WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 1991

ENROLLED

Com. Sub. for
HOUSE BILL No. 2834

(By Mr. Speaker, Mr. Chambers, and Delegate Bark)
[By Request of the Executive]

Passed March 8, 1991

In Effect

Ch. from Passage
AN ACT to amend and reenact sections one, two, four, five, six, nine and ten, article one, chapter nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections forty-two and seventy-one, article twenty-one, chapter eleven; to further amend said article twenty-one by adding thereto three new sections, designated sections twelve-b, sixty-one and sixty-two; to amend and reenact section twelve, article twenty-four of said chapter eleven; to amend and reenact section one, article one-f, chapter fifteen; to amend and reenact section one, article nineteen, chapter eighteen; to amend and reenact article two-c, chapter twenty-one-a; and to amend and reenact section two, article six, chapter twenty-nine, all relating to military service personnel; updating terms relating to the division of veterans affairs; increasing the salary for the director of division of veterans affairs; exempting combat pay received for Desert Shield Service; providing a military incentive tax credit for personal income tax liability; extending time period for performing certain acts under tax statutes; providing benefits for individuals performing Desert Shield Services; providing rules for income tax
liability for individuals while in active military service; authorizing the tax commissioner to execute an agreement with the secretary of the treasury for mandatory withholding of tax; providing a military incentive tax credit for corporate income tax liability; allowing a twenty-four day leave of absence for active military service for national guard or military reserve personnel; providing limited exemption from motor vehicle certificate of title for military personnel and dependents; continuing an appropriation for educational opportunities for children of deceased military personnel, including children of military personnel killed in any hostile action, defining children; providing the correct designation of the division of veterans affairs; enacting the Military Incentive Program Act of 1991; providing legislative intent and purpose of the Military Incentive Program Act; providing definitions to include national guard members and reserve members; providing guidelines for availability of tax credits; providing restrictions and limitations regarding tax credit; providing for administration of programs; amending definitions for purposes of the civil service system.

Be it enacted by the Legislature of West Virginia:

That sections one, two, four, five, six, nine and ten, article one, chapter nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections forty-two and seventy-one, article twenty-one, chapter eleven be amended and reenacted; that said article twenty-one be further amended by adding thereto three new sections, designated sections twelve-b, sixty-one and sixty-two; that section twelve, article twenty-four of said chapter eleven be amended and reenacted; that section one, article one-f, chapter fifteen be amended and reenacted; that section four, article three, chapter seventeen-a be amended and reenacted; that sections one, two and three, article nineteen, chapter eighteen be amended and reenacted; that article two-c, chapter twenty-one-a be amended and reenacted; and that section two, article six, chapter twenty-nine be amended and reenacted, all to read as follows:
CHAPTER 9A. VETERANS' AFFAIRS.

ARTICLE 1. DIVISION OF VETERANS' AFFAIRS.


A state agency to be known as the “West Virginia division of veterans' affairs” is hereby created and established within the department of military affairs and public safety for the purpose of aiding, assisting, counseling and advising, and looking after the rights and interests of, all persons known as veterans who have served in the armed forces of the United States in the army, navy, marine corps, air force or coast guard as defined by the laws of the United States and whose separation therefrom has been other than dishonorable and who are citizens and residents of this state, and the widows, dependents and orphans, who are or have become citizens and residents of this state, or all persons known as veterans who have served in the armed forces of the United States in the army, navy, marine corps, air force or coast guard as defined by the laws of the United States and whose separation therefrom has been other than dishonorable.

§9A-1-2. Veterans' council; administration of division.

There shall be a “veterans' council” which shall consist of seven members who shall be citizens and residents of this state, who have served in and been honorably discharged or separated under honorable conditions from the armed forces of the United States and whose service was within a time of war as defined by the laws of the United States, either Public Law No. 2 — 73rd Congress or Public Law No. 346 — 78th Congress, and any and all amendments thereto. At least one member of the council shall be a veteran of World War II, at least one member of the council shall be a veteran of the Korean Conflict and at least two members of the council shall be veterans of the Vietnam era. The members of the veterans' council shall be selected with special reference to their ability and fitness to effectuate the purposes of this article.

After having conducted a performance and fiscal
audit through its joint committee on government operations, pursuant to section nine, article ten, chapter four of this code, the Legislature hereby finds and declares that the veterans' council should be continued and reestablished. Accordingly, notwithstanding the provisions of section four, article ten, chapter four of this code, the veterans' council shall continue to exist until the first day of July, one thousand nine hundred ninety-four.

The West Virginia division of veterans' affairs shall be administered by a director, and such veterans' affairs officers, assistants and employees as may be deemed advisable.

§9A-1-4. Duties and functions of veterans' council; appointment of director; term of office; removal.

It shall be the duty and function of the veterans' council to determine the general administrative policies of the division, to select at their first meeting in each fiscal year commencing on the first day of July a chairman to serve one year, to promulgate such rules and regulations as may be necessary, to examine into the efficiency of the division from time to time, to exercise general supervision over the operations of the division, to advise the governor and the Legislature with respect to legislation affecting the interests of veterans, their widows, dependents and orphans, to make annual reports to the governor respecting the service of the division, and to prescribe the duties of the director. Such director shall have the same eligibility and qualifications prescribed for members of the veterans' council. The governor shall appoint a director for a term of six years, by and with the advice and consent of the Senate. Before making such appointment, the governor shall request the council of the West Virginia division of veterans' affairs to furnish a full and complete report concerning the qualifications and suitability of the proposed appointee. The director shall be subject to removal by the governor for cause, but shall have upon his own request an open hearing before the governor on the complaints or charges lodged against him. The
§9A-1-5. Compensation of director, veterans' affairs officers, assistants and employees; payment to veterans' council members; traveling expenses; meetings of veterans' council.

The director shall receive a salary of thirty-two thousand dollars per annum and necessary traveling expenses incident to the performance of his or her duties. The salaries of the veterans' affairs officers, assistants and employees shall be fixed by the veterans' council. The members of the veterans' council shall receive no salary, but each member shall receive twenty-five dollars for each day actually in attendance at a meeting and actual expenses and traveling expenses incurred in the performance of duties as a council member under this article. The requisition for such expenses and traveling expenses shall be accompanied by a sworn and itemized statement, which shall be filed with the auditor and permanently preserved as a public record. The veterans' council shall hold its initial meeting on the call of the governor, and thereafter shall meet on the call of its chairman, except as otherwise provided. With the exception of the first three meetings of the veterans' council, none of which shall be of a duration longer than two weeks each, for organizational purposes, the veterans' council shall meet not more than once every two months at such times as may be determined by and upon the call of the chairman for a period of not more than two days, unless there should be an emergency requiring a special meeting or for a longer period and so declared and called by the governor or by the chairman with the approval of the governor. A majority of the members of the veterans' council shall constitute a quorum for the conduct of official business.


The members of the veterans' council, the director, and the veterans' affairs officers, shall take and
subscribe to the oath prescribed by article four, section
five of the state constitution, before entering on their
duties. Their oaths shall be filed with the secretary of
state.


The division of veterans' affairs of West Virginia
shall:

(1) Assist veterans, their widows, dependents and
orphans within the state, in properly presenting their
claims before the United States veterans' administra-
tion, its administrator, or any federal agency, the state
of West Virginia, or any of the several states of the
United States, when the claims arise out of service with
the armed forces of the United States as defined in
section one of this article;

(2) Contact all veterans' organizations in this state
through their duly elected or appointive officers to
effectuate the purposes of this article and aid in the
efficiency of the operations of the division;

(3) Render all possible and proper advice, assistance
and counsel to veterans, their families, and their
widows, dependents and orphans, within the state, and
furnish them information on compensation, allowances,
pensions, insurance, rehabilitation, hospitalization,
education, vocational training, or refresher or retraining
courses in education or training, employment, loans or
aid for the purchase, acquisition or construction of
homes, farms, farm equipment and business property,
preference in the purchase of property and preference
in employment, as provided or may be provided by any
federal act, any federal agency, this state or other states;

(4) Make careful inquiry into all claims presented for
payment out of the state treasury from any appropri-
tation made for the benefit of veterans, their widows,
dependents and orphans.


The director shall be the executive and administrative
head of the division, and as such shall have the power
and duty, subject to the provisions of section four hereof, to:

(a) Supervise and put into effect the purposes and provisions of this article and the rules and regulations for the government of the division;

(b) Prescribe methods pertaining to investigations and reinvestigations of all claims, and to the rights and interests of all veterans, their widows, dependents and orphans;

(c) Prescribe uniform methods of keeping all records, and case records of the veterans, their widows, dependents and orphans;

(d) Sign and execute, in the name of the state by "West Virginia division of veterans' affairs," and by and with the consent of the veterans' council, any contract or agreement with the federal government or its agencies, other states, subdivisions of this state, corporations, associations, partnerships or individuals;

(e) Supervise the fiscal affairs and responsibilities of the division;

(f) Organize the division to comply with the requirements of this article and with the standards required by any federal act or any federal agency;

(g) Establish such regional or area offices throughout the state as may be necessary to promote efficiency and economy in administration;

(h) Make such reports as will comply with the requirements of any federal act or federal agency and the provisions of this article;

(i) Cooperate with the federal and state governments for the more effective attainment of the purposes of this article;

(j) Keep a complete and accurate record of all proceedings; record and file all contracts and agreements, and assume responsibility for the custody and preservation of all papers and documents pertaining to his or her office and the division;
(k) Prepare for the veterans' council the annual reports to the governor of the condition, operation and functioning of the division;
(l) Exercise any other powers necessary and proper to standardize the work; to expedite the service and business; to assure fair consideration of the rights and interests, and claims of veterans, their widows, dependents and orphans, and to promote the efficiency of the division;
(m) Invoke any legal, equitable or special remedies for the enforcement of his orders or the provisions of this article;
(n) Appoint the veterans' affairs officers and heads of divisions of the division, and of regional or area offices, and employ such assistants and employees as may be necessary for the efficient operation of the division; and
(o) Delegate to all or any of his appointees, assistants or employees all powers and duties vested in the director, except the power to sign and execute contracts and agreements, but the director shall be responsible for the acts of such appointees, assistants and employees.

CHAPTER 11. TAXATION.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-12b. Combat pay exempt.

Combat pay received for Desert Shield service, as defined in section sixty-one of this article, which is exempt from federal income tax, under Section 112 of the Internal Revenue code, shall be exempt from the tax imposed by this article.

§11-21-42. Military incentive tax credit.

Every employer entitled to receive a tax credit against his West Virginia personal income tax liability as provided in article two-c, chapter twenty-one-a of this code shall receive the credit for the period and in the amount specified in said article two-c. The state tax commissioner shall provide by appropriate rule or
regulation for the reporting, filing and application of claims of the tax credit provided for in a manner in conformity with the legislative purpose as declared in section two, article two-c, chapter twenty-one-a of this code.

§11-21-61. Extension of time for performing certain acts due to Desert Shield service.

(a) General rule. — For purposes of applying this article and article ten of this chapter with respect to the tax liability (including any interest, penalty, additional amount, or addition to tax) of any individual who performed Desert Shield services, the period during which such individual performed such services, and the next one hundred eighty days thereafter, shall be disregarded in determining whether any of the acts referred to in subsection (b) were performed within the time prescribed therefor.

(b) Time for performing certain acts postponed by reason of Desert Shield service. — Whenever the general rule specified in subsection (a) applies, it shall apply to determine:

Whether any of the following acts was performed within the time prescribed therefor;

(A) Filing any return of income under this article (except income tax withheld at source);

(B) Payment of any income tax due under this article (except income tax withheld at source), or any installment thereof or of any other liability to this state in respect thereof;

(C) Filing a petition for reassessment or refund of any tax administered under article ten of this chapter (including any interest, penalty, additional amount or addition to tax);

(D) Allowance of a credit or refund of any tax administered under article ten of this chapter (including any interest, penalty, additional amount or addition to tax);

(E) Filing a claim for credit or refund of any tax
administered under article ten of this chapter (including any interest, penalty, additional amount or addition to tax);

(F) Appealing any appealable decision of the tax commissioner to the courts of this state, or for appealing to the supreme court of appeals a circuit court decision affirming, in whole or in part, the decision of the tax commissioner;

(G) Assessment of any tax (including any penalty, additional amount or addition to tax);

(H) Giving or making any notice or demand for the payment of any tax administered under article ten of this chapter (including any interest, penalty, additional amount or addition to tax), or with respect to any liability to this state in respect of any such tax;

(I) Collection by the tax commissioner, by levy or otherwise, of any liability in respect of any tax administered under article ten of this chapter;

(J) Bringing suit by any officer on behalf of this state, in respect of any liability in respect of any tax administered under article ten of this chapter;

(K) Any other act required or permitted under article nine or ten of this chapter or under any article of this chapter administered under said article ten, or specified in regulations promulgated under this section by the tax commissioner, in conformity with the provisions of article three, chapter twenty-nine-a of this code.

(c) Treatment of individuals performing Desert Shield services.

(1) In general. — Any individual who performed Desert Shield service shall be entitled to the benefits of this section.

(2) Desert Shield service. — For purposes of this section, the term “Desert Shield service” means any service in a unit of the Armed Forces of the United States (as defined in Section 7701(a)(15) of the Internal Revenue Code of 1986) or in support of any such unit if:
(A) Such service is performed in the area designated by the President of the United States as the “Persian Gulf Desert Shield Area”;

(B) Such service is performed during any portion of the period beginning the second day of August, one thousand nine hundred ninety, and ending on the date on which any portion of the area referred to in subparagraph (A) is designated a combat zone pursuant to Section 112 of the Internal Revenue Code of 1986; or

(C) Such service is performed during any portion of the period that there is in effect a designation by the President of the United States, that the “Persian Gulf Desert Shield Area” is a combat zone, pursuant to Section 112 of the Internal Revenue code.

(3) Hospitalization. — An individual shall be treated as performing Desert Shield services during any period of continuous qualified hospitalization attributable to an injury received while performing Desert Shield service. The term “qualified hospitalization” means:

(A) Any hospitalization outside the United States; and

(B) Any hospitalization inside the United States, except that not more than five years of hospitalization may be taken into account under this subparagraph (B); and this subparagraph shall not apply for purposes of applying this section with respect to the spouse of an individual entitled to the benefits of subsection (a) of this section.

(d) Special rules.

(1) Application to spouse. — The provisions of this section shall apply to the spouse of any individual entitled to the benefits of subsection (a). The preceding sentence shall not cause this section to apply for any spouse for any taxable year beginning more than two years after the date designated by the President of the United States, under Section 112 of the Internal Revenue Code, as the date of termination of combatant activities in the Persian Gulf Desert Shield area.

(2) Missing status. — The period of service referred
(e) Exceptions.

(1) Jeopardy assessments or collection. — Notwithstanding the provisions of subsection (a), if the tax commissioner determines that collection of the amount of any tax would be jeopardized by delay, the provisions of subsection (a) shall not operate to stay the assessment of such amount, or the collection of such amount by levy or otherwise as authorized by law. There shall be excluded from any amount assessed or collected pursuant to this subsection the amount of interest, penalty, additional amount and addition to the tax, if any, in respect of the period disregarded under subsection (a).

(2) Action taken before ascertainment of rights to benefits. — The assessment or collection of any tax administered under article ten of this chapter may be made, begun or prosecuted in accordance with law, without regard to the provisions of subsection (a), unless prior to such assessment, collection, action or proceeding it is ascertained that the person concerned is entitled to the benefits of subsection (a).

(3) Notwithstanding the provisions of paragraphs (1) and (2), the provision of this subsection shall be applied in conformity with the Soldiers' and Sailors' Civil Relief Act.

(f) Effective Date. — The provisions of this section shall be retroactive to the second day of August, one thousand nine hundred ninety.

§11-21-62. Income taxes of members of armed forces on death.

(a) General rule. — In the case of any individual who dies while in active service as a member of the Armed Forces of the United States, if such death occurred while serving in a combat zone (as determined under Section 112 of the Internal Revenue Code of 1986) or as a result of wounds, disease or injury incurred while so
(1) Any tax imposed by this article shall not apply with respect to the taxable year in which falls the date of his or her death, or with respect to any prior taxable year ending on or after the first day he or she served in a combat zone after the first day of August, one thousand nine hundred ninety; and

(2) Any tax under this article for taxable years preceding those specified in paragraph (1) which is unpaid at the date of his or her death (including interest, additions to tax and additional amounts) shall not be assessed and if assessed the assessment shall be abated and if the assessment has been collected, the amount collected shall be credited or refunded as an overpayment.

(b) Individuals in missing status. — For purposes of this section, in the case of an individual who was in a missing status within the meaning of Section 6013(f)(3)(A), of the Internal Revenue Code of 1986, the date of such individual's death shall be treated as being not earlier than the date on which a determination of such individual's death is made under section 556, Title 37 of the United States Code. Subsection (a)(1) shall not apply for any taxable year beginning more than two years after the date designated under Section 112 of the Internal Revenue code as the date of termination of combatant activities in a combat zone.

(c) Certain military or civilian employees of United States dying as a result of injuries sustained overseas.

(1) In general. — In the case of any individual who dies while a military or civilian employee of the United States, if such death occurs as a result of wounds or injury which were incurred while the individual was a military or civilian employee of the United States and which were incurred outside the United States in a terroristic or military action, any tax imposed by this article shall not apply:

(A) With respect to the taxable year in which falls the date of such individual's death; and
(B) With respect to any prior taxable year in the period beginning with the last taxable year ending before the taxable year in which the wounds or injury were incurred.

(2) **Terroristic or military action.** — For purposes of paragraph (1), the term “terroristic or military action” means any action which is terroristic or military action for purposes of Section 692 of the Internal Revenue Code of 1986.

(d) **Effective date.** — The provisions of this section shall apply to taxable years beginning after the thirty-first day of December, one thousand nine hundred ninety.

§11-21-71. **Requirement of withholding tax from wages.**

(a) **General.** — Every employer maintaining an office or transacting business within this state and making payment of any wage taxable under this article to a resident or nonresident individual shall deduct and withhold from such wages for each payroll period a tax computed in such manner as to result, so far as practicable, in withholding from the employee's wages during each calendar year an amount substantially equivalent to the tax reasonably estimated to be due under this article resulting from the inclusion in the employee's West Virginia adjusted gross income of his wages received during such calendar year. The method of determining the amount to be withheld shall be prescribed by the tax commissioner, with due regard to the West Virginia withholding exemption of the employee. This section shall not apply to payments by the United States for service in the armed forces of the United States: **Provided,** That the tax commissioner may execute an agreement with the secretary of the treasury, as provided in 5 United States Code, §5517, for the mandatory withholding of tax under this section on pay to members of the national guard while participating in exercises or performing duty under 32 United States Code, §502, and on pay to members of the ready reserve while participating in scheduled drills or training periods or serving on active duty for training under 10 United States Code, §270(a).
Withholding exemptions. — For purposes of this section:

(1) An employee shall be entitled to the same number of West Virginia withholding exemptions as the number of withholding exemptions to which he is entitled for federal income tax withholding purposes. An employer may rely upon the number of federal withholding exemptions claimed by the employee, except where the employee claims a higher number of West Virginia withholding exemptions.

(2) With respect to any taxable year beginning after the thirty-first day of December, one thousand nine hundred eighty-six, the amount of each West Virginia exemption shall be two thousand dollars whether the individual is a resident or nonresident.

Exception for certain nonresidents. — If the income tax law of another state of the United States or of the District of Columbia results in its residents being allowed a credit under section forty sufficient to offset all taxes required by this article to be withheld from the wages of an employee, the tax commissioner may by regulation relieve the employers of such employees from the withholding requirements of this article with respect to such employees.

Effective date. — The provisions of this section, as amended in the year one thousand nine hundred eighty-seven, shall apply to all taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six.

PART IV.
RETURNS, DECLARATIONS AND PAYMENT OF TAX.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-12. Military incentive tax credit.

Every employer entitled to receive a tax credit against its West Virginia corporate income tax liability as provided in article two-c, chapter twenty-one-a of this code shall receive the credit for the period and in the amount specified in said article two-c of this chapter.
The state tax commissioner shall provide by appropriate rule or regulation for the reporting, filing and application of claims for the tax credit provided for in a manner in conformity with the legislative purpose as declared in section two, article two-c, chapter twenty-one-a of this code.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 1F. PRIVILEGES AND PROHIBITIONS.

§15-1F-1. Leave of absence for public officials and employees for drills, parades, etc.

All officers and employees of the state, or subdivisions or municipalities thereof, who shall be members of the national guard or any military reserve unit of the United States armed services, shall be entitled to leave of absence from their respective offices or employments without loss of pay, status or efficiency rating, on the days during which they shall be engaged in drills, parades or other duty, during business hours ordered by proper authority, or for field training or active service of the state for a maximum period of thirty days in any one calendar year. The term "without loss of pay" means that the officer or employee shall continue to receive his normal salary or compensation, notwithstanding the fact that such officer or employee may have received other compensation from federal or state sources during the same period. Benefits of this section shall accrue to individuals ordered or called to active duty by the president for twenty-four working days after they report for active service.

CHAPTER 17A.

MOTOR VEHICLE ADMINISTRATION, REGISTRATION, CERTIFICATE OF TITLE, AND ANTITHEFT PROVISIONS.

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

§17A-3-4. Application for certificate of title; tax for privilege of certification of title; penalty for false swearing.

(a) Certificates of registration of any vehicle or
registration plates therefor, whether original issues or duplicates, shall not be issued or furnished by the division of motor vehicles or any other officer charged with the duty, unless the applicant therefor already has received, or at the same time makes application for and is granted, an official certificate of title of the vehicle. The application shall be upon a blank form to be furnished by the division of motor vehicles and shall contain a full description of the vehicle, which description shall contain a manufacturer's serial or identification number or other number as determined by the commissioner and any distinguishing marks, together with a statement of the applicant's title and of any liens or encumbrances upon the vehicle, the names and addresses of the holders of the liens and any other information as the division of motor vehicles may require. The application shall be signed and sworn to by the applicant.

(b) A tax is hereby imposed upon the privilege of effecting the certification of title of each vehicle in the amount equal to five percent of the value of said motor vehicle at the time of such certification. If the vehicle is new, the actual purchase price or consideration to the purchaser thereof is the value of the vehicle; if the vehicle is a used or secondhand vehicle, the present market value at time of transfer or purchase is the value thereof for the purposes of this section: Provided, That so much of the purchase price or consideration as is represented by the exchange of other vehicles on which the tax herein imposed has been paid by the purchaser shall be deducted from the total actual price or consideration paid for the vehicle, whether the same be new or secondhand; if the vehicle is acquired through gift, or by any manner whatsoever, unless specifically exempted in this section, the present market value of the vehicle at the time of the gift or transfer is the value thereof for the purposes of this section. No certificate of title for any vehicle shall be issued to any applicant unless the applicant has paid to the division of motor vehicles the tax imposed by this section which is five percent of the true and actual value of said vehicle whether the vehicle is acquired through purchase, by
44 gift or by any other manner whatsoever except gifts
45 between husband and wife or between parents and
46 children: Provided, however, That the husband or wife,
47 or the parents or children previously have paid the tax
48 on the vehicles so transferred to the state of West
49 Virginia: Provided further, That the division of motor
50 vehicles may issue a certificate of registration and title
51 to an applicant if the applicant provides sufficient proof
52 to the division of motor vehicles that the applicant has
53 paid the taxes and fees required by this section to a
54 motor vehicle dealership that has filed bankruptcy
55 proceedings in the United States bankruptcy court and
56 the taxes and fees so required to be paid by the
57 applicant have been impounded due to the bankruptcy
58 proceedings: And provided further, That the applicant
59 makes an affidavit of the same and assigns all rights to
60 claims for money the applicant may have against the
61 motor vehicle dealership to the division of motor
62 vehicles.
63 The tax imposed by this section does not apply to
64 vehicles to be registered as Class H vehicles, or Class
65 S vehicles, as defined in section one, article ten of this
66 chapter, which are used or to be used in interstate
67 commerce. Nor does the tax imposed by this section
68 apply to the titling of Class B, Class K or Class E
69 vehicles registered at a gross weight of fifty-five
70 thousand pounds or more, or to the titling of Class C or
71 Class L semitrailers, full trailers, pole trailers, and
72 converter gear: Provided, That, if an owner of a vehicle
73 has previously titled the vehicle at a declared gross
74 weight of fifty-five thousand pounds or more and title
75 was issued without the payment of the tax imposed by
76 this section, then before the owner may obtain registra-
77 tion for the vehicle at a gross weight less than fifty-five
78 thousand pounds, the owner must surrender to the
79 commissioner the exempted registration, the exempted
80 certificate of title, and pay the tax imposed by this
81 section based upon the current market value of the
82 vehicle: Provided, however, That notwithstanding the
83 provisions of section nine, article fifteen, chapter eleven
84 of this code, the exemption from tax under this section
85 for Class B, Class K or Class E vehicles in excess of fifty-
five thousand pounds and Class C or Class L semitrailers, full trailers, pole trailers and converter gear shall not subject the sale or purchase of said vehicles to the consumers sales tax. The tax imposed by this section does not apply to titling of vehicles by a registered dealer of this state for resale only, nor does the tax imposed by this section apply to titling of vehicles by this state or any political subdivision thereof, or by any volunteer fire department or duly chartered rescue or ambulance squad organized and incorporated under the laws of the state of West Virginia as a nonprofit corporation for protection of life or property. The total amount of revenue collected by reason of this tax shall be paid into the state road fund and expended by the commissioner of highways for matching federal funds allocated for West Virginia. In addition to the tax, there shall be a charge of five dollars for each original certificate of title or duplicate certificate of title so issued: Provided further, That this state or any political subdivision thereof, or any volunteer fire department, or duly chartered rescue squad, is exempt from payment of such charge.

Such certificate is good for the life of the vehicle, so long as the same is owned or held by the original holder of such certificate, and need not be renewed annually, or any other time, except as herein provided.

If, by will or direct inheritance, a person becomes the owner of a motor vehicle and the tax herein imposed previously has been paid, to the division of motor vehicles, on that vehicle, he or she is not required to pay such tax.

A person who has paid the tax imposed by this section is not required to pay the tax a second time for the same motor vehicle, but is required to pay a charge of five dollars for the certificate of retitle of that motor vehicle, except that the tax shall be paid by the person when the title to the vehicle has been transferred either in this or another state from such person to another person and transferred back to such person.

(c) Notwithstanding any provisions of this code to the
contrary, the owners of trailers, semitrailers, recreational vehicles and other vehicles not subject to the certificate of title tax prior to the enactment of this chapter are subject to the privilege tax imposed by this section: Provided, That the certification of title of any recreational vehicle owned by the applicant on the thirtieth day of June, one thousand nine hundred eighty-nine, is not subject to the tax imposed by this section: Provided, however, That mobile homes, house trailers, modular homes and similar nonmotive propelled vehicles, except recreational vehicles, susceptible of being moved upon the highways but primarily designed for habitation and occupancy, rather than for transporting persons or property, or any vehicle operated on a nonprofit basis and used exclusively for the transportation of mentally retarded or physically handicapped children when the application for certificate of registration for such vehicle is accompanied by an affidavit stating that such vehicle will be operated on a nonprofit basis and used exclusively for the transportation of mentally retarded and physically handicapped children, are not subject to the tax imposed by this section, but are taxable under the provisions of articles fifteen and fifteen-a, chapter eleven of this code.

(d) Any person making any affidavit required under any provision of this section, who knowingly swears falsely, or any person who counsels, advises, aids or abets another in the commission of false swearing, is on the first offense guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five hundred dollars or be imprisoned in the county jail for a period not to exceed six months, or, in the discretion of the court, both fined and imprisoned. For a second or any subsequent conviction within five years any such person is guilty of a felony, and, upon conviction thereof, shall be fined not more than five thousand dollars or be imprisoned in the penitentiary for not less than one year nor more than five years or, in the discretion of the court, fined and imprisoned.

(e) Notwithstanding any other provisions of this section, military service personnel stationed outside
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West Virginia, or their dependents who possess a motor
vehicle with valid registration, shall be exempt from the
provisions of this article for a period of nine months
from the date that such military service personnel
returns to this state or the date such military service
personnel's dependent returns to this state whichever is
later.

CHAPTER 18. EDUCATION.

ARTICLE 19. EDUCATIONAL OPPORTUNITIES FOR CHILDREN
OF DECEASED SOLDIERS, SAILORS, MARINES
AND AIRMEN.

§18-19-1. Appropriation to provide educational oppor-
tunities.

For the purpose of providing educational opportuni-
ties for the children of those who served in the army,
navy or marine corps of the United States during the
world war from April sixth, one thousand nine hundred
seventeen, to July second, one thousand nine hundred
twenty-one, or served in the armed forces of the United
States of America at any time between December first,
one thousand nine hundred forty-one, and the declara-
tion of peace by the Congress of the United States, or
served in the armed forces of the United States of
America at any time between June twenty-seventh, one
thousand nine hundred fifty, and January thirty-first,
one thousand nine hundred fifty-five, or served in the
armed forces of the United States of America at any
time between August fifth, one thousand nine hundred
sixty-four, and May seventh, one thousand nine hundred
seventy-five, all dates inclusive, and who were killed in
action or have died or may hereafter die from disease
or disability resulting from such war service, there shall
be appropriated from the state fund general revenue the
sum of at least five thousand dollars for each fiscal year
commencing July first and ending on June thirty of each
year of the next biennium to be used for the benefit of
such children while attending state education or
training institutions. This benefit also shall be given to
children of a service member killed during hostile
actions as defined by the agency administering this
section. The term “children” as used in this article shall
include any child of a veteran who has been legitimized by operation of law prior to the veteran's demise.

§18-19-2. Eligibility of applicant for benefits; application forms; preference.

To be eligible for the benefits of this article, said children must be at least sixteen and not more than twenty-two years of age and have had their domiciles in this state for at least twelve months preceding their application for said benefits. Such application shall be made to, and upon forms provided by, the West Virginia division of veterans affairs, which division shall determine the eligibility of those who make such application and the yearly amount to be allotted each applicant, which amount in the discretion of the division may vary from year to year, but shall not exceed the sum of five hundred dollars in any one year. In selecting those to receive the benefits of this article, preference shall be given those who are otherwise financially unable to secure said educational opportunities and to those whose parent was domiciled in this state during the period of such parent's war service.

§18-19-3. No tuition fees to be charged; how funds to be expended; cessation of allowances.

No tuition fees shall be charged such applicants attending any state education or training institution, and the funds herein appropriated shall be expended by said West Virginia division of veterans affairs only for matriculation fees, board, room rent, books, supplies and other necessary living expenses of such children. Said division is charged with the duty of disbursing the funds herein provided and shall draw its requisitions upon the auditor for that purpose. In the discretion of said division, such requisitions may be made payable to said education or training institutions or to those furnishing to said children board, room rent, books, supplies and other necessary living expenses, the division being first satisfied as to the correctness and amounts of such expenditures. Should any child withdraw from any such institution, all allowances to such child shall cease. No member or employee of said division shall receive any
CHAPTER 21A.
UNEMPLOYMENT COMPENSATION.

ARTICLE 2C. MILITARY INCENTIVE PROGRAM.

1 This article shall be known and may be cited as the
2 "Military Incentive Program Act of 1991."

§21A-2C-2. Declaration of legislative intent and purpose.
1 The Legislature of West Virginia hereby recognizes
2 that disabled veterans and economically disadvantaged
3 veterans of the Vietnam era and of the Korean conflict,
4 members of the West Virginia national guard and the
5 reserve forces of the United States have made sacrifices
6 which merit preferential employment treatment in both
7 the public and private sectors. Economically disadvan-
8 taged and disabled veterans traditionally suffer a
9 disproportionately higher unemployment rate than that
10 of nonveterans of similar age and skills. Members of the
11 West Virginia national guard and reserve forces of the
12 United States who are called upon to leave their jobs to
13 perform military obligations are frequently placed in
14 conflict with their employers and as such are frequently
15 discriminated against by prospective employers. It is the
16 intent and purpose of the Legislature to encourage the
17 employment of these veterans and members of the guard
18 and reserve forces in the private sector by providing tax
19 credits for private sector employers who employ
20 economically disadvantaged Vietnam era and Korean
21 conflict veterans, disabled veterans, unemployed
22 members of the West Virginia national guard and
23 unemployed members of the reserve forces of the United
24 States generally.

1 For the purposes of this article:
2 (a) "Active duty" means full-time duty in the armed
3 forces, other than duty for training in the reserves or
4 national guard. Any period of duty for training in the
reserves or national guard, including authorized travel, during which an individual was disabled from a disease or injury incurred or aggravated in line of duty, is considered “active duty.”

(b) “Economically disadvantaged” means a person who:

(1) Receives, or is a member of a family which receives, cash welfare payments under a federal, state or local welfare program;

(2) Has, or is a member of a family which has, received a total family income for the six months prior to application which, in relation to family size, was not in excess of the higher of:

   (i) The poverty level determined in accordance with criteria established by the federal office of management and budget; or

   (ii) Seventy percent of the lower living standard income level;

(3) Is receiving food stamps pursuant to the food stamp act of one thousand nine hundred seventy-seven;

(4) Is a foster child on behalf of whom state or local government payments are made; or

(5) Is an adult handicapped individual whose own income meets the requirements of subdivisions (1) and (2) of this subsection, but who is a member of a family whose income does not meet such requirements.

(c) “Korean conflict veteran” means a person who served in the armed services of the United States at least one day during the period of time beginning the twenty-seventh day of June, one thousand nine hundred fifty, and extending through the thirty-first day of January, one thousand nine hundred fifty-five.

(d) “National guard member” means a member of any component of the West Virginia national guard.

(e) “Reserve member” means a member of any component of the reserve forces of the United States.
(f) "Veteran" means a member of the United States armed forces who:

(1) Served on active duty for a period of more than one hundred eighty days and was discharged or released therefrom with other than a dishonorable discharge; or

(2) Was discharged or released from active duty because of a service-connected disability.

(g) "Vietnam era veteran" means a person who served in the armed services of the United States at least one day during the period of time beginning the fifth day of August, one thousand nine hundred sixty-four, and extending through the seventh day of May, one thousand nine hundred seventy-five.

§21A-2C-4. Tax credit; eligibility; amount.

(a) Each person, partnership or corporation which employs an economically disadvantaged Vietnam era or Korean conflict veteran or any disabled veteran, or an unemployed member of the West Virginia national guard or a member of the reserve forces of the United States for a continuous period of one year, except as otherwise provided in this article, shall be entitled to an appropriate tax credit for each such individual so employed. In the case of a person or partnership so employing such individuals, the tax credit provided for in this section shall be applied against the employer's personal income tax liability. In the case of a corporation so employing such individuals, the tax credit provided for in this section shall be applied against the corporation's corporate net income tax liability. This tax credit shall be nonassignable and may not exceed an employer's total tax liability with respect to the specific tax against which the tax credit is required to be applied.

(b) The amount of the tax credit allowed under subsection (a) of this section shall be an amount equal to the following:

(1) For each economically disadvantaged Vietnam era or Korean conflict veteran employed as described in subsection (a), the amount of the tax credit allowed shall
be thirty percent of the employee's wage base. For the purposes of this section, the employee's wage base is the first five thousand dollars in wages or compensation actually paid to the employee by the employer;

(2) For each disabled veteran employed as described in subsection (a), the amount of the tax credit allowed shall be a percentage equal to the percentage of disability suffered by the veteran multiplied by the employee's wage base. The employee's wage base is the same as provided in subdivision (1) of this subsection. The percentage of disability referred to in this subdivision means the percentage of compensation for service connected disability as determined by the United States department of veterans affairs; and

(3) For each member of the West Virginia national guard or member of the reserve forces of the United States employed as described in subsection (a), the amount of the tax credit allowed shall be twenty-five percent of the employee's wage base. For the purpose of this section, the employee's wage base is the first five thousand dollars in wages or compensation actually paid to the employee by the employer.

§21A-2C-5. Restrictions and limitations regarding tax credit.

(a) An employer may not claim a tax credit provided for in this article for any individual employed for less than a continuous period of one year, unless:

(1) The individual voluntarily leaves employment with the employer;

(2) The individual becomes totally disabled and unable to continue his employment; or

(3) The individual is terminated for good cause shown.

In the event that the individual is employed for less than a one continuous year period due to circumstances enumerated in subdivision (1), (2) or (3) above, the employer shall be entitled to a partial tax credit in a proportional amount corresponding to the ratio of the time period during which the veteran was actually
employed to the one-year period required for a full tax
credit multiplied by the amount of the full tax which
would have accrued to the employer had the individual’s
employment continued for a full year.

(b) An employer may not claim tax credit provided for
in this article for any individual who is employed and
displaces a person already employed. In addition, no tax
credit may be claimed for the employment of any
individual for whom the employer is receiving job
training payments from either the federal or state
government. Nothing in this section prohibits an
employer from receiving tax credits from both the
federal and state governments under similar targeted
jobs programs if the employer is otherwise qualified to
receive both.

§21A-2C-6. Program administration.

The program established by this article shall be
carried out primarily under the direction of the
employment services section of the bureau of employ-
ment programs or its successor agency and the West
Virginia national guard. Reserve forces units may also
verify through approved vouchers, eligibility of reserve
members to participate in this program. Each individ-
ual who qualifies under this article for participation in
this program shall be given, upon request, a voucher
certifying that the individual is eligible for participation
in the program described in this article. The voucher
shall be in a form prescribed by the commissioner of
employment programs and the adjutant general, and
they may conduct such investigations and collect such
data as they deem necessary to ensure that each
individual applying for the voucher is actually qualified
for participation in the program.

When an employer employs an eligible individual who
presents the voucher herein provided for, the employer
shall submit the voucher along with basic information
to the issuing agency as may be required for participa-
tion in this program. Each year, the issuing agency shall
certify to the state tax commissioner a list of employers
who may be qualified to receive a tax credit under this

program. In order to receive the appropriate tax credit, an employer must file for the tax credit provided for under this article as required by section forty-two, article twenty-one, chapter eleven of this code or by section twelve, article twenty-four, chapter eleven of this code.

ARTICLE 6. CIVIL SERVICE SYSTEM.

§29-6-2. Definition of terms.

1 As used in this article, unless the context indicates otherwise, the term:

(a) “Administrator” means any person who fills a statutorily created position within or related to an agency or board (other than a board member) and who is designated by statute as commissioner, deputy commissioner, assistant commissioner, director, chancellor, chief, executive director, executive secretary, superintendent, deputy superintendent or other administrative title, however designated;

(b) “Agency” means any administrative unit of state government, including any authority, board, bureau, commission, committee, council, division, section or office;

(c) “Appointing authority” means a person or group of persons authorized by an agency to make appointments to positions in the classified or classified-exempt service;

(d) “Board” means the state personnel board created by section six of this article;

(e) “Class” or “class of positions” means a group of positions sufficiently similar in duties, training, experience and responsibilities, as determined by specifications, that the same qualifications, the same title and the same schedule of compensation and benefits may be equitably applied to each position in the group;

(f) “Classification plan” means the plan by which positions in the classified service and classified-exempt service have been allocated by class;
(g) "Classified-exempt service" means an employee whose position satisfies the definitions for "class" and "classify" but who is not covered under the civil service system or employed by the higher education governing boards;

(h) "Classified service" means an employee whose job satisfies the definitions for "class" and "classify" and who is covered under the civil service system;

(i) "Classify" means to group all positions in classes and to allocate every position to the appropriate class in the classification plan;

(j) "Director" means the head of the division of personnel as appointed by section seven of this article;

(k) "Council" means the state personnel advisory council created in section nine-a of this article;

(l) "Division" means the division of personnel herein created;

(m) "Policymaking position" means a position in which the person occupying it (1) acts as an advisor to, or formulates plans for the implementation of broad goals for an administrator or the governor, (2) is in charge of a major administrative component of the agency and (3) reports directly and is directly accountable to an administrator or the governor;

(n) "Position" means a particular job which has been classified based on specifications;

(o) "Secretary" means the secretary of the department of administration created in section two, article one, chapter five-f of this code;

(p) "Specification" means a description of a class of position which defines the class, provides examples of work performed and the minimum qualifications required for employment;

(q) "Veteran" means any person who has served in the armed forces of the United States of America during World War I (April 6, 1917-November 11, 1918), World War II (December 7, 1941-December 31, 1946), the
Korean Conflict (June 27, 1950-January 31, 1955), the Vietnam Conflict (August 5, 1964-May 7, 1975), or in a campaign, expedition or conflict for which a campaign badge has been authorized and received by such person, and who has received a discharge under honorable conditions from such service.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the ___ day of __, 1991.

Governor