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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1991

ENROLLED

Committee Substitute for
SENATE BILL NO. 132
(Originating on the Committee
~~on~~ on Finance)

PASSED

March 8,

1991

In Effect

from

Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 132

(Originating in the Committee on Finance)

[Passed March 8, 1991; in effect from passage.]

AN ACT to repeal sections one-a, seven and nine, article two; and section ten-a, article five, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal article three of said chapter; to amend and reenact section one, article three, chapter five of said code; to amend and reenact section seventeen, article ten of said chapter; to amend and reenact section sixteen, article eleven of said chapter; to amend and reenact section seven, article sixteen-a of said chapter; to amend and reenact section one, article four, chapter five-b of said code; to amend and reenact section ten, article thirteen, chapter seven of said code; to amend and reenact section six, article sixteen of said chapter; to amend and reenact section twenty-seven, article twenty-seven, chapter eight of said code; to amend and reenact section nineteen, article twenty-nine of said chapter; to amend and reenact section nineteen, article twenty-nine-a of said chapter; to amend and reenact section eleven, article thirty-three of said chapter; to amend and reenact section twelve, article one-a, chapter eleven of said code; to amend and reenact section four, article six-

b of said chapter; to amend and reenact section seven, article twelve of said chapter; to amend and reenact section ten, article twenty-four of said chapter; to amend and reenact section two, article twenty-five of said chapter; to amend and reenact section five, article one-a, chapter twelve of said code; to amend and reenact section sixteen, article one, chapter sixteen of said code; to amend and reenact section three, article twenty-nine-d of said chapter; to amend and reenact section three, article twenty-two, chapter seventeen-c of said code; to amend and reenact section twelve, article four, chapter seventeen-d of said code; to amend and reenact section twenty, article seven-a, chapter eighteen of said code; to amend and reenact section sixteen, article nine-b of said chapter; to amend and reenact section fourteen, article twenty-three, chapter nineteen of said code; to amend and reenact section fourteen, article five, chapter twenty-one of said code; to amend and reenact sections three, four, five, six and seven, article one, chapter twenty-one-a of said code; to amend and reenact sections one, five, six, six-b, eight, eleven, thirteen, sixteen, sixteen-a and twenty-three, article two of said chapter; to amend and reenact sections two and four, article two-a of said chapter; to amend and reenact sections one, two and four, article two-b of said chapter; to amend and reenact section six, article two-c of said chapter; to amend and reenact sections ten-a, sixteen and seventeen-b, article five of said chapter; to amend and reenact section nine, article six of said chapter; to amend and reenact section twenty-three, article seven of said chapter; to amend and reenact sections eleven, nineteen, twenty and twenty-two, article ten of said chapter; to amend and reenact sections one, two, three, six, ten, fourteen, sixteen, seventeen and eighteen, article one, chapter twenty three of said code; to amend and reenact sections one-c, six, eight and eleven, article two of said chapter; to amend and reenact sections one-a, two and three, article three of said chapter; to amend and reenact sections one-c, two, seven and fourteen, article four of said chapter; to amend and reenact sections two, three, four, five and eight, article four-a of said chapter; to

amend and reenact sections two and seven, article four-b of said chapter; to amend and reenact sections two and five, article four-c of said chapter; to amend and reenact section two, article five of said chapter; to amend and reenact section two, article eight, chapter twenty-six of said code; to amend and reenact section two, article twelve, chapter twenty-nine of said code; to amend and reenact section six, article eighteen of said chapter; to amend and reenact section five, article five, chapter twenty-nine-a of said code; to amend and reenact section sixty-one, article one, chapter thirty-one of said code; to amend and reenact section ten, article eighteen-b of said chapter; to amend and reenact sections one and five, article fifteen, chapter thirty-three of said code; to amend and reenact section one, article sixteen of said chapter; to amend and reenact section three, article twenty-six of said chapter; to amend and reenact section twelve, article five-b, chapter thirty-eight of said code; to amend and reenact sections seventeen and eighteen, article two, chapter forty-eight-a of said code; to amend and reenact section four-d, article five, chapter fifty-seven of said code; and to amend and reenact section thirty, article three-a, chapter sixty of said code, all relating to combining employment security and workers' compensation into the bureau of employment programs and changing references thereto throughout the code; written opinions and advice and other legal services from the attorney general; membership of the West Virginia public employees retirement system; providing that the maintenance of certain records by the bureau of employment programs is not an unlawful discriminatory practice; the availability of data from the bureau of employment programs to the public employees insurance agency and the legislative task force on uncompensated health care and medicaid expenditures; membership of the West Virginia labor-management advisory council; coverage of employees of a community action program organization, county solid waste authorities, urban mass transportation authorities, regional airport authorities, county airport authorities and building commissions under the workers' compensation act;

functions of the tax commissioner and county assessors in the appraisal of property for periodic statewide appraisals; claims for homestead property tax exemption; reciprocal exchange of information between the tax commissioner and the commissioner of the bureau of employment programs relating to the business registration tax and the corporation net income tax; defining terms relating to tax relief for elderly homeowners and renters; acceptance or rejection of linked deposit loan packages by the state treasurer; defining terms relating to the West Virginia state board of investments; making results of investigations and hearings by the board of health available to the commissioner of the bureau of employment programs; requiring all agencies of the state to cooperate in the development of health care plans; exempting ridesharing from workers' compensation law; defining "motor vehicle liability policy" and setting forth the scope and provisions of such a policy; investment of funds of the state teachers retirement system; transmission and investment of proceeds of permanent improvement funds of county boards of education; disposition of permit fees, registration fees and fines relating to horse and dog racing; employer's bond for wages and benefits; defining terms relating to the bureau of employment programs; placing the bureau under the department of commerce, labor and environmental resources; requiring the bureau to cooperate with the United States department of labor and similar agencies of other states; setting forth duties of the commissioner and the advisory council regarding employment stabilization; creation of the state employment service division within the bureau; setting the salary of the commissioner of the bureau of employment programs; setting forth the powers and duties of the commissioner of the bureau; requiring the tax commissioner to furnish certain information to the commissioner of the bureau of employment programs; compensation of assistants and employees of the bureau; dismissals, terminations, layoffs and suspensions of bureau employees; appointment of deputies; federal-state cooperation; work incentive program; veteran's training program; defining

terms relating to the emergency employment supplemental matching program; providing for notice to private business employers applications for prospective employers and listing of job openings; providing for group insurance plans for regular employees of the bureau and setting forth terms and conditions for such plans; providing for payroll deductions for such plans and allowing employees to continue in group after retirement; administration of the veterans incentive program; optional assessments on employers and employees for unemployment compensation fund; collection of payments from employers and comity for collection of past due payments and overpayments; payment of unemployment benefits; claim procedure and calendar preference for unemployment benefit claims; reports required from employing units; disclosure of certain information to child support and food stamp agencies and the department of housing and urban development; payment of salaries and expenses of commissioner of bureau of employment programs and his employees; allowing the commissioner to employ a secretary and other assistants; payment of fees for officers serving subpoenas; provision of blank forms of applications for workers' compensation benefits; omission to subscribe to workers' compensation fund; annual report by commissioner and occupational pneumoconiosis board; creation of compensation programs advisory board; appointment and terms of members for the advisory board; extraterritorial coverage; furnishing of information by employers, the state tax commissioner and the division of employment compensation and the secrecy of said information; exempting contributing employees from liability to respond in damages for the injury or death of an employee; liability of an employer electing not to pay or defaulting in payment of premiums; election of employer to provide own system of compensation and mandatory participation in second injury reserve of surplus fund; validity of workers' compensation law to employers adjudicated outside the lawful scope of the workers' compensation law; transfer of silicosis fund to workers' compensation fund; custody investment and

disbursement of workers' compensation fund; requiring investment of surplus funds; payment of temporary total disability and medical benefits to claimants; disbursement of workers' compensation fund where injury is self inflicted or intentionally caused by the employer; release of medical information to employer and duty of employer; computation of benefits; specifying to whom benefits may be paid from the disabled workers' relief fund and computation of benefits; providing for payment of benefits from the fund; information required from employers providing own system; funding of disabled workers' relief fund; establishment and administration of coal workers' pneumoconiosis fund; establishment and administration of employers' excess liability fund; creation and membership of workers' compensation appeal board; payment of emergency hospital expenses for entitled persons by commissioner of employment programs; defining terms relating to state insurance for miscellaneous boards and officers; powers, duties and responsibilities of West Virginia railroad maintenance authority; providing exemptions from contested case provisions of state administrative procedures act; issuance of certificates by secretary of state to business and nonprofit corporations; disposition of interest income and repayment of principal of the mortgage and industrial development investment pool; application of the law regarding accident and sickness insurance; optional accident and sickness insurance policy provisions; application of the law regarding group accident and sickness insurance; application of the West Virginia guaranty association act; exemptions relating to the suggestion of the state and political subdivisions; obtaining support from unemployment compensation and workers' compensation benefits to pay child support obligations; exemption for workers' compensation proceedings regarding hospital records and sealed envelopes; requiring certain departments to work with employees whose jobs were terminated by the sale of the state liquor stores; and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

That sections one-a, seven and nine, article two, and section ten-a, article five, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that article three of said chapter be repealed; that section one, article three, chapter five of said code be amended and reenacted; that section seventeen, article ten of said chapter be amended and reenacted; that section sixteen, article eleven of said chapter be amended and reenacted; that section seven, article sixteen-a of said chapter be amended and reenacted; that section one, article four, chapter five-b of said code be amended and reenacted; that section ten, article thirteen, chapter seven of said code be amended and reenacted; that section six, article sixteen of said chapter be amended and reenacted; that section twenty-seven, article twenty-seven, chapter eight of said code be amended and reenacted; that section nineteen, article twenty-nine of said chapter be amended and reenacted; that section nineteen, article twenty-nine-a of said chapter be amended and reenacted; that section eleven, article thirty-three of said chapter be amended and reenacted; that section twelve, article one-a, chapter eleven of said code be amended and reenacted; that section four, article six-b of said chapter be amended and reenacted; that section seven, article twelve of said chapter be amended and reenacted; that section ten, article twenty-four of said chapter be amended and reenacted; that section two, article twenty-five of said chapter be amended and reenacted; that section five, article one-a, chapter twelve of said code be amended and reenacted; that section sixteen, article one, chapter sixteen of said code be amended and reenacted; that section three, article twenty-nine-d of said chapter be amended and reenacted; that section three, article twenty-two, chapter seventeen-c of said code be amended and reenacted; that section twelve, article four, chapter seventeen-d of said code be amended and reenacted; that section twenty, article seven-a, chapter eighteen of said code be amended and reenacted; that section sixteen, article nine-b of said chapter be amended and reenacted; that section fourteen, article twenty-three, chapter nineteen of said code be amended and reenacted; that section fourteen, article five, chapter twenty-one of said code be

amended and reenacted; that sections three, four, five, six and seven, article one, chapter twenty-one-a of said code be amended and reenacted; that sections one, five, six, six-b, eight, eleven, thirteen, sixteen, sixteen-a and twenty-three, article two of said chapter be amended and reenacted; that sections two and four, article two-a of said chapter be amended and reenacted; that sections one, two and four, article two-b of said chapter be amended and reenacted; that section six, article two-c of said chapter be amended and reenacted; that sections ten-a, sixteen and seventeen-b, article five of said chapter be amended and reenacted; that section nine, article six of said chapter be amended and reenacted; that section twenty-three, article seven of said chapter be amended and reenacted; that sections eleven, nineteen, twenty and twenty-two, article ten of said chapter be amended and reenacted; that sections one, two, three, six, ten, fourteen, sixteen, seventeen and eighteen, article one, chapter twenty-three of said code be amended and reenacted; that sections one-c, six, eight and eleven, article two of said chapter be amended and reenacted; that sections one-a, two and three, article three of said chapter be amended and reenacted; that sections one-c, two, seven and fourteen, article four of said chapter be amended and reenacted; that sections two, three, four, five and eight, article four-a of said chapter be amended and reenacted; that sections two and seven, article four-b of said chapter be amended and reenacted; that sections two and five, article four-c of said chapter be amended and reenacted; that section two, article five of said chapter be amended and reenacted; that section two, article eight, chapter twenty-six of said code be amended and reenacted; that section two, article twelve, chapter twenty-nine of said code be amended and reenacted; that section six, article eighteen of said chapter be amended and reenacted; that section five, article five, chapter twenty-nine-a of said code be amended and reenacted; that section sixty-one, article one, chapter thirty-one of said code be amended and reenacted; that section ten, article eighteen-b of said chapter be amended and reenacted; that sections one and five, article fifteen, chapter thirty-three of said code be amended and reenacted; that section one, article sixteen of said chapter be amended and reenacted; that section three, article twenty-

six of said chapter be amended and reenacted; that section twelve, article five-b, chapter thirty-eight of said code be amended and reenacted; that sections seventeen and eighteen, article two, chapter forty-eight-a of said code be amended and reenacted; that section four-d, article five, chapter fifty-seven of said ~~chapter~~ ^{Del. code} be amended and reenacted; and that section thirty, article three-a, chapter sixty of said code be amended and reenacted, all to read as follows:

**CHAPTER 5. GENERAL POWERS AND AUTHORITY
OF THE GOVERNOR, SECRETARY OF STATE AND
ATTORNEY GENERAL; BOARD OF PUBLIC WORKS;
MISCELLANEOUS AGENCIES, COMMISSIONS,
OFFICES, PROGRAMS, ETC.**

ARTICLE 3. ATTORNEY GENERAL.

**§5-3-1. Written opinions and advice and other legal services;
expenditures by state officers, boards and
commissions for legal services prohibited.**

1 The attorney general shall give his written opinion
2 and advice upon questions of law, and shall prosecute
3 and defend suits, actions, and other legal proceedings,
4 and generally render and perform all other legal
5 services, whenever required to do so, in writing, by
6 the governor, the secretary of state, the auditor, the
7 state superintendent of free schools, the treasurer, the
8 commissioner of agriculture, the board of public
9 works, the tax commissioner, the state archivist and
10 historian, the commissioner of banking, the adjutant
11 general, the commissioner of the division of energy,
12 the superintendent of public safety, the state commis-
13 sioner of public institutions, the state road commission,
14 the commissioner of the bureau of employment pro-
15 grams, the public service commission, or any other
16 state officer, board or commission, or the head of any
17 state educational, correctional, penal or eleemosynary
18 institution; and it shall be unlawful from and after the
19 time this section becomes effective for any of the
20 public officers, commissions, or other persons above
21 mentioned to expend any public funds of the state of
22 West Virginia, for the purpose of paying any person,

23 firm, or corporation, for the performance of any legal
24 services: *Provided*, That nothing contained in this
25 section shall impair or affect any existing valid
26 contracts of employment for the performance of legal
27 services heretofore made.

28 It shall also be the duty of the attorney general to
29 render to the president of the Senate and/or the
30 speaker of the House of Delegates, a written opinion or
31 advice, upon any questions submitted to him by them
32 or either of them whenever he shall be requested in
33 writing so to do.

**ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT
ACT.**

§5-10-17. 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
7 the said participating public employer on and after the
8 said date shall become members of the retirement
9 system; and all persons who become employees of a
10 participating public employer on or after the said date
11 shall thereupon become members of the system;
12 except as provided in subdivisions (b) and (c) of this
13 section.

14 (b) The membership of the retirement system shall
15 not include any person who is a member of, or who
16 has been retired by, the state teachers retirement
17 system, the judges retirement system, the retirement
18 system of the division of public safety, or any munic-
19 ipal retirement system for either, or both, policemen
20 or firemen; and the bureau of employment programs,
21 by the commissioner of such bureau, may elect
22 whether its employees will accept coverage under this
23 article or be covered under the authorization of a
24 separate enactment: *Provided*, That such exclusions of
25 membership shall not apply to any member of the

26 state Legislature, the clerk of the House of Delegates,
27 the clerk of the state Senate or to any member of the
28 legislative body of any political subdivision provided
29 he once becomes a contributing member of the retire-
30 ment system: *Provided, however,* That any retired
31 member of the retirement system of the division of
32 public safety, and any retired member of any munic-
33 ipal retirement system for either, or both, policemen
34 or firemen may on and after the effective date of this
35 section become a member of the retirement system as
36 provided in this article, without receiving credit for
37 prior service as a municipal policeman or fireman or
38 as a member of the division of public safety.

39 (c) Any member of the state Legislature, the clerk of
40 the House of Delegates, the clerk of the state Senate
41 and any employee of the state Legislature whose
42 employment is otherwise classified as temporary and
43 who is employed to perform services required by the
44 Legislature for its regular sessions or during the
45 interim between regular sessions and who has been or
46 is so employed during regular sessions or during the
47 interim between sessions for ten or more years, or any
48 member of the legislative body of any other political
49 subdivision shall become a member of the retirement
50 system provided he notifies the retirement system in
51 writing of his intention to be a member of the system
52 and files a membership enrollment form as the board
53 of trustees shall prescribe, and each person, upon
54 filing his written notice to participate in the retire-
55 ment system, shall by said act authorize the clerk of
56 the House of Delegates or the clerk of the state Senate
57 or such person or legislative agency as the legislative
58 body of any other political subdivision shall designate
59 to deduct such member's contribution, as provided in
60 subsection (b), section twenty-nine of this article, and
61 after said deductions have been made from said
62 member's compensation, such deductions shall be
63 forwarded to the retirement system.

64 (d) Should any question arise regarding the mem-
65 bership status of any employee, the board of trustees
66 has the final power to decide the question.

ARTICLE 11. HUMAN RIGHTS COMMISSION.

§5-11-16. Certain records exempt.

1 Notwithstanding any other provisions of this article,
2 it shall not be an unlawful discriminatory practice for
3 the bureau of employment programs to ascertain and
4 record the age, sex, race, religion, color, national
5 origin, ancestry, blindness or handicap of any individ-
6 ual for the purpose of making such reports as may
7 from time to time be required by agencies of the
8 federal government or be necessary to show com-
9 pliance with any rule or regulation issued by any such
10 agency. Said records may be made and kept in the
11 manner required by the federal government: *Pro-*
12 *vided*, That such recording of the age, sex, race,
13 religion, color, national origin, ancestry, blindness or
14 handicap of any individual shall not be used to
15 discriminate, within the meaning of this article,
16 directly or indirectly, against any such individual as
17 prohibited by all other sections of this article.

**ARTICLE 16A. THE WEST VIRGINIA HEALTH CARE INSURANCE
ACT.**

**§5-16A-7. Availability of data of bureau of employment
programs.**

1 In furtherance of the purposes of this article, the
2 bureau of employment programs shall, notwithstand-
3 ing the provisions of section eleven, article ten,
4 chapter twenty-one-a of this code, cooperate to make
5 available to the public employees insurance agency
6 and the legislative task force on uncompensated health
7 care and medicaid expenditures such information as
8 they may request for purposes consistent with this
9 article to identify and facilitate contact with small
10 business employers who may be eligible for participa-
11 tion in the plan. The provisions of this section shall be
12 liberally construed by the bureau of employment
13 programs in order to effectuate the development of
14 the health care insurance plan.

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.

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 4. LABOR-MANAGEMENT COUNCIL.

§5B-4-1. Appointment, terms, vacancies, chairman, quorum of the labor-management council.

1 The West Virginia labor-management advisory
 2 council, heretofore created under the provisions of
 3 article one-c, chapter twenty-one of this code, shall be
 4 continued and be so designated as the West Virginia
 5 labor-management council. The council shall consist of
 6 twenty-six members. One member of the council shall
 7 be the commissioner of labor, one member of the
 8 council shall be a member of the economic develop-
 9 ment authority, one member of the council shall be
 10 the commissioner of the bureau of employment pro-
 11 grams or his designated representative, one member
 12 of the council shall be the state superintendent of
 13 schools, one member of the council shall be a member
 14 of the economic development board to be selected by
 15 it annually, and one member of the council shall be a
 16 member of the board of regents to be selected by it
 17 annually, all of whom shall be ex officio nonvoting
 18 members of the council. The other members of the
 19 council shall be appointed by the governor by and
 20 with the advice and consent of the Senate for terms of
 21 four years or until their successors have been
 22 appointed and have qualified. The members of the
 23 council appointed by the governor shall include one
 24 president of a state university, one president of a state
 25 college or community college, and two persons repres-
 26 enting public secondary schools in the state, who shall
 27 be appointed for terms of two, three and four years,
 28 respectively, as designated by the governor at the time
 29 of their appointment, and until their successors have
 30 been appointed and have qualified. The present
 31 members of the council shall continue to serve out the
 32 terms to which they were appointed.

33 Vacancies shall be filled by appointment by the

34 governor for the unexpired term of the member
35 whose office is vacant and the appointment shall be
36 made within sixty days of the occurrence of the
37 vacancy.

38 In making appointments to the council, the governor
39 shall consider names of persons recommended to him
40 by the West Virginia chamber of commerce, the West
41 Virginia coal association, the West Virginia manufac-
42 turers' association, the West Virginia retailers' associ-
43 ation, utilities, other industrial groups in this state, the
44 West Virginia labor federation, the united mine
45 workers union, the West Virginia building trades
46 council, other labor organizations in the state, the
47 institutional boards of advisors for state colleges and
48 universities, the state board of education, and the West
49 Virginia school board association. Membership shall be
50 composed of, in addition to those of the state or other
51 government agencies and educational institutions, no
52 less than eight members from industry and eight from
53 labor. The council shall elect one of its members as
54 chairman and may elect such other officers as the
55 council may deem necessary or desirable. Such per-
56 sons shall serve as such for one year or until their
57 successors are elected and shall be eligible for
58 reelection.

59 The council shall meet at least four times each year
60 and at other times on call of the chairman or a
61 majority of the members. Thirteen members of the
62 council shall constitute a quorum for the transaction of
63 business.

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

ARTICLE 13. ECONOMIC OPPORTUNITY PROGRAMS.

§7-13-10. Employees covered by workers' compensation.

1 All employees of a community action program
2 organization eligible thereto shall be considered to be

3 within the workers' compensation act of West Virginia
4 and premiums on their compensation shall be paid by
5 the organization, as required by law.

ARTICLE 16. COUNTY SOLID WASTE AUTHORITIES.

§7-16-6. Employees to be covered by workers' compensation.

1 All employees of the authority eligible thereto shall
2 be considered to be within the workers' compensation
3 act of West Virginia and premiums on their compen-
4 sation shall be paid by the authority as required by
5 law.

CHAPTER 8. MUNICIPAL CORPORATIONS.

**ARTICLE 27. INTERGOVERNMENTAL RELATIONS-URBAN MASS
TRANSPORTATION SYSTEMS.**

**PART XI. DISSOLUTION OF AUTHORITY; WORKERS'
COMPENSATION.**

§8-27-27. Employees to be covered by workers' compensation.

1 All eligible employees of any authority shall be
2 considered to be within the workers' compensation
3 statute of this state and premiums on their compensa-
4 tion shall be paid by the authority as required by law.

**ARTICLE 29. INTERGOVERNMENTAL RELATIONS-REGIONAL
AIRPORTS.**

§8-29-19. Employees to be covered by workers' compensation.

1 All eligible employees of any authority shall be
2 considered to be within the workers' compensation
3 statute of this state and premiums on their compensa-
4 tion shall be paid by the authority as required by law.

ARTICLE 29A. COUNTY AIRPORT AUTHORITIES.

**§8-29A-19. Full-time employees of the authority to be public
employees.**

1 Any person who serves regularly as an employee,
2 full time, on a salary basis, whose tenure is not
3 restricted as to temporary or provisional appointment,
4 in the service of, and whose compensation is payable
5 in whole or in part by the authority, shall be consid-

6 ered to be a public employee and shall be subject to
7 any and all applicable provisions of law relating
8 thereto, including, but not limited to, the workers'
9 compensation act and the West Virginia public
10 employees insurance act.

**ARTICLE 33. INTERGOVERNMENTAL RELATIONS-BUILDING
COMMISSIONS.**

PART IV. WORKERS' COMPENSATION; CONSTRUCTION.

§8-33-11. Workers' compensation.

1 Each commission shall subscribe to the workers'
2 compensation fund of this state and pay all necessary
3 premiums thereto, to the end that all eligible
4 employees of such commission shall be covered by
5 workers' compensation.

CHAPTER 11. TAXATION.

**ARTICLE 1A. APPRAISAL OF PROPERTY FOR PERIODIC STATE-
WIDE REAPPRAISALS.**

**§11-1A-12. Division of functions between the tax commis-
sioner and assessor; local exceptions to value;
revisions by tax commissioner; participation
by assessor in hearings and appeals.**

1 (a) It is the intent of the Legislature that in carrying
2 out the appraisal functions required by this article, the
3 tax commissioner shall utilize the county assessors and
4 their employees. The county clerk shall prepare a list
5 of all transfers of real property recorded during the
6 calendar year one thousand nine hundred eighty-three
7 for which payment of the excise tax on the privilege
8 of transferring real property, required by article
9 twenty-two of this chapter was required, and forward
10 such list to the tax commissioner during the second
11 month following such transfers' recording with the
12 clerk of the county commission. The assessor shall
13 review the landbooks for his county for the tax year
14 one thousand nine hundred eighty-three and one
15 thousand nine hundred eighty-four, and shall prepare
16 a written property description of every parcel of real
17 property not previously described on a property record

18 card provided to the assessor by the tax commissioner
19 under the provisions of section eleven, article nine-a,
20 chapter eighteen of this code. The assessors may
21 compile lists of comparable property sales and recom-
22 mend appraisal values with respect to any property in
23 their districts to which the tax commissioner shall give
24 consideration when he fixes values for such property
25 for reappraisal purposes to the extent such recom-
26 mended values are supported by competent evidence.

27 (b) In each county during the reappraisal function,
28 the tax commissioner shall designate a tax department
29 employee as the coordinator of reappraisal functions
30 among the commissioner's personnel, the commission-
31 er's designated agents, and the assessor's personnel so
32 as to insure that the resulting appraisal shall be
33 complete, equal and uniform. In each county, the tax
34 commissioner or his designated agent shall prepare a
35 description of the number, job description and mini-
36 mum qualifications of personnel needed to accomplish
37 the reappraisal, other than permanent employees of
38 the tax commissioner or employees of the assessor.
39 The tax commissioner or his designated agent shall
40 employ qualified individuals to fill the positions giving
41 first preference to persons registered with the bureau
42 of employment programs' job service program, but all
43 such persons shall be residents of the county, or if the
44 tax commissioner finds it necessary for efficiency, any
45 contiguous county, or if none be available, the state.
46 The tax commissioner shall make reasonable efforts to
47 assure that the additional employment required by
48 this article is allocated equitably among the several
49 counties, with attention to the level of unemployment
50 in and the population of each county.

51 (c) To the extent that the tax commissioner con-
52 cludes that assessors and local employees have over-
53 emphasized or underemphasized local aspects in
54 determining value, the tax commissioner may revise
55 information concerning such values so as to achieve
56 uniformity in the statewide reappraisal: *Provided*,
57 That in any hearings or appeals under the provisions
58 of this article the assessor or employee who partici-

59 pated in the gathering of such information may be a
60 competent witness as to how tentative values were
61 arrived at in the process of reappraisal before any
62 such revision.

ARTICLE 6B. HOMESTEAD PROPERTY TAX EXEMPTION.

§11-6B-4. Claim for exemption; renewals; waiver of exemption.

1 (a) *General.* — No exemption shall be allowed under
2 this article unless a claim of exemption is filed with
3 the assessor of the county in which the homestead is
4 located, on or before the first day of October following
5 the July first assessment day. In the case of sickness,
6 absence or other disability of the claimant, the claim
7 may be filed by the claimant or his duly authorized
8 agent.

9 (b) *Claims for disability exemption.* — Each claim
10 for exemption based on the owner being permanently
11 and totally disabled shall include one of the following
12 forms of documentation in support of said claim: (1) A
13 written certification by a doctor of medicine or doctor
14 of osteopathy licensed to practice their particular
15 profession in this state that the claimant is perman-
16 ently and totally disabled; (2) a written certification by
17 the social security administration that the claimant is
18 currently receiving benefits for permanent and total
19 disability; (3) a copy of the letter from the social
20 security administration originally awarding benefits to
21 the claimant for permanent and total disability and a
22 copy of a current check for such benefits, marked void;
23 (4) a current social security health insurance (medi-
24 care) card in the name of the claimant and a copy of
25 a current check to the claimant, marked void, for
26 benefits from the social security administration for
27 permanent and total disability; (5) a written certifica-
28 tion signed by the veterans administration certifying
29 that a person is totally and permanently disabled; (6)
30 any lawfully recognized workers' compensation docu-
31 mentation certifying that a person is totally and
32 permanently disabled; (7) any lawfully recognized
33 pneumoconiosis documentation certifying that a per-

34 son is totally and permanently disabled; or (8) any
35 other lawfully recognized documentation certifying
36 that a person is totally and permanently disabled.

37 (c) *Renewals.*

38 (1) *Senior citizens.* — If the claimant is age sixty-five
39 or older, then after the claimant has filed for the
40 exemption once with his assessor, there shall be no
41 need for that claimant to refile unless the claimant
42 moves to a new homestead.

43 (2) *Disabled.* — If the claimant is permanently and
44 totally disabled, then after the claimant has filed for
45 the exemption once with his assessor, and signed a
46 statement certifying that he will notify the assessor if
47 he is no longer eligible for an exemption on the basis
48 of being permanently and totally disabled and that the
49 claimant will notify the assessor within thirty days of
50 the discontinuance of the receipt of benefits for
51 permanent and total disability, if the claimant origi-
52 nally claimed receipt of said benefits to document his
53 claim for exemption, there shall be no need for that
54 claimant to refile, unless the claimant moves to a new
55 homestead.

56 (3) *Waiver of exemption.* — Any person not filing his
57 claim for exemption on or before the first day of
58 October shall be determined to have waived his right
59 to exemption for the next tax year.

ARTICLE 12. BUSINESS REGISTRATION TAX.

§11-12-7. Display of registration certificate; injunction; public information, reciprocal exchange of information.

1 Any person to whom a certificate of registration
2 shall be issued under the provisions of section four of
3 this article shall keep such certificate posted in a
4 conspicuous position in the place where the privilege
5 of such business is exercised. Such certificate of
6 registration shall be produced for inspection whenever
7 required by the tax commissioner or by any law-
8 enforcement officers of this state, county or municipal-
9 ity wherein the privileges to conduct business are

10 exercised.

11 No injunction shall issue from any court in the state
12 enjoining the collection of any business registration
13 certificate tax required herein; and any person claim-
14 ing that any business certificate is not due, for any
15 reason, shall pay the same under protest and petition
16 the tax commissioner for a refund in accordance with
17 the provisions of section fourteen, article ten of this
18 chapter.

19 If any person engaging in or prosecuting any busi-
20 ness, or trade, contrary to any other provisions of this
21 article, whether without obtaining a business certifi-
22 cate therefor before commencing the same, or by
23 continuing the same after the termination of the
24 effective period of any such business certificate, the
25 circuit court or the judge thereof in vacation, of the
26 county in which such violation occurred, shall, upon
27 proper application in the name of the state, and after
28 ten days' written notice thereof to such person, grant
29 an injunction prohibiting such person from continuing
30 such business, activity or trade until he has fully
31 complied with the provisions of this article. The
32 remedy provided in this section shall be in addition to
33 all other penalties and remedies provided by law.

34 The tax commissioner shall make available, when
35 requested, information as to whether a person is
36 registered to do business in the state of West Virginia.

37 The tax commissioner shall deliver to the commis-
38 sioner of the bureau of employment programs, the
39 information contained in the business franchise regis-
40 tration certificate, when this information is used to
41 implement and administer a single point of registra-
42 tion program for persons engaging in any business
43 activity in the state of West Virginia. The single point
44 of registration program shall provide that, once an
45 individual has received a business franchise registra-
46 tion certificate, the tax commissioner shall notify the
47 commissioner of the bureau of employment programs
48 of the names, addresses and other identifying informa-
49 tion of that individual or entity. Upon receiving this

50 information the commissioner of the bureau of
 51 employment programs shall contact all businesses
 52 receiving a business franchise registration certificate
 53 and provide all necessary forms and paperwork to
 54 register a business within the bureau, pursuant to
 55 subsection (b), section six-b, article two, chapter
 56 twenty-one-a and subsection (c), section two, article
 57 two, chapter twenty-three of this code.

58 Notwithstanding the provisions of section five,
 59 article ten of this chapter, the tax commissioner may
 60 enter into a reciprocal agreement with the governor's
 61 office of community and industrial development and
 62 other departments or agencies of this state for the
 63 exchange of information contained in the application
 64 for a business franchise registration certificate filed
 65 under section four of this article, when the purpose for
 66 the exchange is to implement and administer a single-
 67 point registration program for persons engaging in
 68 business in this state. Such other departments and
 69 agencies shall have authority to enter into a reciprocal
 70 exchange agreement for this purpose notwithstanding
 71 any provision of this code to the contrary.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-10. Credit for hiring of qualified employees by eligible taxpayers engaged in manufacturing.

1 (a) A credit shall be allowed under the provisions of
 2 this section against the primary tax liability of the
 3 taxpayer under this article to eligible taxpayers who
 4 hire qualified employees during the period beginning
 5 the first day of April, one thousand nine hundred
 6 eighty-three, and ending the thirty-first day of Decem-
 7 ber, one thousand nine hundred eighty-four.

8 (b) For the purpose of this section, the term "eligible
 9 taxpayer" means a taxpayer who:

10 (1) Is subject to tax liability under section two-b,
 11 article thirteen, chapter eleven of this code, relating to
 12 business and occupation tax upon the business of
 13 manufacturing, compounding or preparing for sale any
 14 articles, substances or commodities; and

15 (2) Hires a qualified employee, as defined herein,
16 during the period beginning the first day of April, one
17 thousand nine hundred eighty-three, and ending the
18 thirty-first day of December, one thousand nine
19 hundred eighty-four; which employee to such
20 employer is not a returning seasonal employee or
21 employee of like-type.

22 (c) For the purpose of this section, the term "qual-
23 ified employee" means an employee who is hired and
24 employed at a location within this state by an eligible
25 taxpayer for full-time employment, which, for the
26 purposes of this section, means employment for at
27 least one hundred twenty hours per month at a wage
28 equal to, or greater than, the prevailing federal
29 minimum wage and:

30 (1) At the time he or she is hired, has either
31 exhausted entitlement to unemployment compensa-
32 tion benefits under the provisions of chapter twenty-
33 one-a of this code or would have exhausted such
34 benefits within a period of six weeks from date of
35 employment; or

36 (2) At the time of employment, he or she is hired so
37 that one or more present employees will not be
38 required to continue working overtime, and with a
39 resultant decrease in the amount of overtime compen-
40 sation paid by the employer.

41 (d) The term "qualified employee" does not include
42 a person who displaces an employed individual, other
43 than an individual who is discharged for cause, or does
44 not include an individual employed and who is closely
45 related to a person who owns, directly or indirectly,
46 more than fifty percent of the outstanding stock of the
47 business, or an individual employed and who is closely
48 related to the owner or owners of an unincorporated
49 business.

50 (e) Notwithstanding any provision of this code to the
51 contrary, the bureau of employment programs shall
52 disclose, upon request, to the state tax commissioner
53 or his employees, any wage, benefits or eligibility
54 information with respect to an identified individual

55 which is contained in its records.

56 (f) The maximum total credits allowed to any
 57 eligible taxpayer in all taxable years because of the
 58 hiring of any one qualified employee shall be one
 59 thousand dollars: *Provided*, That the amount of the
 60 credit allowed by this section in any one taxable year
 61 shall be the lesser of either one thousand dollars for
 62 each qualified employee hired in such taxable year, or
 63 ten percent of the gross wages paid by the eligible
 64 taxpayer to each qualified employee hired in such
 65 taxable year: *Provided, however*, That unused credit
 66 for an eligible employee may be carried forward to the
 67 next tax year if necessary and until the lesser of either
 68 one thousand dollars for each qualified employee or
 69 ten percent of the gross wages paid to the eligible
 70 employee during his or her first employment year is
 71 taken as a credit by the eligible taxpayer. The credit
 72 allowable by this section for a taxable year is not
 73 subject to the fifty percent limitation specified in
 74 section nine of this article, and any unused credit may
 75 be carried over to each of the next three taxable years
 76 following the unused credit year until used or for-
 77 feited due to lapse of time.

ARTICLE 25. TAX RELIEF FOR ELDERLY HOMEOWNERS AND RENTERS.

§11-25-2. Definitions.

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

3 (1) "Claimant" means a person sixty-five years of
 4 age or older who was domiciled in this state during
 5 any portion of the calendar year preceding the year in
 6 which the claimant is eligible to file a claim for relief
 7 under this article and who had a gross household
 8 income of not more than five thousand dollars during
 9 the calendar year preceding the year in which he is
 10 eligible to file a claim for relief under this article. If
 11 two or more individuals, who otherwise qualify as
 12 claimants under this article, occupy a single home-
 13 stead, such individuals may determine between them-
 14 selves as to which individual shall be the claimant;

15 however, if such individuals are unable to agree, the
16 matters shall be referred to the state tax commissioner
17 for determination and his decision shall be final.

18 (2) "Claimant's spouse" means the spouse of the
19 claimant if such spouse resides in the homestead
20 during any portion of the calendar year preceding the
21 year in which the claimant is eligible to file a claim for
22 relief under this article.

23 (3) "Gross household income" means all actual
24 income received by a claimant and the claimant's
25 spouse during the calendar year preceding the year in
26 which he is eligible to file a claim for relief under this
27 article and such actual income shall be computed by
28 adding to the West Virginia adjusted gross income (as
29 that term is defined in section twelve, article twenty-
30 one of this chapter) of such claimant and the clai-
31 mant's spouse all of the following actually received by
32 the claimant and claimant's spouse during such
33 calendar year:

34 (a) Amount of capital gains excluded from West
35 Virginia adjusted gross income;

36 (b) Support money;

37 (c) Nontaxable strike benefits;

38 (d) Cash public assistance, welfare and relief but not
39 any relief under this article;

40 (e) Gross amount of any pension or annuity, includ-
41 ing railroad retirement benefits;

42 (f) Social security benefits;

43 (g) Unemployment compensation benefits;

44 (h) Veterans disability pensions;

45 (i) Workers' compensation benefits; and

46 (j) Private disability insurance benefits.

47 Gross household income does not include gifts from
48 nongovernmental sources, or surplus foods or other
49 relief in kind supplied by a governmental agency.

50 (4) "Gross rent" means the total amount of money
51 or its equivalent actually paid by a claimant during a
52 particular calendar year to his landlord in a bona fide
53 manner solely for the right of occupancy of a home-
54 stead, exclusive of any charges for utilities, services,
55 furniture, furnishings or electrical or other appliances
56 furnished by such landlord to such claimant; and if the
57 state tax commissioner determines that the rent
58 charged was excessive for the purposes of this article,
59 he may adjust the same, for the purposes of this
60 article, to a reasonable amount.

61 (5) "Homestead" means a single family residential
62 house and the land surrounding such structure; or a
63 part of a multi-dwelling building, multi-purpose
64 building or apartment house; or a mobile home which
65 is used as a permanent residence and the land upon
66 which such mobile home is situate; and it is immate-
67 rial for the purposes of this article whether the
68 foregoing are being purchased, are owned or are
69 rented.

70 (6) "Household" means a claimant, a claimant and
71 the claimant's spouse or a claimant and any other
72 person or persons, who resides or reside in a
73 homestead.

74 (7) "Property taxes" means the amount of the real
75 property taxes, exclusive of any interest or charges for
76 delinquency thereof, paid by a claimant on his home-
77 stead beginning with the calendar year one thousand
78 nine hundred seventy-two, and for any particular
79 calendar year thereafter: *Provided*, That if a home-
80 stead is owned by a claimant and a person or persons
81 (other than the claimant's spouse) as joint tenants or
82 as tenants in common, and such person or persons
83 owning such interest in such homestead do not reside
84 in such homestead, then for the purposes of this
85 article, the property taxes paid by the claimant shall
86 be prorated according to such claimant's percentage of
87 ownership of such homestead: *Provided, however*,
88 That if the claimant's homestead is a single unit
89 within any multi-dwelling building, multi-purpose
90 building or apartment house, and such claimant owns

91 the entirety of any such structure, the property taxes
92 paid by the claimant, for the purposes of this article
93 shall be prorated so as to reflect the percentage of
94 value which the claimant's homestead is to the value
95 of the entire structure which is assessed in a single
96 assessment based upon the entire property.

97 (8) "Rent constituting property taxes" means twelve
98 percent of the gross rent paid by a claimant for the
99 right of occupancy of his homestead beginning with
100 the calendar year one thousand nine hundred seventy-
101 two, and for any particular calendar year thereafter.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 1A. LINKED DEPOSIT PROGRAM.

§12-1A-5. Acceptance or rejection of loan package; deposit agreement.

1 (a) The board of investments may accept or reject a
2 linked deposit loan package or any portion thereof,
3 based on the ratio of state funds to be deposited to jobs
4 sustained or created: *Provided*, That notwithstanding
5 any provision of this article to the contrary, the board
6 of investments may not accept any linked deposit loan
7 package or any portion thereof unless the same has
8 been reviewed and approved by the director in his sole
9 discretion.

10 (b) The board of investments shall reject any linked
11 deposit loan package if the small business requesting
12 such loan is not in good standing with the state tax
13 department and the bureau of employment programs,
14 and these agencies shall provide the board of invest-
15 ments with such information as to the standing of each
16 small business loan applicant, notwithstanding any
17 provision of this code to the contrary.

18 (c) Any linked deposit loan package that is being
19 made to refinance an existing debt, or any portion
20 thereof, must meet one of the following criteria:

21 (1) The small business can demonstrate in good faith
22 that it is experiencing a substantial loss in its current
23 (fiscal or calendar) tax year period;

24 (2) The small business recently experienced a natu-
 25 ral disaster and suffered unreimbursable casualty
 26 losses;

27 (3) The small business has filed to recover under the
 28 Federal Bankruptcy Act and meets the criteria in (1)
 29 above; or

30 (4) The small business can provide compelling
 31 information to the board of investments that jobs will
 32 be saved and/or created as a result of loan refinancing.

33 (d) Upon acceptance of the linked deposit loan
 34 package or any portion thereof by the board of
 35 investments and the director, the board of investments
 36 may place certificates of deposit with the eligible
 37 lending institution at three percent below current
 38 market rates, as determined and calculated by the
 39 board of investments. Upon acceptance of the linked
 40 deposit loan package for flood victims or any portion
 41 thereof, the board of investments may place certifi-
 42 cates of deposit with the eligible lending institution at
 43 five percent below current market rates, as deter-
 44 mined and calculated by the board of investments.
 45 When necessary, the board may place certificates of
 46 deposit prior to acceptance of a linked deposit loan
 47 package.

48 (e) The eligible lending institution shall enter into a
 49 deposit agreement with the board, which shall include
 50 requirements necessary to carry out the purposes of
 51 this article. Such requirements shall reflect the
 52 market conditions prevailing in the eligible lending
 53 institution's lending area. The agreement may include
 54 a specification of the period of time in which the
 55 lending institution is to lend funds upon the placement
 56 of a linked deposit and shall include provisions for the
 57 certificates of deposit to be placed for up to two-year
 58 maturities that may be renewed for up to an addi-
 59 tional two years. Interest shall be paid at the times
 60 determined by the board.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 1. STATE DIVISION OF HEALTH.

§16-1-16. Investigations and hearings; power to administer oaths, subpoena witnesses, etc.; use of information and material acquired.

1 The state board of health, any member thereof, the
2 director of health, or any officer or employee of the
3 department of health designated by the board of
4 health, shall have the power to hold investigations,
5 inquiries and hearings concerning matters covered by
6 the laws of this state pertaining to public health and
7 within the authority of the state board of health, and
8 the rules, regulations and orders of the board. Hear-
9 ings shall be open to the public and shall be held upon
10 such call or notice as the board shall deem advisable.

11 Each member of the board, the director and every
12 officer or employee of the department of health
13 designated to hold any inquiry, investigation or
14 hearing shall have the power to administer oaths and
15 affirmations, certify to all official acts, issue subpoenas
16 and order the attendance and testimony of witnesses
17 in the production of papers, books and documents. In
18 case of the failure of any person to comply with any
19 subpoena or order issued under the authority of this
20 section, the board or its authorized representative may
21 invoke the aid of any circuit court of this state. The
22 court may thereupon order such person to comply
23 with the requirements of the subpoena order or to
24 give evidence touching the matter in question. Failure
25 to obey the order of the court may be punished by the
26 court as a contempt thereof.

27 Subject to the foregoing provision the board may in
28 its discretion make available to appropriate federal,
29 state and municipal agencies information and material
30 developed in the course of its investigation and
31 hearings: *Provided*, That information obtained from
32 studies or from any investigation made or hearing
33 held pursuant to the provisions of this article shall not
34 be admissible in evidence in any action at law to
35 recover damages for personal injury or in any action
36 under the workers' compensation act, but such infor-
37 mation, if available, shall be furnished upon request to
38 the commissioner of the bureau of employment pro-

39 grams for the sole purpose of adjusting claims pres-
40 ented to the said commissioner.

ARTICLE 29D. STATE HEALTH CARE.

**§16-29D-3. Agencies to cooperate and to provide plan;
contents of plan; reports to Legislature; late
payments by state agencies and interest
thereon.**

1 (a) All departments and divisions of the state,
2 including, but not limited to, the division of health and
3 the division of human services within the department
4 of health and human resources; the bureau of employ-
5 ment programs within the department of commerce,
6 labor and environmental resources; the public
7 employees insurance agency within the department of
8 administration; the division of rehabilitation services
9 or such other department or division as shall supervise
10 or provide rehabilitation; and the West Virginia board
11 of regents or such other department or division as
12 shall govern the state medical schools, are authorized
13 and directed to cooperate in order, among other
14 things, to ensure the quality of the health care services
15 delivered to the beneficiaries of such departments and
16 divisions and to ensure the containment of costs in the
17 payment for such services.

18 (b) It is expressly recognized that no other entity
19 may interfere with the discretion and judgment given
20 to the single state agency which administers the state's
21 medicaid program. Thus, it is the intention of the
22 Legislature that nothing contained in this article shall
23 be interpreted, construed, or applied to interfere with
24 the powers and actions of the single state agency
25 which, in keeping with applicable federal law, shall
26 administer the state's medicaid program as it per-
27 ceives to be in the best interest of that program and
28 its beneficiaries.

29 (c) Such departments and divisions shall develop a
30 plan or plans to ensure that a reasonable and appro-
31 priate level of health care is provided to the beneficia-
32 ries of the various programs including the public
33 employees insurance agency and the workers' com-

34 pension fund, the division of rehabilitation services
35 and, to the extent permissible, the state medicaid
36 program. The plan or plans may include, among other
37 things, and the departments and divisions are hereby
38 authorized to enter into:

39 (1) Utilization review and quality assurance
40 programs;

41 (2) The establishment of a schedule or schedules of
42 the maximum reasonable amounts to be paid to health
43 care providers for the delivery of health care services
44 covered by the plan or plans. Such a schedule or
45 schedules may be either prospective in nature or cost
46 reimbursement in nature, or a mixture of both:
47 *Provided*, That any payment methods or schedules for
48 institutions which provide inpatient care shall be
49 institution-specific and shall, at a minimum, take into
50 account a disproportionate share of medicaid, charity
51 care and medical education: *Provided, however*, That
52 in no event may any rate set in this article for an
53 institutional health care provider be greater than such
54 institution's current rate established and approved by
55 the health care cost review authority pursuant to
56 article twenty-nine-b of this chapter;

57 (3) Provisions for making payments in advance of
58 the receipt of health care services by a beneficiary, or
59 in advance of the receipt of specific charges for such
60 services, or both;

61 (4) Provisions for the receipt or payment of charges
62 by electronic transfers;

63 (5) Arrangements, including contracts, with pre-
64 ferred provider organizations; and

65 (6) Arrangements, including contracts, with particu-
66 lar health care providers to deliver health care
67 services to the beneficiaries of the programs of the
68 departments and divisions at agreed upon rates in
69 exchange for controlled access to the beneficiary
70 populations.

71 (d) The director of the public employees insurance
72 agency shall contract with an independent actuarial

73 company for a review every four years of the claims
74 experience of all governmental entities whose
75 employees participate in the public employees insur-
76 ance agency program, including, but not limited to, all
77 branches of state government, all state departments or
78 agencies (including those receiving funds from the
79 federal government or a federal agency), all county
80 and municipal governments, or any other similar
81 entities for the purpose of determining the cost of
82 providing coverage under the program, including
83 administrative cost, to each such governmental entity.

84 (e) Except as provided in subsection (h) of this
85 section, any health care provider who agrees to deliver
86 health care services to any beneficiary of a health care
87 program of a department or division of the state,
88 including the public employees insurance agency, the
89 state medicaid program, the workers' compensation
90 fund and the division of rehabilitation services, the
91 charges for which shall be paid by or reimbursed by
92 any department or division which participates in a
93 plan or plans as described in this section, shall be
94 deemed to have agreed to provide health care services
95 to the beneficiaries of health care programs of all of
96 the other departments and divisions participating in a
97 plan or plans: *Provided*, That a health care provider
98 shall be in compliance with this subsection if the
99 health care provider actually delivers health care
100 services to all such patients who request such services
101 or if the health care provider actually delivers health
102 care services to at least a sufficient number of patients
103 who are beneficiaries under the state's medicaid
104 program to equate to at least fifteen percent of the
105 health care provider's total patient population: *Pro-*
106 *vided, however*, That the delivery of health care
107 services immediately needed to resolve an imminent
108 life-threatening medical or surgical emergency shall
109 not be deemed to be an agreement under this subsec-
110 tion: *Provided further*, That nothing contained in this
111 article may be deemed to, or purport to imply, any
112 consent by any physician on the staff of any hospital
113 or other health care institution to accepting or agree-
114 ing to deliver health care services to any beneficiary

115 of a health care program of a division or department
116 of this state in any such physician's private office or
117 practice by virtue of the fact that such physician saw
118 such patient in connection with such physician's duties
119 as an on-call staff physician.

120 (f) The administrators of the division of health,
121 human services, workers' compensation, and the
122 public employees insurance agency shall report to the
123 Legislature no later than the first day of the regular
124 session of the Legislature of the year one thousand
125 nine hundred ninety concerning the plan or plans
126 developed: *Provided*, That the plan or plans may be
127 implemented prior to the delivery of such report.

128 (g) Nothing in this section shall be construed to give
129 or reserve to the Legislature any further or greater
130 power or jurisdiction over the operations or programs
131 of the various departments and divisions affected by
132 this article than that already possessed by the Legisla-
133 ture in the absence of this article.

134 (h) A health care provider who provides health care
135 services to any beneficiary of a health care program of
136 a department or division of the state pursuant to the
137 plan or plans developed in accordance with this article
138 may withdraw from participation in said plan or plans:
139 *Provided*, That the health care provider shall provide
140 written notice of withdrawal from participation in said
141 plan or plans to the administrator of the public
142 employees insurance agency: *Provided, however*, That
143 a provider who has withdrawn from further participa-
144 tion is not required to render services to any benefi-
145 ciaries under the plan or plans who are not his or her
146 patients at the time the notice of withdrawal is
147 provided and the provider may continue to provide
148 services to his or her preexisting patients for not more
149 than forty-five days after tendering the notice of
150 withdrawal without obligating his or herself to treat
151 such other beneficiaries.

152 (i) For the purchase of health care or health care
153 services by a health care provider participating in a
154 plan under this section or in a contract under subsec-

tion (d) or (e) of section four of this article on or after the first day of September, one thousand nine hundred eighty-nine, by the public employees insurance agency, the division of rehabilitation services and the division of workers' compensation, a state check shall be issued in payment thereof within sixty-five days after a legitimate uncontested invoice is actually received by such division or agency. Any state check issued after sixty-five days shall include interest at the current rate, as determined by the state tax commissioner under the provisions of section seventeen-a, article ten, chapter eleven of this code, which interest shall be calculated from the sixty-sixth day after such invoice was actually received by the division or agency until the date on which the state check is mailed to the vendor.

CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.

ARTICLE 22. RIDESHARING.

§17C-22-3. Workers' compensation law does not apply to ridesharing; exceptions thereto.

Chapter twenty-three of this code providing compensation for workers injured during the course of their employment shall not apply to a person injured while participating in a ridesharing arrangement between his or her place of residence and place of employment or termini near such places: *Provided*, That if the employer owns, leases or contracts for the motor vehicle used in such arrangement, chapter twenty-three shall apply.

CHAPTER 17D. MOTOR VEHICLE SAFETY RESPONSIBILITY LAW.

ARTICLE 4. PROOF OF FINANCIAL RESPONSIBILITY FOR THE FUTURE.

§17D-4-12. "Motor vehicle liability policy" defined; scope and provisions of policy.

(a) A "motor vehicle liability policy" as said term is used in this chapter means an "owner's policy" or an

3 "operator's policy" of liability insurance certified as
4 provided in section ten or section eleven of this article
5 as proof of financial responsibility, and issued, except
6 as otherwise provided in section eleven, by an insur-
7 ance carrier duly authorized to transact business in
8 this state, to or for the benefit of the person named
9 therein as insured.

10 (b) Such owner's policy of liability insurance:

11 (1) Shall designate by explicit description or by
12 appropriate reference all vehicles with respect to
13 which coverage is thereby to be granted; and

14 (2) Shall insure the person named therein and any
15 other person, as insured, using any such vehicle or
16 vehicles with the express or implied permission of
17 such named insured, against loss from the liability
18 imposed by law for damages arising out of the owner-
19 ship, operation, maintenance or use of such vehicle or
20 vehicles within the United States of America or the
21 Dominion of Canada, subject to limits exclusive of
22 interest and costs, with respect to each such vehicle, as
23 follows: Twenty thousand dollars because of bodily
24 injury to or death of one person in any one accident
25 and, subject to said limit for one person, forty thou-
26 sand dollars because of bodily injury to or death of two
27 or more persons in any one accident, and ten thousand
28 dollars because of injury to or destruction of property
29 of others in any one accident.

30 (c) Such operator's policy of liability insurance shall
31 insure the person named as insured therein against
32 loss from the liability imposed upon him by law for
33 damages arising out of the use by him of any motor
34 vehicle not owned by him, within the same territorial
35 limits and subject to the same limits of liability as are
36 set forth above with respect to an owner's policy of
37 liability insurance.

38 (d) Such motor vehicle liability policy shall state the
39 name and address of the named insured, the coverage
40 afforded by the policy, the premium charged therefor,
41 the policy period, and the limits of liability, and shall
42 contain an agreement or be endorsed that insurance is

43 provided thereunder in accordance with the coverage
44 defined in this chapter as respects bodily injury and
45 death or property damage, or both, and is subject to all
46 the provisions of this chapter.

47 (e) Such motor vehicle liability policy need not
48 insure any liability under any workers' compensation
49 law nor any liability on account of bodily injury to or
50 death of an employee of the insured while engaged in
51 the employment, other than domestic, of the insured,
52 or while engaged in the operation, maintenance or
53 repair of any such vehicle nor any liability for damage
54 to property owned by, rented to, in charge of or
55 transported by the insured.

56 (f) Every motor vehicle liability policy shall be
57 subject to the following provisions which need not be
58 contained therein:

59 (1) The liability of the insurance carrier with respect
60 to the insurance required by this chapter shall become
61 absolute whenever injury or damage covered by said
62 motor vehicle liability policy occurs; said policy may
63 not be canceled or annulled as to such liability by an
64 agreement between the insurance carrier and the
65 insured after the occurrence of the injury or damage;
66 no statement made by the insured or on his behalf and
67 no violation of said policy shall defeat or void said
68 policy.

69 (2) The satisfaction by the insured of a judgment for
70 such injury or damage shall not be a condition prece-
71 dent to the right or duty of the insurance carrier to
72 make payment on account of such injury or damage.

73 (3) The insurance carrier shall have the right to
74 settle any claim covered by the policy, and if such
75 settlement is made in good faith, the amount thereof
76 shall be deductible from the limits of liability specified
77 in subdivision (2), subsection (b) of this section.

78 (4) The policy, the written application therefor, if
79 any, and any rider or endorsement which does not
80 conflict with the provisions of this chapter shall
81 constitute the entire contract between parties.

82 (g) Any policy which grants the coverage required
83 for a motor vehicle liability policy may also grant any
84 lawful coverage in excess of or in addition to the
85 coverage specified for a motor vehicle liability policy
86 and such excess or additional coverage shall not be
87 subject to the provisions of this chapter. With respect
88 to a policy which grants such excess or additional
89 coverage the term "motor vehicle liability policy"
90 applies only to that part of the coverage which is
91 required by this section.

92 (h) Any motor vehicle liability policy may provide
93 that the insured shall reimburse the insurance carrier
94 for any payment the insurance carrier would not have
95 been obligated to make under the terms of the policy
96 except for the provisions of this chapter.

97 (i) Any motor vehicle liability policy may provide
98 for the prorating of the insurance thereunder with
99 other valid and collectible insurance.

100 (j) The requirements for a motor vehicle liability
101 policy may be fulfilled by the policies of one or more
102 insurance carriers which policies together meet such
103 requirements.

104 (k) Any binder issued pending the issuance of a
105 motor vehicle policy shall be deemed to fulfill the
106 requirements for such a policy.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-20. Investment of funds.

1 The members of the retirement board shall be the
2 trustees of the several funds created by this article,
3 and shall determine from time to time what part of
4 the moneys belonging to the retirement system shall
5 be invested. When such board shall determine to
6 invest any moneys or to convert or sell any securities,
7 it shall by resolution so direct the custodian. The board
8 of public works is hereby empowered to determine in
9 what securities the investments shall be made, but
10 such investments shall be made only in those securi-

11 ties to which the board of public works is limited in
 12 the investment of workers' compensation funds under
 13 section two, article three, chapter twenty-three of this
 14 code, or in bonds, notes, or other instruments evidenc-
 15 ing loans secured by mortgages or deeds of trust
 16 insured, or with respect to which commitments to
 17 insure have been made by the United States, or by the
 18 secretary of agriculture, pursuant to the Bankhead-
 19 Jones Farm Tenant Act of 1937, as heretofore or
 20 hereinafter amended. It shall be the duty of every
 21 county, school district or municipality issuing any
 22 bonds to offer them in writing to the board of public
 23 works, prior to advertising the bonds for sale. The
 24 board of public works, within fifteen days after receipt
 25 of such offer, may accept or reject such offer in whole
 26 or in part. It shall be the duty of the custodian to
 27 collect the principal and the interest on investments
 28 when they become due and payable and to credit such
 29 collections to the retirement system.

ARTICLE 9B. STATE BOARD OF SCHOOL FINANCE.

§18-9B-16. Transmission and investment of proceeds of permanent improvement fund.

1 If a county board accumulates the permanent
 2 improvement fund for more than two years, the
 3 proceeds of the fund shall be transmitted to the state
 4 sinking fund commission on or before the first day of
 5 December of the year in which the second successive
 6 levy for the fund is laid. Amounts subsequently
 7 accruing to the fund as of the first day of July of each
 8 year shall be transmitted to the state sinking fund
 9 commission on or before the first day of December
 10 ensuing. The state sinking fund commission shall keep
 11 a separate account for the fund of the county and shall
 12 invest the proceeds in any obligations authorized for
 13 the investment of the state workers' compensation
 14 fund. The proceeds of the fund may be withdrawn by
 15 the county board of education as authorized by this
 16 article upon sixty days' notice in writing to the state
 17 sinking fund commission.

CHAPTER 19. AGRICULTURE.

ARTICLE 23. HORSE AND DOG RACING.

§19-23-14. Disposition of permit fees, registration fees and fines.

1 All permit fees, fees paid for the registration of
2 colors or assumed names and fines imposed by the
3 stewards, starters or other racing officials shall be paid
4 into a relief fund and paid out on the order of the
5 racing commission for hospitalization, medical care
6 and funeral expenses occasioned by injuries or death
7 resulting from an accident sustained by any permit
8 holder while in the discharge of his duties under the
9 jurisdiction of the racing commission. No payment
10 shall be made, however, for any hospitalization,
11 medical care or funeral expenses as to any permit
12 holder who is covered under the workers' compensa-
13 tion fund of this state, or any insurance policy provid-
14 ing payments for hospitalization, medical care or
15 funeral expenses. Any balance in said relief fund at
16 any time in excess of five thousand dollars, less any
17 relief obligations then outstanding, shall thereupon be
18 transferred by the racing commission to the state
19 treasurer for deposit to the ~~the~~ credit of the general
20 revenue fund of this state.

CHAPTER 21. LABOR.

ARTICLE 5. WAGE PAYMENT AND COLLECTION.

§21-5-14. Employer's bond for wages and benefits.

1 (a) *Bond required.* — With the exception of those
2 who have been doing business in this state actively
3 and actually engaged in construction work, or the
4 severance, production or transportation of minerals for
5 at least five consecutive years next preceding the
6 posting of the bond required by this section, every
7 employer, person, firm or corporation engaged in or
8 about to engage in construction work, or the sever-
9 ance, production or transportation (excluding railroads
10 and water transporters) of minerals, shall, prior to
11 engaging in any construction work, or the severance,
12 production or transportation of minerals, furnish a

13 bond on a form prescribed by the commissioner,
14 payable to the state of West Virginia, with the condi-
15 tion that the person, firm or corporation pay the wages
16 and fringe benefits of his or its employees when due.
17 The amount of the bond shall be equal to the total of
18 the employer's gross payroll for four weeks at full
19 capacity or production, plus fifteen percent of the said
20 total of employer's gross payroll for four weeks at full
21 capacity or production. The amount of the bond shall
22 increase or decrease as the employer's payroll
23 increases or decreases: *Provided*, That the amount of
24 the bond shall not be decreased, except with the
25 commissioner's approval and determination that there
26 are not outstanding claims against the bond.

27 (b) *Waiver.* — The commissioner shall waive the
28 posting of any bond required by subsection (a) of this
29 section upon his determination that an employer is of
30 sufficient financial responsibility to pay wages and
31 fringe benefits. The commissioner shall promulgate
32 rules and regulations according to the provisions of
33 chapter twenty-nine-a of this code which prescribe
34 standards for the granting of such waivers.

35 (c) *Form of bond; filing in office of circuit clerk.* —
36 The bond may include, with the approval of the
37 commissioner, surety bonding, collateral bonding
38 (including cash and securities), letters of credit,
39 establishment of an escrow account or a combination
40 of these methods. The commissioner shall accept an
41 irrevocable letter of credit in lieu of any other bonding
42 requirement. If collateral bonding is used, the
43 employer may deposit cash, or collateral securities or
44 certificates as follows: Bonds of the United States or its
45 possessions, or of the federal land bank, or of the
46 homeowner's loan corporation; full faith and credit
47 general obligation bonds of the state of West Virginia
48 or other states, and of any county, district or munic-
49 ipality of the state of West Virginia or other states; or
50 certificates of deposit in a bank in this state, which
51 certificates shall be in favor of the state. The cash
52 deposit or market value of such securities or certifi-
53 cates shall be equal to or greater than the sum of the

54 bond. The commissioner shall, upon receipt of any
 55 such deposit of cash, securities or certificates,
 56 promptly place the same with the state treasurer
 57 whose duty it shall be to receive and hold the same in
 58 the name of the state in trust for the purpose for
 59 which such deposit is made. The employer making the
 60 deposit shall be entitled from time to time to receive
 61 from the state treasurer, upon the written approval of
 62 the commissioner, the whole or any portion of any
 63 cash, securities or certificates so deposited, upon
 64 depositing with him in lieu thereof, cash or other
 65 securities or certificates of the classes herein specified
 66 having value equal to or greater than the sum of the
 67 bond. The commissioner shall cause a copy of the bond
 68 to be filed in the office of the clerk of the county
 69 commission of the county wherein the person, firm or
 70 corporation is doing business to be available for public
 71 inspection.

72 (d) *Employee cause of action.* — Notwithstanding
 73 any other provision in this article, any employee,
 74 whose wages and fringe benefits are secured by the
 75 bond, as specified in subsection (c) of this section, has
 76 a direct cause of action against the bond for wages and
 77 fringe benefits that are due and unpaid.

78 (e) *Action of commissioner.* — Any employee having
 79 wages and fringe benefits unpaid, may inform the
 80 commissioner of the claim for unpaid wages and fringe
 81 benefits and request certification thereof. If the
 82 commissioner, upon notice to the employer and inves-
 83 tigation, finds that such wages and fringe benefits or
 84 a portion thereof are unpaid, he shall make demand of
 85 such employer for the payment of such wages and
 86 fringe benefits. If payment for such wages and fringe
 87 benefits is not forthcoming within the time specified
 88 by the commissioner, not to exceed thirty days, the
 89 commissioner shall certify such claim or portion
 90 thereof, and forward the certification to the bonding
 91 company or the state treasurer, who shall provide
 92 payment to the affected employee within fourteen
 93 days of receipt of such certification. The bonding
 94 company, or any person, firm or corporation posting a

95 bond, thereafter shall have the right to proceed against
96 a defaulting employer for that part of the claim the
97 employee paid. The procedure specified herein shall
98 not be construed to preclude other actions by the
99 commissioner or employee to seek enforcement of the
100 provisions of this article by any civil proceedings for
101 the payment of wages and fringe benefits or by
102 criminal proceedings as may be determined
103 appropriate.

104 (f) *Posting and reporting by employer.* — With the
105 exception of those exempt under subsection (a) of this
106 section, any employer who is engaged in construction
107 work or the severance, production or transportation
108 (excluding railroad and water transporters) of miner-
109 als shall post the following in a place accessible to his
110 or its employees:

111 (1) A copy of the bond or other evidence of surety
112 specifying the number of employees covered as pro-
113 vided under subsection (a) of this section, or notifica-
114 tion that the posting of a bond has been waived by the
115 commissioner; and

116 (2) A copy of the notice in the form prescribed by
117 the commissioner regarding the duties of employers
118 under this section. During the first two years that any
119 person, firm or corporation is doing business in this
120 state in construction work, or in the severance,
121 production or transportation of minerals, such person,
122 firm or corporation shall on or before the first day of
123 February, May, August and November of each calen-
124 dar year file with the department a verified statement
125 of the number of employees, or a copy of the quarterly
126 report filed with the bureau of employment programs
127 showing the accurate number of employees, unless the
128 commissioner waives the filing of the report upon his
129 determination that the person, firm or corporation is
130 of sufficient stability that the reporting is unnecessary.

131 (g) *Termination of bond.* — The bond may be
132 terminated, with the approval of the commissioner,
133 after an employer submits a statement, under oath or
134 affirmation lawfully administered, to the commis-

135 sioner that the following has occurred: The employer
136 has ceased doing business and all wages and fringe
137 benefits have been paid, or the employer has been
138 doing business in this state for at least five consecutive
139 years and has paid all wages and fringe benefits. The
140 approval of the commissioner will be granted only
141 after the commissioner has determined that the wages
142 and fringe benefits of all employees have been paid.
143 The bond may also be terminated upon a determina-
144 tion by the commissioner that an employer is of
145 sufficient financial responsibility to pay wages and
146 fringe benefits.

CHAPTER 21A. UNEMPLOYMENT COMPENSATION.

ARTICLE 1. BUREAU OF EMPLOYMENT PROGRAMS.

§21A-1-3. Definitions.

- 1 As used in this chapter, unless the context clearly
2 requires otherwise:
 - 3 “Administration fund” means the employment
4 security administration fund, from which the admin-
5 istrative expenses under this chapter shall be paid.
 - 6 “Annual payroll” means the total amount of wages
7 for employment paid by an employer during a twelve-
8 month period ending with the thirtieth day of June of
9 any calendar 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
13 five completed calendar quarters immediately preced-
14 ing the first day of the individual benefit year.
 - 15 “Base period employer” means any employer who
16 in the base period for any benefit year paid wages to
17 an individual who filed claim for unemployment
18 compensation within such benefit year.
 - 19 “Base period wages” means wages paid to an indi-
20 vidual during the base period by all his base period
21 employers.
 - 22 “Benefit year” with respect to an individual means

23 the fifty-two-week period beginning with the first day
24 of the calendar week in which a valid claim is effec-
25 tive, and thereafter the fifty-two-week period begin-
26 ning with the first day of the calendar week in which
27 such individual next files a valid claim for benefits
28 after the termination of his last preceding benefit
29 year; however, if a claim is effective on the first day
30 of a quarter, the benefit year will be fifty-three weeks,
31 in order to prevent an overlapping of the base period
32 wages. An initial claim for benefits filed in accordance
33 with the provisions of this chapter shall be considered
34 to be a valid claim within the purposes of this defini-
35 tion if the individual has been paid wages in his base
36 period sufficient to make him eligible for benefits
37 under the provisions of this chapter.

38 "Benefits" means the money payable to an individ-
39 ual with respect to his unemployment.

40 "Board" means board of review.

41 "Calendar quarter" means the period of three
42 consecutive calendar months ending on the thirty-first
43 day of March, the thirtieth day of June, the thirtieth
44 day of September, the thirty-first day of December, or
45 the equivalent thereof as the commissioner may by
46 regulation prescribe.

47 "Commissioner" means the bureau of employment
48 programs' commissioner.

49 "Computation date" means the thirtieth day of June
50 the year immediately preceding the first day of
51 January on which an employer's contribution rate
52 becomes effective.

53 "Employing unit" means an individual, or type of
54 organization, including any partnership, association,
55 trust, estate, joint-stock company, insurance company,
56 corporation (domestic or foreign), state or political
57 subdivision thereof, or their instrumentalities, as
58 provided in paragraph (b), subdivision (9) of the
59 definition of "employment" in this section, institution
60 of higher education, or the receiver, trustee in bank-
61 ruptcy, trustee or successor thereof, or the legal

62 representative of a deceased person, which has on the
63 first day of January, one thousand nine hundred
64 thirty-five, or subsequent thereto, had in its employ
65 one or more individuals performing service within this
66 state.

67 "Employer" means:

68 (1) Until the first day of January, one thousand nine
69 hundred seventy-two, any employing unit which for
70 some portion of a day, not necessarily simultaneously,
71 in each of twenty different calendar weeks, which
72 weeks need not be consecutive, within either the
73 current calendar year, or the preceding calendar year,
74 has had in employment four or more individuals
75 irrespective of whether the same individuals were or
76 were not employed on each of such days;

77 (2) Any employing unit which is or becomes a liable
78 employer under any federal unemployment tax act;

79 (3) Any employing unit which has acquired or
80 acquires the organization, trade or business, or sub-
81 stantially all the assets thereof, of an employing unit
82 which at the time of such acquisition was an employer
83 subject to this chapter;

84 (4) Any employing unit which, after the thirty-first
85 day of December, one thousand nine hundred sixty-
86 three, and until the first day of January, one thousand
87 nine hundred seventy-two, in any one calendar quar-
88 ter, in any calendar year, has in employment four or
89 more individuals and has paid wages for employment
90 in the total sum of five thousand dollars or more, or
91 which, after such date, has paid wages for employment
92 in any calendar year in the sum total of twenty
93 thousand dollars or more;

94 (5) Any employing unit which, after the thirty-first
95 day of December, one thousand nine hundred sixty-
96 three, and until the first day of January, one thousand
97 nine hundred seventy-two, in any three-week period,
98 in any calendar year, has in employment ten or more
99 individuals;

100 (6) For the effective period of its election pursuant

101 to section three, article five of this chapter, any
102 employing unit which has elected to become subject to
103 this chapter;

104 (7) Any employing unit which, after the thirty-first
105 day of December, one thousand nine hundred seventy-
106 one, (i) in any calendar quarter in either the current
107 or preceding calendar year paid for service in employ-
108 ment wages of one thousand five hundred dollars or
109 more, or (ii) for some portion of a day in each of
110 twenty different calendar weeks, whether or not such
111 weeks were consecutive, in either the current or the
112 preceding calendar year had in employment at least
113 one individual (irrespective of whether the same
114 individual was in employment in each such day)
115 except as provided in subdivisions eleven and twelve
116 hereof;

117 (8) Any employing unit for which service in employ-
118 ment, as defined in subdivision (9) of the definition of
119 "employment" in this section, is performed after the
120 thirty-first day of December, one thousand nine
121 hundred seventy-one;

122 (9) Any employing unit for which service in employ-
123 ment, as defined in subdivision (10) of the definition of
124 "employment" in this section, is performed after the
125 thirty-first day of December, one thousand nine
126 hundred seventy-one;

127 (10) Any employing unit for which service in
128 employment, as defined in paragraphs (b) and (c) of
129 subdivision (9) of the definition of "employment" in
130 this section, is performed after the thirty-first day of
131 December, one thousand nine hundred seventy-seven;

132 (11) Any employing unit for which agricultural
133 labor, as defined in subdivision (12) of the definition of
134 "employment" in this section, is performed after the
135 thirty-first day of December, one thousand nine
136 hundred seventy-seven; or

137 (12) Any employing unit for which domestic service
138 in employment, as defined in subdivision (13) of the
139 definition of "employment" in this section, is per-

140 formed after the thirty-first day of December, one
141 thousand nine hundred seventy-seven.

142 "Employment", subject to the other provisions of
143 this section, means:

144 (1) Service, including service in interstate com-
145 merce, performed for wages or under any contract of
146 hire, written or oral, express or implied;

147 (2) Any service performed prior to the first day of
148 January, one thousand nine hundred seventy-two,
149 which was employment as defined in this section prior
150 to such date and, subject to the other provisions of this
151 section, service performed after the thirty-first day of
152 December, one thousand nine hundred seventy-one,
153 by an employee, as defined in section 3306 (i) of the
154 Federal Unemployment Tax Act, including service in
155 interstate commerce;

156 (3) Any service performed prior to the first day of
157 January, one thousand nine hundred seventy-two,
158 which was employment as defined in this section prior
159 to such date and, subject to the other provisions of this
160 section, service performed after the thirty-first day of
161 December, one thousand nine hundred seventy-one,
162 including service in interstate commerce, by any
163 officer of a corporation;

164 (4) An individual's entire service, performed within
165 or both within and without this state if: (a) The service
166 is localized in this state or (b) the service is not
167 localized in any state but some of the service is
168 performed in this state and (i) the base of operations,
169 or, if there is no base of operations, then the place
170 from which such service is directed or controlled, is in
171 this state; or (ii) the base of operations or place from
172 which such service is directed or controlled is not in
173 any state in which some part of the service is per-
174 formed but the individual's residence is in this state;

175 (5) Service not covered under paragraph (4) of this
176 subdivision and performed entirely without this state
177 with respect to no part of which contributions are
178 required and paid under an unemployment compensa-

179 tion law of any other state or of the federal govern-
180 ment, is employment subject to this chapter if the
181 individual performing such services is a resident of
182 this state and the commissioner approves the election
183 of the employing unit for whom such services are
184 performed that the entire service of such individual is
185 employment subject to this chapter;

186 (6) Service is localized within a state, if: (a) The
187 service is performed entirely within such state; or (b)
188 the service is performed both within and without such
189 state, but the service performed without such state is
190 incidental to the individual's service within this state,
191 as, for example, is temporary or transitory in nature
192 or consists of isolated transactions;

193 (7) Services performed by an individual for wages
194 are employment subject to this chapter unless and
195 until it is shown to the satisfaction of the commis-
196 sioner that: (a) Such individual has been and will
197 continue to be free from control or direction over the
198 performance of such services, both under his contract
199 of service and in fact; and (b) such service is either
200 outside the usual course of the business for which such
201 service is performed or that such service is performed
202 outside of all the places of business of the enterprise
203 for which such service is performed; and (c) such
204 individual is customarily engaged in an independently
205 established trade, occupation, profession or business;

206 (8) All service performed by an officer or member of
207 the crew of an American vessel (as defined in section
208 three hundred five of an act of Congress entitled
209 Social Security Act Amendment of 1946, approved the
210 tenth day of August, one thousand nine hundred forty-
211 six), on or in connection with such vessel, provided
212 that the operating office, from which the operations of
213 such vessel operating on navigable waters within and
214 without the United States is ordinarily and regularly
215 supervised, managed, directed and controlled, is
216 within this state;

217 (9) (a) Service performed after the thirty-first day of
218 December, one thousand nine hundred seventy-one,

219 by an individual in the employ of this state or any of
220 its instrumentalities (or in the employ of this state and
221 one or more other states or their instrumentalities) for
222 a hospital or institution of higher education located in
223 this state: *Provided*, That such service is excluded
224 from "employment" as defined in the Federal Unem-
225 ployment Tax Act solely by reason of section 3306 (c)
226 (7) of that act and is not excluded from "employment"
227 under subdivision (11) of the exclusion from
228 employment;

229 (b) Service performed after the thirty-first day of
230 December, one thousand nine hundred seventy-seven,
231 in the employ of this state or any of its instrumental-
232 ities or political subdivisions thereof or any of its
233 instrumentalities or any instrumentality of more than
234 one of the foregoing or any instrumentality of any
235 foregoing and one or more other states or political
236 subdivisions: *Provided*, That such service is excluded
237 from "employment" as defined in the Federal Unem-
238 ployment Tax Act by section 3306 (c) (7) of that act and
239 is not excluded from "employment" under subdivision
240 (15) of the exclusion from employment in this section;
241 and

242 (c) Service performed after the thirty-first day of
243 December, one thousand nine hundred seventy-seven,
244 in the employ of a nonprofit educational institution
245 which is not an institution of higher education;

246 (10) Service performed after the thirty-first day of
247 December, one thousand nine hundred seventy-one,
248 by an individual in the employ of a religious, charita-
249 ble, educational or other organization but only if the
250 following conditions are met:

251 (a) The service is excluded from "employment" as
252 defined in the Federal Unemployment Tax Act solely
253 by reason of section 3306 (c) (8) of that act; and

254 (b) The organization had four or more individuals in
255 employment for some portion of a day in each of
256 twenty different weeks, whether or not such weeks
257 were consecutive, within either the current or preced-
258 ing calendar year, regardless of whether they were

259 employed at the same moment of time;

260 (11) Service of an individual who is a citizen of the
261 United States, performed outside the United States
262 after the thirty-first day of December, one thousand
263 nine hundred seventy-one (except in Canada and in
264 the case of Virgin Islands after the thirty-first day of
265 December, one thousand nine hundred seventy-one,
266 and before the first day of January, the year following
267 the year in which the secretary of labor approves for
268 the first time an unemployment insurance law sub-
269 mitted to him by the Virgin Islands for approval) in
270 the employ of an American employer (other than
271 service which is considered "employment" under the
272 provisions of subdivision (4), (5) or (6) of this definition
273 of "employment" or the parallel provisions of another
274 state's law) if:

275 (a) The employer's principal place of business in the
276 United States is located in this state; or

277 (b) The employer has no place of business in the
278 United States, but (i) the employer is an individual
279 who is a resident of this state; or (ii) the employer is
280 a corporation which is organized under the laws of this
281 state; or (iii) the employer is a partnership or a trust
282 and the number of the partners or trustees who are
283 residents of this state is greater than the number who
284 are residents of any one other state; or

285 (c) None of the criteria of subparagraphs (a) and (b)
286 of this subdivision (11) is met but the employer has
287 elected coverage in this state or, the employer having
288 failed to elect coverage in any state, the individual has
289 filed a claim for benefits, based on such service, under
290 the law of this state.

291 An "American employer", for purposes of this
292 subdivision (11), means a person who is (i) an individ-
293 ual who is a resident of the United States; or (ii) a
294 partnership if two thirds or more of the partners are
295 residents of the United States; or (iii) a trust, if all of
296 the trustees are residents of the United States; or (iv)
297 a corporation organized under the laws of the United
298 States or of any state;

299 (12) Service performed after the thirty-first day of
300 December, one thousand nine hundred seventy-seven,
301 by an individual in agricultural labor as defined in
302 subdivision (5) of the exclusions from employment in
303 this section when:

304 (a) Such service is performed for a person who (i)
305 during any calendar quarter in either the current or
306 the preceding calendar year paid remuneration in cash
307 of twenty thousand dollars or more to individuals
308 employed in agricultural labor including labor per-
309 formed by an alien referred to in paragraph (b) of this
310 subdivision (12); or (ii) for some portion of a day in
311 each of twenty different calendar weeks, whether or
312 not such weeks were consecutive, in either the current
313 or the preceding calendar year, employed in agricul-
314 tural labor, including labor performed by an alien
315 referred to in paragraph (b) of this subdivision (12),
316 ten or more individuals, regardless of whether they
317 were employed at the same moment of time;

318 (b) Such service is not performed in agricultural
319 labor if performed before the first day of January, one
320 thousand nine hundred ninety-three, by an individual
321 who is an alien admitted to the United States to
322 perform service in agricultural labor pursuant to
323 sections 214 (c) and 101 (a) (15) (H) of the Immigration
324 and Nationality Act;

325 (c) For the purposes of the definition of employ-
326 ment, any individual who is a member of a crew
327 furnished by a crew leader to perform service in
328 agricultural labor for any other person shall be treated
329 as an employee of such crew leader (i) if such crew
330 leader holds a valid certificate of registration under
331 the Migrant and Seasonal Agricultural Worker Protec-
332 tion Act; or substantially all the members of such crew
333 operate or maintain tractors, mechanized harvesting
334 or crop-dusting equipment, or any other mechanized
335 equipment, which is provided by such crew leader;
336 and (ii) if such individual is not an employee of such
337 other person within the meaning of subdivision (7) of
338 the definition of employer;

339 (d) For the purposes of this subdivision (12), in the
340 case of any individual who is furnished by a crew
341 leader to perform service in agricultural labor for any
342 other person and who is not treated as an employee of
343 such crew leader under subparagraph (c) of this
344 subdivision (12), (i) such other person and not the crew
345 leader shall be treated as the employer of such
346 individual; and (ii) such other person shall be treated
347 as having paid cash remuneration to such individual in
348 an amount equal to the amount of cash remuneration
349 paid to such individual by the crew leader (either on
350 his own behalf or on behalf of such other person) for
351 the service in agricultural labor performed for such
352 other person; and

353 (e) For the purposes of this subdivision (12), the
354 term "crew leader" means an individual who (i)
355 furnishes individuals to perform service in agricul-
356 tural labor for any other person, (ii) pays (either on
357 his own behalf or on behalf of such other person) the
358 individuals so furnished by him for the service in
359 agricultural labor performed by them, and (iii) has not
360 entered into a written agreement with such other
361 person under which such individual is designated as
362 an employee of such other person;

363 (13) The term "employment" includes domestic
364 service after the thirty-first day of December, one
365 thousand nine hundred seventy-seven, in a private
366 home, local college club or local chapter of a college
367 fraternity or sorority performed for a person who paid
368 cash remuneration of one thousand dollars or more
369 after the thirty-first day of December, one thousand
370 nine hundred seventy-seven, in any calendar quarter
371 in the current calendar year or the preceding calendar
372 year to individuals employed in such domestic service.

373 Notwithstanding the foregoing definition of
374 "employment", if the services performed during one
375 half or more of any pay period by an employee for the
376 person employing him constitute employment, all the
377 services of such employee for such period are employ-
378 ment; but if the services performed during more than
379 one half of any such pay period by an employee for

380 the person employing him do not constitute employ-
381 ment, then none of the services of such employee for
382 such period are employment.

383 The term "employment" does not include:

384 (1) Service performed in the employ of this state or
385 any political subdivision thereof, or any instrumental-
386 ity of this state or its subdivisions, except as otherwise
387 provided herein until the thirty-first day of December,
388 one thousand nine hundred seventy-seven;

389 (2) Service performed directly in the employ of
390 another state, or its political subdivisions, except as
391 otherwise provided in paragraph (a), subdivision (9) of
392 the definition of "employment", until the thirty-first
393 day of December, one thousand nine hundred seventy-
394 seven;

395 (3) Service performed in the employ of the United
396 States or any instrumentality of the United States
397 exempt under the constitution of the United States
398 from the payments imposed by this law, except that to
399 the extent that the Congress of the United States shall
400 permit states to require any instrumentalities of the
401 United States to make payments into an unemploy-
402 ment fund under a state unemployment compensation
403 law, all of the provisions of this law shall be applicable
404 to such instrumentalities and to service performed for
405 such instrumentalities in the same manner, to the
406 same extent and on the same terms as to all other
407 employers, employing units, individuals and services:
408 *Provided*, That if this state shall not be certified for
409 any year by the secretary of labor under section 1603
410 (c) of the federal Internal Revenue Code, the pay-
411 ments required of such instrumentalities with respect
412 to such year shall be refunded by the commissioner
413 from the fund in the same manner and within the
414 same period as is provided in section nineteen, article
415 five of this chapter, with respect to payments errone-
416 ously collected;

417 (4) Service performed after the thirtieth day of
418 June, one thousand nine hundred thirty-nine, with
419 respect to which unemployment compensation is

420 payable under the Railroad Unemployment Insurance
421 Act and service with respect to which unemployment
422 benefits are payable under an unemployment compen-
423 sation system for maritime employees established by
424 an act of Congress. The commissioner may enter into
425 agreements with the proper agency established under
426 such an act of Congress to provide reciprocal treat-
427 ment to individuals who, after acquiring potential
428 rights to unemployment compensation under an act of
429 Congress, or who have, after acquiring potential rights
430 to unemployment compensation under an act of
431 Congress, acquired rights to benefit under this chap-
432 ter. Such agreement shall become effective ten days
433 after such publications which shall comply with the
434 general rules of the department;

435 (5) Service performed by an individual in agricul-
436 tural labor, except as provided in subdivision (12) of
437 the definition of "employment" in this section. For
438 purposes of this subdivision (5), the term "agricultural
439 labor" includes all services performed:

440 (a) On a farm, in the employ of any person, in
441 connection with cultivating the soil, or in connection
442 with raising or harvesting any agricultural or horticul-
443 tural commodity, including the raising, shearing,
444 feeding, caring for, training and management of
445 livestock, bees, poultry, and fur-bearing animals and
446 wildlife;

447 (b) In the employ of the owner or tenant or other
448 operator of a farm, in connection with the operation,
449 management, conservation, improvement or mainte-
450 nance of such farm and its tools and equipment, or in
451 salvaging timber or clearing land of brush and other
452 debris left by a hurricane, if the major part of such
453 service is performed on a farm;

454 (c) In connection with the production or harvesting
455 of any commodity defined as an agricultural commod-
456 ity in section fifteen (g) of the Agricultural Marketing
457 Act, as amended, or in connection with the ginning of
458 cotton, or in connection with the operation or mainte-
459 nance of ditches, canals, reservoirs or waterways, not

460 owned or operated for profit, used exclusively for
461 supplying and storing water for farming purposes;

462 (d) (i) In the employ of the operator of a farm in
463 handling, planting, drying, packing, packaging, pro-
464 cessing, freezing, grading, storing or delivering to
465 storage or to market or to a carrier for transportation
466 to market, in its unmanufactured state, any agricul-
467 tural or horticultural commodity; but only if such
468 operator produced more than one half of the commod-
469 ity with respect to which such service is performed; or
470 (ii) in the employ of a group of operators of farms (or
471 a cooperative organization of which such operators are
472 members) in the performance of service described in
473 clause (i), but only if such operators produced more
474 than one half of the commodity with respect to which
475 such service is performed; but the provisions of clauses
476 (i) and (ii) are not applicable with respect to service
477 performed in connection with commercial canning or
478 commercial freezing or in connection with any agri-
479 cultural or horticultural commodity after its delivery
480 to a terminal market for distribution for consumption;

481 (e) On a farm operated for profit if such service is
482 not in the course of the employer's trade or business
483 or is domestic service in a private home of the
484 employer. As used in this subdivision (5), the term
485 "farm" includes stock, dairy, poultry, fruit, fur-
486 bearing animals, truck farms, plantations, ranches,
487 greenhouses, ranges and nurseries, or other similar
488 land areas or structures used primarily for the raising
489 of any agricultural or horticultural commodities;

490 (6) Domestic service in a private home except as
491 provided in subdivision (13) of the definition of
492 "employment" in this section;

493 (7) Service performed by an individual in the
494 employ of his son, daughter or spouse;

495 (8) Service performed by a child under the age of
496 eighteen years in the employ of his father or mother;

497 (9) Service as an officer or member of a crew of an
498 American vessel, performed on or in connection with

499 such vessel, if the operating office, from which the
500 operations of the vessel operating on navigable waters
501 within or without the United States are ordinarily and
502 regularly supervised, managed, directed and con-
503 trolled, is without this state;

504 (10) Service performed by agents of mutual fund
505 broker-dealers or insurance companies, exclusive of
506 industrial insurance agents, or by agents of investment
507 companies, who are compensated wholly on a commis-
508 sion basis;

509 (11) Service performed (i) in the employ of a church
510 or convention or association of churches, or an organi-
511 zation which is operated primarily for religious
512 purposes and which is operated, supervised, controlled
513 or principally supported by a church or convention or
514 association of churches; or (ii) by a duly ordained,
515 commissioned or licensed minister of a church in the
516 exercise of his ministry or by a member of a religious
517 order in the exercise of duties required by such order;
518 or (iii) prior to the first day of January, one thousand
519 nine hundred seventy-eight, in the employ of a school
520 which is not an institution of higher education; or (iv)
521 in a facility conducted for the purpose of carrying out
522 a program of rehabilitation for individuals whose
523 earning capacity is impaired by age or physical or
524 mental deficiency or injury or providing remunerative
525 work for individuals who because of their impaired
526 physical or mental capacity cannot be readily absorbed
527 in the competitive labor market by an individual
528 receiving such rehabilitation or remunerative work; or
529 (v) as part of an unemployment work-relief or work-
530 training program assisted or financed in whole or in
531 part by any federal agency or an agency of a state or
532 political subdivision thereof, by an individual receiving
533 such work relief or work training; or (vi) prior to the
534 first day of January, one thousand nine hundred
535 seventy-eight, for a hospital in a state prison or other
536 state correctional institution by an inmate of the
537 prison or correctional institution, and after the thirty-
538 first day of December, one thousand nine hundred
539 seventy-seven, by an inmate of a custodial or penal

540 institution;

541 (12) Service performed in the employ of a school,
542 college or university, if such service is performed (i)
543 by a student who is enrolled and is regularly attending
544 classes at such school, college or university, or (ii) by
545 the spouse of such a student, if such spouse is advised,
546 at the time such spouse commences to perform such
547 service, that (I) the employment of such spouse to
548 perform such service is provided under a program to
549 provide financial assistance to such student by such
550 school, college or university, and (II) such employment
551 will not be covered by any program of unemployment
552 insurance;

553 (13) Service performed by an individual who is
554 enrolled at a nonprofit or public educational institu-
555 tion which normally maintains a regular faculty and
556 curriculum and normally has a regularly organized
557 body of students in attendance at the place where its
558 educational activities are carried on as a student in a
559 full-time program, taken for credit at such institution,
560 which combines academic instruction with work
561 experience, if such service is an integral part of such
562 program, and such institution has so certified to the
563 employer, except that this subdivision shall not apply
564 to service performed in a program established for or
565 on behalf of an employer or group of employers;

566 (14) Service performed in the employ of a hospital,
567 if such service is performed by a patient of the
568 hospital, as defined in this section; and

569 (15) Service in the employ of a governmental entity
570 referred to in subdivision (9) of the definition of
571 "employment" in this section if such service is
572 performed by an individual in the exercise of duties (i)
573 as an elected official; (ii) as a member of a legislative
574 body, or a member of the judiciary, of a state or
575 political subdivision; (iii) as a member of the state
576 national guard or air national guard; (iv) as an
577 employee serving on a temporary basis in case of fire,
578 storm, snow, earthquake, flood or similar emergency;
579 (v) in a position which, under or pursuant to the laws

580 of this state, is designated as (I) a major nontenured
581 policymaking or advisory position, or (II) a policymak-
582 ing or advisory position the performance of the duties
583 of which ordinarily does not require more than eight
584 hours per week.

585 Notwithstanding the foregoing exclusions from the
586 definition of "employment", services, except agricul-
587 tural labor and domestic service in a private home, are
588 in employment if with respect to such services a tax
589 is required to be paid under any federal law imposing
590 a tax against which credit may be taken for contribu-
591 tions required to be paid into a state unemployment
592 compensation fund, or which as a condition for full tax
593 credit against the tax imposed by the Federal Unem-
594 ployment Tax Act are required to be covered under
595 this chapter.

596 "Employment office" means a free employment
597 office or branch thereof, operated by this state, or any
598 free public employment office maintained as a part of
599 a state controlled system of public employment offices
600 in any other state.

601 "Fund" means the unemployment compensation
602 fund established by this chapter.

603 "Hospital" means an institution which has been
604 licensed, certified or approved by the state department
605 of health as a hospital.

606 "Institution of higher education" means an educa-
607 tional institution which:

608 (1) Admits as regular students only individuals
609 having a certificate of graduation from a high school,
610 or the recognized equivalent of such a certificate;

611 (2) Is legally authorized in this state to provide a
612 program of education beyond high school;

613 (3) Provides an educational program for which it
614 awards a bachelor's or higher degree, or provides a
615 program which is acceptable for full credit toward
616 such a degree, or provides a program of post-graduate
617 or post-doctoral studies, or provides a program of

618 training to prepare students for gainful employment in
619 a recognized occupation; and

620 (4) Is a public or other nonprofit institution.

621 Notwithstanding any of the foregoing provisions of
622 this definition all colleges and universities in this state
623 are institutions of higher education for purposes of this
624 section.

625 "Payments" means the money required to be paid
626 or that may be voluntarily paid into the state unem-
627 ployment compensation fund as provided in article
628 five of this chapter.

629 "Separated from employment" means, for the
630 purposes of this chapter, the total severance, whether
631 by quitting, discharge or otherwise, of the employer-
632 employee relationship.

633 "State" includes, in addition to the states of the
634 United States, Puerto Rico, District of Columbia and
635 the Virgin Islands.

636 "Total and partial unemployment" means:

637 (1) An individual is totally unemployed in any week
638 in which such individual is separated from employ-
639 ment for an employing unit and during which he
640 performs no services and with respect to which no
641 wages are payable to him.

642 (2) An individual who has not been separated from
643 employment is partially unemployed in any week in
644 which due to lack of full-time work wages payable to
645 him are less than his weekly benefit amount plus
646 twenty-five dollars: *Provided*, That said individual
647 must have earnings of at least twenty-six dollars.

648 "Wages" means all remuneration for personal
649 service, including commissions, gratuities customarily
650 received by an individual in the course of employment
651 from persons other than the employing unit, as long as
652 such gratuities equal or exceed an amount of not less
653 than twenty dollars each month and which are
654 required to be reported to the employer by the
655 employee, bonuses, and the cash value of all remuner-

656 ation in any medium other than cash except for
657 agricultural labor and domestic service: *Provided*, That
658 the term "wages" does not include:

659 (1) That part of the remuneration which, after
660 remuneration equal to three thousand dollars has been
661 paid to an individual by an employer with respect to
662 employment during any calendar year, is paid after
663 the thirty-first day of December, one thousand nine
664 hundred thirty-nine, and prior to the first day of
665 January, one thousand nine hundred forty-seven, to
666 such individual by such employer with respect to
667 employment during such calendar year; or that part of
668 the remuneration which, after remuneration equal to
669 three thousand dollars with respect to employment
670 after one thousand nine hundred thirty-eight, has
671 been paid to an individual by an employer during any
672 calendar year after one thousand nine hundred forty-
673 six, is paid to such individual by such employer during
674 such calendar year, except that for the purposes of
675 sections one, ten, eleven and thirteen, article six of
676 this chapter, all remuneration earned by an individual
677 in employment shall be credited to the individual and
678 included in his computation of base period wages:
679 *Provided*, That notwithstanding the foregoing provi-
680 sions, on and after the first day of January, one
681 thousand nine hundred sixty-two, the term "wages"
682 does not include:

683 That part of the remuneration which, after remu-
684 nation equal to three thousand six hundred dollars
685 has been paid to an individual by an employer with
686 respect to employment during any calendar year, is
687 paid during any calendar year after one thousand nine
688 hundred sixty-one; and shall not include that part of
689 remuneration which, after remuneration equal to four
690 thousand two hundred dollars is paid during a calen-
691 dar year after one thousand nine hundred seventy-
692 one; and shall not include that part of remuneration
693 which, after remuneration equal to six thousand
694 dollars is paid during a calendar year after one
695 thousand nine hundred seventy-seven; and shall not
696 include that part of remuneration which, after remu-

697 neration equal to eight thousand dollars is paid during
698 a calendar year after one thousand nine hundred
699 eighty, to an individual by an employer or his prede-
700 cessor with respect to employment during any calen-
701 dar year, is paid to such individual by such employer
702 during such calendar year unless that part of the
703 remuneration is subject to a tax under a federal law
704 imposing a tax against which credit may be taken for
705 contributions required to be paid into a state unem-
706 ployment fund. For the purposes of this subdivision
707 (1), the term "employment" includes service constitut-
708 ing employment under any unemployment compensa-
709 tion law of another state; or which as a condition for
710 full tax credit against the tax imposed by the Federal
711 Unemployment Tax Act is required to be covered
712 under this chapter; and, except, that for the purposes
713 of sections one, ten, eleven and thirteen, article six of
714 this chapter, all remuneration earned by an individual
715 in employment shall be credited to the individual and
716 included in his computation of base period wages:
717 *Provided*, That the remuneration paid to an individual
718 by an employer with respect to employment in
719 another state or other states upon which contributions
720 were required of and paid by such employer under an
721 unemployment compensation law of such other state
722 or states shall be included as a part of the remuner-
723 ation equal to the amounts of three thousand six
724 hundred dollars or four thousand two hundred dollars
725 or six thousand dollars or eight thousand dollars
726 herein referred to. In applying such limitation on the
727 amount of remuneration that is taxable, an employer
728 shall be accorded the benefit of all or any portion of
729 such amount which may have been paid by its prede-
730 cessor or predecessors: *Provided, however*, That if the
731 definition of the term "wages" as contained in section
732 3306 (b) of the Internal Revenue Code of 1954 as
733 amended, is amended: (a) Effective prior to the first
734 day of January, one thousand nine hundred sixty-two,
735 to include remuneration in excess of three thousand
736 dollars, or (b) effective on or after the first day of
737 January, one thousand nine hundred sixty-two, to
738 include remuneration in excess of three thousand six

739 hundred dollars, or (c) effective on or after the first
740 day of January, one thousand nine hundred seventy-
741 two, to include remuneration in excess of four thou-
742 sand two hundred dollars, or (d) effective on or after
743 the first day of January, one thousand nine hundred
744 seventy-eight, to include remuneration in excess of six
745 thousand dollars, or (e) effective on or after the first
746 day of January, one thousand nine hundred eighty, to
747 include remuneration in excess of eight thousand
748 dollars, paid to an individual by an employer under
749 the Federal Unemployment Tax Act during any
750 calendar year, wages for the purposes of this definition
751 shall include remuneration paid in a calendar year to
752 an individual by an employer subject to this article or
753 his predecessor with respect to employment during
754 any calendar year up to an amount equal to the
755 amount of remuneration taxable under the Federal
756 Unemployment Tax Act;

757 (2) The amount of any payment made after the
758 thirty-first day of December, one thousand nine
759 hundred fifty-two (including any amount paid by an
760 employer for insurance or annuities, or into a fund, to
761 provide for any such payment), to, or on behalf of, an
762 individual in its employ or any of his dependents,
763 under a plan or system established by an employer
764 which makes provision for individuals in its employ
765 generally (or for such individuals and their depend-
766 ents), or for a class or classes of such individuals (or
767 for a class or classes of such individuals and their
768 dependents), on account of (A) retirement, or (B)
769 sickness or accident disability payments made to an
770 employee under an approved state workers' compen-
771 sation law, or (C) medical or hospitalization expenses
772 in connection with sickness or accident disability, or
773 (D) death;

774 (3) Any payment made after the thirty-first day of
775 December, one thousand nine hundred fifty-two, by
776 an employer to an individual in its employ (including
777 any amount paid by an employer for insurance or
778 annuities, or into a fund, to provide for any such
779 payment) on account of retirement;

780 (4) Any payment made after the thirty-first day of
781 December, one thousand nine hundred fifty-two, by
782 an employer on account of sickness or accident disabil-
783 ity, or medical or hospitalization expenses in connec-
784 tion with sickness or accident disability, to, or on
785 behalf of, an individual in its employ after the expira-
786 tion of six calendar months following the last calendar
787 month in which such individual worked for such
788 employer;

789 (5) Any payment made after the thirty-first day of
790 December, one thousand nine hundred fifty-two, by
791 an employer to, or on behalf of, an individual in its
792 employ or his beneficiary (A) from or to a trust
793 described in section 401 (a) which is exempt from tax
794 under section 501 (a) of the Federal Internal Revenue
795 Code at the time of such payments unless such
796 payment is made to such individual as an employee of
797 the trust as remuneration for services rendered by
798 such individual and not as a beneficiary of the trust,
799 or (B) under or to an annuity plan which, at the time
800 of such payment, is a plan described in section 403 (a)
801 of the Federal Internal Revenue Code;

802 (6) The payment by an employer of the tax imposed
803 upon an employer under section 3101 of the Federal
804 Internal Revenue Code with respect to remuneration
805 paid to an employee for domestic service in a private
806 home or the employer of agricultural labor;

807 (7) Remuneration paid by an employer after the
808 thirty-first day of December, one thousand nine
809 hundred fifty-two, in any medium other than cash to
810 an individual in its employ for service not in the
811 course of the employer's trade or business;

812 (8) Any payment (other than vacation or sick pay)
813 made by an employer after the thirty-first day of
814 December, one thousand nine hundred fifty-two, to an
815 individual in its employ after the month in which he
816 attains the age of sixty-five, if he did not work for the
817 employer in the period for which such payment is
818 made;

819 (9) Payments, not required under any contract of

820 hire, made to an individual with respect to his period
821 of training or service in the armed forces of the United
822 States by an employer by which such individual was
823 formerly employed; and

824 (10) Vacation pay, severance pay or savings plans
825 received by an individual before or after becoming
826 totally or partially unemployed but earned prior to
827 becoming totally or partially unemployed: *Provided*,
828 That the term totally or partially unemployed shall
829 not be interpreted to include: (A) Employees who are
830 on vacation by reason of the request of the employees
831 or their duly authorized agent, for a vacation at a
832 specific time, and which request by the employees or
833 their agent is acceded to by their employer; (B)
834 employees who are on vacation by reason of the
835 employer's request provided they are so informed at
836 least ninety days prior to such vacation; or (C)
837 employees who are on vacation by reason of the
838 employer's request where such vacation is in addition
839 to the regular vacation and the employer compensates
840 such employee at a rate equal to or exceeding their
841 regular daily rate of pay during the vacation period.

842 The reasonable cash value of remuneration in any
843 medium other than cash shall be estimated and
844 determined in accordance with rules prescribed by the
845 commissioner, except for remuneration other than
846 cash for services performed in agricultural labor and
847 domestic service.

848 "Week" means a calendar week, ending at midnight
849 Saturday, or the equivalent thereof, as determined in
850 accordance with the regulations prescribed by the
851 commissioner.

852 "Weekly benefit rate" means the maximum amount
853 of benefit an eligible individual will receive for one
854 week of total unemployment.

855 "Year" means a calendar year or the equivalent
856 thereof, as determined by the commissioner.

§21A-1-4. Bureau of employment programs created; division; "bureau" defined.

1 There is created an agency designated as the bureau
2 of employment programs, composed of a division of
3 unemployment compensation, a division of employ-
4 ment service, a division of job training programs, a
5 division of workers' compensation, and such other
6 divisions or units as the commissioner determines to
7 be necessary.

8 Wherever, within this chapter, or in chapter twenty-
9 three of this code, the term "department", "bureau",
10 "fund" or "workers' compensation fund" is used, it
11 shall be taken to mean bureau of employment
12 programs.

13 Notwithstanding the provisions of subsection (d)(11)
14 and subsection (d)(12), section one, article two, chapter
15 five-f of this code the division of employment security
16 and the division of workers' compensation programs
17 are hereby consolidated in an agency designated as
18 bureau of employment programs, which bureau shall
19 be administered as part of the department of com-
20 merce, labor and environmental resources created
21 pursuant to subsection (b), section one, article two,
22 chapter five-f of this code.

§21A-1-5. Federal-state cooperation.

1 The bureau shall cooperate with the United States
2 department of labor, similar agencies of the several
3 states, and such other agencies as are concerned with
4 the problem of employment security and public
5 assistance and relief.

§21A-1-6. Employment stabilization.

1 The bureau, through the commissioner and the
2 advisory council, shall take all steps, to:

3 (1) Reduce and prevent unemployment.

4 (2) Encourage and assist in the adoption of practical
5 methods of vocational training and guidance.

6 (3) Encourage the establishment by the state and

7 local subdivisions of public works reserves to finance
8 construction programs in times of unemployment.

9 (4) Promote reemployment and employment read-
10 justment between industries.

11 (5) Conduct researches and investigations toward
12 these ends, and publish the results.

**§21A-1-7. State public employment agency to become state
employment service division.**

1 The "state public employment agency" now main-
2 tained in the department of labor shall be transferred
3 on the first day of January, one thousand nine hun-
4 dred thirty-seven, and shall be made the state employ-
5 ment service division of the bureau of employment
6 programs.

**ARTICLE 2. THE COMMISSIONER OF THE BUREAU OF EMPLOY-
MENT PROGRAMS.**

§21A-2-1. Appointment; term of office.

1 The bureau shall be under the supervision of a
2 commissioner of the bureau of employment programs.
3 The commissioner shall be appointed by the governor,
4 by and with the advice and consent of the Senate, and
5 shall hold his office subject to the will and pleasure of
6 the governor.

§21A-2-5. Compensation; traveling expenses.

1 Notwithstanding the provisions of section two-a,
2 article seven, chapter six of this code, the commis-
3 sioner of the bureau of employment programs shall
4 receive a yearly salary of sixty-five thousand dollars
5 and the necessary traveling expenses incident to the
6 performance of his duties. Requisition for traveling
7 expenses shall be accompanied by a sworn itemized
8 statement which shall be filed with the auditor and
9 preserved as a public record.

§21A-2-6. Powers and duties generally.

1 The commissioner shall be the executive and admin-
2 istrative head of the bureau and shall have the power
3 and duty, to:

4 (1) Exercise general supervision of and make regu-
5 lations for the government of the bureau;

6 (2) Prescribe uniform rules pertaining to investiga-
7 tions, departmental hearings, and promulgate rules
8 and regulations;

9 (3) Supervise fiscal affairs and responsibilities of the
10 bureau;

11 (4) Prescribe the qualifications of, appoint, remove,
12 and fix the compensation of the officers and employees
13 of the bureau, subject to the provisions of section ten,
14 article four of this chapter, relating to the board of
15 review;

16 (5) Organize and administer the bureau so as to
17 comply with the requirements of this chapter and
18 chapter twenty-three of this code and to satisfy any
19 conditions established in applicable federal legislation;

20 (6) Make reports in such form and containing such
21 information as the United States department of labor
22 may from time to time require, and comply with such
23 provisions as the United States department of labor
24 may from time to time find necessary to assure the
25 correctness and verification of such reports;

26 (7) Make available to any agency of the United
27 States charged with the administration of public works
28 or assistance through public employment, upon its
29 request, the name, address, ordinary occupation and
30 employment status of each recipient of unemployment
31 compensation, and a statement of the recipient's rights
32 to further compensation under this chapter;

33 (8) Keep an accurate and complete record of all
34 bureau proceedings; record and file all bonds and
35 contracts and assume responsibility for the custody
36 and preservation of all papers and documents of the
37 bureau;

38 (9) Sign and execute in the name of the state, by
39 "The Bureau of Employment Programs", any contract
40 or agreement with the federal government, its agen-
41 cies, other states, their subdivisions, or private persons;

42 (10) Prescribe a salary scale to govern compensation
43 of appointees and employees of the bureau;

44 (11) Make the original determination of right in
45 claims for benefits;

46 (12) Make recommendations, and an annual report to
47 the governor concerning the condition, operation, and
48 functioning of the bureau;

49 (13) Invoke any legal or special remedy for the
50 enforcement of orders or the provisions of this chapter
51 and chapter twenty-three of this code;

52 (14) Exercise any other power necessary to standard-
53 ize administration, expedite bureau business, assure
54 the establishment of fair rules and regulations and
55 promote the efficiency of the service; and

56 (15) Keep an accurate and complete record and
57 prepare a monthly report of the number of persons
58 employed and unemployed in the state, which report
59 shall be made available upon request to members of
60 the public and press.

**§21A-2-6b. Commissioner to be furnished information by
state tax commissioner; secrecy of informa-
tion; violation a misdemeanor.**

1 (a) Notwithstanding the provisions of any other
2 statute in this code, specifically, but not exclusively,
3 section five, article ten, chapter eleven of this code,
4 the state tax commissioner shall deliver to the com-
5 missioner of the bureau of employment programs the
6 following information: The names, addresses and other
7 identifying information of all business receiving a
8 business franchise registration certificate.

9 (b) All information acquired by the bureau of
10 employment programs commissioner pursuant to
11 subsection (a) of this section shall be used to imple-
12 ment and administer a single point of registration
13 program as created in section seven, article twelve,
14 chapter eleven of this code. The commissioner of the
15 bureau of employment programs, upon receiving the
16 business franchise certificate information made avail-

17 able pursuant to subsection (a) of this section, shall
18 contact all businesses receiving a business franchise
19 registration certificate and provide all necessary forms
20 to register the business under the provisions of article
21 five of this chapter.

22 (c) Any officer or employee of this state who uses
23 the aforementioned information in any manner other
24 than the one stated herein or authorized elsewhere in
25 this code or who divulges or makes known in any
26 manner any of the aforementioned information shall
27 be guilty of a misdemeanor, and, upon conviction
28 thereof, shall be fined not more than one thousand
29 dollars or imprisoned in the county jail for not more
30 than one year, or both, together with cost of
31 prosecution.

32 (d) Reasonable cost of compilation and production of
33 any information made available pursuant to subsection
34 (a) of this section shall be charged to the bureau of
35 employment programs.

36 (e) Information acquired by the bureau of employ-
37 ment programs commissioner pursuant to subsection
38 (a) of this section shall not be subject to disclosure
39 under the provisions of chapter twenty-nine-b of this
40 code.

§21A-2-8. Assistants and employees.

1 The commissioner shall appoint upon a nonpartisan
2 merit basis, the division and unit heads, and such
3 assistants and employees as may be necessary to the
4 efficient operation of the bureau. He shall fix their
5 compensation in accordance with the provisions of
6 article six, chapter twenty-nine of this code.

§21A-2-11. Dismissals, terminations, layoffs and suspensions.

1 The commissioner shall establish regulations govern-
2 ing dismissals, terminations, layoffs and suspensions.
3 Severance of employees' relationship with the bureau
4 shall be in accordance with these regulations. All
5 severances shall be for good cause. Failure to maintain
6 technical or professional qualifications shall be a good
7 cause for severance.

§21A-2-13. Deputies.

1 For the original determination of claims under this
2 chapter and chapter twenty-three of this code the
3 commissioner shall appoint a necessary number of
4 deputies as his representatives.

§21A-2-16. Federal-state cooperation.

1 The commissioner shall have all powers and duties
2 necessary to secure to the state the benefits of congress-
3 sional action for the promotion and maintenance of a
4 system of public employment offices. To this end the
5 provisions of the act referred to in the preceding
6 section and such additional congressional action consis-
7 tent with the above act are accepted by the state and
8 the state pledges its observance and compliance
9 therewith.

10 The bureau of employment programs, by its com-
11 missioner, is designated the agent of this state for the
12 purpose of compliance with the act of Congress
13 entitled "An act to provide for the establishment of a
14 national employment system and for cooperation with
15 states in the promotion of such systems, and for other
16 purposes," approved the sixth day of June, one
17 thousand nine hundred thirty-three, as amended:
18 *Provided*, That the functions formerly performed by
19 the advisory council under article three of this chap-
20 ter, which advisory council was required under the
21 provisions of section eleven of the Wagner-Peyser Act,
22 shall be performed by the state job training coordinat-
23 ing council in accordance with section 122 (c) of the
24 Job Training Partnership Act.

25 The bureau of employment programs, by its com-
26 missioner, is designated the agent of this state for the
27 purpose of compliance with the act of Congress
28 entitled "An act to provide for a job training program,
29 and for other purposes," enacted the eighteenth day of
30 October, one thousand nine hundred eighty-two, as
31 amended.

32 The bureau of employment programs, by its com-
33 missioner, is designated the agent of this state for the

34 purpose of complying with and administering sections
35 sixteen and seventeen of an act of Congress entitled
36 "An act to extend and improve the unemployment
37 compensation program," approved the first day of
38 September, one thousand nine hundred fifty-four.

39 The bureau of employment programs, by its com-
40 missioner, is designated the agent of this state for the
41 purpose of complying with and administering an act of
42 Congress entitled "An act to amend Title XV of the
43 Social Security Act to extend the unemployment
44 insurance system to exservicemen, and for other
45 purposes," approved the twenty-eighth day of August,
46 one thousand nine hundred fifty-eight.

47 The bureau of employment programs, by its com-
48 missioner, is designated the agent of this state for the
49 purpose of complying with and administering an act of
50 Congress entitled "An act relating to manpower
51 requirements, resources, development, and utilization,
52 and for other purposes," approved the fifteenth day of
53 March, one thousand nine hundred sixty-two.

54 The bureau of employment programs, by its com-
55 missioner, is designated the agent of this state for the
56 purpose of complying with and administering an act of
57 Congress entitled "An act to establish an effective
58 program to alleviate conditions of substantial and
59 persistent unemployment and under employment in
60 certain economically distressed areas," approved the
61 first day of May, one thousand nine hundred sixty-one.

62 The bureau of employment programs, by its com-
63 missioner, is designated the agent of this state for the
64 purpose of complying with and administering chapter
65 three of Title III of an act of Congress entitled "An act
66 to promote the general welfare, foreign policy, and
67 security of the United States through international
68 trade agreements and through adjustment assistance
69 to domestic industry, agriculture, and labor, and for
70 other purposes," approved the eleventh day of Octo-
71 ber, one thousand nine hundred sixty-two.

72 The bureau of employment programs, by its com-
73 missioner, is designated the agent of this state for the

74 purpose of complying with and administering an act of
75 Congress entitled "An act to provide for the establish-
76 ment of a temporary program of extended unemploy-
77 ment compensation, to provide for a temporary
78 increase in the rate of the federal unemployment tax,
79 and for other purposes," approved the third day of
80 January, one thousand nine hundred sixty-one.

81 The bureau of employment programs, by its com-
82 missioner, is also designated the agent of this state for
83 the purpose of complying with and administering
84 other programs of the United States government such
85 as the foregoing.

86 The commissioner of the bureau of employment
87 programs is designated as the officer of this state for
88 the purpose of complying with and administering the
89 tasks assigned to the bureau of employment programs
90 pursuant to section six, article two-b, chapter eighteen
91 of this code relating to the area vocational educational
92 program of this state.

93 The commissioner is also authorized to apply for an
94 advance to the unemployment compensation fund in
95 accordance with the conditions specified in Title XII of
96 the "Social Security Act," as amended, in order to
97 secure to this state and its citizens the advantages
98 available under the provisions of that title.

99 In the administration of this chapter the commis-
100 sioner shall cooperate with the United States depart-
101 ment of labor to the fullest extent consistent with the
102 provisions of this chapter, and shall take such action
103 through the adoption of appropriate rules, regulations,
104 administrative methods and standards, as may be
105 necessary to secure to this state and its citizens all
106 advantages available under the provisions of the
107 "Social Security Act" which relate to unemployment
108 compensation, the "Federal Unemployment Tax Act,"
109 the "Wagner-Peyser Act," and the "Federal-State
110 Extended Unemployment Compensation Act of 1970."

111 In the administration of the provisions in article six-
112 a of this chapter, which are enacted to conform with
113 the requirements of the "Federal-State Extended

114 Unemployment Compensation Act of 1970," the com-
115 missioner shall take such action as may be necessary
116 (i) to ensure that the provisions are so interpreted and
117 applied as to meet the requirements of such federal
118 act, and (ii) to secure this state the full reimbursement
119 of the federal share of extended and regular benefits
120 paid under this chapter which are reimbursable under
121 said federal act.

§21A-2-16a. Work incentive program.

1 The bureau of employment programs, by its com-
2 missioner, is hereby designated the sponsor or agent of
3 the United States department of labor for the estab-
4 lishment and operation within the state of West
5 Virginia of the work incentive program for recipients
6 of aid under Part A of Title IV of the Social Security
7 Act. Such work incentive program is provided for in
8 Part C of said Title IV of said Social Security Act. Part
9 C was enacted by the Ninetieth Congress in Social
10 Security Amendments of 1967, Public Law 90-248,
11 under Section 204 thereof.

12 The commissioner, on behalf of the bureau, may do
13 any and all acts necessary to establish and operate
14 such work incentive program within the state of West
15 Virginia.

16 The commissioner is hereby empowered and autho-
17 rized to enter into agreements with the secretary of
18 labor, or his designee, for the purpose of establishing
19 and operating said work incentive program, or any
20 part thereof, within the state of West Virginia.

§21A-2-23. Veteran's training program.

1 (1) The bureau of employment programs, by its
2 commissioner, is hereby authorized and empowered to
3 establish a training program for qualified veteran
4 medical personnel and former military medical corps-
5 men under the "medex" training program for the
6 training of medical assistants or any similar program.

7 (2) The commissioner, on behalf of the bureau, may
8 do any and all acts necessary to establish and operate
9 such training program within the state of West

10 Virginia.

11 (3) The commissioner is hereby empowered and
12 authorized to receive funds to finance such program
13 from agencies of the United States government,
14 including the department of labor, the veterans
15 administration and the department of health, educa-
16 tion and welfare, and from other appropriate fund
17 sources.

18 (4) In order to assist in the administration of this
19 program, the commissioner shall appoint an advisory
20 committee consisting of not more than nine members
21 which members shall be qualified medical profession-
22 als and shall consist of representatives of state medical
23 departments and the state medical association. This
24 committee shall be advisory to the commissioner and
25 shall determine general guidelines for the develop-
26 ment and promotion of the program.

27 (5) The trainee under this program shall work under
28 the supervision of a licensed physician for a period of
29 one year and shall receive an appropriate training
30 allowance.

**ARTICLE 2A. EMERGENCY EMPLOYMENT SUPPLEMENTAL MATCH-
ING PROGRAM.**

§21A-2A-2. Definitions.

1 For the purposes of this article the following terms
2 shall have the following meanings, unless the context
3 in which they are used clearly indicates otherwise:

4 (1) "Commissioner" means the commissioner of the
5 bureau of employment programs.

6 (2) "Private business" means any nongovernmental
7 business or industry in the private sector which
8 maintains an active, bona fide place of business in this
9 state, is duly qualified to do business in the state, and
10 is in good standing under the laws of this state.

11 (3) "Eligible unemployed person" means any person
12 who is a bona fide resident of this state who has been
13 eligible for unemployment compensation benefits and
14 has received all the benefits available to him or her,

15 and who is not gainfully employed.

16 (4) "Head of household" means any person who: (A)
17 Claims one or more persons, other than the filing
18 taxpayer, as a dependent on his or her federal income
19 tax return; (B) has living in the same household one
20 or more dependents; and (C) receives no income from
21 the household and does not have a spouse or depen-
22 dent living in the same household who is employed in
23 regular full-time employment: *Provided*, That partici-
24 pation in any public assistance program or receipt of
25 public assistance benefits shall not disqualify any
26 person from entitlement to head of household status.

**§21A-2A-4. Notice to private business employers; applica-
tions for prospective employers.**

1 The commissioner, within fifteen days after the
2 effective date of legislation appropriating funds for the
3 implementation of this article, shall publish statewide
4 a notice to private business employers of the opportu-
5 nity to employ eligible unemployed persons as pro-
6 vided for under this article.

7 Any private business, as defined in section two of
8 this article, seeking to employ eligible unemployed
9 persons may make application at any local job service
10 office on forms to be supplied by the commissioner.
11 Such forms shall provide space for a listing of the
12 nature of the employment position available and the
13 minimum experience, skills and educational require-
14 ments therefor. The form shall also provide space for
15 an affidavit by the employer that the employment
16 position to be filled is not being used in lieu of the
17 recall of laid off workers, to replace existing employees
18 or to supplement the compensation paid existing
19 employees. This affidavit shall also contain a statement
20 by the private business employer that there is a
21 reasonable expectation that this employment may
22 continue beyond the end of the six-month reimburse-
23 ment period provided for under this article. At each
24 job service office of the bureau of employment pro-
25 grams, the commissioner shall cause to be compiled a
26 list of job openings under this program. The list shall

27 be available for inspection by any eligible unemployed
 28 person applying for employment hereunder. The
 29 commissioner is authorized to require, prior to appro-
 30 val of an application by an employer, examination of
 31 such records and documents of the employer as the
 32 commissioner may consider necessary to ensure the
 33 correctness and truthfulness of the employer's
 34 affidavit.

**ARTICLE 2B. GROUP INSURANCE PLANS FOR REGULAR
 EMPLOYEES.**

§21A-2B-1. Inaugurating group insurance plans.

1 The commissioner of the bureau of employment
 2 programs is hereby authorized and empowered to
 3 negotiate for, secure and adopt for the regular
 4 employees thereof (other than provisional, temporary,
 5 emergency, and intermittent employees) who are in
 6 employee status with the bureau of employment
 7 programs on and after effective date of this article, a
 8 policy or policies of group insurance written by a
 9 carrier or carriers chartered under the laws of any
 10 state and duly licensed to do business in this state and
 11 covering life; health; hospital care; surgical or medical
 12 diagnosis, care, and treatment; drugs and medicines;
 13 remedial care; other medical supplies and services; or
 14 any other combination of these; and any other policy
 15 or policies of group insurance which in the discretion
 16 of the commissioner bear a reasonable relationship to
 17 the foregoing coverages; but subject to the terms and
 18 conditions of this article.

**§21A-2B-2. Acceptance of grants from United States depart-
 ment of labor, bureau of employment secu-
 rity; state not to pay premiums.**

1 The group insurance plans so authorized to be
 2 established shall be subject to the following terms and
 3 conditions:

4 The commissioner is hereby authorized and empo-
 5 wered to accept on behalf of the regular employees of
 6 the bureau of employment programs, who in writing
 7 agree to participate in any plan of group insurance,

8 granted funds provided by the United States depart-
9 ment of labor, bureau of employment security, to pay
10 the agency's share of the premium cost of said group
11 policy or policies. The state of West Virginia shall not
12 pay, or be liable for the payment of, any portion of
13 said premiums for such group insurance.

§21A-2B-4. Payroll deductions; employee continuing in group after retirement.

1 (a) Whenever the above-described regular
2 employees shall indicate in writing that they have
3 subscribed to any of the aforesaid insurance plans on
4 a group basis, the commissioner of the bureau of
5 employment programs is hereby authorized and
6 empowered to approve periodic premium deductions
7 from the salary payments due such employees as
8 specified in a written assignment furnished the com-
9 missioner by each such employee subscribing to a
10 group insurance plan, which deductions shall be made
11 by the auditor of the state of West Virginia.

12 (b) Upon proper requisition of the commissioner, the
13 auditor shall periodically issue a warrant payable as
14 specified in the requisition, for the total deductions
15 from the salaries of employees participating in any
16 such group insurance plan. To promote efficiency and
17 economy in making deductions and issuing warrants
18 as provided herein, the auditor is authorized to
19 promulgate rules and regulations specifying the form
20 and the time and manner of presentation of requisi-
21 tions issued pursuant to this section.

22 (c) When a participating employee shall retire from
23 his employment, he may, if he so elects and the
24 insurance carrier or carriers agree, remain a member
25 of the group plan by paying the entire premium for
26 the coverage involved.

ARTICLE 2C. VETERANS INCENTIVE PROGRAM.

§21A-2C-6. Program administration.

1 The program established by this article shall be
2 conducted primarily under the direction of the divi-
3 sion of employment service of the bureau of employ-

4 ment programs. Each veteran who qualifies under this
5 article for participation in this program shall be given,
6 upon request, a voucher from a local employment
7 service office certifying that the veteran is eligible for
8 participation in the program described in this article.
9 The voucher shall be in a form prescribed by the
10 commissioner of the bureau of employment programs
11 and the commissioner may conduct such investigations
12 and collect such data as he considers necessary to
13 ensure that each veteran applying for the voucher is
14 actually qualified for participation in the program.

15 When an employer employs a veteran who presents
16 the voucher herein provided for, the employer shall
17 submit the voucher along with basic information to
18 the bureau of employment programs as may be
19 required for participation in this program. Each year,
20 the commissioner of the bureau of employment pro-
21 grams shall certify to the state tax commissioner a list
22 of employers who may be qualified to receive a tax
23 credit under this program. In order to receive the
24 appropriate tax credit, an employer must file for the
25 tax credit provided for under this article as required
26 by section forty-two, article twenty-one, chapter
27 eleven of this code or by section twelve, article
28 twenty-four, chapter eleven of this code.

ARTICLE 5. EMPLOYER COVERAGE AND RESPONSIBILITY.

§21A-5-10a. Optional assessments on employers and employees.

1 (a) On and after the first day of July, one thousand
2 nine hundred eighty-seven, if the commissioner
3 determines for a given projected quarter that the rates
4 established under the provisions of section ten of this
5 article will not result in payments being made to the
6 unemployment compensation fund in an amount
7 sufficient to finance the payment of benefits during
8 such quarter, the commissioner shall certify such fact
9 to the governor, and the governor shall, by executive
10 order, direct the commissioner to establish a level of
11 assessment for employees and employers in accor-
12 dance with the provisions of this section which is

13 sufficient to prevent, to the extent possible, a deficit in
14 the funds available to pay benefits to eligible
15 individuals.

16 (b) Pursuant to such executive order, every
17 employer, contributing and reimbursable, subject to
18 this chapter, shall be required to withhold from all
19 persons in his employment an assessment which shall
20 be in an amount not to exceed fifteen one hundredths
21 (15/100) of one percent of an employee's gross wages,
22 which amount, together with an assessment contrib-
23 uted by the employer in an amount as determined in
24 accordance with the provisions of subsection (c) of this
25 section, except for reimbursable employers who shall
26 not be assessed, shall be paid to the division of bureau
27 of employment programs on a form prescribed by the
28 commissioner, at the same time and under the same
29 conditions as the quarterly contribution payments
30 required under the provisions of section seven, article
31 five, chapter twenty-one-a of this code. The commis-
32 sioner shall have the right to collect any delinquent
33 assessments under this section in the same manner as
34 provided for in section sixteen, article five, chapter
35 twenty-one-a of this code; and in addition, any delin-
36 quency hereunder shall bear interest as set forth in
37 section seventeen, article five, chapter twenty-one-a of
38 this code.

39 (c) The commissioner shall establish the exact
40 amounts of the employers' and employees' assess-
41 ments at a level sufficient to generate the revenues
42 needed to prevent a deficit which would otherwise
43 result from the payment of benefits to eligible individ-
44 uals, subject only to the limitation established in the
45 preceding subsection (b) of this section. After deter-
46 mining the level of assessment on the gross wages of
47 employees, the commissioner shall determine a rate of
48 assessment to be imposed upon employers, except
49 reimbursable employers, which rate shall be expressed
50 as a percentage of wages as defined in section three,
51 article one of this chapter, and which is sufficient to
52 cause the total statewide assessment on such employ-
53 ers to equal the total statewide assessment imposed

54 upon employees.

55 Notwithstanding any other provision of this section
56 to the contrary, the solvency assessments on employ-
57 ers and employees established by this section hereby
58 terminate on the first day of April, one thousand nine
59 hundred ninety.

§21A-5-16. Collection of payments.

1 (1) The commissioner in the name of the state shall
2 commence a civil action against an employer who,
3 after due notice, defaults in any payment or interest
4 thereon. If judgment is against the employer he shall
5 pay the costs of the action. Civil actions under this
6 section shall be given preference on the calendar of
7 the court over all other civil actions except petitions
8 for judicial review under article seven of this chapter
9 and cases arising under the workers' compensation
10 law.

11 (2) A payment and interest thereon due and unpaid
12 under this chapter shall be a debt due the state in
13 favor of the commissioner. It shall be a personal
14 obligation of the employer and shall, in addition
15 thereto, be a lien, enforceable by suit in equity, upon
16 all the property of the employer: *Provided*, That no
17 such lien shall be enforceable as against a purchaser
18 (including lien creditor) of real estate or personal
19 property for a valuable consideration, without notice,
20 unless docketed as provided in chapter ninety-nine,
21 acts of the Legislature, regular session, one thousand
22 nine hundred forty-three.

23 (3) In addition to all other civil remedies prescribed
24 herein the commissioner may in the name of the state
25 distrain upon any personal property, including intang-
26 ibles, of any employer delinquent for any payment
27 and interest thereon. If the commissioner has good
28 reason to believe that such property or a substantial
29 portion thereof is about to be removed from the
30 county in which it is situated, he may likewise distrain
31 in the name of the state before such delinquency
32 occurs. For such purpose, the commissioner may
33 require the services of a sheriff of any county in the

34 state in levying such distress in the county in which
35 such sheriff is an officer and in which such personal
36 property is situated. A sheriff so collecting any pay-
37 ments and interest thereon shall be entitled to such
38 compensation as is provided by law for his services in
39 the levy and enforcement of executions.

40 (4) In case a business subject to the payments and
41 interest thereon imposed under this chapter shall be
42 operated in connection with a receivership or insol-
43 vency proceeding in any state court in this state, the
44 court under whose direction such business is operated
45 shall, by the entry of a proper order or decree in the
46 cause, make provision, so far as the assets in adminis-
47 tration will permit, for the regular payment of such
48 payments as the same become due.

49 (5) The secretary of state of this state shall withhold
50 the issuance of any certificate of dissolution or with-
51 drawal in the case of any corporation organized under
52 the laws of this state, or organized under the laws of
53 another state and admitted to do business in this state,
54 until notified by the commissioner that all payments
55 and interest thereon against any such corporation
56 which is an employer under this chapter have been
57 paid or that provision satisfactory to the commissioner
58 has been made for payment.

59 (6) In any case where an employer defaults in
60 payments, or interest thereon, for as many as two
61 calendar quarters, which quarters need not be consec-
62 utive, and remains delinquent after due notice, and
63 the commissioner has been unable to collect such
64 payments by any of the other civil remedies pre-
65 scribed herein, the commissioner may bring action in
66 the circuit court of Kanawha county to enjoin such
67 employer from continuing to carry on the business in
68 which such liability was incurred: *Provided*, That the
69 commissioner may as an alternative to this action
70 require such delinquent employer to file a bond in the
71 form prescribed by the commissioner with satisfactory
72 surety in an amount not less than fifty percent more
73 than the tax due.

74 (7) All state, county, district and municipal officers
75 and agents making contracts on behalf of the state of
76 West Virginia or any political subdivision thereof shall
77 withhold payment in the final settlement of such
78 contracts until the receipt of a certificate from the
79 commissioner to the effect that all payments and
80 interest thereon accrued against the contractor under
81 this chapter have been paid or that provisions satisfac-
82 tory to the commissioner have been made for pay-
83 ment. Any official violating this section shall be guilty
84 of a misdemeanor, and, on conviction thereof shall be
85 fined not more than one thousand dollars or impri-
86 soned not exceeding one year in the county jail, or
87 shall be subject to both such fine and imprisonment,
88 in the discretion of the court.

**§21A-5-17b. Comity in collection of past-due payments and
overpayments.**

1 The courts of this state shall recognize and enforce
2 liabilities for unemployment contributions imposed by
3 other states which extend a like comity to this state.
4 The commissioner in the name of this state is hereby
5 empowered to sue in the courts of any other jurisdic-
6 tion which extends such comity, to collect unemploy-
7 ment contributions and interest due this state. The
8 officials of other states which by statute or otherwise
9 extend a like comity to this state may sue in the courts
10 of this state, to collect for such contributions and
11 interest and penalties if any, due such state; in any
12 such case the commissioner of the bureau of employ-
13 ment programs of this state may through his legal
14 assistant or assistants institute and conduct such suit
15 for such other state.

16 Notwithstanding any other provisions of this chap-
17 ter, the commissioner may recover an overpayment of
18 benefits paid to any individual under this state or
19 another state law or under an unemployment benefit
20 program of the United States.

ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.

§21A-6-9. Place of payment.

1 Benefits shall be paid through employment offices
2 or, if the commissioner by rules so prescribes, through
3 the bureau of employment programs' offices, in
4 accordance with such regulations as the commissioner
5 shall prescribe.

ARTICLE 7. CLAIM PROCEDURE.

§21A-7-23. Trial; preference on calendar.

1 Except as limited by section twenty-one of this
2 article, a decision of the board taken to the circuit
3 court of Kanawha county for judicial review shall be
4 tried as any other civil action: *Provided*, That such
5 actions shall have preference on the calendar of the
6 court over all other civil actions, except cases arising
7 under the workers' compensation law.

ARTICLE 10. GENERAL PROVISIONS.

**§21A-10-11. Requiring information; use of information; libel
and slander actions prohibited.**

1 (a) The commissioner may require an employing
2 unit to provide sworn or unsworn reports concerning:

3 (1) The number of individuals in its employ.

4 (2) Individually their hours of labor.

5 (3) Individually the rate and amount of wages.

6 (4) Such other information as is reasonably con-
7 nected with the administration of this chapter.

8 (b) Information thus obtained shall not be published
9 or be open to public inspection so as to reveal the
10 identity of the employing unit or the individual.

11 (c) Notwithstanding the provisions of subsection (b)
12 of this section, the commissioner may provide infor-
13 mation thus obtained to the following governmental
14 entities for purposes consistent with state and federal
15 laws:

16 (1) The United States department of agriculture;

17 (2) The state agency responsible for enforcement of
18 the medicaid program under Title Nineteen of the
19 Social Security Act;

20 (3) The United States department of health and
21 human services or any state or federal program
22 operating and approved under title one, title two, title
23 ten, title fourteen or title sixteen of the Social Security
24 Act;

25 (4) Those agencies of state government responsible
26 for economic and community development; secondary,
27 post-secondary and vocational education; vocational
28 rehabilitation, employment and training, including,
29 but not limited to, the administration of the perkins
30 act and the job training and partnership act;

31 (5) The tax division, but only for the purposes of
32 collection and enforcement;

33 (6) The division of labor for purposes of enforcing
34 the wage bond provisions of chapter twenty-one of this
35 code;

36 (7) Any agency of this or any other state, or any
37 federal agency, charged with the administration of an
38 unemployment compensation law or the maintenance
39 of a system of public employment offices;

40 (8) Any claimant for benefits or any other interested
41 party to the extent necessary for the proper presenta-
42 tion or defense of a claim; and

43 (9) The division of workers' compensation for pur-
44 poses of collection and enforcement: *Provided*, That
45 the division of workers' compensation shall provide
46 similar information to the other divisions of the
47 bureau of employment programs.

48 (d) The agencies or organizations which receive
49 information under subsection (c) shall agree that such
50 information shall remain confidential so as not to
51 reveal the identity of the employing unit or the
52 individual consistent with the provisions of this
53 chapter.

54 (e) The commissioner may, before furnishing any

55 information permitted under this section, require that
56 those who request the information shall reimburse the
57 division of employment security for any cost associated
58 therewith.

59 (f) The commissioner may refuse to provide any
60 information requested under this section if the agency
61 or organization making the request does not certify
62 that it will comply with the state and federal law
63 protecting the confidentiality of such information.

64 A person who violates the provisions of this section
65 shall be guilty of a misdemeanor, and, upon conviction
66 thereof, shall be fined not less than twenty dollars nor
67 more than two hundred dollars, or imprisoned not
68 longer than ninety days, or both.

69 No action for slander or libel, either criminal or
70 civil, shall be predicated upon information furnished
71 by any employer or any employee to the commissioner
72 in connection with the administration of any of the
73 provisions of this chapter.

**§21A-10-19. Disclosure of information to child support
agencies.**

1 (1) The bureau of employment programs shall
2 disclose, upon request, to officers or employees of any
3 state or local child support enforcement agency, to
4 employees of the secretary of health and human
5 services, any wage and benefit information with
6 respect to an identified individual which is contained
7 in its records.

8 The term "state or local child support enforcement
9 agency" means any agency of a state or political
10 subdivision thereof operating pursuant to a plan
11 described in sections 453 and 454 of the social security
12 act, which has been approved by the secretary of
13 health and human services under Part D, Title IV of
14 the social security act.

15 (2) The requesting agency shall agree that such
16 information is to be used only for the purpose of
17 establishing and collecting child support obligations
18 from, and locating, individuals owing such obligations

19 which are being enforced pursuant to a plan described
20 in sections 453 and 454 of the social security act which
21 has been approved by the secretary of health and
22 human services under Part D, Title IV of the social
23 security act.

24 (3) The information shall not be released unless the
25 requesting agency agrees to reimburse the costs
26 involved for furnishing such information.

27 (4) In addition to the requirements of this section, all
28 other requirements with respect to confidentiality of
29 information obtained in the administration of this
30 chapter and the sanctions imposed on improper disclo-
31 sure shall apply to the use of such information by
32 officers and employees of child support agencies.

§21A-10-20. Disclosure of information to food stamp agencies.

1 (1) The bureau of employment programs shall
2 disclose, upon request, to officers and employees of the
3 United States department of agriculture and any state
4 food stamp agency, with respect to an identified
5 individual, any of the following information which is
6 contained in its records:

7 (a) Wage information;

8 (b) Whether the individual is receiving, has received,
9 or has made application for unemployment compensa-
10 tion and the amount of any compensation being
11 received or to be received by such individual;

12 (c) The current or most recent home address of the
13 individual; and

14 (d) Whether the individual has refused an offer of
15 employment and if so, a description of the employ-
16 ment offered and the terms, conditions and rate of pay
17 therefor.

18 (2) The term "state food stamp agency" means any
19 agency described in section (3) (n) (1) of the Food
20 Stamp Act of 1977 which administers the food stamp
21 program established under such act.

22 (3) The requesting agency shall agree that such

23 information shall be used only for purposes of deter-
24 mining the applicant's eligibility for benefits, or the
25 amount of benefits, under the food stamp program
26 established under the Food Stamp Act of 1977.

27 (4) In addition to the requirements of this section, all
28 other requirements with respect to confidentiality of
29 information obtained in the administration of this
30 chapter and the sanctions imposed for improper
31 disclosure of information obtained in the administra-
32 tion of this act shall apply to the use of such informa-
33 tion by the officers and employees of any food stamp
34 agency or the United States department of agriculture.

**§21A-10-22. Disclosure of information to department of
housing and urban development.**

1 (1) The bureau of employment programs shall
2 disclose, upon request, to officers and employees of the
3 department of housing and urban development and to
4 representatives of public housing agencies, any wage
5 and benefit information with respect to an identified
6 individual which is contained in its records. The term
7 "public housing agencies" means any agency described
8 in section 3 (b)(6) of the United States Housing Act of
9 1937.

10 (2) The requesting agency shall agree that such
11 information is to be used only for the purpose of
12 determining an individual's eligibility for benefits, or
13 the amount of benefits under any housing assistance
14 program of the department of housing and urban
15 development.

16 (3) The information shall not be released unless the
17 requesting agency agrees to reimburse the costs
18 involved for furnishing such information.

19 (4) In addition to the requirements of this section, all
20 other requirements with respect to confidentiality of
21 information obtained in the administration of this
22 chapter and the sanctions imposed on improper disclo-
23 sure shall apply to the use of such information by
24 officers and employees of any public housing agency
25 or the department of housing and urban development.

CHAPTER 23. WORKERS' COMPENSATION.**ARTICLE 1. GENERAL ADMINISTRATIVE PROVISIONS.****§23-1-1. Commissioner of the bureau of employment programs; official seal; legal services.**

1 The commissioner of the bureau of employment
2 programs appointed under the provisions of section
3 one, article two of chapter twenty-one-a, has the sole
4 responsibility for the administration of this chapter. In
5 the administration of this chapter, the commissioner
6 shall exercise all the powers and duties described in
7 this chapter and in article two of chapter twenty-one-
8 a of this code. The commissioner shall have an official
9 seal for the authentication of orders and proceedings,
10 upon which seal shall be engraved the words "West
11 Virginia Commissioner of Employment Programs"
12 and such other design as the commissioner may
13 prescribe. The courts in this state shall take judicial
14 notice of the seal of the commissioner and in all cases
15 copies of orders, proceedings or records in the office of
16 the West Virginia commissioner of employment pro-
17 grams shall be equal to the original in evidence.

18 The attorney general shall perform all legal services
19 required by the commissioner under the provisions of
20 this chapter: *Provided*, That in any case in which an
21 application for review is prosecuted from any final
22 decision of the workers' compensation appeal board to
23 the supreme court of appeals, as provided by section
24 four, article five of this chapter, or in any court
25 proceeding before the workers' compensation appeal
26 board, or in any proceedings before the office of
27 judges, in which such representation shall appear to
28 the commissioner to be desirable, the commissioner
29 may designate a regular employee of this office,
30 qualified to practice before such court to represent the
31 commissioner upon such appeal or proceeding, and in
32 no case shall the person so appearing for the commis-
33 sioner before the court receive remuneration therefor
34 other than such person's regular salary.

§23-1-2. Payment of salaries and expenses — Generally.

1 All expenses peculiar to the administration of this
2 chapter, and, when on official business, the traveling
3 and incidental expenses of the commissioner and
4 salaries or other compensation, traveling and other
5 expenses of all officers or employees of the commis-
6 sioner, and all expenses for furniture, books, maps,
7 stationery, appliances, property of all kinds and dues
8 for membership in all organizations pertaining to
9 workers' compensation or safety in which the commis-
10 sioner considers it advisable to maintain membership,
11 shall be paid out of the workers' compensation fund.

**§23-1-3. Payment of salaries and expenses — Manner;
limitation.**

1 All payments of salaries and expenses in the admin-
2 istration of this chapter shall be made by the state
3 treasurer upon requisitions signed by the commis-
4 sioner, directed to the auditor of the state, who shall
5 draw his warrant therefor, and any such payment
6 shall be charged to the workers' compensation fund:
7 *Provided*, That the total charges against such fund
8 under this section for any one fiscal year shall not
9 exceed the amount appropriated therefor.

**§23-1-6. Employment of secretary and other assistants;
compensation and travel expenses thereof.**

1 The commissioner may employ a secretary, actuary,
2 accountants, inspectors, examiners, experts, clerks,
3 stenographers and other assistants, and fix their
4 compensation, which shall be paid as provided in
5 sections two and three of this article. The commis-
6 sioner, secretary, actuaries, accountants, inspectors,
7 examiners, experts, clerks, stenographers and other
8 assistants who may be employed shall be entitled to
9 receive from the workers' compensation fund their
10 actual and necessary expense while traveling on
11 business of the commissioner. Such expenses shall be
12 itemized and sworn to by the person who incurred the
13 expense, and shall be subject to the approval of the
14 commissioner.

§23-1-10. Fee of officer serving subpoena; fees and mileage of witnesses.

1 Each officer who serves such subpoenas shall receive
 2 the same fee as a sheriff, and each witness who
 3 appears in obedience to a subpoena before the com-
 4 missioner, or an inspector, or an examiner, shall
 5 receive for his attendance the fees and mileage
 6 provided for witnesses in civil cases in the circuit
 7 court, which shall be audited and paid out of the
 8 workers' compensation fund in the same manner as
 9 other expenses are audited and paid, if such witness
 10 was subpoenaed without the request of either claimant
 11 or employer at the instance of the commissioner or an
 12 inspector or an examiner. The witness fees and
 13 mileage of any witness subpoenaed by, or at the
 14 instance of, either claimant or employer shall be paid
 15 by the party who subpoenas such witness.

§23-1-14. Blank forms.

1 The commissioner shall prepare and furnish free of
 2 cost blank forms (and provide in his rules for their
 3 distribution so that the same may be readily available)
 4 of applications for benefits for compensation from the
 5 workers' compensation fund, or directly from employ-
 6 ers, as the case may be, notices to employers, proofs of
 7 injury or death, of medical attendance, of employment
 8 and wage earnings, and such other blanks as may be
 9 deemed proper and advisable, and it shall be the duty
 10 of employers to constantly keep on hand a sufficient
 11 supply of such blanks.

§23-1-16. Omission to subscribe to workers' compensation fund or to perform duty required by commissioner; perjury.

1 Any person, firm or corporation which is required
 2 by the provisions of this chapter to subscribe to the
 3 workers' compensation fund, and which knowingly
 4 fails to subscribe thereto, or which knowingly fails to
 5 make any report or perform any other act or duty
 6 required by the commissioner within the time speci-
 7 fied by the commissioner, shall be guilty of a misde-
 8 meanor, and, upon conviction thereof, shall be fined

9 not more than five thousand dollars. Any person or
10 firm, or the officer of any corporation, who knowingly
11 makes a false report or statement under oath, affidavit
12 or certification respecting any information required by
13 the commissioner, or who shall knowingly testify
14 falsely in any proceeding before the commissioner,
15 shall be considered guilty of perjury, and, upon
16 conviction thereof, shall be punished as provided by
17 law.

**§23-1-17. Annual report by commissioner and occupational
pneumoconiosis board.**

1 Annually, on or about the fifteenth day of Septem-
2 ber in each year, the commissioner and the occupa-
3 tional pneumoconiosis board shall make a report as of
4 the thirtieth day of June addressed to the governor,
5 which shall include a statement of the causes of the
6 injuries for which the awards were made, an explana-
7 tion of the diagnostic techniques used by the occupa-
8 tional pneumoconiosis board and all examining physi-
9 cians to determine the presence of disease, the extent
10 of impairment attributable thereto, a description of
11 the scientific support for such techniques, and a
12 summary of public and private research relating to
13 problems and prevention of occupational diseases. The
14 report shall include a detailed statement of all disbur-
15 sements, and the condition of the fund, together with
16 any specific recommendations for improvements in
17 the workers' compensation law and for more efficient
18 and responsive administration thereof, which the
19 commissioner may consider appropriate. Copies of all
20 annual reports shall be filed with the secretary of state
21 and shall be made available to the Legislature and to
22 the public at large.

**§23-1-18. Compensation programs advisory board created;
membership; appointment; terms; meetings;
duties; annual reports.**

1 There is hereby created an advisory board to the
2 commissioner of the bureau of employment programs
3 to be known as "the compensation programs advisory
4 board".

5 The compensation programs advisory board consists
6 of thirteen members. The commissioner of the bureau
7 of employment programs is an ex officio member of
8 the board whose term as such member continues for
9 that period in which he holds that office. The other
10 twelve members of the board shall be appointed by
11 the governor with three members representing
12 employees subject to this chapter and chapter twenty-
13 one-a of this code, three members representing
14 employers subject to this chapter and chapter twenty-
15 one-a of this code, three members representing pro-
16 viders of medical services to such employees for which
17 such providers are compensated under the provisions
18 of this chapter, and three members representing the
19 citizens of this state. The term of each member except
20 the commissioner shall be three years. Of the persons
21 originally appointed, four members, including one
22 member of each of the four representative groups,
23 shall be designated to serve for terms of one year each,
24 four members, including one member of each of the
25 four representative groups, shall be designated to
26 serve for terms of two years each and four members,
27 including one member of each of the four representa-
28 tive groups, shall be desingated to serve for a term of
29 three years each. The terms of all the initially
30 appointed members of the board shall begin on the
31 first day of July, one thousand nine hundred ninety-
32 one. Upon the expiration of each of such initial
33 appointments the term of each new appointee shall be
34 three years, but any person appointed to fill a vacancy
35 occurring prior to the expiration of the term for which
36 his predecessor was appointed shall be appointed only
37 for the remainder of such term. Each member shall
38 serve until the appointment and qualification of his
39 successor. Members shall be eligible for reappoint-
40 ment. No more than seven of twelve members
41 appointed by the governor may be of the same polit-
42 ical party.

43 The commissioner shall serve as chairman of the
44 board. The other twelve members shall select one of
45 their number to serve as vice chairman of the board
46 and to preside in the absence of the commissioner.

47 Meetings may be held at any time at the call of the
48 commissioner. The commissioner shall call a meeting
49 whenever a majority of the other members of the
50 board request the commissioner to do so. At least one
51 meeting shall be held annually.

52 The purpose of the board and the duty of its
53 members are to advise the commissioner on matters
54 pertinent to the administration of the workers' com-
55 pensation program and the unemployment compensa-
56 tion program, and such other matters as the commis-
57 sioner may desire. The board shall consider any
58 matter brought before it by the commissioner or any
59 appointed member and may consider any matter
60 referred to it by a person not a member of the board.
61 At the conclusion of its consideration of any proposal
62 the board shall make its recommendation to the
63 commissioner. The commissioner is not bound by any
64 recommendation of the board. The board also may
65 formulate general or long-range plans for improve-
66 ments in the administration of the programs for the
67 consideration of the commissioner.

68 By the second Wednesday of January of each year
69 the board shall prepare and deliver to the commis-
70 sioner and to the Legislature a report of all the
71 matters it considered, recommendations it made and
72 plans it formulated during the preceding calendar
73 year. The report shall include any recommendations it
74 may have for changes in the law which would be
75 necessary to implement any of its administrative
76 recommendations.

**ARTICLE 2. EMPLOYERS AND EMPLOYEES SUBJECT TO CHAPTER;
EXTRA TERRITORIAL COVERAGE.**

§23-2-1c. Extraterritorial coverage.

1 Whenever, with respect to an employee of an
2 employer who is a subscriber in good standing to the
3 workers' compensation fund or an employer who has
4 elected to pay compensation directly, as provided in
5 section nine of this article, there is a possibility of
6 conflict with respect to the application of workers'
7 compensation laws because the contract of employ-

8 ment is entered into and all or some portion of the
9 work is performed or is to be performed in a state or
10 states other than this state, the employer and the
11 employee may agree to be bound by the laws of this
12 state or by the laws of such other state in which all or
13 some portion of the work of the employee is to be
14 performed. Such agreement shall be in writing and
15 filed with the commissioner within ten days after
16 execution thereof and shall remain in effect until
17 terminated or modified by agreement of the parties
18 similarly filed. If the parties agree to be bound by the
19 laws of this state, an employee injured within the
20 terms and provisions of this chapter shall be entitled
21 to benefits under this chapter regardless of the situs of
22 the injury or exposure to occupational pneumoconiosis
23 or other occupational disease, and the rights of the
24 employee and his dependents under the laws of this
25 state shall be the exclusive remedy against the
26 employer on account of injury, disease or death in the
27 course of and as a result of the employment.

28 If the parties agree to be bound by the laws of
29 another state and the employer has complied with the
30 laws of that state, the rights of the employee and his
31 dependents under the laws of that state shall be the
32 exclusive remedy against the employer on account of
33 injury, disease or death in the course of and as a result
34 of the employment without regard to the situs of the
35 injury or exposure to occupational pneumoconiosis or
36 other occupational disease.

37 If the employee is a resident of a state other than
38 this state and is subject to the terms and provisions of
39 the workers' compensation law or similar laws of a
40 state other than this state, such employee and his
41 dependents shall not be entitled to the benefits
42 payable under this chapter on account of injury,
43 disease or death in the course of and as a result of
44 employment temporarily within this state, and the
45 rights of such employee and his dependents under the
46 laws of such other state shall be the exclusive remedy
47 against the employer on account of such injury,
48 disease or death.

49 If any employee or his dependents be awarded
50 workers' compensation benefits or recover damages
51 from the employer under the laws of another state for
52 an injury received in the course of and resulting from
53 the employment, the amount so awarded or recovered,
54 whether paid or to be paid in future installments, shall
55 be credited against the amount of any benefits payable
56 under this chapter for the same injury.

§23-2-6. Exemption of contributing employers from liability.

1 Any employer subject to this chapter who shall
2 subscribe and pay into the workers' compensation
3 fund the premiums provided by this chapter or who
4 shall elect to make direct payments of compensation as
5 herein provided, shall not be liable to respond in
6 damages at common law or by statute for the injury
7 or death of any employee, however occurring, after so
8 subscribing or electing, and during any period in
9 which such employer shall not be in default in the
10 payment of such premiums or direct payments and
11 shall have complied fully with all other provisions of
12 this chapter. The continuation in the service of such
13 employer shall be considered a waiver by the
14 employee and by the parents of any minor employee
15 of the right of action as aforesaid, which the employee
16 or his or her parents would otherwise have: *Provided*,
17 That in case of employers not required by this chapter
18 to subscribe and pay premiums into the workers'
19 compensation fund, the injured employee has
20 remained in such employer's service with notice that
21 his employer has elected to pay into the workers'
22 compensation fund the premiums provided by this
23 chapter, or has elected to make direct payments as
24 aforesaid.

**§23-2-8. Liability of employer electing not to pay or
defaulting in payment of premiums; certain
common-law defenses prohibited; exceptions.**

1 All employers required by this chapter to subscribe
2 to and pay premiums into the workers' compensation
3 fund, except the state of West Virginia, the govern-
4 mental agencies or departments created by it, and

5 municipalities and political subdivisions of the state,
 6 and who do not subscribe to and pay premiums into
 7 the workers' compensation fund as required by this
 8 chapter and have not elected to pay individually and
 9 directly or from benefit funds compensation and
 10 expenses to injured employees or fatally injured
 11 employees' dependents under the provisions of section
 12 nine of this article, or having so subscribed or elected,
 13 shall be in default in the payment of same, or not
 14 having otherwise fully complied with the provisions of
 15 section five or section nine of this article, shall be
 16 liable to their employees (within the meaning of this
 17 article) for all damages suffered by reason of personal
 18 injuries sustained in the course of employment caused
 19 by the wrongful act, neglect or default of the employer
 20 or any of the employer's officers, agents or employees
 21 while acting within the scope of their employment and
 22 in the course of their employment and also to the
 23 personal representatives of such employees where
 24 death results from such personal injuries, and in any
 25 action by any such employee or personal representa-
 26 tive thereof, such defendant shall not avail himself of
 27 the following common-law defenses: The defense of
 28 the fellow-servant rule; the defense of the assumption
 29 of risk; or the defense of contributory negligence; and
 30 further shall not avail himself of any defense that the
 31 negligence in question was that of someone whose
 32 duties are prescribed by statute: *Provided*, That such
 33 provision depriving a defendant employer of certain
 34 common-law defenses under the circumstances there-
 35 in set forth shall not apply to an action brought against
 36 a county court, board of education, municipality, or
 37 other political subdivision of the state or against any
 38 employer not required to cover his employees under
 39 the provisions of this chapter.

§23-2-11. Partial invalidity of chapter.

1 If any employer shall be adjudicated to be outside
 2 the lawful scope of this chapter, the chapter shall not
 3 apply to him or his employee; or if any employee shall
 4 be adjudicated to be outside the lawful scope of this
 5 chapter, because of remoteness of his work from the

6 hazard of his employer's work, any such adjudication
 7 shall not impair the validity of this chapter in other
 8 respects, and in every such case an accounting in
 9 accordance with the justice of the case shall be had of
 10 moneys received. If the provisions of this chapter for
 11 the creation of the workers' compensation fund, or the
 12 provisions of this chapter making the compensation to
 13 the employee provided in it exclusive of any other
 14 remedy on the part of the employee, shall be held
 15 invalid, the entire chapter shall be thereby invalidated
 16 and an accounting according to the justice of the case
 17 shall be had of money received. In other respects an
 18 adjudication of invalidity of any part of this chapter
 19 shall not affect the validity of the chapter as a whole
 20 or any part thereof.

ARTICLE 3. WORKERS' COMPENSATION FUND.

§23-3-1a. Transfer of silicosis fund to workers' compensation fund; claims under former article six.

1 Ten percent of the funds collected and held as the
 2 workers' compensation silicosis fund under the provi-
 3 sions of former article six of this chapter, which article
 4 is by this act repealed, shall be transferred to and
 5 made a part of the workers' compensation fund
 6 provided for in the preceding section, and the balance
 7 thereof shall be refunded to the subscribers thereto in
 8 proportion to their contributions to the same under
 9 the provisions of said former article six; and all awards
 10 heretofore made under the provisions of article six
 11 shall be paid from the workers' compensation fund, or
 12 directly by the employer, under order of the commis-
 13 sioner, if the employer has elected to carry his own
 14 risk under the provisions of section nine, article two of
 15 this chapter: *Provided*, That notwithstanding the
 16 repeal of said article six, the provisions thereof shall
 17 be applicable in all cases of the disease or death,
 18 because of silicosis, or an employee whose last expo-
 19 sure to silicon dioxide dust has occurred prior to the
 20 effective date of this section, whose claim or applica-
 21 tion for compensation benefits for silicosis, or that of
 22 his dependent, has not been filed prior to said date,
 23 and whose employer, at the time of such exposure,

24 was subject to the provisions of said article six.

§23-3-2. Custody, investment and disbursement of fund.

1 The state treasurer shall be the custodian of the
2 workers' compensation fund and all premiums, depos-
3 its or other moneys paid thereto shall be deposited in
4 the state treasury to the credit of the workers'
5 compensation fund in the manner prescribed in
6 section five, article two of this chapter. The workers'
7 compensation fund shall consist of the premiums and
8 deposits provided by this chapter and all interest
9 accruing thereto upon investments and deposits in the
10 state depositories, and any other moneys or funds
11 which may be given, appropriated or otherwise desig-
12 nated or accruing thereto. Said fund shall be a sepa-
13 rate and distinct fund and shall be so kept upon the
14 books and records of the auditor and treasurer and the
15 state depositories in which any part is deposited.
16 Disbursements therefrom shall be made upon requis-
17 itions signed by the secretary and approved by the
18 commissioner of the bureau of employment programs.

19 The board of investments shall have authority to
20 invest the surplus, reserve or other moneys belonging
21 to the fund in the bonds of the United States, notes or
22 bonds of this state, bridge revenue bonds of this state
23 issued prior to the first day of January, one thousand
24 nine hundred thirty-nine, or any bonds issued to
25 refund the same, bonds of any county, city, town,
26 village or school district of the state. No such invest-
27 ment shall be made, nor any investment sold or
28 otherwise disposed of without the concurrence of a
29 majority of all members of the board of investments.
30 It shall be the duty of every county, school district or
31 municipality issuing any bonds, to offer the same in
32 writing to the board of investments, prior to advertis-
33 ing the same for sale, and the board of investments
34 shall, within fifteen days after receipt of such offer,
35 accept the same and purchase such bonds, or any
36 portion thereof at par and accrued interest, or reject
37 such offer. All securities purchased by the board of
38 investments for investment for the workers' compen-
39 sation fund shall be placed in the hands of the state

40 treasurer as the custodian thereof, and it shall be his
41 duty to keep and account for the same as he keeps and
42 accounts for other securities of the state, and to collect
43 the interest thereon as the same becomes due and
44 payable and the principal when the same is due. No
45 notes, bonds or other securities shall be purchased by
46 the board of investments until and unless the attorney
47 general shall investigate the issuance of such notes,
48 bonds or securities and shall give a written opinion to
49 the board that the same have been regularly issued
50 according to the constitution and the laws of this state,
51 which opinion, if such notes, bonds or securities be
52 purchased, shall be filed with the treasurer with such
53 bonds or securities.

§23-3-3. Investment of surplus funds required.

1 Whenever there shall be in the state treasury any
2 funds belonging to the workers' compensation fund
3 not likely, in the opinion of the commissioner, to be
4 required for immediate use, it shall be the duty of the
5 board of investments to invest the same as prescribed
6 in the preceding section. Whenever it may become
7 necessary or expedient to use any of the funds so
8 invested, the board of investments, at the direction of
9 the commissioner, shall collect, sell or otherwise
10 realize upon any investment to the amount considered
11 necessary or expedient to use.

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

**§23-4-1c. Payment of temporary total disability benefits
directly to claimant; payment of medical
benefits; payments of benefits during protest;
right of commissioner to collect payments
improperly made.**

1 (a) In any claim for benefits under this chapter, the
2 commissioner shall determine whether the claimant
3 has sustained a compensable injury within the mean-
4 ing of section one of this article, and he shall enter an
5 order giving all parties immediate notice of such
6 decision. Any party shall have the right to protest the
7 order of the commissioner and obtain an evidentiary
8 hearing as provided in section one, article five of this

9 chapter.

10 (b) Where it appears from the employer's report, or
11 from proper medical evidence, that a compensable
12 injury will result in a disability which will last longer
13 than three days as provided in section five of this
14 article, the commissioner may immediately enter an
15 order commencing the payment of temporary total
16 disability benefits to the claimant in the amounts
17 provided for in sections six and fourteen of this article,
18 and payment of the expenses provided for in sub-
19 division (a), section three of this article, relating to
20 said injury, without waiting for the expiration of the
21 thirty-day period during which objections may be filed
22 to such findings as provided in section one, article five
23 of this chapter. The commissioner shall enter an order
24 commencing the payment of temporary total disability
25 or medical benefits within fifteen days of receipt of
26 either the employee's or employer's report of injury,
27 which is received sooner, and also upon receipt of
28 either a proper physician's report or any other infor-
29 mation necessary for a determination. The commis-
30 sioner shall give to the parties immediate notice of any
31 order granting temporary total disability or medical
32 benefits.

33 (c) The commissioner may enter orders granting
34 temporary total disability benefits upon receipt of
35 medical evidence justifying the payment of such
36 benefits. In no claim shall the commissioner enter an
37 order granting prospective temporary total disability
38 benefits for a period of more than ninety days:
39 *Provided*, That when the commissioner determines
40 that the claimant remains disabled beyond the period
41 specified in the prior order granting temporary total
42 disability benefits, the commissioner shall enter an
43 order continuing the payment of temporary total
44 disability benefits for an additional period not to
45 exceed ninety days, and shall give immediate notice to
46 all parties of such decision.

47 (d) Upon receipt of the first report of injury in
48 claim, the commissioner shall request from the
49 employer or employers any wage information neces-

50 sary for determining the rate of benefits to which the
51 employee is entitled. If an employer does not furnish
52 the commissioner with this information within fifteen
53 days from the date the commissioner received the first
54 report of injury in the case, the employee shall be paid
55 temporary total disability benefits for lost time at the
56 rate the commissioner believes would be justified by
57 the usual rate of pay for the occupation of the injured
58 employee. The commissioner shall adjust the rate of
59 benefits both retroactively and prospectively upon
60 receipt of proper wage information. The commissioner
61 shall have access to all wage information in the
62 possession of any state agency, including wage infor-
63 mation received by the unemployment compensation
64 commission under chapter twenty-one-a of this code,
65 pertinent to such determination.

66 (e) Upon a finding of the commissioner that a
67 claimant who has sustained a previous compensable
68 injury which has been closed by any order of the
69 commissioner, or by the claimant's return to work,
70 suffers further temporary total disability or requires
71 further medical or hospital treatment resulting from
72 the compensable injury, the commissioner shall imme-
73 diately enter an order commencing the payment of
74 temporary total disability benefits to the claimant in
75 the amount provided for in section six and fourteen of
76 this article, and the expenses provided for in subdivi-
77 sion (a), section three of this article, relating to said
78 disability, without waiting for the expiration of the
79 thirty-day period during which objections may be filed
80 to such findings as provided in section one, article five
81 of this chapter. The commissioner shall give immedi-
82 ate notice to the parties of his order.

83 (f) Where the employer is a subscriber to the
84 workers' compensation fund under the provisions of
85 article three of this chapter, and upon the findings
86 aforesaid, the commissioner shall mail all workers'
87 compensation checks paying temporary total disability
88 benefits directly to the claimant and not to the
89 employer for delivery to the claimant.

90 (g) Where the employer has elected to carry his own

91 risk under section nine, article two of this chapter, and
92 upon the findings aforesaid, the commissioner shall
93 immediately issue a pay order directing the employer
94 to pay such amounts as are due the claimant for
95 temporary total disability benefits. A copy of the order
96 shall be sent to the claimant. The self-insured
97 employer shall commence such payments by mailing
98 or delivering the payments directly to the employee
99 within ten days of the date of the receipt of the pay
100 order by the employer. If the self-insured employer
101 believes that his employee is entitled to benefits, he
102 may start payments before receiving a pay order from
103 the commissioner.

104 (h) In the event that an employer files a timely
105 objection to any order of the commissioner with
106 respect to compensability, or any order denying an
107 application for modification with respect to temporary
108 total disability benefits, or with respect to those
109 expenses outlined in subdivision (a), section three of
110 this article, the commissioner shall continue to pay to
111 the claimant such benefits and expenses during the
112 period of such disability. Where it is subsequently
113 found by the commissioner that the claimant was not
114 entitled to receive such temporary total disability
115 benefits or expenses, or any part thereof, so paid, the
116 commissioner shall, when the employer is a subscriber
117 to the fund, credit said employer's account with the
118 amount of the overpayment; and, when the employer
119 has elected to carry its own risk, the commissioner
120 shall refund to such employer the amount of the
121 overpayment. The amounts so credited to a subscriber
122 or repaid to a self insurer shall be charged by the
123 commissioner to the surplus fund created in section
124 one, article three of this chapter.

125 (i) When the employer has protested the compensa-
126 bility or applied for modification of a temporary total
127 disability benefit award or expenses and the final
128 decision in such case determines that the claimant was
129 not entitled to such benefits or expenses, the amount
130 of such benefits or expenses shall be considered
131 overpaid. The commissioner may only recover the

132 amount of such benefits or expenses by withholding,
133 in whole or in part, as determined by the commis-
134 sioner, future permanent partial disability benefits
135 payable to the individual in the same or other claims
136 and credit such amount against the overpayment until
137 it is repaid in full.

138 (j) In the event that the commissioner finds that
139 based upon the employer's report of injury, the claim
140 is not compensable, the commissioner shall provide a
141 copy of such employer's report in addition to the order
142 denying the claim.

**§23-4-2. Disbursement where injury is self-inflicted or
intentionally caused by employer; legislative
declarations and findings; "deliberate inten-
tion" defined.**

1 (a) Notwithstanding anything hereinbefore or here-
2 inafter contained, no employee or dependent of any
3 employee shall be entitled to receive any sum from
4 the workers' compensation fund, or to direct compen-
5 sation from any employer making the election and
6 receiving the permission mentioned in section nine,
7 article two of this chapter, or otherwise under the
8 provisions of this chapter, on account of any personal
9 injury to or death to any employee caused by a self-
10 inflicted injury or the intoxication of such employee.
11 For the purpose of this chapter, the commissioner may
12 cooperate with the division of energy and the state
13 department of labor in promoting general safety
14 programs and in formulating rules and regulations to
15 govern hazardous employments.

16 (b) If injury or death result to any employee from
17 the deliberate intention of his employer to produce
18 such injury or death, the employee, the widow,
19 widower, child or dependent of the employee shall
20 have the privilege to take under this chapter, and shall
21 also have cause of action against the employer, as if
22 this chapter had not been enacted, for any excess of
23 damages over the amount received or receivable
24 under this chapter.

25 (c) (1) It is declared that enactment of this chapter

26 and the establishment of the workers' compensation
27 system in this chapter was and is intended to remove
28 from the common law tort system all disputes between
29 or among employers and employees regarding the
30 compensation to be received for injury or death to an
31 employee except as herein expressly provided, and to
32 establish a system which compensates even though the
33 injury or death of an employee may be caused by his
34 own fault or the fault of a co-employee; that the
35 immunity established in sections six and six-a, article
36 two of this chapter, is an essential aspect of this
37 workers' compensation system; that the intent of the
38 Legislature in providing immunity from common law
39 suit was and is to protect those so immunized from
40 litigation outside the workers' compensation system
41 except as herein expressly provided; that, in enacting
42 the immunity provisions of this chapter, the Legisla-
43 ture intended to create a legislative standard for loss
44 of that immunity of more narrow application and
45 containing more specific mandatory elements than the
46 common law tort system concept and standard of
47 willful, wanton and reckless misconduct; and that it
48 was and is the legislative intent to promote prompt
49 judicial resolution of the question of whether a suit
50 prosecuted under the asserted authority of this section
51 is or is not prohibited by the immunity granted under
52 this chapter.

53 (2) The immunity from suit provided under this
54 section and under section six-a, article two of this
55 chapter, may be lost only if the employer or person
56 against whom liability is asserted acted with "deliber-
57 ate intention". This requirement may be satisfied only
58 if:

59 (i) It is proved that such employer or person against
60 whom liability is asserted acted with a consciously,
61 subjectively and deliberately formed intention to
62 produce the specific result of injury or death to an
63 employee. This standard requires a showing of an
64 actual, specific intent and may not be satisfied by
65 allegation or proof of (A) conduct which produces a
66 result that was not specifically intended; (B) conduct

67 which constitutes negligence, no matter how gross or
68 aggravated; or (C) willful, wanton or reckless miscon-
69 duct; or

70 (ii) The trier of fact determines, either through
71 specific findings of fact made by the court in a trial
72 without a jury, or through special interrogatories to
73 the jury in a jury trial, that all of the following facts
74 are proven:

75 (A) That a specific unsafe working condition existed
76 in the workplace which presented a high degree of
77 risk and a strong probability of serious injury or death;

78 (B) That the employer had a subjective realization
79 and an appreciation of the existence of such specific
80 unsafe working condition and of the high degree of
81 risk and the strong probability of serious injury or
82 death presented by such specific unsafe working
83 condition;

84 (C) That such specific unsafe working condition was
85 a violation of a state or federal safety statute, rule or
86 regulation, whether cited or not, or of a commonly
87 accepted and well-known safety standard within the
88 industry or business of such employer, which statute,
89 rule, regulation or standard was specifically applicable
90 to the particular work and working condition involved,
91 as contrasted with a statute, rule, regulation or
92 standard generally requiring safe workplaces, equip-
93 ment or working conditions;

94 (D) That notwithstanding the existence of the facts
95 set forth in subparagraphs (A) through (C) hereof,
96 such employer nevertheless thereafter exposed an
97 employee to such specific unsafe working condition
98 intentionally; and

99 (E) That such employee so exposed suffered serious
100 injury or death as a direct and proximate result of
101 such specific unsafe working condition.

102 (iii) In cases alleging liability under the provisions of
103 the preceding paragraph (ii):

104 (A) No punitive or exemplary damages shall be

105 awarded to the employee or other plaintiff;

106 (B) Notwithstanding any other provision of law or
 107 rule to the contrary, and consistent with the legislative
 108 findings of intent to promote prompt judicial resolu-
 109 tion of issues of immunity from litigation under this
 110 chapter, the court shall dismiss the action upon motion
 111 for summary judgment if it shall find, pursuant to
 112 Rule 56 of the Rules of Civil Procedure that one or
 113 more of the facts required to be proved by the
 114 provisions of subparagraphs (A) through (E) of the
 115 preceding paragraph (ii) do not exist, and the court
 116 shall dismiss the action upon a timely motion for a
 117 directed verdict against the plaintiff if after consider-
 118 ing all the evidence and every inference legitimately
 119 and reasonably raised thereby most favorably to the
 120 plaintiff, the court shall determine that there is not
 121 sufficient evidence to find each and every one of the
 122 facts required to be proven by the provisions of
 123 subparagraphs (A) through (E) of the preceding
 124 paragraph (ii); and

125 (C) The provisions of this paragraph and of each
 126 subparagraph thereof shall be severable from the
 127 provisions of each other subparagraph, subsection,
 128 section, article or chapter of this code so that if any
 129 provision of a subparagraph of this paragraph be held
 130 void, the remaining provisions of this act and this code
 131 shall remain valid.

132 (d) The reenactment of this section in the regular
 133 session of the Legislature during the year one thou-
 134 sand nine hundred eighty-three, shall not in any way
 135 affect the right of any person to bring an action with
 136 respect to or upon any cause of action which arose or
 137 accrued prior to the effective date of such reenactment.

**§23-4-7. Release of medical information to employer;
 legislative findings; effect of application for
 benefits; duty of employer.**

1 (a) The Legislature hereby finds and declares that
 2 two of the primary objectives of the workers' compen-
 3 sation system established by this chapter are to
 4 provide benefits to an injured claimant promptly and

5 to effectuate his return to work at the earliest possible
6 time; that the prompt dissemination of medical infor-
7 mation to the commissioner and employer as to
8 diagnosis, treatment and recovery is essential if these
9 two objectives are to be achieved; that claimants are
10 increasingly burdened with the task of contacting their
11 treating physicians to request the furnishing of
12 detailed medical information to the commissioner and
13 their employers; that the commissioner is increasingly
14 burdened with the administrative responsibility of
15 providing copies of medical reports to the employer
16 involved, whereas in other states the employer can
17 obtain the necessary medical information direct from
18 the treating physician; that much litigation is occasi-
19 oned in this state because of a lack of medical infor-
20 mation having been received by the employer as to
21 the continuing disability of a claimant; and that
22 detailed narrative reports from the treating physician
23 are often necessary in order for the commissioner, the
24 claimant's representatives and the employer to evalu-
25 ate a claim and determine whether additional or
26 different treatment is indicated.

27 (b) In view of the foregoing findings, on and after
28 the effective date of this section, a claimant shall
29 irrevocably agree by the filing of his application for
30 benefits that any physician may release, to the clai-
31 mant's employer or its representative, from time to
32 time to such claimant's employer medical reports
33 containing detailed information as to the claimant's
34 condition, treatment, prognosis and anticipated period
35 of disability and dates as to when the claimant will
36 reach or has reached his maximum degree of improve-
37 ment or will be or was released to return to work.
38 Whenever a copy of any such medical report is
39 obtained by the employer or their representative and
40 the physician has not also forwarded a copy of the
41 same to the commissioner, the employer shall forward
42 a copy of such medical report to the commissioner
43 within ten days from the date such employer received
44 the same from such physician.

§23-4-14. Computation of benefits.

1 The average weekly wage earnings, wherever
2 earned, of the injured person at the date of injury, and
3 the average weekly wage in West Virginia as deter-
4 mined by the commissioner, in effect at the date of
5 injury, shall be taken as the basis upon which to
6 compute the benefits.

7 In cases involving occupational pneumoconiosis or
8 other occupational diseases, the "date of injury" shall
9 be the date of the last exposure to the hazards of
10 occupational pneumoconiosis or other occupational
11 diseases.

12 In computing benefits payable on account of occupa-
13 tional pneumoconiosis, the commissioner shall deduct
14 the amount of all prior workers' compensation benef-
15 its paid to the same claimant on account of silicosis,
16 but a prior silicosis award shall not, in any event,
17 preclude an award for occupational pneumoconiosis
18 otherwise payable under this article.

19 The expression "average weekly wage earnings,
20 wherever earned, of the injured person, at the date of
21 injury", within the meaning of this chapter, shall be
22 computed based upon the daily rate of pay at the time
23 of the injury or upon the average pay received during
24 the two months, six months or twelve months imme-
25 diately preceding the date of the injury, whichever is
26 most favorable to the injured employee, except for the
27 purpose of computing temporary total disability benef-
28 its for part-time employees pursuant to the provisions
29 of section six-d of this article.

30 The expression "average weekly wage in West
31 Virginia", within the meaning of this chapter, shall be
32 the average weekly wage in West Virginia as deter-
33 mined by the commissioner in accordance with the
34 provisions of sections ten and eleven, article six,
35 chapter twenty-one-a of this code, and other applicable
36 provisions of said chapter twenty-one-a.

37 In any claim for injuries, including occupational
38 pneumoconiosis and other occupational diseases,

39 occurring on or after the first day of July, one
40 thousand nine hundred seventy-one, any award for
41 temporary total, permanent partial or permanent total
42 disability benefits or for dependent benefits, shall be
43 paid at the weekly rates or in the monthly amount in
44 the case of dependent benefits applicable to the
45 claimant therein in effect on the date of such injury.
46 If during the life of such award for temporary total,
47 permanent partial or permanent total disability benef-
48 its or for dependent benefits, the weekly rates or the
49 monthly amount in the case of dependent benefits are
50 increased or decreased, the claimant shall receive such
51 increased or decreased benefits beginning as of the
52 effective date of said increase or decrease.

ARTICLE 4A. DISABLED WORKERS' RELIEF FUND.

§23-4A-2. To whom benefits paid.

1 In order to participate in the disabled workers' relief
2 fund, an individual must be receiving workers' com-
3 pensation benefits by virtue of and under the laws of
4 this state in amounts less than those set forth in
5 section one of this article, and be receiving such
6 benefits under a permanent total disability award or
7 be receiving such benefits because of the death of an
8 employee: *Provided*, That a child of an employee
9 deceased before the first day of July, one thousand
10 nine hundred sixty-seven, who is under the age of
11 twenty-three and is a full-time student, and, who, at
12 the time of injury causing death, was dependent in
13 whole or part upon the earnings of the deceased
14 employee, shall be eligible for benefits payable from
15 the fund established by this article in the same
16 manner and amount as if death had occurred after the
17 first day of July, one thousand nine hundred sixty-
18 seven.

§23-4A-3. Computation of benefits.

1 Each individual entitled to participate in the dis-
2 abled workers' relief fund shall be entitled to receive
3 payments without application (except that an applica-
4 tion shall be required under section five of this article)
5 from said fund of an amount equal to the difference

6 between the amounts set forth in section one of this
7 article, and the amount said individual is in fact
8 receiving by virtue of and under the laws of this state.
9 The first such payment shall be made concurrently
10 with the payment to him of workers' compensation on
11 the first day of August, one thousand nine hundred
12 seventy-six and subsequent payments shall be made
13 during the period thereafter in which such participant
14 shall be entitled to workers' compensation benefits by
15 virtue of and under the laws of this state.

§23-4A-4. Mode of payment.

1 Payments to an individual entitled to participate in
2 the disabled workers' relief fund may be made from
3 said fund by separate check or may be made from said
4 fund and from the workers' compensation fund by one
5 check, but each such check drawn on the two funds
6 shall be so written as to show plainly the payments
7 made from each fund. No disbursements shall be made
8 from the workers' compensation fund on account of
9 any provisions of this article.

§23-4A-5. Employers providing own system of compensation.

1 The commissioner shall promptly require of each
2 employer who has elected to pay compensation direct
3 under the provisions of section nine, article two of this
4 chapter a verified list of the names and addresses of all
5 persons to whom such employer is paying workers'
6 compensation on account of permanent total disability
7 or because of the death of an employee and such
8 evidence respecting such persons as the commissioner
9 may reasonably consider necessary to determine the
10 eligibility of any such person to participate in the
11 disabled workers' relief fund. Any person claiming the
12 right to participate in said fund under the provisions
13 of this section may file his application therefor with
14 the commissioner and shall be accorded a hearing
15 thereon.

§23-4A-8. Disabled workers' relief fund; how funded.

1 For the purpose of carrying out the provisions of this
2 article, the commissioner shall transfer annually, out

3 of the interest earned during the previous year on
4 investments held by the workers' compensation fund,
5 and out of the amount assessed against self-insured
6 employers pursuant to the provisions of article two,
7 section nine, an amount estimated by the commis-
8 sioner to be necessary to carry out the provisions of
9 this article for one year.

10 Such money shall be deposited by the commissioner
11 in the disabled workers' relief fund, as required by
12 this article.

ARTICLE 4B. COAL-WORKERS' PNEUMOCONIOSIS FUND.

§23-4B-2. Coal-workers' pneumoconiosis fund established.

1 For the relief of persons who are entitled to receive
2 benefits by virtue of Title IV of the Federal Coal Mine
3 Health and Safety Act of 1969, as amended, there is
4 hereby established a fund to be known as the coal-
5 workers' pneumoconiosis fund, which fund shall be
6 separate from the workers' compensation fund. The
7 coal-workers' pneumoconiosis fund shall consist of
8 premiums and other funds paid thereto by employers,
9 subject to the provisions of Title IV of the Federal
10 Coal Mine Health and Safety Act of 1969, as amended,
11 who shall elect to subscribe to such fund to insure the
12 payment of benefits required by such act.

13 The state treasurer shall be the custodian of the
14 coal-workers' pneumoconiosis fund, and all premiums,
15 deposits or other moneys paid thereto shall be depos-
16 ited in the state treasury to the credit of the coal-
17 workers' pneumoconiosis fund. Disbursements from
18 such fund shall be made upon requisition signed by
19 the commissioner to those persons entitled to partici-
20 pate therein. The West Virginia state board of invest-
21 ments shall have authority to invest any surplus,
22 reserve or other moneys belonging to the coal-
23 workers' pneumoconiosis fund in accordance with
24 article six, chapter twelve of this code.

§23-4B-7. Administration.

1 The coal-workers' pneumoconiosis fund shall be
2 administered by the commissioner of the bureau of

3 employment programs, who shall employ such
 4 employees as may be necessary to discharge his duties
 5 and responsibilities under this article. All payments of
 6 salaries and expenses of such employees and all
 7 expenses peculiar to the administration of this article
 8 shall be made by the state treasurer from the coal-
 9 workers' pneumoconiosis fund upon requisitions
 10 signed by the commissioner.

ARTICLE 4C. EMPLOYERS' EXCESS LIABILITY FUND.

§23-4C-2. Employers' excess liability fund established.

1 To provide insurance coverage for employers subject
 2 to this chapter who may be subjected to liability for
 3 any excess of damages over the amount received or
 4 receivable under this chapter, there is hereby estab-
 5 lished a fund to be known as the employers' excess
 6 liability fund, which fund shall be separate from the
 7 workers' compensation fund. The employers' excess
 8 liability fund shall consist of premiums paid thereto by
 9 employers who may voluntarily elect to subscribe to
 10 the fund for coverage of potential liability to any
 11 person who may be entitled to any excess of damages
 12 over the amount received or receivable under this
 13 chapter.

§23-4C-5. Administration.

1 The employers' excess liability fund shall be admin-
 2 istered by the commissioner of employment programs,
 3 who shall employ such employees as may be necessary
 4 to discharge his duties and responsibilities under this
 5 article. All payments of salaries and expenses of the
 6 employees and all expenses peculiar to the administra-
 7 tion of this article shall be made by the state treasurer
 8 from the employers' excess liability fund upon requi-
 9 sitions signed by the commissioner.

ARTICLE 5. REVIEW.

§23-5-2. Workers' compensation appeal board — Generally.

1 There shall be a board to be known as the "Workers'
 2 Compensation Appeal Board", which shall be referred
 3 to in this article as the "board", to be composed of

4 three members.

5 Two members of such board shall be of opposite
6 politics to the third, and all three shall be citizens of
7 this state who have resided therein for a period of at
8 least five years. All members of the board shall be
9 appointed by the governor and shall receive an annual
10 salary in accordance with the provisions of section
11 two-a, article seven, chapter six of this code. The
12 salaries shall be payable in monthly installments, and
13 the members shall also be entitled to all reasonable
14 and necessary traveling and other expenses actually
15 incurred while engaged in the performance of their
16 duties. The governor shall designate one of the
17 members of the board as chairman thereof, and the
18 board shall meet at the capitol or at such other places
19 throughout the state as it may consider proper at
20 regular sessions designated as "Appeal Board Hearing
21 Days" commencing on the first Tuesday of every
22 month or the next regular business day, for a period
23 of at least three days, for the purpose of conducting
24 hearings on appeals, and continuing as long as may be
25 necessary for the proper and expeditious transaction of
26 the hearings, decisions and other business before it.
27 All clerical services required by the board shall be
28 paid for by the commissioner from any funds at his
29 disposal. The board shall, from time to time, compile
30 and promulgate such rules of practice and procedure
31 as to it shall appear proper for the prompt and
32 efficient discharge of its business and such rules shall
33 be submitted to the supreme court of appeals for
34 approval, and if approved by such court shall have the
35 same force and effect as the approved rules of proce-
36 dure of circuit courts. The board shall employ such
37 clerical staff as may be necessary for the efficient
38 conduct of its business but the number of such
39 employees shall not exceed four. Salaries of the board,
40 and its employees, and all of its necessary operating
41 expenses shall be paid from the workers' compensa-
42 tion fund. The board shall submit its annual budget to
43 the commissioner for inclusion as a separate item in
44 the budget estimates prepared by him annually and
45 within the limits of such budget, all expenses of the

46 board shall be by the requisition of the commissioner.
47 Salaries of the employees of the board shall be fixed
48 by the board.

49 The board shall report monthly to the governor and
50 commissioner on the status of all claims on appeal.

CHAPTER 26. STATE BENEVOLENT INSTITUTIONS.

ARTICLE 8. EMERGENCY HOSPITALS.

§26-8-2. Patients; expenses; disposition of receipts.

1 The state commissioner of public institutions shall
2 admit to said hospitals, under its rules and regulations,
3 persons requiring hospital care, and shall treat free of
4 charge persons accidentally injured in this state while
5 engaged in their usual employment, but preference at
6 all times shall be given to persons accidentally injured:
7 *Provided*, That the commissioner of the bureau of
8 employment programs shall pay to said hospitals for
9 the treatment of anyone entitled to benefits or aid out
10 of the workers' compensation fund the same fee or
11 expenses as would be paid to a private hospital for
12 similar treatment. All moneys collected under this
13 section shall be paid into the state treasury through
14 the state commissioner of public institutions as
15 required in section thirteen, article one, chapter
16 twenty-five of this code.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 12. STATE INSURANCE.

§29-12-2. Definitions.

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

3 (a) "Board" means the "State Board of Insurance of
4 West Virginia".

5 (b) "Company" means and includes corporations,
6 associations, partnerships and individuals.

7 (c) "Insurance" means all forms of insurance and
8 bonding services available for protection and indemni-

9 fication of the state and its officials, employees,
10 properties, activities and responsibilities against loss or
11 damage or liability, including fire, marine, casualty,
12 and surety insurance.

13 (d) "Insurance company" means all insurers or
14 insurance carriers, including, but not limited to, stock
15 insurance companies, mutual insurance companies,
16 reciprocal and interinsurance exchanges, and all other
17 types of insurers and insurance carriers, including life,
18 accident, health, fidelity, indemnity, casualty, hospital-
19 ization and other types and kinds of insurance compa-
20 nies, organizations and associations, but excepting and
21 excluding workers' compensation coverage.

22 (e) "State property activities" and "state responsibil-
23 ities" shall mean and include all operations, boards,
24 commission, works, projects and functions of the state,
25 its properties, officials, agents and employees which,
26 within the scope and in the course of governmental
27 employment, may be subject to liability, loss, damage,
28 risks and hazards recognized to be and normally
29 included within insurance and bond coverages.

30 (f) "State property" means all property belonging to
31 the state of West Virginia and any boards or commis-
32 sions thereof wherever situated and which is the
33 subject of risk or reasonably considered to be subject
34 to loss or damage or liability by any single occurrence
35 of any event insured against.

ARTICLE 18. WEST VIRGINIA RAILROAD MAINTENANCE AUTHORITY.

§29-18-6. Powers, duties and responsibilities of authority generally.

1 The West Virginia railroad maintenance authority is
2 hereby granted, has and may exercise all powers
3 necessary or appropriate to carry out and effectuate its
4 corporate purpose.

5 (a) The authority shall have the power and capacity
6 to:

7 (1) Adopt, and from time to time, amend and repeal

8 bylaws necessary and proper for the regulation of its
9 affairs and the conduct of its business and rules and
10 regulations to implement and make effective its
11 powers and duties, such rules and regulations to be
12 promulgated in accordance with the provisions of
13 chapter twenty-nine-a of this code.

14 (2) Adopt an official seal.

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
21 sections ten, eleven and sixteen of this article. Any
22 actions against the authority shall be brought in the
23 circuit court of Kanawha County. The location of the
24 principal office of the authority shall be determined by
25 the governor.

26 (5) Make loans and grants to governmental agencies
27 and persons for carrying out railroad projects by any
28 such governmental agency or person and, in accor-
29 dance with chapter twenty-nine-a of this code, adopt
30 rules and procedures for making such loans and
31 grants.

32 (6) Acquire, construct, reconstruct, enlarge, improve,
33 furnish, equip, maintain, repair, operate, lease or rent
34 to, or contract for operation by a governmental agency
35 or person, railroad projects, and, in accordance with
36 chapter twenty-nine-a of this code, adopt rules and
37 regulations for the use of such projects.

38 (7) Make available the use or services of any railroad
39 project to one or more persons, one or more govern-
40 mental agencies, or any combination thereof.

41 (8) Issue railroad maintenance authority bonds and
42 notes and refunding bonds of the state, payable solely
43 from revenues as provided in section ten of this article
44 unless the bonds are refunded by refunding bonds, for
45 the purpose of paying any part of the cost of one or
46 more railroad projects or parts thereof.

47 (9) Acquire, by gift or purchase, hold and dispose of
48 real and personal property in the exercise of its
49 powers and the performance of its duties as set forth
50 in this article.

51 (10) Acquire in the name of the state, by purchase or
52 otherwise, on such terms and in such manner as it
53 deems proper, or by the exercise of the right of
54 eminent domain in the manner provided in chapter
55 fifty-four of this code, rail properties and appurtenant
56 rights and interests necessary for carrying out railroad
57 projects.

58 (11) Make and enter into all contracts and agree-
59 ments and execute all instruments necessary or
60 incidental to the performance of its duties and the
61 execution of its powers. When the cost under any such
62 contract or agreement, other than compensation for
63 personal services, involves an expenditure of more
64 than two thousand dollars, the authority shall make a
65 written contract with the lowest responsible bidder
66 after public notice published as a Class II legal
67 advertisement in compliance with the provisions of
68 article three, chapter fifty-nine of this code, the
69 publication area for such publication to be the county
70 wherein the work is to be performed or which is
71 affected by the contract, which notice shall state the
72 general character of the work and the general charac-
73 ter of the materials to be furnished, the place where
74 plans and specifications therefor may be examined and
75 the time and place of receiving bids, but a contract or
76 lease for the operation of a railroad project con-
77 structed and owned by the authority or an agreement
78 for cooperation in the acquisition or construction of a
79 railroad project pursuant to section sixteen of this
80 article is not subject to the foregoing requirements
81 and the authority may enter into such contract or
82 lease or such agreement pursuant to negotiation and
83 upon such terms and conditions and for such period as
84 it finds to be reasonable and proper under the circum-
85 stances and in the best interests of proper operation or
86 of efficient acquisition or construction of such railroad
87 project. The authority may reject any and all bids. A

88 bond with good and sufficient surety, approved by the
89 authority, shall be required of all contractors in an
90 amount equal to at least fifty percent of the contract
91 price, conditioned upon the faithful performance of
92 the contract.

93 (12) Appoint a director and employ managers,
94 superintendents and other employees and retain or
95 contract with consulting engineers, financial consul-
96 tants, accountants, attorneys and such other consul-
97 tants and independent contractors as are necessary in
98 its judgment to carry out the provisions of this article,
99 and fix the compensation or fees thereof. All expenses
100 thereof shall be payable from the proceeds of railroad
101 maintenance authority revenue bonds or notes issued
102 by the authority, from revenues and funds approp-
103 riated for such purpose by the Legislature or from
104 grants from the federal government which may be
105 used for such purpose.

106 (13) Receive and accept from any state or federal
107 agency, grants for or in aid of the construction of any
108 railroad project or for research and development with
109 respect to railroads and receive and accept aid or
110 contributions from any source of money, property,
111 labor or other things of value, to be held, used and
112 applied only for the purposes for which such grants
113 and contributions are made.

114 (14) Engage in research and development with
115 respect to railroads.

116 (15) Purchase fire and extended coverage and liabil-
117 ity insurance for any railroad project and for the
118 principal office and suboffices of the authority, insur-
119 ance protecting the authority and its officers and
120 employees against liability, if any, for damage to
121 property or injury to or death of persons arising from
122 its operations and be a member of, and to participate
123 in, the state workers' compensation program.

124 (16) Charge, alter and collect rates, rentals and other
125 charges for the use or services of any railroad project
126 as provided in this article.

127 (17) Do all acts necessary and proper to carry out the
128 powers expressly granted to the authority in this
129 article.

130 (b) In addition, the authority shall have the power
131 to:

132 (1) Acquire rail properties both within and not
133 within the jurisdiction of the interstate commerce
134 commission and rail properties within the purview of
135 the federal Regional Rail Reorganization Act of 1973,
136 any amendments to it and any other relevant federal
137 legislation.

138 (2) Enter into agreements with owners of rail
139 properties for the acquisition of rail properties or use,
140 or both of rail properties upon such terms, conditions,
141 rates or rentals as can best effectuate the purposes of
142 this article.

143 (3) Acquire rail properties and other property of a
144 railroad in concert with another state or states as is
145 necessary to ensure continued rail service in this state.

146 (4) Establish a state plan for rail transportation and
147 local rail services.

148 (5) Administer and coordinate such state plan.

149 (6) Provide in such state plan for the equitable
150 distribution of federal rail service continuation subsi-
151 dies among state, local and regional transportation
152 authorities.

153 (7) Promote, supervise and support safe, adequate
154 and efficient rail services.

155 (8) Employ sufficiently trained and qualified person-
156 nel for these purposes.

157 (9) Maintain adequate programs of investigation,
158 research, promotion and development in connection
159 with such purposes and to provide for public partici-
160 pation therein.

161 (10) Provide satisfactory assurances on behalf of the
162 state that fiscal control and fund accounting proce-
163 dures will be adopted by the state necessary to assure

164 proper disbursement of and accounting for federal
165 funds paid to the state as rail service continuation
166 subsidies.

167 (11) Comply with the regulations of the secretary of
168 transportation of the United States department of
169 transportation affecting federal rail service continua-
170 tion programs.

171 (12) Do all things otherwise necessary to maximize
172 federal assistance to the state under Title IV of the
173 federal Regional Rail Reorganization Act of 1973 and to
174 qualify for rail service continuation subsidies pursuant
175 to the federal Regional Rail Reorganization Act of 1973.

CHAPTER 29A. STATE ADMINISTRATIVE PROCEDURES ACT.

ARTICLE 5. CONTESTED CASES.

§29A-5-5. Exceptions.

1 The provisions of this article shall not apply to the
2 workers' compensation fund, the bureau of employ-
3 ment programs, the state tax commissioner, the state
4 road commissioner, the state road commission, and the
5 teachers' retirement board.

CHAPTER 31. CORPORATIONS.

ARTICLE 1. BUSINESS AND NONPROFIT CORPORATIONS.

§31-1-61. Certificate as to taxes prerequisite for issuance of dissolution, withdrawal, consolidation or merger, or expiration.

1 The secretary of state shall withhold the issuance of
2 any certificate of dissolution or withdrawal, or certif-
3 icate of consolidation or merger in the case where the
4 new or surviving corporation will be a foreign corpo-
5 ration which has not qualified to conduct affairs or do
6 or transact business or hold property in this state, nor
7 shall any corporation expire by virtue of its articles of
8 incorporation or amendment thereto, until the receipt
9 by the secretary of state of a notice from the tax
10 commissioner and bureau of employment programs to
11 the effect that all taxes due from said corporation
12 under the provisions of chapter eleven of this code,

13 including, but not limited to, taxes withheld under the
14 provisions of section seventy-one, article twenty-one of
15 said chapter eleven, all business and occupation taxes,
16 motor carrier and transportation privilege taxes,
17 gasoline taxes, consumer sales taxes and any and all
18 license, franchise or other excise taxes and corporate
19 net income taxes, and employment security payments
20 levied or assessed against the corporation seeking to
21 withdraw, dissolve, consolidate, merge or expire have
22 been paid or that such payment has been provided for,
23 or until the secretary of state receives a notice from
24 the tax commissioner or bureau of employment
25 programs, as the case may be, stating that the corpo-
26 ration in question is not subject to payment of any
27 such taxes or to the making of any employment
28 security payments or assessments.

**ARTICLE 18B. MORTGAGE AND INDUSTRIAL DEVELOPMENT
INVESTMENT POOL.**

**§31-18B-10. Disposition of interest income and repayments
of principal.**

- 1 (a) The interest received from mortgage payments
2 made pursuant to the provisions of this article shall be
3 transmitted to the state board of investments monthly.
- 4 (b) Such interest shall be treated by the state board
5 of investments as an investment return, and shall be
6 credited to the workers' compensation account or
7 other appropriate accounts in the same manner as
8 interest received on other investments.
- 9 (c) The funds from repayment of principal of mort-
10 gage loans shall be reinvested by the housing develop-
11 ment fund according to the provisions of section five
12 of this article. Funds which have been repaid to the
13 state mortgage and industrial development investment
14 pool and not reinvested in mortgages within one year
15 shall revert to the sole control of the state board of
16 investments and shall no longer be considered part of
17 the state mortgage and industrial development invest-
18 ment pool.

CHAPTER 33. INSURANCE.

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

§33-15-1. Scope of article.

1 Nothing in this article shall apply to or affect:

2 (a) Any policy of liability or workers' compensation
3 insurance nor shall any of the references to "other
4 insurance" contained in this article be interpreted to
5 mean, include, or apply to, any policy of liability or
6 workers' compensation insurance.

7 (b) Any group accident and sickness policy issued in
8 accordance with article sixteen of this chapter.

9 (c) Life insurance (including endowment or annuity
10 contracts), or contracts supplemental thereto, which
11 contain only such provisions relating to accident and
12 sickness insurance as (1) provide additional benefits in
13 case of death by accidental means, or as (2) operate to
14 safeguard such contracts against lapse, or to give a
15 special surrender value or special benefit or an
16 annuity in the event that the insured shall become
17 totally and permanently disabled as defined by the
18 contract or supplemental contract.

19 (d) Reinsurance.

§33-15-5. Optional policy provisions.

1 Except as provided in section six of this article, no
2 such policy delivered or issued for delivery to any
3 person in this state shall contain provisions respecting
4 the matters set forth below unless such provisions are
5 in the words in which the same appear in this section:
6 *Provided*, That the insurer may, at its option, use in
7 lieu of any such provision a corresponding provision of
8 different wording approved by the commissioner
9 which is not less favorable in any respect to the
10 insured or the beneficiary. Any such provision con-
11 tained in the policy shall be preceded individually by
12 the appropriate caption appearing in this section or, at
13 the option of the insurer, by such appropriate individ-
14 ual or group captions or subcaptions as the commis-
15 sioner may approve.

16 (a) A provision as follows:

17 "Change of Occupation: If the insured be injured or
18 contract sickness after having changed his occupation
19 to one classified by the insurer as more hazardous
20 than that stated in this policy or while doing for
21 compensation anything pertaining to an occupation so
22 classified, the insurer will pay only such portion of the
23 indemnities provided in this policy as the premium
24 paid would have purchased at the rates and within the
25 limits fixed by the insurer for such more hazardous
26 occupation. If the insured changes his occupation to
27 one classified by the insurer as less hazardous than
28 that stated in this policy, the insurer, upon receipt of
29 proof of such change of occupation, will reduce the
30 premium rate accordingly, and will return the excess
31 pro rata unearned premium from the date of change
32 of occupation or from the policy anniversary date
33 immediately preceding receipt of such proof, which-
34 ever is the more recent. In applying this provision, the
35 classification of occupational risk and the premium
36 rates shall be such as have been last filed by the
37 insurer prior to the occurrence of the loss for which
38 the insurer is liable or prior to date of proof of change
39 in occupation with the state official having supervision
40 of insurance in the state where the insured resided at
41 the time this policy was issued; but if such filing was
42 not required, then the classification of occupational
43 risk and the premium rates shall be those last made
44 effective by the insurer in such state prior to the
45 occurrence of the loss or prior to the date of proof of
46 change in occupation."

47 (b) A provision as follows:

48 "Misstatement of Age: If the age of the insured has
49 been misstated, all amounts payable under this policy
50 shall be such as the premium paid would have pur-
51 chased at the correct age."

52 (c) A provision as follows:

53 "Other Insurance in This Insurer: If an accident or
54 sickness or accident and sickness policy or policies
55 previously issued by the insurer to the insured be in

56 force concurrently herewith, making the aggregate
57 indemnity for _____ (insert type of coverage or
58 coverages) in excess of \$ _____ (insert maximum
59 limit of indemnity or indemnities) the excess insur-
60 ance shall be void and all premiums paid for such
61 excess shall be returned to the insured or to his
62 estate.”

63 Or, in lieu thereof:

64 “Insurance effective at any one time on the insured
65 under a like policy or policies in this insurer is limited
66 to the one such policy elected by the insured, his
67 beneficiary or his estate, as the case may be, and the
68 insurer will return all premiums paid for all other
69 such policies.”

70 Provided that no policy hereafter issued for delivery
71 in this state which provides, with or without other
72 benefits, for the payment of benefits or reimburse-
73 ment for expenses with respect to hospitalization,
74 nursing care, medical or surgical examination or
75 treatment, or ambulance transportation shall contain
76 any provision for a reduction of such benefits or
77 reimbursement, or any provision for avoidance of the
78 policy, on account of other insurance of such nature
79 carried by the same insured with the same or another
80 insurer.

81 (d) A provision as follows:

82 “Insurance with Other Insurers: If there be other
83 valid coverage, not with this insurer, providing benef-
84 its for the same loss on other than an expense
85 incurred basis and of which this insurer has not been
86 given written notice prior to the occurrence or com-
87 mencement of loss, the only liability for such benefits
88 under this policy shall be for such proportion of the
89 indemnities otherwise provided hereunder for such
90 loss as the like indemnities of which the insurer had
91 notice (including the indemnities under this policy)
92 bear to the total amount of all like indemnities for
93 such loss, and for the return of such portion of the
94 premium paid as shall exceed the pro rata portion for
95 the indemnities thus determined.”

96 The insurer may, at its option, include in this
97 provision a definition of "other valid coverage",
98 approved as to form by the commissioner, which
99 definitions shall be limited in subject matter to
100 coverage provided by organizations subject to regula-
101 tion by insurance law or by insurance authorities of
102 this or any other state of the United States or any
103 province of Canada, and to any other coverage the
104 inclusion of which may be approved by the commis-
105 sioner. In the absence of such definition such term
106 shall not include group insurance, or benefits provided
107 by union welfare plans or by employer or employee
108 benefit organizations. For the purpose of applying the
109 foregoing policy provisions with respect to any insured
110 any amount of benefit provided for such insured
111 pursuant to any compulsory benefit statute (including
112 any workers' compensation or employer's liability
113 statute) whether provided by a governmental agency
114 or otherwise shall in all cases be deemed to be "other
115 valid coverage" of which the insurer has had notice.
116 In applying the foregoing policy provision no third
117 party liability coverage shall be included as "other
118 valid coverage".

119 (e) A provision as follows:

120 "Relation of Earnings to Insurance: If the total
121 monthly amount of loss of time benefits promised for
122 the same loss under all valid loss of time coverage
123 upon the insured, whether payable on a weekly or
124 monthly basis, shall exceed the monthly earnings of
125 the insured at the time disability commenced or his
126 average monthly earnings for the period of two years
127 immediately preceding a disability for which claim is
128 made, whichever is the greater, the insurer will be
129 liable only for such proportionate amount of such
130 benefits under this policy as the amount of such
131 monthly earnings or such average monthly earnings of
132 the insured bears to the total amount of monthly
133 benefits for the same loss under all such coverage
134 upon the insured at the time such disability commen-
135 ces and for the return of such part of the premiums
136 paid during such two years as shall exceed the pro rata

137 amount of the premiums for the benefits actually paid
138 hereunder; but this shall not operate to reduce the
139 total monthly amount of benefits payable under all
140 such coverage upon the insured below the sum of two
141 hundred dollars or the sum of the monthly benefits
142 specified in such coverages, whichever is the lesser,
143 nor shall it operate to reduce benefits other than those
144 payable for loss of time.”

145 The foregoing policy provision may be inserted only
146 in a policy which the insured has the right to continue
147 in force subject to its terms by the timely payment of
148 premiums (1) until at least age fifty or, (2) in the case
149 of a policy issued after age forty-four, for at least five
150 years from its date of issue. The insurer may, at its
151 option, include in this provision a definition of “valid
152 loss of time coverage”, approved as to form by the
153 commissioner, which definition shall be limited in
154 subject matter to coverage provided by governmental
155 agencies or by organizations subject to regulation by
156 insurance law or by insurance authorities of this or
157 any other state of the United States or any province of
158 Canada, or to any other coverage the inclusion of
159 which may be approved by the commissioner or any
160 combination of such coverages. In the absence of such
161 definition such term shall not include any coverage
162 provided for such insured pursuant to any compulsory
163 benefit statute (including any workers’ compensation
164 or employer’s liability statute), or benefits provided by
165 union welfare plans or by employer or employee
166 benefit organizations.

167 (f) A provision as follows:

168 “Unpaid Premium: Upon the payment of a claim
169 under this policy, any premiums then due and unpaid
170 or covered by any note or written order may be
171 deducted therefrom.”

172 (g) A provision as follows:

173 “Return of Premium on Cancellation: If the insured
174 cancels this policy, the earned premium shall be
175 computed by the use of the short-rate table last filed
176 with the state official having supervision of insurance

177 in the state where the insured resided when the policy
178 was issued. Cancellation shall be without prejudice to
179 any claim originating prior to the effective date of
180 cancellation.”

181 (h) A provision as follows:

182 “Conformity with State Statutes: Any provision of
183 this policy which, on its effective date, is in conflict
184 with the statutes of the state in which the insured
185 resides on such date is hereby amended to conform to
186 the minimum requirements of such statutes.”

187 (i) A provision as follows:

188 “Illegal Occupation: The insurer shall not be liable
189 for any loss to which a contributing cause was the
190 insured’s commission of or attempt to commit a felony
191 or to which a contributing cause was the insured’s
192 being engaged in an illegal occupation.”

193 (j) A provision as follows:

194 “Intoxicants and Narcotics: The insurer shall not be
195 liable for any loss sustained or contracted in conse-
196 quence of the insured’s being intoxicated or under the
197 influence of any narcotic unless administered on the
198 advice of a physician.”

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-1. Scope of article.

1 (a) Nothing in this article shall apply to or affect any
2 policy of liability or workers’ compensation insurance,
3 or any policy of individual accident and sickness
4 insurance issued in accordance with article fifteen of
5 this chapter, or any policy issued by a fraternal benefit
6 society.

7 (b) Nothing in this article shall apply to or in any
8 way affect life insurance, endowment or annuity
9 contracts or contracts supplemental thereto which
10 contain no provisions relating to accident or sickness
11 insurance except (a) such as provide additional benef-
12 its in case of death by accidental means and except (b)
13 such as operate to safeguard such contracts against

14 lapse, or to give a special surrender value or special
15 benefit or an annuity in the event that the insured or
16 annuitant shall become totally and permanently
17 disabled as defined by the contract or supplemental
18 contract.

19 (c) No accident and sickness policy or certificate
20 shall be delivered or issued for delivery in this state
21 insuring more than one individual (subject to the
22 same exceptions provided for group life insurance in
23 section one of article fourteen of this chapter) unless
24 to one of the groups set forth in section two of this
25 article and unless otherwise in compliance with this
26 article.

ARTICLE 26. WEST VIRGINIA GUARANTY ASSOCIATION ACT.

§33-26-3. Scope.

1 This article shall apply to all kinds of direct insur-
2 ance, except life, title, surety, disability, credit,
3 mortgage guaranty, ocean marine, and workers'
4 compensation insurance.

CHAPTER 38. LIENS.

**ARTICLE 5B. SUGGESTION OF THE STATE AND POLITICAL SUBDI-
VISIONS; GARNISHMENT AND SUGGESTION OF
PUBLIC OFFICERS.**

§38-5B-12. Exemptions.

1 A judgment debtor to whom money is due or to
2 become due which would otherwise be subject to
3 suggestion under this article may have the same
4 exempted from levy in the manner and to the extent
5 provided by article eight of this chapter. In the case of
6 salary or wages the exemption may be claimed for
7 sums currently accruing but must be asserted anew as
8 to any salary or wages which shall begin to accrue
9 after the next payment date. Such exemption shall not
10 be binding upon the state, state agency or political
11 subdivision of which the judgment debtor is an officer
12 or employee unless and until a certificate of exemp-
13 tion or true copy thereof shall have been delivered to
14 the proper officer upon whom to make service of a

15 suggestee execution under this article.

16 Money due to any lawful beneficiary thereof from
17 any workers' compensation, unemployment compensa-
18 tion, pension or retirement, public assistance or relief
19 fund or system, or under the state's emergency
20 employment program as provided by section six, title
21 two of Enrolled Senate Bill No. 1 (Budget Bill),
22 enacted by the Legislature of West Virginia, regular
23 session, one thousand nine hundred sixty-one, or any
24 laws amendatory of, supplementary or successor to,
25 such program that may hereafter be enacted, shall not
26 be subject to suggestion under this article.

27 Public obligations, whether in the form of bonds,
28 notes, certificates of indebtedness, or otherwise, and
29 whether negotiable or nonnegotiable, shall not be
30 subject to suggestion under this article.

CHAPTER 48A. ENFORCEMENT OF FAMILY OBLIGATIONS.

ARTICLE 2. WEST VIRGINIA CHILD ADVOCATE OFFICE.

§48A-2-17. Obtaining support from unemployment compen- sation benefits.

1 (a) The director shall determine on a periodic basis
2 whether individuals receiving unemployment compen-
3 sation owe child support obligations which are being
4 enforced or have been requested to be enforced by the
5 office. If an individual is receiving such compensation
6 and owes any such child support obligation which is
7 not being met, the office shall enter into an agreement
8 with such individual to have specified amounts with-
9 held otherwise payable to such individual, and shall
10 submit a copy of such agreement to the bureau of
11 employment programs. In the absence of such agree-
12 ment, the office shall bring legal process to require the
13 withholding of amounts from such compensation.

14 (b) The director shall enter into a written agreement
15 with the bureau of employment programs for the
16 purpose of withholding unemployment compensation
17 from individuals with unmet support obligations being
18 enforced by the office. The office shall agree only to a

19 withholding program that it expects to be cost effective,
20 and, as to reimbursement, shall agree only to
21 reimburse the bureau of employment programs for its
22 actual, incremental costs of providing services to the
23 office.

24 (c) The director shall establish and use written
25 criteria for selecting cases to pursue through the
26 withholding of unemployment compensation for support
27 purposes. These criteria shall be designed to
28 insure maximum case selection and minimal discretion
29 in the selection process.

30 (d) The director shall, not less than annually,
31 provide a receipt to an individual who requests a
32 receipt for the support paid through the withholding
33 of unemployment compensation, if receipts are not
34 provided through other means.

35 (e) The director shall, through direct contact with
36 the bureau of employment programs, process cases
37 through the bureau of employment programs in this
38 state, and shall process cases through support enforcement
39 agencies in other states. The director shall
40 receive all amounts withheld by the bureau of
41 employment programs in this state, forwarding any
42 amounts withheld on behalf of support enforcement
43 agencies in other states to those agencies.

44 (f) The director shall, not less than annually, review
45 and document program operations, including case
46 selection criteria established under subsection (c) of
47 this section, and the costs of the withholding process
48 versus the amounts collected and, as necessary, modify
49 procedures and renegotiate the services provided by
50 the bureau of employment programs to improve
51 program and cost effectiveness.

52 (g) For the purposes of this section:

53 (1) "Legal process" means a writ, order, summons or
54 other similar process in the nature of garnishment
55 which is issued by a court of competent jurisdiction or
56 by an authorized official pursuant to an order to such
57 court or pursuant to state or local law.

58 (2) "Unemployment compensation" means any
59 compensation under state unemployment compensa-
60 tion law (including amounts payable in accordance
61 with agreements under any federal unemployment
62 compensation law). It includes extended benefits,
63 unemployment compensation for federal employees,
64 unemployment compensation for ex-servicemen, trade
65 readjustment allowances, disaster unemployment
66 assistance, and payments under the Federal Redwood
67 National Park Expansion Act.

§48A-2-18. Obtaining support from workers' compensation.

1 (a) The director shall determine on a periodic basis
2 whether individuals receiving workers' compensation
3 benefits owe child support obligations which are being
4 enforced or have been requested to be enforced by the
5 office. If an individual is receiving such compensation
6 and owes any such child support obligation which is
7 not being met, the office shall enter into an agreement
8 with such individual to have specified amounts with-
9 held otherwise payable to such individual, and shall
10 submit a copy of such agreement to the commissioner
11 of the bureau of employment programs. In the
12 absence of such agreement, the office shall bring legal
13 process to require the withholding of amounts from
14 such compensation.

15 (b) The director shall enter into a written agreement
16 with the commissioner of the bureau of employment
17 programs for the purpose of withholding workers'
18 compensation benefits from individuals with unmet
19 support obligations being enforced by the office. The
20 office shall agree only to a withholding program that
21 it expects to be cost effective, and, as to reimburse-
22 ment, shall agree only to reimburse the commissioner
23 of the bureau of employment programs for the com-
24 missioner's actual, incremental costs of providing
25 services to the support enforcement agency.

26 (c) The director shall establish and use written
27 criteria for selecting cases to pursue through the
28 withholding of workers' compensation benefits for
29 support purposes. These criteria shall be designed to

30 insure maximum case selection and minimal discre-
31 tion in the selection process.

32 (d) The director shall, not less than annually,
33 provide a receipt to an individual who requests a
34 receipt for the support paid through the withholding
35 of workers' compensation benefits, if receipts are not
36 provided through other means.

37 (e) The director shall, through direct contact with
38 the commissioner of the bureau of employment pro-
39 grams, process cases through the commissioner of the
40 bureau of employment programs in this state, and
41 shall process cases through support enforcement
42 agencies in other states. The director shall receive all
43 amounts withheld by the commissioner of the bureau
44 of employment programs in this state, forwarding any
45 amounts withheld on behalf of support enforcement
46 agencies in other states to those agencies.

47 (f) The director shall, not less than annually, review
48 and document program operations, including case
49 selection criteria established under subsection (c) of
50 this section, and the costs of the withholding process
51 versus the amounts collected and, as necessary, modify
52 procedures and renegotiate the services provided by
53 the commissioner of the bureau of employment pro-
54 grams to improve program and cost effectiveness.

55 (g) For the purposes of this section:

56 (1) "Legal process" means a writ, order, summons or
57 other similar process in the nature of garnishment
58 which is issued by a court of competent jurisdiction or
59 by an authorized official pursuant to an order of such
60 court or pursuant to state or local law.

61 (2) "Workers' compensation benefits" means any
62 compensation payable under state workers' compensa-
63 tion law as temporary total disability benefits.

CHAPTER 57. EVIDENCE AND WITNESSES.

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§57-5-4d. Hospital records; opening of sealed envelopes.

1 Unless the sealed envelope or wrapper is returned to

2 a witness who is to appear personally, the copy of the
3 records shall remain sealed and shall be opened only
4 at the time of trial, deposition, or other hearing, upon
5 the direction of the judge, court, officer, body or
6 tribunal conducting the proceeding, in the presence of
7 all parties who have appeared in person or by counsel
8 at such trial, deposition or hearing. Before directing
9 that such inner-envelope or wrapper be opened, the
10 judge, court, officer, body or tribunal shall first
11 ascertain that either (1) the records have been sub-
12 poenaed at the insistance of the patient involved or his
13 counsel of record, or (2) the patient involved or
14 someone authorized in his behalf to do so for him has
15 consented thereto and waived any privilege of confi-
16 dence involved. Records which are not introduced in
17 evidence or required as part of the record shall be
18 returned to the person or entity from whom received.

19 The provisions of this section shall not apply in a
20 workers' compensation proceeding if the pertinent
21 record is the record of the claimant therein or a
22 claimant's decedent: *Provided*, That nothing in this
23 section, or the preceding section, shall limit in any
24 manner the availability of and access to documents as
25 provided in the rules of civil procedure or elsewhere
26 in this code by the parties to any civil action and their
27 counsel.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.

§60-3A-30. Employees.

1 The department of health and human resources, the
2 bureau of employment programs, the public
3 employees retirement system, the public employees
4 insurance agency, any state agency or local commu-
5 nity action agency receiving job training partnership
6 act funds and any other agency of the state involved
7 with benefits or services to the unemployed, shall
8 work individually with all employees whose jobs have
9 been terminated by this chapter in order to recom-
10 mend benefits, services, training, interagency employ-

11 ment transfer or other employment. The alcohol
12 beverage control commission director and directors of
13 all other state agencies shall use best efforts to employ
14 qualified employees who were employed at the facility
15 immediately prior to such sale or transfer: *Provided,*
16 That notwithstanding any other provision of the code
17 to the contrary, in filling vacancies at other facilities
18 or other state agencies the director and the directors
19 of other agencies shall, for a period of twenty-four
20 months after such transfer or sale give preference
21 over all but existing employees to qualified employees
22 who were permanently employed at the facility
23 immediately prior to such transfer or sale: *Provided,*
24 *however,* That qualified persons who were perman-
25 ently employed at an alcohol beverage control com-
26 mission facility immediately prior to such transfer or
27 sale shall not supersede those employees with recall
28 rights in other state agencies.

The Joint Committee on Enrolled Bills hereby certifies
that the foregoing bill is correctly enrolled.

Somer Luck
.....
Chairman Senate Committee

Ernest C. Moore
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

Darrell Williams
.....
Clerk of the Senate

Donald L. Hopp
.....
Clerk of the House of Delegates

Walter Rudette
.....
President of the Senate

Bob C. C. C.
.....
Speaker House of Delegates

The within *in approved* this the *2nd*
day of *April*, 1991.

Yasou C. C.
.....
Governor

PRESENTED TO THE

GOVERNOR

Date

3/18/91

Time

3:00 pm