WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1991

ENROLLED
Committee Substitute for
SENATE BILL NO. 132
(Originating on the Committee
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 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 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 five, article twenty-one of said code; to amend and reenact sections three, four, five, six and seven, article one, chapter twenty-one 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-thirteen, 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 twentythree 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 mem-
bership of workers' compensation appeal board; pay-
ment 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 responsi-
bilities of West Virginia railroad maintenance authority;
providing exemptions from contested case provisions of
state administrative procedures act; issuance of certifi-
cates by secretary of state to business and nonprofit
corporations; disposition of interest income and repay-
ment 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 sup-
port 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 section one, 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 seventeen, article 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, 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 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 and advice upon questions of law, and shall prosecute and defend suits, actions, and other legal proceedings, and generally render and perform all other legal services, whenever required to do so, in writing, by the governor, the secretary of state, the auditor, the state superintendent of free schools, the treasurer, the commissioner of agriculture, the board of public works, the tax commissioner, the state archivist and historian, the commissioner of banking, the adjutant general, the commissioner of the division of energy, the superintendent of public safety, the state commissioner of public institutions, the state road commission, the commissioner of the bureau of employment programs, the public service commission, or any other state officer, board or commission, or the head of any state educational, correctional, penal or eleemosynary institution; and it shall be unlawful from and after the time this section becomes effective for any of the public officers, commissions, or other persons above mentioned to expend any public funds of the state of West Virginia, for the purpose of paying any person,
firm, or corporation, for the performance of any legal services: Provided, That nothing contained in this section shall impair or affect any existing valid contracts of employment for the performance of legal services heretofore made.

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

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-17. Retirement system membership.

The membership of the retirement system shall consist of the following persons:

(a) All employees, as defined in section two of this article, who are in the employ of a political subdivision the day preceding the date it becomes a participating public employer and who continue in the employ of the said participating public employer on and after the said date shall become members of the retirement system; and all persons who become employees of a participating public employer on or after the said date shall thereupon become members of the system; except as provided in subdivisions (b) and (c) of this section.

(b) The membership of the retirement system shall not include any person who is a member of, or who has been retired by, the state teachers retirement system, the judges retirement system, the retirement system of the division of public safety, or any municipal retirement system for either, or both, policemen or firemen; and the bureau of employment programs, by the commissioner of such bureau, may elect whether its employees will accept coverage under this article or be covered under the authorization of a separate enactment: Provided, That such exclusions of membership shall not apply to any member of the
state Legislature, the clerk of the House of Delegates, the clerk of the state Senate or to any member of the legislative body of any political subdivision provided he once becomes a contributing member of the retirement system: Provided, however, That any retired member of the retirement system of the division of public safety, and any retired member of any municipal retirement system for either, or both, policemen or firemen may on and after the effective date of this section become a member of the retirement system as provided in this article, without receiving credit for prior service as a municipal policeman or fireman or as a member of the division of public safety.

(c) Any member of the state Legislature, the clerk of the House of Delegates, the clerk of the state Senate and any employee of the state Legislature whose employment is otherwise classified as temporary and who is employed to perform services required by the Legislature for its regular sessions or during the interim between regular sessions and who has been or is so employed during regular sessions or during the interim between sessions for ten or more years, or any member of the legislative body of any other political subdivision shall become a member of the retirement system provided he notifies the retirement system in writing of his intention to be a member of the system and files a membership enrollment form as the board of trustees shall prescribe, and each person, upon filing his written notice to participate in the retirement system, shall by said act authorize the clerk of the House of Delegates or the clerk of the state Senate or such person or legislative agency as the legislative body of any other political subdivision shall designate to deduct such member’s contribution, as provided in subsection (b), section twenty-nine of this article, and after said deductions have been made from said member’s compensation, such deductions shall be forwarded to the retirement system.

(d) Should any question arise regarding the membership status of any employee, the board of trustees has the final power to decide the question.
ARTICLE 11. HUMAN RIGHTS COMMISSION.


1 Notwithstanding any other provisions of this article, it shall not be an unlawful discriminatory practice for the bureau of employment programs to ascertain and record the age, sex, race, religion, color, national origin, ancestry, blindness or handicap of any individual for the purpose of making such reports as may from time to time be required by agencies of the federal government or be necessary to show compliance with any rule or regulation issued by any such agency. Said records may be made and kept in the manner required by the federal government: Provided, That such recording of the age, sex, race, religion, color, national origin, ancestry, blindness or handicap of any individual shall not be used to discriminate, within the meaning of this article, directly or indirectly, against any such individual as 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 bureau of employment programs shall, notwithstanding the provisions of section eleven, article ten, chapter twenty-one-a of this code, cooperate to make available to the public employees insurance agency and the legislative task force on uncompensated health care and medicaid expenditures such information as they may request for purposes consistent with this article to identify and facilitate contact with small business employers who may be eligible for participation in the plan. The provisions of this section shall be liberally construed by the bureau of employment programs in order to effectuate the development of the health care insurance plan.

15 Information thus obtained by the public employees insurance agency and the legislative task force on
uncompensated health care and medicaid expenditures
shall be maintained as strictly confidential and shall be
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.

The West Virginia labor-management advisory
council, heretofore created under the provisions of
article one-c, chapter twenty-one of this code, shall be
continued and be so designated as the West Virginia
labor-management council. The council shall consist of
twenty-six members. One member of the council shall
be the commissioner of labor, one member of the
council shall be a member of the economic develop-
ment authority, one member of the council shall be
the commissioner of the bureau of employment pro-
grams or his designated representative, one member
of the council shall be the state superintendent of
schools, one member of the council shall be a member
of the economic development board to be selected by
it annually, and one member of the council shall be a
member of the board of regents to be selected by it
annually, all of whom shall be ex officio nonvoting
members of the council. The other members of the
council shall be appointed by the governor by and
with the advice and consent of the Senate for terms of
four years or until their successors have been
appointed and have qualified. The members of the
council appointed by the governor shall include one
president of a state university, one president of a state
college or community college, and two persons repres-
enting public secondary schools in the state, who shall
be appointed for terms of two, three and four years,
respectively, as designated by the governor at the time
of their appointment, and until their successors have
been appointed and have qualified. The present
members of the council shall continue to serve out the
terms to which they were appointed.

Vacancies shall be filled by appointment by the
governor for the unexpired term of the member whose office is vacant and the appointment shall be made within sixty days of the occurrence of the vacancy.

In making appointments to the council, the governor shall consider names of persons recommended to him by the West Virginia chamber of commerce, the West Virginia coal association, the West Virginia manufacturers' association, the West Virginia retailers' association, utilities, other industrial groups in this state, the West Virginia labor federation, the United Mine workers union, the West Virginia building trades council, other labor organizations in the state, the institutional boards of advisors for state colleges and universities, the state board of education, and the West Virginia school board association. Membership shall be composed of, in addition to those of the state or other government agencies and educational institutions, no less than eight members from industry and eight from labor. The council shall elect one of its members as chairman and may elect such other officers as the council may deem necessary or desirable. Such persons shall serve as such for one year or until their successors are elected and shall be eligible for reelection.

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

All employees of a community action program organization eligible thereto shall be considered to be
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 be considered to be within the workers' compensation act of West Virginia and premiums on their compensation shall be paid by the authority as required by 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 considered to be within the workers' compensation statute of this state and premiums on their compensation 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 considered to be within the workers' compensation statute of this state and premiums on their compensation 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, full time, on a salary basis, whose tenure is not restricted as to temporary or provisional appointment, in the service of, and whose compensation is payable 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.


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

(b) In each county during the reappraisal function, the tax commissioner shall designate a tax department employee as the coordinator of reappraisal functions among the commissioner’s personnel, the commissioner’s designated agents, and the assessor’s personnel so as to insure that the resulting appraisal shall be complete, equal and uniform. In each county, the tax commissioner or his designated agent shall prepare a description of the number, job description and minimum qualifications of personnel needed to accomplish the reappraisal, other than permanent employees of the tax commissioner or employees of the assessor. The tax commissioner or his designated agent shall employ qualified individuals to fill the positions giving first preference to persons registered with the bureau of employment programs’ job service program, but all such persons shall be residents of the county, or if the tax commissioner finds it necessary for efficiency, any contiguous county, or if none be available, the state. The tax commissioner shall make reasonable efforts to assure that the additional employment required by this article is allocated equitably among the several counties, with attention to the level of unemployment in and the population of each county.

(c) To the extent that the tax commissioner concludes that assessors and local employees have overemphasized or underemphasized local aspects in determining value, the tax commissioner may revise information concerning such values so as to achieve uniformity in the statewide reappraisal: Provided, That in any hearings or appeals under the provisions of this article the assessor or employee who partici-
ARTICLE 6B. HOMESTEAD PROPERTY TAX EXEMPTION.

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

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

(b) Claims for disability exemption. — Each claim for exemption based on the owner being permanently and totally disabled shall include one of the following forms of documentation in support of said claim: (1) A written certification by a doctor of medicine or doctor of osteopathy licensed to practice their particular profession in this state that the claimant is permanently and totally disabled; (2) a written certification by the social security administration that the claimant is currently receiving benefits for permanent and total disability; (3) a copy of the letter from the social security administration originally awarding benefits to the claimant for permanent and total disability and a copy of a current check for such benefits, marked void; (4) a current social security health insurance (medicare) card in the name of the claimant and a copy of a current check to the claimant, marked void, for benefits from the social security administration for permanent and total disability; (5) a written certification signed by the veterans administration certifying that a person is totally and permanently disabled; (6) any lawfully recognized workers' compensation documentation certifying that a person is totally and permanently disabled; (7) any lawfully recognized pneumoconiosis documentation certifying that a per-
son is totally and permanently disabled; or (8) any
other lawfully recognized documentation certifying
that a person is totally and permanently disabled.

(c) Renewals.

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

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

(3) Waiver of exemption. — Any person not filing his
claim for exemption on or before the first day of
October shall be determined to have waived his right
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.

Any person to whom a certificate of registration
shall be issued under the provisions of section four of
this article shall keep such certificate posted in a
conspicuous position in the place where the privilege
of such business is exercised. Such certificate of
registration shall be produced for inspection whenever
required by the tax commissioner or by any law-
enforcement officers of this state, county or municipal-
ity wherein the privileges to conduct business are
No injunction shall issue from any court in the state enjoining the collection of any business registration certificate tax required herein; and any person claiming that any business certificate is not due, for any reason, shall pay the same under protest and petition the tax commissioner for a refund in accordance with the provisions of section fourteen, article ten of this chapter.

If any person engaging in or prosecuting any business, or trade, contrary to any other provisions of this article, whether without obtaining a business certificate therefor before commencing the same, or by continuing the same after the termination of the effective period of any such business certificate, the circuit court or the judge thereof in vacation, of the county in which such violation occurred, shall, upon proper application in the name of the state, and after ten days' written notice thereof to such person, grant an injunction prohibiting such person from continuing such business, activity or trade until he has fully complied with the provisions of this article. The remedy provided in this section shall be in addition to all other penalties and remedies provided by law.

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

The tax commissioner shall deliver to the commissioner of the bureau of employment programs, the information contained in the business franchise registration certificate, when this information is used to implement and administer a single point of registration program for persons engaging in any business activity in the state of West Virginia. The single point of registration program shall provide that, once an individual has received a business franchise registration certificate, the tax commissioner shall notify the commissioner of the bureau of employment programs of the names, addresses and other identifying information of that individual or entity. Upon receiving this
information the commissioner of the bureau of employment programs shall contact all businesses receiving a business franchise registration certificate and provide all necessary forms and paperwork to register a business within the bureau, pursuant to subsection (b), section six-b, article two, chapter twenty-one-a and subsection (c), section two, article two, chapter twenty-three of this code.

Notwithstanding the provisions of section five, article ten of this chapter, the tax commissioner may enter into a reciprocal agreement with the governor's office of community and industrial development and other departments or agencies of this state for the exchange of information contained in the application for a business franchise registration certificate filed under section four of this article, when the purpose for the exchange is to implement and administer a single-point registration program for persons engaging in business in this state. Such other departments and agencies shall have authority to enter into a reciprocal exchange agreement for this purpose notwithstanding 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.

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

(b) For the purpose of this section, the term “eligible taxpayer” means a taxpayer who:

(1) Is subject to tax liability under section two-b, article thirteen, chapter eleven of this code, relating to business and occupation tax upon the business of manufacturing, compounding or preparing for sale any articles, substances or commodities; and
(2) Hires a qualified employee, as defined herein, during the period beginning the first day of April, one thousand nine hundred eighty-three, and ending the thirty-first day of December, one thousand nine hundred eighty-four; which employee to such employer is not a returning seasonal employee or employee of like-type.

(c) For the purpose of this section, the term “qualified employee” means an employee who is hired and employed at a location within this state by an eligible taxpayer for full-time employment, which, for the purposes of this section, means employment for at least one hundred twenty hours per month at a wage equal to, or greater than, the prevailing federal minimum wage and:

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

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

(d) The term “qualified employee” does not include a person who displaces an employed individual, other than an individual who is discharged for cause, or does not include an individual employed and who is closely related to a person who owns, directly or indirectly, more than fifty percent of the outstanding stock of the business, or an individual employed and who is closely related to the owner or owners of an unincorporated business.

(e) Notwithstanding any provision of this code to the contrary, the bureau of employment programs shall disclose, upon request, to the state tax commissioner or his employees, any wage, benefits or eligibility information with respect to an identified individual
which is contained in its records.

(f) The maximum total credits allowed to any eligible taxpayer in all taxable years because of the hiring of any one qualified employee shall be one thousand dollars: Provided, That the amount of the credit allowed by this section in any one taxable year shall be the lesser of either one thousand dollars for each qualified employee hired in such taxable year, or ten percent of the gross wages paid by the eligible taxpayer to each qualified employee hired in such taxable year: Provided, however, That unused credit for an eligible employee may be carried forward to the next tax year if necessary and until the lesser of either one thousand dollars for each qualified employee or ten percent of the gross wages paid to the eligible employee during his or her first employment year is taken as a credit by the eligible taxpayer. The credit allowable by this section for a taxable year is not subject to the fifty percent limitation specified in section nine of this article, and any unused credit may be carried over to each of the next three taxable years following the unused credit year until used or forfeited due to lapse of time.

ARTICLE 25. TAX RELIEF FOR ELDERLY HOMEOWNERS AND RENTERS.


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

1 (1) "Claimant" means a person sixty-five years of age or older who was domiciled in this state during any portion of the calendar year preceding the year in which the claimant is eligible to file a claim for relief under this article and who had a gross household income of not more than five thousand dollars during the calendar year preceding the year in which he is eligible to file a claim for relief under this article. If two or more individuals, who otherwise qualify as claimants under this article, occupy a single homestead, such individuals may determine between themselves as to which individual shall be the claimant;
however, if such individuals are unable to agree, the
matters shall be referred to the state tax commissioner
for determination and his decision shall be final.

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

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

(a) Amount of capital gains excluded from West
Virginia adjusted gross income;
(b) Support money;
(c) Nontaxable strike benefits;
(d) Cash public assistance, welfare and relief but not
any relief under this article;
(e) Gross amount of any pension or annuity, includ-
ing railroad retirement benefits;
(f) Social security benefits;
(g) Unemployment compensation benefits;
(h) Veterans disability pensions;
(i) Workers' compensation benefits; and
(j) Private disability insurance benefits.

Gross household income does not include gifts from
nongovernmental sources, or surplus foods or other
relief in kind supplied by a governmental agency.
(4) "Gross rent" means the total amount of money or its equivalent actually paid by a claimant during a particular calendar year to his landlord in a bona fide manner solely for the right of occupancy of a homestead, exclusive of any charges for utilities, services, furniture, furnishings or electrical or other appliances furnished by such landlord to such claimant; and if the state tax commissioner determines that the rent charged was excessive for the purposes of this article, he may adjust the same, for the purposes of this article, to a reasonable amount.

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

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

(7) "Property taxes" means the amount of the real property taxes, exclusive of any interest or charges for delinquency thereof, paid by a claimant on his homestead beginning with the calendar year one thousand nine hundred seventy-two, and for any particular calendar year thereafter: Provided, That if a homestead is owned by a claimant and a person or persons (other than the claimant's spouse) as joint tenants or as tenants in common, and such person or persons owning such interest in such homestead do not reside in such homestead, then for the purposes of this article, the property taxes paid by the claimant shall be prorated according to such claimant's percentage of ownership of such homestead: Provided, however, That if the claimant's homestead is a single unit within any multi-dwelling building, multi-purpose 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
98 (8) “Rent constituting property taxes” means twelve
99 percent of the gross rent paid by a claimant for the
100 right of occupancy of his homestead beginning with
101 the calendar year one thousand nine hundred seventy-
102 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;
(2) The small business recently experienced a natural disaster and suffered unreimbursable casualty losses;

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

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

d) Upon acceptance of the linked deposit loan package or any portion thereof by the board of investments and the director, the board of investments may place certificates of deposit with the eligible lending institution at three percent below current market rates, as determined and calculated by the board of investments. Upon acceptance of the linked deposit loan package for flood victims or any portion thereof, the board of investments may place certificates of deposit with the eligible lending institution at five percent below current market rates, as determined and calculated by the board of investments. When necessary, the board may place certificates of deposit prior to acceptance of a linked deposit loan package.

e) The eligible lending institution shall enter into a deposit agreement with the board, which shall include requirements necessary to carry out the purposes of this article. Such requirements shall reflect the market conditions prevailing in the eligible lending institution’s lending area. The agreement may include a specification of the period of time in which the lending institution is to lend funds upon the placement of a linked deposit and shall include provisions for the certificates of deposit to be placed for up to two-year maturities that may be renewed for up to an additional two years. Interest shall be paid at the times 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.

The state board of health, any member thereof, the director of health, or any officer or employee of the department of health designated by the board of health, shall have the power to hold investigations, inquiries and hearings concerning matters covered by the laws of this state pertaining to public health and within the authority of the state board of health, and the rules, regulations and orders of the board. Hearings shall be open to the public and shall be held upon such call or notice as the board shall deem advisable.

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

Subject to the foregoing provision the board may in its discretion make available to appropriate federal, state and municipal agencies information and material developed in the course of its investigation and hearings: Provided, That information obtained from studies or from any investigation made or hearing held pursuant to the provisions of this article shall not be admissible in evidence in any action at law to recover damages for personal injury or in any action under the workers' compensation act, but such information, if available, shall be furnished upon request to the commissioner of the bureau of employment pro-
grams for the sole purpose of adjusting claims presented 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.

(a) All departments and divisions of the state, including, but not limited to, the division of health and the division of human services within the department of health and human resources; the bureau of employment programs within the department of commerce, labor and environmental resources; the public employees insurance agency within the department of administration; the division of rehabilitation services or such other department or division as shall supervise or provide rehabilitation; and the West Virginia board of regents or such other department or division as shall govern the state medical schools, are authorized and directed to cooperate in order, among other things, to ensure the quality of the health care services delivered to the beneficiaries of such departments and divisions and to ensure the containment of costs in the payment for such services.

(b) It is expressly recognized that no other entity may interfere with the discretion and judgment given to the single state agency which administers the state's medicaid program. Thus, it is the intention of the Legislature that nothing contained in this article shall be interpreted, construed, or applied to interfere with the powers and actions of the single state agency which, in keeping with applicable federal law, shall administer the state's medicaid program as it perceives to be in the best interest of that program and its beneficiaries.

(c) Such departments and divisions shall develop a plan or plans to ensure that a reasonable and appropriate level of health care is provided to the beneficiaries of the various programs including the public employees insurance agency and the workers' comp-

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
40  (1) Utilization review and quality assurance
41 programs;
42
43  (2) The establishment of a schedule or schedules of
44 the maximum reasonable amounts to be paid to health
45 care providers for the delivery of health care services
46 covered by the plan or plans. Such a schedule or
47 schedules may be either prospective in nature or cost
48 reimbursement in nature, or a mixture of both:
49 Provided, That any payment methods or schedules for
50 institutions which provide inpatient care shall be
51 institution-specific and shall, at a minimum, take into
52 account a disproportionate share of medicaid, charity
53 care and medical education: Provided, however, That
54 in no event may any rate set in this article for an
55 institutional health care provider be greater than such
56 institution’s current rate established and approved by
57 the health care cost review authority pursuant to
58 article twenty-nine-b of this chapter;
59
60  (3) Provisions for making payments in advance of
61 the receipt of health care services by a beneficiary, or
62 in advance of the receipt of specific charges for such
63 services, or both;
64
65  (4) Provisions for the receipt or payment of charges
66 by electronic transfers;
67
68  (5) Arrangements, including contracts, with pre-
69 ferred provider organizations; and
70
71  (6) Arrangements, including contracts, with particu-
72 lar health care providers to deliver health care
73 services to the beneficiaries of the programs of the
74 departments and divisions at agreed upon rates in
75 exchange for controlled access to the beneficiary
76 populations.
77
78  (d) The director of the public employees insurance
79 agency shall contract with an independent actuarial
company for a review every four years of the claims experience of all governmental entities whose employees participate in the public employees insurance agency program, including, but not limited to, all branches of state government, all state departments or agencies (including those receiving funds from the federal government or a federal agency), all county and municipal governments, or any other similar entities for the purpose of determining the cost of providing coverage under the program, including administrative cost, to each such governmental entity.

(e) Except as provided in subsection (h) of this section, any health care provider who agrees to deliver health care services to any beneficiary of a health care program of a department or division of the state, including the public employees insurance agency, the state medicaid program, the workers' compensation fund and the division of rehabilitation services, the charges for which shall be paid by or reimbursed by any department or division which participates in a plan or plans as described in this section, shall be deemed to have agreed to provide health care services to the beneficiaries of health care programs of all of the other departments and divisions participating in a plan or plans: Provided, That a health care provider shall be in compliance with this subsection if the health care provider actually delivers health care services to all such patients who request such services or if the health care provider actually delivers health care services to at least a sufficient number of patients who are beneficiaries under the state's medicaid program to equate to at least fifteen percent of the health care provider's total patient population: Provided, however, That the delivery of health care services immediately needed to resolve an imminent life-threatening medical or surgical emergency shall not be deemed to be an agreement under this subsection: Provided further, That nothing contained in this article may be deemed to, or purport to imply, any consent by any physician on the staff of any hospital or other health care institution to accepting or agreeing to deliver health care services to any beneficiary
of a health care program of a division or department
of this state in any such physician's private office or
practice by virtue of the fact that such physician saw
such patient in connection with such physician's duties
as an on-call staff physician.

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

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

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

(i) For the purchase of health care or health care
services by a health care provider participating in a
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 hun-
dred 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 commis-
sioner 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 com-
penation 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
"operator's policy" of liability insurance certified as provided in section ten or section eleven of this article as proof of financial responsibility, and issued, except as otherwise provided in section eleven, by an insurance carrier duly authorized to transact business in this state, to or for the benefit of the person named therein as insured.

(b) Such owner’s policy of liability insurance:

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

(2) Shall insure the person named therein and any other person, as insured, using any such vehicle or vehicles with the express or implied permission of such named insured, against loss from the liability imposed by law for damages arising out of the ownership, operation, maintenance or use of such vehicle or vehicles within the United States of America or the Dominion of Canada, subject to limits exclusive of interest and costs, with respect to each such vehicle, as follows: Twenty thousand dollars because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, forty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and ten thousand dollars because of injury to or destruction of property of others in any one accident.

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

(d) Such motor vehicle liability policy shall state the name and address of the named insured, the coverage afforded by the policy, the premium charged therefor, the policy period, and the limits of liability, and shall contain an agreement or be endorsed that insurance is
provided thereunder in accordance with the coverage defined in this chapter as respects bodily injury and death or property damage, or both, and is subject to all the provisions of this chapter.

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

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

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

(2) The satisfaction by the insured of a judgment for such injury or damage shall not be a condition precedent to the right or duty of the insurance carrier to make payment on account of such injury or damage.

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

(4) The policy, the written application therefor, if any, and any rider or endorsement which does not conflict with the provisions of this chapter shall constitute the entire contract between parties.
(g) Any policy which grants the coverage required for a motor vehicle liability policy may also grant any lawful coverage in excess of or in addition to the coverage specified for a motor vehicle liability policy and such excess or additional coverage shall not be subject to the provisions of this chapter. With respect to a policy which grants such excess or additional coverage the term "motor vehicle liability policy" applies only to that part of the coverage which is required by this section.

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

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

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

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

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-20. Investment of funds.

The members of the retirement board shall be the trustees of the several funds created by this article, and shall determine from time to time what part of the moneys belonging to the retirement system shall be invested. When such board shall determine to invest any moneys or to convert or sell any securities, it shall by resolution so direct the custodian. The board of public works is hereby empowered to determine in what securities the investments shall be made, but such investments shall be made only in those securi-
ties to which the board of public works is limited in
the investment of workers' compensation funds under
section two, article three, chapter twenty-three of this
code, or in bonds, notes, or other instruments evidenc-
ing loans secured by mortgages or deeds of trust
insured, or with respect to which commitments to
insure have been made by the United States, or by the
secretary of agriculture, pursuant to the Bankhead-
Jones Farm Tenant Act of 1937, as heretofore or
hereinafter amended. It shall be the duty of every
county, school district or municipality issuing any
bonds to offer them in writing to the board of public
works, prior to advertising the bonds for sale. The
board of public works, within fifteen days after receipt
of such offer, may accept or reject such offer in whole
or in part. It shall be the duty of the custodian to
collect the principal and the interest on investments
when they become due and payable and to credit such
collections to the retirement system.

ARTICLE 9B. STATE BOARD OF SCHOOL FINANCE.

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

If a county board accumulates the permanent
improvement fund for more than two years, the
proceeds of the fund shall be transmitted to the state
sinking fund commission on or before the first day of
December of the year in which the second successive
levy for the fund is laid. Amounts subsequently
accruing to the fund as of the first day of July of each
year shall be transmitted to the state sinking fund
commission on or before the first day of December
ensuing. The state sinking fund commission shall keep
a separate account for the fund of the county and shall
invest the proceeds in any obligations authorized for
the investment of the state workers' compensation
fund. The proceeds of the fund may be withdrawn by
the county board of education as authorized by this
article upon sixty days' notice in writing to the state
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 colors or assumed names and fines imposed by the stewards, starters or other racing officials shall be paid into a relief fund and paid out on the order of the racing commission for hospitalization, medical care and funeral expenses occasioned by injuries or death resulting from an accident sustained by any permit holder while in the discharge of his duties under the jurisdiction of the racing commission. No payment shall be made, however, for any hospitalization, medical care or funeral expenses as to any permit holder who is covered under the workers' compensation fund of this state, or any insurance policy providing payments for hospitalization, medical care or funeral expenses. Any balance in said relief fund at any time in excess of five thousand dollars, less any relief obligations then outstanding, shall thereupon be transferred by the racing commission to the state treasurer for deposit to the credit of the general revenue fund of this state.

CHAPTER 21. LABOR.

ARTICLE 5. WAGE PAYMENT AND COLLECTION.


1 (a) Bond required. — With the exception of those who have been doing business in this state actively and actually engaged in construction work, or the severance, production or transportation of minerals for at least five consecutive years next preceding the posting of the bond required by this section, every employer, person, firm or corporation engaged in or about to engage in construction work, or the severance, production or transportation (excluding railroads and water transporters) of minerals, shall, prior to engaging in any construction work, or the severance, production or transportation of minerals, furnish a
bond on a form prescribed by the commissioner, payable to the state of West Virginia, with the condition that the person, firm or corporation pay the wages and fringe benefits of his or its employees when due. The amount of the bond shall be equal to the total of the employer's gross payroll for four weeks at full capacity or production, plus fifteen percent of the said total of employer's gross payroll for four weeks at full capacity or production. The amount of the bond shall increase or decrease as the employer's payroll increases or decreases: Provided, That the amount of the bond shall not be decreased, except with the commissioner's approval and determination that there are not outstanding claims against the bond.

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

(c) Form of bond; filing in office of circuit clerk. — The bond may include, with the approval of the commissioner, surety bonding, collateral bonding (including cash and securities), letters of credit, establishment of an escrow account or a combination of these methods. The commissioner shall accept an irrevocable letter of credit in lieu of any other bonding requirement. If collateral bonding is used, the employer may deposit cash, or collateral securities or certificates as follows: Bonds of the United States or its possessions, or of the federal land bank, or of the homeowner’s loan corporation; full faith and credit general obligation bonds of the state of West Virginia or other states, and of any county, district or municipality of the state of West Virginia or other states; or certificates of deposit in a bank in this state, which certificates shall be in favor of the state. The cash deposit or market value of such securities or certificates shall be equal to or greater than the sum of the
bond. The commissioner shall, upon receipt of any such deposit of cash, securities or certificates, promptly place the same with the state treasurer whose duty it shall be to receive and hold the same in the name of the state in trust for the purpose for which such deposit is made. The employer making the deposit shall be entitled from time to time to receive from the state treasurer, upon the written approval of the commissioner, the whole or any portion of any cash, securities or certificates so deposited, upon depositing with him in lieu thereof, cash or other securities or certificates of the classes herein specified having value equal to or greater than the sum of the bond. The commissioner shall cause a copy of the bond to be filed in the office of the clerk of the county commission of the county wherein the person, firm or corporation is doing business to be available for public inspection.

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

(e) Action of commissioner. — Any employee having wages and fringe benefits unpaid, may inform the commissioner of the claim for unpaid wages and fringe benefits and request certification thereof. If the commissioner, upon notice to the employer and investigation, finds that such wages and fringe benefits or a portion thereof are unpaid, he shall make demand of such employer for the payment of such wages and fringe benefits. If payment for such wages and fringe benefits is not forthcoming within the time specified by the commissioner, not to exceed thirty days, the commissioner shall certify such claim or portion thereof, and forward the certification to the bonding company or the state treasurer, who shall provide payment to the affected employee within fourteen days of receipt of such certification. The bonding company, or any person, firm or corporation posting a
bond, thereafter shall have the right to proceed against
a defaulting employer for that part of the claim the
employee paid. The procedure specified herein shall
not be construed to preclude other actions by the
commissioner or employee to seek enforcement of the
provisions of this article by any civil proceedings for
the payment of wages and fringe benefits or by
criminal proceedings as may be determined
appropriate.

(f) Posting and reporting by employer. — With the
exception of those exempt under subsection (a) of this
section, any employer who is engaged in construction
work or the severance, production or transportation
(excluding railroad and water transporters) of minerals shall post the following in a place accessible to his
or its employees:

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

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

(g) Termination of bond. — The bond may be
terminated, with the approval of the commissioner,
after an employer submits a statement, under oath or
affirmation lawfully administered, to the commis-
sioner that the following has occurred: The employer has ceased doing business and all wages and fringe benefits have been paid, or the employer has been doing business in this state for at least five consecutive years and has paid all wages and fringe benefits. The approval of the commissioner will be granted only after the commissioner has determined that the wages and fringe benefits of all employees have been paid. The bond may also be terminated upon a determination by the commissioner that an employer is of sufficient financial responsibility to pay wages and fringe benefits.

CHAPTER 21A. UNEMPLOYMENT COMPENSATION.

ARTICLE 1. BUREAU OF EMPLOYMENT PROGRAMS.


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

3 "Administration fund" means the employment security administration fund, from which the administrative expenses under this chapter shall be paid.

5 "Annual payroll" means the total amount of wages for employment paid by an employer during a twelve-month period ending with the thirtieth day of June of any calendar year.

7 "Average annual payroll" means the average of the last three annual payrolls of an employer.

9 "Base period" means the first four out of the last five completed calendar quarters immediately preceding the first day of the individual benefit year.

11 "Base period employer" means any employer who in the base period for any benefit year paid wages to an individual who filed claim for unemployment compensation within such benefit year.

13 "Base period wages" means wages paid to an individual during the base period by all his base period employers.

15 "Benefit year" with respect to an individual means
the fifty-two-week period beginning with the first day of the calendar week in which a valid claim is effective, and thereafter the fifty-two-week period beginning with the first day of the calendar week in which such individual next files a valid claim for benefits after the termination of his last preceding benefit year; however, if a claim is effective on the first day of a quarter, the benefit year will be fifty-three weeks, in order to prevent an overlapping of the base period wages. An initial claim for benefits filed in accordance with the provisions of this chapter shall be considered to be a valid claim within the purposes of this definition if the individual has been paid wages in his base period sufficient to make him eligible for benefits under the provisions of this chapter.

"Benefits" means the money payable to an individual with respect to his unemployment.

"Board" means board of review.

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

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

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

"Employing unit" means an individual, or type of organization, including any partnership, association, trust, estate, joint-stock company, insurance company, corporation (domestic or foreign), state or political subdivision thereof, or their instrumentalities, as provided in paragraph (b), subdivision (9) of the definition of "employment" in this section, institution of higher education, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal
representative of a deceased person, which has on the first day of January, one thousand nine hundred thirty-five, or subsequent thereto, had in its employ one or more individuals performing service within this state.

"Employer" means:

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

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

(3) Any employing unit which has acquired or acquires the organization, trade or business, or substantially all the assets thereof, of an employing unit which at the time of such acquisition was an employer subject to this chapter;

(4) Any employing unit which, after the thirty-first day of December, one thousand nine hundred sixty-three, and until the first day of January, one thousand nine hundred seventy-two, in any one calendar quarter, in any calendar year, has in employment four or more individuals and has paid wages for employment in the total sum of five thousand dollars or more, or which, after such date, has paid wages for employment in any calendar year in the sum total of twenty thousand dollars or more;

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

(6) For the effective period of its election pursuant
to section three, article five of this chapter, any employing unit which has elected to become subject to this chapter;

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

(8) Any employing unit for which service in employment, as defined in subdivision (9) of the definition of “employment” in this section, is performed after the thirty-first day of December, one thousand nine hundred seventy-one;

(9) Any employing unit for which service in employment, as defined in subdivision (10) of the definition of “employment” in this section, is performed after the thirty-first day of December, one thousand nine hundred seventy-one;

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

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

(12) Any employing unit for which domestic service in employment, as defined in subdivision (13) of the definition of “employment” in this section, is per-
formed after the thirty-first day of December, one thousand nine hundred seventy-seven.

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

(1) Service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied;

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

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

(4) An individual's entire service, performed within or both within and without this state if: (a) The service is localized in this state or (b) the service is not localized in any state but some of the service is performed in this state and (i) the base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in this state; or (ii) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed but the individual's residence is in this state;

(5) Service not covered under paragraph (4) of this subdivision and performed entirely without this state with respect to no part of which contributions are required and paid under an unemployment compensa-
tion law of any other state or of the federal govern-
ment, is employment subject to this chapter if the
individual performing such services is a resident of
this state and the commissioner approves the election
of the employing unit for whom such services are
performed that the entire service of such individual is
employment subject to this chapter;

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

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

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

(9) (a) Service performed after the thirty-first day of
December, one thousand nine hundred seventy-one,
by an individual in the employ of this state or any of
its instrumentalities (or in the employ of this state and
one or more other states or their instrumentalities) for
a hospital or institution of higher education located in
this state: Provided, That such service is excluded
from "employment" as defined in the Federal Unem-
ployment Tax Act solely by reason of section 3306 (c)
(7) of that act and is not excluded from "employment"
under subdivision (11) of the exclusion from
employment;

(b) Service performed after the thirty-first day of
December, one thousand nine hundred seventy-seven,
in the employ of this state or any of its instrumen-
talities or political subdivisions thereof or any of its
instrumentalities or any instrumentality of more than
one of the foregoing or any instrumentality of any
foregoing and one or more other states or political
subdivisions: Provided, That such service is excluded
from "employment" as defined in the Federal Unem-
ployment Tax Act by section 3306 (c) (7) of that act and
is not excluded from "employment” under subdivision
(15) of the exclusion from employment in this section;

and

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

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

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

(b) The organization had four or more individuals in
employment for some portion of a day in each of
twenty different weeks, whether or not such weeks
were consecutive, within either the current or prece-
ding calendar year, regardless of whether they were
(11) Service of an individual who is a citizen of the United States, performed outside the United States after the thirty-first day of December, one thousand nine hundred seventy-one (except in Canada and in the case of Virgin Islands after the thirty-first day of December, one thousand nine hundred seventy-one, and before the first day of January, the year following the year in which the secretary of labor approves for the first time an unemployment insurance law submitted to him by the Virgin Islands for approval) in the employ of an American employer (other than service which is considered “employment” under the provisions of subdivision (4), (5) or (6) of this definition of “employment” or the parallel provisions of another state’s law) if:

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

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

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

An “American employer”, for purposes of this subdivision (11), means a person who is (i) an individual who is a resident of the United States; or (ii) a partnership if two thirds or more of the partners are residents of the United States; or (iii) a trust, if all of the trustees are residents of the United States; or (iv) a corporation organized under the laws of the United States or of any state;
(12) Service performed after the thirty-first day of December, one thousand nine hundred seventy-seven, by an individual in agricultural labor as defined in subdivision (5) of the exclusions from employment in this section when:

(a) Such service is performed for a person who (i) during any calendar quarter in either the current or the preceding calendar year paid remuneration in cash of twenty thousand dollars or more to individuals employed in agricultural labor including labor performed by an alien referred to in paragraph (b) of this subdivision (12); or (ii) for some portion of a day in each of twenty different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor, including labor performed by an alien referred to in paragraph (b) of this subdivision (12), ten or more individuals, regardless of whether they were employed at the same moment of time;

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

(c) For the purposes of the definition of employment, any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of such crew leader (i) if such crew leader holds a valid certificate of registration under the Migrant and Seasonal Agricultural Worker Protection Act; or substantially all the members of such crew operate or maintain tractors, mechanized harvesting or crop-dusting equipment, or any other mechanized equipment, which is provided by such crew leader; and (ii) if such individual is not an employee of such other person within the meaning of subdivision (7) of the definition of employer;
(d) For the purposes of this subdivision (12), in the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of such crew leader under subparagraph (c) of this subdivision (12), (i) such other person and not the crew leader shall be treated as the employer of such individual; and (ii) such other person shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader (either on his own behalf or on behalf of such other person) for the service in agricultural labor performed for such other person; and

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

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

Notwithstanding the foregoing definition of "employment", if the services performed during one half or more of any pay period by an employee for the person employing him constitute employment, all the services of such employee for such period are employment; but if the services performed during more than one half of any such pay period by an employee for
the person employing him do not constitute employment, then none of the services of such employee for such period are employment.

The term "employment" does not include:

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

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

(3) Service performed in the employ of the United States or any instrumentality of the United States exempt under the constitution of the United States from the payments imposed by this law, except that to the extent that the Congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation law, all of the provisions of this law shall be applicable to such instrumentalities and to service performed for such instrumentalities in the same manner, to the same extent and on the same terms as to all other employers, employing units, individuals and services:

Provided, That if this state shall not be certified for any year by the secretary of labor under section 1603 (c) of the federal Internal Revenue Code, the payments required of such instrumentalities with respect to such year shall be refunded by the commissioner from the fund in the same manner and within the same period as is provided in section nineteen, article five of this chapter, with respect to payments erroneously collected:

(4) Service performed after the thirtieth day of June, one thousand nine hundred thirty-nine, with respect to which unemployment compensation is
payable under the Railroad Unemployment Insurance Act and service with respect to which unemployment benefits are payable under an unemployment compensation system for maritime employees established by an act of Congress. The commissioner may enter into agreements with the proper agency established under such an act of Congress to provide reciprocal treatment to individuals who, after acquiring potential rights to unemployment compensation under an act of Congress, or who have, after acquiring potential rights to unemployment compensation under an act of Congress, acquired rights to benefit under this chapter. Such agreement shall become effective ten days after such publications which shall comply with the general rules of the department;

(5) Service performed by an individual in agricultural labor, except as provided in subdivision (12) of the definition of “employment” in this section. For purposes of this subdivision (5), the term “agricultural labor” includes all services performed:

(a) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training and management of livestock, bees, poultry, and fur-bearing animals and wildlife;

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

(c) In connection with the production or harvesting of any commodity defined as an agricultural commodity in section fifteen (g) of the Agricultural Marketing Act, as amended, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs or waterways, not
owned or operated for profit, used exclusively for
supplying and storing water for farming purposes;

(d) (i) In the employ of the operator of a farm in
handling, planting, drying, packing, packaging, pro-
cessing, freezing, grading, storing or delivering to
storage or to market or to a carrier for transportation
to market, in its unmanufactured state, any agricul-
tural or horticultural commodity; but only if such
operator produced more than one half of the commod-
ity with respect to which such service is performed; or
(ii) in the employ of a group of operators of farms (or
a cooperative organization of which such operators are
members) in the performance of service described in
clause (i), but only if such operators produced more
than one half of the commodity with respect to which
such service is performed; but the provisions of clauses
(i) and (ii) are not applicable with respect to service
performed in connection with commercial canning or
commercial freezing or in connection with any agricu-
lultural or horticultural commodity after its delivery
to a terminal market for distribution for consumption;

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

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

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

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

(9) Service as an officer or member of a crew of an
American vessel, performed on or in connection with
such vessel, if the operating office, from which the
operations of the vessel operating on navigable waters
within or without the United States are ordinarily and
regularly supervised, managed, directed and con-
trolled, is without this state;

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

(11) Service performed (i) in the employ of a church
or convention or association of churches, or an organi-
zation which is operated primarily for religious
purposes and which is operated, supervised, controlled
or principally supported by a church or convention or
association of churches; or (ii) by a duly ordained,
commissioned or licensed minister of a church in the
exercise of his ministry or by a member of a religious
order in the exercise of duties required by such order;
or (iii) prior to the first day of January, one thousand
eighty-eight, in the employ of a school
which is not an institution of higher education; or (iv)
in a facility conducted for the purpose of carrying out
a program of rehabilitation for individuals whose
earning capacity is impaired by age or physical or
mental deficiency or injury or providing remunerative
work for individuals who because of their impaired
physical or mental capacity cannot be readily absorbed
in the competitive labor market by an individual
receiving such rehabilitation or remunerative work; or
(v) as part of an unemployment work-relief or work-
training program assisted or financed in whole or in
part by any federal agency or an agency of a state or
political subdivision thereof, by an individual receiving
such work relief or work training; or (vi) prior to the
first day of January, one thousand nine hundred
seventy-eight, for a hospital in a state prison or other
state correctional institution by an inmate of the
prison or correctional institution, and after the thirty-
first day of December, one thousand nine hundred
seventy-seven, by an inmate of a custodial or penal
(12) Service performed in the employ of a school, college or university, if such service is performed (i) by a student who is enrolled and is regularly attending classes at such school, college or university, or (ii) by the spouse of such a student, if such spouse is advised, at the time such spouse commences to perform such service, that (I) the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college or university, and (II) such employment will not be covered by any program of unemployment insurance;

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

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

(15) Service in the employ of a governmental entity referred to in subdivision (9) of the definition of "employment" in this section if such service is performed by an individual in the exercise of duties (i) as an elected official; (ii) as a member of a legislative body, or a member of the judiciary, of a state or political subdivision; (iii) as a member of the state national guard or air national guard; (iv) as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood or similar emergency; (v) in a position which, under or pursuant to the laws
of this state, is designated as (I) a major nontenured
policymaking or advisory position, or (II) a policymak-
ing or advisory position the performance of the duties
of which ordinarily does not require more than eight
hours per week.

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

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

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

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

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

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

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

(3) Provides an educational program for which it
awards a bachelor's or higher degree, or provides a
program which is acceptable for full credit toward
such a degree, or provides a program of post-graduate
or post-doctoral studies, or provides a program of
training to prepare students for gainful employment in a recognized occupation; and
(4) Is a public or other nonprofit institution.
Notwithstanding any of the foregoing provisions of this definition all colleges and universities in this state are institutions of higher education for purposes of this section.
"Payments" means the money required to be paid or that may be voluntarily paid into the state unemployment compensation fund as provided in article five of this chapter.
"Separated from employment" means, for the purposes of this chapter, the total severance, whether by quitting, discharge or otherwise, of the employer-employee relationship.
"State" includes, in addition to the states of the United States, Puerto Rico, District of Columbia and the Virgin Islands.
"Total and partial unemployment" means:
(1) An individual is totally unemployed in any week in which such individual is separated from employment for an employing unit and during which he performs no services and with respect to which no wages are payable to him.
(2) An individual who has not been separated from employment is partially unemployed in any week in which due to lack of full-time work wages payable to him are less than his weekly benefit amount plus twenty-five dollars: Provided, That said individual must have earnings of at least twenty-six dollars.
"Wages" means all remuneration for personal service, including commissions, gratuities customarily received by an individual in the course of employment from persons other than the employing unit, as long as such gratuities equal or exceed an amount of not less than twenty dollars each month and which are required to be reported to the employer by the employee, bonuses, and the cash value of all remuner-
ation in any medium other than cash except for agricultural labor and domestic service: Provided, That the term “wages” does not include:

(i) That part of the remuneration which, after remuneration equal to three thousand dollars has been paid to an individual by an employer with respect to employment during any calendar year, is paid after the thirty-first day of December, one thousand three hundred ninety, and prior to the first day of January, one thousand three hundred forty-seven, to such individual by such employer with respect to employment during such calendar year; or that part of the remuneration which, after remuneration equal to three thousand dollars with respect to employment after one thousand three hundred thirty-eight, has been paid to an individual by an employer during any calendar year after one thousand three hundred forty-six, is paid to such individual by such employer during such calendar year, except that for the purposes of sections one, ten, eleven and thirteen, article six of this chapter, all remuneration earned by an individual in employment shall be credited to the individual and included in his computation of base period wages:

Provided, That notwithstanding the foregoing provisions, on and after the first day of January, one thousand three hundred sixty-two, the term “wages” does not include:

That part of the remuneration which, after remuneration equal to three thousand six hundred dollars has been paid to an individual by an employer with respect to employment during any calendar year, is paid during any calendar year after one thousand nine hundred sixty-one; and shall not include that part of remuneration which, after remuneration equal to four thousand two hundred dollars is paid during a calendar year after one thousand nine hundred seventy-one; and shall not include that part of remuneration which, after remuneration equal to six thousand dollars is paid during a calendar year after one thousand nine hundred seventy-seven; and shall not include that part of remuneration which, after remu-
Enr. Com. Sub. for S. B. No. 132] 60

697 remuneration 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 remunera-
723 tion 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
hundred dollars, or (c) effective on or after the first
day of January, one thousand nine hundred seventy-
two, to include remuneration in excess of four thou-
sand two hundred dollars, or (d) effective on or after
the first day of January, one thousand nine hundred
seventy-eight, to include remuneration in excess of six
thousand dollars, or (e) effective on or after the first
day of January, one thousand nine hundred eighty, to
include remuneration in excess of eight thousand
dollars, paid to an individual by an employer under
the Federal Unemployment Tax Act during any
calendar year, wages for the purposes of this definition
shall include remuneration paid in a calendar year to
an individual by an employer subject to this article or
his predecessor with respect to employment during
any calendar year up to an amount equal to the
amount of remuneration taxable under the Federal
Unemployment Tax Act;

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

(3) Any payment made after the thirty-first day of
December, one thousand nine hundred fifty-two, by
an employer to an individual in its employ (including
any amount paid by an employer for insurance or
annuities, or into a fund, to provide for any such
payment) on account of retirement;
(4) Any payment made after the thirty-first day of December, one thousand nine hundred fifty-two, by an employer on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, to, or on behalf of, an individual in its employ after the expiration of six calendar months following the last calendar month in which such individual worked for such employer;

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

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

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

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

(9) Payments, not required under any contract of
hire, made to an individual with respect to his period of training or service in the armed forces of the United States by an employer by which such individual was formerly employed; and

(10) Vacation pay, severance pay or savings plans received by an individual before or after becoming totally or partially unemployed but earned prior to becoming totally or partially unemployed: Provided, that the term totally or partially unemployed shall not be interpreted to include: (A) Employees who are on vacation by reason of the request of the employees or their duly authorized agent, for a vacation at a specific time, and which request by the employees or their agent is acceded to by their employer; (B) employees who are on vacation by reason of the employer’s request provided they are so informed at least ninety days prior to such vacation; or (C) employees who are on vacation by reason of the employer’s request where such vacation is in addition to the regular vacation and the employer compensates such employee at a rate equal to or exceeding their regular daily rate of pay during the vacation period.

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

“Week” means a calendar week, ending at midnight Saturday, or the equivalent thereof, as determined in accordance with the regulations prescribed by the commissioner.

“Weekly benefit rate” means the maximum amount of benefit an eligible individual will receive for one week of total unemployment.

“Year” means a calendar year or the equivalent 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 of employment programs, composed of a division of unemployment compensation, a division of employment service, a division of job training programs, a division of workers' compensation, and such other divisions or units as the commissioner determines to be necessary.

2 Wherever, within this chapter, or in chapter twenty-three of this code, the term “department”, “bureau”, “fund” or “workers’ compensation fund” is used, it shall be taken to mean bureau of employment programs.

3 Notwithstanding the provisions of subsection (d)(11) and subsection (d)(12), section one, article two, chapter five-f of this code the division of employment security and the division of workers’ compensation programs are hereby consolidated in an agency designated as bureau of employment programs, which bureau shall be administered as part of the department of commerce, labor and environmental resources created pursuant to subsection (b), section one, article two, chapter five-f of this code.

§21A-1-5. Federal-state cooperation.

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


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

2 (1) Reduce and prevent unemployment.

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

4 (3) Encourage the establishment by the state and
(4) Promote reemployment and employment read-
justment between industries.

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

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

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

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

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

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

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

Notwithstanding the provisions of section two-a,
chapter six, this code, the commis-

sioner of the bureau of employment programs shall
receive a yearly salary of sixty-five thousand dollars
and the necessary traveling expenses incident to the
performance of his duties. Requisition for traveling
expenses shall be accompanied by a sworn itemized
statement which shall be filed with the auditor and
preserved as a public record.


The commissioner shall be the executive and admin-
istrative head of the bureau and shall have the power
and duty, to:
4 (1) Exercise general supervision of and make regulations for the government of the bureau;

6 (2) Prescribe uniform rules pertaining to investigations, departmental hearings, and promulgate rules and regulations;

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

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

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

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

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

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

38 (9) Sign and execute in the name of the state, by “The Bureau of Employment Programs”, any contract or agreement with the federal government, its agencies, other states, their subdivisions, or private persons;
(10) Prescribe a salary scale to govern compensation of appointees and employees of the bureau;

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

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

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

(14) Exercise any other power necessary to standardize administration, expedite bureau business, assure the establishment of fair rules and regulations and promote the efficiency of the service; and

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

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

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

(b) All information acquired by the bureau of employment programs commissioner pursuant to subsection (a) of this section shall be used to implement and administer a single point of registration program as created in section seven, article twelve, chapter eleven of this code. The commissioner of the bureau of employment programs, upon receiving the business franchise certificate information made avail-
able pursuant to subsection (a) of this section, shall contact all businesses receiving a business franchise registration certificate and provide all necessary forms to register the business under the provisions of article five of this chapter.

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

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

(e) Information acquired by the bureau of employment programs commissioner pursuant to subsection (a) of this section shall not be subject to disclosure under the provisions of chapter twenty-nine-b of this code.


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


The commissioner shall establish regulations governing dismissals, terminations, layoffs and suspensions. Severance of employees' relationship with the bureau shall be in accordance with these regulations. All severances shall be for good cause. Failure to maintain technical or professional qualifications shall be a good cause for severance.
1 For the original determination of claims under this chapter and chapter twenty-three of this code the commissioner shall appoint a necessary number of deputies as his representatives.

1 The commissioner shall have all powers and duties necessary to secure to the state the benefits of congressional action for the promotion and maintenance of a system of public employment offices. To this end the provisions of the act referred to in the preceding section and such additional congressional action consistent with the above act are accepted by the state and the state pledges its observance and compliance therewith.

The bureau of employment programs, by its commissioner, is designated the agent of this state for the purpose of compliance with the act of Congress entitled “An act to provide for the establishment of a national employment system and for cooperation with states in the promotion of such systems, and for other purposes,” approved the sixth day of June, one thousand nine hundred thirty-three, as amended:
Provided, That the functions formerly performed by the advisory council under article three of this chapter, which advisory council was required under the provisions of section eleven of the Wagner-Peyser Act, shall be performed by the state job training coordinating council in accordance with section 122 (c) of the Job Training Partnership Act.

The bureau of employment programs, by its commissioner, is designated the agent of this state for the purpose of compliance with the act of Congress entitled “An act to provide for a job training program, and for other purposes,” enacted the eighteenth day of October, one thousand nine hundred eighty-two, as amended.

The bureau of employment programs, by its commissioner, is designated the agent of this state for the
purpose of complying with and administering sections
sixteen and seventeen of an act of Congress entitled
"An act to extend and improve the unemployment
compensation program," approved the first day of
September, one thousand nine hundred fifty-four.

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

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

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

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

The bureau of employment programs, by its com-
missioner, is designated the agent of this state for the
purpose of complying with and administering an act of
Congress entitled "An act to provide for the establish-
ment of a temporary program of extended unemploy-
ment compensation, to provide for a temporary
increase in the rate of the federal unemployment tax,
and for other purposes," approved the third day of
January, one thousand nine hundred sixty-one.

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

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

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

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

In the administration of the provisions in article six-
a of this chapter, which are enacted to conform with
the requirements of the "Federal-State Extended
Unemployment Compensation Act of 1970,'" the com-
missioner shall take such action as may be necessary
(i) to ensure that the provisions are so interpreted and
applied as to meet the requirements of such federal
act, and (ii) to secure this state the full reimbursement
of the federal share of extended and regular benefits
paid under this chapter which are reimbursable under
said federal act.

§21A-2-16a. Work incentive program.

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

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

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

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

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

(2) The commissioner, on behalf of the bureau, may
do any and all acts necessary to establish and operate
such training program within the state of West
(3) The commissioner is hereby empowered and authorized to receive funds to finance such program from agencies of the United States government, including the department of labor, the veterans administration and the department of health, education and welfare, and from other appropriate fund sources.

(4) In order to assist in the administration of this program, the commissioner shall appoint an advisory committee consisting of not more than nine members which members shall be qualified medical professionals and shall consist of representatives of state medical departments and the state medical association. This committee shall be advisory to the commissioner and shall determine general guidelines for the development and promotion of the program.

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

ARTICLE 2A. EMERGENCY EMPLOYMENT SUPPLEMENTAL MATCHING PROGRAM.


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

(1) “Commissioner” means the commissioner of the bureau of employment programs.

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

(3) “Eligible unemployed person” means any person who is a bona fide resident of this state who has been eligible for unemployment compensation benefits and has received all the benefits available to him or her,
and who is not gainfully employed.

(4) "Head of household" means any person who: (A) claims one or more persons, other than the filing taxpayer, as a dependent on his or her federal income tax return; (B) has living in the same household one or more dependents; and (C) receives no income from the household and does not have a spouse or dependent living in the same household who is employed in regular full-time employment: Provided, That participation in any public assistance program or receipt of public assistance benefits shall not disqualify any person from entitlement to head of household status.

§21A-2A-4. Notice to private business employers; applications for prospective employers.

The commissioner, within fifteen days after the effective date of legislation appropriating funds for the implementation of this article, shall publish statewide a notice to private business employers of the opportunity to employ eligible unemployed persons as provided for under this article.

Any private business, as defined in section two of this article, seeking to employ eligible unemployed persons may make application at any local job service office on forms to be supplied by the commissioner. Such forms shall provide space for a listing of the nature of the employment position available and the minimum experience, skills and educational requirements therefor. The form shall also provide space for an affidavit by the employer that the employment position to be filled is not being used in lieu of the recall of laid off workers, to replace existing employees or to supplement the compensation paid existing employees. This affidavit shall also contain a statement by the private business employer that there is a reasonable expectation that this employment may continue beyond the end of the six-month reimbursement period provided for under this article. At each job service office of the bureau of employment programs, the commissioner shall cause to be compiled a list of job openings under this program. The list shall
be available for inspection by any eligible unemployed
person applying for employment hereunder. The
commissioner is authorized to require, prior to appro-
val of an application by an employer, examination of
such records and documents of the employer as the
commissioner may consider necessary to ensure the
correctness and truthfulness of the employer’s
affidavit.

ARTICLE 2B. GROUP INSURANCE PLANS FOR REGULAR
EMPLOYEES.

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

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

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

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

4. The commissioner is hereby authorized and empo-
wered to accept on behalf of the regular employees of
the bureau of employment programs, who in writing
agree to participate in any plan of group insurance,
Enr. Com. Sub. for S. B. No. 132] 76

8 granted funds provided by the United States department of labor, bureau of employment security, to pay the agency’s share of the premium cost of said group policy or policies. The state of West Virginia shall not pay, or be liable for the payment of, any portion of said premiums for such group insurance.


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

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

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

ARTICLE 2C. VETERANS INCENTIVE PROGRAM.

§21A-2C-6. Program administration.

The program established by this article shall be conducted primarily under the direction of the division of employment service of the bureau of employ-
ment programs. Each veteran who qualifies under this article for participation in this program shall be given, upon request, a voucher from a local employment service office certifying that the veteran is eligible for participation in the program described in this article. The voucher shall be in a form prescribed by the commissioner of the bureau of employment programs and the commissioner may conduct such investigations and collect such data as he considers necessary to ensure that each veteran applying for the voucher is actually qualified for participation in the program.

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

ARTICLE 5. EMPLOYER COVERAGE AND RESPONSIBILITY.

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

(a) On and after the first day of July, one thousand nine hundred eighty-seven, if the commissioner determines for a given projected quarter that the rates established under the provisions of section ten of this article will not result in payments being made to the unemployment compensation fund in an amount sufficient to finance the payment of benefits during such quarter, the commissioner shall certify such fact to the governor, and the governor shall, by executive order, direct the commissioner to establish a level of assessment for employees and employers in accordance with the provisions of this section which is
sufficient to prevent, to the extent possible, a deficit in
the funds available to pay benefits to eligible
individuals.

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

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

Notwithstanding any other provision of this section to the contrary, the solvency assessments on employers and employees established by this section hereby terminate on the first day of April, one thousand nine hundred ninety.


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

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

3 (3) In addition to all other civil remedies prescribed herein the commissioner may in the name of the state restrain upon any personal property, including intangibles, of any employer delinquent for any payment and interest thereon. If the commissioner has good reason to believe that such property or a substantial portion thereof is about to be removed from the county in which it is situated, he may likewise restrain in the name of the state before such delinquency occurs. For such purpose, the commissioner may require the services of a sheriff of any county in the
in levying such distress in the county in which
such sheriff is an officer and in which such personal
property is situated. A sheriff so collecting any pay-
ments and interest thereon shall be entitled to such
compensation as is provided by law for his services in
the levy and enforcement of executions.

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

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

(6) In any case where an employer defaults in
payments, or interest thereon, for as many as two
calendar quarters, which quarters need not be consec-
utive, and remains delinquent after due notice, and
the commissioner has been unable to collect such
payments by any of the other civil remedies pre-
scribed herein, the commissioner may bring action in
the circuit court of Kanawha county to enjoin such
employer from continuing to carry on the business in
which such liability was incurred: Provided, That the
commissioner may as an alternative to this action
require such delinquent employer to file a bond in the
form prescribed by the commissioner with satisfactory
surety in an amount not less than fifty percent more
than the tax due.
(7) All state, county, district and municipal officers and agents making contracts on behalf of the state of West Virginia or any political subdivision thereof shall withhold payment in the final settlement of such contracts until the receipt of a certificate from the commissioner to the effect that all payments and interest thereon accrued against the contractor under this chapter have been paid or that provisions satisfactory to the commissioner have been made for payment. Any official violating this section shall be guilty of a misdemeanor, and, on conviction thereof shall be fined not more than one thousand dollars or imprisoned not exceeding one year in the county jail, or shall be subject to both such fine and imprisonment, in the discretion of the court.


1 The courts of this state shall recognize and enforce liabilities for unemployment contributions imposed by other states which extend a like comity to this state. The commissioner in the name of this state is hereby empowered to sue in the courts of any other jurisdiction which extends such comity, to collect unemployment contributions and interest due this state. The officials of other states which by statute or otherwise extend a like comity to this state may sue in the courts of this state, to collect for such contributions and interest and penalties if any, due such state; in any such case the commissioner of the bureau of employment programs of this state may through his legal assistant or assistants institute and conduct such suit for such other state.

16 Notwithstanding any other provisions of this chapter, the commissioner may recover an overpayment of benefits paid to any individual under this state or another state law or under an unemployment benefit 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;
(2) The state agency responsible for enforcement of the medicaid program under Title Nineteen of the Social Security Act;

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

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

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

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

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

(8) Any claimant for benefits or any other interested party to the extent necessary for the proper presentation or defense of a claim; and

(9) The division of workers’ compensation for purposes of collection and enforcement: Provided, That the division of workers’ compensation shall provide similar information to the other divisions of the bureau of employment programs.

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

(e) The commissioner may, before furnishing any
information permitted under this section, require that those who request the information shall reimburse the division of employment security for any cost associated therewith.

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

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

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


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

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

(2) The requesting agency shall agree that such information is to be used only for the purpose of establishing and collecting child support obligations from, and locating, individuals owing such obligations
which are being enforced pursuant to a plan described in sections 453 and 454 of the social security act which has been approved by the secretary of health and human services under Part D, Title IV of the social security act.

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

(4) In addition to the requirements of this section, all other requirements with respect to confidentiality of information obtained in the administration of this chapter and the sanctions imposed on improper disclosure shall apply to the use of such information by officers and employees of child support agencies.


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

(a) Wage information;

(b) Whether the individual is receiving, has received, or has made application for unemployment compensation and the amount of any compensation being received or to be received by such individual;

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

(d) Whether the individual has refused an offer of employment and if so, a description of the employment offered and the terms, conditions and rate of pay therefor.

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

(3) The requesting agency shall agree that such
information shall be used only for purposes of determining the applicant's eligibility for benefits, or the amount of benefits, under the food stamp program established under the Food Stamp Act of 1977.

(4) In addition to the requirements of this section, all other requirements with respect to confidentiality of information obtained in the administration of this chapter and the sanctions imposed for improper disclosure of information obtained in the administration of this act shall apply to the use of such information by the officers and employees of any food stamp agency or the United States department of agriculture.


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

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

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

(4) In addition to the requirements of this section, all other requirements with respect to confidentiality of information obtained in the administration of this chapter and the sanctions imposed on improper disclosure shall apply to the use of such information by officers and employees of any public housing agency 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.

The commissioner of the bureau of employment programs appointed under the provisions of section one, article two of chapter twenty-one-a, has the sole responsibility for the administration of this chapter. In the administration of this chapter, the commissioner shall exercise all the powers and duties described in this chapter and in article two of chapter twenty-one-a of this code. The commissioner shall have an official seal for the authentication of orders and proceedings, upon which seal shall be engraved the words “West Virginia Commissioner of Employment Programs” and such other design as the commissioner may prescribe. The courts in this state shall take judicial notice of the seal of the commissioner and in all cases copies of orders, proceedings or records in the office of the West Virginia commissioner of employment programs shall be equal to the original in evidence.

The attorney general shall perform all legal services required by the commissioner under the provisions of this chapter: Provided, That in any case in which an application for review is prosecuted from any final decision of the workers’ compensation appeal board to the supreme court of appeals, as provided by section four, article five of this chapter, or in any court proceeding before the workers’ compensation appeal board, or in any proceedings before the office of judges, in which such representation shall appear to the commissioner to be desirable, the commissioner may designate a regular employee of this office, qualified to practice before such court to represent the commissioner upon such appeal or proceeding, and in no case shall the person so appearing for the commissioner before the court receive remuneration therefor other than such person’s regular salary.

1 All expenses peculiar to the administration of this chapter, and, when on official business, the traveling and incidental expenses of the commissioner and salaries or other compensation, traveling and other expenses of all officers or employees of the commissioner, and all expenses for furniture, books, maps, stationery, appliances, property of all kinds and dues for membership in all organizations pertaining to workers' compensation or safety in which the commissioner considers it advisable to maintain membership, 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 administration of this chapter shall be made by the state treasurer upon requisitions signed by the commissioner, directed to the auditor of the state, who shall draw his warrant therefor, and any such payment shall be charged to the workers' compensation fund: Provided, That the total charges against such fund under this section for any one fiscal year shall not 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, accountants, inspectors, examiners, experts, clerks, stenographers and other assistants, and fix their compensation, which shall be paid as provided in sections two and three of this article. The commissioner, secretary, actuaries, accountants, inspectors, examiners, experts, clerks, stenographers and other assistants who may be employed shall be entitled to receive from the workers' compensation fund their actual and necessary expense while traveling on business of the commissioner. Such expenses shall be itemized and sworn to by the person who incurred the expense, and shall be subject to the approval of the commissioner.
§23-1-10. Fee of officer serving subpoena; fees and mileage of witnesses.

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


1 The commissioner shall prepare and furnish free of cost blank forms (and provide in his rules for their distribution so that the same may be readily available) of applications for benefits for compensation from the workers' compensation fund, or directly from employers, as the case may be, notices to employers, proofs of injury or death, of medical attendance, of employment and wage earnings, and such other blanks as may be deemed proper and advisable, and it shall be the duty of employers to constantly keep on hand a sufficient 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 by the provisions of this chapter to subscribe to the workers' compensation fund, and which knowingly fails to subscribe thereto, or which knowingly fails to make any report or perform any other act or duty required by the commissioner within the time specified by the commissioner, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined
not more than five thousand dollars. Any person or
firm, or the officer of any corporation, who knowingly
makes a false report or statement under oath, affidavit
or certification respecting any information required by
the commissioner, or who shall knowingly testify
falsely in any proceeding before the commissioner,
shall be considered guilty of perjury, and, upon
conviction thereof, shall be punished as provided by
law.

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

Annually, on or about the fifteenth day of September in each year, the commissioner and the occupational pneumoconiosis board shall make a report as of the thirtieth day of June addressed to the governor, which shall include a statement of the causes of the injuries for which the awards were made, an explanation of the diagnostic techniques used by the occupational pneumoconiosis board and all examining physicians to determine the presence of disease, the extent of impairment attributable thereto, a description of the scientific support for such techniques, and a summary of public and private research relating to problems and prevention of occupational diseases. The report shall include a detailed statement of all disbursements, and the condition of the fund, together with any specific recommendations for improvements in the workers' compensation law and for more efficient and responsive administration thereof, which the commissioner may consider appropriate. Copies of all annual reports shall be filed with the secretary of state and shall be made available to the Legislature and to the public at large.

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

There is hereby created an advisory board to the commissioner of the bureau of employment programs to be known as "the compensation programs advisory board".
The compensation programs advisory board consists of thirteen members. The commissioner of the bureau of employment programs is an ex officio member of the board whose term as such member continues for that period in which he holds that office. The other twelve members of the board shall be appointed by the governor with three members representing employees subject to this chapter and chapter twenty-one-a of this code, three members representing employers subject to this chapter and chapter twenty-one-a of this code, three members representing providers of medical services to such employees for which such providers are compensated under the provisions of this chapter, and three members representing the citizens of this state. The term of each member except the commissioner shall be three years. Of the persons originally appointed, four members, including one member of each of the four representative groups, shall be designated to serve for terms of one year each, four members, including one member of each of the four representative groups, shall be designated to serve for terms of two years each and four members, including one member of each of the four representative groups, shall be designated to serve for a term of three years each. The terms of all the initially appointed members of the board shall begin on the first day of July, one thousand nine hundred ninety-one. Upon the expiration of each of such initial appointments the term of each new appointee shall be three years, but any person appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. Each member shall serve until the appointment and qualification of his successor. Members shall be eligible for reappointment. No more than seven of twelve members appointed by the governor may be of the same political party.

The commissioner shall serve as chairman of the board. The other twelve members shall select one of their number to serve as vice chairman of the board and to preside in the absence of the commissioner.
Meetings may be held at any time at the call of the commissioner. The commissioner shall call a meeting whenever a majority of the other members of the board request the commissioner to do so. At least one meeting shall be held annually.

The purpose of the board and the duty of its members are to advise the commissioner on matters pertinent to the administration of the workers' compensation program and the unemployment compensation program, and such other matters as the commissioner may desire. The board shall consider any matter brought before it by the commissioner or any appointed member and may consider any matter referred to it by a person not a member of the board. At the conclusion of its consideration of any proposal the board shall make its recommendation to the commissioner. The commissioner is not bound by any recommendation of the board. The board also may formulate general or long-range plans for improvements in the administration of the programs for the consideration of the commissioner.

By the second Wednesday of January of each year the board shall prepare and deliver to the commissioner and to the Legislature a report of all the matters it considered, recommendations it made and plans it formulated during the preceding calendar year. The report shall include any recommendations it may have for changes in the law which would be necessary to implement any of its administrative recommendations.

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

§23-2-1c. Extraterritorial coverage.

Whenever, with respect to an employee of an employer who is a subscriber in good standing to the workers' compensation fund or an employer who has elected to pay compensation directly, as provided in section nine of this article, there is a possibility of conflict with respect to the application of workers' compensation laws because the contract of employ-
ment is entered into and all or some portion of the work is performed or is to be performed in a state other than this state, the employer and the employee may agree to be bound by the laws of this state or by the laws of such other state in which all or some portion of the work of the employee is to be performed. Such agreement shall be in writing and filed with the commissioner within ten days after execution thereof and shall remain in effect until terminated or modified by agreement of the parties similarly filed. If the parties agree to be bound by the laws of this state, an employee injured within the terms and provisions of this chapter shall be entitled to benefits under this chapter regardless of the situs of the injury or exposure to occupational pneumoconiosis or other occupational disease, and the rights of the employee and his dependents under the laws of this state shall be the exclusive remedy against the employer on account of injury, disease or death in the course of and as a result of the employment.

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

If the employee is a resident of a state other than this state and is subject to the terms and provisions of the workers' compensation law or similar laws of a state other than this state, such employee and his dependents shall not be entitled to the benefits payable under this chapter on account of injury, disease or death in the course of and as a result of employment temporarily within this state, and the rights of such employee and his dependents under the laws of such other state shall be the exclusive remedy against the employer on account of such injury, disease or death.
If any employee or his dependents be awarded workers' compensation benefits or recover damages from the employer under the laws of another state for an injury received in the course of and resulting from the employment, the amount so awarded or recovered, whether paid or to be paid in future installments, shall be credited against the amount of any benefits payable under this chapter for the same injury.


Any employer subject to this chapter who shall subscribe and pay into the workers' compensation fund the premiums provided by this chapter or who shall elect to make direct payments of compensation as herein provided, shall not be liable to respond in damages at common law or by statute for the injury or death of any employee, however occurring, after so subscribing or electing, and during any period in which such employer shall not be in default in the payment of such premiums or direct payments and shall have complied fully with all other provisions of this chapter. The continuation in the service of such employer shall be considered a waiver by the employee and by the parents of any minor employee of the right of action as aforesaid, which the employee or his or her parents would otherwise have: Provided, That in case of employers not required by this chapter to subscribe and pay premiums into the workers' compensation fund, the injured employee has remained in such employer's service with notice that his employer has elected to pay into the workers' compensation fund the premiums provided by this chapter, or has elected to make direct payments as aforesaid.

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

All employers required by this chapter to subscribe to and pay premiums into the workers' compensation fund, except the state of West Virginia, the governmental agencies or departments created by it, and
municipalities and political subdivisions of the state, and who do not subscribe to and pay premiums into the workers' compensation fund as required by this chapter and have not elected to pay individually and directly or from benefit funds compensation and expenses to injured employees or fatally injured employees' dependents under the provisions of section nine of this article, or having so subscribed or elected, shall be in default in the payment of same, or not having otherwise fully complied with the provisions of section five or section nine of this article, shall be liable to their employees (within the meaning of this article) for all damages suffered by reason of personal injuries sustained in the course of employment caused by the wrongful act, neglect or default of the employer or any of the employer's officers, agents or employees while acting within the scope of their employment and in the course of their employment and also to the personal representatives of such employees where death results from such personal injuries, and in any action by any such employee or personal representative thereof, such defendant shall not avail himself of the following common-law defenses: The defense of the fellow-servant rule; the defense of the assumption of risk; or the defense of contributory negligence; and further shall not avail himself of any defense that the negligence in question was that of someone whose duties are prescribed by statute: Provided, That such provision depriving a defendant employer of certain common-law defenses under the circumstances there-in set forth shall not apply to an action brought against a county court, board of education, municipality, or other political subdivision of the state or against any employer not required to cover his employees under the provisions of this chapter.


1 If any employer shall be adjudicated to be outside the lawful scope of this chapter, the chapter shall not apply to him or his employee; or if any employee shall be adjudicated to be outside the lawful scope of this chapter, because of remoteness of his work from the
hazard of his employer's work, any such adjudication shall not impair the validity of this chapter in other respects, and in every such case an accounting in accordance with the justice of the case shall be had of moneys received. If the provisions of this chapter for the creation of the workers' compensation fund, or the provisions of this chapter making the compensation to the employee provided in it exclusive of any other remedy on the part of the employee, shall be held invalid, the entire chapter shall be thereby invalidated and an accounting according to the justice of the case shall be had of money received. In other respects an adjudication of invalidity of any part of this chapter shall not affect the validity of the chapter as a whole or any part thereof.

ARTICLE 3. WORKERS' COMPENSATION FUND.

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

Ten percent of the funds collected and held as the workers' compensation silicosis fund under the provisions of former article six of this chapter, which article is by this act repealed, shall be transferred to and made a part of the workers' compensation fund provided for in the preceding section, and the balance thereof shall be refunded to the subscribers thereto in proportion to their contributions to the same under the provisions of said former article six; and all awards heretofore made under the provisions of article six shall be paid from the workers' compensation fund, or directly by the employer, under order of the commissioner, if the employer has elected to carry his own risk under the provisions of section nine, article two of this chapter: Provided, That notwithstanding the repeal of said article six, the provisions thereof shall be applicable in all cases of the disease or death, because of silicosis, or an employee whose last exposure to silicon dioxide dust has occurred prior to the effective date of this section, whose claim or application for compensation benefits for silicosis, or that of his dependent, has not been filed prior to said date, and whose employer, at the time of such exposure,
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 workers' compensation fund and all premiums, deposits or other moneys paid thereto shall be deposited in the state treasury to the credit of the workers' compensation fund in the manner prescribed in section five, article two of this chapter. The workers' compensation fund shall consist of the premiums and deposits provided by this chapter and all interest accruing thereto upon investments and deposits in the state depositories, and any other moneys or funds which may be given, appropriated or otherwise designated or accruing thereto. Said fund shall be a separate and distinct fund and shall be so kept upon the books and records of the auditor and treasurer and the state depositories in which any part is deposited. Disbursements therefrom shall be made upon requisitions signed by the secretary and approved by the commissioner of the bureau of employment programs.

The board of investments shall have authority to invest the surplus, reserve or other moneys belonging to the fund in the bonds of the United States, notes or bonds of this state, bridge revenue bonds of this state issued prior to the first day of January, one thousand nine hundred thirty-nine, or any bonds issued to refund the same, bonds of any county, city, town, village or school district of the state. No such investment shall be made, nor any investment sold or otherwise disposed of without the concurrence of a majority of all members of the board of investments. It shall be the duty of every county, school district or municipality issuing any bonds, to offer the same in writing to the board of investments, prior to advertising the same for sale, and the board of investments shall, within fifteen days after receipt of such offer, accept the same and purchase such bonds, or any portion thereof at par and accrued interest, or reject such offer. All securities purchased by the board of investments for investment for the workers' compensation fund shall be placed in the hands of the state
treasurer as the custodian thereof, and it shall be his
duty to keep and account for the same as he keeps and
accounts for other securities of the state, and to collect
the interest thereon as the same becomes due and
payable and the principal when the same is due. No
notes, bonds or other securities shall be purchased by
the board of investments until and unless the attorney
general shall investigate the issuance of such notes,
bonds or securities and shall give a written opinion to
the board that the same have been regularly issued
according to the constitution and the laws of this state,
which opinion, if such notes, bonds or securities be
purchased, shall be filed with the treasurer with such
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-
sary for determining the rate of benefits to which the
employee is entitled. If an employer does not furnish
the commissioner with this information within fifteen
days from the date the commissioner received the first
report of injury in the case, the employee shall be paid
temporary total disability benefits for lost time at the
rate the commissioner believes would be justified by
the usual rate of pay for the occupation of the injured
employee. The commissioner shall adjust the rate of
benefits both retroactively and prospectively upon
receipt of proper wage information. The commissioner
shall have access to all wage information in the
possession of any state agency, including wage infor-
mation received by the unemployment compensation
commission under chapter twenty-one-a of this code,
pertinent to such determination.

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

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

(g) Where the employer has elected to carry his own
risk under section nine, article two of this chapter, and
upon the findings aforesaid, the commissioner shall
immediately issue a pay order directing the employer
to pay such amounts as are due the claimant for
temporary total disability benefits. A copy of the order
shall be sent to the claimant. The self-insured
employer shall commence such payments by mailing
or delivering the payments directly to the employee
within ten days of the date of the receipt of the pay
order by the employer. If the self-insured employer
believes that his employee is entitled to benefits, he
may start payments before receiving a pay order from
the commissioner.

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

(i) When the employer has protested the compensa-
bility or applied for modification of a temporary total
disability benefit award or expenses and the final
decision in such case determines that the claimant was
not entitled to such benefits or expenses, the amount
of such benefits or expenses shall be considered
overpaid. The commissioner may only recover the
amount of such benefits or expenses by withholding, in whole or in part, as determined by the commissioner, future permanent partial disability benefits payable to the individual in the same or other claims and credit such amount against the overpayment until it is repaid in full.

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

§23-4-2. Disbursement where injury is self-inflicted or intentionally caused by employer; legislative declarations and findings; “deliberate intention” defined.

(a) Notwithstanding anything hereinbefore or hereinafter contained, no employee or dependent of any employee shall be entitled to receive any sum from the workers’ compensation fund, or to direct compensation from any employer making the election and receiving the permission mentioned in section nine, article two of this chapter, or otherwise under the provisions of this chapter, on account of any personal injury to or death to any employee caused by a self-inflicted injury or the intoxication of such employee. For the purpose of this chapter, the commissioner may cooperate with the division of energy and the state department of labor in promoting general safety programs and in formulating rules and regulations to govern hazardous employments.

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

(c) (1) It is declared that enactment of this chapter
and the establishment of the workers' compensation system in this chapter was and is intended to remove from the common law tort system all disputes between or among employers and employees regarding the compensation to be received for injury or death to an employee except as herein expressly provided, and to establish a system which compensates even though the injury or death of an employee may be caused by his own fault or the fault of a co-employee; that the immunity established in sections six and six-a, article two of this chapter, is an essential aspect of this workers' compensation system; that the intent of the Legislature in providing immunity from common law suit was and is to protect those so immunized from litigation outside the workers' compensation system except as herein expressly provided; that, in enacting the immunity provisions of this chapter, the Legislature intended to create a legislative standard for loss of that immunity of more narrow application and containing more specific mandatory elements than the common law tort system concept and standard of willful, wanton and reckless misconduct; and that it was and is the legislative intent to promote prompt judicial resolution of the question of whether a suit prosecuted under the asserted authority of this section is or is not prohibited by the immunity granted under this chapter.

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

(i) It is proved that such employer or person against whom liability is asserted acted with a consciously, subjectively and deliberately formed intention to produce the specific result of injury or death to an employee. This standard requires a showing of an actual, specific intent and may not be satisfied by allegation or proof of (A) conduct which produces a result that was not specifically intended; (B) conduct
which constitutes negligence, no matter how gross or
aggravated; or (C) willful, wanton or reckless miscon-
duct; or
(ii) The trier of fact determines, either through
specific findings of fact made by the court in a trial
without a jury, or through special interrogatories to
the jury in a jury trial, that all of the following facts
are proven:
(A) That a specific unsafe working condition existed
in the workplace which presented a high degree of
risk and a strong probability of serious injury or death;
(B) That the employer had a subjective realization
and an appreciation of the existence of such specific
unsafe working condition and of the high degree of
risk and the strong probability of serious injury or
death presented by such specific unsafe working
condition;
(C) That such specific unsafe working condition was
a violation of a state or federal safety statute, rule or
regulation, whether cited or not, or of a commonly
accepted and well-known safety standard within the
industry or business of such employer, which statute,
rule, regulation or standard was specifically applicable
to the particular work and working condition involved,
as contrasted with a statute, rule, regulation or
standard generally requiring safe workplaces, equip-
ment or working conditions;
(D) That notwithstanding the existence of the facts
set forth in subparagraphs (A) through (C) hereof,
such employer nevertheless thereafter exposed an
employee to such specific unsafe working condition
intentionally; and
(E) That such employee so exposed suffered serious
injury or death as a direct and proximate result of
such specific unsafe working condition.
(iii) In cases alleging liability under the provisions of
the preceding paragraph (ii):
(A) No punitive or exemplary damages shall be
awarded to the employee or other plaintiff;

(B) Notwithstanding any other provision of law or rule to the contrary, and consistent with the legislative findings of intent to promote prompt judicial resolution of issues of immunity from litigation under this chapter, the court shall dismiss the action upon motion for summary judgment if it shall find, pursuant to Rule 56 of the Rules of Civil Procedure that one or more of the facts required to be proved by the provisions of subparagraphs (A) through (E) of the preceding paragraph (ii) do not exist, and the court shall dismiss the action upon a timely motion for a directed verdict against the plaintiff if after considering all the evidence and every inference legitimately and reasonably raised thereby most favorably to the plaintiff, the court shall determine that there is not sufficient evidence to find each and every one of the facts required to be proven by the provisions of subparagraphs (A) through (E) of the preceding paragraph (ii); and

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

(d) The reenactment of this section in the regular session of the Legislature during the year one thousand nine hundred eighty-three, shall not in any way affect the right of any person to bring an action with respect to or upon any cause of action which arose or 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.

(a) The Legislature hereby finds and declares that two of the primary objectives of the workers' compensation system established by this chapter are to provide benefits to an injured claimant promptly and
5 to effectuate his return to work at the earliest possible
time; that the prompt dissemination of medical infor-
mation to the commissioner and employer as to
diagnosis, treatment and recovery is essential if these
two objectives are to be achieved; that claimants are
increasingly burdened with the task of contacting their
treating physicians to request the furnishing of
detailed medical information to the commissioner and
their employers; that the commissioner is increasingly
burdened with the administrative responsibility of
providing copies of medical reports to the employer
involved, whereas in other states the employer can
obtain the necessary medical information direct from
the treating physician; that much litigation is occasi-
oned in this state because of a lack of medical infor-
mation having been received by the employer as to
the continuing disability of a claimant; and that
detailed narrative reports from the treating physician
are often necessary in order for the commissioner, the
claimant’s representatives and the employer to evalu-
ate a claim and determine whether additional or
different treatment is indicated.

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

1 The average weekly wage earnings, wherever earned, of the injured person at the date of injury, and the average weekly wage in West Virginia as determined by the commissioner, in effect at the date of injury, shall be taken as the basis upon which to compute the benefits.

2 In cases involving occupational pneumoconiosis or other occupational diseases, the “date of injury” shall be the date of the last exposure to the hazards of occupational pneumoconiosis or other occupational diseases.

3 In computing benefits payable on account of occupational pneumoconiosis, the commissioner shall deduct the amount of all prior workers' compensation benefits paid to the same claimant on account of silicosis, but a prior silicosis award shall not, in any event, preclude an award for occupational pneumoconiosis otherwise payable under this article.

4 The expression “average weekly wage earnings, wherever earned, of the injured person, at the date of injury”, within the meaning of this chapter, shall be computed based upon the daily rate of pay at the time of the injury or upon the average pay received during the two months, six months or twelve months immediately preceding the date of the injury, whichever is most favorable to the injured employee, except for the purpose of computing temporary total disability benefits for part-time employees pursuant to the provisions of section six-d of this article.

5 The expression “average weekly wage in West Virginia”, within the meaning of this chapter, shall be the average weekly wage in West Virginia as determined by the commissioner in accordance with the provisions of sections ten and eleven, article six, chapter twenty-one-a of this code, and other applicable provisions of said chapter twenty-one-a.

6 In any claim for injuries, including occupational pneumoconiosis and other occupational diseases,
occurring on or after the first day of July, one thousand nine hundred seventy-one, any award for temporary total, permanent partial or permanent total disability benefits or for dependent benefits, shall be paid at the weekly rates or in the monthly amount in the case of dependent benefits applicable to the claimant therein in effect on the date of such injury. If during the life of such award for temporary total, permanent partial or permanent total disability benefits or for dependent benefits, the weekly rates or the monthly amount in the case of dependent benefits are increased or decreased, the claimant shall receive such increased or decreased benefits beginning as of the 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 fund, an individual must be receiving workers' compensation benefits by virtue of and under the laws of this state in amounts less than those set forth in section one of this article, and be receiving such benefits under a permanent total disability award or be receiving such benefits because of the death of an employee: Provided, That a child of an employee deceased before the first day of July, one thousand nine hundred sixty-seven, who is under the age of twenty-three and is a full-time student, and, who, at the time of injury causing death, was dependent in whole or part upon the earnings of the deceased employee, shall be eligible for benefits payable from the fund established by this article in the same manner and amount as if death had occurred after the first day of July, one thousand nine hundred sixty-seven.


1 Each individual entitled to participate in the disabled workers' relief fund shall be entitled to receive payments without application (except that an application shall be required under section five of this article) from said fund of an amount equal to the difference
between the amounts set forth in section one of this article, and the amount said individual is in fact receiving by virtue of and under the laws of this state. The first such payment shall be made concurrently with the payment to him of workers' compensation on the first day of August, one thousand nine hundred seventy-six and subsequent payments shall be made during the period thereafter in which such participant shall be entitled to workers' compensation benefits by virtue of and under the laws of this state.


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

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

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

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

1 For the purpose of carrying out the provisions of this article, the commissioner shall transfer annually, out
of the interest earned during the previous year on
investments held by the workers' compensation fund,
and out of the amount assessed against self-insured
employers pursuant to the provisions of article two,
section nine, an amount estimated by the commis-
sioner to be necessary to carry out the provisions of
this article for one year.

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

ARTICLE 4B. COAL-WORKERS' PNEUMOCONIOSIS FUND.

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

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

§23-4B-7. Administration.

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

ARTICLE 4C. EMPLOYERS’ EXCESS LIABILITY FUND.

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

To provide insurance coverage for employers subject to this chapter who may be subjected to liability for any excess of damages over the amount received or receivable under this chapter, there is hereby established a fund to be known as the employers' excess liability fund, which fund shall be separate from the workers' compensation fund. The employers' excess liability fund shall consist of premiums paid thereto by employers who may voluntarily elect to subscribe to the fund for coverage of potential liability to any person who may be entitled to any excess of damages over the amount received or receivable under this chapter.

§23-4C-5. Administration.

The employers' excess liability fund shall be administered by the commissioner of employment programs, who shall employ such employees as may be necessary to discharge his duties and responsibilities under this article. All payments of salaries and expenses of the employees and all expenses peculiar to the administration of this article shall be made by the state treasurer from the employers' excess liability fund upon requisitions signed by the commissioner.

ARTICLE 5. REVIEW.


There shall be a board to be known as the "Workers' Compensation Appeal Board", which shall be referred to in this article as the "board", to be composed of
three members.

Two members of such board shall be of opposite politics to the third, and all three shall be citizens of this state who have resided therein for a period of at least five years. All members of the board shall be appointed by the governor and shall receive an annual salary in accordance with the provisions of section two-a, article seven, chapter six of this code. The salaries shall be payable in monthly installments, and the members shall also be entitled to all reasonable and necessary traveling and other expenses actually incurred while engaged in the performance of their duties. The governor shall designate one of the members of the board as chairman thereof, and the board shall meet at the capitol or at such other places throughout the state as it may consider proper at regular sessions designated as “Appeal Board Hearing Days” commencing on the first Tuesday of every month or the next regular business day, for a period of at least three days, for the purpose of conducting hearings on appeals, and continuing as long as may be necessary for the proper and expeditious transaction of the hearings, decisions and other business before it. All clerical services required by the board shall be paid for by the commissioner from any funds at his disposal. The board shall, from time to time, compile and promulgate such rules of practice and procedure as to it shall appear proper for the prompt and efficient discharge of its business and such rules shall be submitted to the supreme court of appeals for approval, and if approved by such court shall have the same force and effect as the approved rules of procedure of circuit courts. The board shall employ such clerical staff as may be necessary for the efficient conduct of its business but the number of such employees shall not exceed four. Salaries of the board, and its employees, and all of its necessary operating expenses shall be paid from the workers’ compensation fund. The board shall submit its annual budget to the commissioner for inclusion as a separate item in the budget estimates prepared by him annually and 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 ification 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 ies” 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
bypaws necessary and proper for the regulation of its
affairs and the conduct of its business and rules and
regulations to implement and make effective its
powers and duties, such rules and regulations to be
promulgated in accordance with the provisions of
chapter twenty-nine-a of this code.

(2) Adopt an official seal.

(3) Maintain a principal office and, if necessary,
regional suboffices at locations properly designated or
provided.

(4) Sue and be sued in its own name and plead and
be impleaded in its own name, and particularly to
enforce the obligations and covenants made under
sections ten, eleven and sixteen of this article. Any
actions against the authority shall be brought in the
circuit court of Kanawha County. The location of the
principal office of the authority shall be determined by
the governor.

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

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

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

(8) Issue railroad maintenance authority bonds and
notes and refunding bonds of the state, payable solely
from revenues as provided in section ten of this article
unless the bonds are refunded by refunding bonds, for
the purpose of paying any part of the cost of one or
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 of
86 efficient acquisition or construction of such railroad
87 project. The authority may reject any and all bids. A
bond with good and sufficient surety, approved by the
authority, shall be required of all contractors in an
amount equal to at least fifty percent of the contract
price, conditioned upon the faithful performance of
the contract.

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

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

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

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

(16) Charge, alter and collect rates, rentals and other
charges for the use or services of any railroad project
as provided in this article.
(17) Do all acts necessary and proper to carry out the powers expressly granted to the authority in this article.

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

1. Acquire rail properties both within and not within the jurisdiction of the interstate commerce commission and rail properties within the purview of the federal Regional Rail Reorganization Act of 1973, any amendments to it and any other relevant federal legislation.

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

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

4. Establish a state plan for rail transportation and local rail services.

5. Administer and coordinate such state plan.

6. Provide in such state plan for the equitable distribution of federal rail service continuation subsidies among state, local and regional transportation authorities.

7. Promote, supervise and support safe, adequate and efficient rail services.

8. Employ sufficiently trained and qualified personnel for these purposes.

9. Maintain adequate programs of investigation, research, promotion and development in connection with such purposes and to provide for public participation therein.

10. Provide satisfactory assurances on behalf of the state that fiscal control and fund accounting procedures will be adopted by the state necessary to assure
119 [Enr. Com. Sub. for S. B. No. 132

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

167 (11) Comply with the regulations of the secretary of transportation of the United States department of transportation affecting federal rail service continuation programs.

171 (12) Do all things otherwise necessary to maximize federal assistance to the state under Title IV of the federal Regional Rail Reorganization Act of 1973 and to qualify for rail service continuation subsidies pursuant 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 workers' compensation fund, the bureau of employment programs, the state tax commissioner, the state road commissioner, the state road commission, and the 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 any certificate of dissolution or withdrawal, or certificate of consolidation or merger in the case where the new or surviving corporation will be a foreign corporation which has not qualified to conduct affairs or do or transact business or hold property in this state, nor shall any corporation expire by virtue of its articles of incorporation or amendment thereto, until the receipt by the secretary of state of a notice from the tax commissioner and bureau of employment programs to the effect that all taxes due from said corporation under the provisions of chapter eleven of this code,
including, but not limited to, taxes withheld under the provisions of section seventy-one, article twenty-one of said chapter eleven, all business and occupation taxes, motor carrier and transportation privilege taxes, gasoline taxes, consumer sales taxes and any and all license, franchise or other excise taxes and corporate net income taxes, and employment security payments levied or assessed against the corporation seeking to withdraw, dissolve, consolidate, merge or expire have been paid or that such payment has been provided for, or until the secretary of state receives a notice from the tax commissioner or bureau of employment programs, as the case may be, stating that the corporation in question is not subject to payment of any such taxes or to the making of any employment security payments or assessments.

ARTICLE 18B. MORTGAGE AND INDUSTRIAL DEVELOPMENT INVESTMENT POOL.

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

(a) The interest received from mortgage payments made pursuant to the provisions of this article shall be transmitted to the state board of investments monthly.

(b) Such interest shall be treated by the state board of investments as an investment return, and shall be credited to the workers' compensation account or other appropriate accounts in the same manner as interest received on other investments.

(c) The funds from repayment of principal of mortgage loans shall be reinvested by the housing development fund according to the provisions of section five of this article. Funds which have been repaid to the state mortgage and industrial development investment pool and not reinvested in mortgages within one year shall revert to the sole control of the state board of investments and shall no longer be considered part of the state mortgage and industrial development investment 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.


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.
(a) A provision as follows:

"Change of Occupation: If the insured be injured or contract sickness after having changed his occupation to one classified by the insurer as more hazardous than that stated in this policy or while doing for compensation anything pertaining to an occupation so classified, the insurer will pay only such portion of the indemnities provided in this policy as the premium paid would have purchased at the rates and within the limits fixed by the insurer for such more hazardous occupation. If the insured changes his occupation to one classified by the insurer as less hazardous than that stated in this policy, the insurer, upon receipt of proof of such change of occupation, will reduce the premium rate accordingly, and will return the excess pro rata unearned premium from the date of change of occupation or from the policy anniversary date immediately preceding receipt of such proof, whichever is the more recent. In applying this provision, the classification of occupational risk and the premium rates shall be such as have been last filed by the insurer prior to the occurrence of the loss for which the insurer is liable or prior to date of proof of change in occupation with the state official having supervision of insurance in the state where the insured resided at the time this policy was issued; but if such filing was not required, then the classification of occupational risk and the premium rates shall be those last made effective by the insurer in such state prior to the occurrence of the loss or prior to the date of proof of change in occupation."

(b) A provision as follows:

"Misstatement of Age: If the age of the insured has been misstated, all amounts payable under this policy shall be such as the premium paid would have purchased at the correct age."

(c) A provision as follows:

"Other Insurance in This Insurer: If an accident or sickness or accident and sickness policy or policies previously issued by the insurer to the insured be in
force concurrently herewith, making the aggregate indemnity for _______ (insert type of coverage or coverages) in excess of $__________ (insert maximum limit of indemnity or indemnities) the excess insurance shall be void and all premiums paid for such excess shall be returned to the insured or to his estate."

Or, in lieu thereof:

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

Provided that no policy hereafter issued for delivery in this state which provides, with or without other benefits, for the payment of benefits or reimbursement for expenses with respect to hospitalization, nursing care, medical or surgical examination or treatment, or ambulance transportation shall contain any provision for a reduction of such benefits or reimbursement, or any provision for avoidance of the policy, on account of other insurance of such nature carried by the same insured with the same or another insurer.

(d) A provision as follows:

"Insurance with Other Insurers: If there be other valid coverage, not with this insurer, providing benefits for the same loss on other than an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability for such benefits under this policy shall be for such proportion of the indemnities otherwise provided hereunder for such loss as the like indemnities of which the insurer had notice (including the indemnities under this policy) bear to the total amount of all like indemnities for such loss, and for the return of such portion of the premium paid as shall exceed the pro rata portion for the indemnities thus determined."
The insurer may, at its option, include in this provision a definition of "other valid coverage", approved as to form by the commissioner, which definitions shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, and to any other coverage the inclusion of which may be approved by the commissioner. In the absence of such definition such term shall not include group insurance, or benefits provided by union welfare plans or by employer or employee benefit organizations. For the purpose of applying the foregoing policy provisions with respect to any insured any amount of benefit provided for such insured pursuant to any compulsory benefit statute (including any workers' compensation or employer's liability statute) whether provided by a governmental agency or otherwise shall in all cases be deemed to be "other valid coverage" of which the insurer has had notice. In applying the foregoing policy provision no third party liability coverage shall be included as "other valid coverage".

(e) A provision as follows:

"Relation of Earnings to Insurance: If the total monthly amount of loss of time benefits promised for the same loss under all valid loss of time coverage upon the insured, whether payable on a weekly or monthly basis, shall exceed the monthly earnings of the insured at the time disability commenced or his average monthly earnings for the period of two years immediately preceding a disability for which claim is made, whichever is the greater, the insurer will be liable only for such proportionate amount of such benefits under this policy as the amount of such monthly earnings or such average monthly earnings of the insured bears to the total amount of monthly benefits for the same loss under all such coverage upon the insured at the time such disability commenced and for the return of such part of the premiums paid during such two years as shall exceed the pro rata
amount of the premiums for the benefits actually paid hereunder; but this shall not operate to reduce the total monthly amount of benefits payable under all such coverage upon the insured below the sum of two hundred dollars or the sum of the monthly benefits specified in such coverages, whichever is the lesser, nor shall it operate to reduce benefits other than those payable for loss of time."

The foregoing policy provision may be inserted only in a policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums (1) until at least age fifty or, (2) in the case of a policy issued after age forty-four, for at least five years from its date of issue. The insurer may, at its option, include in this provision a definition of "valid loss of time coverage", approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by governmental agencies or by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, or to any other coverage the inclusion of which may be approved by the commissioner or any combination of such coverages. In the absence of such definition such term shall not include any coverage provided for such insured pursuant to any compulsory benefit statute (including any workers' compensation or employer's liability statute), or benefits provided by union welfare plans or by employer or employee benefit organizations.

(f) A provision as follows:

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

(g) A provision as follows:

"Return of Premium on Cancellation: If the insured cancels this policy, the earned premium shall be computed by the use of the short-rate table last filed with the state official having supervision of insurance
in the state where the insured resided when the policy
was issued. Cancellation shall be without prejudice to
any claim originating prior to the effective date of
cancellation."

(h) A provision as follows:

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

(i) A provision as follows:

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

(j) A provision as follows:

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

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-1. Scope of article.

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

(b) Nothing in this article shall apply to or in any
way affect life insurance, endowment or annuity
contracts or contracts supplemental thereto which
contain no provisions relating to accident or sickness
insurance except (a) such as provide additional benef-
its in case of death by accidental means and except (b)
such as operate to safeguard such contracts against
lapse, or to give a special surrender value or special
benefit or an annuity in the event that the insured or
annuitant shall become totally and permanently
disabled as defined by the contract or supplemental
contract.

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

ARTICLE 26. WEST VIRGINIA GUARANTY ASSOCIATION ACT.


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

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

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

Public obligations, whether in the form of bonds, notes, certificates of indebtedness, or otherwise, and whether negotiable or nonnegotiable, shall not be 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 compensation benefits.

(a) The director shall determine on a periodic basis whether individuals receiving unemployment compensation owe child support obligations which are being enforced or have been requested to be enforced by the office. If an individual is receiving such compensation and owes any such child support obligation which is not being met, the office shall enter into an agreement with such individual to have specified amounts withheld otherwise payable to such individual, and shall submit a copy of such agreement to the bureau of employment programs. In the absence of such agreement, the office shall bring legal process to require the withholding of amounts from such compensation.

(b) The director shall enter into a written agreement with the bureau of employment programs for the purpose of withholding unemployment compensation from individuals with unmet support obligations being enforced by the office. The office shall agree only to a
withholding program that it expects to be cost effective, and, as to reimbursement, shall agree only to reimburse the bureau of employment programs for its actual, incremental costs of providing services to the office.

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

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

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

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

(g) For the purposes of this section:

1. “Legal process” means a writ, order, summons or other similar process in the nature of garnishment which is issued by a court of competent jurisdiction or by an authorized official pursuant to an order to such court or pursuant to state or local law.
(2) "Unemployment compensation" means any compensation under state unemployment compensation law (including amounts payable in accordance with agreements under any federal unemployment compensation law). It includes extended benefits, unemployment compensation for federal employees, unemployment compensation for ex-servicemen, trade readjustment allowances, disaster unemployment assistance, and payments under the Federal Redwood National Park Expansion Act.


(a) The director shall determine on a periodic basis whether individuals receiving workers’ compensation benefits owe child support obligations which are being enforced or have been requested to be enforced by the office. If an individual is receiving such compensation and owes any such child support obligation which is not being met, the office shall enter into an agreement with such individual to have specified amounts withheld otherwise payable to such individual, and shall submit a copy of such agreement to the commissioner of the bureau of employment programs. In the absence of such agreement, the office shall bring legal process to require the withholding of amounts from such compensation.

(b) The director shall enter into a written agreement with the commissioner of the bureau of employment programs for the purpose of withholding workers’ compensation benefits from individuals with unmet support obligations being enforced by the office. The office shall agree only to a withholding program that it expects to be cost effective, and, as to reimbursement, shall agree only to reimburse the commissioner of the bureau of employment programs for the commissioner’s actual, incremental costs of providing services to the support enforcement agency.

(c) The director shall establish and use written criteria for selecting cases to pursue through the withholding of workers’ compensation benefits for support purposes. These criteria shall be designed to
insure maximum case selection and minimal discretion in the selection process.

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

(e) The director shall, through direct contact with the commissioner of the bureau of employment programs, process cases through the commissioner of the bureau of employment programs in this state, and shall process cases through support enforcement agencies in other states. The director shall receive all amounts withheld by the commissioner of the bureau of employment programs in this state, forwarding any amounts withheld on behalf of support enforcement agencies in other states to those agencies.

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

(g) For the purposes of this section:

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

(2) "Workers' compensation benefits" means any compensation payable under state workers' compensation 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
a witness who is to appear personally, the copy of the
records shall remain sealed and shall be opened only
at the time of trial, deposition, or other hearing, upon
the direction of the judge, court, officer, body or
tribunal conducting the proceeding, in the presence of
all parties who have appeared in person or by counsel
at such trial, deposition or hearing. Before directing
that such inner-envelope or wrapper be opened, the
judge, court, officer, body or tribunal shall first
ascertain that either (1) the records have been sub-
opnaed at the insistence of the patient involved or his
counsel of record, or (2) the patient involved or
someone authorized in his behalf to do so for him has
consented thereto and waived any privilege of confi-
dence involved. Records which are not introduced in
evidence or required as part of the record shall be
returned to the person or entity from whom received.

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

CHAPTER 60. STATE CONTROL OF
ALCOHOLIC LIQUORS.

ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.

§60-3A-30. Employees.

The department of health and human resources, the
bureau of employment programs, the public
employees retirement system, the public employees
insurance agency, any state agency or local commu-
nity action agency receiving job training partnership
act funds and any other agency of the state involved
with benefits or services to the unemployed, shall
work individually with all employees whose jobs have
been terminated by this chapter in order to recom-
mend benefits, services, training, interagency employ-
ment transfer or other employment. The alcohol
beverage control commission director and directors of
all other state agencies shall use best efforts to employ
qualified employees who were employed at the facility
immediately prior to such sale or transfer: Provided,
That notwithstanding any other provision of the code
to the contrary, in filling vacancies at other facilities
or other state agencies the director and the directors
of other agencies shall, for a period of twenty-four
months after such transfer or sale give preference
over all but existing employees to qualified employees
who were permanently employed at the facility
immediately prior to such transfer or sale: Provided,
however, That qualified persons who were perman-
ently employed at an alcohol beverage control com-
mission facility immediately prior to such transfer or
sale shall not supersede those employees with recall
rights in other state agencies.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

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

Governor