| 25 | Alcohol, Drug Abuse and DD | — | 2,846,200 |
| 26 | Epidemiology Research | — | 263,036 |
| 27 | Grants to Counties and | | |
| 28 | EMS Entities | — | 1,790,000 |
| 29 | Behavioral Health Program | — | 1,277,000 |
| 30 | Unclassified | <u>23,929,200</u> | <u>—0—</u> |
| 31 | Total | \$23,929,200 | \$ 94,226,900 |

32 The director of health, prior to the beginning of the
33 fiscal year, shall file with the legislative auditor an
34 expenditure schedule for each formerly separate
35 spending unit which has been consolidated into the
36 above account and which receives a portion of the above
37 appropriation. He shall also, within fifteen days after
38 the close of each six-month period of said fiscal year, file
39 with the legislative auditor an itemized report of

40 expenditures made during the preceding six-month
41 period.

42 Additional funds have been appropriated in account
43 no. 8500 for operation of the medical facilities.

*50—State Board of Rehabilitation—
Division of Rehabilitation Services*

(WV Code Chapter 18)

Acct. No. 4405

1 Unclassified—Total \$27,172,000 \$ 10,168,448

BUSINESS AND INDUSTRIAL RELATIONS

51—Department of Labor

(WV Code Chapters 21 and 47)

Acct. No. 4500

| | | | | | |
|---|-----------------------------|----|---------|----|-----------|
| 1 | Personal Services | \$ | — | \$ | 895,585* |
| 2 | Annual Increment | | — | | 10,008 |
| 3 | Unclassified | | 298,800 | | 217,660 |
| 4 | Total | \$ | 298,800 | \$ | 1,123,253 |

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

52—Department of Commerce

(WV Code Chapter 5B)

Acct. No. 4625

| | | | | | |
|---|---|----|-----------|----|------------|
| 1 | Personal Services | \$ | — | \$ | 7,266,190* |
| 2 | Annual Increment | | — | | 200,000 |
| 3 | Unclassified | | 1,000,000 | | 513,636 |
| 4 | Advertising | | — | | 700,000 |
| 5 | Pricketts Fort State 6 Park—Lights, Boat 7 Docks and Amphitheater . . | | — | | 50,000 |
| 8 | Total | \$ | 1,000,000 | \$ | 8,729,826 |

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

9 Any unexpended balances remaining in the appropri-
10 ations for Cacapon State Park (account no. 4625-65) and
11 Capital Outlay (account no. 4625-10) at the close of the

12 fiscal year 1987-88 are hereby reappropriated for
13 expenditure during the fiscal year 1988-89.

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

*53—Interstate Commission on
Potomac River Basin*

(WV Code Chapter 29)

Acct. No. 4730

| | | | | | |
|---|--------------------------|----|---|----|--------|
| 1 | West Virginia's | | | | |
| 2 | Contribution to the | | | | |
| 3 | Interstate Commission on | | | | |
| 4 | Potomac River | | | | |
| 5 | Basin—Total | \$ | — | \$ | 24,400 |

*54—Ohio River Valley Water
Sanitation Commission*

(WV Code Chapter 29)

Acct. No. 4740

| | | | | | |
|---|------------------------------|----|---|----|---------|
| 1 | West Virginia's Contribution | | | | |
| 2 | to the Ohio River Valley | | | | |
| 3 | Water Sanitation | | | | |
| 4 | Commission—Total | \$ | — | \$ | 100,200 |

*55—West Virginia Air Pollution
Control Commission*

(WV Code Chapter 16)

Acct. No. 4760

| | | | | | |
|---|-------------------------|----|-----------|----|---------|
| 1 | Personal Services | \$ | — | \$ | 617,289 |
| 2 | Annual Increment | | — | | 6,684 |
| 3 | Unclassified | | 1,241,300 | | 182,272 |
| 4 | Total | \$ | 1,241,300 | \$ | 806,245 |

56—Department of Energy

(WV Code Chapter 22)

Acct. No. 4775

| | | | | | |
|---|-------------------------|----|------------|----|------------|
| 1 | Personal Services | \$ | — | \$ | 4,790,264* |
| 2 | Annual Increment | | — | | 78,000 |
| 3 | Unclassified | | 29,112,130 | | 999,476 |
| 4 | Total | \$ | 29,112,130 | \$ | 5,867,740 |

*Includes salaries of the commissioner at \$65,000 per annum and of the deputy commissioner at \$45,000 per annum.

57—Board of Coal Mine Health and Safety

(WV Code Chapter 22)

Acct. No. 4775-20

| | | | | | |
|---|--------------------------|----|---|----|--------|
| 1 | Unclassified—Total | \$ | — | \$ | 60,000 |
|---|--------------------------|----|---|----|--------|

*58—Coal Mine Safety and
Technical Review Committee*

(WV Code Chapter 22)

Acct. No. 4775-21

| | | | | | |
|---|--------------------------|----|---|----|--------|
| 1 | Unclassified—Total | \$ | — | \$ | 75,000 |
|---|--------------------------|----|---|----|--------|

59—State Athletic Commission

(WV Code Chapter 29)

Acct. No. 4790

| | | | | | |
|---|--------------------------|----|---|----|-------|
| 1 | Unclassified—Total | \$ | — | \$ | 5,500 |
|---|--------------------------|----|---|----|-------|

*60—West Virginia Nonintoxicating
Beer Commissioner*

(WV Code Chapter 11)

Acct. No. 4900

| | | | | | |
|---|-------------------------|----|---|----|----------|
| 1 | Personal Services | \$ | — | \$ | 303,360* |
| 2 | Annual Increment | | — | | 4,250 |
| 3 | Unclassified | | — | | 108,750 |
| 4 | Total | \$ | — | \$ | 416,360 |

*Includes salary of the commissioner at \$30,500 per annum.

61—West Virginia Racing Commission

(WV Code Chapter 19)

Acct. No. 4950

| | | | | | |
|---|-------------------------|----|---|----|-----------|
| 1 | Personal Services | \$ | — | \$ | 936,709 |
| 2 | Annual Increment | | — | | 8,200 |
| 3 | Unclassified | | — | | 355,091 |
| 4 | Total | \$ | — | \$ | 1,300,000 |

AGRICULTURE

62—Department of Agriculture

(WV Code Chapter 19)

Acct. No. 5100

| | | | | | |
|---|-------------------------------|----|-----------|----|-----------|
| 1 | Salary of Commissioner | \$ | — | \$ | 46,800 |
| 2 | Other Personal Services | | — | | 2,316,737 |
| 3 | Annual Increment | | — | | 51,156 |
| 4 | Unclassified | | 1,744,500 | | 828,757 |
| 5 | Total | \$ | 1,744,500 | \$ | 3,243,450 |

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

63—Farm Management Commission

(WV Code Chapter 19)

Acct. No. 5110

| | | | | | |
|---|-------------------------|----|---|----|-----------|
| 1 | Personal Services | \$ | — | \$ | 641,494 |
| 2 | Annual Increment | | — | | 17,496 |
| 3 | Unclassified | | — | | 829,838 |
| 4 | Total | \$ | — | \$ | 1,488,828 |

*64—Department of Agriculture—
Soil Conservation Committee*

(WV Code Chapter 19)

Acct. No. 5120

| | | | | | |
|---|-------------------------|----|---|----|---------|
| 1 | Personal Services | \$ | — | \$ | 327,548 |
| 2 | Annual Increment | | — | | 6,480 |
| 3 | Unclassified | | — | | 136,659 |
| 4 | Total | \$ | — | \$ | 470,687 |

*65—Department of Agriculture—
Division of Rural Resources
(Matching Fund)*

(WV Code Chapter 19)

Acct. No. 5130

| | | | | | |
|---|-------------------------|----|---|----|---------|
| 1 | Personal Services | \$ | — | \$ | 557,236 |
| 2 | Annual Increment | | — | | 12,636 |
| 3 | Unclassified | | — | | 264,387 |
| 4 | Total | \$ | — | \$ | 834,259 |

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

*66—Department of Agriculture—
Meat Inspection*

(WV Code Chapter 19)

Acct. No. 5140

| | | | | | |
|---|-------------------------|----|---------|----|---------|
| 1 | Personal Services | \$ | — | \$ | 260,000 |
| 2 | Annual Increment | | — | | 7,358 |
| 3 | Unclassified | | 685,000 | | 98,504 |
| 4 | Total | \$ | 685,000 | \$ | 365,862 |

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

*67—Department of Agriculture—
Agricultural Awards*

(WV Code Chapter 19)

Acct. No. 5150

| | | | | | |
|---|---------------------------|----|---|----|---------|
| 1 | Agricultural Awards | \$ | — | \$ | 70,000 |
| 2 | Fairs and Festivals | | — | | 196,450 |
| 3 | Total | \$ | — | \$ | 266,450 |

68—*Department of Agriculture—
Forestry Division*

(WV Code Chapter 19)

Acct. No. 5160

| | | | | | |
|---|-------------------------|----|---------|----|------------|
| 1 | Personal Services | \$ | — | \$ | 2,228,114* |
| 2 | Annual Increment | | — | | 45,036 |
| 3 | Unclassified | | 322,100 | | 245,860 |
| 4 | Total | \$ | 322,100 | \$ | 2,519,010 |

*Includes salary of the director at \$45,000 per annum.

5 Out of the above general revenue funds, a sum may
6 be used to match federal funds for cooperative studies
7 or other funds for similar purposes.

CONSERVATION AND DEVELOPMENT

69—*Geological and Economic Survey*

(WV Code Chapter 29)

Acct. No. 5200

| | | | | | |
|---|-------------------------|----|--------|----|-----------|
| 1 | Personal Services | \$ | — | \$ | 1,251,493 |
| 2 | Annual Increment | | — | | 19,404 |
| 3 | Unclassified | | 32,000 | | 273,709 |
| 4 | Total | \$ | 32,000 | \$ | 1,544,606 |

5 Any unexpended balance remaining in the appropri-
6 ation To Secure Federal and Other Contracts (account
7 no. 5200-07) at the close of the fiscal year 1987-88 is
8 hereby reappropriated for expenditure during the fiscal
9 year 1988-89.

10 The Unclassified appropriation includes funding to
11 secure federal and other contracts and may be trans-
12 ferred to a special revenue account for the purpose of
13 providing advance funding for such contracts.

70—Water Resources Board

(WV Code Chapter 20)

Acct. No. 5640

| | | | | | |
|---|-------------------------|----|---|----|---------|
| 1 | Personal Services | \$ | — | \$ | 64,596 |
| 2 | Annual Increment | | — | | 792 |
| 3 | Unclassified | | — | | 54,566 |
| 4 | Total | \$ | — | \$ | 119,954 |

71—Department of Natural Resources

(WV Code Chapter 20)

Acct. No. 5650

| | | | | | |
|---|-------------------------|----|-----------|----|------------|
| 1 | Personal Services | \$ | — | \$ | 3,112,349* |
| 2 | Annual Increment | | — | | 67,968 |
| 3 | Unclassified | | 9,512,850 | | 1,046,341 |
| 4 | Wild Wonderful West | | | | |
| 5 | Virginia Magazine | | — | | —0— |
| 6 | Water Resources | | — | | —0— |
| 7 | Total | \$ | 9,512,850 | \$ | 4,226,658 |

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

72—Blennerhassett Historical

Park Commission

(WV Code Chapter 29)

Acct. No. 5660

| | | | | | |
|---|-------------------------|----|---------|----|---------|
| 1 | Personal Services | \$ | — | \$ | 210,327 |
| 2 | Annual Increment | | — | | 1,620 |
| 3 | Unclassified | | 400,000 | | 177,144 |
| 4 | Total | \$ | 400,000 | \$ | 389,091 |

5 Any unexpended balance remaining in the appropri-
 6 ation for Blennerhassett Island (account no. 5660-07) at
 7 the close of the fiscal year 1987-88 is hereby reappropri-
 8 ated for expenditure during the fiscal year 1988-89.

73—Water Development Authority

(WV Code Chapter 20)

Acct. No. 5670

1 Unclassified—Total \$18,919,200 \$ —0—

2 Any unexpended balances remaining in the appropri-
3 ations for Phase III Hardship Grants (account no. 5670-
4 08), Hardship Grants (account no. 5670-10), Loan and
5 Grant Program (account no. 5670-17) and Capital
6 Outlay—Sewer (account no. 5670-20) at the close of the
7 fiscal year 1987-88 are hereby reappropriated for
8 expenditure during the fiscal year 1988-89.

*74—West Virginia Railroad
Maintenance Authority*

(WV Code Chapter 29)

Acct. No. 5690

| | | | | | |
|---|----------------------------|----|---------|----|---------|
| 1 | Personal Services | \$ | — | \$ | 441,935 |
| 2 | Annual Increment | | — | | 5,364 |
| 3 | Unclassified | | 150,000 | | 200,460 |
| 4 | B & O Commuter Service ... | | — | | 100,000 |
| 5 | Total | \$ | 150,000 | \$ | 747,759 |

6 Any unexpended balance remaining in the appropri-
7 ation for Unclassified (account no. 5690-06) at the close
8 of the fiscal year 1987-88 is hereby reappropriated for
9 expenditure during the fiscal year 1988-89 and redesign-
10 ated Rehabilitation and Repair of Chapline Hill
11 Tunnel.

PROTECTION

75—Department of Public Safety

(WV Code Chapter 15)

Acct. No. 5700

| | | | | | |
|---|-------------------------|----|---------|----|-------------|
| 1 | Personal Services | \$ | — | \$ | 16,305,281* |
| 2 | Annual Increment | | — | | 91,944 |
| 3 | Unclassified | | 294,700 | | 9,102,775 |
| 4 | Total | \$ | 294,700 | \$ | 25,500,000 |

*Includes salary of the superintendent at \$42,500 per annum.

76—Adjutant General—State Militia

(WV Code Chapter 15)

Acct. No. 5800

| | | | | | |
|---|-------------------------|----|-----------|----|-----------|
| 1 | Personal Services | \$ | — | \$ | 256,723* |
| 2 | Annual Increment | | — | | 5,976 |
| 3 | Unclassified | | 2,600,000 | | 3,737,301 |
| 4 | Total | \$ | 2,600,000 | \$ | 4,000,000 |

*Includes salary of the adjutant general at \$34,000 per annum.

BOARDS AND COMMISSIONS

77—*West Virginia Civil Service System*

(WV Code Chapter 29)

Acct. No. 5840

| | | | | | |
|---|-------------------------|----|---|----|-----------|
| 1 | Personal Services | \$ | — | \$ | 828,718* |
| 2 | Annual Increment | | — | | 15,012 |
| 3 | Unclassified | | — | | 215,692 |
| 4 | Total | \$ | — | \$ | 1,059,422 |

*Includes salary of the director at \$36,500 per annum.

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

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

78—*West Virginia Public Legal
 Services Council*

(WV Code Chapter 29)

Acct. No. 5900

| | | | | | |
|---|-------------------------|----|---|----|-----------|
| 1 | Personal Services | \$ | — | \$ | 228,863 |
| 2 | Annual Increment | | — | | 1,944 |
| 3 | Unclassified | | — | | 4,628,193 |
| 4 | Total | \$ | — | \$ | 4,859,000 |

5 Any unexpended balance remaining in the appropri-
 6 ation for Appointed Counsel Fees (account no. 5900-11)
 7 at the close of the fiscal year 1987-88 is hereby
 8 reappropriated for expenditure during the fiscal year
 9 1988-89.

79—Human Rights Commission

(WV Code Chapter 5)

Acct. No. 5980

| | | | | | |
|---|-------------------------|----|---------|----|---------|
| 1 | Personal Services | \$ | — | \$ | 394,142 |
| 2 | Annual Increment | | — | | 6,389 |
| 3 | Unclassified | | 301,600 | | 130,294 |
| 4 | Total | \$ | 301,600 | \$ | 530,825 |

80—Women's Commission

(WV Code Chapter 29)

Acct. No. 6000

| | | | | | |
|---|-------------------------|----|---|----|--------|
| 1 | Personal Services | \$ | — | \$ | 53,014 |
| 2 | Annual Increment | | — | | 432 |
| 3 | Unclassified | | — | | 13,579 |
| 4 | Total | \$ | — | \$ | 67,025 |

81—Education and State Employees Grievance Board

(WV Code Chapter 18)

Acct. No. 6015

| | | | | | |
|---|-------------------------|----|---|----|---------|
| 1 | Personal Services | \$ | — | \$ | 351,476 |
| 2 | Annual Increment | | — | | 5,500 |
| 3 | Unclassified | | — | | 152,918 |
| 4 | Total | \$ | — | \$ | 509,894 |

*82—West Virginia Public Employees
Retirement Board*

(WV Code Chapter 5)

Acct. No. 6140

1 Supplemental Benefits for
 2 Annuitants—Total \$ — \$ 2,232,000

3 The board shall transfer monthly to the public
 4 employees insurance agency (account no. 8265) from
 5 employees' contribution moneys, accumulated reserves
 6 or investment income an amount of money sufficient to
 7 reimburse the public employees insurance agency for
 8 the cost of the public employee accrued sick leave
 9 program, as set forth in section twelve, article sixteen,
 10 chapter five of the code, and the cost of the state's share
 11 of health care claims of retired public employees
 12 retirement system members who have elected health
 13 care coverage through the public employees insurance
 14 agency pursuant to section twelve, article sixteen,
 15 chapter five of the code.

16 The board shall transfer and cause to expire into the
 17 state fund, general revenues of the state, the employer
 18 contribution moneys received from those departments
 19 operating from special revenue funds.

20 The West Virginia department of highways, depart-
 21 ment of motor vehicles, workers' compensation commis-
 22 sioner, public service commission and other depart-
 23 ments operating from special revenue funds and/or
 24 federal funds shall pay their proportionate share of the
 25 retirement costs for their respective divisions. When
 26 specific appropriations are not made, such payments
 27 may be made from the balances in the various special
 28 revenue funds in excess of specific appropriations.

*83—West Virginia Public Employees
 Insurance Agency*

(WV Code Chapter 5)

Acct. No. 6150

1 Unclassified—Total \$ — \$ 19,290,352

2 Moneys transferred into this account shall be used to

3 cover the state's share of public employees health
 4 insurance costs for those spending units operating from
 5 the general revenue fund, with the remainder of such
 6 costs to be paid by the spending unit as specified in
 7 TITLE I—GENERAL PROVISIONS, Sec. 3 of this act.

8 The above appropriation and any special revenue
 9 received are intended to cover employers' contribution
 10 as defined in enrolled house bill no. 4222, acts, Legis-
 11 lature, regular session, 1988.

12 The West Virginia department of highways, depart-
 13 ment of motor vehicles, workers' compensation commis-
 14 sioner, public service commission and other depart-
 15 ments operating from special revenue funds and/or
 16 federal funds shall pay their proportionate share of the
 17 public employees health insurance cost for their
 18 respective divisions. When specific appropriations are
 19 not made, such payments may be made from the
 20 balances in the various special revenue funds in excess
 21 of specific appropriations.

84—Insurance Commissioner

(WV Code Chapter 33)

Acct. No. 6160

| | | | | | |
|---|--------------------------|----|---|----|-----|
| 1 | Unclassified—Total | \$ | — | \$ | —0— |
|---|--------------------------|----|---|----|-----|

85—State Fire Commission

(WV Code Chapter 29)

Acct. No. 6170

| | | | | | |
|---|-------------------------|----|---|----|---------|
| 1 | Personal Services | \$ | — | \$ | 605,305 |
| 2 | Annual Increment | | — | | 11,196 |
| 3 | Unclassified | | — | | 197,951 |
| 4 | Total | \$ | — | \$ | 814,452 |

1 Total Title II, Section 1—

| | | | | | |
|---|-----------------------|--|---|----|---------------|
| 2 | General Revenue | | — | \$ | 1,463,037,750 |
|---|-----------------------|--|---|----|---------------|

1 **Sec. 3. Appropriations from other funds.**—From
 2 the funds designated there are hereby appropriated
 3 conditionally upon the fulfillment of the provisions set

4 forth in article two, chapter five-a of the code the
 5 following amounts, as itemized, for expenditure during
 6 the fiscal year one thousand nine hundred eighty-nine.

1 **Sec. 4. Appropriations of federal funds.**—In
 2 accordance with article eleven, chapter four of the code,
 3 from federal funds there are hereby appropriated
 4 conditionally upon the fulfillment of the provisions set
 5 forth in article two, chapter five-a of the code the
 6 following amounts, as itemized, for expenditure during
 7 the fiscal year one thousand nine hundred eighty-nine.

8 Any unexpended cash balances remaining in federal
 9 funds at the close of the fiscal year 1987-88 are hereby
 10 reappropriated for expenditure during the fiscal year
 11 1988-89 and brought forward to such 1988-89 fiscal
 12 year; further, the amount of total appropriations made
 13 in fiscal years prior to 1988-89 are hereby expired and
 14 such ledger entries closed.

86—*West Virginia Department of Highways*

(WV Code Chapters 17 and 17C)

Acct. No. 6700

TO BE PAID FROM STATE ROAD FUND

| | Federal Funds Fiscal Year 1988-89 | Other Funds Fiscal Year 1988-89 |
|-------------------------------------|--|--|
| 1 Maintenance, Expressway, | | |
| 2 Trunkline and Feeder \$ | — | \$ 54,600,000 |
| 3 Maintenance, State | | |
| 4 Local Services | — | 77,080,000 |
| 5 Maintenance, Contract | | |
| 6 Paving and Secondary | | |
| 7 Road Maintenance | — | 28,768,000 |
| 8 Bridge Repair | | |
| 9 and Replacement | — | 10,000,000 |
| 10 Inventory Revolving | — | 1,500,000 |
| 11 Equipment Revolving | — | 15,750,000 |
| 12 General Operations | — | 28,125,000* |
| 13 Annual Increment | — | 228,000 |

| | | | |
|----|-------------------------------|------|---------------|
| 14 | Debt Service | — | 103,088,000 |
| 15 | Interstate Construction | — | 54,650,000 |
| 16 | Other Federal | | |
| 17 | Aid Programs | — | 152,350,000 |
| 18 | Appalachian Program | — | 29,750,000 |
| 19 | Nonfederal Aid Construction | — | 7,566,000 |
| 20 | Highway Litter Control | — | 1,900,000 |
| 21 | Early Retirement | | |
| 22 | Transfer of Funds | — | 5,200,000 |
| 23 | Total | \$ — | \$570,555,000 |

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

24 The above appropriations are to be expended in
25 accordance with the provisions of chapters seventeen
26 and seventeen-c of the code.

27 The commissioner of highways shall have the author-
28 ity to operate revolving funds within the state road fund
29 for the operation and purchase of various types of
30 equipment used directly and indirectly in the construc-
31 tion and maintenance of roads and for the purchase of
32 inventories and materials and supplies.

33 There is hereby appropriated within the above items
34 sufficient money for the payment of claims, accrued or
35 arising during this budgetary period, to be paid in
36 accordance with sections seventeen and eighteen, article
37 two, chapter fourteen of the code.

38 Funds appropriated on line 13, Annual Increment,
39 shall be transferred to line 12, General Operations, only
40 as required.

87—Department of Motor Vehicles

(WV Code Chapters 17, 17A, 17B, 17C, 20 and 24)

Acct. No. 6710

TO BE PAID FROM STATE ROAD FUND

| | | | |
|---|-------------------------|------------|---------------|
| 1 | Personal Services | \$ — | \$ 2,609,014* |
| 2 | Annual Increment | — | 47,556 |
| 3 | Unclassified | 100,000 | 4,104,730 |
| 4 | Total | \$ 100,000 | \$ 6,761,300 |

*Includes salary of the commissioner at \$36,500 per annum.

88—*State Department of Education—
Veterans' Education*

(WV Code Chapter 18)

Acct. No. 7979

TO BE PAID FROM FEDERAL FUNDS

1 Unclassified—Total \$ 130,413 \$ —

2 Expenditures from this appropriation shall not exceed
3 the amount to be reimbursed by the federal government.

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

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

(WV Code Chapters 12 and 36)

Acct. No. 8000

TO BE PAID FROM SPECIAL REVENUE FUND

| | | | | | |
|---|-----------------------------|----|---|----|---------|
| 1 | Personal Services | \$ | — | \$ | 127,353 |
| 2 | Annual Increment | | — | | 468 |
| 3 | Unclassified | | — | | 59,479 |
| 4 | Total | \$ | — | \$ | 187,300 |

90—*Real Estate Commission*

(WV Code Chapter 47)

Acct. No. 8010

TO BE PAID FROM SPECIAL REVENUE FUND

| | | | | | |
|---|-----------------------------|----|---|----|---------|
| 1 | Personal Services | \$ | — | \$ | 131,217 |
| 2 | Annual Increment | | — | | 2,016 |
| 3 | Unclassified | | — | | 133,067 |
| 4 | Total | \$ | — | \$ | 266,300 |

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

91—Insurance Commissioner

(WV Code Chapter 33)

Acct. No. 8016

TO BE PAID FROM SPECIAL REVENUE FUND

| | | | | | |
|---|-------------------------|----|---|----|-----------|
| 1 | Personal Services | \$ | — | \$ | 925,412* |
| 2 | Annual Increment | | — | | 10,004 |
| 3 | Unclassified | | — | | 619,958 |
| 4 | Total | \$ | — | \$ | 1,555,374 |

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

- 5 The total amount of this appropriation shall be paid
6 from a special revenue fund out of collections of fees and
7 charges as provided by law.

92—Regional Jail and Prison Authority

(WV Code Chapter 31)

Acct. No. 8051

TO BE PAID FROM SPECIAL REVENUE FUND

| | | | | | |
|---|-------------------------|----|---|----|---------|
| 1 | Personal Services | \$ | — | \$ | 252,485 |
| 2 | Annual Increment | | — | | 2,808 |
| 3 | Unclassified | | — | | 175,329 |
| 4 | Total | \$ | — | \$ | 430,622 |

93—West Virginia Racing Commission

(WV Code Chapter 19)

Acct. No. 8080

TO BE PAID FROM SPECIAL REVENUE FUND

| | | | | | |
|---|----------------------------|----|---|----|---------|
| 1 | Medical Expenses—Total ... | \$ | — | \$ | 120,000 |
|---|----------------------------|----|---|----|---------|

- 2 The total amount of this appropriation shall be paid
3 from the special revenue fund out of collections of
4 license fees and fines as provided by law.

- 5 No expenditures shall be made from this account

- 6 except for hospitalization, medical care and/or funeral
7 expenses for persons contributing to this fund.

*94—Auditor's Office—
Land Department Operating Fund*
(WV Code Chapters 11A, 12 and 36)

Acct. No. 8120

TO BE PAID FROM SPECIAL REVENUE FUND

1 Unclassified—Total \$ — \$ 12,000

- 2 The total amount of this appropriation shall be paid
3 from the special revenue fund out of fees and collections
4 as provided by law.

*95—State Board of Rehabilitation—Division of
Rehabilitation Services—West Virginia Rehabilitation
Center—Special Account*

(WV Code Chapter 18)

Acct. No. 8137

TO BE PAID FROM SPECIAL REVENUE FUND

1 Unclassified—Total \$ — \$ 600,000

- 2 The total amount of this appropriation shall be paid
3 from special revenue funds out of receipts collected
4 pursuant to section six-a, article ten-a, chapter eighteen
5 of the code.

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

(WV Code Chapter 5A)

Acct. No. 8140

TO BE PAID FROM SPECIAL REVENUE FUND

| | | | |
|---|-----------------------------|------|--------------|
| 1 | Personal Services | \$ — | \$ 768,173 |
| 2 | Annual Increment | — | 15,768 |
| 3 | Unclassified | — | 823,959 |
| 4 | Total | \$ — | \$ 1,607,900 |

- 5 The total amount of this appropriation shall be paid

6 from a special revenue fund as provided by article two,
7 chapter five-a of the code.

8 The above appropriation includes salaries and operat-
9 ing expenses.

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

*97—Department of Finance and Administration—
Information System Services Division Fund*

(WV Code Chapter 5A)

Acct. No. 8151

TO BE PAID FROM SPECIAL REVENUE FUND

| | | | | | |
|---|-------------------------|----|---|----|-----------|
| 1 | Personal Services | \$ | — | \$ | 3,159,211 |
| 2 | Annual Increment | | — | | 49,644 |
| 3 | Unclassified | | — | | 1,590,095 |
| 4 | Total | \$ | — | \$ | 4,798,950 |

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

9 There is hereby appropriated from this fund, in
10 addition to the above appropriation, the necessary
11 amount for the procurement of data processing equip-
12 ment, telecommunications expenses and supplies for
13 resale.

98—Department of Agriculture

(WV Code Chapter 19)

Acct. No. 8180

TO BE PAID FROM SPECIAL REVENUE FUND

| | | | | | |
|---|--------------------------|----|---|----|---------|
| 1 | Unclassified—Total | \$ | — | \$ | 577,400 |
|---|--------------------------|----|---|----|---------|

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

99—*General John McCausland Memorial Farm*

(WV Code Chapter 19)

Acct. No. 8194

TO BE PAID FROM SPECIAL REVENUE FUND

| | | | | | |
|---|--------------------------|----|---|----|--------|
| 1 | Unclassified—Total | \$ | — | \$ | 80,000 |
|---|--------------------------|----|---|----|--------|

2 Funds for the above appropriation shall be expended
3 in accordance with article twenty-six, chapter nineteen
4 of the code.

100—*Board of Barbers and Beauticians*

(WV Code Chapters 16 and 30)

Acct. No. 8220

TO BE PAID FROM SPECIAL REVENUE FUND

| | | | | | |
|---|-------------------------|----|---|----|---------|
| 1 | Personal Services | \$ | — | \$ | 143,899 |
| 2 | Annual Increment | | — | | 3,492 |
| 3 | Unclassified | | — | | 122,509 |
| 4 | Total | \$ | — | \$ | 269,900 |

5 The total amount of this appropriation shall be paid
6 from a special revenue fund out of collections made by
7 the board of barbers and beauticians as provided by law.

101—*Public Service Commission*

(WV Code Chapter 24)

Acct. No. 8280

TO BE PAID FROM SPECIAL REVENUE FUND

| | | | | | |
|---|-------------------------|----|--------|----|------------|
| 1 | Personal Services | \$ | — | \$ | 3,773,869* |
| 2 | Annual Increment | | — | | 41,000 |
| 3 | Unclassified | | 93,700 | | 2,840,031 |
| 4 | Total | \$ | 93,700 | \$ | 6,654,900 |

*Includes salaries of the commissioners—chairman at \$37,575 and two members at \$33,900 each per annum.

5 Any unexpended balance remaining in the appropri-
6 ation for Headquarters Building Development (account

7 no. 8280-10) at the close of the fiscal year 1987-88 is
8 hereby reappropriated for expenditure during the fiscal
9 year 1988-89.

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

*102—Public Service Commission—
Gas Pipeline Division*

(WV Code Chapter 24B)

Acct. No. 8285

TO BE PAID FROM SPECIAL REVENUE FUND

| | | | | | |
|---|-------------------------|----|--------|----|----------|
| 1 | Personal Services | \$ | — | \$ | 128,503* |
| 2 | Annual Increment | | — | | 1,296 |
| 3 | Unclassified | | 87,500 | | 115,301 |
| 4 | Total | \$ | 87,500 | \$ | 245,100 |

*Includes salaries of three members at \$1,600 each per annum.

5 The total amount of this appropriation shall be paid
6 from a special revenue fund out of receipts collected for
7 or by the public service commission pursuant to and in
8 the exercise of regulatory authority over pipeline
9 companies as provided by law.

*103—Public Service Commission—
Motor Carrier Division*

(WV Code Chapter 24A)

Acct. No. 8290

TO BE PAID FROM SPECIAL REVENUE FUND

| | | | | | |
|---|-------------------------|----|---------|----|------------|
| 1 | Personal Services | \$ | — | \$ | 1,216,711* |
| 2 | Annual Increment | | — | | 15,915 |
| 3 | Unclassified | | 468,800 | | 629,974 |
| 4 | Total | \$ | 468,800 | \$ | 1,862,600 |

*Includes salaries of three members at \$8,500 each per annum.

5 The total amount of this appropriation shall be paid

6 from a special revenue fund out of receipts collected for
 7 or by the public service commission pursuant to and in
 8 the exercise of regulatory authority over motor carriers
 9 as provided by law.

*104—Public Service Commission—
 Consumer Advocate*

(WV Code Chapter 24)

Acct. No. 8295

TO BE PAID FROM SPECIAL REVENUE FUND

| | | | | | |
|---|-------------------------|----|---|----|---------|
| 1 | Personal Services | \$ | — | \$ | 321,036 |
| 2 | Annual Increment | | — | | 1,260 |
| 3 | Unclassified | | — | | 337,204 |
| 4 | Total | \$ | — | \$ | 659,500 |

5 The total amount of this appropriation shall be paid
 6 from a special revenue fund out of collections made by
 7 the public service commission.

105—Department of Natural Resources

(WV Code Chapter 20)

Acct. No. 8300

TO BE PAID FROM SPECIAL REVENUE FUND

| | | | | | |
|---|--------------------------|----|---|----|-----------|
| 1 | Personal Services | \$ | — | \$ | 3,992,994 |
| 2 | Annual Increment | | — | | 91,584 |
| 3 | Land Purchase | | | | |
| 4 | and Buildings | | — | | 603,392 |
| 5 | Fort Mill Run— | | | | |
| 6 | Land Purchase for | | | | |
| 7 | Hunting and Fishing Area | | — | | 300,000 |
| 8 | Unclassified | | — | | 3,232,730 |
| 9 | Total | \$ | — | \$ | 8,220,700 |

10 Any unexpended balance remaining in the appropri-
 11 ation for Land Purchase and Buildings (account no.
 12 8300-09) at the close of the fiscal year 1987-88 is hereby
 13 reappropriated for expenditure during the fiscal year
 14 1988-89.

15 The total amount of this appropriation shall be paid
 16 from a special revenue fund out of fees collected by the
 17 department of natural resources. Expenditures shall be
 18 limited to the amounts appropriated except for federal
 19 funds received and special funds collected.

106—West Virginia Hospital Finance Authority

(WV Code Chapter 16)

Acct. No. 8330

TO BE PAID FROM SPECIAL REVENUE FUND

| | | | | | |
|---|-------------------------|----|---|----|---------|
| 1 | Personal Services | \$ | — | \$ | 51,210 |
| 2 | Annual Increment | | — | | 437 |
| 3 | Unclassified | | — | | 83,353 |
| 4 | Total | \$ | — | \$ | 135,000 |

5 The total amount of this appropriation shall be paid
 6 from the special revenue fund out of fees and collections
 7 as provided by article twenty-nine-a, chapter sixteen of
 8 the code.

9 Special funds in excess of the amount herein approp-
 10 riated may be made available by budget amendment
 11 upon request of the commissioner of finance and
 12 administration and the approval of the governor.

*107—Department of Public Safety—
 Inspection Fees*

(WV Code Chapter 15)

Acct. No. 8350

TO BE PAID FROM SPECIAL REVENUE FUND

| | | | | | |
|---|-------------------------|----|---|----|---------|
| 1 | Personal Services | \$ | — | \$ | 487,736 |
| 2 | Annual Increment | | — | | 1,404 |
| 3 | Unclassified | | — | | 247,960 |
| 4 | Total | \$ | — | \$ | 737,100 |

5 The total amount of this appropriation shall be paid
 6 from the special revenue fund out of fees collected for
 7 inspection stickers as provided by law.

108—Department of Public Safety—

Drunk Driving Prevention Fund

(WV Code Chapter 15)

Acct. No. 8355

TO BE PAID FROM SPECIAL REVENUE FUND

1 Unclassified—Total \$ — \$ 1,165,000

2 The total amount of this appropriation shall be paid
3 from the special revenue fund out of receipts collected
4 pursuant to sections nine-a and sixteen, article fifteen,
5 chapter eleven of the code and paid into a revolving fund
6 account in the state treasury.

109—Department of Banking

(WV Code Chapter 31A)

Acct. No. 8395

TO BE PAID FROM SPECIAL REVENUE FUND

| | | | | | |
|---|-------------------------|----|---|----|-----------|
| 1 | Personal Services | \$ | — | \$ | 707,983* |
| 2 | Annual Increment | | — | | 5,832 |
| 3 | Unclassified | | — | | 587,585 |
| 4 | Total | \$ | — | \$ | 1,301,400 |

*Includes salary of the commissioner at \$36,500 per annum.

110—Crime Victims Compensation Fund

(WV Code Chapter 14)

Acct. No. 8412

TO BE PAID FROM SPECIAL REVENUE FUND

| | | | | | |
|---|-------------------------|----|---------|----|---------|
| 1 | Personal Services | \$ | — | \$ | 110,124 |
| 2 | Annual Increment | | — | | 468 |
| 3 | Unclassified | | 700,000 | | 65,008 |
| 4 | Total | \$ | 700,000 | \$ | 175,600 |

5 These funds are intended to be expended for court
6 costs and administrative costs and federal reimburse-
7 ment for compensation paid to crime victims.

111—State Department of Health—

Hospital Services Revenue Account
(*Special Fund*)
(*Capital Improvement, Renovation and Operation*)

(WV Code Chapter 16)

Acct. No. 8500

TO BE PAID FROM SPECIAL REVENUE FUND

| | | | | | |
|----|----------------------------|----|---|----|------------|
| 1 | Unclassified | \$ | — | \$ | —0— |
| 2 | Medical Services— | | | | |
| 3 | Medicaid Match | | — | | 9,500,000 |
| 4 | Institutional Facilities | | | | |
| 5 | Operations | | — | | 19,900,000 |
| 6 | Placement Programs for the | | | | |
| 7 | Developmentally Disabled | | — | | 1,500,000 |
| 8 | Debt Service for | | | | |
| 9 | Huntington, Spencer and | | | | |
| 10 | Jane Lew Facilities | | — | | 4,000,000 |
| 11 | Total | \$ | — | \$ | 34,900,000 |

12 Any unexpended balance remaining in the appropri-
13 ation for hospital services revenue account at the close
14 of the fiscal year 1987-88 is hereby reappropriated for
15 expenditure during the fiscal year 1988-89.

16 The total amount of this appropriation shall be paid
17 from the hospital services revenue account special fund
18 created by section fifteen-a, article one, chapter sixteen
19 of the code, and shall be used only for operating
20 expenses and for improvements in connection with
21 existing facilities, except for the Medical Services-
22 Medicaid Match line item, Medley, and bond payments.

23 All or any part of the above-designated line item
24 Medical Services-Medicaid Match appropriation may be
25 transferred to the department of human services,
26 medical services program special fund, account no.
27 9155-67, for medical match purposes under Title XIX
28 waiver, personal care option, maternity and infant care,
29 ICF-MR group homes, clinic services option and case
30 management option.

31 Projects are to be paid on a cash basis and made
32 available from the date of passage. Items and projects

33 of this appropriation are to begin as funds become
34 available in the special fund or from bond proceeds.

35 Necessary funds from the above appropriation may be
36 used for the medical facilities operations, either in
37 connection with this account or in connection with the
38 item designated Institutional Facilities Operations in
39 the Consolidated Medical Services Fund, acct. no. 4190.

112—Health Care Cost Review Authority

(WV Code Chapter 16)

Acct. No. 8564

TO BE PAID FROM SPECIAL REVENUE FUND

| | | | | | |
|---|-------------------------|----|---|----|-----------|
| 1 | Personal Services | \$ | — | \$ | 582,974 |
| 2 | Annual Increment | | — | | 5,688 |
| 3 | Unclassified | | — | | 498,162 |
| 4 | Total | \$ | — | \$ | 1,086,824 |

5 The above appropriation is to be expended in accor-
6 dance with and pursuant to the provisions of article
7 twenty-nine-b, chapter sixteen of the code and from the
8 special revolving fund designated health care cost
9 review fund.

113—Geological and Economic Survey

(WV Code Chapter 29)

Acct. No. 8589

TO BE PAID FROM SPECIAL REVENUE FUND

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

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

*114—West Virginia Board of Regents—
Special Capital Improvement Fund*

(WV Code Chapter 18)

Acct. No. 8830

TO BE PAID FROM SPECIAL REVENUE FUND

1 Unclassified—Total \$ — \$ 543,000

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

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

(WV Code Chapter 18)

Acct. No. 8835

TO BE PAID FROM SPECIAL REVENUE FUND

1 Unclassified—Total \$ — \$ 11,697,000

2 Any unexpended balances remaining in prior years'
3 and 1987-88 appropriations are hereby reappropriated
4 for expenditure during the fiscal year 1988-89.

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

*116—West Virginia Board of Regents—
State System Registration Fee
Revenue Bond Construction Fund*

(WV Code Chapter 18)

Acct. No. 8845

TO BE PAID FROM SPECIAL REVENUE FUND

1 Any unexpended balances remaining in prior years'
2 and 1987-88 appropriations are hereby reappropriated
3 for expenditure during the fiscal year 1988-89.

*117—West Virginia Board of Regents—
State System Tuition Fee—
Special Capital Improvement Fund
(Capital Improvement and*

Bond Retirement Fund)
(WV Code Chapter 18)
Acct. No. 8855

TO BE PAID FROM SPECIAL REVENUE FUND

1 Unclassified—Total \$ — \$ 33,660,000

2 Any unexpended balances remaining in prior years'
3 and 1987-88 appropriations are hereby reappropriated
4 for expenditure during the fiscal year 1988-89.

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

10 From the above appropriation, \$200,000 is intended
11 for repairs and alterations for Jackson's Mill.

12 From this account, * * * * the Marshall University
13 Football Stadium shall be paid on a cash basis or from
14 the sale of revenue bonds. * * * * *
15 *

*118—West Virginia Board of Regents—
State System Tuition Fee—
Revenue Bond Construction Fund*
(WV Code Chapter 18)
Acct. No. 8860

TO BE PAID FROM SPECIAL REVENUE FUND

1 Any unexpended balances remaining in prior years'
2 and 1987-88 appropriations are hereby reappropriated
3 for expenditure during the fiscal year 1988-89.

119—Workers' Compensation Commissioner
(WV Code Chapter 23)
Acct. No. 9000

Clerk's Note: The governor deleted "an allocation of \$25,000,000" on line twelve, Acct. No. 8855. On line fourteen, the following was deleted: "pursuant to the provisions of article twelve-b, chapter eighteen of the code, when and if the West Virginia board of regents determines that funds are available for such purpose."

TO BE PAID FROM WORKERS' COMPENSATION FUND

| | | | | | |
|----|------------------------------|----|---|----|------------|
| 1 | Personal Services | \$ | — | \$ | 8,537,600* |
| 2 | Annual Increment | | — | | 126,700 |
| 3 | Current Expenses | | — | | 5,591,300 |
| 4 | Equipment | | — | | 210,300 |
| 5 | Social Security Matching ... | | — | | 650,700 |
| 6 | Public Employees | | | | |
| 7 | Retirement Matching | | — | | 832,100 |
| 8 | Public Employees | | | | |
| 9 | Health Insurance | | — | | 1,031,400 |
| 10 | Employers' Excess | | | | |
| 11 | Liability Fund | | — | | 209,600 |
| 12 | Personal Services | | — | | (131,500) |
| 13 | Annual Increment | | — | | (500) |
| 14 | Current Expenses | | — | | (35,500) |
| 15 | Equipment | | — | | (1,600) |
| 16 | Social Security Matching ... | | — | | (9,900) |
| 17 | Public Employees | | | | |
| 18 | Retirement Matching | | — | | (12,600) |
| 19 | Public Employees | | | | |
| 20 | Health Insurance | | — | | (18,000) |
| 21 | Total | \$ | — | \$ | 17,189,700 |

*Includes salary of the commissioner at \$36,500 per annum.

22 There is hereby authorized to be paid out of the above
 23 appropriation the amount necessary for the premiums
 24 on bonds given by the treasurer as bond custodian for
 25 the protection of the workers' compensation fund. This
 26 sum shall be transferred to the state board of insurance.

*120—West Virginia Alcohol
 Beverage Control Commissioner*

(WV Code Chapter 60)

Acct. No. 9270

TO BE PAID FROM SPECIAL REVENUE FUND

| | | | | | |
|---|-------------------------|----|---|----|------------|
| 1 | Personal Services | \$ | — | \$ | 8,606,008* |
| 2 | Annual Increment | | — | | 200,100 |
| 3 | Unclassified | | — | | 9,007,592 |
| 4 | Total | \$ | — | \$ | 17,813,700 |

*Includes salary of the commissioner at \$36,500 per annum.

5 The total amount of this appropriation shall be paid
6 from a special revenue fund out of liquor revenues.

7 The above appropriation includes the salary of the
8 commissioner, salaries of store personnel, store inspec-
9 tors, store operating expenses and equipment, and
10 salaries, expenses and equipment of administration
11 offices.

12 There is hereby appropriated from liquor revenues, in
13 addition to the appropriation, the necessary amount for
14 the purchase of liquor as provided by law.

*121—West Virginia University—
Schools of Health Sciences*

(WV Code Chapter 18)

Acct. No. 9280

TO BE PAID FROM MEDICAL SCHOOL FUND

1 Unclassified—Total \$ — \$ 14,985,077

2 Any unexpended balances remaining in the appropri-
3 ations for Capital Outlay (account no. 9280-08) and in
4 the 1987-88 appropriation for the West Virginia
5 University—Medical Center at the close of the fiscal
6 year 1987-88 are hereby reappropriated for expenditure
7 during the fiscal year 1988-89.

1 **Sec. 5. Awards for claims against the state.—**
2 There is hereby appropriated, for the remainder of the
3 fiscal year 1987-88 and to remain in effect until June
4 30, 1989, from the fund as designated, in the amount as
5 specified and for the claimants as named in enrolled
6 senate bill no. 642, acts, Legislature, regular session,
7 1988—crime victims compensation fund of \$170,000.00
8 for payment of claims against the state.

9 There are hereby appropriated, for the remainder of
10 the fiscal year 1987-88 and to remain in effect until June
11 30, 1989, from the funds as designated, in the amounts
12 as specified and for the claimants as named in enrolled
13 house bill no. 206, acts, Legislature, second extraordi-

14 nary session, 1988—state road funds of \$645,670.95,
 15 special revenue funds of \$107,968.95, workers' compen-
 16 sation funds of \$1,957.43 and federal funds of \$4,822.98
 17 for payment of claims against the state.

18 There is hereby appropriated for fiscal year 1988-89
 19 from the fund as designated, in the amount as specified
 20 and for the claimants as named in enrolled senate bill
 21 no. 641, acts, Legislature, regular session, 1988, and in
 22 enrolled house bill no. 206, acts, Legislature, second
 23 extraordinary session, 1988—general revenue funds of
 24 \$1,827,219.95.

1 **Sec. 6. Appropriations and reappropriations—**
 2 **revenue sharing trust fund.**—Any unexpended balan-
 3 ces to appropriations made by the 1979, 1980, 1981,
 4 1982, 1983, 1984, 1985, 1986 and 1987 budget acts and
 5 any supplementary transfers or redesignations made by
 6 the above-listed budget acts from the revenue sharing
 7 trust fund at the close of the fiscal year 1987-88 are
 8 hereby reappropriated for expenditure during the fiscal
 9 year 1988-89.

*122—Office of Community and
 Industrial Development*

Acct. No. 9720

| | | | | |
|---|-------------------------------|----|---|------------|
| 1 | Pocahontas County | | | |
| 2 | Commission—Marlinton | | | |
| 3 | School Sewer System | \$ | — | \$ 200,000 |
| 4 | City of Paw Paw— | | | |
| 5 | Land Acquisition | | — | 30,000 |
| 6 | Greenbrier County | | | |
| 7 | Commission—Greenbrier | | | |
| 8 | County Youth Camp | | | |
| 9 | (Capital Outlay) | | — | 50,000 |

*123—State Board of Education—
 Vocational Division*

Acct. No. 9780

| | | | | |
|---|--------------------------|----|---|-----------|
| 1 | Wirt County High School— | | | |
| 2 | Capital Outlay | \$ | — | \$ 35,000 |

124—Department of Human Services

Acct. No. 9750

| | | | | |
|---|--------------------------|----|---|--------|
| 1 | Individual and Family | | | |
| 2 | Grants—FEMA | | | |
| 3 | Reimbursement | | | |
| 4 | (1985 Flood)—Total | \$ | — | \$ —0— |

125—Department of Commerce

Acct. No. 9708

| | | | | |
|---|---------------------------|----|---|------------|
| 1 | Chief Logan State Park— | | | |
| 2 | Capital Outlay | \$ | — | \$ 150,000 |
| 3 | Pinnacle Rock State Park— | | | |
| 4 | Land Acquisition | | — | 25,000 |
| 5 | Tomblinson Run State | | | |
| 6 | Park—Capital Outlay | | — | 35,000 |

*126—Department of Agriculture—
Soil Conservation Committee*

Acct. No. 9771

| | | | | |
|---|-----------------------|----|---|------------|
| 1 | Mud River Flood | | | |
| 2 | Control Project | \$ | — | \$ 250,000 |
| 3 | Harmon Creek | | | |
| 4 | (Brooke County) | | | |
| 5 | Flood Control Project | | — | 30,000 |

127—Department of Natural Resources

Acct. No. 9725

| | | | | |
|---|-----------------------------|----|---|-----------|
| 1 | Water Quality Studies | \$ | — | \$ 50,000 |
| 2 | Black Fly Control | | | |
| 3 | Spraying Project | | — | 100,000 |

128—West Virginia Department of Highways

Acct. No. 9705

| | | | | |
|---|----------------------|----|---|-----------|
| 1 | Chief Mingo | | | |
| 2 | Recreation Park— | | | |
| 3 | Capital Outlay | \$ | — | \$ 50,000 |

- 1 **Sec. 7. Appropriation from federal block**
 2 **grants.**—The following items are hereby appropriated
 3 from federal block grants to be available for expendi-
 4 ture during the fiscal year 1988-89.

*129—Office of Community and Industrial
 Development—Community Development*

Acct. No. 8029

TO BE PAID FROM FEDERAL FUNDS

- 1 Unclassified—Total \$14,962,000

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

Acct. No. 8030

TO BE PAID FROM FEDERAL FUNDS

- 1 Unclassified—Total \$49,350,700

*131—Office of Community and Industrial
 Development—Community Service*

Acct. No. 8031

TO BE PAID FROM FEDERAL FUNDS

- 1 Unclassified—Total \$ 5,459,000

*132—Office of Community and Industrial
 Development—Justice Assistance*

Acct. No. 8032

TO BE PAID FROM FEDERAL FUNDS

- | | | | |
|---|-------------------------|----|------------|
| 1 | To Local Entities | \$ | 519,000 |
| 2 | Unclassified | | <u>—0—</u> |
| 3 | Total | \$ | 519,000 |

*133—State Department of Education—
 Education Grant*

Acct. No. 8242

TO BE PAID FROM FEDERAL FUNDS

1 Unclassified—Total \$40,438,469

*134—State Department of Health—
Maternal and Child Health*

Acct. No. 8502

TO BE PAID FROM FEDERAL FUNDS

1 Unclassified—Total \$ 7,350,300

*135—State Department of Health—
Alcohol, Drug Abuse and Mental Health*

Acct. No. 8503

TO BE PAID FROM FEDERAL FUNDS

1 Unclassified—Total \$ 5,400,000

*136—State Department of Health—
Preventive Health*

Acct. No. 8506

TO BE PAID FROM FEDERAL FUNDS

1 Unclassified—Total \$ 1,499,600

*137—State Department of Health—
Mental Health Services for the Homeless*

Acct No. 8508

TO BE PAID FROM FEDERAL FUNDS

1 Unclassified—Total \$ 400,000

*138—State Department of Health—
Alcohol and Drug Abuse Treatment
and Rehabilitation*

Acct. No. 8510

TO BE PAID FROM FEDERAL FUNDS

1 Unclassified—Total \$ 1,322,000

*139—Department of Human Services—
Energy Assistance*

Acct. No. 9147

TO BE PAID FROM FEDERAL FUNDS

1 Unclassified—Total \$16,482,500

140—Department of Human Services—
Social Services

Acct. No. 9161

TO BE PAID FROM FEDERAL FUNDS

1 Unclassified—Total \$21,773,500

1 **Sec. 8. Special revenue appropriations.**—There
2 are hereby appropriated for expenditure during the
3 fiscal year one thousand nine hundred eighty-nine
4 appropriations made by general law from special
5 revenue which are not paid into the state fund as
6 general revenue under the provisions of section two,
7 article two, chapter twelve of the code: *Provided*, That
8 none of the money so appropriated by this section shall
9 be available for expenditure except in compliance with
10 and in conformity to the provisions of articles two and
11 three, chapter twelve and article two, chapter five-a of
12 the code, unless the spending unit has filed with the
13 director of the budget, the auditor and the legislative
14 auditor prior to the beginning of each fiscal year:

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

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

1 **Sec. 9. State improvement fund appropri-**
2 **ations.**—Bequests or donations of nonpublic funds,
3 received by the governor on behalf of the state during
4 the fiscal year one thousand nine hundred eighty-nine,
5 for the purpose of making studies and recommendations
6 relative to improvements of the administration and
7 management of spending units in the executive branch
8 of state government, shall be deposited in the state
9 treasury in a separate account therein designated state
10 improvement fund.

11 There are hereby appropriated all moneys so depos-
12 ited during the fiscal year one thousand nine hundred
13 eighty-nine, to be expended as authorized by the
14 governor, for such studies and recommendations which
15 may encompass any problems of organization, proce-
16 dures, systems, functions, powers or duties of a state
17 spending unit in the executive branch, or the betterment
18 of the economic, social, educational, health and general
19 welfare of the state or its citizens.

1 **Sec. 10. Specific funds and collection accounts.—**
2 A fund or collection account which by law is dedicated
3 to a specific use is hereby appropriated in sufficient
4 amount to meet all lawful demands upon the fund or
5 collection account and shall be expended according to
6 the provisions of article three, chapter twelve of the
7 code.

1 **Sec. 11. Appropriations for refunding erroneous**
2 **payment.—** Money that has been erroneously paid into
3 the state treasury is hereby appropriated out of the fund
4 into which it was paid, for refund to the proper person.

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

1 **Sec. 12. Sinking fund deficiencies.—**There is
2 hereby appropriated to the governor a sufficient amount
3 to meet any deficiencies that may arise in the mortgage
4 finance bond insurance fund of the West Virginia
5 housing development fund which is under the supervi-
6 sion and control of the municipal bond commission as
7 provided by section twenty-b, article eighteen, chapter
8 thirty-one of the code, or in the funds of the municipal
9 bond commission because of the failure of any state
10 agency for either general obligations or revenue bonds
11 or any local taxing district for general obligation bonds
12 to remit funds necessary for the payment of interest and
13 sinking fund requirements. The governor is authorized

14 to transfer from time to time such amounts to the
15 municipal bond commission as may be necessary for
16 these purposes.

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

1 **Sec. 13. Appropriations to pay costs of publica-**
2 **tion of delinquent corporations.**—There is hereby
3 appropriated out of the state fund, general revenue, out
4 of funds not otherwise appropriated, to be paid upon
5 requisition of the auditor and/or the governor, as the
6 case may be, a sum sufficient to pay the cost of
7 publication of delinquent corporations as provided by
8 sections eighty-four and eighty-six, article twelve,
9 chapter eleven of the code.

1 **Sec. 14. Appropriations for local governments.**—
2 There are hereby appropriated for payment to counties,
3 districts and municipal corporations such amounts as
4 will be necessary to pay taxes due counties, districts and
5 municipal corporations and which have been paid into
6 the treasury:

- 7 (a) For redemption of lands;
8 (b) By public service corporations;
9 (c) For tax forfeitures.

1 **Sec. 15. Total appropriations.**—Where only a total
2 sum is appropriated to a spending unit, the total sum
3 shall include personal services, annual increment,
4 current expenses, repairs and alterations, equipment
5 and capital outlay, where not otherwise specifically
6 provided and except as otherwise provided in TITLE I—
7 GENERAL PROVISIONS, Sec. 3.

1 **Sec. 16. General school fund.**—The balance of the
2 proceeds of the general school fund remaining after the
3 payment of the appropriations made by this act is
4 appropriated for expenditure in accordance with section

5 sixteen, article nine-a, chapter eighteen of the code.

TITLE 3. ADMINISTRATION.

§1. Appropriations conditional.

§2. Constitutionality.

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

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

1 **Sec. 2. Constitutionality.**—If any part of this act is
2 declared unconstitutional by a court of competent
3 jurisdiction, its decision shall not affect any portion of
4 this act which remains, but the remaining portion shall
5 be in full force and effect as if the portion declared
6 unconstitutional had never been a part of the act.

CHAPTER 3

(H. B. 206—By Delegates Artrip and Wells)

[Passed June 9, 1988; 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; and expressly determining certain other claims to not be moral obligations of the state, not authorized for payment hereunder, and to not be hereafter recertified for reconsideration.

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. **Finding and declaring certain claims against the**

department of agriculture; attorney general; non-intoxicating beer commissioner; department of commerce; governor's office of community and industrial development; department of corrections; department of education; educational broadcasting authority; farm management commission; department of finance and administration; state fire marshal; department of health; department of health-office of the chief medical examiner; department of highways; human rights commission; department of human services; department of labor; lottery commission; department of natural resources; department of public safety; public service commission; railroad maintenance authority; board of regents; state board of rehabilitation; secretary of state; supreme court of appeals; state tax department; treasurer's office and workers' compensation fund, to be moral obligations of the state and directing payment thereof; and expressly finding and declaring certain claims against the department of corrections; department of culture and history; department of education; department of finance and administration; department of health; department of highways; department of public safety; board of regents and workers' compensation fund are not moral obligations of the state, rejecting payment thereof hereunder, and expressly denying hereafter any further recertification for reconsideration thereof.

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

14 claims which were certified by the clerk of the court of
 15 claims in accordance with section twenty-three, article
 16 two, chapter fourteen of the code of West Virginia, one
 17 thousand nine hundred thirty-one, as amended, and
 18 which claims are specifically rejected in this bill, are
 19 such claims which the Legislature has expressly
 20 determined are not moral obligations of the State of
 21 West Virginia.

22 (a) *Claims against the Department of Agriculture:*

23 (TO BE PAID FROM GENERAL REVENUE FUND)

| | | |
|----|---|-------------|
| 24 | (1) A & I Supply Company | \$ 1,977.14 |
| 25 | (2) Mechanical Supply Company, Inc. | \$ 2,518.80 |
| 26 | (3) Shawnee Hills Community | |
| 27 | Mental Health/Mental | |
| 28 | Retardation Center, Inc. | \$ 5,372.50 |

29 (b) *Claims against the Attorney General:*

30 (TO BE PAID FROM GENERAL REVENUE FUND)

| | | |
|----|---------------------------------------|-------------|
| 31 | (1) Holiday Inn of Fairmont | \$ 30.05 |
| 32 | (2) Morgan, Gregory A | \$ 6,962.10 |
| 33 | (3) Spieler, Emily A | \$ 144.00 |

34 (c) *Claims against the Nonintoxicating*
 35 *Beer Commissioner:*

36 (TO BE PAID FROM GENERAL REVENUE FUND)

| | | |
|----|---|-------------|
| 37 | (1) Arthur H. Fulton, Inc | \$ 731.43 |
| 38 | (2) C. Schmidt & Sons, Inc. | \$ 1,722.20 |
| 39 | (3) Sullivan's Distributing, Inc. | \$ 190.57 |

40 (d) *Claims against the Department of Commerce:*

41 (TO BE PAID FROM GENERAL REVENUE FUND)

| | | |
|----|------------------------------------|--------------|
| 42 | (1) Elwin E. Aliff Construction | |
| 43 | Company, Inc | \$ 12,073.30 |
| 44 | (2) Johnson Controls, Inc. | \$ 10,000.00 |

45 (e) *Claims against the Governor's Office of*
 46 *Community and Industrial Development:*

47 (TO BE PAID FROM GENERAL REVENUE FUND)

| | | |
|----|---------------------------------|-------------|
| 48 | (1) Bramwell, Town of | \$ 6,645.63 |
|----|---------------------------------|-------------|

| | | |
|----|--|--------------|
| 49 | (2) Brooke County Board of | |
| 50 | Education, The | \$ 12,500.00 |
| 51 | (3) Capon Bridge Community | |
| 52 | and Senior Center | \$ 8,849.00 |
| 53 | (4) Glenville, City of | \$ 33,387.22 |
| 54 | (5) Hampshire County | |
| 55 | Commission, The | \$ 44,234.16 |
| 56 | (6) Harrisville, Town of | \$ 3,486.35 |
| 57 | (7) Hurricane, City of | \$ 12,382.64 |
| 58 | (8) Marshall County Sewerage District | \$ 88,120.96 |
| 59 | (9) Marshall University | \$ 25,241.97 |
| 60 | (10) Mineral County Commission | \$ 21,741.80 |
| 61 | (11) Moorefield, Town of | \$ 74,835.16 |
| 62 | (12) New Cumberland, City of | \$ 13,625.00 |
| 63 | (13) Ohio Valley Industrial and Business | |
| 64 | Development Corporation | \$ 15,074.96 |
| 65 | (14) Parsons, City of | \$ 12,700.00 |
| 66 | (15) Xerox Corporation | \$ 879.13 |
| 67 | (f) <i>Claims against the Department of Corrections:</i> | |
| 68 | (TO BE PAID FROM GENERAL REVENUE FUND) | |
| 69 | (1) A & I Supply Company | \$ 1,680.37 |
| 70 | (2) Braxton County Emergency Squad | \$ 145.50 |
| 71 | (3) Byers, John W | \$ 1,915.00 |
| 72 | (4) Cabell Huntington Hospital | \$ 138.75 |
| 73 | (5) Cash, Joseph W., Jr. | \$ 691.11 |
| 74 | (6) Casto & Harris, Inc. | \$ 487.14 |
| 75 | (7) Chesapeake and Potomac Telephone | |
| 76 | Company of West Virginia | \$ 42,719.02 |
| 77 | (8) Contractors Supply Corporation ... | \$ 3,758.57 |
| 78 | (9) Dunbar Printing Company | \$ 129.22 |
| 79 | (10) Elkins Builders Supply Co. | \$ 1,289.28 |
| 80 | (11) Exxon Company U.S.A. | \$ 97.23 |
| 81 | (12) Family Dental Associates, Inc. | \$ 488.00 |
| 82 | (13) Federal Correctional Institution | |
| 83 | (Alderson) | \$ 55,615.51 |
| 84 | (14) Federal Correctional Institution | |
| 85 | (Lexington) | \$ 4,390.59 |
| 86 | (15) Federal Express Corporation | \$ 40.37 |
| 87 | (16) Foster Medical Corporation | \$ 1,050.00 |
| 88 | (17) Gear, James W. | \$ 2,170.00 |
| 89 | (18) General Welding Supply Co. | \$ 210.00 |

| | | | |
|-----|---|--------------|-----------|
| 90 | (19) H. Goodman, Inc. | \$ | 67.66 |
| 91 | (20) Goodyear Tire and Rubber | | |
| 92 | Company, The..... | \$ | 721.56 |
| 93 | (21) Grafton City Hospital, Inc. | \$ | 316.85 |
| 94 | (22) Greenbrier County, | | |
| 95 | Sheriff and Treasurer | \$ | 228.44 |
| 96 | (23) Greenbrier County Commission.... | \$ | 40.88 |
| 97 | (24) Hajoca Corporation, Weslakin Div. | \$ | 4,761.55 |
| 98 | (25) Hill, B. J..... | \$ | 140.00 |
| 99 | (26) Hobart Brothers Company | \$ | 15.59 |
| 100 | (27) Hodges, Stephen | \$ | 70.00 |
| 101 | (28) Hyre, E. Clifton..... | \$ | 191.00 |
| 102 | (29) Jan-Care Ambulance Service, Inc. | \$ | 482.00 |
| 103 | (30) John Marshall Medical | | |
| 104 | Services, Inc..... | \$ | 11.70 |
| 105 | (31) Mellon Bank, Assignee of | | |
| 106 | Kleen All of America, Inc. | \$234,400.00 | |
| 107 | (32) Marshall County Sheriff's | | |
| 108 | Department | \$ | 1,869.86 |
| 109 | (33) Mutual Wholesalers, Inc. | \$ | 203.04 |
| 110 | (34) Nale Equipment Co., Inc..... | \$ | 122.09 |
| 111 | (35) National Laboratories..... | \$ | 928.91 |
| 112 | (36) Pinewood Medical Corporation, Inc. | \$ | 658.00 |
| 113 | (37) Prime Computer, Inc. | \$ | 4,585.20 |
| 114 | (38) Purolator Courier Corp. | \$ | 98.00 |
| 115 | (39) R. C. Steele Co. | \$ | 26.72 |
| 116 | (40) Radiology, Inc..... | \$ | 165.00 |
| 117 | (41) Regional Distribution Center | \$ | 233.96 |
| 118 | (42) Reynolds Memorial Hospital, Inc. . . | \$ | 611.00 |
| 119 | (43) Rite Aid Corporation | \$ | 996.06 |
| 120 | (44) Robinson Textiles, Inc. | \$ | 15,395.68 |
| 121 | (45) Sears, Roebuck & Company | \$ | 61.79 |
| 122 | (46) Standard Exterminating Company | \$ | 95.00 |
| 123 | (47) Standard Laboratories, Inc. | \$ | 74.50 |
| 124 | (48) Stumpp, Harold M. | \$ | 64.54 |
| 125 | (49) Superamerica, Division of | | |
| 126 | Ashland Oil, Inc. | \$ | 42.97 |
| 127 | (50) Taylor, Donald R. | \$ | 180.00 |
| 128 | (51) Traylor, J. R., Jr. | \$ | 3,895.00 |
| 129 | (52) Tri-Cities Health Service Corp., | | |
| 130 | d/b/a HCA Huntington Hospital | \$ | 271.50 |
| 131 | (53) Tri-State Otolaryngology, Head and | | |

| | | | |
|-----|---|----|------------|
| 132 | Neck Surgery, Inc. | \$ | 190.00 |
| 133 | (54) U.O.V.P., Inc. | \$ | 68.00 |
| 134 | (55) Uniforms Manufacturing, Inc. | \$ | 13,265.69 |
| 135 | (56) UNIJAX | \$ | 879.56 |
| 136 | (57) Vance, Kenneth E. | \$ | 207.00 |
| 137 | (58) Virginia Welding Supply Company | \$ | 842.77 |
| 138 | (59) W.Va. Uniforms, Inc. | \$ | 95.43 |
| 139 | (60) West Virginia Welding Supply Co. | \$ | 101.40 |
| 140 | (61) Wood, Ralph E. | \$ | 130.00 |
| 141 | (g) <i>Claims against the Department of Education:</i> | | |
| 142 | (TO BE PAID FROM GENERAL REVENUE FUND) | | |
| 143 | (1) American College Testing | | |
| 144 | Program, The | \$ | 1,780.50 |
| 145 | (2) Charleston Trophy and | | |
| 146 | Engraving, Inc. | \$ | 127.36 |
| 147 | (3) Cumberland Charter Service | \$ | 7,509.00 |
| 148 | (4) E & G, Inc., a WV Corporation, d/b/a | | |
| 149 | Ramada Inn of South Charleston | \$ | 16,881.20 |
| 150 | (5) Herff Jones, Inc. | \$ | 5,353.03 |
| 151 | (6) McNeel, Tom | \$ | 66.50 |
| 152 | (7) Richard, Jeffrey Alan | \$ | 202.50 |
| 153 | (8) Xerox Corporation | \$ | 242.06 |
| 154 | (9) Zenith Data Systems Corp. | \$ | 5,316.40 |
| 155 | (h) <i>Claim against the Educational Broadcasting</i> | | |
| 156 | <i>Authority:</i> | | |
| 157 | (TO BE PAID FROM GENERAL REVENUE FUND) | | |
| 158 | (1) Ampex Corporation | \$ | 181,593.52 |
| 159 | (i) <i>Claims against the Farm Management Commission:</i> | | |
| 160 | (TO BE PAID FROM GENERAL REVENUE FUND) | | |
| 161 | (1) J. F. Allen Company | \$ | 301.26 |
| 162 | (2) Coyne Textile Services | \$ | 45.27 |
| 163 | (3) DeLauder, Joe N. | \$ | 250.00 |
| 164 | (4) Fox Dairy Supply Inc. | \$ | 517.87 |
| 165 | (5) Goodyear Tire and Rubber | | |
| 166 | Company, The | \$ | 549.55 |
| 167 | (6) Liggett, Jedson R., d/b/a | | |
| 168 | Liggett's Supply | \$ | 10,892.81 |
| 169 | (7) Oldtown Farm, Inc. | \$ | 100.00 |

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CLAIMS

[Ch. 3

| | | | |
|-----|---|----|-----------|
| 170 | (8) Southern States Point Pleasant | | |
| 171 | Cooperative, Inc. | \$ | 593.21 |
| 172 | (j) <i>Claims Against the Department of Finance</i> | | |
| 173 | <i>and Administration:</i> | | |
| 174 | (TO BE PAID FROM GENERAL REVENUE FUND) | | |
| 175 | (1) Capitol Business Equipment, Inc. . . | \$ | 355.00 |
| 176 | (TO BE PAID FROM SPECIAL REVENUE FUND) | | |
| 177 | from Acct. No. 8151-01 | | |
| 178 | (1) Executone/Mountain State | | |
| 179 | Communications, Inc. | \$ | 50.00 |
| 180 | (2) Moore Business Forms & | | |
| 181 | Systems Division | \$ | 176.18 |
| 182 | (3) Storage Technology Corporation ... | \$ | 438.00 |
| 183 | (k) <i>Claim against the State Fire Marshal:</i> | | |
| 184 | (TO BE PAID FROM GENERAL REVENUE FUND) | | |
| 185 | (1) Van Volunteer Fire Department ... | \$ | 4,575.93 |
| 186 | (l) <i>Claims against the Department of Health:</i> | | |
| 187 | (TO BE PAID FROM GENERAL REVENUE FUND) | | |
| 188 | (1) Aide's Discount Store, Inc. | \$ | 706.10 |
| 189 | (2) Alker Tire & Supply, Inc. | \$ | 333.55 |
| 190 | (3) Alpha Therapeutic Corporation ... | \$ | 4,268.91 |
| 191 | (4) American Hotel Register Company | \$ | 233.81 |
| 192 | (5) American Red Cross | \$ | 7,008.06 |
| 193 | (6) American Teletronics Corporation | \$ | 266.20 |
| 194 | (7) American White Goods Company .. | \$ | 610.45 |
| 195 | (8) Appalachian Regional | | |
| 196 | Healthcare, Inc. | \$ | 10,249.62 |
| 197 | (9) Appalachian Tire Products, Inc. ... | \$ | 22.38 |
| 198 | (10) Armour Pharmaceutical Company | \$ | 8,086.12 |
| 199 | (11) Banks, Earl | \$ | 43.50 |
| 200 | (12) Brook Lane Psychiatric Center ... | \$ | 7,661.84 |
| 201 | (13) Buckland, James. | \$ | 18.00 |
| 202 | (14) Cabell Huntington Hospital | \$ | 165.45 |
| 203 | (15) Cannon, Randy | \$ | 30.00 |
| 204 | (16) Capage, James | \$ | 390.00 |
| 205 | (17) Columbia Sussex Corp., d/b/a | | |

| | | | |
|-----|---|----|-----------|
| 206 | Holiday Inn Heart-O-Town..... | \$ | 546.66 |
| 207 | (18) Crawford, James..... | \$ | 60.00 |
| 208 | (19) Deal, Rodney | \$ | 10.00 |
| 209 | (20) Diagnostic Affiliates, Inc. | \$ | 682.00 |
| 210 | (21) Dukane Corporation | \$ | 69.99 |
| 211 | (22) Exxon Company U.S.A. | \$ | 222.37 |
| 212 | (23) Fayette-Monroe-Raleigh | | |
| 213 | Summers Counties Mental | | |
| 214 | Health Council, Inc. | \$ | 30,436.97 |
| 215 | (24) Goldfarb Electric Supply Co. Inc. .. | \$ | 201.21 |
| 216 | (25) Greenbrier Medical Arts | | |
| 217 | Pharmacy, Inc..... | \$ | 437.36 |
| 218 | (26) Greybill, Thomas | \$ | 18.00 |
| 219 | (27) Hancock-Brooke Mental | | |
| 220 | Health Service | \$ | 8,915.45 |
| 221 | (28) Home Health Products, Inc. | \$ | 101.34 |
| 222 | (29) Hope Gas, Inc. | \$ | 10,756.10 |
| 223 | (30) IAMFES, Inc. | \$ | 42.73 |
| 224 | (31) Independent Dressed Beef | | |
| 225 | Company, Inc..... | \$ | 134.17 |
| 226 | (32) Karoll's Inc. | \$ | 1,558.12 |
| 227 | (33) Lanham, Wayne | \$ | 81.50 |
| 228 | (34) Life Technologies, Inc., Gibco | | |
| 229 | Laboratories Division..... | \$ | 120.06 |
| 230 | (35) Logan-Mingo Area | | |
| 231 | Mental Health, Inc..... | \$ | 6,168.01 |
| 232 | (36) Long, Buddy..... | \$ | 39.30 |
| 233 | (37) Lowe's of West Virginia, Inc., | | |
| 234 | d/b/a Lowe's of Charleston | \$ | 29.65 |
| 235 | (38) Meadows, Don | \$ | 50.00 |
| 236 | (39) Medline Industries, Inc. | \$ | 1,006.41 |
| 237 | (40) Mercer, McDowell, Wyoming | | |
| 238 | Mental Health Council, Inc. | \$ | 15,829.80 |
| 239 | (41) Mid-Ohio Valley Board of Health .. | \$ | 2,133.70 |
| 240 | (42) Misco, Inc..... | \$ | 37.65 |
| 241 | (43) Moore, Elmer..... | \$ | 45.00 |
| 242 | (44) National Laboratories | \$ | 42.97 |
| 243 | (45) National Service Industries, Inc., | | |
| 244 | d/b/a National Linen Service.... | \$ | 1,028.65 |
| 245 | (46) Northern Panhandle Behavioral | | |
| 246 | Health Center, Inc. | \$ | 93,976.00 |
| 247 | (47) Pankey, Cheryl | \$ | 75.97 |

| | | |
|-----|--|--------------|
| 248 | (48) Perkin-Elmer Corporation, The | \$ 1,017.14 |
| 249 | (49) Polyfoam Packers Corp. | \$ 120.02 |
| 250 | (50) Potomac Highlands Mental | |
| 251 | Health Guild, Inc. | \$ 30,797.00 |
| 252 | (51) Princeton Community Hospital | \$ 160.00 |
| 253 | (52) Rader, James | \$ 5.00 |
| 254 | (53) Radiological Consultants | |
| 255 | Association, Inc. | \$ 103.00 |
| 256 | (54) Radiology, Inc. | \$ 1,216.14 |
| 257 | (55) Red Line Medical Supply Company | \$ 29.10 |
| 258 | (56) Rider Pharmacy | \$ 297.85 |
| 259 | (57) Roche Biomedical Laboratories, Inc. | \$ 8,693.05 |
| 260 | (58) Safety First Supply Co. | \$ 23.74 |
| 261 | (59) Fred Sammons, Inc. | \$ 53.33 |
| 262 | (60) Sears Roebuck & Company | \$ 41.70 |
| 263 | (61) Shawnee Hills Community Mental | |
| 264 | Health/Mental Retardation | |
| 265 | Center, Inc. | \$ 38,215.20 |
| 266 | (62) Sims, Scott | \$ 33.00 |
| 267 | (63) St. Mary's Hospital | \$ 15,459.95 |
| 268 | (64) Standard Theatre Supply Co. | \$ 1,091.70 |
| 269 | (65) Stonewall Jackson | |
| 270 | Memorial Hospital | \$ 1,581.03 |
| 271 | (66) Stuarts Drug & Surgical Supply . . . | \$ 41.30 |
| 272 | (67) Trans-Med, Inc. | \$ 229.50 |
| 273 | (68) Uniforms Manufacturing, Inc. | \$ 1,737.47 |
| 274 | (69) UNIJAX | \$ 113.31 |
| 275 | (70) Union Oil Company of California, | |
| 276 | d/b/a UNOCAL | \$ 70.50 |
| 277 | (71) Valley Comprehensive Community | |
| 278 | Mental Health Center, Inc. | \$ 30,590.00 |
| 279 | (72) Van Nostrand Reinhold | |
| 280 | Company, Inc. | \$ 106.29 |
| 281 | (73) W.Va. Electric Supply Company . . . | \$ 381.17 |
| 282 | (74) West Virginia Welding Supply | \$ 54.53 |
| 283 | (75) West Virginia Business | |
| 284 | Machines, Inc. | \$ 154.80 |
| 285 | (76) West Virginia Paper, Inc. | \$ 215.19 |
| 286 | (77) West Virginia University | |
| 287 | Hospitals, Inc. | \$ 560.00 |
| 288 | (78) Western District Guidance | |
| 289 | Center, Inc. | \$ 27,847.15 |

| | | | |
|-----|---|----|----------|
| 290 | (79) Williams & Company | \$ | 63.96 |
| 291 | (80) Williams and Company, Inc. | \$ | 525.83 |
| 292 | (81) Yeager, Inc. | \$ | 1,000.00 |
| 293 | (m) <i>Claims against the Department of Health:</i> | | |
| 294 | (TO BE PAID FROM GENERAL REVENUE FUND) | | |
| 295 | (Welch Emergency Hospital-overtime claims) | | |
| 296 | (1) Adams, Elsie | \$ | 267.24 |
| 297 | (2) Addair, Karen | \$ | 346.39 |
| 298 | (3) Addair, Luther | \$ | 691.01 |
| 299 | (4) Addair, Merry | \$ | 610.00 |
| 300 | (5) Adkins, Nathan | \$ | 705.59 |
| 301 | (6) Akers, Mary | \$ | 306.44 |
| 302 | (7) Bailey, Anna | \$ | 591.45 |
| 303 | (8) Bailey, Ardeen | \$ | 346.44 |
| 304 | (9) Bailey, Clarissa | \$ | 955.65 |
| 305 | (10) Bailey, Sylvia | \$ | 3,037.14 |
| 306 | (11) Bailey, William | \$ | 493.40 |
| 307 | (12) Bailey, Wilma | \$ | 484.95 |
| 308 | (13) Barrett, Sylvia | \$ | 220.37 |
| 309 | (14) Baylor, Barbara | \$ | 284.16 |
| 310 | (15) Beaman, Virginia | \$ | 626.54 |
| 311 | (16) Beavers, Cheryl | \$ | 6.16 |
| 312 | (17) Beheler, Helen | \$ | 927.42 |
| 313 | (18) Bell, Cynthia | \$ | 742.50 |
| 314 | (19) Billings, Ronald | \$ | 3,050.51 |
| 315 | (20) Birchfield, Sherri | \$ | 212.23 |
| 316 | (21) Bishop, Barbara | \$ | 490.68 |
| 317 | (22) Bishop, Donald | \$ | 660.99 |
| 318 | (23) Bishop, Linda | \$ | 456.56 |
| 319 | (24) Blankenship, Jeannie | \$ | 641.63 |
| 320 | (25) Blizzard, James | \$ | 292.26 |
| 321 | (26) Boggs, Martha | \$ | 217.83 |
| 322 | (27) Bolen, Debra | \$ | 786.51 |
| 323 | (28) Box, Naomi | \$ | 628.95 |
| 324 | (29) Boyd, Howard | \$ | 216.80 |
| 325 | (30) Brickey, Sandra D. | \$ | 114.53 |
| 326 | (31) Browning, Mary | \$ | 774.98 |
| 327 | (32) Burks, Edna | \$ | 419.88 |
| 328 | (33) Burroughs, Nathaniel | \$ | 448.21 |
| 329 | (34) Bush, Ethel | \$ | 436.71 |

| | | | |
|-----|---------------------------------|----|----------|
| 330 | (35) Carter, Lori | \$ | 349.29 |
| 331 | (36) Carter, Lucille | \$ | 454.36 |
| 332 | (37) Carter, Richard | \$ | 113.87 |
| 333 | (38) Cartwright, Norma | \$ | 797.21 |
| 334 | (39) Chatman, Brenda | \$ | 350.85 |
| 335 | (40) Chatman, Cheryl | \$ | 572.14 |
| 336 | (41) Church, Alice | \$ | 364.24 |
| 337 | (42) Church, Bennett | \$ | 765.59 |
| 338 | (43) Church, Juanita | \$ | 1,938.66 |
| 339 | (44) Coleman, Jerlene | \$ | 777.24 |
| 340 | (45) Compton, Myrtle | \$ | 928.78 |
| 341 | (46) Cook, Leah | \$ | 568.90 |
| 342 | (47) Cooper, Patricia | \$ | 911.76 |
| 343 | (48) Cox, Helena | \$ | 443.83 |
| 344 | (49) Cox, Paula | \$ | 686.79 |
| 345 | (50) Dalton, Izallier | \$ | 328.57 |
| 346 | (51) Dalton, Shirley | \$ | 54.99 |
| 347 | (52) Davis, Evelyn | \$ | 292.77 |
| 348 | (53) Davis, Judy | \$ | 185.87 |
| 349 | (54) Dawson, Helena | \$ | 520.35 |
| 350 | (55) Day, Carol | \$ | 1,579.75 |
| 351 | (56) Day, Drema | \$ | 505.89 |
| 352 | (57) Deskins, Albert | \$ | 175.64 |
| 353 | (58) Donithan, Andrea | \$ | 389.11 |
| 354 | (59) Edwards, Charlie | \$ | 320.79 |
| 355 | (60) Edwards, Robert | \$ | 237.39 |
| 356 | (61) England, Elizabeth | \$ | 335.25 |
| 357 | (62) Evans, Virginia | \$ | 458.53 |
| 358 | (63) Falvo, Albert | \$ | 397.54 |
| 359 | (64) Farmer, Diane | \$ | 749.74 |
| 360 | (65) Farmer, Esther | \$ | 465.60 |
| 361 | (66) Finney, Beverly | \$ | 850.73 |
| 362 | (67) Frasher, Rita | \$ | 2,626.00 |
| 363 | (68) Gillenwater, David | \$ | 44.80 |
| 364 | (69) Gillenwater, Earline | \$ | 574.23 |
| 365 | (70) Gillespie, Carolyn | \$ | 677.55 |
| 366 | (71) Goforth, Sylvia | \$ | 507.99 |
| 367 | (72) Grant, Sheryl | \$ | 160.91 |
| 368 | (73) Green, Loretta | \$ | 657.20 |
| 369 | (74) Green, Patsy | \$ | 517.04 |
| 370 | (75) Guidi, Francoise | \$ | 181.06 |
| 371 | (76) Hale, Karen | \$ | 126.13 |

| | | | |
|-----|----------------------------------|----|----------|
| 372 | (77) Hall, Henry | \$ | 344.38 |
| 373 | (78) Hamilton, Mary Martin | \$ | 523.71 |
| 374 | (79) Handshoe, Ogie | \$ | 236.95 |
| 375 | (80) Hardee, Fred | \$ | 1,199.52 |
| 376 | (81) Haynes, Janice | \$ | 334.00 |
| 377 | (82) Heath, William | \$ | 231.66 |
| 378 | (83) Hicks, Helen | \$ | 289.82 |
| 379 | (84) Hill, Barbara | \$ | 370.79 |
| 380 | (85) Holland, Patricia | \$ | 414.96 |
| 381 | (86) Hopkins, Rosetta | \$ | 422.98 |
| 382 | (87) Horton, John | \$ | 233.08 |
| 383 | (88) Horton, Rita | \$ | 1,182.76 |
| 384 | (89) Hudson, Regina | \$ | 143.64 |
| 385 | (90) Huffman, Barbara | \$ | 266.17 |
| 386 | (91) Hurley, Ellen | \$ | 794.60 |
| 387 | (92) Jeffries, Diana | \$ | 543.80 |
| 388 | (93) Jenks, Charles | \$ | 387.18 |
| 389 | (94) Johnson, Nancy | \$ | 342.01 |
| 390 | (95) Johnson, Thomas | \$ | 262.16 |
| 391 | (96) Johnson, Vanessa | \$ | 575.42 |
| 392 | (97) Jones, John | \$ | 573.37 |
| 393 | (98) Jones, Sandra | \$ | 63.42 |
| 394 | (99) Jordan, Nanci | \$ | 331.32 |
| 395 | (100) Joyce, Denise | \$ | 787.42 |
| 396 | (101) Keen, Elizabeth | \$ | 948.43 |
| 397 | (102) Krajc, Frank | \$ | 274.40 |
| 398 | (103) Lane, Edward | \$ | 82.42 |
| 399 | (104) Lane, Pamela | \$ | 675.48 |
| 400 | (105) Law, Millard | \$ | 585.77 |
| 401 | (106) Law, Phalanders | \$ | 110.26 |
| 402 | (107) Lawson, Patricia | \$ | 209.94 |
| 403 | (108) Ledford, Paul | \$ | 61.86 |
| 404 | (109) Lester, Beatrice | \$ | 278.98 |
| 405 | (110) Lester, Carol | \$ | 670.60 |
| 406 | (111) Lester, Carolyn | \$ | 603.94 |
| 407 | (112) Lester, Darcus | \$ | 904.44 |
| 408 | (113) Lilly, Dennis | \$ | 550.80 |
| 409 | (114) Lipscomb, Ruthie | \$ | 531.27 |
| 410 | (115) Lockhart, Patricia | \$ | 229.74 |
| 411 | (116) Lockhart, Virginia | \$ | 301.53 |
| 412 | (117) Marcum, Wanda | \$ | 98.26 |
| 413 | (118) Marsh, Marvin | \$ | 287.92 |

| | | | |
|-----|---------------------------------|----|----------|
| 414 | (119) Martin, Jane | \$ | 920.02 |
| 415 | (120) Martin, Linda | \$ | 3.93 |
| 416 | (121) Mathews, John | \$ | 406.15 |
| 417 | (122) Mathews, William | \$ | 515.17 |
| 418 | (123) Matney, Donald..... | \$ | 786.78 |
| 419 | (124) Matthews, Jeff..... | \$ | 882.94 |
| 420 | (125) May, Margaret | \$ | 402.46 |
| 421 | (126) McBride, Martha | \$ | 1,280.74 |
| 422 | (127) McBride, Rebecca | \$ | 538.80 |
| 423 | (128) McCoy, Bernadette | \$ | 553.74 |
| 424 | (129) McGrew, Patricia..... | \$ | 306.98 |
| 425 | (130) McGrew, William..... | \$ | 318.79 |
| 426 | (131) McKinney, Jane | \$ | 1,004.72 |
| 427 | (132) Mikels, Betty | \$ | 954.38 |
| 428 | (133) Miller, April | \$ | 15.04 |
| 429 | (134) Miller, Peggy..... | \$ | 1,034.71 |
| 430 | (135) Mills, Monica | \$ | 1,476.06 |
| 431 | (136) Mocnik, Gina | \$ | 108.91 |
| 432 | (137) Morgan, Darrell | \$ | 1,100.18 |
| 433 | (138) Mullens, Ruth | \$ | 449.04 |
| 434 | (139) Mullins, Barbara | \$ | 655.50 |
| 435 | (140) Mullins, Charolate | \$ | 372.77 |
| 436 | (141) Mullins, Ola | \$ | 380.56 |
| 437 | (142) Mullins, Patricia..... | \$ | 305.53 |
| 438 | (143) Munsey, Ellissa..... | \$ | 358.39 |
| 439 | (144) Neal, William | \$ | 1,081.55 |
| 440 | (145) Neeley, Rebecca Sue | \$ | 1,287.94 |
| 441 | (146) Neirman, Charles..... | \$ | 1,093.42 |
| 442 | (147) Nystrom, Judy..... | \$ | 762.90 |
| 443 | (148) Paramore, Eugene..... | \$ | 680.89 |
| 444 | (149) Parker, Mary | \$ | 262.73 |
| 445 | (150) Parker, Sandra | \$ | 324.34 |
| 446 | (151) Parks, Gail | \$ | 439.12 |
| 447 | (152) Payne, Ruth | \$ | 725.68 |
| 448 | (153) Perkins, Kathy | \$ | 433.95 |
| 449 | (154) Pittman, Tina | \$ | 113.55 |
| 450 | (155) Premo, Mary | \$ | 524.76 |
| 451 | (156) Pruitt, Robin | \$ | 337.36 |
| 452 | (157) Rakes, Christina | \$ | 305.51 |
| 453 | (158) Randolph, Ronald E..... | \$ | 957.48 |
| 454 | (159) Redd, Mary | \$ | 351.74 |
| 455 | (160) Reedy, Betty..... | \$ | 534.22 |

| | | |
|-----|---------------------------------|-------------|
| 456 | (161) Reilley, Alva | \$ 402.05 |
| 457 | (162) Rhodes, Kathy | \$ 1,195.27 |
| 458 | (163) Richards, Claude R. | \$ 293.07 |
| 459 | (164) Riffe, Kim | \$ 210.18 |
| 460 | (165) Riggs, Billy R. | \$ 1,807.36 |
| 461 | (166) Rose, Jo Nell | \$ 581.10 |
| 462 | (167) Rotenberry, Deborah. | \$ 302.71 |
| 463 | (168) Rotenberry, Jerry. | \$ 878.18 |
| 464 | (169) Scales, Cora Marie | \$ 427.37 |
| 465 | (170) Shirley, Jessie | \$ 388.17 |
| 466 | (171) Short, Charles | \$ 1,688.53 |
| 467 | (172) Shrader, Teresa | \$ 807.94 |
| 468 | (173) Shrewsberry, Violet | \$ 291.69 |
| 469 | (174) Sigmon, Connie | \$ 511.13 |
| 470 | (175) Simons, Wanda | \$ 1,018.18 |
| 471 | (176) Slaughter, Carolyn. | \$ 5.67 |
| 472 | (177) Spencer, Dietrich | \$ 259.95 |
| 473 | (178) Steele, Milton | \$ 920.68 |
| 474 | (179) Steele, Nellie R. | \$ 376.00 |
| 475 | (180) Stevenson, Martha | \$ 1,904.72 |
| 476 | (181) Swiney, Evelyn | \$ 477.37 |
| 477 | (182) Terry, Helen | \$ 441.50 |
| 478 | (183) Thomas, Linda | \$ 194.45 |
| 479 | (184) Tilley, Garland | \$ 398.29 |
| 480 | (185) Townsend, Yvonne | \$ 476.62 |
| 481 | (186) Vance, Casperetta | \$ 412.38 |
| 482 | (187) Vaughn, Laura | \$ 376.13 |
| 483 | (188) Walker, Charlene | \$ 54.64 |
| 484 | (189) Walker, Larry | \$ 196.96 |
| 485 | (190) Walker, Marvin | \$ 233.86 |
| 486 | (191) White, Kathy | \$ 417.28 |
| 487 | (192) Whited, Debra | \$ 576.00 |
| 488 | (193) Whitehead, Alice | \$ 497.35 |
| 489 | (194) Wolfe, Carolyn | \$ 1,079.85 |
| 490 | (195) Woody, Claudia | \$ 481.16 |
| 491 | (196) Yates, Deborah | \$ 990.16 |
| 492 | (197) Young, James | \$ 674.40 |

493 TOTAL \$111,295.98

494 (n) *Claims against the Department of Health—*
 495 *Office of the Chief Medical Examiner:*

496

(TO BE PAID FROM GENERAL REVENUE FUND)

| | | | |
|-----|---|----|----------|
| 497 | (1) Adams, Joe | \$ | 50.00 |
| 498 | (2) Almase, Luis | \$ | 50.00 |
| 499 | (3) American Hospital Supply | | |
| 500 | Corporation, American Scientific | | |
| 501 | Products Division | \$ | 125.41 |
| 502 | (4) Boone, Ralph H. | \$ | 200.00 |
| 503 | (5) Chartex Services, Inc. | \$ | 63.34 |
| 504 | (6) Clemente Diaz, MD PC, Inc. | \$ | 100.00 |
| 505 | (7) Cottle, Aaron D. | \$ | 200.00 |
| 506 | (8) Craske, William J. | \$ | 50.00 |
| 507 | (9) Crisp, Ronald J. | \$ | 4,850.00 |
| 508 | (10) Glover, John E. | \$ | 100.00 |
| 509 | (11) Griffith, Kirk M. | \$ | 525.00 |
| 510 | (12) Hori, Jose M. | \$ | 400.00 |
| 511 | (13) LeVaughn, Mark M. | \$ | 581.25 |
| 512 | (14) Lifeteam E.M.S. Ambulance | | |
| 513 | Service | \$ | 64.00 |
| 514 | (15) H. A. Lindsay, Inc. | \$ | 300.00 |
| 515 | (16) Mail-Well Envelope Company | \$ | 43.24 |
| 516 | (17) Marsh, James M. | \$ | 700.00 |
| 517 | (18) Nicolet Instrument Corporation. | \$ | 65.11 |
| 518 | (19) Pickens, J. Keith | \$ | 300.00 |
| 519 | (20) Potomac Valley Hospital | \$ | 75.00 |
| 520 | (21) Rochlani, S. P. | \$ | 500.00 |
| 521 | (22) Schreiber, Joseph E. | \$ | 450.00 |
| 522 | (23) Syva/a Syntex Company. | \$ | 750.35 |
| 523 | (24) Wilson, Carl | \$ | 1,050.00 |
| 524 | (25) Wood, Norman E. | \$ | 600.00 |

525 (o) *Claims against the Department of Highways:*

526

(TO BE PAID FROM STATE ROAD FUND)

| | | | |
|-----|--|----|------------|
| 527 | (1) Brown, Opal M. and John | \$ | 263.16 |
| 528 | (2) City of Fairmont | \$ | 1,632.40 |
| 529 | (3) Cooper, Ruth Ann | \$ | 210.81 |
| 530 | (4) General Welding Supply Company | \$ | 125.00 |
| 531 | (5) Gillispie, Carolyn Kay | \$ | 1,200.00 |
| 532 | (6) Gillispie, Robert Kevin | \$ | 500.00 |
| 533 | (7) Good, Gregory C., as committee for | | |
| 534 | Good, Melinda F. | \$ | 200,000.00 |
| 535 | (8) S. J. Groves & Sons Company, for the | | |

| | | | |
|-----|------|---|--------------|
| 536 | | benefit of Atlas Machine and Iron | |
| 537 | | Works, Inc. | \$217,259.56 |
| 538 | (9) | Hatfield, James and Eula; Hatfield, William | |
| 539 | | R. and Gwendolyn; Hatfield, Wallie, | |
| 540 | | guardian of Crockett Hatfield, an | |
| 541 | | incompetent; Hatfield, Wallie and Ethel; | |
| 542 | | Newsom, Addie Jean and Oakey; Hall, | |
| 543 | | Vicie and Ray | \$ 2,250.00 |
| 544 | (10) | Hatfield, James and Eula | \$ 16,000.00 |
| 545 | (11) | Hatfield, Wallie and Ethel..... | \$ 14,000.00 |
| 546 | (12) | Hatfield, William R. | |
| 547 | | and Gwendolyn..... | \$ 15,000.00 |
| 548 | (13) | Knott, Paul P., Executor of the | |
| 549 | | Estate of Delores C. Knott, | |
| 550 | | deceased | \$152,732.00 |
| 551 | (14) | Kushner, John R. and Sheryl | \$ 177.75 |
| 552 | (15) | Lekanidis, Terry G. | \$ 579.32 |
| 553 | (16) | Life, Lawrence L., Sr. | \$ 362.27 |
| 554 | (17) | Liming, Patricia | \$ 2,529.07 |
| 555 | (18) | Liming, Roger | \$ 500.00 |
| 556 | (19) | Mackey, Frank D. | \$ 100.84 |
| 557 | (20) | Marcum, Vernon, Jr..... | \$ 100.00 |
| 558 | (21) | Maxey, George R. and Shirley | \$ 199.96 |
| 559 | (22) | Petty, W. Marshall and Patricia A. | \$ 300.00 |
| 560 | (23) | Rodeheaver, Linda and Von | \$ 601.83 |
| 561 | (24) | State Farm Mutual Automobile | |
| 562 | | Insurance Company, as subrogee of | |
| 563 | | Vernon Marcum, Jr..... | \$ 1,611.25 |
| 564 | (25) | Sutphin, John H. and Nancy | \$ 16,800.00 |
| 565 | (26) | West Virginia Safety Council, Inc. | \$ 300.00 |
| 566 | (27) | Withrow, Terry James | \$ 73.86 |
| 567 | (28) | Wright, Robert L. and Robin L..... | \$ 261.87 |
| 568 | (p) | <i>Claims against the Human Rights Commission:</i> | |
| 569 | | (TO BE PAID FROM GENERAL REVENUE FUND) | |
| 570 | (1) | Bickley, Jacobs & Barkus..... | \$ 4,350.00 |
| 571 | (2) | Gerl, James..... | \$ 8,080.52 |
| 572 | (3) | N. Joan Thaxton, | |
| 573 | | Court Reporters, Inc. | \$ 1,254.64 |
| 574 | (q) | <i>Claims against the Department of Human Services:</i> | |
| 575 | | (TO BE PAID FROM SPECIAL REVENUE FUND) | |

576

from Acct.No. 9150-01

| | | |
|-----|---------------------------------------|-------------|
| 577 | (1) Crow-Hussell Funeral Home..... | \$ 1,300.00 |
| 578 | (2) Dawson Funeral Home, Inc. | \$ 650.00 |
| 579 | (3) Lawson, Sharon..... | \$ 46.20 |
| 580 | (4) Carl R. Spear Funeral Home | \$ 650.00 |
| 581 | (5) Stockert-Gibson Funeral Home | \$ 325.00 |
| 582 | (6) Williams Mortuary, Inc..... | \$ 1,300.00 |

583

from Acct. No. 9155-10

| | | |
|-----|-----------------------------|-------------|
| 584 | (1) City Hospital, Inc..... | \$ 1,721.47 |
|-----|-----------------------------|-------------|

585 (r) *Claims against the Department of Labor:*

586

(TO BE PAID FROM GENERAL REVENUE FUND)

| | | |
|-----|-----------------------------|--------------|
| 587 | (1) Boggs, James | \$ 1,184.00 |
| 588 | (2) Bowyer, Floyd | \$ 3,336.00 |
| 589 | (3) Bryant, Richard | \$ 2,285.00 |
| 590 | (4) Cook, Timothy | \$ 41,418.00 |
| 591 | (5) Cox, Charles | \$ 1,684.00 |
| 592 | (6) Delp, Raymond | \$ 165.00 |
| 593 | (7) Divers, Dennis | \$ 4,250.00 |
| 594 | (8) Evans, Ronnie | \$ 1,142.00 |
| 595 | (9) Fisher, Charles | \$ 2,662.00 |
| 596 | (10) Fletcher, Walter | \$ 1,275.00 |
| 597 | (11) Gray, James | \$ 7,925.00 |
| 598 | (12) Jennings, Lowery | \$ 1,634.00 |
| 599 | (13) Lilly, Barry | \$ 1,618.00 |
| 600 | (14) Martin, James | \$ 7,414.00 |
| 601 | (15) Meador, Kenneth | \$ 4,545.00 |
| 602 | (16) Milam, Archie | \$ 3,690.00 |
| 603 | (17) Milam, Jackie | \$ 554.00 |
| 604 | (18) McMillion, Albert..... | \$ 2,689.00 |
| 605 | (19) Murdock, Albert..... | \$ 1,268.00 |
| 606 | (20) Nichols, Robert | \$ 1,463.00 |
| 607 | (21) Prather, Gary | \$ 892.00 |
| 608 | (22) Sadler, Leslie..... | \$ 1,676.00 |
| 609 | (23) Snuffer, Ronnie | \$ 864.00 |
| 610 | (24) Stover, Clifford | \$ 1,790.00 |
| 611 | (25) Stover, Lonnie | \$ 605.00 |
| 612 | (26) Taylor, Ernest | \$ 731.00 |
| 613 | (27) Thompson, Ronnie | \$ 4,302.00 |
| 614 | (28) Toler, Joey | \$ 1,251.00 |

| | | | |
|-----|--|----|-----------|
| 615 | (29) Tucker, Mark..... | \$ | 1,947.00 |
| 616 | (30) Walker, C. J. | \$ | 1,608.00 |
| 617 | (31) Watson, David | \$ | 406.00 |
| 618 | (32) Whitt, Aubrey | \$ | 1,495.00 |
| 619 | (33) Williams, Fred | \$ | 1,403.00 |
| 620 | (34) Williams, Timothy | \$ | 1,829.00 |
| 621 | (s) <i>Claim against the West Virginia</i> | | |
| 622 | <i>Lottery Commission:</i> | | |
| 623 | (TO BE PAID FROM SPECIAL REVENUE FUND) | | |
| 624 | from Acct. No. 8013-06 | | |
| 625 | (1) Scientific Games, Inc. | \$ | 18,000.00 |
| 626 | (t) <i>Claims against the Department of Natural Resources:</i> | | |
| 627 | (TO BE PAID FROM GENERAL REVENUE FUND) | | |
| 628 | (1) Capitol Business Equipment, Inc. .. | \$ | 805.01 |
| 629 | (2) Cole Business Furniture | \$ | 194.79 |
| 630 | (3) B. Stanley Gill, Inc. | \$ | 152.55 |
| 631 | (4) Harris Corporation..... | \$ | 585.02 |
| 632 | (5) Motorola C & E, Inc. | \$ | 1,251.72 |
| 633 | (6) Sears, Roebuck and Company..... | \$ | 304.22 |
| 634 | (7) Varian Associates, Inc. | \$ | 9,675.71 |
| 635 | (TO BE PAID FROM SPECIAL REVENUE FUND) | | |
| 636 | (1) Capitol Business Equipment, Inc. .. | \$ | 806.83 |
| 637 | (2) Motorola C. & E., Inc. | \$ | 3,239.20 |
| 638 | (u) <i>Claims against the Department of Public Safety:</i> | | |
| 639 | (TO BE PAID FROM GENERAL REVENUE FUND) | | |
| 640 | (1) Alltel Corporation..... | \$ | 78.58 |
| 641 | (2) Associated Radiologist, Inc..... | \$ | 276.50 |
| 642 | (3) Blevins, Ronald Glenn | \$ | 300.00 |
| 643 | (4) Capitol Business Equipment, Inc. .. | \$ | 660.00 |
| 644 | (5) Charleston Area Medical Center ... | \$ | 7,135.96 |
| 645 | (6) General Anesthesia Services | \$ | 441.00 |
| 646 | (7) Goodyear Tire and Rubber | | |
| 647 | Company, The..... | \$ | 5,348.81 |
| 648 | (8) Hamrick, R. Edward, Jr | \$ | 330.00 |
| 649 | (9) Hanover Shoe Co., The | \$ | 59.50 |
| 650 | (10) Health Plus Professionals, Inc..... | \$ | 108.00 |

| | | | |
|-----|--|----|-----------|
| 651 | (11) Jan-Care Ambulance Service, Inc. | \$ | 49.00 |
| 652 | (12) Johnson & Higgins of | | |
| 653 | Washington D.C., Inc | \$ | 16,500.00 |
| 654 | (13) Kanawha Valley Radiologists, Inc. | \$ | 304.00 |
| 655 | (14) Knickerbocker, Inc. | \$ | 2,296.33 |
| 656 | (15) MacCallum, John P., M.D. | | |
| 657 | and Associates, Inc. | \$ | 180.00 |
| 658 | (16) Mayle, Timothy R. | \$ | 171.91 |
| 659 | (17) McKinley Engineering Company .. | \$ | 396.00 |
| 660 | (18) Michie Company, The | \$ | 1,674.76 |
| 661 | (19) Midkiff, James D. | \$ | 597.50 |
| 662 | (20) Orthopaedic Associates, Inc. | \$ | 2,134.00 |
| 663 | (21) P. C. Corro, M.D., Inc. | \$ | 14.92 |
| 664 | (22) Phillips, T. L. | \$ | 538.90 |
| 665 | (23) RCA Service Company | \$ | 313.50 |
| 666 | (24) Rose's Linen & Uniform Service, | | |
| 667 | Division of Spalding Services ... | \$ | 1,542.80 |
| 668 | (25) Settle, Edmund C., Jr. | \$ | 90.00 |
| 669 | (26) Smith & Jones Home | | |
| 670 | Suppliers, Inc. | \$ | 950.00 |
| 671 | (27) Thoracic and Cardiovascular | | |
| 672 | Associates, Inc. | \$ | 2,703.00 |
| 673 | (28) Tiley, Edward H. | \$ | 1,765.00 |
| 674 | (29) Waco Equipment Company | \$ | 23.28 |
| 675 | (30) White, G. W. | \$ | 300.00 |
| 676 | (31) Wilfredo N. Molano, MDSC, Inc. . . . | \$ | 340.00 |
| 677 | (32) Williams, George W. | \$ | 1,000.00 |
| 678 | (v) <i>Claim against the Public Service Commission:</i> | | |
| 679 | (TO BE PAID FROM SPECIAL REVENUE FUND) | | |
| 680 | from Acct. No. 8280 | | |
| 681 | (1) Smith, Joe L. Jr., Inc. | | |
| 682 | BJW Printers Division | \$ | 34,918.38 |
| 683 | (w) <i>Claim against the Railroad Maintenance Authority:</i> | | |
| 684 | (TO BE PAID FROM SPECIAL REVENUE FUND) | | |
| 685 | from Acct. No. 8344-06 | | |
| 686 | (1) Butts, Mrs. Terry | \$ | 45.00 |
| 687 | (x) <i>Claims against the Board of Regents:</i> | | |

| | | |
|-----|--|--------------|
| 688 | (TO BE PAID FROM GENERAL REVENUE FUND) | |
| 689 | (1) Eastern Associates, | |
| 690 | A Limited Partnership | \$ 6,314.00 |
| 691 | (TO BE PAID FROM SPECIAL REVENUE FUND) | |
| 692 | from Acct. No. 8628-11 | |
| 693 | (1) A-One Rental Sales and Service . . . | \$ 580.00 |
| 694 | from Acct. No. 8610-60 | |
| 695 | (1) Aerosol Monitoring & Analysis, Inc. | \$ 4,662.70 |
| 696 | (2) Booth, Beverly A. | \$ 2,494.27 |
| 697 | (3) Guidi, Fred Thomas..... | \$ 294.28 |
| 698 | (4) Hammack, Barbara J..... | \$ 605.50 |
| 699 | (5) Muth, Sarah A. | \$ 657.50 |
| 700 | (6) Nicholas, Kathy Elaine..... | \$ 156.00 |
| 701 | (7) Shaffer, Kathryn F. | \$ 1,227.00 |
| 702 | (8) Silcott, Patricia Lynn | \$ 2,217.00 |
| 703 | (9) Warmate, Nsobiari..... | \$ 375.00 |
| 704 | from Acct. No. 8610-31 | |
| 705 | (1) Birchman, John Robert..... | \$ 121.00 |
| 706 | (2) Hardman, Dann A..... | \$ 118.50 |
| 707 | (3) Webb, Jeffrey M. | \$ 35.00 |
| 708 | from Acct. No. 8610-10 | |
| 709 | (1) Cronic, Jane Fanslow | \$ 125.00 |
| 710 | (2) Pervola, Terry A. | \$ 300.00 |
| 711 | from Acct. No. 8835 | |
| 712 | (1) E. P. Fogleman Construction | |
| 713 | Co., Inc..... | \$ 30,000.00 |
| 714 | from Acct. No. 9280 | |
| 715 | (1) Meleady, Rene' A..... | \$ 125.00 |
| 716 | from Acct. No. 8610-34 | |
| 717 | (1) Murphy, Michael Robert | \$ 208.94 |
| 718 | (y) <i>Claims against the State Board of Rehabilitation:</i> | |
| 719 | (TO BE PAID FROM FEDERAL FUNDS) | |
| 720 | from Acct. No. 7873 | |

| | | | |
|-----|---|----|----------|
| 721 | (1) A T & T | \$ | 242.58 |
| 722 | (2) Braxton V.O.I.C.E., Inc. | \$ | 735.24 |
| 723 | (3) Beckley Radiology Associates | \$ | 175.50 |
| 724 | (4) Cole Office, Environments, Division | | |
| 725 | of Joyce International, Inc. | \$ | 260.58 |
| 726 | (5) St. Joseph's Hospital | \$ | 2,569.08 |
| 727 | (6) Wade, John A., M. D., Inc. | \$ | 840.00 |

728 (z) *Claim against the Secretary of State:*

729 (TO BE PAID FROM GENERAL REVENUE FUND)

| | | | |
|-----|--------------------------------------|----|--------|
| 730 | (1) Mail-Well Envelope Company | \$ | 498.53 |
|-----|--------------------------------------|----|--------|

731 (aa) *Claims against the Supreme Court of Appeals:*

732 (TO BE PAID FROM GENERAL JUDICIAL
 733 ACCOUNT NO. 1110 AND THE APPROPRIATION
 734 FOR CURRENT FISCAL YEAR 1987-88 THEREOF)

| | | | |
|-----|------------------------------|----|----------|
| 735 | (1) Blair, Robert E. | \$ | 2,515.00 |
| 736 | (2) Keller, Gary E., Sheriff | | |
| 737 | Tyler County | \$ | 4,202.25 |

738 (bb) *Claims against the State Tax Department:*

739 (TO BE PAID FROM GENERAL REVENUE FUND)

| | | | |
|-----|--------------------------------------|----|-----------|
| 740 | (1) Arnett & Foster | \$ | 51,972.55 |
| 741 | (2) Carnegie-Mellon University | \$ | 1,228.00 |

742 (cc) *Claims against the Treasurer's Office:*

743 (TO BE PAID FROM GENERAL REVENUE FUND)

| | | | |
|-----|-----------------------------|----|----------|
| 744 | (1) Hecks, Inc. | \$ | 21.30 |
| 745 | (2) Xerox Corporation | \$ | 3,207.98 |

746 (dd) *Claims against the Workers' Compensation Fund:*

747 (TO BE PAID FROM WORKERS' COMPENSATION FUND)

| | | | |
|-----|---------------------------------|----|----------|
| 748 | (1) Bell & Howell Company | \$ | 479.00 |
| 749 | (2) Linotype Company | \$ | 1,478.43 |

750 The Legislature finds that the above moral obligations
 751 and the appropriations made in satisfaction thereof shall
 752 be the full compensation for all claimants, and that prior
 753 to the payments to any claimant provided for in this bill,
 754 the court of claims shall receive a release from said
 755 claimant releasing any and all claims for moral

756 obligations arising from the matters considered by the
 757 Legislature in the finding of the moral obligations and
 758 the making of the appropriations for said claimant. The
 759 court of claims shall deliver all releases obtained from
 760 claimants to the department against which the claim
 761 was allowed.

762 The Legislature expressly finds and determines that
 763 the claims listed below are not moral obligations of the
 764 state, should not be paid hereunder, nor hereafter
 765 recertified for reconsideration:

766 (a) *Claims against the Department of Corrections:*

767 (GENERAL REVENUE FUND)

| | | |
|-----|--------------------------------|--------------|
| 768 | (1) Board of Regents..... | \$ 16,027.18 |
| 769 | (2) Employment Security, | |
| 770 | Department of | \$ 8,739.13 |
| 771 | (3) Hall, Clarence B..... | \$ 200.00 |
| 772 | * (4) Lassiter, Russell | \$ 60.12 |
| 773 | (5) Miller, James E., Jr. | \$ 5,000.00 |
| 774 | * (6) Mullins, David | \$ 141.60 |
| 775 | * (7) Sartin, Elijah | \$ 118.05 |
| 776 | * (8) Sims, Gary | \$ 184.10 |

777 (b) *Claim against the Department of*
 778 *Culture and History:*

779 (GENERAL REVENUE FUND)

| | | |
|-----|--------------------------|-----------|
| 780 | (1) Employment Security, | |
| 781 | Department of | \$ 661.86 |

782 (c) *Claims against the Department of Education:*

783 (GENERAL REVENUE FUND)

| | | |
|-----|------------------------------|-------------|
| 784 | (1) Employment Security, | |
| 785 | Department of | \$ 4,233.66 |
| 786 | (2) Secretary of State | \$ 43.10 |
| 787 | (3) West Virginia College | |
| 788 | of Graduate Studies | \$ 875.00 |

789 (d) *Claim against the Department of Finance*
 790 *and Administration:*

791 (SPECIAL REVENUE FUND)

| | | | |
|------|---|--------|------------|
| 1090 | | CLAIMS | [Ch. 3 |
| 792 | (1) Lacy, Surshel C. | \$ | 725.00 |
| 793 | <i>(e) Claim against the Department of Health:</i> | | |
| 794 | (GENERAL REVENUE FUND) | | |
| 795 | (1) Employment Security, | | |
| 796 | Department of | \$ | 2,226.52 |
| 797 | <i>(f) Claims against the Department of Highways:</i> | | |
| 798 | (STATE ROAD FUND) | | |
| 799 | ** (1) Lane Construction Corporation, The | \$ | 454,931.52 |
| 800 | * (2) USX Corporation | \$ | 141,350.55 |
| 801 | <i>(g) Claim against the Department of Public Safety:</i> | | |
| 802 | (GENERAL REVENUE FUND) | | |
| 803 | (1) Death Disability and Retirement Board, | | |
| 804 | Department of Public Safety | \$ | 232,561.96 |
| 805 | <i>(h) Claims against the Board of Regents:</i> | | |
| 806 | (SPECIAL REVENUE FUND) | | |
| 807 | * (1) Kirby Electric Service, Inc. | \$ | 107,835.04 |
| 808 | * (2) Mellon-Stuart Company | \$ | 697,934.33 |
| 809 | <i>(i) Claim against the Workers' Compensation Fund:</i> | | |
| 810 | (WORKERS' COMPENSATION FUND) | | |
| 811 | (1) Employment Security, | | |
| 812 | Department of | \$ | 3,235.43 |
| 813 | * Recertified Claim | | |
| 814 | ** The Legislature concurs with the position of the | | |
| 815 | Department of Highways that payment of this claim | | |
| 816 | should be made from federal moneys applied for and | | |
| 817 | obtained, because the project was a totally federal- | | |
| 818 | funded project. | | |
| 819 | NOTE: The purpose of this bill is for the Legislature | | |
| 820 | to find and declare the existence of a moral obligation | | |
| 821 | to pay, with public moneys, each of the claims herein | | |
| 822 | against specified state agencies, by the named clai- | | |
| 823 | nants, payable from the specified funds, and in the | | |
| 824 | amounts of the awards made. This bill also, as now | | |

825 required by recent decision of our Supreme Court of
 826 Appeals, expressly sets forth the claims considered but
 827 being denied, so that such claims will not again be
 828 automatically recertified to the Legislature by the Clerk
 829 of the Court of Claims for any further or subsequent
 830 reconsideration.

831 The claims against the Supreme Court of Appeals,
 832 awarded herein, do not require new appropriation of
 833 general revenue funds as do the other claims against
 834 general revenue herein, since the court has agreed that
 835 such claims will be absorbed and paid from its current
 836 appropriation of general revenue funds in its General
 837 Judicial Account No. 1110 for current fiscal year 1987-
 838 88.

839 A second and separate bill (either a supplementary
 840 appropriation bill or a section of the budget bill) will
 841 actually appropriate the moneys herein awarded and
 842 permit payment in current fiscal year 1987-88 and
 843 through June 30, 1989.

844 The totals, as to type of funds and amounts of awards
 845 in the bill, are:

| | | |
|-----|--------------------------------------|----------------|
| 846 | (1) General Revenue Funds of | \$1,805,513.22 |
| 847 | (2) Special Revenue Funds of..... | \$ 112,544.88 |
| 848 | (3) Federal Funds of..... | \$ 4,822.98 |
| 849 | (4) State Road Funds of..... | \$ 645,670.95 |
| 850 | (5) Workers' Compensation Fund | \$ 1,957.43 |

CHAPTER 4

(Com. Sub. for H. B. 204—By Delegates Leary and White)

[Passed June 3, 1988; in effect July 1, 1988. Approved by the Governor.]

AN ACT to amend chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article sixteen-a, relating to the creation of a small business health insurance initiative program through joint efforts of public employees insurance agency and legislative task

force on uncompensated health care and medicaid expenditures; establishment of multiple small employer insurance pool; "small business" to be defined; bids from insurance companies or carriers for insurance coverage; reports to Legislature; data of department of employment security to be furnished; state antitrust laws to not apply; small business health insurance initiative program termination; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 16A. SMALL BUSINESS HEALTH INSURANCE INITIATIVE.

- §5-16A-1. Short title.
- §5-16A-2. Legislative findings.
- §5-16A-3. Insurance initiative; purpose; planning; development and implementation.
- §5-16A-4. Funding and payment procedures separated from public insurance agency appropriations.
- §5-16A-5. Rules and regulations; contents; creation of small business insurance pool.
- §5-16A-6. Legislative report.
- §5-16A-7. Availability of data of department of employment security.
- §5-16A-8. Exemption from state antitrust laws.
- §5-16A-9. Termination of small business health insurance initiative program.

§5-16A-1. Short title.

- 1 This article may be cited as the "Small Business
- 2 Health Insurance Initiative."

§5-16A-2. Legislative findings.

- 1 The Legislature hereby finds and declares as follows:
- 2 (a) In excess of three hundred thousand, or nearly
- 3 sixteen percent, of West Virginians are without health
- 4 insurance and are not covered by federal or state health
- 5 care assistance and eighty percent of these persons have
- 6 incomes below two hundred percent of the federal
- 7 poverty level and are thus medically indigent;
- 8 (b) This problem is worsening as the number of

9 persons so uninsured has increased by thirty thousand,
10 or eleven percent, since the year one thousand nine
11 hundred eighty;

12 (c) Over seventy-eight thousand, or thirteen percent,
13 of West Virginia workers are without health insurance,
14 and that these workers and their uninsured dependents
15 together are estimated to total over one hundred thirty-
16 two thousand, or more than forty-four percent, of all
17 uninsured persons in the state;

18 (d) No relief appears available for the uninsured
19 working citizens of this state in the form of adequate
20 health insurance or access to funds to pay therefor and
21 the health and welfare of these uninsured working
22 citizens and their dependents is increasingly threatened;

23 (e) Studies show that the numbers of such uninsured
24 persons are rising as a result of changing patterns of
25 employment in which jobs are available in ever enlarg-
26 ing numbers in industries involving service and trade
27 and that these are among the least likely industries to
28 provide health insurance for employees;

29 (f) The system of cost shifting by providers of
30 uncompensated health care to paying health care
31 consumers creates increasing numbers of persons
32 unable to afford health insurance and has resulted in a
33 climate where the financial stability of health care
34 providers is increasingly threatened;

35 (g) Thousands of uninsured working citizens are
36 employed in small businesses of fifty or less employees,
37 many of which do not have available to them affordable
38 group health insurance plans for their employees;

39 (h) The severity of these problems demands a solution,
40 and projects have been developed in other states which
41 do provide affordable, necessary health insurance
42 coverage through the combining of small employee
43 groups into a larger insurance pool;

44 (i) To address these problems, the public employees
45 insurance agency created by article sixteen of this
46 chapter is the appropriate logical entity to implement
47 a small business health insurance initiative to target the

48 forty-four percent of working West Virginians and their
49 dependents without health insurance, with the cooper-
50 ation and assistance of the legislative task force on
51 uncompensated health care and medicaid expenditures
52 created by article twenty-nine-c, chapter sixteen of this
53 code.

**§5-16A-3. Insurance initiative; purpose; planning; devel-
opment and implementation.**

1 On the first day of July, one thousand nine hundred
2 eighty-eight, the planning of a small business health
3 insurance initiative in the state shall be commenced by
4 the public employees insurance agency and the resour-
5 ces available to it, with the advice and assistance of the
6 legislative task force on uncompensated health care and
7 medicaid expenditures. The purpose of the project shall
8 be to make available affordable health insurance by
9 pooling in a group for health insurance purposes groups
10 of small businesses to provide for acute and primary
11 health care services to working citizens of the state and
12 their dependents who are without health insurance
13 benefits offered in connection with their employment.
14 The public employees insurance agency shall be respon-
15 sible for the development and implementation of the
16 program. In so doing, the agency may seek the advice
17 and assistance of the legislative task force on uncompen-
18 sated health care and medicaid expenditures.

**§5-16A-4. Funding and payment procedures separated
from public employees insurance agency
appropriations.**

1 Funds received through employer-employee premi-
2 ums of participating small businesses or from any entity
3 granting funds for the purposes of this program shall
4 be set aside and kept at all times separate and apart
5 from any and all funds appropriated or remitted
6 heretofore or in the future to and for the public
7 employees insurance agency for purposes enumerated in
8 article sixteen, chapter five of this code. No such funds
9 shall be utilized to supplement any health care insu-
10 rance offered through the initiative established under
11 the provisions of this article. No benefit or program

12 entitlement offered to those eligible under the provisions
13 of said article sixteen may be affected by the initiative
14 established in this article, and initiative procedures and
15 mechanisms for processing of claims shall be kept
16 separate and apart from those established pursuant to
17 said article sixteen.

**§5-16A-5. Rules and regulations; contents; creation of
small business insurance pool.**

1 The public employees insurance agency shall develop
2 and implement the program through rules and regula-
3 tions promulgated in accordance with the provisions of
4 chapter twenty-nine-a of this code. The legislative task
5 force on uncompensated health care and medicaid
6 expenditures shall share with the public employees
7 insurance agency any and all pertinent data, studies,
8 reports, analyses, research, summaries, information
9 collected, filed or developed now or in the future in
10 order to effect the development and implementation of
11 the program contemplated herein. Upon request, in the
12 planning, development and implementation of the
13 program the insurance commissioner shall cooperate
14 with advice and assistance.

15 The rules and regulations shall provide for the
16 establishment of a multiple small employer insurance
17 pool for the provision of basic acute and primary health
18 care insurance coverage with measurable cost contain-
19 ment provisions to employers and employees of small
20 businesses in the state and their respective dependents;
21 shall specify that those eligible for participation in the
22 program be small businesses in the state with fifty or
23 fewer employees; shall develop a definition for "small
24 business" which definition shall include nonprofit
25 organizations and nonprofit corporations having fifty or
26 fewer employees; shall permit bids from qualified and
27 licensed insurance companies or carriers, who may wish
28 to offer plans or reinsurance for the insurance coverage
29 desired; shall address incentives for small business
30 participation in the program, and a variety of effective
31 cost controls; shall provide for an appropriate applica-
32 tion form for participation and procedures for applica-
33 tion; shall ensure accurate and appropriate marketing

34 of the health insurance coverage to small businesses
35 throughout the state; and shall establish criteria for
36 monitoring the effectiveness of the multiple small
37 employer insurance pool.

§5-16A-6. Legislative report.

1 The public employees insurance agency, with the
2 advice and assistance of the legislative task force on
3 uncompensated health care and medicaid expenditures,
4 shall cooperate to prepare and submit reports to the
5 Legislature before it convenes in the years one thousand
6 nine hundred eighty-nine, one thousand nine hundred
7 ninety, one thousand nine hundred ninety-one and one
8 thousand nine hundred ninety-two, with studies, find-
9 ings, conclusions and recommendations, including any
10 recommendations for legislation, all relating to the
11 purpose and effect of the small business health insu-
12 rance initiative created herein. Said report shall be in
13 addition to any report prepared by the legislative task
14 force on uncompensated health care and medicaid
15 expenditures pursuant to the provisions of article
16 twenty-nine-c, chapter sixteen of this code.

**§5-16A-7. Availability of data of department of employ-
ment security.**

1 In furtherance of the purposes of this article, the
2 department of employment security shall, notwithstand-
3 ing the provisions of section eleven, article ten, chapter
4 twenty-one-a of this code, cooperate to make available
5 to the public employees insurance agency and the
6 legislative task force on uncompensated health care and
7 medicaid expenditures such information as they may
8 request for purposes consistent with this article to
9 identify and facilitate contact with small business
10 employers who may be eligible for participation in the
11 initiative. The provisions of this section shall be liberally
12 construed by the department of employment security in
13 order to effectuate the development of the small business
14 insurance initiative.

15 Information thus obtained by the public employees
16 insurance agency and the legislative task force on
17 uncompensated health care and medicaid expenditures

18 shall be maintained as strictly confidential and shall be
19 exempt from disclosure to the public.

§5-16A-8. Exemption from state antitrust laws.

1 The small business health insurance initiative and
2 those responsible for developing and implementing it
3 under the provisions of this article are exempted from
4 the provisions of section five, article eighteen, chapter
5 forty-seven of this code.

**§5-16A-9. Termination of small business health insurance
initiative program.**

1 The small business health insurance initiative pro-
2 gram shall be terminated pursuant to the provisions of
3 article ten, chapter four of this code on the first day of
4 July, one thousand nine hundred ninety-two, unless
5 continued or reestablished pursuant to the provisions of
6 that article.



LEGISLATURE OF WEST VIRGINIA**ACTS****THIRD EXTRAORDINARY SESSION, 1988****CHAPTER 1**

(Com. Sub. for H. B. 303—By Mr. Speaker, Mr. Chambers, and Delegate Swann,
by request of the executive)

[Passed June 28, 1988; in effect September 1, 1988. 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 three-c, relating to AIDS-related medical testing and records confidentiality act; defining terms; setting testing requirements; providing for confidentiality of records; authorizing substitute consent; providing for remedies and penalties and private rights of action; prohibiting denial of certain rights; requiring study by department of corrections; providing administrative implementation; and providing for individual banking of blood for elective medical procedures.

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 three-c, to read as follows:

ARTICLE 3C. AIDS-RELATED MEDICAL TESTING AND RECORDS CONFIDENTIALITY ACT.

§16-3C-1. Definitions.

- §16-3C-2. Testing.
- §16-3C-3. Confidentiality of records; permitted disclosure; no duty to notify.
- §16-3C-4. Substituted consent.
- §16-3C-5. Remedies and penalties.
- §16-3C-6. Prohibiting certain acts; HIV tests.
- §16-3C-7. Department of corrections to conduct AIDS related study.
- §16-3C-8. Administrative implementation.
- §16-3C-9. Individual banking of blood by health care providers for elective surgery or medical procedures.

§16-3C-1. Definitions.

- 1 When used in this article:
- 2 (a) "Department" means the state department of
- 3 health.
- 4 (b) "AIDS" means acquired immunodeficiency
- 5 syndrome.
- 6 (c) "ARC" means AIDS-related complex.
- 7 (d) "Funeral director" shall have the same meaning
- 8 ascribed to such term in section four, article six, chapter
- 9 thirty of this code.
- 10 (e) "Funeral establishment" shall have the same
- 11 meaning ascribed to such term in section four, article
- 12 six, chapter thirty of this code.
- 13 (f) "HIV" means the human immunodeficiency virus
- 14 identified as the causative agent of AIDS.
- 15 (g) "HIV-related test" means a test for the HIV
- 16 antibody or antigen or any future valid test approved
- 17 by the department, the federal drug administration or
- 18 the centers for disease control.
- 19 (h) "Health facility" means a hospital, nursing home,
- 20 clinic, blood bank, blood center, sperm bank, laboratory
- 21 or other health care institution.
- 22 (i) "Health care provider" means any physician,
- 23 dentist, nurse, paramedic, psychologist or other person
- 24 providing medical, dental, nursing, psychological or
- 25 other health care services of any kind.
- 26 (j) "Person" includes any natural person, partnership,

27 association, joint venture, trust, public or private
28 corporation or health facility.

29 (k) "Release of test results" means a written author-
30 ization for disclosure of HIV-related test results which
31 is signed, dated and which specifies to whom disclosure
32 is authorized and the time period during which the
33 release is to be effective.

§16-3C-2. Testing.

1 (a) HIV-related testing may be requested by a
2 physician, dentist or the director of the department for
3 any of the following:

4 (1) When there is cause to believe that the test could
5 be positive; or

6 (2) When there is cause to believe that the test could
7 provide information important in the care of the patient;
8 or

9 (3) When any person voluntarily consents to the test.

10 (b) The requesting physician, dentist or the director
11 of the department shall provide the patient with
12 information in the form of a booklet or printed infor-
13 mation prepared or approved by the department or, in
14 the case of persons who are unable to read, shall either
15 show a video or film prepared or approved by the
16 department to the patient, or read or cause to be read
17 to the patient the information prepared or approved by
18 the department which contains the following
19 information:

20 (1) An explanation of the test, including its purpose,
21 potential uses, limitations, the meaning of its results and
22 any special relevance to pregnancy and prenatal care;
23 and

24 (2) An explanation of the procedures to be followed;
25 and

26 (3) An explanation that the test is voluntary and may
27 be obtained anonymously; and

28 (4) An explanation that the consent for the test may
29 be withdrawn at any time prior to drawing the sample

30 for the test and that such withdrawal of consent may
31 be given orally if the consent was given orally, or shall
32 be in writing if the consent was given in writing; and

33 (5) An explanation of the nature and current knowl-
34 edge of asymptomatic HIV infection, ARC and AIDS,
35 and the relationship between the test result and those
36 diseases; and

37 (6) Information about behaviors known to pose risks
38 for transmission of HIV infection.

39 (c) A person seeking an HIV-related test who wishes
40 to remain anonymous has the right to do so, and to
41 provide written, informed consent through use of a
42 coded system with no linking or individual identity to
43 the test requests or results. A health care provider who
44 does not provide HIV-related tests on an anonymous
45 basis shall refer such a person to a test site which does
46 provide anonymous testing, or to any local or county
47 health department which shall provide for performance
48 of an HIV-related test and counseling.

49 (d) At the time of learning of any test result, the
50 subject of the test shall be provided with counseling or
51 referral for counseling for coping with the emotional
52 consequences of learning any test result. This may be
53 done by brochure or personally, or both.

54 (e) No consent for testing is required and the provi-
55 sions of subsection (b) of this section do not apply for:

56 (1) A health care provider or health facility perform-
57 ing an HIV-related test on the donor or recipient when
58 the health care provider or health facility procures,
59 processes, distributes or uses a human body part
60 (including tissue and blood or blood products) donated
61 for a purpose specified under the uniform anatomical
62 gift act, or for transplant recipients, or semen provided
63 for the purpose of artificial insemination and such test
64 is necessary to assure medical acceptability of a
65 recipient or such gift or semen for the purposes
66 intended;

67 (2) The performance of an HIV-related test in docu-
68 mented bona fide medical emergencies when the subject

69 of the test is unable to grant or withhold consent, and
70 the test results are necessary for medical diagnostic
71 purposes to provide appropriate emergency care or
72 treatment, except that post-test counseling or referral
73 for counseling shall nonetheless be required. Necessary
74 treatment may not be withheld pending HIV test
75 results; or

76 (3) The performance of an HIV-related test for the
77 purpose of research if the testing is performed in a
78 manner by which the identity of the test subject is not
79 known and may not be retrieved by the researcher.

80 (f) Mandated testing:

81 (1) The performance of any HIV-related testing that
82 is or becomes mandatory shall not require consent of the
83 subject but will include counseling.

84 (2) An HIV-related test shall be performed on any
85 persons convicted of any of the following crimes or
86 offenses:

87 (i) Prostitution;

88 (ii) Sexual abuse, sexual assault, incest or molestation.

89 (3) The director of the department or his or her
90 designees may require an HIV test for the protection of
91 a person who was possibly exposed to HIV infected
92 blood or other body fluids as a result of receiving or
93 rendering emergency medical aid or who possibly
94 received such exposure as a funeral director. Results of
95 such a test of the person causing exposure may be used
96 by the requesting physician for the purpose of determin-
97 ing appropriate therapy, counseling and psychological
98 support for the person rendering emergency medical aid
99 including good samaritans, as well as for the patient, or
100 individual receiving the emergency medical aid.

101 (4) When the director of the department knows or has
102 reason to believe, because of medical or epidemiological
103 information, that a person, including, but not limited to,
104 a person such as an IV drug abuser, or a person who
105 may have a sexually transmitted disease, or a person
106 who has sexually molested, abused or assaulted another,

107 has HIV infection and is or may be a danger to the
108 public health, he may issue an order to:

109 (i) Require a person to be examined and tested to
110 determine whether the person has HIV infection;

111 (ii) Require a person with HIV infection to report to
112 a qualified physician or health worker for counseling;
113 and

114 (iii) Direct a person with HIV infection to cease and
115 desist from specified conduct which endangers the
116 health of others.

117 (g) If a person violates a cease and desist order issued
118 pursuant to this section and it is shown that the person
119 is a danger to others, the director of the department
120 shall enforce the cease and desist order by imposing
121 such restrictions upon the person as are necessary to
122 prevent the specific conduct which endangers the health
123 of others. Any restriction shall be in writing, setting
124 forth the name of the person to be restricted and the
125 initial period of time, not to exceed three months, during
126 which the order shall remain effective, the terms of the
127 restrictions and such other conditions as may be
128 necessary to protect the public health.

129 (h) Premarital screening:

130 (1) Every person who is empowered to issue a mar-
131 riage license shall, at the time of issuance thereof,
132 distribute to the applicants for the license, information
133 concerning acquired immunodeficiency syndrome
134 (AIDS) and inform them of the availability of HIV-
135 related testing and counseling. The informational
136 brochures shall be furnished by the department.

137 (2) A notation that each applicant has received the
138 AIDS informational brochure shall be placed on file
139 with the marriage license on forms provided by the
140 department.

141 (i) The director of the department may obtain and test
142 specimens for AIDS or HIV infection for research or
143 epidemiological purposes without consent of the person
144 from whom the specimen is obtained if all personal

145 identifying information is removed from the specimen
146 prior to testing.

147 (j) Nothing in this section is applicable to any insurer
148 regulated under chapter thirty-three of this code:
149 *Provided*, That the commissioner of insurance shall
150 develop standards regarding consent for use by insurers
151 which test for the presence of the HIV antibody.

152 (k) Whenever consent of the subject to the perfor-
153 mance of HIV-related testing is required under this
154 article, any such consent obtained, whether orally or in
155 writing, shall be deemed to be a valid and informed
156 consent if it is given after compliance with the provi-
157 sions of subsection (b) of this section.

**§16-3C-3. Confidentiality of records; permitted disclo-
sure; no duty to notify.**

1 (a) No person may disclose or be compelled to disclose
2 the identity of any person upon whom an HIV-related
3 test is performed, or the results of such a test in a
4 manner which permits identification of the subject of
5 the test, except to the following persons:

6 (1) The subject of the test;

7 (2) Any person who secures a specific release of test
8 results executed by the subject of the test;

9 (3) A funeral director or an authorized agent or
10 employee of a health facility or health care provider if
11 the funeral establishment, health facility or health care
12 provider itself is authorized to obtain the test results, the
13 agent or employee provides patient care or handles or
14 processes specimens of body fluids or tissues and the
15 agent or employee has a need to know such information:
16 *Provided*, That such funeral director, agent or employee
17 shall maintain the confidentiality of such information;

18 (4) Licensed medical personnel or appropriate health
19 care personnel providing care to the subject of the test,
20 when knowledge of the test results is necessary or useful
21 to provide appropriate care or treatment, in an appro-
22 priate manner: *Provided*, That such personnel shall
23 maintain the confidentiality of such test results. The

24 entry on a patient's chart of an HIV-related illness by
25 the attending or other treating physician or other health
26 care provider shall not constitute a breach of confidential-
27 tiality requirements imposed by this article;

28 (5) The department or the centers for disease control
29 of the United States public health service in accordance
30 with reporting requirements for a diagnosed case of
31 AIDS, or a related condition;

32 (6) A health facility or health care provider which
33 procures, processes, distributes or uses: (A) A human
34 body part from a deceased person with respect to
35 medical information regarding that person; or (B)
36 semen provided prior to the effective date of this article
37 for the purpose of artificial insemination; (C) blood or
38 blood products for transfusion or injection; (D) human
39 body parts for transplant with respect to medical
40 information regarding the donor or recipient;

41 (7) Health facility staff committees or accreditation or
42 oversight review organizations which are conducting
43 program monitoring, program evaluation or service
44 reviews so long as any identity remains anonymous; and

45 (8) A person allowed access to said record by a court
46 order which is issued in compliance with the following
47 provisions:

48 (i) No court of this state may issue such order unless
49 the court finds that the person seeking the test results
50 has demonstrated a compelling need for the test results
51 which cannot be accommodated by other means. In
52 assessing compelling need, the court shall weigh the
53 need for disclosure against the privacy interest of the
54 test subject and the public interest;

55 (ii) Pleadings pertaining to disclosure of test results
56 shall substitute a pseudonym for the true name of the
57 test subject of the test. The disclosure to the parties of
58 the test subject's true name shall be communicated
59 confidentially, in documents not filed with the court;

60 (iii) Before granting any such order, the court shall,
61 if possible, provide the individual whose test result is in
62 question with notice and a reasonable opportunity to

63 participate in the proceedings if he or she is not already
64 a party;

65 (iv) Court proceedings as to disclosure of test results
66 shall be conducted in camera unless the subject of the
67 test agrees to a hearing in open court or unless the court
68 determines that the public hearing is necessary to the
69 public interest and the proper administration of justice;
70 and

71 (v) Upon the issuance of an order to disclose test
72 results, the court shall impose appropriate safeguards
73 against unauthorized disclosure, which shall specify the
74 person who may have access to the information, the
75 purposes for which the information may be used and
76 appropriate prohibitions on future disclosure.

77 (b) No person to whom the results of an HIV-related
78 test have been disclosed pursuant to subsection (a) of this
79 section may disclose the test results to another person
80 except as authorized by subsection (a).

81 (c) Whenever disclosure is made pursuant to this
82 section, except when such disclosure is made to persons
83 in accordance with subdivisions (1), (3), (4), (5), (6) and
84 (7), subsection (a) of this section, it shall be accompanied
85 by a statement in writing which includes the following
86 or substantially similar language: "This information has
87 been disclosed to you from records whose confidentiality
88 is protected by state law. State law prohibits you from
89 making any further disclosure of the information
90 without the specific written consent of the person to
91 whom it pertains, or as otherwise permitted by law. A
92 general authorization for the release of medical or other
93 information is NOT sufficient for this purpose."

94 (d) Notwithstanding the provisions set forth in
95 subsections (a) through (c) of this section, the use of HIV
96 test results to inform individuals named or identified as
97 sex partners or contacts or persons who have shared
98 needles that they may be at risk of having acquired the
99 HIV infection as a result of possible exchange of body
100 fluids, is permitted. The name or identity of the person
101 whose HIV test result was positive is to remain
102 confidential. Contacts or identified partners may be

103 tested anonymously at the state department of health
104 designated test sites, or at their own expense by a health
105 care provider or an approved laboratory of their choice.
106 A cause of action will not arise against the department,
107 a physician or other health care provider from any such
108 notification.

109 (e) There is no duty on the part of the physician or
110 health care provider to notify the spouse or other sexual
111 partner of, or persons who have shared needles with, an
112 infected individual of their HIV infection and a cause
113 of action will not arise from any failure to make such
114 notification. However, if contact is not made, the
115 department will be so notified.

§16-3C-4. Substituted consent.

1 (a) If the person whose consent is necessary under this
2 article for HIV-related testing or the authorization of
3 the release of test results is unable to give such consent
4 or authorization because of mental incapacity or
5 incompetency, the consent or authorization shall be
6 obtained from another person in the following order of
7 preference:

8 (1) A person holding a durable power of attorney for
9 health care decisions;

10 (2) The person's duly appointed legal guardian;

11 (3) The person's next-of-kin in the following order of
12 preference: spouse, parent, adult child, sibling, uncle or
13 aunt, and grandparent.

14 (b) The person's inability to consent shall not be
15 permitted to result in prolonged delay or denial of
16 necessary medical treatment.

17 (c) The information required to be provided to the
18 patient pursuant to subsections (b) and (d), section two
19 of this article, shall be provided to the person giving
20 substituted consent hereunder.

§16-3C-5. Remedies and penalties.

1 (a) Any person aggrieved by a violation of this article
2 has right of action in the circuit court and may recover

3 for the violation:

4 (1) Against any person who recklessly violates a
5 provision of this article, liquidated damages of one
6 thousand dollars or actual damages, whichever is
7 greater; or

8 (2) Against any person who intentionally or mali-
9 ciously violated a provision of this article, liquidated
10 damages of ten thousand dollars or actual damages,
11 whichever is greater; and

12 (3) Reasonable attorney fees; and

13 (4) Such other relief, including an injunction, as the
14 court may consider appropriate.

15 (b) Any action under this article is barred unless the
16 action is commenced within five years after the violation
17 occurs.

18 (c) Nothing in this article limits the rights of the
19 subject of an HIV-related test to recover damages or
20 other relief under any other applicable law.

21 (d) Nothing in this article may be construed to impose
22 civil liability for disclosure of an HIV-related test result
23 in accordance with any reporting guidelines or require-
24 ments of the department or the centers for disease
25 control of the United States public health service.

§16-3C-6. Prohibiting certain acts; HIV tests results.

1 (a) A positive HIV test report, or the diagnosis of
2 AIDS related complex (ARC), or the diagnosis of the
3 AIDS syndrome or disease, may not constitute a basis
4 upon which to deny the individual so diagnosed, access
5 to quality health care: *Provided*, That this subsection
6 does not apply to insurance.

7 (b) No student of any school or institution of higher
8 learning, public or private, may be excluded from
9 attending the school or institution of higher learning, or
10 from participating in school sponsored activities, on the
11 basis of a positive HIV test, or a diagnosis of ARC, or
12 AIDS syndrome or disease. Exclusion from attendance
13 or participation, as described above, shall be determined

14 on a case by case basis, in consultation with the
15 individual's parents, medical care provider, health
16 authorities, school or institution administrators or
17 medical advisors, in accordance with policies and
18 guidelines which may have been established by the
19 entities. Exclusion may only be based on the student
20 representing an unacceptable risk as agreed to by the
21 department for the transmission of the HIV to others
22 because of the stage or nature of the illness.

**§16-3C-7. Department of corrections to conduct AIDS
related study.**

1 The commissioner of the department of corrections is
2 authorized and directed to conduct a study at penal
3 institutions (including jails administered by counties
4 and municipalities) to determine whether it would be
5 prudent and reasonable to offer or require of each
6 inmate at such institutions testing, educational classes
7 or counseling related to AIDS and HIV infections. This
8 shall be done in consultation with the department of
9 health. The commissioner shall complete the study and
10 present the findings and recommendations in a report
11 to be filed with the director of the department of health,
12 the President of the Senate and the Speaker of the
13 House of Delegates within six months of the effective
14 date of this article.

§16-3C-8. Administrative implementation.

1 (a) The director of the department shall immediately
2 implement and enforce the provisions of this article, and
3 shall adopt rules to the extent necessary for further
4 implementation of the article. The rules proposed by the
5 department pursuant to this article may include
6 procedures for taking appropriate action with regard to
7 health care facilities or health care providers which
8 violate this article or the rules promulgated hereunder.
9 The provisions of the state administrative procedures
10 act apply to all administrative rules and procedures of
11 the department pursuant to this article, except that in
12 case of conflict between the state administrative
13 procedures act and this article, the provisions of this
14 article shall control.

15 (b) The department shall promulgate rules to assure
16 adequate quality control for all laboratories conducting
17 HIV tests and to provide for a reporting and monitoring
18 system for reporting to the department all positive HIV
19 tests results.

**§16-3C-9. Individual banking of blood by health care
providers for elective surgery or medical
procedures.**

1 Any person may, in contemplation of elective surgery
2 or other elective medical procedures for which a blood
3 transfusion may be required, request the health care
4 provider conducting such surgery or medical procedure,
5 or any private, public or nonprofit blood bank, to make
6 or cause to be made appropriate provisions to store and
7 bank that individual's blood for use during such surgery
8 or medical procedure. The health care provider or the
9 private, public or nonprofit blood bank shall, upon such
10 request, store and bank a person's blood and the health
11 care provider shall use such blood in the elective surgery
12 or medical procedure to the extent such blood is
13 available.

CHAPTER 2

(Com. Sub. for S. B. 15—By Senators Tonkovich, Mr. President,
by request, and Harman)

[Passed June 16, 1988; 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-eight, to the State Department of Education, Account No. 2860, supplementing chapter one hundred twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-seven, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That Account No. 2860, chapter one hundred twenty-two, acts of the Legislature, regular session, one thousand nine

hundred eighty-seven, 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 *30—State Department of Education*
 5 (WV Code Chapters 18 and 18A)
 6 Account No. 2860
 7 1 Unclassified \$32,156

8 The purpose of this supplementary appropriation is to
 9 supplement this account and the existing line item
 10 therein for expenditure in the current fiscal year 1987-
 11 88 in order to achieve reimbursement of tuition to any
 12 professional teacher renewing his or her professional
 13 certificate or other certificates or permits toward
 14 maintaining full teaching status and toward completion
 15 of requirements and courses for such purpose. The funds
 16 hereby appropriated shall be used to pay and reimburse
 17 those persons on record with the department as being
 18 entitled to payment because the state revenues were
 19 insufficient to satisfy the appropriated amounts, not-
 20 withstanding that such entitlement to reimbursement
 21 accrued in a prior fiscal year. These funds shall be
 22 available for expenditure immediately upon the effec-
 23 tive date of this bill. Any unexpended balance in the
 24 above amount remaining at the close of fiscal year 1987-
 25 88 is hereby reappropriated for expenditure in fiscal
 26 year 1988-89.

CHAPTER 3

(Com. Sub. for S. B. 17—By Senators Tonkovich, Mr. President,
 by request, and Harman)

[Passed June 16, 1988; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal

funds out of the treasury from the balance of all federal funds remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-eight, to the State Department of Education, Account No. 2860, supplementing chapter one hundred twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-seven, known as the budget bill.

WHEREAS, The Governor has established the receipt and availability of federal funds for new programs, now available for expenditure in the current fiscal year of 1987-1988, a part of which balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That Account No. 2860, chapter one hundred twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-seven, known as the budget bill, be supplemented by adding the following sum to the designated line item:

- 1 TITLE 2. APPROPRIATIONS.
- 2 Section 2. Appropriations of federal funds.
- 3 EDUCATIONAL
- 4 30—*State Department of Education*
- 5 (WV Code Chapters 18 and 18A)
- 6 Account No. 2860
- 7 1 Unclassified \$500,000
- 8 Any unexpended balance remaining in the Unclassi-
- 9 fied appropriation for asbestos abatement at the close of
- 10 the fiscal year 1987-88 is hereby reappropriated for
- 11 expenditure during the fiscal year 1988-89.
- 12 The purpose of this supplementary appropriation bill
- 13 is to supplement this account in the budget bill for fiscal
- 14 year 1987-88 by adding to this existing line item an
- 15 amount to be used for the implementation of the federal
- 16 grant for the purpose of Asbestos Abatement in the
- 17 public schools of West Virginia.

CHAPTER 4

(Com. Sub. for S. B. 18—By Senators Tonkovich, Mr. President,
by request, and Harman)

[Passed June 16, 1988; in effect from passage. Approved by the Governor.]

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

WHEREAS, The Governor has established the receipt and availability of federal funds for new programs, now available for expenditure in the current fiscal year of 1987-1988, a part of which balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That Account No. 2860, chapter one hundred twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-seven, known as the budget bill, be supplemented by adding the following sum to the designated line item:

| | | |
|----|---|----------|
| 1 | TITLE 2. APPROPRIATIONS. | |
| 2 | Section 2. Appropriations of federal funds. | |
| 3 | EDUCATIONAL | |
| 4 | 30—State Department of Education | |
| 5 | (WV Code Chapters 18 and 18A) | |
| 6 | Account No. 2860 | |
| 7 | 1 Unclassified | \$50,000 |
| 8 | Any unexpended balance remaining in the Unclassi- | |
| 9 | fied appropriation for the homeless act at the close of | |
| 10 | the fiscal year 1987-88 is hereby reappropriated for | |

11 expenditure during the fiscal year 1988-89.

12 The purpose of this supplementary appropriation bill
 13 is to supplement this account in the budget bill for fiscal
 14 year 1987-88 by adding to this existing line item an
 15 amount to be used for the implementation of the
 16 Homeless Act which provides federal funds for services
 17 to homeless children.

CHAPTER 5

(Com. Sub. for S. B. 29—By Senators Tonkovich, Mr. President,
 by request, and Harman)

[Passed June 27, 1988; in effect from passage. Approved by the Governor.]

AN ACT making supplementary appropriation of public moneys, as specified, out of the treasury with insertion thereof into appropriation accounts, as specified, and with all necessary adjustments of increase, reduction or transfer of items and language of appropriation in such specified accounts; supplementing chapter two, acts of the Legislature, second extraordinary session, one thousand nine hundred eighty-eight, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That account nos. 1010, 1020, 1030, 1210, 2790, 2800, 2810, 2840, 2850, 2860, 2870, 2890, 2910, 2950, 2960, 2980, 3330, 3360, 3770, 4405, 5120, 5650, 7979, 8830, 8835, 8855, 9280, 9720, 9771, 9725 and 8242, chapter two, acts of the Legislature, second extraordinary session, one thousand nine hundred eighty-eight, known as the budget bill, be supplemented and amended by the items and language of appropriation set forth herein and to such extent, (all other items and language of appropriation of such accounts, as set forth in the budget bill, to remain unchanged and unaffected) to read as follows:

1 TITLE II. APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 Sec. 2. Appropriations of federal funds.

4 LEGISLATIVE

5

1—Senate

6

Acct. No. 1010

7

8

Federal

General

9

Funds

Revenue

10

Fiscal

Fund

11

Year

Fiscal

12

1988-89

1988-89

13

1 Compensation of

14

Members \$ — \$ 210,000*

15

11 Total \$ — \$ 2,224,338

16

2—House of Delegates

17

Acct. No. 1020

18

5 Current Expenses and

19

6 Contingent Fund — 1,088,015

20

7 Total \$ — \$ 3,108,294

21

3—Joint Expenses

22

Acct. No. 1030

23

(WV Code Chapter 4)

24

1 Unclassified—Total \$ — \$ 4,966,435

25

26

EXECUTIVE

27

6—Office of Community and

28

Industrial Development

29

(WV Code Chapter 5B)

30

Acct. No. 1210

31

3 Unclassified 12,512,100 2,521,146

32

4a Pocahontas County

33

Commission—

34

4b Marlinton School

35

Sewer System — 200,000

36

37

EDUCATIONAL

38

24—West Virginia Board of Regents (Control)

| | | | | |
|----|----|-------------------------|------|----------------|
| 39 | | (WV Code Chapter 18) | | |
| 40 | | Acct. No. 2790 | | |
| 41 | 1 | Unclassified | \$ — | \$ 21,739,324 |
| 42 | 1a | Personal Services | — | 138,487,820 |
| 43 | 1b | Annual Increment | — | 1,058,000 |
| 44 | 1c | Total | \$ — | \$ 161,285,144 |

45 *25—West Virginia Board of Regents*

46 (WV Code Chapter 18)

47 Acct. No. 2800

| | | | | |
|----|---|---------------------------|------|--------------|
| 48 | 1 | Unclassified | \$ — | \$ 4,225,593 |
| 49 | 2 | Personal Services | — | 1,089,000 |
| 50 | 3 | Annual Increment | — | 12,000 |
| 51 | 4 | Asbestos Litigation | — | 500,000 |
| 52 | 5 | Total | \$ — | \$ 5,826,593 |

53 *26—West Virginia School of*
54 *Osteopathic Medicine*

55 (WV Code Chapter 18)

56 Acct. No. 2810

| | | | | |
|----|---|-------------------------|------|--------------|
| 57 | 1 | Unclassified | \$ — | \$ 1,174,950 |
| 58 | 2 | Personal Services | — | 3,152,944 |
| 59 | 3 | Annual Increment | — | 20,000 |
| 60 | 4 | Total | \$ — | \$ 4,347,894 |

61 *27—Marshall University—Medical School*

62 (WV Code Chapter 18)

63 Acct. No. 2840

| | | | | |
|----|---|-------------------------|------|--------------|
| 64 | 1 | Unclassified | \$ — | \$ 821,107 |
| 65 | 2 | Personal Services | — | 6,372,244 |
| 66 | 3 | Annual Increment | — | 22,000 |
| 67 | 4 | Total | \$ — | \$ 7,215,351 |

68 *28—West Virginia University—*
69 *Schools of Health Sciences*

70 (WV Code Chapter 18)

71 Acct. No. 2850

| | | | | | | |
|----|----|------------------------------|----|---|----|------------|
| 72 | 1 | Unclassified | \$ | — | \$ | 2,542,426 |
| 73 | 1a | Personal Services | | — | | 24,200,864 |
| 74 | 1b | Annual Increment | | — | | 150,000 |
| 75 | 1c | Cancer Research Center | | — | | 750,000 |
| 76 | 1d | Total | \$ | — | \$ | 27,643,290 |

77 *29—State Department of Education*

78 (WV Code Chapters 18 and 18A)

79 Acct. No. 2860

| | | | | | | |
|----|----|-------------------------|----|-----------|----|-----------|
| 80 | 1 | Unclassified | \$ | 3,052,862 | \$ | 4,701,341 |
| 81 | 1a | Personal Services | | — | | 2,793,435 |
| 82 | 1b | Annual Increment | | — | | 40,621 |
| 83 | 1c | Education of | | | | |
| 84 | 1d | Institutionalized | | | | |
| 85 | | Juveniles | | — | | 1,243,042 |
| 86 | 1e | Total | \$ | 3,052,862 | \$ | 8,778,439 |

87 *30—State Department of Education—*88 *School Lunch Program*

89 (WV Code Chapters 18 and 18A)

90 Acct. No. 2870

| | | | | | |
|----|---|-------------------------|--------------|----|-----------|
| 91 | 1 | Unclassified | \$48,477,000 | \$ | 1,822,436 |
| 92 | 2 | Personal Services | | — | 177,660 |
| 93 | 3 | Annual Increment | | — | 3,708 |
| 94 | 4 | Total | \$48,477,000 | \$ | 2,003,804 |

95 *31—State Board of Education—*96 *Vocational Division*

97 (WV Code Chapters 18 and 18A)

98 Acct. No. 2890

| | | | | | | |
|-----|---|-------------------------|----|-----------|----|------------|
| 99 | 1 | Unclassified | \$ | 9,621,200 | \$ | 12,428,367 |
| 100 | 2 | Personal Services | | — | | 692,812 |
| 101 | 3 | Annual Increment | | — | | 13,600 |
| 102 | 4 | Total | \$ | 9,621,200 | \$ | 13,134,779 |

103 *32—Educational Broadcasting Authority*

104 (WV Code Chapter 10)

105 Acct. No. 2910

| | | | | |
|-----|----|--|--------------|----------------|
| 106 | 3 | Unclassified | \$ 1,351,250 | \$ 4,614,140 |
| 107 | 4 | Total | \$ 1,351,250 | \$ 4,714,772 |
| 108 | | <i>33—State Department of Education—</i> | | |
| 109 | | <i>State Aid to Schools</i> | | |
| 110 | | (WV Code Chapters 18 and 18A) | | |
| 111 | | Acct. No. 2950 | | |
| 112 | 1 | Unclassified | \$ — | \$ —0— |
| 113 | 1a | Professional Educators | — | 481,582,788 |
| 114 | 1b | Service Personnel | — | 174,984,577 |
| 115 | 1c | Fixed Charges | — | 75,570,904 |
| 116 | 1d | Transportation | — | 26,054,153 |
| 117 | 1e | Administration | — | 5,778,993 |
| 118 | 1f | Other Current | | |
| 119 | | Expenses | — | 66,969,871 |
| 120 | 1g | Improve Instructional | | |
| 121 | 1h | Programs | — | 41,556,379 |
| 122 | 1i | Basic Foundation | | |
| 123 | 1j | Allowances | — | 872,497,665 |
| 124 | 1k | Less Local Share | — | (127,833,091) |
| 125 | 1l | Total Basic | | |
| 126 | 1m | State Aid | — | 744,664,574 |
| 127 | 1n | Increased Enrollment .. | — | 400,000 |
| 128 | 1o | Total | \$ — | \$ 745,064,574 |
| 129 | | <i>34—State Department of Education—</i> | | |
| 130 | | <i>Aid for Exceptional Children</i> | | |
| 131 | | (WV Code Chapters 18 and 18A) | | |
| 132 | | Acct. No. 2960 | | |
| 133 | 1 | Unclassified—Total | \$24,072,100 | \$ —0— |
| 134 | | <i>35—Teachers' Retirement Board</i> | | |
| 135 | | (WV Code Chapter 18) | | |
| 136 | | Acct. No. 2980 | | |
| 137 | 1 | Unclassified—Total | \$ — | \$ —0— |
| 138 | | <i>36—West Virginia Schools for the</i> | | |
| 139 | | <i>Deaf and the Blind</i> | | |
| 140 | | (WV Code Chapters 18 and 18A) | | |

1120

APPROPRIATIONS

[Ch. 5]

141

Acct. No. 3330

| | | | | | | |
|-----|---|-------------------------|----|---|----|-----------|
| 142 | 1 | Unclassified | \$ | — | \$ | 1,436,528 |
| 143 | 2 | Personal Services | | — | | 3,978,643 |
| 144 | 3 | Annual Increment | | — | | 5,616 |
| 145 | 4 | Total | \$ | — | \$ | 5,420,787 |

146 *37—State FFA-FHA Camp and Conference Center*

147 (WV Code Chapters 18 and 18A)

148

Acct. No. 3360

| | | | | | | |
|-----|---|-------------------------|----|---|----|---------|
| 149 | 1 | Unclassified | \$ | — | \$ | 79,854 |
| 150 | 2 | Personal Services | | — | | 137,496 |
| 151 | 3 | Annual Increment | | — | | 2,989 |
| 152 | 4 | Total | \$ | — | \$ | 220,339 |

153

154

CORRECTIONS

155 *42—Department of Corrections—*
156 *Correctional Units*

157 (WV Code Chapters 25, 28, 29 and 62)

158

Acct. No. 3770

| | | | | | | |
|-----|---|-------------------------|----|---|----|------------|
| 159 | 1 | Personal Services | \$ | — | \$ | 12,004,325 |
| 160 | 5 | Total | \$ | — | \$ | 21,377,640 |

161

HEALTH AND HUMAN SERVICES

162 *50—State Board of Rehabilitation—*
163 *Division of Rehabilitation Services*

164 (WV Code Chapter 18)

165

Acct. No. 4405

| | | | | | |
|-----|---|-------------------------|--------------|----|------------|
| 166 | 1 | Unclassified | \$27,172,000 | \$ | 4,616,583 |
| 167 | 2 | Personal Services | — | | 5,228,909 |
| 168 | 3 | Annual Increment | — | | 322,956 |
| 169 | 4 | Total | \$27,172,000 | \$ | 10,168,448 |

170

AGRICULTURE

171 *64—Department of Agriculture—*
172 *Soil Conservation Committee*

173

(WV Code Chapter 19)

| | | | |
|-----|----------------|-----------------------|-----------------|
| 174 | Acct. No. 5120 | | |
| 175 | 3a | Mud River Flood | |
| 176 | | Control Project | — 250,000 |
| 177 | 3b | Harmon Creek | |
| 178 | | (Brooke County) | |
| 179 | 3c | Flood Control Project | — 30,000 |
| 180 | 4 | Total | \$ — \$ 750,687 |

181

182

CONSERVATION AND DEVELOPMENT

183

71—Department of Natural Resources

184

(WV Code Chapter 20)

185

Acct. No. 5650

| | | | | |
|-----|----|-------------------------|-----------|---------|
| 186 | 3 | Unclassified | 9,512,850 | 896,341 |
| 187 | 6a | Water Quality Studies.. | — | 50,000 |
| 188 | 6b | Black Fly | | |
| 189 | | Control Spraying | | |
| 190 | 6c | Project | — | 100,000 |

191 **Sec. 3. Appropriations from other funds.**192 **Sec. 4. Appropriations of federal funds.**

193

88—State Department of Education—

194

Veterans' Education

195

(WV Code Chapter 18)

196

Acct. No. 7979

197

TO BE PAID FROM FEDERAL FUNDS

| | | | | |
|-----|----|-------------------------|-----------|------|
| 198 | 1 | Unclassified | \$ 41,736 | \$ — |
| 199 | 1a | Personal Services | 47,068 | — |
| 200 | 1b | Annual Increment | 1,296 | — |
| 201 | 1c | Total | \$ 90,100 | \$ — |

202

114—West Virginia Board of Regents—

203

Special Capital Improvement Fund

204

(WV Code Chapter 18)

205

Acct. No. 8830

206

TO BE PAID FROM SPECIAL REVENUE FUND

| | | | | |
|-----|----|--------------------|------|---------|
| 207 | 1 | Unclassified | \$ — | \$ —0— |
| 208 | 1a | Debt Service | — | 448,000 |

| | | | | | | |
|-----|----|---|----|---|----|------------|
| 209 | 1b | Total | \$ | — | \$ | 448,000 |
| 210 | | <i>115—West Virginia Board of Regents—</i> | | | | |
| 211 | | <i>State System Registration Fee—</i> | | | | |
| 212 | | <i>Special Capital Improvements Fund</i> | | | | |
| 213 | | <i>(Capital Improvement and Bond Retirement Fund)</i> | | | | |
| 214 | | (WV Code Chapter 18) | | | | |
| 215 | | Acct. No. 8835 | | | | |
| 216 | | TO BE PAID FROM SPECIAL REVENUE FUND | | | | |
| 217 | 1 | Unclassified | \$ | — | \$ | —0— |
| 218 | 1a | Debt Service..... | | — | | 2,865,000 |
| 219 | 1b | Capitol Building | | | | |
| 220 | | Repairs and | | | | |
| 221 | 1c | Alterations | | | | |
| 222 | | (Supplements | | | | |
| 223 | 1d | Operating Budgets | | | | |
| 224 | | of Colleges | | | | |
| 225 | 1e | and Universities) | | — | | 4,500,000 |
| 226 | 1f | Miscellaneous Projects | | — | | 1,500,000 |
| 227 | 1g | Total | \$ | — | \$ | 8,865,000 |
| 228 | | <i>117—West Virginia Board of Regents—</i> | | | | |
| 229 | | <i>State System Tuition Fee—</i> | | | | |
| 230 | | <i>Special Capital Improvement Fund</i> | | | | |
| 231 | | <i>(Capital Improvement and</i> | | | | |
| 232 | | <i>Bond Retirement Fund)</i> | | | | |
| 233 | | (WV Code Chapter 18) | | | | |
| 234 | | Acct. No. 8855 | | | | |
| 235 | | TO BE PAID FROM SPECIAL REVENUE FUND | | | | |
| 236 | 1 | Unclassified | \$ | — | \$ | —0— |
| 237 | 1a | Debt Service..... | | — | | 11,177,000 |
| 238 | 1b | Building and | | | | |
| 239 | | Campus Renewal | | — | | 9,000,000 |
| 240 | 1c | Total | \$ | — | \$ | 20,177,000 |
| 241 | | <i>121—West Virginia University—</i> | | | | |
| 242 | | <i>Schools of Health Sciences</i> | | | | |
| 243 | | (WV Code Chapter 18) | | | | |
| 244 | | Acct. No. 9280 | | | | |

| | | | |
|-----|-------------------------------------|-------------------------|--------------------|
| 245 | TO BE PAID FROM MEDICAL SCHOOL FUND | | |
| 246 | 1 | Unclassified | \$ — \$ 12,532,000 |
| 247 | 1a | Personal Services | — 2,860,000 |
| 248 | 1b | Annual Increment | — 8,000 |
| 249 | 1c | Total | \$ — \$ 15,400,000 |

250 **Sec. 6. Appropriations and reappropriations—revenue**
 251 **sharing trust fund.**

252 *122—Office of Community and*
 253 *Industrial Development*

254 *Acct. No. 9720*

| | | | | |
|-----|---|--------------------|-------------|--|
| 255 | 1 | Pocahontas County | | |
| 256 | | Commission— | | |
| 257 | 2 | Marlinton School | | |
| 258 | | Sewer System | \$ — \$ —0— | |

259 *126—Department of Agriculture—*
 260 *Soil Conservation Committee*

261 *Acct. No. 9771*

| | | | | |
|-----|---|-----------------------|-------------|-----|
| 262 | 1 | Mud River Flood | | |
| 263 | | Control Project | \$ — \$ —0— | |
| 264 | 2 | Harmon Creek | | |
| 265 | | (Brooke County) | | |
| 266 | 3 | Flood Control Project | — | —0— |

267 *127—Department of Natural Resources*

268 *Acct. No. 9725*

| | | | |
|-----|---|-------------------------|-------------|
| 269 | 1 | Water Quality Studies.. | \$ — \$ —0— |
| 270 | 2 | Black Fly Control | |
| 271 | 3 | Spraying Project..... | — —0— |

272 **Sec. 7. Appropriation from federal block grants.**

273 *133—State Department of Education—*
 274 *Education Grant*

275 *Acct. No. 8242*

276 TO BE PAID FROM FEDERAL FUNDS

| | | | |
|-----|---|-------------------------|---------------|
| 277 | 1 | Unclassified—Total | \$ 39,332,600 |
|-----|---|-------------------------|---------------|

278 The purpose of this supplementary appropriation bill

278 is to appropriate public money, as specified (general
 279 revenues, federal funds, special revenue funds, and
 280 federal block grant funds) with insertion of such moneys
 281 into accounts in the budget bill and specified items
 282 thereof, together with all adjustments of increase,
 283 reduction or transfer required. These public moneys, as
 284 newly provided for, shall be available for such use and
 285 expenditure upon passage of the bill and in fiscal year
 286 1988-89, supplementing the budget bill for such fiscal
 287 year earlier enacted.

CHAPTER 6

(S. B. 11—By Senators Tonkovich, Mr. President, by request, and Harman)

[Passed June 18, 1988; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and three, article twenty-six, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to state institutions of higher education and board of regents; providing for legislative intent regarding delegation of responsibilities and equitable distribution of state funds; and continuing the board of regents until one thousand nine hundred eighty-nine.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 26. WEST VIRGINIA BOARD OF REGENTS.

§18-26-1. Legislative purpose.

§18-26-3. West Virginia board of regents created; general powers; continuation..

§18-26-1. Legislative purpose.

- 1 The purpose of the Legislature in the enactment of
- 2 this article is to establish a state agency to be known

3 as the West Virginia board of regents which will have
4 the general determination, control, supervision and
5 management of the financial, business, and educational
6 policies and affairs of all state institutions of higher
7 education. Except as otherwise provided by law, the
8 board's responsibilities shall include, but shall not be
9 limited to, the making of studies and recommendations
10 respecting higher education in West Virginia; allocating
11 among the state institutions of higher education specific
12 functions and responsibilities; submitting budget
13 requests for such institutions; and equitably allocating
14 available state appropriated funds among the
15 institutions.

16 It is the intent of the Legislature that the board shall
17 delegate, as far as is lawful, efficient and fiscally
18 responsible and within prescribed standards and
19 limitations, such part of its power and control over
20 financial, educational and administrative affairs to the
21 president or other administrative head of each state
22 institution of higher education. This shall not be
23 interpreted to include the classification of employees,
24 lawful appeals made by students in accordance with
25 board policy, lawful appeals made by faculty or staff,
26 or final review of new or established academic or other
27 programs.

28 The Legislature further intends that, in order to
29 allocate funding for higher education in an equitable
30 manner to achieve the goals and objectives of the system
31 as determined by the board of regents and to promote
32 the mission of each state institution of higher education,
33 the board of regents implement a funding formula for
34 the distribution of state funds on and after the first day
35 of July, one thousand nine hundred eighty-eight, and
36 shall annually review and revise such formula
37 thereafter.

38 Except as is otherwise provided by law or rule, the
39 president or other administrative head of each state
40 institution of higher education shall exercise all the
41 duties and powers conferred by law in the government
42 of the institution under such person's management and
43 control and, subject to review by the board, shall have

44 the authority and responsibility for overseeing the
45 routine matters of the institution, which include, but are
46 not limited to, travel approval, sabbaticals, budget
47 oversight and special student fees. The president or
48 other administrative head of each state institution of
49 higher education shall also be responsible for seeking
50 community advice on academic or other programs.

§18-26-3. West Virginia board of regents created; general powers; continuation.

1 There is hereby created a state agency to be known
2 as the West Virginia board of regents, which shall be
3 a corporation and as such may contract and be con-
4 tracted with, plead and be impleaded, sue and be sued,
5 and have and use a common seal.

6 After having conducted a performance audit through
7 its joint committee on government operations, pursuant
8 to section nine, article ten, chapter four of this code, the
9 Legislature hereby finds and declares that the West
10 Virginia board of regents should be continued and
11 reestablished. Accordingly, notwithstanding the provi-
12 sions of section four, article ten, chapter four of this
13 code, the West Virginia board of regents shall continue
14 to exist until the first day of July, one thousand nine
15 hundred eighty-nine.

CHAPTER 7

(Com. Sub. for S. B. 14—By Senators Tonkovich, Mr. President,
by request, and Harman)

[Passed June 27, 1988; in effect from passage. Approved by the Governor.]

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

seventeen-b; to amend and reenact sections five-a, six, seven, nine and twenty-six, article two, chapter eighteen of said code; to further amend said article two by adding thereto eight new sections, designated sections six-a, six-b, six-c, eleven, fifteen-a, twenty-two, twenty-eight and twenty-nine; to further amend said chapter eighteen by adding thereto two new articles, designated articles two-e and two-f; to amend and reenact section four, article four of said chapter eighteen; to amend and reenact sections thirteen, fifteen, seventeen, eighteen-a and thirty-nine, article five of said chapter eighteen; to further amend said article five by adding thereto four new sections, designated sections fifteen-d, eighteen-c, twenty-six and forty; to amend and reenact sections eighteen and twenty-six-h, article seven-a of said chapter eighteen; to amend and reenact sections one-a, two, four and five, article eight of said chapter eighteen; to further amend said article eight by adding thereto two new sections, designated sections five-a and eleven; to amend and reenact sections two, four, five, six, six-a, eight, nine, ten, eleven, fourteen and twenty-two, article nine-a of said chapter eighteen; to further amend said article nine-a by adding thereto four new sections, designated sections five-a, thirteen-b, fourteen-a and twenty-three; to further amend said chapter eighteen by adding thereto a new article, designated article nine-d; to amend and reenact section five, article twenty of said chapter eighteen; to further amend said article twenty by adding thereto two new sections, designated sections seven and eight; to amend and reenact article twenty-one of said chapter eighteen; to further amend said chapter eighteen by adding thereto a new article, designated article thirty; to amend and reenact sections one, two, two-a, five and nine, article two, chapter eighteen-a of said code; to amend and reenact section one, article three of said chapter eighteen-a; to further amend said article three by adding thereto a new section, designated section eight; to amend and reenact sections five, five-c, eight, eight-a, eight-b and ten, article four of said chapter eighteen-a; to further amend said article four by adding thereto two new sections, designated sections ten-b and eighteen; to amend article

five of said chapter eighteen-a by adding thereto a new section, designated section eight; to amend and reenact section three, article one, chapter twenty-nine-a of said code; to amend and reenact section one, article three of said chapter twenty-nine-a; and to further amend said chapter twenty-nine-a by adding thereto a new article, designated article three-a, all relating to public education and school finance; defining value for purpose of bonded indebtedness of school districts; denying or suspending instructional permit or operators license to person under age eighteen who has withdrawn from school prior to receipt of high school diploma or equivalent; requiring state board to file proposed rules with legislative oversight commission on education accountability; authorizing state board to develop alternative teacher training programs; requiring state board to consult with board of regents regarding all teacher preparation programs; requiring state board to implement beginning teacher internship program by certain date; requiring state board to participate in work of national board for professional teaching standards and authorizing the state board to contract with such board and adopt or adapt work product for teaching certification; providing for establishment of faculty teams at each elementary school to set curriculum for kindergarten through fourth grade subject to approval of county board; authorizing team to apply to the state board for grant to develop and/or implement remedial and accelerated programs; directing state board to continue certain professional personnel academies; prohibiting state board from adopting rules which set daily instructional time requirements for kindergarten through fourth grade; specifying certain grade levels within which students receive certain instruction; clarifying subject matter of such instruction; referencing voter registration law; requiring instruction in substance abuse and health education, including prevention, transmission and spread of acquired immune deficiency syndrome and other sexually transmitted diseases; requiring involvement of department of health in rule-making; granting opportunity for parental examination of AIDS curriculum; providing exemption

from instruction and penalties for violation of section; requiring state board to establish policy with certain required provisions for county boards to opt to grant sabbatical leaves to professional educators; requiring that certain percentage of such sabbaticals be granted to classroom teachers; requiring state board to study and make recommendations as to education law, including interpretations of statutes and administrative rules; requiring report to Legislature and the oversight commission on education accountability; requiring state board to study certain programs related to dropout prevention and report to Legislature; providing for the duties of boards of regional educational service agencies; requiring that state board and regional educational service agencies develop electronic instruction in certain circumstances; providing procedures regarding programs and services, including county participation; denying certain funding upon finding of inefficient nonparticipation by a county; authorizing establishment of school advisory councils upon petition to or discretion of school principal to be composed of elected members and appointees of the principal; authorizing school advisory councils to propose alternatives to public school operation which meet or exceed high quality educational standards and achieve certain other objectives; providing for approval of proposed alternatives; authorizing waiver of certain district board rules to permit operation of proposed alternative; requiring report to legislative oversight commission on education accountability on rule waiver requests; making proposed alternatives eligible for certain competitive grants and incentive grant rewards; requiring state board to adopt policies to involve parents in their child's educational process; establishing competitive grant program for schools and school districts to implement exemplary and innovative programs to be awarded with regard to certain priorities based on measurable performance; requiring state board to establish rules therefor and to encourage private and other funding; stating purpose regarding high quality educational programs; establishing program for statewide testing of educational progress of students for stated purposes by stated dates

in certain subject areas; providing for student make-up tests, exemption of exceptional children based on individualized education programs, notice to parents of student test scores and compilation of aggregate test scores for public inspection; requiring state board to adopt achievement standards for purposes of remediation; requiring county board to print and distribute school report cards with assistance of state board; requiring certain inclusions in report cards; providing for school and school district accreditation measured by compliance with high quality educational standards to be adopted by state board by certain date as determined by required annual reports and periodic unannounced visits by board-appointed review teams; defining levels of accreditation status; authorizing state board to declare state of emergency in certain circumstances and to intervene in the operation of the district to correct impairments; requiring accreditation information to be publicly available; creating misdemeanor of knowingly and intentionally reporting false information regarding education programs under article and providing penalty; providing for identification of and reward for schools of excellence in each regional educational service agency district in accordance with certain criteria determined by state board; providing additional qualifications for county superintendents with exceptions thereto; authorizing counties to enter into cooperative agreements; requiring county boards to discuss and report on possibilities for district consolidation; authorizing establishment of year-round schools in accordance with state board rules; discouraging interruptions to the instructional day; requiring counties to schedule seven days outside school environment; stating findings regarding excess levies and equal educational opportunities; updating levy election provision; requiring county boards to provide in-service training on AIDS for school personnel and parents; requiring county boards of education to provide or contract with health agencies to provide developmental screening of children under compulsory school age; requiring coordination with other agencies and information to public on availability of developmental screening;

exempting waiver requirement for excessive pupil/teacher ratio in certain circumstances; providing increased compensation to affected teachers; requiring state board to equitably assign students among classroom teachers; requiring state board to collect and report to the legislative oversight commission on education accountability information on class size and pupils per teacher per class in grades seven through twelve; requiring county boards to provide transitional and developmental kindergarten programs under guidelines and criteria established by state board for children who have not demonstrated readiness based on tests, other standards and professional judgment after consultation with the parent or guardian; providing for state appropriated funding for such programs; making legislative findings on suitability and need of school facilities being used for child day care and providing generally therefor in accordance with guidelines adopted by committee appointed by state superintendent; requiring professional positions for summer school to first be filled on the basis of certification and length of time employed in summer school program in county; requiring state board to establish guidelines for operation of public kindergarten and elementary schools on semester basis; requiring state board to select by certain date, on the basis of applications, at least four elementary schools with kindergarten programs from different regional educational service agency areas to be operated on a semester basis; requiring county boards to pay retirement contributions for salaries paid in excess of certain amounts; deleting requirement for line item appropriation for payment of supplemental retirement benefit; providing that compulsory school attendance begins upon enrollment in a publicly supported kindergarten, with exceptions, and continues for as long as student is enrolled in school system after sixteenth birthday; increasing penalties, including school attendance, for parents' failure to comply with compulsory school attendance laws; transferring criminal liability from parent to student for truancy if student is age eighteen; providing for concurrent jurisdiction; increasing number of absences required before attendance

director must act; requiring warrant for arrest of person accused of school attendance violation to be executed within ten days of issuance; requiring principal, administrative head or other chief administrator of schools to report unexcused absences and nonenrollees to county attendance director; requiring meeting with parent, guardian or custodian and pupil when pupil accumulates five unexcused absences during any one half of the instructional term; authorizing teacher, upon approval by principal, to use one noninstructional day for visitation to home of certain pupils; requiring reimbursement of teacher for visitation travel expenses; specifying procedures and circumstances for denial, suspension or revocation of driving privilege; including up to one thousand full-time equivalent adults enrolled in existing, regular secondary vocational programs for which no additional tuition or special fees are charged to be apportioned annually to the counties for inclusion in net enrollment computation; increasing minimum ratio of professional instructional personnel to adjusted enrollment; limiting the foundation allowance for professional educators and service personnel for the fiscal year beginning on the first day of July, one thousand nine hundred eighty-eight, to amount allowable based on net enrollment in the school year one thousand nine hundred eighty-six—eighty-seven unless county's special education enrollment is less than sixteen and two-tenths percent of net enrollment; prohibiting layoffs due to such provision; providing waiver of maximum ratio and growth cap for service personnel based on transportation needs and county's current expense balance; establishing maximum ratios of professional educators and service personnel per net enrollment for purpose of basic foundation allowances; decreasing factor used in calculating unemployment compensation portion of foundation allowance for fixed charges; providing for teachers retirement fund allowance in foundation allowance for fixed charges; increasing foundation allowance for administrative cost and increasing distribution of such allowance to regional education service agencies; increasing the foundation allowance for other current expenses and substitutes

and distributing such allowance in accordance with average daily enrollment; resetting amount to which increases in local share are added after certain date for foundation allowance to improve instructional programs; allocating fifty percent of increase in local share funds to school building capital improvement fund; limiting and prescribing such school building capital improvement amounts for the school year one thousand nine hundred eighty-eight—eighty-nine; prescribing expenditures for special education and other specified purposes; basing local share computation involving nonpublic utility property on assessed rather than appraised values and increasing the percentage applied to such values to determine local share; requiring minimum state appropriation for basic foundation program for stated fiscal years of no less than appropriation for fiscal year commencing the first day of July, one thousand nine hundred eighty-seven; appropriating two million dollars for remedial and accelerated programs; providing accrued funds due to changes in adjusted enrollment above that computed for stated school year be allocated sixty percent for salary equity and forty percent for remedial and accelerated programs; limiting advance funds for incentive for staffing improvement to extent appropriations are provided; providing counties with eighty percent of maximum state funds for personnel if certain criteria are met; expiring provisions relating to high quality educational standards and approval of county educational programs effective the thirty-first day of December, one thousand nine hundred eighty-eight; creating misdemeanor of knowingly and intentionally falsifying enrollment or attendance to obtain state funds and providing penalty; designating state board as school building authority and granting certain powers; defining terms and providing generally for sale and refunding of bonds and determination of need; providing for higher education savings plan; exempting bonds and interest thereon from taxation by state or any political subdivision; authorizing authority to enter into agreement with trust company or bank to act as trustee for holders of bonds; requiring authority to make

periodic payments from capital improvement fund for deposit in special sinking fund of treasurer to meet requirements of bonds; prohibiting pledge of credit or taxing power of state by authority and specifying obligations or debts of authority not obligations or debts of state; providing for duties of state superintendent regarding juveniles and adults in correctional facilities; requiring state board to establish exceptional children program compliance review teams composed of five credentialed persons appointed by the state superintendent to conduct random, unannounced on-site program compliance reviews at least every four years in each county and recommend changes; requiring departments of health, human services and education to develop statewide plan for coordinating programs providing early intervention and developmental screening phased in for all developmentally delayed and at-risk children ages birth through five; providing for appointment of advisory council consisting of twelve credentialed persons to assist in developing the plan and performing other enumerated functions; authorizing the joint committee on education to disband or alter council functions as it deems advisable following submission of the first annual report by the council; providing for reimbursement of expenses of members; creating and providing generally for a scholarship fund administered by the board of regents to grant scholarships to prospective teachers; providing for selection of scholarship recipients; requiring board to solicit views of interested parties in developing selection criteria and procedures and determining projected needs; requiring repayment of scholarship for noncompliance with required agreement with exceptions; creating West Virginia higher education tuition trust act to permit tuition prepayment contracts and tuition trust account contracts for attendance at institutions of higher education; allowing certain tax deductions; creating board of directors and providing generally for board, contracts and fees; creating scholarship fund; expiring tuition trust act under certain circumstances; providing for will and pleasure dismissal of certain county board employees upon approval of board; extending insurance

for certain time after notice of classroom teacher's resignation; authorizing up to one-year leave of absence without pay for school personnel for pregnancy, childbirth, or adoptive or infant bonding upon notification; limiting number of pay grade H service personnel; requiring high school diploma, general educational development certificate, or enrollment in approved course as condition of employment by county board; limiting number of teaching and multi-school principalships based on student enrollment; removing certification requirement that alien person intend to become naturalized citizen; authorizing professional staff development council; deleting provision which denied equity money to counties which reduce funds allocated for salary supplements; requiring new equity appropriations to be apportioned to more closely align teachers and service personnel salaries with counterparts in contiguous states; creating service personnel class title for braille or sign language specialist and providing for salary at pay grade E; redefining secretary III; providing for multi-classification service personnel category and minimum pay; establishing minimum salary for service personnel extra-duty assignments; disregarding laws relating to hiring of professional personnel for certain intra-elementary school positions; limiting school employees' right to collect both workers' compensation and personal leave benefits; providing method for selection, recordation, review and distribution of exemplary teaching techniques and providing compensation for teachers whose exemplary techniques are utilized; providing that certain department of education personnel receive salary at least equal to that paid comparable professional personnel employed by county where office is located; exempting classroom teacher bonus from such minimum; providing for authority, qualifications, appointment, transfer and training rights and compensation of certain aides exercising control over pupils; requiring that state board rules be promulgated in accordance with article creating legislative oversight commission on education accountability; providing generally for such rule making, including notice

requirements, registration with secretary of state, submission to Legislature, powers and duties of commission, withdrawal or modification of rules, emergency rules, judicial review and other matters; and exempting prior policy from review by such commission.

Be it enacted by the Legislature of West Virginia:

That article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section twelve-a; that section thirty-four, article one, chapter thirteen of said code be amended and reenacted; that sections three and five, article two, chapter seventeen-b of said code be amended and reenacted; that section six, article three of said chapter seventeen-b be amended and reenacted; that sections five-a, six, seven, nine and twenty-six, article two, chapter eighteen of said code be amended and reenacted; that said article two be further amended by adding thereto eight new sections, designated sections six-a, six-b, six-c, eleven, fifteen-a, twenty-two, twenty-eight and twenty-nine; that said chapter eighteen be further amended by adding thereto two new articles, designated articles two-e and two-f; that section four, article four of said chapter eighteen be amended and reenacted; that sections thirteen, fifteen, seventeen, eighteen-a and thirty-nine, article five of said chapter eighteen be amended and reenacted; that said article five be further amended by adding thereto four new sections, designated sections fifteen-d, eighteen-c, twenty-six and forty; that sections eighteen and twenty-six-h, article seven-a of said chapter eighteen be amended and reenacted; that sections one-a, two, four and five, article eight of said chapter eighteen be amended and reenacted; that said article eight be further amended by adding thereto two new sections, designated sections five-a and eleven; that sections two, four, five, six, six-a, eight, nine, ten, eleven, fourteen and twenty-two, article nine-a of said chapter be amended and reenacted; that said article nine-a be further amended by adding thereto four new sections, designated sections five-a, thirteen-b, fourteen-a and twenty-three; that said chapter eighteen be further amended by adding thereto a new article, designated article nine-d; that section five, article twenty of said chapter eighteen be amended and reenacted; that said article twenty be further

amended by adding thereto two new sections, designated sections seven and eight; that article twenty-one of said chapter eighteen be amended and reenacted; that said chapter eighteen be further amended by adding thereto a new article, designated article thirty; that sections one, two, two-a, five and nine, article two, chapter eighteen-a of said code be amended and reenacted; that section one, article three of said chapter eighteen-a be amended and reenacted; that said article three be further amended by adding thereto a new section, designated section eight; that sections five, five-c, eight, eight-a, eight-b and ten, article four of said chapter eighteen-a be amended and reenacted; that said article four be further amended by adding thereto two new sections, designated sections ten-b and eighteen; that article five of said chapter eighteen-a be amended by adding thereto a new section, designated section eight; that section three, article one, chapter twenty-nine-a of said code be amended and reenacted; that section one, article three of said chapter twenty-nine-a be amended and reenacted; and that said chapter twenty-nine-a be further amended by adding thereto a new article, designated article three-a, all to read as follows:

Chapter

- 11. Taxation.**
- 13. Public Bonded Indebtedness.**
- 17B. Motor Vehicle Operators' and Chauffeurs' Licenses.**
- 18. Education.**
- 18A. School Personnel.**
- 29A. State Administrative Procedures.**

CHAPTER 11. TAXATION.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-12a. Additional modification reducing federal adjusted gross income.

- 1 In addition to amounts authorized to be subtracted
- 2 from federal adjusted gross income pursuant to subsec-
- 3 tion (c), section twelve of this article, any payment made
- 4 under a tuition prepayment contract or tuition trust
- 5 account contract, or both, as provided under section
- 6 fourteen, article thirty, chapter eighteen of this code,
- 7 shall also be an authorized modification reducing
- 8 federal adjusted gross income.

CHAPTER 13. PUBLIC BONDED INDEBTEDNESS.

ARTICLE 1. BOND ISSUES FOR ORIGINAL INDEBTEDNESS.

§13-1-34. Bonded indebtedness of school districts; annual tax to be levied and collected to pay same; definition of value.

1 (a) Notwithstanding any other provision of this article
 2 or of any other law to the contrary, every school district,
 3 by and through its board of education, shall levy and
 4 collect in each year a direct annual tax on all taxable
 5 property in such school district sufficient to pay the
 6 principal and interest maturing in such year, together
 7 with any deficiencies for prior years, within, and not
 8 exceeding thirty-four years, on any bonded indebtedness
 9 of such school district, now or hereafter contracted, not
 10 to exceed five percent of the value of the taxable
 11 property therein to be ascertained in accordance with
 12 section 8, article X of the Constitution, which levies shall
 13 be laid separate and apart and in addition to the
 14 maximum rates provided for tax levies by school
 15 districts on the several classes of property specified in
 16 section 1, article X of the Constitution, but in the same
 17 proportions as such maximum rates are levied on the
 18 several classes of property, and which tax may be levied
 19 outside the limits fixed by said section 1, article X of
 20 the Constitution.

21 (b) The term "value" as used in this section and in
 22 section 8, article X of the Constitution, is used in the
 23 same context that the term "value" is used in section 1,
 24 article X of the Constitution, and means the "worth in
 25 money" of a piece of property—its market value for ad
 26 valorem property tax purposes.

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

Article

2. Issuance of License, Expiration and Renewal.
3. Cancellation, Suspension, or Revocation of Licenses.

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-3. What persons shall not be licensed; exceptions.

§17B-2-5. Qualifications, issuance and fee for instruction permits.

§17B-2-3. What persons shall not be licensed; exceptions.

1 The department shall not issue any license hereunder:

2 (1) To any person, as an operator, who is under the
3 age of eighteen years: *Provided*, That under rules and
4 regulations to be established by the commissioner and
5 in accordance with the provisions hereinafter set forth
6 in this subdivision (1), a junior or probationary opera-
7 tor's license may be issued to any person between the
8 ages of sixteen and eighteen years, who complies with
9 section eleven, article eight, chapter eighteen of this
10 code and is not otherwise disqualified by law, upon
11 application therefor on a form prescribed by the
12 commissioner and successful completion of all examina-
13 tions and driving tests required by law for the issuance
14 of an operator's license to a person eighteen years of age
15 or older. The commissioner may impose reasonable
16 conditions or restrictions on the operation of a motor
17 vehicle by a person holding such junior or probationary
18 operator's license, which conditions or restrictions shall
19 be printed on each such license. In addition to all other
20 provisions of this chapter for which a regular operator's
21 or chauffeur's license may be revoked, suspended or
22 canceled, whenever a person holding such a junior or
23 probationary operator's license (i) does not comply with
24 the provisions of section eleven, article eight, chapter
25 eighteen of this code, (ii) operates a motor vehicle in
26 violation of the conditions or restrictions set forth on
27 such license, or (iii) has a record of two convictions for
28 moving violations of the traffic regulations and laws of
29 the road, which convictions have become final, the junior
30 or probationary license of such person shall be perman-
31 ently revoked, with like effect as if such person had
32 never held a junior or probationary operator's license:
33 *Provided, however*, That a junior or probationary
34 operator's license shall be suspended for noncompliance
35 with the provisions of section eleven, article eight,
36 chapter eighteen of this code, and may be reinstated
37 upon compliance: *Provided further*, That such junior or
38 probationary operator's license shall be revoked upon

39 one final conviction for any offense specified in section
40 five, article three of this chapter. Under no circumstan-
41 ces shall such a license be revoked for convictions of
42 offenses in violation of any regulation or law governing
43 the standing or parking of motor vehicles. A person
44 whose junior or probationary operator's license has been
45 revoked shall not thereafter receive a junior or proba-
46 tionary operator's license, but such person, upon
47 attaining the age of eighteen, shall be eligible, unless
48 otherwise disqualified by law, for examination and
49 driver testing for a regular operator's license or
50 chauffeur's license. No person shall receive a junior or
51 probationary operator's license unless the application
52 therefor is accompanied by a writing, duly acknowl-
53 edged, consenting to the issuance of such junior or
54 probationary operator's license and executed (a) by the
55 parents of the applicant, or (b) if only one parent is
56 living, then by such parent, or (c) if the parents be living
57 separate and apart, by the one to whom was awarded
58 the custody of the applicant, or (d) if there is a guardian
59 entitled to the custody of the applicant, then by such
60 guardian. Upon attaining the age of eighteen years, a
61 person holding an unrevoked junior or probationary
62 operator's license shall, upon payment of the prescribed
63 fee, be entitled to receive a regular operator's license or
64 chauffeur's license without further examination or
65 driver testing. When a junior license is revoked as a
66 result of two convictions for moving violations of the
67 traffic regulations and laws of the road as hereinabove
68 stated, the provisions of section one, article four, chapter
69 seventeen-d shall not apply;

70 (2) To any person, as a chauffeur, who is under the
71 age of eighteen years;

72 (3) To any person, as an operator or chauffeur, whose
73 license has been suspended, during such suspension, nor
74 to any person whose license (other than a junior or
75 probationary operator's license) has been revoked,
76 except as provided in section eight, article three of this
77 chapter;

78 (4) To any person, as an operator or chauffeur, who
79 is an habitual drunkard, or is addicted to the use of

80 narcotic drugs;

81 (5) To any person, as an operator or chauffeur, who
82 has previously been adjudged to be afflicted with or
83 suffering from any mental disability or disease and who
84 has not at the time of application been restored to
85 competency by judicial decree or released from a
86 hospital for the mentally incompetent, upon the certifi-
87 cate of the superintendent of such institution that such
88 person is competent and not then unless the commis-
89 sioner is satisfied that such person is competent to
90 operate a motor vehicle with safety to persons or
91 property;

92 (6) To any person, as an operator or chauffeur, who
93 is required by this chapter to take an examination,
94 unless such person shall have successfully passed such
95 examination;

96 (7) To any person who is required under the provi-
97 sions of the motor vehicle safety responsibility laws of
98 this state to deposit proof of financial responsibility and
99 who has not deposited such proof;

100 (8) To any person when the commissioner has good
101 cause to believe that the operation of a motor vehicle on
102 the highways by such person would be inimical to public
103 safety or welfare.

§17B-2-5. Qualifications, issuance and fee for instruction permits.

1 Any person who is at least sixteen years of age may
2 apply to the department for an instruction permit. The
3 department may, in its discretion, after the applicant
4 has appeared before the department of public safety and
5 successfully passed all parts of the examination other
6 than the driving test and presented documentation of
7 compliance with the provisions of section eleven, article
8 eight, chapter eighteen of this code, issue to the
9 applicant an instruction permit which shall entitle the
10 applicant while having such permit in his immediate
11 possession to drive a motor vehicle upon the public
12 highways for a period of sixty days when accompanied
13 by a licensed operator or chauffeur who is occupying a

14 seat beside the driver, except in the event the permittee
15 is operating a motorcycle. Any such instruction permit
16 may be renewed or a new permit issued for an addi-
17 tional period of sixty days. The fee for such instruction
18 permit shall be four dollars, one dollar of which shall
19 be paid into the state treasury and credited to the state
20 road fund, and the other three dollars of which shall be
21 paid into the state treasury and credited to the general
22 fund to be appropriated to the department of public
23 safety for application in the enforcement of the road law.

**ARTICLE 3. CANCELLATION, SUSPENSION OR REVOCATION
OF LICENSES.**

**§17B-3-6. Authority of department to suspend or revoke
license; hearing.**

1 The department is hereby authorized to suspend the
2 license of an operator or chauffeur without preliminary
3 hearing upon a showing by its records or other sufficient
4 evidence that the licensee:

5 (1) Has committed an offense for which mandatory
6 revocation of license is required upon conviction;

7 (2) Has by reckless or unlawful operation of a motor
8 vehicle, caused or contributed to an accident resulting
9 in the death or personal injury of another or property
10 damage;

11 (3) Has been convicted with such frequency of serious
12 offenses against traffic regulations governing the
13 movement of vehicles as to indicate a disrespect for
14 traffic laws and a disregard for the safety of other
15 persons on the highways;

16 (4) Is an habitually reckless or negligent driver of a
17 motor vehicle;

18 (5) Is incompetent to drive a motor vehicle;

19 (6) Has permitted an unlawful or fraudulent use of
20 such license;

21 (7) Has committed an offense in another state which
22 if committed in this state would be a ground for
23 suspension or revocation;

24 (8) Has failed to pay or has defaulted on a plan for
25 the payment of all costs, fines, forfeitures or penalties
26 imposed by a magistrate court or municipal court
27 within ninety days, as required by section two-a, article
28 ten, chapter eight of this code;

29 (9) Has failed to appear or otherwise respond before
30 a magistrate court or municipal court when charged
31 with a motor vehicle violation as defined in section
32 three-a, article three, chapter seventeen-b of this code;
33 or

34 (10) Is under the age of eighteen and has withdrawn
35 either voluntarily or involuntarily from a secondary
36 school, as provided in section eleven, article eight,
37 chapter eighteen of this code.

38 The operator's or chauffeur's license of any person
39 having his or her license suspended shall be reinstated
40 if:

41 (A) The license was suspended under the provisions of
42 subdivision (8) of this section and the payment of costs,
43 fines, forfeitures or penalties imposed by the applicable
44 court has been made; or

45 (B) The license was suspended under the provisions of
46 subdivision (9) of this section, and the person having his
47 or her license suspended has appeared in court and has
48 prevailed against the motor vehicle violations charged,
49 or such person has paid any and all costs, fines,
50 forfeitures or penalties imposed by the applicable court.

51 Any reinstatement of a license under paragraph (A)
52 or (B) of this subdivision shall be subject to a reinstatement
53 fee designated in section nine of this chapter.

54 Upon suspending the license of any person as herein-
55 before in this section authorized, the department shall
56 immediately notify the licensee in writing, sent by
57 registered mail to the address given by the licensee in
58 applying for license, and upon his request shall afford
59 him an opportunity for a hearing as early as practical
60 within not to exceed twenty days after receipt of such
61 request in the county wherein the licensee resides unless
62 the department and the licensee agree that such hearing

63 may be held in some other county. Upon such hearing
 64 the commissioner or his duly authorized agent may
 65 administer oaths and may issue subpoenas for the
 66 attendance of witnesses and the production of relevant
 67 books and papers and may require a reexamination of
 68 the licensee. Upon such hearing the department shall
 69 either rescind its order of suspension or, good cause
 70 appearing therefor, may extend the suspension of such
 71 license or revoke such license.

CHAPTER 18. EDUCATION.

Article

- 2. State Board of Education.
- 2E. High Quality Educational Programs.
- 2F. Schools of Excellence.
- 4. County Superintendent of Schools.
- 5. County Board of Education.
- 7A. State Teachers Retirement System.
- 8. Compulsory School Attendance.
- 9A. Public School Support.
- 9D. School Building Authority.
- 20. Education of Exceptional Children.
- 21. Underwood-Smith Teacher Scholarship Program.
- 30. West Virginia Higher Education Tuition Trust Act.

ARTICLE 2. STATE BOARD OF EDUCATION.

- §18-2-5a. Board rules to be filed with Legislature.
- §18-2-6. Training of teachers; accreditation, classification and standardization of schools; standards for degrees and diploma.
- §18-2-6a. Participation in National Standards Board.
- §18-2-6b. Establishment of school teams.
- §18-2-6c. Teachers' forum; teachers' academy; principals' academy; other training and development programs.
- §18-2-7. Courses of study; language of instruction.
- §18-2-9. Required courses of instruction; violation and penalty.
- §18-2-11. Sabbatical leaves for teachers and certain aides.
- §18-2-15a. Comprehensive study of education law.
- §18-2-22. State board study of programs related to school dropout prevention.
- §18-2-26. Establishment of multi-county regional educational service agencies; purposes; authority to implement regional services.
- §18-2-28. School advisory councils; election.
- §18-2-29. Competitive grant program for selected schools and school districts.

§18-2-5a. Board rules to be filed with Legislature.

1 The state board of education shall file a copy of any
2 rule that it proposes to promulgate, adopt, amend or
3 repeal under the authority of the constitution or of this
4 chapter with the legislative oversight commission on
5 education accountability created pursuant to section
6 eleven, article three-a, chapter twenty-nine-a. "Rule," as
7 used herein, means a regulation, standard, statement of
8 policy, or interpretation of general application and
9 future effect.

**§18-2-6. Training of teachers; accreditation, classification
and standardization of schools; standards for
degrees and diploma.**

1 (a) The education of teachers in the state shall be
2 under the general direction and control of the state
3 board of education after consultation with the board of
4 regents, which shall, through the state superintendent
5 of schools, exercise supervisory control over teacher
6 preparation including (1) those programs in all institu-
7 tions of higher education, including student teaching in
8 the public schools; and (2) any alternative training
9 programs leading to licensure, in accordance with
10 standards for program approval stated in writing by the
11 board. Such standards shall include a provision for the
12 study of multicultural education.

13 As used in this section, multicultural education means
14 the study of the pluralistic nature of American society
15 including its values, institutions, organizations, groups,
16 status positions and social roles.

17 (b) To give prospective teachers the teaching expe-
18 rience needed to demonstrate competence, as a prereq-
19 uisite to licensure, the state board of education may
20 enter into an agreement with county boards of education
21 for the use of the public schools. Such agreement shall
22 recognize student teaching as a joint responsibility of
23 the teacher preparation institution and the cooperating
24 public schools and shall include (1) the minimum
25 qualifications for the employment of public school

26 teachers selected as supervising teachers; (2) the
27 remuneration to be paid public school teachers by the
28 state board, in addition to their contractual salaries, for
29 supervising student teachers; and (3) minimum stand-
30 ards to guarantee adequacy of facilities and program of
31 the public school selected for student teaching. The
32 student teacher, under the direction and supervision of
33 the supervising teacher, shall exercise the authority of
34 a substitute teacher.

35 Institutions of higher education approved for teacher
36 preparation may cooperate with each other and with one
37 or more county boards of education in the organization
38 and operation of centers to provide selected phases of the
39 teacher preparation program such as student teaching
40 or internship programs, instruction in methodology,
41 seminar programs for college students, first year
42 teachers and supervising teachers.

43 Such institutions of higher education and participat-
44 ing county boards of education may budget and expend
45 funds for the operation of such centers through pay-
46 ments to the appropriate fiscal office of the county
47 designated by mutual agreement of participating county
48 school boards and higher education institutions to serve
49 as the administering agency of the center.

50 The provisions of this section shall not be construed
51 to require the discontinuation of an existing student
52 teacher training center or school which meets the
53 standards of the state board of education.

54 (c) Notwithstanding any other provision of this article
55 to the contrary, the state board of education is autho-
56 rized to develop alternative training programs leading
57 to licensure in accordance with rules and regulations
58 adopted by the state board of education after consulta-
59 tion with the board of regents: *Provided*, That no teacher
60 shall be permanently certified who has not completed a
61 core curriculum, as determined by the state board after
62 consultation with the board of regents, in an approved
63 teacher preparation or improvement program at an
64 accredited institution of higher education.

65 The state board shall also develop and implement a
66 beginning teacher internship program by the first day
67 of July, one thousand nine hundred ninety.

68 (d) The state board shall make rules for the accred-
69 itation, classification and standardization of all schools
70 in the state, except institutions of higher education, and
71 shall determine the minimum standards for the grant-
72 ing of diplomas and other certificates of proficiency,
73 except those conferred or granted by institutions of
74 higher education. No institution of less than collegiate
75 or university status may grant any diploma or other
76 certificate of proficiency on any basis of work or merit
77 below the minimum standards prescribed by the state
78 board of education. All institutions of higher education
79 approved for teacher preparation in the school year of
80 one thousand nine hundred sixty-two—sixty-three shall
81 continue to hold that distinction so long as they meet the
82 minimum standards for teacher preparation. Nothing
83 contained herein shall infringe upon the rights granted
84 to any institution by charter given according to law
85 previous to the adoption of this code.

86 No charter or other instrument containing the right
87 to issue diplomas or other certificates of proficiency
88 shall be granted by the state of West Virginia to any
89 institution or other associations or organizations of less
90 than collegiate or university status within the state until
91 the condition of granting or issuing such diplomas or
92 other certificates of proficiency has first been approved
93 in writing by the state board of education.

§18-2-6a. Participation in National Standards Board.

1 The state board shall participate in the work of, and
2 may contract with, the National Board for Professional
3 Teaching Standards, Inc., to develop processes, proce-
4 dures and assessment measures for the independent
5 certification of teachers and may adopt or adapt the
6 product of such work for the granting of teaching
7 certificates valid in the public schools of the state.

§18-2-6b. Establishment of school teams.

1 There shall be established at each elementary school
2 in the state a team composed of the school principal, the
3 counselor designated to serve that school and three
4 teachers from the kindergarten through fourth grade
5 faculty chosen by that faculty.

6 The school team shall establish the programs and
7 methods for implementing a curriculum based on state-
8 approved learning outcomes for kindergarten through
9 fourth grade based on the needs of the individual school
10 with a focus on the basic skills of reading, composition
11 and mathematics. The curriculum thus established shall
12 be submitted to the county board of education for
13 approval or for return to the school for reconsideration.

14 The school team may apply for a grant from the state
15 board of education for the development and/or imple-
16 mentation of remedial and accelerated programs to
17 meet the needs of the students at the individual school.

§18-2-6c. Teachers' forum; teachers' academy; principals' academy; other training and development programs.

1 The Legislature, recognizing the positive contribu-
2 tions which the previously established teachers' forum,
3 teachers' academy and principals' academy have made
4 to excellence in education throughout the public school
5 system, hereby directs the board to continue these
6 programs and to develop plans for the expansion and
7 improvement of these programs and for the establish-
8 ment of other training and staff development programs
9 designed to promote and encourage excellence in the
10 public schools of West Virginia.

§18-2-7. Courses of study; language of instruction.

1 The state board of education shall prescribe minimum
2 standards in the courses of study to be offered in
3 elementary schools, high schools, vocational schools and
4 in all other kinds, grades and classes of schools or
5 departments thereof, which may now or hereafter be
6 maintained in the state, in whole or in part, from any
7 state fund or funds: *Provided*, That the courses of study

8 in the public schools in the state shall be prepared by
9 the faculties, teachers or other constituted authority
10 thereof, and shall, before going into effect, be submitted
11 to the state board of education for its approval. The
12 basic language of instruction in all schools, public,
13 private and parochial, shall be the English language
14 only. The state board shall not adopt any policies or
15 rules which set out time requirements within the
16 instructional day for instruction in kindergarten
17 through fourth grade.

§18-2-9. Required courses of instruction; violation and penalty.

1 (a) In all public, private, parochial and denomina-
2 tional schools located within this state there shall be
3 given prior to the completion of the eighth grade at least
4 one year of instruction in the history of the state of West
5 Virginia. Such schools shall require regular courses of
6 instruction by the completion of the twelfth grade in the
7 history of the United States, in civics, in the constitution
8 of the United States, and in the government of the state
9 of West Virginia for the purpose of teaching, fostering
10 and perpetuating the ideals, principles and spirit of
11 political and economic democracy in America and
12 increasing the knowledge of the organization and
13 machinery of the government of the United States and
14 of the state of West Virginia. The state board of
15 education shall, with the advice of the state superintend-
16 ent of schools, prescribe the courses of study covering
17 these subjects for the public schools. It shall be the duty
18 of the officials or boards having authority over the
19 respective private, parochial and denominational schools
20 to prescribe courses of study for the schools under their
21 control and supervision similar to those required for the
22 public schools. To further such study, every high school
23 student eligible by age for voter registration shall be
24 afforded the opportunity to register to vote pursuant to
25 section twenty-two, article two, chapter three of this
26 code.

27 (b) The state board of education shall cause to be
28 taught in all of the public schools of this state the subject
29 of health education, including instruction in any of the

30 grades six through twelve as deemed appropriate by the
31 county board, on (1) the prevention, transmission and
32 spread of acquired immune deficiency syndrome and
33 other sexually transmitted diseases and (2) substance
34 abuse, including the nature of alcoholic drinks and
35 narcotics, tobacco products, and other potentially
36 harmful drugs, with special instruction as to their effect
37 upon the human system and upon society in general. The
38 course curriculum requirements and materials for such
39 instruction shall be adopted by the state board by rule
40 in consultation with the department of health.

41 An opportunity shall be afforded to the parent or
42 guardian of a child subject to instruction in the
43 prevention, transmission and spread of acquired im-
44 mune deficiency syndrome and other sexually transmit-
45 ted diseases to examine the course curriculum require-
46 ments and materials to be used in such instruction. The
47 parent or guardian may exempt such child from
48 participation in such instruction by giving notice to that
49 effect in writing to the school principal.

50 (c) Any person violating the provisions of this section
51 shall be guilty of a misdemeanor, and, upon conviction
52 thereof, shall be fined not exceeding ten dollars for each
53 violation, and each week during which there is a
54 violation shall constitute a separate offense. If the person
55 so convicted occupy a position in connection with the
56 public schools, that person shall automatically be
57 removed from such position and shall be ineligible for
58 reappointment to that or a similar position for the
59 period of one year.

§18-2-11. Sabbatical leaves for teachers and certain aides.

1 The state board shall by the first day of December,
2 one thousand nine hundred eighty-eight, establish by
3 policy a sabbatical leave program. Such program
4 participation shall be considered optional for each
5 county board. Individuals employed as professional
6 educators, as defined in section one, article one, chapter
7 eighteen-a of this code, and aides shall be eligible for
8 the sabbatical leave program: *Provided*, That such aides

9 have a cumulative grade point of three and two-tenths
10 on a possible four point scale pursuant to successful
11 completion of at least sixty-four semester hours of course
12 work at an approved institution of higher education.
13 Such policy shall establish the educational objectives,
14 peer selection criteria and other guidelines the board
15 deems necessary. The sabbatical leave policy shall
16 provide that not less than ninety-five percent of
17 sabbatical leaves granted shall be for classroom teachers
18 and such policy shall not provide for the granting of
19 sabbatical leave to any employee who has fewer than ten
20 years of West Virginia public school service, nor shall
21 compensation during such leave be more than one half
22 of the employee's regular salary. While on sabbatical
23 leave the employee shall be deemed to be a full-time
24 employee for purposes of years of experience and
25 participation in the teachers retirement system and the
26 public employees insurance program. Any employee
27 receiving a sabbatical leave shall be required to return
28 to employment by the board which granted the leave for
29 a period of at least one year or repay the compensation
30 and benefits received during that time and have
31 deducted the retirement credit and years of service
32 credit accrued during sabbatical leave: *Provided,*
33 *however,* That sabbatical leaves for teachers and certain
34 aides shall be optional by the respective boards of
35 education.

§18-2-15a. Comprehensive study of education law.

1 The state board of education shall conduct a compre-
2 hensive study of the administrative rules adopted by the
3 board, the state superintendent's interpretations and the
4 West Virginia statutes relating to education that are the
5 basis of the rules and interpretations. The study shall
6 include recommendations to revise or to repeal certain
7 rules, interpretations or statutes with specific attention
8 to be given to reducing paperwork for classroom
9 teachers. The state superintendent shall prepare a
10 written report detailing the findings, conclusions and
11 recommendations generated by the study to be pres-
12 ented to the legislative oversight commission on educa-
13 tion accountability by the first day of December, one

14 thousand nine hundred eighty-eight.

§18-2-22. State board study of programs related to school dropout prevention.

1 The state board shall review the dropout program
2 developed in the state of Wisconsin, commonly referred
3 to as "learnfare", and other alternative educational
4 programs commonly referred to as "ocean-quest" and
5 "vision-quest", and shall make a report to the Legisla-
6 ture with appropriate recommendations by the first day
7 of December, one thousand nine hundred eighty-eight.

**§18-2-26. Establishment of multi-county regional educa-
tional service agencies; purposes; authority to
implement regional services.**

1 (a) In order to consolidate and administer more
2 effectively existing educational programs and services
3 and in order to equalize and extend educational
4 opportunities, the state board of education shall estab-
5 lish multi-county regional educational service agencies
6 for the purpose of providing high quality, cost effective
7 educational programs and services to the county school
8 systems, and shall make such rules as may be necessary
9 for the effective administration and operation of such
10 agencies.

11 (b) In furtherance of these purposes, it is the duty of
12 the board of directors of each regional educational
13 service agency to continually explore possibilities for the
14 delivery of services on a regional basis which will
15 facilitate equality in the educational offerings among
16 counties in its service area, permit the delivery of high
17 quality educational programs at a lower per student
18 cost, strengthen the cost effectiveness of education
19 funding resources, reduce administrative and/or opera-
20 tional costs, and promote the efficient administration
21 and operation of the public school systems generally.

22 Technical, operational, programmatic or professional
23 services would be among the types of services approp-
24 riate for delivery on a regional basis.

25 (c) A regional educational service agency may imple-
26 ment regional programs and services by a majority vote

27 of its board of directors. When said vote is not unanim-
28 ous, the board of directors shall file a plan for the
29 service or program delivery with the state board
30 describing the program or service, the manner of
31 delivery and the projected savings and/or the improved
32 quality of the program or service. The state board shall
33 promulgate rules requiring a county board that declines
34 to participate in such programs or services to show just
35 cause for not participating and the estimated savings
36 accruing to the county therefrom. If a county board fails
37 to show that savings will accrue to the county or the
38 quality of the program will be significantly and
39 positively affected as a result of its decision not to
40 participate, the state board shall withhold from the
41 county's foundation allowance for administrative cost
42 the lesser of the amount of the estimated savings or the
43 allocation for the county's foundation allowance for
44 administrative cost.

45 (d) The state board, in conjunction with the various
46 regional educational service agencies, shall develop an
47 effective model for the regional delivery of instruction
48 in subjects where there exists low student enrollment or
49 a shortage of certified teachers or where such delivery
50 method substantially improves the quality of an instruc-
51 tional program. Such model shall incorporate an
52 interactive electronic classroom approach to instruction.
53 To the extent funds are appropriated or otherwise
54 available, county boards or regional educational service
55 agencies may adopt and utilize the model for the
56 delivery of such instruction.

57 (e) A regional board shall be empowered to receive
58 and disburse funds from the state and federal govern-
59 ments, member counties, gifts and grants.

§18-2-28. School advisory councils; election.

1 (a) Upon petition to the school principal by at least
2 twenty percent of the school community, or at the
3 discretion of the principal without a petition, a school
4 advisory council shall be established consisting of the
5 principal, who shall serve as the ex officio, nonvoting
6 chairman of the council, three teachers elected by secret

7 ballot by and from teachers employed at the school on
8 the date notice of such election was given, one school
9 service personnel elected by secret ballot by and from
10 school service personnel employed at the school on the
11 date notice of such election was given, three parents of
12 students enrolled at the school elected by secret ballot
13 by and from such parents, and two at-large members
14 who reside in the school's attendance area appointed by
15 the principal subject to approval of the elected members
16 of the council. For the purposes of this section, the school
17 community shall consist of the classroom teachers as
18 defined in section one, article one, chapter eighteen-a of
19 this code, the service personnel, the parents and
20 administrators of the school taken together.

21 Following such petition, the principal shall arrange
22 for such elections to be held prior to the thirty-first day
23 of October of each school year and shall give notice of
24 the elections at least one week prior to the elections
25 being held. To the extent practical, all elections shall be
26 held within the same week. Persons elected to the
27 council may only be replaced upon death, resignation,
28 change of employment status, failure to appear at three
29 consecutive meetings of the council for which reasonable
30 notice was given or, in the case of the parent members,
31 discontinuance of their child's enrollment at that school.
32 In the case of replacement, an election shall be held to
33 elect another qualified person to serve the unexpired
34 term of the person so replaced.

35 Each member of the council must be given written
36 notice two weeks in advance of any council meeting.

37 (b) A school advisory council may propose alternatives
38 to the operation of the public school which will meet or
39 exceed the high quality standards established by the
40 state board and will increase administrative efficiency,
41 enhance the delivery of instructional programs, promote
42 community involvement in the local school system or
43 improve the educational performance of the school
44 generally. The alternatives proposed by the council may
45 include matters which require the waiver of district
46 board policies or rules other than those relating to due
47 process rights. For an alternative to be proposed, at

48 least five of the members must vote in favor thereof.

49 To facilitate the work of the school advisory councils,
50 any district board policy which exceeds the require-
51 ments of a written state board policy shall specify the
52 extent to which the requirements exceed those of the
53 state board.

54 Whenever a school advisory council decides to propose
55 an alternative, it shall forward a copy of the proposal
56 to the school district board. The school district board
57 shall acknowledge receipt of the proposed alternative,
58 promptly review the proposed alternative and, in its
59 discretion, approve the alternative or reply to the
60 advisory council within a reasonable time as to its
61 reasons for not approving the proposed alternative.

62 (c) The state board shall by the first day of July of
63 each year submit a report to the Legislature identifying
64 all policy or rule waiver requests received in the
65 preceding school year and the disposition of each.

66 (d) School advisory councils shall be considered for
67 the receipt of school of excellence competitive grant
68 awards under section twenty-nine of this article, and
69 may receive and expend such grants for the purposes
70 provided in such section.

71 (e) In any and all matters which may fall within the
72 scope of the school advisory councils and the school
73 teams authorized in section six-b of this article, the
74 school teams shall be deemed to have jurisdiction.

75 (f) The state board shall further adopt policies to
76 involve parents in their child's educational process.

**§18-2-29. Competitive grant program for selected schools
and school districts.**

1 The state board shall establish no later than the school
2 year one thousand nine hundred eighty-nine—ninety a
3 competitive grant program whereby schools may be
4 awarded grants to implement exemplary and innovative
5 programs designed to improve instruction.

6 The priority for rewarding competitive grants to
7 schools shall be for schools having probationary accred-

8 itation status, as defined in section five-c, article two-
 9 e, chapter eighteen, and school districts having nonap-
 10 proval accreditation status as defined in section five-d,
 11 article two-e, chapter eighteen. Approval of the compet-
 12 itive grants shall be based on measurable performance
 13 and progress towards achieving full accreditation for
 14 the school or school district. Such measurable perfor-
 15 mance shall include criteria such as: (a) Student
 16 achievement gain; (b) student attendance; (c) teacher
 17 attendance; (d) parent participation; (e) reduction in the
 18 amount of paperwork required of teachers; and (f) any
 19 other factor promoting the attainment of full accredita-
 20 tion for the school or the school district.

21 The state board shall promulgate rules which ensure
 22 that the school or school district utilizes these funds
 23 appropriately. The state board shall encourage the
 24 donation of funds from private and other sources to
 25 augment state funding for the program.

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

§18-2E-1. Legislative purpose.

§18-2E-2. Statewide testing of educational progress program (WV-STEP); purposes, development and implementation of program.

§18-2E-3. Compensatory and remedial instruction programs; uniform promotion criteria.

§18-2E-4. Better schools accountability; school, school district and statewide school report cards.

§18-2E-5. School accreditation; standards compliance board; approval status; intervention to correct impairments.

§18-2E-6. Falsifying reports; penalty.

§18-2E-1. Legislative purpose.

1 The purpose of this article is to provide for the
 2 establishment of high quality educational standards, to
 3 provide for the evaluation of student progress in
 4 attaining the knowledge and skills essential for them to
 5 become productive members of society, and to provide
 6 assurances to the public that a thorough and efficient
 7 system of education is being provided for all public
 8 school children in West Virginia.

§18-2E-2. Statewide testing of educational progress program (WV-STEP); purposes, development and implementation of program.

1 (a) The state board of education shall establish a
2 program for the statewide testing of the educational
3 progress of public school students in attaining a high
4 quality education, hereinafter referred to as the WV-
5 STEP program.

6 The WV-STEP program shall provide information to:

7 (1) Assess the overall academic progress of students,
8 including (i) identifying individual students' academic
9 weaknesses and readiness, and (ii) identifying students
10 who may need remediation;

11 (2) Assist the teacher in determining student
12 promotion;

13 (3) Compare achievement of students in West Virgi-
14 nia to achievement of students on a national basis;

15 (4) Assess the strengths and weaknesses of school
16 performance;

17 (5) Assess the effects of state and local educational
18 programs;

19 (6) Make decisions at the state and local level with
20 regard to educational matters, including (i) the need for
21 new or revised educational programs and the need to
22 terminate existing educational programs, (ii) overall
23 curriculum development and revision activities, and (iii)
24 teacher training and staff development activities; and

25 (7) Inform the public of the overall quality of educa-
26 tion in individual schools and school districts.

27 (b) The state board shall prepare detailed design
28 specifications for the WV-STEP program which ac-
29 complish the following:

30 (1) Take into account the state learning outcome
31 statements in the basic skill areas of reading, composi-
32 tion, mathematics and other subject areas as determined
33 by the state board; and

34 (2) Include testing of students' higher level cognitive
35 thinking in each subject area tested.

36 "Learning outcome statements" mean statements

37 developed and adopted by the state board which for the
38 purposes of this article have been fully and properly
39 field tested to ensure their reliability and validity in
40 indicating the knowledge base and skills expected of
41 students for particular subject areas and which may be
42 used to measure indicators of statewide standards for
43 student progress in attaining a high quality education.

44 (c) The state board shall implement the WV-STEP
45 program as follows:

46 (1) Beginning in the school year one thousand nine
47 hundred ninety—ninety-one, and continuing thereafter:

48 (i) A test designed to measure a student's readiness to
49 begin the formal school curriculum shall be adminis-
50 tered to all public school students during the second half
51 of the kindergarten grade. The results of the readiness
52 test shall be used to assist the teacher in determining
53 which students are in need of a transitional kinder-
54 garten program or to provide appropriate developmen-
55 tal activities in the first grade; and

56 (ii) A criterion referenced test measuring competen-
57 cies based on the learning outcome statements shall be
58 administered to all public school students in grades one,
59 two, three and four to measure student academic
60 progress in reading, composition and mathematics in
61 those respective grades. The results of the tests shall be
62 used to identify each student's deficiencies, aid in
63 determining instruction needed by the student in
64 achieving the statewide standards established for the
65 respective grade and assist the teacher in determining
66 student promotion.

67 (2) Beginning in the school year one thousand nine
68 hundred ninety-one—ninety-two, and continuing
69 thereafter:

70 (i) A criterion referenced test measuring competen-
71 cies based on the learning outcome statements for
72 reading, composition and mathematics in grade five
73 shall be administered to all public school students in
74 grade five. Each year thereafter, a criterion referenced
75 test for these subject areas shall be administered to

76 students in the next higher grade through grade eight;
77 and

78 (ii) Criterion referenced testing measuring competen-
79 cies based on the learning outcome statements in
80 additional subject areas shall be implemented as funds
81 are available on a schedule determined by the board.

82 (3) Beginning in the school year one thousand nine
83 hundred ninety—ninety-one, and continuing thereafter,
84 National Assessment of Educational Progress Program
85 tests shall be administered in academic areas at the
86 various grades designated by the National Assessment
87 of Educational Progress officials to provide comparisons
88 of West Virginia students to a national sample.

89 (d) The state board shall revise and update the
90 learning outcome statements as necessary and shall
91 determine a schedule for the annual administration of
92 the WV-STEP program tests. The state superintendent
93 is responsible for the overall development, implementa-
94 tion and monitoring of the program. The state board
95 may establish a pilot program to implement the WV-
96 STEP program prior to the required implementation
97 dates under subsection (c) of this section.

98 (e) Any student who is unable to take any of the tests
99 prescribed in this section because of absence from school
100 and provides school authorities with a valid reason for
101 such absence shall be given the missed test as soon as
102 possible following the student's return to school. An
103 exceptional child is subject to testing under the WV-
104 STEP program only to the extent specified in that
105 child's individualized education program (IEP).

106 (f) The parent or guardian of each student tested
107 under the WV-STEP program shall be notified in
108 writing of the student's test score, along with the
109 average test score of all other students in the same grade
110 at the school. The state board shall promulgate rules for
111 the compilation of aggregate test scores by grade in such
112 manner as to permit the comparison of student perfor-
113 mance at different schools within and among the various
114 school districts. The test scores of all students taking the
115 test at each school shall be compiled by the district

116 pursuant to such rules, shall be made available for
117 public inspection and shall be included in the school and
118 county report cards under section four of this article.
119 However, no individual student's WV-STEP scores may
120 be disclosed to the public.

121 (g) The department of education shall take necessary
122 administrative action under section five of this article
123 to monitor and evaluate the curriculum and instruction
124 methods in each school district to ensure compliance
125 with the standards and purposes of this article.

§18-2E-3. Compensatory and remedial instruction programs; uniform promotion criteria.

1 (a) The Legislature finds and declares that student
2 progress towards attainment of a high quality education
3 is enhanced when students are afforded the opportunity
4 to remediate their academic deficiencies when they
5 occur, and before moving on to higher level work.
6 Therefore, the state board shall develop and adopt rules
7 in accordance with the provisions of this section, and
8 which complement and are coordinated with federally
9 funded compensatory education programs, requiring
10 school districts to provide compensatory and remedial
11 instruction programs for students who fail to meet or
12 exceed the statewide standards for student progress in
13 the subject matter and in the grades in which the
14 students are tested under the WV-STEP program.
15 Compensatory and remedial programs may include
16 special homework, tutorial sessions, extended school day
17 instruction, modified instructional materials, other
18 modifications in the instructional program, summer
19 school instruction, retention in grade and such other
20 programs as are appropriate for providing special
21 instruction inside or outside the regular classroom
22 designed to increase student knowledge in given subject
23 areas. The guidelines shall provide for notification to the
24 parent or guardian of the educational deficiency of a
25 student subject to remediation and shall encourage their
26 involvement in the remediation effort, including allo-
27 wances for alternative remediation plans to be imple-
28 mented by the parent or guardian with approval of the
29 teacher. The guidelines shall further provide for every

30 student who receives a score on the WV-STEP test
31 below state standard to be retested prior to promotion
32 to the next higher grade, except that students who are
33 assigned to a compensatory or remediation program
34 may be retested at any time during such program at the
35 discretion of the teacher to determine the student's
36 continued need for the program and upon receiving a
37 score at or above state standard shall not again be
38 retested at that level.

39 The purpose of the compensatory and remedial
40 programs shall be to (1) reduce the number of students
41 who fail to make acceptable progress towards attaining
42 a high quality education as indicated by their scores on
43 the WV-STEP program tests and (2) improve the
44 academic performance of students who have scored
45 below the standard and who in the opinion of the teacher
46 will not be able to achieve the standard through regular
47 classroom instruction.

48 A school district board of education may request from
49 the state board in writing a waiver from the guidelines
50 established by the state board if:

51 (1) The implementation of compensatory and reme-
52 dial programs under the guidelines would cause an
53 undue financial hardship or the district has a low
54 number of students requiring such programs; and

55 (2) The district board implements an alternative plan
56 of remediation approved by the state board for those
57 students who would be required to attend such pro-
58 grams under this section.

59 (b) Whenever a student who is tested under the WV-
60 STEP program receives a score below the state stand-
61 ard in a particular subject area at that student's grade
62 level and, in the judgment of the teacher, the level of
63 knowledge of the student in the subject area will not
64 sufficiently improve through instruction in the regular
65 classroom to enable the student to obtain a score at or
66 above state standard upon retesting and/or the student's
67 level of knowledge in the subject area would improve to
68 a greater extent from participation in programs which
69 cannot be reasonably accomplished in the regular

70 classroom, the teacher shall assign the student to
71 complete a remediation program in that subject.

72 (c) Instruction in remedial, compensatory and enrich-
73 ment programs shall be accomplished at such times as
74 will result in minimum disruption in the student's
75 instruction in the basic skills in the regular classroom
76 and to the extent possible shall use existing personnel.

77 (d) The state board shall establish uniform criteria
78 based on the learning outcome statements and the
79 results of the Statewide Testing of Educational Progress
80 (WV-STEP) program tests to assist the teacher in
81 determining the promotion of students to the next
82 higher grade. The criteria shall include a requirement
83 that every student has taken the WV-STEP test at least
84 one time during the school year. Whenever a student
85 who is retested prior to promotion under the WV-STEP
86 program receives a total test score that is below the state
87 standard at that student's grade level, the teacher shall
88 (1) assign the student to a remediation program that
89 includes retesting to be successfully completed prior to
90 promotion to the next higher grade, (2) retain the
91 student at the same grade level in the following year,
92 or (3) state in writing to the principal, to be forwarded
93 to the district superintendent, that (i) the performance
94 of a student on a retest does not accurately reflect the
95 student's level of knowledge based on performance in
96 the class during the year and that the student should
97 be promoted to the next higher grade despite having
98 received a total test score below state standard, or (ii)
99 the student has been previously retained under this
100 section, is achieving at his or her potential despite the
101 test score, and would not academically benefit from
102 being retained at the current grade level.

103 A student may be retained under this section only one
104 time for each grade level.

105 If a student is retained for one school year under this
106 subsection, the district board shall provide assistance to
107 the student that is designed to meet that student's
108 individual learning needs.

109 (e) The superintendent of the school district shall

110 report annually to the state board detailed information
111 as required by the state board concerning test scores
112 and any waivers granted under this section.

113 (f) School districts shall annually evaluate the com-
114 pensatory and remedial programs in the district as
115 prescribed by state board rules. If the average WV-
116 STEP test scores of students assigned to the programs
117 do not show acceptable improvement as determined by
118 the state board, the programs must undergo formal
119 process evaluation. Further state funding will be
120 contingent upon an approved corrective action plan.

121 (g) By November first of each year the state board
122 shall report to the Legislature an analysis of test scores
123 and data for the preceding school year including an
124 analysis by the department of education of data
125 necessary to evaluate at the school level the effectiveness
126 of the remedial and compensatory education programs
127 and the per student cost of each classification of student
128 under the rules of the board. Additionally, a longitud-
129 inal analysis of the data must be provided to determine
130 the long term effect of program participation on
131 academic achievement of students.

132 (h) Notwithstanding any other provisions of statute or
133 rules, testing of students for comparison with national
134 norms or for the purposes of this section shall be limited
135 to six instructional days in each school year unless the
136 difference between the number of days required and six
137 is added to the instructional term for students and the
138 employment term for necessary personnel.

139 (i) Nothing in this section shall be construed to
140 prevent a teacher from exercising his or her judgment
141 in the assignment of remedial course work, the retention
142 of students at the same grade level or in the practice
143 of other academically sound principles to increase the
144 classroom performance of students despite a student's
145 WV-STEP test score at or above the state standard.

**§18-2E-4. Better schools accountability; school, school
district and statewide school report cards.**

1 (a) For the purpose of providing information to the

2 parents of public school children and the general public
3 on the quality of education in the public schools which
4 is uniform and comparable between schools within and
5 among the various school districts, the state board shall
6 prepare forms for school, school district and statewide
7 school report cards and shall promulgate rules concern-
8 ing the collection and reporting of data and the
9 preparation, printing and distribution of report cards
10 under this section. Such forms shall provide for brief,
11 concise reporting in nontechnical language of required
12 information. Any technical or explanatory material a
13 county board wishes to include shall be contained in a
14 separate appendix available to the general public upon
15 request.

16 (b) The school report cards shall include:

17 (1) The following indicators of student performance at
18 the school in comparison with the county, state, regional,
19 and national student performance, as applicable:
20 Student performance by grade level in the various
21 subjects tested under the Statewide Testing of Educa-
22 tional Progress program; school attendance rates; the
23 percent of students not promoted to next grade; the
24 graduation rate; and student mobility (turnover shown
25 as a percent of transfers out and a percent of transfers
26 in); and

27 (2) The following indicators of school performance in
28 comparison with the aggregate of all other schools in the
29 county and the state, as applicable: Average class size;
30 percent of enrollments in courses in high school
31 mathematics, science, English and social science;
32 amount of time per day devoted to mathematics, science,
33 English and social science at middle, junior high and
34 high school grade levels; percent of enrollments in
35 college preparatory, general education and vocational
36 education programs; pupil-teacher ratio; number of
37 exceptions to pupil-teacher ratio requested by the county
38 board and the number of exceptions granted; the
39 number of split-grade classrooms; pupil-administrator
40 ratio; operating expenditure per pupil; county expendi-
41 ture by fund in graphic display; and the average degree
42 classification and years of experience of the administra-
43 tors and teachers at the school.

44 (c) The school district report card shall include the
45 data for each school for each separately listed applicable
46 indicator and the aggregate of the data for all schools,
47 as applicable, in the county for each indicator. The
48 statewide school report card shall include the data for
49 each county for each separately listed indicator and the
50 aggregate for all counties for each indicator.

51 (d) The report cards shall be prepared using actual
52 local school, county, state, regional and national data
53 indicating the present performance of the school and
54 shall also include the state norms and the upcoming
55 year's targets for the school and the county board.

56 The state board shall provide technical assistance to
57 each county board in preparing the school and school
58 district report cards.

59 Each school district board shall prepare report cards
60 in accordance with the guidelines set forth in this
61 section. The school district report cards shall be
62 presented at a regular school board meeting subject to
63 applicable notice requirements and shall be made
64 available to a newspaper of general circulation serving
65 the district. The school report cards shall be mailed
66 directly to the parent or parents of any child enrolled
67 in that school. In addition, each county board shall
68 submit the completed report cards to the state board
69 which shall make copies available to any individual
70 requesting them.

71 The report cards shall be completed and disseminated
72 prior to the first day of January, one thousand nine
73 hundred eighty-nine, and in each year thereafter, and
74 shall be based upon information for the current school
75 year, or for the most recent school year for which such
76 information is available, in which case such year shall
77 be clearly footnoted.

78 (e) In addition to the requirements of subsection (c) of
79 this section, the school district report card shall list (1)
80 the names of the members of the district school board,
81 the dates upon which their terms expire and whether
82 they have attended an orientation program for new

83 members approved by the state board and conducted by
84 the West Virginia school board association or other
85 approved organizations, and other school board member
86 training programs, and (2) the names of the district
87 school superintendent and every assistant and associate
88 superintendent and any training programs related to
89 their area of school administration which they have
90 attended. Such information shall also be reported by
91 district in the statewide school report card.

92 (f) The state board shall develop and implement a
93 separate report card for nontraditional public schools
94 pursuant to the appropriate provisions of this section to
95 the extent practicable.

**§18-2E-5. School accreditation; standards compliance
board; approval status; intervention to cor-
rect impairments.**

1 (a) The purpose of this section is to provide assurances
2 that a thorough and efficient system of education is
3 being provided for all West Virginia public school
4 students on an equal educational opportunity basis and
5 that the high quality standards are being met. A system
6 for the review of school district educational plans,
7 performance-based accreditation and periodic, random,
8 unannounced on-site effectiveness reviews of district
9 educational systems, including individual schools within
10 the districts, shall provide assurances that the high
11 quality standards, established pursuant to subsection (b)
12 of this section, are being met. A performance-based
13 accreditation system shall provide assurances that the
14 high quality standards, established pursuant to subsec-
15 tion (c) of this section, are being met.

16 (b) On or before the first day of January, one thousand
17 nine hundred eighty-nine, the state board of education
18 shall establish and adopt high quality educational
19 standards in the areas of curriculum, finance, transpor-
20 tation, special education, facilities, administrative
21 practices, training of school district board members and
22 administrators, personnel qualifications, professional
23 development and evaluation, student and school perfor-
24 mance and other such areas as determined by the state

25 board of education. Each school district shall submit an
26 annual improvement plan designed around locally
27 identified needs showing how the educational program
28 of each school in the district will meet or exceed the high
29 quality standards.

30 A performance-based accreditation system shall be
31 the only statewide system used for accrediting or
32 classifying the public schools in West Virginia. The state
33 board shall establish a schedule and shall review each
34 school within a district and each school district board
35 of education for accreditation.

36 (c) On or before the first day of July, one thousand
37 nine hundred eighty-nine, the state board of education
38 shall establish and adopt a system which measures the
39 performance of each school on the following measures
40 of student and school performance: Student perfor-
41 mance by grade level in the various subjects tested
42 under the Statewide Testing of Educational Progress
43 program; school attendance rates; student dropout rate;
44 the percent of students promoted to next grade and the
45 number of waivers of the promotion standard granted;
46 the graduation rate; average class size; pupil-teacher
47 ratio; number of exceptions to pupil-teacher ratio
48 requested by the county board and the number of
49 exceptions granted; the number of split-grade class-
50 rooms; pupil-administrator ratio; and the operating
51 expenditure per pupil.

52 The state board annually shall review the information
53 submitted for each school and shall issue to every school:
54 (1) Full accreditation status; or (2) probationary
55 accreditation status.

56 Full accreditation status shall be given to a school
57 when the measure of the school's performance on the
58 above indicators is at a level which would be expected
59 when all of the high quality educational standards are
60 being met. Probationary accreditation status shall be
61 given to a school when the measure of the school's
62 performance is below such level.

63 Whenever a school is given probationary accreditation
64 status, the district board shall implement an improve-

65 ment plan which is designed to increase the perfor-
66 mance of the school to a full accreditation status level
67 within one year.

68 (d) Whenever the state board of education determines
69 that the quality of education in a school is seriously
70 impaired, the state superintendent, with approval of the
71 state board, shall appoint a team of three improvement
72 consultants to make recommendations within sixty days
73 of appointment for correction of the impairment. Upon
74 approval of the recommendations by the state board, the
75 recommendations shall be made to the district board of
76 education. If progress in correcting the impairment is
77 not made within six months of receipt of the recommen-
78 dations, the state superintendent shall provide consulta-
79 tion and assistance to the district board to (1) improve
80 personnel management, (2) establish more efficient
81 financial management practices, (3) improve instruc-
82 tional programs and policies or (4) make such other
83 improvements as may be necessary to correct the
84 impairment. If the impairment is not corrected within
85 one year of receipt of the recommendations, the district
86 shall be given probationary approval status or nonap-
87 proval status.

88 (e) Whenever a school is given probationary status or
89 is determined to be seriously impaired and fails to
90 improve its status within one year, any student attend-
91 ing such school may transfer once to the nearest fully
92 accredited school, subject to approval of the fully
93 accredited school and at the expense of the school from
94 which the student transferred.

95 (f) The state board of education shall issue one of the
96 following accreditation levels to each school district
97 board of education: (1) Full approval, (2) probationary
98 approval or (3) nonapproval.

99 Full approval shall be given to a district board whose
100 educational system meets or exceeds all of the high
101 quality standards adopted by the state board and whose
102 schools have all been given full accreditation status. Full
103 approval shall be for a period not to exceed four years.

104 Probationary approval shall be given to a district

105 board of education whose educational program has not
106 met the high quality standards, or which has one or
107 more schools in the district given probationary status.
108 Probationary approval is a warning that the district
109 board must make specified improvements. If the high
110 quality standards are not met during the succeeding
111 year, or the number of schools in the district given
112 probationary status is not reduced to a number that
113 would allow full accreditation to be granted in the
114 following year, the district board shall be automatically
115 given nonapproval. In addition, nonapproval shall be
116 given to a district board of education which fails to
117 submit an annual program plan or fails to demonstrate
118 a reasonable effort to meet the high quality standards.

119 (g) Whenever nonapproval status is given to a district,
120 the state board of education shall declare a state of
121 emergency in the district and may intervene in the
122 operation of the district to (1) limit the authority of the
123 district superintendent and district board of education
124 as to the expenditure of funds, the employment and
125 dismissal of personnel, the establishment and operation
126 of the school calendar, the establishment of instructional
127 programs and policies, and such other areas as may be
128 designated by the state board by rule, (2) take such
129 direct action as may be necessary to correct the
130 impairment and (3) declare that the office of the district
131 superintendent is vacant.

132 (h) To assist the state board in determinations of the
133 accreditation status of schools and the approval status
134 of school districts under this section, the state board
135 shall from time to time appoint an educational stand-
136 ards compliance review team to make unannounced on-
137 site reviews of the educational programs in any school
138 or school district in the state to assess compliance of the
139 school or district with the high quality standards
140 adopted by the state board, including, but not limited
141 to, facilities, administrative procedures, transportation,
142 food services and the audit of all matters relating to
143 school finance, budgeting and administration.

144 The teams shall be composed of not more than ten
145 persons, not more than half of whom may be members

146 of or currently employed by the state board, who possess
 147 the necessary knowledge, skills and experience to make
 148 an accurate assessment of such educational programs.
 149 The educational standards compliance team shall report
 150 the findings of its on-site reviews to the state board of
 151 education for inclusion in the determination of a school's
 152 or district's accreditation or approval status as applica-
 153 ble. The state board of education shall encourage the
 154 sharing of information to improve school effectiveness
 155 among the districts.

156 The state board shall make accreditation information
 157 available to the Legislature, the governor, the general
 158 public and to any individuals who request such
 159 information.

160 (i) The state board shall fully implement the accred-
 161 itation system established under this article for all
 162 schools on the first day of July, one thousand nine
 163 hundred eighty-nine, and may pilot test the system prior
 164 to that date. The state board shall adopt rules necessary
 165 to implement the provisions of this article.

§18-2E-6. Falsifying reports; penalty.

1 It shall be unlawful for any person knowingly and
 2 intentionally to falsely report any information required
 3 under this article.

4 Any person who violates the provisions of this section
 5 is guilty of a misdemeanor, and, upon conviction thereof,
 6 shall be imprisoned in the county jail for not more than
 7 one year, or fined not more than one thousand dollars,
 8 or both.

ARTICLE 2F. SCHOOLS OF EXCELLENCE.

§18-2F-1. State board to establish criteria for selecting schools of excellence;
 annual school of excellence awards.

§18-2F-2. Teachers, students to be honored; parents and community honored.

**§18-2F-1. State board to establish criteria for selecting
 schools of excellence; annual school of excel-
 lence awards.**

1 The state board of education shall promulgate rules
 2 outlining criteria for the identification of schools of

3 excellence. Such criteria shall include, but not be
4 limited to, improvement in student achievement in
5 comparison to state and national norms, improvement in
6 reducing drop-out rates, improvement in standardized
7 test scores, implementation of advanced or innovative
8 programs, parent and community involvement, student
9 attendance and other factors which promote excellence
10 in education. Such rules shall be promulgated by the
11 first day of July, one thousand nine hundred eighty-nine.
12 No school shall be prohibited by such rules from
13 applying for consideration as a school of excellence.

14 Each year, the state board shall select one high school,
15 one middle or junior high school, and one elementary
16 school within each regional educational service agency
17 district, and one vocational school selected on a state-
18 wide basis to be awarded school of excellence status.

**§18-2F-2. Teachers, students to be honored; parents and
community honored.**

1 The state board shall promulgate rules outlining
2 appropriate methods of recognizing and honoring
3 teachers, students attending schools of excellence, and
4 parents or members of the school community who have
5 contributed to excellence in education at the school.

ARTICLE 4. COUNTY SUPERINTENDENT OF SCHOOLS.

**§18-4-4. Compensation generally; master's degree or
equivalent required for new appointee.**

1 On or before the first day of May of the year in which
2 the superintendent is appointed, the board shall fix the
3 annual salary of the superintendent for the period of
4 appointment for the term beginning on the first day of
5 July following. The board shall pay the salary from the
6 general current expense fund of the district: *Provided,*
7 That any newly appointed superintendent not employed
8 as a superintendent on the effective date of this section
9 shall meet the requirements set forth in section two of
10 this article and shall hold a superintendent's certificate
11 and at least a master's degree or its equivalent related
12 to public school education plus twenty-four semester
13 hours related to public school education earned at an

14 institution of higher education approved to offer
 15 graduate work: *Provided, however,* That any assistant
 16 superintendent employed in this state on the effective
 17 date of this section who was employed as a county
 18 superintendent in this state shall not be required to meet
 19 the requirements of this section.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-13. Authority of boards generally.

§18-5-15. School term; exception; levies; ages of persons to whom schools are open.

§18-5-15d. In-service training programs in the prevention, transmission, spread and treatment of acquired immune deficiency syndrome; parent attendance.

§18-5-17. Compulsory preenrollment hearing, vision and speech and language testing; developmental screening for children under compulsory school age.

§18-5-18a. Maximum teacher-pupil ratio.

§18-5-18c. Transitional or developmental kindergartens.—Program created; eligibility and standards for placement; qualifications of teachers; funding.

§18-5-26. School buildings as child care facilities.

§18-5-39. Establishment of summer school programs; tuition.

§18-5-40. School entry age; operation of schools on semester basis.

§18-5-13. Authority of boards generally.

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

4 (1) To control and manage all of the schools and school
 5 interests for all school activities and upon all school
 6 property, whether owned or leased by the county,
 7 including the authority to require that records be kept
 8 of all receipts and disbursements of all funds collected
 9 or received by any principal, teacher, student or other
 10 person in connection therewith, any programs, activities
 11 or other endeavors of any nature operated or carried on
 12 by or in the name of the school, or any organization or
 13 body directly connected with the school, to audit such
 14 records and to conserve such funds, which shall be
 15 deemed quasi-public moneys, including securing surety
 16 bonds by expenditure of board moneys;

17 (2) To establish schools, from preschool through high
 18 school, inclusive of vocational schools; and to establish

19 schools and programs, or both, for post high school
20 instruction, subject to approval of the state board of
21 education;

22 (3) To close any school which is unnecessary and to
23 assign the pupils thereof to other schools: *Provided*, That
24 such closing shall be officially acted upon and teachers
25 and service personnel involved notified on or before the
26 first Monday in April, in the same manner as provided
27 in section four of this article, except in an emergency,
28 subject to the approval of the state superintendent, or
29 under subdivision (5) of this section;

30 (4) To consolidate schools;

31 (5) To close any elementary school whose average
32 daily attendance falls below twenty pupils for two
33 months in succession and send the pupils to other schools
34 in the district or to schools in adjoining districts. If the
35 teachers in the school so closed are not transferred or
36 reassigned to other schools, they receive one month's
37 salary;

38 (6) (a) To provide at public expense adequate means
39 of transportation, including transportation across county
40 lines, for all children of school age who live more than
41 two miles distance from school by the nearest available
42 road; to provide at public expense and according to such
43 regulations as the board may establish, adequate means
44 of transportation for school children participating in
45 board-approved curricular and extracurricular activi-
46 ties; and to provide in addition thereto at public expense,
47 by rules and regulations and within the available
48 revenues, transportation for those within two miles
49 distance; to provide in addition thereto, at no cost to the
50 board and according to rules and regulations established
51 by the board, transportation for participants in projects
52 operated, financed, sponsored or approved by the
53 commission on aging: *Provided*, That all costs and
54 expenses incident in any way to transportation for
55 projects connected with the commission on aging shall
56 be borne by such commission, or the local or county
57 chapter thereof: *Provided, however*, That in all cases the
58 school buses owned by the board of education shall be

59 driven or operated only by drivers regularly employed
60 by the board of education: *Provided further*, That the
61 county board may provide, under rules established by
62 the state board, for the certification of professional
63 employees as drivers of board-owned vehicles with a
64 seating capacity of less than ten passengers used for the
65 transportation of pupils for school-sponsored activities
66 other than transporting students between school and
67 home: *And provided further*, That the use of such
68 vehicles shall be limited to one for each school-sponsored
69 activity: *And provided further*, That buses shall be used
70 for extracurricular activities as herein provided only
71 when the insurance provided for by this section shall
72 have been effected;

73 (b) To enter into agreements with one another to
74 provide, on a cooperative basis, adequate means of
75 transportation across county lines for children of school
76 age subject to the conditions and restrictions of subdi-
77 visions (6) and (8) of this section;

78 (7) To lease school buses operated only by drivers
79 regularly employed by the board to public and private
80 nonprofit organizations or private corporations to
81 transport school-age children to and from camps or
82 educational activities in accordance with rules and
83 regulations established by the board. All costs and
84 expenses incurred by or incidental to the transportation
85 of such children shall be borne by the lessee;

86 (8) To provide at public expense for insurance against
87 the negligence of the drivers of school buses, trucks or
88 other vehicles operated by the board; and if the
89 transportation of pupils be contracted, then the contract
90 therefor shall provide that the contractor shall carry
91 insurance against negligence in such an amount as the
92 board shall specify;

93 (9) To provide solely from county funds for all regular
94 full-time employees of the board all or any part of the
95 cost of a group plan or plans of insurance coverage not
96 provided or available under the West Virginia public
97 employees insurance act;

98 (10) To employ teacher aides, to provide in-service

99 training for teacher aides, the training to be in
100 accordance with rules and regulations of the state board
101 and, in the case of service personnel assuming duties as
102 teacher aides in exceptional children programs, to
103 provide a four-clock-hour program of training prior to
104 such assignment which shall, in accordance with rules
105 and regulations of the state board, consist of training in
106 areas specifically related to the education of exceptional
107 children;

108 (11) To establish and conduct a self-supporting
109 dormitory for the accommodation of the pupils attend-
110 ing a high school or participating in a post high school
111 program and of persons employed to teach therein;

112 (12) To employ legal counsel;

113 (13) To provide appropriate uniforms for school
114 service personnel;

115 (14) To provide at public expense and under regula-
116 tions as established by any county board of education for
117 the payment of traveling expenses incurred by any
118 person invited to appear to be interviewed concerning
119 possible employment by such county board of education;

120 (15) To allow or disallow their designated employees
121 to use publicly provided carriage to travel from their
122 residences to their workplace and return: *Provided,*
123 That such usage is subject to the supervision of such
124 board and is directly connected with and required by
125 the nature and in the performance of such employee's
126 duties and responsibilities;

127 (16) To provide, at public expense, adequate public
128 liability insurance, including professional liability
129 insurance for board employees; and

130 (17) To enter into agreements with one another to
131 provide, on a cooperative basis, improvements to the
132 instructional needs of each county. Said cooperative
133 agreements may be used to employ specialists in a field
134 of academic study or support functions or services
135 therefor. Such agreements shall be subject to approval
136 by the state board of education.

137 The county superintendent of schools and the county
138 boards of two or more adjoining counties shall commun-
139 icate with one another for the purpose of scheduling one
140 or more joint meetings to discuss the potential advan-
141 tages of consolidation of their county school systems. As
142 soon as the joint meeting is set, each county board or
143 county superintendent shall notify the state superintend-
144 ent of schools in writing of the time, place and date of
145 the meeting.

146 The county superintendents shall submit written
147 reports of the joint meetings to the state superintendent.
148 These reports shall be submitted on or before the
149 fifteenth day of December, one thousand nine hundred
150 eighty-eight, and contain a discussion of the advantages
151 and disadvantages of the joint establishment of county
152 systems, together with recommendations for the imple-
153 mentation for joint establishment of county school
154 systems.

155 The state superintendent of schools shall submit a
156 written report to the state board of education, which
157 shall consider all reports and recommendations and then
158 report its recommendations on the joint establishment
159 of county school systems to the Legislature on or before
160 the first day of February, one thousand nine hundred
161 eighty-nine.

162 "Quasi-public funds" as used herein means any money
163 received by any principal, teacher, student or other
164 person for the benefit of the school system as a result
165 of curricular or noncurricular activities.

166 The board of each county shall expend under such
167 regulations as it establishes for each child an amount not
168 to exceed the proportion of all school funds of the district
169 that each child would be entitled to receive if all the
170 funds were distributed equally among all the children
171 of school age in the district upon a per capita basis.

**§18-5-15. School term; exception; levies; ages of persons
to whom schools are open.**

- 1 (a) The board shall provide a school term for its
- 2 schools which shall be comprised of (a) an employment

3 term for teachers, and (b) an instructional term for
4 pupils. Nothing in this section shall prohibit the
5 establishment of year-round schools in accordance with
6 rules to be established by the state board.

7 The employment term for teachers shall be no less
8 than ten months, a month to be defined as twenty
9 employment days exclusive of Saturdays and Sundays:
10 *Provided*, That the board may contract with all or part
11 of the personnel for a longer term. The employment
12 term shall be fixed within such beginning and closing
13 dates as established by the state board: *Provided*,
14 *however*, That the time between the beginning and
15 closing dates does not exceed forty-three weeks.

16 Within the employment term there shall be an
17 instructional term for pupils of not less than one
18 hundred eighty nor more than one hundred eighty-five
19 instructional days: *Provided*, That the minimum instruc-
20 tional term may be decreased, by order of the state
21 superintendent of schools, in any West Virginia county
22 declared to be a federal disaster area by the Federal
23 Emergency Management Agency. Instructional and
24 noninstructional activities may be scheduled during the
25 same employment day. Noninstructional interruptions
26 to the instructional day shall be minimized to allow the
27 classroom teacher to teach. The instructional term shall
28 commence no earlier than the first day of September
29 and shall terminate no later than the eighth day of June.

30 Noninstructional days in the employment term may
31 be used for making up canceled instructional days,
32 curriculum development, preparation for opening and
33 closing of the instructional term, in-service and profes-
34 sional training of teachers, teacher-pupil-parent confer-
35 ences, professional meetings and other related activities.
36 In addition, each board shall designate and schedule for
37 teachers and service personnel seven days to be used by
38 the employee outside the school environment. However,
39 no more than seven noninstructional days, except
40 holidays, may be scheduled prior to the first day of
41 January in a school term.

42 Notwithstanding any other provisions of the law to the

43 contrary, if the board has canceled instructional days
44 equal to the difference between the total instructional
45 days scheduled and one hundred seventy-eight, each
46 succeeding instructional day canceled shall be resched-
47 uled, utilizing only the remaining noninstructional
48 days, except holidays, following such cancellation, which
49 are available prior to the second day before the end of
50 the employment term established by such county board.

51 Where the employment term overlaps a teacher's or
52 service personnel's participation in a summer institute
53 or institution of higher education for the purpose of
54 advancement or professional growth, the teacher or
55 service personnel may substitute, with the approval of
56 the county superintendent, such participation for not
57 more than five of the noninstructional days of the
58 employment term.

59 The board may extend the instructional term beyond
60 one hundred eighty-five instructional days provided the
61 employment term is extended an equal number of days.
62 If the state revenues and regular levies, as provided by
63 law, are insufficient to enable the board of education to
64 provide for the school term, the board may at any
65 general or special election, if petitioned by at least five
66 percent of the qualified voters in the district, submit the
67 question of additional levies to the voters. If at the
68 election a majority of the qualified voters cast their
69 ballots in favor of the additional levy, the board shall
70 fix the term and lay a levy necessary to pay the cost of
71 the additional term. The additional levy fixed by the
72 election shall not continue longer than five years without
73 submission to the voters. The additional rate shall not
74 exceed by more than one hundred percent the maximum
75 school rate prescribed by article eight, chapter eleven
76 of the code, as amended.

77 (b) The Legislature finds and declares that excess
78 levies as they currently exist create unequal educational
79 opportunities from county to county based on the
80 difference in the will of the voters and also based on the
81 differences in property wealth among the counties; that
82 prior to the first day of July, one thousand nine hundred
83 ninety-four, the Legislature shall proceed to equalize

84 educational opportunities over and above the opportun-
85 ities afforded by each county's property values by
86 considering the existence or nonexistence of excess
87 levies as a factor in the distribution of equity moneys;
88 and that on and after the first day of July, one thousand
89 nine hundred ninety-four, the Legislature shall imple-
90 ment a plan for the equitable distribution of funds so
91 as to eliminate the inequities resulting from county
92 excess levies.

93 (c) The public schools shall be open for the full
94 instructional term to all persons who have attained the
95 entrance age as stated in section five, article two and
96 section eighteen, article five, chapter eighteen of this
97 code: *Provided*, That persons over the age of twenty-one
98 may enter only those programs or classes authorized by
99 the state board of education and deemed appropriate by
100 the county board of education conducting any such
101 program or class: *Provided, however*, That authorization
102 for such programs or classes shall in no way serve to
103 affect or eliminate programs or classes offered by
104 county boards of education at the adult level for which
105 fees are charged to support such programs or classes.

**§18-5-15d. In-service training programs in the preven-
tion, transmission, spread and treatment of
acquired immune deficiency syndrome;
parent attendance.**

1 Under guidelines established by the department of
2 education in consultation with the department of health,
3 training programs on the prevention, transmission,
4 spread and treatment of acquired immune deficiency
5 syndrome shall be provided by the county boards as in-
6 service training for all school personnel. The county
7 boards shall encourage the attendance of parents at
8 these programs and notify such parents to the fullest
9 extent practicable, including notification in written
10 form and by publication.

**§18-5-17. Compulsory preenrollment hearing, vision and
speech and language testing; developmental
screening for children under compulsory
school age.**

1 (a) All children entering public school for the first
2 time in this state shall be given prior to their enrol-
3 lments screening tests to determine if they might have
4 vision or hearing impairments or speech and language
5 disabilities. County boards of education may provide,
6 upon request, such screening tests to all children
7 entering nonpublic school. County boards of education
8 shall conduct these screening tests for all children
9 through the use of trained personnel. Parents or
10 guardians of children who are found to have vision or
11 hearing impairments or speech and language disabili-
12 ties shall be notified of the results of these tests and
13 advised that further diagnosis and treatment of the
14 impairments or disabilities by qualified professional
15 personnel is recommended.

16 (b) County boards of education shall provide or
17 contract with appropriate health agencies to provide,
18 upon the request of a parent or guardian residing within
19 the district, developmental screening for their child or
20 children under compulsory school attendance age:
21 *Provided*, That a county board is not required to provide
22 such screening to the same child more than once in any
23 one school year. Developmental screening is the process
24 of measuring the progress of children to determine if
25 there are problems or potential problems or advanced
26 abilities in the areas of understanding language,
27 perception through sight, perception through hearing,
28 motor development and hand-eye coordination, health,
29 and psycho-social or physical development. The boards
30 shall coordinate the provision of developmental screen-
31 ing with other public agencies and the interagency plan
32 for exceptional children under section eight, article
33 twenty of this chapter to avoid the duplication of
34 services and to facilitate the referral of children and
35 their parents or guardians who need other services. The
36 county boards shall provide notice to the public of the
37 availability of these services.

38 (c) The state board of education is hereby authorized
39 to promulgate rules consistent with this section. The
40 state superintendent is directed to apply for federal
41 funds, if available, for the implementation of the

42 requirements of this section.

§18-5-18a. **Maximum teacher-pupil ratio.**

1 County boards of education shall provide, by the
2 school year one thousand nine hundred eighty-three—
3 eighty-four, and 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
7 grades, shall not have more than twenty-five pupils for
8 each teacher of the grade or grades and shall not have
9 more than twenty pupils for each kindergarten teacher
10 per session, unless the state superintendent has excepted
11 a specific classroom upon application therefor by a
12 county board.

13 County boards shall provide by the school year one
14 thousand nine hundred eighty-four—eighty-five, and
15 continue thereafter, sufficient personnel, equipment and
16 facilities as will ensure that each third, fourth, fifth and
17 sixth grade classroom, or classrooms having two or more
18 grades that include one or more of the third, fourth, fifth
19 and sixth grades, shall not have more than twenty-five
20 pupils for each teacher of the grade or grades.

21 Beginning with the school year one thousand nine
22 hundred eighty-six—eighty-seven, and thereafter, no
23 county shall maintain a greater number of classrooms
24 having two or more grades that include one or more of
25 the grade levels referred to in this section than were in
26 existence in said county as of the first day of January,
27 one thousand nine hundred eighty-three: *Provided*, That
28 for the prior school years, and only if there is insuffi-
29 cient classroom space available in the school or county,
30 a county may maintain one hundred ten percent of such
31 number of classrooms.

32 During the school year one thousand nine hundred
33 eighty-four—eighty-five, and thereafter, the state
34 superintendent is authorized, consistent with sound
35 educational policy, (a) to permit on a statewide basis, in
36 grades four through six, more than twenty-five pupils
37 per teacher in a classroom for the purposes of instruc-
38 tion in physical education, and (b) to permit more than

39 twenty pupils per teacher in a specific kindergarten
40 classroom and twenty-five pupils per teacher in a
41 specific classroom in grades one through six during a
42 school year in the event of extraordinary circumstances
43 as determined by the state superintendent after appli-
44 cation by a county board of education.

45 The state board of education shall establish guidelines
46 for the exceptions authorized in this section, but in no
47 event shall the superintendent except classrooms having
48 more than three pupils above the pupil-teacher ratio as
49 set forth in this section.

50 The requirement for approval of an exception to
51 exceed the twenty pupils per kindergarten teacher per
52 session limit or the twenty-five pupils per teacher limit
53 in grades one through six is waived in schools where the
54 schoolwide pupil-teacher ratio is twenty-five or less in
55 grades one through six: *Provided*, That a teacher shall
56 not have more than three pupils above the teacher-pupil
57 ratio as set forth in this section. Any kindergarten
58 teacher who has more than twenty pupils per session
59 and any classroom teacher of grades one through six
60 who has more than twenty-five pupils shall be paid
61 additional compensation based on the affected classroom
62 teacher's average daily salary divided by twenty for
63 kindergarten teachers or twenty-five for teachers of
64 grades one through six for every day the additional
65 pupils are enrolled in the teacher's classroom. All such
66 additional compensation shall be paid from county funds
67 exclusively.

68 No provision of this section is intended to limit the
69 number of pupils per teacher in a classroom for the
70 purpose of instruction in choral, band or orchestra
71 music.

72 Each school principal shall assign students equitably
73 among the classroom teachers, taking into consideration
74 reasonable differences due to subject areas and/or grade
75 levels.

76 The state board of education shall collect from each
77 county board of education information on class size and
78 the number of pupils per teacher for all classes in

79 grades seven through twelve. The state board shall
80 report such information to the legislative oversight
81 commission on education accountability before the first
82 day of January of each year.

§18-5-18c. Transitional or developmental kindergartens.—Program created; eligibility and standards for placement; qualifications of teachers; funding.

1 County boards shall provide by the school year one
2 thousand nine hundred eighty-nine—ninety, and contin-
3 uing thereafter, transitional or developmental kinderg-
4 arten programs for children identified as needing
5 additional physical, social, emotional, perceptual or
6 intellectual experiences. Students who have completed
7 a state-certified kindergarten program and have not
8 demonstrated readiness for first grade work as indi-
9 cated by tests and other standards are eligible for the
10 transitional or developmental kindergarten program.

11 Placement of these children shall be based on a
12 comprehensive standardized readiness assessment and
13 the judgment of the teacher and other professional
14 personnel after consultation with the parent or
15 guardian. Counties may designate one or more schools
16 for a transitional or developmental kindergarten
17 program and transport children to these schools.

18 Provisions shall be made for transitional or develop-
19 mental kindergarten teachers to communicate on a
20 regular basis with other teachers, professional personnel
21 and representatives of other appropriate agencies.

22 The state board, with the advice of the state super-
23 intendent, shall establish and prescribe guidelines and
24 criteria relating to the establishment, operation and
25 successful completion of transitional or developmental
26 kindergarten programs in accordance with the other
27 provisions of this section and high quality educational
28 programs.

29 Funding to implement the transitional or developmen-
30 tal kindergarten program during the fiscal year one
31 thousand nine hundred eighty-nine and thereafter shall

32 be appropriated from the general revenues of the state
33 to the state board for distribution to the counties.

34 Any additional costs incurred by the county boards of
35 education by reason of this section shall be fully
36 reimbursed by the state board of education to the extent
37 such funding is not provided pursuant to article nine-
38 a of this chapter.

§18-5-26. School buildings as child care facilities.

1 The Legislature finds that school facilities are suitable
2 for the provision of child day care and that such day
3 care centers are needed by school personnel and other
4 parents in the school and the community. Therefore, on
5 or before the first day of April of each year, each county
6 board of education shall compile a list of facilities under
7 the jurisdiction of the county board of education which
8 would have space available for child day care for the
9 benefit of school employees and others during the next
10 ensuing school year. Such space shall be made available
11 thereafter for use as a child day care facility upon the
12 decision of the county board or upon written request
13 therefor by a duly authorized representative of the local
14 membership of a statewide association of school person-
15 nel, a parent-teacher association or any other entity
16 recognized by the county board as suitably responsible
17 for the implementation of such program in the county
18 until such time as the space is deleted from the list for
19 good cause shown.

20 The child care facility shall be operated in accordance
21 with guidelines to be adopted by a committee appointed
22 by the state superintendent which shall include repre-
23 sentatives of the Legislature, the department of human
24 services, at least two individuals active in statewide
25 associations of school personnel, at least two individuals
26 active in parent-teacher associations, and at least two
27 county school administrators. Such guidelines may
28 provide that the child day care facility be funded by the
29 parents, the school personnel or parent-teacher associ-
30 ations, the county board of education or any combination
31 of funding, including independent or federal funding
32 sources. Within such guidelines and dependent upon

33 adequate facilities and personnel, any county board of
34 education may extend use of the child day care facility
35 to other than school personnel.

36 Upon decision by the county board and in accordance
37 with state law, any child care facility operated pursuant
38 to the provisions of this section may be deemed operated
39 by the county for purposes of liability and insurance.
40 Personnel hired therefor may be deemed county school
41 personnel or may be independent contractors pursuant
42 to a management contract entered into between the
43 county board and the child care providers. Any parent-
44 teacher association, school personnel association or other
45 entity involved in implementation of the program may
46 also be party to such contract.

47 Schools need not be open for any other purpose for
48 such day care centers to operate.

**§18-5-39. Establishment of summer school programs;
tuition.**

1 Inasmuch as the present county school facilities for
2 the most part lie dormant and unused during the
3 summer months, and inasmuch as there are many
4 students who are in need of remedial instruction and
5 others who desire accelerated instruction, it is the
6 purpose of this section to provide for the establishment
7 of a summer school program, which program is to be
8 separate and apart from the full school term as
9 established by each county.

10 The board of education of any county shall have
11 authority to establish a summer school program utiliz-
12 ing the public school facilities and to charge tuition for
13 students who attend such summer school, such tuition
14 not to exceed in any case the actual cost of operation of
15 such summer school program: *Provided*, That any
16 deserving pupil whose parents, in the judgment of the
17 board, are unable to pay such tuition, may attend at a
18 reduced charge or without charge. The county board of
19 education shall have the authority to determine the term
20 and curriculum of such summer schools based upon the
21 particular needs of the individual county. The curricu-
22 lum may include, but is not limited to, remedial

23 instruction, accelerated instruction, and the teaching of
24 manual arts. The term of such summer school program
25 may not be established in such a manner as to interfere
26 with the regular school term.

27 The county boards may employ as teachers for this
28 summer school program any certified teacher. Certified
29 teachers employed by the county board to teach in the
30 summer school program shall be paid an amount to be
31 determined by the county board and shall enter into a
32 contract of employment in such form as is prescribed
33 by the county board: *Provided*, That teachers who teach
34 summer courses of instruction which are offered for
35 credit and which are taught during the regular school
36 year shall be paid at the same daily rate such teacher
37 would receive if paid in accordance with the then
38 current minimum monthly salary in effect for teachers
39 in that county.

40 Any funds accruing from such tuitions shall be
41 credited to and expended within the existing framework
42 of the general current expense fund of the county board.

43 Notwithstanding any other provision of this code to
44 the contrary, the board shall fill professional positions
45 established pursuant to the provisions of this section on
46 the basis of certification and length of time the
47 professional has been employed in the county's summer
48 school program. In the event that no employee who has
49 been previously employed in the summer school pro-
50 gram holds a valid certification or licensure, a board
51 shall fill the position as a classroom teaching position in
52 accordance with section eight-b, article four, chapter
53 eighteen-a of this code.

§18-5-40. School entry age; operation of schools on semester basis.

1 (a) The state board shall establish guidelines prior to
2 the first day of January, one thousand nine hundred
3 eighty-nine, for the operation of public kindergarten and
4 elementary schools on a semester basis within the
5 applicable provisions of this article and chapter relating
6 to the school term. Notwithstanding any other provision
7 of this code to the contrary relating to compulsory school

8 attendance, any child required or allowed by proximity
9 to attend a school operated on a semester basis shall be
10 deemed to have reached compulsory school age and shall
11 enroll as follows: (1) For the fall semester, in such year
12 when the sixth birthday is reached on or between the
13 first day of July and the last day of December, and (2)
14 for the spring semester, when the sixth birthday is
15 reached on or between the first day of January and the
16 last day of June of that year: *Provided*, That the state
17 board shall establish guidelines for enrollment prior to
18 a child's reaching compulsory school age. Student
19 progress within and between the various grade levels
20 shall be determined on a semester by semester basis,
21 and promotion or assignment to the middle or junior
22 high school grade levels is conditioned upon completion
23 of either of the last two semesters offered at the
24 elementary school.

25 (b) By the school year one thousand nine hundred
26 eighty-nine—ninety, the state board shall select at least
27 four elementary schools with kindergarten programs
28 which may be operated on a semester basis upon
29 applications submitted, with preference being given in
30 such selection to schools in different regional education
31 service agency areas to the extent reasonable and
32 practical based on the applications. The operation of
33 these schools on a semester basis shall be phased in by
34 grade level beginning with kindergarten and progress-
35 ing by one additional grade level in each successive
36 school year until all of the grade levels offered at that
37 school are operated on a semester basis.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-18. Funds created; fund transfers.

§18-7A-26h. Supplemental benefits for certain annuitants.

§18-7A-18. Funds created; fund transfers.

1 The funds created are the teachers accumulation fund,
2 the employers accumulation fund, the benefit fund, the
3 reserve fund and the expense fund. Each fund shall
4 constitute a separate trust.

5 (a) The teachers accumulation fund shall be the fund
6 in which the contributions of members shall be accum-

7 ulated. The accumulated contributions of a member
8 returned to him upon his withdrawal, or paid to his
9 estate or designated beneficiary in the event of death,
10 shall be paid from the teachers accumulation fund. Any
11 accumulated contributions forfeited by failure to claim
12 such contributions shall be transferred from the
13 teachers accumulation fund to the reserve fund.

14 (b) Beginning on the first day of July, one thousand
15 nine hundred eighty-four, contributions of employers,
16 equaling annually the members' contributions, shall be
17 deposited in the employers accumulation fund through
18 state appropriations, and such amounts shall be in-
19 cluded in the budget bill submitted annually by the
20 governor.

21 Beginning on the first day of July, one thousand nine
22 hundred eighty-nine, each county shall deposit in the
23 employers accumulation fund an amount equal to one
24 and one-half percent of all salary paid in excess of that
25 authorized for minimum salaries in sections two and
26 eight-a, article four, chapter eighteen-a of this code and
27 any salary equity authorized in section five of said
28 article or any county supplement equal to the amount
29 distributed for salary equity among the counties;
30 beginning on the first day of July, one thousand nine
31 hundred ninety, the rate shall increase to three percent;
32 beginning on the first day of July, one thousand nine
33 hundred ninety-one, the rate shall increase to four and
34 one-half percent; and beginning on the first day of July,
35 one thousand nine hundred ninety-two, and thereafter,
36 the rate shall be six percent.

37 (c) The benefit fund shall be the fund from which
38 annuities shall be paid. Upon the retirement of a
39 member, his accumulated contributions shall be trans-
40 ferred from the teachers accumulation fund to the
41 benefit fund; the accumulated employers' contribution
42 shall be transferred from the employers accumulation
43 fund to the benefit fund; and annually a sum for prior
44 service pension and disability credits, if needed, shall be
45 transferred from the reserve fund to the benefit fund.
46 Any deficit occurring in the benefit fund which is not
47 automatically met by payments to that fund, as provided

48 for by this article, shall be met by additional transfers
49 from the employers accumulation fund and, if necessary,
50 by transfers from the teachers accumulation fund.

51 (d) The retirement board is hereby authorized to
52 accept gifts and bequests. All gifts, bequests and
53 interest earnings from investments received by the
54 board shall be deposited in the reserve fund. Any funds
55 that may come into possession of the retirement system
56 in this manner or which may be transferred from the
57 teachers accumulation fund by reason of the lack of a
58 claimant or because of a surplus in any of the funds, or
59 any other moneys the disposition of which is not
60 otherwise provided for, shall be credited to the reserve
61 fund. The retirement board shall allow interest on the
62 contributions in the teachers accumulation fund. Such
63 interest shall be paid from the reserve fund and credited
64 to the teachers accumulation fund. Any deficit occurring
65 in any fund which would not be automatically covered
66 by the payments to that fund as otherwise provided by
67 this article shall be met by transfers from the reserve
68 fund to such fund. In the reserve fund shall be accum-
69 ulated moneys from retirement board appropriations to
70 pay the accrued liabilities of the system, caused by the
71 granting of prior service, ad hoc increases granted prior
72 to the first day of July, one thousand nine hundred
73 eighty, and disability pensions. Costs associated with
74 board investments, such as premiums, accrued interest
75 and commissions, shall be paid from the reserve fund.

76 (e) The expense fund shall be the fund from which
77 shall be paid the expense incurred in the administration
78 of the retirement system. The retirement board is
79 herewith authorized to pay, from the expense fund,
80 membership fees in such voluntary organizations as the
81 national council on teacher retirement, anything in this
82 code to the contrary notwithstanding. Interest on loans
83 to members shall be deposited in the expense fund.

84 The retirement board is herewith given sole authority
85 to direct and approve the making of any and all fund
86 transfers as provided herein, anything in this code to the
87 contrary notwithstanding.

§18-7A-26h. Supplemental benefits for certain annuitants.

1 Any annuitant who is receiving a retirement annuity
2 of less than seven thousand five hundred dollars
3 annually on the effective date of this section shall receive
4 a supplemental benefit, prospectively, under this
5 section: *Provided*, That the effective date of retirement
6 for such annuitant was prior to the first day of July, one
7 thousand nine hundred seventy-nine, and he had ten
8 years or more of credited service at the time of such
9 retirement. For the purposes of this section, "effective
10 date of retirement" means the last day of actual
11 employment, or the last day carried on the payroll of the
12 employer, whichever is later, together with a meeting
13 fully of all eligibility requirements for retirement prior
14 to the aforesaid effective date. Any annuitant retired
15 pursuant to the disability provisions of this article shall
16 be considered to have had ten years or more credited
17 service at the time of such retirement.

18 Each such annuitant shall receive as his supplemental
19 benefit an increased annual amount which is the
20 product of the sum of eighteen dollars multiplied by his
21 years of credited service: *Provided*, That the total
22 annuity of any annuitant affected by the provisions of
23 this section, together with any of the other provisions of
24 this article, shall not exceed seven thousand five
25 hundred dollars annually.

26 Any annuitant receiving the supplemental benefit
27 provided for herein for the annuity payment period just
28 prior to the first day of July, one thousand nine hundred
29 eighty-five, or any annuitant made newly eligible for
30 receipt of such supplemental benefit on such date, shall
31 receive a nineteen percent increase in the amount of
32 such supplemental benefit prior received or newly
33 calculated, effective on and after the first day of July,
34 one thousand nine hundred eighty-five, and irrespective
35 of the maximum total annuity proviso, and limitation of
36 seven thousand five hundred dollars annually. In any
37 fiscal year in which pay increases are granted by the
38 Legislature to active teachers, there may also be given
39 an increase in retirement benefits for retired teachers,

40 if funding is available for this purpose.

41 For the purpose of calculating the supplemental
42 benefit provided in this section, fractional parts of a
43 service credit year are to be disregarded unless in excess
44 of one half of a credited service year, in which event the
45 same shall constitute a full year of service credit.

46 On or after the first day of July, one thousand nine
47 hundred eighty-two, for the purpose of computation for
48 determination of eligibility and for the amount of any
49 supplemental benefit hereunder, separate computation
50 shall be made of a retirant's own benefit and that which
51 may be receivable as beneficiary of another, under the
52 provisions of this article, with each such benefit being
53 eligible for the supplemental benefit herein provided.

ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

§18-8-1a. Compulsory school attendance; public school entrance requirements; exceptions thereto.

§18-8-2. Offenses; penalties; cost of prosecution.

§18-8-4. Duties of attendance director and assistant directors; complaints, warrants and hearings.

§18-8-5. Duties of principal, administrative head or other chief administrator.

§18-8-5a. Home visitations.

§18-8-11. School attendance as condition of licensing for privilege of operation of motor vehicle.

§18-8-1a. Compulsory school attendance; public school entrance 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 or upon enrolling
5 in a publicly supported kindergarten program and
6 continue to the sixteenth birthday or for as long as the
7 student shall continue to be enrolled in a school system
8 after the sixteenth birthday: *Provided*, That a child may
9 be removed from such kindergarten program when the
10 principal, teacher and parent or guardian concur that
11 the best interest of the child would not be served by
12 requiring further attendance: *Provided, however*, That
13 the principal shall make the final determination with
14 regard to compulsory school attendance in a publicly
15 supported kindergarten program: *Provided further*,

16 That the compulsory school attendance provision of this
17 article shall be enforced against a person eighteen years
18 of age or older for as long as the person continues to be
19 enrolled in a school system, and shall not be enforced
20 against the parent, guardian or custodian of such
21 person.

22 Attendance at a state-approved or Montessori kinder-
23 garten, as provided for in section eighteen, article five
24 of this chapter, shall be deemed school attendance for
25 purposes of this section. Prior to entrance into the first
26 grade in accordance with section five, article two of this
27 chapter, each child must have either (1) successfully
28 completed such publicly or privately supported, state-
29 approved kindergarten program or Montessori kinder-
30 garten program, or (2) successfully completed an
31 entrance test of basic readiness skills approved by the
32 county in which the school is located: *Provided*, That
33 such test be administered in lieu of kindergarten
34 attendance only under extraordinary circumstances to
35 be determined by the board. Notwithstanding the
36 provisions of this section and of section five, article two
37 of this chapter and section eighteen, article five of this
38 chapter, a county board may provide for advanced
39 entrance or placement under policies adopted by said
40 board for any child who has demonstrated sufficient
41 mental and physical competency for such entrance or
42 placement. Nothing herein shall prevent a student from
43 another state from enrolling in a public school in West
44 Virginia in such grade as the student was enrolled at
45 the school from which the student transferred.

§18-8-2. Offenses; penalties; cost of prosecution.

1 Any person who, after receiving due notice as
2 hereinafter provided, shall fail to cause a child or
3 children in that person's legal or actual charge to attend
4 school as hereinbefore provided, shall be guilty of a
5 misdemeanor, and shall, upon conviction thereof, be
6 fined not less than fifty nor more than one hundred
7 dollars together with the costs of prosecution, or
8 confined in jail not less than five nor more than twenty
9 days. The magistrate or judge may require the parent
10 or parents to bring the child to school and remain

11 through the school day until such time as the magistrate
12 or judge may determine as appropriate. Every day a
13 child is out of school contrary to the provisions of this
14 article shall constitute a separate offense. Magistrates
15 shall have concurrent jurisdiction with circuit courts for
16 the trial of offenses arising under this section.

17 Whenever a person accused of violating any of the
18 provisions of this article has been tried and acquitted,
19 the cost of prosecution shall be paid by the county board
20 of 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 the assistants
2 shall diligently promote regular school attendance. They
3 shall ascertain reasons for inexcusable absences from
4 school of pupils of compulsory school age as defined
5 under this article and shall take such steps as are, in
6 their discretion, best calculated to correct attitudes of
7 parents and pupils which results in absences from school
8 even though not clearly in violation of law.

9 In the case of five consecutive or ten total unexcused
10 absences of a child during a single semester, the
11 attendance director or assistant shall serve written
12 notice to the parent, guardian or custodian of such child
13 that the attendance of such child at school is required
14 and that within ten days of receipt of such notice the
15 parent, guardian or custodian, accompanied by the
16 child, if possible, shall report in person to the school the
17 child attends for a conference with the principal or other
18 designated representative of the school in order to
19 discuss and correct the circumstances causing the
20 inexcusable absences of the child; and if the parent,
21 guardian or custodian does not comply with the provi-
22 sions of this article, then the attendance director or
23 assistant shall make complaint against such parent,
24 guardian or custodian before a magistrate of the county.
25 The attendance director or assistant may serve such
26 notice for other absences from school found to be in
27 violation of law. For any similar subsequent offense in

28 any school year no notice shall be required. If it appears
29 from the complaint that there is probable cause to
30 believe that an offense has been committed and that the
31 accused has committed it, a warrant for the arrest of
32 the accused shall issue to any officer authorized by law
33 to arrest persons charged with offenses against the state.
34 More than one warrant may be issued on the same
35 complaint. The warrant shall be executed within ten
36 days of its issuance.

37 The magistrate court clerk, or the clerk of the circuit
38 court performing the duties of the magistrate court as
39 authorized in section eight, article one, chapter fifty of
40 this code, shall assign the case to a magistrate within
41 ten days of execution of the warrant. The hearing shall
42 be held within twenty days of the assignment to the
43 magistrate, subject to lawful continuance. The magis-
44 trate shall provide to the accused at least ten days'
45 advance notice of the date, time and place of the
46 hearing.

47 When any doubt exists as to the age of a child absent
48 from school, the attendance director shall have authority
49 to require a properly attested birth certificate or an
50 affidavit from the parent, guardian or custodian of such
51 child, stating age of such child. The county attendance
52 director or assistant shall, in the performance of his
53 duties, have authority to take without warrant any child
54 absent from school in violation of the provisions of this
55 article and to place such child in the school in which
56 such child is or should be enrolled.

57 The county attendance director shall devote such time
58 as is required by section three of this article to the duties
59 of attendance director in accordance with this section
60 during the instructional term and at such other times
61 as the duties of an attendance director are required. All
62 attendance directors hired for more than two hundred
63 days may be assigned other duties determined by the
64 superintendent during the period in excess of two
65 hundred days. The county attendance director shall be
66 responsible under direction of the county superintendent
67 for the efficient administration of school attendance in
68 the county.

69 In addition to those duties directly relating to the
70 administration of attendance, the county attendance
71 director and assistant directors shall also perform the
72 following duties:

73 (a) Assist in directing the taking of the school census
74 to see that it is taken at the time and in the manner
75 provided by law;

76 (b) Confer with principals and teachers on the
77 comparison of school census and enrollment for the
78 detection of possible nonenrollees;

79 (c) Cooperate with existing state and federal agencies
80 charged with enforcement of child labor laws;

81 (d) Prepare a report for submission by the county
82 superintendent to the state superintendent of schools on
83 school attendance, at such times and in such detail as
84 may be required; also, file with the county superintend-
85 ent and county board of education at the close of each
86 month a report showing activities of the school attend-
87 ance office and the status of attendance in the county
88 at the time;

89 (e) Promote attendance in the county by the compila-
90 tion of data for schools and by furnishing suggestions
91 and recommendations for publication through school
92 bulletins and the press, or in such manner as the county
93 superintendent may direct;

94 (f) Participate in school teachers' conferences with
95 parents and students;

96 (g) Assist in such other ways as the county superin-
97 tendent may direct for improving school attendance.

**§18-8-5. Duties of principal, administrative head or other
chief administrator.**

1 It shall be the duty of the principal, administrative
2 head or other chief administrator of each school,
3 whether public or private, to make prompt reports to
4 the county attendance director, or proper assistant, of
5 all cases of unexcused absences arising within the school
6 which require the services of an attendance worker.
7 Such reports shall be on the form prescribed for such

8 purpose, by telephone, or in person, and shall include
9 essential information about the child and the name and
10 residence of any parent, guardian or custodian of a
11 child.

12 It shall also be the duty of each principal, adminis-
13 trative head or other chief administrator of each public
14 school to ascertain and report promptly the name of any
15 parent, guardian or custodian of any child of compulsory
16 school age as defined in this article who was or should
17 be enrolled in the school reporting and who has not
18 enrolled in any school that year. By way of ascertaining
19 the status of school attendance, each principal, adminis-
20 trative head or other chief administrator shall compare
21 the school census with the school enrollment at the
22 opening of the school term and each month thereafter,
23 or as directed by the county superintendent of schools,
24 and report the same to the county attendance director:
25 *Provided,* That any child who was or should be enrolled
26 in a particular school, but who is at the time enrolled
27 in another school shall be considered as attending the
28 school in which enrolled and shall be included only in
29 the report of attendance from the school in which the
30 child is enrolled at the time.

31 If the principal, administrative head or other chief
32 administrator of a school determines that an enrolled
33 pupil has accumulated unexcused absences from attend-
34 ance at such school for five instructional days during
35 any one half of the instructional term, the principal,
36 administrative head or other chief administrator shall
37 contact any parent, guardian or custodian of the pupil
38 and shall hold a meeting with any person so contacted,
39 and the pupil, and any other person that the adminis-
40 trator deems a relevant participant in such meeting.

§18-8-5a. Home visitations.

1 If approved by the principal, administrative head or
2 other chief administrator, a teacher may use one
3 noninstructional day during an employment term for
4 the purpose of home visitations with the parent,
5 guardian or custodian of any pupil or pupils designated
6 by the principal, administrative head or other chief

7 administrator. Priority shall be given to those pupils
8 identified as potential school dropouts or whose school
9 attendance is otherwise jeopardized.

10 Such home visitations shall be deemed the equivalent
11 of one day of continuing education in accordance with
12 rules and regulations of the state board requiring such
13 education.

14 The county board may adopt rules and regulations
15 regarding such home visitations and shall reimburse a
16 teacher for the necessary traveling expenses upon
17 presentation of an itemized, sworn statement.

**§18-8-11. School attendance as condition of licensing for
privilege of operation of motor vehicle.**

1 (a) In accordance with the provisions of sections three
2 and five, article two, chapter seventeen-b of this code,
3 the department of motor vehicles shall deny a license or
4 instruction permit for the operation of a motor vehicle
5 to any person under the age of eighteen who does not
6 at the time of application present a diploma or other
7 certificate of graduation issued to the person from a
8 secondary high school of this state or any other state,
9 or documentation that the person (1) is enrolled and
10 making satisfactory progress in a course leading to a
11 general educational development certificate (GED) from
12 a state approved institution or organization, or has
13 obtained such certificate, (2) is enrolled in a secondary
14 school of this state or any other state, or (3) is excused
15 from such requirement due to circumstances beyond his
16 or her control.

17 (b) The attendance director or chief administrator
18 shall provide documentation of enrollment status on a
19 form approved by the department of education to any
20 student sixteen years of age or older upon request who
21 is properly enrolled in a school under the jurisdiction of
22 said official for presentation to the department of motor
23 vehicles on application for or reinstatement of an
24 instruction permit or license to operate a motor vehicle.
25 Whenever a student sixteen years of age or older
26 withdraws from school, except as provided in subsection
27 (d) of this section, the attendance director or chief

28 administrator shall notify the department of motor
29 vehicles of such withdrawal. Within five days of receipt
30 of such notice, the department of motor vehicles shall
31 send notice to the licensee that the license will be
32 suspended under the provisions of section three, article
33 two, chapter seventeen-b of this code on the thirtieth day
34 following the date the notice was sent unless documen-
35 tation of compliance with the provisions of this section
36 is received by the department of motor vehicles before
37 such time.

38 (c) For the purposes of this section, withdrawal shall
39 be defined as more than ten consecutive or fifteen days
40 total unexcused absences during a single semester. For
41 the purposes of this section, suspension or expulsion
42 from school or imprisonment in a jail or a penitentiary
43 is not a circumstance beyond the control of such person.

44 (d) Whenever the withdrawal from school of such
45 student, or such student's failure to enroll in a course
46 leading to or to obtain a GED or high school diploma,
47 is beyond the control of such student, or is for the
48 purpose of transfer to another school as confirmed in
49 writing by the student's parent or guardian, no such
50 notice shall be sent to the department of motor vehicles
51 to suspend the student's motor vehicle operator's license,
52 and if the student is applying for a license, the
53 attendance director or chief administrator shall provide
54 the student with documentation to present to the
55 department of motor vehicles to excuse such student
56 from the provisions of this section. The school district
57 superintendent (or the appropriate school official of any
58 private secondary school) with the assistance of the
59 county attendance director and any other staff or school
60 personnel, shall be the sole judge of whether such
61 withdrawal is due to circumstances beyond the control
62 of such person.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

- §18-9A-2. Definitions.
- §18-9A-4. Foundation allowance for professional educators.
- §18-9A-5. Foundation allowance for service personnel.
- §18-9A-5a. Ratio of foundation allowances for professional educators and service personnel to net enrollment.

- §18-9A-6. Foundation allowance for fixed charges.
- §18-9A-6a. Teachers retirement fund allowance.
- §18-9A-8. Foundation allowance for administrative cost.
- §18-9A-9. Foundation allowance for other current expense and substitute employees.
- §18-9A-10. Foundation allowance to improve instructional programs.
- §18-9A-11. Computation of local share; appraisal and assessment of property.
- §18-9A-13b. Allowances for remedial and accelerated education programs and salary equity.
- §18-9A-14. Incentive for staffing improvement.
- §18-9A-14a. Incentive for administrative efficiency.
- §18-9A-22. Standards for educational quality.
- §18-9A-23. Obtaining state funds by falsifying reports; penalty.

§18-9A-2. Definitions.

- 1 For the purpose of this article:
- 2 "State board" means the West Virginia board of
3 education.
- 4 "County board" or "board" means a county board of
5 education.
- 6 "Professional salaries" means the state legally man-
7 dated salaries of the professional educators as provided
8 in article four, chapter eighteen-a of this code.
- 9 "Professional educator" shall be synonymous with and
10 shall have the same meaning as "teacher" as defined in
11 section one, article one, chapter eighteen of this code.
- 12 "Professional instructional personnel" means a profes-
13 sional educator whose regular duty is as that of a
14 classroom teacher, librarian or counselor. A professional
15 educator having both instructional and administrative
16 or other duties shall be included as professional
17 instructional personnel for that ratio of the school day
18 for which he is assigned and serves on a regular full-
19 time basis in appropriate instruction, library or
20 counseling duties.
- 21 "Service personnel salaries" shall mean the state
22 legally mandated salaries for service personnel as
23 provided in section eight-a, article four, chapter
24 eighteen-a of the code.
- 25 "Service personnel" shall mean all personnel as

26 provided for in section eight, article four, chapter
27 eighteen-a of this code. For the purpose of computations
28 under this article of ratios of service personnel to
29 adjusted enrollment, a service employee shall be counted
30 as that number found by dividing his number of
31 employment days in a fiscal year by two hundred:
32 *Provided*, That the computation for any such person
33 employed for three and one-half hours or less per day
34 as provided in section eight-a, article four, chapter
35 eighteen-a of this code, shall be calculated as one half
36 an employment day.

37 "Net enrollment" means the number of pupils enrolled
38 in special education programs, kindergarten programs
39 and grades one to twelve, inclusive, of the public schools
40 of the county. Commencing with the school year
41 beginning on the first day of July, one thousand nine
42 hundred eighty-eight, net enrollment further shall
43 include adults enrolled in regular secondary vocational
44 programs existing as of the effective date of this section:
45 *Provided*, That net enrollment shall include no more
46 than one thousand such adults counted on the basis of
47 full-time equivalency and apportioned annually to each
48 county in proportion to the adults participating in
49 regular secondary vocational programs in the prior year
50 counted on the basis of full-time equivalency: *Provided*,
51 *however*, That no tuition or special fees beyond that
52 required of the regular secondary vocational student is
53 charged for such adult students.

54 "Adjusted enrollment" means the net enrollment plus
55 twice the number of pupils enrolled for special educa-
56 tion, all adjusted to the equivalent of the instructional
57 term and in accordance with such eligibility require-
58 ments and rules as established by the state board, but
59 no pupil shall be counted more than once by reason of
60 transfer within the county or from another county
61 within the state, and no pupil shall be counted who
62 attends school in this state from another state.

63 "Levies for general current expense purposes" means
64 on each hundred dollars of valuation, twenty-two and
65 five-tenths cents on Class I property, forty-five cents on

66 Class II property, and ninety cents on Classes III and
67 IV property.

68 "Basic resources per pupil" for the state and the
69 several counties means the total of (a) property tax
70 revenues computed at the maximum regular levy rates
71 as provided by section six-c, article eight, chapter eleven
72 of this code, at a uniform rate of ninety-five percent, but
73 excluding revenues from increased levies as provided in
74 section ten, article X of the Constitution of West
75 Virginia, and (b) basic state aid as provided in sections
76 twelve and thirteen of this article, but excluding the
77 foundation allowance to improve instructional programs
78 as provided in section ten of this article, and excluding
79 any funds appropriated for the purpose of achieving
80 salary equity among county board employees, this total
81 divided by the number of students in adjusted enrol-
82 lment: *Provided*, That any year's allocations to the
83 counties of the eighty percent portion of the foundation
84 allowance to improve instructional programs, as pro-
85 vided in section ten of this article, shall be determined
86 on the basis of the immediately preceding school year's
87 basic resources per pupil.

§18-9A-4. Foundation allowance for professional educators.

1 The basic foundation allowance to the county for
2 professional educators shall be the amount of money
3 required to pay the state minimum salaries, in accor-
4 dance with provisions of article four, chapter eighteen-
5 a of the code, to such personnel employed: *Provided*,
6 That in making this computation no county shall receive
7 an allowance for such personnel which number is in
8 excess of fifty-five professional educators to each one
9 thousand students in adjusted enrollment: *Provided*,
10 *however*, That any county not qualifying under the
11 provision of section fourteen of this article shall be
12 eligible for a growth rate in professional personnel in
13 any one year not to exceed twenty percent of its total
14 potential increase under this provision, except that in no
15 case shall such limit be fewer than five professionals:
16 *Provided further*, That the number of and the allowance
17 for personnel paid in part by state and county funds

18 shall be prorated: *And provided further*, That where two
19 or more counties join together in support of a vocational
20 or comprehensive high school or any other program or
21 service, the professional educators for such school or
22 program may be prorated among the participating
23 counties on the basis of each one's enrollment therein
24 and that such personnel shall be considered within the
25 above-stated limit: *And provided further*, That in the
26 school year beginning the first day of July, one thousand
27 nine hundred eighty-eight, and the succeeding school
28 year, each county board shall establish and maintain a
29 minimum ratio of fifty professional instructional
30 personnel per one thousand students in adjusted
31 enrollment, and in the school year beginning the first
32 day of July, one thousand nine hundred ninety, and for
33 each succeeding school year, each county board shall
34 establish and maintain a minimum ratio of fifty-one
35 professional instructional personnel per one thousand
36 students in adjusted enrollment. Any county board
37 which does not establish and maintain this minimum
38 ratio shall suffer a pro rata reduction in the allowance
39 for professional educators under this section, and,
40 further, any county board which does not establish and
41 maintain this minimum ratio shall utilize any and all
42 allocations to it by provision of section fourteen of this
43 article solely to employ professional instructional
44 personnel until the minimum ratio is attained: *And*
45 *provided further*, That for the fiscal year commencing
46 on the first day of July, one thousand nine hundred
47 eighty-eight, only, the foundation allowance for profes-
48 sional educators for a county board of education shall
49 be equal to the amount allowable based upon the actual
50 ratio of professional educators per one thousand students
51 in net enrollment for which the county board of
52 education received state reimbursement during the
53 school year one thousand nine hundred eighty-seven—
54 eighty-eight, except that this provision shall not apply
55 to those counties whose percent rate of special education
56 enrollment to net enrollment is less than sixteen and
57 two-tenths percent. No person employed prior to the
58 first day of July, one thousand nine hundred eighty-
59 eight, shall have their employment terminated because

60 of a reduction in force resulting from the provisions of
61 this section. Reductions in force will be achieved only
62 through attrition and early retirement.

§18-9A-5. Foundation allowance for service personnel.

1 The basic foundation allowance to the county for
2 service personnel shall be the amount of money required
3 to pay the annual state minimum salaries in accordance
4 with the provisions of article four, chapter eighteen-a of
5 the code, to such service personnel employed: *Provided,*
6 That no county shall receive an allowance for an amount
7 in excess of thirty-four service personnel per one
8 thousand students in adjusted enrollment: *Provided,*
9 *however,* That the state superintendent of schools is
10 authorized in accordance with rules and regulations
11 established by the state board and upon request of a
12 county superintendent, to waive the maximum ratio of
13 thirty-four service personnel per one thousand students
14 in adjusted enrollment and the twenty percent per year
15 growth cap provided in this section in those cases where
16 the state superintendent determines that student
17 population density and miles of bus route driven justify
18 such waiver, except that no waiver shall be granted to
19 any county whose financial statement shows a net
20 balance in general current expense funds greater than
21 three percent at the end of the previous fiscal year:
22 *Provided further,* That on or before the first day of each
23 regular session of the Legislature, the state board,
24 through the state superintendent, shall make to the
25 Legislature a full report concerning the number of
26 waivers granted and the fiscal impact related thereto:
27 *And provided further,* That for the fiscal year commenc-
28 ing on the first day of July, one thousand nine hundred
29 eighty-eight, only, the foundation allowance for service
30 personnel for a county board of education shall be equal
31 to the amount allowable based upon the actual ratio of
32 service personnel per one thousand net enrollment for
33 which the county board of education received state
34 reimbursement during the school year one thousand
35 nine hundred eighty-seven—eighty-eight, except that
36 this provision shall not apply to those counties whose
37 percent rate of special education enrollment to net

38 enrollment is less than sixteen and two-tenths percent.
39 Every county shall utilize methods other than reduction
40 in force, such as attrition and early retirement, before
41 implementing their reductions in force policy to comply
42 with the limitations of this section.

43 For any county which has in excess of thirty-four
44 service personnel per one thousand students in adjusted
45 enrollment, such allowance shall be computed based
46 upon the average state minimum pay scale salary of all
47 service personnel in such county: *Provided*, That for any
48 county having fewer than thirty-four service personnel
49 per one thousand students in adjusted enrollment, in any
50 one year, the number of service personnel used in
51 making this computation may be increased the succeeding
52 years by no more than twenty percent per year of
53 its total potential increase under this provision, except
54 that in no case shall such limit be fewer than two service
55 personnel until the county attains the maximum ratio
56 set forth: *Provided, however*, That where two or more
57 counties join together in support of a vocational or
58 comprehensive high school or any other program or
59 service, the service personnel for such school or program
60 may be prorated among the participating counties on
61 the basis of each one's enrollment therein and that such
62 personnel shall be considered within the above-stated
63 limit.

§18-9A-5a. Ratio of foundation allowances for professional educators and service personnel to net enrollment.

1 (a) The purpose of this section is to establish maxi-
2 mum ratios between the numbers of professional
3 educators and service personnel in the counties which
4 are funded through the public school support plan and
5 the net enrollment in the counties, such ratios are in
6 addition to the ratios provided for in sections four and
7 five of this article. It is the intent of the Legislature to
8 adjust these ratios pursuant to legislative act as may be
9 appropriate when additional personnel are needed to
10 perform additional duties.

11 (b) Commencing with the school year one thousand

12 nine hundred eighty-nine—ninety, and each year
 13 thereafter, in computing the basic foundation allowance
 14 to a county for professional educators and the basic
 15 foundation allowance to a county for service personnel
 16 under sections four and five of this article, a county shall
 17 not receive an allowance for such personnel which
 18 number per one thousand students in net enrollment is
 19 in excess of the number of professional educators and
 20 the number of service personnel in the county computed
 21 as follows:

| 22 | | Maximum professional | Maximum service |
|----|-------------|----------------------|--------------------|
| 23 | | educators per 1000 | personnel per 1000 |
| 24 | For the | net enrollment the | net enrollment the |
| 25 | school year | preceding year | preceding year |
| 26 | 1989-90 | 76.5 | 45.5 |
| 27 | 1990-91 | 76.0 | 45.0 |
| 28 | 1991-92 | 75.5 | 44.5 |
| 29 | 1992-93 | 75.0 | 44.0 |
| 30 | 1993-94 | 74.5 | 43.75 |
| 31 | 1994-95 and | 74.0 | 43.5 |
| 32 | thereafter | | |

33 (c) No person employed prior to the first day of July,
 34 one thousand nine hundred eighty-eight, will be laid off
 35 because of a reduction in force resulting from the
 36 provisions of this section. Reductions in force will be
 37 achieved only through attrition and early retirement.

§18-9A-6. Foundation allowance for fixed charges.

1 The total allowance for fixed charges shall be the sum
 2 of the following:

3 (1) The sum of the foundation allowance for profes-
 4 sional educators and the foundation allowance for other
 5 personnel, as determined in sections four and five above,
 6 multiplied by the current social security rate of
 7 contribution; plus

8 (2) The sum of the foundation allowance for profes-
 9 sional educators and the foundation allowance for other
 10 personnel, as determined in sections four and five above,
 11 multiplied by four hundredths of one percent as an

12 allowance for unemployment compensation contribution;
13 plus

14 (3) The sum of the foundation allowance for profes-
15 sional educators and the foundation allowance for other
16 personnel, as determined in sections four and five above,
17 multiplied by the rate which is derived by dividing the
18 total contributions for workers' compensation for
19 professional educators and other personnel by the total
20 of the state minimum salaries. The computation of this
21 rate shall be determined by using data of the most
22 recent year for which available; plus

23 (4) The teachers retirement fund allowance as deter-
24 mined in section six-a of this article.

§18-9A-6a. Teachers retirement fund allowance.

1 The total teachers retirement fund allowance shall be
2 the sum of the basic foundation allowance for profes-
3 sional educators and the basic foundation allowance for
4 service personnel, as provided in sections four and five
5 of this article; all salary equity appropriations autho-
6 rized in section five, article four of chapter eighteen-a;
7 and such amounts as are to be paid by the counties
8 pursuant to sections five-a and five-b of said article to
9 the extent such county salary supplements are equal to
10 the amount distributed for salary equity among the
11 counties, multiplied by the following factors for the
12 following fiscal years:

| 13 | Fiscal year | Factor |
|----|------------------------|---------------|
| 14 | 1988-89 | 3.5% |
| 15 | 1989-90 | 6.0% |
| 16 | 1990-91 | 7.5% |
| 17 | 1991-92 | 9.0% |
| 18 | 1992-93 | 10.5% |
| 19 | 1993-94 | 12.0% |
| 20 | 1994-95 | 13.5% |
| 21 | 1995-96 and thereafter | 15.0% |

22 The teachers retirement fund allowance amounts shall
23 be accumulated in the employers accumulation fund of
24 the state teachers retirement system pursuant to section
25 eighteen, article seven-a of this chapter, and shall be in

26 lieu of the contribution required of employers pursuant
27 to subsection (b) of said section eighteen as to all
28 personnel included in the allowance for state aid in
29 accordance with sections four and five of this article.

§18-9A-8. Foundation allowance for administrative cost.

1 The allowance for administrative cost shall be equal
2 to one and two-tenths percent of the allocation for
3 professional educators, as determined in section four of
4 this article.

5 Distribution of the computed allowance shall be made
6 as follows:

7 (1) Seven twelfths of the allowance shall be distrib-
8 uted to the counties in equal amounts; and

9 (2) Five twelfths of the allowance shall be distributed
10 to the regional education service agencies in accordance
11 with rules adopted by the state board. The allowance for
12 regional education service agencies shall be excluded
13 from the computation of total basic state aid as provided
14 for in section twelve of this article.

**§18-9A-9. Foundation allowance for other current ex-
pense and substitute employees.**

1 The total allowance for other current expense and
2 substitute employees shall be the sum of the following:

3 (1) For current expense, for the year one thousand
4 nine hundred eighty-eight—eighty-nine only, seven and
5 seven-tenths percent of the sum of the computed state
6 allocation for professional educators and service person-
7 nel as determined in sections four and five of this article,
8 and thereafter the rate shall be eight and two-tenths
9 percent. Distribution to the counties shall be made
10 proportional to the average of each county's average
11 daily attendance for the preceding year and the county's
12 second month net enrollment; plus

13 (2) For professional educator substitutes or current
14 expense, two and five-tenths percent of the computed
15 state allocation for professional educators as determined
16 in section four of this article. Distribution to the counties
17 shall be made proportional to the total county allocation
18 for professional educators; plus

19 (3) For service personnel substitutes or current
20 expense, two and five-tenths percent of the computed
21 state allocation for service personnel as determined in
22 section five of this article. Distribution to the counties
23 shall be made proportional to the total county allocation
24 for service personnel.

§18-9A-10. Foundation allowance to improve instructional programs.

1 (a) Commencing with the school year beginning on
2 the first day of July, one thousand nine hundred eighty-
3 eight, and thereafter, twenty-eight million one hundred
4 forty-four thousand two hundred seventy-nine dollars, in
5 addition to funds which accrue from allocations due to
6 increase in total local share above that computed for the
7 school year beginning on the first day of July, one
8 thousand nine hundred eighty-eight, from balances in
9 the general school fund, or from appropriations for such
10 purpose shall be allocated to increase state support of
11 counties as follows:

12 (1) Twenty percent of these funds shall be allocated
13 to the counties proportional to adjusted enrollment; and

14 (2) Each county whose allocation in subsection (1) is
15 less than one hundred thousand dollars in any fiscal year
16 shall then receive an amount which equals the differ-
17 ence between such amount received and one hundred
18 thousand dollars.

19 (b) The remainder of these funds shall be allocated
20 according to the following plan for progress toward
21 basic resources per pupil equity:

22 Beginning with the county which has the lowest basic
23 resources per pupil and progressing through the
24 counties successively to and beyond the county with the
25 highest basic resources per pupil, the funds available
26 shall be allocated in amounts necessary to increase
27 moneys available to the county or counties to the basic
28 resources per pupil level, as nearly as is possible, of the
29 county having the next higher basic resources per pupil:
30 *Provided*, That to be eligible for its allocation under this
31 section, a county board shall lay the maximum regular

32 tax rates set out in section six-c, article eight, chapter
33 eleven of this code: *Provided, however,* That moneys
34 allocated by provision of this section shall be used to
35 improve instructional programs according to a plan for
36 instructional improvement which the affected county
37 board shall file with the state board by the first day of
38 August of each year, to be approved by the state board
39 by the first day of September of that year if such plan
40 substantially complies with standards to be adopted by
41 the state board: *Provided further,* That no part of this
42 allocation may be used to employ professional educators
43 in counties until and unless all applicable provisions of
44 sections four and fourteen of this article have been fully
45 utilized. Such instructional improvement plan shall be
46 made available for distribution to the public at the office
47 of each affected county board.

48 (c) Commencing with the school year beginning on the
49 first day of July, one thousand nine hundred eighty-
50 eight, and thereafter, fifty percent of the funds which
51 accrue due to an increase in local share above that
52 computed for the school year beginning on the first day
53 of July, one thousand nine hundred eighty-seven, shall
54 be paid into the school building capital improvements
55 fund created by section five, article nine-d of this
56 chapter, and shall be used solely for the purposes of said
57 article nine-d: *Provided,* That for the school year one
58 thousand nine hundred eighty-eight—eighty-nine such
59 amount shall not exceed two million dollars: *Provided,*
60 *however,* That one million six hundred twenty-three
61 thousand dollars of such amount for the school year one
62 thousand nine hundred eighty-eight—eighty-nine, shall
63 be used for vocational education facilities.

64 (d) There shall be appropriated seven million four
65 hundred ten thousand six hundred sixty-eight dollars
66 for aid to counties which may be expended by the county
67 boards for the initiation, and/or improvements of special
68 education programs including employment of new
69 special education professional personnel solely serving
70 exceptional children; instructional programs which
71 utilize state of the art technology; training of educa-
72 tional personnel to work with exceptional children; and

73 supportive costs such as materials, transportation,
74 contracted services, minor renovations and other costs
75 directly related to the special education delivery process
76 prescribed by the state board. The appropriation may
77 also be used for nonpersonnel costs associated with the
78 maintenance of special education programs in accor-
79 dance with such rules as established by the state board.
80 The appropriation includes out-of-state instruction and
81 may be expended to provide instruction, care and
82 maintenance for educable persons who are severely
83 handicapped and for whom the state provides no
84 facilities.

85 (e) There shall be appropriated two million one
86 thousand seven hundred thirty-two dollars to be used by
87 the state department of education which may be
88 expended for the purposes of paying staff and operating
89 costs of both administrative/program personnel and
90 instructional personnel delivering education to handi-
91 capped children in facilities operated by the state
92 department of health; paying state department of
93 education staff, current expenses and equipment;
94 supporting a gifted summer camp; and supporting
95 special state projects including, but not limited to, (1)
96 an instructional materials center for visually handi-
97 capped children at the West Virginia Schools for the
98 Deaf and the Blind, (2) the state special olympics
99 program, (3) the West Virginia advisory council for the
100 education of exceptional children at the West Virginia
101 College of Graduate Studies, (4) statewide training
102 activities or other programs benefiting exceptional
103 children, and (5) the state very special arts program.

**§18-9A-11. Computation of local share; appraisal and
assessment of property.**

1 (a) On the basis of the most recent survey of property
2 valuations in the state, completed as to all classes of
3 property in all counties determined by the tax commis-
4 sioner under present or former provisions of this article,
5 the state board shall for each county compute by
6 application of the levies for general current expense
7 purposes, as defined in section two of this article, the
8 amount of revenue which such levies would produce if

9 levied upon one hundred percent of the appraised value
10 of each of the several classes of property contained in
11 the report or revised report of such value, made to it
12 by the tax commissioner as follows: (1) The state board
13 shall first take ninety-seven and one-half percent of the
14 amount ascertained by applying these rates to the total
15 assessed public utility valuation in each classification of
16 property in the county. (2) The state board shall then
17 apply these rates to the appraised value of other
18 property in each classification in the county as deter-
19 mined by the tax commissioner and shall deduct
20 therefrom five percent as an allowance for the usual
21 losses in collections due to discounts, exonerations,
22 delinquencies and the like. Fifty percent of the amount
23 so determined shall be added to the ninety-seven and
24 one-half percent of public utility taxes computed as
25 provided above and this total shall be the local share of
26 the particular county.

27 Effective the first day of July, one thousand nine
28 hundred eighty-two, fifty-five percent of the amount so
29 determined shall be added to the ninety-seven and one-
30 half percent of public utility taxes computed as provided
31 above and this total shall be the local share of the
32 particular county: *Provided*, That for the fiscal year
33 beginning on the first day of July, one thousand nine
34 hundred eighty-eight, the state board shall apply these
35 rates to the assessed taxable value of other property in
36 each classification in the county and shall deduct
37 therefrom five percent as an allowance for the usual
38 losses in collections due to discounts, exonerations,
39 delinquencies and the like. Ninety percent of the amount
40 so determined shall be added to the public utility taxes
41 computed as provided above: *Provided, however*, That
42 for the fiscal year beginning on the first day of July, one
43 thousand nine hundred eighty-nine, and thereafter, the
44 state board shall apply these rates to the assessed
45 taxable value of other property in each classification in
46 the county and shall deduct five percent as an allowance
47 for the usual losses in collections due to discounts,
48 exonerations, delinquencies and the like. All of the
49 amount so determined shall be added to the public
50 utility taxes computed as provided above.

51 (b) The tax commissioner shall make or cause to be
52 made an appraisal in the several counties of the state
53 of all nonutility real property and of all nonutility
54 personal property which shall be based upon true and
55 actual value as set forth in article three, chapter eleven
56 of this code. In determining the value of personal
57 property—other than all machinery, equipment, furni-
58 ture and fixtures of any industrial plant, mine, quarry
59 or installation and of any commercial, industrial or
60 professional establishment—the tax commissioner shall
61 prescribe accepted methods of determining such values.
62 The tax commissioner shall in accordance with such
63 methods determine the value of such property.

64 For the purpose of appraising commercial, industrial
65 and professional properties, the tax commissioner, after
66 consultation with the county commission, may employ a
67 competent property appraisal firm or firms, which
68 appraisals shall be under his supervision and direction.

69 In making or causing to be made such appraisal, the
70 tax commissioner shall employ such assistance as
71 available appropriations will permit and shall prescribe
72 and use such accepted methods and procedures for
73 checking property values and determining the amount
74 of property in the several classes of property provided
75 by law as are customarily employed for appraisal
76 purposes.

77 (c) Such appraisal of all said property in the several
78 counties shall be completed prior to the first day of July,
79 one thousand nine hundred sixty-seven. Each year after
80 the completion of the property appraisal in a county the
81 tax commissioner shall maintain the appraisal by
82 making or causing to be made such surveys, examina-
83 tions, audits, maps and investigations of the value of the
84 several classes of property in each county which should
85 be listed and taxed under the several classifications, and
86 shall determine the appraised value thereof. On the
87 basis of information so ascertained, the tax commis-
88 sioner shall annually revise his reports to the Legisla-
89 ture and to the state board concerning such appraisals,
90 such reports to be made not later than the first day of
91 January of each year.

92 (d) The tax commissioner shall prescribe appropriate
93 methods for the appraisal of the various types of
94 property subject to taxation as public utilities and the
95 types of property which are to be included in the
96 operating property of a public utility and thereby not
97 subject to taxation by the county assessor. Only parcels
98 or other property, or portions thereof, which are an
99 integral part of the public utility's function as a utility
100 shall be included as operating property.

101 (e) As information from such appraisal of property in
102 a county under the provisions of this section becomes
103 available for a district, municipality and county, the tax
104 commissioner shall notify the county commission and
105 the assessor of said county that such information is
106 available and shall make available to said county
107 commission and assessor all data, records and reports
108 or other information relating to said work, along with
109 a list of any properties in said district, municipality and
110 county which are entered on the assessment rolls but for
111 which no appraisal has been made, a list of any
112 properties which were appraised but which cannot be
113 found on the assessment rolls and a list of all properties
114 carried on the assessment rolls which have not been
115 identified on the map. Said list shall set forth the name
116 of the owner and a description of the property and the
117 reason, if known, for its failure to have been entered on
118 the assessment rolls or to have been appraised or to have
119 been identified on the map, as the case may be.

120 (f) As such appraisal of property in a county, under
121 this section, is completed to the extent that a total
122 valuation for each class of property can be determined,
123 such appraisal shall be delivered to the assessor and the
124 county commission, and in each assessment year
125 commencing after such appraisal is so delivered and
126 received, the county assessor and the county commission,
127 sitting as a board of equalization and review, shall use
128 such appraised valuations as a basis for determining the
129 true and actual value for assessment purposes of the
130 several classes of property. The total assessed valuation
131 in each of the four classes of property shall not be less
132 than fifty percent nor more than one hundred percent

133 of the appraised valuation of each said class of property:
134 *Provided*, That beginning July one, one thousand nine
135 hundred eighty-one, the total assessed valuation in each
136 of the four classes of property shall not be less than sixty
137 percent of the appraised valuation of each said class of
138 property.

139 (g) Whenever in any year a county assessor or a county
140 commission shall fail or refuse to comply with the
141 provisions of this section in setting the valuations of
142 property for assessment purposes in any class or classes
143 of property in the county, the state tax commissioner
144 shall review the valuations for assessment purposes
145 made by the county assessor and the county commission
146 and shall direct the county assessor and the county
147 commission to make such corrections in the valuations
148 as may be necessary so that they shall comply with the
149 requirements of chapter eleven of this code and this
150 section, and the tax commissioner shall enter the county
151 and fix the assessments at the required ratios. Refusal
152 of the assessor or the county commission to make such
153 corrections shall constitute grounds for removal from
154 office.

155 (h) In any year in which the total assessed valuation
156 of a county shall fail to meet the minimum requirements
157 above set forth, the county commission of such county
158 shall allocate for such year to the county board of
159 education from the tax levies allowed to the county
160 commission a sufficient portion of its levies as will, when
161 applied to the valuations for assessment purposes of such
162 property in the county, provide a sum of money equal
163 to the difference between the amount of revenue which
164 will be produced by application of the allowable school
165 levy rates defined in section two of this article upon the
166 valuations for assessment purposes of such property and
167 the amount of revenue which would be yielded by the
168 application of such levies to fifty percent of the total of
169 appraised valuations of such property. In the event the
170 county commission shall fail or refuse to make the
171 reallocation of levies as provided for herein, the county
172 board of education, the tax commissioner, the state
173 board, or any other interested party, shall have the right

174 to enforce the same by writ of mandamus in any court
175 of competent jurisdiction.

176 (i) In conjunction with and as a result of the appraisal
177 herein set forth the tax commissioner shall have the
178 power, and it shall be his duty, to establish a permanent
179 records system for each county in the state, consisting
180 of:

181 (1) Tax maps of the entire county drawn to scale or
182 aerial maps, which maps shall indicate all property and
183 lot lines, set forth dimensions or areas, indicate whether
184 the land is improved, and identify the respective parcels
185 or lots by a system of numbers or symbols and numbers,
186 whereby the ownership of such parcels and lots can be
187 ascertained by reference to the property record cards
188 and property owner's index;

189 (2) Property record cards arranged geographically
190 according to the location of property on the tax maps,
191 which cards shall set forth the location and description
192 thereof, the acreage or dimensions, description of
193 improvements, if any, the owner's name, address and
194 date of acquisition, the purchase price, if any, set forth
195 in the deed of acquisition, the amount of tax stamps, if
196 any, on the deed, the assessed valuation, and the
197 identifying number or symbol and number, shown on
198 the tax map; and

199 (3) Property owner's index consisting of an alphabet-
200 ical listing of all property owners, setting forth brief
201 descriptions of each parcel or lot owned and cross-
202 indexed with the property record cards and the tax
203 map.

204 (j) The tax commissioner is hereby authorized and
205 empowered to enter into such contracts as may be
206 necessary, and for which funds may be available, to
207 establish the permanent records system herein provided
208 for, or may through his staff and employees, prepare
209 and complete such system.

210 All microfilm photography and original copies of tax
211 maps created under the provisions of this section are the
212 property of the state of West Virginia and the reproduc-

213 tion, copying, distribution or sale of such microfilm,
214 photography or tax maps or any copies thereof without
215 the written permission of the state tax commissioner is
216 prohibited. Any person who shall violate the provisions
217 of this paragraph shall be guilty of a misdemeanor, and,
218 upon conviction thereof, shall be fined not less than fifty
219 dollars nor more than three hundred dollars, or
220 imprisoned in the county jail not less than thirty days
221 nor more than one year, or both fined and imprisoned.
222 Magistrates shall have concurrent jurisdiction with
223 other courts having jurisdiction for the trial of all
224 misdemeanors arising under this paragraph.

225 The tax commissioner shall by uniform rules establish
226 a procedure for the sale of reproduction of microfilm,
227 photography and maps and may pay for having such
228 reproductions made from the appropriation for "prop-
229 erty appraisal." Any funds received as a result of the
230 sale of such reproductions shall be deposited to the
231 appropriated account from which the payment for
232 reproduction is made.

233 (k) The cost of conducting the appraisal herein
234 provided for shall be borne jointly by the state and the
235 several counties in the following manner and terms:
236 There shall be appropriated from the general revenue
237 fund annually an amount sufficient to maintain the
238 appraisal in all counties of the state. Each county shall
239 furnish, through its county commission, not more than
240 ten percent of the cost of such appraisal or reappraisal
241 and permanent records system for each county. Such
242 county costs may be paid over a period of three years
243 with the approval of the tax commissioner. In those
244 instances where the cost of the appraisal, reappraisal or
245 permanent records system required by this section has
246 been paid by the tax commissioner from funds approp-
247 riated for these purposes, the share of such cost allocated
248 to each county shall, upon receipt thereof by the tax
249 commissioner, be deposited to the appropriated account
250 from which such payments have been made. In those
251 instances where a county has heretofore employed a
252 professional appraisal firm to conduct an appraisal or
253 reappraisal of all or part of nonutility property within

254 the past seventeen years, and such appraisal has been
255 accepted by the tax commissioner, with the county
256 having borne in excess of ten percent of the cost of such
257 appraisal, reappraisal, and permanent records system,
258 monetary reimbursement of one third of such excess
259 costs shall be made by the tax commissioner from funds
260 appropriated for such purpose, to such county, yearly,
261 for a period of three years, in order to establish the joint
262 sharing of such costs as hereinbefore set forth.

263 (l) The county assessor and the county commission
264 shall comply with the provisions of chapter eleven of this
265 code in determining the true and actual value of
266 property for assessment purposes and shall not arbitrar-
267 ily use a direct percentage application to the appraisal
268 valuations, whether complete appraisal or spot survey,
269 of any class of property or property within a class for
270 such purposes.

271 (m) The provisions of this section shall not be
272 construed to alter or repeal in any manner the provi-
273 sions of chapter eleven of this code, but shall be
274 construed in pari materia therewith, and compliance
275 with this section by the assessor and county commission
276 shall be considered, pro tanto, as compliance with said
277 chapter eleven.

**§18-9A-13b. Allowances for remedial and accelerated
education programs and salary equity.**

1 For the fiscal years commencing on the first day of
2 July, one thousand nine hundred eighty-eight and
3 eighty-nine, only, the total state appropriation for the
4 basic foundation program shall be no less than the state
5 appropriation for the fiscal year which began on the
6 first day of July, one thousand nine hundred eighty-
7 seven.

8 For the fiscal year commencing on the first day of
9 July, one thousand nine hundred eighty-eight, there
10 shall be appropriated two million dollars to the state
11 board to develop and implement remedial and acceler-
12 ated programs in the counties including grants to those
13 individual schools which have developed remedial plans
14 and whose plans are approved by the state board.

15 Commencing with the school year beginning on the
16 first day of July, one thousand nine hundred eighty-
17 eight, and thereafter, funds which accrue from alloca-
18 tions due to changes in adjusted enrollment above that
19 computed for the school year beginning on the first day
20 of July, one thousand nine hundred eighty-seven, or
21 from appropriations for such purpose, shall be allocated
22 to increase state support for salary equity and to develop
23 and implement remedial and accelerated programs in
24 the following manner:

25 Sixty percent of these funds shall be allocated for the
26 purpose of attaining salary equity among the counties
27 pursuant to section five, article four, chapter eighteen-
28 a; and

29 Forty percent of these funds shall be allocated to
30 implement remedial and accelerated programs as
31 developed under guidelines of the state board.

§18-9A-14. Incentive for staffing improvement.

1 (a) In order to encourage counties to move toward new
2 and improved programs and to reduce class size,
3 counties having ratios of adjusted enrollment to profes-
4 sional staff higher than the state average will be
5 granted, to the extent appropriations are provided,
6 advance funds to employ sufficient additional staff to
7 reach the state average: *Provided*, That in any one fiscal
8 year no more than one half of such additional staff may
9 be counted under this provision. Such funds shall be
10 granted to each eligible county based on data at the end
11 of the second month of school but only on the basis of
12 actual staff members employed.

13 (b) Counties having ratios of adjusted enrollment to
14 service personnel higher than the state average will be
15 granted, to the extent appropriations are provided,
16 funds to employ service personnel to progress toward
17 the state average: *Provided*, That in any fiscal year the
18 number of service personnel for which funds are
19 allocated shall not exceed that number of service
20 personnel by which the counties' computations for
21 allocations may be increased as provided in section five
22 of this article.

§18-9A-14a. Incentive for administrative efficiency.

1 (a) Notwithstanding any other provision to the con-
2 trary, and in order to encourage county superintendents
3 to more fully utilize their administrative capabilities
4 and provide them with increased fiscal flexibility, each
5 county shall be granted the funds equal to the eighty
6 percent of the difference between the total amount
7 received pursuant to sections four and six of this article
8 based on actual professional educators employed and the
9 amount the county would receive if they employed the
10 maximum professional educators allowed pursuant to
11 section four of this article using that county's average
12 funded state minimum salary for professional educators
13 for such computation: *Provided*, That the following three
14 conditions are all met the prior year:

15 (1) The county maintained the minimum instructional
16 personnel ratio set forth in section four of this article;

17 (2) The county reduced the number of maximum class
18 size exemptions, if any, as provided for in section
19 eighteen-a, article five of this chapter, by twenty-five
20 percent over the prior year; and

21 (3) The county reduced the number of split grade
22 exemptions, if any, as provided for in section eighteen-
23 a, article five of this chapter, by twenty-five percent
24 over the prior year.

25 (b) Each county shall also be granted the funds equal
26 to eighty percent of the difference between the total
27 amount received pursuant to sections five and six of this
28 article based on actual service personnel employed and
29 the amount the county would receive if they employed
30 the maximum service personnel allowed pursuant to
31 section five of this article, using the county's average
32 state funded minimum salary for service personnel for
33 such computation: *Provided*, That in the prior year the
34 number of professional educators who do not spend at
35 least seventy-five percent of their work day assigned to
36 a local school or schools shall not exceed the sum of the
37 numbers derived by multiplying (1) the first two
38 hundred or fewer professional educators and service
39 personnel for whom basic state aid is authorized by this

40 article by two and one-half percent and (2) all additional
41 such personnel, if any, by one percent, such sum to be
42 rounded down to the nearest tenth.

43 (c) The provisions of this section shall commence with
44 the school year beginning on the first day of July, one
45 thousand nine hundred eighty-nine, and continue
46 thereafter.

§18-9A-22. Standards for educational quality.

1 (a) The purpose of this section is to declare the intent
2 of the Legislature to provide a thorough and efficient
3 system of education for West Virginia public school
4 students. High quality educational standards shall be
5 provided all public school students on an equal educa-
6 tional opportunity basis. A system for the review of
7 county educational plans and the on-site reviews of
8 county educational programs shall provide assurances
9 that the high quality standards, established pursuant to
10 this section, are being met.

11 On or before January one, one thousand nine hundred
12 eighty-five, the state board of education shall establish
13 and adopt high quality educational standards and shall
14 provide each county board of education a copy thereof.

15 On or before July one, one thousand nine hundred
16 eighty-five, and each July one thereafter, each county
17 board of education shall file an annual specific program
18 plan with the state department of education. The
19 program plan shall, at a minimum, meet the statewide
20 high quality educational standards as established by the
21 state board of education.

22 The purpose of the program plan is to allow county
23 boards of education flexibility in developing school
24 improvement programs structured around locally
25 identified needs, but in compliance with the high quality
26 standards adopted by the state board of education. High
27 quality standards must be met in curriculum, finance,
28 transportation, special education, facilities, textbooks,
29 personnel qualifications and other such areas as
30 determined by the state board of education.

31 The state department of education shall review the

32 plans annually and conduct an on-site review of each
33 county's educational program every fourth year. The
34 state board of education shall have authority to issue
35 four types of recognition status: (1) Full approval, (2)
36 substantial approval, (3) probationary and (4)
37 nonapproval.

38 Full approval status may be granted to a county board
39 of education whose educational program has undergone
40 an on-site evaluation by representatives of the state
41 department of education and has met the high quality
42 standards adopted by the state board of education. Full
43 approval status shall be for a period not to exceed four
44 years.

45 Substantial approval status may be granted to a
46 county board of education whose educational program
47 has satisfied all conditions identified under full approval
48 status, with the exception of an on-site review, or all
49 conditions identified under full approval have been
50 satisfied except that one or more of the high quality
51 standards have not been met but will be attained within
52 one year, as described in an acceptable plan of action.

53 Probationary status is given to a county board of
54 education whose educational program has not met the
55 high quality standards. Probationary status is a warn-
56 ing that the county board of education must make
57 specified improvements. If progress is not made toward
58 meeting the high quality standards during the succeed-
59 ing year, the county board of education is automatically
60 placed on nonapproval status.

61 Nonapproval status is given to a county board of
62 education which fails to submit an annual program
63 plan, fails to give evidence of meeting the high quality
64 standards or has not demonstrated a reasonable effort
65 to meet such standards.

66 (b) After the thirty-first day of December, one
67 thousand nine hundred eighty-eight, the approval of
68 educational programs based on high quality educational
69 standards established by the state board shall be in
70 accordance with the provisions of article two-e of this
71 chapter and the provisions of this chapter shall expire.

§18-9A-23. Obtaining state funds by falsifying reports; penalty.

1 It shall be unlawful for any person knowingly and
 2 intentionally to falsify any enrollment or attendance
 3 reports for the purpose of obtaining state funds allocated
 4 to a county under the provisions of this article.

5 Any person who violates the provisions of this section
 6 is guilty of a misdemeanor, and, upon conviction thereof,
 7 shall be confined in the county jail for not more than
 8 six months, or fined not more than one thousand dollars,
 9 or both.

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

§18-9D-1. State board of education to act as school building authority for purposes of this article; powers.

§18-9D-2. Definitions.

§18-9D-3. Powers of authority.

§18-9D-4. School building authority authorized to issue revenue bonds for prioritized school building capital improvement projects; refunding bonds authorized; local contribution required.

§18-9D-5. School building authority authorized to offer individual higher education savings plans.

§18-9D-6. School building capital improvements fund in state treasury; collections to be paid into special fund; authority to pledge such collections as security for revenue bonds; authority to finance projects on a cash basis.

§18-9D-7. Authority to fix and collect rents.

§18-9D-8. Issuance of revenue bonds; use of proceeds; bonds exempt from taxation.

§18-9D-9. Issuance of revenue refunding bonds; use of moneys; power to enter into escrow agreements; call for redemption.

§18-9D-10. Bonds may be issued for combined purposes.

§18-9D-11. Bonds shall be negotiable instruments.

§18-9D-12. Trust agreements for holders of bonds.

§18-9D-13. Sinking fund for payment of bonds.

§18-9D-14. Credit of state not pledged.

§18-9D-1. State board of education to act as school building authority for purposes of this article; powers.

1 The state board of education as heretofore created and
 2 constituted under the provisions of section one, article
 3 two of this chapter, is the school building authority for
 4 the purposes of this article and as such, may exercise
 5 all of the powers and functions granted to it under the

6 provisions of this article.

7 The acts performed by the state board of education in
8 its capacity as the school building authority are solely
9 the acts of the authority.

§18-9D-2. Definitions.

1 The following terms, wherever used or referred to in
2 this article, shall have the following meanings, unless a
3 different meaning clearly appears from the context:

4 (1) "Authority" means the school building authority of
5 West Virginia or if said authority shall be abolished, any
6 board or officer succeeding to the principal functions
7 thereof, or to whom the powers given to said authority
8 shall be given by law;

9 (2) "Bonds" means bonds issued by the authority
10 pursuant to this article;

11 (3) "Project" or "capital improvement project" means
12 the new construction, major renovation, repair and
13 safety upgrading of facilities, buildings and structures
14 for school purposes including the acquisition of land for
15 current or future use in connection therewith, equip-
16 ment, machinery, furnishings, installation of utilities
17 and other similar items convenient in connection with
18 placing the foregoing into operation, but may not
19 include such items as books, fuel, supplies and other
20 items which are customarily deemed to result in a
21 current operating charge;

22 (4) "Cost of project" means the cost of construction,
23 renovation, repair and safety upgrading of facilities,
24 buildings and structures for school purposes; the cost of
25 land, equipment, machinery, furnishings, installation of
26 utilities and other similar items convenient in connec-
27 tion with placing the foregoing into operation; and the
28 cost of financing, interest during construction, profes-
29 sional service fees and all other charges or expenses
30 necessary, appurtenant or incidental to the foregoing,
31 including the cost of administration of this article;

32 (5) "Revenue" or "revenues" mean moneys deposited
33 in the school building capital improvements fund

34 pursuant to the operation of subsection (b), section ten,
35 article nine-a of this chapter; any moneys received,
36 directly or indirectly, from any source for the use of all
37 or any part of any project completed pursuant to this
38 article; and any other moneys received by the authority
39 for the purposes of this article.

§18-9D-3. Powers of authority.

1 The school building authority has power:

2 (1) To sue and be sued, plead and be impleaded;

3 (2) To have a seal and alter the same at pleasure;

4 (3) To contract to acquire and to acquire, in the name
5 of the authority by purchase, lease-purchase, or other-
6 wise, real property or rights or easements necessary or
7 convenient for its corporate purposes and to exercise the
8 power of eminent domain to accomplish such purposes;

9 (4) To acquire, hold and dispose of real and personal
10 property for its corporate purposes;

11 (5) To make bylaws for the management and rule of
12 its affairs;

13 (6) With the consent of the attorney general of the
14 state of West Virginia, to use the facilities, office,
15 assistants and employees of the attorney general in all
16 legal matters relating to or pertaining to the authority;

17 (7) To appoint officers, agents and employees, and fix
18 their compensation;

19 (8) To make contracts, and to execute all instruments
20 necessary or convenient to effectuate the intent of, and
21 to exercise the powers granted to it by, this article;

22 (9) To renegotiate all contracts entered into by it
23 whenever, due to a change in situation, it appears to the
24 authority that its interests will be best served;

25 (10) To acquire by purchase, eminent domain or
26 otherwise all real property or interests therein necessary
27 or convenient to accomplish the purposes of this article;

28 (11) To require proper maintenance and insurance of
29 any project authorized hereunder;

30 (12) To charge rent for the use of all or any part of
31 a project or buildings at any time financed, constructed,
32 acquired or improved in whole or in part with the
33 revenues of the authority;

34 (13) To acquire land, buildings and capital improve-
35 ments to existing school buildings and property, by lease
36 from a private or public lessor for a term not to exceed
37 twenty-five years, with or without an option to purchase
38 pursuant to an investment contract with said lessor, for
39 use as public school facilities on such terms and
40 conditions as may be determined to be in the best
41 interests of the authority and consistent with the
42 purposes of this article;

43 (14) To accept and expend any gift, grant, contribu-
44 tion, bequest or endowment of money to, or for the
45 benefit of, the authority, from the state of West Virginia
46 or any other source for any or all of the purposes
47 specified in this article or for any one or more of such
48 purposes as may be specified in connection with such
49 gift, grant, contribution, bequest or endowment;

50 (15) To enter on any lands and premises for the
51 purpose of making surveys, soundings and examina-
52 tions; and

53 (16) To do all things necessary or convenient to carry
54 out the powers given in this article.

**§18-9D-4. School building authority authorized to issue
revenue bonds for prioritized school build-
ing capital improvement projects; refunding
bonds authorized; local contribution
required.**

1 The school building authority may, in accordance with
2 the provisions of this article, issue revenue bonds of the
3 authority from time to time, either to finance the cost
4 of school building capital improvement projects for
5 public schools in this state, as determined on the basis
6 of need by resolution of the authority, or to refund, at
7 the discretion of the authority, bonds issued and
8 outstanding under and pursuant to the provisions of this
9 article. The principal of, interest and redemption

10 premium, if any, on such bonds shall be payable solely
11 from the special fund herein provided for such payment.

12 The resolution of the authority shall be in accordance
13 with such order of priority as the facility needs of each
14 county have been determined on the basis of need:
15 *Provided*, That priority shall be given first to (1)
16 counties utilizing facilities which do not meet state
17 board of education health and safety standards, (2)
18 counties whose net enrollment has increased for each of
19 the two school years immediately preceding a determi-
20 nation by the authority that a need exists, and (3)
21 counties which have, pursuant to section thirteen-a,
22 article five of this chapter, approved a plan to consol-
23 idate under-utilized schools. Funds may be made
24 available only to counties which have retired a bond
25 issue within the past five years. Counties which meet
26 these eligibility criteria must provide a twenty-five per-
27 cent match per project in order to receive state funds.
28 The authority shall present such expenditures to the
29 governor for inclusion in the annual budget bill and may
30 only be expended with the approval of the Legislature
31 as indicated by direct appropriation therefor.

§18-9D-5. School building authority authorized to offer individual higher education savings plans.

1 (a) *Legislative findings.* — The Legislature hereby
2 finds and declares that:

3 (1) It is an essential function of state government to
4 encourage post secondary education in order to have
5 well-educated citizens.

6 (2) Tuition costs at institutions of higher education are
7 difficult for many to afford and are difficult to predict
8 in order to enable individuals and families to plan.

9 (3) It is in the best interest of the people of this state
10 to encourage state residents desiring a public higher
11 education to enroll in state public institutions of higher
12 learning and to enhance and foster the ability of West
13 Virginia residents to choose an independent institution
14 of higher education in order to provide well-educated
15 citizens and to encourage state residents desiring an

16 independent higher education to enroll in an independ-
17 ent degree-granting college or university.

18 (4) Students in elementary and secondary schools tend
19 to achieve a higher standard of performance when the
20 payment of tuition for their higher education is secured.

21 (5) Providing assistance to assure the higher educa-
22 tion of citizens of this state is necessary and desirable
23 for the public health, safety and welfare.

24 (b) *Purpose.* — In light of the findings described in
25 subsection (a) of this section and in light of the purposes
26 of this article, the Legislature declares that the purpose
27 of this section is to encourage education and the means
28 of education by (1) authorizing establishment of individ-
29 ual higher education savings plan programs; and (2)
30 providing for the funds invested in this program
31 through the purchase of state building authority
32 revenue bonds to be used to make capital improvements
33 to primary and secondary educational facilities in this
34 state, as provided in this article.

35 (c) *Authorization.* — The state school building author-
36 ity is authorized to offer to the general public one or
37 more individual higher education savings plan pro-
38 grams. In order to establish, operate and maintain an
39 efficient and effective program or programs, the state
40 school building authority shall have such additional
41 powers as are necessary or reasonably desirable to
42 implement such a program or programs. These addi-
43 tional powers shall include, but are not limited to, the
44 power to:

45 (1) Issue revenue bonds under this article in denom-
46 inations of twenty-five, fifty, one hundred and five
47 hundred dollars.

48 (2) Permit employees to purchase bonds through
49 payroll deductions by their employer.

50 (3) Offer different classes of bonds and different bond
51 terms which take into consideration the short term
52 nature and purpose of an individual participating in an
53 individual higher education savings plan program.

54 (4) Offer a rate of interest on bonds purchased under
55 this program which encourages maximum participa-
56 tion.

57 (5) Execute a separate trust agreement under section
58 twelve of this article for bonds sold pursuant to an
59 individual higher education savings plan program
60 established under this section.

61 (d) *Construction.* — Other sections of this article
62 which apply generally to bonds issued under this article
63 shall apply to the revenue bonds issued under this
64 section. If any language in this section conflicts with
65 language in another section of this article, the language
66 of this section shall control unless such a construction
67 would be unlawful, or would not be in the public
68 interest, or would be contrary to the statements of
69 finding and purpose in this section.

70 (e) *Tax treatment.*

71 (1) The amount which an individual invests during his
72 taxable year in the purchase of revenue bonds issued
73 under this section shall be allowed as a deduction from
74 federal adjusted gross income for purposes of the tax
75 imposed by article twenty-one, chapter eleven of this
76 code, except as provided in paragraph (3).

77 (2) The interest which an individual earns on revenue
78 bonds issued under this section shall not be subject to
79 the tax imposed by article twenty-one, chapter eleven of
80 this code, except as provided in subdivision (3) of this
81 subsection.

82 (3) If the owner of a bond purchased under this
83 section sells it during a taxable year and does not spend
84 the entire amount for tuition and fees, books, reasonable
85 room and board and child care to attend an institution
86 which is accredited to award higher education degrees
87 by the West Virginia board of regents, or any successor
88 thereto, or by its equivalent in another state, the
89 proceeds of the sale not so spent shall be taxed under
90 article twenty-one, chapter eleven of this code, by
91 application of the highest marginal rate applicable to
92 the taxpayer to the amount not so spent. Additionally,

93 a penalty equal to ten percent of the tax due shall be
94 imposed, which penalty may be waived by the tax
95 commissioner if the taxpayer shows that this failure was
96 due to reasonable cause and not due to willful neglect.
97 The amount of tax and penalty so imposed shall be due
98 and payable on the fifteenth day of the fourth month of
99 the taxable year immediately succeeding the taxable
100 year in which the bond was sold.

101 (f) *Reports.* — The school building authority and the
102 trustee of an individual higher education savings plan
103 program shall make such reports regarding such bonds
104 to the tax commissioner and to the individuals of record
105 who own the bonds with respect to bond principal and
106 interest (and the years to which they relate) and such
107 other matters as the tax commissioner may require. The
108 reports required by this section shall be filed with the
109 tax commissioner at least annually, at such time and in
110 such manner as the tax commissioner may by regulation
111 require.

**§18-9D-6. School building capital improvements fund in
state treasury; collections to be paid into
special fund; authority to pledge such collec-
tions as security for revenue bonds; author-
ity to finance projects on a cash basis.**

1 There is created in the state treasury a school building
2 capital improvements fund to be expended by the
3 authority for the purposes of this article.

4 The school building authority shall have authority to
5 pledge all or such part of the revenues paid into the
6 school building capital improvements fund as may be
7 needed to meet the requirements of any revenue bond
8 issue or issues authorized by this article, including the
9 payment of principal of, interest and redemption
10 premium, if any, on such revenue bonds, the establish-
11 ing and maintaining of a reserve fund or funds for the
12 payment of the principal of, interest and redemption
13 premium, if any, on such revenue bond issue or issues
14 when other moneys pledged may be insufficient therefor
15 and including such additional protective pledge of
16 revenues as the authority in its discretion may provide

17 by resolution authorizing the issue of such bonds and in
18 any trust agreement made in connection therewith, and
19 the authority may further provide in such resolution and
20 in such trust agreement, for such priorities on the
21 revenues paid into such school building capital improve-
22 ments fund as may be necessary for the protection of the
23 prior rights of the holders of bonds issued at different
24 times under the provisions of this article.

25 Any balance remaining in the school building capital
26 improvements fund after the authority has issued bonds
27 authorized by this article, and after the requirements of
28 all funds including reserve funds established in connec-
29 tion with the bonds issued pursuant to this article have
30 been satisfied, may be used for the redemption of any
31 of the outstanding bonds issued hereunder which by
32 their terms are then redeemable, or for the purchase of
33 such bonds at the market price, but at not exceeding the
34 price, if any, at which such bonds shall in the same year
35 be redeemable, and all bonds redeemed or purchased
36 shall forthwith be canceled and shall not again be
37 issued.

38 The school building authority, in its discretion, may
39 use the moneys in the school building capital improve-
40 ments fund to finance the cost of projects on a cash basis.
41 Any pledge of moneys in such fund for revenue bonds
42 shall be a prior and superior charge on such fund over
43 the use of any of the moneys in such fund to pay for the
44 cost of any project on a cash basis: *Provided*, That any
45 expenditures from such fund, other than for the
46 retirement of revenue bonds, may only be made by the
47 authority to meet the cost of a predetermined capital
48 improvements project, in such order or priority as the
49 facility needs of each county have been determined on
50 the basis of need by resolution of the authority. The
51 allocation of funding for such purposes shall have been
52 agreed upon by the school building authority and
53 presented to the governor for inclusion in the annual
54 budget bill, and may only be expended with the
55 approval of the Legislature as indicated by direct
56 appropriation therefor.

§18-9D-7. Authority to fix and collect rents.

1 The authority may fix and collect a rental fee for the
2 use of all or any part of a capital improvement project
3 completed under this article to provide revenues for
4 deposit in the school building capital improvements
5 fund to pay, in whole or in part, the principal of, interest
6 and redemption premium, if any, on the bonds autho-
7 rized to be issued pursuant to this article as the same
8 mature and become due and to make all reserve and
9 other payments to be required by the proceedings which
10 authorize such bonds; to provide any additional protec-
11 tive pledge of revenues and reserve or other payments
12 as the school building authority may in its discretion
13 require by the resolution authorizing any issue of bonds
14 pursuant to this article and any trust agreement made
15 in connection therewith; and to make any other pay-
16 ments required or authorized by this article or any
17 proceedings, resolutions or trust agreements authorized
18 hereunder.

**§18-9D-8. Issuance of revenue bonds; use of proceeds;
bonds exempt from taxation.**

1 The issuance of revenue bonds under the provisions of
2 this article shall be authorized from time to time by
3 resolution or resolutions of the school building authority,
4 which shall set forth the proposed projects and provide
5 for the issuance of bonds in amounts sufficient, when
6 sold as hereinafter provided, to provide moneys deemed
7 by the authority sufficient to pay such costs, less the
8 amounts of any other funds available for said costs or
9 from any appropriation, grant or gift therefor. Such
10 resolution shall prescribe the rights and duties of the
11 bondholders and the school building authority, and for
12 such purpose may prescribe the form of the trust
13 agreement hereinafter referred to. The bonds may be
14 issued from time to time, in such amounts, shall be of
15 such series, bear such date or dates, mature at such time
16 or times not exceeding forty years from their respective
17 dates, bear interest at such rate or rates; be in such
18 denominations; be in such form, either coupon or
19 registered, carrying such registration, exchangeability
20 and interchangeability privileges; be payable in such
21 medium of payment and at such place or places within

22 or without the state; be subject to such terms of
23 redemption at such prices not exceeding one hundred
24 five percent of the principal amount thereof; and be
25 entitled to such priorities on the revenues paid into the
26 school building authority capital improvements fund as
27 may be provided in the resolution authorizing the
28 issuance of the bonds or in any trust agreement made
29 in connection therewith. The bonds shall be signed by
30 the governor, and by the president or vice president of
31 the authority, under the great seal of the state, attested
32 by the secretary of state, and the coupons attached
33 thereto shall bear the facsimile signature of the
34 president or vice president of the authority. In case any
35 of the officers whose signatures appear on the bonds or
36 coupons cease to be such officers before the delivery of
37 such bonds, such signatures shall nevertheless be valid
38 and sufficient for all purposes the same as if such
39 officers had remained in office until such delivery. Such
40 revenue bonds shall be sold in such manner as the
41 authority may determine to be for the best interests of
42 the state.

43 Any pledge of revenues for such revenue bonds made
44 by the school building authority shall be valid and
45 binding between the parties from the time the pledge
46 is made; and the revenues so pledged shall immediately
47 be subject to the lien of such pledge without any further
48 physical delivery thereof or further act. The lien of such
49 pledge shall be valid and binding against all parties
50 having claims of any kind in tort, contract or otherwise,
51 irrespective of whether such parties have notice of the
52 lien of such pledge, and such pledge shall be a prior and
53 superior charge over any other use of such revenues so
54 pledged.

55 The proceeds of such bonds shall be used solely for the
56 payment of the cost of those projects as generally and
57 specifically set forth in the resolution authorizing those
58 bonds, and shall be deposited in the state treasury in a
59 special fund to be disbursed as provided by law for the
60 disbursement of any other state funds. If the proceeds
61 of such bonds, by error in calculations or otherwise,
62 shall be less than the cost of such projects, additional

63 bonds may in like manner be issued to provide the
64 amount of the deficiency; and unless otherwise provided
65 for in the resolution or trust agreement hereinafter
66 mentioned, such additional bonds shall be deemed to be
67 of the same issue, and shall be entitled to payment from
68 the same fund, without preference or priority, as the
69 bonds before issued for such projects. If the proceeds of
70 bonds issued for such projects exceed the cost thereof,
71 the surplus may be used for such other projects as the
72 school building authority may determine or in such
73 other manner as the resolution authorizing such bonds
74 may provide. Prior to the preparation of definitive
75 bonds, the authority may, under like restrictions, issue
76 temporary bonds with or without coupons, exchangeable
77 for definitive bonds upon the issuance of such definitive
78 bonds.

79 After the issuance of any of such revenue bonds, the
80 revenues pledged therefor shall not be reduced as long
81 as any of such revenue bonds are outstanding and
82 unpaid except under such terms, provisions and condi-
83 tions as shall be contained in the resolution, trust
84 agreement or other proceedings under which such
85 revenue bonds were issued.

86 Such revenue bonds and the revenue refunding bonds,
87 and bonds issued for combined purposes shall, together
88 with the interest thereon, be exempt from all taxation
89 by the state of West Virginia, or by any county, school
90 district, municipality or political subdivision thereof.

**§18-9D-9. Issuance of revenue refunding bonds; use of
moneys; power to enter into escrow agree-
ments; call for redemption.**

1 The issuance of revenue refunding bonds under the
2 provisions of this article shall be authorized by resolu-
3 tion of the school building authority and shall otherwise
4 be subject to the limitations, conditions and provisions
5 of other revenue bonds under this article. Such revenue
6 refunding bonds may be issued in an amount at the
7 option of the authority sufficient to pay either in full or
8 together with interest sufficient on the investment of the
9 proceeds thereof, whether or not at the time of the

10 issuance of the revenue refunding bonds the hereafter
11 mentioned bonds are payable or callable for optional
12 redemption; (1) the redemption premium, if any, on such
13 outstanding bonds or the prior redemption thereof; (2)
14 the interest due and payable on such outstanding bonds
15 to and including the first date upon which said outstand-
16 ing bonds are callable prior to maturity, not exceeding,
17 however, ten years from the date of issuance of such
18 revenue refunding bonds, or the dates upon which the
19 principal of said outstanding bonds mature before such
20 first date on which the same are callable prior to
21 maturity, including any interest theretofore accrued and
22 unpaid; and (3) all expenses of the issuance and sale of
23 said revenue refunding bonds, including all necessary
24 financial and legal expenses, and also including the
25 creation of initial debt service reserve funds. Any
26 revenues pledged with respect to the outstanding bonds
27 may be used for any or all of the purposes stated in (1),
28 (2) and (3) above or may be deposited in a sinking fund
29 or reserve fund or other funds for the issue of bonds
30 which have been issued wholly or in part for the purpose
31 of such refunding. Such amount of the proceeds of the
32 revenue refunding bonds as shall be sufficient for the
33 payment of the principal of, interest and redemption
34 premium, if any, on such outstanding bonds which will
35 not be immediately due and payable shall be deposited
36 in trust, for the sole purpose of making such payments,
37 with the treasurer of the state of West Virginia. Any of
38 the moneys so deposited in trust may, prior to the date
39 on which such moneys will be needed for the payment
40 of principal of, interest and redemption premium, if
41 any, on such outstanding bonds, be invested and
42 reinvested as determined by the authority, in whole or
43 in part: (a) In direct obligations issued by the United
44 States of America or one of its agencies or in direct
45 obligations of the state of West Virginia, (b) in obliga-
46 tions unconditionally guaranteed by the United States
47 of America as to principal and interest, or (c) in
48 certificates of deposit of a banking corporation or
49 association which is a member of the federal deposit
50 insurance corporation, or successor; but any such
51 certificates of deposit must be fully secured as to both

52 principal and interest by pledged collateral consisting
53 of direct obligations of or obligations guaranteed by the
54 United States of America, or direct obligations of the
55 state of West Virginia, having a market value, exclud-
56 ing accrued interest, at all times at least equal to the
57 amount of the principal of and accrued interest on such
58 certificates of deposit. Any such investments must
59 mature, or be payable in advance of maturity at the
60 option of the holder, and must bear interest in such
61 manner as to provide funds which, together with
62 uninvested money, will be sufficient to pay when due or
63 called for redemption the bonds refunded, together with
64 interest accrued and to accrue thereon and redemption
65 premiums, if any, and such refunding bonds' proceeds
66 or obligations so purchased therewith shall be deposited
67 in escrow and held in trust for the payment and
68 redemption of the bonds refunded: *Provided*, That if
69 interest earned by any investment in such escrow is
70 shown to be in excess of the amounts required from time
71 to time for the payment of interest on and principal of
72 the refunded bonds, including applicable redemption
73 premium, then such excess may be withdrawn from
74 escrow and disbursed in such manner as the authority
75 shall by resolution determine, subject to the provisions
76 of section five of this article. Any moneys in the sinking
77 or reserve funds or other funds maintained for the
78 outstanding bonds to be refunded may be applied in the
79 same manner and for the same purpose as are the net
80 proceeds of refunding bonds or may be deposited in the
81 special fund or any reserve funds established for account
82 of the refunding bonds.

83 The authority to issue revenue refunding bonds shall
84 be in addition to any other authority to refund bonds
85 conferred by law.

86 The school building authority shall have power to
87 enter into such escrow agreements and to insert therein
88 such protective and other covenants and provisions as it
89 may consider necessary to permit the carrying out of the
90 provisions of this article and to ensure the prompt
91 payment of the principal of and interest and redemption
92 premiums on the revenue bonds refunded.

93 Where any revenue bonds to be refunded are not to
94 be surrendered for exchange or payment and are not to
95 be paid at maturity with escrowed obligations, but are
96 to be paid from such source prior to maturity pursuant
97 to call for redemption exercised under a right of
98 redemption reserved in such revenue bonds, the author-
99 ity shall, prior to the issuance of the refunding bonds,
100 determine which redemption date or dates shall be used,
101 call such revenue bonds for redemption and provide for
102 the giving of the notice of redemption required by the
103 proceedings authorizing such revenue bonds. Where
104 such notice is to be given at a time subsequent to the
105 issuance of the refunding bonds, the necessary notices
106 may be deposited with the state treasurer or the bank
107 acting as escrow agent of the refunding bond proceeds
108 and the escrow agent appropriately instructed and
109 authorized to give the required notices at the prescribed
110 time or times. If any officer of the public body signing
111 any such notice shall no longer be in office at the time
112 of the utilization of the notice, the notice shall neverthe-
113 less be valid and effective for its intended purpose.

§18-9D-10. Bonds may be issued for combined purposes.

1 The school building authority may authorize by one
2 or more resolutions a single issue of bonds for the
3 combined purposes of refunding the outstanding bonds
4 as herein authorized and financing one or more of the
5 projects authorized hereunder.

§18-9D-11. Bonds shall be negotiable instruments.

1 The revenue bonds, revenue refunding bonds and
2 bonds issued for combined purposes under the provi-
3 sions of this article shall, independently of the require-
4 ments of any other provision of law and solely by virtue
5 of the provisions of this section, be and have all the
6 qualities and incidents of negotiable instruments.

§18-9D-12. Trust agreements for holders of bonds.

1 The school building authority may enter into an
2 agreement or agreements with any trust company, or
3 with any bank having the powers of a trust company,
4 either within or outside the state, to act as trustee for

5 the holders of bonds issued hereunder, setting forth
6 therein such duties and containing such legally binding
7 covenants of the school building authority with the
8 holders of the bonds in respect to the payment of the
9 bond; the fixing and collecting of rents hereinbefore
10 referred to; the completion of authorized projects; the
11 custody, safeguarding and disposition of the proceeds of
12 the bonds, and the moneys in such special funds, sinking
13 funds, reserve funds, or any other moneys or funds,
14 notwithstanding provisions of this article to the con-
15 trary; the security for moneys on hand or on deposit, and
16 the rights and remedies of the trustee and the holders
17 of the bonds, as may be agreed upon with the purchasers
18 of such bonds; provisions restricting the individual right
19 of action of bondholders as is customary in trust
20 agreements respecting bonds and debentures of munic-
21 ipal corporations, protecting and enforcing the rights
22 and remedies of the trustee and the bondholders; and
23 provisions as to any other matters which are deemed
24 necessary and advisable by the school building authority
25 in the best interests of the state and to enhance the
26 marketability of the bonds. Any such agreement entered
27 into by the school building authority shall be binding in
28 all respects on such authority and its successors from
29 time to time in accordance with the terms thereof; and
30 all the provisions thereof shall be enforceable by
31 appropriate proceedings at law or in equity, or other-
32 wise.

§18-9D-13. Sinking fund for payment of bonds.

1 From the school building capital improvement fund
2 the school building authority shall make periodic
3 payments to the state treasurer in an amount sufficient
4 to meet the requirements of any issue of bonds sold
5 under the provisions of this article, as may be specified
6 in the resolution of the authority authorizing the issue
7 thereof and in any trust agreement entered into in
8 connection therewith. The payments so made shall be
9 placed by the treasurer in a special sinking fund which
10 is hereby pledged to and charged with the payment of
11 the principal of the bonds of such issue and the interest
12 thereon, and to the redemption or repurchase of such

13 bonds, such sinking fund to be a fund for all bonds of
14 such issue without distinction or priority of one over
15 another, except as may be provided in the resolution
16 authorizing such issue of bonds. The moneys in the
17 special sinking fund, less such reserve for payment of
18 principal and interest and redemption premium, if any,
19 as may be required by the resolution of the school
20 building authority, authorizing the issue and any trust
21 agreement made in connection therewith, may be used
22 for the redemption of any of the outstanding bonds
23 payable from such fund which by their terms are then
24 redeemable, or for the purchase of bonds at the market
25 price, but at not exceeding the price, if any, at which
26 such bonds shall in the same year be redeemable; and
27 all bonds redeemed or purchased shall forthwith be
28 canceled and shall not again be issued.

§18-9D-14. Credit of state not pledged.

1 No provisions of this article shall be construed to
2 authorize the school building authority at any time or
3 in any manner to pledge the credit or taxing power of
4 the state, nor shall any of the obligations or debts
5 created by the school building authority under the
6 authority herein granted be deemed to be obligations of
7 the state.

ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.

§18-20-5. Powers and duties of state superintendent.

§18-20-7. Exceptional children program compliance review teams.

§18-20-8. Interagency plan for exceptional children; advisory council.

§18-20-5. Powers and duties of state superintendent.

1 The state superintendent of schools shall organize,
2 promote, administer and be responsible for:

3 (1) Stimulating and assisting county boards of educa-
4 tion in establishing, organizing and maintaining special
5 schools, classes, regular class programs, home-teaching
6 and visiting-teacher services.

7 (2) Cooperating with all other public and private
8 agencies engaged in relieving, caring for, curing,
9 educating and rehabilitating exceptional children, and
10 in helping coordinate the services of such agencies.

11 (3) Preparing the necessary rules, regulations, for-
12 mula for distribution of available appropriated funds,
13 reporting forms and procedures necessary to define
14 minimum standards in providing suitable facilities for
15 education of exceptional children and ensuring the
16 employment, certification and approval of qualified
17 teachers and therapists subject to approval by the state
18 board of education.

19 (4) Receiving from county boards of education their
20 applications, annual reports and claims for reimburse-
21 ment from such moneys as are appropriated by the
22 Legislature, auditing such claims and preparing
23 vouchers to reimburse said counties the amounts
24 reimbursable to them.

25 (5) Assuring that all exceptional children in the state,
26 including children in mental health facilities, residential
27 institutions, private schools, and correctional facilities as
28 provided in section thirteen-f, article two, chapter
29 eighteen of this code, receive an education in accordance
30 with state and federal laws: *Provided*, That the state
31 superintendent shall also assure that adults in correc-
32 tional facilities shall receive an education to the extent
33 funds are provided therefor.

34 (6) Performing such other duties and assuming such
35 other responsibilities in connection with this program as
36 may be needed.

37 (7) Nothing herein contained shall be construed to
38 prevent any county board of education from establishing
39 and maintaining special schools, classes, regular class
40 programs, home-teaching or visiting-teacher services
41 out of funds available from local revenue.

**§18-20-7. Exceptional children program compliance
review teams.**

1 The state board shall establish exceptional children
2 program compliance review teams to conduct random
3 unannounced on-site reviews of such programs at least
4 every four years in each county for the purpose of
5 reviewing identification procedures, complying with any
6 or all applicable laws and policies, delivering services,

7 verifying enrollment and attendance reports, recom-
8 mending changes, and fulfilling such other duties as
9 may be established by the state board.

10 Each review team unit shall consist of five members
11 including one member of an exceptional children
12 advocacy group who is not an employee of any county
13 or state government agency, one teacher of exceptional
14 children in the specific category or categories to be
15 reviewed, one person certified to interpret psycho-
16 educational assessments, one school finance official and
17 one financial auditor who shall not be an employee of
18 any county board, all appointed by the state superin-
19 tendent.

**§18-20-8. Interagency plan for exceptional children;
advisory council.**

1 (a) The state departments of health, human services
2 and education shall enter into a collaborative agreement
3 for the purpose of developing a statewide plan of
4 coordinating comprehensive, multidisciplinary intera-
5 gency programs providing appropriate early interven-
6 tion services to all developmentally delayed and at-risk
7 children, ages birth through five years, and their
8 families to be phased in by the school year one thousand
9 nine hundred ninety—ninety-one.

10 This comprehensive, coordinated statewide plan shall
11 include, at a minimum:

12 (1) Specification of the population to be served;

13 (2) The development of regulations and procedural
14 safeguards;

15 (3) The development of procedures for administration,
16 supervision and monitoring;

17 (4) The identification and coordination of all available
18 resources; and

19 (5) The development of formal interagency agree-
20 ments that define the financial responsibility of each
21 agency and all additional components necessary to
22 ensure meaningful cooperation and coordination.

23 (b) To assist in the development of such a plan, an
24 advisory council consisting of twelve members shall be
25 created. The departments of health, human services and
26 education shall each appoint four members, and each
27 shall include in such appointments one parent of an
28 exceptional child under the age of six; one public or
29 private provider of early intervention services for
30 developmentally delayed and at-risk children; one
31 individual involved in the education training of person-
32 nel who work with preschool handicapped; and one other
33 person.

34 The functions of the council shall include the
35 following:

36 (1) Meet at least quarterly;

37 (2) Solicit information and opinions from concerned
38 agencies, groups and individuals;

39 (3) Advise and assist the departments of health,
40 human services and education in the development of the
41 statewide plan herein required; and

42 (4) Prepare and submit an annual report by the first
43 day of December of each year to the governor, the joint
44 committee on education, the Legislative commission on
45 juvenile law, the legislative oversight commission on
46 education accountability, and other agencies, as approp-
47 riate, which report shall recommend policies, proce-
48 dures and legislation for effectively providing early
49 intervention services and reports on the status of
50 existing programs.

51 Following the submission of the advisory council's
52 first annual report, the joint committee on education is
53 authorized and empowered to disband the council or
54 alter its functions as it deems advisable.

55 The members of the council may be reimbursed for
56 actual and necessary expenses incurred in the perfor-
57 mance of their official duties in accordance with state
58 law from appropriations to the departments of health,
59 human services and education or available federal
60 funds.

ARTICLE 21. UNDERWOOD-SMITH TEACHER SCHOLARSHIP PROGRAM.

§18-21-1. Scholarship fund created; purposes; funding.

§18-21-2. Selection criteria and procedures.

§18-21-3. Scholarship agreement.

§18-21-4. Renewal conditions; noncompliance; deferral; excusal.

§18-21-5. Amount and duration of scholarship; relation to other assistance.

§18-21-1. Scholarship fund created; purposes; funding.

1 (a) It is the purpose of this article to encourage and
2 enable individuals who are outstanding high school
3 graduates and who demonstrate an interest in teaching
4 to pursue teaching careers at the preschool, elementary
5 or secondary levels in the public schools of this state.
6 The board of regents may promulgate reasonable rules
7 under this article in furtherance of this purpose. All
8 rules so promulgated shall be filed with the secretary
9 of state.

10 (b) For the purposes of this article, "board" means the
11 board of regents unless the context in which used clearly
12 indicates otherwise.

13 (c) There is hereby created in the state treasury a
14 special revolving fund to be known as the "Underwood-
15 Smith Teacher Scholarship Fund" to be administered by
16 the board of regents solely for granting scholarships to
17 prospective teachers in accordance with this article. Any
18 moneys which may be appropriated by the Legislature
19 or received by the board from other sources for the
20 purposes of this article shall be deposited in the fund,
21 and any moneys remaining in the fund at the close of
22 a fiscal year shall be carried forward for use in the next
23 fiscal year. Any moneys repaid to the board of regents
24 by reason of default of a scholarship agreement under
25 this article shall also be deposited in the fund. Fund
26 balances shall be invested with the state's consolidated
27 investment fund, and any and all interest earnings on
28 these investments shall be used solely for the purposes
29 for which moneys invested were appropriated or
30 otherwise received.

31 (d) The board of regents may accept and expend any
32 gift, grant, contribution, bequest, endowment, or other

33 money for the purposes of this article and shall make
34 a reasonable effort to encourage support for the
35 scholarship program from all sources.

36 (e) For the purpose of encouraging support for the
37 scholarship program from private sources, the board of
38 regents may set aside no more than half of the funds
39 appropriated by the Legislature for Underwood-Smith
40 teacher scholarships to be used to match two state
41 dollars to each private dollar from a nonstate source
42 contributed on behalf of a specific institution of higher
43 education in this state.

§18-21-2. Selection criteria and procedures.

1 (a) The board of regents shall designate an existing
2 state-sanctioned scholarship selection agency or panel to
3 select the recipients of Underwood-Smith teacher
4 scholarships who meet the eligibility criteria set forth
5 in subsection (b) of this section. If no such agency or
6 panel exists, the governor shall appoint a scholarship
7 selection panel for this purpose which shall consist of
8 seven persons representative of public school adminis-
9 trators, teachers, including preschool teachers, and
10 parents.

11 (b) Selections of Underwood-Smith teacher scholar-
12 ship recipients shall be made from aides as defined in
13 section eight, article four, chapter eighteen-a of this
14 code, who have a cumulative grade point of three and
15 two-tenths on a possible scale of four after successfully
16 completing two years of course work at an approved
17 institution of higher education, or students who are West
18 Virginia residents and have graduated or who are
19 graduating from high school and who rank in the top
20 ten percent of their graduating class or the top ten
21 percent statewide of those West Virginia students
22 taking the American College Test, except that selections
23 of the teacher scholarship recipients at the master's
24 degree level shall be made from students who have
25 graduated or are graduating in the top ten percent of
26 their college graduating class. The board shall develop
27 criteria and procedures for the selection of recipients
28 which may include, but not be limited to, the applicant's

29 grade point average, involvement in extracurricular
30 activities, financial need, current academic standing,
31 and an expression of interest in teaching as expressed
32 in an essay written by the applicant. The board may also
33 require the applicant to furnish letters of recommenda-
34 tion from teachers and others. The selection criteria and
35 procedures shall also reflect the present and projected
36 teacher needs of the state, including the demand for and
37 supply of early childhood, elementary and secondary
38 teachers and teachers with training in specific academic
39 disciplines.

40 (c) In developing the selection criteria and procedures
41 to be used by the panel, the board shall solicit the views
42 of public and private education agencies and institutions
43 and other interested parties. These views (1) shall be
44 solicited by means of written and published selection
45 criteria and procedures in final form for implementa-
46 tion and (2) may be solicited by means of public hearings
47 on the present and projected teacher needs of the state
48 or such other methods as the board may determine to
49 be appropriate to gather such information.

50 (d) The board shall make application forms for
51 Underwood-Smith teacher scholarships available to
52 public and private high schools in the state and in other
53 locations convenient to applicants, parents and others.

§18-21-3. Scholarship agreement.

1 (a) Each recipient of an Underwood-Smith teacher
2 scholarship shall enter into an agreement with the board
3 of regents under which the recipient shall:

4 (1) Provide the board with evidence of compliance
5 with subsection (a), section four of this article; and

6 (2) Within a ten-year period after completing the
7 teacher education for which the scholarship was
8 awarded, teach full time under contract with a county
9 board of education (A) in a public education program
10 in the state for a period of not less than two years for
11 each year for which a scholarship was received, or (B)
12 in this state in a teacher shortage area as determined
13 by the state board of education, in an exceptional

14 children program in this state, or in a school in an
15 economically disadvantaged area of this state for not less
16 than one year for each year for which a scholarship was
17 received; or

18 (3) Repay all or part of an Underwood-Smith teacher
19 scholarship received under this article plus interest and,
20 if applicable, reasonable collection fees, in compliance
21 with rules issued by the board under subsection (b),
22 section four of this article, except as provided in
23 subsections (c) and (d) of said section four.

24 (b) Scholarship agreements shall fully disclose the
25 terms and conditions under which assistance under this
26 article is provided and under which repayment may be
27 required, including:

28 (1) A description of the conditions and procedures to
29 be established under section four of this article; and

30 (2) A description of the appeals procedure required to
31 be established under section four of this article.

**§18-21-4. Renewal conditions; noncompliance; deferral;
excusal.**

1 (a) The recipient of an Underwood-Smith teacher
2 scholarship is eligible for scholarship renewal only
3 during such periods that the board finds the recipient
4 is:

5 (1) Enrolled as a full-time student in an accredited
6 institution of higher education in this state;

7 (2) Pursuing a course of study leading to teacher
8 certification at the preschool, elementary or secondary
9 level in this state;

10 (3) Maintaining satisfactory progress as determined
11 by the institution of higher education the recipient is
12 attending; and

13 (4) Complying with such other standards as the board
14 may establish by rule.

15 (b) Recipients found by the board to be in noncom-
16 pliance with the agreement entered into under section
17 three of this article shall be required to repay the

18 amount of the scholarship awards received, plus interest
19 and, where applicable, reasonable collection fees, on a
20 schedule and at a rate of interest to be prescribed by
21 the board by rule. The board shall provide by rule for
22 procedures for proration of the amount to be repaid by
23 a recipient who teaches for part of the period required
24 under subsection (a), section three of this article and for
25 appeal procedures under which a recipient may appeal
26 any determination of noncompliance.

27 (c) A recipient shall not be considered in violation of
28 the agreement entered into under section three of this
29 article during any period in which the board finds that
30 the recipient is:

31 (1) Pursuing a full-time course of study at an accre-
32 dited institution of higher education;

33 (2) Serving, not in excess of three years, as a member
34 of the armed services of the United States;

35 (3) Seeking and unable to find full-time employment
36 as a teacher in a public education or exceptional
37 children program in the state; or

38 (4) Satisfying the provisions of additional repayment
39 exemptions that may be prescribed by the board by rule.

40 (d) A recipient shall be excused from repayment of a
41 teacher scholarship received under this article if the
42 recipient dies or becomes permanently and totally
43 disabled as established by sworn affidavit of a qualified
44 physician.

**§18-21-5. Amount and duration of scholarship; relation to
other assistance.**

1 (a) Subject to subsection (b) of this section, each
2 recipient of an Underwood-Smith teacher scholarship is
3 eligible to receive assistance of up to five thousand
4 dollars for each academic year of higher education in
5 preparation for becoming a preschool, elementary or
6 secondary teacher in the public schools of this state. No
7 individual may receive scholarship assistance for more
8 than four academic years for the completion of a
9 bachelor's degree and two academic years for comple-

10 tion of a master's degree.

11 (b) No individual shall receive a scholarship award
 12 under this article which exceeds the cost of attendance
 13 at the institution the individual is attending. The board
 14 shall establish the cost of attendance by rule based on
 15 the actual cost of tuition and fees, and reasonable
 16 allowances for books, educational supplies, room and
 17 board and other expenses necessitated by individual
 18 circumstances. For the purposes of establishing an
 19 award amount, the board shall take into account the
 20 amount of financial aid assistance the recipient has or
 21 will receive from all other sources. If the amount of the
 22 Underwood-Smith teacher scholarship assistance award
 23 and the amount of assistance awards which the recipient
 24 has received from all other sources exceed the cost of
 25 attendance, the Underwood-Smith teacher scholarship
 26 shall be reduced by the amount by which such combined
 27 assistance exceeds the cost of attendance, except that
 28 when other assistance to be received by the recipient
 29 includes assistance from the West Virginia higher
 30 education grant program, the amount to be received
 31 from the higher education grant program shall first be
 32 reduced.

**ARTICLE 30. WEST VIRGINIA HIGHER EDUCATION TUITION
 TRUST ACT.**

- §18-30-1. Title.
- §18-30-2. Legislative findings and purpose.
- §18-30-3. Definitions.
- §18-30-4. West Virginia higher education tuition trust created.
- §18-30-5. Appointment of board of directors; terms; compensation; proceedings generally.
- §18-30-6. Powers generally.
- §18-30-7. Higher education tuition trust fund created; assets generally; expenditures; exemption from taxation; excess fund.
- §18-30-8. Tuition prepayment contract provisions.
- §18-30-9. Tuition trust account contract provisions.
- §18-30-10. Contract termination; refund; transfer of benefits to institutions outside this state; penalty; exception.
- §18-30-11. Report of account; annual audit.
- §18-30-12. Administration of trust.
- §18-30-13. Conditions precedent to administration of trust; disclaimer; enforcement.
- §18-30-14. Income tax deduction for purchasers.
- §18-30-15. Lincoln scholarship fund created.

§18-30-16. Liberal construction; severability.

§18-30-17. Expiration of act.

§18-30-1. Title.

- 1 This article shall be known and may be cited as the
- 2 "West Virginia Higher Education Tuition Trust Act."

§18-30-2. Legislative findings and purpose.

- 1 The Legislature hereby finds and declares that it is
- 2 in the best interests of the state to encourage its citizens
- 3 to obtain a higher education. The Legislature further
- 4 finds that tuition costs at institutions of higher education
- 5 are difficult for many to either afford or to predict so
- 6 they can plan for a higher education.

- 7 In light of these findings, the Legislature declares the
- 8 purpose of this article and the West Virginia higher
- 9 education tuition trust fund created by this article is to
- 10 encourage students and their parents to plan for
- 11 attendance at an institution of higher education, to
- 12 enable them to finance the cost of a higher education in
- 13 this state by providing economic protection against
- 14 rising tuition costs at state institutions of higher
- 15 education and economic assistance for attendance at
- 16 other institutions of higher education in this state, and
- 17 to enhance access to all institutions of higher education
- 18 to benefit the state of West Virginia and its people.

§18-30-3. Definitions.

- 1 As used in this article, except where the context
- 2 clearly requires otherwise:

- 3 (a) "Average tuition cost" means the weighted aver-
- 4 age cost per semester for full-time, resident, undergrad-
- 5 uate attendance at any state institution of higher
- 6 education, such weighted average cost to be arrived at
- 7 by adding the products of the cost of tuition at each state
- 8 institution of higher education for full-time attendance
- 9 per semester times its total number of full-time-
- 10 equivalent undergraduate students during a fiscal year,
- 11 and then dividing that sum by the total number of full-
- 12 time-equivalent undergraduate students attending all
- 13 state institutions of higher education in that fiscal year;

14 (b) "Board" means the board of directors of the West
15 Virginia higher education tuition trust board provided
16 for in section five of this article;

17 (c) "Contract" means a tuition prepayment contract or
18 a tuition trust account contract, or both;

19 (d) "Fund" means the West Virginia higher education
20 tuition trust fund created in section seven of this article;

21 (e) "Institution of higher education" means any public
22 or private, nonprofit, accredited, degree-granting
23 college or university;

24 (f) "Purchaser" means a person who makes or is
25 obligated to make payments pursuant to a tuition
26 prepayment contract or tuition trust account contract,
27 or both;

28 (g) "Qualified beneficiary" means any resident of this
29 state, or any other state, who is named as such in the
30 tuition prepayment contract or tuition trust account
31 contract;

32 (h) "Standard tuition unit" means the weighted
33 average tuition cost divided by the minimum number of
34 credits per semester required for full-time enrollment
35 to reflect a cost per credit;

36 (i) "State institution of higher education" means state
37 colleges, state universities and any community college as
38 those terms are defined in section two, article twenty-
39 six of this chapter;

40 (j) "Trust" means the West Virginia higher education
41 tuition trust created in section four of this article;

42 (k) "Tuition" means the cost of tuition and all
43 mandatory fees required of resident, undergraduate
44 students per semester at state institutions of higher
45 education including, but not limited to, fees required
46 pursuant to sections one, one-a, one-b and four, article
47 twenty-four of this chapter;

48 (l) "Tuition prepayment contract" means a contract
49 entered into by the trust and a purchaser pursuant to
50 section eight of this article; and

51 (m) "Tuition trust account contract" means a contract
52 entered into by the trust and a purchaser pursuant to
53 section nine of this article.

§18-30-4. West Virginia higher education tuition trust created.

1 (a) There is created a public body corporate and
2 politic to be known as the West Virginia higher
3 education tuition trust. The trust shall be within the
4 office of the state treasurer and may utilize the services,
5 personnel and equipment of such office, but shall
6 exercise its prescribed statutory powers, duties and
7 functions independently of the head of that office.

8 (b) The purposes, powers and duties of the West
9 Virginia higher education tuition trust are vested in and
10 shall be exercised by a board of directors.

§18-30-5. Appointment of board of directors; terms; compensation; proceedings generally.

1 (a) The board of directors shall consist of the chancel-
2 lor of the board of regents, who shall be the chairman
3 of the board, the state treasurer, and the state super-
4 intendent of schools, who shall serve as ex officio voting
5 members of the board, and six other members with
6 knowledge, skill and experience in an academic,
7 business or financial field, who shall be residents of the
8 state appointed by the governor, by and with the advice
9 and consent of the Senate. Of the six appointed
10 members, four shall be appointed from nominations as
11 follows: One shall be a private citizen not employed by
12 or an officer of the state or any political subdivision
13 thereof appointed from one or more nominees of the
14 speaker of the House of Delegates; one shall be a private
15 citizen not employed by or an officer of the state or any
16 political subdivision thereof appointed from one or more
17 nominees of the president of the Senate; one shall be a
18 president of a state institution of higher education who
19 shall be appointed from one or more nominees of the
20 council of presidents of state colleges and universities;
21 and one shall represent the interests of private institu-
22 tions of higher education located in this state who shall
23 be appointed from one or more nominees of the West

24 Virginia association of private colleges. Of these six
25 members first appointed, two shall be appointed for
26 terms that expire on the thirty-first day of December,
27 one thousand nine hundred eighty-nine, two shall be
28 appointed for terms that expire on the thirty-first day
29 of December, one thousand nine hundred ninety, and
30 two shall be appointed for a term that expires on the
31 thirty-first day of December, one thousand nine hundred
32 ninety-one. Following the expiration of these fixed
33 terms, a member shall be appointed for a term of three
34 years. A member shall serve until a successor is
35 appointed, and a vacancy shall be filled for the balance
36 of the unexpired term in the same manner as the
37 original appointment. The chancellor, treasurer, state
38 superintendent or president of a state institution of
39 higher education may appoint a designee to serve as a
40 voting member of the board in such person's absence.

41 (b) Members of the board shall serve without compen-
42 sation, but shall receive reimbursement for reasonable
43 and necessary expenses actually incurred in the perfor-
44 mance of their duties as board members unless such
45 member is otherwise reimbursed as an employee of the
46 state.

47 (c) A majority of the members of the board serving
48 shall constitute a quorum for the transaction of business
49 at a meeting of the board, or the exercise of a power
50 or function of the trust, notwithstanding the existence
51 of one or more vacancies. Voting upon action taken by
52 the board shall be conducted by majority vote of the
53 members present in person at a meeting of the board,
54 and, if authorized by the bylaws of the board and when
55 a quorum is present in person at the meeting, by use
56 of amplified telephonic equipment. The board shall meet
57 at the call of the chairman and as may be provided in
58 its bylaws. Meetings of the board may be held anywhere
59 within the state.

60 (d) The board is subject to the open governmental
61 proceedings and freedom of information provisions of
62 article nine-a, chapter six, and chapter twenty-nine-b,
63 respectively, of this code.

§18-30-6. Powers generally.

1 In addition to the powers granted by other provisions
2 of this article, the board has the powers necessary or
3 convenient to carry out and effectuate the purposes,
4 objectives and provisions of this article, the purposes
5 and objectives of the trust and the powers delegated by
6 other laws or executive orders, including, but not
7 limited to, the power to:

8 (1) Invest any money of the trust, at the board's
9 discretion, with the West Virginia state board of
10 investments, or in any instruments, obligations, secur-
11 ities or property authorized under article six, chapter
12 twelve of this code for the investment of state moneys;

13 (2) Name and use depositories for its money in such
14 manner as is prescribed for the deposit of state moneys;

15 (3) Pay money to institutions of higher education on
16 account of a qualified beneficiary as provided in a
17 contract made with the trust and to enter into contrac-
18 tual or other arrangements that are necessary or
19 appropriate with institutions of higher education in
20 order to fulfill the trust's obligations under tuition
21 prepayment and tuition trust account contracts;

22 (4) Administer the higher education tuition trust fund
23 pursuant to section seven and other provisions of this
24 article;

25 (5) To make, execute and deliver contracts in accor-
26 dance with the provisions of sections eight and nine of
27 this article, which contracts shall set forth terms and
28 conditions relating to payment, benefits, withdrawal
29 and any other provisions which clarify the rights and
30 duties of the parties to the contracts;

31 (6) Employ and delegate to an executive secretary or
32 others such functions and authority as the board
33 considers necessary or appropriate, including, but not
34 limited to, the hiring, oversight and supervision of
35 employees of the trust;

36 (7) Utilize the services, personnel and equipment of
37 the treasurer's office for the provision of all or a portion

38 of the services necessary for the management and
39 operation of the trust;

40 (8) Contract with others, public or private, for goods
41 and any services necessary for the management and
42 operation of the trust, including the office of the
43 attorney general and engage the services of private
44 consultants, actuaries, managers, legal counsel and
45 auditors for rendering professional, management and
46 technical assistance and advice, all payable out of any
47 money of the trust from management and administra-
48 tive withholding fees in excess of that needed to ensure
49 actuarial soundness of the trust funds;

50 (9) Solicit and accept gifts, grants, loans and other
51 aids from any person or the federal, state or a local
52 government or any agency of the federal, state or a local
53 government, and to participate in any other way in any
54 federal, state or local government program;

55 (10) Certify and approve contracts entered into with
56 a private sector investment manager which provide
57 equivalent benefits, rights and duties to purchasers,
58 beneficiaries, the trust and state institutions of higher
59 education as a contract offered by the trust, including
60 provisions relating to administrative fees, charges and
61 penalties, and the disposition of amounts resulting
62 therefrom;

63 (11) Charge, impose and collect administrative fees,
64 charges and penalties in connection with any refund or
65 transfer to an institution of higher education outside this
66 state and provide for reasonable penalties, including
67 default, for delinquent payment of amounts due under
68 a tuition prepayment or tuition trust account contract,
69 or for fraud;

70 (12) Procure insurance against any loss in connection
71 with the trust's property, assets or activities;

72 (13) Sue and be sued; have a seal and alter the same
73 at pleasure; have perpetual succession; make, execute
74 and deliver any additional contracts, conveyances and
75 other instruments necessary or convenient to the
76 exercise of its powers; and make and amend bylaws;

77 (14) Indemnify or procure insurance indemnifying
78 any member of the board from personal loss or accoun-
79 tability from liability resulting from a member's action
80 or inaction as a member of the board;

81 (15) Establish policies, procedures and any other
82 criteria necessary or convenient to implement this act;

83 (16) Impose reasonable limits on the number of
84 participants in the trust; and

85 (17) Make transfers of trust moneys to the Lincoln
86 scholarship fund created in section fifteen of this article.

**§18-30-7. Higher education tuition trust fund created;
assets generally; expenditures; exemption
from taxation; excess funds.**

1 (a) The higher education tuition trust fund is hereby
2 created, to be under the jurisdiction and control of the
3 board. Payments received by the trust from purchasers
4 on behalf of qualified beneficiaries or from any other
5 source, public or private, shall be placed in the fund.
6 The fund may be divided into separate accounts.

7 (b) Assets of the trust shall not be considered state
8 money. The assets of the trust shall be preserved,
9 invested and expended solely pursuant to and for the
10 purposes set forth in this act and shall not be loaned or
11 otherwise transferred or used by the state for any
12 purpose other than the purposes of this act: *Provided,*
13 That this section shall not be construed to prohibit the
14 trust from investing in, by purchase or otherwise, bonds,
15 notes or other obligations of the state, an agency of the
16 state or an instrumentality of the state.

17 (c) Unless otherwise provided by resolution of the
18 board, assets of the trust shall be expended in the
19 following order of priority:

20 (1) To make payments to institutions of higher
21 education on account of qualified beneficiaries;

22 (2) To make refunds upon termination of a contract;

23 (3) To pay the costs of administration, management
24 and organization of the trust and the fund not to exceed

25 three fourths of the amount of any management and
26 administrative withholding fees per year collected by
27 the trust;

28 (4) To make transfers of moneys in the fund from
29 management and administrative withholding fees for
30 tuition trust account contracts, less any amounts used
31 for the purposes of subdivision (3) of this subsection, to
32 the Lincoln scholarship fund created in section fifteen
33 of this article; and

34 (5) To the extent moneys in the fund from manage-
35 ment and administrative withholding fees for tuition
36 prepayment contracts are in excess of those needed to
37 ensure the actuarial soundness of the trust with regard
38 to these contracts, to make transfers of such excess
39 funds, less any amounts used for the purposes of
40 subdivision (3) of this subsection, to the Lincoln
41 scholarship fund created in section fifteen of this article.

42 (d) Assets of the trust may be invested in such manner
43 as is prescribed under article six, chapter twelve of this
44 code for the investment of state funds in any instrument,
45 obligation, security or property considered appropriate
46 by the trust and may be pooled for investment purposes
47 with investments of the state, including, but not limited
48 to, state pension funds.

49 (e) The property of the trust and its income and
50 operation shall be exempt from all taxation by this state
51 or any of its political subdivisions.

§18-30-8. Tuition prepayment contract provisions.

1 (a) A tuition prepayment contract shall provide for
2 the purchase of tuition guarantees which may be used
3 by a qualified beneficiary to attend without additional
4 cost any state institution of higher education to which
5 the qualified beneficiary is admitted as an undergrad-
6 uate, except such increases as shall be mandated due to
7 any nonresident status of the beneficiary, for such
8 number of semesters or credit hours as are purchased
9 pursuant to and stated in the tuition prepayment
10 contract. In the event the qualified beneficiary chooses
11 and is admitted to a private institution of higher

12 education in this state, the trust shall pay such institu-
13 tion an amount equal to the average tuition cost or the
14 cost of the standard tuition units, whichever has been
15 purchased. In the event the qualified beneficiary chooses
16 and is admitted to an institution of higher education
17 located outside this state, the trust shall pay the
18 institution pursuant to subsection (c), section ten of this
19 article.

20 (b) In addition, a tuition prepayment contract shall
21 set forth in a clear, understandable manner all of the
22 following:

23 (1) A management fee not to exceed three percent per
24 year as to amounts under a tuition prepayment contract;

25 (2) The amount of withholding fee not to exceed
26 twenty percent of accrued earnings where a refund is
27 made or where the benefits of a contract are transferred
28 to an institution of higher education located outside this
29 state, unless such institution has a reciprocal agreement
30 with the board of regents pursuant to section ten-b,
31 article twenty-six of this chapter and the qualified
32 beneficiary is enrolled in a program covered by the
33 agreement;

34 (3) The amount of the payment or payments required
35 from the purchaser on behalf of the qualified benefi-
36 ciary, which payments may be in lump sum or periodic;

37 (4) The terms and conditions for making the payment,
38 including, but not limited to, the date or dates upon
39 which the payment, or portions of the payment, shall be
40 due, and provisions for making payments in lump sums,
41 periodic sums or payroll deductions;

42 (5) Provisions for late payment charges and for
43 default;

44 (6) The name and age of the qualified beneficiary
45 under the contract. The purchaser, with the approval of
46 and on conditions determined by the trust, may subse-
47 quently substitute another person for the qualified
48 beneficiary originally named, but may not sell or
49 otherwise transfer the contract without the prior
50 approval of the trust;

51 (7) The name of the person entitled to terminate the
52 contract, which, as provided by the contract, may be the
53 purchaser, the qualified beneficiary, or a person to act
54 on behalf of the purchaser or qualified beneficiary, or
55 any combination of these persons;

56 (8) The terms and conditions under which the con-
57 tract may be terminated or transferred out of state in
58 accordance with section ten of this article, and the
59 amount of the refund to which the person terminating
60 the contract, or specifically the purchaser or designated
61 qualified beneficiary if the contract so provides, shall be
62 entitled upon termination. The contract shall specifi-
63 cally state whether the trust shall refund any invest-
64 ment income attributable to the payments;

65 (9) The period of time from the beginning to the end
66 of which the qualified beneficiary may receive the
67 benefits under the contract: *Provided*, That such time
68 shall be extended for such amount of time as the
69 qualified beneficiary is on active duty in the military
70 services of the United States at a time within which a
71 Federal Selective Service Act is in effect;

72 (10) All other rights and obligations of the purchaser
73 and the trust; and

74 (11) Other terms, conditions and provisions as the
75 trust considers in its sole discretion to be necessary or
76 appropriate.

77 (c) The form of any tuition prepayment contract to be
78 entered into by the trust shall first be approved by the
79 board.

80 (d) A tuition prepayment contract shall be exempt
81 from the Uniform Securities Act, chapter thirty-two of
82 this code.

83 (e) A tuition prepayment contract may provide that,
84 if after a number of years specified in the contract the
85 contract has not been terminated or the qualified
86 beneficiary's rights under the contract have not been
87 exercised and after the trust has made a reasonable
88 effort to locate the purchaser and qualified beneficiary
89 or the agent of either, the rights of the qualified

90 beneficiary, the purchaser or the agent of either shall
91 be considered terminated.

§18-30-9. Tuition trust account contract provisions.

1 (a) A tuition trust account contract shall provide for
2 the establishment of a trust account with the trust by
3 the purchaser on behalf of a qualified beneficiary which
4 shall be transferred on a semester basis to any institu-
5 tion of higher education to which the qualified benefi-
6 ciary is admitted to meet the cost of tuition and all
7 mandatory fees for so many semesters as the qualified
8 beneficiary is in attendance and funds in the account are
9 available therefor.

10 (b) In addition, a tuition trust account contract shall
11 set forth in a clear, understandable manner all of the
12 following:

13 (1) A management fee not to exceed three percent per
14 year as to amounts under a tuition trust account
15 contract;

16 (2) The amount of withholding fee not to exceed
17 twenty percent of accrued earnings where a refund is
18 made or where the benefits of a contract are transferred
19 to an institution of higher education located outside this
20 state, unless such institution has a reciprocal agreement
21 with the board of regents pursuant to section ten-b,
22 article twenty-six of this chapter and the qualified
23 beneficiary is enrolled in a program covered by the
24 agreement;

25 (3) The name and age of the qualified beneficiary
26 under the contract. The purchaser, with the approval of
27 and on conditions determined by the trust, may subse-
28 quently substitute another person for the qualified
29 beneficiary originally named, but may not sell or
30 otherwise transfer the contract without the prior
31 approval of the trust;

32 (4) The name of the person entitled to terminate the
33 contract, which, as provided by the contract, may be the
34 purchaser, the qualified beneficiary, or a person to act
35 on behalf of the purchaser or qualified beneficiary, or
36 any combination of these persons;

37 (5) The terms and conditions under which the con-
38 tract may be terminated or transferred out of state in
39 accordance with section ten of this article, and the
40 amount of the refund to which the person terminating
41 the contract, or specifically the purchaser or designated
42 qualified beneficiary if the contract so provides, shall be
43 entitled upon termination. The contract shall specifi-
44 cally state whether the trust shall refund any invest-
45 ment income attributable to the payments;

46 (6) All other rights and obligations of the purchaser
47 and the trust; and

48 (7) Other terms, conditions and provisions as the trust
49 considers in its sole discretion to be necessary or
50 appropriate.

51 (c) The form of any tuition trust account contract to
52 be entered into by the trust shall first be approved by
53 the board.

54 (d) A tuition trust account contract shall be exempt
55 from the Uniform Securities Act, chapter thirty-two of
56 this code.

57 (e) A tuition trust account contract may provide that,
58 if after a number of years specified in the contract the
59 contract has not been terminated or the qualified
60 beneficiary's rights under the contract have not been
61 exercised and after the trust has made a reasonable
62 effort to locate the purchaser and qualified beneficiary
63 or the agent of either, the rights of the qualified
64 beneficiary, the purchaser, or the agent of either shall
65 be considered terminated.

**§18-30-10. Contract termination; refund; transfer of
benefits to institutions outside this state;
penalty; exception.**

1 (a) A tuition prepayment contract and tuition trust
2 account contract shall authorize a termination of the
3 contract when any one of the following occurs:

4 (1) The qualified beneficiary dies or is certified by a
5 qualified physician to be permanently totally disabled.
6 In such event, notwithstanding any other provisions of

7 this article, the total investment plus all accrued
8 interest, if any, shall be refunded to the person
9 authorized under the contract to receive the refund;

10 (2) The qualified beneficiary is not admitted to an
11 institution of higher education after making proper
12 application or fails to meet the standards for continued
13 admission to an institution of higher education;

14 (3) The qualified beneficiary certifies to the trust,
15 after he or she has a high school diploma or has reached
16 the age of majority, that he or she has decided not to
17 attend an institution of higher education and requests,
18 in writing, before the fifteenth day of July of the year
19 in which the qualified beneficiary receives a high school
20 diploma or reaches the age of majority, that the contract
21 be terminated;

22 (4) The qualified beneficiary offers proof of the
23 completion of the requirements for a degree pursuant
24 to a two-year program at an institution of higher
25 education and chooses no further attendance at an
26 institution of higher education;

27 (5) The qualified beneficiary is on active duty in the
28 military services of the United States at a time within
29 which a Federal Selective Service Act is in effect; or

30 (6) Other circumstances, determined by the trust and
31 set forth in the contract, occur.

32 (b) Such refund shall be an amount equal to the sum
33 of payments and, if the contract so provides, accrued
34 interest, minus applicable management and withholding
35 fees and any amounts transferred to an institution of
36 higher education prior to termination of the contract.

37 (c) A tuition prepayment contract and tuition trust
38 account contract shall authorize a person who is entitled
39 under the contract to transfer the benefits of the
40 contract and to direct the payment of such benefits, less
41 any withholding fee stated in the contract, to an
42 institution of higher education located outside this state:
43 *Provided*, That such withholding fee shall not be applied
44 to a qualified beneficiary enrolled in a program at an
45 institution of higher education with which the board of

46 regents has a reciprocal agreement pursuant to section
47 ten-b, article twenty-six of this chapter and such
48 program is covered by the agreement.

§18-30-11. Report of account; annual audit.

1 The board shall annually prepare or cause to be
2 prepared an accounting of the trust, including all
3 administrative costs and the actuarial soundness of the
4 trust, and shall transmit a copy of the accounting to the
5 governor, the president of the Senate, the speaker of the
6 House of Delegates and the respective minority leaders
7 of the Senate and House of Delegates. The board shall
8 also make available the accounting of the trust to the
9 purchasers of the trust. The accounts of the board shall
10 be subject to annual audits by the legislative auditor or
11 a certified public accountant appointed by the legisla-
12 tive auditor.

§18-30-12. Administration of trust.

1 (a) The trust shall be administered in a manner
2 reasonably designed to be actuarially sound such that
3 the assets of the trust will be sufficient to defray the
4 obligations of the trust.

5 (b) The trust board shall annually evaluate and cause
6 to be evaluated by a nationally recognized actuary the
7 actuarial soundness of the trust and determine the
8 additional assets needed, if any, to defray the obligations
9 of the trust. If there are not funds sufficient to ensure
10 the actuarial soundness of the trust as determined by the
11 nationally recognized actuary, the trust shall adjust
12 payments of subsequent purchasers to ensure its
13 actuarial soundness. If there are insufficient numbers of
14 new purchasers to ensure the actuarial soundness of the
15 tuition prepayment contracts of the trust, the available
16 assets of the trust attributable to the tuition prepayment
17 contracts shall be immediately prorated among the then
18 existing tuition prepayment contracts, and these shares
19 shall be applied, at the option of the person to whom the
20 refund is payable or would be payable under the
21 contract upon termination of the contract, either
22 towards the tuition prepayment contract for a qualified
23 beneficiary or disbursed to the person to whom the

24 refund is payable or would be payable under the
25 contract upon termination.

§18-30-13. Conditions precedent to administration of trust; disclaimer; enforcement.

1 (a) A tuition prepayment contract or tuition trust
2 account contract shall not be entered into by the trust
3 until the Internal Revenue Service has issued a ruling
4 or opinion regarding the federal tax consequences of any
5 benefits or refunds received from the trust under the
6 applicable contract. If a ruling or opinion is rendered
7 by the Internal Revenue Service that any benefits or
8 refunds under either contract are subject to federal
9 taxation, the board shall present a report to the
10 Legislature outlining recommendations for the modifi-
11 cation and continuance of the trust or of any provisions
12 under which such ruling or opinion was rendered,
13 including a recommendation as to whether the trust
14 should proceed to enter into such contracts. If continua-
15 tion is recommended, the report shall also include
16 measures which may be taken to provide that any
17 benefits or refunds, or certain benefits or refunds, shall
18 not be considered actually or constructively to be income
19 for purposes of taxation. An unfavorable ruling or
20 opinion regarding the federal tax consequences of any
21 benefits or refunds pertaining to one of these contracts
22 shall not preclude the trust from entering into the other
23 contracts.

24 (b) Before entering into a tuition prepayment contract
25 or tuition trust account contract with purchasers, the
26 state shall solicit answers to appropriate ruling requests
27 from the federal Securities and Exchange Commission
28 regarding the application of federal security laws to the
29 trust. No contracts may be entered without the trust
30 making known to the Legislature the status of the
31 request.

32 (c) Nothing in this article or in a contract entered into
33 pursuant to this article may be construed as a promise
34 or guarantee by the trust or the state that a person will
35 be admitted to a particular institution of higher
36 education, will be allowed to continue to attend an

37 institution of higher education after having been
38 admitted or will be graduated from an institution of
39 higher education.

40 (d) The board, state institutions of higher education,
41 purchasers and qualified beneficiaries may enforce this
42 article and any contract entered into pursuant to this
43 article in the circuit court of Kanawha County.

§18-30-14. Income tax deduction for purchasers.

1 As provided in section twelve-a, article twenty-one,
2 chapter eleven of this code, the purchaser may subtract
3 for state income tax purposes from federal adjusted
4 gross income the following payments made by the
5 purchaser in the tax year:

6 (1) The amount of payment made under a tuition
7 prepayment contract or tuition trust account contract,
8 or both; and

9 (2) The amount of payment made under a contract
10 with a private sector investment manager, broker-
11 dealer or agent approved by the securities division of the
12 state auditor of this state or the federal Securities and
13 Exchange Commission for the private placement of
14 contracts under this article, such contract to be certified
15 and approved by the board to provide equivalent
16 benefits, rights and duties to purchasers, beneficiaries,
17 the trust and institutions of higher education as a tuition
18 prepayment contract or a tuition trust account contract.

§18-30-15. Lincoln scholarship fund created.

1 There is created in the state treasury under the
2 jurisdiction and control of the board a Lincoln scholar-
3 ship fund for the purpose of providing scholarships for
4 residents of this state to attend any state institution of
5 higher education. This scholarship fund shall be
6 administered pursuant to rules promulgated by the
7 board of regents: *Provided*, That certain funds may be
8 set aside to enable and to help ensure that any group
9 of people determined to be underrepresented at state
10 institutions of higher education know about, apply and
11 qualify for such scholarships. The Lincoln scholarship
12 fund account shall be separate from all other accounts

13 of the board.

§18-30-16. Liberal construction; severability.

1 (a) This article shall be construed liberally to effec-
 2 tuate the legislative intent, the purposes of the article,
 3 and as complete and independent authority for the
 4 performance of each and every act and thing authorized
 5 in the article, and all powers granted herein shall be
 6 broadly interpreted to effectuate such intent and
 7 purposes and not as to limitation of powers.

8 (b) If any section, subsection, paragraph, clause or
 9 provision of this article shall be adjudged unconstitu-
 10 tional or ineffective, no other section, subsection,
 11 paragraph, clause or provision of this article shall on
 12 account thereof be considered invalid or ineffective, and
 13 the applicability or invalidity of any section, subsection,
 14 paragraph, clause or provision of this article in any one
 15 or more instances or under any one or more circumstan-
 16 ces shall not be taken to affect or prejudice its applic-
 17 ability or validity in any other instance or under any
 18 other circumstance.

§18-30-17. Expiration of act.

1 This article is repealed effective the first day of
 2 January, one thousand nine hundred ninety-two, if the
 3 trust has not entered into a tuition prepayment contract
 4 or tuition trust account contract with a purchaser before
 5 that date.

CHAPTER 18A. SCHOOL PERSONNEL.

Article

2. **School Personnel.**
3. **Training, Certification, Licensing.**
4. **Salaries, Wages and Other Benefits.**
5. **Authority; Rights; Responsibilities.**

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-1. Employment in general.

§18A-2-2. Employment of teachers; contracts; continuing contract status;
 how terminated; dismissal for lack of need; released time;
 failure of teacher to perform contract or violation thereof.

§18A-2-2a. Leaves of absence for teachers and service personnel.

§18A-2-5. Employment of service personnel; limitation.

§18A-2-9. Duties and responsibilities of school principals; assistant
 principals.

§18A-2-1. Employment in general.

1 The employment of professional personnel shall be
2 made by the board only upon nomination and recom-
3 mendation of the superintendent. In case the board
4 refuses to employ any or all of the persons nominated,
5 the superintendent shall nominate others and submit the
6 same to the board at such time as the board may direct.
7 All personnel so nominated and recommended for
8 employment and for subsequent assignment shall meet
9 the certification, licensing, training, and other eligibility
10 classifications as may be required by provisions of this
11 chapter and by state board regulation. Professional
12 personnel employed as deputy, associate or assistant
13 superintendents by the board in offices, departments or
14 divisions at locations other than a school and who are
15 directly answerable to the superintendent shall serve at
16 the will and pleasure of the superintendent and may be
17 removed by the superintendent upon approval of the
18 board. Such professional personnel shall retain seniority
19 rights only in the area or areas in which they hold valid
20 certification or licensure.

§18A-2-2. Employment of teachers; contracts; continuing contract status; how terminated; dismissal for lack of need; released time; failure of teacher to perform contract or violation thereof.

1 Before entering upon their duties, all teachers shall
2 execute a contract with their boards of education, which
3 contract shall state the salary to be paid and shall be
4 in the form prescribed by the state superintendent of
5 schools. Every such contract shall be signed by the
6 teacher and by the president and secretary of the board
7 of education, and when so signed shall be filed, together
8 with the certificate of the teacher, by the secretary of
9 the office of the board.

10 A teachers' contract, under this section, shall be for
11 a term of not less than one nor more than three years;
12 and if, after three years of such employment, the teacher
13 who holds a professional certificate, based on at least a

14 bachelor's degree, has met the qualifications for the
15 same, and the board of education enter into a new
16 contract of employment, it shall be a continuing
17 contract: *Provided*, That any teacher holding a valid
18 certificate with less than a bachelor's degree who is
19 employed in a county beyond the said three-year
20 probationary period shall upon qualifying for said
21 professional certificate based upon a bachelor's degree,
22 if reemployed, be granted continuing contract status:
23 *Provided, however*, That a teacher holding continuing
24 contract status with one county shall be granted
25 continuing contract status with any other county upon
26 completion of one year of acceptable employment if such
27 employment is during the next succeeding school year
28 or immediately following an approved leave of absence
29 extending no more than one year.

30 The continuing contract of any teacher shall remain
31 in full force and effect except as modified by mutual
32 consent of the school board and the teacher, unless and
33 until terminated (1) by a majority vote of the full
34 membership of the board before April first of the then
35 current year, after written notice, served upon the
36 teacher, return receipt requested, stating cause or
37 causes, and an opportunity to be heard at a meeting of
38 the board prior to the board's action thereon, or (2) by
39 written resignation of the teacher before that date. Such
40 termination shall take effect at the close of the school
41 year in which the contract is so terminated: *Provided*,
42 That the contract may be terminated at any time by
43 mutual consent of the school board and the teacher, and
44 that this section shall not affect the powers of the school
45 board to suspend or dismiss a principal or teacher
46 pursuant to section eight of this article: *Provided*,
47 *however*, That a continuing contract for any teacher
48 holding a certificate valid for more than one year and
49 in full force and effect during the school year one
50 thousand nine hundred eighty-four, and one thousand
51 nine hundred eighty-five, shall remain in full force and
52 effect: *Provided further*, That a continuing contract shall
53 not operate to prevent a teacher's dismissal based upon
54 the lack of need for the teacher's services pursuant to
55 the provisions of law relating to the allocation to

56 teachers and pupil-teacher ratios. But in case of such
57 dismissal, the teachers so dismissed shall be placed upon
58 a preferred list in the order of their length of service
59 with that board, and no teacher shall be employed by
60 the board until each qualified teacher upon the pre-
61 ferred list, in order, shall have been offered the
62 opportunity for reemployment: *And provided further,*
63 That he has not accepted a teaching position elsewhere.
64 Such reemployment shall be upon a teacher's preexist-
65 ing continuing contract and shall have the same effect
66 as though the contract had been suspended during the
67 time the teacher was not employed.

68 In the assignment of position or duties of a teacher
69 under said continuing contract, the board shall have
70 authority to provide for released time of a teacher for
71 any special professional or governmental assignment
72 without jeopardizing the contractual rights of such
73 teacher or any other rights, privileges or benefits under
74 the provisions of this chapter.

75 Any teacher who fails to fulfill his contract with the
76 board, unless prevented from so doing by personal
77 illness or other just cause, or unless released from such
78 contract by the board, or who violates any lawful
79 provision thereof, shall be disqualified to teach in any
80 other public school in the state for a period of the next
81 ensuing school year, and the state department of
82 education or board may hold all papers and credentials
83 of such teacher on file for a period of one year for such
84 violation: *Provided,* That marriage of a teacher shall not
85 be considered a failure to fulfill, or violation of, the
86 contract.

87 Any classroom teacher, as defined in section one,
88 article one of this chapter, who desires to resign
89 employment with a board of education or request a leave
90 of absence, such resignation or leave of absence to
91 become effective on or before the fifteenth day of July
92 of the same year and after completion of the employ-
93 ment term, may do so at any time during the school year
94 by written notification thereof, and any such notification
95 received by a board of education shall automatically
96 extend such teacher's public employee insurance

97 coverage until the thirty-first day of August of the same
98 year.

§18A-2-2a. Leaves of absence for teachers and service personnel.

1 (a) Any teacher who is returning from an approved
2 leave of absence that extended for a period of one year
3 or less shall be reemployed by the county board with the
4 right to be restored to the same assignment of position
5 or duties held prior to the approved leave of absence.
6 Such teacher shall retain all seniority, rights and
7 privileges which had accrued at the time of the
8 approved leave of absence, and shall have all rights and
9 privileges generally accorded teachers at the time of the
10 reemployment.

11 (b) An employee shall notify the county board at least
12 ten working days prior to beginning a leave of absence.
13 The county board shall approve such leave of absence
14 for any teacher or service personnel who requests an
15 extended leave of absence without pay for any period of
16 time not exceeding one year for the purpose of preg-
17 nancy, childbirth or adoptive or infant bonding. An
18 employee shall not be required to use accumulated
19 annual leave or sick leave prior to taking an extended
20 leave of absence.

21 (c) Such employee who returns from an approved
22 leave of absence for the purpose of pregnancy, childbirth
23 or adoptive or infant bonding which lasted for a period
24 of one year or less than one year shall be reemployed
25 with the right to be restored to the same assignment of
26 position or duties and benefits held prior to the approved
27 leave of absence. Such employee shall retain all rights
28 and privileges generally accorded employees at the time
29 of the reemployment.

§18A-2-5. Employment of service personnel; limitation.

1 The board is authorized to employ such service
2 personnel, including substitutes, as is deemed necessary
3 for meeting the needs of the county school system:
4 *Provided*, That the board may not employ a number of
5 such personnel whose minimum monthly salary under

6 section eight-a, article four of this chapter is specified
 7 as pay grade "H", which number exceeds the number
 8 employed by the board on the first day of March, one
 9 thousand nine hundred eighty-eight.

10 Effective the first day of July, one thousand nine
 11 hundred eighty-eight, a county board shall not employ
 12 for the first time any person who has not obtained a high
 13 school diploma or general educational development
 14 certificate (GED) or who is not enrolled in an approved
 15 adult education course by the date of employment in
 16 preparation for obtaining a GED: *Provided*, That such
 17 employment is contingent upon continued enrollment or
 18 successful completion of the GED program.

19 Before entering upon their duties service personnel
 20 shall execute with the board a written contract which
 21 shall be in the following form:

22 "COUNTY BOARD OF EDUCATION
 23 SERVICE PERSONNEL CONTRACT OF
 24 EMPLOYMENT

25 THIS (Probationary or Continuing) CONTRACT OF
 26 EMPLOYMENT, made and entered into this ____ day
 27 of _____, 19____, by and between THE BOARD OF
 28 EDUCATION OF THE COUNTY OF _____,
 29 a corporation, hereinafter called the 'Board,' and (Name
 30 of Employee), of (Mailing Address), hereinafter called
 31 the 'Employee.'

32 WITNESSETH, that whereas, at a lawful meeting of
 33 the Board of Education of the County of _____ held
 34 at the offices of said Board, in the City of _____,
 35 _____ County, West Virginia, on the _____ day of
 36 _____, 19____, the Employee was duly hired and ap-
 37 pointed for employment as a (Job Classification) at
 38 (Place of Assignment) for the school year commencing
 39 _____ for the employment term and at the salary
 40 and upon the terms hereinafter set out.

41 NOW, THEREFORE, pursuant to said employment,
 42 Board and Employee mutually agree as follows:

43 (1) The Employee is employed by the Board as a (Job

44 Classification) at (Place of Assignment) for the school
45 year or remaining part thereof commencing _____,
46 19____. The period of employment is _____ days at an
47 annual salary of \$_____ at the rate of \$ _____ per
48 month.

49 (2) The Board hereby certifies that the Employee's
50 employment has been duly approved by the Board and
51 will be a matter of the Board's minute records.

52 (3) The services to be performed by the Employee
53 shall be such services as are prescribed for the job
54 classification set out above in paragraph (1) and as
55 defined in Section 8, Article 4, Chapter 18A of the Code
56 of West Virginia, as amended.

57 (4) The Employee may be dismissed at any time for
58 immorality, incompetency, cruelty, insubordination,
59 intemperance or willful neglect of duty pursuant to the
60 provisions of Section 8, Article 2, Chapter 18A of the
61 Code of West Virginia, as amended.

62 (5) The Superintendent of the _____ County Board
63 of Education, subject to the approval of the Board, may
64 transfer and assign the Employee in the manner
65 provided by Section 7, Article 2, Chapter 18A of the
66 Code of West Virginia, as amended.

67 (6) This contract shall at all times be subject to any
68 and all existing laws, or such laws as may hereafter be
69 lawfully enacted, and such laws shall be a part of this
70 contract.

71 (7) This contract may be terminated or modified at
72 any time by the mutual consent of the Board and the
73 Employee.

74 (8) This contract must be signed and returned to the
75 Board at its address of _____ within
76 thirty days after being received by the Employee.

77 (9) By signing this contract the Employee accepts
78 employment upon the terms herein set out.

79 WITNESS the following signatures as of the day,
80 month and year first above written:

81 _____, (President, _____ County Board

82 of Education) _____, (Secretary, _____ County
83 Board of Education) _____, (Employee)"

84 The use of this form shall not be interpreted to
85 authorize boards to discontinue any employee's contract
86 status with the board or rescind any rights, privileges
87 or benefits held under contract or otherwise by any
88 employee prior to the effective date of this section.

89 Each contract of employment shall be designated as
90 a probationary or continuing contract. The employment
91 of service personnel shall be made a matter of minute
92 record. The employee shall return the contract of
93 employment to the county board of education within
94 thirty days after receipt or otherwise he shall forfeit his
95 right to employment.

96 Under such regulation and policy as may be estab-
97 lished by the county board, service personnel selected
98 and trained for teacher-aide classifications, such as
99 monitor aide, clerical aide, classroom aide and general
100 aide, shall work under the direction of the principal and
101 teachers to whom assigned.

**§18A-2-9. Duties and responsibilities of school principals;
assistant principals.**

1 Upon the recommendation of the county superintend-
2 ent of schools, the county board of education shall
3 employ and assign, through written contract, public
4 school principals who shall supervise the management
5 and the operation of the school or schools to which they
6 are assigned. Such principals shall hold valid adminis-
7 trative certificates appropriate for their assignments.

8 Under the supervision of the superintendent and in
9 accordance with the rules and regulations of the county
10 board of education, the principal shall assume adminis-
11 trative and instructional supervisory responsibility for
12 the planning, management, operation and evaluation of
13 the total educational program of the school or schools to
14 which he is assigned.

15 The principal may submit recommendations to the
16 superintendent regarding the appointment, assignment,
17 promotion, transfer and dismissal of all personnel

18 assigned to the school or schools under said principal's
19 control. Such recommendation shall be submitted in
20 writing as prescribed by the superintendent.

21 The principal shall perform such other duties as may
22 be assigned by the superintendent pursuant to the rules
23 and regulations of the county board of education.

24 Upon recommendation of the county superintendent of
25 schools, the county board of education shall, when
26 needed, employ and assign, through written contract,
27 assistant principals who shall work under the direction
28 of the school principal. Such assistant principals shall
29 hold valid administrative certificates appropriate for
30 their assignments.

31 Beginning with the school year one thousand nine
32 hundred eighty-eight—eighty-nine, no county shall have
33 more teaching principalships or multischool principal-
34 ships than was present on the first day of January, one
35 thousand nine hundred eighty-eight: *Provided*, That any
36 school that has a nonteaching principal as of the first
37 day of January, one thousand nine hundred eighty-eight,
38 shall continue to have a full-time principal if that school
39 does not drop below a student enrollment of one hundred
40 seventy students for two consecutive years: *Provided*,
41 *however*, That where enrollments exceed four hundred
42 students there will be no additional schools assigned to
43 that principal, and no principal shall be assigned to
44 more than two campuses.

45 Nothing herein shall prohibit a county board from
46 assigning a nonteaching principal to a school with fewer
47 than one hundred seventy students.

48 Nothing contained in this section shall be construed
49 to reduce or limit the rights and privileges of principals
50 and assistant principals as teachers under the provisions
51 of section one, article one, chapter eighteen of the code
52 of West Virginia, as amended; section one, article one,
53 chapter eighteen-a; and other provisions of this code.

ARTICLE 3. TRAINING, CERTIFICATION, LICENSING.

§18A-3-1. Teacher certification; required; expiration; qualification; certifica-
tion of aliens.

§18A-3-8. Staff development programs.

§18A-3-1. Teacher certification; required; expiration; qualifications; certification of aliens.

1 Any professional educator, as defined in article one of
2 this chapter, who is employed within the public school
3 system of the state shall hold a valid teaching certificate
4 licensing him to teach in the public schools in the
5 specializations and grade levels as shown on his
6 certificate for the period of his employment. If a teacher
7 is employed in good faith on the anticipation that he is
8 eligible for a certificate and it is later determined that
9 he was not eligible, the state superintendent of schools
10 may authorize payment by the county board of educa-
11 tion to the teacher for a time not exceeding three school
12 months or the date of notification of his ineligibility,
13 whichever shall occur first. All certificates shall expire
14 on June thirtieth of the last year of their validity
15 irrespective of the date of issuance. A certificate to teach
16 shall not be granted to any person who is not a citizen
17 of the United States, is not of good moral character and
18 physically, mentally and emotionally qualified to
19 perform the duties of a teacher and who has not attained
20 the age of eighteen years on or before the first day of
21 October of the year in which his certificate is issued;
22 except, that an exchange teacher from a foreign
23 country, or an alien person who meets the requirements
24 to teach may be granted a permit to teach within the
25 public schools of the state.

§18A-3-8. Staff development programs.

1 The Legislature finds the professional expertise and
2 insight of the classroom teacher shall allow educators
3 peer control of staff development programs.

4 Upon petition of ten percent of professional educators
5 and an affirmative majority vote of all county profes-
6 sional educators voting, a professional staff development
7 council shall be established. The professional educators
8 may openly nominate and elect a nine to fifteen member
9 council comprised of proportional representation from
10 the major school levels and from vocational, special
11 education and other specialties in proportion to their

12 employment numbers in said county. Such councils shall
 13 have final authority to propose staff development
 14 programs for their peers based upon rules established
 15 by statute and/or the state board of education, and the
 16 council on professional education.

17 The county superintendent or a designee shall enjoy
 18 an advisory, nonvoting role on said council. The county
 19 board shall make available an amount equal to one tenth
 20 of one percent of the amounts provided in accordance
 21 with section four, article nine-a, chapter eighteen of this
 22 code and credit such funds to an account to be used by
 23 the council to fulfill its objectives. The local board will
 24 have final approval of all proposed disbursements.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-5. Salary equity among the counties; state salary supplement.

§18A-4-5c. Equity appropriation from surplus revenues.

§18A-4-8. Employment term and class titles of service personnel;
 definitions.

§18A-4-8a. Service personnel minimum monthly salaries.

§18A-4-8b. Seniority rights for professional and school service personnel.

§18A-4-10. Personal leave for illness and other causes; leave banks;
 substitutes.

§18A-4-10b. Demonstration of exemplary teaching techniques.

§18A-4-18. Department of education certified staff salaries.

§18A-4-5. Salary equity among the counties; state salary supplement.

1 To assist the state in meeting its objective of salary
 2 equity among the counties, on and after the first day of
 3 July, one thousand nine hundred eighty-four, subject to
 4 available state appropriations and the conditions set
 5 forth herein, each teacher and school service personnel
 6 shall receive a supplemental amount in addition to the
 7 amount from the state minimum salary schedules
 8 provided for in this article.

9 State funds for this purpose shall be paid within the
 10 West Virginia public school support plan in accordance
 11 with article nine-a, chapter eighteen of this code. The
 12 amount allocated for salary equity shall be apportioned
 13 between teachers and school service personnel in direct
 14 proportion to that amount necessary to support the
 15 professional salaries and service personnel salaries

16 statewide under sections four and five, article nine-a,
17 chapter eighteen of this code: *Provided*, That in making
18 such division an adequate amount of state equity funds
19 shall be reserved to finance the appropriate foundation
20 allowances and staffing incentives provided for in said
21 article nine-a.

22 Pursuant to this section, each teacher and school
23 service personnel shall receive the amount that is the
24 difference between their authorized state minimum
25 salary and ninety-five percent of the maximum salary
26 schedules prescribed in sections five-a and five-b of this
27 article, reduced by any amount provided by the county
28 as a salary supplement for teachers and school service
29 personnel on the first day of January of the fiscal year
30 immediately preceding that in which the salary equity
31 appropriation is distributed: *Provided*, That no amount
32 received pursuant to this section shall be decreased as
33 a result of any county supplement increase instituted
34 after the first day of January, one thousand nine
35 hundred eighty-four, unless and until the objective of
36 salary equity is reached: *Provided, however*, That any
37 amount received pursuant to this section may be
38 reduced proportionately based upon the amount of funds
39 appropriated for this purpose.

40 No county may reduce any salary supplement that
41 was in effect on the first day of January, one thousand
42 nine hundred eighty-four, except as permitted by
43 sections five-a and five-b of this article.

§18A-4-5c. Equity appropriation from surplus revenues.

1 Notwithstanding the provisions of section five of this
2 article, any moneys appropriated and expended for
3 equity that are in addition to such amounts as were
4 expended for such purpose prior to the effective date of
5 this section shall be apportioned between teachers and
6 school service personnel in such proportion as necessary
7 to align more closely teachers and school service
8 personnel with their counterparts in the contiguous
9 states: *Provided*, That an adequate amount of such funds
10 shall be reserved to finance the appropriate foundation
11 allowances and staffing incentives provided for in

12 article nine-a of chapter eighteen.

§18A-4-8. Employment term and class titles of service personnel; definitions.

1 The purpose of this section is to establish an employ-
2 ment term and class titles for service personnel. The
3 employment term for service personnel shall be no less
4 than ten months, a month being defined as twenty
5 employment days: *Provided*, That the county board of
6 education may contract with all or part of these
7 personnel for a longer term. The beginning and closing
8 dates of the ten-month employment term shall not
9 exceed forty-three weeks. Service personnel employed
10 on a yearly or twelve-month basis may be employed by
11 calendar months. Whenever there is a change in job
12 assignment during the school year, the minimum pay
13 scale and any county supplement shall be applicable.

14 Service personnel employed in the same classification
15 for more than the two hundred day minimum employ-
16 ment term shall be paid for additional employment at
17 a daily rate of not less than the daily rate paid for the
18 two hundred day minimum employment term.

19 No service employee, without his agreement, shall be
20 required to report for work more than five days per
21 week and no part of any working day may be accum-
22 ulated by the employer for future work assignments,
23 unless the employee agrees thereto.

24 Should an employee whose regular work week is
25 scheduled from Monday through Friday agree to
26 perform any work assignments on a Saturday or
27 Sunday, the employee shall be paid for at least one-half
28 day of work for each such day he reports for work, and
29 if the employee works more than three and one-half
30 hours on any Saturday or Sunday, he shall be paid for
31 a least a full day of work for each such day.

32 Custodians required to work a daily work schedule
33 that is interrupted, that is, who do not work a continuous
34 period in one day, shall be paid additional compensation
35 which shall be equal to at least one eighth of their total
36 salary as provided by their state minimum salary and

37 any county pay supplement, and payable entirely from
38 county funds.

39 Upon the change in classification or upon meeting the
40 requirements of an advanced classification of or by any
41 employee, his salary shall be made to comply with the
42 requirements of this article, and to any county salary
43 schedule in excess of the minimum requirements of this
44 article, based upon his advanced classification and
45 allowable years of employment.

46 An employee's contract as provided in section five,
47 article two of this chapter shall state the appropriate
48 monthly salary the employee is to be paid, based on the
49 class title as provided in this article and any county
50 salary schedule in excess of the minimum requirements
51 of this article.

52 The column heads of the state minimum pay scale and
53 class titles, set forth in section eight-a of this article, are
54 defined as follows:

55 "Pay grade" means the monthly salary applicable to
56 class titles of service personnel.

57 "Years of employment" means the number of years
58 which an employee classified as service personnel has
59 been employed by a board of education in any position
60 prior to or subsequent to the effective date of this section
61 and including service in the armed forces of the United
62 States if the employee were employed at the time of his
63 induction. For the purpose of section eight-a of this
64 article, years of employment shall be limited to the
65 number of years shown and allowed under the state
66 minimum pay scale as set forth in section eight-a of this
67 article.

68 "Class title" means the name of the position or job held
69 by service personnel.

70 "Accountant I" means personnel employed to maintain
71 payroll records and reports and perform one or more
72 operations relating to a phase of the total payroll.

73 "Accountant II" means personnel employed to main-
74 tain accounting records and to be responsible for the

75 accounting process associated with billing, budgets,
76 purchasing and related operations.

77 "Accountant III" means personnel who are employed
78 in the county board of education office to manage and
79 supervise accounts payable and/or payroll procedures.

80 "Aide I" means those personnel selected and trained
81 for teacher-aide classifications such as monitor aide,
82 clerical aide, classroom aide or general aide.

83 "Aide II" means those personnel referred to in the
84 "Aide I" classification who have completed a training
85 program approved by the state board of education, or
86 who hold a high school diploma or have received a
87 general educational development certificate. Only
88 personnel classified in an Aide II class title shall be
89 employed as an aide in any special education program.

90 "Aide III" means those personnel referred to in the
91 "Aide I" classification who hold a high school diploma
92 or a general educational development certificate, and
93 have completed six semester hours of college credit at
94 an institution of higher education or are employed as an
95 aide in a special education program and have one year's
96 experience as an aide in special education.

97 "Aide IV" means personnel referred to in the "Aide
98 I" classification who hold a high school diploma or a
99 general educational development certificate and who
100 have completed eighteen hours of state board-approved
101 college credit at a regionally accredited institution of
102 higher education, or who have completed fifteen hours
103 of state board-approved college credit at a regionally
104 accredited institution of higher education and success-
105 fully completed an in-service training program deter-
106 mined by the state board to be the equivalent of three
107 hours of college credit.

108 "Audiovisual technician" means personnel employed
109 to perform minor maintenance on audiovisual equip-
110 ment, films, supplies and the filling of requests for
111 equipment.

112 "Auditor" means personnel employed to examine and
113 verify accounts of individual schools and to assist schools

114 and school personnel in maintaining complete and
115 accurate records of their accounts.

116 "Braille or sign language specialist" means personnel
117 employed to provide braille and/or sign language
118 assistance to students.

119 "Bus operator" means personnel employed to operate
120 school buses and other school transportation vehicles as
121 provided by the state board of education.

122 "Buyer" means personnel employed to review and
123 write specifications, negotiate purchase bids and
124 recommend purchase agreements for materials and
125 services that meet predetermined specifications at the
126 lowest available costs.

127 "Cabinetmaker" means personnel employed to
128 construct cabinets, tables, bookcases and other
129 furniture.

130 "Cafeteria manager" means personnel employed to
131 direct the operation of a food services program in a
132 school, including assigning duties to employees, approv-
133 ing requisitions for supplies and repairs, keeping
134 inventories, inspecting areas to maintain high standards
135 of sanitation, preparing financial reports and keeping
136 records pertinent to food services of a school.

137 "Carpenter I" means personnel classified as a carpen-
138 ter's helper.

139 "Carpenter II" means personnel classified as a
140 journeyman carpenter.

141 "Chief mechanic" means personnel employed to be
142 responsible for directing activities which ensure that
143 student transportation or other board-owned vehicles
144 are properly and safely maintained.

145 "Clerk I" means personnel employed to perform
146 clerical tasks.

147 "Clerk II" means personnel employed to perform
148 general clerical tasks, prepare reports and tabulations
149 and operate office machines.

150 "Computer operator" means qualified personnel

151 employed to operate computers.

152 "Cook I" means personnel employed as a cook's helper.

153 "Cook II" means personnel employed to interpret
154 menus, to prepare and serve meals in a food service
155 program of a school and shall include personnel who
156 have been employed as a "Cook I" for a period of four
157 years, if such personnel have not been elevated to this
158 classification within that period of time.

159 "Cook III" means personnel employed to prepare and
160 serve meals, make reports, prepare requisitions for
161 supplies, order equipment and repairs for a food service
162 program of a school system.

163 "Crew leader" means personnel employed to organize
164 the work for a crew of maintenance employees to carry
165 out assigned projects.

166 "Custodian I" means personnel employed to keep
167 buildings clean and free of refuse.

168 "Custodian II" means personnel employed as a
169 watchman or groundsman.

170 "Custodian III" means personnel employed to keep
171 buildings clean and free of refuse, to operate the heating
172 or cooling systems and to make minor repairs.

173 "Custodian IV" means personnel employed as head
174 custodians. In addition to providing services as defined
175 in "Custodian III," their duties may include supervising
176 other custodian personnel.

177 "Director or coordinator of services" means personnel
178 not defined as professional personnel or professional
179 educators in section one, article one of this chapter, who
180 are assigned to direct a department or division.

181 "Draftsman" means personnel employed to plan,
182 design and produce detailed architectural/engineering
183 drawings.

184 "Electrician I" means personnel employed as an
185 apprentice electrician helper or who holds an electrician
186 helper license issued by the state fire marshal.

- 187 “Electrician II” means personnel employed as an
188 electrician journeyman or who holds a journeyman
189 electrician license issued by the state fire marshal.
- 190 “Electronic technician I” means personnel employed
191 at the apprentice level to repair and maintain electronic
192 equipment.
- 193 “Electronic technician II” means personnel employed
194 at the journeyman level to repair and maintain elec-
195 tronic equipment.
- 196 “Executive secretary” means personnel employed as
197 the county school superintendent’s secretary or as a
198 secretary who is assigned to a position characterized by
199 significant administrative duties.
- 200 “Food services supervisor” means qualified personnel
201 not defined as professional personnel or professional
202 educators in section one, article one of this chapter,
203 employed to manage and supervise a county school
204 system’s food service program. The duties would include
205 preparing in-service training programs for cooks and
206 food service employees, instructing personnel in the
207 areas of quantity cooking with economy and efficiency,
208 and keeping aggregate records and reports.
- 209 “Foremen” means skilled persons employed for
210 supervision of personnel who work in the areas of repair
211 and maintenance of school property and equipment.
- 212 “General maintenance” means personnel employed as
213 helpers to skilled maintenance employees and to
214 perform minor repairs to equipment and buildings of a
215 county school system.
- 216 “Glazier” means personnel employed to replace glass
217 or other materials in windows and doors and to do minor
218 carpentry tasks.
- 219 “Graphic artist” means personnel employed to prepare
220 graphic illustrations.
- 221 “Groundsmen” means personnel employed to perform
222 duties that relate to the appearance, repair and general
223 care of school grounds in a county school system.
224 Additional assignments may include the operation of a

- 225 small heating plant and routine cleaning duties in
226 buildings.
- 227 "Handyman" means personnel employed to perform
228 routine manual tasks in any operation of the county
229 school system.
- 230 "Heating and air conditioning mechanic I" means
231 personnel employed at the apprentice level to install,
232 repair and maintain heating and air conditioning plants
233 and related electrical equipment.
- 234 "Heating and air conditioning mechanic II" means
235 personnel employed at the journeyman level to install,
236 repair and maintain heating and air conditioning plants
237 and related electrical equipment.
- 238 "Heavy equipment operator" means personnel em-
239 ployed to operate heavy equipment.
- 240 "Inventory supervisor" means personnel who are
241 employed to supervise or maintain operations in the
242 receipt, storage, inventory and issuance of materials and
243 supplies.
- 244 "Key punch operator" means qualified personnel
245 employed to operate key punch machines or verifying
246 machines.
- 247 "Locksmith" means personnel employed to repair and
248 maintain locks and safes.
- 249 "Lubrication man" means personnel employed to
250 lubricate and service gasoline or diesel-powered equip-
251 ment of a county school system.
- 252 "Machinist" means personnel employed to perform
253 machinist tasks which include the ability to operate a
254 lathe, planer, shaper, threading machine and wheel
255 press. Such personnel should also have ability to work
256 from blueprints and drawings.
- 257 "Mail clerk" means personnel employed to receive,
258 sort, dispatch, deliver or otherwise handle letters,
259 parcels and other mail.
- 260 "Maintenance clerk" means personnel employed to
261 maintain and control a stocking facility to keep ade-

- 262 quate tools and supplies on hand for daily withdrawal
263 for all school maintenance crafts.
- 264 "Mason" means personnel employed to perform tasks
265 connected with brick and block laying and carpentry
266 tasks related to such laying.
- 267 "Mechanic" means personnel employed who can
268 independently perform skilled duties in the maintenance
269 and repair of automobiles, school buses and other
270 mechanical and mobile equipment to use in a county
271 school system.
- 272 "Mechanic assistant" means personnel employed as a
273 mechanic apprentice and helper.
- 274 "Multi-classification" means personnel employed to
275 perform tasks that involve the combination of two or
276 more class titles in this section or as created by the West
277 Virginia board of education. In such instances the
278 minimum salary scale shall be the higher pay grade of
279 the class titles involved.
- 280 "Office equipment repairman I" means personnel
281 employed as an office equipment repairman apprentice
282 or helper.
- 283 "Office equipment repairman II" means personnel
284 responsible for servicing and repairing all office
285 machines and equipment. Personnel shall be responsible
286 for parts being purchased necessary for the proper
287 operation of a program of continuous maintenance and
288 repair.
- 289 "Painter" means personnel employed to perform
290 duties of painting, finishing and decorating of wood,
291 metal and concrete surfaces of buildings, other struc-
292 tures, equipment, machinery and furnishings of a
293 county school system.
- 294 "Plumber I" means personnel employed as an apprent-
295 ice plumber and helper.
- 296 "Plumber II" means personnel employed as a journey-
297 man plumber.
- 298 "Printing operator" means personnel employed to

299 operate duplication equipment, and as required, to cut,
300 collate, staple, bind and shelve materials.

301 "Printing supervisor" means personnel employed to
302 supervise the operation of a print shop.

303 "Programmer" means personnel employed to design
304 and prepare programs for computer operation.

305 "Roofing/sheet metal mechanic" means personnel
306 employed to install, repair, fabricate and maintain roofs,
307 gutters, flashing and duct work for heating and
308 ventilation.

309 "Sanitation plant operator" means personnel employed
310 to operate and maintain a water or sewage treatment
311 plant to ensure the safety of the plant's effluent for
312 human consumption or environmental protection.

313 "School bus supervisor" means qualified personnel
314 employed to assist in selecting school bus operators and
315 routing and scheduling of school buses, operate a bus
316 when needed, relay instructions to bus operators, plan
317 emergency routing of buses and promoting good
318 relationships with parents, pupils, bus operators and
319 other employees.

320 "Secretary I" means personnel employed to transcribe
321 from notes or mechanical equipment, receive callers,
322 perform clerical tasks, prepare reports and operate
323 office machines.

324 "Secretary II" means personnel employed in any
325 elementary, secondary, kindergarten, nursery, special
326 education, vocational or any other school as a secretary.
327 The duties may include performing general clerical
328 tasks, transcribing from notes or steno type or mechan-
329 ical equipment or a sound-producing machine, prepar-
330 ing reports, receiving callers and referring them to
331 proper persons, operating office machines, keeping
332 records and handling routine correspondence. There is
333 nothing implied herein that would prevent such em-
334 ployees from holding or being elevated to a higher
335 classification.

336 "Secretary III" means personnel assigned to the

337 county board of education office administrators in
338 charge of various instructional, maintenance, transpor-
339 tation, food services, operations and health departments,
340 federal programs or departments with particular
341 responsibilities of purchasing and financial control or
342 any personnel who have served in a position which meets
343 the definition of "secretary II" or "secretary III" herein
344 for twelve years.

345 "Supervisor of maintenance" means skilled personnel
346 not defined as professional personnel or professional
347 educators as in section one, article one of this chapter.
348 The responsibilities would include directing the upkeep
349 of buildings and shops, issuing instructions to subordi-
350 nates relating to cleaning, repairs and maintenance of
351 all structures and mechanical and electrical equipment
352 of a board of education.

353 "Supervisor of transportation" means qualified
354 personnel employed to direct school transportation
355 activities, properly and safely, and to supervise the
356 maintenance and repair of vehicles, buses, and other
357 mechanical and mobile equipment used by the county
358 school system.

359 "Switchboard operator-receptionist" means personnel
360 employed to refer incoming calls, to assume contact with
361 the public, to direct and to give instructions as neces-
362 sary, to operate switchboard equipment and to provide
363 clerical assistance.

364 "Truck driver" means personnel employed to operate
365 light or heavy duty gasoline and diesel-powered vehicles.

366 "Warehouse clerk" means personnel employed to be
367 responsible for receiving, storing, packing and shipping
368 goods.

369 "Watchman" means personnel employed to protect
370 school property against damage or theft. Additional
371 assignments may include operation of a small heating
372 plant and routine cleaning duties.

373 "Welder" means personnel employed to provide
374 acetylene or electric welding services for a school
375 system.

376 In addition to the compensation provided for in section
377 eight-a of this article, for service personnel, each service
378 employee shall, notwithstanding any provisions in this
379 code to the contrary, be entitled to all service personnel
380 employee rights, privileges and benefits provided under
381 this or any other chapter of this code without regard to
382 such employee's hours of employment or the methods or
383 sources of compensation.

384 Service personnel whose years of employment exceed
385 the number of years shown and provided for under the
386 state minimum pay scale set forth in section eight-a of
387 this article, may not be paid less than the amount shown
388 for the maximum years of employment shown and
389 provided for in the classification in which he is
390 employed.

391 The county boards shall review each service personnel
392 employee job classification annually and shall reclassify
393 all service employees as required by such job classifi-
394 cations. The state superintendent of schools is hereby
395 authorized to withhold state funds appropriated pursu-
396 ant to this article for salaries for service personnel who
397 are improperly classified by such county boards.
398 Further, he shall order county boards to correct
399 immediately any improper classification matter and
400 with the assistance of the attorney general shall take any
401 legal action necessary against any county board to
402 enforce such order.

403 The state board of education is authorized to establish
404 other class titles of service personnel positions and jobs
405 not listed in this section. The state board of education
406 is further authorized to provide appropriate pay grades
407 for such positions and jobs but pay shall be established
408 within the minimum salary scale in section eight-a of
409 this article.

410 No service employee, without his written consent, may
411 be reclassified by class title, nor may a service employee,
412 without his written consent, be relegated to any
413 condition of employment which would result in a
414 reduction of his salary, rate of pay, compensation or
415 benefits earned during the current fiscal year or which

416 would result in a reduction of his salary, rate of pay,
 417 compensation or benefits for which he would qualify by
 418 continuing in the same job position and classification
 419 held during said fiscal year and subsequent years.

420 Any board failing to comply with the provisions of this
 421 article may be compelled to do so by mandamus, and
 422 shall be liable to any party prevailing against the board
 423 for court costs and his reasonable attorney fee, as
 424 determined and established by the court.

§18A-4-8a. Service personnel minimum monthly salaries.

| 1 STATE MINIMUM PAY SCALE PAY GRADE | | | | | | | | | |
|-------------------------------------|----------------------|-------|-------|-------|-------|-------|-------|-------|------------------|
| 2 | Years of | | | | | | | | |
| 3 | Employ- | | | | | | | | |
| 4 | ment | A | B | C | D | E | F | G | H |
| 5 | 0 | 822 | 842 | 882 | 932 | 982 | 1,042 | 1,072 | 1,142 |
| 6 | 1 | 842 | 862 | 902 | 952 | 1,002 | 1,062 | 1,092 | 1,162 |
| 7 | 2 | 862 | 882 | 922 | 972 | 1,022 | 1,082 | 1,112 | 1,182 |
| 8 | 3 | 882 | 902 | 942 | 992 | 1,042 | 1,102 | 1,132 | 1,202 |
| 9 | 4 | 902 | 922 | 962 | 1,012 | 1,062 | 1,122 | 1,152 | 1,222 |
| 10 | 5 | 922 | 942 | 982 | 1,032 | 1,082 | 1,142 | 1,172 | 1,242 |
| 11 | 6 | 942 | 962 | 1,002 | 1,052 | 1,102 | 1,162 | 1,192 | 1,262 |
| 12 | 7 | 962 | 982 | 1,022 | 1,072 | 1,122 | 1,182 | 1,212 | 1,282 |
| 13 | 8 | 982 | 1,002 | 1,042 | 1,092 | 1,142 | 1,202 | 1,232 | 1,302 |
| 14 | 9 | 1,002 | 1,022 | 1,062 | 1,112 | 1,162 | 1,222 | 1,252 | 1,322 |
| 15 | 10 | 1,022 | 1,042 | 1,082 | 1,132 | 1,182 | 1,242 | 1,272 | 1,342 |
| 16 | 11 | 1,042 | 1,062 | 1,102 | 1,152 | 1,202 | 1,262 | 1,292 | 1,362 |
| 17 | 12 | 1,062 | 1,082 | 1,122 | 1,172 | 1,222 | 1,282 | 1,312 | 1,382 |
| 18 | 13 | 1,082 | 1,102 | 1,142 | 1,192 | 1,242 | 1,302 | 1,332 | 1,402 |
| 19 | 14 | 1,102 | 1,122 | 1,162 | 1,212 | 1,262 | 1,322 | 1,352 | 1,422 |
| 20 | 15 | 1,122 | 1,142 | 1,182 | 1,232 | 1,282 | 1,342 | 1,372 | 1,442 |
| 21 | 16 | 1,142 | 1,162 | 1,202 | 1,252 | 1,302 | 1,362 | 1,392 | 1,462 |
| 22 | 17 | 1,162 | 1,182 | 1,222 | 1,272 | 1,322 | 1,382 | 1,412 | 1,482 |
| 23 | 18 | 1,182 | 1,202 | 1,242 | 1,292 | 1,342 | 1,402 | 1,432 | 1,502 |
| 24 | 19 | 1,202 | 1,222 | 1,262 | 1,312 | 1,362 | 1,422 | 1,452 | 1,522 |
| 25 | 20 | 1,222 | 1,242 | 1,282 | 1,332 | 1,382 | 1,442 | 1,472 | 1,542 |
| 26 | 21 | 1,242 | 1,262 | 1,302 | 1,352 | 1,402 | 1,462 | 1,492 | 1,562 |
| 27 | 22 | 1,262 | 1,282 | 1,322 | 1,372 | 1,422 | 1,482 | 1,512 | 1,582 |
| 28 | 23 | 1,282 | 1,302 | 1,342 | 1,392 | 1,442 | 1,502 | 1,532 | 1,602 |
| 29 | 24 | 1,302 | 1,322 | 1,362 | 1,412 | 1,462 | 1,522 | 1,552 | 1,622 |
| 30 | 25 | 1,322 | 1,342 | 1,382 | 1,432 | 1,482 | 1,542 | 1,572 | 1,642 |
| 31 | CLASS TITLE | | | | | | | | PAY GRADE |
| 32 | Accountant I | | | | | | | | D |
| 33 | Accountant II | | | | | | | | E |
| 34 | Accountant III | | | | | | | | F |

| | | |
|----|--|---|
| 35 | Aide I | A |
| 36 | Aide II | B |
| 37 | Aide III | C |
| 38 | Aide IV | D |
| 39 | Audiovisual Technician | C |
| 40 | Auditor | G |
| 41 | Braille or Sign Language Specialist | E |
| 42 | Bus Operator | D |
| 43 | Buyer | F |
| 44 | Cabinetmaker | G |
| 45 | Cafeteria Manager | D |
| 46 | Carpenter I | E |
| 47 | Carpenter II | F |
| 48 | Chief Mechanic | G |
| 49 | Clerk I | B |
| 50 | Clerk II | C |
| 51 | Computer Operator | E |
| 52 | Cook I | A |
| 53 | Cook II | B |
| 54 | Cook III | C |
| 55 | Crew Leader | F |
| 56 | Custodian I | A |
| 57 | Custodian II | B |
| 58 | Custodian III | C |
| 59 | Custodian IV | D |
| 60 | Director or Coordinator of Services | H |
| 61 | Draftsman | D |
| 62 | Electrician I | F |
| 63 | Electrician II | G |
| 64 | Electronic Technician I | F |
| 65 | Electronic Technician II | G |
| 66 | Executive Secretary | G |
| 67 | Food Services Supervisor | G |
| 68 | Foreman | G |
| 69 | General Maintenance | C |
| 70 | Glazier | D |
| 71 | Graphic Artist | D |
| 72 | Groundsman | B |
| 73 | Handyman | B |
| 74 | Heating and Air Conditioning Mechanic I | E |
| 75 | Heating and Air Conditioning Mechanic II | G |
| 76 | Heavy Equipment Operator | E |

| | | |
|-----|---|---|
| 77 | Inventory Supervisor | D |
| 78 | Key Punch Operator | B |
| 79 | Locksmith | G |
| 80 | Lubrication Man | C |
| 81 | Machinist | F |
| 82 | Mail Clerk | D |
| 83 | Maintenance Clerk | C |
| 84 | Mason | G |
| 85 | Mechanic | F |
| 86 | Mechanic Assistant | E |
| 87 | Office Equipment Repairman I | F |
| 88 | Office Equipment Repairman II | G |
| 89 | Painter | E |
| 90 | Plumber I | E |
| 91 | Plumber II | G |
| 92 | Printing Operator | B |
| 93 | Printing Supervisor | D |
| 94 | Programmer | H |
| 95 | Roofing/Sheet Metal Mechanic | F |
| 96 | Sanitation Plant Operator | F |
| 97 | School Bus Supervisor | E |
| 98 | Secretary I | D |
| 99 | Secretary II | E |
| 100 | Secretary III | F |
| 101 | Supervisor of Maintenance | H |
| 102 | Supervisor of Transportation | H |
| 103 | Switchboard Operator-Receptionist | D |
| 104 | Truck Driver | D |
| 105 | Warehouse Clerk | C |
| 106 | Watchman | B |
| 107 | Welder | F |

108 On and after the first day of July, one thousand nine
109 hundred eighty-six, the minimum monthly pay for each
110 service employee whose employment is for a period of
111 more than three and one-half hours a day shall be at
112 least the amounts indicated in the "state minimum pay
113 scale" as set forth in this section, and the minimum
114 monthly pay for each service employee whose employ-
115 ment is for a period of three and one-half hours or less
116 a day shall be at least one half the amount indicated in
117 the "state minimum pay scale" set forth in this section.

118 Any service employee required to work on any legal
119 school holiday shall be paid at a rate one and one-half
120 times his usual hourly rate.

121 Any full-time service personnel required to work in
122 excess of their normal working day during any week
123 which contains a school holiday for which they are paid
124 shall be paid for such additional hours or fraction
125 thereof at a rate of one and one-half times their usual
126 hourly rate and paid entirely from county board of
127 education funds.

128 No service employee shall have his daily work
129 schedule changed during the school year without his
130 written consent, and his required daily work hours shall
131 not be changed to prevent the payment of time and one-
132 half wages or the employment of another employee.

133 The minimum pay for extra-duty assignments as
134 defined in section eight-b of this article shall be no less
135 than one seventh of the employee's daily total salary for
136 each hour the employee is involved in performing the
137 assignment and paid entirely from local funds. The
138 salary for any fraction of an hour the employee is
139 involved in performing the assignment shall be pro-
140 rated accordingly. When performing extra-duty assign-
141 ments, employees who are regularly employed on a one-
142 half day salary basis shall receive the same hourly
143 extra-duty assignment pay computed as though such an
144 employee were employed on a full-day salary basis.

**§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
3 employee has been professionally employed by the
4 county board of education. For purposes of establishing
5 seniority as hereinafter provided, when an employee
6 holds valid certification or licensure in one or more
7 areas, the seniority shall accrue in each area.
8 Employment for a full employment term shall equal one
9 year of seniority, but no employee may accrue more than
10 one year of seniority during any given fiscal year.
11 Employment for less than the full employment term

12 shall be prorated. A random selection system estab-
13 lished by the employees and approved by the board shall
14 be used to determine the priority if two or more
15 employees accumulate identical seniority.

16 A county board of education shall make decisions
17 affecting promotion and filling of any classroom
18 teacher's position occurring on the basis of qualifica-
19 tions. If the applicant with the most seniority is not
20 selected for the position a written statement of reasons
21 shall be given to the applicant with the most seniority
22 with suggestions for improving the applicant's
23 qualifications.

24 Whenever a county board is required to reduce the
25 number of professional personnel in its employment, the
26 employee with the least amount of seniority shall be
27 properly notified and released from employment pursu-
28 ant to the provisions of section two, article two of this
29 chapter: *Provided*, That such employee shall be em-
30 ployed in any other professional position where he had
31 previously been employed or to any lateral area for
32 which he is certified and/or licensed if his seniority is
33 greater than the seniority of any other employee in that
34 area of certification and/or licensure.

35 All professional personnel whose seniority with the
36 county board is insufficient to allow their retention by
37 the county board during a reduction in work force shall
38 be placed upon a preferred recall list. As to any
39 professional position opening within the area where they
40 had previously been employed or to any lateral area for
41 which they have certification and/or licensure, such
42 employee shall be recalled on the basis of seniority if no
43 regular full-time professional personnel, or those
44 returning from leaves of absence with greater seniority,
45 are qualified, apply for and accept such position. Before
46 position openings that are known or expected to extend
47 for twenty consecutive employment days or longer for
48 professional personnel may be filled by the board, the
49 board shall be required to notify all qualified profes-
50 sional personnel on the preferred list and give them an
51 opportunity to apply, but failure to apply shall not cause
52 such employee to forfeit any right to recall. The notice

53 shall be sent by certified mail to the last known address
54 of the employee, and it shall be the duty of each
55 professional personnel to notify the board of continued
56 availability annually, of any change in address or of any
57 change in certification and/or licensure.

58 Boards shall be required to post and date notices of
59 all openings in established, existing or newly created
60 positions in conspicuous working places for all profes-
61 sional personnel to observe for at least five working
62 days. The notice of such position openings shall include
63 the job description. No vacancy shall be filled until after
64 the five-day minimum posting period: *Provided*, That no
65 vacancy which occurs after the beginning of the
66 semester instructional term shall be required to be
67 posted until the sixtieth day of the semester at which
68 time all job openings shall be posted with the successful
69 applicant assuming the position at the beginning of the
70 next semester.

71 Notwithstanding any other provision of the code to the
72 contrary, where the total number of classroom teaching
73 positions in an elementary school remains the same from
74 one school year to the next, but there exists in that
75 school a need to increase the number of teachers in one
76 or more grade levels, kindergarten through six, and
77 there exists a need to decrease the number of teachers
78 in one or more other grade levels, kindergarten through
79 six, a teacher in the school and assigned to a grade level
80 to be decreased, may be reassigned to a grade level to
81 be increased for which the teacher is certified without
82 that position being posted, provided that the employee
83 and the county board of education mutually agree to the
84 reassignment.

85 (b) A county board of education shall make decisions
86 affecting promotion and filling of any service personnel
87 positions of employment or jobs occurring throughout
88 the school year that are to be performed by service
89 personnel as provided in section eight, article four of
90 this chapter, on the basis of seniority, qualifications and
91 evaluation of past service.

92 Qualifications shall mean that the applicant holds a

93 classification title in his category of employment as
94 provided in this section and must be given first
95 opportunity for promotion and filling vacancies. Other
96 employees then must be considered and shall qualify by
97 meeting the definition of the job title as defined in
98 section eight, article four of this section, that relates to
99 the promotion or vacancy. If the employee so requests,
100 the board must show valid cause why an employee with
101 the most seniority is not promoted or employed in the
102 position for which he applies. Applicants shall be
103 considered in the following order:

- 104 (1) Regularly employed service personnel;
- 105 (2) Service personnel whose employment has been
106 discontinued in accordance with this section;
- 107 (3) Professional personnel who held temporary service
108 personnel jobs or positions prior to the ninth day of June,
109 one thousand nine hundred eighty-two, and who apply
110 only for such temporary jobs or positions;
- 111 (4) Substitute service personnel; and
- 112 (5) New service personnel.

113 The county board of education may not prohibit a
114 service employee from retaining or continuing his
115 employment in any positions or jobs held prior to the
116 effective date of this section and thereafter.

117 A promotion shall be defined as any change in his
118 employment that the employee deems to improve his
119 working circumstance within his classification category
120 of employment and shall include a transfer to another
121 classification category or place of employment if the
122 position is not filled by an employee who holds a title
123 within that classification category of employment. Each
124 class title listed in section eight, article four of this
125 chapter shall be considered a separate classification
126 category of employment for service personnel, except for
127 those class titles having Roman numeral designations,
128 which shall be considered a single classification of
129 employment. The cafeteria manager class title shall be
130 included in the same classification category as cooks.
131 The executive secretary class title shall be included in

132 the same classification category as secretaries.

133 For purposes of determining seniority under this
134 section an employee's seniority begins on the date that
135 he enters into his assigned duties.

136 Notwithstanding any other provisions of this chapter
137 to the contrary, decisions affecting such personnel with
138 respect to extra-duty assignments shall be made in the
139 following manner: An employee with the greatest length
140 of service time in a particular category of employment
141 shall be given priority in accepting such assignments,
142 followed by other fellow employees on a rotating basis
143 according to the length of their service time until all
144 such employees have had an opportunity to perform
145 similar assignments. The cycle then shall be repeated:
146 *Provided*, That an alternative procedure for making
147 extra-duty assignments within a particular classifica-
148 tion category of employment may be utilized if the
149 alternative procedure is approved both by the county
150 board of education and by an affirmative vote of two
151 thirds of the employees within that classification
152 category of employment. For the purpose of this section,
153 extra-duty assignments are defined as irregular jobs
154 that occur periodically or occasionally such as, but not
155 limited to, field trips, athletic events, proms, banquets
156 and band festival trips.

157 Boards shall be required to post and date notices of
158 all job vacancies of established existing or newly created
159 positions in conspicuous working places for all school
160 service employees to observe for at least five working
161 days. The notice of such job vacancies shall include the
162 job description, the period of employment, the amount
163 of pay and any benefits and other information that is
164 helpful to the employees to understand the particulars
165 of the job. After the five day minimum posting period
166 all vacancies shall be filled within twenty working days
167 from the posting date notice of any job vacancies of
168 established existing or newly created positions.

169 All decisions by county boards of education concern-
170 ing reduction in work force of service personnel shall be
171 made on the basis of seniority, as hereinafter provided.

172 The seniority of any such service personnel shall be
173 determined on the basis of the length of time the
174 employee has been employed by the county board of
175 education within a particular job classification. For the
176 purpose of establishing seniority for a preferred recall
177 list as hereinafter provided, when an employee has been
178 employed in one or more classifications, the seniority
179 accrued in each previous classification shall be retained
180 by the employee.

181 Should a county board of education be required to
182 reduce the number of employees within a particular job
183 classification, the employee with the least amount of
184 seniority within that classification or grades of classifi-
185 cation shall be properly released and employed in a
186 different grade of that classification if there is a job
187 vacancy: *Provided*, That if there is no job vacancy for
188 employment within such classification or grades of
189 classification, he shall be employed in any other job
190 classification which he previously held with the county
191 board if there is a vacancy and shall retain any seniority
192 accrued in such job classification or grade of
193 classification.

194 If two or more employees accumulate identical
195 seniority, the priority shall be determined by a random
196 selection system established by the employees and
197 approved by the county board.

198 All employees whose seniority with the county board
199 is insufficient to allow their retention by the county
200 board during a reduction in work force shall be placed
201 upon a preferred recall list and shall be recalled to
202 employment by the county board on the basis of
203 seniority.

204 Employees placed upon the preferred list shall be
205 recalled to any position openings by the county board
206 within the classification(s), where they had previously
207 been employed, or to any lateral position for which the
208 employee is qualified or to a lateral area for which an
209 employee has certification and/or licensure.

210 Employees on the preferred recall list shall not forfeit
211 their right to recall by the county board if compelling

1212 reasons require an employee to refuse an offer of
1213 reemployment by the county board.

1214 The county board shall be required to notify all
1215 employees on the preferred recall list of all position
1216 openings that from time to time exist. Such notice shall
1217 be sent by certified mail to the last known address of
1218 the employee; it shall be the duty of each such employee
1219 to notify the county board of any change in the address
1220 of such employee.

1221 No position openings may be filled by the county
1222 board, whether temporary or permanent, until all
1223 employees on the preferred recall list have been
1224 properly notified of existing vacancies and have been
1225 given an opportunity to accept reemployment.

1226 Any board failing to comply with the provisions of this
1227 article may be compelled to do so by mandamus and
1228 shall be liable to any party prevailing against the board
1229 for court costs and his reasonable attorney fee, as
1230 determined and established by the court. Further,
1231 employees denied promotion or employment in violation
1232 of this section shall be awarded the job, pay and any
1233 applicable benefits retroactively to the date of the
1234 violation and payable entirely from local funds. Further,
1235 the board shall be liable to any party prevailing against
1236 the board for any court reporter costs including copies
1237 of transcripts.

**§18A-4-10. Personal leave for illness and other causes;
leave banks; substitutes.**

1 At the beginning of the employment term, any full-
2 time employee of a county board of education shall be
3 entitled annually to at least one and one-half days
4 personal leave for each employment month or major
5 fraction thereof in the employee's employment term.
6 Unused leave shall be accumulative without limitation
7 and shall be transferable within the state. A change in
8 job assignment during the school year shall in no way
9 affect the employee's rights or benefits.

10 A regular full-time employee who is absent from
11 assigned duties due to accident, sickness, death in the

12 immediate family, or other cause authorized or ap-
13 proved by the board, shall be paid the full salary from
14 his regular budgeted salary appropriation during the
15 period which such employee is absent, but not to exceed
16 the total amount of leave to which such employee is
17 entitled: *Provided*, That each such employee shall be
18 permitted three days of such leave annually, which may
19 be taken without regard to the cause for the absence,
20 except that personal leave without cause may not be
21 taken on consecutive work days unless authorized or
22 approved by the employee's principal or immediate
23 supervisor, as the case may be: *Provided, however*, That
24 notice of such leave day shall be given to the employee's
25 principal or immediate supervisor, as the case may be,
26 at least twenty-four hours in advance, except that in the
27 case of sudden and unexpected circumstances, such
28 notice shall be given as soon as reasonably practicable;
29 however, the use of such day may be denied if, at the
30 time notice is given, either fifteen percent of the
31 employees or three employees, whichever is greater,
32 under the supervision of the principal or immediate
33 supervisor, as the case may be, have previously notified
34 the principal or immediate supervisor of their intention
35 to use that day for such leave: *Provided further*, That
36 such leave shall not be used in connection with a
37 concerted work stoppage or strike. Where the cause for
38 leave had its origin prior to the beginning of the
39 employment term, the employee shall be paid for time
40 lost after the start of the employment term. If an
41 employee should use personal leave which the employee
42 has not yet accumulated on a monthly basis and
43 subsequently leave the employment, the employee shall
44 be required to reimburse the board for the salary or
45 wages paid to him for such unaccumulated leave.

46 Prior to the first day of January, one thousand nine
47 hundred eighty-nine, the state board shall establish
48 rules, effective on said date, to restrict the payment of
49 personal leave benefits and the charging of personal
50 leave time used to an employee receiving a workers'
51 compensation benefit from a claim filed against and
52 billed to the employee's board. If an employee is
53 awarded such benefit, such employee shall receive

54 personal leave compensation only to the extent such
55 compensation is required, when added to the workers'
56 compensation benefit, to equal the amount of compen-
57 sation regularly paid such employee. If personal leave
58 compensation equal to the employee's regular pay is
59 paid prior to the award of the workers' compensation
60 benefit, such amount which, when added to the benefit,
61 is in excess of the employee's regular pay shall be
62 deducted from the employee's subsequent pay. The
63 employee's accrued personal leave days shall be charged
64 only for such days as equal the amount of personal leave
65 compensation required to compensate the employee at
66 the employee's regular rate of pay.

67 The board may establish reasonable rules for report-
68 ing and verification of absences for cause; and if any
69 error in reporting absences should occur it shall have
70 authority to make necessary salary adjustments in the
71 next pay after the employee has returned to duty or in
72 the final pay if the absence should occur during the last
73 month of the employment term.

74 A county board of education may establish a personal
75 leave bank or banks to which employees may contribute
76 no more than two days of personal leave per school year:
77 *Provided*, That such bank or banks be established either
78 jointly or separately for both professional personnel and
79 school service personnel and that a bank be available to
80 all school personnel. Such personal leave bank shall be
81 established and operated pursuant to rules adopted by
82 the county board: *Provided, however*, That such rules
83 may limit the maximum number of days used by an
84 employee, shall require that leave bank days be used
85 only by an active employee with less than five days
86 accumulated personal leave who is absent from work
87 due to accident or illness of such employee, and shall
88 prohibit the use of such days with the extension of
89 insurance coverage pursuant to section twelve, article
90 sixteen, chapter five of this code. Such rules shall
91 require that contributions shall reduce, to the extent of
92 such contribution, the number of personal leave days to
93 which an employee is entitled by this section: *Provided*
94 *further*, That such contribution shall not reduce personal

95 leave days without cause to which an employee is
96 entitled. No employee may be compelled to contribute
97 to such personal leave bank.

98 When an allowable absence does not directly affect the
99 instruction of the pupils or when a substitute employee
100 may not be required because of the nature of the work
101 and the duration of the cause for the allowable absence
102 of the regular employee, the administration, subject to
103 board approval, may use its discretion as to the need for
104 a substitute where limited absence may prevail.

105 If funds in any fiscal year, including transfers, are
106 insufficient to pay the full cost of substitutes for meeting
107 the provisions of this section, the remainder shall be
108 paid on or before the thirty-first day of August from the
109 budget of the next fiscal year.

110 Any board of education shall have authority to
111 supplement such leave provisions in any manner it may
112 deem advisable in accordance with applicable rules of
113 the state board and the provisions of this chapter and
114 chapter eighteen of this code.

§18A-4-10b. Demonstration of exemplary teaching techniques.

1 The Legislature recognizes that the nature of teaching
2 restricts the interaction of teachers in the classroom and
3 their opportunity to observe exemplary instructional
4 techniques of their colleagues. To facilitate a process for
5 sharing successful pedagogy, the state board, through
6 regional educational service agencies, shall develop a
7 process to record and distribute exemplary teaching
8 techniques by any electronic means available.

9 The teachers at any school within a regional educa-
10 tional service agency may nominate by consensus one
11 teacher per year from that school whose teaching
12 techniques they believe to be exemplary. Such nomina-
13 tion shall be completed no later than the first day of
14 January in any school year. Upon such nomination, the
15 principal shall arrange through the regional educational
16 service agency for the recording of that teacher's
17 exemplary teaching techniques. Following completion of

18 such recording, the regional educational service agency
 19 shall make arrangements and schedule a date and
 20 location for those teachers whose teaching techniques
 21 were recorded to review the teaching techniques
 22 recorded in the region and determine which best
 23 demonstrate exemplary teaching techniques in different
 24 subject areas. Teachers whose recorded teaching
 25 techniques are selected shall receive a bonus equal to the
 26 highest average two-day pay for a teacher in the region.

27 The state board shall compile the recorded teaching
 28 techniques selected by the teachers, produce copies of
 29 the recording and provide a method for distribution on
 30 a statewide and regional basis.

§18A-4-18. Department of education certified staff salaries.

1 Personnel employed by the state department of
 2 education who are required to hold a teaching certificate
 3 shall receive a salary that is at least equal to the salary
 4 paid to comparable professional personnel employed by
 5 the county board wherein their office is located, minus
 6 the six hundred dollars authorized pursuant to section
 7 two of this article for classroom teachers with twenty
 8 years of experience.

ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.

§18A-5-8. Authority of certain aides to exercise control over pupils; compensation; transfers.

1 (a) Within the limitations provided herein, any aide
 2 who agrees to do so shall stand in the place of the parent
 3 or guardian and shall exercise such authority and
 4 control over pupils as is required of a teacher as defined
 5 and provided in section one of this article. The principal
 6 shall designate such aides in the school who agree to
 7 exercise such authority on the basis of seniority as an
 8 aide and shall enumerate the instances in which such
 9 authority shall be exercised by an aide when requested
 10 by the principal, assistant principal or professional
 11 employee to whom the aide is assigned: *Provided*, That
 12 such authority does not extend to suspending or
 13 expelling any pupil, participating in the administration

14 of corporal punishment or performing instructional
15 duties as a teacher or substitute teacher.

16 An aide designated by the principal under this
17 subsection shall receive a salary not less than one pay
18 grade above the minimum salary to which said aide
19 would otherwise be entitled under section eight-a of this
20 article, and any county salary schedule in excess of the
21 minimum requirements of this article.

22 (b) An aide shall not be required by the operation of
23 this section to perform noninstructional duties for an
24 amount of time which exceeds that required under the
25 aides's contract of employment or that required of other
26 aides in the same school, unless the assignment of such
27 duties is mutually agreed upon by the aide and the
28 county superintendent, or the superintendent's desig-
29 nated representative, subject to board approval. The
30 terms and conditions of such agreement shall be in
31 writing, signed by both parties, and may include
32 additional benefits. Such agreement shall be uniform as
33 to aides assigned similar duties for similar amounts of
34 time within the same school. Aides shall have the option
35 of agreeing to supervise students and of renewing
36 related assignments annually: *Provided*, That should an
37 aide elect not to renew the previous agreement to
38 supervise students, the minimum salary of such aide
39 shall revert to the pay grade specified in section eight-
40 a of this article for the classification title held by the
41 aide and any county salary schedule in excess of the
42 minimum requirements of this article.

43 (c) For the purposes of this section, aide shall mean
44 and include any aide class title as defined in section
45 eight, article four of this chapter, regardless of numeric
46 classification.

47 (d) Notwithstanding the provisions of section eight-b,
48 article four of this chapter, an aide shall be employed
49 on the basis of (1) qualifications, including, but not
50 limited to, education, training and experience, and (2)
51 seniority. Qualifications shall not include additional
52 college credits beyond that currently required. With
53 regard to such qualifications, the county board shall

54 establish and make available to service personnel a
55 written policy to be used when regular service personnel
56 who are employed in a different category of employment
57 other than an aide are to be employed in an aide
58 position. An aide may transfer to another position of
59 employment one time only during any half of a school
60 term, unless otherwise mutually agreed upon by the aide
61 and the county superintendent, or the superintendent's
62 designee, subject to board approval: *Provided*, That
63 during the first year of employment as an aide, an aide
64 shall not transfer to another position of employment
65 during the first one-half school term of employment,
66 unless mutually agreed upon by the aide and county
67 superintendent, subject to board approval.

68 (e) Regular service personnel employed in a category
69 of employment other than aide who seek employment as
70 an aide shall be required to hold a high school diploma
71 or have received a general educational development
72 certificate and shall have opportunity to receive
73 appropriate training pursuant to subsection (10), section
74 thirteen, article five, chapter eighteen of this code and
75 section two, article twenty of said chapter.

CHAPTER 29A. STATE ADMINISTRATIVE PROCEDURES.

Article

1. Definitions and Application of Chapter.
3. Rule Making.
- 3A. Education Rule Making.

ARTICLE 1. DEFINITIONS AND APPLICATION OF CHAPTER.

§29A-1-3. Application of chapter; limitations.

1 (a) The provisions of this chapter do not apply in any
2 respect whatever to executive orders of the governor,
3 which orders to the extent otherwise lawful, shall be
4 effective according to their terms: *Provided*, That the
5 executive orders shall be admitted to record in the state
6 register when and to the extent the governor deems
7 suitable and shall be included therein by the secretary
8 of state when tendered by the governor.

9 (b) Except as to requirements for filing in the state

10 register, and with the Legislature or its rule-making
11 review committee, provided in this chapter or other law,
12 the provisions of this chapter do not apply in any respect
13 whatever to the West Virginia board of probation and
14 parole, the public service commission, the board of
15 public works sitting as such and the West Virginia
16 board of regents: *Provided*, That rules of such agencies
17 shall be filed in the state register in the form prescribed
18 by this chapter and be effective no sooner than sixty
19 consecutive days after being so filed: *Provided, however*,
20 That the rules promulgated by the state colleges and
21 universities shall only be filed with the West Virginia
22 board of regents: *Provided further*, That such agencies
23 may promulgate emergency rules in conformity with
24 section fifteen, article three of this chapter.

25 (c) The provisions of this chapter do not apply to rules
26 relating to, or contested cases involving public elections,
27 the conduct of inmates or other persons admitted to
28 public institutions, the conduct of students at public
29 schools or public educational institutions, the open
30 seasons and the bag, creel, size, age, weight and sex
31 limits with respect to the wildlife in this state, the
32 conduct of persons in military service or the receipt of
33 public assistance. Such rules shall be filed in the state
34 register in the form prescribed by this chapter and be
35 effective upon filing.

36 (d) Nothing herein shall be construed to affect, limit
37 or expand any express and specific exemption from this
38 chapter contained in any other statute relating to a
39 specific agency, but such exemptions shall be construed
40 and applied in accordance with the provisions of this
41 chapter to effectuate any limitations on such exemptions
42 contained in any such other statute.

ARTICLE 3. RULE MAKING.

§29A-3-1. Rules to be promulgated only in accordance with this article.

1 In addition to other rule-making requirements im-
2 posed by law and except to the extent specifically
3 exempted by the provisions of this chapter or other

4 applicable law, and except as provided for in article
 5 three-a of this chapter, every rule and regulation
 6 (including any amendment of or rule to repeal any other
 7 rule) shall be promulgated by an agency only in
 8 accordance with this article and shall be and remain
 9 effective only to the extent that it has been or is
 10 promulgated in accordance with this article.

ARTICLE 3A. EDUCATION RULE MAKING.

- §29A-3A-1. Definitions.
 §29A-3A-2. Rules to be promulgated only in accordance with this article.
 §29A-3A-3. Limitations on authority to exercise rule-making power.
 §29A-3A-4. Rules of procedure required.
 §29A-3A-5. Filing of proposed procedural rules and interpretive rules.
 §29A-3A-6. Notice of proposed rule making.
 §29A-3A-7. Filing findings and determinations for rules in state register; evidence deemed public record.
 §29A-3A-8. Notice of hearings.
 §29A-3A-9. Adoption of procedural and interpretive rules.
 §29A-3A-10. Proposal of legislative rules.
 §29A-3A-11. Creation of a legislative oversight commission on education accountability; termination.
 §29A-3A-11a. Additional powers and duties; subpoena powers.
 §29A-3A-12. Submission of legislative rules to the legislative oversight commission on education accountability.
 §29A-3A-13. Submission of legislative rules to Legislature.
 §29A-3A-14. Adoption of legislative rules; effective date.
 §29A-3A-15. Withdrawal or modification of proposed rules.
 §29A-3A-16. Emergency legislative rules; procedure for promulgation; definition.
 §29A-3A-16a. Disapproval of emergency rules by the secretary of state; judicial review.
 §29A-3A-17. Legislative review of procedural rules, interpretive rules and existing legislative rules.
 §29A-3A-18. Prior rules.

§29A-3A-1. Definitions.

- 1 As used in this article:
 2 (a) "Commission" means the legislative oversight
 3 commission on education accountability;
 4 (b) "Board" means the West Virginia board of
 5 education.

§29A-3A-2. Rules to be promulgated only in accordance with this article.

- 1 In addition to other rule-making requirements im-

2 posed by law and except to the extent specifically
3 exempted by the provisions of this chapter or other
4 applicable law, every rule and regulation (including any
5 amendment of or rule to repeal any other rule) shall be
6 promulgated by the board only in accordance with this
7 article and shall be and remain effective only to the
8 extent that it has been or is promulgated in accordance
9 with this article.

§29A-3A-3. Limitations on authority to exercise rule-making power.

1 (a) Except when, and to the extent, that this chapter
2 or any other provision of law now or hereafter made
3 expressly exempts the board, or a particular grant of
4 the rule-making power, from the provisions of this
5 article, every grant of rule-making authority to the
6 board heretofore provided shall be construed and
7 applied to be effective only:

8 (1) If heretofore lawfully exercised in accordance with
9 the prior provisions of this chapter and the resulting
10 rule has not been revoked or invalidated by the
11 provisions hereof or by the board; or

12 (2) If exercised in accordance with the provisions
13 hereof.

14 (b) The board shall not be deemed to have the power
15 and authority to promulgate a legislative rule without
16 compliance with this article unless: (1) The provision of
17 this code, heretofore or hereafter enacted, granting such
18 power and authority, expressly exempts its exercise
19 from legislative rule-making review prior to promulga-
20 tion or (2) the grant of such power and authority is
21 exempted from the application of this chapter by the
22 express provisions of this chapter. To the extent any
23 such grant of power and authority, not so exempt, shall
24 be deemed to exceed the limits and provisions of this
25 article, such power and authority to promulgate
26 legislative rules is hereby revoked.

§29A-3A-4. Rules of procedure required.

1 In addition to other rule-making requirements im-
2 posed by law:

3 (a) The board shall adopt procedural rules governing
4 the formal and informal procedures prescribed or
5 authorized by this chapter. Procedural rules shall
6 include rules of practice before the board, together with
7 forms and instructions.

8 (b) To assist interested persons dealing with it, the
9 board shall, so far as deemed practicable, supplement
10 its rules or regulations with descriptive statements of its
11 procedures.

**§29A-3A-5. Filing of proposed procedural rules and
interpretive rules.**

1 (a) When the board proposes a procedural rule or an
2 interpretive rule, the agency shall file in the state
3 register a notice of its action, including the text of the
4 rule as proposed.

5 (b) All proposed rules filed under subsection (a) of this
6 section shall have a fiscal note attached itemizing the
7 cost of implementing the rules as they relate to this state
8 and to persons affected by the rules and regulations.
9 Such fiscal note shall include all information included
10 in a fiscal note for either house of the Legislature and
11 a statement of the economic impact of the rule on the
12 state or its residents. The objectives of the rules shall
13 be clearly and separately stated in the fiscal note by the
14 agency issuing the proposed rules. No procedural or
15 interpretive rule shall be void or voidable by virtue of
16 noncompliance with this subsection.

§29A-3A-6. Notice of proposed rule making.

1 When the board proposes to promulgate a rule other
2 than an emergency rule it shall file in the state register
3 a notice of its action, including a text of the rule
4 proposed, a fiscal note as defined in subsection (b) of
5 section five, and any request for the submission of
6 evidence to be presented on any factual determinations
7 or inquiries required by law to promulgate such rule.
8 If the board is considering alternative draft proposals
9 it may include the text thereof.

10 The notice shall fix a date, time and place for the
11 taking of evidence for any findings and determinations

12 which are a condition precedent to promulgation of the
13 proposed rule and contain a general description of the
14 issues to be decided. If no findings and determinations
15 are required as a condition precedent to promulgation,
16 the notice shall fix a date, time and place for receipt of
17 public comment on such proposed rule.

18 If findings and determinations are a condition
19 precedent to the promulgation of such rule, then an
20 opportunity for public comment on the merits of the rule
21 shall be afforded after such findings and determinations
22 are made. In such event, notice of the hearing, or of the
23 period for receiving public comment on the proposed
24 rule shall be attached to and filed as a part of the
25 findings and determinations of the board when filed in
26 the state register.

27 In any hearing for public comment on the merits of
28 the rule, the board may limit presentations to written
29 material. The time, date and place fixed in the notice
30 shall constitute the last opportunity to submit any
31 written material relevant to any hearing, all of which
32 may be earlier submitted by filing with the board.

33 The board may also, at its expense, cause to be
34 published as a Class I legal publication in every county
35 of the state, any notice required by this section.

36 Any citizen or other interested party may appear and
37 be heard at such hearings as are required by this
38 section.

**§29A-3A-7. Filing findings and determinations for rules
in state register; evidence deemed public
record.**

1 (a) Incident to fixing a date for public comment on a
2 proposed rule, the board shall promulgate the findings
3 and determinations required as a condition precedent
4 thereto, and state fully and succinctly the reasons
5 therefor and file such findings and determinations in the
6 state register. If the board amends the proposed rule as
7 a result of the evidence or comment presented pursuant
8 to section five, such amendment shall be filed with a
9 description of any changes and statement listed for the

10 amendment.

11 (b) The statement of reasons and a transcript of all
12 evidence and public comment received pursuant to
13 notice are public records and shall be carefully pre-
14 served by the board and be open for public inspection
15 and copying for a period of not less than five years from
16 the date of the hearing.

§29A-3A-8. Notice of hearings.

1 Notices of hearings required by sections six and seven
2 of this article shall be filed in the state register not less
3 than thirty nor more than sixty days before the date of
4 such hearing or the last day specified therein for
5 receiving written material. Any hearing may be
6 continued from time to time and place to place by the
7 board which shall have the effect of extending the last
8 day for receipt of evidence or public comment. Notice
9 of such continuance shall be promptly filed thereafter
10 in the state register.

§29A-3A-9. Adoption of procedural and interpretive rules.

1 A procedural and interpretive rule shall be considered
2 by the board for adoption not later than six months after
3 the close of public comment and a notice of withdrawal
4 or adoption shall be filed in the state register within that
5 period. Failure to file such notice shall constitute
6 withdrawal and the secretary of state shall note such
7 failure in the state register immediately upon the
8 expiration of the six-month period.

9 A procedural or interpretive rule may be amended by
10 the board prior to final adoption without further
11 hearing or public comment. No such amendment may
12 change the main purpose of the rule. If the fiscal
13 implications have changed since the rule was proposed,
14 a new fiscal note shall be attached to the notice of filing.
15 Upon adoption of the rule (including any such amend-
16 ment) the board shall file the text of the adopted
17 procedural or interpretive rule with its notice of
18 adoption in the state register and the same shall be
19 effective on the date specified in the rule or thirty days

20 after such filing, whichever is later.

§29A-3A-10. Proposal of legislative rules.

1 When the board proposes a legislative rule, other than
2 an emergency rule, it shall be deemed to be applying
3 to the Legislature for permission, to be granted by law,
4 to promulgate such rule as approved by the agency for
5 submission to the Legislature or as amended and
6 authorized by the Legislature by law.

7 When proposing a legislative rule, other than an
8 emergency rule, the board shall first file in the state
9 register a notice of its proposal, including the text of the
10 legislative rule and including all materials required in
11 the case of a procedural or interpretive rule. The board
12 shall then proceed as in the case of a procedural and
13 interpretive rule to the point of, but not including, final
14 adoption. In lieu of final adoption, the agency shall
15 approve the rule, including any amendments, for
16 submission to the Legislature and file such notice of
17 approval in the state register and with the legislative
18 oversight commission on education accountability.

19 Such approval of the rule by the board for submission
20 to the Legislature shall be deemed to be approval for
21 submission to the Legislature only and not deemed to
22 give full force and effect until authority to do so is
23 granted by law.

**§29A-3A-11. Creation of a legislative oversight commis-
sion on education accountability;
termination.**

1 (a) There is hereby created a joint commission of the
2 Legislature, known as the legislative oversight commis-
3 sion on education accountability, to review all legislative
4 rules of the board and such other rules as the commis-
5 sion deems appropriate. The commission shall be
6 composed of three members of the Senate, appointed by
7 the president of the Senate, and three members of the
8 House of Delegates, appointed by the speaker of the
9 House of Delegates. In addition, the president of the
10 Senate and the speaker of the House of Delegates shall
11 be ex officio nonvoting members of the commission and

12 shall designate the cochairmen. Not more than two of
13 the voting members of the commission from each house
14 shall be members of the same political party. At least
15 one of the Senate members and one of the House
16 members shall be members of the committee on
17 education of the Senate and House, respectively, and at
18 least one of the Senate members and at least one of the
19 House members shall be a member of the committee on
20 finance of the Senate and House, respectively. The
21 members shall serve until their successors shall have
22 been appointed as heretofore provided. Members of the
23 commission shall receive such compensation and ex-
24 penses as provided in article two-a, chapter four of this
25 code. Such expenses and all other expenses, including
26 those incurred in the employment of legal, technical,
27 investigative, clerical, stenographic, advisory and other
28 personnel shall be paid from an appropriation to be
29 made expressly for the legislative oversight commission
30 on education accountability, but if no such appropriation
31 be made, such expenses shall be paid from the appro-
32 priation under "Account No. 103 for Joint Expenses,"
33 but no expense of any kind whatever payable under said
34 Account No. 103 for joint expenses shall be incurred
35 unless first approved by the joint committee on govern-
36 ment and finance. The commission shall meet at any
37 time, both during sessions of the Legislature and in the
38 interim.

39 (b) The commission may adopt such rules of procedure
40 as it considers necessary for the submission, presenta-
41 tion and consideration of rules.

42 (c) The legislative oversight commission on education
43 accountability shall be terminated on the first day of
44 July, one thousand nine hundred ninety-two, unless
45 review of its functions shall be undertaken pursuant to
46 the provisions of sections nine, ten and eleven, article
47 ten, chapter four of this code. If such commission is
48 terminated pursuant to this subsection, any report
49 required to be submitted to them shall instead be
50 submitted to the joint committee on education of the
51 Legislature.

§29A-3A-11a. Additional powers and duties; subpoena

powers.

1 (a) In addition to the powers and duties conferred
2 upon the commission pursuant to the provisions of this
3 article, the commission shall make a continuing inves-
4 tigation, study and review of the practices, policies and
5 procedures of the board and of any and all matters
6 related to education in the state and shall make annual
7 reports to the Legislature of the results of such
8 investigation, study and review.

9 (b) These reports shall describe and evaluate in a
10 concise manner:

11 (1) The major activities of the board for the fiscal year
12 immediately past, including important policy decisions
13 reached on initiatives undertaken during that year,
14 especially as such activities, decisions and initiatives
15 relate to the implementation of (1) the constitutional
16 requirement of providing a thorough and efficient
17 education to the children of this state and (2) the
18 objective of improving the quality of education at all
19 levels in this state.

20 (2) Other information considered by the commission
21 to be important, including recommendations for statu-
22 tory, fiscal or other reform and reasons for such
23 recommendations.

24 Further, these reports may specify in what manner
25 said practices, policies and procedures may or should be
26 modified to satisfy said constitutional requirement and
27 to improve the quality of education at all levels in this
28 state.

29 The commission may meet as often as may be
30 necessary and employ such professional, clerical and
31 technical personnel as it considers necessary to perform
32 effectively the duties herein prescribed.

33 (c) The commission shall conduct a study to determine
34 whether the bureaucracies of the state board of educa-
35 tion and each county board of education are of such size
36 and complexity that they do not best serve the educa-
37 tional needs of the children of the state. The commission
38 may request assistance from the legislative auditor to

39 conduct this study.

40 (d) For purposes of carrying out its duties, the
41 commission is hereby empowered and authorized to
42 examine witnesses and to subpoena such persons and
43 books, records, documents, papers or any other tangible
44 things as it believes should be examined to make a
45 complete investigation. All witnesses appearing before
46 the commission shall testify under oath or affirmation,
47 and any member of the commission may administer
48 oaths or affirmations to such witnesses. To compel the
49 attendance of witnesses at such hearings or the produc-
50 tion of any books, records, documents, papers or any
51 other tangible thing, the commission is hereby empo-
52 wered and authorized to issue subpoenas, signed by one
53 of the cochairmen, in accordance with section five,
54 article one of this chapter. Such subpoenas shall be
55 served by any person authorized by law to serve and
56 execute legal process and service shall be made without
57 charge. Witnesses subpoenaed to attend hearings shall
58 be allowed the same mileage and per diem as is allowed
59 witnesses before any petit jury in this state.

60 If any person subpoenaed to appear at any hearing
61 shall refuse to appear or to answer inquiries there
62 propounded, or shall fail or refuse to produce books,
63 records, documents, papers or any other tangible thing
64 within his control when the same are demanded, the
65 commission shall report the facts to the circuit court of
66 Kanawha County or any other court of competent
67 jurisdiction and such court may compel obedience to the
68 subpoena as though such subpoena had been issued by
69 such court in the first instance.

**§29A-3A-12. Submission of legislative rules to the legisla-
tive oversight commission on education
accountability.**

1 (a) When the board finally approves a proposed
2 legislative rule for submission to the Legislature,
3 pursuant to the provisions of section ten of this article,
4 the board shall submit to the legislative oversight
5 commission on education accountability at its offices or
6 at a regular meeting of such commission fifteen copies

7 of (1) the full text of the legislative rule as finally
8 approved by the board, with new language underlined
9 and with language to be deleted from any existing rule
10 stricken-through but clearly legible; (2) a brief sum-
11 mary of the content of the legislative rule and a
12 description and a copy of any existing rule which the
13 agency proposes to amend or repeal; (3) a statement of
14 the circumstances which require the rule; (4) a fiscal
15 note containing all information included in a fiscal note
16 for either house of the Legislature and a statement of
17 the economic impact of the rule on the state or its
18 residents; and (5) any other information which the
19 commission may request or which may be required by
20 law.

21 (b) The commission shall review each proposed
22 legislative rule and, in its discretion, may hold public
23 hearings thereon. Such review shall include, but not be
24 limited to, a determination of:

25 (1) Whether the board has exceeded the scope of its
26 statutory authority in approving the proposed legislative
27 rule;

28 (2) Whether the proposed legislative rule is in confor-
29 mity with the legislative intent of the statute which the
30 rule is intended to implement, extend, apply, interpret
31 or make specific;

32 (3) Whether the proposed legislative rule conflicts
33 with any other provision of this code or with any other
34 rule adopted by the same or a different agency;

35 (4) Whether the proposed legislative rule is necessary
36 to fully accomplish the objectives of the statute under
37 which the proposed rule was promulgated;

38 (5) Whether the proposed legislative rule is reasona-
39 ble, especially as it affects the convenience of the general
40 public or of persons particularly affected by it;

41 (6) Whether the proposed legislative rule could be
42 made less complex or more readily understandable by
43 the general public; and

44 (7) Whether the proposed legislative rule was promul-

45 gated in compliance with the requirements of this
46 article and with any requirements imposed by any other
47 provision of this code.

48 (c) After reviewing the legislative rule, the commis-
49 sion shall recommend that the Legislature:

50 (1) Authorize the board to promulgate the legislative
51 rule; or

52 (2) Authorize the board to promulgate part of the
53 legislative rule; or

54 (3) Recommend that the rule be withdrawn.

55 The commission shall file notice of its action in the
56 state register and with the board proposing the rule:
57 *Provided*, That when the commission makes the recom-
58 mendations of subdivision (2) or (3) of this subsection,
59 the notice shall contain a statement of the reasons for
60 such recommendation.

61 (d) When the commission recommends that a rule be
62 authorized, in whole or in part, by the Legislature, the
63 commission shall instruct its staff or the office of
64 legislative services to draft a bill authorizing the board
65 to promulgate all or part of the legislative rule. If the
66 commission recommends that the rule not be authorized,
67 it shall include in its report a draft of a bill authorizing
68 promulgation of the rule together with a recommenda-
69 tion. Any draft bill prepared under this section shall
70 contain a legislative finding that the rule is within the
71 legislative intent of the statute which the rule is
72 intended to implement, extend, apply or interpret and
73 shall be available for any member of the Legislature to
74 introduce to the Legislature.

§29A-3A-13. Submission of legislative rules to Legislature.

1 (a) No later than forty days before the sixtieth day of
2 each regular session of the Legislature, the cochairmen
3 of the legislative oversight commission on education
4 accountability shall submit to the clerk of the respective
5 houses of the Legislature copies of all proposed legisla-
6 tive rules which have been submitted to and considered

7 by the commission pursuant to the provisions of section
8 eleven of this article and which have not been previously
9 submitted to the Legislature for study, together with the
10 recommendations of the commission with respect to such
11 rules, a statement of the reasons for any recommenda-
12 tion that a rule be withdrawn, and a statement that a
13 bill authorizing the legislative rule has been drafted by
14 the staff of the commission or by legislative services
15 pursuant to section twelve of this article. The cochair-
16 men of the commission may also submit such rules at
17 the direction of the commission at any time before or
18 during a special session in which consideration thereof
19 may be appropriate. The commission may withhold
20 from its report any proposed legislative rule which was
21 submitted to the commission fewer than two hundred
22 ten days before the end of the regular session. The clerk
23 of each house shall submit the report to his house at the
24 commencement of the next session.

25 All bills introduced authorizing the promulgation of
26 a rule may be referred by the speaker of the House of
27 Delegates and by the president of the Senate to
28 appropriate standing committees of the respective
29 houses for further consideration or the matters may be
30 otherwise dealt with as each house or its rules provide.
31 The Legislature may by act authorize the board to adopt
32 a legislative rule incorporating the entire rule. The clerk
33 of the house originating such act shall forthwith file a
34 copy of any bill enacted in contemplation of this section
35 in the state register and with the board and the clerk
36 of each house may prepare and file a synopsis of
37 legislative action during any session on any proposed
38 rule submitted to the house during such session for
39 which authority to promulgate was not by law provided
40 during such session.

41 (b) If the Legislature fails during its regular session
42 to act upon all or part of any legislative rule which was
43 submitted to it by the legislative oversight commission
44 on education accountability during such session, the
45 board may not thereafter issue any rule or directive or
46 take other action to implement such rule or part thereof
47 unless and until otherwise authorized to do so.

48 (c) Nothing herein shall be construed to prevent the
49 Legislature by law from authorizing or authorizing and
50 directing the board to promulgate legislative rules not
51 proposed by the board or upon which some procedure
52 specified in this chapter is not yet complete.

53 (d) Whenever the Legislature is convened by procla-
54 mation of the governor, upon his own initiative or upon
55 application of the members of the Legislature, or
56 whenever a regular session of the Legislature is
57 extended or convened by the vote or petition of its
58 members, the Legislature may by act enacted during
59 such extraordinary or extended session authorize, in
60 whole or in part, any legislative rule whether submitted
61 to the legislative oversight commission on education
62 accountability, or not, if legislative action on such rule
63 during such session is a lawful order of business.

64 (e) Whenever a date is required by this section to be
65 computed in relation to the end of a regular session of
66 the Legislature, such date shall be computed without
67 regard to any extensions of such session occasioned
68 solely by the proclamation of the governor.

69 (f) Whenever a date is required to be computed from
70 or is fixed by the first day of a regular session of the
71 Legislature, it shall be computed or fixed in the year
72 one thousand nine hundred eighty-four, and each fourth
73 year thereafter without regard to the second Wednesday
74 of January of such years.

§29A-3A-14. Adoption of legislative rules; effective date.

1 (a) Except as the Legislature may by law otherwise
2 provide, within sixty days after the effective date of an
3 act authorizing promulgation of a legislative rule, the
4 board shall promulgate the rule only in conformity with
5 the provisions of law authorizing and directing the
6 promulgation of such rule.

7 (b) A legislative rule authorized by the Legislature
8 shall become effective thirty days after such filing in the
9 state register, or on the effective date fixed by the
10 authorizing act or if none is fixed by law, such later date
11 not to exceed ninety days, as is fixed by the board.

12 (c) The secretary of state shall note in the state
13 register the effective date of an authorized and promul-
14 gated legislative rule, and shall file such legislative rule
15 in the state register in lieu of the proposed legislative
16 rule previously filed pursuant to section seven of this
17 article.

§29A-3A-15. Withdrawal or modification of proposed rules.

1 (a) Any legislative rule proposed by the board may be
2 withdrawn any time before passage of a law authorizing
3 or authorizing and directing its promulgation, but no
4 such action shall be construed to affect the validity,
5 force or effect of a law enacted authorizing or authoriz-
6 ing and directing the promulgation of an authorized
7 legislative rule or exercising compliance with such law.
8 The board shall file a notice of any such action in the
9 state register.

10 (b) At any time before a proposed legislative rule has
11 been submitted by the legislative oversight commission
12 on education accountability to the Legislature pursuant
13 to the provisions of section thirteen of this article, the
14 board may modify the proposed rule to meet the
15 objections of the commission. The board shall file in the
16 state register a notice of its modifying action including
17 a copy of the modified rule, but shall not be required
18 to comply with any provisions of this article requiring
19 opportunity for public comment or taking of evidence
20 with respect to such modification. If a legislative rule
21 has been withdrawn, modified and then resubmitted to
22 such commission, the rule shall be considered to have
23 been submitted to such commission on the date of such
24 resubmission.

§29A-3A-16. Emergency legislative rules; procedure for promulgation; definition.

1 (a) The board may, without hearing, find that an
2 emergency exists requiring that emergency rules be
3 promulgated and promulgate the same in accordance
4 with this section. Such emergency rules, together with
5 a statement of the facts and circumstances constituting
6 the emergency, shall be filed in the state register and

7 shall become effective immediately upon such filing.
8 Such emergency rules may adopt, amend or repeal any
9 legislative rule, but the circumstances constituting the
10 emergency requiring such adoption, amendment or
11 repeal shall be stated with particularity and be subject
12 to de novo review by any court having original jurisdic-
13 tion of an action challenging their validity. Fifteen
14 copies of the rules and of the required statement shall
15 be filed forthwith with the legislative oversight commis-
16 sion on education accountability.

17 An emergency rule shall be effective for not more
18 than fifteen months and shall expire earlier if any of the
19 following occurs:

20 (1) The secretary of state, acting under the authority
21 provided for in section fifteen-a of this article, or the
22 attorney general, acting under the authority provided
23 for in section fifteen-b of this article, disapproves the
24 emergency rule because (A) the board has exceeded the
25 scope of its statutory authority in promulgating the
26 emergency rule; (B) an emergency does not exist
27 justifying the promulgation of such rule; or (C) the rule
28 was not promulgated in compliance with the provisions
29 of this section.

30 (2) The board has not previously filed and fails to file
31 a notice of public hearing on the proposed rule within
32 sixty days of the date the proposed rule was filed as an
33 emergency rule; in which case the emergency rule
34 expires on the sixty-first day.

35 (3) The board has not previously filed and fails to file
36 the proposed rule with the legislative oversight commis-
37 sion on education accountability within one hundred
38 eighty days of the date the proposed rule was filed as
39 an emergency rule; in which case the emergency rule
40 expires on the one hundred eighty-first day.

41 (4) The Legislature has authorized or directed pro-
42 mulgation of an authorized legislative rule dealing with
43 substantially the same subject matter since such
44 emergency rule was first promulgated, and in which
45 case the emergency rule expires on the date the
46 authorized rule is made effective.

47 (5) The Legislature has, by law, disapproved of such
48 emergency rule; in which case the emergency rule
49 expires on the date the law becomes effective.

50 (b) Any amendment to an emergency rule made by
51 the board shall be filed in the state register and does
52 not constitute a new emergency rule for the purpose of
53 acquiring additional time or avoiding the expiration
54 dates in subdivision (1), (2), (3) or (4), subsection (a) of
55 this section.

56 (c) Once an emergency rule expires due to the
57 conclusion of fifteen months or due to the effect of
58 subdivision (1), (2), (3) or (4), subsection (a) of this
59 section, the board may not refile the same or similar
60 rule as an emergency rule.

61 (d) Emergency legislative rules currently in effect
62 under the prior provisions of this section may be refiled
63 under the provisions of this section.

64 (e) The provision of this section shall not be used to
65 avoid or evade any provision of this article or any other
66 provisions of this code, including any provisions for
67 legislative review and approval of proposed rules. Any
68 emergency rule promulgated for any such purpose may
69 be contested in a judicial proceeding before a court of
70 competent jurisdiction.

71 (f) The legislative oversight commission on education
72 accountability may review any emergency rule to
73 determine (1) whether the board has exceeded the scope
74 of its statutory authority in promulgating the emer-
75 gency rule; (2) whether there exists an emergency
76 justifying the promulgation of such rule; and (3)
77 whether the rule was promulgated in compliance with
78 the requirements and prohibitions contained in this
79 section. The commission may recommend to the board,
80 the Legislature, or the secretary of state such action as
81 it may deem proper.

82 (g) For the purposes of this section, an emergency
83 exists when the promulgation of a rule is necessary for
84 the immediate preservation of the public peace, health,
85 safety or welfare or is necessary to comply with a time

86 limitation established by this code or by a federal statute
87 or regulation or to prevent substantial harm to the
88 public interest.

**§29A-3A-16a. Disapproval of emergency rules by the
secretary of state; judicial review.**

1 (a) Upon the filing of an emergency rule by the board,
2 under the provisions of section sixteen of this article, the
3 secretary of state shall review such rule and, within
4 forty-two days of such filing, shall issue a decision as to
5 whether or not such emergency rule should be
6 disapproved.

7 (b) The secretary of state shall disapprove an emer-
8 gency rule if he determines:

9 (1) That the board has exceeded the scope of its
10 statutory authority in promulgating the emergency rule;

11 (2) That an emergency does not exist justifying the
12 promulgation of the rule; or

13 (3) That the rule was not promulgated in compliance
14 with the provisions of section fifteen of this article.

15 (c) If the secretary of state determines, based upon the
16 contents of the rule or the supporting information filed
17 by the board, that the emergency rule should be
18 disapproved, he may disapprove such rule without
19 further investigation, notice or hearing. If, however, the
20 secretary of state concludes that the information
21 submitted by the board is insufficient to allow a proper
22 determination to be made as to whether the emergency
23 rule should be disapproved, he may make further
24 investigation, including, but not limited to, requiring
25 the board or other interested parties to submit addi-
26 tional information or comment or fixing a date, time and
27 place for the taking of evidence on the issues involved
28 in making a determination under the provisions of this
29 section.

30 (d) The determination of the secretary of state shall
31 be reviewable by the supreme court of appeals under its
32 original jurisdiction, based upon a petition for a writ of

33 mandamus, prohibition of certiorari, as appropriate.
34 Such proceeding may be instituted by:

35 (1) The board which promulgated the emergency rule;

36 (2) A member of the Legislature; or

37 (3) Any person whose personal property interests will
38 be significantly affected by the approval or disapproval
39 of the emergency rule by the secretary of state.

**§29A-3A-17. Legislative review of procedural rules,
interpretive rules and existing legislative
rules.**

1 The legislative oversight commission on education
2 accountability may review any procedural rules, inter-
3 pretive rules or existing legislative rules and may make
4 recommendations concerning such rules to the Legisla-
5 ture, or to the board, or to both the Legislature and the
6 board.

§29A-3A-18. Prior rules.

1 Any rule lawfully promulgated prior to the effective
2 date of this chapter shall remain in full force and effect
3 until:

4 (1) Such rule is expressly made ineffective by the
5 provisions of this chapter; or

6 (2) Such rule should expire by reason of failure to
7 refile the same as provided in section five of article two,
8 or expires pursuant to its own terms and provisions
9 lawfully made before the effective date of this section;
10 or

11 (3) Such rule is repealed by the lawful act of the
12 board, in conformity with this chapter; or

13 (4) Such rule is invalidated by an act of the Legisla-
14 ture or the force and effect of another law.

CHAPTER 8

(S. B. 13—By Senators Tonkovich, Mr. President,
by request, and Harman)

[Passed June 17, 1988; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to prohibited use of certain vehicles on the highways between sunset and sunrise.

Be it enacted by the Legislature of West Virginia:

That section two, 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-3-2. Every motor vehicle, etc., subject to
registration and certificate of title provi-
sions; exceptions.**

1 Every motor vehicle, trailer, semitrailer, pole trailer,
2 and recreational vehicle when driven or moved upon a
3 highway shall be subject to the registration and
4 certificate of title provisions of this chapter except:

5 (1) Any such vehicle driven or moved upon a highway
6 in conformance with the provisions of this chapter
7 relating to manufacturers, transporters, dealers, lien-
8 holders, or nonresidents or under a temporary registra-
9 tion permit issued by the department as hereinafter
10 authorized;

11 (2) Any implement of husbandry upon which is
12 securely attached a machine for spraying fruit trees and
13 plants of the owner or lessee or for any other implement
14 of husbandry which is used exclusively for agricultural
15 or horticultural purposes on lands owned or leased by
16 the owner thereof and which is not operated on or over
17 any public highway of this state for any other purpose
18 other than for the purpose of operating it across a

19 highway or along a highway other than an expressway
20 as designated by the commissioner of the department of
21 highways from one point of the owner's land to another
22 part thereof, irrespective of whether or not the tracts
23 adjoin: *Provided*, That the distance between the points
24 shall not exceed fifteen miles, or for the purpose of
25 taking it or other fixtures thereto attached, to and from
26 a repair shop for repairs. The foregoing exemption from
27 registration and license requirements shall also apply to
28 any vehicle hereinbefore described or to any farm
29 trailer owned by the owner or lessee of the farm on
30 which such trailer is used, when such trailer is used by
31 the owner thereof for the purpose of moving farm
32 produce and livestock from such farm along a public
33 highway for a distance not to exceed ten miles to a
34 storage house or packing plant, when such use is a
35 seasonal operation.

36 The exemptions contained in this section shall also
37 apply to farm machinery and tractors: *Provided*, That
38 such machinery and tractors may use the highways in
39 going from one tract of land to another tract of land
40 regardless of whether such land be owned by the same
41 or different persons.

42 Any vehicle exempted hereunder from the require-
43 ments of annual registration certificate and license
44 plates and fees therefor shall not be permitted to use the
45 highways as above provided between sunset and sunrise.

46 Any vehicle exempted hereunder from the require-
47 ments of annual registration certificate and license
48 plates shall be permitted to use the highways as herein
49 provided whether such exempt vehicle is self-propelled,
50 towed by another exempt vehicle or towed by another
51 vehicle for which registration is required.

52 Any vehicle used as an implement of husbandry
53 exempt hereunder must have the words "farm use"
54 affixed to both sides of the implement in ten inch letters;

55 (3) Any vehicle which is propelled exclusively by
56 electric power obtained from overhead trolley wires
57 though not operated upon rails;

- 58 (4) Any vehicle of a type subject to registration owned
59 by the government of the United States;
- 60 (5) Any wrecked or disabled vehicle which is being
61 towed by a licensed wrecker or dealer on the public
62 highways of this state;
- 63 (6) The following recreational vehicles shall be
64 exempt from the requirements of annual registration,
65 license plates and fees, unless otherwise specified by
66 law, but shall be subject to the certificate of title
67 provisions of this chapter regardless of highway use:
68 motorboats, all-terrain vehicles and snowmobiles.
- 69 The provisions of this article relating to recreational
70 vehicles shall become effective on the first day of July,
71 one thousand nine hundred eighty-nine.

CHAPTER 9

(Com. Sub. for S. B. 10—By Senators Tonkovich, Mr. President,
by request, and Harman)

[Passed June 27, 1988; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, twenty-two-c and fifty-three, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article ten by adding thereto a new section, designated section fifteen-a; to repeal article ten-d of said chapter five; to amend and reenact sections thirteen-b, thirty-five-b and thirty-six, article seven-a, chapter eighteen of said code; and to amend and reenact section four-a, article twenty-three of said chapter eighteen, all relating to the public employees retirement system (PERS), the public employees retirement system II (PERS II), and the state teachers retirement system (TRS); providing first, in respect of the public employees retirement system (PERS), for: clarifying and making changes in certain definitions, including revising the definition of "contributing service" to specifically permit the using

and combining of such contributing service in certain other public retirement systems of the state with that earned after one has become a member of PERS for determining certain eligibility, including application of the "special rule of eighty", with such revised definition being made applicable and so usable, retroactively, to the first day of April, one thousand nine hundred eighty-eight; revising the definition for "employees" to permit temporary legislative employees to be considered such eligible employees after eight years of such temporary service rather than ten years; specifying the method of computation to be applied in determining additional credited service for retirement receivable by a member through use of his accrued annual leave or sick leave days, as an option, for such purpose; providing for the temporary, early retirement incentives program, and in respect of it, for: changes in the period for election and exercise of such rights under such incentive program; options; specifying those members eligible for such incentives program and certain ineligible members; factors of eligibility; conditions; exceptions; giving of certain notice and time therefor; receipt of incentive retirement benefit and certain other governmental employment prohibited, with exceptions; prohibition of incentive retirants from entering or reentering certain retirement systems, with exception; funding and sources thereof; reports; retirement-vacated positions and abolishment of certain of such positions, with exceptions; budgetary savings; special account established in state treasury; "special rule of eighty" and "contributing service" and other qualifications thereunder; dates for beginning, termination and giving of certain notice under retirement incentives program and requiring making of joint study of state retirement systems with report to be submitted by specified date to joint committee on government and finance of the Legislature; providing second, in respect of the public employees retirement system II (PERS II) for repeal and termination of such retirement system of the state, prior to its beginning operation on the first day of July, one thousand nine hundred eighty-eight; providing third, in respect of the teachers retirement system (TRS) for:

acquisition of credited service in certain instances with payment therefor by cooperative extension service employees, and conditions thereof; the temporary early retirement incentives program and in respect of it for: changes in the period for election and exercise of rights under such incentives program; specifying members eligible for such program and certain ineligible members; options; factors of eligibility; conditions; exceptions; giving of certain notice and date therefor; receipt of incentive-based retirement benefit and certain other governmental employment prohibited, with exceptions; incentive retirants prohibited from entering or reentering certain retirement systems, with exception; funding and sources thereof; reports; retirement-vacated positions and abolishment of certain of such positions, with exceptions; budgetary savings; special account established in state treasury; "special rule of eighty" and "contributing service" and other qualifications thereunder; dates for beginning, termination and giving of certain notice under retirement incentives program; requiring cooperative joint study of state retirement systems, with report thereof to be submitted by specified date to joint committee on government and finance of the Legislature; and specifying by legislative declaration that certain language inadvertently remaining in a certain specified section of Enrolled Committee Substitute for H. B. 4672, enacted at regular session, one thousand nine hundred eighty-eight, after intended legislative deletion, and contrary to legislative intent, be retroactively expunged and deleted to time of the effective date of said enrolled bill as curative and technical error corrective action by Legislature and that such ambiguous and deficient language shall be given no force and effect in any litigation involving such language.

Be it enacted by the Legislature of West Virginia:

That sections two, twenty-two-c and fifty-three, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article ten be further amended by adding thereto a new section, designated section fifteen-a; that article ten-d of

said chapter five be repealed; that sections thirteen-b, thirty-five-b and thirty-six, article seven-a, chapter eighteen of said code be amended and reenacted; and that section four-a, article twenty-three of said chapter eighteen be amended and reenacted, all to read as follows:

Chapter

5. **General Powers and Authority of the Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, Etc.**

18. **Education.**

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

- §5-10-2. Definitions.
- §5-10-15a. Retirement credited service through member's use, as option, of accrued annual or sick leave days.
- §5-10-22c. Temporary early retirement incentives program; legislative declaration and finding of compelling state interest and public purpose; specifying eligible and ineligible members for incentives program; options, conditions, and exceptions; certain positions abolished; special rule of eighty; effective, termination, and notice dates.
- §5-10-53. Joint study of state retirement systems; report to joint committee on government and finance by specified date of study conclusions.

§5-10-2. Definitions.

1 The following words and phrases as used in this
 2 article, unless a different meaning is clearly indicated
 3 by the context, shall have the following meanings:

- 4 (1) "State" means the state of West Virginia;
- 5 (2) "Retirement system" or "system" means the West
 6 Virginia public employees retirement system created
 7 and established by this article;
- 8 (3) "Board of trustees" or "board" means the board of

9 trustees of the West Virginia public employees retire-
10 ment system;

11 (4) "Political subdivision" means the state of West
12 Virginia, a county, city or town in the state; a school
13 corporation or corporate unit; any separate corporation
14 or instrumentality established by one or more counties,
15 cities or towns, as permitted by law; any corporation or
16 instrumentality supported in most part by counties,
17 cities or towns; any public corporation charged by law
18 with the performance of a governmental function and
19 whose jurisdiction is coextensive with one or more
20 counties, cities or towns, any agency or organization
21 established by, or approved by the department of mental
22 health for the provision of community health or mental
23 retardation services, and which is supported in part by
24 state, county or municipal funds;

25 (5) "Participating public employer" means the state of
26 West Virginia, any board, commission, department,
27 institution or spending unit, and shall include any
28 agency created by rule of the supreme court of appeals
29 having full-time employees, which for the purposes of
30 this article shall be deemed a department of state
31 government; and any political subdivision in the state
32 which has elected to cover its employees, as defined in
33 this article, under the West Virginia public employees
34 retirement system;

35 (6) "Employee" means any person who serves regu-
36 larly as an officer or employee, full time, on a salary
37 basis, whose tenure is not restricted as to temporary or
38 provisional appointment, in the service of, and whose
39 compensation is payable, in whole or in part, by any
40 political subdivision, or an officer or employee whose
41 compensation is calculated on a daily basis and paid
42 monthly or on completion of assignment, including
43 technicians and other personnel employed by the West
44 Virginia national guard whose compensation, in whole
45 or in part, is paid by the federal government: *Provided*,
46 That members of the state Legislature, the clerk of the
47 house of delegates, the clerk of the state senate,
48 employees of the state Legislature whose term of
49 employment is otherwise classified as temporary and

50 who are employed to perform services required by the
51 Legislature for its regular sessions or during the interim
52 between regular sessions and who have been or are so
53 employed during regular sessions or during the interim
54 between regular sessions for eight or more years,
55 members of the legislative body of any political subdi-
56 vision and judges of the state court of claims shall be
57 considered to be employees, anything contained herein
58 to the contrary notwithstanding. In any case of doubt as
59 to who is an employee within the meaning of this article
60 the board of trustees shall decide the question;

61 (7) "Member" means any person who is included in
62 the membership of the retirement system;

63 (8) "Retirant" means any member who retires with an
64 annuity payable by the retirement system;

65 (9) "Beneficiary" means any person, except a retirant,
66 who is entitled to, or will be entitled to, an annuity or
67 other benefit payable by the retirement system;

68 (10) "Service" means personal service rendered to a
69 participating public employer by an employee, as
70 defined in this article, of a participating public
71 employer;

72 (11) "Prior service" means service rendered prior to
73 July one, one thousand nine hundred sixty-one, to the
74 extent credited a member as provided in this article;

75 (12) "Contributing service" means service rendered by
76 a member within this state and for which such member
77 made contributions to a public retirement system
78 account of this state, to the extent credited him as
79 provided by this article, such revised definition being
80 retroactive and applicable to the first day of April, one
81 thousand nine hundred eighty-eight, and thereafter;

82 (13) "Credited service" means the sum of a member's
83 prior service credit and contributing service credit
84 standing to his credit as provided in this article;

85 (14) "Compensation" means the remuneration paid a
86 member by a participating public employer for personal
87 services rendered by him to the participating public

88 employer. In the event a member's remuneration is not
89 all paid in money, his participating public employer
90 shall fix the value of the portion of his remuneration
91 which is not paid in money;

92 (15) "Final average salary" means either (a) the
93 average of the highest annual compensation received by
94 a member (including a member of the Legislature who
95 participates in the retirement system in the year one
96 thousand nine hundred seventy-one or thereafter)
97 during any period of three consecutive years of his
98 credited service contained within his ten years of
99 credited service immediately preceding the date his
100 employment with a participating public employer last
101 terminated, or (b) if he has less than five years of
102 credited service, the average of the annual rate of
103 compensation received by him during his total years of
104 credited service; and in determining the annual compen-
105 sation, under either (a) or (b) of this subdivision (15), of
106 a member of the Legislature who participates in the
107 retirement system as a member of the Legislature in the
108 year one thousand nine hundred seventy-one or in any
109 year thereafter, his actual legislative compensation (the
110 total of all compensation paid under sections two, three,
111 four and five, article two-a, chapter four of this code)
112 in the year one thousand nine hundred seventy-one or
113 in any year thereafter, plus any other compensation he
114 receives in any such year from any other participating
115 public employer including the state of West Virginia,
116 without any multiple in excess of one times his actual
117 legislative compensation as aforesaid and other compen-
118 sation, shall be used: *Provided*, That "final average
119 salary" for any former member of the Legislature or for
120 any member of the Legislature in the year one thousand
121 nine hundred seventy-one who, in either event, was a
122 member of the Legislature on November thirty, one
123 thousand nine hundred sixty-eight, or November thirty,
124 one thousand nine hundred sixty-nine, or November
125 thirty, one thousand nine hundred seventy, or on
126 November thirty in any one or more of said three years,
127 and who participated in the retirement system as a
128 member of the Legislature in any one or more of such
129 years of one thousand nine hundred sixty-eight, one

130 thousand nine hundred sixty-nine or one thousand nine
131 hundred seventy, means (i) either (notwithstanding the
132 provisions of this subdivision (15) preceding this proviso)
133 one thousand five hundred dollars multiplied by eight,
134 plus the highest other compensation such former
135 member or member received in any one of said three
136 years from any other participating public employer
137 including the state of West Virginia, or (ii) "final
138 average salary" determined in accordance with (a) or (b)
139 of this subdivision (15), whichever computation shall
140 produce the higher final average salary (and in deter-
141 mining the annual compensation under (ii) of this
142 proviso, the legislative compensation of any such former
143 member shall be computed on the basis of one thousand
144 five hundred dollars multiplied by eight, and the
145 legislative compensation of any such member shall be
146 computed on the basis set forth in the provisions of this
147 subdivision (15) immediately preceding this proviso or
148 on the basis of one thousand five hundred dollars
149 multiplied by eight, whichever computation as to such
150 member shall produce the higher annual compensation);

151 (16) "Accumulated contributions" means the sum of
152 all amounts deducted from the compensations of a
153 member and credited to his individual account in the
154 members' deposit fund, together with regular interest
155 thereon;

156 (17) "Regular interest" means such rate or rates of
157 interest per annum, compounded annually, as the board
158 of trustees shall from time to time adopt;

159 (18) "Annuity" means an annual amount payable by
160 the retirement system throughout the life of a person.
161 All annuities shall be paid in equal monthly instal-
162 ments, using the upper cent for any fraction of a cent;

163 (19) "Annuity reserve" means the present value of all
164 payments to be made to a retirant or beneficiary of a
165 retirant on account of any annuity, computed upon the
166 basis of such mortality and other tables of experience,
167 and regular interest, as the board of trustees shall from
168 time to time adopt;

169 (20) "Retirement" means a member's withdrawal

170 from the employ of a participating public employer with
171 an annuity payable by the retirement system;

172 (21) "Actuarial equivalent" means a benefit of equal
173 value computed upon the basis of such mortality table
174 and regular interest as the board of trustees shall from
175 time to time adopt; and

176 (22) The masculine gender shall include the feminine
177 gender, and words of the singular number with respect
178 to persons shall include the plural number, and vice
179 versa.

§5-10-15a. Retirement credited service through member's use, as option, of accrued annual or sick leave days.

1 Any member accruing annual leave or sick leave days
2 may, after the effective date of this section, elect to use
3 such days at the time of retirement to acquire additional
4 credited service in this retirement system. Such days
5 shall be applied on the basis of two workdays credit
6 granted for each one day of such accrued annual or sick
7 leave days, with each month of retirement service credit
8 to equal twenty workdays and with any remainder of ten
9 workdays or more to constitute a full month of addi-
10 tional credit and any remainder of less than ten
11 workdays to be dropped and not used, notwithstanding
12 any provisions of the code to the contrary, including
13 section twelve, article sixteen of this chapter. Such
14 credited service shall be allowed and not deemed to
15 controvert the requirement of no more than twelve
16 months credited service in any year's period.

§5-10-22c. Temporary early retirement incentives program; legislative declaration and finding of compelling state interest and public purpose; specifying eligible and ineligible members for incentives program; options, conditions, and exceptions; certain positions abolished; special rule of eighty; effective, termination, and notice dates.

1 The Legislature hereby finds and declares that a
2 compelling state interest exists in providing a tempor-

3 any early retirement incentives program for encourag-
4 ing the early, voluntary retirement of those public
5 employees who were current, active contributing
6 members of this retirement system on the first day of
7 April, one thousand nine hundred eighty-eight, in the
8 reduction of the number of such employees and in
9 reduction of governmental costs therefor; that such
10 program constitutes a public purpose; and that the
11 special classifications and differentiations provided in
12 respect of such program are reasonable and equitable
13 ones for the accomplishment of such purpose and
14 program as enacted in Enrolled Committee Substitute
15 for H. B. 4672, regular session, one thousand nine
16 hundred eighty-eight, and as clarified and supplé-
17 mented herein, retroactive to such beginning date,
18 aforesaid.

19 (a) Beginning on the first day of April, one thousand
20 nine hundred eighty-eight, and continuing through the
21 thirty-first day of December, one thousand nine hundred
22 eighty-eight, (or as extended by eligibility qualification
23 requirement, as hereinafter specified) eligible members,
24 being those active, contributing members actually and
25 currently employed on such beginning date, retiring
26 pursuant to this section, and from any state, county or
27 municipal position, covered under the two divisions of
28 this retirement system (the state division and the public
29 employer, nonstate division) including those so employed
30 on said beginning date and leaving the system during
31 the incentive period and who are eligible for taking
32 deferred retirement (but not disability retirees) may
33 elect to participate in this incentives program and may
34 elect any one of the three following incentive options:

35 (1) Retirement incentive option one:

36 For the purpose of computing the member's annuity,
37 the normal final average salary shall be computed and
38 one-eighth thereof shall be added thereto in arriving at
39 the true final average salary for use in actual compu-
40 tation of retirement benefit.

41 (2) Retirement incentive option two:

42 A member may elect a lump sum payment, in addition

43 to his regular retirement annuity, equal to ten percent
44 of his final average salary not to exceed five thousand
45 dollars, and in the case of a deferred retirement electing
46 this option, such lump sum payment shall be receivable
47 and deferred to the time of receipt of such deferred
48 retirement annuity.

49 (3) Retirement incentive option three:

50 A person shall be credited with an additional two
51 years of contributing service and an additional two
52 years of age. The years credited under this option shall
53 in no way add to a member's final average salary factor
54 of computation.

55 Active, contributing members who desire to retire
56 under this section but who are unable to retire by the
57 thirty-first day of December, one thousand nine hundred
58 eighty-eight, and make use of the incentive retirement
59 program because an element of eligibility for retire-
60 ment, such as age or other element, will not be met until
61 a date after the thirty-first day of December, one
62 thousand nine hundred eighty-eight, and before the first
63 day of July, one thousand nine hundred eighty-nine,
64 shall be permitted to postpone actual retirement until
65 the date of fulfilling such element of eligibility and shall
66 retire on such date, before the temporary retirement
67 incentive program ends on the thirtieth day of June, one
68 thousand nine hundred eighty-nine; with proper credit
69 to be granted for such extended period: *Provided*, That
70 they shall have made application for retirement,
71 including choice of their respective option, and given
72 notice to their respective employer by the thirty-first
73 day of December, one thousand nine hundred eighty-
74 eight, although postponing actual retirement, as
75 aforesaid.

76 (b) Any member participating in this retirement
77 incentive program is not eligible to accept further
78 employment from the state or any of its political
79 subdivisions: *Provided*, That a person may retire under
80 this section and thereafter serve in an elective office:
81 *Provided, however*, That he shall not receive an incentive
82 annuity under this section during the term of service in

83 said office, but shall receive his or her annuity calcu-
84 lated on regular basis, as if originally taken not under
85 this section but on such regular basis. At the end of such
86 term and cessation of service in such office during which
87 the member shall rejoin and reenter the retirement
88 system and pay contributions therefor, such regular
89 annuity shall be recalculated and an increased annuity
90 due to such additional employment shall be granted and
91 computed on regular basis and in similar manner as
92 under section forty-eight of this article. In respect of an
93 appointive office, as distinguished from an elective
94 office, any person retiring under this section and
95 thereafter serving in such appointive office shall not
96 receive an incentive annuity under this section during
97 the term of service in said office, but the same shall be
98 suspended during such period: *Provided further*, That at
99 the end of such term and cessation of service in such
100 appointive office the incentive annuity provided for
101 under this section shall be resumed.

102 In any event, an eligible member may retire under
103 this section and thereafter continue to receive his
104 incentive annuity and be employed as a substitute
105 teacher or as adjunct faculty.

106 Any such incentive retirants, under this section, may
107 not thereafter receive such annuity and enter or reenter
108 any governmental retirement system established or
109 authorized to be established by the state, notwithstand-
110 ing any provision of the code to the contrary, unless
111 required by constitutional provision or as hereby
112 specifically permitted to those retiring and thereafter
113 serving in elective office, as aforesaid.

114 The additional annuity allowed for temporary early
115 retirement under these options, in respect of state
116 division retirants of this system, is intended to be paid
117 from the retirement incentive account hereby created as
118 a special account in the state treasury and from the
119 funds therein established with moneys required to be
120 transferred by heads of spending units from the unused
121 portion of salary and fringe benefits in their budgets
122 accruing in respect of such positions vacated and
123 subsequently canceled under this temporary early

124 retirement program. Salary and fringe benefit moneys
125 actually saved in a particular fiscal year shall constitute
126 the fund source for payment of such additional annuity,
127 the funds of the retirement system to be used for
128 payment of the base annuity under the early retirement
129 incentive program: *Provided*, That such additional
130 annuity shall be paid from the unused portion of both
131 salary and fringe benefits and with any remainder of
132 any fringe benefit moneys, as such, to remain with the
133 spending unit and any remainder of salary as such, to
134 be directed as additional funding to the teachers
135 retirement system and as a part of the assets thereof.
136 No such additional annuity shall be disallowed even
137 though initial receipts may not be sufficient, with funds
138 of the system to be applied for such purpose, as for the
139 base annuity. With respect to public employer division
140 retirants (nonstate division retirants of the system), such
141 incentive annuity shall be paid from the nonstate
142 division funds of the system.

143 (c) The executive secretary of the retirement system
144 shall provide forms for applicants. Such forms shall
145 include a detailed description of the incentive plan
146 options.

147 The executive secretary of the retirement system shall
148 file a report to the Legislature no later than the fifteenth
149 day of February, one thousand nine hundred eighty-
150 nine, and quarterly thereafter, detailing the number of
151 retirees who have elected to accept early retirement
152 incentive options, the dollar cost to date by option
153 selected, and the projected annual cost through the year
154 two thousand.

155 (d) Within every spending unit, department, board,
156 corporation, commission, or any other agency or entity
157 wherein two or multiples of two members elect to retire
158 either under the temporary early retirement incentives
159 set forth above, or under regular, voluntary retirement,
160 and countable on an agency-wide or entity-wide basis,
161 no more than one of such vacated positions may be filled,
162 with the second position being abolished upon the
163 effective day of the member's retirement. The vacant
164 position abolishment requirement shall not apply to

165 elective positions or appointed public officers whose
166 positions are established by state constitutional or
167 statutory provision. The retirant's employing entity shall
168 decide as to which of the vacated positions made
169 available through special early retirement or through
170 regular, voluntary retirement are to be abolished and
171 the head of such spending unit shall immediately notify
172 the state auditor, the legislative auditor, and the
173 commissioner of the department of finance and admin-
174 istration of the decisions and shall then apply and/or
175 transfer the remaining salary and fringe benefits as
176 aforesaid: *Provided*, That this vacant position abolish-
177 ment provision shall not apply to any county or
178 municipal position except those under the authority of
179 a county board of education, nor to any position or
180 positions, whether designated by spending unit, depart-
181 ment, agency, commission, entity or otherwise, which
182 the governor in respect of the executive branch, or the
183 chief justice of the supreme court of appeals in respect
184 of the judicial branch, or the president of the senate or
185 speaker of the house of delegates, in respect of the
186 legislative branch, may exempt or amend, under such
187 abolishment provision, upon his respective recommenda-
188 tion that such exemption or amendment is necessary to
189 provide for continuity of governmental operation or to
190 preserve the health, welfare or safety of the people of
191 West Virginia, and with the prior concurrence of the
192 joint committee on government and finance in such
193 recommendation, after the chairmen thereof shall cause
194 such committee to meet.

195 (e) *Special rule of eighty.* — Any active, contributing
196 member of the retirement system as of the first day of
197 April, one thousand nine hundred eighty-eight, who
198 selects one of the incentive options in this section, may
199 retire under the special early retirement provisions with
200 full pension rights, without reduction of benefits if the
201 sum of such member's age plus years of contributing
202 service equals or exceeds eighty: *Provided*, That such
203 person has at least twenty years of contributing service;
204 up to two years of which may be military service, or
205 prior service, or any combination thereof not exceeding
206 an aggregate of two years.

207 (f) *Termination of temporary retirement incentives*
 208 *program.* — The right to elect, choose, select or use any
 209 of the options, special rule of eighty, or other benefits
 210 set forth in this section shall terminate on the thirtieth
 211 day of June, one thousand nine hundred eighty-nine.

§5-10-53. Joint study of state retirement systems; report to joint committee on government and finance by specified date of study conclusions.

1 In light of the determination to repeal the public
 2 employees retirement system II (PERS II) before its
 3 proposed date of initial operation, a study shall be
 4 undertaken through the cooperative efforts of the board
 5 of the public employees retirement system, the board of
 6 the teachers retirement system and the legislative
 7 commission on pensions and retirement toward deter-
 8 mining the best method by which to address the fiscal
 9 problems of the teachers retirement system together
 10 with any combining of retirement systems of the state
 11 that might be indicated, with report to be made to the
 12 joint committee on government and finance of the
 13 Legislature by the thirtieth day of June, one thousand
 14 nine hundred eighty-nine.

CHAPTER 18. EDUCATION.

Article

7A. **State Teachers Retirement System.**

23. **Additional Powers, Duties and Responsibilities of Governing Boards of State Institutions of Higher Education.**

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-13b. Option of certain present members to elect between state and federal retirement systems; payment of contributions to federal system.

§18-7A-35b. Temporary early retirement incentives program; legislative declaration and finding of compelling state interest and public purpose; specifying eligible and ineligible members for incentives program; options, conditions, and exceptions; certain positions abolished; special rule of eighty; effective, termination, and notice dates.

§18-7A-36. Joint study of state retirement systems; report to joint committee on government and finance by specified date of study conclusions.

§18-7A-13b. Option of certain present members to elect

between state and federal retirement systems; payment of contributions to federal system.

1 Notwithstanding any other provision of this article to
2 the contrary, any present member of the retirement
3 system who as an employee of the board of governors
4 in the cooperative extension service of West Virginia
5 University holds a federal appointment, making him
6 eligible for membership in the federal civil service
7 retirement system, shall have an option to terminate his
8 membership in the state teachers retirement system at
9 any time within twelve months after the effective date
10 hereof, or to continue his membership if he so desires.
11 If he elects to terminate his membership, he shall be
12 entitled to withdrawal benefits similar to those that are
13 provided in section twenty-three of this article for
14 members who withdraw from service prior to retire-
15 ment, and he shall be required to join the federal civil
16 service retirement system. Any future employee in the
17 cooperative extension service who is eligible for mem-
18 bership in the federal civil service retirement system
19 shall be required to join that system, and shall be
20 ineligible for membership in the state teachers retire-
21 ment system during such period of employment. Should
22 employment cease with the cooperative extension service
23 of West Virginia University and the employee assumes
24 a position that subjects him to membership in the
25 teachers retirement system, he shall receive service
26 credit for each year served in the cooperative extension
27 service and within this state providing: (1) That the
28 member pays to the system a contribution equal to the
29 amount he contributed during his first full year of
30 current employment, times the number of years for
31 which credit is granted, plus interest at a rate equal to
32 that established by the retirement board for the
33 purchase of service as a teacher in the employment of
34 the federal government, and (2) that such years of
35 service for which he receives credit hereunder have not
36 and will not, in the future, be used to obtain or enhance
37 a retirement benefit from any other retirement system
38 whatsoever, including the federal civil service retire-
39 ment system.

40 The board of governors shall have the authority and
41 shall be required to withhold from each salary payment
42 due any employee in the cooperative extension service,
43 who is a member of the federal civil service retirement
44 system, the amount of the contribution he is required to
45 make to the federal treasury for such membership.
46 Upon proper requisition of the board, the auditor shall
47 periodically issue a warrant payable to the treasurer of
48 the United States for the total membership contribu-
49 tions so withheld from the salaries of all employees in
50 the cooperative extension service.

§18-7A-35b. Temporary early retirement incentives program; legislative declaration and finding of compelling state interest and public purpose; specifying eligible and ineligible members for incentives program; options, conditions, and exceptions; certain positions abolished; special rule of eighty; effective, termination, and notice dates.

1 The Legislature hereby finds and declares that a
2 compelling state interest exists in providing a tempor-
3 ary, early retirement incentives program for encourag-
4 ing the early, voluntary retirement of those public
5 employees who were current, active contributing
6 members of this retirement system on the first day of
7 April, one thousand nine hundred eighty-eight, in the
8 reduction of the number of such employees and in
9 reduction of governmental costs therefor; that such
10 program constitutes a public purpose; and that the
11 special classifications and differentiations provided in
12 respect of such program are reasonable and equitable
13 ones for the accomplishment of such purpose and
14 program as enacted in Enrolled Committee Substitute
15 for H. B. 4672, regular session, one thousand nine
16 hundred eighty-eight, and as clarified and supple-
17 mented herein, retroactive to such beginning date,
18 aforesaid.

19 (a) Beginning on the first day of April, one thousand
20 nine hundred eighty-eight, and continuing through the
21 thirty-first day of December, one thousand nine hundred

22 eighty-eight, (or as extended by contract or by eligibility
23 qualification requirement, as hereinafter specified)
24 eligible members, being those active, contributing
25 members actually and currently employed on such
26 beginning date, retiring pursuant to this section (except
27 disability retirees, but including those so employed on
28 said beginning date and leaving the system during the
29 incentive period and who are eligible for deferred
30 benefits), may elect to participate in this incentives
31 program and may elect any one of the three following
32 incentive options:

33 (1) Retirement incentive option one:

34 For the purpose of computing the member's annuity,
35 the normal final average salary shall be computed and
36 one-eighth thereof shall be added thereto in arriving at
37 the true final average salary for use in actual compu-
38 tation of retirement benefit.

39 (2) Retirement incentive option two:

40 A member may elect a lump sum payment, in addition
41 to his regular retirement annuity, equal to ten percent
42 of his final average salary not to exceed five thousand
43 dollars, and in the case of a deferred retirement electing
44 this option, such lump sum payment shall be receivable
45 and deferred to the time of receipt of such deferred
46 retirement annuity.

47 (3) Retirement incentive option three:

48 A person shall be credited with an additional two
49 years of contributing service and an additional two
50 years of age. The years credited under this option shall
51 in no way add to a member's final average salary factor
52 of computation.

53 (b) Eligible, active, contributing members, aforesaid,
54 employed under contract and rendering services during
55 school year one thousand nine hundred eighty-eight —
56 one thousand nine hundred eighty-nine shall, if retiring
57 pursuant to the provisions of this section and the early
58 retirement incentive program set forth herein, make
59 application for retirement, including choice of their
60 respective option, and give notice to their respective

61 county boards of education by the thirty-first day of
62 December, one thousand nine hundred eighty-eight, but
63 shall be permitted to postpone actual retirement until
64 immediately after the close of such contract period and
65 said school year; with proper credit to be granted for
66 such extended period.

67 Also, eligible, active contributing members employed,
68 not under contract, who desire to retire under this
69 section but who are unable to retire by the thirty-first
70 day of December, one thousand nine hundred eighty-
71 eight, because an element of eligibility for retirement,
72 such as age or other element, will not be met until a date
73 after the thirty-first day of December, one thousand nine
74 hundred eighty-eight, and before the first day of July,
75 one thousand nine hundred eighty-nine, shall be permit-
76 ted to postpone actual retirement until the date of
77 fulfilling such element of eligibility and shall retire on
78 such date, before the temporary retirement incentive
79 program ends on the thirtieth day of June, one thousand
80 nine hundred eighty-nine; with proper credit to be
81 granted for such extended period: *Provided*, That
82 members eligible under the preceding paragraph and
83 this paragraph shall have made application for retire-
84 ment, including choice of their respective option, and
85 given notice to their respective employer by the thirty-
86 first day of December, one thousand nine hundred
87 eighty-eight, although postponing actual retirement, as
88 aforesaid. Nothing in this section shall prohibit any
89 eligible, active, contributing member who has thereto-
90 fore notified the retirement system and the local board
91 of education or other educational agency of his or her
92 intention of retiring to reverse such decision and elect
93 not to retire at any time.

94 Eligible members other than those covered under the
95 provisions of the two preceding paragraphs, desiring to
96 retire under this incentive program shall make their
97 option election prior to and take their respective
98 retirement by the close of the thirty-first day of
99 December, one thousand nine hundred eighty-eight.

100 Any eligible member who retires hereunder during
101 the school year (after the first day of July, one thousand

102 nine hundred eighty-eight, and on any date prior to the
103 thirtieth day of June, one thousand nine hundred eighty-
104 nine) shall have included such months of such school
105 year and the salary in respect thereof, if ones of higher
106 salary, in place of and for any like number of months
107 in his or her five-year period for computation of
108 annuities as provided for in section twenty-six of this
109 article.

110 (c) Any member participating in this retirement
111 incentive program is not eligible to accept further
112 employment from the state or any of its political
113 subdivisions: *Provided*, That a person may retire under
114 this section and thereafter serve in an elective office:
115 *Provided, however*, That he shall not receive an incentive
116 annuity under this section during the term of service in
117 said office, but shall receive his or her annuity calcu-
118 lated on regular basis, as if originally taken not under
119 this section but on such regular basis. At the end of such
120 term and cessation of service in such office, such
121 incentive annuity shall resume. In respect of an
122 appointive office, as distinguished from an elective
123 office, any person retiring under this section and
124 thereafter serving in such appointive office shall not
125 receive an incentive annuity under this section during
126 the term of service in said office, but the same shall be
127 suspended during such period: *Provided further*, That at
128 the end of such term and cessation of service in such
129 appointive office the incentive annuity provided for
130 under this section shall be resumed.

131 In any event, an eligible member may retire under
132 this section and thereafter continue to receive his
133 incentive annuity and be employed as a substitute
134 teacher or as adjunct faculty, or as a school service
135 personnel substitute.

136 Any such incentive retirants, under this section, may
137 not thereafter receive such annuity and enter or reenter
138 any governmental retirement system established or
139 authorized to be established by the state, notwithstand-
140 ing any provision of the code to the contrary, unless
141 required by constitutional provision.

142 The additional annuity allowed for temporary early
143 retirement under these options is intended to be paid
144 from the retirement incentive account hereby created as
145 a special account in the state treasury and from the
146 funds therein established with moneys required to be
147 applied or transferred by heads of spending units from
148 the unused portion of salary and fringe benefits in their
149 budgets accruing in respect of such positions vacated
150 and subsequently canceled under this temporary early
151 retirement program. Salary and fringe benefit moneys
152 actually saved in a particular fiscal year shall constitute
153 the fund source. No such additional annuity shall be
154 disallowed even though initial receipts may not be
155 sufficient, with funds of the system to be applied for
156 such purpose, as for the base annuity.

157 (d) The executive secretary of the retirement system
158 shall provide forms for applicants. Such forms shall
159 include a detailed description of the incentive plan
160 options.

161 The executive secretary of the retirement system shall
162 file a report to the Legislature no later than the fifteenth
163 day of February, one thousand nine hundred eighty-
164 nine, and quarterly thereafter, detailing the number of
165 retirees who have elected to accept early retirement
166 incentive options, the dollar cost to date by option
167 selected, and the projected annual cost through the year
168 two thousand.

169 (e) Within every spending unit, department, board,
170 corporation, commission, or any other agency or entity
171 wherein two or multiples of two members elect to retire
172 either under the temporary early retirement incentives
173 set forth above, or under regular, voluntary retirement,
174 and countable on an agency-wide or entity-wide basis,
175 no more than one of such vacated positions may be filled,
176 with the second position being abolished upon the
177 effective day of the member's retirement: *Provided*,
178 That county boards of education in replacing employees
179 leaving under this temporary early retirement incentive
180 program shall be eligible to replace in that number as
181 authorized by the basic school aid formula and pursuant
182 to those guidelines in respect of number of positions lost

183 or projected to be lost due to declining enrollment,
184 changes in statutes, changes in state appropriations and
185 the other guidelines set forth and contained within said
186 basic school aid formula. The vacant position abolish-
187 ment requirement shall not apply to elective positions
188 or appointed public officers whose positions are estab-
189 lished by state constitutional or statutory provision. The
190 retirant's employing entity shall decide as to which of
191 the vacated positions made available through special
192 early retirement or through regular, voluntary retire-
193 ment are to be abolished and the head of such spending
194 unit shall immediately notify the state auditor, the
195 legislative auditor, and the commissioner of the depart-
196 ment of finance and administration of the decisions and
197 shall then apply and/or transfer, as aforesaid, the
198 remaining salary and fringe benefit appropriations:
199 *Provided, however,* That this vacant position abolishment
200 provision shall not apply to any county position, other
201 than those under the authority of county boards of
202 education, nor to any position or positions, whether
203 designated by spending unit, department, agency,
204 commission, entity or otherwise, which the governor
205 may exempt or amend under such abolishment provision
206 upon his recommendation that such exemption or
207 amendment is necessary to preserve the health, welfare
208 or safety of the people of West Virginia, and with the
209 prior concurrence of the joint committee on government
210 and finance in such recommendation, after the chairmen
211 thereof shall cause such committee to meet.

212 (f) *Special rule of eighty.* — Any active, contributing
213 member of the retirement system as of the first day of
214 April, one thousand nine hundred eighty-eight, who
215 selects one of the incentive options in this section, may
216 retire under the special early retirement provisions with
217 full pension rights, without reduction of benefits if the
218 sum of such member's age plus years of contributing
219 service equals or exceeds eighty: *Provided,* That such
220 person has at least twenty years of contributing service,
221 up to two years of which may be military service, or
222 prior service, or already paid and credited out-of-state
223 service (if so paid and credited by the first day of April,
224 one thousand nine hundred eighty-eight) or any combi-

225 nation thereof not exceeding an aggregate of two years.

226 (g) *Termination of temporary retirement incentives*
 227 *program.* — The right to elect, choose, select or use any
 228 of the options, special rule of eighty, or other benefits
 229 set forth in this section shall terminate on the thirtieth
 230 day of June, one thousand nine hundred eighty-nine.

**§18-7A-36. Joint study of state retirement systems; report
 to joint committee on government and
 finance by specified date of study
 conclusions.**

1 In light of the determination to repeal the public
 2 employees retirement system II (PERS II) before its
 3 proposed date of initial operation, a study shall be
 4 undertaken through the cooperative efforts of the board
 5 of the public employees retirement system, the board of
 6 the teachers retirement system and the legislative
 7 commission on pensions and retirement toward deter-
 8 mining the best method by which to address the fiscal
 9 problems of the teachers retirement system together
 10 with any combining of retirement systems of the state
 11 that might be indicated, with report to be made to the
 12 joint committee on government and finance of the
 13 Legislature by the thirtieth day of June, one thousand
 14 nine hundred eighty-nine.

ARTICLE 23. ADDITIONAL POWERS, DUTIES AND RESPONSIBILITIES OF GOVERNING BOARDS OF STATE INSTITUTIONS OF HIGHER EDUCATION.

§18-23-4a. Supplemental and additional retirement plans for employees; payroll deductions; authority to match employee contributions; retroactive curative and technical corrective action.

1 The governing boards shall have the authority to
 2 contract for a supplemental retirement plan for any or
 3 all of its employees to supplement the benefits such
 4 employees will receive under the state teachers retire-
 5 ment system. The governing boards shall have the
 6 authority to make additional periodic deductions from
 7 the salary payments due such employees in the amount
 8 they are required to contribute for the supplemental

9 retirement plan selected by the board. The additional
10 deductions shall not exceed five percent of the salary of
11 employees under thirty-five years of age, six percent of
12 the salary of those thirty-five through forty-four years
13 of age, and seven and one-half percent of the salary of
14 those forty-five years of age and above, and shall not
15 cover any portion of an employee's salary which is
16 covered by the state teachers retirement system.

17 The governing boards shall also have the authority to
18 contract for an additional retirement plan for any of its
19 employees who elect to participate solely in such a
20 retirement plan selected by the governing boards
21 without participating in the state retirement system.
22 The governing boards shall have the authority to make
23 periodic deductions from the salary payments due such
24 employees in the amount they are required to contribute
25 to the additional plan, which deductions shall be the
26 same percentage of the participating employees' salaries
27 as that deducted from the salaries of members of the
28 state retirement system.

29 The board is further authorized, by way of additional
30 compensation to such employees, to pay an amount equal
31 to the contributions of such employees into either the
32 supplemental or additional retirement plan from funds
33 appropriated to it for personal services. Each participat-
34 ing employee shall have a full and immediate vested
35 interest in the retirement and death benefits accrued
36 from all the moneys paid into such supplemental or
37 additional retirement plan for his benefit. Upon proper
38 requisition of the board, the auditor shall periodically
39 issue a warrant, payable as specified in the requisition,
40 for the total contributions so withheld from the salaries
41 of all participating employees and for the governing
42 board's matching funds.

43 Pursuant to the provisions contained in article seven-
44 a and article twenty-three of this chapter, once a
45 member has elected one of the options contained in
46 section fourteen-a, article seven-a of this chapter and
47 section four-a, article twenty-three of this chapter, he
48 cannot thereafter change such election. The Legislature
49 declares that the amendment of this section in Enrolled

50 Committee Substitute for House Bill 4672, enacted at
51 the regular session, one thousand nine hundred eighty-
52 eight, was inadvertent and remained in said bill
53 contrary to legislative intent that the same be deleted;
54 therefore, such language is hereby retroactively deleted
55 and expunged as of the effective date of said Enrolled
56 Committee Substitute for House Bill 4672 as curative
57 and technical corrective action. The Legislature further
58 declares that such ambiguous and deficient language
59 inadvertently enacted in said bill shall be given no force
60 and effect whatsoever in any litigation involving such
61 language.

CHAPTER 10

(S. B. 36—By Senators Loehr, Burdette and Lucht)

[Passed June 28, 1988; in effect July 10, 1988. Approved by the Governor.]

AN ACT to amend and reenact sections eleven and thirty, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to removing the exemption for soft drinks, soft drink mixes and syrups from the consumers sales tax; dedicating a portion of revenues from said tax and creating a higher education salary fund in the state treasury.

Be it enacted by the Legislature of West Virginia:

That sections eleven and thirty, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 15. CONSUMERS SALES TAX.

§11-15-11. Exemption of food intended for human consumption; transition reduction of tax; definitions and exceptions.

§11-15-30. Proceeds of tax.

§11-15-11. Exemption of food intended for human consumption; transition reduction of tax; definitions and exceptions.

1 (a) Exemption. — Sales of food intended for human
2 consumption made on or after the first day of July, one
3 thousand nine hundred eighty-one, shall be exempt from
4 the tax imposed by this article. This exemption shall be
5 in addition to any other exemption permitted under this
6 article.

7 (b) *Transition reduction of tax on July 1, 1979 and*
8 *July 1, 1980.* — The amount of tax imposed by section
9 three of this article on sales of food for human consump-
10 tion shall be reduced as follows:

11 (1) Sales of food intended for human consumption
12 made before the first day of July, one thousand nine
13 hundred seventy-nine, shall be taxed as provided in
14 section three of this article.

15 (2) Sales of food intended for human consumption
16 made after the thirtieth day of June, one thousand nine
17 hundred seventy-nine, shall be taxed as follows:

18 (A) There shall be no tax on sales where the monetary
19 consideration is twenty-five cents or less.

20 (B) On each sale, where the monetary consideration is
21 from twenty-six cents to fifty cents, both inclusive, one
22 cent.

23 (C) On each sale where the monetary consideration is
24 from fifty-one cents to one dollar, both inclusive, two
25 cents.

26 (D) On each fifty cents of monetary consideration or
27 fraction thereof in excess of one dollar, one cent.

28 (3) Sales of food intended for human consumption
29 made after the thirtieth day of June, one thousand nine
30 hundred eighty, but before the first day of July, one
31 thousand nine hundred eighty-one, shall be taxed as
32 follows:

33 (A) There shall be no tax on sales where the monetary
34 consideration is twenty-five cents or less.

35 (B) On each sale where the monetary consideration is
36 from twenty-six cents to one dollar, both inclusive, one
37 cent.

38 (C) On each one dollar or fraction thereof in excess of
39 one dollar, one cent. Separate sales such as daily or
40 weekly deliveries, shall not be aggregated for purpose
41 of computation of this tax even though such sales are
42 aggregated in the billing or the payment.

43 (c) Definition of food. — For purposes of this section,
44 and except as provided in subsection (d), the term “food”
45 shall mean and include all edible foodstuffs, beverages
46 containing no alcohol and items commonly thought of as
47 food, including, by way of illustration and not by
48 limitation, cereals and cereal products, meat and meat
49 products, fish and fish products, poultry and poultry
50 products, fresh and salt water animal products, eggs
51 and egg products, vegetables and vegetable products,
52 fruit and fruit products, flour and flour products, sugar
53 and sugar products, milk and milk products, cocoa and
54 cocoa products, coffee and coffee substitutes, tea, herbs,
55 spices, salt and salt substitutes, condiments, candy and
56 confections, tenderizers, food coloring, bottled drinking
57 water, sugar substitutes, oleomargarine, shortening,
58 gelatins, baking and cooking ingredients, mushrooms,
59 spreads, relishes, desserts, flavorings, chewing gum,
60 edible seeds, nuts and berries.

61 (d) The term “food” shall not include medicines,
62 vitamins and dietary supplements whether in liquid,
63 powdered, granular, tablet, capsule, lozenge or pill
64 form; soft drinks, soft drink mixes and syrups; spirit-
65 uous, malt or vinous liquors or beer; ice; tobacco or
66 tobacco products; vending machine sales; or food sold by
67 a food-service establishment.

68 (e) Definition of “food-service establishment.” — For
69 purposes of this section, and except as provided in
70 subsection (f), the term “food-service establishment”
71 means any fixed or mobile restaurant, coffee shop,
72 cafeteria, short-order cafe, luncheonette, grill, tearoom,
73 sandwich shop, soda fountain, tavern, bar, cocktail
74 lounge, nightclub, industrial-feeding establishment,
75 private, public or nonprofit organization or institution
76 routinely serving food, catering operation, commissary
77 or any other similar place in which food or drink is
78 prepared for sale or for service on the premises or

79 elsewhere; and any food-service establishment which
80 operates for a limited period of time in connection with
81 events such as, but not limited to, a fair, carnival, circus,
82 public exhibition, athletic event, or similar gathering:
83 *Provided*, That delicatessen, grocery, market, dairy or
84 bakery stores shall not be considered food-service
85 establishments within the meaning of this section except
86 for the sale of dinners, luncheons, barbecued chicken
87 other than barbecued chicken sold whole and unsliced,
88 sandwiches, snacks, hot pizzas, and other similar items
89 which are commonly sold at snack bars, coffee shops or
90 luncheon counters.

91 (f) The term "food-service establishment" shall not
92 include:

93 (1) Food sold by public or private schools, school
94 sponsored student organizations, or school sponsored
95 parent-teacher associations to students enrolled in such
96 school or to employees of such school during normal
97 school hours; but not those sales of food made to the
98 general public.

99 (2) Food sold by a public or private college or
100 university or by a student organization officially
101 recognized by such college or university to students
102 enrolled at such college or university when such sales
103 are made on a contract basis so that a fixed price is paid
104 for consumption of food products for a specific period
105 of time without respect to the amount of food product
106 actually consumed by the particular individual contract-
107 ing for the sale and no money is paid at the time the
108 food product is served or consumed.

109 (3) Food sold by a nonprofit organization or a govern-
110 mental agency under a program funded by a state or
111 the United States to low-income elderly persons at or
112 below costs.

113 (4) Food sold in an occasional sale by a charitable or
114 nonprofit organization, including volunteer fire depart-
115 ments and rescue squads, if the purpose of the sale is
116 to obtain revenue for the functions and activities of the
117 organization and the revenue so obtained is actually
118 expended for that purpose.

119 (5) Food sold by any religious organization at a social
120 or other gathering conducted by it or under its auspices,
121 if the purpose in selling the food is to obtain revenue
122 for the functions and activities of the organization and
123 the revenue obtained from selling the food is actually
124 used in carrying on such functions and activities. For
125 the purpose of this paragraph, "religious organizations"
126 means any organization the property of which is exempt
127 from taxation under article ten, section one of the West
128 Virginia constitution.

§11-15-30. Proceeds of tax.

1 Subject to the temporary allocations and transfers in
2 section three-a of this article, the proceeds of the tax
3 imposed by this article shall be deposited in the general
4 revenue fund of the state: *Provided*, That one million
5 dollars thereof shall be dedicated annually to the cancer
6 center at West Virginia University and eight million
7 dollars thereof shall be dedicated annually to the
8 "higher education salary fund" which is hereby created
9 in the state treasury. All moneys credited to the higher
10 education salary fund shall be expended by the board
11 of regents for further implementation of the fee
12 schedules established in articles twenty-two and twenty-
13 six-b, chapter eighteen of this code.

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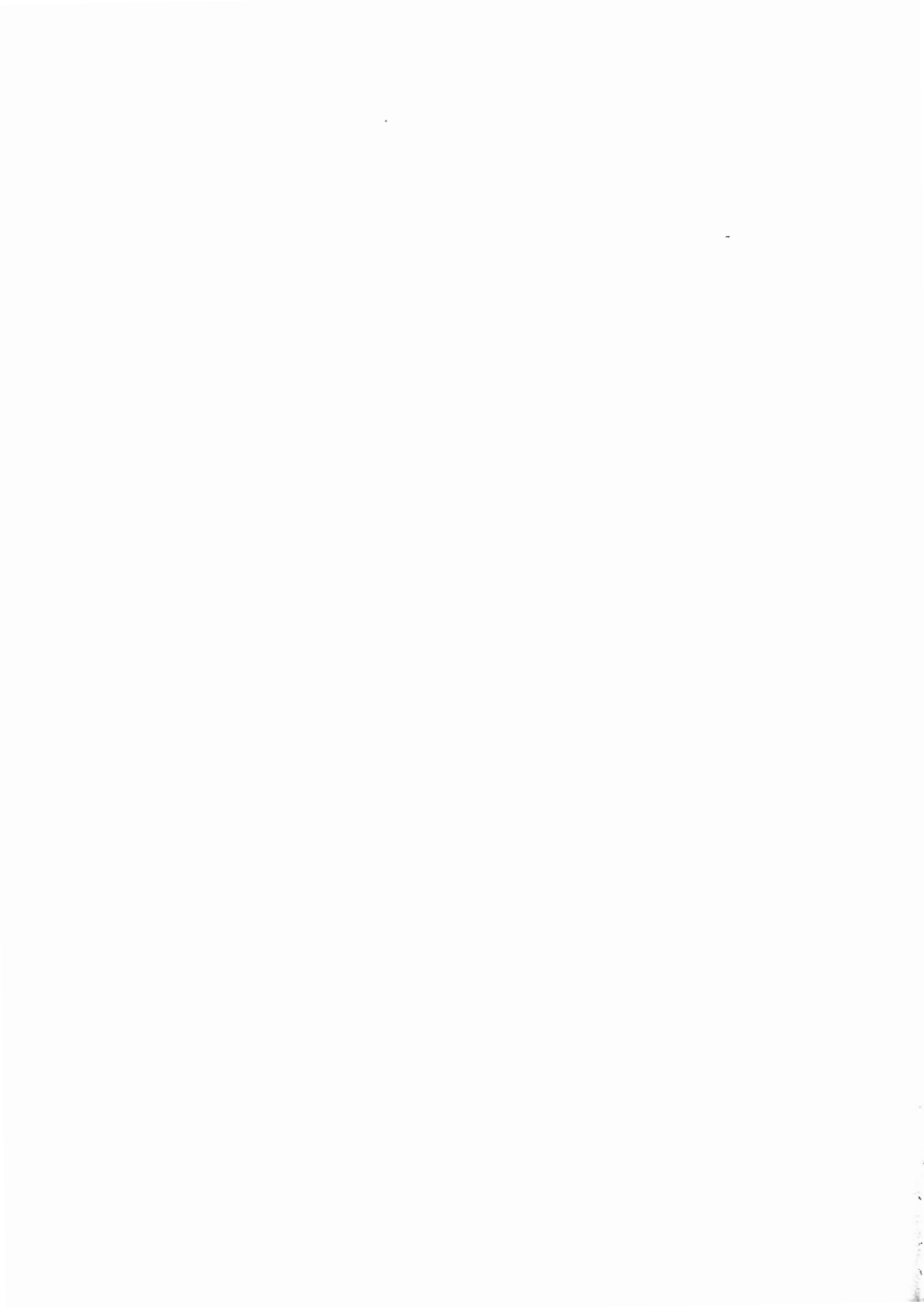
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