ACTS

and

RESOLUTIONS

of the

FORTY-SECOND

LEGISLATURE

of

WEST VIRGINIA

Regular Session 1935
NOTE BY THE CLERK OF THE HOUSE OF DELEGATES

This volume contains all the Acts of the 1935 regular session of the forty-second Legislature, including municipal charters. It also contains all Senate and House Joint and Concurrent resolutions adopted, as well as all the Senate and House resolutions adopted by the respective bodies.
List of Members and Officers of the Legislature of West Virginia

1935

SENATE OFFICERS

President—CHARLES E. HODGES, Morgantown
Clerk—CHARLES LIVELY, Weston
Sergeant-at-Arms—FRED D. WOLFE, Ripley
Doorkeeper—G. W. TRIPLETT, Huntington

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*Holdover Senators, who will serve in the 1937 session.

24—Democrats
6—Republicans
Standing Committees of the Senate

ON RULES

Messrs. Hodges (Mr. President) (Chairman ex officio), Jones, Fleming, Paull and Helmick.

ON PRIVILEGES AND ELECTIONS

Messrs. Jones (Chairman), Sandridge, Howard, Garrett, Paull, Tuckwiller, Mathews, Reynolds and Young (of Upshur).

ON THE JUDICIARY

Messrs. Paull (Chairman), Barnhart, Helsley, Spillers, Fleming, Beacom, Canterbury, Greene, Jones, Mathews, Smith, Henderson, Belknap, Randolph, Reynolds, Young (of Tyler), Curtis and Ritchie.

ON FINANCE


ON EDUCATION

Messrs. Smith (Chairman), Paull, Elbin, Fleming, Wiseman, Barnhart, Garrett, Reynolds and Ritchie.

ON COUNTIES AND MUNICIPAL CORPORATIONS

Messrs. Mathews (Chairman), Jones, Spillers, Howard, Randolph, Sandridge, Greene, Helmick and Young (of Tyler).

ON ROADS AND NAVIGATION


ON BANKS AND CORPORATIONS

Messrs. Wiseman (Chairman), Paull, Elbin, Howard, Greene, Henderson, Mathews, Young (of Tyler) and Young (of Upshur).
Senate Committees

On Public Buildings and Humane Institutions

Messrs. Tuckwiller (Chairman), Henderson, Elbin, Beacom, Millender, Mitchell, Barnhart, Belknap, Rouss, Helmick and Ritchie.

On the Penitentiary

Messrs. Millender (Chairman), Spillers, Elbin, Belknap, Smith, Henderson, Jones, Helmick and Ritchie.

On Railroads

Messrs. Rouss (Chairman), Sandridge, Spillers, Howard, Garrett, Canterbury, Jones, Reynolds and Helmick.

On Militia

Messrs. Beacom (Chairman), Randolph, Tuckwiller, Smith, Canterbury, Helsley, Millender, Ritchie and Young (of Tyler).

On Federal Relations

Messrs. Belknap (Chairman), Millender, Barnhart, Wiseman, Sandridge, Rouss, Beacom, Curtis and Ritchie.

On Insurance

Messrs. Garrett (Chairman), Helsley, Mitchell, Barnhart, Mathews, Henderson, Paull, Ritchie and Young (of Upshur).

On Agriculture

Messrs. Mitchell (Chairman), Tuckwiller, Millender, Garrett, Belknap, Rouss, Sandridge, Helmick and Curtis.

On Mines and Mining

Messrs. Sandridge (Chairman), Canterbury, Smith, Wiseman, Jones, Millender, Beacom, Reynolds and Young (of Upshur).

On Medicine and Sanitation

Messrs. Spillers (Chairman), Belknap, Elbin, Garrett, Canterbury, Henderson, Rouss, Reynolds and Young (of Upshur).

On Labor

Messrs. Greene (Chairman), Jones, Spillers, Fleming, Garrett, Wiseman, Randolph, Reynolds and Curtis.
ON CLAIMS AND GRIEVANCES

Messrs. Randolph (Chairman), Barnhart, Rouss, Paull, Fleming, Beacom, Millender, Helmick and Young (of Tyler).

ON FORFEITED, DELINQUENT AND UNAPPROPRIATED LANDS

Messrs. Elbin (Chairman), Howard, Greene, Barnhart, Belknap, Smith, Henderson, Reynolds and Young (of Upshur).

ON PUBLIC PRINTING

Messrs. Canterbury (Chairman), Beacom, Spillers, Fleming, Jones, Helsley, Smith, Young (of Tyler) and Curtis.

ON PUBLIC LIBRARY

Messrs. Helsley (Chairman), Sandridge, Smith, Tuckwiller, Canterbury, Greene, Howard, Reynolds and Young (of Upshur).

TO EXAMINE THE CLERK’S OFFICE

Messrs. Randolph (Chairman), Rouss and Garrett.

ON TEMPERANCE

Messrs. Garrett (Chairman), Mathews, Fleming, Greene, Wiseman, Randolph, Helsley, Reynolds and Curtis.

ON FORESTRY AND CONSERVATION

Messrs. Barnhart (Chairman), Mitchell, Paull, Beacom, Millender, Tuckwiller, Randolph, Helsley, Reynolds and Young (of Upshur).

ON REDISTRICTING

Messrs. Fleming (Chairman), Jones, Spillers, Greene, Smith, Randolph, Sandridge, Helmick and Curtis.

JOINT COMMITTEE ON ENROLLED BILLS ON THE PART OF THE SENATE

Messrs. Howard (Chairman), Wiseman, Rouss, Greene and Reynolds.

JOINT COMMITTEE ON JOINT RULES ON THE PART OF THE SENATE

Messrs. Hodges (President), Jones and Helmick.
## OFFICERS

**Speaker**—John J. Pellet, Dehue  
**Clerk**—John S. Hall, Williamson  
**Sergeant-at-Arms**—Hal Depue, Charleston  
**Doorkeeper**—J. N. Finley, Chester

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(D)—Democrats. 72  
(R)—Republicans. 22  
Total. 94
Standing Committees of the House of Delegates

AGRICULTURE

Messrs. Chipley (Chairman), Brotherton (Vice Chairman), Bailey, Butler, Cottrill, Davis, Gum, Holswade, Keister, Lester, Martin (of Jefferson), Neal, Mrs. Price, Messrs. Righter, Bayer, Crow, Hall and Ong.

ARTS, SCIENCE, AND GENERAL IMPROVEMENTS

Messrs. Cottrill (Chairman), Preston (Vice Chairman), Anderson, Breedlove, Chipley, Doringer, Gilmore, Gum, Jimison, Martin (of Cabell), Righter, Shahan, Vickers, Watts, Beall, Butler, Ong and Simmons.

BANKS AND CORPORATIONS

Messrs. Lantz (Chairman), McCoy, (Vice Chairman), Amos, Anderson, Breedlove, Clifford, Dotson, Galbraith, Hiner, James, LaFon, Martin (of Jefferson), Paul, Preston, Wright, Wysong, Beeler, Crow, Hertnick, Janes and Reed.

CLAIMS AND GRIEVANCES

Messrs. Roberts (Chairman), Lester (Vice Chairman), Adams, Adkins, Brotherton, Doringer, Fite, Gaylord, Gum, Jimison, Linger, Martin (of Jefferson), Morris, Perry, Phillips, Saville, Wright, Beall, Bishop, Lawson and Shedan.

COUNTIES, DISTRICTS AND MUNICIPAL CORPORATIONS

Messrs. Clifford (Chairman), Johnston (Vice Chairman), Bailey, Brotherton, Dickerson, Doringer, Jimison, Martin (of Cabell), McCoy, Perry, Righter, Russek, Strouss, Van Sickler, Vickers, Winters, Wiseman, Beard, Hall, Simmons and Underwood.

EDUCATION

Messrs. Strouss (Chairman), Butler (Vice Chairman), Adams, Adkins, Amos, Anderson, Bailey, Calvert, Cottrill, Galbraith, Jones (of McDowell), Lester, Linger, Martin (of Cabell), Parrish, Mrs. Price, Messrs. Shahan, Winter, Wiseman, Raider, Rexrode, Simmons, Vandall and Wolfe.
ELECTIONS AND PRIVILEGES

Messrs. Galbraith (Chairman), Hiehle (Vice Chairman), Bailey, Bibb, Breedlove, Clifford, Dickerson, Erhard, Fite, Haythe, James, Keister, Morford, Oldham, Bishoff, Janes and Welton.

EXECUTIVE OFFICES AND LIBRARY

Messrs. Martin (of Jefferson) (Chairman), Adkins (Vice Chairman), Adams, Breedlove, Butcher, Calvert, Doringer, Dotson, Erhard, Fite, Gilmore, Haythe, Holswade, Inscore, Kuhn, Beard and Crow.

FEDERAL RELATIONS

Messrs. Butcher (Chairman), Fite (Vice Chairman), Clifford, Johnston, Jones (of McDowell), Lester, Linger, Martin (of Cabell), Morris, Neal, Paul, Preston, Russell.

FORESTRY AND CONSERVATION

Messrs. Proctor (Chairman), Gaylord (Vice Chairman), Adams, Adkins, Bailey, Butcher, Erhard, Gilmore, Hiehle, Linger, Righter, Russell, Shahan, Wiseman, Beall, Rexrode, Simmons and Wolfe.

FORFEITED, DELINQUENT AND UNAPPROPRIATED LANDS

Messrs. Wysong (Chairman), Amos (Vice Chairman), Cottrill, Gum, Hiner, Kuhn, Oldham, Parrish, Paul, Roberts, Saville, Watts, Woodward, Rairden, Reed, Shadan and Vandall.

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Messrs. Calvert (Chairman), Watts (Vice Chairman), Amos, Bibb, Brotherton, Chipley, Cottrill, Galbraith, Gilmore, Lantz, Morford, Righter, Roberts, Saville, Shahan, Vickers, Wright, Beeler, Lawson, Wade and Wolfe.

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INSURANCE

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HOUSE COMMITTEES

(of Cabell), McCoy, Woodward, Wylie, Hertnick, Jones (of Doddridge), Lawson and Underwood.

JUDICIARY

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LABOR


MEDICINE AND SANITATION

Messrs. Wylie (Chairman), Morford (Vice Chairman), Butler, Chipley, Haythe, James, Jones (of McDowell), Kuhn, Morris, Mrs. Price, Messrs. Wiseman, Woodward, Wysong, Crow, Hertnick, Jones (of Doddridge) and Underwood.

MILITARY AFFAIRS

Messrs. Holswade (Chairman), Doringer (Vice Chairman), Adams, Anderson, Bailey, Calvert, Gentry, Inscore, Jones (of McDowell), Perry, Preston, Woodward, Wylie, Beall, Hertnick, Jones (of Doddridge), Ong, Simmons and Wolfe.

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Messrs. Bibb (Chairman), Paul (Vice Chairman), Breedlove, Dickerson, Erhard, Fite, Gilmore, Jimison, Kuhn, Morris, Perry, Phillips, Proctor, Shahan, Strouss, Thomas, Winter, Wiseman, Woodward, Wright, Wylie, Beard, Reed and Simmons.

PENITENTIARY

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PRINTING AND CONTINGENT EXPENSES

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REDISTRICTING

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RULES

Messrs. Speaker (Chairman ex officio), Gentry, Hiner, James, LaFon, Strouss, Underwood and Welton.

STATE BOUNDARIES

Messrs. Neal (Chairman), Keister (Vice Chairman), Butcher, Dotson, Gum, Haythe, Hiehle, Holswade, Inscore, Jones (of McDowell), Kuhn, Mrs. Price, Messrs. Shahan, Strouss, Vickers, Shedian, Vandall and Welton.

TAXATION AND FINANCE

Messrs. Thomas (Chairman), Righter (Vice Chairman), Anderson, Bibb, Brotherton, Dotson, Gaylord, Gentry, Hiehle, Holswade, James, Lantz, McCoy, Morford, Oldham, Parrish, Paul, Proctor, Russek, Strouss, Wylie, Hall, Rairden, Reed and Welton.
TEMPERANCE

Messrs. Saville (Chairman), Gum (Vice Chairman), Adams, Brotherton, Dickerson, Fite, Lantz, McCoy, Neal, Parrish, Proctor, Russek, Winter, Hertnick, Jones (of Doddridge), Rexrode and Wade.

JOINT COMMITTEE ON ENROLLED BILLS ON THE PART OF THE HOUSE

Messrs. Vickers (Chairman), Hiehle, Shahan, Winter and Beeler.

JOINT COMMITTEE ON JOINT RULES ON THE PART OF THE HOUSE

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AN ACT permitting persons, associations, partnerships or corporations of the state of West Virginia to borrow funds from production credit associations, regional agricultural credit corporations, the reconstruction finance corporation, banks for cooperatives, or the government of the United States or any department, agency or officer thereof, federal intermediate credit banks or any institution which has made arrangements to discount therewith or to procure funds therefrom on the security of the obligation of the borrower and providing a means of securing said loans on chattels and crops.

[Passed March 9, 1935; in effect from passage. Became a law without the approval of the Governor.]

Sec. 1. Persons or cooperative associations may borrow funds from federal agencies and give chattel deed of trust on personal property, including crops, to secure repayment; lien of deed of trust.

2. When lien of chattel deed of trust on crops has priority; exceptions.

3. Deed of trust may secure future advances to be made within three years; lien of future advances.

4. Deed of trust may include replacements or increase of livestock; permitted use of hay, grain, etc. covered by deed of trust, for livestock.

5. Acknowledgment of deed of trust.

6. (a) Filing and docketing by county clerk of deed of trust.
Sec. 1. Lien of deed of trust not impaired by removal of encumbered property to another county.

Sec. 11. When trustee may take possession of the encumbered property.

Sec. 12. How deeds of trust foreclosed.

Sec. 13. How deeds of trust foreclosed.

Sec. 14. Act to be liberally construed; provisions of act separable.

Be it enacted by the Legislature of West Virginia:

Section 1. Any person may enter into an agreement with, and borrow funds from, a production credit association organized under the farm credit act of one thousand nine hundred thirty-three, a regional agricultural credit corporation, the reconstruction finance corporation, or the government of the United States or any department, agency or officer thereof, a federal intermediate credit bank, or any institution which has made arrangements to discount therewith, or to procure funds therefrom on the security of, the obligations of the borrower, and any cooperative association or corporation composed of agricultural producers and/or purchasers may enter into an agreement with, and borrow from, any bank for cooperatives organized under said farm credit act of one thousand nine hundred thirty-three and/or from any federal intermediate credit bank, and the repayment of any funds so borrowed, and/or of any then existing indebtedness to any such institution may be secured by chattel deed of trust upon personal property of any kind, character or description owned at the time of the execution of the chattel deed of trust, or property of the same class as is covered by the chattel deed of trust or mortgage if acquired by the grantor subsequent to the execution of the chattel deed of trust, and prior to its extinguishment, or upon any crop or crops, annual or perennial, including fruit crops, grown or growing, either already planted or to be planted and/or maturing within one year from the execution of such chattel deed of trust. Such chattel deed of trust shall be a lien upon the property therein described from the time of the docketing of such chattel deed of trust as provided for herein, which lien shall be good and valid against, and superior to all rights of subsequent creditors, purchasers, mortgagees, and other lienors and encumbrancers, and any of them. For the purposes of this act, all such property shall be deemed to
Ch. 1]  DEEDS OF TRUST FOR AGRICULTURAL LOANS  3

Sec. 2. The lien of any chattel deed of trust on crops executed in pursuance of the provisions of this act shall be superior to any mortgages, deeds of trust, or judgments upon the land upon which any such crop has been so seeded and/or may be growing, and any sale made under any mortgage, deed of trust, or judgment upon such land before said crop has been severed shall be made subject to any lien on said crops acquired as provided for in this act: Provided, however, That the provisions of this act shall not in any manner whatever affect any deed of trust, mortgage, or judgment upon the land, recorded or docketed prior to the approval of this act: Provided further, That nothing in this act shall be construed to affect in any manner the rights of a landlord to his proper share of rents or his rights of distress or attachment for the same, unless such landlord shall expressly waive such rights in writing.

Sec. 3. Any such deed of trust or mortgage may secure future advances to be made by the beneficiary, at its option, within a period of three years from the execution of such deed of trust, but not to exceed in the aggregate an amount stated in such deed of trust; and all advances so made shall be secured by such deed of trust equally and to the same extent as the amount originally advanced on the security of such deed of trust; and all such future advances shall be a lien upon the property therein described from the time of the docketing of such deed of trust, good and valid against and superior to all rights of subsequent creditors, purchasers, mortgagees and other subsequent lienors and encumbrancers and any of them.

Sec. 4. Such chattel deed of trust may include replacements of any of the encumbered property therein described and all increase of animals and livestock of all kinds. No chattel deed of trust of livestock and hay, grain or other food stuffs shall be invalid in any particular because provision is contained therein, or the beneficiary consents, that the grantor may use and consume food, forage and/or fodder crops in preserving and preparing for market the livestock covered thereby.

Sec. 5. Any chattel deed of trust given under and pursuant to this act shall be executed by the grantor and need not be
Sec. 6. (a) Any chattel deed of trust given under and pursuant to this act, or instrument intended to operate as such, shall be filed in the office of the clerk of the county court for the county in which the chattels or crops are located at the time of the execution of such deed of trust. The county court clerk shall docket such instrument when presented to him for that purpose, in a well bound book to be known as the "Federal Farm Credit Lien Book", and shall alphabetically index same therein, setting forth the date of the lien, the name of the grantor, the trustee and beneficiary, the amount advanced and the limit thereof, and a brief description of the chattels described therein and/or the crops affected, and the property on which said chattels and/or crops are located.

(b) Every assignment made of any instrument executed under and pursuant to this act shall be filed in the office of the clerk of the county court where the original instrument is docketed; and when any such assignment is presented for filing, the said clerk of the county court shall enter upon the margin of the page on which is docketed the original instrument, the names of the assignor and assignee and the addresses of each, the amount of the debt or the date of the assignment, the date of the execution of the assignment and the date of filing thereof.

Sec. 7. The county court clerks are entitled to receive a fee of fifty cents for the docketing and entering of chattel deed of trust filed and docketed under and pursuant to this act, and a fee of twenty-five cents for each assignment and each release filed and indexed pursuant to this act.

Sec. 8. A chattel deed of trust executed under and pursuant to this act shall be invalid as against creditors, purchasers, mortgagees, and other lienors and encumbrancers after the expiration of a period of five years, reckoning from the time of the docketing of said chattel deed of trust, unless before the expiration of such term the beneficiary or someone on behalf of the beneficiary shall file a statement containing the names of the parties to the deed of trust, the time and place where docketed, and the amount then due thereon for principal and interest, in which case the lien of the deed of trust shall be
extended for five years from and after the date of the filing of said statement. The officer filing the statement shall enter the same in the "Federal Farm Credit Lien Book" and shall be entitled to the same fee as in the case of the docketing and entry of a chattel deed of trust under this act.

Sec. 9. Any deed of trust executed under and pursuant to this act may be assigned by an instrument in writing, signed and acknowledged by the beneficiary, its agent or assignee, and upon presentation of such assignment to the county court clerk in the office in which the original deed of trust is docketed, such assignment shall be by such county court clerk indexed and filed and the fact thereof shall be noted on the margin of the page in which the original deed of trust is docketed, and such assignment shall, except as to the parties thereto, take effect and be valid only from the time of filing and noting as herein provided.

Sec. 10. Any chattel deed of trust executed under and pursuant to this act may be released by an instrument in writing signed and acknowledged by the beneficiary, or its assignee, or the duly authorized agent of such beneficiary, or assignee, and upon presentation of such release in the office of the clerk of the county court, where the original chattel deed of trust is docketed, the clerk of the county court shall index and file the same and shall note such release and the date thereof on the margin of the page of the book where the original chattel deed of trust is docketed, and when so noted such release shall fully and effectually release the lien of said chattel deed of trust.

Sec. 11. The lien of the deed of trust shall not be extinguished or impaired by the removal of the encumbered property from the county in which the deed of trust is docketed.

Sec. 12. Upon default in any of the terms and provisions of any deed of trust executed in accordance with the provisions of this act, the trustee shall have the right, without process of law, immediately to take possession of the encumbered property and do all things necessary to preserve same, and any expense incurred in connection therewith shall be included in and secured by the lien of said deed of trust.
Sec. 13. In addition to any other methods of foreclosing chattel deeds of trust under the laws of this state, chattel deeds of trust executed under and pursuant to this act may be foreclosed in the manner provided for in said chattel deed of trust. Where such chattel deed of trust contains a power of sale, the same may be foreclosed upon compliance with the provisions of sale as set out in said chattel deed of trust: Provided, That all sales are made at public auction.

Sec. 14. This act shall be liberally construed to effectuate the purposes hereof and substantial compliance therewith shall be sufficient hereunder. The provisions of this act, so far as the same are applicable, shall govern and control chattel deeds of trust given under and pursuant hereto. If any provision of this act, or the application thereof to any person or circumstances, is held invalid, the remainder of the act, and the application of such provisions to other persons or circumstances, shall not be affected thereby. All laws or clauses of laws in conflict herewith are hereby repealed.

CHAPTER 2
(Senate Bill No. 79—By Mr. Fleming)

AN ACT to amend and reenact section eighteen, article eleven, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended by chapter seventy-four, acts of the Legislature, second extraordinary session, one thousand nine hundred thirty-three, relating to advances made for crops.

[Passed March 9, 1935; in effect from passage. Became a law without the approval of the Governor.]

Sec. 18. Lien of advances for crops; how secured; filing and docketing; itemized statement to sheriff; how validity contested.

Be it enacted by the Legislature of West Virginia:

That section eighteen, article eleven, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as
last amended by chapter seventy-four, acts of the Legislature, second extraordinary session, one thousand nine hundred thirty-three, be amended and reenacted to read as follows:

Section 18. If any person makes advances, either in money or supplies, or other thing of value, to anyone who is engaged in, or is about to engage in, the cultivation or cropping of land, the person so making such advances shall have a lien on the crops which may be made or seeded, or fruit and/or other crops maturing during the year upon the lands in or about the cultivation or cropping of which the advances so made have been or were intended to be expended, to the extent of such advances made for the cultivation, cropping, harvesting and/or marketing of such crops; but the person making such advances shall not have the benefit of the liens given in this section, unless there is an agreement, in writing, signed by both parties, in which there is specified the amount advanced, or a limit to be fixed beyond which any advances, made from time to time during the year, shall not go, and a description of the land cultivated or cropped, or to be cultivated or cropped, sufficient to identify it, and a description of the crops to be cultivated, cropped, harvested and/or marketed, and such agreement be filed in the office of the clerk of the county court of the county in which such land so cultivated or cropped or to be cultivated or cropped, lies, in a well-bound book to be known as "Crop Lien Book", and alphabetically indexed therein, by such clerk, setting forth the date of the lien, a brief description of the land so cultivated or cropped, or to be cultivated or cropped, sufficient to identify the same as stated in the writing, the name of the lienor and the lienee, the amount advanced or the limit thereof, and of the crops to be cultivated, cropped, harvested and/or marketed, and from the time such lien is so filed it shall have the same force and effect as a duly recorded trust deed, and shall be valid as to purchasers without notice from, and the creditors of, the parties or party obtaining such advances; and in the event of a sale, under a trust deed or mortgage, of the land upon which any such crop has been so seeded and/or may be growing, and before such crop has been severed, such sale shall be made subject to such crop lien: Provided, That whenever the crops are subject to a lien of a fieri facias or attachment, whether a levy be actually made or not, it shall be the duty of the person claiming a lien under this section,
39 upon the request of the sheriff, or any party in interest, to
40 render to the sheriff of the county wherein the crops are grown
41 a complete and itemized statement, under oath, of the claims
42 for advances, showing the nature of the claims, the dates of
43 advancement and the respective amounts. And in case the
44 person claiming the advances fails to render to the sheriff of
45 such county the verified itemized statement above provided for
46 within ten days after request has been made, he shall forever
47 lose the benefit of the lien on the crops for advances granted
48 him under this section: Provided further, That if the execution
49 creditor or attachment creditor desires to contest the validity
50 of the claims for advances, he may cause the clerk of the circuit
51 court of the county in which such crops are grown to summon
52 the person claiming such lien to appear before such court and
53 show to the satisfaction of the court that such money, supplies,
54 and other things of value were advanced for the purpose of, and
55 were actually used in and about the cultivation, production,
56 harvesting and/or marketing of the crops upon which the lien
57 is claimed. For the services of the clerk in recording a crop
58 lien under this section, he shall receive a fee of fifty cents.

CHAPTER 3
(Senate Bill No. 80—By Mr. Fleming)

AN ACT to permit certain cooperative associations to give deeds
of trust or chattel mortgages on rotating stocks of goods to
secure loans from banks for cooperatives, organized under the
farm credit act of one thousand nine hundred thirty-three, or
from federal intermediate credit banks, organized under the
agricultural credits act of one thousand nine hundred twenty-
three.

[Passed March 9, 1935; in effect from passage. Became a law without the
approval of the Governor.]

Sec. 1. Cooperative associations may give chattel deeds of trust on
stocks of goods or inventories to secure certain loans to
them; lien of deed of trust to attach to articles replacing
cumbered articles.

Be it enacted by the Legislature of West Virginia:

Section 1. Any cooperative association or corporation, or-
organized under the laws of this state, or under the laws of the
3 United States, or qualified to do business in this state, and
4 qualified as a cooperative association under the laws of this
5 state and/or under the laws of the United States, may give as
6 security for any loan or loans obtained from any bank for
7 cooperatives, organized under the act of congress known as
8 the “Farm Credit Act” of one thousand nine hundred thirty-
9 three, or for any loan or loans obtained from any federal in-
10 termediate credit bank, organized under an act of congress
11 known as the “Agricultural Credits Act” of one thousand nine
12 hundred twenty-three, a chattel mortgage or deed of trust
13 covering stocks of goods or inventories, or other things in bulk,
14 but changing in specifics, in which case the lien of such mort-
15 gage or deed of trust shall be lost as to all articles disposed of
16 by the mortgagor prior to the extinguishment of such mortgage,
17 but shall attach to any articles purchased to supply their places.

• CHAPTER 4

(House Bill No. 119—By Mr. Pelter, by request)

AN ACT repealing chapter sixty, as amended, of the code of
West Virginia, one thousand nine hundred thirty-one, and
enacting in lieu thereof a new chapter sixty providing for
state control of alcoholic liquors, and repealing all acts or
parts of acts inconsistent herewith.

[Passed February 22, 1935; in effect March 1, 1935. Approved by the Governor.]

ARTICLE I.

Sec. 1. Purpose of act.
2. Provisions of act to govern sale, etc., of alcoholic liquors in
   state.
3. Restrictions of sale, manufacture and consumption of alcoholic
   liquors.
4. All sales to be made by or through the West Virginia
   Liquor Control Commission.
5. Definitions.
6. Chapter cited as "Liquor Control Act".

*Amended by chapter five, acts of this session.

ARTICLE II.

Sec. 1. West Virginia liquor control
   commission created.
2. Members of commission ap-
   pointed by Governor, with
   consent of Senate; to devote
   entire time to duties.
3. Terms of members of comis-
   sion.
4. Qualifications of members of
   commission.
5. Office of member becoming a can-
   didate for, or holding public
   office or membership on com-
   mittee of political party va-
   cated.
6. Members of commission to have
Sec. 7. Oath and bond of members of commission.
8. Organization and quorum of commission.
9. Salaries and traveling expenses of commission.
10. Offices of commission.
12. Commission to employ assistants and employees and fix salaries.
14. Commission to grant and revoke licenses.
15. Advertising of alcoholic liquors.
17. What powers and duties of commission may be exercised by employees.
18. Procedure in hearings and proceedings before commission.
19. Attorney general and prosecuting attorneys to render legal services to commission.
20. When members of commission not civilly responsible for acts.
21. Tax commissioner to audit affairs of commission; cost paid from operating fund.

ARTICLE III.

Sec. 1. Sale of alcoholic liquors a state monopoly and made at retail only through stores and agencies of commission; sales at wholesale to be made by commission.
2. Commission to establish and discontinue store and agencies for retail sales; location.
3. Commission may establish and manage not more than four warehouses.
4. Commission to appoint managers and assign employees to state stores; manager responsible to commission.
5. Rules and regulations to govern state stores and agencies.
6. State agencies to procure stocks from commission; sales by agencies.
7. State agencies classified; compensation and bond of agent.
8. Agent to receive no profit from sales.
9. Commission shall, from time to time, fix uniform prices; price lists to be posted and distributed.
10. Uniform system of records and accounts for stores and agencies; daily report and monthly audits.
11. Stock or inventory control for stores, agencies and warehouses.
12. Commission to fix day and hours of stores, agencies and warehouses.

Sec. agencies may sell; days on which stores shall not open or agencies sell.
13. Display, distribution of advertising matter or recommendation of brands of alcoholic liquors by stores or agencies prohibited.
14. How commission may acquire by purchase or lease necessary equipment, etc.; sworn statement as to purity to accompany delivery of alcoholic liquors to commission; analysis of liquors by commission.
15. Amount of stock on hand not to exceed estimated requirement for sixty days' sales; commission may contract for manufacture of "state brand".
16. Liquors to be sold in sealed packages; what manufacturer's label to show.
17. Regulations of commission for handling and depositing moneys to be approved by Governor and state treasurer; deposit of funds in state treasury.
18. Operating fund, uses; reserve fund, uses; transfers from reserve to operating fund.
19. Amount of operating fund and reserve funds; excess transferred monthly to state treasury.
20. Sales by stores and agencies to be for cash only.
21. Sales limited to one gallon to a person at one time; exception.
22. To whom sales shall not be made.
23. What purchaser may not do upon premises of store or agency.
24. Authority of employees to make arrests.

ARTICLE IV.

Sec. 1. Commission to grant and revoke licenses; licenses issued or renewed for calendar year.
2. Separate licenses for manufacture of alcoholic liquors.
3. To whom licensed manufacturer may sell.
4. Licenses to wholesale druggists; sales by.
5. Licenses for purchase at wholesale for industrial or scientific uses.
6. Licenses to druggists to sell upon prescriptions.
7. Licenses, without fee, for stills used for laboratory or pharmaceutical purposes.
8. Licenses for stills used by commercial chemists for laboratory purposes.
9. Each place of business requires separate license; license not transferable, but may be amended to change location.
10. Applicant for license to post and publish notice; exception.
Sec. as to druggists selling on prescription.
11. When applicant for license to file application and pay license fee.
12. Commission to grant or refuse license within fifteen days; if refused, license fee refunded.
13. When commission shall refuse license.
14. When licensee shall pay fee; license revoked upon failure to pay.
15. Amount of license fees.
16. Records of and reports by licensee.
17. Rules and regulations for reports.
18. No municipal fee for license.
19. When license shall be revoked.
20. Notice of and hearing on revocation of license; disposition of stock on revocation.
21. Appeal from action of commission granting or revoking, or refusing to grant or revoke license.

ARTICLE V.
Sec. 1. Local option election in county or municipality.
2. Local option election called on petition of twenty-five per cent of qualified voters.
3. Form of petition for local option election.
4. Publication of notice of special local option election; when held; election officers.
5. Form of ballot.
6. How election conducted and results certified.
7. Within thirty days after local option election if result is "No", state stores and agencies to be closed.
8. When local option election may be held or held again.

ARTICLE VI.
Sec. 1. When lawful to possess, use or serve alcoholic liquors.
2. When lawful to manufacture and sell wine and cider.
3. Provisions of chapter not to apply to use of ethyl alcohol for certain purposes.
4. To what medicinal, toilet and other preparations provisions of chapter do not apply.
5. To what uses by physicians, druggists and others, provisions of act do not apply.
6. Transportation into and in state of not to exceed one gallon of alcoholic liquors.
7. Specified acts in regard to alcoholic liquors forbidden; penalties.
8. Unlawful sales or possession of alcoholic liquors by licensee; penalties.
9. Intoxication, or drinking, in public place; buying or possessing alcoholic liquors unlawfully acquired; penalty.
10. Unlawful operation of plant to manufacture distilled spirits; penalty.
11. Unlawful manufacture, transportation or sale of alcoholic liquors while armed; penalty.
12. Unlawful transportation of alcoholic liquors for sale; penalties.
13. When importation of alcoholic liquors into, or transportation in, state permitted.
14. When transportation deemed to be for sale.
15. Penalties for violations of chapter not otherwise specified; if conflict, heavier penalty to control.
16. When places deemed common and public nuisances; penalty for maintaining; abatement.
17. Suit to abate nuisances; injunction.
18. Search warrants, issuance and execution.
19. When stills, distilling apparatus and containers contraband and forfeited to state.
20. When vehicles used for transportation of alcoholic liquors deemed contraband and forfeited to state; disposition of same.
21. Court procedure as to contraband and forfeited articles.
22. No action to be maintained, except by state or commission, to recover price of alcoholic liquors sold unlawfully.
23. Unconstitutionality or invalidity of any section, etc., not to affect validity of remaining sections, etc.

Be it enacted by the Legislature of West Virginia:

That chapter sixty, as amended, of the code of West Virginia, one thousand nine hundred thirty-one, is hereby repealed; and a new chapter sixty providing for the state control of alcoholic liquors is hereby enacted to read as follows:
ARTICLE I.

Section 1. The purpose of this chapter is to give effect to the mandate of the people expressed in the repeal of the state prohibition amendment; and to assure the greatest degree of personal freedom that is consistent with the health, safety and good morals of the people of the state. To these ends the police power of the state is pledged to the sound control and the temperate use of alcoholic liquors.

Sec. 2. A person shall not sell, possess for sale, transport, or distribute alcoholic liquors in this state except in accordance with the provisions of this chapter.

Sec. 3. Subject to the provisions of this chapter, alcoholic liquors, in this state:
1. Shall be sold only in sealed packages.
2. Shall not be sold for consumption on the premises where sold.
3. Shall be manufactured only by persons licensed under the provisions of this chapter.
4. Shall not be consumed or sold for consumption in a public place.

Sec. 4. Alcoholic liquors shall be sold at wholesale and retail in this state only by or through the West Virginia Liquor Control Commission, or its retail agencies.

Sec. 5. For the purposes of this chapter:
1. "Alcohol" shall mean ethyl alcohol whatever its origin, and shall include synthetic ethyl alcohol but not denatured alcohol.
2. "Beer" shall mean any beverage obtained by the fermentation of barley, malt, hops or any other similar product or substitute, and containing more than five per cent of alcohol by weight.
3. "Non-intoxicating beer" shall mean any beverage obtained by the fermentation of barley, malt, hops, or similar product or substitute, and containing not more than five per cent of alcohol by weight.
4. "Wine" shall mean any alcoholic beverage obtained by the
13 fermentation of the natural content of fruits, or other agricultural products, containing sugar.

15 "Spirits" shall mean any alcoholic beverage obtained by distillation and mixed with potable water and other substances in solution, and includes brandy, rum, whiskey, cordials and gin.

19 "Alcoholic liquor" shall include alcohol, beer, wine and spirits, and any liquid or solid containing more than five per cent of alcohol by weight and capable of being used as a beverage.

22 "Original package" shall mean any closed or sealed container or receptacle used for holding alcoholic liquor.

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

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

31 "Person" shall mean an individual, firm, partnership, corporation or voluntary association.

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

38 "Manufacturer" shall mean any person engaged in the manufacture of any alcoholic liquor, and among others includes a distiller, a rectifier, a wine maker, and a brewer.

41 "Brewery" shall mean an establishment where beer is manufactured or in any way prepared.

45 "Winery" shall mean an establishment where wine is manufactured or in any way prepared.

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

52 "Public place" shall mean any place, building or conveyance to which the public has, or is permitted to have access, including restaurants, soda fountains, and hotel dining rooms and lobbies, and corridors of hotels, and any highway, street, lane, park or place of public resort or amusement.

56 "State Liquor Store" shall mean a store established and operated by the commission under this chapter for the sale of alcoholic liquor in the original package for consumption off the premises.
LIQUOR CONTROL ACT

Sec. 6. This chapter may be cited as the "Liquor Control Act".

Sec. 7. The provisions of this act do not apply to non-intoxicating beer except as is otherwise specifically provided.

ARTICLE II.

Section 1. To accomplish the purposes of this chapter there is hereby created the "West Virginia Liquor Control Commission," which shall be a corporation, and, as such, may sue and be sued, contract and be contracted with, and it shall have a common seal.

Sec. 2. The commission shall consist of three members to be appointed by the governor, with the advice and consent of the senate. The commissioners shall devote their entire time to the duties of the office.

Sec. 3. The term of office of members of the commission shall be four years, except the governor, upon the adoption of this act, shall appoint the members of the commission upon the following basis: One member for a term of two years, one member for a term of three years, and one member for a term of four years. As these appointments expire, subsequent appointments shall be made for four-year terms.

Any appointment to fill a vacancy shall be for the unexpired term.

Sec. 4. The members of the commission shall be selected with special reference to their ability and fitness to perform the duties required of them by this chapter.

Not more than two of the commission shall be members of the same political party.
Sec. 5. A member of the commission shall not be a candidate for or hold any public office other than that of member of the commission; nor shall he be a member of any committee of a political party. In case a member becomes a candidate for or is appointed to any public office or political committee, his office as member of the commission shall be automatically vacated.

Sec. 6. A member of the commission shall have no personal interest in or derive any gain from an enterprise or industry engaged in the manufacture, sale or use of alcoholic liquor.

Sec. 7. Before entering upon their duties, members of the commission shall each take and subscribe to the oath prescribed by section five, article four of the constitution of this state, and shall give bond in the penalty of twenty-five thousand dollars, to be approved by the governor and conditioned upon the faithful performance of his duties and the accounting for and payment into the treasury of all moneys coming into his custody by virtue of his office. The bond and oath shall be filed with the secretary of state.

Sec. 8. The governor shall designate one member of the commission as the chairman, who shall be the presiding officer, and the members shall choose one of their own members secretary. A majority of the members shall constitute a quorum for the conduct of official business.

Sec. 9. Each member of the commission shall receive a salary of six thousand dollars per annum and his actual and necessary traveling expenses incurred in the performance of his duties.

Sec. 10. The offices of the commission shall be maintained at the state capitol and shall be the regular place of meeting of the commission.

Sec. 11. The state liquor commission shall have the following powers and duties and any and all other powers and duties reasonably necessary and convenient for the purposes of this act:

(1) Exercise general supervision of, and make rules and regulations for the management of its department;
7 (2) Sign and execute in the name of the commission any
8 contract or agreement authorized by this chapter;
9 (3) Supervise the fiscal affairs and responsibilities of the
10 department;
11 (4) Obtain by lease or agreement, after receiving competi-
12 tive bids, lands and buildings required for the purposes of this
13 chapter; but nothing herein contained shall empower the com-
14 mission to acquire title to any real estate. But all such leases
15 and/or agreements shall contain a condition whereby such
16 leases or agreements shall terminate and all liability to the com-
17 mission thereunder shall cease and determine, should the sale
18 of alcoholic liquors be prohibited under the provisions of article
19 five of this chapter.
20 (5) Keep a complete and accurate record of all proceedings,
21 record and file all bonds and contracts taken or entered into,
22 and assume responsibility for the custody and preservation of
23 all papers and documents pertaining to the commission;
24 (6) Purchase or lease as provided by law all equipment
25 necessary for the conduct of the department;
26 (7) Report to the governor each year all information rela-
27 tive to the operation and functions of the department. They
28 shall make such other reports and recommendations as may be
29 required by the governor;
30 (8) Exercise any other power that may be necessary or
31 proper for the orderly conduct of the business and the effective
32 discharge of the duties of the commission;
33 (9) Invoke any legal or equitable remedies for the en-
34 forcement of the orders of the commission or the provisions of
35 this chapter;
36 (10) All writings required to be executed on behalf of the
37 commission shall be signed by the chairman and attested by the
38 secretary, except that in the absence of the chairman such writ-
39 ings may be executed by the other two members.

Sec. 12. The commission shall appoint or employ such as-
2 sistants and employees as may be necessary to the efficient oper-
3 ation of the department and fix their salaries. All assistants
4 and employees shall be appointed or employed to serve during
5 the will and pleasure of the commission.

Sec. 13. The commission shall require every employee who
2 collects fees or handles funds or who has custody of equipment
and supplies belonging to the state to take the oath prescribed by section five, article four of the state constitution and give an official bond. The bond shall be properly conditioned upon the faithful performance of the employee's duties and the accounting for and payment into the state treasury as required by this chapter of all moneys coming into his custody by virtue of this chapter, and signed by sufficient sureties in a sum to be fixed by the commission, which bond shall be approved by the commission and filed in the office of the secretary of state.

Sec. 14. The commission shall have the authority to grant and revoke licenses as provided in article four of this chapter.

Sec. 15. The commission shall prescribe regulations governing the advertising of alcoholic liquors in this state. The regulations shall prohibit advertising that encourages intemperance, induces minors to purchase, or tends to deceive or misrepresent.

Sec. 16. The commission shall have the power to prescribe rules and regulations to give effect to the powers vested in it by this chapter. Rules and regulations shall be recorded in a book especially kept for that purpose, and in its discretion may be published for general circulation. All other records and entries necessary to show the official conduct of the commission shall be preserved and shall be public records and open for inspection during business hours.

Sec. 17. All powers and duties vested in the commission, except the power to sign contracts, may be exercised by the appointees or employees of the commission under its direction; but the commission shall be responsible for their acts.

Sec. 18. In all hearings and proceedings before the commission, the evidence of witnesses and the production of documentary evidence may be required. Summons may be issued by it for appearance at any designated place of hearing. In case of disobedience to a summons or other process, the commission or any party to the proceedings before the commission may invoke the aid of any circuit court in requiring the evidence and testimony of witnesses and the production of papers, b
9 documents. Upon proper showing, the court shall issue an
10 order requiring witnesses to appear before the commission,
11 produce all books and papers, and give evidence touching the
12 matter in question. Any person failing to obey the order may
13 be punished by the court as for contempt. A claim that evi-
14 dence may tend to incriminate the person giving the evidence
15 shall not excuse him from testifying, but he shall not be prose-
16 cuted for any offense concerning which he is compelled to
17 testify.

Sec. 19. The attorney general and the prosecuting attorneys
2 of the several counties shall render to the commission, without
3 additional compensation, such legal services as it may require
4 of them in the discharge of its duties under the provisions of
5 this chapter.

Sec. 20. The members of the commission shall not be civilly
2 responsible for any act done or omitted in good faith in the
3 discharge of duties imposed upon them by this chapter.

Sec. 21. At the close of each fiscal year, the state tax com-
2 missioner shall audit the affairs of the West Virginia depart-
3 ment of liquor control and report the results of the audit to the
4 governor. The cost of the audit shall be paid from the oper-
5 ating fund.

ARTICLE III.

Section 1. The sale of alcoholic liquors at wholesale and
2 retail in this state shall be a state monopoly. Alcoholic liquors
3 shall be sold at retail only through the state stores and the
4 agencies of the West Virginia Liquor Control Commission.
5 The commission may sell such liquors at wholesale to per-
6 sons licensed to purchase at wholesale as provided in this
7 chapter.

Sec. 2. The commission shall establish state stores and
2 agencies at places throughout the state so as to serve adequately
3 and reasonably the demand for the sale at retail of alcoholic
4 liquors, subject only to the limitations imposed by article five
5 of this chapter. It may discontinue a store or agency when
6 in its opinion it is advisable to do so.
7 A store or agency shall not be located in the immediate vicin-
8 ity of a church or school.
Sec. 3. The commission shall establish and manage as many warehouses as may be necessary, but not more than four, for the storage of alcoholic liquors and the supply of state stores and agencies.

Sec. 4. The commission shall appoint a manager for and assign employees to each state store. The manager shall be responsible to the commission for the conduct and operation of the store.

Sec. 5. The commission shall issue appropriate rules and regulations to govern the conduct of state stores and agencies.

Sec. 6. A state agency shall procure stocks of alcoholic liquor for sale at retail only from the commission. Sales at retail in agencies shall be made in the same manner as sales in state stores.

Sec. 7. The commission shall classify state agencies into not more than three groups with respect to volume of business. An agent shall be compensated in a fixed sum, uniform within each group, and in an amount to be fixed by the commission, but not more than one thousand dollars in any one year. Each agent shall give bond in an amount fixed by the commission conditioned upon the faithful observance of the provisions of this chapter, compliance with the rules and regulations of the commission, and the accounting for and paying over of all moneys coming into his custody by virtue of his agency. An agent shall not, at any time, have on hand a stock of alcoholic liquors greater in value than the amount of his bond.

Sec. 8. An agent shall make no profit from the sale of alcoholic liquors, nor shall he receive compensation for the performance of his duties as agent other than that paid him by the commission.

Sec. 9. The commission shall, from time to time, fix uniform prices for each variety, class and brand of alcoholic liquors offered for sale in state stores. Alcoholic liquors shall be sold in state stores and agencies only at the uniform prices fixed by the commission. The commission shall prepare price lists showing the price of each variety, class or brand. Price lists shall be posted
prominently in each store and shall be available for distribution and inspection in every state store and agency.

Sec. 10. The commission shall install a uniform system of records and accounts for state stores and agencies. It shall require a daily report of sales and stock inventory, and shall audit the accounts and check the stock inventory of each store and agency at least once in every thirty days.

Sec. 11. The commission shall prescribe a method of stock or inventory control that will show the amount of each variety, class and brand of alcoholic liquor on hand in each state store, agency, and warehouse at any time.

Sec. 12. The commission shall fix the days on which state stores shall be open and the hours of opening and closing, and the hours during which agencies shall sell alcoholic liquors. Stores shall not be open nor shall agencies sell alcoholic liquors on:

1. Sundays;
2. Legal holidays;
3. Any general or special election day.

Sec. 13. A store or agency shall not display any alcoholic liquor or display or distribute any advertising matter, nor shall a person employed in a state store or agency advertise, display or recommend any type, class or brand of alcoholic liquors, nor shall he discuss or comment upon the relative merits of any such liquors.

Sec. 14. The commission shall acquire by purchase or lease equipment, materials, supplies and other property necessary for the operation of state stores in the manner required for the purchase or lease of property by other state departments. This requirement shall not apply to the purchases of alcoholic liquor for sale or to the leasing of premises for state stores or warehouses. The commission shall require a sworn statement with the delivery of alcoholic liquors purchased by it that the goods are as represented, and do not contain any impure or deleterious matter. The commission shall by frequent chemical analysis determine that liquors offered for sale in state stores and agencies are pure, potable, and not misrepresented.
Sec. 15. In order to avoid the accumulation of excessive stocks in warehouses and stores, the commission shall so plan its purchases of alcoholic liquors for sale in state stores and agencies that the stock on hand at any time does not exceed the estimated requirements for sixty days' sales.

The commission may, with the consent of the governor, contract for the manufacture of alcoholic liquors for sale in state stores and agencies. Such liquors shall bear a special designation as a "state brand".

Sec. 16. Alcoholic liquors shall be sold only in sealed packages, bearing such seals and labels as the commission may require.

A manufacturer of liquor offered for sale in state stores and agencies shall attach to each bottle a special label bearing an accurate description of the contents of the bottle in such form and detail as the commission may require.

Sec. 17. The commission, with the approval of the governor and the state treasurer, shall prescribe regulations for the handling and depositing of all moneys collected by the commission. All receipts shall be remitted promptly to the state treasury.

Sec. 18. The following funds are created in the state treasury for the purposes of this chapter:

1. The operating fund, which shall be a revolving fund from which all expenses of operation and administration shall be paid except those authorized to be paid from the reserve fund.

2. The reserve fund, which shall be a reserve for contingencies and depreciation. This fund may be used for (a) the purchase of equipment and other property having a useful life of more than one year from date of purchase, and (b) transfer to the operating fund to meet unusual requirements arising in the course of business.

Transfers from the reserve fund to the operating fund shall be made as follows: The commission shall recommend such transfer to the governor and the governor shall draw the requisition if he approves the transfer. Moneys in the reserve fund not needed for cash reserve shall, with the approval of the governor, be invested by the Board of Public Works in obligations
19 of the United States, of the State of West Virginia, or any of its subdivisions.

Sec. 19. All moneys collected by the commission shall be credited to the operating fund until that fund reaches an amount sufficient for the current, and routine requirements of the department, this amount to be fixed by the commission with the approval of the governor. The receipts in excess of the requirements of the operating fund shall be paid into the reserve fund until the amount of the reserve fund equals one million dollars. Receipts in excess of the requirements of the operating and reserve funds shall be transferred monthly into the general fund of the state treasury upon requisition of the governor.

Sec. 20. The sale of alcoholic liquors in state stores and in state agencies shall be for cash only.

Sec. 21. Not more than one gallon of alcoholic liquor shall be sold to a person at one time; but a sale in excess of one gallon may be made to a person licensed to purchase at wholesale, and to a religious organization purchasing wine for sacramental purposes.

Sec. 22. Alcoholic liquors shall not be sold to a person who is:

(1) Less than twenty-one years of age;
(2) An habitual drunkard;
(3) Intoxicated;
(4) Addicted to the use of narcotic drugs;
(5) Mentally incompetent.

Sec. 23. A person, while on the premises of a state store or agency, shall not:

(1) Break the seal upon any package of alcoholic liquors;
(2) Consume alcoholic liquor;
(3) Loiter.

Sec. 24. An appointee or employee of the commission shall have the authority of a peace officer, to arrest a person for an act committed on or about the premises of a state warehouse, state store, or agency, and in his presence, which amounts to:

(1) A violation of a provision of this chapter;
6. (2) Disorderly conduct.
7. The commission shall furnish its appointees and employees
8. with an official badge as evidence of this authority.

ARTICLE IV.
3. be issued and renewed for the period of the calendar year.

Section 1. The commission shall grant and revoke licenses
2. in accordance with the provisions of this article. Licenses shall

Sec. 2. The commission may grant licenses for the manufacture of alcoholic liquors. Separate licenses shall be issued
3. to the following classes of manufacturing establishments:
4. (1) Distilleries, in which only alcoholic liquors other than
5. wine or beer shall be manufactured;
6. (2) Wineries, in which only wines shall be manufactured;
7. (3) Breweries, in which beer shall be manufactured;
8. (4) Bottling plants, in which beer only shall be bottled.
9. Licenses for manufacture shall authorize the manufacture
10. and sale of alcoholic liquors as provided by this chapter.

Sec. 3. A person who is licensed to manufacture alcoholic
2. liquors in this state may sell such liquors in this state only to the
3. West Virginia Liquor Control Commission, and to wholesalers
4. and retailers licensed as provided in this chapter. A manufacturer may sell alcoholic liquors outside of the state for use or
5. resale outside of the state.

Sec. 4. The commission may grant to wholesale druggists
2. licenses to purchase alcoholic liquors at wholesale from or
3. through the West Virginia Liquor Control Commission for the
4. purpose of resale in this state to licensed druggists for compounding and sale at retail in accordance with the provisions
5. of this chapter. A person holding a license issued under the
6. authority of this section may sell to druggists outside of this
7. state for compounding and resale outside of this state.

Sec. 5. The commission may grant licenses to persons to
2. purchase alcoholic liquors at wholesale from or through the
3. West Virginia Liquor Control Commission for industrial, or
4. scientific uses, or for use in institutions as provided in article
5. six, section five of this chapter.
The commission may issue special permits authorizing transactions at wholesale for industrial purposes only.

Sec. 6. The commission may issue licenses to druggists to sell alcoholic liquors upon prescription as provided in this chapter.

Sec. 7. The commission shall license without fee a still used solely for laboratory purposes in an educational institution and a still used solely for pharmaceutical purposes.

Sec. 8. The commission shall license a still used by a commercial chemist for laboratory purposes only, and not used for the purpose of the manufacture of alcoholic liquors for resale, at a fee of five dollars.

Sec. 9. Each separate place of business shall require a separate license. Licenses shall not be transferable but, with the approval of the commission in such form and manner as the commission may prescribe, may be amended to change the location of the business licensed.

Sec. 10. A person who desires to apply for a license authorized by the provisions of this chapter shall, not more than thirty nor less than ten days before the filing of formal application, give notice of his intention. He shall give notice by posting a statement of his intention in such form as the commissioner may require at the front door or principal entrance of the place where the business is to be conducted. He shall also publish notice, in such form as the commission may require, at least once in a newspaper published or having a general circulation in the county and municipality in which he intends to do business: Provided, however, That retail druggists desiring to sell alcoholic liquors on prescriptions shall not be subject to the provisions of this section: Provided further, That such retail druggists shall file formal application in writing with the commission and shall pay the license fee.

Sec. 11. Not less than ten days after giving notice of his intention, a person desiring to apply for a license shall file formal application, in writing, with the commission and shall pay the license fee.

Sec. 12. Within fifteen days after the filing of formal ap-
application for a license the commission shall either grant or refuse the license.

If the commission refuses to grant the license it shall refund the license fee.

Sec. 13. The commission shall refuse the license if it finds that:

1. The applicant is not a suitable person;
2. The place to be occupied by the applicant is not a suitable place;
3. A sufficient number of licenses have already been issued.

Sec. 14. A person possessing a license issued under the provisions of this chapter shall pay the fee annually on or before the first day of January of each year. If the license fee is not paid on that day, the license shall be automatically revoked, unless the commission shall, for good cause, grant an extension in writing for not more than ten days.

Sec. 15. A person to whom a license is issued under the provisions of this chapter shall pay, annually, to the commission a license fee as follows, for:

1. Distilleries, five hundred dollars;
2. Wineries, two hundred and fifty dollars;
3. Breweries, two hundred and fifty dollars;
4. Bottling plants, one hundred dollars;
5. Wholesale druggists, fifty dollars;
6. Institutions, ten dollars;
7. Industrial use, fifty dollars;
8. Retail wine, twenty-five dollars;
9. Retail druggists, ten dollars.

Sec. 16. The commission shall prescribe records to be kept by licensees and shall require regular reports at least every thirty days of the amounts and kinds of alcoholic liquors manufactured, sold, or kept in stock under the authority of a license issued according to the provisions of this article. Records which the licensee is required to keep shall be open at all reasonable times to inspection by the commission or its agents.

Sec. 17. The commission shall have the authority to prescribe such rules and regulations and to require the reporting
Sec. 18. A municipal corporation shall not impose a fee or a special tax as a condition upon the exercise of a license issued under the provisions of this chapter.

Sec. 19. The commission shall revoke a license issued by it if it shall find that:
1. The licensee is not a suitable person;
2. The place occupied by the licensee is not a suitable place;
3. The licensee has violated a provision of this chapter or a regulation made by the commission under the authority of this chapter;
4. The licensee has failed to comply with the spirit and intent of this chapter by encouraging intemperance, the unlawful consumption of alcoholic liquors, or otherwise.

Sec. 20. Before revoking a license issued under the authority of this chapter, the commission shall give at least ten days notice to the licensee. Notice shall be in writing, shall state the reason for revocation and shall designate a time and place when the licensee may show cause why the license should not be revoked. Notice shall be sent by registered mail to the address for which the license was issued. The licensee may, at the time designated for the hearing, produce evidence in his behalf and be represented by counsel. On the final revocation of a license or licenses the commission shall immediately take over the stocks of liquors possessed by the licensee, and pay to the licensee the amount paid by him to the state for such stocks less the amount necessary to defray the costs incurred by the commission in the revocation proceedings.

Sec. 21. A decision of the commission granting or revoking, or refusing to grant or to revoke a license authorized by this chapter shall be subject to judicial review upon the appeal of a licensee and applicant for a license, a resident of the community in his own behalf or in behalf of the community, or an interested party who is dissatisfied with the decision of the commission in granting, refusing to grant, revoking or refusing to revoke a license authorized by this chapter, but in any such judicial review only the legality of the decision of the commis-
SECTION 1. A county, or any municipality may in an election held especially for the purpose, determine whether the sale of alcoholic liquors for beverage purposes shall be permitted within that county or municipality.

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

Sec. 2. The county court, or the governing body of the municipality, as the case may be, shall call a special "local option election" upon the filing of a petition signed by not less than twenty-five per cent of the qualified voters within the county or municipality.

Sec. 3. The petition shall be in the following form:

Petition for Local Option Election

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

Shall the sale of alcoholic beverages under the West Virginia Liquor Control Commission be permitted in ........................ ?

Name

Address

Date

(Post office or street and number)

Sec. 4. The county court or governing body of the municipality shall give notice of the special "local option election" by publication in two newspapers of opposite politics and of general circulation in the area in which the election is held. Notice shall be given at least once each week for two successive weeks, prior to the election, and printed copies of the order shall be posted at each place of voting at least ten days before the election. If there is only one newspaper published in the county or municipality, the publication shall be made therein. The election shall be held not more than ninety nor less than sixty days from the filing of the petition. The regular election officers of the county or municipal corporation shall open the polls and conduct the election in the same manner provided for general elections.
Sec. 5. On the ballot shall be printed the following:
2 Shall the sale of alcoholic beverages under the West Virginia
3 Liquor Control Commission be permitted in..........................?
4 □ Yes.
5 □ No.
6 (Place a cross mark in the square opposite your choice.)

Sec. 6. The ballots shall be counted, returns made and can-
2 vassed as in general elections, and the results certified by the
3 commissioners of election to the county court of the county, or
4 the governing body of the municipality, as the case may be.
5 The county court or governing body shall without delay certify
6 the result of the election to the commission.

Sec. 7. Within thirty days after a "local option election" in
2 which a majority has voted "No," the commission shall close
3 all state stores and discontinue all agencies situated within the
4 county or municipality.

Sec. 8. When a "local option election" has been held in a
2 county or municipality, another such election shall not be held
3 for a period of two years; except that an election may be held
4 within a municipality without regard to an election held in or
5 the time limit applicable to the county within which the muni-
6 cipality, or a part thereof, is located.

ARTICLE VI.

Section 1. The provisions of this chapter shall not prevent:
2 (1) A person from keeping and possessing alcoholic liquors
3 in his residence for the personal use of himself, his family, his
4 servants or his guests if such alcoholic liquors shall have been
5 lawfully acquired by him;
6 (2) A person, his family, or servants from giving or serving
7 such alcoholic liquors to guests in said residence, when such gift
8 or service is not for the purpose of evading the provisions of
9 this chapter.

Sec. 2. The provisions of this chapter shall not prevent:
2 (1) A person from manufacturing wine at his residence for
3 consumption at his residence as permitted by section one of this
4 article;
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Sec. 3. The provisions of this chapter do not apply to ethyl alcohol used:
1. (1) For scientific, chemical, mechanical or industrial purposes.
2. (2) By those authorized to procure ethyl alcohol tax-free under the acts of Congress and regulations thereunder.
3. (3) In the manufacture of denatured alcohol produced and used as provided by the acts of Congress and regulations thereunder.
4. (4) In the manufacture of scientific, chemical, mechanical and industrial preparations or products unfit for beverage purposes.

Sec. 4. The provisions of this chapter shall not prevent a person from manufacturing, selling, delivering or shipping:
1. (1) Any medicine containing sufficient medication to prevent its use as a beverage;
2. (2) Any medicinal preparation manufactured in accordance with formulas prescribed by the United States Pharmacopeia, and National Formulary, patent and proprietary preparations, and other bona fide medicinal and technical preparations, which are manufactured and sold to be used exclusively as medicine and not as beverages, and the sale of which does not now require the payment of a United States liquor dealer’s tax;
3. (3) Toilet, medicinal and antiseptic preparations not intended for internal human use nor for beverage purposes;
4. (4) Any food products known as flavoring extracts manufactured and sold for cooking and culinary purposes only and not for beverage purposes.

Sec. 5. The provisions of this chapter shall not prevent:
(1) A physician from prescribing the use of alcoholic liquors when necessary for a bona fide patient;
(2) A druggist from selling, upon a prescription properly issued by a physician, alcoholic liquors for medicinal purposes;
(3) A physician, dentist, or veterinarian, in the legitimate practice of his profession, from using and administering alcoholic liquors;
(4) Hospitals, sanitariums, or that division of any institution which is regularly conducted as a hospital, dispensary or infirmary, from using or administering alcoholic liquors to bona fide patients. Institutions and the divisions thereof provided in this section may carry a stock of alcoholic liquors sufficient for this purpose;
(5) Religious organizations from using wine for sacramental purposes.

Sec 6. The provisions of this chapter shall not prevent a person from bringing into or transporting in this state, in his possession or in his baggage, and not for resale, alcoholic liquor in a quantity not to exceed one gallon.

Sec. 7. A person shall not:
(1) Manufacture or sell in this state without a license any alcoholic liquor except as permitted by this article;
(2) Aid or abet in the manufacture or sale of alcoholic liquor without a license except as permitted by this article;
(3) Sell without a license any alcoholic liquor other than permitted by this article;
(4) Adulterate any alcoholic liquor by the addition of any drug, methyl alcohol, crude, unrectified or impure form of ethyl alcohol, or other foreign or deleterious substance or liquid;
(5) Refill, with alcoholic liquor, any bottle or other container in which alcoholic liquor has been sold at retail in this state;
(6) Advertise any alcoholic liquor in this state except in accordance with the rules and regulations of the commission;
(7) Distribute, deal in, possess, or use crowns, stamps or seals required under the authority of this chapter, except in accordance with the rules and regulations prescribed by the commission.
A person who violates any provision of this section shall be guilty of a misdemeanor and upon conviction shall be fined not less than fifty nor more than five hundred dollars, or confined in jail not less than thirty days nor more than one year or both such fine and imprisonment, for the first offense. Upon conviction of a second or subsequent offense, the court may in its discretion impose a penalty of confinement in the penitentiary for a period not to exceed three years.

Sec. 8. A licensed person shall not:
1. Sell alcoholic liquors of a kind other than that which such license or this act authorizes him to sell;
2. Sell beer to which wine, spirits, or alcohol has been added;
3. Sell wine to which other alcoholic spirits have been added, otherwise than as required in the manufacture thereof under regulations of the commission;
4. Sell alcoholic liquors except as authorized by his license;
5. Sell any alcoholic liquor when forbidden by the provisions of this chapter;
6. Keep on the premises covered by his license alcoholic liquor other than that which he is authorized to sell by such license or by this act.

A person who violates any provision of this section shall be guilty of a misdemeanor and upon conviction shall be fined not less than fifty nor more than five hundred dollars, or confined in jail not less than thirty days nor more than one year, or both such fine and imprisonment for the first offense. Upon conviction of a second or subsequent offense, the court may in its discretion impose a penalty of confinement in the penitentiary for a period not to exceed three years.

Sec. 9. A person shall not:
1. Appear in a public place in an intoxicated condition;
2. Drink alcoholic liquor in a public place;
3. Drink alcoholic liquor in a motor vehicle on any highway, street, alley, or in a public garage;
4. Tender a drink of alcoholic liquor to another person in a public place;
8 (5) Buy alcoholic liquor from a person whom he knows or
9 should know to be unauthorized by the provisions of this
10 chapter to sell alcoholic liquor;
11 (6) Possess alcoholic liquor which he knows or should know
12 was acquired in violation of this chapter.
13 A person who violates any provision of this section shall be
14 guilty of a misdemeanor and upon conviction shall be fined not
15 less than five nor more than one hundred dollars, or confined
16 in jail not more than sixty days, or both such fine and imprison-
17 ment.

Sec. 10. A person who unlawfully owns, operates, or main-
2 tains a plant for the manufacture of distilled spirits, or aids or
3 abets in the operation or maintenance of such a plant shall be
4 guilty of a felony, and upon conviction shall be fined not less
5 than one hundred nor more than one thousand dollars or con-
6 fined in the penitentiary not less than one nor more than five
7 years.

Sec. 11. A person who, while engaged in the unlawful
2 manufacture, transportation or sale of alcoholic liquors, or
3 while aiding or assisting in any of such acts, has in his actual or
4 constructive possession a firearm or other lethal weapon, shall
5 be guilty of a felony, and upon conviction shall be confined in
6 the penitentiary not less than one nor more than ten years.

Sec. 12. A person who, without authorization under this
2 chapter, transports alcoholic liquors for the purpose of sale,
3 shall be guilty of a misdemeanor, and upon conviction shall
4 be fined not less than fifty nor more than five hundred dollars
5 or confined in jail not less than sixty days nor more than
6 one year for the first offense. Upon conviction of a second
7 or subsequent offense, the court may in its discretion impose
8 a penalty of confinement in the penitentiary for a period not
9 to exceed three years.

Sec. 13. Except as permitted by section six of this article,
2 a person shall not import into, or transport in this state any
3 alcoholic liquor unless it is:
4 (1) Consigned to the commission;
5 (2) Transported or shipped upon the direction of the com-
6 mission directly to persons licensed to receive alcoholic
7 liquors at wholesale; or
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8  (3) Transported or shipped to persons outside the state for
9  sale or delivery outside the state. A common carrier may trans-
10  port through this state in a locked compartment alcoholic
11  liquors which are kept as a part of its commissary.

Sec. 14. Transportation of alcoholic liquors in a quantity
2  in excess of one gallon, except under authority of sections
3  two, three, and thirteen of this article, shall be prima facie
4  evidence of transportation for the purpose of sale, unless prior
5  to transportation of a greater quantity a permit shall be pro-
6  cured from the department of public safety.

Sec. 15. A person who violates any order, rule or regulation
2  of the commission made under the authority of this chapter,
3  or who violates any provision of this chapter for which punish-
4  ment has not been specifically provided, shall be guilty of a
5  misdemeanor and upon conviction shall be fined not less than
6  ten nor more than five hundred dollars or confined in jail not
7  less than five days nor more than six months, or by both such
8  fine and imprisonment.

9  If, by the provisions of this chapter, conflicting penalties
10  are prescribed for an offense, the section providing for the
11  heavier penalty shall control.

Sec. 16. A place where alcoholic liquor is manufactured,
2  sold, stored, possessed, given away, or furnished contrary to
3  law shall be deemed a common and public nuisance. Boats,
4  cars (including railroad and traction passenger cars operating
5  in this state), automobiles, wagons, water and air craft, beasts
6  of burden, or vehicles of any kind shall be deemed places
7  within the meaning of this section and may be proceeded
8  against under the provisions of section seventeen of this arti-
9  cle. A person who shall maintain, or shall aid or abet or
10  knowingly be associated with others in maintaining such com-
11  mon and public nuisance shall be guilty of a misdemeanor,
12  and upon conviction thereof shall be punished by a fine of
13  not less than one hundred nor more than five hundred dollars,
14  or by confinement in jail not less than sixty days nor more
15  than six months for each offense, and judgment shall be given
16  that such nuisance be abated or closed as a place for the manu-
17  facture, sale, storage, possession, giving away, or furnishing
18  contrary to law of alcoholic liquor, as the court may determine.

Sec. 17. The commission, its agents, the attorney general,
2  the prosecuting attorney, or a citizen of the county or munici-
pality where a nuisance as defined in section sixteen of this article is located, may maintain a suit in equity in the name of the state to abate and perpetually enjoin the same. Courts of equity shall have jurisdiction thereof. The injunction may be granted at the commencement of the suit and no bond shall be required. On the finding that the material allegations of the bill are true, the court or judge thereof in vacation shall order the injunction for such period of time as it or he may think proper, with the right to dissolve the injunction upon the application of the owner of the place, if a proper case is shown for such dissolution.

The continuance of the injunction as provided in this section may be ordered, although the place complained of may not at the time of hearing be unlawfully used.

Sec. 18. If there be complaint on oath or affirmation supported by affidavit or affidavits setting forth the facts for such belief that alcoholic liquors are being manufactured, sold, kept, stored or in any manner held, used or concealed in a particular house or other place in violation of law, the justice of the peace, circuit, criminal or intermediate court, or the judge thereof in vacation, or the mayor of any city, town or village to whom such complaint is made, if satisfied that there is a probable cause for such belief, shall issue a warrant to search such house or other place for alcoholic liquors. Such warrants, except as herein otherwise provided, shall be issued, directed and executed in accordance with the laws of West Virginia pertaining to search warrants.

Warrants issued under this act for the search of any automobile, boat, conveyance or vehicle, or for the search of any trunk, grip or other article of baggage, for alcoholic liquor, may be executed in any part of the state where the same is overtaken, and shall be made returnable before any justice of the peace, circuit, criminal or intermediate court, or the judge thereof in vacation, or the mayor of any city, town or village within whose jurisdiction such automobile, boat, conveyance, vehicle, trunk, grip or other article of baggage, or any of them, were transported or attempted to be transported contrary to law.

An officer charged with the execution of a warrant issued
Sec. 19. All stills and distilling apparatus and material for the manufacture of the same, and all alcoholic liquors, and materials used in the manufacture of alcoholic liquors, and all containers in which alcoholic liquors may be found, which are kept, stored, possessed or in any manner used in violation of the provisions of this chapter shall be deemed contraband and shall be forfeited to the state.

Sec. 20. A motor vehicle or vehicles of any kind used for transportation of alcoholic liquors for purposes of sale in violation of section twelve of this article shall be deemed contraband and shall be forfeited to the state and proceeded against in the manner provided for confiscation by section twenty-one of this article.

All vehicles forfeited to the state under the provisions of this section shall be turned over to the commission which may retain the same for public use in the administration and enforcement of this chapter. If it has no need for the vehicle, it may order its destruction or sale unless the department of public safety requests it, in which case the commission shall turn it over to the said department.

The net proceeds of sales made under this section shall be paid into the state treasury in the manner prescribed for receipts from state stores and agencies.

Sec. 21. Proceedings for confiscation of articles declared contraband and forfeited to the state under section twenty of this article shall be as follows:

(1) When such articles have been seized under or without a warrant provided for in section eighteen of this article, by an officer charged with the enforcement of this chapter, the officer shall produce the articles and the person in whose possession they were found, if any, and if no person be found in possession the return shall so state. A copy of the warrant shall be posted on the door of the place where the articles were found, or if there be no door, then in any conspicuous place upon the premises;

(2) Upon the return of the warrant, the justice of the peace, circuit, criminal, or intermediate court, or judge thereof
in vacation, or the mayor of any city, town or village, shall
fix a time not less than ten nor more than thirty days there-
after for hearing of the return, at which hearing it shall be
determined whether or not the articles seized were used or
in any manner possessed in violation of this chapter. If no
claimant appear, the justice of the peace, circuit, criminal or
intermediate court, or judge thereof in vacation, or the mayor
of the city, town or village shall declare the articles seized
forfeited to the state, and if such articles be not necessary as
evidence in any proceeding, shall turn the same over to the
commission. At such hearing a person claiming any interest
in an article seized may appear and file a written claim setting
forth particularly the character and extent of his interest,
whereupon, if the trial be before a justice of the peace or
mayor he shall forthwith certify the warrant, the articles
seized and the claim filed to the circuit court or other court
having jurisdiction which court shall docket the case, and
shall hear and determine the validity of such claim. If, upon
hearing, the evidence warrants, the court shall enter a judg-
ment of forfeiture and order the articles turned over to the
commission. Action under this section and the forfeiture
of articles thereunder shall not bar prosecution under any
other provisions of this chapter;
(3) Articles forfeited to the state and turned over to the
commission in accordance with the provisions of this section
shall be destroyed or sold as the commission deems proper.
The net proceeds of sales made under this section shall be paid
into the state treasury in the manner prescribed by this chapter
for receipts from state stores.

Sec. 22. No action shall be maintained to recover the price
of alcoholic liquor sold in violation of the provisions of this
chapter, except that the state or the commission may recover
from any person the price of any alcoholic liquor purchased by
him in violation of this chapter, and from any person who may
have sold alcoholic liquors in violation of the provisions of this
chapter, the consideration received by him therefor.

Sec. 23. If any article, a section or part of an article or sec-
tion of this chapter is for any reason declared unconstitutional,
or otherwise invalid, the decision of the court shall not affect the
validity of any remaining article, section or part of an article
or section thereof.
AN ACT to amend section twenty-one, article two, sections four and six, article four and section thirteen, article six of an act known as house bill number one hundred nineteen, enacted February twenty-fifth, at the regular session of the Legislature of West Virginia, one thousand nine hundred thirty-five, relating to the state control of alcoholic liquors.

[Passed March 8, 1935: in effect from passage. Became a law without the approval of the Governor.]

Be it enacted by the Legislature of West Virginia:

That section twenty-one, article two, sections four and six, article four and section thirteen, article six of an act known as house bill number one hundred nineteen, enacted February twenty-fifth, at the regular session of the Legislature of West Virginia, one thousand nine hundred thirty-five, be amended to read as follows:

ARTICLE II

Section 21. At the close of each fiscal year the state tax commissioner shall audit the affairs of the West Virginia liquor control commission and report the results of the audit to the governor. The cost of the audit shall be paid from the operating funds.

*Amending chapter four, acts of this session.*
ARTICLE IV.

Section 4. The commission may grant to wholesale druggists, licenses to purchase alcoholic liquors at wholesale from or through the West Virginia liquor control commission for the purpose of resale outside this state. Notwithstanding any other provisions of the act known as house bill number one hundred nineteen, the commission may grant to wholesale druggists licenses to purchase ethyl alcohol for non-beverage purposes, at wholesale from their usual sources of supply, upon orders for same first approved by the West Virginia liquor control commission for sale, either within or without the state, to retail druggists or to persons licensed to purchase ethyl alcohol from said commission under the provisions of said act.

Sec. 6. The commission may issue licenses to retail druggists to sell, upon prescription, and for the purposes provided for in this chapter, alcoholic liquor purchased from the West Virginia liquor control commission. Notwithstanding any other provisions of the act known as house bill number one hundred nineteen, the commission may also issue licenses to retail druggists to purchase ethyl alcohol for non-beverage purposes from wholesale druggists within or without the state, or from their usual sources of supply, upon orders first approved by the commission.

ARTICLE VI

Section 13. Except as permitted by section six of this article, a person shall not import into, or transport in this state any alcoholic liquor unless it is:

1. Consigned to the commission;
2. Transported or shipped upon the direction of the commission directly to persons licensed to receive alcoholic liquors at wholesale;
3. Transported or shipped to persons outside the state for sale or delivery outside the state; or
4. Transported or shipped to persons who are duly authorized salesmen of recognized brokers, distributors, or distillers for the purpose of being used solely as sample products for negotiating sales with the commission, provided the authority of the commission in writing be first had.
CHAPTER 6

(House Bill No. 177—By Mr. LaFon, by request)

AN ACT to amend and reenact section one, article twelve, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, and to amend article twelve, chapter eleven of the code by enacting and adding thereto thirteen additional sections to be numbered ninety-one, ninety-two, ninety-three, ninety-four, ninety-five, ninety-six, ninety-seven, ninety-eight, ninety-nine, one hundred, one hundred one, one hundred two and one hundred three; to provide for the raising of additional public revenue by a license tax on the business of selling non-intoxicating beer; to define non-intoxicating beer; to classify sales thereof, and to provide for the collection of such tax, and to repeal chapter twenty, acts of the Legislature, first extraordinary session, one thousand nine hundred thirty-three, and all other acts and parts of acts, general and special, in conflict with this act or the purpose thereof.

[Passed February 28, 1935; in effect March 1, 1935. Approved by the Governor.]
Be it enacted by the Legislature of West Virginia:

That section one, article twelve, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, be and the same is hereby amended and reenacted, and article twelve, chapter eleven of said code be and the same is hereby amended by enacting and adding thereto thirteen additional sections to be numbered sections ninety-one, ninety-two, ninety-three, ninety-four, ninety-five, ninety-six, ninety-seven, ninety-eight, ninety-nine, one hundred, one hundred one, one hundred two and one hundred three, which sections shall read as follows:

Section 1. No person without a state license therefor, shall

(a) Keep a hotel, eating house, or restaurant; or
(b) Keep, for public use or resort, a bowling alley, pool table, billiard table, bagatelle table, or any table of like kind; or
(c) Sell at wholesale or retail patent or proprietary medicines in incorporated cities and towns; or
(d) Exhibit any circus, menagerie, circus and menagerie combined, theatrical performance, street or other carnival, or public show, to which admission is obtained for money or reward, except for the benefit or under the auspices of a volunteer fire department; or
(e) Run or operate, for profit, a merry-go-round, or roller coaster, or scenic railway, or like device, or keep for public use or resort, a shooting gallery, a skating rink; or run, or operate a cane rack, doll baby rack, knife rack, striking machine, jingle board, punch board, artful dodger, candy wheel, or other scheme or device by which merchandise or other things of value are disposed of by game of chance, or like device, or human laundry device, or dip device; or
(f) Act as a hawker or peddler; but bona fide farmers vending farm products shall not be required to have a license; or
(g) Act as an auctioneer; or
(h) Practice the business of real estate agent, stockbroker,
or other broker, by buying or selling for others, stocks, se-
curities, or any other property for a commission or reward; or
(i) Practice the business of money broker, buying or sell-
ing undercurrent or depreciated money or funds; or ex-
changing one kind of money or funds for another, for bene-
fit or reward; or
(j) Practice the business of pawnbroker by lending money
or other things for profit, for or on account of personal
property deposited with the lender in pledge; or
(k) Sell, or barter, or offer, or expose, for sale or barter,
any patent right; or
(l) Sell, offer, or expose for sale, to merchants, trading
stamps, premium stamps or certificates of like nature or char-
acter, or undertake with merchants to redeem such stamps or
certificates in money or goods; or
(m) Being a traveling agent, canvasser or salesman, or
itinerant vendor, sell any sewing machines, pianos, organs,
victrolas, phonographs, talking machines, or similar musical
instruments, or, sell or contract to sell any books, maps, prints,
pamphlets, and periodicals, except such books, pamphlets
and periodicals that be of a religious or ethical nature, whether
manufactured within or without the state; or
(n) Sell, offer or expose for sale, or solicit, or receive or-
ders for manufactured tobacco, snuff, cigars, cigarettes, or
other preparations of tobacco, or cigarette paper or wrapper,
at wholesale or retail; or
(o) Carry on the business of junk dealer, or act as agent, so-
lieutor, canvasser, or salesman, for any junk dealer; or
(p) Sell pistols, revolvers, or weapons of like kind; or
(q) Maintain or occupy any house boat, or like structure or
vessel, upon or along the bed, banks or shores of any navigable
stream; or
(r) Maintain any slot machine, or other automatic device,
which, for the same profit or reward, in each case and with-
out any violation of the law, furnishes music, or exhibits pic-
tures, or provides facilities for weighing, or supplies any
merchandise or other thing or renders any service; but no slot
machine or other automatic device with respect to which, or its
operation, service, or supplies, there is any element of chance
(being a gaming table, within the meaning of section one,
66 article ten, chapter sixty-one of this code), shall be protected
67 by any license; or
68 (s) Being a corporation, heretofore or hereafter chartered
69 under the laws of this state, whether its principal place of
70 business or chief works be within or without the state, do,
71 or attempt to do, any business by virtue of its charter or cer-
72 tificate of incorporation; or
73 (t) Being a corporation chartered or organized under the
74 laws of any other state or country, hold property or transact
75 business in this state; or being a corporation, hold more than
76 ten thousand acres of land in this state; or
77 (u) Solicit, carry on or practice the business of a collection
78 agency, or association, whether it be a person, firm or corpor-
79 ation; or
80 (v) Keep or maintain, a public park, admission to which is
81 obtained for money or reward; or
82 (w) Carry on the business of a labor agency; or
83 (x) Manufacture, sell or distribute, either at retail or
84 wholesale, any and all preparations of every kind, character
85 or nature, such as are prepared, mixed and sold at soda foun-
86 tain, and all such preparations as bevo, pablo, moxie, gin-
87 ger ale, near beer, coca cola, pop, and all other preparations of
88 like nature and character commonly known as soft drinks; or
89 (y) Keep or maintain, for public use or resort, a taxi-cab
90 stand or any place of like character; or
91 (z) Manufacture, sell or distribute, either at retail or
92 wholesale, cereal malt beverage or products of the brewing
93 industry, as defined in section ninety-one of this act.
94 Nothing in this article contained, and no license or payment
95 under the provisions hereof, shall be taken to legalize any
96 act which otherwise may be in violation of law, or exempt any
97 person from any penalty prescribed for such violation.

Sec. 91. The words "non-intoxicating beer", as used in
2 this act shall be construed to embrace all cereal malt bever-
3 ages or products of the brewing industry, which same are com-
4 monly referred to as beer, lager beer, ale and all other mix-
5 tures and preparations produced by the brewing industry, and
6 containing not more than five per cent of alcohol by weight,
7 which are hereby declared to be non-intoxicating; and the
8 word "liquor" as used in chapter sixty of the code of West
9 Virginia shall not be construed to include or embrace any cereal malt beverage or product of the brewing industry or any other mixtures or preparations of like nature containing not more than five per cent of alcohol by weight.

Sec. 92. The word "retailer" as used in this act, shall mean and include any person, firm, association, partnership or corporation selling, serving, delivering or otherwise dispensing non-intoxicating beer, whether in glass bottles or on draught, at his, its or their established and licensed place of business.

The words "manufacturer or brewer" as used in this act, shall mean and include any person, firm, association, partnership or corporation manufacturing non-intoxicating beer for sale at wholesale: And provided further, That no manufacturer or brewer whose chief place of business is without the state of West Virginia, shall offer his or their products for sale in the state of West Virginia except through a duly licensed wholesaler or distributor operating under the provisions of this act, and no manufacturer or brewer whose chief place of business is without the state of West Virginia, shall be connected either directly or indirectly with a wholesaler or distributor.

The word "distributor" as used in this act, shall mean and include any person, firm, association, partnership, corporation, manufacturer or brewer, whose chief place of business is within the state of West Virginia, jobbing or distributing non-intoxicating beer to a retailer at wholesale: Provided, however, That a wholesaler or distributor may sell to a consumer, for personal use and not for resale, draught beer in quantities of one-eighth, one quarter and one-half barrels in the original container.

Sec. 93. There is hereby levied and imposed upon retail dealers as herein defined an annual license tax of one hundred dollars per year. There is hereby levied and imposed upon manufacturers or brewers, as herein defined, manufacturing non-intoxicating beer, as defined in section ninety-one of this act, within this state an initial license tax of five hundred dollars per year, and whether such non-intoxicating beer be kept or sold in barrels or other containers, an additional tax of one dollar on each barrel of thirty-one gallons, and in like ratio on
each part barrel so manufactured in this state for sale within
this state. There is hereby levied and imposed upon distribu-
tors, as herein defined, an initial license tax of two hundred
fifty dollars per year, and an additional tax of one dollar on
each barrel, and in like ratio on each part barrel of non-intoxi-
cating beer whether distributed in barrels or other containers,
so distributed in this state: Provided, however, That the barrel
tax herein levied shall, as to non-intoxicating beer made in
West Virginia, be paid by the manufacturer or brewer, and
the barrel tax on non-intoxicating beer made outside of West
Virginia shall be paid by the original consignee thereof with-
in this state, who shall be deemed the distributor for the pur-
poses of this act, and required to take out a license as such,
and the issuance of such distributor’s license shall operate as a
forfeiture of any retail dealer’s license held by him; and no
non-intoxicating beer manufactured, sold or distributed in
West Virginia shall be subject to more than one barrel tax.

Each such retail dealer, manufacturer or brewer and dis-
tributor being engaged in the business of selling, delivering
or otherwise distributing non-intoxicating beer, and having
more than one place of business within the state of West
Virginia, shall pay the full amount of the initial tax hereby
imposed for each such place of business: Provided further,
That any social, fraternal or business clubs not operating for
profit, and having been in continuous operation for five years
or more prior to the enactment of this law, shall pay an annual
license tax of fifty dollars, as retailers hereunder; And pro-
vided further, That railroads operating in this state may dis-
pense non-intoxicating beer upon payment of an annual license
tax of ten dollars for each dining, club or buffet car in which
it is dispensed.

Sec. 94. It shall be unlawful for any manufacturer or
brewer, wholesaler or distributor, to furnish, give, rent or
sell any equipment, fixtures, or supplies, directly or indirectly,
or through a subsidiary or affiliate, or by any officer, director,
or firm member of the industry, to any person engaged in sell-
ing products of the brewing industry for consumption on the
premises where sold or to offer any prize, premium, gift, or
other similar inducement, except advertising novelties of nomi-
nal value, to either trade or consumer buyers.
10 No person, firm or corporation having an interest in the manufacture or wholesale distribution of non-intoxicating beer shall be permitted, either directly or indirectly, to be connected with, or have an interest in the sale or dispensing of non-intoxicating beer under a retail license.

Sec. 95. Licenses for the sale of non-intoxicating beer shall be for the term of one year commencing on the first day of July of each year and ending on the thirtieth day of June of the following year. If granted for a less period than one year the initial state tax thereon shall be computed quarterly from the annual tax in proportion to such time as the license has to run.

Sec. 96. All licenses under this act for manufacturers, brewers, distributors and retail dealers shall be issued by the tax commissioner upon the filing of the application herein required, except that such tax commissioner shall not be required to renew the licenses of any such manufacturer, brewer, distributor or retail dealer who shall have failed and refused to comply with any of the provisions of this act, or any lawful regulation of the tax commissioner with relation to such business, during the time when any such applicant shall have operated under any license theretofore issued to him.

Every such retail dealer, on or before the first day of July of any year, shall make out and deliver to the state tax commissioner, on the blank to be furnished by the commissioner for that purpose, a statement showing the name of such retail dealer, a brief and accurate description of the place or places where his business as such retail dealer is conducted and by whom owned. Such statement shall be signed and sworn to before a notary public or other officer empowered to administer oath.

Every manufacturer, brewer and distributor applying for license under this act shall, in addition to furnishing the information required in the last preceding section, furnish a bond in some solvent surety company to be approved by the tax commissioner, payable to the state of West Virginia, in the minimum amount of one thousand dollars, and, within the discretion of the tax commissioner, in the maximum amount of ten thousand dollars, conditioned for the payment of any and
all additional taxes accruing during the period of such license. On or before the tenth day of each calendar month during the license period, every such manufacturer, brewer or distributor shall make a report in writing under oath to the tax commissioner, in such form as may be required by the tax commissioner, showing the number of barrels of non-intoxicating beer manufactured or distributed by such manufacturer, brewer or distributor for the preceding calendar month, or part thereof during which such manufacturer, brewer or distributor was engaged in business and at the same time pay the tax thereon levied by this act. Within thirty days after the end of any license tax year each manufacturer or brewer and distributor shall make report in writing, under oath, to the tax commissioner, in such form as may be required by him, showing the number of barrels of non-intoxicating beer manufactured or distributed by such manufacturer or brewer or distributor for the preceding license tax year, or part thereof during which such manufacturer or brewer or distributor was engaged in business.

Sec. 97. If any manufacturer or brewer or distributor whose report to the tax commissioner provided for in the next preceding section hereof shows him, it or them to be liable for any unpaid license taxes shall fail to pay the same to the tax commissioner as provided therein, the tax commissioner shall be authorized to restrain immediately therefor, or collect the amount thereof in any appropriate legal proceeding instituted in the circuit court of the county wherein the seat of government is located, and in addition the state shall have a lien on all the property of such manufacturer or brewer or distributor for the full amount of the unpaid tax; and in addition the tax commissioner may revoke the license of any such manufacturer or brewer or distributor so failing to pay any such tax.

Sec. 98. Every manufacturer or brewer and distributor shall maintain and keep and preserve for a period of two years such record or records of non-intoxicating beer manufactured, sold or distributed in this state, together with such invoices, records, receipts, bills of lading and other pertinent papers as may be required by the tax commissioner, and
the tax commissioner shall have authority by himself or
through his duly designated agent to inspect the books, ac-
counts, records and memoranda of any manufacturer, brewer or
distributor licensed under the provisions of this act, and to ex-
amine under oath any officer, agent or employee of any manu-
facturer or brewer and distributor. The tax commissioner
may require the production, within this state at such time and
place as he may designate, of any books, accounts, papers or
records kept within or without the state, or verified copies in
lieu thereof, in order that an examination thereof may be made
by the tax commissioner or his duly designated agents. If as the
result of such examination it shall be found that any non-intoxi-
cating beer subject to the payment of a license tax, has been
manufactured or brewed, sold or distributed, by any manufac-
turer or brewer or distributor, upon which the tax has not been
paid, the tax commissioner shall make an assessment of the
amount of the tax so found to be due, and in addition there-
to and as a part thereof shall assess a penalty of fifty per cent
of the amount of such tax and shall notify such manufacturer
or brewer or distributor of the additional amount due. If
the same remains unpaid for a period of thirty days the tax
commissioner shall have authority to revoke any license held
at the time by the licensee and in addition thereto to collect
the amount found to be due by an appropriate legal proceed-
ing in the circuit court of the county in which the seat of
government is located, unless an appeal is taken from the action
of the tax commissioner as hereinafter provided.

Within thirty days after the receipt of notice of any addi-
tional amount claimed to be due by any brewer or manufac-
turer or distributor as shown by an examination by the tax
commissioner, the licensee shall have the right to an appeal
from his findings to the circuit court of the county in which
the seat of government is located and such appeal shall be
heard by the said circuit court de novo. Whether the find-
ing of the tax commissioner is affirmed or reversed the cir-
cuit court shall enter an order accordingly and either party
shall then have the right of appeal to the supreme court of
appeals of the state.

Sec. 99. A license shall be issued by the authorities so em-
powered in this act to any person, firm, association, partnership
or corporation, who applies for a retail license and who submits a written application for a license, which application shall state under oath:

As to individuals:

(a) That he has been a resident of the state for five years or more and the name, and residence address of the applicant, and the length of time he has lived at such address;

(b) That he is a citizen of the United States;

(c) The place of birth of the applicant, and if the applicant is a naturalized citizen, the time and place of such naturalization;

(d) That the applicant has never been convicted of a felony;

As to all applicants:

(a) The location of the place or building where the applicant intends to operate;

(b) The name of the owner of the building and if such owner is not the applicant, that such applicant is the actual lessee of the premises;

(c) That the place or building where he intends to operate reasonably conforms to all laws and health and fire regulations, applicable thereto, and is a safe and proper place or building;

Sec. 100. The state tax commissioner shall have the power and authority to adopt and promulgate, repeal, rescind and amend, in the manner herein required, rules, regulations, standards, requirements and orders necessary to carry out the provisions of this act including the following:

(a) Rules and regulations with reference to permits; and issuance of the same.

(b) Rules and regulations determining the nature and form of all packages and bottles to be used as containers for cereal malt beverages or products of the brewing industry to be kept or sold under this act.

(c) Rules and regulations pertaining to the branding or labeling of packages or containers used in the sale of cereal malt beverages or products of the brewing industry.

(d) Rules and regulations governing the placing of all exterior advertising with reference to the sale of cereal malt beverages or products of the brewing industry, upon premises where permits have been granted for the sale of the same at retail.

And provided further, That the tax commissioner may revoke
the license of any licensee, subject to an appeal of any licensee to a court of competent jurisdiction whenever any licensee is aggrieved:

(1) When disorderly or immoral practices or other violations of the law are permitted or intoxicating liquor is possessed or sold unlawfully on the premises;

(2) Where the word "saloon" is printed, painted or placed upon the door, window or in any other public place on or about the premises or when the word "saloon" is used in any advertisement by the licensee;

(3) When circumstances happen or become known to the properly empowered authorities under this act, which had they happened or been known at the time of the application for the license would have legally justified such authorities in refusing the license;

(4) Where any retail dealer shall sell or dispense non-intoxicating beer purchased from any other person other than a licensed distributor under the laws of this state, without having first paid the barrel tax therefor herein imposed;

(5) When such licensee shall violate any of the provisions of this act or any lawful rule or regulation promulgated by the tax commissioner under authority of this act.

Any person who violates any provisions of this act or who makes a false statement concerning any material fact in submitting an application for a license or for a renewal of a license or in any hearing concerning the revocation thereof, shall be punished for each offense by a fine of not less than twenty-five dollars nor more than five hundred dollars or imprisonment in the county jail for not less than thirty days or more than six months or both such fine and imprisonment.

Any person (other than parent or guardian) firm, association, partnership or corporation holding a license under this act who shall sell or give any non-intoxicating beer to any person under the age of eighteen years, knowing, or having reason to believe, that such person is under the age of eighteen years, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined by the court not less than twenty-five nor more than one hundred dollars.

Cities and incorporated towns are hereby specifically empowered to enact ordinances for the enforcement of this act in conformity with the provisions of this act.

Sec. 101. Municipal corporations in this state shall have au-
2 authority to levy a license tax under the provisions of this act upon any retail dealer, manufacturer or brewer and distributor of non-intoxicating beer; but the amount of the license tax levied by such municipal corporation shall in no event exceed one-half the amount fixed herein to be levied by the state as an annual license tax upon retail dealers and an initial license tax per year upon manufacturers and brewers and distributors.

Sec. 102. All taxes imposed and collected under the provisions of this act from non-intoxicating beer shall be paid to the treasurer of the state in the manner now provided by law, and credited to the state fund, general revenue.

Sec. 103. The sections of this act and every part of such sections are hereby declared to be independent sections and parts of sections, and the holding of any section or any part thereof to be void or ineffective shall not affect any other section or part of section: Provided further, That chapter twenty, acts of the legislature, first extraordinary session, one thousand nine hundred thirty-three, being house bill number eight of that session, all other acts and parts of acts, general or special, coming within the purview of this act and inconsistent therewith are hereby repealed.

CHAPTER 7

(House Bill No. 524—By Mr. Wiseman)

AN ACT providing for the refunding of the purchase price of stamps required to be affixed to spirituous liquors under the provisions of subsection (e), section five, chapter twenty-one of the acts of the Legislature, first extraordinary session, one thousand nine hundred thirty-three.

[Passed March 1, 1935; in effect from passage. Approved by the Governor.]

Sec. 1. That the owners and holders of stamps required to be used in the sale of spirituous liquors to have refund of face value of unused stamps; how amount of refund ascertained and paid.

Be it enacted by the Legislature of West Virginia:

Section 1. That the owners and holders of stamps required to be used in the sale of spirituous liquors, under the provisions
3 of subsection (e), section five, chapter twenty-one, acts of the 4 Legislature, first extraordinary session, one thousand nine hun- 5 dred thirty-three, shall, on and after the first day of March, one 6 thousand nine hundred thirty-five, be entitled to be paid the face 7 value of any such stamps, and the same shall be cancelled. The 8 amount of any such stamps outstanding, on said date, shall 9 be ascertained by the state tax commissioner, and the payment 10 to the owner thereof shall be made by requisition, to be made 11 on the state treasury by the tax commissioner, and the auditor 12 shall draw his warrant on the state treasury therefor. The 13 amount and ownership of such stamps outstanding may be 14 established by the presentation of such stamps to the tax com- 15 missioner, or, where that can not be done, through such proof 16 as said tax commissioner may require.
17 All acts and parts of acts in conflict herewith are hereby 18 repealed.

CHAPTER 8
(Senate Bill No. 210—By Mr. Hodges, by request)

AN ACT to appropriate money out of the treasury for the purpose 1 of granting relief, in cooperation with the federal government, 2 to the needy citizens of the state for the remainder of the 3 current fiscal year.

[Passed March 8, 1935; in effect from passage. Approved by the Governor.]

Sec. 1. Appropriation of one million dol- 1 lars from state general revenue 2 for relief of needy of state, for 3 remainder of fiscal year ending 4 June 30, 1935; payments to be 5 made as directed by the gov- 6 ernor, but not to exceed two 7 hundred fifty-thousand dollars 8 in any one month.

Be it enacted by the Legislature of West Virginia:

Section 1. It appearing from the statement of the revenues 2 of the current fiscal year and of the appropriations therefor 3 that there remains in the general revenue for the current fiscal 4 year, unappropriated, an amount in excess of the amount 5 appropriated by this act, there is hereby appropriated to the 6 governor, in order to afford relief to the needy citizens of the
7 state, and to gain the advantages of federal cooperation, for
8 the remainder of the current fiscal year ending June thirtieth,
9 one thousand nine hundred thirty-five, the sum of one million
10 dollars, to be paid as the governor shall direct, but not to
11 exceed the sum of two hundred fifty thousand dollars in any
12 one month.

CHAPTER 9
(Com. Sub. House Bill No. 257—Originating in the Committee on
Taxation and Finance)

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

[Passed March 11, 1935; in effect from passage. No action on bill by Governor
required.]

TITLE I.
Sec. 1. Purpose of act; duties of board of public works.
2. Definitions.
3. Purposes for which appropriations may be expended.
4. Manner in which appropriations may be expended.
5. Expenditure for each item limited to specific amount appropriated; how transfers of amounts between items authorized.

TITLE II.
Sec. 1. Appropriations from state fund, general revenue for fiscal years 1936 and 1937 to legislative, judicial, executive, fiscal, legal, educational and other state departments, institutions, bureaus, boards and commissions: appropriations for relief of the needy and to supplement the general school fund.
2. Miscellaneous, supplemental and deficiency appropriations.
3. Appropriation to meet principal and interest of bonded obligations of state, other than road bonds.
4. Appropriations made by general law from special revenue not paid into state fund, general revenue.

Sec.
5. Unexpended appropriation for spending unit for fiscal year 1936 may be revived and expended in fiscal year 1937 by order of board of public works.
6. When specific payment of definite sum is required by general law, such sum to be paid from proper item of appropriation.
7. Funds or collection accounts dedicated to specific uses.
8. Refunding moneys erroneously paid into state treasury.
9. Expenditure of contingent funds: exception as to governor's civil contingent and legislative contingent funds.
10. Appropriation to state sinking fund commission to meet failure of taxing districts to remit necessary funds: repayment by commission.
11. Appropriation from forfeitures and license fees collected by tax commissioner of expenses of collections, attorneys' fees, etc.
12. Appropriation to counties, etc., taxes due them and paid into state treasury.
13. Cost of printing, binding and stationery to be paid from current expense appropriation for spending unit.
14. Payment to hospital for charity cases.
Sec. 15. Expenditure of appropriation for only a total sum.

10. Appropriation of any balance of proceeds of general school fund.

TITLE III.

Sec.

1. Conditions attached to expenditure of appropriations, except for legislative and judicial branches of state government; requisitions through the director of the budget.

2. Board of public works to control fiscal methods of spending units.

3. Board of public works to examine progress of collection of state revenue.

4. How board of public works may reduce appropriations.

5. Reduction of appropriations to prevent overdraft or deficit in the general fund.

6. Reduction of appropriation from certain funds.

7. Classification of appropriations and reduction by percentages.

8. Director of the budget, appointment, duties and salary.

9. Director of the budget may require certain duties from the board of control.

10. Board of public works to make personnel classifications of offices and employments in state government and agencies; exceptions personnel classifications by state board of education, board of governors of West Virginia University and board of control.

11. Board of public works to install accrual accounting system; to prescribe uniform records, accounts and forms.

12. Executive officer of spending unit to submit to board of public works detailed plan of expenditure for fiscal year; what plan to show.

13. If approved, plan to govern expenditures unless appropriations reduced by board, or plan altered.

14. Request to board by executive officer of spending unit for quarterly allotment of funds.

15. Quarterly allotments not to be exceeded; if not expended allotment carries over to any succeeding year.

16. Record of receipts, etc. to be kept by director of the budget.

17. Expenditure of excess collections of spending unit: expenditure without appropriation unlawful.

18. Transfer by board of public works of amounts between items of total appropriation for spending unit.

19. Duties of spending unit.


Be it enacted by the Legislature of West Virginia:

TITLE I—GENERAL PROVISIONS

Section 1. The purpose of this act is to appropriate money necessary for economical and efficient discharge of the duties and responsibilities of the state and its agencies during the fiscal years one thousand nine hundred thirty-six and one thousand three hundred thirty-seven. To give effect to this purpose, the board of public works shall supervise the fiscal policy, control the assumption of obligations, and regularize the expenditures of the agencies of the state.

Sec. 2. For the purpose of this act:

2 “Board” shall mean the board of public works;

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

Sec. 3. An appropriation for:

2 “Personal services” shall be expended only for the payment
3 of salaries, wages, fees, and other compensation for skill, work, 
4 or employment;
5 "Current expenses" shall be expended only for operating 
6 costs other than personal services or capital outlay. Repairs 
7 and improvements that do not increase the capital asset shall 
8 be paid for out of current expenses;
9 "Capital outlay" shall be expended only for buildings, land, 
10 and equipment;
10-a "Buildings" shall include construction and alteration of 
10-b structures and the improvement of lands and shall include 
10-c shelter, support, storage, protection, or the improvement of 
10-d a natural condition;
11 "Lands" shall be expended only for the purchase of land 
12 or interests in land;
13 "Equipment" shall be expended only for things which have 
14 an appreciable and calculable period of usefulness in excess 
15 of one year;
16 The "fiscal year one thousand nine hundred thirty-six" shall 
17 mean the period from July first, one thousand nine hundred 
18 thirty-five through June thirtieth, one thousand nine hundred 
19 thirty-six; and the "fiscal year one thousand nine hundred 
20 thirty-seven" shall mean the period from July first, one thou-
21 sand nine hundred thirty-six through June thirtieth, one thou-
22 sand nine hundred thirty-seven;
23 "From collections" shall mean the amount of the total ap-
24 propriation which must be collected by the spending unit to be 
25 available for expenditure. If the authorized amount of collec-
26 tions is not collected, the total appropriation for the spending 
27 unit shall be reduced automatically by the amount of the 
28 deficiency in the collection. If the amount collected exceeds 
29 the amount designated "from collections" the excess shall be 
30 set aside in a special surplus fund and may be expended for 
31 the purposes of the spending unit as provided by section 
32 seventeen of Title III of this act.

Sec. 4. Money appropriated by this act, unless otherwise 
2 specifically directed, shall be appropriated and expended ac-
3 cording to the provisions of article three, chapter twelve of the 
4 code of one thousand nine hundred thirty-one or according 
5 to any law detailing a procedure specifically limiting that 
6 article.
Sec. 5. The expenditure of money appropriated by this act shall be limited to the specific amount appropriated to each item. There shall be no transfer of amounts between items of the appropriation of the spending unit without prior authorization by the board of public works, as provided by section eighteen, Title III of this act.

TITLE II—APPROPRIATIONS

Section 1. "Governmental Appropriations." From the state fund, general revenue, except as otherwise provided, there is hereby appropriated conditionally upon the fulfillment of the provisions set forth in Title III of this act, the following amounts, as itemized, for expenditures during the fiscal years one thousand nine hundred thirty-six and one thousand nine hundred thirty-seven:

<table>
<thead>
<tr>
<th>LEGISLATURE</th>
<th>Fiscal Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Spending Unit</td>
<td>1936</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Acct. No. 1—Senate</td>
<td></td>
</tr>
<tr>
<td>1 Personal Services (salaries)</td>
<td>$15,000.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td></td>
</tr>
<tr>
<td>3 Mileage of members</td>
<td>917.50</td>
</tr>
<tr>
<td>4 President of the Senate, $2.00 per day</td>
<td>120.00</td>
</tr>
<tr>
<td>Compensation and Per Diem of Other Elective Officers</td>
<td></td>
</tr>
<tr>
<td>1 Compensation of the Clerk of the Senate</td>
<td>1,200.00</td>
</tr>
<tr>
<td>2 Compensation of the Sergeant-at-Arms</td>
<td>600.00</td>
</tr>
<tr>
<td>3 Compensation of the Doorkeeper</td>
<td>600.00</td>
</tr>
<tr>
<td>Compensation of Presidential Appointees</td>
<td></td>
</tr>
<tr>
<td>1 Nine floor stenographers</td>
<td>3,780.00</td>
</tr>
<tr>
<td>2 Three committee stenographers</td>
<td>1,260.00</td>
</tr>
<tr>
<td>3 Two clerks</td>
<td>840.00</td>
</tr>
<tr>
<td>4 Two committee clerks-at-large</td>
<td>1,200.00</td>
</tr>
<tr>
<td>5 One clerk to Committee on Finance</td>
<td>600.00</td>
</tr>
</tbody>
</table>
GENERAL APPROPRIATIONS

6 One clerk to Committee on the
Judiciary ........................................... 600.00
8 One clerk to Sergeant-at-Arms ......... 420.00
9 One secretary to the Minority ...... 720.00
10 One clerk to the Minority Leader .. 540.00
11 One secretary to the President ...... 720.00
12 One messenger to the President ... 240.00
13 One chaplain .................................. 300.00
14 Four assistant doorkeepers ........... 1,680.00
15 One night watchman ....................... 360.00
16 Five pages ...................................... 1,200.00
17 Two cloakroom attendants .......... 480.00

Clerk’s Appointees

1 Two assistant clerks ......................... 1,440.00
2 Five assistant clerks ......................... 2,700.00
3 Seven assistant clerks ....................... 3,360.00
4 Two assistant clerks ......................... 840.00
5 Seven assistant clerks ....................... 2,520.00
6 Superintendent of Capitol Building
and Grounds and six assistants ........... 1,560.00
9 Contingent fund of the Senate ......... 45,000.00
10 To pay Charles Lively for editing,
compiling and publishing the
"West Virginia Blue Book", formerly known as the "West
Virginia Legislative Hand Book and Manual and Official Regis-
ter" under the same provisions
as to distribution as were
adopted in the session of one
thousand nine hundred and
twenty-one, including all ex-
enses incurred in the employ-
ment of contributors, prepara-
tion of matter, clerical hire,
stenographic services and proof
reading, and for shipping
charges in connection with the
distribution of the book; which
distribution shall include seventy-
ty-five copies each to members
of the Legislature;
For the fiscal year ending June
thirty, one thousand nine hun-
dred and thirty-six....................$ 10,000.00
For the fiscal year ending June
thirty, one thousand nine hun-
dred and thirty-seven.............. $ 8,000.00
After the distribution provided for
in the acts of one thousand nine
hundred and twenty-one above
referred to, or by further resolu-
tion of the Legislature, the re-
mainder of the edition shall be
sold by the superintendent of
public printing to persons desir-
ing to purchase the same at the
price of three dollars per vol-
ume.
The Clerk of the Senate is author-
ized to draw his warrants upon
the Auditor, payable out of the
contingent fund of the Senate,
for any bills for supplies and
services that may have been in-
curred by the Senate and not in-
cluded in the appropriation bill,
and for bills for supplies and
services incurred after adjourn-
ment, the requisition for same
to be accompanied by bills to be
filed with the Auditor.

Fiscal Year

Spending Unit 1936 1937

Acct. No. 2—House of Delegates

1 Personal Services (salaries) $ 47,300.00 $ 47,300.00
2 Current Expenses $ 47,300.00 $ 47,300.00
3 Mileage $ 2,711.90

Fiscal Year 1935
4 Personal Services (salaries) .......... 605.00
5 Compensation and per diem of
6 officers and attaches............... 56,800.00
7 Contingent Fund...................... 85,000.00
8 The Clerk of the House of Dele-
9 gates, with the approval of the
10 Speaker of the House, is author-
11 ized to draw his warrants upon
12 the Auditor, payable out of the
13 contingent fund, for any bills
14 for supplies and services that
15 may have been incurred by the
16 House of Delegates and not in-
17 cluded in this appropriation
18 bill, for bills for supplies and
19 services incurred after adjourn-
20 ment, the requisition for same to
21 be accompanied by a bill to be
22 filed with the Auditor, but no
23 payment shall be made to
24 attaches under this paragraph.

Acct. No. 3—Legislative Printing

1 To pay the cost of legislative
2 printing and stationery, the ap-
3 propriation to be available for the
4 year ending June thirty, one thou-
5 sand nine hundred thirty-five. If
6 this work is not completed prior
7 to June thirty, one thousand nine
8 hundred thirty-five then the ap-
9 propriation shall continue in effect
10 until completed ....................... $ 75,000.00

Fiscal Year
Spending Unit 1936 1937
JUDICIAL

Acct. No. 6—Supreme Court of Appeals

1 Personal Services .................... $ 79,320.00 $ 79,320.00
### Ch. 9] GENERAL APPROPRIATIONS

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Description</th>
<th>1936</th>
<th>1937</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$9,000.00</td>
<td>$9,000.00</td>
</tr>
<tr>
<td>3</td>
<td>Total</td>
<td>$88,320.00</td>
<td>$88,320.00</td>
</tr>
</tbody>
</table>

#### Acct. No. 7—Circuit Courts

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>1936</th>
<th>1937</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$157,000.00</td>
<td>$157,000.00</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$19,000.00</td>
<td>$19,000.00</td>
</tr>
<tr>
<td>3</td>
<td>Total</td>
<td>$176,000.00</td>
<td>$176,000.00</td>
</tr>
</tbody>
</table>

#### Acct. No. 7-A—Criminal Charges

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>1936</th>
<th>1937</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Total</td>
<td>$125,000.00</td>
<td>$125,000.00</td>
</tr>
</tbody>
</table>

#### Acct. No. 9—Compensation of Special Judges of the Circuit Courts

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>1936</th>
<th>1937</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$2,000.00</td>
<td>$2,500.00</td>
</tr>
</tbody>
</table>

#### Acct. No. 10—State Law Library

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>1936</th>
<th>1937</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$4,587.00</td>
<td>$4,587.00</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$714.00</td>
<td>$714.00</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>$2,500.00</td>
<td>$2,500.00</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td>$7,801.00</td>
<td>$7,801.00</td>
</tr>
</tbody>
</table>

### EXECUTIVE

#### Fiscal Year

<table>
<thead>
<tr>
<th>Spending Unit</th>
<th>1936</th>
<th>1937</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acct. No. 120—Governor’s Office: Executive</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1 Personal Services</td>
<td>$12,430.00</td>
<td>$12,430.00</td>
</tr>
<tr>
<td>2 Civil Contingent Fund</td>
<td>$20,000.00</td>
<td>$20,000.00</td>
</tr>
<tr>
<td>3 Total</td>
<td>$32,430.00</td>
<td>$32,430.00</td>
</tr>
</tbody>
</table>

#### Acct. No. 120-A—Governor’s Office: Emergency Fund

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>1936</th>
<th>1937</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Total</td>
<td>$125,000.00</td>
<td>$125,000.00</td>
</tr>
<tr>
<td>2</td>
<td>Of which $25,000 may be expended each year for such research and technical service as the governor may require.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Acct. No. 121—Governor’s Office: Custodial

<table>
<thead>
<tr>
<th>Item</th>
<th>1936</th>
<th>1937</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>$9,000.00</td>
<td>$9,000.00</td>
</tr>
</tbody>
</table>

### Acct. No. 122—Pardon Attorney

<table>
<thead>
<tr>
<th>Item</th>
<th>1936</th>
<th>1937</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$4,830.00</td>
<td>$4,830.00</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$500.00</td>
<td>$500.00</td>
</tr>
<tr>
<td>Total</td>
<td>$5,330.00</td>
<td>$5,330.00</td>
</tr>
</tbody>
</table>

### FISCAL

#### Fiscal Year

<table>
<thead>
<tr>
<th>Spending Unit</th>
<th>1936</th>
<th>1937</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acct. No. 150—Auditor’s Office: General Administration</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Personal Services</td>
<td>$13,430.00</td>
<td>$13,830.00</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$5,710.00</td>
<td>$5,060.00</td>
</tr>
<tr>
<td>Total</td>
<td>$19,140.00</td>
<td>$18,890.00</td>
</tr>
<tr>
<td>Acct. No. 151—Auditor’s Office: Accounting Department</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Personal Services</td>
<td>$6,520.00</td>
<td>$6,520.00</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$190.00</td>
<td>$190.00</td>
</tr>
<tr>
<td>Equipment</td>
<td>$1,200.00</td>
<td>$700.00</td>
</tr>
<tr>
<td>Total</td>
<td>$7,910.00</td>
<td>$7,410.00</td>
</tr>
<tr>
<td>Acct. No. 152—Auditor’s Office: Claims Department</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Personal Services</td>
<td>$9,740.00</td>
<td>$9,740.00</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$1,200.00</td>
<td>$1,200.00</td>
</tr>
<tr>
<td>Equipment</td>
<td>$145.00</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>$11,085.00</td>
<td>$10,940.00</td>
</tr>
<tr>
<td>Acct. No. 153—Auditor’s Office: Criminal Claims Department</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Personal Services</td>
<td>$1,320.00</td>
<td>$1,320.00</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$375.00</td>
<td>$375.00</td>
</tr>
<tr>
<td>Equipment</td>
<td>$290.00</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>$1,985.00</td>
<td>$1,695.00</td>
</tr>
</tbody>
</table>
### Acct. No. 154—Auditor’s Office:  
**Corporation Department**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$4,600.00</td>
<td>$4,600.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$865.00</td>
<td>$865.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$350.00</td>
<td>$385.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$5,815.00</strong></td>
<td><strong>$5,850.00</strong></td>
</tr>
</tbody>
</table>

### Acct. No. 155—Auditor’s Office:  
**Taxation Department**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$8,400.00</td>
<td>$8,400.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$715.00</td>
<td>$715.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$400.00</td>
<td>$400.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$9,520.00</strong></td>
<td><strong>$9,515.00</strong></td>
</tr>
</tbody>
</table>

### Acct. No. 156—Auditor’s Office:  
**Land Department**

FROM THE GENERAL SCHOOL FUND:

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$26,800.00</td>
<td>$26,800.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$3,200.00</td>
<td>$3,200.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$1,585.00</td>
<td>$875.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$31,585.00</strong></td>
<td><strong>$30,875.00</strong></td>
</tr>
</tbody>
</table>

5 In addition to the total appropriation, for the auditor’s office, land department, there is appropriated a sum sufficient to pay the costs of publication required by section eight, article three, chapter thirty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended.

### Acct. No. 157—Auditor’s Office:  
**Public Land Corporation**

FROM THE GENERAL SCHOOL FUND:

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$10,000.00</td>
<td>$10,000.00</td>
</tr>
</tbody>
</table>
### General Appropriations

#### Acct. No. 62—Auditor’s Office:

**Securities Department**

<table>
<thead>
<tr>
<th>Category</th>
<th>Amount</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$7,272.00</td>
<td>$7,272.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$2,180.00</td>
<td>$2,180.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$85.00</td>
<td>$40.00</td>
</tr>
</tbody>
</table>

4 Total .................. $9,537.00 $9,492.00

5 From Collections ..... $6,237.00 $6,192.00

#### Acct. No. 63—Auditor’s Office:

**Insurance Department**

<table>
<thead>
<tr>
<th>Category</th>
<th>Amount</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$12,040.00</td>
<td>$12,040.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$2,370.00</td>
<td>$2,190.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$290.00</td>
<td>$470.00</td>
</tr>
</tbody>
</table>

4 Total .................. $14,700.00 $14,700.00

#### Acct. No. 16—Treasurer’s Office:

<table>
<thead>
<tr>
<th>Category</th>
<th>Amount</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$27,800.00</td>
<td>$27,800.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$4,525.00</td>
<td>$4,850.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$3,425.00</td>
<td>$3,470.00</td>
</tr>
</tbody>
</table>

4 Total .................. $35,750.00 $36,120.00

#### Acct. No. 17—State Sinking Fund Commission:

<table>
<thead>
<tr>
<th>Category</th>
<th>Amount</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$8,500.00</td>
<td>$8,500.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$500.00</td>
<td>$500.00</td>
</tr>
</tbody>
</table>

3 Total .................. $9,000.00 $9,000.00

#### Acct. No. 180—Tax Commissioner:

**General Administration**

<table>
<thead>
<tr>
<th>Category</th>
<th>Amount</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$30,205.80</td>
<td>$30,205.80</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$34,690.11</td>
<td>$34,690.11</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$970.00</td>
<td>$970.00</td>
</tr>
</tbody>
</table>

4 Total .................. $65,865.91 $65,865.91

#### Acct. No. 181—Tax Commissioner:

**Revenue Department**

<table>
<thead>
<tr>
<th>Category</th>
<th>Amount</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$132,000.00</td>
<td>$132,000.00</td>
</tr>
</tbody>
</table>
### General Appropriations

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Description</th>
<th>1936</th>
<th>1937</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>52,977.00</td>
<td>52,977.00</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>2,000.00</td>
<td>2,000.00</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td>186,977.00</td>
<td>186,977.00</td>
</tr>
</tbody>
</table>

**Acct. No. 182—Tax Commissioner:**

#### Accounting Department

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Description</th>
<th>1936</th>
<th>1937</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>20,260.00</td>
<td>20,260.00</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>3,560.00</td>
<td>3,560.00</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>2,000.00</td>
<td>2,000.00</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td>25,820.00</td>
<td>25,820.00</td>
</tr>
</tbody>
</table>

**Acct. No. 183—Tax Department:**

#### Gasoline Tax

FROM THE ROAD FUND

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Description</th>
<th>1936</th>
<th>1937</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>9,400.00</td>
<td>9,400.00</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>4,100.00</td>
<td>4,100.00</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>2,000.00</td>
<td>2,000.00</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td>15,500.00</td>
<td>15,500.00</td>
</tr>
</tbody>
</table>

**Acct. No. 19—Board of Control:**

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Description</th>
<th>1936</th>
<th>1937</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>32,786.00</td>
<td>32,786.00</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>6,797.00</td>
<td>6,797.00</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>600.00</td>
<td>700.00</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td>40,183.00</td>
<td>40,283.00</td>
</tr>
</tbody>
</table>

**Acct. No. 20—Board of Public Works:**

#### Director of the Budget

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Description</th>
<th>1936</th>
<th>1937</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>24,000.00</td>
<td>18,000.00</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>4,000.00</td>
<td>3,000.00</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>12,000.00</td>
<td>9,000.00</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td>40,000.00</td>
<td>30,000.00</td>
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</table>

### Legal

**Fiscal Year**

**Spending Unit 1936**

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Description</th>
<th>1936</th>
<th>1937</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>29,811.00</td>
<td>29,811.00</td>
</tr>
<tr>
<td>Item</td>
<td>1936</td>
<td>1937</td>
<td></td>
</tr>
<tr>
<td>---------------------------</td>
<td>----------</td>
<td>----------</td>
<td></td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$4,439.00</td>
<td>$4,439.00</td>
<td></td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$750.00</td>
<td>$750.00</td>
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</tr>
<tr>
<td>4 Contingent Fund</td>
<td>$4,000.00</td>
<td>$4,000.00</td>
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</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$39,000.00</strong></td>
<td><strong>$39,000.00</strong></td>
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</table>

**RECORDING**

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Spending Unit</th>
<th>1936</th>
<th>1937</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Acct. No. 29—Secretary of State’s Office</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1 Personal Services</td>
<td>$16,940.00</td>
<td>$16,940.00</td>
<td></td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$2,210.00</td>
<td>$2,647.00</td>
<td></td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$620.00</td>
<td>73.00</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$19,150.00</strong></td>
<td><strong>$19,660.00</strong></td>
<td></td>
</tr>
</tbody>
</table>

**CUSTODIAL AND SERVICE**

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Spending Unit</th>
<th>1936</th>
<th>1937</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Acct. No. 31—Capitol Building and Grounds</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1 Personal Services</td>
<td>$49,140.00</td>
<td>$49,140.00</td>
<td></td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$58,924.00</td>
<td>$28,924.00</td>
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</tr>
<tr>
<td>3 Equipment</td>
<td>$12,000.00</td>
<td>73.00</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$120,064.00</strong></td>
<td><strong>$78,064.00</strong></td>
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</table>

**Acct. No. 32—Mailing Department**

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Spending Unit</th>
<th>1936</th>
<th>1937</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$7,740.00</td>
<td>$7,740.00</td>
<td></td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$73,874.00</td>
<td>$75,844.00</td>
<td></td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$1,980.00</td>
<td>10.00</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$83,594.00</strong></td>
<td><strong>$83,594.00</strong></td>
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</tr>
</tbody>
</table>

**Acct. No. 33—Purchasing Department**

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Spending Unit</th>
<th>1936</th>
<th>1937</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$35,000.00</td>
<td>$35,000.00</td>
<td></td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$5,000.00</td>
<td>$5,000.00</td>
<td></td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$620.00</td>
<td>$620.00</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$40,620.00</strong></td>
<td><strong>$40,620.00</strong></td>
<td></td>
</tr>
</tbody>
</table>
In addition to the above appropriation, a Revolving Fund to maintain printing, binding and stationery inventories $15,000.00

**EDUCATIONAL**

*Fiscal Year*

*Spending Unit 1936 1937*

**Acct. No. 36—State Board of Education**

1. **From the General School Fund:**
   2. Personal Services $31,805.10 $31,805.10
   3. Provided, however, That no part of this decrease shall be deducted from the appropriation for rehabilitation work, vocational education, or for the legal services of Price, Smith and Spillman.
   4. Current Expenses 31,266.00 29,716.00
   5. Equipment 300.00 250.00

   **Total** $63,371.10 $61,771.10

5. From the total appropriated for each year the following sums are allocated for the purpose of cooperating with the federal government:
   11. For rehabilitation work $14,000
   12. For vocational education 30,000
   14. From the total appropriations above, pay the firm of Price, Smith and Spillman for legal services rendered in 1931-32 $1,500
   18. State aid for Negro students, $7,000.00 for each year.

**Acct. No. 37—Department of Education**

1. **From the General School Fund:**
   2. Personal Services $113,440.00 $111,940.00
   3. Current Expenses 39,935.00 38,745.00
GENERAL APPROPRIATIONS

4 Equipment ....................................... 1,100.00 925.00

5 Total .......................................... $154,475.00 $151,610.00

6 Of the total amount appropriated for personal services $60,000 shall be expended each year for the salaries of county superintendents.

11 Provided, however, That no part of the above appropriation shall be used for state physical director, or state school architects.

Acct. No. 38—West Virginia University

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$908,765.00</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>202,049.00</td>
</tr>
<tr>
<td>Equipment</td>
<td>151,560.00</td>
</tr>
<tr>
<td>Lands</td>
<td>2,000.00</td>
</tr>
<tr>
<td>Total</td>
<td>$1,264,374.00</td>
</tr>
</tbody>
</table>

6 From Collections .............. 800,000.00 800,000.00

7 The Board of Governors of West Virginia University and the Board of Control are specially authorized to expend directly $68,000 of the amount appropriated for equipment for the year 1936, to equip the new dormitories at West Virginia University, known as P.W.A. project No. 465.

Acct No. 400—Marshall College

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$228,500.00</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>63,300.00</td>
</tr>
<tr>
<td>Equipment</td>
<td>8,550.00</td>
</tr>
<tr>
<td>Total</td>
<td>$300,350.00</td>
</tr>
</tbody>
</table>

4 From Collections .............. 120,000.00 120,000.00

Acct. No. 400A—Fairmont State Teachers College

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$116,200.00</td>
</tr>
<tr>
<td>Acct. No. 401—Glenville State Teachers College</td>
<td>Acct. No. 402—West Liberty State Teachers College</td>
</tr>
<tr>
<td>-----------------------------------------------</td>
<td>-------------------------------------------------</td>
</tr>
<tr>
<td>1 Personal Services</td>
<td>1 Personal Services</td>
</tr>
<tr>
<td>$ 59,000.00</td>
<td>$ 52,000.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>2 Current Expenses</td>
</tr>
<tr>
<td>$ 18,000.00</td>
<td>$ 15,000.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>3 Equipment</td>
</tr>
<tr>
<td>$ 2,000.00</td>
<td>$ 4,000.00</td>
</tr>
<tr>
<td>4 Total</td>
<td>4 Total</td>
</tr>
<tr>
<td>$ 79,000.00</td>
<td>$ 71,000.00</td>
</tr>
<tr>
<td>5 From Collections</td>
<td>5 From Collections</td>
</tr>
<tr>
<td>$ 25,000.00</td>
<td>$ 20,000.00</td>
</tr>
</tbody>
</table>

In addition to the total appropriated, $2,500 may be expended for the purchase of farm land and equipment from special revenue:

Board and room fund.
### Acct. No. 405—Potomac State School

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$45,810.00</td>
<td>$45,810.00</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$12,265.00</td>
<td>$12,265.00</td>
</tr>
<tr>
<td>Equipment</td>
<td>$2,850.00</td>
<td>$2,850.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$60,925.00</strong></td>
<td><strong>$60,925.00</strong></td>
</tr>
</tbody>
</table>

### Acct. No. 406—New River State College

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$61,400.00</td>
<td>$61,400.00</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$26,921.64</td>
<td>$18,000.00</td>
</tr>
<tr>
<td>Equipment</td>
<td>$4,500.00</td>
<td>$4,000.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$92,821.64</strong></td>
<td><strong>$83,400.00</strong></td>
</tr>
</tbody>
</table>

Of the amount appropriated for current expenses, 1936, $8,921.64 is allocated for the payment of a claim for paving bonds held by the estate of Dr. C. H. Martin.

### Acct. No. 407—West Virginia State College

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$120,000.00</td>
<td>$120,000.00</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$45,000.00</td>
<td>$45,000.00</td>
</tr>
<tr>
<td>Equipment</td>
<td>$2,000.00</td>
<td>$2,000.00</td>
</tr>
<tr>
<td>Building</td>
<td>$21,000.00</td>
<td>$21,000.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$188,000.00</strong></td>
<td><strong>$188,000.00</strong></td>
</tr>
</tbody>
</table>

### Acct. No. 408—Bluefield State Teachers College

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$45,500.00</td>
<td>$45,500.00</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$12,000.00</td>
<td>$12,000.00</td>
</tr>
<tr>
<td>Equipment</td>
<td>$1,500.00</td>
<td>$1,500.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$59,000.00</strong></td>
<td><strong>$59,000.00</strong></td>
</tr>
</tbody>
</table>

### Acct. No. 409—Storer College

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>$12,000.00</td>
<td>$12,000.00</td>
</tr>
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</table>

### General Appropriations

<table>
<thead>
<tr>
<th>Account Number</th>
<th>Description</th>
<th>Amount</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>405</td>
<td>Potomac State School</td>
<td></td>
<td></td>
</tr>
<tr>
<td>406</td>
<td>New River State College</td>
<td></td>
<td></td>
</tr>
<tr>
<td>407</td>
<td>West Virginia State College</td>
<td></td>
<td></td>
</tr>
<tr>
<td>408</td>
<td>Bluefield State Teachers College</td>
<td></td>
<td></td>
</tr>
<tr>
<td>409</td>
<td>Storer College</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Acct. No. 410—West Virginia School for the Deaf and Blind

1 Personal Services $85,000.00 $85,000.00
2 Current Expenses 60,000.00 60,000.00
3 Equipment 23,000.00 23,000.00
4 Total $168,000.00 $168,000.00
5 From Collections 2,500.00 2,500.00

Acct. No. 411—West Virginia School for the Colored Deaf and Blind

1 Personal Services $13,500.00 $13,500.00
2 Current Expenses 12,000.00 12,000.00
3 Equipment 2,000.00 1,000.00
4 Total $27,500.00 $26,500.00

Acct. No. 43—Department of Archives and History

1 Personal Services $9,500.00 $9,500.00
2 Current Expenses 1,330.00 1,330.00
3 Equipment 1,580.00 1,000.00
4 Total $12,410.00 $11,830.00

Acct. No. 460—West Virginia Industrial School for Boys

1 Personal Services $42,140.00 $42,140.00
2 Current Expenses 46,038.00 44,320.50
3 Buildings 13,800.00
4 Equipment 6,825.00 2,625.00
4-a Total $108,803.00 $89,085.50
5 From Collections 17,000.00 17,000.00
6 Out of the appropriations for personal services to pay Lelia Arnett, widow of U. G. Arnett, killed by an inmate while in line of duty, to be paid in monthly installments 600.00 600.00
7 Out of the appropriation for personal services, to pay George A.
### GENERAL Appropriations

14 Barnard, employee, permanently, totally disabled by an inmate while in line of duty, to be paid in monthly installments ........................................ $600.00
19 Out of the total appropriation for current general expense to pay the heirs of Hazel Woodward, deceased, for land rental accruing since January 1, 1910, the sum of ..................................... $1,355.24

**Acct. No. 461—West Virginia Industrial School for Colored Boys**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount 1</th>
<th>Amount 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$8,500.00</td>
<td>$8,500.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$15,000.00</td>
<td>$15,300.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$1,076.00</td>
<td>$441.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$24,576.00</strong></td>
<td><strong>24,241.00</strong></td>
</tr>
<tr>
<td>5 From Collections</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>$4,000.00</strong></td>
<td><strong>4,000.00</strong></td>
</tr>
</tbody>
</table>

**Acct. No. 462—West Virginia Industrial Home for Girls**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount 1</th>
<th>Amount 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$19,000.00</td>
<td>$19,000.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$21,481.00</td>
<td>$21,481.00</td>
</tr>
<tr>
<td>3 Buildings</td>
<td>$400.00</td>
<td>$400.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$1,715.00</td>
<td>$1,065.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$42,596.00</strong></td>
<td><strong>41,946.00</strong></td>
</tr>
<tr>
<td>6 From Collections</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>$9,000.00</strong></td>
<td><strong>9,000.00</strong></td>
</tr>
</tbody>
</table>

**Acct. No. 463—West Virginia Industrial Home for Colored Girls**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount 1</th>
<th>Amount 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$4,716.00</td>
<td>$4,716.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$7,360.00</td>
<td>$7,310.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$1,470.00</td>
<td>$1,470.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$13,546.00</strong></td>
<td><strong>13,496.00</strong></td>
</tr>
<tr>
<td>5 From Collections</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>$1,500.00</strong></td>
<td><strong>1,500.00</strong></td>
</tr>
</tbody>
</table>

**Acct. No. 464—Florence Crittendon Home**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount 1</th>
<th>Amount 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Total</td>
<td>$4,000.00</td>
<td>$4,000.00</td>
</tr>
</tbody>
</table>

**Acct. No. 465—Colored Day Nursery and Child’s Shelter**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount 1</th>
<th>Amount 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Total</td>
<td>$2,000.00</td>
<td>$2,000.00</td>
</tr>
</tbody>
</table>
Ch. 9] GENERAL APPROPRIATIONS

To be expended upon the requisition of the matron of the Colored Day Nursery and Child’s Shelter for the purpose of liquidating the indebtedness now existing against the property of said Shelter.

Acct. No. 470—West Virginia Children’s Home

<table>
<thead>
<tr>
<th>1 Personal Services</th>
<th>$ 8,397.00</th>
<th>$ 8,559.00</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 Current Expenses</td>
<td>$26,888.60</td>
<td>$25,358.60</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$ 2,700.00</td>
<td>$ 2,250.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$37,985.60</strong></td>
<td><strong>$36,167.60</strong></td>
</tr>
<tr>
<td>4 From Collections</td>
<td>$ 6,500.00</td>
<td>$ 6,500.00</td>
</tr>
</tbody>
</table>

Acct. No. 471—West Virginia Colored Children’s Home

<table>
<thead>
<tr>
<th>1 Personal Services</th>
<th>$ 3,697.50</th>
<th>$ 3,697.50</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 Current Expenses</td>
<td>$ 8,231.55</td>
<td>$ 8,231.55</td>
</tr>
<tr>
<td>3 Building</td>
<td>$ 680.00</td>
<td>$ 680.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$ 202.30</td>
<td>$ 220.15</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$12,811.35</strong></td>
<td><strong>$12,829.20</strong></td>
</tr>
<tr>
<td>5 From Collections</td>
<td>$ 2,500.00</td>
<td>$ 2,500.00</td>
</tr>
</tbody>
</table>

Acct. No. 472—Home for the Aged and Infirm Colored

<table>
<thead>
<tr>
<th>1 Personal Services</th>
<th>$ 5,222.40</th>
<th>$ 5,222.40</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 Current Expenses</td>
<td>$10,972.60</td>
<td>$10,973.45</td>
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<tr>
<td>3 Equipment</td>
<td>$ 153.00</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$16,348.00</strong></td>
<td><strong>$16,195.85</strong></td>
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<tr>
<td>5 From Collections</td>
<td>$ 7,848.00</td>
<td>$ 7,669.00</td>
</tr>
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</table>

Acct. No. 473—West Virginia Training School

<table>
<thead>
<tr>
<th>1 Personal Services</th>
<th>$ 13,800.00</th>
<th>$ 13,400.00</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 Current Expenses</td>
<td>$17,375.00</td>
<td>$17,025.00</td>
</tr>
<tr>
<td>3 Buildings</td>
<td>$ 8,375.00</td>
<td></td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$ 3,892.00</td>
<td>$ 2,260.00</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$43,442.00</strong></td>
<td><strong>$32,685.00</strong></td>
</tr>
</tbody>
</table>
### Acct. No. 48—West Virginia Penitentiary

1. **Personal Services** $130,815.00 $130,815.00
2. **Current Expenses** $187,000.00 $187,000.00
3. **Equipment** $34,000.00 $34,000.00

**Total** $351,815.00 $351,815.00

Out of appropriation for personal services, to pay Ray Estep, permanently injured while employed in penitentiary coal mine $240.00 $240.00

Any balance remaining unexpended at the close of the fiscal year, one thousand nine hundred thirty-five, in the appropriation for a new wall is appropriated for expenditure during the fiscal years, one thousand nine hundred thirty-six and one thousand nine hundred thirty-seven.

### Acct. No. 50—Emergency Hospital Service

1. **Total** $25,000.00 $25,000.00

This appropriation to be expended according to the provisions of section fourteen of this title.

### Acct. Nos. 520; 521—State Health Department and Public Health Council

1. **Personal Services** $78,580.00 $78,700.00
2. **Current Expenses** $36,702.00 $36,582.00
3. **Equipment** $4,993.00 $4,993.00

**Total** $120,275.00 $120,275.00

**From Collections** $10,800.00 $10,800.00

### Acct. No. 522—State Water Commission

1. **Personal Services** $3,500.00 $3,500.00
<table>
<thead>
<tr>
<th>Acct. No.</th>
<th>Account Description</th>
<th>Amount</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2 Current Expenses</td>
<td>500.00</td>
<td>500.00</td>
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<tr>
<td></td>
<td>3 Total</td>
<td>$4,000.00</td>
<td>$4,000.00</td>
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<tr>
<td>523</td>
<td>State Committee of Barbers and Beauticians</td>
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<td></td>
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<tr>
<td>1</td>
<td>Personal Services</td>
<td>$10,800.00</td>
<td>$10,800.00</td>
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<td>2</td>
<td>Current Expenses</td>
<td>11,320.00</td>
<td>11,320.00</td>
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<tr>
<td></td>
<td>3 Total</td>
<td>$22,120.00</td>
<td>$22,120.00</td>
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<tr>
<td></td>
<td>4 From Collections</td>
<td>22,120.00</td>
<td>22,120.00</td>
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<tr>
<td>530</td>
<td>Department of Public Welfare</td>
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<tr>
<td>1</td>
<td>Personal Services</td>
<td>$42,180.00</td>
<td>$40,680.00</td>
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<tr>
<td>2</td>
<td>Current Expenses</td>
<td>149,270.00</td>
<td>148,008.00</td>
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<tr>
<td>3</td>
<td>Equipment</td>
<td>2,550.00</td>
<td>550.00</td>
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<td></td>
<td>4 Total</td>
<td>$194,000.00</td>
<td>$189,238.00</td>
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<tr>
<td>531</td>
<td>Bureau of Negro Welfare and Statistics</td>
<td></td>
<td></td>
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<tr>
<td>1</td>
<td>Personal Services</td>
<td>$4,620.00</td>
<td>$4,620.00</td>
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<td>2</td>
<td>Current Expenses</td>
<td>1,080.00</td>
<td>1,280.00</td>
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<tr>
<td>3</td>
<td>Equipment</td>
<td>300.00</td>
<td>100.00</td>
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<tr>
<td></td>
<td>4 Total</td>
<td>$6,000.00</td>
<td>$6,000.00</td>
</tr>
<tr>
<td>540</td>
<td>Weston State Hospital</td>
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<td></td>
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<tr>
<td>1</td>
<td>Personal Services</td>
<td>$105,518.00</td>
<td>$105,518.00</td>
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<td>2</td>
<td>Current Expenses</td>
<td>149,688.00</td>
<td>148,040.00</td>
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<td>3</td>
<td>Equipment</td>
<td>6,552.00</td>
<td>3,950.00</td>
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<td>4 Total</td>
<td>$261,758.00</td>
<td>$257,508.00</td>
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<td>5 From Collections</td>
<td>21,500.00</td>
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<tr>
<td>541</td>
<td>Spencer State Hospital</td>
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<tr>
<td>1</td>
<td>Personal Services</td>
<td>$42,500.00</td>
<td>$42,500.00</td>
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<tr>
<td>2</td>
<td>Current Expenses</td>
<td>80,521.00</td>
<td>79,666.00</td>
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<td>3</td>
<td>Building</td>
<td>7,400.00</td>
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<tr>
<td>4</td>
<td>Equipment</td>
<td>15,000.00</td>
<td>15,000.00</td>
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<tr>
<td></td>
<td>5 Total</td>
<td>$145,421.00</td>
<td>$137,166.00</td>
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<tr>
<td></td>
<td>6 From Collections</td>
<td>25,000.00</td>
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</table>
### General Appropriations

#### Acct. No. 542—Lakin State Hospital

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$23,964.00</td>
<td>23,964.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$40,148.00</td>
<td>40,148.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$1,275.00</td>
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<tr>
<td>4 Total</td>
<td>$65,387.00</td>
<td>65,387.00</td>
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<tr>
<td>5 From Collections</td>
<td>$7,500.00</td>
<td>7,500.00</td>
</tr>
</tbody>
</table>

#### Acct. No. 543—Welch Emergency Hospital

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$13,304.00</td>
<td>13,304.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$21,426.00</td>
<td>21,426.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$1,290.00</td>
<td>1,290.00</td>
</tr>
<tr>
<td>4 Total</td>
<td>$36,020.00</td>
<td>36,020.00</td>
</tr>
<tr>
<td>5 From Collections</td>
<td>$20,300.00</td>
<td>20,300.00</td>
</tr>
</tbody>
</table>

#### Acct. No. 544—McKendree Emergency Hospital

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$13,860.00</td>
<td>13,860.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$19,203.00</td>
<td>18,332.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$2,660.00</td>
<td>2,660.00</td>
</tr>
<tr>
<td>4 Total</td>
<td>$35,723.00</td>
<td>34,852.00</td>
</tr>
<tr>
<td>5 From Collections</td>
<td>$22,100.00</td>
<td>22,200.00</td>
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</table>

#### Acct. No. 545—Fairmont Emergency Hospital

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$14,856.00</td>
<td>14,036.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$21,289.00</td>
<td>17,525.00</td>
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<tr>
<td>3 Equipment</td>
<td>$2,544.00</td>
<td>2,252.00</td>
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<td>4 Total</td>
<td>$38,689.00</td>
<td>33,813.00</td>
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<tr>
<td>5 From Collections</td>
<td>$12,750.00</td>
<td>12,750.00</td>
</tr>
</tbody>
</table>

#### Acct. No. 546—Hopemont Sanitarium

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$115,412.00</td>
<td>112,812.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$160,000.00</td>
<td>160,000.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$24,333.00</td>
<td>18,800.00</td>
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<td>4 Total</td>
<td>$299,745.00</td>
<td>291,612.00</td>
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<tr>
<td>5 From Collections</td>
<td>$185,000.00</td>
<td>185,000.00</td>
</tr>
</tbody>
</table>
Acct. No. 547—Denmar Sanitarium

<table>
<thead>
<tr>
<th>Account</th>
<th>Amount</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$17,180.00</td>
<td>$17,180.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$21,484.00</td>
<td>$20,784.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$1,650.00</td>
<td>$360.00</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$40,314.00</strong></td>
<td><strong>$38,324.00</strong></td>
</tr>
</tbody>
</table>

5 From Collections ........................... 15,000.00 15,000.00

Acct. No. 548—Pinecrest Sanitarium

<table>
<thead>
<tr>
<th>Account</th>
<th>Amount</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$44,700.00</td>
<td>$44,700.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$53,875.00</td>
<td>$51,975.00</td>
</tr>
<tr>
<td>3 Building</td>
<td>$17,000.00</td>
<td>$2,000.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$23,350.00</td>
<td>$6,700.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$138,925.00</strong></td>
<td><strong>$105,375.00</strong></td>
</tr>
</tbody>
</table>

5 From Collections ........................... 50,000.00 50,000.00

6 From the amount appropriated for current expenses for the year 1936, $3,000.00 is allocated to pay the State Compensation Commission for an X-ray machine.

Acct. No. 549—Berkeley Springs Sanitarium

<table>
<thead>
<tr>
<th>Account</th>
<th>Amount</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$3,500.00</td>
<td>$3,500.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$4,900.00</td>
<td>$4,900.00</td>
</tr>
<tr>
<td>3 Buildings</td>
<td>$2,500.00</td>
<td>$2,500.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$10,900.00</strong></td>
<td><strong>$10,900.00</strong></td>
</tr>
</tbody>
</table>

5 From Collections ........................... 5,900.00 8,400.00

Acct. No. 550—Huntington State Hospital

<table>
<thead>
<tr>
<th>Account</th>
<th>Amount</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$58,478.00</td>
<td>$58,543.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$85,737.00</td>
<td>$85,901.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$7,932.00</td>
<td>$7,232.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$152,147.00</strong></td>
<td><strong>$151,676.00</strong></td>
</tr>
</tbody>
</table>

5 From Collections ........................... 60,100.00 60,100.00

Acct. No. 551—Tuberculosis Clinics

<table>
<thead>
<tr>
<th>Account</th>
<th>Amount</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Total</td>
<td>$7,500.00</td>
<td>$7,500.00</td>
</tr>
</tbody>
</table>
Acct. No. 552—Treatment of Tuberculosis

1 Total ........................................ $ 17,500.00 $ 23,500.00

Acct. No. 553—Wayside Farm Preventorium

1 Total ........................................ $ 3,500.00

2 To be expended upon the requisition of the Board of Control.

BUSINESS AND INDUSTRIAL RELATIONS

Fiscal Year

Spending Unit 1936 1937

Acct. No. 57—Bureau of Labor and Department of Weights and Measures

<table>
<thead>
<tr>
<th></th>
<th>1936</th>
<th>1937</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$ 21,500.00</td>
<td>$ 21,500.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>11,050.00</td>
<td>11,000.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>900.00</td>
<td>800.00</td>
</tr>
<tr>
<td>4 Total</td>
<td>$ 33,450.00</td>
<td>$ 33,300.00</td>
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Acct. No. 570—Bureau of Labor: West Virginia Employment Service

<table>
<thead>
<tr>
<th></th>
<th>1936</th>
<th>1937</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$ 5,000.00</td>
<td>$ 5,000.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>2,000.00</td>
<td>2,000.00</td>
</tr>
<tr>
<td>3 Total</td>
<td>$ 7,000.00</td>
<td>$ 7,000.00</td>
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Acct. No. 58—Department of Mines

<table>
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<th>1937</th>
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<tr>
<td>1 Personal Services</td>
<td>$ 119,000.00</td>
<td>$ 119,000.00</td>
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<tr>
<td>2 Current Expenses</td>
<td>40,700.00</td>
<td>40,700.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>5,970.00</td>
<td>5,970.00</td>
</tr>
<tr>
<td>4 Total</td>
<td>$ 165,670.00</td>
<td>$ 165,670.00</td>
</tr>
<tr>
<td>5 From Collections</td>
<td>1,062.00</td>
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</table>

Acct. No. 59— Compensation Commission

FROM THE COMPENSATION FUND:

<table>
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<th>1936</th>
<th>1937</th>
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<td>1 Personal Services</td>
<td>$ 148,183.00</td>
<td>$ 158,183.00</td>
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<tr>
<td>2 Current Expenses</td>
<td>66,417.00</td>
<td>66,417.00</td>
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<tr>
<td>3 Equipment</td>
<td>11,400.00</td>
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<tr>
<td>4 Total</td>
<td>$ 226,000.00</td>
<td>$ 236,000.00</td>
</tr>
</tbody>
</table>
Acct. No. 59-A—Workmen’s Compensation Commission:  
Silicosis

Payable From the Silicosis Fund Created by House Bill No. 331.

1 Total ........................................ $ 40,000.00 $ 30,000.00  
2 From Collections .......................... 40,000.00 30,000.00  
3 To administer the Workmen’s  
Compensation silicosis fund as  
provided in House Bill No.  
331, regular session, 1935, and  
to pay premium on bond of the  
state treasurer as custodian of  
the fund.

Acct. No. 60—Public Service Commission

1 Personal Services .......................... $ 181,960.00 $ 181,960.00  
2 Current Expenses ......................... 50,020.00 50,020.00  
3 Equipment .................................. 5,020.00 5,020.00  
4 Total ........................................ $ 237,000.00 $ 237,000.00  

1 Of the amount appropriated for personal services $15,000 for  
the salaries of the members of the public service commission shall  
be paid from the general fund: The balance of the total amount  
appropriated shall be paid from the collection of special license  
fees from public service corporations, as authorized by section  
six, article three, chapter twenty-four of the code, as amended  
and reenacted by Senate Bill No. 146, of the Acts of the Legis-  
lature of West Virginia, regular session, 1935. Of the above  
appropriation, not more than $800 may be expended annually for  
the maintenance of the office of the General Solicitor of the  
National Association of Railroad and Utilities Commissioners,  
and for representation in matters before the Interstate Com-  
merce Commission and other Federal Departments, at Washing-  
ton, D. C.

Acct. No. 61—Department of Banking

1 Personal Services .......................... $ 24,080.00 $ 24,200.00  
2 Current Expenses .......................... 23,950.00 23,950.00  
3 Total ........................................ $ 48,030.00 $ 48,150.00  
4 From Collections ......................... 4,250.00 4,250.00
Acct. No. 64—Racing Commission

1 Total $3,250.00 $3,250.00
2 From Collections 3,250.00 3,250.00

HIGHWAYS

Fiscal Year

Spending Unit 1936 1937

Acct. No. 67—State Road Commission

FROM THE ROAD FUND:

1 General Administration and Engineering $580,600.00 $580,600.00
2 The proceeds of the receipts of the road fund, except as herein after provided, are appropriated in accordance with the provisions of article three, chapter seventeen of the code of one thousand nine hundred thirty-one, as amended.
3 For the maintenance, construction and reconstruction of secondary roads, each of the two years of the biennium, all of the receipts to the road fund arising under the operation of House Bill No. 472, regular session, 1935, are hereby appropriated.

FROM THE GENERAL FUND:

20 For maintenance, construction and reconstruction of secondary roads, to be transferred to the Road Fund upon the requisition of the governor 2,000,000.00 2,000,000.00

AGRICULTURE

Fiscal Year

Spending Unit 1936 1937

Acct. No. 70—Department of Agriculture

1 Personal Services $74,650.00 $74,650.00
2 Current Expenses 48,000.00 48,400.00
GENERAL APPROPRIATIONS

3 Equipment ..................................... 2,195.00 2,195.00
4 To be expended for the eradication of bovine diseases .......................... 15,000.00 15,000.00
5 The appropriation of this item is contingent upon the granting of an equal amount of funds to this state by the Federal Government for the same purpose.

11 Total ........................................ $ 139,845.00 $ 140,245.00
12 From Collections .................................................. 45,472.00 45,656.00

Acct. No. 71—Agricultural Fairs and Associations

1 Current Expenses $ 5,000.00 $ 5,000.00
2 Awards 1,500.00 1,500.00
3 4-H Jubilee and State Fair to be expended for the encouragement of 4-H activities at the state or any regional fair; to be expended on the approval of the governor and the commissioner of agriculture.

CONSERVATION AND DEVELOPMENT

Fiscal Year

Acct. No. 73—Extension Division of West Virginia University: County Agricultural Agents

1 Total ........................................ $ 60,000.00 $ 60,000.00

Acct. No. 730—Geological Survey

1 Personal Services $ 17,100.00 $ 17,100.00
2 Current Expenses $ 15,250.00 $ 15,250.00
3 Equipment 950.00 950.00

4 Total ........................................ $ 33,300.00 $ 33,300.00
5 From Collections .................................................. 1,000.00 1,000.00

Acct. No. 732—Conservation Commission

1 Personal Services $ 197,408.00 $ 197,408.00
<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Amount</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>42,382.00</td>
<td>102,630.00</td>
</tr>
<tr>
<td>3</td>
<td>Lands</td>
<td>104,660.00</td>
<td>15,360.00</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td>$344,450.00</td>
<td>$315,398.00</td>
</tr>
<tr>
<td>5</td>
<td>From Collections</td>
<td>$219,850.00</td>
<td>$219,850.00</td>
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</table>

**Acct. No. 770—Department of Public Safety**

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Amount</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$420,000.00</td>
<td>$420,000.00</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>80,000.00</td>
<td>80,000.00</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>80,000.00</td>
<td>80,000.00</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td>$580,000.00</td>
<td>$580,000.00</td>
</tr>
<tr>
<td>5</td>
<td>Of the total amount appropriated $30,000 shall be paid out of the Road Fund to assist in defraying the cost of the enforcement of traffic, permit and license laws, to be paid upon the requisition of the Department of Public Safety and the Board of Control.</td>
<td></td>
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</table>

**Acct. No. 772—Adjutant General: State Militia**

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Amount</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$45,000.00</td>
<td>$45,000.00</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>51,000.00</td>
<td>51,000.00</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>4,000.00</td>
<td>4,000.00</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td>$100,000.00</td>
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**Acct. No. 774—Fire Marshal’s Office**

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$18,568.00</td>
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<tr>
<td>2</td>
<td>Current Expenses</td>
<td>7,432.00</td>
<td>7,432.00</td>
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<tr>
<td>3</td>
<td>Equipment</td>
<td>1,000.00</td>
<td>1,000.00</td>
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<tr>
<td>4</td>
<td>Total</td>
<td>$27,000.00</td>
<td>$27,000.00</td>
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<tr>
<td>5</td>
<td>From Collections</td>
<td>$27,000.00</td>
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</table>

**Acct. No. 7800—State Board of Examiners of Accounts**

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
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<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
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<td>2</td>
<td>From Collections</td>
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</table>
## General Appropriations

### Acct. No. 7821—Aviation Field—4-H Camp

<table>
<thead>
<tr>
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<tbody>
<tr>
<td>1</td>
<td></td>
<td>4,000.00</td>
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### Acct. No. 7830—State Board of Law Examiners

<table>
<thead>
<tr>
<th></th>
<th>Total</th>
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<tbody>
<tr>
<td>1</td>
<td></td>
<td>1,000.00</td>
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</table>

### Acct. No. 7840—Board of Examiners for Registered Nurses

<table>
<thead>
<tr>
<th></th>
<th>Total</th>
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<tbody>
<tr>
<td>1</td>
<td></td>
<td>3,000.00</td>
<td>3,000.00</td>
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<tr>
<td>2 From Collections</td>
<td></td>
<td>3,000.00</td>
<td>3,000.00</td>
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</tbody>
</table>

### Acct. No. 7841—State Board of Dental Examiners

<table>
<thead>
<tr>
<th></th>
<th>Total</th>
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<tbody>
<tr>
<td>1</td>
<td></td>
<td>1,000.00</td>
<td>1,000.00</td>
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<tr>
<td>2 From Collections</td>
<td></td>
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### Acct. No. 7842—State Board of Pharmacy

<table>
<thead>
<tr>
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<tbody>
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<td>5,000.00</td>
<td>5,000.00</td>
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<tr>
<td>2 From Collections</td>
<td></td>
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</table>

### Acct. No. 7843—State Board of Osteopathy

<table>
<thead>
<tr>
<th></th>
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<tbody>
<tr>
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<tr>
<td>2 From Collections</td>
<td></td>
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</table>

### Acct. No. 7844—State Board of Examiners in Optometry

<table>
<thead>
<tr>
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<tbody>
<tr>
<td>1</td>
<td></td>
<td>1,500.00</td>
<td>1,500.00</td>
</tr>
<tr>
<td>2 From Collections</td>
<td></td>
<td>1,500.00</td>
<td>1,500.00</td>
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</table>

### Acct. No. 7845—State Board of Embalmers and Funeral Directors

<table>
<thead>
<tr>
<th></th>
<th>Total</th>
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<tbody>
<tr>
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<td></td>
<td>5,000.00</td>
<td>5,000.00</td>
</tr>
<tr>
<td>2 From Collections</td>
<td></td>
<td>5,000.00</td>
<td>5,000.00</td>
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</table>

### Acct. No. 7850—State Board of Registration for Professional Engineers

<table>
<thead>
<tr>
<th></th>
<th>Total</th>
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<th>$</th>
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<tbody>
<tr>
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<td></td>
<td>3,000.00</td>
<td>3,000.00</td>
</tr>
<tr>
<td>2 From Collections</td>
<td></td>
<td>3,000.00</td>
<td>3,000.00</td>
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</tbody>
</table>

### Acct. No. 7851—State Board of Examiners for Architects

<table>
<thead>
<tr>
<th></th>
<th>Total</th>
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<tbody>
<tr>
<td>1</td>
<td></td>
<td>2,000.00</td>
<td>2,000.00</td>
</tr>
<tr>
<td>2 From Collections</td>
<td></td>
<td>2,000.00</td>
<td>2,000.00</td>
</tr>
</tbody>
</table>

### Acct. No. 7860—State Veterinary Examining Board

<table>
<thead>
<tr>
<th></th>
<th>Total</th>
<th>$</th>
<th>$</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td>500.00</td>
<td>500.00</td>
</tr>
<tr>
<td>2 From Collections</td>
<td></td>
<td>500.00</td>
<td>500.00</td>
</tr>
</tbody>
</table>

**Federal Relief**

1. For the purpose of cooperating
2. With the Federal government in
3 relief of needy persons, to be ex-
4 pended at a rate of not more than
5 $250,000 per month upon the
6 requisition of the governor.......... 3,000,000.00 3,000,000.00
7 To supplement the General
8 School Fund to pay teachers sal-
9 aries for eight months and for
10 equalization fund purposes ...... $10,500,000.00 $10,500,000.00

Sec 2. "General Appropriations." There is hereby appro-
2 priated for the fiscal year one thousand nine hundred thirty-six,
3 and for the fiscal year one thousand nine hundred thirty-seven,
4 from the state fund, general revenue, the following items, and
5 these items shall be appropriated conditionally upon the fulfill-
6 ment of the provisions set forth in Title III of this act:

Fiscal Year

Spending Unit 1936 1937

<table>
<thead>
<tr>
<th>Acct. No. 741—Droop Mountain Battlefield Commission</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Total ........................................... $ 100.00 $ 100.00</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Acct. No. 743—Point Pleasant Battle Monument Commission</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Total ........................................... $ 1,000.00 $ 1,000.00</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Acct. No. 744—Rumseyan Society</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Total ........................................ $ 100.00 $ 100.00</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Acct. No. 745—Morgan Morgan Memorial</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Total ........................................ $ 25.00 $ 25.00</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Acct. No. 746—Grafton G. A. R. Post</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Total ........................................ $ 500.00 $ 500.00</td>
</tr>
</tbody>
</table>

West Virginia Training School

1 To supplement Current General
2 Expense Fund for fiscal year
3 1934-35 ........................................ $ 6,500.00

Spencer State Hospital

1 To supplement Current General
2 Expense Fund for fiscal year 1934-35

**West Virginia Children’s Home**
1 To supplement Current General Expense Fund for fiscal year 1934-35 to permit purchase of equipment for new unit

**West Virginia Industrial School for Boys**
1 To pay outstanding obligations for food, clothing and miscellaneous supplies purchased by institution for fiscal year 1933-34
2 To supplement 1934-1935 Current General Expense for purchase of new boiler
3 To supplement 1934-35 Current General Expense Fund for purchase of seeds, fertilizer and other farm supplies
4 To supplement 1934-35 Current General Expense fund to build filtration plant, all unexpended balances in this account to be re-appropriated for fiscal year 1935-36

**West Virginia University**
1 Payment of the cost of research and technical services rendered to the state during the fiscal year 1935

**Hopemont Sanitarium**
1 In the event the amount collect-
2 ed and paid into the treasury to
3 the credit of the Current General
4 Expense fund, payable out of col-
5 lections, does not aggregate $116,-
6 000, by reason of the inability of
7 counties or individuals to pay
8 their accounts, then there is hereby
9 authorized, payable out of general
10 revenues of the state, an amount
11 sufficient to cover the losses caused
12 by either or both of the aforesaid
13 contingencies, to supplement the
14 appropriation for Current General
15 Expense for the fiscal year ending
16 June 30, 1935, Hopemont San-
17 tarium.
18 To pay the City of Morgantown
19 amount advanced by said city
20 for the paving of Beechurst Ave-
21 nue, Hough Street and Hunt
22 Street, abutting upon the property
23 of the West Virginia University
24 and its branches ......................... 17,397.85
25 To pay Fidelity National Bank
26 and Trust Company of Kansas
27 City for paving certificates issued
28 by the city of Charleston for
29 paving abutting on the State
30 Capitol .................................... 5,427.03
31 To pay Mathews Lumber &
32 Manufacturing Company account
33 erroneous assessment of charter
34 tax ....................................... 280.00
35 To pay the Ohio County Farm-
36 ers Cooperative Association ac-
37 count erroneous assessment of
38 charter tax ................................ 297.00
39 To pay Cass Gilbert, Architect,
40 for State Capitol, balance in full
41 on contract ............................. 449.95
42 The Tax Commissioner is hereby authorized to refund to the Gauley Coal Land Company, Gross Sales Taxes erroneously collected aggregating not to exceed  

43 4,410.62

47 The Tax Commissioner is hereby authorized to refund to the Daily Telegraph and Printing Company, Gross Sales Taxes erroneously collected aggregating not to exceed  

48 1,517.74

Payable Out of State Road Fund

1 To pay 205 claims against the State Road Commission resulting from personal injury or property damages: This amount appropriated for the remainder of year ending June 30, 1935, and to remain in effect until claims are paid.  

2 16,491.78

8 To pay Mrs. Pearl Curd on account of the death of her husband while performing his duties as an employee of the State Road Commission: 

13 For remainder of year ending June 30, 1935, including hospital and funeral expense  

14 621.00

16 For year ending June 30, 1936  

17 360.00

18 For year ending June 30, 1937  

19 360.00

19 To pay claim of Jake Bennett, employee injured while in employ of State Road Commission: 

21 For remainder of year ending June 30, 1935, including hospital  

22 1,137.00

23 For year ending June 30, 1936  

24 642.00

24 For year ending June 30, 1937  

25 312.00

25 Total  

26 $ 2,091.00

26 To pay William H. Shaver for
27 loss and damage due to cancellation of contract with the State Road Commission ........................... 5,700.00
30 To pay Northern Bank Note Company for preparatory work on Hinton Bridge Bonds ................... 225.00

**Payable Out of the General Fund**

1 To pay unpaid claims for stenographic work, stationery and postage for the judges of the circuit courts 4,000.00
5 To refund to the estate of Frederick J. Knutti, excess payment of inheritance and transfer taxes 168.17
9 To refund to the Northfork Coca-Cola Bottling Works for excess payments under the gross sales tax and surtax laws 264.82
13 To refund to the Wheeling Corrugating Company for excess payments under the gross sales tax and surtax laws 281.88
17 To pay Potomac State College for building a wall, which expenditure it was unable to meet from its appropriation of 1934-1935 1,200.00

**Acct. No. 7810—State Athletic Commission**

1 Total ........................................... $2,500.00 $ 2,500.00
2 From Collections ......................... 2,500.00 2,500.00

**West Virginia Liquor Control Commission**

1 There is hereby appropriated from the general fund to be paid immediately the sum of $500,000 to the West Virginia Liquor Control Commission. The general fund shall be reimbursed by this amount out of the first collections of the West Virginia Liquor Control Commission that accrue to the reserve fund in
accordance with section nineteen, article three, of House Bill 119, 
enacted February 25, 1935.

There is appropriated for the fiscal years 1935, 1936 and 1937 
the collections of the West Virginia Liquor Control Commission 
for expenditure in accordance with the provisions of House Bill 
enacted February 25, 1935.

West Virginia University

For the 4-H Camp of the Extension Division of the College 
of Agriculture: To pay part cost of placement of the West Vir- 
ginia Century of Progress Exhibit at Jackson’s Mill. This ap-
propriation is contingent upon the sum of $10,000.00 being 
secured from sources other than the state.

Fiscal Year 1936.............................. $6,500.00

Adjutant General: State Militia

Repair of the Huntington Armory,
Fiscal Year 1935............................. $1,500.00

Department of Mines

To meet additional personal 
service expenditures ordered by 
the West Virginia Supreme Court 
of Appeals, fiscal year 1934-35..... $ 15,000.00

West Virginia State College

To reimburse Current General Expense, West Virginia State 
College, for moneys used in connection with expenditures upon 
FERA and PWA projects at that institution, not to exceed six 
thousand dollars, from any surplus in the collections of that 
institution for the fiscal year 1935.

Purchasing Department

Printing, binding and station-
ery for the fiscal year 1935............ $ 12,500.00

Auditor’s Office: Land Department

Salaries and current expenses 
resulting from increased duties im-
posed upon the state auditor’s 
office by the enactment of chapter 
eighteen, acts of the Legislature of 
West Virginia, second extraordi-
REIMBURSEMENTS

1. There is hereby appropriated from the general fund the following items to reimburse spending units as follows for:

   Board of Control

2. Amounts advanced to the purchasing department during the fiscal year 1935 $6,000.00

CLAIMS AGAINST THE STATE

1. Harry E. Brown, the annual payments required by chapter seventeen, acts of the legislature of West Virginia, second extraordinary session, 1933:

   Fiscal Year 1936 $720.00
   Fiscal Year 1937 720.00

   Acct. No. 732-A—The Conservation Commission of West Virginia

   1. Total $45,000.00 $45,000.00
   2. To qualify for federal reimbursement under the Clarks-McNary and Weeks Acts.

   Morris Memorial Hospital

   1. Total $10,000.00 $10,000.00
   2. This appropriation to be spent upon the authorization of the Board of Control.

   Acct. No. 549-A—West Virginia Foundation for Crippled Children

   1. Total $6,500.00
   2. For the purchase of property at Berkeley Springs, for the treatment of crippled children, such money to be spent upon the authorization of the Board of Control.

Sec. 3. There is hereby appropriated out of the general fund an amount sufficient to meet the principal and interest requirements of the bonded obligations of the state other than road bonds.

Sec. 4. There is hereby appropriated for expenditure during the fiscal years one thousand nine hundred thirty-six and
Sec. 5. A part of an appropriation to a spending unit that remains unexpended at the end of the fiscal year one thousand nine hundred thirty-six may, by order of the board of public works, be revived and expended to meet unforeseen contingencies arising during the fiscal year one thousand nine hundred thirty-seven.

Sec. 6. Whenever the specific payment of a definite sum of money is required by general law such sum shall be paid from the proper item appropriated by this act.

Sec. 7. A fund or collections account, which by law is dedicated to a specific use, is hereby appropriated in sufficient amount to meet all lawful demands upon the fund or collection account, and shall be expended according to the provisions of article three, chapter twelve of the code of one thousand nine hundred thirty-one.

Sec. 8. Money that has been erroneously paid into the state treasury is hereby appropriated out of the fund into which it was paid for refund to the proper person. When the officer authorized by law to collect money for the state finds that a sum has been erroneously paid he shall issue his requisition upon the auditor for the refunding of the proper amount. The auditor shall issue his warrant to the treasurer and the treasurer shall pay the warrant out of the fund into which the amount was originally paid.

Sec. 9. A contingent fund may be expended as appropriated, with the approval of the board of public works, when the expenditure will improve the governmental service and care for unexpected contingencies. A part of a contingent fund that remains unexpended at the end of the first fiscal year shall automatically become available for expenditure during the second fiscal year. The expenditure of the governor's civil contingent fund, and the legislative contingent funds shall not be conditioned upon the approval of the board of public works.
Sec. 10. There is hereby appropriated to the board of public works a sufficient amount to meet a deficiency that may arise in the fund of the state sinking fund commission because of the failure of a local taxing district to remit funds necessary for the payment of interest and sinking fund requirements. The board of public works is authorized to transfer from time to time such amounts to the state sinking fund commission as may be necessary for this purpose.

The state sinking fund commission shall reimburse the board of public works from the first remittances collected from the local taxing district for which the board of public works advanced funds, with interest at the rate carried by the bonds for which the advance was made.

Sec. 11. There is hereby appropriated from all forfeitures and license fees collected by the state tax commissioner, all necessary salaries, expenses, commissions, and attorneys’ fees authorized by law for the collection of such forfeitures and license fees. All such salaries, expenses, commissions, and attorneys’ fees authorized by law shall be paid by the tax commissioner through the state treasury out of gross collections. Any part of such forfeitures that may be due the state or any county, district or municipality shall be distributed through the state treasury by the tax commissioner in the manner provided by law.

Sec. 12. There is hereby appropriated for payment to counties, districts, and municipal corporations such amounts as will be necessary to pay taxes due county, district and municipal corporations and have been paid into the treasury:

1. For the redemption of lands;
2. By public service corporations.

Sec. 13. The cost of printing, binding, and stationery for each spending unit shall be paid from the current expense appropriation for the spending unit.

Sec. 14. A hospital, other than a state hospital, doing charity work, may file with the board of control on October first, one thousand nine hundred thirty-five, and every three months thereafter, itemized bills for all charity cases treated during the preceding three months. The bills shall be made out on the forms and at the rates fixed by the board of control.
Sixty days shall be allowed for filing the bills after which time the board of control shall audit them and pay all proper claims. If, however, the aggregate of all claims filed exceeds one-fourth of the amount appropriated for the year then the board shall apportion the said one-fourth appropriated so that each claim will receive its pro rata share: Provided, however, that no claim for treatment of a charity case shall be considered unless the board has received notice from the hospital at the time of receiving the charity patient, said notice to be on forms prescribed by and to contain such information as may be required under rules and regulations of the board. The board is authorized to limit the number of patients that may be received as charity cases by any one hospital.

Sec. 15. Where only a total sum is appropriated to a spending unit that total sum shall include personal services, current expenses, and capital outlay.

Sec. 16. The balance of the proceeds of the general school fund remaining after the payment of the appropriations made by this act is appropriated for expenditure in accordance with section six, article nine, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended.

TITLE III—ADMINISTRATION

Section 1. The expenditure of the appropriations made by this act, except those appropriations made to the legislative and judicial branches of the state government, are conditioned upon the compliance by the spending unit with the requirements of this act and the regulations and orders made under it. A requisition for the expenditure of an appropriation made by this act shall be presented to the auditor only through the director of the budget.

Sec. 2. The board of public works shall control and supervise the fiscal methods of spending units of the state so as to insure the expenditure of funds appropriated by this act in accordance with a sound state fiscal policy and a planned program of expenditure for the spending unit. The provisions of this act shall not be construed to delegate to the board a control over the policies and activities of agencies and institutions that it does not already possess.
Sec. 3. The board shall examine and survey the progress of the collection of the revenue of the state and shall determine each quarter of the fiscal year the proportion which the amount actually collected bears to the collections estimated for that period. For this purpose the board shall have the authority to require all necessary estimates and reports from any office, department or other agency of state government.

Sec. 4. The board may reduce appropriations according to any of the plans which are set forth in sections five, six, and seven of this act.

Sec. 5. If the board determines that the amounts, or parts thereof, appropriated from the general revenue cannot be expended without creating an overdraft or a deficit in the general fund, it may reduce equally and pro rata all appropriations out of general revenue in such a degree as may be necessary to prevent an overdraft or a deficit in the general fund.

Sec. 6. The board, in the manner prescribed in section five, may reduce appropriations from:

1. Funds supported by designated taxes or fees;
2. Fees or other collections set aside for the support of designated activities or services.

Each fund and each fee or collection account shall be treated separately, but appropriations from the same fund or account shall be treated equally and reduced pro rata.

Sec. 7. If the board determines that the reductions provided for in sections five and six of this title will dangerously impair the existence of the essential services of government, it may reduce the amount to be expended from separate appropriations in accordance with the following method:

1. The board shall first classify appropriations as follows:
   Class One: For agencies collecting revenue and administering the fiscal operations of government, including the offices and departments of the tax commissioner, auditor, treasurer, and sinking fund commission.
   Class Two: For agencies vested with the supervision, control, and direction of executive policy and law enforcement, including the governor’s office, the attorney general’s office, and the department of public safety.
15 Class Three: For state institutions, educational, charitable, and corrective.
16 Class Four: For other departments and services of the state government.
17 Class Five: For transfers from the general fund.
18 2. The board shall first reduce the appropriations from class five and then if necessary reduce the appropriations for the other classes in descending numerical order as follows: Class four, class three, class two, class one. All reductions shall be in multiples of five per cent, but a fixed relationship shall be maintained between the classes which shall be measured by a difference of five per cent in the rate of reduction. The maximum reduction shall not exceed twenty-five per cent in class five and in the other classes it shall be proportional according to the following table:

<table>
<thead>
<tr>
<th>Classes</th>
<th>Five</th>
<th>Four</th>
<th>Three</th>
<th>Two</th>
<th>One</th>
</tr>
</thead>
<tbody>
<tr>
<td>Per cent of reductions</td>
<td>5%</td>
<td>10%</td>
<td>15%</td>
<td>20%</td>
<td>25%</td>
</tr>
<tr>
<td>Total from appropriations</td>
<td>10%</td>
<td>15%</td>
<td>10%</td>
<td>5%</td>
<td></td>
</tr>
</tbody>
</table>

Sec. 8. The governor, as chairman of the board of public works, shall appoint a director of the budget who shall administer the budget under the direction of the board of public works. The director of the budget shall hold office at the will and pleasure of the chairman of the board and shall receive a salary to be fixed by the chairman of the board, but not to exceed six thousand dollars a year.

Sec. 9. In the control and supervision of the fiscal methods of the institutions named in sections three and four, article one, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, the board of control shall perform such duties as the director of the budget may require.

Sec. 10. With the exception of those institutions under the control of the state board of education, the board of governors of West Virginia University and the board of control, the board of public works shall classify the offices and employments in the state government and its agencies, into a personnel classification which reflects the differences in training, experience, ability and responsibility required for different types or kinds of service or
employment, and shall establish uniform salary and wage scales within each class.

The board shall require the state board of education, the board of governors of West Virginia University, and the board of control to prepare and apply personnel classifications to the institutions under their control.

Sec. 11. The board of public works shall install a system of accrual accounting for the purpose of recording for each spending unit the collection of all income, the amounts available for expenditure and obligations, encumbrances and disbursements. The board shall prescribe uniform records, accounts and forms to be used by spending units so far as may be necessary for the efficient administration of the budget.

Sec. 12. Prior to the beginning of each fiscal year, the executive officer of a spending unit shall submit to the board of public works a detailed plan of expenditure for the ensuing fiscal year. The plan shall be submitted in such form and at such time as the board may require.

1. A proposed monthly rate of expenditure for amounts appropriated for personal services.
2. A proposed quarterly rate of expenditure for amounts appropriated for current expense.
3. A proposed yearly plan for expenditure of amounts appropriated for capital outlay.

Sec. 13. The board shall examine the plan of expenditure for each spending unit, and if it finds that the plan conforms to the requirements of this act and is in accordance with sound fiscal methods it shall approve the plan. A plan approved by the board shall control and govern the expenditures of the spending unit, unless the board finds it necessary to reduce expenditures from a fund in order to avoid a deficit in that fund, or the board consents to an alteration of the plan, at the request of the executive officer of the spending unit, to increase the efficiency of the service.

Sec. 14. At least thirty days prior to the beginning of each quarter of the fiscal year the executive officer of a spending unit shall submit to the board of public works a request for an allotment of public funds sufficient to operate his unit during the en-
The board shall examine the request and if the board approves the request and finds that the collection of revenue warrants the expenditure it shall order the allotment to be credited to the account of the spending unit.

Sec. 15. The expenditures of a spending unit during a quarter of the fiscal year shall not exceed the amount of the allotment made by the board of public works, except upon the approval of the board of public works, but any amounts remaining unexpended at the close of the quarter shall be available for reallocation and expenditure during any succeeding quarter of the same fiscal year.

Sec. 16. The director of the budget shall keep a record of receipts, accruals, and anticipated income from which appropriations are expended in such form that he can determine at any time whether the actual income of the state is sufficient to pay the appropriations made by this act.

Sec. 17. If the amount actually collected by a spending unit exceeds the amount which it is authorized to expend from collections, the excess of collections shall be set aside in a special surplus fund for the spending unit. Expenditures from this fund shall be made only in accordance with the following procedure:

The executive officer of the spending unit shall submit to the board of public works:

1. A plan of expenditure showing the purposes for which the surplus fund is to be expended, and
2. A justification statement showing the reasons why the expenditure is necessary and desirable.

If the board is satisfied that the expenditure is required to defray the additional costs of the service or activity of the spending unit, the demand for which is reflected by the surplus of collections and that the expenditure is in accordance with sound fiscal methods, the board may authorize the use of the surplus fund during the current or next fiscal year.

An expenditure from a surplus fund without the approval of the board of public works shall be an unlawful use of public funds.

Sec. 18. The board of public works may, at the request of
2 the executive officer of a spending unit, transfer amounts between 3 items of the total appropriation for the spending unit in order 4 to protect or increase the efficiency of the service.

Sec. 19. A spending unit shall:
2 1. Keep and maintain records and accounts in the manner 2-a and on the forms prescribed by the board.
3 2. Transmit reports and estimates at such times as the board 4 shall direct.
5 3. Maintain such personnel classifications and uniform salary 6 scales as the board shall approve.
7 4. Keep its records and accounts open during business hours 8 for inspection by the budget officer or his representatives.

Sec. 20. A provision of another act, or of the code of West 2 Virginia, one thousand nine hundred thirty-one, as amended, 3 which is in conflict with the provisions of this act is hereby sus- 4 pended during the operation of this act.

Sec. 21. If any part of this act is declared unconstitutional 2 by a court of competent jurisdiction its decision shall not affect 3 any portion of this act which remains, but the remaining por- 4 tions shall be in full force and effect as if the portion declared 5 unconstitutional had never been a part of the act.

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CHAPTER 10

(House Bill No. 533—By Mr. Thomas)

AN ACT to make a supplemental appropriation from the general revenue to the general school fund.

[Passed March 9, 1935; In effect ninety days from passage. Approved by the Governor.]

Sec. Sec.
1. Appropriation of one million dol- 1. Appropriation of one million dol- 2. to be transferred upon requisition 3. ars for each of the fiscal years 4. for each of the fiscal years 1936 and 1937 from the treasury 5. be transferred upon requisition 6. to the general school fund to 7. of the Governor; state superin- 8. to insure a nine months school term in all school districts; to 9. tendent of free schools to sub- 10. tenent of free schools to sub- 11. mit budget to board of public 12. mit budget to board of public 13. works; basic salaries of teach- 14. works; basic salaries of teach- 15. ers.

Be it enacted by the Legislature of West Virginia:

Section 1. It appearing from the budget for the fiscal years
two thousand nine hundred thirty-five—one thousand nine hundred thirty-six and one thousand nine hundred thirty-six—one thousand nine hundred thirty-seven, that there is sufficient revenue available, there is hereby appropriated from the treasury state fund general revenue to supplement the general school fund to pay teachers' salaries for nine months and for equalization purposes, to be transferred from the state fund general revenue to the general school fund, upon the requisition of the governor, at such times and in such amounts as, in the judgment of the governor, the condition of the treasury permits, for the fiscal year one thousand nine hundred thirty-five—one thousand nine hundred thirty-six, one million dollars, and for the fiscal year one thousand nine hundred thirty-six—one thousand nine hundred thirty-seven, one million dollars.

The purpose of this appropriation is to insure a school term of nine months in all school districts of the state, and no part of this appropriation shall be expended unless and until the state superintendent of free schools shall submit to the board of public works and the board of public works shall have approved a budget of all revenue available in the state for school purposes, including both state revenue and the revenue of the several districts, based upon the payment of basic teachers' salaries, which basic salaries shall not be less than the basic salaries set forth in chapter nine, acts of the Legislature of West Virginia, first extraordinary session, one thousand nine hundred thirty-three, and which basic salaries shall not be greater than the basic salaries set forth in section two, article seventeen, chapter eighteen of the code of West Virginia, one thousand three hundred ninety-one, which shall in each school district make such a distribution of all school funds available for such district, including funds available from district revenue, the general school fund for teachers' salaries, and the equalization fund, and including this appropriation, between teachers' salaries and maintenance expenses as will enable the school to be operated in such district for a school year of nine months. The payment from the general school fund for teachers' salaries shall be upon the basis of the basic salaries set forth in chapter nine, acts of the Legislature of West Virginia, first extraordinary session, one thousand nine hundred thirty-three, and the basic salaries in each school district payable from state
43 funds or district funds, or both, shall be uniform throughout
44 the district, but within the limitations hereinbefore set forth
45 the basic salaries need not be uniform among the several dis-
46 tricts depending upon the relative amounts of revenue avail-
47 able to the several districts from the district revenues.

CHAPTER 11

(House Bill No. 534—By Mr. Thomas)

AN ACT to appropriate moneys from the treasury to further sup­
plement the general school fund for the fiscal year one thou­
sand nine hundred thirty-four—-one thousand nine hundred
thirty-five.

[Passed March 9, 1935; in effect from passage. Approved by the Governor.]

Sec. 1. Appropriation of seven hundred
thousand dollars to general
school fund to supplement
payment of teachers' salaries

for the ninth month of current
school year to be transferred
upon requisition of the gover­
nor.

Be it enacted by the Legislature of West Virginia:

Section 1. It appearing from a statement of the revenues
2 and appropriations for the fiscal year one thousand nine hun-
3 dred thirty-four—one thousand nine hundred thirty-five, that
4 there remains in the treasury, state fund general revenue, reve-
5 nue in excess of the amount hereby appropriated, there is here-
6 by appropriated from the state fund general revenue for the
7 remainder of the current fiscal year one thousand nine hun-
8 dred thirty-four—one thousand nine hundred thirty-five, to
9 supplement the general school fund to pay on the account of
10 teachers’ salaries for the ninth month of the current school
11 year, the sum of seven hundred thousand dollars to be trans-
12 ferred from the state fund general revenue to the general school
13 fund upon the requisition of the governor at such times and
14 in such amounts as in his opinion the condition of the treasury
15 warrants.
CHAPTER 12
(House Bill No. 535—By Mr. Hiner)

AN ACT to appropriate funds out of the Workmen's Compensation Fund in order that the provisions of house bill number one hundred sixty, passed at this session of the Legislature, may be put into effect.

[Passed March 9, 1935: in effect ninety days from passage. Became a law without the approval of the Governor.]

Sec. 1. Appropriation from Workmen's Compensation Fund of twenty thousand dollars for fiscal year 1935, and fifty thousand dollars for each of the fiscal years 1936 and 1937, to make effective the provisions of House Bill No. 160 enacted at the regular session, 1935.

Be it enacted by the Legislature of West Virginia:

Section 1. There is hereby appropriated out of funds in the Workmen's Compensation Fund a sum not to exceed twenty thousand dollars for the fiscal year ending June thirtieth, one thousand nine hundred thirty-five, fifty thousand dollars for the fiscal year ending June thirtieth, one thousand nine hundred thirty-six, and fifty thousand dollars for the fiscal year ending June thirtieth, one thousand nine hundred thirty-seven, to provide the personnel and the salaries and expenses for putting into effect the provisions of house bill number one hundred sixty, enacted into law at the regular session, one thousand nine hundred thirty-five, and to make effective the provisions of said bill.

* See chapter seventy-eight, acts of this session.
CHAPTER 13

(Senate Bill No. 58—By Mr. Belknap)

AN ACT to amend and reenact chapter five, acts of the Legislature, first extraordinary session, one thousand nine hundred thirty-three, relating to the appointment of conservators for, and the reorganization of and rehabilitation of banking institutions under the supervision of the banking commissioner.

[Passed February 28, 1935; in effect from passage. Approved by the Governor.]

ARTICLE VIII.

Sec. 43. Conservator of banking institution, appointment, bond, duties, rights and powers; legal relations same as if receiver had been appointed; sworn inventory of assets and list of liabilities of banking institution; filing of list; resumption of business by banking institution; payment to depositors and other creditors by conservator; provisions concerning deposits received by conservator; approval by commissioner of banking of plan for reorganization of banking institution; how business of reorganized institution conducted; publication by conservator of notice of return of deposits; return of deposits to depositors; copies of notice to depositors; powers of governor or commissioner of banking not impaired; rules and regulations by commissioner of banking to carry out provisions of this section.

Be it enacted by the Legislature of West Virginia:

That chapter five, acts of the Legislature of West Virginia, first extraordinary session, one thousand nine hundred thirty-three, be amended and reenacted so as to read as follows:

ARTICLE VIII.

Section 43. Whenever the commissioner of banking shall deem it necessary, in order to conserve the assets of any banking institution for the benefit of the depositors and other creditors thereof, he may appoint a conservator for such banking institution. The conservator may be an employee of the department of banking, and may be required to give such bond and security as the commissioner deems proper.

The conservator, under the direction of the commissioner of banking, shall take possession of the papers, books, records and assets of every description of such banking institution, and take such action as may be necessary to conserve such
assets pending further disposition of the business of such
institutions.
The conservator shall have all the rights, powers and priv-
ileges now possessed by or hereafter given receivers of in-
solvent banking institutions and shall be subject to all the
liabilities, obligations and penalties, not inconsistent with the
provisions of this article, to which receivers are now or may
hereafter become subject.
During the period that such conservator remains in pos-
session of such banking institution, the legal relations of all
parties with respect thereto shall, subject to the other pro-
visions of this section, be the same as if a receiver had been
appointed therefor.
All expenses of any such conservatorship shall be paid out
of the assets of such banking institution and shall be a lien
thereon, which shall be prior to any other lien. The conserva-
tor shall receive a reasonable compensation for his services to
be fixed by the commissioner of banking, but in no event shall
such compensation exceed that paid to employees of the de-
partment of banking for similar services.
(a) Immediately upon taking charge of such banking in-
stitution, the conservator, in conjunction with a representative
of the bank designated by the directors thereof, shall make
in duplicate a complete inventory of all assets and an itemized
list of all liabilities of such institution. The original and
copy of such list shall be subscribed and sworn to by the
persons making the same and the original shall be filed with
the department of banking as soon as practicable, and the
copy shall be retained by the conservator.
(b) If the commissioner of banking becomes satisfied that
such a course of action may be pursued safely and that it will
be in the public interest, he may, in his discretion, terminate
the conservatorship and permit such banking institution to
resume the transaction of its business subject to such terms,
conditions, restrictions and limitations as he may prescribe.
(c) While such banking institution is in the hands of the
conservator, the commissioner of banking may require such
conservator to set aside and make available for withdrawal
by depositors and payment to other creditors, on a ratable
basis, such amounts as in the opinion of the commissioner may
be used safely for this purpose, subject to such priorities and
preferences as are provided by law. The commissioner may, in his discretion, permit the conservator to receive deposits. Such deposits shall not be subject to any limitation as to payment or withdrawal. The deposits shall be segregated and shall not be used either to liquidate any indebtedness of such banking institution existing at the time that the conservator was appointed for it or any subsequent indebtedness incurred for the purpose of liquidating any indebtedness of such banking institution existing at the time such conservator was appointed.

Deposits received while the banking institution is in the hands of a conservator shall: (1) Be kept on hand in cash; or, (2) be deposited with a federal reserve bank or deposited with such banking institution organized under the United States national bank act, or the law of this state as the commissioner of banking may, in his discretion, designate; or, (3) be invested in the direct obligations of the United States or the state of West Virginia or the funded obligations of any political subdivision of this state approved by the commissioner of banking.

(d) In any reorganization of any banking institution under a plan of a kind which, by its own terms or under existing law, requires the consent, as the case may be, (a) of depositors and other creditors; or (b) of stockholders; or (c) of both depositors and other creditors, and stockholders, such reorganization shall become effective only (1) when the commissioner of banking shall be satisfied that the plan of reorganization is fair and equitable to all depositors, other creditors and stockholders, and that the plan is in the public interest and when he shall have approved the plan subject to such conditions, restrictions and limitations as he may prescribe; and (2) when, after reasonable notice of such reorganization, as the case may require, (a) depositors and other creditors of such banking institution representing at least seventy-five per cent in amount of its total deposits and other liabilities; or (b) stockholders owning at least two-thirds in amount of its outstanding capital stock; or (c) both depositors and other creditors representing at least seventy-five per cent in amount of the total deposits and other liabilities and stockholders owning at least two-thirds in amount of its outstanding capital stock, shall, as the plan may require, have consented in writing.
94 to the plan of reorganization. Claims of depositors or other 95 creditors which will be satisfied in full under the plan of 96 reorganization shall not be included among the total deposits 97 and other liabilities of said banking institution in determining 98 the seventy-five per cent thereof as above provided.

99 When such reorganization becomes effective, all books, 100 records, and assets of the bank shall be disposed of in accord- 101 ance with the provisions of the plan and the affairs of the 102 bank shall be conducted by its board of directors in the man- 103 ner provided by the plan and under the conditions, restric- 104 tions and limitations which may have been prescribed by the 105 banking commissioner. In any reorganization which shall have 106 been approved and shall have become effective as provided 107 herein, all depositors and other creditors and stockholders of 108 such bank, whether or not they shall have consented to such 109 plan of reorganization, shall be fully and in all respects sub- 110 ject to and bound by its provisions, and claims of all depositors 111 and other creditors shall be treated as if they had consented 112 to such plan of reorganization.

113 (e) Fifteen days after the affairs of a banking institution 114 shall have been turned back to its board of directors by the 115 conservator, either with or without a reorganization as pro- 116 vided in subsection (d) hereof, the provisions of subsection 117 (c) hereof shall no longer be effective. Before the conservator 118 shall turn back the affairs of the institution to its board of 119 directors he shall publish in a newspaper published in the 120 municipality or county in which such bank is located. and 121 if no newspaper is so published, then in a newspaper of gen- 122 eral circulation in the county in which the bank is located, 123 a notice in form approved by the commissioner, stating the 124 date on which the affairs of the banking institution will be 125 returned to its board of directors and that the said provisions 126 of subsection (c) will not be effective fifteen days after such 127 date. On the date of the publication of such notice the con- 128 servator shall send a copy of such notice by registered mail 129 to the last known address of every person who is a depositor 130 as shown by the records of the institution. The conservator 131 shall send similar notice in like manner to every person making 132 deposit in such institution under subsection (c) after the date 133 of such newspaper publication and before the time when the 134 affairs of the bank are returned to its directors.
135  (f) Nothing in this section shall be construed to impair in
136 any manner any powers of the governor or the commissioner
137 of banking.
138  (g) The commissioner of banking is hereby authorized to
139 prescribe such rules and regulations as he may deem necessary
140 in order to carry out the provisions of this section.

CHAPTER 14

(House Bill No. 254—By Mr. Martin, of Jefferson)

AN ACT to amend and reenact section eighteen, article eight, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as last amended and reenacted by chapter six, acts of the Legislature of West Virginia, first extraordinary session, one thousand nine hundred thirty-three, relating to limitations on loans by banking institutions and to the valuation of securities purchased by them.

(Passed February 25, 1935; in effect from passage. Approved by the Governor.)

Sec. Sec.
18. Limitation on loans by banking institutions; renewal and re-
duction of existing loans; what not included in limitation; pro-
visions as to obligations secured by warehouse receipts and lim-
itations on same; certain federal and state obligations and obligations of corporation own-
ing the building of the bank-
ing institution exempted from provisions of section; collection of obligations in excess of prescribed limitations; penalty for violation of section; loans to officers, directors, etc., of bank-
ing institution; securities pur-
chased by bank, value as en-
tered on books and for divi-
dend purposes.

Be it enacted by the Legislature of West Virginia:

Section 18. The total liabilities to any banking institution
2 of any person, firm or corporation, for money borrowed by
3 note, bond, certificate of indebtedness or other device, including
4 in the liabilities of the firm, the liabilities of the several mem-
5 bers thereof, including in the liabilities of any corporation an
6 investment by such banking institution in the stock of such
7 corporation shall at no time exceed ten per cent of the unim-
8 paired capital stock, including debentures and surplus fund
9 of such banking institution: Provided, however, That such lia-
10 bilities to a banking institution in excess of the maximum herein
11 provided, outstanding at the date this act takes effect, but not
12 exceeding twenty per cent of the unimpaired capital stock, in-
13 cluding debentures and surplus fund of such banking institu-
14 tion, may be renewed, refunded or extended until December
15 thirty-first, one thousand nine hundred thirty-six; at such time
16 the limit of such liabilities to such banking institution shall be
17 reduced to fifteen per cent of such unimpaired capital stock,
18 debentures and surplus fund of such banking institution and
19 such limit may continue until December thirty-first, one thou-
20 sand nine hundred thirty-seven; after which time such limit
21 shall be reduced so that it will not exceed ten per cent of such
22 unimpaired capital stock, debentures and surplus fund of such
23 banking institution. But the discount of commercial or business
24 paper actually owned by the person, firm or corporation nego-
25 tiating the same shall not be considered as money borrowed
26 within the limitation of this section; and the obligations of any
27 person, firm or corporation, in the form of notes or drafts
28 secured by shipping documents, warehouse receipts or other such
29 documents transferring or securing title covering readily mar-
30 ketable nonperishable staples when such property is fully cov-
31 ered by insurance, if it is customary to insure such staples, shall
32 be considered money borrowed within the meaning of this section
33 but shall be subject to the exception that with respect thereto
34 the limitation of ten per cent of the unimpaired capital stock,
35 including debentures and surplus fund, to which reference has
36 hereinbefore been made, may be increased to twenty-five per cent
37 when the market value of such staples securing such obligations
38 is not at any time less than one hundred and fifteen per cent of
39 the face amount of such obligations, and may be increased up
40 to fifty per cent of such unimpaired capital stock, including
41 debentures and surplus fund, with a corresponding increase in
42 market value of such staples securing such obligation up to not
43 less than one hundred and forty per cent of the face amount of
44 such additional obligation, but this exception shall not apply to
45 obligations of any one person, firm or corporation arising from
46 the same transaction and/or secured upon the identical staples
47 for more than ten months. This section shall not apply to the
48 obligations of the United States or general obligations of any
49 state or of any political subdivisions thereof, or obligations is-
sued under authority of the Federal Farm Loan Act, as amended, or issued by the Federal Home Loan Bank, or the Home Owners Loan Corporation. Neither shall this section apply to the obligations of a corporation owning the building in which the banking institution is located, when such banking institution has an unimpaired capital and surplus of not less than one million dollars, or when approved in writing by the commissioner of banking. Nothing herein shall be construed to forbid the sale upon credit of a bank building owned by a banking institution at the time this act takes effect.

Indebtedness to a banking institution in excess of the maximum prescribed in this section, outstanding at the date this act takes effect, shall not be renewed, refunded or otherwise extended for a period longer than the limitation provided by this section. Not later than May first, one thousand nine hundred thirty-seven, every banking institution shall proceed to collect such indebtedness by appropriate proceedings to enforce security of personal liability. Violation of this section shall be a misdemeanor and shall be punishable under the provisions of section thirty-nine of this article.

No officer, director, clerk or other employee of any banking institution or the commissioner of banking or any employee of the department of banking shall borrow, directly or indirectly, from the banking institution with which he is connected, or is subject to his examination, any sum of money without the written approval of a majority of the board of directors or discount committee thereof filed in its office, or embodied in a resolution adopted by a majority vote of such board, exclusive of the director to whom the loan is made. If an officer, director, clerk or other employee of any bank shall own or control a majority of the stock of any other corporation, a loan to such corporation shall, for the purpose of this section, constitute a loan to such officer, director, clerk or other employee.

Securities purchased by a banking institution shall be entered upon the books of the bank at actual cost but may be carried thereafter at market value. For the purpose of calculating the undivided profits applicable to the payment of dividends, securities shall not be estimated at a valuation exceeding their present cost as determined by amortization; that is, by deducting from the cost of a security purchased at a premium, and charging to
90 profit and loss a sum sufficient to bring it to par at maturity, 91 or adding to the cost of a security purchased at a discount, 92 and crediting to profit and loss a sum sufficient to bring it to 93 par at maturity.

CHAPTER 15

(House Bill No. 301—By Mr. Lantz, by request)

AN ACT to exempt banking institutions from furnishing security for any deposits to the extent such deposits are insured under section twelve-(b) of the federal reserve act, as amended.

[Passed February 28, 1935; in effect from passage. Approved by the Governor.]

Sec. 1. Security for deposits insured under section twelve-(b) of the federal reserve act, as amended, not required.

Sec. 2. Conflicting laws repealed.

Be it enacted by the Legislature of West Virginia:

Section 1. Notwithstanding any provision of law of this state or of any political subdivision thereof requiring security for deposits in the form of collateral, surety bond or in any other form, security for such deposits shall not be required to the extent said deposits are insured under the provisions of section twelve-(b) of the federal reserve act, as amended, or any amendments thereto.

Sec. 2. All laws or parts of laws in conflict herewith are hereby repealed.

CHAPTER 16

(House Bill No. 302—By Mr. Lantz, by request)

AN ACT authorizing banking institutions to issue and sell capital notes or debentures; subordinating same to other claims; construing the term “capital” as used in the banking laws
to embrace the amount of capital notes and debentures outstanding and sold to the Reconstruction Finance Corporation; providing that the capital stock of a banking institution shall be deemed unimpaired when the amount of said capital notes or debentures as represented by cash or sound assets exceeds any impairment as found by the state banking commissioner; requiring any existing deficiency in capital to be paid in cash before retiring said capital notes or debentures; exempting them from assessment and the holders of same individually from any obligations of such institutions and from any assessments to restore impairment of their capital.

[Passed February 28, 1935; in effect from passage. Approved by the Governor.]

Sec. 1. With approval of banking commissioner, directors of bank may sell its capital notes or debentures; subordinated to claims of depositors and may be subordinated to claims of other creditors; definition of “capital” and when deemed unimpaired; before capital notes paid existing deficiency of capital to be paid in cash; not subject to assessment; holders not individually responsible for debts, etc., of bank and not liable for assessments to restore impairment in capital.

Be it enacted by the Legislature of West Virginia:

Section 1. With the approval of the state banking commissioner any banking institution may at any time through action of its board of directors and without requiring any action of its stockholders issue and sell its capital notes or debentures. Such capital notes or debentures shall be subordinate and subject to the claims of depositors and may be subordinated and subjected to the claims of other creditors.

The term "capital" as used in the laws of this state relating to banking shall be construed to embrace the amount of outstanding capital notes and debentures legally issued by any banking institution and sold by it to the Reconstruction Finance Corporation. The capital stock of any such banking institution may be deemed to be unimpaired when the amount of such capital notes and debentures as represented by cash or sound assets exceeds the impairment as found by the state banking commissioner. Before any such capital notes or debentures are retired or paid by the bank any existing deficiency of its capital (disregarding the notes or debentures to be re-
19) must be paid in cash, to the end that the sound capital 
20 assets shall at least equal the capital stock of the bank. 
21 Such capital notes or debentures shall in no case be subject 
22 to any assessment. The holders of such capital notes or de-
23 bentures shall not be held individually responsible as such 
24 holders for any debts, contracts, or engagements of such in-
25 stitution, and shall not be held liable for assessments to restore 
26 impairments in the capital of such institution.

Sec. 2. All laws or parts of laws in conflict herewith are 
2 hereby repealed.

CHAPTER 17

(John Bill No. 303—By Mr. Lantz, by request)

AN ACT to authorize any bank, trust company, bank and trust 
company, banking association, stock savings bank or mutual 
savings bank now or hereafter organized under the laws of 
this state or the conservator, receiver or liquidator thereof, to 
enter into such contracts, incur such obligations and generally 
to do such acts as may be appropriate or necessary to take ad-
vantage of any and all memberships, loans, subscriptions, 
contracts, grants, rights or privileges which may, at any time, 
be available or inure to said banking institutions or their 
depositors or stockholders, or their conservators, liquidators, 
or receivers, by virtue of any acts or resolution of the Congress 
of the United States to aid, regulate or safeguard banking in-
stitutions and depositors, including the act creating the Fed-
eral Deposit Insurance Corporation; to empower any such 
banking institution to subscribe to and acquire any stock or de-
bentures or bonds or other types of securities of said cor-
poration and to comply with its regulations and requirements; 
to authorize the appointment of the Federal Deposit Insurance 
Corporation as receiver or liquidator of any such insured 
closed banking institution, and to authorize said corporation 
to do any and all things appropriate in the sale or acquirement
of the assets of such institutions and in the liquidation of same; to make loans to same and to its receivers and liquidators and the state banking commissioner therefor; to provide for the subrogation of said corporation to the rights against said closed institutions of all insured depositors, whose deposits have been paid, or for the payment of which funds have been made available; to recognize right of said corporation to make examinations of and to require reports from such institution, and the state banking commissioner to accept same in lieu of any examination or report authorized to be made to said official; to provide for disclosure by said state banking commissioner to said corporation of the condition and affairs of such insured institution and access to information regarding same; to provide for the vesting of title in said corporation of assets of such closed institutions and the right for the corporation, as receiver or liquidator, to enforce the individual liability of stockholders and directors thereof.

(Passed March 2, 1935; in effect from passage. Became a law without the approval of the Governor.)

Sec. 1. Banking institution defined.

Sec. 2. State banking institution authorized to enter into such contracts, etc., necessary to take advantage of section twelve-(b), federal reserve act, as amended, etc.

Sec. 3. When federal deposit insurance corporation may act, without bond, as receiver or liquidator of closed state banking institution; powers and duties as such receiver or liquidator.

Sec. 4. When federal deposit insurance corporation subrogated to rights of owners of deposits insured and paid by it.

Sec. 5. When examination and reports made by or to federal deposit insurance corporation may be accepted by state banking commissioner in lieu of state examinations or reports; copies.

Sec. 6. Receiver or liquidator of state bank, with consent of banking commissioner may borrow from corporation and furnish assets of banks as security; when court order required: section not to limit present powers to pledge or sell assets.

Sec. 7. When deposit insurance corporation is receiver, title to all assets of bank passes to it without execution of assignment, etc.

Sec. 8. If provision of act invalid, other provisions not affected.

Sec. 9. Conflicting laws repealed.

Be it enacted by the Legislature of West Virginia:

Section 1. The term "banking institution", as used in this act shall be construed to mean any bank, trust company, bank and trust company, stock savings bank or mutual savings bank, which is now or may hereafter be organized under the laws of this state.
Sec. 2. Any banking institution now or hereafter organized under the laws of this state is hereby empowered, on the authority of its board of directors, or a majority thereof, to enter into such contracts, incur such obligations and generally to do and perform any and all such acts and things whatsoever as may be necessary or appropriate in order to take advantage of any and all memberships, loans, subscriptions, contracts, grants, rights or privileges, which may at any time be available or inure to banking institutions or to their depositors, creditors, stockholders, conservators, receivers or liquidators, by virtue of those provisions of section eight of the federal "Banking Act of one thousand nine hundred thirty-three" (section twelve-(b) of the federal reserve act, as amended,) which establish the Federal Deposit Insurance Corporation and provide for the insurance of deposits, or of any other provisions of that or of any other act or resolution of Congress to aid, regulate or safeguard banking institutions and their depositors, including any amendments of the same or any substitutions therefor; also, to subscribe for and acquire any stock, debentures, bonds or other types of securities of the Federal Deposit Insurance Corporation and to comply with the lawful regulations and requirements from time to time issued or made by such corporation.

Sec. 3. The Federal Deposit Insurance Corporation created by section eight of the federal "Banking Act of one thousand nine hundred thirty-three" (section twelve-(b) of the federal reserve act, as amended) is hereby authorized and empowered to be and act without bond as receiver or liquidator of any banking institution, the deposits in which are to any extent insured by said corporation, and which shall have been closed on account of inability to meet the demands of its depositors. The appropriate state authority having the right to appoint a receiver or liquidator of a banking institution, may in the event of such closing tender to said corporation the appointment as receiver or liquidator of such banking institution, and if the corporation accepts said appointment, the corporation shall have and possess all the powers and privileges provided by the laws of this state with respect to a receiver or liquidator respectively of a banking institution, its depositors and other creditors, and be subject to all the duties of such receiver or liquidator, except in so far as such powers, privileges or duties are in conflict with the provisions of
Sec. 4. Whenever any banking institution shall have been closed as aforesaid, and said Federal Deposit Insurance Corporation shall pay or make available for payment the insured deposit liabilities of such closed institution, the corporation, whether or not it shall have become receiver or liquidator of such closed banking institution, as herein provided, shall be subrogated to all rights against such closed banking institution of the owners of such deposits in the same manner and to the same extent as subrogation of the corporation is provided for in subsection (one) of section twelve-(b) of said federal reserve act, as amended (being section eight of said "Banking Act of one thousand nine hundred thirty-three") in the case of closing of a national bank: Provided, That the rights of depositors and other creditors of such closed institution shall be determined in accordance with the applicable provisions of the laws of this state.

Sec. 5. The state banking commissioner is authorized to accept in his discretion in lieu of any examination authorized by the laws of this state to be conducted by his department of a banking institution the examination that may have been made of same within a reasonable period by the Federal Deposit Insurance Corporation provided a copy of said examination is furnished to said state banking commissioner. Said state banking commissioner may, also, in his discretion accept any report relative to the condition of a banking institution which may have been obtained by said corporation within a reasonable period, in lieu of a report authorized by the laws of this state to be required of such institution by his department, provided a copy of such report is furnished to said state banking commissioner.

Said state banking commissioner may furnish to said corporation, or to any official or examiner thereof, a copy or copies of any or all examinations made of any such banking institution and of any or all reports made by same, and shall give access to and disclose to said corporation or any official or exami-
iner thereof any and all information possessed by the office of said state banking commissioner with reference to the conditions or affairs of any such insured institution.

Nothing in this section shall be construed to limit the duty of any banking institution in this state, deposits in which are to any extent insured under the provisions of section eight of the "Banking Act of one thousand nine hundred thirty-three" (section twelve-(b) of the federal reserve act, as amended) or of any amendment of or substitution for the same, to comply with the provisions of said act, its amendments or substitutions, or the requirements of said corporation relative to examinations and reports, nor to limit the powers of the state banking commissioner with reference to examinations and reports under existing law.

Sec. 6. With respect to any banking institution, which is now or may hereafter be closed on account of inability to meet the demands of its depositors or by action of the state banking commissioner or of a court or by action of its directors or in the event of its insolvency or suspension, the state banking commissioner and/or the receiver or liquidator of such institution with the permission of said state banking commissioner may borrow from said corporation and furnish any part or all of the assets of said institution to said corporation as security for a loan from the same: Provided, That where said corporation is acting as such receiver or liquidator, the order of a court of record of competent jurisdiction shall be first obtained approving such loan. Said state banking commissioner upon the order of a court of record of competent jurisdiction, and upon a like order and with the permission of said state banking commissioner the receiver or liquidator of any such institution may sell to said corporation any part or all of the assets of such institution.

The provisions of this section shall not be construed to limit the power of any banking institution, the state banking commissioner or receivers or liquidators to pledge or sell assets in accordance with any existing law.

Sec. 7. Upon the acceptance of the appointment of receiver or liquidator aforesaid by said corporation, the possession of and title to all the assets, business and property of such banking institution of every kind and nature shall pass to and vest in
5 said corporation and without the execution of any instruments
6 of conveyance, assignment, transfer or endorsement.

Sec. 8. The validity of any provision or part of this act
2 shall not be dependent upon any other provision or part there-
3 of. If any provision or part thereof should for any reason
4 be held unconstitutional or invalid such decision shall not af-
5 fect the validity of any of the remaining provisions or parts
6 of this act.

Sec. 9. All laws or parts of laws in conflict herewith are
2 hereby repealed.

CHAPTER 18

(House Bill No. 443—By Mr. Lantz)

AN ACT to amend article one, chapter twelve of the code of West
Virginia, one thousand nine hundred thirty-one, relating to
state depositories, by adding thereto a new section fourteen
relating to the temporary investment of surplus funds and
the designation of out-of-state depositories for surplus funds.

[Passed March 9, 1935; in effect from passage. Approved by the Governor.]

Sec. 14. Whenever the receipts of the treasury shall ex-
ceed the ordinary demands thereon and shall create a temporary
surplus greater than one million dollars, and it appears that
such surplus will continue for as much as one month, the treas-
urer, with the approval in writing of the board of public works,
may invest such surplus in bonds or obligations of the United
7 States or for which both principal and interest are guaranteed
8 by the United States, or of the state of West Virginia, or of
9 any political subdivision thereof; and the treasurer may there-
10 after, with like approval of the board of public works, sell such
11 investments in whole or in part, whenever it appears that a
12 present need for such funds exists.
13 Whenever the funds in the treasury exceed the amount for
14 which depositories within the state have qualified, or the de-
15 positories within the state which have qualified are unwilling
16 to receive larger deposits, the board of public works may desig-
17 nate depositories without the state, and when such depositories
18 without the state shall have qualified by giving bond of the
19 character provided by clause (a) (surety company) or clause
20 (c) (collateral) as prescribed in section two of this article, the
21 treasurer may deposit funds therein in like manner as funds
22 are deposited in depositories within the state under this article.

CHAPTER 19

(House Bill No. 366—By Mr. Van Sickler)

AN ACT authorizing the issuance and sale of not exceeding ten
million dollars of road bonds of the State of West Virginia
to raise money for road construction purposes under and by
virtue of the “‘Good Roads Amendment’” to the constitution
adopted at the general election held in November, one thou-
sand nine hundred twenty; to provide for the distribution
and expenditure of the proceeds of sale thereof, and to pro-
vide for the levy and collection of an annual state tax and
other revenue sufficient to pay semi-annually the interest
on said bonds and the principal thereof within twenty-five
years.

[Passed March 7, 1935: In effect from passage. Approved by the Governor.]

Sec.
1. Issue of ten million dollars in
   state road bonds authorized in
   such amounts, denominations,
   etc., as the governor may deter-
   mine; payable serially in equal
   amounts from one to twenty-
   five years; not to issue until
   equal or greater amount of ex-
   isting road bonds retired.
2. Transfer of registered bonds;
Be it enacted by the Legislature of West Virginia:

Section 1. That bonds of the state of West Virginia of the par value of ten million dollars are hereby authorized to be issued and sold for the purpose of raising funds for assisting in building and constructing the system of state roads and highways provided for by the constitution. Said bonds may be issued by the governor in such amounts, in coupon or registered form, in such denominations, at such times and bearing such date or dates as the governor may determine, and shall become due and payable serially in equal amounts beginning one year and ending twenty-five years from the date thereof:

Provided, however, That no bonds may be issued under the provisions of this act until bonds authorized and issued under the provisions of the "Good Roads Amendment" to the constitution of said state, ratified at the general election held in November, one thousand nine hundred twenty, have been retired and cancelled out of the state road sinking fund created by section six, chapter one hundred thirteen, acts of the Legislature of West Virginia, one thousand nine hundred twenty-one, in an amount equal to or greater than the amount to be issued hereunder at any one time.

Sec. 2. The auditor and treasurer are authorized to arrange for the transfer of registered bonds and for each such transfer a fee of fifty cents shall be charged by and paid to the state of West Virginia, to the credit of the state road sinking fund. Bonds taken in exchange will be cancelled by the auditor and treasurer and be carefully preserved by the treasurer. The treasurer shall make provisions for registering payable to bearer bonds and for each bond registered a fee of fifty cents shall likewise be charged by and paid to the state
of West Virginia, to the credit of the state road sinking fund.
All of such bonds shall be payable at the office of the treasurer
of the state of West Virginia, or, at the option of the holder,
at some designated bank in the city of New York to be desig-
nated by the governor. Said bonds shall bear interest at a
rate not exceeding four and one-half per cent per annum,
payable semi-annually, on the first day of
the first day of , of each year, to bearer,
at the office of the treasurer of the state of West Virginia, at
the capitol of said state, or at the bank designated by the gov-
ernor, upon presentation and surrender of interest coupons then
due, in the case of coupon bonds. In the case of registered
bonds the treasurer of the state of West Virginia shall issue
his check for the interest then due on the first day of
and of each year, and mail the same to the reg-
istered owner at his address as shown by the record of registra-
tion. Both the principal and interest of said bonds shall be
payable in lawful money of the United States of America and
said bonds shall be exempt from taxation by the state of West
Virginia, or by any county, district, or municipality thereof,
which fact shall appear on the face of the bonds as part of
the contract with the holder thereof.

Sec. 3. Said bonds and coupons shall be engraved and the
bonds shall be signed, on behalf of the state of West Virginia,
by the treasurer thereof, under the great seal of the state,
countersigned by the auditor of the state, and shall be in
the following form or to the following effect, as nearly as may
be, namely:

COUPON ROAD BOND
(Or registered Road Bond, As The Case May Be)

OF THE
STATE OF WEST VIRGINIA

The State of West Virginia, under and by virtue of authority
of an act of its Legislature passed at the regular session of one
thousand nine hundred thirty-five, on the day of
one thousand nine hundred thirty-five, and approved by the
governor on the day of , one thousand
nine hundred thirty-five, which is hereby made a part hereof
as fully as if set forth at length herein, acknowledged itself
STATE ROAD BONDS

19 to be indebted to, and hereby promise to pay to the bearer
20 hereof (in the case of a coupon bond) or to
21 or assigns, (the owner of record, in case of registered bonds)
22 years after the date of this bond, to-wit: On the
23 day of , 19 , in lawful money of the United
24 States of America at the office of the Treasurer of the State
25 of West Virginia, at the capitol of said state, or at the option
26 of the holder at bank in the City of
27 New York, the sum of dollars, with interest
28 thereon at per cent per annum from date, payable
29 semi-annually in like lawful money of the United States of
30 America at the Treasurer’s office or bank aforesaid, on the
31 first day of and the first day of
32 of each year, (and in the case of coupon bonds) according to
33 the tenor of the annexed coupons, bearing the engraved fac-
34 simile signature of the Treasurer of the State of West Virginia,
35 upon surrender of such coupons. This bond (in the case of a
36 coupon bond) may be exchanged for a registered bond of like
37 tenor upon application to the Treasurer of the State of West
38 Virginia.
39 To secure the payment of this bond, principal sum and in-
40 terest, when other funds and revenues sufficient are not avail-
41 able for that purpose, it is agreed that, within the limits pre-
42 scribed by the constitution, the board of public works of the
43 State of West Virginia shall annually cause to be levied and col-
44 lected an annual state tax on all property in the state, until said
45 bond is fully paid, sufficient to pay the annual interest on said
46 bond and the principal sum thereof within the time this bond
47 becomes due and payable.
48 This bond is hereby made exempt from any taxation by the
49 State of West Virginia, or by any county, district or municipal
50 corporation thereof.
51 In testimony whereof, witness the signature of
52 Treasurer of the State of West Virginia, and the countersigna-
53 ture of , the Auditor of said State hereto affixed
54 according to law, dated the day of , one thou-
55 sand nine hundred , and the seal of the State
56 of West Virginia.
57 (S E A L)
58 Treasurer of the State of West Virginia
Sec. 4. The form of coupons shall be substantially as follows, to-wit:

STATE OF WEST VIRGINIA

On the first day of , 19 , the State of West Virginia will pay to the bearer, in lawful money of the United States of America, at the office of the Treasurer of the State, or at the option of the holder at bank in the City of New York, the sum of dollars, the same being semi-annual interest on Road Bond No. , series of one thousand nine hundred Treasurer of the State of West Virginia

The signature of the treasurer to said coupon shall be by his engraved facsimile signature and the coupons shall be numbered in the order of their maturity, from number one consecutively. Said bonds and coupons may be signed by the present treasurer and auditor, or by any of their respective successors in office; and bonds signed by the persons now in office may be sold by the governor or his successor in office without being signed by the successor in office of the present treasurer or auditor.

Sec. 5. All coupon and registered bonds issued under this act shall be separately listed by the auditor of the state in books provided for the purpose, in each case giving the date, number, character and amount of obligations issued, and in case of registered bonds, the name and post office address of the person, firm or corporation registered as the owner thereof.

Sec. 6. Into the state road sinking fund shall be paid all moneys received from the annual state tax levy on the taxable property in the state levied under the provisions of this act, from any and all appropriations made by the state from other sources for the purposes of paying the interest on said bonds or paying off and retiring same, from fines, forfeitures and penalties, if any made applicable by law for the payment of said bonds or the interest thereon, from transfer fees as herein provided, and
from any source whatsoever, which is made liable by law for the
payment of the principal of said bonds or the interest thereon.
All such funds shall be kept by the treasurer in a separate
account, under the designation aforesaid, and all money belon-
ging to said fund shall be deposited in the state treasury to
the credit thereof.
Said fund shall be applied by the treasurer of the state, first to
the payment of the semi-annual interest on said bonds as it
shall become due as herein provided. The remainder of said
fund shall be turned over by the state treasurer to the state
sinking fund commission, whose duty it shall be to invest the
same in the bonds of the government of the United States, the
bonds of the state of West Virginia, or any political sub-
division thereof: Provided, however, That bonds so purchased
by the state sinking fund commission shall mature so as to pro-
vide sufficient money to pay off all bonds herein provided to be
issued as they may become due; and the money so paid into the
said state road sinking fund under the provisions of this act
shall be expended for the purpose of paying the interest and
principal of the bonds hereby provided for, and for no other
purpose except that said fund may be invested until needed,
as herein provided.

Sec. 7. In order to provide the revenue necessary for the pay-
ment of the principal and interest of said bonds, as hereinbefore
provided, the board of public works within the limits prescribed
by the constitution, is authorized, empowered and directed to
lay annually a tax upon all real and personal property subject
to taxation within this state, sufficient to pay interest on said
bonds accruing during the current year and one twenty-fifth of
the total issue (at par value) of said bonds, for such number
of years, not exceeding twenty-five, as may be necessary to pay
the interest thereon and to pay off the principal sum of said
bonds; and said taxes, when so collected, shall not be liable for
or applicable to any other purpose: Provided, however, That
if there be other funds in the state treasury, or in the state road
funds, in any fiscal year, not otherwise appropriated, or if other
sources of revenue be hereafter provided by law for the purpose,
the board of public works is authorized, empowered and directed
to set apart, in any year there be such funds, or other sources
of revenue provided for such purpose, a sum sufficient to pay
19 the interest on bonds accruing during the current year, and to
20 pay off and retire the principal of said bonds, or any part
21 thereof, at maturity.
22 The authority hereby vested in the board of public works shall
23 be in addition to the authority now vested in it by present
24 law.

Sec. 8. The governor shall sell all bonds herein mentioned at
such time or times as he may determine necessary to provide
funds for road construction purposes, as herein provided, upon
recommendation of the state road commission. All sales shall
be at not less than par and accrued interest. Registered bonds
shall bear interest only from the date of delivery. All interest
coupons becoming payable prior to said sale date shall be can­
celled by the treasurer and rendered ineffective before the
delivery of the bonds so sold.

Sec. 9. The proceeds of all sales of bonds herein authorized
shall be paid into the state road fund created by section one,
article three, chapter forty, acts of the Legislature, first extraor-
dinary session, one thousand nine hundred thirty-three; and the proceeds from the sale of said bonds shall be expended
as provided by section six, article three, chapter forty, acts of
the Legislature, first extraordinary session, one thousand nine
hundred thirty-three.

Sec. 10. The plates from which the bonds authorized by this
act are engraved shall be the property of the state of West
Virginia.

Sec. 11. The state auditor shall be the custodian of all unsold
bonds issued pursuant to the provisions of this act.

Sec. 12. The governor may authorize the issuance of interim
certificates to be issued to the purchasers of said bonds to be
held by them in lieu of engraved bonds. When said interim
certificates are so issued, they shall become full and legal obliga-
tions of the state of West Virginia under all of the provisions
of this act just as fully and completely as the engraved and
permanent bonds.

Sec. 13. All necessary expenses incurred in the execution of
this act shall be paid out of any money in the treasury of the
state of West Virginia, not otherwise appropriated, on warrants
of the auditor of the state drawn on the state treasurer.
CHAPTER 20

(House Bill No. 394—By Mr. Thomas)

AN ACT authorizing the execution, issuance and sale of not exceeding two million nine hundred eighteen thousand dollars of bonds of the state of West Virginia for the purpose of refunding the outstanding bonds of the state of West Virginia issued for the payment of West Virginia's part of the public debt of the commonwealth of Virginia prior to the first day of January, one thousand eight hundred sixty-one, in accordance with chapter ten, acts of the Legislature of West Virginia, extraordinary session, one thousand nine hundred nineteen, which have become or are becoming due and payable, and for the discharge of which there are or will be when the bonds mature no funds or insufficient funds available, or which are to be presented for payment before maturity by the exercise of option provisions or by agreement with the holders thereof; to provide for the application of the proceeds thereof, and to provide for the levy and collection of revenues sufficient to pay semi-annually the interest on said bonds and the principal thereof within four years.

[Passed March 7, 1935; in effect from passage. Approved by the Governor.]

Be it enacted by the Legislature of West Virginia:

Section 1. That bonds of the state of West Virginia, in an
aggregate amount not exceeding two million nine hundred eighteen thousand dollars, are hereby authorized to be issued and sold for the purpose of refunding the outstanding bonds of the state of West Virginia issued for the payment of West Virginia's part of the public debt of the Commonwealth of Virginia prior to the first day of January, one thousand eight hundred sixty-one, in accordance with chapter ten, acts of the Legislature of West Virginia, extraordinary session, one thousand nine hundred nineteen, which have become or are becoming due and payable, and for the discharge of which there are or will be when the bonds mature no funds, or insufficient funds, available; and in like manner such refunding bonds are hereby authorized to be issued and sold for the purpose of refunding outstanding bonds not due when such outstanding bonds are to be presented for payment before maturity by the exercise of option provisions or by agreement with the holders thereof. Said bonds shall be of the par value of not exceeding two million nine hundred eighteen thousand dollars, dated the first day of January, one thousand nine hundred thirty-five, or such other date as the governor may determine, and shall become due and payable serially beginning the first day of July, one thousand nine hundred thirty-six, and ending the first day of July, one thousand nine hundred thirty-nine, and may be either coupon or registered bonds, in such denominations as the governor may determine. The amount payable in each year may be so fixed that when the annual interest is added to the principal amount to be paid the total amount payable in each year in which part of the principal is payable shall be as nearly equal as practicable, or, such bonds may be payable in annual instalments beginning one year after the date thereof, each instalment being as nearly equal in principal amount as may be practicable. It shall be an immaterial variance if the difference between the largest and smallest amounts or principal and interest for any year during the term of the bonds shall not exceed three per cent of the total authorized issue.

Sec. 2. The treasurer shall make provisions for registering coupon or 'payable to bearer' bonds, and for each bond so registered a fee of fifty cents shall be charged and paid to the state of West Virginia to the credit of the 'Virginia Debt Refunding bonds of one thousand nine hundred thirty-five, sink-
ing fund". Coupon bonds exchanged for registered bonds shall
be cancelled by the treasurer and auditor and be preserved
by the treasurer.

All bonds issued hereunder shall be payable at the office of
the treasurer of the state of West Virginia, or, at the option
of the holder, at some bank in the City of New York designated
by the governor. Said bonds shall bear interest at a rate not
exceeding three per cent per annum, payable semi-annually
on the first day of January and the first day of July of each
year, to bearer, at the office of the treasurer of the state of
West Virginia, at the capitol of said state, or at the bank in
the City of New York designated by the governor, and, in case
of coupon bonds, upon presentation and surrender of interest
coupons then due. In the case of registered bonds, the treas-
urer of the state shall issue his check for interest payments
when due on the first day of January and July of each year,
and mail the same to the registered owner at his address, as
shown by the record of the registration of said bond or bonds.

Both principal and interest of said bonds shall be payable in
lawful money of the United States. All said bonds shall be ex-
empt from taxation by the state of West Virginia, or by any
county, district or municipality thereof, which fact shall ap-
pear on the face of the bonds as part of the contract of the
holder thereof with the state.

Sec. 3. Said bonds and coupons shall be engraved, and the
bonds signed, on behalf of the state of West Virginia, by the
treasurer thereof, under the great seal of the state, and
countersigned by the auditor of the state, and shall be in the
following form or to the following effect, as nearly as may
be, namely:

COUPON REFUNDING BOND, SERIES OF 1935
(or Registered Refunding Bond, Series of 1935, as the case may
be) of the

STATE OF WEST VIRGINIA

$ No.

KNOW ALL MEN BY THESE PRESENTS that the State
of West Virginia, under and by virtue of the authority vested
in said State by an Act of its Legislature, passed at a
session held in the year one thousand nine hundred thirty-five,
on the day of , one thousand nine
17 hundred thirty-five, and approved by the governor on the
18 day of , one thousand nine hundred thirty-
19 five, which said act is hereby made a part hereof, as fully as if
20 set forth at length herein, acknowledges herself to be indebted
21 to and hereby promises to pay to the bearer hereof (in the case
22 of a coupon bond) or to , or assigns (the owner
23 of record, in case of registered bonds), years after
24 the date of this bond, to-wit: On the day of ,
25 one thousand nine hundred , in lawful money of the
26 United States of America, at the office of the treasurer of the
27 State of West Virginia, at the capitol of said state, or at the
28 option of the holder at Bank in the
29 City of New York, the sum of dollars, with
30 interest thereon at per cent per annum from date, pay-
31 able semi-annually in lawful money of the United States of
32 America, at the treasurer's office, or bank aforesaid, on the
33 first day of January, and the first day of July of each year
34 (and in the case of coupon bonds), according to the tenor of
35 the annexed coupons, bearing the engraved facsimile signa-
36 ture of the treasurer of the state of West Virginia, upon sur-
37 render of such coupons. This bond (in the case of a coupon
38 bond) may be exchanged for a registered bond of like tenor
39 upon application to the treasurer of the state of West Virginia.
40 To secure the payment of this bond, principal sum and in-
41 terest, when other funds and revenues sufficient are not avail-
42 able for that purpose, it is agreed that the board of public
43 works of the State of West Virginia shall annually cause to be
44 levied and collected an annual state tax on all property in the
45 state, until said bond is fully paid, sufficient to pay the annual
46 interest on said bond and the principal sum thereof within the
47 time this bond becomes due and payable.
48 This bond is hereby made exempt from any taxation by the
49 state of West Virginia, or by any county, district or municipal
50 corporation thereof.
51 In testimony whereof, witness the signature of ,
52 treasurer of the State of West Virginia, and the counter-signa-
53 ture of , the auditor of said state hereto affixed
54 according to law, dated the first day of , one
55 thousand nine hundred thirty-five, and the great seal of the
56 State of West Virginia.
57 (GREAT SEAL)
VIRGINIA DEBT BONDS

Treasurer of the State of
West Virginia.

Countersigned:

Auditor of West Virginia.

Sec. 4. The form of coupon shall be substantially as follows, to-wit:

STATE OF WEST VIRGINIA

Bond No. Coupon No.

On the first day of, one thousand nine hundred , the state of West Virginia will pay to the bearer, in lawful money of the United States, at the office of the treasurer of the state, or at the option of the holder at bank in the city of New York, the sum of dollars, the same being semi-annual interest on bond number , series of one thousand nine hundred thirty-five.

The signature of the treasurer to said coupons shall be his engraved facsimile signature and the coupons shall be numbered in the order of their maturity, from number one, consecutively.

Sec. 5. All coupons and registered bonds issued under this act shall be listed by the auditor of the state in books provided for the purpose, in each case giving the date, number, character and amount of obligations issued, and in case of registered bonds, the name and postoffice address of the person, firm or corporation registered as the owner thereof.

Sec. 6. Into a fund designated the “Virginia Debt Refunding Bonds of 1935, Sinking Fund” shall be paid all moneys received from the annual state tax levy on the taxable property in the state levied under the provisions of this act, all moneys received from any and all appropriations made by the state from other sources of revenue for the purpose of paying the interest on said bonds, or the principal thereof, as herein provided, and from transfer fees as herein provided, and from any source whatsoever, which is made liable by law for the payment of the principal of said bonds or the interest thereon. All such funds shall be kept by the treasurer in a separate account, under
12 the designation aforesaid, and all moneys belonging to said
13 fund shall be deposited in the state treasury to the credit there-
14 of and used for no other purpose than as herein provided.

Sec. 7. In order to provide the revenue necessary for the
2 payment of the principal and interest of said bonds as herein
3 provided the board of public works is authorized, empowered
4 and directed, to lay annually a tax on all real and personal
5 property subject to taxation within the state, sufficient to pay
6 the interest on said bonds accruing and the principal of bonds
7 maturing during any current year, for such number of years
8 not exceeding four as may be deemed necessary to pay the
9 interest thereon and to pay off the principal sum of said bonds;
10 and said taxes, when so levied and collected, shall not be liable
11 for or applicable to any purpose other than paying the indebt-
12 edness of the state as herein provided: Provided, however, That
13 the board of public works is hereby authorized, empowered and
14 directed, and upon its failure so to do may be required by the
15 holder of any bond issued hereunder, or by any taxpayer, to set
16 apart in any current year funds collected for general revenue
17 purposes from whatsoever source of taxation derived, a sum suf-
18 ficient to pay the interest on bonds accruing during such current
19 year and to pay off and retire the principal of said bonds or any
20 part thereof, at maturity.

The authority hereby vested in the board of public works
22 shall be in addition to the authority now vested in it by present
23 law.

Sec. 8. The governor shall sell the bonds herein provided
2 for at such time or times as he may determine necessary, and
3 the rate of interest on the bonds shall be fixed at the time of
4 the sale thereof, not to exceed the rate hereinabove provided.
5 From the proceeds of the sale or sales of bonds authorized to be
6 issued and sold under the authority of this Act, there shall be
7 credited to the "Virginia Debt Sinking Fund" heretofore cre-
8 ated, an amount equal to the par value of all bonds so issued
9 and sold, and any balance remaining from any such sale shall
10 be credited to the "Virginia Debt Refunding Bonds of 1935,
11 Sinking Fund," herein provided.

Sec. 9. The governor may authorize the issuance of interim
2 certificates to the purchasers of said bonds to be held by them
3 in lieu of the engraved bonds until such time as the engraved
4 bonds shall be delivered. When said interim certificates are so
5 issued, they shall become full and legal obligations of the state
6 of West Virginia under all of the provisions of this act just
7 as fully and completely as the engraved and permanent bonds.

Sec. 10. The bonds issued hereunder shall be a legal invest-
2 ment for the workmen’s compensation fund, the irreducible
3 school fund, and all fiduciary or other trust funds, and shall be
4 legal as deposit by any bank to secure deposits of state, county,
5 municipal, or other public funds, and shall be legal as security
6 or collateral for any kind and all bonds required by any court
7 or administrative board or officer of the state and shall be legal
8 as deposit by any insurance, casualty, annuity or like company,
9 with the auditor of the state of West Virginia or any other
10 officer or board of the state.

Sec. 11. The plates from which the bonds of this act are
2 engraved shall be and remain the property of the state of West
3 Virginia.

Sec. 12. The state treasurer shall be the custodian of all
2 unsold bonds issued pursuant to the provisions of this act.

Sec. 13. All necessary expenses incurred in the execution of
2 this act shall be paid out of any money in the treasury of the
3 state of West Virginia, not otherwise appropriated, on war-
4 rants of the auditor drawn on the state treasurer.

Sec. 14. The provisions of this act shall be considered
2 severally, and should any one or more provisions thereof be de-
3 clared unconstitutional, the remaining provisions, if capable of
4 operation when standing without such unconstitutional pro-
5 visions, shall be and remain in full force and effect.

CHAPTER 21

(House Bill No. 325—By Mr. Bibb)

AN ACT to amend and reenact section three, article one, chapter
thirteen of the code of West Virginia, one thousand nine
hundred thirty-one, prescribing the maximum amounts of
indebtedness for which bonds may be issued by a political
subdivision for various purposes; defining the term “sewer-
ing” as used in such section; authorizing and empowering the
county court of any county to negotiate and sell to the government of the United States and to other governmental agencies at private sale at not less than par, such bonds issued for the purpose of erecting and equipping a courthouse and/or jail.

[Passed March 8, 1935; in effect ninety days from passage. Became a law without the approval of the Governor.]

Sec. 3. Limitation on bond issues by political divisions; additional amounts for erection of school buildings, courthouses and/or jails and for municipal corporations for grading, paving or sewerage or improving streets and alleys; “sewering” defined; sale, by county court, to federal agency, of bonds to erect courthouse or other public building.

Be it enacted by the Legislature of West Virginia:

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

Section 3. No political division authorized by this article to issue bonds, shall, by any bond issue, become indebted to an amount, including all other indebtedness, exceeding two and one-half per cent of the value of the taxable property therein, as shown by the last assessment thereof, for state and county purposes, next prior to the issuing of such bonds: Provided, however, That any board of education for the acquisition of land and the erection and equipment of school buildings, and any county for the erection and equipment of a courthouse and/or jail for such county, with funds borrowed from the government of the United States or any governmental agency, federal or state, and any municipal corporation of three hundred inhabitants or more, for the purpose of grading, paving, sewerage and, otherwise improving or re-improving its streets and alleys, may become indebted and issue bonds in an additional sum not exceeding two and one-half per cent of the value of the taxable property therein, ascertained as aforesaid.

The term “sewering” as used herein shall be treated in a comprehensive sense, so as to include all mains, laterals, connections, traps, incinerating and disposal plants, and other necessary and convenient accessories to a modern, sanitary and efficient sewerage system, and shall include storm sewers.

The county court of any county is hereby authorized and
empowered to negotiate and sell to the government of the United States or to any governmental agency, federal or state, at private sale, at not less than par any bonds issued for the purpose of erecting and equipping a courthouse or other public buildings for such county, under and by virtue of article one, chapter thirteen of the code of West Virginia, without first offering them for sale at public auction, or to any other person or agency.

CHAPTER 22

(Senate Bill No. 225—By Mr. Fleming)

AN ACT to provide for the submission to the voters of the state of an amendment to the constitution of the state of West Virginia, as follows: Amending article six by adding thereto section thirty-nine-(a).

Sec. 1. Ratification of proposed constitutional amendment submitted to voters, by adding section 39-(a).
Sec. 2. Proposed amendment to be known as "municipal home rule amendment."
Sec. 3. Proposed amendment to be placed upon and at foot of official ballot; form of ballot; election, how conducted and returned.
Sec. 4. Certificates of results by commissioners and canvassers and by county court, as canvassers.
Sec. 5. Governor to ascertain and declare results from certificates; if ratified by voters, in force and effect.
Sec. 6. Publication of proposed amendment by governor before election.

Be it enacted by the Legislature of West Virginia:

Section 1. The question of the ratification or rejection of an amendment to the constitution of West Virginia, proposed in accordance with the provisions of section two, article fourteen, of said constitution, shall be submitted to the voters of the state at the next general election, to be held in the year one thousand nine hundred thirty-six, which proposed amendment is as follows:

That article six of the constitution of West Virginia be
amended by adding section thirty-nine-(a) thereto, which is as follows:

Section 39-(a). No local or special law shall hereafter be passed incorporating cities, towns or villages, or amending their charters. The legislature shall provide by general laws for the incorporation and government of cities, towns and villages and shall classify such municipal corporations, upon the basis of population, into not less than two nor more than five classes. Such general laws shall restrict the powers of such cities, towns and villages to borrow money and contract debts, and shall limit the rate of taxes for municipal purposes, in accordance with section one, article ten of the constitution of the state of West Virginia. Under such general laws, the electors of each municipal corporation, wherein the population exceeds two thousand, shall have power and authority to frame, adopt and amend the charter of such corporation, or to amend an existing charter thereof, and through its legally constituted authority, may pass all laws and ordinances relating to its municipal affairs: Provided, That any such charter or amendment thereto, and any such law or ordinance so adopted, shall be invalid and void if inconsistent or in conflict with this constitution or the general laws of the state then in effect, or thereafter, from time to time enacted.

Sec. 2. For convenience in referring to the said proposed amendment and in the preparation of the form of the ballot hereinafter provided for, said proposed amendment is hereby designated as follows: To be known as the "Municipal Home Rule Amendment."

Sec. 3. For the purpose of enabling the voters of the state to vote on the question of said proposed amendment to the constitution at the general election to be held in the year one thousand nine hundred thirty-six, the board of ballot commissioners of each county is hereby required to place upon, and at the foot of, the official ballots to be voted at said election, the following:

Ballot on constitutional "Municipal Home Rule Amendment," amending article six by adding section 39-(a).

[ ] For ratification of municipal home rule amendment.
11 □ Against ratification of municipal home rule amendment.

12 The election on the proposed amendment, at each place of voting, shall be superintended, conducted and returned, and the result thereof ascertained by the same officers and in the same manner as the election of officers to be voted for at said election; and all of the provisions of law relating to general elections, including all duties to be performed by any officer or board, as far as applicable and not inconsistent with anything herein contained, shall apply to the election held under the provisions of this act, except when it is herein otherwise provided. The ballots cast on the question of said proposed amendment shall be counted as other ballots cast at said election.

Sec. 4. As soon as the result is ascertained the commissioners, or a majority of them, and the canvassers (if there be any), or a majority of them, at each place of voting, shall make out and sign two certificates thereof in the following form or to the following effect: “We, the undersigned, who acted as commissioners (or canvassers, as the case may be), of the election held at precinct number ................................, in the district of................................., in the county of ................................., on the ............day of November, one thousand nine hundred thirty-six, upon the question of the ratification or rejection of the proposed constitutional amendment to article six, do hereby certify that the result of said election is as follows:

Amending article six:

For ratification of municipal home rule amendment...................... votes.

Against ratification of municipal home rule amendment ...................... votes.

Given under our hands this..............day of November, one thousand nine hundred thirty-six.”

The said two certificates shall correspond with each other in all respects, and contain the full and true returns of said election at each place of voting on said question. The said commissioners, or any one of them (or said canvassers, or any one of them, as the case may be), shall within four days excluding Sunday, after that on which said election was held,
26 deliver one of said certificates to the clerk of the county court
27 of his county, together with the ballots, and the other to the
28 clerk of the circuit court of the county.
29 The said certificates, together with the ballots cast on the
30 question of said proposed amendment, shall be laid before the
31 commissioners of the county court at the courthouse at the same
time the ballots, poll books and the certificates of the election
33 for the members of the legislature are laid before them; and
34 as soon as the result of said election in the county upon the
35 question of such ratification or rejection is ascertained, two
36 certificates of such result shall be made out and signed by said
37 commissioners, as a board of canvassers, in the following form
or to the following effect:
39 "We, the board of canvassers of the county of .....................
40 having carefully and impartially examined the returns of the
41 election held in said county, in each district thereof, on the
42 ...............day of November, one thousand nine hundred thirty-
43 six, do certify that the result of the election in said county, on
44 the question of the ratification or rejection of the proposed
45 constitutional amendment to article six is as follows:
46 For ratification of municipal home rule amendment.............
47 votes.
48 Against ratification of municipal home rule amendment
49 ...............votes.
50 Given under our hands this...............day of.....................,
51 one thousand nine hundred thirty-six.''
52 One of the certificates shall be filed in the office of the clerk
53 of the county court, and the other forwarded by mail to the
54 secretary of state, who shall file and preserve the same until
55 the day on which the result of said election in the state is to be
56 ascertained, as hereinafter stated.

Sec. 5. On the twenty-fifth day after the election is held, 2
or as soon thereafter as practicable, the said certificates shall 3
be laid before the governor, whose duty it shall be to ascertain 4
therefrom the result of said election in the state, and declare 5
the same by proclamation published in one or more newspapers 6
printed at the seat of government. If a majority of the votes 7
cast at said election upon said question be for the ratification 8
of the said amendment, the proposed amendment so ratified
9 shall be of force and effect from and after the time of such
10 ratification as part of the constitution of the state.

Sec. 6. The governor shall cause the said proposed amend-
2 ment, with the proper designation for the same as hereinbefore
3 adopted, to be published one time, at least three months before
4 such election, in some newspaper in every county in this state
5 in which a newspaper is printed, at a price to be agreed upon
6 in advance in writing, and the cost of such advertising shall in
7 the first instance, if found necessary by him, be paid out of
8 the governor's contingent fund and be afterwards repaid to
9 such fund by appropriation of the legislature.

CHAPTER 23

(Senate Bill No. 298—By Mr. Barnhart)

AN ACT to provide for the submission to the voters of the state of
an amendment to the constitution of the state of West Virginia,
amending section thirty-five of article six thereof.

[Passed March 9, 1935; In effect ninety days from passage. Became a law
without the approval of the Governor]

Sec. 1. Proposed amendment to constitution submitted to voters.
2. To be known as "garnishee amendment."
3. To be placed upon, and at foot of official ballot; how election
   conducted.
4. Certificates of results by county commissioners or canvassers, and
   county courts, as canvassers.
5. Proclamation by governor of results of election; if ratified by
   voters, in force and effect.
6. Publication by governor of proposed amendment before election.

Be it enacted by the Legislature of West Virginia:

Section 1. That the question of the ratification or rejection
2 of an amendment to the constitution of West Virginia, proposed
3 in accordance with the provisions of section two, article fourteen
4 of said constitution, shall be submitted to the voters of the state
5 at the next general election, to be held in the year one thousand
6 nine hundred thirty-six, which proposed amendment is as fol-
7 lows:
Section 35. The state of West Virginia shall never be made defendant in any court of law or equity, except the state of West Virginia, including any subdivision thereof, or any municipality therein, or any officer, agent, or employee thereof, may be made defendant in any garnishment or attachment proceeding, as garnishee or suggestee.

Sec. 2. For convenience in referring to the said proposed amendment and in the preparation of the form of the ballot hereinafter provided for, said proposed amendment is hereby designated as follows: To be known as the "garnishee amendment".

Sec. 3. For the purpose of enabling the voters of the state to vote on the question of said proposed amendment to the constitution at the general election to be held in the year one thousand nine hundred thirty-six, the board of ballot commissioners of each county is hereby required to place upon, and at the foot of, the official ballots to be voted at said election, the following: Ballot on constitutional "garnishee amendment," amending section thirty-five, article six.

[ ] For ratification of garnishee amendment.

[ ] Against ratification of garnishee amendment.

The election on the proposed amendment, at each place of voting, shall be superintended, conducted and returned, and the result thereof ascertained by the same officers and in the same manner as the election of officers to be voted for at said election; and all of the provisions of law relating to general elections, including all duties to be performed by any officer or board, as far as applicable and not inconsistent with anything herein contained, shall apply to the election held under the provisions of this act, except when it is herein otherwise provided. The ballots cast on the question of said proposed amendment shall be counted as other ballots cast at said election.

Sec. 4. As soon as the result is ascertained the commissioners, or a majority of them, and the canvassers (if there be any), or a majority of them, at each place of voting, shall make out and
sign two certificates thereof in the following form or to the fol-
lowing effect: "We, the undersigned, who acted as commis-
sioners (or canvassers, as the case may be), of the election held
at precinct number ............, in the district of ............,
in the county of ............., on the .......... day of
November, one thousand nine hundred thirty-six, upon the ques-
tion of the ratification or rejection of the proposed constitutional
amendment to section thirty-five, article six, do hereby certify
that the result of said election is as follows:

Amending section thirty-five, article six:
For ratification of garnishee amendment ................ votes.
Against ratification of garnishee amendment ................ votes.
Given under our hands this .......... day of November, one
thousand nine hundred thirty-six.''

The said two certificates shall correspond with each other in
all respects, and contain the full and true returns of said elec-
tion at each place of voting on said question. The said com-
missioners, or any one of them (or said canvassers, or any one
of them, as the case may be), shall within four days, excluding
Sunday, after that on which said election was held, deliver one
of said certificates to the clerk of the county court of his county,
together with the ballots, and the other to the clerk of the
circuit court of the county.

The said certificates, together with the ballots cast on the
question of said proposed amendment, shall be laid before the
commissioners of the county court at the courthouse at the same
time the ballots, poll books and the certificates of the election
for the members of the legislature are laid before them; and as
soon as the result of said election in the county upon the ques-
tion of such ratification or rejection is ascertained, two certif-
icates of such result shall be made out and signed by said com-
missioners, as a board of canvassers, in the following form or to
the following effect:

"We, the board of canvassers of the county of .............,
having carefully and impartially examined the returns of the
election held in said county, in each district thereof, on the
do day of November, one thousand nine hundred thirty-
six, do certify that the result of the election in said county, on
the question of the ratification or rejection of the proposed con-
institutional amendment to section thirty-five, article six, is as follows:

For ratification of garnishee amendment votes.
Against ratification of garnishee amendment votes.
Given under our hands day of , one thousand nine hundred thirty-six."

One of the certificates shall be filed in the office of the clerk of the county court, and the other forwarded by mail to the secretary of state, who shall file and preserve the same until the day on which the result of said election in the state is to be ascertained, as hereinafter stated.

Sec. 5. On the twenty-fifth day after the election is held, or as soon thereafter as practicable, the said certificate shall be laid before the governor, whose duty it shall be to ascertain therefrom the result of said election in the state, and declare the same by proclamation published in one or more newspapers printed at the seat of government. If a majority of the votes cast at said election upon said question be for the ratification of the said amendment, the proposed amendment so ratified shall be of force and effect from and after the time of such ratification as part of the constitution of the state.

Sec. 6. The governor shall cause the said proposed amendment, with the proper designation for the same as hereinbefore adopted, to be published one time, at least three months before such election, in some newspaper in every county in this state in which a newspaper is printed, at a price to be agreed upon in advance in writing, and the cost of such advertising shall in the first instance, if found necessary by him, be paid out of the governor's contingent fund and be afterwards repaid to such fund by appropriation of the legislature.

CHAPTER 24

(House Bill No. 438—By Mr. James)

AN ACT to amend and reenact section seventy, article one, chapter thirty-one of the code of West Virginia, one thousand nine
hundred thirty-one, relating to the payment of dividends by corporations of this state so as to permit corporations engaged in the exploitation of wasting assets to determine net profits derived from the exploitation of such assets without taking into consideration the depletion thereof.

[Passed March 9, 1935; in effect ninety days from passage. Became a law without the approval of the Governor.]

Sec. 70. Dividends by corporations; dividends applied to corporate indebtedness of stockholder; determination of net profits from exploitation of wasting assets.

Be it enacted by the Legislature of West Virginia:

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

Section 70. The board of directors may, from time to time, declare and pay dividends of so much of the net profits or of any surplus arising from a reduction of capital pursuant to section thirteen-(a) of this article, as they deem it prudent to divide. If any stockholder be indebted to the corporation, his dividend, or so much thereof as is necessary, may be applied to the payment of such indebtedness if then due and payable. Subject to any restrictions in its charter, the directors of any corporation engaged in the exploitation of wasting assets may determine the net profits derived from the exploitation of such wasting assets without taking into consideration the depletion of such assets resulting from lapse of time or from necessary consumption of such assets incidental to their exploitation.

CHAPTER 25

(House Bill No. 439—By Mr. James)

AN ACT to amend and reenact section eleven, article one, chapter thirty-one of the code of West Virginia, one thousand nine
hundred thirty-one, relating to the amendment by corporations of this state of their charters.

(Passed March 9, 1935; in effect ninety days from passage. Became a law without the approval of the Governor.)

Be it enacted by the Legislature of West Virginia:

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

Section 11. Every corporation of this state heretofore or hereafter incorporated may, from time to time and in the manner herein provided, when and as desired, amend its charter by addition to its corporate powers and purposes, or diminution thereof, or both; or by substitution of other powers and purposes, in whole or in part, for those set forth in its charter; or by increasing or decreasing its authorized capital stock or classifying or reclassifying the same, by changing the number, par value, designations, preferences, or relative, participating, optional, or other special rights of the shares, or the qualifications, limitations or restrictions of such rights, or by changing shares with par value into shares without par value or shares without par value into shares with par value either with or without increasing or decreasing the number of shares; or by changing its corporate name, or by making any other change or alteration in its charter that may be desired; and any or all such changes or alterations may be effected by one amendment: Provided, That every charter as so amended, changed or altered, shall contain only such provisions as it would be lawful and proper to have in an original agreement of incorporation made at the time of making such amendment.

Whenever issued shares having par value are changed into the same or a greater or less number of shares without par value, whether of the same or of a different class or classes of stock, the aggregate amount of the capital of the corporation represented by such shares without par value shall be the same.
as the aggregate amount of capital represented by the shares so changed; and whenever issued shares without par value are changed into other shares without par value to a greater or lesser number, whether of the same or of a different class or classes, the amount of capital represented by the new shares in the aggregate shall be the same as the aggregate amount of capital represented by the shares so changed; and the amendment of the charter of the corporation effecting any such change shall set forth that the capital of the corporation will not be reduced under or by reason of such amendment.

CHAPTER 26

(House Bill No. 440—By Mr. James)

AN ACT to provide for the reduction of capital by corporations of this state by adding to article one, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, a new section to be designated section thirteen-(a).

[Passed March 9, 1935; in effect ninety days from passage. Became a law without the approval of the Governor.]

Sec. 13-(a). Reduction of capital by domestic corporation by resolution of stockholders; resolution certified to secretary of state; certificate of secretary of state, what to state and recordation; no reduction in capital unless remaining assets sufficient to pay debts; how reduction effected; when effected by retiring shares; publication of certificate of secretary of state; civil liability for failure to publish; when decrease of capital does not release liability of stockholder; where required publication to be made.

Be it enacted by the Legislature of West Virginia:

That there be added to article one, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, a new section to be designated section thirteen-(a) and to read as follows:

Section 13-(a). Every corporation of this state heretofore or hereafter incorporated may reduce its capital at any time and in the manner herein provided, by a resolution or resolutions adopted by a majority vote of all of the shares of capital stock of the corporation entitled to vote, at a meeting of the stock-
6 holders called for that purpose by notice given as provided by
each the by-laws of the corporation, or in the absence of a provision
in the by-laws for such notice, in the manner provided in this
article. The president or a vice-president of the corporation,
under his signature and the seal of the corporation, shall certify
the resolution or resolutions and the fact and manner of the
adoption of the same, and of the assenting of all stockholders,
the consent of whom is required under this section for such re-
cussion of capital, to the secretary of state, who shall issue his
certificate reciting such resolution, corporate action and facts
certified in like manner as an original certificate of incorpora-
tion and transmit the same to the corporation. Such certificate
or a certified copy thereof shall be recorded and received in evi-
dence as provided for the recordation and admission in evidence
of an original certificate of incorporation or a certified copy of
such original. Such certificate shall declare the reduction of
capital as in effect from the date thereof. No such reduction,
having, however, shall be made in the capital of the corporation unless
the assets of the corporation remaining after such reduction are
sufficient to pay any debts, the payment of which shall not have
been otherwise provided for and the certification of said pres-
ident or vice-president shall so state.
28 Such reduction of the capital of the corporation may be ef-
fected by retiring or reducing the outstanding shares of any
class or by drawing the necessary number of the outstanding
shares of any class by lot for retirement, or by the exchange by
the holders of outstanding shares of any class of the shares of
such class held by them for a decreased number of shares of
stock of the same or of a different class of stock, or by the ex-
change of shares having par value for shares having no par
value, or of shares without par value for shares with par value,
or by reducing (in conjunction with appropriate action under
section eleven of this article) the par value of the shares of any
class of stock having par value, or where the amount of capital
represented by shares of stock having par value exceeds such
par value, by reducing the amount of capital represented by
such shares by an amount not greater than such excess, or by
reducing the amount of capital represented by shares of stock
having no par value, or, in case the capital shall have been in-
creased by the transfer thereto from surplus and the transfer
shall not have been made in respect of any designated class or
47 classes of stock, by retransferring to surplus all or any part of
48 the amount by which capital shall have been so increased, or by
49 the purchase of shares for retirement, either pro rata from all
50 holders of shares of that class of stock or by purchasing such
51 shares from time to time in the open market or at private sale
52 in both cases at not exceeding such price or prices as may be
53 fixed or approved by the stockholders entitled to vote upon the
54 reduction of capital to be effected in that manner, or by retiring
55 shares owned by the corporation. If such reduction of capital
56 of the corporation be effected by retiring shares, then, if the
57 resolution or resolutions of stockholders above referred to shall
58 so provide, an amount not exceeding that part of the capital of
59 the corporation represented by such shares may be charged
60 against or paid out of the capital of the corporation in respect
61 of such shares.

62 When any corporation shall decrease the amount of its capital
63 as hereinbefore provided, the above-mentioned certificate of the
64 secretary of state shall be published by the corporation for three
65 weeks successively at least once in each week, in a newspaper
66 published in the county in which the principal office of the cor-
67 poration is located; the first publication to be made within
68 fifteen days after the issuance of such certificate, and in default
69 thereof the directors of the corporation shall be jointly and
70 severally liable to any creditors of the corporation who shall
71 suffer loss by reason of the non-compliance with the provisions
72 of this section and the stockholders shall be similarly liable up
73 to the amount of such sums as they may respectively receive of
74 the amount so reduced: Provided, That no such decrease of cap-
75 ital shall release the liability of any stockholder, whose shares
76 have not been fully paid, for debts of the corporation thereto-
77 fore contracted.

78 If the principal office of any corporation mentioned in this
79 section is not located within West Virginia, the notice provided
80 by the foregoing paragraph may be published in any county
81 in this state in which it has an office or does business; and if it
82 neither has any office nor does any business in any county in
83 this state, then such notice may be published in the county of
84 this state wherein the seat of government is located.
AN ACT to amend article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, by adding thereto section twenty-nine, creating a criminal identification bureau of fingerprints, records and statistics, within the department of public safety, conferring powers and duties upon the superintendent of said department, the officer in charge of, and the members of said criminal identification bureau, requiring peace officers and persons in charge of penal institutions, correctional institutions and jails to take fingerprints and make reports respecting crime and criminals and to furnish same to such bureau and providing certain penalties for violation of the provisions thereof and the destruction of the records therein.

[Passed March 9, 1935; in effect from passage. Became a law without the approval of the Governor.]

Be it enacted by the Legislature of West Virginia:

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

Section 29. The superintendent of the department of public safety shall establish, equip and maintain at the offices of the department located at Charleston, a criminal identification bureau, for the purpose of receiving and filing fingerprints, photographs and other records pertaining to the investigation of
6 crime and the apprehension of criminals, as hereinafter pro-
7 vided. The superintendent shall appoint or designate a
8 regularly enlisted member of the department as officer in charge
9 of the criminal identification bureau and such officer shall be a
10 qualified fingerprint expert and shall be responsible to the
11 superintendent for the affairs of the bureau. Members of the
12 department assigned to the criminal identification bureau shall
13 classify and file fingerprints, compare the fingerprints of per-
14 sons arrested with those on file and notify the arresting officer
15 if it is found by comparison of fingerprints that any person
16 has a previous criminal record, or is a fugitive from justice
17 They shall also cooperate with other members of the department
18 of public safety, and all state, county and city law enforcement
19 officials throughout the state in connection with the identifica-
20 tion and apprehension of criminals. Such members shall co-
21 operate with identification bureaus of other states and of the
22 United States, to develop and carry on a complete interstate,
23 national and international system of criminal identification.
24 They may furnish copies of the fingerprints of persons ar-
25 rested in this state to the identification bureau of the United
26 States government and to other states for the purpose of
27 ascertaining if such persons have been previously arrested or
28 convicted of crime.
29 (1) Persons in charge of any penal or correctional insti-
30 tution in this state shall take, or cause to be taken, the finger-
31 prints and description of all persons lawfully committed thereto
32 or confined therein and furnish the same in duplicate to the
33 criminal identification bureau, department of public safety at
34 Charleston. Such fingerprints shall be taken on forms approved
35 by the superintendent of the department of public safety. All
36 such officials as herein named may, when possible to do so,
37 furnish photographs to the criminal identification bureau of
38 such persons so fingerprinted.
39 (2) Members of the department of public safety, and all
40 other state law enforcement officials, sheriffs, deputy sheriffs,
41 constables, and each and every peace officer in this state, shall
42 take or cause to be taken the fingerprints and description of
43 all persons arrested or detained by them, charged with any
44 crime or offense in this state, in which the penalty provided
45 therefor is confinement in any penal or correctional institution,
46 or of any person who they have reason to believe is a fugitive
from justice or an habitual criminal, and furnish the same in
duplicate to the criminal identification bureau, department of
public safety, Charleston, on forms approved by the superin-
tendent of said department of public safety. All such officials
as herein named may, when possible to do so, furnish to the
criminal identification bureau, photographs of such persons
so fingerprinted. The arresting officer shall submit to the
criminal identification bureau, in duplicate, a report of final
disposition concerning any case held for court, or in any case
in which the disposition thereof has not been previously fur-
nished to said bureau (on the fingerprint record of the person
arrested). Such report of final disposition shall be made on
forms furnished or approved by the superintendent of the
department of public safety.

(3) Any person who has been fingerprinted or photographed
in accordance with the provisions of this act, who is acquitted
of the charges upon which he or she was arrested, and who has
no previous criminal record, may, upon the presentation of
satisfactory proof to the superintendent of the department of
public safety, have such fingerprints or photographs, or both,
returned to them.

(4) Neglect or refusal of any person mentioned in this act
to make the report required herein, or to do or perform any
act on his or her part to be done or performed in connection
with the operation of this act, shall constitute a misdemeanor,
and such person shall, upon conviction thereof, be punished by
a fine of not less than twenty-five nor more than two hundred
dollars, or by imprisonment in the county jail for a period of
not exceeding sixty days, or both, in the discretion of the
court. Such neglect shall constitute misfeasance in office and
subject such person to removal from office. Any person who
wilfully removes, destroys, or mutilates any of the records of
the department of public safety, shall be guilty of a misde-
meanor, and such person shall, upon conviction thereof, be
punished by a fine not exceeding one hundred dollars, or by
imprisonment in the county jail for a period of not exceeding
six months, or by both, in the discretion of the court.

(5) Should any of the provisions of this act be held uncon-
stitutional by any court of competent jurisdiction, the same
shall not affect the validity of the act as a whole or any part
thereof, other than the portion so held invalid.
CHAPTER 28
(Senate Bill No. 111—By Mr. Henderson)

AN ACT to amend and reenact sections twenty-seven and twenty-eight, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, providing for a death, disability, and retirement fund for the members of the department of public safety of West Virginia and dependent members of their families, and providing for pensions for retired or disabled members of the department of public safety or dependent members of their families and making provision for a pension fund board to control and disburse such fund.

(Passed March 9, 1935: in effect from passage. Became a law without the approval of the Governor.)

Sec. Sec.
27. Death, disability and retirement fund in department of public safety (state police) created: sources of fund from fees, rewards, salaries of members, etc.; fund kept as separate account by auditor and treasurer; investment of fund by board of public works.
28. (a) Awards and rules and regulations by pension fund board; (b) amount of pension to members of department retired by reason of length of service and age; (c) amount of pension to members retired by reason of permanent disability received in performance of duty; (d) amount of pension to dependents of member losing life in performance of duty; pensions to widow to cease upon remarriage; (e) refund to member released from or severing connection with department after two or more years service; (f) how outstanding annuities paid; (g) reserves for future awards; (h) accounting system.

Be it enacted by the Legislature of West Virginia:

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

Section 27. There is hereby created a death, disability, and retirement fund for the benefit of members of the department of public safety, or any dependent of a member or former member thereof. Into such fund shall be paid such amounts as have heretofore been collected by the superintendent of the department of public safety on account of fees for arrests, rewards, or from any other source permitted by law. There
8 shall be paid into such fund such amounts arising in the future from the above named or any other sources permitted by law, designated by the superintendent of the department of public safety, except that no part of any fine shall be paid thereinto. There shall be deducted from the monthly payroll of each member of the department of public safety four per cent of the amount of his salary, and an additional four per cent of the monthly salary of each member of the department of public safety shall be paid by the state of West Virginia out of the biennial appropriation for said department, which shall be paid into such fund. Any money so collected by the superintendent of the department of public safety shall be turned over to the state treasury, and the treasurer and auditor shall keep a separate account thereof on their books. Such funds shall be invested by the state board of public works in bonds of the government of the United States, the state of West Virginia, or any political subdivision thereof.

Sec. 28 (a) The board of commissioners created by section twenty, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, and the superintendent of the department of public safety shall constitute a pension fund board and shall have the power to make awards or to revise awards previously made for such times and under such terms and conditions as are hereinafter provided for, and shall make all necessary rules and regulations regarding the same not inconsistent with this act.

(b) Any member of the department of public safety who has served in said department for a period of twenty years and who has reached the age of fifty-five years, upon application by said member to the superintendent of said department, together with certificate of service and with the approval of the board of commissioners, shall be retired and shall thereupon receive annually, in monthly installments, from said pension fund an amount equal to two per cent of the total salary earned by him during his service in the department.

(c) Any member of said department of public safety who has heretofore received or who may hereafter receive permanent disability in the performance of his duty shall upon certificate of disability of a physician designated for the purpose by the board of commissioners, be retired upon an annual pension of
not less than one nor more than two per cent of twenty years salary based on his average earnings while employed by the department.

(d) The widow or children under the age of sixteen years, or sole dependent parent of any member of the department of public safety who shall have heretofore or shall hereafter lose his life in the performance of his duty, or where death results from injury received in the performance of duty, shall receive an annual pension that shall not exceed two per cent of twenty years' salary based on his average earnings while employed by the department: Provided, That in case of a widow and children such pension shall be for the widow and the children and shall be paid to the widow, and in case there are three or more children under the age of sixteen years and no widow, the said children shall receive the pension in equal shares until they attain the age of sixteen years, and in case there are two children under the age of sixteen years and widow, they shall be paid such pension, but not to exceed fifteen dollars monthly each, until they attain the age of sixteen years, and in the case of only one child and no widow, he or she shall be paid such pension, but not to exceed fifteen dollars monthly, until he or she attains the age of sixteen years: Provided further, That in case there is no widow and no children under the age of sixteen years then such pension shall be paid to the parent or parents dependent upon the deceased member: Provided further, That if any widow entitled to a pension aforesaid dies or remarries, then such pensions shall cease to be paid to such widow, or her estate, but shall be paid to each of said children, or child, until they reach the age of sixteen years.

No such child shall receive more than fifteen dollars per month.

(e) Any member of the department of public safety who is released or who severs his connection with the department of public safety and who has served two full years or more with the department, shall, upon request, be refunded all deductions made from his salary, but without interest, on account of this fund. But in the event that such refund is made, and such member subsequently reenlists, no credit shall be allowed to him for any former service. If any member is released or severs his connection with the department before he has served
two full years, he shall forfeit his right to have refunded to him any such deductions.

(f) All outstanding annuities shall be paid from the current income to such fund and from the interest on or income from an accumulated fund amounting to one hundred and seven thousand dollars.

(g) All future awards from such fund shall be valued annually and reserves based on sound actuarial principles for their payment shall be carried on the funds account as a liability against the general fund.

(h) An adequate system of accounting shall be installed and kept so as to insure a proper record of all transactions in a detailed record of all contributions and refunds, dates of enlistments, time served, and all releases of members.

CHAPTER 29

(House Bill No. 474—By Mr. LaFon)

AN ACT to amend and reenact sections nine and sixteen, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, relating to standard uniform for members of the department of public safety and other equipment and supplies, and to prescribe penalty for impersonation of members of the department and for unlawful use of such standard uniform badge or other insignia adopted or used by said department.

[Passed March 9, 1935: In effect ninety days from passage. Approved by the Governor.]

Sec. 9. Description of standard uniform of department of public safety (state police): uniforms, weapons, horses or other means of conveyance furnished members to remain property of state; local headquarters and quarters

Sec. 16. Penalty for unauthorized use of uniform, badge or other insignia of department or impersonation of member; definition of "person".

Be it enacted by the Legislature of West Virginia:

That sections nine and sixteen, article two, chapter fifteen of
the code of West Virginia, one thousand nine hundred thirty-one, be amended and reenacted, so as to read as follows:

Section 9. The standard uniform to be used by the department of public safety on and after the first day of July, one thousand nine hundred thirty-five, shall be as follows:

- Forestry green blouse with West Virginia state police emblem on sleeve; black shoulder strap; one inch black strip around sleeve, four inches from end of sleeve; forestry green breeches with one inch black strip down the side; trousers (slacks) with one inch black stripe down the side for officers and clerks regularly enlisted in the department; forestry green shirts with West Virginia state police emblem on sleeve; black shoulder straps; forestry green mackinaw with West Virginia state police emblem on sleeve; black shoulder straps; one inch black stripe around sleeve four inches from end of sleeve; campaign hat of olive drab color; cordovan Sam Browne belt with holster; cordovan leggings and shoes; the officers' uniform will have one and one-quarter inch black stripe around the sleeve or blouse and mackinaw, four inches from end of sleeve circumposed with one-half inch gold braid, also black collars on blouse, with two silver shoulder bars for captains, one silver shoulder bar for first lieutenant and one gold shoulder bar for second lieutenant.

For non-commissioned officer the uniform blouse and shirt will have thereon black chevrons of the appropriate rank.

The superintendent shall provide the members of the department of public safety with suitable arms and weapons, and, when and where he shall deem it necessary, with suitably equipped horses and other means of conveyance. He shall also provide the standard uniforms for all members of the department, for officers, non-commissioned officers and privates herein provided for. All uniforms and all arms, weapons and other property furnished the members of the department of public safety by the state of West Virginia shall be and remain the property of the state.

The superintendent shall establish and maintain local headquarters at such places in West Virginia as are in his judgment suitable and proper to render the department of public safety most efficient for the purpose of preserving the peace, protecting property, preventing crime, apprehending criminals and carrying into effect all other provisions of this article. The superin-
39 tendent shall provide by lease or otherwise for housing and
40 quarters for the accommodation of the members of the depart-
41 ment of public safety, and shall provide all equipment and
42 supplies necessary for them in the performance of the duties
43 of their office.

Sec. 16. Every person is hereby prohibited and forbidden
directly or indirectly to wear, use or order to be used or worn,
copy or imitate in any respect or manner, the standard uniform
prescribed for members of the department of public safety by
this chapter; and any person not a member of said department
who shall violate the provisions of this chapter, for which no
other penalty is expressly provided, and any person who shall
falsely represent himself to be an officer or member of the
department of public safety, or to be under the order or direc-
tion of any officer or member of said department, or who shall,
unless an officer or member thereof, wear the standard uniform
prescribed for members of said department, or the badge or
other insignia adopted or used by said department, shall be
guilty of a misdemeanor, and, upon conviction thereof, shall be
fined not exceeding two hundred dollars, or imprisoned in
the county jail for a period of not exceeding six months, or
both fined and imprisoned, in the discretion of the court.

The term "person" as used in this chapter, unless otherwise
stated, shall include members of associations, corporations, its
agents and employees, and officers and officials of any town,
city or county.

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CHAPTER 30
(Com. Sub. for House Bill No. 56—Originating in the House Committee
on the Judiciary.)

AN ACT to amend chapter fifty of the code of West Virginia, one
thousand nine hundred thirty-one, by amending and reenact-
ing section one, article eighteen, relating to the criminal juris-
diction of justices, and by amending and reenacting section
eleven, article seventeen, as last amended by house bill num-
ber sixty-five, acts of the Legislature of West Virginia, regular
session, one thousand nine hundred thirty-five, relating to fees of justices in criminal cases, and by amending and re-enacting section fourteen, article seventeen, as last amended by house bill number sixty-five, acts of the Legislature of West Virginia, regular session, one thousand nine hundred thirty-five, relating to recovery of justices' fees.

[Passed March 9, 1935; in effect from passage. Became a law without the approval of the Governor.]

**ARTICLE XVIII.**

Sec. 1. Criminal jurisdiction of justices of the peace.

Sec. 14. How fees paid; executions for fines and costs and payment to sheriff; exception as to certain costs; claims for justices' fees to be submitted to prosecuting attorney for approval or disapproval.

**Be it enacted by the Legislature of West Virginia:**

That chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, be amended and reenacted by amending and reenacting section one, article eighteen; by amending and reenacting section eleven, article seventeen, as last amended by house bill number sixty-five, acts of the Legislature of West Virginia, regular session, one thousand nine hundred thirty-five, and by amending and reenacting section fourteen, article seventeen, as last amended by house bill number sixty-five, acts of the Legislature of West Virginia, regular session, one thousand nine hundred thirty-five, to read as follows:

**ARTICLE XVIII.**

Section 1. A justice shall have jurisdiction of the following offenses committed in his county, or on any river or creek ad

joining thereto:

(a) In cases of assault and battery, unless the offense was committed on a sheriff or other officer or justice, or riotously, or with intent to commit a felony; and no compromise with the party injured shall affect or prevent the trial of such offense by the justice; and if a defendant be convicted of such offense he shall be fined not less than five nor more than fifty dollars;

(b) In cases of trespass to personal property; and, if a de-
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JUSTICES' FEES IN CRIMINAL CASES

11 fendant be convicted of such offense, he shall be fined not less
12 than five nor more than fifty dollars;
13 (c) In cases for the violation of section fourteen, article six,
14 chapter sixty-one of this code; and, upon the conviction of a de-
15 fendant for a violation of any of the provisions of said section,
16 he shall be punished as therein provided;
17 (d) In cases of adultery and fornication; and, if a defen-
18 dant be convicted of such offense, he shall be fined twenty dol-
19 lars;
20 (e) In cases of petit larceny; and, if a defendant be con-
21 victed of such offense, he shall be fined not less than ten nor
22 more than thirty dollars, and may, at the discretion of the jus-
23 tice or jury trying the case, be imprisoned in the county jail not
24 exceeding thirty days;
25 (f) In cases for the violation of article seven, chapter sixty-
26 one of this code; and upon the conviction of a defendant for
27 a violation of any of the provisions of said section, he shall be
28 punished as therein provided;
29 (g) In any case where the punishment is limited to a fine not
30 exceeding ten dollars, or to imprisonment for not more than
31 ten days;
32 (h) In all misdemeanor cases for the violation of the pro-
33 visions of chapter sixty of said code as amended by house bill
34 number one hundred nineteen, acts of the Legislature of West
35 Virginia, regular session, one thousand nine hundred thirty-
36 five: Provided, however, That whenever a person has been
37 convicted in the municipal or police court of any incorporated
38 town or city, such conviction shall be a bar to any criminal pro-
39 ceeding before a justice for the same offense.

ARTICLE XVII.

Section 11. Every justice shall be entitled to a fee of three
2 dollars in each criminal case and proceeding before him, which
3 fee shall constitute his compensation for all official services per-
4 formed by him in connection with any single case, including
5 affidavit for warrant, warrant of arrest, trial, examination, re-
6 cognizance, issuing subpoenaas and copies thereof, warrants sum-
7 moning and swearing a jury when required, swearing and cer-
8 tifying attendance of witnesses, entering judgment and taxing
9 costs, issuing execution and any return thereon, granting an
10 appeal, including the taking of bond or recognizance, and all
other acts in connection therewith. Except, that he shall be
allowed an additional fee of fifty cents for making and certify-
ing a transcript of his docket in any particular case and trans-
mitting the same to the clerk of the circuit court, the state road
commission, or any other office to which he may be by law re-
quired to certify such transcript. The fees herein provided
shall cover any particular case and all proceedings thereon,
whether there be one defendant or more than one defendant.
And no other fees shall be taxed or charged by any justice in
such cases and proceedings: Provided, however, That the pro-
visions of this section shall not apply to the fees of justices
earned by them prior to the seventeenth day of January, one
thousand nine hundred thirty-five, but the justices shall be
entitled to such fees theretofore earned as were authorized by
law at the time said fees were earned, and the prosecuting at-
torneys, county courts and sheriffs may approve and pay such
accrued costs in the same manner as was provided by the code
of West Virginia, one thousand nine hundred thirty-one, prior
to the enactment of house bills numbers sixty-four and sixty-
five, acts of the Legislature of West Virginia, regular session,
one thousand nine hundred thirty-five.

Sec. 14. In all cases and proceedings before a justice in re-
lation to both felonies and misdemeanors, not triable on the
merits of the case, the fees provided by section eleven shall be
audited and paid by the county court as other claims against
the county. Fees in misdemeanor cases, triable on the merits
thereof, may be paid as provided by section fifteen, article five,
chapter seven of the code.
The justice may issue executions for all fines and costs im-
posed by him in criminal proceedings which are not paid by
the parties, and shall deliver such executions to a constable of
his district of the county and such constable shall collect the
same by levy or otherwise if the same can be collected, and shall
return such executions to the justice issuing the same, show-
ing how he has executed the same, and the justice shall note
such returns on his docket. All costs collected by the justice
by executions or otherwise shall be paid by him to the sheriff
in like manner as the justice is required by section fifteen of
this article to pay to the sheriff all fines collected by him: Pro-
vided, however, That the justice need not pay to the sheriff but
20 may pay direct to any constable, any member of the depart-
21 ment of public safety on account of the department of public
22 safety, and to any witness such lawful fees as he may have col-
23 lected on their behalf and which they are lawfully entitled to
24 receive.
25 No payment of fees or costs shall be made to any justice as
26 provided herein until the claim shall have been submitted to
27 the prosecuting attorney and the approval or disapproval of the
28 prosecuting attorney shall have been noted thereon.

CHAPTER 31
(House Bill No. 64—By Mr. Proctor)

AN ACT to amend and reenact section fifteen, article five, chapter
seven of the code of West Virginia, one thousand nine hun-
dred thirty-one, relating to fines of justices and payment of
fines in misdemeanor cases.

[Passed January 17, 1035; in effect from passage. Approved by the Governor.]

Sec. 15. All claims by justices and constables for fees
due them in misdemeanor proceedings in the county instituted
before them on and after the effective date of this act, shall
be audited and examined by the county court, and if found
correct and if submitted, as provided in section fourteen, ar-
ticle seventeen, chapter fifty of this code, the county court
shall cause orders to be issued therefor on the sheriff to be paid
out of the general school fund or out of the general county
fund, as the court may direct. The sheriff shall annually,
during the month of January, render under oath to the audii-
11 for a true statement of the account of all fines and costs collected by justices and transmitted to him and pay into the treasury of the state, the net proceeds of such fines and costs as exhibited by such account, to be appropriated as directed by the fifth section of article twelve of the Constitution; failure so to do shall be deemed a breach of his official duty.

CHAPTER 32

(House Bill No. 65—By Mr. Proctor)

AN ACT to provide for the fees of justices in criminal cases by amending and reenacting sections eleven and fourteen, article seventeen, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one.

[Passed January 17, 1935; in effect from passage. Approved by the Governor.]

Sec. 11. Fees or justices in criminal cases. How fees paid; executions for fines and costs and payment to sheriff; claims for justices' fees to be submitted to prosecuting attorney for approval or disapproval.

Be it enacted by the Legislature of West Virginia:

That sections eleven and fourteen, article seventeen, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, be amended and reenacted to read, respectively, as follows:

Section 11. Every justice shall be entitled to a fee of one dollar in each criminal case and proceeding before him, which fee shall constitute his compensation for all official services performed by him in connection with any single case, including affidavit for warrant, warrant of arrest, trial, examination, recognizance, issuing subpoenas and copies thereof, warrants summoning and swearing a jury when required, swearing and certifying attendance of witnesses, entering judgment and tax-

*Amended by chapter thirty, acts of this session.*
9 ing costs, issuing execution and any return thereon, granting
10 an appeal, including the taking of bond or recognizance, and
11 all other acts in connection therewith. Except, that he shall
12 be allowed an additional fee of fifty cents for making and cer-
13 tifying a transcript of his docket in any particular case and
14 transmitting the same to the clerk of the circuit court, the
15 state road commission, or any other office to which he may
16 be by law required to certify such transcript. The fees herein
17 provided shall cover any particular case and all proceedings
18 thereon, whether there be one defendant or more than one de-
19 fendant. And no other fees shall be taxed or charged by any
20 justice in such cases and proceedings.

Sec. 14. In all cases and proceedings before a justice in re-
2 lation to both felonies and misdemeanors, not triable on the
3 merits of the case, the fees provided by section eleven shall be
4 audited and paid by the county court as other claims against
5 the county. Fees in misdemeanor cases, triable on the merits
6 thereof, may be paid as provided by section fifteen, article
7 five, chapter seven of the code.
8 The justice may issue executions for all fines and costs im-
9 posed by him in criminal proceedings which are not paid by
10 the parties, and shall deliver such executions to a constable
11 of his district of the county and such constable shall collect the
12 same by levy or otherwise if the same can be collected, and shall
13 return such executions to the justice issuing the same, showing
14 how he has executed the same, and the justice shall note such
15 returns on his docket. All costs collected by the justice by ex-
16 ecutons or otherwise shall be paid by him to the sheriff in
17 like manner as the justice is required by section fifteen of this
18 article to pay to the sheriff all fines collected by him.
19 No payment of fees or costs shall be made to any justice as
20 provided herein until the claim shall have been submitted to
21 the prosecuting attorney and the approval or disapproval of
22 the prosecuting attorney shall have been noted thereon.
CHAPTER 33

(Senate Bill No. 25—By Mr. Belknap)

AN ACT to amend and reenact section nine, article one, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, relating to appointment of an administrator de bonis non upon the death, resignation, or removal of an executor or the person appointed as administrator with the will annexed.

[Passed February 22, 1035; In effect from passage. Approved by the Governor.]

Sec. 9. Administration of estate in which there is a will, on death or sole surviving executor or administrator of such will or of an administrator with the will annexed, administration of such estate may be granted to such person as the court shall find it proper to appoint; and no executor or administrator of an executor or administrator shall have authority to administer the estate of the first testator or the first intestate.

CHAPTER 34

(Senate Bill No. 29—By Mr. Spillers)

AN ACT to amend and reenact section two, article six, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended and reenacted by chapter
sixty, acts of the Legislature of West Virginia, one thousand nine hundred thirty-one, relating to investing of funds by fiduciaries.

[Passed February 25, 1935; in effect from passage. Approved by the Governor.]

Sec. 2. Authorized investments, without court order or liability for loss, by fiduciaries; minimum and maximum interest rates; exception when instrument creating trust specially directs investments; special directions by courts as to investments.

Be it enacted by the Legislature of West Virginia:

That section two, article six, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended and reenacted by chapter sixty, acts of the Legislature of West Virginia, one thousand nine hundred thirty-one, be amended and reenacted to read as follows:

Section 2. Any executor, administrator, guardian, curator, committee, trustee, or other fiduciary whose duty it may be to loan or invest money intrusted to him as such, may without any order of any court, invest the same or any part thereof in any of the following securities, and without liability for any loss resulting from investments therein:

(a) In bonds or interest-bearing notes or obligations of the United States, or those for which the faith of the United States is distinctly pledged to provide for the payment of the principal and interest thereof, including bonds issued under the federal farm loan act;
(b) In bonds or interest-bearing notes or obligations of this state;
(c) In bonds of any state of the United States which has not within ten years previous to the making of such investment defaulted in the payment of any part of either principal or interest on any of its bonds issued by authority of the legislature of such state;
(d) In the bonds or interest-bearing notes or obligations of any county, district, school district or independent school district, municipality, or any other political division, of this state that have been issued pursuant to the authority of any law of this state, since the ninth day of May of the year one thousand nine hundred seventeen;
(e) In bonds and negotiable notes secured by first mortgage or first trust deed upon improved real estate in this state.
27 where the amount secured by such mortgage or trust deed
28 shall not at the time of making the same exceed eighty per
29 cent of the assessed value of the real estate covered by such
30 mortgage or trust deed, and when such mortgage or trust deed
31 is accompanied by a satisfactory abstract of title, certificate
32 of title, or title insurance policy, showing good title in the
33 mortgagor when making such mortgage or trust deed, and by
34 a fire insurance policy in an old line company with loss, if any,
35 payable to the mortgagee or trustee as his interest may appear:
36 Provided, That the rate of interest upon the above enumerated
37 securities in this sub-section (e), in which such investments
38 may be made shall not be less than four per cent, nor more than
39 seven per cent, per annum.
40 This section shall not apply where the instrument creating
41 the trust, or the last will and testament of any testator, or any
42 court having jurisdiction of the matter, specially directs in
43 what securities the trust funds shall be invested, and every such
44 court is hereby given power specially to direct by order or
45 orders, from time to time, additional securities in which trust
46 funds may be invested, and any investment thereof made in
47 accordance with any such special direction shall be legal, and
48 no executor, administrator, guardian, curator, committee, trus-
49 tee, or other fiduciary, shall be held liable for any loss resulting
50 in any such case.

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CHAPTER 35

(Senate Bill No. 47—By Mr. Belknap, by request)

AN ACT to amend and reenact article two, chapter forty-eight of
the code of West Virginia, one thousand nine hundred thirty-
one, relating to divorces, by amending and reenacting sections
one, three, four, fifteen, eighteen, nineteen, twenty, twenty-
one, twenty-two, twenty-three, twenty-five, twenty-seven and
twenty-nine of said article, and by repealing sections five and
sixteen of said article.

[Passed March 9, 1935; in effect from passage. Became a law without the
approval of the Governor.]
Be it enacted by the Legislature of West Virginia:

That sections five and sixteen, article two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, be repealed, and that sections one, three, four, fifteen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-five, twenty-seven and twenty-nine, of said article, be amended and reenacted to read as follows:

Section 1. All marriages between a white person and a negro; all marriages which are prohibited by law on account of either of the parties having a former wife or husband then living; all marriages which are prohibited by law on account of consanguinity or affinity between the parties; all marriages solemnized when either of the parties was an insane person, feeble-minded person, idiot, imbecile, or an epileptic, or was afflicted with a venereal disease, or was incapable, because of natural or incurable impotency of body, of entering into the marriage state, or was under the age of consent; all marriages solemnized when either of the parties, prior to the marriage, without the knowledge of the other, had been convicted of an infamous offense, or when, at the time of marriage, the wife, without the knowledge of the husband, was with child by some person other than the husband, or prior to such marriage had been, without the knowledge of the husband, notoriously a prostitute, or when, prior to such marriage the husband, with out the knowledge of the wife, had been notoriously a licen-
Sec. 3. A suit for annulling a marriage may not be instituted:

(a) Where the cause is the natural or incurable impotency of body of either of the parties to enter the marriage state, by the party who had knowledge of such incapacity at the time of marriage; or

(b) Where the cause is fraud, force or coercion, by the party who was guilty of such fraud, force or coercion, nor by the injured party if, after knowledge of the facts, he or she has by acts or conduct confirmed such marriage; or

(c) Where the cause is affliction with a venereal disease existing at the time of marriage, by the party who was so afflicted if such party has subsequent to the marriage become cured of such disease, nor by the person who was not so afflicted if he or she after the curing of the afflicted person has by acts or conduct confirmed the marriage; or

(d) Where the cause is the nonage of either of the parties, by the party who was capable of consenting, nor by the party not so capable if he or she has by acts or conduct confirmed the marriage after arriving at the age of consent; or

(e) Where the cause is lack of consent on the part of either of the parties, by the party consenting or bringing about the marriage; or

(f) Where the cause is that either of the parties has been convicted of an infamous offense prior to marriage, by the other party if, after knowledge of such fact, he or she has cohabited with the party so convicted; or

(g) Where the cause is that the wife was at the time of marriage with child by some person other than the husband, or that prior to the marriage the wife had been notoriously a prostitute, by the husband, if, after knowledge of the fact, he has cohabited with the wife; or

(h) Where the cause is that the husband was prior to the marriage notoriously a licentious person, by the wife, if, after knowledge of the fact, she has cohabited with the husband.

Sec. 4. A divorce from the bond of matrimony may be decreed:

(a) For adultery; or
(b) When either of the parties subsequent to the marriage has, in or out of this state, been sentenced to imprisonment for the commission of a crime which under the laws of this state is a felony, and such sentence has become final, if the suit for divorce be commenced while such party is actually imprisoned under such sentence, or before the parties have again cohabited; and no pardon granted to the party so sentenced, if suit for divorce shall have been commenced before the granting of such pardon, shall restore such party to his or her conjugal rights; or

(c) To the party abandoned, when either party wilfully abandons or deserts the other for two years; or

(d) For cruel or inhuman treatment, or reasonable apprehension of bodily hurt, and a charge of prostitution made by the husband against the wife falsely shall be deemed cruel treatment within the meaning of this paragraph; or

(e) For habitual drunkenness of either party subsequent to the marriage; or

(f) For the addiction of either party, subsequent to the marriage, to the habitual use of opium, morphine, cocaine or other like drug.

Sec. 5 is hereby repealed.

Sec. 15. Upon decreeing a divorce, the court may make such further decree as it shall deem expedient, concerning the maintenance of the parties, or either of them; and upon decreeing the annulment of a marriage, or a divorce, the court may make such further decree as it shall deem expedient, concerning the care, custody, education and maintenance of the minor children, and may determine with which of the parents the children or any of them, may remain; and the court may, from time to time afterward, on the petition of either of the parties, revise or alter such decree concerning the maintenance of the parties, or either of them, and make a new decree concerning the same, as the altered circumstances or needs of the parties may render necessary to meet the ends of justice; and the court may also from time to time afterward, on the petition of either of the parties, revise or alter such decree concerning the care, custody, education and maintenance of the children, and make a new decree concerning the same, as the circumstances of the parents and the benefit of the children may require. In any
case where the divorce or the annulment is denied, if the par-
ties are living separate and apart from each other, the court
shall retain jurisdiction of the case for the purpose of deter-
mining with which of the parents the children or any of them
may remain and of making such order or decree concerning
the care, custody, education and maintenance of the minor
children, or any of them, as to the court may seem proper and
the benefit of the child or children may require; and such order
or decree may, from time to time afterward, on petition of
either of the parties, be revised or altered, and a new order or
decree made, as the circumstances of the parties or the needs
of the children may require. For the purpose of making effec-
tual any order or decree provided for in this section the court
may make any order or decree concerning the estate of the
parties, or either of them, as it shall deem expedient.

Sec. 16 is hereby repealed.

Sec. 18. When a divorce shall be granted, all rights of either
husband or wife to dower shall be thereby barred; but the
court when granting any divorce shall, in every proper case,
compel the guilty party to compensate the innocent party for
any inchoate right of dower, in any then existing property,
that may be barred by the divorce; and to secure the payment
of such compensation the court may make such compensation a
lien upon the real estate of the party liable therefor.

Sec. 19. Upon decreeing the annulment of a marriage, or
upon decreeing a divorce, the court shall have power to award
to either of the parties whatever of his or her property, real or
personal, may be in the possession, or under the control, or in
the name, of the other, and to compel a transfer or conveyance
thereof as in other cases of chancery.

Sec. 20. Any decree of divorce from bed and board entered
before the passage of this act, may be revoked at any time by the
same court by which it was pronounced, under such regulations
and restrictions as the court may impose, upon the joint applica-
tion of the parties, and upon their producing satisfactory evi-
dence of their reconciliation. Either party to a suit in which a
divorce from bed and board has been granted prior to the
passage of this act may proceed to have the same made final in
the manner prescribed by the code of West Virginia. All suits
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10 now pending for divorce from bed and board shall be converted
11 forthwith into suits for divorce from the bonds of matrimony
12 or withdrawn, at the option of the plaintiff. The court shall, in
13 each case when a suit for divorce from bed and board is con-
14 verted into a suit for divorce from the bonds of matrimony,
15 enter a memorandum to this effect in the chancery records, and
16 notice thereof shall be given to the defendant in the manner pro-
17 vided for service of original process.

Sec. 21. The court upon granting a divorce to a woman may,
2 if there are no children of such marriage, allow her to resume
3 her maiden name, or the name of a former deceased husband.

Sec. 22. When a divorce is decreed neither party to the
2 marriage so dissolved shall in any case again marry within
3 sixty days from the date of the decree, or pending an appeal of
4 the case in the supreme court. The court may, in its discretion,
5 further prohibit the guilty party from marrying again within
6 a certain time, not to exceed one year from the date of the de-
7 cree. The foregoing shall not prevent the divorced parties from
8 being remarried to each other at any time. The periods within
9 which both parties are prohibited from marrying again,
10 whether prescribed by law or by the court, shall be stated in
11 the decree; and any marriage contracted by any divorced
12 party, except a remarriage to the person from whom divorced,
13 within the prohibited period, shall be void, and the party shall
14 be criminally liable the same as if no divorce had been granted.

Sec. 23. Suit for divorce or annulment shall mature the
2 same as other cases in chancery, and when properly matured
3 the case shall be placed on the docket for trial, and the same
4 shall be tried before the court in chambers, and all witnesses
5 shall appear and testify at the trial the same as witnesses in
6 an action at law; and the law governing the taking and read-
7 ing of depositions in an action at law shall apply to the deposi-
8 tions in the trial of divorce cases: Provided, That the court may,
9 instead of proceeding with the case under this section, refer
10 the same to a commissioner in chancery, or a special commis-
11 sioner, as hereinafter provided.

Sec. 25. The plaintiff shall, in every case which is to be
2 heard before the court, at least thirty days before the first
day of the term at which it is expected to try the case before
the court, give the divorce commissioner of the county, if one
has been appointed under the provisions of section twenty-four
of this article, notice in writing that a trial will be demanded. If
the plaintiff has not in the bill stated the residence and post-
office address of the defendant, he shall furnish it to the di-
verce commissioner at the time of giving such notice; but if the residence and postoffice address of the defendant
are unknown to the plaintiff, at the time of the giving of no-
tice, an affidavit of this fact, by the plaintiff, delivered to the
divorce commissioner with the notice shall be sufficient.

Sec. 27. The commissioner to whom any case is referred
under the provisions of the previous section shall, before pro-
ceeding to execute the requirements of the decree of reference,
give to the parties or their attorneys, and the divorce commis-
sioner, if one has been appointed under the provisions of sec-
tion twenty-four of this article, at least ten days' notice of the
time and place when and where he will commence proceedings,
but if any party is not represented by an attorney and personal
service cannot be had on the party on account of absence from
the state or nonresidence, then it shall be sufficient to publish
the notice in a newspaper of general circulation in the county
wherein the suit is pending for such length of time as the court
may direct.

Sec. 29. Whenever a husband shall, without good and suffi-
cient cause, have failed to provide suitable support for his wife,
or have abandoned or deserted her, or if the wife, for such
cause as would entitle her to a divorce, is actually living apart
from her husband, and such husband is in either case of suffi-
cient ability to support his wife, the circuit court of any county
that would have jurisdiction of a suit for divorce between the
parties, shall, at the suit of the wife, in chancery, whether or
not a divorce be prayed for, decree to the wife as alimony and
separate maintenance such sum out of the husband's earnings
and income as the court may determine, considering the cir-
cumstances of the parties and their stations in life, and may
prohibit the husband from imposing any restraint on her
personal liberty, and may free her real and personal property
from possession, control or any interest of the husband; and
during the pendency of the suit the court, or judge thereof in
17 vacation, shall have the same powers to make such orders as
18 are provided for suits for divorce by section thirteen of this
19 article. Any decree entered in the case shall be effective dur-
20 ing such time as the court shall by its order direct, or until
21 the further order of the court thereon, and, upon the petition
22 of either party, the court may, from time to time afterwards,
23 revise or alter such decree, or make further decrees, concern-
24 ing the maintenance of the wife and the interest of the hus-
25 band in the property of the wife, and the care, custody, edu-
26 cation and maintenance of the minor children of the parties,
27 and may determine with which of their parents the children
28 or any of them shall remain.

CHAPTER 36

(Senate Bill No. 59—By Mr. Mathews)

AN ACT to provide for procuring attendance of persons resident
or domiciled outside this state as witnesses in criminal pro­
ceedings pending or about to be instituted in courts of record
in this state, and to provide for the attendance of persons
resident or domiciled in this state as witnesses in criminal
proceedings in courts of record in other states; to provide
for compensating such persons so attending as witnesses in
this state, and to provide certain immunities for persons
coming into or passing through this state as such witnesses.

[Passed March 9, 1885; in effect from passage. Became a law without the
approval of the Governor.]

See.
1. Procedure for securing attend­
ance of person resident in this
state as witness in criminal
2. Procedure for securing attend­
ance of nonresident as witness in

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1. Procedure for securing attend­
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Be it enacted by the Legislature of West Virginia:

Section 1. If a judge of a court of record in any state,
which by its laws has made provision for commanding persons
within that state to attend and testify in criminal prosecutions
in this state, certifies under the seal of such court that there
is a criminal prosecution pending in such court, that a person
being within this state is a material witness in such prosecu-
tion, and that his presence will be required for a specified
number of days, upon presentation of such certificate to any
judge of a court of record in the county in which such person
is found, such judge shall fix a time and place for a hearing
and shall notify the witness of such time and place.
If at the hearing the judge determines that the witness is
material and necessary, that it will not cause undue hardship
to the witness to be compelled to attend and testify in the prose-
cution in the other state, that the witness will not be compelled
to travel more than one thousand miles to reach the place of
trial by the ordinary traveled route, and that the laws of the
state in which the prosecution is pending, and of any other
state through which the witness may be required to pass by
ordinary course of travel, will give to him protection from
arrest and the service of civil and criminal process, he shall
issue a summons, with a copy of the certificate attached, direct-
ing the witness to attend and testify in the court where the
prosecution is pending, at a time and place specified in the
summons.
If the witness, who is summoned as above provided, after
being paid or tendered, by some properly authorized person,
the sum of ten cents a mile for each mile by the ordinary trav-
eled route to and from the court where the prosecution is pend-
ing, and five dollars for each day that he is required to travel
and attend as a witness, fails without good cause to attend and
testify as directed in the summons, he shall be punished in the
manner provided for the punishment of any witness who dis-
obeys a summons issued from a court of record in this state.

Sec. 2. If a person in any state, which by its laws has made
provision for commanding persons within its borders to attend
and testify in criminal prosecutions in this state, is a material
witness in a prosecution pending or about to be instituted in
a court of record in this state, a judge of such court may issue
a certificate under the seal of the court stating these facts and
specifying the number of days the witness will be required.
This certificate shall be presented to a judge of a court of
record in the county in which the witness is found.
If the witness is summoned to attend and testify in the
criminal prosecution in this state he shall be tendered the sum of ten cents a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending, and five dollars for each day that he is required to travel and attend as a witness. A witness who has appeared in accordance with the provisions of the summons shall not be required to remain within this state a longer period of time than the period mentioned in the certificate.

Sec. 3. If a person comes into this state in obedience to a summons directing him to attend and testify in a criminal prosecution in this state he shall not, while in this state pursuant to such summons, be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this state under the summons. If a person passes through this state while going to another state in obedience to a summons to attend and testify in a criminal prosecution in that state or while returning therefrom, he shall not while so passing through this state be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this state under the summons.

Sec. 4. This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of the states which enact it.

Sec. 5. This act may be cited as "Uniform act to secure the attendance of witnesses from without the state in criminal cases."

Sec. 6. All acts or parts of acts inconsistent with this act are hereby repealed.

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CHAPTER 37

(Senate Bill No. 220—By Mr. Mathews)

AN ACT to amend and reenact section four, article one, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, providing for the regulation by the
supreme court of appeals of pleading, practice and procedure in the courts of West Virginia.

[Passed March 9, 1935; in effect ninety days from passage. Became a law without the approval of the Governor.]

Sec. 4. Supreme court of appeals to make general rules and regulations governing pleading, practice and procedure in such court and in all other courts of record of this state. All statutes relating to pleading, practice and procedure shall have force and effect only as rules of court and shall remain in effect unless and until modified, suspended or annulled by rules promulgated pursuant to the provisions of this section. Such rules and regulations shall be uniform for all courts of the same grade or class; but any court of the state other than the supreme court of appeals may adopt rules of court governing its local practice, but such rules of local practice shall not be inconsistent with any general rule of court then in existence or thereafter promulgated, and shall be effective only after approval by the supreme court of appeals.

The judicial council of West Virginia is hereby designated as advisory committee to make observation and report to the supreme court of appeals, from time to time, such recommendations as may, in its judgment, be proper; and all rules promulgated by the supreme court of appeals under the authority of this section shall, before taking effect, be referred to the chairman of the judicial council, the president of the Virginia bar association and to the judge of every court affected thereby. In the event a hearing is requested, within twenty days after such reference, by any five of the persons
26 so designated, the supreme court of appeals shall thereupon
27 designate a day when a hearing on the matter of the adoption
28 of such rules shall be held. In the event no hearing is re-
29 quested or, if requested, after such hearing, the supreme court
30 of appeals shall be free to adopt or reject the proposed rules.
31 General rules and regulations governing pleading, practice
32 and procedure, and local rules, shall from time to time be
33 published as an appendix to the official reports of the supreme
34 court of appeals and bound therewith.
35 All acts and parts of acts inconsistent with this act are
36 hereby repealed.

CHAPTER 38

(House Bill No. 30—By Mr. Preston)

AN ACT to amend and reenact section six, article one, chapter
sixty-two of the code of West Virginia, one thousand nine hun-
dred thirty-one, relating to criminal procedure and admission
to bail.

[Passed February 18, 1935; in effect ninety days from passage. Approved by the
Governor.]

Sec. 6. Admission to bail by justice; amount of bail; when bail not
granted; admission to bail by court or judge, before or after
conviction, in certain cases; condition of recognizance when bail allowed after conviction.

Be it enacted by the Legislature of West Virginia:

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

Section 6. A justice may admit to bail a person who is
2 charged with, but not convicted of, an offense not punishable
3 with death. If the offense be punished by confinement in the
4 penitentiary, he shall not admit such person to bail in a sum
5 less than five hundred dollars. But a justice shall not admit
6 any person to bail if bail has been previously refused to such
7 person by any court or judge; nor shall any person confined
8 in jail by an order of commitment in which the amount of bail
9 he is to give, is specified, or where an order has been made
10 by a court or judge fixing the bail such person is to give, be
11 admitted to bail by a justice in a sum less than is specified in
12 the order. But a circuit, intermediate or criminal court, or
13 the supreme court of appeals, or a judge of either of said
14 courts in vacation, may, for good cause shown, admit any per-
15 son to bail before conviction, or after conviction for a misde-
16 meanor, or after a new trial has been granted after conviction
17 for a felony, except conviction for offenses where the penalty
18 is confinement in the penitentiary for life or death, and may,
19 by order, direct the clerk of the circuit, intermediate or crimi-
20 nal court of the county in which the offense is charged to have
21 been committed to take the bond with good security in such a
22 sum as the court or judge may fix in such order: Provided,
23 That in cases where bail has been allowed after conviction as
24 aforesaid, the condition of the recognizance, or bond shall be,
25 that the accused shall appear before the said circuit, inter-
26 mediate or criminal court at its first regular term after the
27 appellate court shall have rendered its final order or judg-
28 ment, upon such writ of error, appeal or supersedeas, and sub-
29 mit himself to such order or judgment, and to be further
30 dealt with according to law.

CHAPTER 39

(House Bill No. 81—By Mr. Van Sickler)

AN ACT to amend and reenact section four, article one, chapter
forty-five of the code of West Virginia, one thousand nine
hundred thirty-one, relating to the remedy of bail, surety,
guarantor, etc., making payment.

[Passed March 7, 1935; in effect from passage. Approved by the Governor.]

Sec. 4. Action by bail, surety, etc., or
sheriff for recovery of liability
paid and damages; subroga-
tion to rights of creditor; execu-
tion in name of original
creditor; rights of original
creditor not affected; provi-
sions of act intended to pro-
protect rights of person second-
arily liable; assignments here-
tofoe made validated.

Be it enacted by the Legislature of West Virginia:

That section four, article one, chapter forty-five of the code of
West Virginia, one thousand nine hundred thirty-one, be amended
and reenacted to read as follows:
Section 4. If any person liable as bail, surety, guarantor or endorser, or any sheriff liable for not taking sufficient bail, or the committee, heir, or personal representative of any so liable, shall pay, in whole or in part, any judgment, decree or execution rendered or awarded on account of such liability, the person having right of action for the amount so paid, may, by motion in the court in which said judgment, decree, or execution was rendered or awarded, obtain judgment or decree against any person against whom such right of action exists for the amount so paid, with interest from the time of payment, and five per cent damages on said amount; and said person so paying in whole or in part, any such judgment, decree or execution rendered or awarded on account of such liability, or any such note, bond or other demand, in whole or in part, shall by operation of law, in addition to the remedy above provided, be substituted to and become the owner of all of the rights and remedies of the creditor for the enforcement and collection of the amount or amounts so paid, and shall be deemed the assignee thereof; executions, or other legal process to which the principal creditor was entitled, may be issued on any such judgment or decree in the name of the original endorser against the person primarily liable for the benefit of the person secondarily liable to the extent to which he has satisfied the original creditor; but nothing in this act shall be construed to impair or affect in any way the security of the original creditor, or his rights and remedies as to any balance which may be due him. The provisions of this section are cumulative, and are intended to protect the rights of any person secondarily liable to the extent to which he has satisfied the obligation of the person primarily liable. All assignments heretofore made of judgments and decrees to persons secondarily liable are hereby validated, and upon the same executions may be issued as herebefore provided.

CHAPTER 40

(AN ACT to permit the circuit courts of the state to charge off any account in the hands of its general receiver, whose owners
are unknown or deceased without heirs or possibility of being claimed, and the application thereof to any loss or depreciation on the investments in the hands of such general receiver.

[Passed March 9, 1933; in effect from passage. Approved by the Governor.]

Sec. 14. Application of unclaimed funds in hands of general receiver of circuit court; publication

Sec. of notice of intention to make application of fund.

Be it enacted by the Legislature of West Virginia:

That a new section be added to article six, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, to be known as section fourteen, the same to read as follows:

Section 14. Whenever it shall appear to any circuit court that any fund in its charge and in the hands of its general receiver, for a period of at least twenty years, will, in all probability, never be claimed by any one entitled thereto, the court may order such fund applied to any loss of or shrinkage in the investments of such general receiver due to economic condition, and may release such general receiver from any further liability on account of such fund so in his hands.

But before entering any such order, the court shall cause a notice of such intention to be given by the clerk of said court by publication thereof once a week for three successive weeks in some newspaper of general circulation in said county, and if no claimant shall appear and establish a right to said fund within one year from the date of the last publication thereof, the court may take said facts to have been fully established, and shall so apply said fund.
CHAPTER 41

( Senate Bill No. 21—By Mr. Greene)

AN ACT to transfer the county of Mingo from the eighth judicial circuit to the twenty-fourth judicial circuit, and fixing the time of holding the terms of circuit court therein.

[Passed February 4, 1935: In effect on March 1, 1935. Became a law without the approval of the Governor.]

Sec. 1. The county of Mingo, which is now a part of the eighth judicial circuit, composed of the counties of McDowell and Mingo, be, and the same is, hereby transferred to and shall, on and after the first day of March, one thousand nine hundred thirty-five, or as soon thereafter as this act shall take effect, become a part of the twenty-fourth judicial circuit, which shall be composed of the counties of Mingo and Wayne; the judge of the twenty-fourth judicial circuit now serving, shall continue as judge thereof, including the county of Mingo, for his unexpired term, with the authority, powers, duties, compensation and emoluments of said office as provided by the constitution and laws relating to circuit judges.

Sec. 2. The terms of circuit court, in the counties composing the twenty-fourth judicial circuit, as aforesaid, shall commence and be held each year as follows:

4 For the county of Mingo, on the first Monday in January, May and October; for the county of Wayne, on the second Monday in March and July, and the fourth Monday in November.

All acts and parts of acts in conflict herewith are hereby repealed.
CHAPTER 42

(House Bill No. 490—By Mr. Haythe, by request)

AN ACT to transfer the county of Summers from the tenth judicial circuit to the eleventh judicial circuit and fixing the times of holding the circuit courts in the eleventh judicial circuit.

[Passed March 9, 1935: in effect ninety days from passage. Became a law without the approval of the Governor.]

Sec. 1. That the county of Summers which is now a part of the tenth judicial circuit, composed of the counties of Boone, Raleigh and Summers, be and the same is hereby transferred to and shall, on and after the first day of January, one thousand thirty-seven, become a part of the eleventh judicial circuit, then to be composed of the counties of Greenbrier, Monroe, Pocahontas and Summers.

Sec. 2. The times for holding court within said eleventh judicial circuit to be so constituted shall be as follows:

1. For the county of Pocahontas: Second Tuesday in March, first Tuesday in June, and the first Tuesday in October of each year.
2. For the county of Greenbrier: Third Tuesday in January, first Tuesday in May, first Tuesday in August and the fourth Tuesday in November of each year.
3. For the county of Monroe: First Tuesday in April, second Tuesday in July, and the second Tuesday in November of each year.
4. For the county of Summers: First Tuesday in January, third Tuesday in April, third Tuesday in July, and third Tuesday in October of each year.

Sec. 3. All acts or parts of acts inconsistent with this act are hereby repealed.
CHAPTER 43
(Senate Bill No. 116—By Mr. Sandridge)

AN ACT to amend and reenact chapter twenty-three, acts of the Legislature of West Virginia, one thousand nine hundred thirty-one, fixing the time for holding terms of court in the nineteenth judicial circuit.

[Passed February 13, 1935; in effect ninety days from passage. Approved by the Governor.]

Sec.
1-(s) Terms of court in the nineteenth judicial circuit.

Be it enacted by the Legislature of West Virginia:

That chapter twenty-three, acts of the Legislature of West Virginia, one thousand nine hundred thirty-one, amending section one-(s), article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, be amended and reenacted to read as follows:

Section 1-(s). For the county of Barbour, on the fourth Monday in February, May and October.
3 For the county of Taylor, on the second Monday in January, April and September.
5 All acts inconsistent with this act are hereby repealed.

CHAPTER 44
(Senate Bill No. 65—By Mr. Spillers, by request)

AN ACT authorizing the board of commissioners of Ohio county to pay additional compensation to the judges of the first judicial circuit and providing for limits and regulations under which such payments may be made.

[Passed March 8, 1935; in effect from passage. Became a law without the approval of the Governor.]

Sec.
1. Board of county commissioners of Ohio county authorized to pay additional compensation to judges of first judicial circuit; amount not to exceed two thousand dollars per annum to each judge; county courts of Brooke and Hancock counties may contribute to payment of said additional compensation.

Be it enacted by the Legislature of West Virginia:

Section 1. The board of county commissioners of Ohio county
2 is authorized to pay additional compensation to the judges of
3 the first judicial circuit, and to limit and regulate such pay-
4 ments as follows:
5 From and after January first, one thousand nine hundred
6 thirty-seven, the board of county commissioners of Ohio county
7 is hereby authorized to pay additional compensation to the
8 judges of the first judicial circuit; but the amount of such
9 compensation shall not exceed two thousand dollars per annum
10 to each of said judges. Said board of county commissioners
11 may arrange with the county courts of Brooke and Hancock
12 counties, or either or both of said counties, whereby either or
13 both of said county courts may contribute toward the payment
14 of any such additional compensation so paid to said judges.

Sec. 2. All acts or parts of acts inconsistent herewith are
2 hereby repealed.

CHAPTER 45

(House Bill No. 236—By Mr. Galbraith)

AN ACT to authorize the board of county commissioners of Ohio
Co unty and the county court of Brooke County to provide ad-
ditional compensation for special judges of courts of record
within said counties.

[Passed February 19, 1935; in effect from passage. Became a law without the
approval of the Governor.]

Sec. Sec. 1. Board of commissioners of Ohio

County and county court of
Brooke county authorized to
provide additional compensa-
tion for special judges of all

Be it enacted by the Legislature of West Virginia:

Section 1. The board of county commissioners of Ohio
2 County and the county court of Brooke County are hereby au-
3 thorized to provide additional compensation for special judges
4 of all courts of record in said counties: Provided, That the
5 amount of such additional compensation provided for any such
6 judge, when added to the compensation payable to him out of
7 the state treasury, shall not exceed the amount of the salary of
8 the regular judge in whose place and stead such special judge
9 serves.
CHAPTER 46

( Senate Bill No. 230—By Messrs. Spillers and Young, of Upshur)

AN ACT to regulate and control the production, preparation, manufacture, possession, transportation, sale, disposition and use of coca leaves, cocaine, opium, morphine, codeine, heroin, and any compound, manufacture, salt, derivative, mixture and preparation thereof or of either of them; to provide for the control and sale of cannabis, chloral and barbital; to provide for the issuance, suspension and revocation of licenses to produce, prepare, manufacture, sell, dispense and otherwise handle such drugs; to prescribe penalties for violations of this act, and to provide that this act may be designated and cited as the "Uniform Narcotic Drug Act."

[Passed March 8, 1935; in effect ninety days from passage. Became a law without the approval of the Governor.]

Sec. 1. Definition of words and phrases.
2. Manufacture, sale, etc., of narcotic drugs prohibited, unless authorized by this act.
3. License to manufacture, etc., or supply at wholesale narcotic drugs; fee: for calendar year.
4. Proof of certain facts to be furnished by applicant for license; when not to be granted; suspension or revocation.
5. To whom licensed manufacturer or wholesaler may sell narcotic drugs; official written orders for such sales; when possession or control of narcotic drugs lawful; limitation on right of designated persons to administer narcotic drugs.
6. Sales by pharmacists upon prescriptions; what prescription to state; prescription for sale of stock by legal owner discontinuing dealing in narcotic drugs; sales by pharmacists of solutions containing narcotic drugs.
7. Prescription for, or administering, narcotic drug by physician or dentist; what prescription to state; prescription for, or administering narcotic drug by veterinarian; what prescription to state.
8. To what acts or sales provisions of act do not apply; to what conditions exceptions subjected; when no limit on kind and quantity of narcotic drug prescribed or sold.
9. Records to be kept by physicians, dentists: etc.; (2) records to be kept by manufacturers and wholesalers; (3) records to be kept by pharmacists; (4) records to be kept by others; (5) form of records prescribed by state board of pharmacy; what records to state; preservation; record of narcotic drugs lost, destroyed or stolen.
10. What labels affixed to narcotic drugs in packages to state; what labels affixed to narcotic drugs sold by pharmacists on prescription to state.
11. When narcotic drug to remain in container in which sold.
12. To whom provisions of act restricting possession and control of narcotic drugs do not apply.
13. What stores, vehicles, etc., deemed common nuisances for purposes of act.
Be it enacted by the Legislature of West Virginia:

Section 1. The following words and phrases, as used in this act, shall have the following meanings, unless the context otherwise requires:

(1) "Person" includes any corporation, association, co-partnership, or one or more individuals.

(2) "Physician" means a person authorized by law to practice medicine in this state and any other person authorized by law to treat sick and injured human beings in the state and to use narcotic drugs in connection with such treatment.

(3) "Dentist" means a person authorized by law to practice dentistry in this state.

(4) "Veterinarian" means a person authorized by law to practice veterinary medicine in this state.

(5) "Manufacturer" means a person who, by compounding, mixing, cultivating, growing, or other process, produces or prepares narcotic drugs, but does not include a pharmacist who compounds narcotic drugs to be sold or dispensed on prescriptions.

(6) "Wholesaler" means a person who supplies narcotic drugs that he himself has not produced or prepared, on official written orders, but not prescriptions.

(7) "Pharmacist" means a licensed pharmacist as defined by the laws of this state.

(8) "Pharmacy Owner" means the owner of a store or other place of business where narcotic drugs are compounded.
or dispensed by a registered pharmacist; but nothing in this
act contained shall be construed as conferring on a person
who is not registered or licensed as a pharmacist any author-
ity, right or privilege that is not granted to him by the
pharmacy laws of this state.

(9) "Hospital" means an institution for the care and
treatment of the sick and injured, approved by the state board
of pharmacy as proper to be entrusted with the custody of
narcotic drugs and the professional use of narcotic drugs
under the direction of a physician, dentist, or veterinarian.

(10) "Laboratory" means a laboratory approved by the
state board of pharmacy as proper to be entrusted with the
custody of narcotic drugs and the use of narcotic drugs for
scientific and medical purposes and for purposes of instruc-
tion.

(11) "Sale" includes barter, exchange, or offer therefor,
and each such transaction made by any person, whether as
principal, proprietor, agent, servant, or employee.

(12) "Coca Leaves" includes cocaine and any compound,
manufacture, salt, derivative, mixture, or preparation of coca
leaves, except derivatives of coca leaves which do not con-
tain cocaine, ecgonine, or substances from which cocaine or
ecgonine may be synthesized or made.

(13) "Opium" includes morphine, codeine, and heroin,
and any compound, manufacture, salt, derivative, mixture, or
preparation of opium.

(14) "Narcotic drugs" means coca leaves and opium.

(15) "Federal Narcotic Laws" means the laws of the
United States relating to opium, coca leaves, and other
narcotic drugs.

(16) "Official Written Order" means an order written on
a form provided for that purpose by the United States com-
missioner of narcotics, under any laws of the United States
making provision therefor, if such order forms are authorized
and required by federal law, and if no such order form is
provided then on an official form provided for that purpose
by the state board of pharmacy.

(17) "Dispense" includes distribute, leave with, give away,
dispose of, or deliver.
Sec. 2. No person shall manufacture, possess, have under his control, sell, prescribe, administer, dispense, or compound any narcotic drug, except as authorized in this act.

Sec. 3. No person shall manufacture, compound, mix, cultivate, grow, or by any other process produce or prepare narcotic drugs, and no person as a wholesaler shall supply the same, without having first obtained a license so to do from the state board of pharmacy.

A fee of ten dollars shall be charged and collected by the state board of pharmacy for each manufacturer’s and each wholesaler’s license issued under the provision of this section. The license shall be for the calendar year, and shall be renewable on the first day of January of each year.

Sec. 4. No license shall be issued under the foregoing section unless and until the applicant therefor has furnished proof satisfactory to the state board of pharmacy:

(a) That the applicant is of good moral character, or if the applicant be an association or corporation, that the managing officers are of good moral character;

(b) That the applicant is equipped as to land, buildings, paraphernalia properly to carry on the business described in his application; and that his trade connections are such that there is reasonable probability that he will apply all narcotic drugs manufactured or sold by him to medicinal and scientific purposes;

(c) No license shall be granted to any person who has within five years been convicted of a wilful violation of any law of the United States, or of any state, relating to opium, coca leaves, or other narcotic drugs, or to any person who is a narcotic drug addict;

(d) The state board of pharmacy may suspend or revoke any license for cause.

Sec. 5. (1) A duly licensed manufacturer or wholesaler may sell and dispense narcotic drugs to any of the following persons, but only on official written orders:

(a) To a manufacturer, wholesaler or pharmacist;

(b) To a physician, dentist or veterinarian;
6 (c) To a person in charge of a hospital, but only for use by 7 or in that hospital: Provided, That the official written order is 8 signed by a physician, dentist, veterinarian or pharmacist con- 9 nected with such hospital;
10 (d) To a person in charge of a laboratory, but only for use 11 in that laboratory for scientific and medical purposes.
12 (2) A duly licensed manufacturer or wholesaler may sell 13 narcotic drugs to any of the following persons:
14 (a) On a special written order accompanied by a certificate 15 of exemption as required by the federal narcotic laws, to a 16 person in the employ of the United States government or of any 17 state, territorial, district, county, municipal or insular govern- 18 ment, purchasing, receiving, possessing or dispensing narcotic 19 drugs by reason of his official duties;
20 (b) To a master of a ship or a person in charge of any 21 aircraft upon which no physician is regularly employed, for the 22 actual medical needs of persons on board such ship or aircraft, 23 when not in port: Provided, That such narcotic drugs shall be 24 sold to the master of such ship or person in charge of such air- 25 craft only in pursuance of a special order form approved by a 26 commissioned medical officer or acting assistant surgeon of the 27 United States public health service;
28 (c) To a person in a foreign country if the provisions of the 29 federal narcotic laws are complied with.
30 (3) An official written order for any narcotic drug shall be 31 signed in duplicate by the person giving said order or by his 32 duly authorized agent. The original shall be presented to the 33 person who sells or dispenses the narcotic drug named therein. 34 In event of the acceptance of such order by said person, each 35 party to the transaction shall preserve his copy of such order for 36 a period of two years in such a way as to be readily accessible 37 for inspection by any public officer or employee engaged in the 38 enforcement of this act. Compliance with the federal narcotic 39 laws, by the parties to the transaction, shall be deemed com- 40 pliance with this subsection, respecting the requirements govern- 41 ing the use of order forms.
42 (4) Possession of or control of narcotic drugs obtained as 43 authorized by this section shall be lawful if in the regular 44 course of business, occupation, profession, employment or duty 45 of the possessor.
(5) A person in charge of a hospital or of a laboratory, or in the employ of this state or of any other state, or of any political subdivision thereof, and a master or other proper officer of a ship or aircraft, who obtains narcotic drugs under the provisions of this section or otherwise, shall not administer, nor dispense, nor otherwise use such drugs, within this state, except within the scope of his employment or official duty, and then only for scientific or medicinal purposes and subject to the provisions of this act.

Sec. 6. (1) A pharmacist, in good faith, may sell and dispense narcotic drugs to any person upon a written prescription of a physician, dentist, or veterinarian: Provided, That such prescription is properly executed, dated and signed by the person prescribing on the day when issued, and bearing the full name and address of the patient for whom, or of the owner of the animal for which, the drug is dispensed, and the full name, address, and registry number under the federal narcotic laws, of the person prescribing, if he is required by those laws to be so registered. If the prescription be for an animal, it shall state the species of animal for which the drug is prescribed. The person filling the prescription shall write the date of filling and his own signature on the face of the prescription. The prescription shall be retained on file by the proprietor of the pharmacy in which it is filled for a period of two years, so as to be readily accessible for inspection by any public officer or employee engaged in the enforcement of this act. The prescription shall not be refilled.

(2) The legal owner of any stock of narcotic drugs in a pharmacy, upon discontinuance of dealing in said drugs, may sell said stock to a manufacturer, wholesaler, pharmacist or pharmacy owner, but only on an official written order.

(3) A pharmacist, only upon an official written order, may sell to a physician, dentist, or veterinarian, in quantities not exceeding one ounce at any one time, aqueous or oleaginous solutions of which the content of narcotic drug does not exceed a proportion greater than twenty per cent of the complete solution, to be used for medical purposes. The original order form must be filed by the pharmacist with his narcotic pre-
solution so furnished must bear a label showing the date and number of the order form, the name and proportion of narcotic drug contained in the solution, the name, address, and registry number of the person furnishing the order, and the name, address and registry number of the pharmacist or pharmacy owner filling the order.

Sec. 7. (1) A physician or a dentist, in good faith and in the course of his professional practice only, may prescribe on written prescription, administer, and dispense narcotic drugs, or he may cause the same to be administered by a nurse or intern under his direction and supervision. Such a prescription shall be dated and signed by the person prescribing on the day when issued, and shall bear the full name and address of the patient for whom the narcotic drug is prescribed, and the full name, address and registry number under the federal narcotic laws of the person prescribing: Provided, That he is required by those federal laws to be so registered.

(2) A veterinarian, in good faith and in the course of his professional practice only, and not for use by a human being, may prescribe on written prescription, administer, and dispense narcotic drugs, and he may cause them to be administered by an assistant or orderly under his direction and supervision. Such a prescription shall be dated and signed by the person prescribing on the day when issued and shall bear the full name and address of the owner of the animal, and the species of the animal, for which the narcotic drug is prescribed, and the full name, address, and registry number under the federal narcotic laws of the person prescribing provided he is required by those laws to be so registered.

Sec. 8. Except as otherwise in this act specifically provided, this act shall not apply to the following cases:

(1) Prescribing, administering, dispensing, or selling at retail of any medicinal preparation that contains not more than two grains of opium, or more than one-fourth of a grain of morphine, or more than one-eighth of a grain of heroin, or more than one grain of codeine, or any salt or derivative of any of them in one fluid ounce, or if a solid or semi-solid preparation, in one avoirdupois ounce;

(2) Prescribing, administering, dispensing, or selling at retail of any medicinal preparation that contains not more than two grains of opium, or more than one-fourth of a grain of morphine, or more than one-eighth of a grain of heroin, or more than one grain of codeine, or any salt or derivative of any of them in one fluid ounce, or if a solid or semi-solid preparation, in one avoirdupois ounce;
11 tail of liniments, ointments, and other preparations that are
12 susceptible of external use only and that contain narcotic drugs
13 in such combinations as prevent their being readily extracted
14 from such liniments, ointments, or preparations, except that
15 this act shall apply to all liniments, ointments, and other prep-
16 arations, that contain coca leaves in any quantity or combina-
17 tion;
18 (3) The exceptions authorized by this section shall be sub-
19 ject to the following conditions:
20 (a) The medicinal preparation, or the liniment, ointment,
21 or other preparations susceptible of external use only, pre-
22 scribed, administered, dispensed, or sold, shall contain, in ad-
23 dition to the narcotic drug in it, some drug or drugs conferring
24 upon it medicinal qualities other than those possessed by the
25 narcotic drug alone;
26 (b) Such preparation shall be prescribed, administered, com-
27 pounded, dispensed, and sold in good faith as a medicine, and
28 not for the purpose of evading the provisions of this act;
29 (c) Nothing in this section shall be construed to limit the
30 kind and quantity of any narcotic drug that may be prescribed,
31 administered, compounded, dispensed, or sold, to any person
32 or for the use of any person or animal, when it is prescribed,
33 administered, compounded, dispensed, or sold, in compliance
34 with the general provisions of this act.

Sec. 9. (1) Every physician, dentist, veterinarian, or other
2 person who is authorized to administer or professionally use
3 narcotic drugs, shall keep a record of such drugs received by
4 him, and a record of all such drugs administered, dispensed, or
5 professionally used by him otherwise than by prescription.
6 The keeping of a record by any such person using small quan-
7 tities of solutions or other preparations of such drugs for local
8 application, of the quantity, character, and potency of such
9 solutions or other preparations purchased or made up by him,
10 and of the dates when purchased or made up, without keeping
11 a record of the amount of such solution or other preparation
12 applied by him to individual patients, shall constitute a suffi-
13 cient compliance with this subsection.
14 (2) Manufacturers and wholesalers shall keep records of all
15 narcotic drugs compounded, mixed, cultivated, grown, or by any
16-17 other process produced or prepared, and of all narcotic
drugs received and disposed of by them, in accordance with the provisions of subsection five of this section.

(3) Pharmacists and pharmacy owners shall keep records of all narcotic drugs received and disposed of by them, in accordance with the provisions of subsection five of this section.

(4) Every person who purchases for resale, or who sells narcotic drug preparations exempted by section eight of this act, shall keep a record showing the quantities and kinds thereof received and sold, or disposed of otherwise, in accordance with the provisions of subsection five of this section.

(5) The form of records shall be prescribed by the state board of pharmacy. The record of narcotic drugs received shall in every case show the date of receipt, the name and address of the person from whom received, and the kind and quantity of drugs received, the kind and quantity of narcotic drugs produced or removed from process of manufacture, and the date of such production or removal from process of manufacture; and the record shall in every case show the proportion of morphine, cocaine, or ecgonine contained in or producible from crude opium or coca leaves received or produced.

The record of all narcotic drugs sold, administered, compounded, dispensed, or otherwise disposed of, shall show the date of selling, administering, compounding, or dispensing, the name and address of the person to whom or for whose use, or the owner and species of animal for which the drugs were sold, administered, compounded, or dispensed, and the kind and quantity of drugs. Every such record shall be kept for a period of two years from the date of the transaction recorded. The keeping of a record required by or under the federal narcotic laws, containing substantially the same information as is specified above, shall constitute compliance with this section, except that every record shall contain a detailed list of narcotic drugs lost, destroyed, or stolen, if any, the kind and quantity of such drugs, and the date of the discovery of such loss, destruction, or theft.

Sec. 10. (1) Whenever a manufacturer sells or dispenses a narcotic drug, and whenever a wholesaler sells or dispenses a narcotic drug in a package prepared by him, he shall securely affix to each package in which that drug is contained a label showing in legible English the name and address of the vendor
6 and the quantity, kind, and form of narcotic drug contained
7 therein. No person, except a pharmacist for the purpose of
8 filling a prescription under this act shall alter, deface, or re-
9 move any label so affixed.

10 (2) Whenever a pharmacist sells or dispenses any narcotic
drug on a prescription issued by a physician, dentist or veteri-
narian, he shall affix to the container in which said drug is
sold or dispensed, a label showing his name or the name of
the store, address, and registry number, or the name, address,
an and registry number of the pharmacist for which he is law-
fully acting; the serial number of the prescription; the name
and address of the patient, or, if the patient is an animal, the
name and address of the owner of the animal and the species
of the animal; the name, address and registry number of the
physician, dentist, or veterinarian, by whom the prescription
was written; and such directions as may be stated on the pre-
scription. No person shall alter, deface, or remove any label
so affixed, so long as any of the original contents remain.

Sec. 11. A person to whom or for whose use any narcotic
2 drug has been prescribed, sold, or dispensed, by a physician,
dentist, pharmacist, or other person authorized under the
provisions of section five of this act, and the owner of any
animal for which any such drug has been prescribed, sold,
or dispensed, by a veterinarian, may lawfully possess it only
in the container in which it was delivered to him by the person
selling or dispensing the same.

Sec. 12. The provisions of this act restricting the possess-
ing and having control of narcotic drugs shall not apply to
common carriers or to warehousemen, while engaged in law-
fully transporting or storing such drugs, or to any employee of
the same acting within the scope of his employment; or to
public officers or their employees in the performance of their
official duties requiring possession or control of narcotic drugs;
or to temporary incidental possession by employees or agents
of persons lawfully entitled to possession, or by persons whose
possession is for the purpose of aiding public officers in per-
forming their official duties.

Sec. 13. Any store, shop, warehouse, dwelling house, build-
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Any vehicle, boat, aircraft, or any place whatever, which is resorted to by narcotic drug addicts for the purpose of using narcotic drugs or which is used for the illegal keeping or selling of the same, shall be deemed a common nuisance. No person shall keep or maintain such a common nuisance.

Sec. 14. All narcotic drugs, the lawful possession of which is not established or the title to which cannot be ascertained, which have come into the custody of a peace officer, shall be forfeited, and disposed of as follows:

(a) The court or magistrate having jurisdiction shall immediately notify the state board of pharmacy and unless otherwise requested within fifteen days by the state board of pharmacy, in accordance with subsection (b) of this section shall order such narcotic drugs forfeited and destroyed. A record of the place where said drugs were seized, of the kinds and quantities of drugs so destroyed, and of the time, place, and manner of destruction, shall be kept, and a return under oath, reporting said destruction, shall be made to the court or magistrate and to the United States commissioner of narcotics, by the officer who destroys them;

(b) Upon written application by the state board of pharmacy the court or magistrate by whom the forfeiture of narcotic drugs has been decreed may order the delivery of any of them, except heroin and its salts and derivatives, to said state board of pharmacy, for distribution or destruction, as hereinafter provided;

(c) Upon application by any hospital or institution within this state, not operated for private gain, the state board of pharmacy may in its discretion deliver any narcotic drugs that have come into its custody by authority of this section to the applicant for medicinal or scientific use. The state board of pharmacy may from time to time deliver excess stocks of such narcotic drugs to the United States commissioner of narcotics, or may destroy same;

(d) The state board of pharmacy shall keep a full and complete record of all drugs received and of all drugs disposed of, showing the exact kinds, quantities, and forms of such drugs; the persons from whom received and to whom delivered; by whose authority received, delivered, and destroyed; and the
35 dates of the receipt, disposal, or destruction, which record shall
36 be open to inspection by all federal or state officers charged
37 with the enforcement of federal and state narcotic laws.

Sec. 15. On the conviction of any person of the violation
2 of any provision of this act, a copy of the judgment and sen-
3 tence, and of the opinion of the court or magistrate, if any
4 opinion be filed, shall be sent by the clerk of the court, or by
5 the magistrate, to the board or officer, if any, by whom the
6 convicted defendant has been licensed or registered to prac-
7 tice his profession or to carry on his business. A duplicate
8 copy of the judgment and sentence and opinion, if any opinion
9 be filed, shall be sent to the state board of pharmacy.
10 On the conviction of any such person the court may, in its
11 discretion, suspend or revoke the license or registration of the
12 convicted defendant to practice his profession or to carry on
13 his business. On the application of any person whose license
14 or registration has been suspended or revoked, and upon
15 proper showing and for good cause, said board or officer may
16 reinstate such license or registration.

Sec. 16. Prescriptions, orders, and records, required by
2 this act, and stocks of narcotic drugs, shall be open for inspec-
3 tion only to federal, state, county and municipal officers, whose
4 duty it is to enforce the laws of this state or of the United
5 States relating to narcotic drugs. No officer having knowledge
6 by virtue of his office of any such prescription, order or rec-
7 ords shall divulge such knowledge, except in connection with
8 a prosecution or proceedings in court or before a licensing or
9 registration board or officer, to which prosecution or proceed-
10 ing the person to whom such prescriptions, orders, or records
11 relate, is a party.

Sec. 17. (1) No person shall obtain or attempt to obtain
2 a narcotic drug, or procure or attempt to procure the admin-
3 istration of a narcotic drug, (a) by fraud, deceit, misrepre-
4 sentation, or subterfuge; or (b) by forgery or alteration of
5 a prescription or of any written order; (c) by the conceal-
6 ment of a material fact; or (d) by the use of a false name or
7 the giving of a false address.
8 (2) Information communicated to a physician in an effort
9 to unlawfully procure a narcotic drug, or unlawfully to pro-
10 cure the administration of any such drug, shall not be deemed
11 a privileged communication.
12 (3) No person shall wilfully make a false statement in any
13 prescription, order, report, or record, required by this act.
14 (4) No person shall, for the purpose of obtaining a narcotic
15 drug, falsely assume the title of, or represent himself to be, a
16 manufacturer, wholesaler, pharmacist, pharmacy owner,
17 physician, dentist, veterinarian, or other authorized person.
18 (5) No person shall make or utter any false or forged pre-
19 scription or false or forged written order.
20 (6) No person shall affix any false or forged label to a pack-
21 age or receptacle containing narcotic drugs.
22 (7) The provisions of this section shall apply to all transac-
23 tions relating to narcotic drugs under the provisions of section
24 eight of this act, and in the same way as they apply to transac-
25 tions under all other sections.

Sec. 18. In any complaint, information or indictment, and in
2 any action or proceeding brought for the enforcement of any
3 provision of this act, it shall not be necessary to negative any
4 exception, excuse, proviso, or exemption, contained in this act,
5 and the burden of proof of any such exception, excuse, pro-
6 viso, or exemption, shall be upon the defendant.

Sec. 19. No cannabis, including the following substances
2 under whatever names they may be designated (a) the dried
3 flowering or fruiting tops of the pistillate plant of Cannabis
4 Sativae L., from which the resin has not been extracted, or
5 (b) the resin extracted from such tops, or (c) any compound,
6 manufacture, mixture, or preparation of such resin, or of
7 such tops from which the resin has not been extracted, shall
8 be sold at retail or dispensed at retail to any person except up-
9 on the written prescription of a physician, dentist, or veter-
10 inarian: Provided, however, That nothing in this section shall
11 prevent a registered pharmacist from supplying any of the
12 said drugs to a physician, dentist, veterinarian, or accredited
13 hospital for medicinal use: Provided further, That nothing
14 in this section shall prevent the sale or dispensing at retail of
15 preparations containing cannabis when used for external pur-
16 poses.
Sec. 20. No chloral hydrate, or any compound, manufacture, mixture, or preparation thereof containing over two grains to the ounce, shall be sold at retail or dispensed at retail to any person except upon the written prescription of a physician, dentist, or veterinarian: Provided, however, That nothing in this section shall prevent a registered pharmacist from supplying any of the said drugs to a physician, dentist, veterinarian, or accredited hospital for medicinal use.

Sec. 21. No malonylurea (barbituric acid), as such, or diethyl-malonylurea, as such, or any sodium or potassium salt of either of them, under whatever name they may be designated, or any sodium or potassium salt of any chemical derivative of malonylurea, or diethyl-malonylurea, under whatever name they may be designated, that may be classed as a dangerous hypnotic or narcotic as defined by regulations of the state board of pharmacy, shall be sold at retail or dispensed at retail to a person except upon the written prescription of a physician, dentist, or veterinarian: Provided, however, That nothing in this section shall prevent a registered pharmacist from supplying any of the said drugs to physicians, dentists, veterinarians and/or accredited hospitals for medicinal use: Provided further, That in order to carry out the intent of this section to control the misuse of certain drugs that no malonylurea or any of its salts, derivatives, mixtures, or preparations thereof shall be sold or dispensed, at retail, by any person not a pharmacist as defined.

Sec. 22. The state board of pharmacy, its officers, agents, inspectors, and representatives, and all peace officers within the state, and all prosecuting attorneys of the state shall enforce all provisions of this act, except those specifically delegated, and shall cooperate with all agencies charged with the enforcement of the laws of the United States, of this state, and of all other states, relating to narcotic drugs.

Sec. 23. Any person violating any provision of this act shall upon conviction be punished, for the first offense, by a fine not exceeding one hundred dollars, or by imprisonment in jail for not exceeding one year, or by both such fine and imprisonment; and for any subsequent offense, by a fine not exceeding one thousand dollars or by imprisonment for not exceeding five
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7 years in the penitentiary or by both such fine and imprisonment.

Sec. 24. No person shall be prosecuted for a violation of any provision of this act if such person has been acquitted or convicted under the federal narcotic laws of the same act or omission which, it is alleged, constitutes a violation of this act:

Sec. 25. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provisions or application, and to this end the provisions of this act are declared to be severable.

Sec. 26. This act shall be interpreted and construed as to effectuate its general purpose, to make uniform the laws of these states which enact it.

Sec. 27. All acts or parts of acts which are inconsistent with the provisions of this act are hereby repealed.

Sec. 28. This act may be designated and cited as the "Uniform Narcotic Drug Act."

CHAPTER 47

(House Bill No. 136—By Mr. Wiseman)

AN ACT to amend and reenact sections three and four, article seven, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, relating to inspection and analysis of food and drugs; adulteration of food and drugs; sale and penalties; and conferring upon the West Virginia board of pharmacy certain powers and duties in relation thereto.

[Passed February 27, 1935; in effect from passage. Approved by the Governor.]

Sec. 3. Inspection and analysis of foods and drugs by state department of health, West Virginia board of pharmacy or county or municipal health officer; procedure; report of analysis.

Sec. 4. Penalty for adulterating, or selling adulterated food or drug; to pay cost of analysis; if a pharmacist, registration to be revoked; adulterated article to be destroyed; inconsistent acts repealed.
Be it enacted by the Legislature of West Virginia:

That sections three and four, article seven, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, are hereby amended and reenacted to read as follows:

Section 3. Whenever the state department of health, the West Virginia board of pharmacy, or any county or municipal health officer has reason to believe that any food or drug manufactured for sale, offered for sale, or sold, within this state, is adulterated, such department of health or board of pharmacy, by its authorized agents, or such county or municipal health officer, shall have the power, and it shall be his duty, to enter, during the usual hours of business, into any creamery, factory, store, sales room, drug store, laboratory, or other place where he has reason to believe such food or drug is manufactured, prepared, sold, or offered for sale, within the county or municipality, as the case may be, and to open any case, tub, jar, bottle, or package containing, or supposed to contain, any such food or drug, and take a specimen thereof for examination and analysis. If less than a whole package is taken, the specimen shall be sealed and properly prepared for shipment to the person who will make the analysis hereinafter provided for. No whole or less than a whole package taken and prepared for shipment shall be opened before it has been received by the analyst aforesaid.

It shall be the duty of the chief chemist of the state hygienic laboratory to test and analyze any such specimen, to record the result of his analysis among the records of the laboratory, and to certify such findings to the state department of health, the West Virginia board of pharmacy, or to the county or municipal health officer, as the case may be. If the analysis indicates that the said food or drug is adulterated, a certificate of such result, sworn to by the person making the analysis, who shall also state in his certificate the reasonable cost and expense of such analysis, shall be prima facie evidence of such adulteration in prosecution under this article.

Sec. 4. Whoever, by himself or his agents, knowingly adulterates or causes to be adulterated any article of food or drug, or knowingly manufactures for sale, offers for sale, or sells, within this state, any article of food or drug which is adulterated within the meaning of this article, without mak-
6 ing the same known to the buyer, shall be guilty of a misde-
7 meanor, and, upon conviction thereof, shall be fined not ex-
8 ceeding five hundred dollars, or confined in jail not more than
9 one year, or both, in the discretion of the court; and in addi-
10 tion to the penalties hereinbefore provided, he shall be ad-
11 judged to pay the cost and expense of analyzing such adulter-
12 ated food or drug, as set forth in the certificate of the person
13 making the analysis, not exceeding twenty-five dollars in any
14 one case, which shall be included in the costs of such prosecution
15 and taxed in favor of the state department of health or the
16 West Virginia board of pharmacy, as the case may be; and if
17 he be a registered pharmacist or assistant pharmacist, his
18 name shall be stricken from the register. The adulterated
19 article shall be forfeited and destroyed.
20 All acts and parts of acts inconsistent herewith are hereby
21 repealed insofar, and only so far, as they are inconsistent
22 with this particular act.

CHAPTER 48

(Senate Bill No. 10—By Mr. Smith)

AN ACT to provide educational opportunities for the children of
soldiers, sailors and marines who were killed in action or died
during the World War.

[Passed March 7, 1936; in effect ninety days from passage. Became a law without
the approval of the Governor.]

Sec.
1. Appropriation from treasury of
2. Eligibility of applicant for
the purpose of providing educational
opportunities for the children of
soldiers, sailors and marines who
were killed in action or died
from other cause from April sixth,
one thousand nine

Be it enacted by the Legislature of West Virginia:

Section 1. For the purpose of providing educational op-
portunities for the children of those who were killed in action
3 or died from other cause from April sixth, one thousand nine
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4 hundred seventeen, to July second, one thousand nine hundred
5 twenty-one, while serving in the army, navy or marine corps
6 of the United States, or died as a result of such service, the
7 sum of eighteen hundred dollars, out of any moneys in the
8 treasury not otherwise appropriated, is hereby appropriated
9 out of the treasury for each of the fiscal years beginning July
10 first, one thousand nine hundred thirty-five, to July first,
11 one thousand nine hundred forty-two, inclusive, while such
12 children are attending a state educational or training insti-
13 tution.

Sec. 2. To be eligible for the benefits of this act, said
2 children must be at least sixteen and not more than twenty-
3 two years of age and have had their domiciles in this state
4 for at least twelve months preceding their application for said
5 benefits. Such application shall be made to, and upon forms
6 provided by, the department of public welfare of West Vir-
7 ginia, which department shall determine the eligibility of those
8 who make such application and the yearly amount to be
9 allotted each applicant, which amount in the discretion of the
10 department may vary from year to year, but shall not exceed
11 the sum of one hundred and fifty dollars in any one year. In
12 selecting those to receive the benefits of this act preference
13 shall be given those who are otherwise financially unable to
14 secure said educational opportunities and to those whose parent
15 was domiciled in this state during the period of such parent’s
16 war service.

Sec. 3. No tuition fees shall be charged such applicants at-
2 tending any state educational or training institution and the
3 funds herein appropriated shall be expended by said depart-
4 ment of public welfare only for matriculation fees, board,
5 room rent, books, supplies and other necessary living expenses
6 of such children. Said department is charged with the duty
7 of disbursing the funds herein provided and shall draw its
8 requisitions upon the auditor for that purpose. In the discre-
9 tion of said department, such requisitions may be made pay-
10 able to said educational or training institutions or to those
11 furnishing to said children board, room rent, books, supplies
12 and other necessary living expenses, the department being first
13 satisfied as to the correctness and amounts of such expendi-
14 tures. Should any child withdraw from any such institution
15 all allowances to such child shall cease. No member or em-
16 ployee of said department shall receive any additional com-
17 pensation for the services herein required.

Sec. 4. Balances in this fund remaining at the end of any 
2 fiscal year, except the last herein appropriated for, shall not 
3 revert to the treasury. Any balance remaining at the end of the 
4 fiscal year beginning July first, one thousand nine hundred forty-
5 two, shall revert to the treasury.

CHAPTER 49

(Senate Bill No. 184—By Mr. Hodges, by request)

AN ACT to authorize the West Virginia board of control to apply 
any surplus funds in the funds commonly known as the 
"Woman's Hall Fund," the "Special Departmental Fees 
Fund" or any other special funds, at the West Virginia uni-
versity, for the purpose of meeting any deficits in the federal 
funds available for completing the new dormitories at the 
university.

[Passed March 9, 1935; in effect from passage. Became a law without the 
approval of the Governor.]

Sec. 1. Board of control authorized to expend certain surpluses in 
funds collected at West Virginia University to complete 
building projects under construction at the university; 
conditions under which expenditures may be made.

Be it enacted by the Legislature of West Virginia:

Section 1. The West Virginia board of control is hereby 
2 authorized to expend any surplus funds collected at the univer-
3 sity and any surplus funds to the credit of the funds commonly 
4 known as the "Woman's Hall Fund," the "Special Depart-
5 mental Fees Fund" or any other special fund, for the purpose 
6 of completing the finishing of certain items of the men’s dormi-
7 tory and the additions to the woman’s hall, now under construc-
8 tion at the West Virginia university under the provisions of 
9 chapter nine, acts of the Legislature, regular session, one thou-
10 sand nine hundred thirty-three, to the extent that the federal 
11 grant and proceeds of bonds heretofore sold be not sufficient to 
12 complete the finishing of certain details thereof, when and if in
13 their judgment, a sufficient balance exists in any of the said
14 special funds for such purpose over and above the amount
15 necessary to be reserved in said funds for current general ex-
16 penses payable from the same, and the need for such additional
17 finishing exists.

CHAPTER 50

(Com. Sub. for House Bill No. 169—Originating in the House Committee
on Education)

AN ACT to amend and reenact section sixteen, article five, chapter
eight, acts of the Legislature of West Virginia, first extraordinary
session, one thousand nine hundred thirty-three, relating
to the establishment of the county unit plan of school organi-
ization; providing that the boards of education may not be com-
pelled to pay tuition to the boards of education of adjoining
counties for the transfer of pupils where a first class high
school or elementary school is maintained accessible to the
pupils, except upon the order of the board of education.

[Passed March 8, 1935; In effect ninety days from passare. Became a law without
the approval of the Governor.]
4 of any parent or guardian, or person legally responsible for
5 any pupil, or for reasons affecting the best interests of the
6 schools, the superintendent may transfer pupils from one
7 school to another within the district. Any aggrieved person
8 may appeal the decision of the superintendent to the board,
9 and the decision of the board shall be final.
10 Transfers of pupils from one county to another may be made
11 by the board of the county in which the pupil desiring to be
12 transferred resides; but the transfer shall be subject to the
13 approval of the board of the county to which the pupil wishes
14 to be transferred, except such approval shall not be a condition
15 precedent to the transfer of a pupil resident in a municipality
16 comprised of parts of two or more counties in this state, or
17 resident in an independent school district as the same existed
18 prior to the date the county unit act became effective, made up
19 of parts of two or more counties and whether or not within its
20 limits now defined is located a municipality or part thereof,
21 but until otherwise provided by the board of the unit of his
22 residence, such pupil shall be considered and treated as trans-
23 ferred, as the case or the situation may be, with the right
24 unimpaired to attend the school or schools now established and
25 maintained (if not discontinued) in such municipality and/or
26 independent school district. Such transfer by operation of law
27 shall cease, when; (a), the board of the unit comprising a part
28 of the municipality or independent school district, has erected
29 or does establish and maintain therein a school or schools of the
30 grade or grades and standing, respectively, equivalent to the
31 school or schools in adjoining unit which the pupil coming
32 within the exception above mentioned is given the right to
33 attend; or (b), in the discretion of the board it can transport
34 economically the pupils coming within the exception aforesaid
35 to some school or schools established and maintained in the
36 jurisdiction of the unit of the pupils' residence, and elects to
37 so do. The existence of the fact under (a) aforesaid shall be
38 declared by the board and entered of record in its minutes, as
39 well as the entry of the exercise of its discretion and election
40 under the provisions (b) aforesaid, and a copy of the minutes
41 of the board relating to its declaration and/or discretion and
42 election as aforesaid, as the case may be, duly certified by the
43 signature of the president and the secretary of said board, shall
44 be furnished forthwith to the board of the unit comprising the
other part of said municipality or independent school district.

In all cases of transfer by the act of the board or by operation of law, either to elementary schools or to high schools, the board making the transfer shall pay to the board to which such transfer is made, reasonable tuition fees, which for elementary schools shall not exceed two and one-half dollars a month, and for junior and senior high schools shall not exceed ten dollars a month. The fee, to be paid out of the teachers' fund, shall not exceed the actual cost of the instruction. No parent, guardian or person acting as parent or guardian shall be required to pay for the transfer or for the tuition of the pupil after the transfer. The board of the district to which the pupil has been transferred shall promptly, at the first of each month, certify to the board of the district from which the pupil was transferred the correct amount of all tuition fees due and payable for the next preceding month. All tuition fees shall be paid within thirty days of certification, to the district maintaining the school by the district to which the fees are certified. All tuition fees shall be paid out of the teachers' fund of the one district to the teachers' fund of the other:

Provided, That in districts in which no high school is maintained for negro pupils and no provision for high school training for such pupil or pupils is otherwise provided for by said districts, such board shall transfer said pupils to the high school department of one of the state supported educational institutions or similar other institution in which said pupils may be trained. In which case said board of education shall pay to such institution on proper requisition the sum of ten dollars per month to be applied to the general expenses of said pupil at such institution: Provided further, That in districts where high schools are maintained, and because of the topography of the district, or impassable roads, or other conditions preventing practical transfer of pupils to high schools within the district, the district shall provide financial assistance toward the general expenses of said pupils, not to exceed ten dollars per month.

Transfer of pupils from this state to another shall be upon such terms as shall be mutually agreed upon by the board of the transferring district and the authorities of the school to which the transfer is made, and shall be based upon the aggregate per capita student cost of the preceding year, of the school to which the transfer is made.
CHAPTER 51

(House Bill No. 338—By Mr. Johnston)

AN ACT to provide funds for the purchase of materials for cooperation with the Federal Emergency Relief Administration in the completion of any and all projects and improvements at Concord State Teachers College; to provide labor at said institution for unemployed laborers in Mercer county; and to authorize the use of any surplus funds at said college saved out of appropriations or collected in excess of money appropriated out of collections for said institution, for the fiscal year ending June thirty, one thousand nine hundred thirty-five, and to authorize the West Virginia state board of control to cause all such excess collections and balances to be set apart in a special improvement fund, and to expend the same for the purposes herein stated under its direction.

[Passed March 8, 1935; in effect from passage. Became a law without the approval of the Governor.]

Sec. 1. Continued purchase of material, etc., by Concord State Teachers' college and state board of control from excess collections and savings to complete FERA projects at said college.

Sec. 2. Creation of special improvement fund to complete said projects; surplus collections to be first paid into state treasury and paid out on approval of board of control; when excess collections immediately available.

Sec. 3. Sources of special improvement fund.

Sec. 4. Other payments into improvement fund.

Be it enacted by the Legislature of West Virginia:

Section 1. The Concord State Teachers College and the West Virginia Board of Control is hereby authorized to continue to purchase material and employ labor toward the completion of projects and improvements now under construction at said institution or hereafter approved by the Federal Emergency Relief Administration by the use of excess collections and savings from appropriations authorized for the said college for the fiscal year ending June thirty, one thousand nine hundred thirty-five.

Sec. 2. The West Virginia Board of Control is hereby authorized to set aside any surplus remaining from collections for the fiscal year ending June thirtieth, one thousand nine hundred thirty-five, made at said college over and above the amount necessary to meet the requirements of said college for the year
one thousand nine hundred thirty-five, and also any accumula-
tions, any special funds at said college over and above the needs
of said special funds for this fiscal year, and credit same to a
special improvement fund to be used for purchasing materials
and employing labor to assist in the completion of any Fed-
eral Relief Administration projects and improvements now in
process of completion or hereafter undertaken by the Federal
Emergency Relief Administration and/or any other federal
agency: Provided, That all of said surplus collections must first
be put into the state treasury as required by section two,
article two, chapter twelve of the code of West Virginia, one
thousand nine hundred thirty-one, and then paid out only on
approval of the West Virginia State Board of Control: Pro-
vided further, That after the full amount has been collected to
meet the appropriations out of the collections for salaries of
officials, teachers and employees and current general expense
for said Concord State Teachers College for the fiscal year end-
ing June thirtieth, one thousand nine hundred thirty-five, any
excess collections herein referred to shall be immediately avail-
able for use for the purposes and in the manner herein set out.

Sec. 3. The West Virginia State Board of Control is hereby
authorized and directed to transfer to said Special Improve-
ment Fund hereinbefore referred to any balances in said ap-
propriations, special funds in excess of needs for this fiscal year,
and collections in excess of appropriations out of collections for
the fiscal year ending June thirtieth, one thousand nine hundred
thirty-five, to be used for the purposes above set forth in section
two of this act.

Sec. 4. The West Virginia State Board of Control is hereby
authorized and directed to also set aside into the said Special
Improvement Fund any moneys accumulating at said Concord
State Teachers College, from collections for the rent of the
president’s home and/or from the town of Athens for water
furnished said town by Concord State Teachers College, said
collections to be paid into the state treasury as required by
section two, article two, chapter twelve, of the code of West
Virginia, one thousand nine hundred thirty-one, and then used
for the purposes set forth in section two of this act.

All existing acts of law inconsistent with this act are hereby
repealed.
CHAPTER 52

(House Bill No. 481—By Mr. Parrish)

AN ACT to amend and reenact section one, article sixteen, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, relating to Potomac State School.

[Passed March 7, 1935; in effect ninety days from passage. Approved by the Governor.]

Sec. 1. Name of Potomac state school changed; control of educational affairs of school transferred to board of governors of West Virginia university; control of financial and business affairs under board of control: board of governors to determine subjects in which instruction offered and may extend instructional facilities and resources of university to school; when act effective and transfer of appropriations.

Be it enacted by the Legislature of West Virginia:

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

Section 1. The Potomac State School heretofore established and located at Keyser, in Mineral county, shall be continued and shall be known as the "Potomac State School of West Virginia University". The educational affairs of the college shall be under the control, supervision and management of the board of governors of the West Virginia University who shall have full authority to employ all officers, teachers and other employees and fix their yearly or monthly salaries, as provided in section one, article eleven, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, and its financial and business affairs shall be under the charge and control of the state board of control, as provided in section one, article eleven, chapter eighteen of said code. The college shall offer instructions in such subjects as the board of governors may direct. The board of governors shall have authority to extend all instructional facilities and resources of West Virginia University for use from time to time within said Potomac State School.

This act shall become effective July first, one thousand nine hundred thirty-five, and all moneys heretofore appropriated for the use and benefit of Potomac State School for the fiscal
22 year of one thousand nine hundred thirty-five, one thousand
23 nine hundred thirty-six, shall be for the use and benefit of
24 Potomac State School of West Virginia University.
25 All acts and parts of acts inconsistent herewith are hereby
26 repealed.

CHAPTER 53

(Senate Bill No. 62—By Mr. Mathews)

AN ACT to amend and reenact section twenty-two, article nine,
chapter eleven of the code of West Virginia, one thousand
nine hundred thirty-one, relating to publication and posting
of delinquent lists.

[Passed March 9, 1935; in effect from passage. Became a law without the
approval of the Governor.]

Sec. 22. Publication and posting of lists
of delinquent taxes; cost of
printing paid from county
treasury; aggregate amount of
tax only need be published;
collection by sheriff after pub-
lication and posting.

Be it enacted by the Legislature of West Virginia:

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

Section 22. A copy of each of such lists shall be posted at
2 the front door of the courthouse of the county, at least two
3 weeks before the session of the county court at which they are
4 presented for examination. A copy of each of such lists shall
5 at the same time be printed once, in two newspapers of opposite
6 politics, if such there be in the county, and the costs of printing
7 shall be paid out of the county treasury; but in such publica-
tion the aggregate amount of the tax only and not each
9 division thereof need be published. Thereafter the sheriff shall
10 proceed to collect such delinquent taxes.

CHAPTER 54

(House Bill No. 5—By Mr. Thomas)

AN ACT to amend and reenact sections one and five, chapter six-
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teen, acts of the Legislature of West Virginia, first extraordinary session, one thousand nine hundred thirty-three, as amended by chapter forty-five, acts of the Legislature, second extraordinary session, one thousand nine hundred thirty-three, relating to forfeited and delinquent lands.

[Passed February 5, 1935; in effect from passage. Became a law without the approval of the Governor.]

Sec. 1. Redemption of land delinquent and/or forfeited for non-payment of taxes until December 31, 1933, by payment to auditor of taxes assessed, without interest or costs, for years prior to 1933; when cost of suit by commissioner of school land to be included; redemption under court order, when two or more claimants to same tract.

Sec. 5. Auditor to receive payment of taxes without fees, costs or interest until December 31, 1935; redemptions after said date; reports by auditor to county assessor; form of receipts for tax payments; recordation and filing of receipt by clerk of county court.

Be it enacted by the Legislature of West Virginia:

That sections one and five, chapter sixteen, acts of the Legislature of West Virginia, first extraordinary session, one thousand nine hundred thirty-three, as amended by chapter forty-five, acts of the Legislature, second extraordinary session, one thousand nine hundred thirty-three, be amended and reenacted to read as follows:

Section 1. That the owner of any land and real estate in this state, his heirs, devisees or assigns and any person holding a lien thereon, or having the right to charge the same with a debt, which land and real estate has been returned delinquent and/or forfeited for the non-payment of taxes levied and assessed against the same, including forfeited land and real estate certified to the commissioner of school lands of the respective counties on which suits may or may not have been instituted or may still be pending in which no sale and/or confirmation of sale has been made, may redeem such land and real estate from such delinquency and/or forfeiture, or for any other cause, by the payment to the auditor of the state of West Virginia of the taxes so levied and assessed together with all taxes which would have been levied and extended on the land books against said real estate had there been no such forfeiture, without interest or costs, if the same shall be paid on or before December thirty-first, one thousand nine hundred thirty-five. Such payment shall include all taxes assessed and in arrears for any and all years prior to the year one thousand nine hundred
20 thirty-three, and prior to such redemption, and any legal costs
21 as now provided by statute that have accrued by reason of the
22 prosecution of any suit shall be paid by the commissioner of
23 school lands in the county in which the land is situated, when
24 approved and so ordered by the court by order entered of record
25 from any funds in his hands for which said commissioner shall
26 have credit in his settlement of accounts, as such commissioner
27 and commissioners of school lands shall be allowed in their set-
28 tlements such reasonable sums as the court shall determine and
29 allow for work done and services rendered by them and their
30 attorneys in relation to the tracts, lots and parcels of land
31 which have been heretofore certified to them and which have
32 not before this act becomes effective been disposed of, and such
33 sums so allowed may be, by order of the court, paid out of funds
34 in the hands of the commissioners or which shall come into their
35 hands: Provided, however, That where two or more claimants
36 have filed their petition as required by law asking to redeem the
37 same tract or tracts of land, said tract or tracts of land shall not
38 be certified to the auditor by the circuit clerk as provided in
39 section three of this act, nor be redeemed from the auditor as
40 provided in section one of this act as amended, but the party de-
41 creed by the court to be entitled to redeem said land by pay-
42 ing all costs accumulated as taxed by the clerk thereof, by
43 reason of the contest of title, together with the portion of the
44 taxes as above set forth unto the commissioner of school lands.

Sec. 5. It shall be the duty of the auditor of this state to
receive payment of the taxes mentioned in the lists certified to
him by virtue of sections two and three of this act, and to ac-
count for and disburse the same as other taxes received by him,
and in the payment of such taxes as is mentioned in section one
of this act, as amended, he shall charge no fees, costs nor interest,
if redeemed on or before December thirty-first, one thousand nine
hundred thirty-five, after which date all such redemptions shall
be made as provided in section thirty, article ten, chapter eleven
of the code of West Virginia, one thousand nine hundred thirty-
one. The auditor shall make written reports every thirty days to
the assessor of each county in this state of all forfeited lands
redeemed, and upon the payment of such taxes to the auditor as
aforesaid he shall execute triplicate receipts, retain and file one
in his office and deliver two thereof, including the original, to
Ch. 55] LANDS PURCHASED BY STATE FOR TAXES 207

16 the party paying the same in the following form or to the fol-
17 lowing effect:

19 Received of ................................................................. dollars in full pay-
20 19 ment of all taxes assessed against acres of land
21 situate on in district, county of
22 for the year(s).

25 (here give the years for which delinquent and/or forfeited) in
26 the name of

27 which are the total taxes assessed against the same, which pay-
28 ment is made by virtue of chapter sixteen, acts of the first
29 extraordinary session, one thousand nine hundred thirty-three,
30 as amended by chapter forty-five, acts of the second extraordi-
31 nary session, one thousand nine hundred thirty-three, as amend-
32 ed by the regular session, one thousand nine hundred thirty-
33 five.

35 Auditor of West Virginia.

36 Provided, however, That when the aforesaid redemption re-
37 ceipt is presented by the redemptor to the clerk of the county
38 court of the county in which the real estate is situated, he shall
39 record and file the aforesaid redemption receipt for which
40 service no fee shall be charged.

CHAPTER 55

(House Bill No. 138—By Mr. Wysong)

AN ACT to amend and reenact section two, chapter forty-six, acts
of the Legislature of West Virginia, second extraordinary ses-
30 sion, one thousand nine hundred thirty-three, relating to for-
feited and delinquent lands.

[Passed March 6, 1935; in effect from passage. Approved by the Governor.]
Be it enacted by the Legislature of West Virginia:

That section two, chapter forty-six, acts of the Legislature of West Virginia, second extraordinary session, one thousand nine hundred thirty-three, be amended and reenacted to read as follows:

Section 2. The time within which the auditor shall certify to the commissioner of school lands or sheriff of the proper counties copies of the certificates of the clerks of the county courts of such counties of lands purchased for the state at sales thereof for taxes due thereon for the years one thousand nine hundred twenty-nine, one thousand nine hundred thirty, one thousand nine hundred thirty-one, and one thousand nine hundred thirty-two, as provided in section five, article three, chapter thirty-seven of the code of West Virginia, one thousand nine hundred thirty-one, shall be and the same is hereby extended until the thirty-first day of December, one thousand nine hundred thirty-five. The commissioner of school lands shall cause no proceedings to be started or prosecuted against any forfeited lands herefore certified to him by the auditor, until after the thirty-first day of December, one thousand nine hundred thirty-five, except at the instance and request of the owner or owners of any particular tract or tracts, or of a redeemable interest therein to enable such owner, or owners to redeem such tract or tracts unless the court for good reasons otherwise orders and directs.

CHAPTER 56

(Senate Bill No. 155—By Mr. Garrett, by request)

AN ACT to amend chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, by adding to article eleven, relating to the organization and regulation of domestic companies, and to the admission and regulation of foreign companies, for the purpose of transacting the business of accident and health insurance.

[Passed March 9, 1935: in effect from passage. Became a law without the approval of the Governor.]

ARTICLE XI.

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accident and health insurance policies.

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16. When rights of insurer to defend claim under policy not affected.

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20. (a) Article not to apply to workmen's compensation and other policies. (b) article not to apply to policy containing no provisions relating to accident or health insurance: exceptions. (c) article not to apply to fraternal benefit societies. (d) what may be omitted from transportation ticket policies.

21. If section invalid, other sections not affected.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE XI

Section 1. Stock companies may incorporate under the general corporation laws of this state, with the approval of the insurance commissioner, and, subject to all of the provisions of the laws of this state not inconsistent herewith, may issue policies of accident and health insurance covering personal injury, disablement or death by accident, disability resulting from sickness, reimbursement for expenses incident to personal injury, sickness or death, and every coverage appertaining to accident and health insurance.

Sec. 2. Stock companies incorporated under this article must have a capital of not less than one hundred thousand
3 dollars, fully paid, and in addition thereto shall maintain a
4 reserve equal to the unearned portion of the gross premium
5 charged for all risks written and renewed.

Sec. 3. (1) The capital, reserves and surplus funds of
2 stock companies incorporated under this article shall be in-
3 vested in the following manner:
4 (a) In bonds of the United States, any state, county, dis-
5 trict, township, city, town or village of this state or any other
6 state of the United States or the District of Columbia: Pro-
7 vided, That such bonds are not in default as to interest or
8 principal;
9 (b) In bonds and preferred stocks of corporations, pro-
10 vided the same are listed upon some recognized exchange, and
11 provided also that no default in interest or dividends exists
12 at the time of purchase or has existed at any time during the
13 two years next previous;
14 (c) In loans secured by pledge of securities of the character
15 enumerated in subdivisions (a) and (b) hereof, but no such
16 loans shall be made for more than eighty per cent of the actual
17 market value of such securities;
18 (d) In loans upon unencumbered real estate situated in
19 this state or in any state of the United States or the District
20 of Columbia, but no such loans shall be made for more than
21 fifty per cent of the market value thereof, such market value
22 to be ascertained by the sworn appraisements of three free-
23 holders of recognized knowledge of values in the community in
24 which such real estate is located.
25 (2) No company incorporated under this article shall pur-
26 chase, hold, or convey real estate, except for the purpose and
27 in the manner herein set forth, to-wit:
28 (a) Such as shall be requisite for the transaction of its
29 business;
30 (b) Such as shall have been conveyed to it in satisfaction
31 of debts previously contracted in the course of its dealings;
32 (c) Such as shall have been purchased at sales upon judg-
33 ments, decrees, or mortgages, obtained or made for debts due
34 the company, or for debts due other persons, where such com-
35 pany may have liens or encumbrances on the same, and the
36 purchase is deemed necessary to save the company from loss.
37 It shall not be lawful for any such company to purchase or
38 hold real estate in any other case or for any other purpose.
39 Any real estate purchased, received, or acquired under para-
40 graphs (b) and (c) of this subdivision (two), which has been
41 held for a period of more than five years from the date of
42 its purchase, receipt, or acquisition, must be sold and disposed
43 of within a period of six months after due notice to the com-
44 pany from the insurance commissioner to sell and convey the
45 same. The commissioner may extend the time for such dis-
46 position if he believes the interest of the company will suffer
47 materially by a forced sale.

Sec. 4. Stock companies incorporated under this article
2 shall, as a condition precedent to engaging in writing insur-
3 ance, deposit with the state treasurer in accordance with the
4 provisions of article five, chapter twelve of the code of West
5 Virginia, one thousand nine hundred thirty-one, one hundred
6 thousand dollars in securities of the kinds prescribed in
7 section three of this article, in trust, for the protection of
8 all policyholders of such company.

Sec. 5. Stock or legal reserve mutual life insurance com-
2 panies, organized under the laws of this state to transact a
3 life insurance business, may write the classes of business
4 enumerated in section one of this article by otherwise complied-
5 ing with all of the provisions of this article.

Sec. 6. Stock or mutual casualty insurance companies
2 organized under the laws of this state may write the classes
3 of business enumerated in section one of this article by other-
4 wise complying with all of the provisions of this article.

Sec. 7. Stock or legal reserve mutual life insurance com-
2 panies and stock or mutual companies authorized to do a
3 casualty or miscellaneous business and incorporated under the
4 laws of any other state or government may be admitted to
5 do the kinds of business enumerated in section one of this
6 article by otherwise complying with the laws of this state
7 relative to the admission of foreign insurance companies and
8 by complying with all of the provisions of this article:
9 Provided, That the deposit required in section four of this
10 article of companies incorporated under this article, shall not
be required of companies incorporated under the laws of any
other state or government, if a certificate is filed showing that
a general deposit of equal amount is being maintained with
the proper official in the state in which it is incorporated or,
if an alien company, in some other state of the United States.

Sec. 8. Companies organized and doing business under this
article and companies admitted to transact business in this
state, under this article, shall be required to comply with all
of the laws of this state governing the operations of insurance
companies if such laws are not inconsistent with the provisions
of this article, and the taxes and fees imposed upon insurance
companies by the laws of this state shall apply to companies
organized or admitted to do business in this state under this
article.

Sec. 9. No policy of insurance against loss from sickness,
loss or damage from bodily injury or death of the insured
by accident, shall be issued or delivered by any stock or mutual
casualty company, or any stock or mutual life insurance com-
pany issuing such policies, to any person in this state until
a copy of the form thereof, and of the classification of risks
and the premium rates pertaining thereto, have been filed with
the insurance commissioner, nor shall such policy be so issued
or delivered until the expiration of thirty days after it has
been so filed, unless the insurance commissioner shall sooner
give his written approval thereto. If the insurance commis-
sioner shall notify in writing the company, corporation, asso-
ciation, or other insurer which has filed such form that it does
not comply with the requirements of law, specifying the reasons
for his opinion, it shall be unlawful thereafter for any such
insurer to issue any policy in such form. The action of the
insurance commissioner in this regard shall be subject to re-
view in the mode and manner prescribed by section thirteen,
article two, of this chapter.

Sec. 10. No such policy shall be issued or delivered, except
subject to the following conditions: (a) Unless the entire
money and other consideration therefor be expressed in the
policy; nor (b) unless the time at which the insurance there-
dered takes effect and terminates be stated in a portion of
the policy preceding its execution by the insurer; nor (c) if the
7 policy purports to insure more than one person; nor (d) unless every printed portion thereof and of any endorsements or attached papers shall be plainly printed in type of which the face shall be not smaller than ten point; nor (e) unless a brief description thereof be printed on its first page and on its filing back in type of which the face shall be not smaller than fourteen point; nor (f) unless the exceptions of the policy be printed with the same prominence as the benefits to which they apply; nor (g) unless any portion of such policy which purports, by reason of the circumstances under which a loss is incurred, to reduce any indemnity promised therein to an amount less than that provided for the same loss occurring under ordinary circumstances shall be printed in bold face type and with greater prominence than any other portion of the text of the policy.

Sec. 11. Every such policy so issued shall contain certain standard provisions, which shall be in the words and in the order hereinafter set forth, and be preceded in every policy by the caption "Standard Provisions." In each such standard provision as hereinafter set forth, wherever the word "insurer" is used, there shall be substituted therefor the word "company," or "corporation," or "association," or "society," as the case may be, in printing such standard provisions as a part of such policy. Such standard provisions shall be:

(a) A standard provision relative to the contract which may be in either of the following two forms: Form (A), to be used in policies which do not provide for reduction of indemnity on account of change of occupation, and form (B), to be used in policies which do so provide. If form (B) is used, and the policy provides indemnity against loss from sickness, the words "or contracts sickness" may be inserted therein immediately after the words "in the event that the insured is injured."

"(A)—1. This policy includes the endorsements and attached papers, if any, and contains the entire contract of insurance. No reduction shall be made in any indemnity herein provided by reason of change in the occupations of the insured or by reason of his doing any act or thing pertaining to any other occupation."

"(B)—1. This policy includes the endorsements and at-
tached papers, if any, and contains the entire contract of in-
surance except as it may be modified by the insurer's classifi-
cation of risks and premium rates in the event that the in-
sured is injured after having changed his occupation to one
classified by the insurer as more hazardous than that stated
in the policy, or while he is doing any act or thing pertaining
to any occupation so classified, except ordinary duties about
his residence or while engaged in recreation, in which event
the insurer will pay only such portion of the indemnities
provided in the policy as the premium paid would have pur-
chased at the rate but within the limits so fixed by the in-
surer for such more hazardous occupation.

If the law of the state in which the insured resides at
the time this policy is issued requires that prior to its issue
a statement of the premium rates and classification of risks
pertaining to it shall be filed with the state official having
supervision of insurance in such state, then the premium
rates and classification of risks mentioned in this policy shall
mean only such as have been last filed by the insurer in
accordance with such law, but if such filing is not required
by such law then they shall mean the insurer's premium rates
and classification of risks last made effective by it in such
state prior to the occurrence of the loss for which the insurer
is liable."

(b) A standard provision relative to changes in the con-
tract, which shall be in the following form:

``2. No statement made by the applicant for insurance not
included herein shall avoid the policy or be used in any legal
proceeding herewith. No agent has authority to change this
policy or to waive any of its provisions. No change in this
policy shall be valid unless approved by an executive officer
of the insurer and such approval be endorsed hereon."

(c) A standard provision relative to reinstatement of
policy after lapse, which may be in either of the three follow-
ing forms: Form (A), to be used in policies which insure only
against loss from accident; form (B), to be used in policies
which insure only against loss from sickness; and form (C),
to be used in policies which insure against loss from both
accident and sickness.

``(A)—3. If default be made in the payment of the agreed
premium for this policy, the subsequent acceptance of a
premium by the insurer or by any of its duly authorized
agents shall reinstate the policy but only to cover loss result-
ing from accidental injury thereafter sustained.''

"(B)—3. If default be made in the payment of the agreed
premium for this policy, the subsequent acceptance of a
premium by the insurer or by any of its duly authorized
agents shall reinstate the policy but only to cover such sick-
ness as may begin more than ten days after the date of such
acceptance.''

"(C)—3. If default be made in the payment of the agreed
premium for this policy, the subsequent acceptance of a
premium by the insurer or by any of its duly authorized
agents shall reinstate the policy but only to cover accidental
injury thereafter sustained and such sickness as may begin
more than ten days after the date of such acceptance.''

(d) A standard provision relative to time of notice of
claim, which may be in either of the three following forms:
Form (A), to be used in policies which insure only against
loss from accidents; form (B), to be used in policies which
insure only against loss from sickness; and form (C), to be
used in policies which insure against loss from both accident
and sickness. If form (A) or (C) is used, the insurer may,
at its option, add thereto the following sentence: "In event
of accidental death immediate notice thereof must be given
to the insurer.''

"(A)—4. Written notice of injury on which claim may be
based must be given to the insurer within twenty days after
the date of the accident causing such injury.''

"(B)—4. Written notice of sickness on which claim may be
based must be given to the insurer within ten days after the
commencement of the disability from such sickness.''

"(C)—4. Written notice of injury or of sickness on which
claim may be based must be given to the insurer within
twenty days after the date of the accident causing such in-
jury or within ten days after the commencement of disability
from such sickness.''

(e) A standard provision relative to sufficiency of notice
of claim, which shall be in the following form, and in which
the insurer shall insert, in the blank space, such office and
its location as it may desire to designate for such purpose
of notice:

5. Such notice given by or in behalf of the insured or
beneficiary, as the case may be, to the insurer at ....................... .
or to any authorized agent of the insurer, with particulars
sufficient to identify the insured, shall be deemed to be notice
to the insurer. Failure to give notice within the time pro-
vided in this policy shall not invalidate any claim if it shall
be shown not to have been reasonably possible to give such
notice and that notice was given as soon as was reasonably
possible.''

(f) A standard provision relative to furnishing forms
for the convenience of the insured in submitting proof of
loss, as follows:

6. The insurer upon receipt of such notice, will furnish
to the claimant such forms as are usually furnished by it
for filing proofs of loss. If such forms are not so furnished
within fifteen days after the receipt of such notice, the
claimant shall be deemed to have complied with the require-
ments of this policy as to proof of loss upon submitting within
the time fixed in the policy for filing proofs of loss, written
proof covering the occurrence, character and extent of the
loss for which claim is made.''

(g) A standard provision relative to filing proof of loss,
which shall be in such one of the following forms as may
be appropriate to the indemnities provided:

(A)—7. Affirmative proof of loss must be furnished to the
insurer at its said office within ninety days after the date
of the loss for which claim is made.''

(B)—7. Affirmative proof of loss must be furnished to
the insurer at its said office within ninety days after the
termination of the period of disability for which the com-
pany is liable.''

(C)—7. Affirmative proof of loss must be furnished to
the insurer at its said office in case of claim for loss of time
from disability within ninety days after the termination of
the period for which the insurer is liable, and in case of
claim for any other loss, within ninety days after the date
of such loss.''

(h) A standard provision relative to examination of the
person of the insured, and relative to autopsy, which shall be in the following form:

"8. The insurer shall have the right and opportunity to examine the person of the insured when and so often as it may reasonably require during the pendency of claim hereunder, and also the right and opportunity to make an autopsy in case of death where it is not forbidden by law."

(i) A standard provision relative to the time within which payments, other than those for loss of time on account of disability shall be made, which provision may be in either of the following two forms, and which may be omitted from any policy providing only indemnity for loss of time on account of disability. The insurer shall insert, in the blank space, either the word "Immediately," or appropriate language to designate such period of time, not more than sixty days, as it may desire: Form (A), shall be used in policies which do not provide indemnity for loss of time on account of disability; and form (B), shall be used in policies which do so provide:

"(A)—9. All indemnities provided in this policy will be paid after receipt of due proof."

"(B)—9. All indemnities provided in this policy for loss other than that of time on account of disability will be paid after receipt of due proof."

(j) A standard provision relative to periodical payments of indemnity for loss of time on account of disability, which provision shall be in the following form, and which may be omitted from any policy not providing for such indemnity. The insurer shall insert, in the first blank space of the form, appropriate language to designate the proportion of accrued indemnity it may desire to pay, which proportion may be all or any part not less than one-half, and, in the second blank space, shall insert any period of time not exceeding sixty days:

"10. Upon request of the insured and subject to due proof of loss accrued indemnity for loss of time on account of disability will be paid at the expiration of each during the continuance of the period for which the insurer is liable, and any balance remaining un-
paid at the termination of such period will be paid im-
mediately upon receipt of due proof."

(k) A standard provision relative to indemnity payments.
which may be in either of the two following forms: Form (A),
to be used in policies which designate a beneficiary; and form
(B), to be used in policies which do not designate any
beneficiary other than the insured:

"(A)—11. Indemnity for loss of life of the insured is pay-
able to the beneficiary if surviving the insured, and other-
wise to the estate of the insured. All other indemnities of
this policy are payable to the insured."

"(B)—11. All the indemnities of this policy are payable to
the insured."

(1) A standard provision providing for cancellation of the
policy at the instance of the insured, which shall be in the
following form:

"12. If the insured shall at any time change his occupation
to one classified by the insurer as less hazardous than that
stated in the policy, the insurer, upon written request of the
insured and surrender of the policy, will cancel the same and
will return to the insured the unearned premium."

(m) A standard provision relative to the right of the
beneficiary under the policy, which shall be in the following
form, and which may be omitted from any policy not desig-
ning a beneficiary:

"13. Consent of the beneficiary shall not be requisite to
surrender or assignment of this policy, or to change of
beneficiary, or to any other changes in the policy."

(n) A standard provision limiting the time within which
suit may be brought upon the policy, as follows:

"14. No action at law or in equity shall be brought to
recover on this policy prior to the expiration of sixty days
after proof of the loss has been filed in accordance with the
requirements of this policy, nor shall such action be brought
at all unless brought within two years from the expiration
of the time within which proof of loss is required by the
policy."

(o) A standard provision relative to time limitations of
the policy as follows:

"15. If any time limitation of this policy with respect to
giving notice of claim or furnishing proof of loss is less than
that permitted by the law of the state in which the insured resides at the time this policy is issued, such limitation is hereby extended to agree with the minimum period permitted by such law.''

Sec. 12. No such policy shall be so issued or delivered which contains any provision (a) relative to cancellation at the instance of the insurer, or (b) limiting the amount of indemnity to a sum less than the amount stated in the policy and for which the premium has been paid, or (c) providing for the deduction of any premium from the amount paid in settlement of claim, or (d) relative to other insurance by the same insurer, or (e) relative to the age limits of the policy, unless such provisions, which are hereby designated as optional standard provisions, shall be in the words and in the order in which they are hereinafter set forth; but the insurer may, at its option, omit from the policy any such optional standard provision. Such optional standard provisions, if inserted in the policy, shall immediately succeed the standard provisions named in the preceding section of this article and shall be as follows:

(a) An optional standard provision relative to cancellation of the policy at the instance of the insurer, as follows:

"'16. The insured may cancel this policy at any time by written notice delivered to the insured or mailed to his last address, as shown by the records of the insurer, together with cash or the insurer's check for the unearned portion of the premiums actually paid by the insured, and such cancellation shall be without prejudice to any claim originating prior thereto.'"

(b) An optional standard provision relative to reduction of the amount of indemnity to a sum less than that stated in the policy as follows:

"'17. If the insured shall carry with another company, corporation, association or society other insurance covering the same loss without giving written notice to the insurer, then in that case the insurer shall be liable only for such portion of the indemnity promised as the said indemnity bears to the total amount of like indemnity in all policies covering such loss, and for the return of such part of the premium paid as shall exceed the pro rata for the indemnity thus determined.'"
An optional standard provision relative to deduction of premium upon settlement of claim, as follows:

"18. Upon the payment of any claim hereunder any premium then due and unpaid or covered by any note or written order may be deducted therefrom."

An optional standard provision relative to other insurance by the same insurer, which shall be in such one of the following forms as may be appropriate to the indemnities provided, and in the blank spaces of which the insurer shall insert such upward limits of indemnity as are specified by the insurer’s classification of risks, filed as required by this article:

"(A)—19. If a like policy or policies, previously issued by the insurer to the insured be in force concurrently herewith, making the aggregate indemnity in excess of $............................................ the excess insurance shall be void and all premiums paid for such excess shall be returned to the insured."

"(B)—19. If a like policy or policies, previously issued by the insurer to the insured be in force concurrently herewith, making the aggregate indemnity for loss of time on account of disability in excess of $..............................weekly, the excess insurance shall be void and all premiums paid for such excess shall be returned to the insured."

"(C)—19. If a like policy or policies, previously issued by the insurer to the insured be in force concurrently herewith, making the aggregate indemnity for loss other than that of time on account of disability in excess of $.............................., or the aggregate indemnity for loss of time on account of disability in excess of $..............................weekly, the excess insurance of either kind shall be void and all premiums paid for such excess shall be returned to the insured."

An optional standard provision relative to the age limits of the policy, which shall be in the following form, and in the blank spaces of which the insurer shall insert such number of years as it may elect:

"20. The insurance under this policy shall not cover any person under the age of ..........years nor over the age of ..........years. Any premium paid to the insurer for any period not covered by this policy will be returned upon request."

Sec. 13. Policies of insurance against accidental bodily in-
2 jury or sickness, issued by an insurer not organized under
3 the laws of this state, may contain, when issued in this state,
4 any provision which the law of the state, territory or district
5 of the United States or country, under which the insurer is
6 organized, prescribes for insertion in such policies. Policies
7 of insurance against accidental bodily injury or sickness,
8 issued by an insurer organized under the laws of this state,
9 may contain, when issued or delivered in any other state,
10 territory, district, or country, any provision required by the
11 laws of the state, territory, district, or country in which the
12 same are issued, anything in this article to the contrary not-
13 withstanding.

Sec. 14. No such policy shall be issued or delivered if it
2 contains any provision contradictory, in whole or part, of any
3 of the provisions hereinbefore, in this article, designated as
5 nor shall any endorsements or attached papers vary, alter,
6 extend, or be used as a substitute for, or in any way conflict
7 with, any of the said "Standard Provisions" or the said
8 "Optional Standard Provisions", nor shall such policy be so
9 issued or delivered if it contains any provision purporting to
10 make any portion of the charter, constitution, or by-laws of
11 the insurer a part of the policy, unless such portion of the
12 charter, constitution, or by-laws shall be set forth in full in
13 the policy; but this prohibition shall not be deemed to apply
14 to any statement of rates or classification of risks, filed with
15 the insurance commissioner in accordance with the provisions
16 of this article.

Sec. 15. No alteration of any written application for in-
2 surance, by erasure, insertion, or otherwise, shall be made by
3 any person other than the applicant, without his written con-
4 sent, and the making of any such alteration without the con-
5 sent of the applicant shall be a misdemeanor. If such alter-
6 ation shall be made by any officer of the insurer, or by any
7 employee of the insurer with the insurer's knowledge or con-
8 sent, then such act shall be deemed to have been performed
9 by the insurer thereafter issuing the policy upon such altered
10 application. The commissioner may revoke the license of the
11 insurer for any violation of this section.
Sec. 16. The acknowledgment by any insurer of the receipt of notice given under any policy covered by this article or the furnishing of forms for filing proofs of loss, or the acceptance of such proofs, or the investigation of any claims thereunder, shall not operate as a waiver of any of the rights of the insurer in defense of any claim arising under such policy.

Sec. 17. A policy issued in violation of this article shall be held valid, but shall be construed as provided herein; and, when any provision in such policy is in conflict with any provision of this article, such provision of the policy so conflicting shall be invalid, and the policy shall be deemed to contain the standard provisions required by this article.

Sec. 18. Discrimination between individuals of the same class in the amount of premiums or rates charged for any policy of insurance covered by this article, or in the benefits payable thereon, or in any of the terms or conditions of such policy, or in any other manner whatsoever, is prohibited.

Sec. 19. Any insurer, or any officer or agent thereof, who issues or delivers to any person in this state any policy, or alters any written application for insurance, in willful violation of the provisions of this article, shall be guilty of a misdemeanor, and, upon conviction thereof shall be sentenced to pay a fine of not more than three hundred dollars for each offense. The insurance commissioner may revoke the license of any company, corporation, association or other insurer of another state or country, or of the agent thereof, which or who wilfully violates any of said provisions.

Sec. 20. (a) Nothing in this article, however, shall apply to or affect any policy of liability or workmen’s compensation insurance or any policy of insurance on which the premiums are payable weekly or any group, general or blanket policy of insurance issued to any municipal corporation or department thereof, or to any corporation, co-partnership, association or individual employer, police or fire department, underwriter’s corps, salvage bureau, or to any association having a constitution or by-laws and formed in good faith for purposes other than that of obtaining insurance, where the officers, members or employees or classes or departments thereof are insured for their individual benefit against specified accidental
13 bodily injuries or sickness while exposed to the hazards of the
14 occupation or otherwise.
15 (b) Nothing in this article shall apply to nor in any way
16 affect life insurance, endowment or annuity contracts or con-
17 tracts supplemental thereto which contain no provisions relat-
18 ing to accident or health insurance except (a) such as provide
19 additional benefits in case of death by accidental means, and
20 except (b) such as operate to safeguard such contracts against
21 lapse, or to give a special surrender value, or special benefit,
22 or an annuity, in the event that the insured or annuitant shall
23 become totally and permanently disabled as defined by the con-
24 tract or supplemental contract.
25 (c) Nothing in this article shall apply to or in any way
26 affect fraternal benefit societies.
27 (d) The provisions of this article contained in clause (e)
28 of section ten and in clauses (b), (c), (h), and (i) of section
29 eleven, may be omitted from transportation ticket policies.

Sec. 21. If any section, paragraph, sentence, clause, word
2 and/or application of any part hereof be held unconstitutional
3 the same shall not affect the validity of the remaining portions.
4 All acts and parts of acts in conflict with the provisions of
5 this act are hereby repealed.

CHAPTER 57
(Senate Bill No. 156—By Mr. Garrett, by request)

AN ACT to amend and reenact article five, chapter thirty-three
of the code of West Virginia, one thousand nine hundred
thirty-one, relating to farmers’ mutual fire insurance com-
panies.

[Passed March 1, 1935; in effect from passage. Became a law law without the
approval of the Governor.]
Section 1. A farmers’ mutual fire insurance company may be organized and incorporated without capital stock under the provisions of this article for the purpose of insuring property against damage by fire, lightning, hail, tornado or windstorm.

Section 2. No such company shall commence the transaction of business until it receives from the insurance commissioner a certificate of authority, which shall state that such company has complied with the provisions of this article, and such certificate shall continue in force until the first day of April next after its issuance, unless sooner revoked for cause. Be-
fore such certificate may be issued such company shall file with the insurance commissioner a certified copy of its charter and by-laws and have same approved in writing by him. The charter and by-laws so submitted must be accompanied by applications by citizens of this state for not less than one hundred thousand dollars of insurance on property located in this state, of which amount no one risk subject to one fire shall exceed one thousand dollars. The certificate of authority shall be renewed from year to year unless cause exists to refuse such renewal.

Sec. 3. Every such company when so authorized to transact business shall possess all the powers necessary to carry out the corporate purposes not inconsistent with the constitution or laws of this state. Amendments to the charter and/or by-laws may be offered by the board or any member at any regular or special meeting of members and may be adopted by the approval of a majority of the members present and voting, provided notice in writing of the intention to propose such amendments and the substance thereof is given to the members not less than thirty days prior to such meeting. All amendments shall be subject to the approval of the insurance commissioner.

Sec. 4. Any such company may insure property at any location. If insurance is granted on mercantile or industrial property the premiums or assessments shall be based on an annual inspection bureau rate on the property insured, in which case the company may pay such dividend on such insurance as the company’s experience with such insurance may justify.

Sec. 5. Every such company may issue policies of insurance, signed by its president and secretary, agreeing in the name of the company to pay all damages caused by fire, lightning, hail, tornado or windstorm to the property insured during the term of the policy. The form of all such policies shall be subject to regulation and approval of the insurance commissioner, who may, if he deems fit, after conferring with representatives of companies affected, prescribe a general form or forms for such policies, or specific provisions which shall be inserted in such policies, and all such policies thereafter issued shall conform
11 to all such regulations prescribed by the insurance commis-
12 sioner. All policies issued shall have all of their terms and
13 provisions printed thereon or attached thereto in full. Com-
14 panies may limit their liability in the policy to a definite per
15 cent of the value of the property.

Sec. 6. Any such company may reinsure any or all of its
2 risks in any fire insurance company authorized to do business
3 in this state and may itself issue policies of reinsurance to
4 other companies operating in this state. Two or more farmers’
5 mutual fire insurance companies may issue policies jointly.

Sec. 7. Whenever any public or private corporation, board
2 or association in this state has entered into an agreement for
3 and holds a policy in any farmers’ mutual fire insurance com-
4 pany operating under this article, any officer, stockholder or
5 trustee of any such corporation, board or association may be
6 recognized as acting for or on its behalf for the purpose of
7 such membership, but shall not be personally liable upon such
8 contract of insurance by reason of acting in such representative
9 capacity. The right of any corporation organized under the
10 laws of this state to participate as a member of such
11 farmers’ mutual insurance company is hereby declared to be
12 incidental to the purpose for which such corporation is organ-
13 ized and as much granted as the rights and powers expressly
14 conferred.

Sec. 8. No such company shall insure any single risk com-
2 prising a building and contents or other property so located
3 as to be subject to destruction by a single fire for a greater
4 amount than one thousand dollars until its insurance in force
5 shall be as much as five hundred thousand dollars, nor shall
6 it then insure any such risks for an amount greater than one-
7 fifth of one per cent of the net insurance in force under its
8 policies, unless the risks insured by the company in excess of
9 the amounts above stipulated are simultaneously covered by
10 reinsurance.

Sec. 9. Every such company is authorized to accumulate a
2 surplus or emergency fund in such amount as may be deemed
3 advisable by its board of directors.

Sec. 10. The number of directors of any such company
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2 shall not be less than six nor more than fifteen, a majority
3 of whom shall constitute a quorum to do business, to be elected
4 from the incorporators by ballot, of whom one-third shall be
5 elected for one year, one-third for two years and one-third for
6 three years, until their successors are elected and qualified.
7 At all subsequent elections, except to fill vacancies, one-third
8 of such board of directors shall be elected for three years,
9 such election to be held at the annual meeting of the company.
10 In the election of the first board of directors each incorporator
11 shall be entitled to one vote. At every subsequent election,
12 unless otherwise provided in the by-laws, every member shall
13 be entitled to one vote and may cast the same in person or by
14 proxy. Regular meetings of the board of directors shall be
15 held as often as the by-laws may provide, and special meetings
16 may be held at the call of the president, secretary, or a majority
17 of the board of directors.

Sec. 11. The directors shall elect from their number a presi-
2 dent and a treasurer, and shall also employ a secretary, who
3 may or may not be a member of the company, all of whom
4 shall hold their office for one year and until their successors
5 are elected and qualified. Any two of the above named offices
6 except the office of president may be held by the same person.
7 The directors shall also prescribe the duties of the officers and
8 fix their compensation, not inconsistent with the charter and
9 by-laws.

Sec. 12. The treasurer and secretary shall give bonds to
2 the company for the faithful performance of their duties in
3 such amounts as shall be prescribed by the board of directors,
4 only one bond being required where the office of treasurer and
5 secretary is held by the same person. Bonds may be required of
6 other employees and agents of the company at the discretion
7 of the board of directors.

Sec. 13. All notices of cancellation of policies or reduction
2 thereof and all other notices to members required by this
3 article shall be delivered personally or mailed in a sealed en-
4 velope addressed to the last known address of the member
5 and when so given they shall be deemed sufficient and binding
6 upon the member so notified.

Sec. 14. The board of directors shall notify all members of
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2 the time and place of the annual meeting of such members,
3 either by printing the same on their policies or by written
4 notice, as required by section thirteen of this article, and shall
5 report at such annual meeting all matters pertaining to the
6 operations of the company.

Sec. 15. Any person owning property may become a mem-
2 ber of such company by insuring therein, and shall be entitled
3 to all the rights and privileges appertaining thereto and sub-
4 ject to all liabilities connected with such membership.

Sec. 16. The president and secretary of every such mutual
2 company shall prepare annually, under oath, a full, true and
3 complete statement of the condition of such company on the
4 thirty-first day of December, and present the same to the
5 annual meeting.

Sec. 17. Any such company may levy assessments or collect
2 premiums for the purpose of paying losses and expenses al-
3 ready incurred, or for estimated future losses and expenses,
4 and for reserve or surplus fund purposes. The secretary of any
5 such company shall notify every member of the company of
6 the amount due by a written or printed notice, stating the
7 amount due the company from the member and the time and
8 place and to whom it shall be paid. Such payment shall be
9 made by the member within sixty days from date of mailing
10 such notice, or within a less period, as the by-laws may pro-
11 vide. The company may maintain an action against any mem-
12 ber thereof to recover all such assessments which he may
13 neglect or refuse to pay when legally due and payable.

Sec. 18. The contingent liability of the member may, with
2 the approval of the insurance commissioner, be limited to one
3 or more times the premium stated in the policy, and the com-
4 pany may issue a policy without contingent liability to the
5 member if at the time of issuance it has a surplus of not less
6 than one hundred thousand dollars and maintains unearned
7 premium and other reserves on the same basis as that required
8 of domestic stock companies offering the same kind of insur-
9 ance. In the absence of such limitation of contingent liability
10 each member shall be liable for his pro rata share of losses
11 and expenses of the company, including a reasonable contri-
12 bution to a surplus fund.
Sec. 19. Any such company shall collect from its members such fees or initial charges as the by-laws may provide.

Sec. 20. Any member of a company may withdraw therefrom upon written notice to the company. Every member so withdrawing shall immediately surrender his policy and pay to the extent of his liability as stated in the policy, all of his indebtedness legally due the company. No member shall be liable for losses or expense occurring subsequent to the time of his membership. No member shall upon withdrawal have any right or interest in the surplus of the company. The company may cancel any policy upon written notice to the holder. A company may, in its by-laws, provide for the suspension of its liability for loss upon any policy from the date when an unpaid assessment becomes due if notice is given to the member five days before the suspension is to become effective, and the payment of such assessment shall only reinstate such policy from the date of such payment, but no allowance shall be made in any assessment because of such suspension.

Sec. 21. Every company licensed under this article shall be required to obtain from the insurance commissioner a license for each of its agents who solicits or writes insurance in this state, which license shall continue in force until the first day of April next after date of its issuance, unless sooner revoked for cause. If the license of any agent is revoked by the company or not renewed at the end of the license year, the reasons for such revocation or failure to renew shall be reported by the company to the insurance commissioner on forms provided for that purpose. The information thus furnished to the insurance commissioner shall be available to any insurance company licensed in this state. The records containing such information shall not be open for public inspection and neither the insurance commissioner nor the company furnishing such information shall be liable for any action of damages for any statement made in complying with the provisions of this section. The name of the person or the company furnishing such information shall be held as confidential and not disclosed in such report. The annual fee for the licensing of all such agents shall be one dollar.

Sec. 22. No officer or other person whose duty it is to de-
termine the character of the risk and upon whose decision the application shall be finally accepted or rejected shall receive as any part of his compensation a fee or commission upon the premium.

Sec. 23. Every company operating under this article shall make an annual report to the insurance commissioner on or before the first day of March, showing the condition of the company on the thirty-first day of December next preceding, on such form as he shall prescribe, and shall pay the insurance commissioner a fee of five dollars at the time of filing such annual report. If the insurance commissioner finds it necessary in order to receive a satisfactory report he may, after conferring with representatives of the companies affected, prescribe uniform accounting forms and practices to be followed by all such companies.

Sec. 24. Every company licensed under this article shall report promptly to the fire marshal of this state, on forms provided by him, all the details in regard to each loss sustained by such company under its policies. The primary purpose of such reports shall be fire prevention and the detection and punishment of arson. The information thus furnished shall be available to any insurance company licensed in this state. The records containing such information shall not be open for public inspection and neither the fire marshal nor the company furnishing such reports shall be liable in any action of damages by reason of any statement made in complying with the provisions of this section. On request of any licensed company the fire marshal shall furnish such information as he may have relative to any risk or the owner thereof, and a fee of one dollar may be charged for each report. The name of the person or company furnishing such information shall be held as confidential and not disclosed in such report.

Sec. 25. Every such company shall be examined by the insurance commissioner or some other qualified examiner appointed by him at least once in every three years, and oftener if he deems it necessary. No person shall be considered a qualified examiner unless he is familiar with the underwriting and accounting methods of such companies. He shall have free access to the books, papers and records of the company, and is
8 authorized to examine members, officers, and employees of the
9 company under oath touching any matters pertaining to the
10 operation of the company. A written report of each examina-
11 tion, giving consideration to the underwriting methods and
12 financial condition of the company, shall be made and placed
13 on file in the office of the insurance commissioner, where it
14 shall be available to the public, and a copy of such report
15 shall be furnished to the examined company. If the insurance
16 commissioner shall find that such company is not paying its
17 losses or is not complying with the law, or is conducting its
18 business in a manner detrimental to the interests of the mem-
19 bers or the public he may order the levy of an assessment upon
20 all members liable for assessment, order the company to cease
21 issuing new policies, or take such other action as shall best pro-
22 tect the interests of those insured by the company.

Sec. 26. Any such company may at any annual or special
2 meeting, due notice of the time, place, and object of which shall
3 have been given, decide to voluntarily discontinue its opera-
4 tions and settle its affairs. A committee of three members shall
5 be then designated which shall on behalf of the company and
6 under the supervision of the insurance commissioner, liquidate
7 its assets, pay its debts and expenses and divide any surplus
8 ratably among the member. Upon final settlement by such
9 committee it shall make a complete report which shall be
9-a signed by its members and filed with the insurance commis-
10 sioner. If he approves the report he shall transmit to such
11 committee a certificate of his approval and thereupon the
12 company shall be deemed dissolved and shall cease to exist
13 under this article.

Sec. 27. Any farmers’ mutual fire insurance company here-
2 tofore organized and doing business pursuant to the laws of
3 the state of West Virginia may by resolution and without reor-
4 ganization avail itself of and be governed by all of the pro-
5 visions of this article. A copy of such resolution, duly certi-
6 fied by the president and secretary of such company, shall be
7 filed with the insurance commissioner. All farmers’ mutual
8 fire insurance companies hereafter organized pursuant to the
9 laws of the state of West Virginia shall be subject to the pro-
10 visions of this article. After the first day of January,
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11 nineteen hundred and forty, all farmers’ mutual fire insurance companies incorporated in this state shall comply with this article.

Sec. 28. Any such company organized or operating under the provisions of this article shall be exempt from all provisions of other insurance laws of this state, and no law hereafter passed shall apply to such companies unless such law shall expressly declare that it is applicable to farmers’ mutual fire insurance companies, as contemplated by this article.

Sec. 29. If any section, paragraph, sentence, clause, word, and/or application of any part hereof be held unconstitutional, the same shall not affect the validity of the remaining portions. All existing provisions of law inconsistent with this act are hereby repealed.

CHAPTER 58

(Senate Bill No. 157—By Mr. Garrett, by request)

AN ACT to amend and reenact section eighteen, article two, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, relating to discrimination and rebating by insurance companies and insurance agents, solicitors, brokers and other persons, and providing penalties.

[Passed March 1, 1935; in effect from passage. Approved by the Governor.]

Sec. 18. Discriminations by life insurance companies or agents prohibited: hearing by insurance commissioner on charge of discrimination: review of commissioner’s orders: continuation of rates: notice to insurer: contract for insurance to be plainly expressed in policy: rebate of premium, commissions, etc., and other inducements not specified in policy prohibited: provisions as to loans as inducement: penalties for violation of section

Be it enacted by the Legislature of West Virginia:

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

Section 18. No life insurance company doing business in this state shall make or permit any distinction or discrimina-
tion in favor of individuals of the same class, or of equal
expectation of life, in the amount of payment or return of
premiums or rates charged for policies of insurance, or in
the dividends or other benefits payable thereon, or in any other
of the terms and conditions of the contract it makes, nor shall
any such company permit, or agent thereof offer or make,
any contract of insurance or agreement as to such contract
other than is plainly expressed in the issued policy thereon.
No other insurer, authorized to transact business in this state,
shall fix or make any rates or schedules of rates or charge a
rate which discriminates unfairly between risks in this state
of essentially the same hazard. Whenever it is made to appear
to the satisfaction of the insurance commissioner that such
discrimination exists, he may, after a full hearing either before
himself or before any salaried employee of the insurance de-
partment whose report be may adopt, order such discrimination
removed. The findings, determinations and orders of the com-
missioner shall be subject to review in the manner provided
in section thirteen, article two of this chapter. If complaint
is made to the insurance commissioner that any rate or premium
or schedule of rates or premiums discriminates unfairly in
violation of this section, or if the insurance commissioner shall
himself raise the question, without complaint, he shall send
written notice to the insurer, charging such rate or premium
or making use of such schedule of rates or premiums. but
such rate or premium or schedule may, nevertheless, be con-
tinued in effect until the issue as to its discriminatory character
is finally determined. And no company authorized or per-
mitted to do an insurance business within this state, or any
officer, agent, solicitor or representative thereof, shall make
any contract for such insurance on property or risk located
within the state against liability, casualty, accident or hazard
that may arise or occur thereon, or any agreement as to such
contract, other than as plainly expressed in the policy issued,
or to be issued, thereon; and no insurance company, association
or society, by itself or any other party, and no insurance agent,
solicitor or broker, personally, or by any other party, shall
offer, promise, allow, give, set off or pay, directly or indirectly.
any rebate of or part of the premium payable on the policy,
or on any policy, or agent's commission thereon, earnings,
profits, dividends, or other benefit founded, arising, accruing
or to accrue thereon, or therefrom, or any other valuable con-
sideration or inducement to or for insurance, on any risk in
this state now or hereafter to be written, which is not specified
in the policy contract of insurance, nor shall any such com-
pany, association, or society, agent, solicitor, or broker, person-
ally or otherwise, offer, promise, give, sell or purchase any
stocks, securities or property, or any dividends or profits
accruing or to accrue thereon, or other thing of value whatso-
ever as inducement to insurance, or in connection therewith,
which is not specified in the policy. And no insurance agent,
solicitor or broker, personally or by any other party, shall
directly or indirectly offer a loan through any building asso-
ciation or bank, or in any other way, as an inducement to
insurance, nor shall any insurance agent, solicitor or broker
require an applicant for a loan to cancel outstanding in-
surance in admitted and solvent companies: Provided, That
any insurance agent, solicitor or broker may accept the renewal
of any policy, even though such agent, solicitor or broker
represents a building association, bank or other party making
the insured a loan, if the insured protects the lender by an
indorsement on such policy in proper form. Upon satisfactory
evidence of the violation of any provision of this section by
any solicitor or agent of any insurance company, the insurance
commissioner shall forthwith revoke the certificate of authority
of such solicitor or agent, and no license shall be issued to
such agent or solicitor within one year from the date of the
revocation of such license; and any insurance company, asso-
ciation, or society, its officers, solicitors or agents, or any in-
surance broker violating the provisions of this section shall be
guilty of a misdemeanor, and, upon conviction thereof, shall
be fined one hundred dollars for each and every violation, or,
in the discretion of the court, imprisoned in the county jail
of the county in which the offense is committed for a period
of not less than ninety days nor more than six months.
CHAPTER 59

(Senate Bill No. 17—By Mr. Henderson)

AN ACT to provide for the use of safety glass in motor vehicles and providing penalties.

[Passed March 4, 1935; in effect ninety days from passage. Approved by the Governor.]

Sec. 1. When unlawful to operate motor vehicle registered in this state unless equipped with safety glass.

2. Definition of safety glass.

3. When unlawful to operate motor vehicle registered in this state unless equipped with safety glass.

4. State road commissioner to approve and maintain list of approved types of glass to be used.

5. Penalty for violation of act by operator, owner or custodian of motor vehicle; revocation or suspension of permit or certificate.

Be it enacted by the Legislature of West Virginia:

Section 1. On and after July first, one thousand nine hundred thirty-five, and except as hereinafter otherwise provided, it shall be unlawful to operate, on any public highway or street in this state, any motor vehicle which is registered in this state, and which shall have been manufactured or assembled on or after July first, one thousand nine hundred thirty-five, unless such motor vehicle be equipped with safety glass wherever glass is used in partitions, doors, windows or windshields.

Sec. 2. The term "safety glass", as used in this act shall be construed as meaning glass so treated or combined with other materials as to reduce, in comparison with ordinary sheet glass or plate glass, the likelihood of injury to persons by objects from external sources or by glass when the glass is cracked or broken.

Sec. 3. After January first, one thousand nine hundred thirty-seven, it shall be unlawful to operate on any highway any motor vehicle registered in this state, manufactured or assembled after the said date, unless such vehicle be equipped with safety glass wherever glass is used in doors, windows, windshields and sideshields; this provision shall not, however,
7 apply to any vehicle registered in this or any other state prior 
8 to January first, one thousand nine hundred thirty-seven.

Sec. 4. The state road commissioner shall approve and 
2 maintain a list of the approved types of glass, conforming to 
3 the specifications and requirements for safety glass as set forth 
4 in this act and in accordance with the standards recognized by 
5 the United States bureau of standards, and shall not issue a 
6 license for or relicense any motor vehicle subject to the provi- 
7 sions of this act, unless such motor vehicle be equipped as 
8 herein provided with such approved type of glass.

Sec. 5. The operator, owner, or custodian of any motor 
2 vehicle which is operated in violation of the provisions of this 
3 act shall be deemed guilty of a misdemeanor and upon con- 
4 viction thereof shall be fined twenty-five dollars or be impris- 
5 oned ten days in jail or both. In case of the violation of the 
6 provisions of this act by any common carrier or person oper- 
7 ating under a permit or certificate issued by the public service 
8 commission, such permit or certificate shall be revoked, or, in 
9 the discretion of the commission, suspended until the provisions 
10 of this act are satisfactorily complied with.

CHAPTER 60

(Senate Bill No. 20—By Mr. Spillers)

AN ACT to amend and reenact section thirteen, article five, chapter 
eighteen of the code of West Virginia, one thousand nine 
hundred thirty-one, as last amended and reenacted by chapter 
eight, acts of the Legislature, first extraordinary session, one 
hundred nine hundred thirty-three, relating to the authority 
of county boards of education, and authorizing the purchase 
of insurance against negligence.

[Passed March 7, 1935; in effect from passage. Became a law without the 
approval of the Governor.]

Sec. 13. Enumerated powers of county 
boards of education, including 
purchase of insurance against 
negligence of drivers of school 
buses operated by the board.

Sec. amount that may be expended 
upon each child of school age; 
no change in textbooks except 
y by general law; instruction in 
state history.
Be it enacted by the Legislature of West Virginia:

That section thirteen, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as last amended and reenacted by chapter eight, acts of the Legislature, first extraordinary session, one thousand nine hundred thirty-three, be amended and reenacted so as to read as follows:

Section 13. The board, subject to the provisions of this chapter and the rules and regulations of the state board, shall have authority:

1. To control and manage all of the schools and school interests of the county;
2. To establish needed high schools;
3. To close any school which is unnecessary and to assign the pupils thereof to other schools;
4. To consolidate schools;
5. To close any elementary school whose average daily attendance falls below twenty pupils for two months in succession, and to send the pupils to other schools in the district or to schools in adjoining districts. The compensation of teachers in schools so closed shall cease;
6. To provide at public expense adequate means of transportation for all children of school age who live more than two miles distant from school by the nearest available road or path;
7. To provide at public expense for insurance against the negligence of the drivers of school buses operated by the board; and if the transportation of pupils be let out to contract, then the contract therefor shall provide that the contractor shall carry insurance against negligence in such an amount as the board shall specify.
8. The board of any district may expend, under such regulations as it establishes, for each child, an amount not to exceed the proportion of all school funds of the district that each child would be entitled to receive if all the funds were distributed equally among all the children of school age in the district upon a per capita basis. No changes in textbooks except those provided by general law shall be made as a result of the passage of this act: Provided, however, That at least one year of instruction in the history of the state of West Virginia shall be given prior to the eighth grade.
CHAPTER 61
(Senate Bill No. 216—By Mr. Fleming)

AN ACT to amend chapter seventeen of the code of West Virginia one thousand nine hundred thirty-one, by adding thereto article twenty, relating to the protection of the public against reckless and irresponsible persons on public highways, the operation of motor vehicles on public highways and the financial responsibility of owners and operators of motor vehicles for damages caused by such operation and providing penalties.

[Passed March 5, 1935: In effect from passage. Became a law without the approval of the Governor.]

Sec. 1. Act supplemental to other laws relating to motor vehicles and their operation: if conflict in penalties, greater penalty to prevail.

Sec. 2. Suspension of permits, licenses, certificates of registration and registration plates upon conviction, plea of guilty or forfeiture of bond for violations of motor vehicle law: suspension not lifted on vehicle thereafter registered in name of violator until he proves his ability to respond in damages for liability thereafter incurred: amount; when certificate of registration or registration plates not suspended: proof by nonresident owner or operator: certified copy of conviction, etc., to be sent to state road commissioner: if violator is nonresident, certified copy of certified copy to be sent by commissioner to proper officer in state of violator's residence: when violator is not owner and owner furnishes required proof, violator not required to give proof in own behalf, except for vehicles registered in his name.

Sec. 3. When final judgment in excess of fifty dollars not satisfied within thirty days, permits, licenses, etc., suspended until judgment satisfied and proof of ability to respond in damages given: when judgment is against nonresident, certified copy to commissioner and to proper officer of state of nonresident: when proof given, but another judgment obtained before proof given, permits, etc., again suspended until judgment satisfied: when judgment, for purposes of this article, regarded as satisfied by certain payments: partial payment credited on amounts provided for in section.

Sec. 4. Application to court or justice by judgment debtor to pay judgment in installments: if not in default and proof of ability to respond in damages given, restoration of license, etc.

Sec. 5. How proof of ability to respond in damages evidenced: (a) by insurance policy: when additional operator's insurance policy required: proof by nonresident: reciprocity or nonreciprocity of certificates of insurance carriers: default of foreign insurance carrier: notification to commissioner by insurance carrier of cancellation or expiration of policy; (b) by bond of surety company or individual bond, with sureties: conditions, and cancellation of bond: lien of, how established: fee and duties of county clerk: when other evidence of ability to respond in damages may be required.

Sec. 6. Commissioner to hold bond as satisfying judgment for damages: action by judgment creditor, in name of state, against company or person executing bond.

Sec. 7. Commissioner to furnish copy of operating record of any person subject to provisions of article: what abstract to show: fee
Sec. 8. Commissioner to furnish injured person with information as to ability of owner or operator to respond in damages.

Sec. 9. Return of suspended licenses, registration plates, etc., to commissioner; penalty for failure: when superintendent of department of public safety to secure and return same to commissioner.

Sec. 10. When bond or certificate of insurance to be returned; conditions on which cancellation or return may be made: when re-establishment of proof required upon application for license; cancellation or return upon substitution of other adequate proof.

Sec. 11. Provisions concerning transfer of suspended certificate of registration or the registration, re-possession or sale of motor vehicle.

Sec. 12. Endorsement of certificates of insurance to conform to requirements of article.

Sec. 13. Penalties for violations of act.

Sec. 14. Definition, and provisions of motor vehicle liability policy, operator's policy; commissioner to approve form of policy before issuance or delivery: provisions to which policies subject, whether or not stated therein: may not be cancelled after accident by carrier and insured: rights of carrier against insured: what constitutes entire contract: certificate of issuance of policy for filing with commissioner: binder or endorsement.

Sec. 15. When commissioner attorney for nonresident for service of process; fee and bond: notice to nonresident.

Sec. 16. Definitions of words and phrases.

Sec. 17. Rules and regulations by commissioner for enforcement of act.

Sec. 18. Plaintiff may use other processes of law.

Sec. 19. If section invalid, other sections not affected.

Sec. 20. Act not retroactive.

Be it enacted by the Legislature of West Virginia:

That chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, be amended by the addition thereto of article twenty, to read as follows:

Section 1. This article shall in no respect be considered as a repeal of any law relating to motor vehicles and their operation but shall be considered as supplemental thereto, and, in the event there is a conflict between any penalty provided in this article and any other penalty provided by law for the same offense, the greater penalty shall be enforced.

Sec. 2. The motor vehicle learner's permit, operator's and/or chauffeur's license, all of the certificates of registration and the registration plates of any person shall be suspended by the state road commissioner, hereinafter called the commissioner, if such person shall, by a final order or judgment, have been convicted of, or shall have pleaded guilty to, or shall have forfeited any bond or collateral deposited to secure his appearance for trial as defendant (where such forfeiture shall not have been vacated) for any of the following offenses hereafter committed:

(a) Operating a motor vehicle while under the influence
11 of intoxicating liquor, drugs or narcotics in violation of any law of this state;
12 (b) Homicide or assault arising out of the operation of a motor vehicle;
13 (c) Reckless driving, resulting in bodily injury or damage to property;
14 (d) Leaving the scene of an automobile accident without making identity known, in violation of the provisions of article eight of this chapter and of the acts amendatory thereof and supplemental thereto;
15 (e) Operating a motor vehicle on any road or highway of this state without being licensed therefor, in violation of any of the provisions of article six of this chapter and of the acts amendatory thereof and supplemental thereto;
16 (f) Such other violations of the laws as require suspension or revocation of permits and/or licenses in this state;
17 (g) An offense in any other state or in any province of the Dominion of Canada which, if committed in this state, would be in violation, as aforesaid, of any of the above specified provisions of law in this state.
18 Such permit, license, certificate and plates, so suspended by the commissioner, shall remain so suspended and shall not at any time thereafter be renewed or used, nor shall any such permit or license be thereafter issued to such person, nor shall any motor vehicle be thereafter registered in the name of such person, until he shall have given proof of his ability to respond in damages for any liability thereafter incurred, resulting from the ownership, maintenance, use or operation thereafter of a motor vehicle, for bodily injury to or death of any one person in the amount of at least five thousand dollars, and, subject to the aforesaid limit for any one person injured or killed, of at least ten thousand dollars for bodily injury to or the death of two or more persons in any one accident, and for damage to property in the amount of at least one thousand dollars resulting from any one accident: Provided, however, That the certificate of registration and the registration plates issued for any motor vehicle registered in the name of such person as owner shall not be so suspended in the event such person has previously given or shall immediately give and thereafter maintain, for a period of three years, proof of his ability to respond in damages ac-
52 cording to the provisions of this article, with respect to each
53 and every motor vehicle owned and registered by such person.
54 Such proof in said amounts shall be furnished for each motor
55 vehicle registered by such person. If such person shall not
56 be a resident of this state, he shall not operate any motor
57 vehicle in this state nor shall any motor vehicle owned by
58 him be operated within this state by any person, and no
59 learner’s permit or operator’s or chauffeur’s license shall be
60 issued to such person and no motor vehicle shall be registered
61 in his name, until he shall have given proof as aforesaid.
62 Whenever there is a conviction, plea or forfeiture, as afore-
63 said, in any court of record, or in a justice’s court, or in the
64 police court of any incorporated municipality, the clerk of
65 such court of record, or the justice of a justice’s court, or the
66 clerk or recorder of the municipality in which is such police
67 court, as the case may be, in which any such judgment is
68 rendered or order is entered or other such action taken, shall
69 forward immediately to the commissioner a certified copy
70 thereof, to which copy shall be appended a certificate showing
71 the nature of the offense upon which the conviction was had.
72 A certified copy of the judgment, order or record of other
73 action of the court or justice shall be prima facie evidence
74 of the conviction, plea, forfeiture or other action therein
75 stated. In the event that the person so shown to have been
76 convicted, pleaded guilty or forfeited bond or collateral ap-
77 pears to be a nonresident of this state, the commissioner shall
78 transmit a copy of such certified copy, certified to by him, to
79 the officer in charge of the issuance of motor vehicle operators’
80 and/or chauffeurs’ licenses and registration certificates of
81 the state or province of which such person appears to be a
82 resident.
83 If it shall be duly established to the satisfaction of the com-
84 missioner and the commissioner shall so find (a) that any
85 person, whether a resident or nonresident of this state, who
86 shall have been convicted, pleaded guilty or forfeited bond
87 or collateral, as aforesaid, was, upon the occasion of the offense
88 upon which such conviction, plea or forfeiture was based, a
89 chauffeur or motor vehicle operator, however designated, in
90 the employ of the owner of the motor vehicle involved in such
91 offense or a member of the immediate family or household of
92 the owner of such motor vehicle, and (b) that there was not,
93 at the time of such offense or subsequent thereto, up to the 94 date of such finding, any motor vehicle registered in this 95 state, (or if a nonresident, in the state of his residence) in 96 the name of the person who so has been convicted, pleaded 97 guilty or forfeited bond or collateral, as aforesaid, then and 98 in that event, if the person in whose name such motor vehicle 99 is registered shall give proof of ability to respond in damages 100 according to the provisions of this article (and the commis- 101 sioner is hereby authorized to accept such proof from such 102 person) such chauffeur or other person, as aforesaid, shall be 103 relieved of the necessity of giving such proof in his own behalf, 104 so long as such chauffeur or other person is operating a motor 105 vehicle for which the owner has given proof as herein pro- 106 vided. The commissioner shall designate the restrictions im- 107 posed by this section on the face of such person's operator's 108 or chauffeur's license: Provided, however, That such chauffeur 109 or other person shall furnish proof of ability to respond in 110 damages, as herein required, for all motor vehicles registered 111 in the name of such chauffeur or other person: Provided 112 further, That no such license shall be reinstated or any new 113 license issued until otherwise permitted under the laws of 114 this state.

Sec. 3. In the event of the failure of any person, within thirty 2 days thereafter, to satisfy any judgment, which shall have be- 3 come final by expiration, without appeal, of the time within 4 which appeal might have been perfected, or by final affirmance 5 on appeal rendered against him by a court of competent juris- 6 diction in this state or in any other state or the District of Co- 7 lumbia, or in any district court of the United States, or by a 8 court of competent jurisdiction in any province of the Dominion 9 of Canada, for damages on account of bodily injury, including 10 death, or damage to property in excess of fifty dollars, 11 resulting from the ownership, maintenance, use or operation 11-a hereafter of a motor vehicle, the learner's permit, operator's 12 and/or chauffeur's license, every certificate of registration and 13 the registration plates of such person shall be forthwith sus- 14 pended by the commissioner upon receiving a certified copy of 15 such final judgment from the court in which or the justice by 16 whom the same was rendered, together with a certificate from 17 such court or justice that such judgment is final and still un- 18 satisfied and that more than thirty days have elapsed since the
same became final, as aforesaid, and shall remain so suspended and shall not be renewed nor shall any motor vehicle be there-
after registered in the name of such person while any such judgment remains unstayed, unsatisfied and subsisting, nor until every such judgment is satisfied or discharged, except by a discharge in bankruptcy, and until such person gives proof of his ability to respond in damages as required in section two of this article for future accidents. If such person who has failed to satisfy within thirty days any final judgment, as aforesaid, shall not be a resident of this state, he shall not operate any motor vehicle in this state, nor shall any motor vehicle owned by him be operated in this state by any person, nor shall any operator’s or chauffeur’s license be issued to such person or any motor vehicle be registered in his name, until every such judgment shall be stayed, satisfied or discharged as herein provided, and until such person shall have given proof of his ability to respond in damages for future accidents as required in section two of this article. The clerk of the court of record in which, or the justice by whom, any such judgment is rendered, shall forward immediately, after the expiration of said thirty days, as aforesaid, to the commissioner, a certified copy of such judgment as aforesaid. In the event the defendant is a nonresident, the commissioner shall transmit to the commissioner of motor vehicles or other officer or body in charge of the issuance of operators’ licenses and registration certificates of the state or province of which the defendant is a resident, a certified copy of such judgment. If after such proof has been given, any other such judgment shall be recovered against such person for an event occurring before such proof was given but after this article shall take effect, such permit, license or licenses and certificate or certificates and plates shall again be and remain suspended, and no other such permit, license, certificate or plates shall be issued to such person while any such judgment remains unstayed, unsatisfied and subsisting, as aforesaid. Provided, however, That, (a) When five thousand dollars has been credited upon any judgment or judgments rendered in excess of that amount for bodily injury to or death of one person as the result of any one accident; or (b) When, subject to the limit of five thousand dollars as to one person, the sum of ten thousand dollars has been credited upon any judgment or judgments rendered in excess of that
amount for bodily injury to or the death of more than one person as the result of any one accident; or

(c) When one thousand dollars has been credited upon any judgment or judgments rendered in excess of that amount for damage to property of others as a result of any one accident, resulting from the ownership, maintenance, use or operation of a motor vehicle, credit for such amounts shall be deemed a satisfaction of such judgment or judgments in excess of said amounts for the purposes of this article only.

Whenever payment has been made in settlement of any claims for bodily injury, death, or property damage arising from a motor vehicle accident resulting in injury, death, or property damage to two or more persons in such accident, any such payment shall be credited in reduction of the amounts provided for in this section.

Sec. 4. A judgment debtor to whom this article applies may, for the sole purpose of giving authority to the commissioner to authorize such judgment debtor to operate a motor vehicle thereafter, after five days' notice to the judgment creditor, apply to the court in which or the justice before whom the judgment was obtained for the privilege of paying such judgment in installments, and the court or justice, without prejudice to any other legal remedies which the judgment creditor may have, may so order, fixing the amounts and times of payment of the installments. While the judgment debtor is not in default in payment of such installments, the commissioner, upon his giving proof of ability to respond in damages for future accidents, as hereinbefore provided, may, in his discretion, restore or refrain from suspending his permit, license and/or certificate or certificates of registration and registration plates, but such permit, license and/or certificate or certificates and plates shall be suspended as hereinbefore provided, if and when the commissioner is satisfied that the judgment debtor has failed to comply with the terms of the order of such court or justice.

Sec. 5. Proof of ability to respond in damages, when required by this article, may be evidenced by either of the following:

(a) By filing with the commissioner the written certificate or certificates of any insurance carrier, duly authorized to do business within this state, that it has issued to, or for
the benefit of, the person furnishing such proof and named
as the insured, a motor vehicle liability policy or policies, or
in certain events an operator’s policy, in the form hereinafter
prescribed, which, at the date of the certificate or certificates
is or are in full force and effect, and designating therein by
explicit description or by other adequate reference, all motor
vehicles to which the policy or policies apply, unless the policy
or policies are issued to a person who is not the owner of a
motor vehicle. The commissioner shall not accept any cer-
tificate or certificates unless the same shall cover all motor
vehicles then registered in the name of the person furnishing
such proof as owner. An additional certificate or certificates,
as aforesaid, shall be required as a condition precedent to the
registration of any additional motor vehicle or motor vehicles
in the name of such person furnishing such proof as owner.
Such certificate or certificates shall certify that the motor
vehicle liability policy or policies therein cited shall not be
canceled or expire except as hereinafter provided.
When a certificate is filed showing that a policy or policies
have been issued covering all motor vehicles owned by the
insured but not insuring such person when operating any
motor vehicle not owned by him, it shall be unlawful for such
person to operate any motor vehicle not owned by him or not
covered by such certificate. In such event the commissioner
shall designate the above restriction upon the operator’s or
chauffeur’s license of such person. In the event the owner of
a motor vehicle or motor vehicles desires to be relieved of such
restriction and to be permitted to drive any other motor
vehicle he may have such restriction removed upon filing a
certificate showing that there has been issued to him a policy
of insurance insuring him as insured against liability imposed
by law upon such insured for bodily injury to or death of
any person or damage to property to the amounts and limits
as provided under section two of this article with respect to
any motor vehicle operated by him and which otherwise com-
plies with the requirements of this article with respect to
such type of policy. Such policy is hereinafter referred to as
an operator’s policy. When the person required to give proof
of ability to respond in damages is not the owner of a motor
vehicle, then an operator’s policy of the type and coverage
47 described in this paragraph shall be sufficient under this
48 article.
49 If such person be a nonresident, a certificate, as aforesaid,
50 of an insurance carrier authorized to transact business in the
51 state or province in which the motor vehicle or motor vehicles
52 described in such certificate is or are registered, or if such non-
53 resident does not own a motor vehicle, then in the state or
54 province in which the insured resides, and otherwise conform-
55 ing to the provisions of this article, shall be accepted if such
56 carrier shall, (1) execute a power of attorney authorizing the
57 commissioner to accept service of notice or process in any
58 action arising out of a motor vehicle accident in this state,
59 and (2) duly adopt a resolution which shall be binding on it,
60 declaring that its policies shall be deemed to be varied to
61 comply with the laws of this state relating to the terms of
62 motor vehicle liability policies issued therein, and (3) agree
63 to accept as final and binding any final judgment of any court
64 of competent jurisdiction in this state, duly rendered in any
65 action arising out of a motor vehicle accident: Provided, how-
66 ever, That the provisions of this section shall be operative as
67 to such insurance carriers (organized and existing under the
68 laws of such state or province and not licensed to transact busi-
69 ness in this state) only to the extent and under the same terms
70 and conditions that, under the laws of such state or province
71 where such motor vehicle is registered or in which the insured
72 resides, like recognition, if a law of like effect is in force and
73 effect, is granted to certificates of insurance carriers organized
74 and existing under and by virtue of the laws of this state.
75 If, under the laws of such state or province, in which a law
76 of like effect is in force and effect, certificates of insurance
77 carriers organized and existing under or by virtue of the laws
78 of this state are not accepted, the certificates of insurance car-
79 riers of such state or province shall not be accepted under the
80 provisions of this article: Provided further, That whenever
81 any foreign insurance carrier which has qualified to furnish
82 proof of ability to respond in damages, as hereinbefore re-
83 quired, defaults in any of its undertakings or agreements, the
84 commissioner shall not thereafter accept any certificate of said
85 carrier, whether theretofore filed or thereafter tendered, as
86 such proof of ability to respond in damages, so long as such
87 default continues.
The commissioner shall be notified by the insurance carrier of the cancellation or expiration of any motor vehicle liability policy certified under the provisions of this article at least ten days before the effective date of such cancellation or expiration, and until such notice is duly given, such policy shall continue in full force and effect. The notice of such cancellation or expiration shall be served in the manner provided in section one, article two, chapter fifty-six of the code of West Virginia, one thousand nine hundred thirty-one, or by registered mail, which latter method shall be evidenced by a return receipt.

(b) By filing with the commissioner a bond executed by the person giving such proof and by a surety company, duly authorized to transact business in this state, or a bond executed by the person giving such proof and by at least two individual sureties, each owning real estate within the county where such surety resides and having an equity therein in the amount of such bond, which real estate shall be scheduled in the bond and such bond shall be approved by the clerk of a court of record in the county in which such surety resides. Such bond shall be conditioned for the payment of the amounts specified in section two of this article and shall be filed with the commissioner and shall not be cancellable except after ten days' written notice to said commissioner, served and evidenced in the manner provided in this section as to similar notices respecting motor vehicle liability policies, but cancellation of such bond shall not prevent recovery thereon with respect to any right or cause of action arising prior to the date of cancellation. Such restriction as to cancellation only after ten days' notice shall be set forth in the bond. Such bond shall constitute a lien in favor of the state upon the real estate so scheduled of any surety, which lien shall exist in favor of any holder of a final judgment against the person who has filed such proof, on account of damage to property in excess of fifty dollars, or injury to, including death of, a person or persons resulting from the ownership, maintenance, use or operation hereafter of a motor vehicle, upon the filing of a notice to that effect by the commissioner in the office of the clerk of the county court of the county where such real estate is located. Such notice shall contain the name in full of any such surety to be affected by it, the description of the real
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129 estate located in such county as scheduled in the bond, and
130 shall be signed by said commissioner and bear an imprint of
131 the official seal of the commission. Such clerk shall indicate
132 on such notice the day and hour when it was received by him,
133 and, upon the payment of a fee of one dollar, he shall imme-
134 diately record such notice in the place wherein trust deeds
135 of real estate are recorded and shall index such notice in the
136 name of such surety in the same place in which such trust
137 deeds are indexed, treating such surety as a grantor and the
138 state of West Virginia as a grantee, and such clerk shall be
139 subject to the penalties provided in article three of chapter
140 thirty-eight and in article four of chapter fifty-one of the code
141 of West Virginia, one thousand nine hundred thirty-one, for the
142 failure to so record and to so index such notice, respectively.
143 A fee of one dollar shall be collected by the commissioner from
144 the person who has filed such proof and shall be paid to such
145 clerk by the commissioner. All liens so created shall relate
146 to the time of filing such notice in such clerk’s office and shall
147 have priority over all liens suffered or created thereafter.
148 Whenever any evidence of proof of ability to respond in
149 damages filed under the provisions of this article no longer
150 fulfills the purpose for which required, the commissioner shall,
151 for the purposes of this article, require other evidence of ability
152 to respond in damages as required by this article and shall
153 suspend the operator’s license, chauffeur’s license, certificate
154 of registration and registration plates of the person con-
155 cerned pending such proof.

Sec. 6. A bond filed by or on behalf of any person, under
2 the provisions of the preceding section, shall be held by the
3 commissioner to satisfy, in accordance with the provisions of
4 this article, any execution issued against such person on a
5 judgment for damages, as aforesaid, arising out of the owner-
6 ship, maintenance, use or operation of a motor vehicle as afore-
7 said. If such a judgment rendered against the principal on
8 the surety company or real estate individual bond given under
9 the provisions of this article shall not be satisfied within thirty
10 days after it has become final, as hereinbefore provided, the
11 judgment creditor may, for his own use and benefit and at his
12 sole expense, bring an action or actions in the name of the
13 state against the company or persons executing such bond and
14 may enforce by a suit in equity in his own name any lien
existing by virtue of the provisions of this article upon the real estate of a person who has executed such bond.

Sec. 7. The commissioner shall upon request furnish any insurance carrier, person or surety a certified abstract of the operating record on file in the office of said commissioner, of any person subject to the provisions of this article, which abstract shall fully designate every motor vehicle (if any) registered in the name of such person, and if there shall be no such record of any conviction of such person of a violation of any provisions of any statute relating to the operating of a motor vehicle or of any injury or damage caused by such person as herein provided, the commissioner shall so certify. The commissioner shall collect for each such certificate the sum of one dollar. Such record shall not be admissible as evidence in any action for damages or criminal proceeding arising out of a motor vehicle accident.

Sec. 8. The commissioner shall furnish any person who may have been injured in person or property by any motor vehicle, upon written request accompanied by a fee of one dollar, with all information of record in his office pertaining to the evidence of the ability of any operator or owner of any motor vehicle to respond in damages.

Sec. 9. Any operator or any owner, whose learner’s permit, operator’s and/or chauffeur’s license or certificate of registration or registration plates shall have been suspended as in this article provided, or whose policy of insurance or surety bond, when same is required under this article, shall have been canceled or terminated, or who shall neglect to furnish additional evidence of ability to respond in damages upon request of the commissioner, shall immediately return to the commissioner his learner’s permit, operator’s license, certificate of registration and the registration plates issued under the provisions of this article. If any person shall wilfully fail to return to the commissioner the learner’s permit, operator’s and/or chauffeur’s license, certificate of registration and the registration plates so issued as provided herein, the commissioner shall forthwith notify the superintendent of the department of public safety who shall, as soon as possible, secure possession thereof and return same to the commissioner. Said superintendent of the department of public safety shall make a report in writing
19 to the commissioner, within two weeks after being so notified
20 by the commissioner, as to the result of his efforts to secure
21 the possession and return of such permit, license, certificate of
22 registration and registration plates. Any person willfully fail-
23 ing to return such learner’s permit, operator’s or chauffeur’s
24 license or such certificate and registration plates shall be guilty
25 of a misdemeanor and, upon conviction thereof, shall be fined
26 not more than two hundred dollars, and such penalty shall be
27 in addition to any penalty imposed for any violation of any of
28 the motor vehicle laws of this state.

Sec. 10. (a) The commissioner shall, upon the request in
2 writing of the person on whose behalf such proof of ability
3 to respond in damages was furnished, cancel any bond or return
4 any certificate of insurance filed pursuant to this article as
5 proof of ability to respond in damages, or waive the requirement
6 of filing proof of ability to respond in damages in any of the
7 following events:
8 (1) At any time after three years shall have elapsed since
9 the filing of such bond or certificate, if the person has not,
10 during the three year period immediately preceding the re-
11 quest, been convicted of any offense referred to in section two
12 of this article; or
13 (2) In the event of the death of the person on whose behalf
14 such proof was filed, or the permanent incapacity of such per-
15 son to operate a motor vehicle; or
16 (3) In the event the person who has given proof of ability
17 to respond in damages surrenders his operator’s or chauffeur’s
18 license, every certificate of registration and all registration
19 plates to the commissioner: Provided, however, That in each
20 of the foregoing instances such cancellation or return shall
21 be upon the condition that no action for damages, upon a
22 liability referred to in this article, is pending against such
23 person on whose behalf such proof of ability to respond in
24 damages was furnished, that no judgment upon any such lia-
25 bility against such person is outstanding and unsatisfied, and
26 that no notice has been filed with the commissioner of an acci-
27 dent involving such person, occurring within the three month
28 period immediately preceding such request and resulting from
29 the ownership, maintenance, use or operation of a motor ve-
30 hicle.
31 The affidavit of such person, showing fulfillment of the necessary requirements under this section, shall be sufficient proof thereof in the absence of evidence to the contrary in the records of the commissioner.

32 Whenever any person, as to whom such proof has been so canceled or to whom such proof has been so returned, applies for an operator's or chauffeur's license or the registration of a motor vehicle within a period of three years from the date proof of ability to respond in damages was originally required, any such application shall be refused unless the applicant shall reestablish such proof for the remainder of such period.

33 (b) The commissioner shall cancel any bond or return any certificate of insurance to the person entitled thereto, upon the substitution and acceptance of other adequate proof of ability to respond in damages pursuant to the provisions of this article.

Sec. 11. If an owner's certificate of registration has been suspended under the provisions of this article, such certificate shall not be transferred nor the motor vehicle, in respect of which such certificate was issued, registered in another name, where the commissioner has reasonable grounds to believe that such transfer or registration is proposed for the purpose or will have the effect of defeating the purpose of this article: Provided, however, That nothing in this section contained shall be held to apply to or affect the registration of any motor vehicle sold by a person who, pursuant to the terms or conditions of any written instrument giving a right of repossession, has exercised such right and has repossessed such motor vehicle from a person whose certificate of registration has been suspended under the provisions of this article: Provided further, That nothing in this section contained shall prevent the owner of a motor vehicle, the registration of which has been suspended hereunder, from effecting a bona fide sale of such motor vehicle to another person whose rights or privileges are not suspended under this article nor prevent the registration of such motor vehicle by such other person.

Sec. 12. Nothing in this article contained shall be held to apply to or affect policies of automobile insurance against liability which may now or hereafter be required by any other law of this state, and such policies, if endorsed to conform to
5 the requirements of this article, shall be accepted as proof of
6 ability to respond in damages when required under this article,
7 nor shall anything in this article contained be held to apply
8 to or affect policies insuring solely the insured named in the
9 policy against liability resulting from the maintenance, opera-
10 tion or use by persons in the insured’s employ or in his behalf
11 of motor vehicles not owned by the insured.

Sec. 13. Any person who shall forge, or, without authority,
2 sign any evidence of ability to respond in damages as required
3 by the commissioner in the administration of this article, or
4 utter or attempt to employ as true such forged evidence of
5 ability to respond in damages, knowing the same to be forged,
6 and any person who shall violate any of the provisions of this
7 article for which no penalty is otherwise provided shall be
8 guilty of a misdemeanor, and, upon conviction thereof, be fined
9 not more than one thousand dollars, or imprisoned not more
10 than six months, or both so fined and imprisoned. Any person
11 whose learner’s permit, operator’s or chauffeur’s license or
12 certificate of registration, registration plates and/or other
13 privilege to operate a motor vehicle has been suspended or re-
14 voked and restoration thereof or issuance of a new permit,
15 license or certificate of registration is contingent upon the fur-
16 nishing of proof of ability to respond in damages according
17 to the provisions of this article, and who, during such sus-
18 pension or revocation, or in the absence of full authorization
19 from the commissioner, drives any motor vehicle upon any
20 highway or knowingly permits any motor vehicle owned by him
21 to be operated by another upon any highway, except as per-
22 mitted hereunder, shall be guilty of a misdemeanor, and, upon
23 conviction thereof, be imprisoned for not more than six months
24 or fined not more than five hundred dollars, or both so fined
25 and imprisoned.

Sec. 14. “Motor vehicle liability policy,” as used in this
2 article, shall be taken to mean any policy of liability insurance
3 issued by an insurance carrier authorized to transact business
4 in this state, or issued by an insurance carrier authorized to
5 transact business in the state or province in which the motor
6 vehicle or motor vehicles therein described is or are registered,
7 or if none be described, then in the state in which the insured
8 resides, to or for the benefit of the person therein named as
9 insured, which policy shall either (a) designate, by explicit
description or other adequate reference, every motor vehicle
with respect to which coverage is intended to be granted by
such policy, and shall insure the insured named therein and
any other person using or responsible for the use of any such
motor vehicle with the consent, express or implied, of such
insured, against loss from the liability imposed by law upon
such insured or upon such other person for injury to or
death of any person, other than such insured and such person
or persons as may be covered as respects such injury or death
by any workmen’s compensation law, and/or for damage to
property, except property of others in charge of the insured
or of his employees or other agents, growing out of the owner-
ship, maintenance, use or operation of any such motor vehicle
within the continental limits of the United States of America
or the Dominion of Canada, or which policy shall, in the
alternative (b) insure the person therein named as insured
against loss from the liability imposed by law upon such
insured for bodily injury to or death of any person, other
than such insured and such person or persons as may be
covered as respects such injury or death by any workmen’s
compensation law, and/or for damage to property, except
property of others in charge of the insured or of his employees
or other agents, growing out of the maintenance, operation or
use by such insured of any motor vehicle, except a motor
vehicle registered in the name of such insured, and occurring
while such insured is personally in control, as driver or occu-
pant, of such motor vehicle within the continental limits of
the United States of America or the Dominion of Canada, the
policy in the latter case to be known as an operator’s policy;
in either case to the amount or limit of five thousand dollars,
exclusive of interest and costs, on account of bodily injury
to or death of any one person, and, subject to the same limit
as respects bodily injury to or death of any one person, of
ten thousand dollars, exclusive of interest and costs, on ac-
count of any one accident resulting in bodily injury to or
death of more than one person; and of one thousand dollars
for damage to property of others, as herein provided, result-
ing from any one accident; or a binder pending the issuance
of any such policy, or an endorsement to an existing policy,
both as hereinafter provided: Provided, however, That this
section shall not be construed as preventing an insurance carrier from granting in a motor vehicle liability policy any lawful coverage in excess of or in addition to the coverage herein provided for, or from embodying in such policy any agreements, provisions or stipulations not contrary to the provisions of this article and not otherwise contrary to law: Provided further, That separate concurrent policies, which together meet the requirements of this article, whether issued by one or several carriers, covering, respectively, (1) personal injury or death, as aforesaid, and (2) property damage, as aforesaid, shall be termed a "motor vehicle liability policy," within the meaning of this article.

Except as in section twelve of this article is provided, no motor vehicle liability policy or operator's policy shall be issued or delivered in this state, pursuant to the provisions of this article, until a copy of the form of policy shall have been on file with the insurance commissioner for at least thirty days, unless sooner approved in writing by said insurance commissioner, nor if within said period of thirty days said insurance commissioner shall have notified the carrier in writing that in his opinion, specifying the reasons therefor, the form of policy does not comply with the provisions of this article. Said insurance commissioner shall approve any form of policy which specifies the name, address and business, if any, of the insured, the coverage afforded by the policy, the premium charged therefor, the policy period, and the limits of liability, and contains an agreement that the insurance thereunder is provided in accordance with the coverage defined in this article, as respects bodily injury and death or property damage or both, and is subject to all the provisions of this article.

Every such motor vehicle liability policy and every such operator's policy shall be subject to the following provisions, whether or not contained therein:

(a) The liability of the insurance carrier under any such policy shall become absolute whenever loss or damage covered by such policy occurs, and the satisfaction by the insured of a final judgment for such loss or damage shall not be a condition precedent to the right or obligation of the carrier to make payment on account of such loss or damage: Provided, however, That the insurance carrier shall have the right to
88-c settle any claim covered by the policy and, if such settlement
88-d is made in good faith, the amount thereof shall be deductible
88-e from the limits of liability specified in the policy: No such
89 policy shall be canceled or annulled as respects any loss or
damage, by any agreement between the carrier and the in-
91 sured after the insured has become involved in any accident
92 out of which any liability may arise for such loss or damage,
93 and any such cancellation or annulment shall be void.
94 The policy may provide that the insured, or any other person
95 covered by the policy, shall reimburse the insurance carrier
96 for any payment made on account of a loss, or damage claim,
97 or suit, involving a breach of the terms, provisions or con-
ditions of the policy; and further, if the policy shall provide
99 for limits in excess of the limits specified in this article, the
100 insurance carrier may plead against any plaintiff, with respect
to the amount of such excess limits of liability, any defenses
102 which it may be entitled to plead against the insured, and any
103 such policy may further provide for the prorating of the ins-
104 surance thereunder with other applicable valid and collectible
105 insurance.
106 (b) The policy, the written application therefor, if any, and
107 any rider or endorsement which does not conflict with the
108 provisions of this article shall constitute the entire contract
109 between the parties.
110 (c) The insurance carrier shall, upon the request of the
111 insured, deliver to the insured for filing, or at the request of
112 the insured shall file direct with the commissioner, an appro-
113 priate certificate showing that such policy has been issued,
114 which certificate shall be in conformity with the provisions of
115 section five of this article.
116 (d) Any carrier authorized to issue motor vehicle liability
117 policies may, pending the issuance of such a policy, execute
118 an agreement, to be known as a "binder", or may, in lieu of
119 such a policy, issue an endorsement to an existing policy.
120 Every such binder or endorsement shall be subject to the pro-
121 visions of this section and shall be construed to provide in-
122 demnity or insurance in like manner and to the same extent
123 as a motor vehicle liability policy.

Sec. 15. The operation by a nonresident, or by his duly
2 authorized agent, of a motor vehicle upon a public street or
3 highway of this state, shall be deemed equivalent to an appoint-
4 ment by such nonresident of the commissioner, or his successor
5 in office, to be his true and lawful attorney upon whom may
6 be served all lawful process in any action or proceeding against
7 him, growing out of any accident or collision in which such
8 nonresident may be involved while so operating or so per-
9 mitting to be operated a motor vehicle on any such street or
10 highway, and such operation shall be a signification of his
11 agreement that any such process against him, which is so served,
12 shall be of the same legal force and validity as if served upon
13 him personally. Service of such process shall be made by
14 leaving a copy thereof, with a fee of two dollars, with said
15 commissioner or in his office, together with a bond conditioned
16 on the failure of the plaintiff to prevail in the action, in the
17 sum of five hundred dollars with sureties to be approved by the
18 commissioner, for the purpose of reimbursing the defendant for
19 expenses necessarily incurred by him in defending the action
20 in this state, and such service shall be sufficient service upon
21 said nonresident, provided that notice of such service and a
22 copy of the process shall forthwith be sent by registered mail
23 by said commissioner to the defendant, and the defendant’s
24 return receipt is appended to the original process and filed
25 therewith in court. The court in which the action is pending
26 may order such continuances as may be reasonable to afford the
27 defendant opportunity to defend the action. The fee of two
28 dollars, paid by the plaintiff to said commissioner at the time
29 of service, shall be taxed in the costs of the proceeding and said
30 commissioner shall keep a record of all such process, which
31 shall show the day and hour of service, and he shall pay into
32 the state treasury all funds so coming into his hands from such
33 service.

Sec. 16. The following words and phrases, when used in
2 this article, shall, for the purpose of this article and unless a
3 different intent on the part of the legislature be apparent from
4 the context, have the following meanings:
5 (a) "Commissioner" shall mean the state road commissioner
6 of this state.
7 (b) "Person" shall include individuals, partnerships, corpo-
8 rations, receivers, referees, trustees, executors and adminis-
9 trators, and shall also include the owner of any motor vehicle as
10 requisite; but shall not include the state or any political sub-
10-a division thereof.
(c) "Motor vehicle" shall mean and include any self-propelled vehicle, including motorcycles and tractors, and trailers, not operated exclusively upon stationary tracks.

(d) "Vehicle" shall mean every device in, upon or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationary rails or tracks.

(e) "Nonresident" shall mean every person who is not a resident of this state.

(f) "Owner" shall mean a person who holds the legal title of a vehicle or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this article.

(g) "Street," "road" or "highway" shall mean the entire width between property lines of every way or place of whatever nature when any part thereof is open to the use of the public, as a matter of right, for purposes of vehicular traffic.

(h) "State" shall mean any state of the United States, the District of Columbia, or any province of the Dominion of Canada.

(i) "Province" shall mean any province of the Dominion of Canada.

Sec. 17. The commissioner shall administer and enforce the provisions of this article and he is hereby authorized to adopt and enforce such rules and regulations as may be necessary for the administration of the provisions of this article.

Sec. 18. Nothing herein shall be construed as preventing the plaintiff in any action at law from relying for security upon the other processes provided by law.

Sec. 19. If any part, subdivision or section of this article shall be deemed unconstitutional, the validity of its remaining provisions shall not be affected thereby.

Sec. 20. This act shall not have a retroactive effect and shall not apply to any judgment or cause of action arising out of an accident occurring prior to the effective date of this act.
AN ACT to add sections five-(a), twenty-six and twenty-seven to article one, and to amend and reenact sections three, five, ten, twelve, twenty, twenty-(a), twenty-(b), twenty-three and twenty-five of article six, and to add thereto sections four-(a), four-(b), four-(c) and four-(d), and to amend and reenact section six, article seven, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended by chapter sixty, acts of the Legislature, first extraordinary session, one thousand nine hundred thirty-three, and chapters twenty-three and twenty-four, acts of the Legislature, second extraordinary session, one thousand nine hundred thirty-three, and to vest authority in the road commissioner to exercise the requirements of law set out in said sections; defining truck tractors, certificates of convenience and permits; providing for the issuance of certificates of convenience and permits for certain vehicles operated for compensation; providing for the issuance of certificates of convenience for vehicles operated in interstate commerce; providing for the regulation of vehicles operated for compensation and prescribing the fees therefor and the penalties for the violation of such provisions; defining the terms of certificates of convenience and permits; prescribing the fees for certain vehicles, restricting the load of certain vehicles and providing for additional fees for weights in excess of such restrictions; prescribing penalties for certain violations, prescribing the license period, prohibiting the operation of vehicles without proper registration plates and prescribing penalties for the violation thereof; providing for the regulation of dealers in motor vehicles and prescribing penalties for the violation of such regulations.

[Passed March 9, 1935: in effect July 1, 1935. Approved by the Governor.]

ARTICLE I.
Sec.
5-(a). Definition of truck tractor.
27. Definition of permit.

ARTICLE VI.
Sec.
3. When permits or certificates of convenience required for operation of motor vehicles: when vehicle used in interstate com-
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Sec. 4. (a). Permits other than over regular route or between fixed termini; terms and conditions; permits for classes K and L licenses; secretary of state as attorney in fact for nonresident operator for service of process.

4-(b). Schedule of fees for trucks and truck tractors transporting property for compensation not operating under certificate of convenience.

4-(c). Schedule of fees for trailers and semi-trailers transporting property for compensation not operating under certificates of convenience; when credited on classes K and L fees; not to apply to trailers used for certain purposes.

4-(d). Distinguishing mark, form, and content of permit; permit plates, form and display; penalty for not displaying or altering; to whom penalty applies.

5. Granting or refusal of permits or certificates of convenience by commissioner; when application for class J permit may be refused; time certificates of convenience to be in effect; consolidation, cancellation, etc., of certificates; assignment, sale, etc., of certificate; report by operator under, to road commissioner.

10. Fees for Class A licenses, not operated for compensation.

12. Fees for vehicles, trailed or propelled by vehicle or tractor, not operated for compensation or by common carriers.

Sec. 20. Fees for trucks or track tractors, operated for transportation of property for compensation, not over regular route or between fixed terminal.

20-(a). Fees for trailers and semi-trailers operated for transportation of property for compensation, not over regular route or between fixed terminal.

20-(b). When manufacturer's rated or warranted capacity used in determining fees for vehicles transporting property; overloads permitted; excess overloads, upon payment of additional registration fees; restrictions on additional overloads; permissible overload to be shown on registration card; fee; penalty for violation of section.

23. Yearly and quarterly license or registration fees; expiration; duplicate plate, when original lost or destroyed; fee; transfer of certificate of registration; penalty when certificate of registration obtained by misrepresentation.

25. Display of registration plate; penalty for display of unauthorized plates; revocation, after notice, of registration and plates; renewal, after revocation.

ARTICLE VII.

Sec. 6. Separate certificate of title for each motor vehicle required in case of dealers; commissioner to determine form of certificate and assignment; for what purpose and by whom records of dealers subject to inspection: penalty for violation of section; if section invalid, remaining sections not affected.

Be it enacted by the Legislature of West Virginia:

That sections three, five, ten, twelve, twenty-(a), twenty-(b), twenty-three and twenty-five of article six, and section six, article seven, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended by chapter sixty, acts of the Legislature, first extraordinary session, one thousand nine hundred thirty-three, and chapters twenty-three and twenty-four, acts of the Legislature, second extraordinary session, one thousand nine hundred thirty-three, be amended and reenacted, and that sections five-(a), twenty-six and twenty-seven, reading as hereinafter set forth, be added to article one, and that sections four-(a), four-(b), four-(c) and four-(d),
reading as hereinafter set forth, be added to article six of said chapter seventeen.

ARTICLE I

Section 5-(a). "Truck Tractor" shall mean and include any motor vehicle designed and used primarily for drawing or propelling other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

Sec. 26. "Certificate of Convenience" as used in this chapter shall mean and include all certificates of convenience issued or to be issued by the state road commissioner authorizing the transportation of passengers or property, or both, for compensation, over a regular route or between fixed termini.

Sec. 27. "Permit" as used in this chapter shall mean and include all permits issued or to be issued by the state road commissioner authorizing the transportation of passengers or property, or both, for compensation, other than over a regular route or between fixed termini.

ARTICLE VI

Section 3. No motor vehicle shall be operated over any public road, highway, street or alley in this state, for public transportation of passengers or property, or both, for compensation until the owner or operator of such vehicle shall first have made application to and secured from the state road commissioner a permit or certificate of convenience to operate such vehicle. Such classification shall include public livery vehicles, cars for hire or for rent, taxi cabs, bus lines, truck lines, and any other public transportation of passengers or property for compensation, without regard to whether such operation is between fixed termini or over regular routes or otherwise.

The state road commissioner may also grant certificates of convenience and necessity and permits for the transportation of persons or property, or both, for compensation in interstate commerce, and regulate such interstate commerce under the authority of and in accordance with the provisions of any statute that has been or hereafter may be enacted by the Congress of the United States, vesting in or delegating to the state road commissioner of West Virginia the authority,
21 as an agency of the United States Government, so to grant 22 such certificates and permits, and so to regulate such com- 23 merce. If the Legislature shall by statute transfer from the 24 state road commissioner to any other commission, board or 25 officer, the authority to grant certificates of convenience and 26 permits and to regulate intrastate transportation of persons 27 or property, or both, for compensation, then the authority 28 herein granted shall vest in such other commission, board or 29 officer. The state road commissioner, or such other com- 30 mission, board or officer, as the case may be, is hereby author- 31 ized to notify the proper department of the federal govern- 32 ment of his or its assent to conform to the requirements, con- 33 ditions and obligations of said statute of the congress in regard 34 to interstate commerce by motor vehicles.

Sec. 4-(a). The state road commissioner shall have the 2 power to issue to any applicant a permit for the transporta- 3 tion of property for compensation other than over a regular 4 route or between fixed termini, or to issue it for the partial 5 exercise only of the privileges sought and may attach to the 6 exercise of the rights given by such permit, such terms and con- 7 ditions as in his judgment may be necessary for the welfare and 8 adequate protection of the public. No license shall be issued by 9 the commissioner for the operation of any vehicle or vehicles 10 under Classes K or L until the applicant for such license shall 11 have first applied for and obtained from the commissioner a per- 12 mit as provided for in this article and section. No permit shall 13 be issued by the commissioner to any non-resident operator until 14 such non-resident operator shall have executed and filed with 15 the secretary of state of this state a writing constituting the 16 secretary of state attorney in fact of such non-resident oper- 17 ator, upon whom all legal processes in any action, suit or pro- 18 ceeding against such non-resident operator may be served, or 19 the secretary of state may accept service of all such processes.

Sec. 4-(b). The annual permit fee for all trucks and truck 2 tractors used for the transportation of property for compen- 3 sation other than those operated under a certificate of con- 4 venience and necessity shall be as follows:

<table>
<thead>
<tr>
<th>Capacity</th>
<th>Pneumatic Tires</th>
<th>Solid Tires</th>
</tr>
</thead>
<tbody>
<tr>
<td>One ton or less</td>
<td>$ 20.00</td>
<td>$ 32.00</td>
</tr>
</tbody>
</table>
8 Over 1 ton to 1½ tons ....................................... 30.00 42.00
9 Over 1½ tons to 2 tons .................................... 40.00 55.00
10 Over 2 tons to 3 tons ..................................... 83.00 122.00
11 Over 3 tons to 4 tons .................................... 125.00 185.00
12 Over 4 tons to 5 tons .................................... 175.00 260.00
13 For each additional ton over 5 tons ...................... 100.00 150.00

Sec. 4-(c). The permit fee for all trailers and semi-trailers used for the transportation of property for compensation, other than those operated under a certificate of convenience and necessity, shall be as follows:

<table>
<thead>
<tr>
<th>Capacity</th>
<th>Trailers</th>
<th></th>
<th>Semi-trailers</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Pneumatic</td>
<td>Solid</td>
<td>Pneumatic</td>
<td>Solid</td>
</tr>
<tr>
<td>Tires</td>
<td>Tires</td>
<td></td>
<td>Tires</td>
<td>Tires</td>
</tr>
<tr>
<td>One ton or less</td>
<td>$16.00</td>
<td>$24.00</td>
<td>$10.00</td>
<td>$16.00</td>
</tr>
<tr>
<td>Over 1 ton to 2 tons</td>
<td>34.00</td>
<td>50.00</td>
<td>21.00</td>
<td>31.00</td>
</tr>
<tr>
<td>Over 2 tons to 3 tons</td>
<td>57.00</td>
<td>86.00</td>
<td>32.00</td>
<td>48.00</td>
</tr>
<tr>
<td>Over 3 tons to 4 tons</td>
<td>89.00</td>
<td>132.00</td>
<td>46.00</td>
<td>68.00</td>
</tr>
<tr>
<td>Over 4 tons to 5 tons</td>
<td>122.00</td>
<td>184.00</td>
<td>62.00</td>
<td>92.00</td>
</tr>
<tr>
<td>For each additional ton over 5 tons</td>
<td>100.00</td>
<td>150.00</td>
<td>50.00</td>
<td>75.00</td>
</tr>
</tbody>
</table>

Provided, That the payments on the permit fees provided for in sections four-(b) and four-(c) of this article may be credited against the registration fees under Classes K and L as required by sections twenty and twenty-(a) respectively of this article. The fees required by sections four-(b) and four-(c) of this article shall not apply to vehicles used for the transportation of live stock, or the unprocessed products of farm or orchard. The fee for permits issued under the provisions of sections four-(a) and four-(b), shall be collected on the same basis as registration fees as provided in section twenty-three of this article.

Sec. 4-(d). Upon the granting of the permit and the payment of the fees provided for in sections four-(a), four-(b) and four-(c), the state road commissioner shall issue the permit to the applicant, giving it a distinguishing mark and number. Such permit shall be of convenient size and form; shall contain data sufficient to identify the vehicle or vehicles to be operated; shall be at all times carried upon such vehicle and shall be sub-
In addition to the permit the state road commissioner shall, without additional charge, deliver to the owner one metal plate bearing the abbreviations of the names of the commission and of the state, the year for which issued, and the distinguishing mark or number assigned to such permit and vehicle. Such plate shall be known as a permit plate. The plates shall be of such size, colors and character as the state road commissioner may prescribe so as to properly accommodate the numerals and other marks. Every vehicle operated by the grantee of any permit shall be required to carry one of such plates.

No vehicle used for the transportation of property for compensation, except vehicles operated under a certificate of convenience, shall be operated without the proper permit plate fastened thereon in some conspicuous place on the left forward side of said vehicle. Permit plates issued prior to the first of the year for which they are to be effective may be placed on the vehicle for which issued not more than ten days prior to the first day of such year and used without additional permit fee.

Any person, firm or corporation engaged in the transportation of property for compensation, except under a certificate of convenience, who fails to carry the permit in the vehicle for which issued, or who operates a vehicle without the proper permit plate affixed thereto, or who changes the name, number or other identification information on the permit or the permit plates, shall be deemed guilty of a misdemeanor, and upon conviction, shall be fined not less than twenty-five nor more than two hundred dollars, and if such person, firm or corporation be the grantee of a permit, the permit shall be revoked by the state road commissioner.

The provisions of this section shall apply both to the operator or chauffeur and to the owner and the agent or lessee of the owner who causes or knowingly permits his vehicle to be operated without the permit and permit plates as herein provided.

Sec. 5. The state road commissioner shall have the power to issue any certificate of convenience and such certificates, when granted, shall remain in effect until cancelled or revoked by the commissioner as hereinafter provided: Provided, however, That motor vehicles operated for transportation of passengers or
property, or both, for compensation, and not running over a
regular route between fixed termini or having a regular time
schedule, shall be granted a permit only until the first day of
the next annual licensing period. The commissioner is hereby
given authority to deny an application for a permit under
Class J, if in the judgment of the commissioner the community
proposed to be served by the application is adequately served
by vehicles operated under permit similar to that for which
application is made.
Certificates of convenience heretofore granted by the state road
commission shall be and remain in full force and effect until
revoked or cancelled as provided herein, and shall give the same
rights and be subject to the same restrictions as if granted here-
under.
The state road commissioner may consolidate two or more
certificates, cancel a certificate in whole or in part, or extend or
divide a certificate already granted if not against public wel-
fare, and under such rules as the commissioner may prescribe.
Any certificate held, owned or obtained by any person may
be sold, assigned, leased, transferred as other property, only
upon authorization by the commissioner. The owner of or
operator under any certificate of convenience shall make
such report and furnish such detailed information with respect
to the service rendered as the state road commissioner shall from
time to time direct.

Sec. 10. Class A. Fee for motor vehicles of the passenger
type, other than those operated for compensation.
The registration fee for all motor vehicles of the passenger
type, other than those operated for compensation, shall be
eleven dollars for a vehicle of a weight of two thousand pounds
or less, and for all motor vehicles having a weight of over two
thousand pounds, sixty cents additional for each one hundred
pounds of weight, or fraction thereof, in excess of two thousand
pounds, and for the purpose of determining the weight, except
of those used in transportation of passengers or property for
compensation, the actual weight of the vehicle shall be taken.

Sec. 12. The registration fee for all vehicles trailed or pro-
pelled by any motor vehicle or tractor except those operated for
compensation, other than over a regular route or between fixed
termini by common carriers, shall be as follows:
### Registration Fees, Etc., of Motor Vehicles

<table>
<thead>
<tr>
<th>Capacity</th>
<th>Pneumatic Tires</th>
<th>Solid Tires</th>
<th>Pneumatic Tires</th>
<th>Solid Tires</th>
</tr>
</thead>
<tbody>
<tr>
<td>One-half ton trailers</td>
<td>$9.00</td>
<td>$13.50</td>
<td>$5.00</td>
<td>$10.00</td>
</tr>
<tr>
<td>One ton</td>
<td>$25.00</td>
<td>$37.50</td>
<td>$18.75</td>
<td>$28.00</td>
</tr>
<tr>
<td>Over 1 ton to 2 tons</td>
<td>$35.00</td>
<td>$52.50</td>
<td>$26.25</td>
<td>$39.50</td>
</tr>
<tr>
<td>Over 2 tons to 3 tons</td>
<td>$78.00</td>
<td>$117.00</td>
<td>$58.50</td>
<td>$87.50</td>
</tr>
<tr>
<td>Over 3 tons to 4 tons</td>
<td>$120.00</td>
<td>$180.00</td>
<td>$90.00</td>
<td>$135.00</td>
</tr>
<tr>
<td>Over 4 tons to 5 tons</td>
<td>$170.00</td>
<td>$255.00</td>
<td>$127.50</td>
<td>$191.25</td>
</tr>
<tr>
<td>Over 5 tons to 6 tons</td>
<td>$228.00</td>
<td>$342.00</td>
<td>$171.00</td>
<td>$256.50</td>
</tr>
<tr>
<td>Over 6 tons to 7 tons</td>
<td>$294.00</td>
<td>$441.00</td>
<td>$220.50</td>
<td>$330.75</td>
</tr>
<tr>
<td>Over 7 tons to 8 tons</td>
<td>$368.00</td>
<td>$552.00</td>
<td>$276.00</td>
<td>$414.00</td>
</tr>
<tr>
<td>Over 8 tons to 9 tons</td>
<td>$450.00</td>
<td>$675.00</td>
<td>$337.50</td>
<td>$506.25</td>
</tr>
<tr>
<td>Over 9 tons to 10 tons</td>
<td>$540.00</td>
<td>$810.00</td>
<td>$405.00</td>
<td>$607.50</td>
</tr>
<tr>
<td>For each additional ton over 10 tons</td>
<td>$100.00</td>
<td>$150.00</td>
<td>$75.00</td>
<td>$112.50</td>
</tr>
</tbody>
</table>

Sec. 20. The registration fee for all motor vehicles, commonly designated as trucks and truck-tractors, operated for transportation of property for compensation, other than over a regular route or between fixed termini by common carrier, shall be as follows:

<table>
<thead>
<tr>
<th>Capacity</th>
<th>Pneumatic Tires</th>
<th>Solid Tires</th>
</tr>
</thead>
<tbody>
<tr>
<td>One ton or less</td>
<td>$30.00</td>
<td>$54.00</td>
</tr>
<tr>
<td>Over 1 ton to 1½ tons</td>
<td>$50.00</td>
<td>$74.00</td>
</tr>
<tr>
<td>Over 1½ tons to 2 tons</td>
<td>$70.00</td>
<td>$100.00</td>
</tr>
<tr>
<td>Over 2 tons to 3 tons</td>
<td>$156.00</td>
<td>$234.00</td>
</tr>
<tr>
<td>Over 3 tons to 4 tons</td>
<td>$240.00</td>
<td>$360.00</td>
</tr>
<tr>
<td>Over 4 tons to 5 tons</td>
<td>$340.00</td>
<td>$510.00</td>
</tr>
<tr>
<td>Over 5 tons to 6 tons</td>
<td>$456.00</td>
<td>$684.00</td>
</tr>
<tr>
<td>Over 6 tons to 7 tons</td>
<td>$588.00</td>
<td>$882.00</td>
</tr>
<tr>
<td>Over 7 tons to 8 tons</td>
<td>$736.00</td>
<td>$1104.00</td>
</tr>
<tr>
<td>Over 8 tons to 9 tons</td>
<td>$900.00</td>
<td>$1350.00</td>
</tr>
<tr>
<td>Over 9 tons to 10 tons</td>
<td>$1080.00</td>
<td>$1620.00</td>
</tr>
<tr>
<td>For each additional ton over 10 tons</td>
<td>$200.00</td>
<td>$300.00</td>
</tr>
</tbody>
</table>

Sec. 20-(a). The registration fee for all trailers and semi-trailers used for transportation of property for compensation, other than over a regular route or between fixed termini by common carriers, shall be as follows:
### Registration Fees, Etc., of Motor Vehicles

#### Ch. 62

<table>
<thead>
<tr>
<th>Capacity</th>
<th>Pneumatic Tires</th>
<th>Solid Tires</th>
<th>Pneumatic Tires</th>
<th>Solid Tires</th>
</tr>
</thead>
<tbody>
<tr>
<td>One ton or less</td>
<td>$30.00</td>
<td>$45.00</td>
<td>$22.50</td>
<td>$33.75</td>
</tr>
<tr>
<td>Over 1 ton to 2 tons</td>
<td>70.00</td>
<td>105.00</td>
<td>52.50</td>
<td>78.75</td>
</tr>
<tr>
<td>Over 2 tons to 3 tons</td>
<td>156.00</td>
<td>234.00</td>
<td>117.00</td>
<td>175.50</td>
</tr>
<tr>
<td>Over 3 tons to 4 tons</td>
<td>240.00</td>
<td>360.00</td>
<td>180.00</td>
<td>270.00</td>
</tr>
<tr>
<td>Over 4 tons to 5 tons</td>
<td>340.00</td>
<td>510.00</td>
<td>255.00</td>
<td>382.50</td>
</tr>
<tr>
<td>Over 5 tons to 6 tons</td>
<td>456.00</td>
<td>684.00</td>
<td>342.00</td>
<td>513.00</td>
</tr>
<tr>
<td>Over 6 tons to 7 tons</td>
<td>588.00</td>
<td>882.00</td>
<td>441.00</td>
<td>661.50</td>
</tr>
<tr>
<td>Over 7 tons to 8 tons</td>
<td>736.00</td>
<td>1104.00</td>
<td>552.00</td>
<td>828.00</td>
</tr>
<tr>
<td>Over 8 tons to 9 tons</td>
<td>900.00</td>
<td>1350.00</td>
<td>675.00</td>
<td>1012.50</td>
</tr>
<tr>
<td>Over 9 tons to 10 tons</td>
<td>1080.00</td>
<td>1620.00</td>
<td>810.00</td>
<td>1215.00</td>
</tr>
<tr>
<td>For each additional ton over 10 tons</td>
<td>200.00</td>
<td>300.00</td>
<td>150.00</td>
<td>225.00</td>
</tr>
</tbody>
</table>

Sec. 20-(b). For purpose of registration of and determining of all fees to be paid for operation of vehicles in transportation of property, the manufacturer’s rated capacity of any such vehicle will be accepted: Provided, That if the manufacturer warrant or guarantee such vehicle for a capacity greater than such rated capacity, then such warranted capacity shall be taken and considered as the rated capacity of such vehicle.

No vehicle, except by special permit as provided in section twenty of article eight, chapter seventeen of the code, one thousand nine hundred thirty-one, shall be operated upon any public highway of this state, or upon any street or alley within any municipality within this state, with a load thereon more than one hundred per cent greater than the capacity for which such vehicle is registered, if such vehicle is registered for a capacity not exceeding two tons, or fifty per cent if such vehicle is registered for a capacity in excess of two tons and not exceeding four tons; or twenty-five per cent if such vehicle is registered for a capacity exceeding four tons.

Vehicles may carry loads in excess of the foregoing restrictions provided additional registration fees are paid on the excess weight in the same proportion that each ton of excess weight, fractions considered whole tons, bears to the permitted weight for which the vehicle has been registered under sections eleven, twelve, eighteen, twenty and twenty-(a) of this article, but no vehicle may carry any load which com-
bined with the weight of the vehicle is in excess of the restrictions imposed upon axle weights by article eight, section nineteen of this chapter.

All vehicles shall be titled and registered for their actual or warranted capacity as required by this section; upon the payment of the additional fees provided for in this section the permissible overload as provided for in this section shall be stamped upon the title and registration card in such manner as the commissioner may require. The commissioner is hereby authorized to make an additional charge of one dollar for the change and correction of title and registration cards from actual rated capacity to excess capacity and from excess capacity to actual rated capacity.

Any violation of this section shall be a misdemeanor, and upon conviction thereof any owner or operator shall be fined not less than twenty-five nor more than two hundred dollars for the first offense and upon any subsequent offense occurring within the same licensing year, a fine of not less than fifty nor more than five hundred dollars shall be imposed.

Sec. 23. The license or registration fees herein prescribed shall be for the entire fiscal year: Provided, That where application for such license and registration is made between the first day of October and the thirty-first day of December, inclusive, in any fiscal year, the charge therefor shall be three-fourths of the sum charged for such yearly license; and where such application is made between the first day of January and the thirty-first day of March, inclusive, in any fiscal year, the charge therefor shall be one-half of such yearly fee; and where such application is made after the thirty-first day of March in any fiscal year, the charge therefor shall be one-fourth of such yearly fee.

The registration certificate and the right to use the corresponding registration plates shall expire at midnight of the thirtieth day of June of the fiscal year for which issued.

In the event of the loss or inadvertent destruction of any plate issued under the provisions of this article, the commissioner shall investigate the circumstances of alleged loss or destruction, and if satisfied that the loss or destruction has occurred as alleged, shall issue a duplicate, or duplicates, or may in its discretion issue a new set of plates with appro-
priate certificate of registration, at a cost not to exceed one
dollar. In the event of the loss or inadvertent destruction
of any certificate of registration issued under the provisions
of this article, the commissioner may issue a duplicate upon
receipt of affidavit of such loss at a cost not to exceed one
dollar.

Certificates of registration and corresponding registration
plates of vehicles operating under a permit or certificate of
convenience may be transferred only under the provisions of,
and when provided by, the rules and regulations of the com-
missioner.

Any owner or operator who shall obtain a registration cer-
tificate, or registration plates, or other licenses provided for in
this article, by misrepresentation or by any other method not
authorized by law, or who shall violate any of the other pro-
visions of this section, shall be guilty of a misdemeanor, and,
upon conviction thereof, shall be fined not less than ten nor
more than fifty dollars.

Sec. 25. No person shall operate or permit to be operated
on any road or highway in this state a vehicle unless he shall
display thereon the registration plate or plates of such vehicle,
as in this article provided. No person shall operate or permit
to be operated a vehicle registered in this state upon which
there is displayed the registration plate of another state, or a
fictitious registration plate, or the plate of another vehicle,
or the plate of a previous owner of the same vehicle: Provided,
That in the event of the sale of a vehicle the person purchas-
ing the same may, for a period of not more than ten days,
operate such vehicle under the registration of its previous
owner and display the registration plate thereof: Provided
further, That he shall have and display on the demand of
any proper officer the consent in writing of such previous
owner so to use such registration. Any person violating any
provision of this section shall be deemed guilty of a misde-
meanor, and, upon conviction thereof, shall be fined not less
than ten nor more than fifty dollars.

The commissioner may also, after due hearing, upon not
less than five days' notice in writing, sent by registered mail
to the address given by the owner of a vehicle when applying
for his registration certificate, which shall constitute a suf-
23. If a sufficient form of notice, suspend or revoke the registration certificate and the registration plates issued to such person, upon proof that such plates were used for a purpose other than for which issued.

27. In any case where a license or registration is revoked, no license or registration shall again be granted to such person within one year from the date of the revocation of such license or registration, except at the discretion of the commissioner.

ARTICLE VII

Section 6. In the case of dealers in motor vehicles, including manufacturers who sell to others than dealers, all of whom are intended to be covered by this and all other provisions of this section, a separate certificate of title either of such dealer’s immediate vendor, or of the dealer himself, shall be required in the case of each motor vehicle in his possession, and the state road commissioner shall determine the form in which application for such certificate of title and assignments shall be made: Provided, however, that no such certificate shall be required in the case of new motor vehicles sold by manufacturers or dealers.

12. The records of all dealers in motor vehicles shall be open to the inspection of members of the department of public safety and to the state road commissioner and his duly authorized employees for the purpose of ascertaining whether or not the provisions of this section have been violated. Any person, firm or corporation violating any of the provisions of this section shall be guilty of a misdemeanor, and shall, upon conviction, be punished by a fine of not less than twenty-five nor more than two hundred dollars for the first offense, and for a second or subsequent offense as an additional penalty the state road commissioner may revoke the registration certificates and registration plates issued to such dealer, and the same shall not be reinstated or reissued for a period of at least one year from the date of revocation thereof.

26. If any part, or parts, of this act shall be held to be unconstitutional such unconstitutionality shall not affect the validity of the remaining parts of this act.
CHAPTER 63

(House Bill No. 396—By Mr. Hiner)

AN ACT to amend and reenact section twenty-three, article six, chapter sixty, acts of the Legislature of West Virginia, first extraordinary session, one thousand nine hundred thirty-three, and to provide for the issuance of motor vehicle licenses and to provide for such license plates to be retained by the owner thereof upon the transfer of ownership of any motor vehicle.

[Passed March 9, 1935; in effect July 1, 1935. Became a law without the approval of the Governor.]

Sec. 23. Registration fees for motor vehicles for fiscal year; quarterly payments; when registration certificate and use of plates expires; duplicate plates, if original lost or destroyed; fee on transfer of motor vehicles, original owner to retain plates and notify commissioner; how retained plates may be used on other vehicles; notice by dealer to commissioner of transfer; copies of notification; penalty for violation by dealer; how certificates of registration and plates transferred; penalty for violation of section by owner or operator.

Be it enacted by the Legislature of West Virginia:

That section twenty-three, article six, chapter sixty, acts of the Legislature of West Virginia, first extraordinary session, one thousand nine hundred thirty-three, be amended so as to read as follows:

Section 23. Beginning on the first day of July, one thousand nine hundred thirty-four, the registration fees herein prescribed shall be for the entire fiscal year; Provided, That where application for such registration is made between the first day of October and the thirty-first day of December, inclusive, in any fiscal year, the charge therefor shall be three quarters of such yearly fee and when application for such registration is made between the first day of January and the thirty-first day of March, inclusive, in any fiscal year, the charges shall be one-half of such yearly fee and where application for such registration is made between the first day of April and the thirtieth day of June, inclusive, in any fiscal year, the charge shall be one quarter of such yearly fee.

The registration certificate and the right to use corresponding registration plates issued after the first day of July, one thousand nine hundred thirty-four, shall expire at midnight on the thirtieth day of June of the fiscal year for which issued.

In the event of the loss or inadvertent destruction of any
19 plate issued under the provisions of this article, the commis-
20 sioner shall investigate the circumstances of alleged loss or de-
21 struction, and if satisfied that the loss or destruction has oc-
22 curred as alleged, shall issue a duplicate, or duplicates, or may
23 in his discretion issue a new set of plates with appropriate cer-
24 tificate of registration, at a cost not to exceed one dollar. In
25 the event of the loss or inadvertent destruction of any certifi-
26 cate of registration issued under the provisions of this article,
27 the commissioner may issue a duplicate upon receipt of affidavit
28 of such loss at cost not to exceed one dollar. Upon the transfer
29 of ownership of any motor vehicle, it shall be the duty of the
30 original owner to retain the registration plates issued therefor
31 and to immediately notify the state road commissioner of such
32 transfer upon such form as may be provided therefor and to
33 deliver to him the certificate of registration, whereupon the
34 commissioner shall, upon the payment of a fee of one dollar,
35 issue a new certificate showing the use that is to be made of
36 such plates. Such plates may be used by such owner on an-
37 other vehicle of the same class as the vehicle for which they
38 were originally issued if such other vehicle does not require a
39 greater license fee than was required for such original vehicle.
40 If such other vehicle requires a greater license fee than such
41 original vehicle, then such plates may be used by paying such
42 difference to the road commissioner, but it shall be unlawful to
43 use such plates until such difference is paid. When such transfer
44 of ownership is made to a licensed dealer in motor vehicles it
45 shall be the duty of such licensed dealer to immediately execute
46 notification of transfer, in triplicate, to have this notification
47 properly signed by the owner making the transfer. The dealer
48 will also collect the transfer fee of one dollar and any additional
49 fee that may be required under the terms of this act. The
50 dealer will immediately forward to the road commissioner the
51 original copy of the notification of transfer together with all
52 fees collected. One copy of the notification of transfer shall
53 be given to the owner and one shall be retained by the dealer.
54 The owner’s copy, properly signed by the dealer, will be the
55 owner’s identification until he receives new registration card
56 from the road commissioner.
57 Any licensed dealer who shall fail to comply with the pro-
58 visions of this act will be guilty of a misdemeanor, and upon
59 conviction thereof shall be fined not less than fifty, nor more
272 MOTOR VEHICLES—DRIVING WHILE DRUNK, ETC. [Ch. 64

60 than three hundred dollars. Certificates of registration and 61 corresponding registration plates of vehicles operating under 62 a permit or certificate of convenience may be transferred only 63 under the provisions of, and when provided by, the rules and 64 regulations of the commissioner.

65 Any owner or operator who shall obtain a registration cer- 66 tificate, or registration plates, or other licenses provided for 67 in this article, by misrepresentation or by any other method 68 not authorized by law, or who shall violate any of the other 69 provisions of this section, shall be guilty of a misdemeanor, 70 and, upon conviction thereof, shall be fined not less than ten 71 nor more than fifty dollars.

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CHAPTER 64

(House Bill No. 423—By Mr. LaFon)

AN ACT to amend and reenact section twenty-five, article eight, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, relating to the operation of vehicles on public roads or streets while under the influence of intoxicants, drugs or narcotics, and providing penalties for violations.

(Passed March 8, 1935; in effect from passage. Approved by the Governor.)

Sec. 25. Penalty for operating vehicle on public road or street while intoxicated or under the influence of intoxicating liquors, drugs or narcotics, or permitting same, by owner; impounding of car, cancellation of operator's or chauffeur's license, etc.; sale of impounded car; repossessing of impounded car by owner, if other than offending person, or seller; rights of holder of lien against impounded car; second offense a felony; penalty; revocation and non-issuance of license; convictions reported to state road commissioner.

Be it enacted by the Legislature of West Virginia:

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

Section 25. No person shall drive or operate any vehicle, 2 motor driven or otherwise, upon any public road or street in 3 this state, while intoxicated or under the influence of intoxi-
4 eating liquor, drugs or narcotics; nor shall the owner of such
5 vehicle, knowingly permit the same to be so operated by one
6 intoxicated, or under the influence of intoxicating liquor, drugs
7 or narcotics.

8 A person violating any of the provisions of this section shall,
9 for the first offense, be guilty of a misdemeanor and upon con-
10 viction thereof the vehicle owned and/or operated by him shall
11 be impounded by the state and placed under lock and key for a
12 period of six months at some place, other than his home, to be
13 designated by the court, and shall pay the costs of the trial and
14 that incurred by the state in carrying out this provision before
15 said vehicle shall be released, except as otherwise provided
16 herein; and his operator's or chauffeur's license shall be can-
17 celled and revoked for a period of six months by the court or
18 justice trying the case; and he may be punished by a fine of not
19 less than twenty-five nor more than one hundred dollars, or by
20 confinement in jail not less than five days nor more than six
21 months, or by both such fine and imprisonment. If either such
22 fine, or the costs of the trial incurred by the state and the costs
23 incurred by the impounding of the car shall not be paid, then
24 after ten days' notice, posted publicly, said vehicle shall be sold
25 at public auction by the officer impounding the same, unless re-
26 possessed as hereinafter provided, and the proceeds of such sale,
27 after deducting the costs of sale, shall be credited on said fine
28 and costs. If the proceeds of such sale exceed said fine and all
29 costs as hereincbefore set out, the remainder shall be paid to the
30 defendant in said action, unless a bona fide lien holder inter-
31 venes as hereinafter provided, or to the actual owner of said
32 vehicle, as the case may be.

33 The seller of such vehicle so impounded may repossess the
34 same as provided by article three, chapter forty of the code, as
35 well also the actual owner if other than offending person, by suit
36 or otherwise in the court having jurisdiction of said vehicle,
37 and in addition to other evidence of right of possession, by
38 showing to the satisfaction of the court that the unlawful use of
39 the vehicle was not with the knowledge and/or consent of such
40 seller or actual owner, the cost of such proceeding, including
41 the cost of impounding, to be paid by the seller or owner.
42 And if repossessio is had by the seller under the pro-
43 visions hereof, and the court directs sale of such vehicle, 
44 the excess, if any, of the sale price, above the debit in pursuance
of which the repossession is had, by order of the court shall be
paid into the hands of the officer impounding said vehicle to be
held by him in its place and stead for disposition thereof as
provided by law: Provided, That in any event the holder of a
bona fide lien against said vehicle may appear by petition in the
court having jurisdiction of said vehicle and have his claim
therein adjudicated, and in addition to other evidence of lien,
by showing to the satisfaction of the court that the unlawful use
of the vehicle was not with the knowledge and/or consent of
such lien holder, and if the lien be allowed, and sale be made by
the impounding officer, the proceeds of such sale after paying
the cost and expenses of impounding and sale, shall be applied
as a credit or in satisfaction of such lien, and the excess, if any,
shall be paid to the defendant in said action or to the actual
owner of said vehicle as the case may be.

For a second and subsequent offense he shall be guilty of a
felony and upon conviction thereof shall be confined in the peni-
tentiary not less than one nor more than three years and his
operator's or chauffeur's license shall be cancelled and revoked
never to be reissued.

All convictions under this section wherein the penalty in-
cludes the revocation of an operator's or chauffeur's license
shall be immediately reported to the state road commission in
the manner provided in section twenty-six, article eight, chapter
seventeen of the code of West Virginia, one thousand nine
hundred thirty-one.

CHAPTER 65

(House Bill No. 472—By Mr. Thomas)

AN ACT to amend and reenact section one, article seven, chapter
seventeen of the code of West Virginia, one thousand nine
hundred thirty-one, relating to certificates of title for motor
vehicles and imposing a tax upon the certification of such
titles.

[Passed March 9, 1935; in effect from passage. Approved by the Governor.]
Be it enacted by the Legislature of West Virginia:

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

ARTICLE VII.

Section 1. Certificates of registration of any vehicle or registration plates therefor, whether original issues or duplicates, shall not be issued or furnished by the state road commission or any other officer charged with such duty, unless the applicant therefor already has received, or shall at the same time make application for and be granted, an official certificate of title of such motor vehicle. Such application shall be upon a blank form to be furnished by the state road commission, and shall contain a full description of the motor vehicle, which description shall contain the manufacturer's number, the motor number and any distinguishing marks, together with a statement of the applicant's title and of any liens or encumbrances upon such motor vehicles, the names and addresses of the holders of such liens, and such other information as the state road commission may require. The application shall be signed and sworn to by the applicant. A tax is hereby imposed upon the privilege of effecting the certification of title of each motor vehicle in the amount equal to two per cent of the value of said motor vehicle at the time of such certification. If the motor vehicle is new, the actual purchase price or consideration to the purchaser thereof shall be the value of said vehicle; if the motor vehicle is a used or second-hand vehicle, the actual price or consideration paid therefor by the purchaser shall be deemed the value thereof for the purposes of this act: Provided, That so much of the purchase price or consideration as is represented by the exchange of other motor vehicle shall be deducted from the total actual price or consideration paid for said vehicle, whether the same be new or second-hand. No certificate of title for any motor vehicle shall be issued to any applicant unless such applicant shall have paid to the state road commissioner the tax imposed by this act; but the tax imposed by this act...
32 shall not apply to motor vehicles to be registered under sections 
33 seventeen and eighteen, article six of this chapter, which are 
34 used or to be used exclusively in interstate commerce. The total 
35 amount of revenue collected by reason of this tax shall be paid 
36 into the state road fund and expended by the state road com-
37 missioner in the maintenance and construction of the state’s 
38 secondary roads. In addition to said tax there shall be a charge 
39 of one dollar for each original certificate of title so issued. 
40 The state road commission, or other officer charged with such 
41 duty by the commission, if satisfied that the applicant is the 
42 owner of such vehicle, or otherwise entitled to have the same 
43 registered in his name, shall thereupon issue to the applicant an 
44 appropriate certificate of title over the signature of the official 
45 designated by the commission, authenticated by a seal to be 
46 procured and used for such purpose. Such certificates shall be 
47 numbered consecutively, beginning with number one, and shall 
48 contain such description and other evidence of identification of 
49 such motor vehicle as the state road commission may deem 
50 proper. 
51 Such certificate shall be good for the life of the car, so long 
52 as the same is owned or held by the original holder of such cer-
53 tificate, and need not be renewed annually, or at any other time, 
54 except as herein provided.

CHAPTER 66

( Senate Bill No. 4—By Mr. Greene)

AN ACT to amend and reenact section ten, article four, chapter 
eight of the code of West Virginia, one thousand nine hundred thirty-one, relating to the general powers of municipal coun-
cils, and the extra territorial operation of such powers.

[Passed February 20, 1935; in effect from passage. Approved by the Governor.]

Sec. 10. General and plenary powers of municipal councils: extension of |

See. powers for not more than one |

mile beyond corporate limits.

Be it enacted by the Legislature of West Virginia:

That section ten, article four, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, relating to
the general powers of municipal councils and the extra territorial operation of such powers, be amended and reenacted so as to read as follows:

Section 10. The council shall have plenary power and authority therein by ordinance or resolution as the case may require, (so far as such power or authority is not in conflict with the constitution and laws of this state or the constitution of the United States) to lay off, vacate, close, open, alter, curb, recurb, pave or repave and keep in good repair roads, streets, alleys, sidewalks, crosswalks, drains and gutters, for the use of the public, and to improve and light the same, and have them kept free from obstructions on or over them; to prevent by proper fines and penalties the throwing, depositing or permitting to remain on any street, sidewalk, alley, lane, square or other public place any glass, scrap iron, nails, tacks, wire, other litter, or any offensive matter or anything likely to injure the feet of persons or animals or the tires of vehicles; to regulate the use of streets, alleys, lanes and sidewalks for vehicles propelled by man power, and for other vehicles the use of which is not regulated by general laws; to regulate the width of sidewalks on the streets, and, subject to the provisions of article eight of this chapter, to order the sidewalks, footways and crosswalks to be curbed, recurbed, paved, repaved and kept in good order, free and clean, by the owners or occupants thereof, or of the real property next adjacent thereto; to establish and regulate markets, and prescribe the time of holding the same; to prevent injury or annoyance to the public or individuals from anything dangerous, offensive or unwholesome; to prevent hogs, cattle, horses, sheep or other animals, and fowls of all kinds, from going at large in such town; to protect places of divine worship and to preserve peace and order in and about the premises where held; to arrest, convict and punish any person for keeping a house of ill-fame, or for letting to another person any house or other building for the purpose of being used or kept as a house of ill-fame, or for knowingly permitting any house owned by him, or under his control, to be kept or used as a house of ill-fame, or for loafing, boarding or loitering in a house of ill-fame, or frequenting same; to arrest, convict and punish any person for importing, printing, publishing, selling or
38 distributing any pornographic publication; to arrest, convict and punish any person for cruelly, unnecessarily or needlessly beating, torturing, mutilating, killing or overloading or overdriving, or wilfully depriving of necessary sustenance, any horse or other domestic animal; to arrest, convict, and punish any person for gambling or keeping gaming tables, commonly called "A, B, C", or "E, O." table or faro bank or keno table, or table of like kind, under any denomination, whether the gaming table be played with cards, dice or otherwise, or any person who shall be a partner or concerned in interest, in keeping or exhibiting such table or bank, or keeping or maintaining any gaming house or place, or betting or gambling for money or anything of value; to license, or for good cause to refuse to license in a particular case, or at its discretion to prohibit in all cases, the operation of pool and billiard rooms and maintaining for hire of pool and billiard tables, notwithstanding the general law as to state licenses for such business. When the council, in the exercise of its discretion, shall have refused to grant a license to operate a pool or billiard room mandamus shall not lie to compel the council to grant such license, unless it shall clearly appear that the refusal of the council to grant such license is discriminatory or arbitrary. In the event that the council decides to license any such business, the council shall have power, and it shall be the duty of the council, to make and enforce reasonable ordinances regulating the licensing and operating of such businesses; the council shall also have such power and authority to arrest, convict and punish any person for carrying about his person any revolver or other pistol, dirk, bowie-knife, razor, sling shot, billy, metallic or other false knuckles, or any other dangerous or other deadly weapon of like kind or character, within such town; to arrest, convict and punish any person for driving or operating, within such town, a motor vehicle when intoxicated or under the influence of liquor, drugs or narcotics; to provide penalties for the offenses and violations of law mentioned herein in addition to the penalties provided in section twenty-three of this article, but which shall not exceed the penalties provided for like offenses and violations in this chapter, and in chapter sixty-one of this code; to abate or cause to be abated anything which, in the opinion of a majority of the whole council, shall
be a nuisance; to regulate the keeping of gunpowder and other combustibles; to acquire, by purchase, condemnation and otherwise, land in or near the town for providing and maintaining proper places for the burial of the dead and to regulate interments therein upon such terms and conditions as to price and otherwise as may be determined by the council, and, in order to carry into effect such provisions the council may acquire any cemetery or cemeteries already established; to provide for the regular building of houses or other structures, and for making of division fences by the owners of adjacent premises and the drainage of lots by the proper drains and ditches; to make regulations guarding against danger or damage by fire; to prevent the illegal sale of intoxicating liquors, drinks, mixtures and preparations therein; to protect the persons and property of the inhabitants of such town, and to preserve peace and good order therein, and, for this purpose, to appoint, when necessary, a police force to assist the sergeant in the discharge of his duties; except as otherwise provided, to prescribe the powers and define the duties of the officers appointed by the council, fix their terms of service and compensation, and require and take from them bonds, when deemed necessary, payable to such town, in its corporate name, with such sureties and in such penalty as the council may see fit, conditioned for the faithful discharge of their duties; to require and take from employees and contractors bonds in such penalties, with such sureties and with such conditions, as council may see fit; to erect, or authorize or prohibit the erection of gas works, electric light works, water works, and sewer treatment and disposal works within or without the town, or partly within and partly without the town, except that it shall not erect or authorize the erection of any such works partly without the town to serve persons already obtaining service from existing works of the character proposed, and where such works are by the municipality erected, or have heretofore been so erected, partly within and partly without the town, it shall have the right to lay and collect charges for service rendered to those served within and those served without the town, and to prevent injury to such works or the pollution of the water and its maintenance in a healthful condition for public use within the town; to regulate and provide for the weighing of hay, coal and other articles sold
124 or for sale in the town; to provide a revenue for the town
125 and appropriate the same to its expenses, which power shall
126 include the power to tax dogs; to impose a license tax on
127 persons or companies keeping for hire carriages, hacks, bug-
128 gies or wagons, or for carrying passengers for pay in any
129 such vehicle, in such town; to adopt rules for the transaction
130 of business, and the government and regulation of its own
131 body.
132 Wherever the powers herein granted cannot be reasonably
133 and efficiently exercised by confining the exercise thereof
134 within the corporate limits, the powers of the corporation shall
135 extend beyond the corporate limits to the extent necessary to
136 the reasonably efficient exercise of such powers within the
137 corporate limits. But such powers, unless otherwise provided,
139 shall not extend more than one mile beyond the corporate
140 limits, nor shall such powers extend into the corporate limits
141 of another municipal corporation.

CHAPTER 67

(Com. Sub. for House Bill No. 15—Originating in the Senate Committee
on Counties and Municipal Corporations)

AN ACT to amend section twenty, chapter sixty, acts of the Legis-
lature of West Virginia, regular session, one thousand nine
hundred thirty-three, as amended by chapter seventy-nine, acts of the Legislature of West Virginia, second extraordinary
session, one thousand nine hundred thirty-three.

[Passed February 20, 1933; in effect from passage. Became a law without the
approval of the Governor.]

Sec. 20. To what municipalities provisions of civil service law for munici-
pal fire departments do not apply.

Be it enacted by the Legislature of West Virginia:

That section twenty, chapter sixty, acts of the Legislature, regular session, one thousand nine hundred thirty-three, as amended by chapter seventy-nine, acts of the Legislature, second extraordinary session, one thousand nine hundred thirty-three, be amended and reenacted to read as follows:
Section 20. The provisions of this act shall not apply to the municipality of Parkersburg, and the civil service commission created for the city of Bluefield under an act of the Legislature, regular session, one thousand nine hundred thirty-three, is hereby abolished.

CHAPTER 68

(House Bill No. 165—By Mr. Thomas)

AN ACT to authorize municipalities to establish, construct, acquire, extend, own, operate, equip, maintain and improve municipal public works and to defray the cost of such construction, equipment, acquisition, extensions and improvements by issuing revenue bonds, secured by and payable from the revenues of such systems; to authorize charges for the use of such municipal public works and to provide for the collection of same.

[Passed March 8, 1935; in effect from passage. Because a law without the approval of the Governor.]
Section 1. (a) The term "municipality", as used in this act, shall be construed to mean any city or incorporated town in the state of West Virginia; (b) the term "municipal authorities", as used in this act, shall be construed to mean the mayor and council, or similar governing body, board or commission of any city or incorporated town; (c) the term "municipal public works", as used in this act, shall be construed to mean and include cemeteries, incinerator plants, hospitals, piers, docks, terminals, airports, drainage systems, flood control systems, public markets, stadiums, public recreation parks, swimming pools, tennis courts, golf courses, polo grounds, public buildings, including libraries and museums, common jails, grading and/or paving, and/or re-paving streets and alleys, where such works or projects will be made self-supporting, and the construction and/or acquisition cost thereof, together with interest thereon, will be returned within a reasonable period, not exceeding thirty years, by means of tolls, fees, rents or

Be it enacted by the Legislature of West Virginia:

Sec. 12. Obligations hereunder not to bind municipal official or member of board personally.

Sec. 13. Ordinance by municipal authorities for issuance of additional bonds for extension or improvements of works.


Sec. 15. Bonds may be secured by trust indenture between municipality and corporate trustee; provisions of ordinance and indenture.

Sec. 16. Municipal authorities to provide, by ordinance, out of net revenues of works, for sinking fund, etc., to pay bonds and interest, fiscal charges, etc., which shall be a first lien on net revenues of works; ordinance for purchase of outstanding bonds; transfer of balance of net revenues; remittance of sinking fund and interest to state sinking fund, as fiscal agent.

Sec. 17. Municipal authorities to establish and adjust rates for services rendered by works; amount of charges; publication of notice of hearing on; adoption; schedule of, to be kept on file; extension of, to additional users, without hearing; change or re-adjustment; sufficiency of aggregate of rates; recovery and lien of service charge; discontinuance of service.

Sec. 18. Appeal to public service commission from rates fixed.

Sec. 19. Municipality to install proper accounting system; yearly audit; auditor's report open for inspection; municipal treasurer custodian of funds; separate account.

Sec. 20. Municipality to pay from corporate funds established charges and rates for services rendered it.

Sec. 21. Administration and control may be under board provided by council: powers, duties and compensation of board.

Sec. 22. When statutory mortgage lien created: enforcement of lien by bond holders: receivership for works.

Sec. 23. Acquisition of property on which lien exists.


Sec. 25. Act confers additional powers, jurisdiction beyond municipal limits.


Sec. 27. Act to be liberally construed.

Sec. 28. Provisions of act separable: if section invalid, remaining section not affected.
Sec. 2. Every municipality in the state of West Virginia is hereby authorized and empowered to construct, acquire or equip, operate, maintain and/or enlarge, extend or increase any of the municipal public works described in section one of this act, together with all appurtenances necessary, useful or convenient for the maintenance and operation of such works, and shall have authority to acquire by gift, grant, purchase, condemnation or otherwise, all necessary lands, rights of way and property therefor within and/or without the corporate limits of such municipality, and to issue revenue bonds to pay the costs of such public works and property: Provided, however, that this section shall not be construed to authorize any municipality to construct, acquire, own, equip, operate or maintain any works which would render a service already being adequately rendered within such municipality. No obligation shall be incurred by the municipality in such construction, acquisition, extension or improvement, except such as is payable solely from the funds provided under the authority of this act.

Sec. 3. The construction, acquisition, improvement, extension, equipment, custody, operation and maintenance of any such works, and the collection of revenues therefrom for the service rendered thereby, shall be under the supervision and control of the municipal authorities, or of a board, commission or committee appointed by such municipal authorities as may be determined by general orders. The term "board" when hereafter used in this act, shall be construed to mean the municipal authorities, or such board, commission or committee, as the case may be.

Sec. 4. The board shall have power to take all steps and proceedings, and to make and enter into all contracts or agreements necessary or incidental to the performance of its duties and the execution of its powers under this act: Provided, That any contract relating to the financing, or the acquisition, construction, extension or improvement of any such works, or any trust indenture as hereafter provided for, shall be approved by the municipal authorities.
The board may employ engineers, architects, inspectors, superintendents, managers, collectors, attorneys and such other employees as in its judgment may be necessary in the execution of its powers and duties, and may fix their compensation, all of whom shall do such work as the board may direct. All such compensation and expense incurred in carrying out the provisions of this act shall be paid solely from funds provided under the authority of this act, and the board shall not exercise or carry out any authority or power herein given it so as to bind said board or said municipality beyond the extent to which money shall have been, or may be provided under the authority of this act. No contract or agreement with any contractor or contractors for labor and/or materials, exceeding in amount the sum of one thousand ($1,000) dollars shall be made without advertising for bids, which bids shall be publicly opened and award made to the lowest responsible bidder, with power in the board to reject any and all bids. After the construction, installations and completion of the works or the acquisition thereof, the board shall operate, manage and control the same, and may order and complete any extensions, betterments and improvements of and to the works that the board may deem expedient, if funds therefor be available, or are made available, as provided in this act, and shall establish rules and regulations for the use and operation of the works, and do all things necessary or expedient for the successful operation thereof. All public ways or public works damaged or destroyed by the board in carrying out its authority under this act, shall be restored or repaired by the board and placed in their original condition, as nearly as practicable, if requested so to do by proper authority, out of the funds provided by this act.

Sec. 5. All necessary preliminary expenses actually incurred by the board of any municipality in the making of surveys, estimates of cost and of revenues, employment of engineers or other employees, the giving of notices, taking of options, and all other expenses of whatsoever nature necessary to be paid prior to the issue, sale and delivery of the revenue bonds hereinafter provided for, may be paid by the municipality, to be reimbursed and repaid out of the proceeds of the sale of such revenue bonds to be used for the construction, acquisition, extension or improvement of such works as hereinafter provided.
Sec. 6. Before any municipality shall construct, acquire, improve or extend any works under this act, the municipal authorities shall enact an ordinance or ordinances, or shall adopt a proper resolution which shall (a) set forth a brief and general description of the works, and if the same are to be constructed, a reference to the preliminary report or plans and specifications which shall theretofore have been prepared; (b) set forth the estimated cost thereof; (c) order the construction, acquisition, extension or improvement of such works; (d) direct that revenue bonds of the municipality be issued pursuant to this act; in such amount as may be found necessary to pay the cost of the works; and (e) contain such other provisions as may be necessary or proper in the premises. Before such ordinance shall become effective, it shall be published once each week for two successive weeks in two newspapers of opposite political faith published in such municipality, or in one newspaper, if only one political faith is represented by newspapers in the said municipality, or, if there be no newspapers so published, then such ordinance shall be posted in at least three public places therein. Said notice shall specify a time and place for a public hearing, the time being not less than ten days after the first publication or posting of said notice at which time and place all parties and interests may appear before the municipal authorities, and may be heard as to whether or not said ordinance shall be put into effect. At such hearing all objections and suggestions shall be heard and the governing body shall take such action as it shall deem proper in the premise: Provided, however, That if at such hearing written protest is filed by thirty per cent or more of the owners of real estate situate in said municipality, then the governing body of said municipality shall not take further action unless four-fifths of the members of said governing body assent thereto: Provided further, That in case written protest is filed by thirty per cent or more of owners of real estate as herein provided, the governing body shall have authority to appoint a committee to consist of one proponent, one opponent and the third to be selected by these two, to determine whether or not thirty per cent of the property owners have in fact protested and said committee shall report its findings to the governing body.

Sec. 7. Every such municipality shall have power to con-
2 demn any such municipal public works to be acquired, and any
3 land, rights, easements, franchises and other property, real
4 or personal, deemed necessary or convenient for the construc-
5 tion of any such works, or for extensions, improvements or
6 additions thereto, and in connection therewith shall have and
7 may exercise all the rights, power and privileges of eminent
8 domain granted to municipalities under the laws relating there-
9 to. Title to property shall be taken in the name of the munici-
10 pality. Proceedings for such appropriation of property shall
11 be under and pursuant to the general provisions of law relating
12 to condemnation proceedings in the exercise of eminent do-
13 main: Provided, That the municipality shall be under no obliga-
14 tion to accept and pay for any property condemned, and shall
15 in no event pay for any property condemned or purchased, ex-
16 cept from the funds provided, pursuant to this act; and in
17 any proceedings to condemn, such orders may be made as may
18 be just to the municipality and to the owners of the property
19 to be condemned; and an understanding or other security may
20 be required securing such owners against any loss or damage
21 which may be sustained by reason of the failure of the munici-
22 pality to accept and pay for the property, but such under-
23 taking or security shall impose no liability upon the munici-
24 pality, except such as may be paid from the funds provided
25 under the authority of this act.
26 In the event of acquisition by purchase, the board may ob-
27 tain and exercise an option from the owners of said property
28 for the purchase thereof, and may enter into a contract for the
29 purchase thereof, and such purchase may be made upon such
30-31 terms and conditions, and in such manner as the board may
32 deem proper: Provided, however, That such exercise of option,
33 purchase, or contract for such purchase shall in no event bind
34 or obligate said municipality, or create any debt, liability or
35 claim, except such as may be paid from the funds provided
36 under the authority of this act.
37 In the event of the acquisition of any works already con-
38 structed by purchase or condemnation, the board at or before
39 the time of the adoption of the ordinance or resolution de-
40 scribed in section six hereof, shall cause to be determined what
41 repairs, replacements, additions and betterments will be neces-
42 sary, in order that such works may be effective for their pur-
pose, and an estimate of the cost of such improvements shall be included in the estimate of the cost required by section six hereof, and such improvement shall be made upon the acquisition of the works and as a part of the cost thereof: Provided, however, That no municipality shall, under the authority conferred by the act, condemn any existing privately owned works in operation at the date of the condemnation.

Sec. 8. Whenever any municipality now, or hereafter, shall own and operate any of the works herein referred to, whether constructed under the provisions of this act or not, and shall desire to construct improvements, enlargements, extensions and betterments thereto, it may issue revenue bonds, under the provisions of this act, to pay for the same, and the procedure therefor, including fixing all rates and the computation of the amount thereof, shall be the same as in this act provided for the issuance of bonds for acquisition or construction of such works in or by the municipality which has not theretofore owned and operated such works: Provided, however, That no existing obligations or rights shall be affected or impaired thereby.

Sec. 9. The cost of the works shall be deemed to include the cost of the acquisition or construction thereof, the cost of all property rights, easements and franchises deemed necessary or convenient therefor and for the improvements determined upon, as provided in section seven of this act; interest upon bonds prior to and during construction or acquisition and for six months after completion or construction or of acquisition of the improvements last mentioned; engineering and legal expense; expense for estimates of cost and of revenues; expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense, and such other expenses as may be necessary or incident to the financing herein authorized, and the construction or acquisition of the works and the placing of the works in operation, and the performance of the things herein required or permitted in connection with any thereof.

Sec. 10. Nothing in this act contained shall be so construed as to authorize or permit any municipality to make any con-
3 tract or incur any obligation of any kind or nature, except such
4 as shall be payable solely from the funds provided under this
5 act. Funds for the payment of the entire cost of the works
6 shall be provided by the issuance of revenue bonds of the
7 municipality, the principal and interest of which bonds shall
8 be payable solely from the special fund herein provided for
9 such payment, and said bonds shall not in any respect be a cor-
10 porate indebtedness of such municipality. All such bonds shall
11 be exempt from taxation by the state of West Virginia or any
12 county or municipality therein. All of the details of such bonds
13 and the issuance thereof shall be determined by ordinance or
14 resolution of the municipal authorities.

Sec. 11. Such revenue bonds shall bear interest at not more
2 than six (6%) per cent per annum, payable annually, or at
3 shorter intervals, and shall mature at such time or times, not ex-
4 ceeding thirty years, as may be determined by ordinance or reso-
5 lution. Such bonds may be made redeemable before maturity,
6 at the option of the municipality, to be exercised by said board,
7 at not more than the par value thereof, and the premium of not
8 more than five (5%) per cent, under such terms and conditions
9 as may be fixed by the ordinance or resolution authorizing the is-
10 suance of the bonds. The principal and interest of the bonds
11 may be made payable in any lawful medium. Said ordinance or
12 resolution shall determine the form of the bonds, including
13 the interest coupons to be attached thereto, and shall fix the
14 denomination or denominations of such bonds, and the place or
15 places of the payment of the principal and interest thereof,
16 which may be at any bank or trust company within or with-
17 out the state. The bonds shall contain a statement on their
18 face that the municipality shall not be obligated to pay the
19 same, or the interest thereon, except from the special fund de-
20 rived from the net revenue of the works, or the pro rata part
21 thereof, as provided for in section eight hereof. All such bonds
22 shall be, and shall have, and are hereby declared to have all
23 the qualities and incidents of negotiable instruments, under
24 the negotiable instruments law of this state. Provision may
25 be made for the registration of any of the bonds in the name
26 of the owner as to principal alone; but bonds shall be executed
27 in such manner as the municipal authorities may direct. The
28 bonds shall be sold by the municipal authorities in such manner
29 as may be determined to be for the best interest of the munici-
30 pality: Provided, however, That said bonds shall not be nego-
31 tiated at a price lower than a price which computed to maturity
32 upon standard tables of bond values will show a net return of
33 six per cent per annum to the purchaser upon the amount
34 paid therefor. Any surplus of the bonds proceeds over and
35 above the cost of the works shall be paid into the sinking
36 fund hereinafter provided. If the proceeds of the bonds, by
37 error of calculation, or otherwise, shall be less than the cost
38 of the works, additional bonds may in like manner be issued
39 to provide the amount of such deficit, and, unless otherwise
40 provided in the ordinance or resolution authorizing the issuance
41 of the bonds first issued, or in the trust indenture hereinafter
42 authorized, shall be deemed to be of the same issue, and shall
43 be entitled to payment without preference or priority of the
44 bonds first issued, but such preference or priority shall not
45 extend to an amount exceeding ten per cent of the original
46 issue. Prior to the preparation of the definite bonds, interim
47 certificates may, under like restrictions be issued with or with-
48 out coupons exchangeable for definite bonds upon the issuance
49 of the latter.

Sec. 12. No municipal official or member of the board shall
2 in any event be personally liable upon any contract or obliga-
3 tion of any kind or character executed under the authority
4 herein contained, even if said undertaking should hereafter
5 be held ultra vires.

Sec. 13. The municipal authorities may provide by the said
2 ordinance or resolution authorizing the issuance of the bonds
3 or in the trust indenture hereinafter referred to, that addi-
4 tional bonds may thereafter be authorized and issued at one
5 time, or from time to time, under such limitations and restric-
6 tions as may be set forth in said ordinance, resolution and/or
7 trust indenture, for the purpose of extending, improving or
8 bettering the works when deemed necessary in the public in-
9 terest, such additional bonds to be secured, and be payable
10 from the revenues of the works, as provided for in section eight
11 of this act.

Sec. 14. All moneys received from the sale of any bonds
2 issued pursuant to this act, after reimbursements and repay-
3 ments to said municipalities of all amounts advanced for pre-
liminary expenses, as provided in section five of this act, shall be applied solely to the payment of the cost of the works, extensions, improvements, or betterments, or to the appurtenant sinking fund, and there shall be, and hereby is created and granted a lien upon such money, until so applied, in favor of the holders of the bonds or the trustees hereinafter provided for.

Sec. 15. In the discretion and at the option of the municipal authorities such bonds may be secured by a trust indenture by and between the municipality and a corporate trustee, which may be a trust company or bank having powers of a trust company within or without the state of West Virginia, but no such trust indenture shall convey, mortgage or create any lien upon the works or any part thereof. The ordinance or resolution authorizing the revenue bonds, and fixing the details thereof, may provide that such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of bond holders as may be reasonable and proper, not in violation of law, including covenants setting forth the duties of the municipality and the board in relation to the construction or acquisition of the works and the improvement, operation, repair, maintenance and insurance thereof, and the custody, safeguarding and application of all moneys, and may provide that the works shall be contracted for, constructed and paid for, under the supervision and approval of the consulting engineers employed or designated by the board and satisfactory to the original bond purchasers, their successors, assigns or nominees who may be given the right to require the security given by contractors and by any depository of the proceeds of bonds or revenues of the works or other moneys pertaining thereto be satisfactory to such purchasers, their successors, assigns or nominees. Such indenture may set forth the rights and remedies of the bond holders and/or such trustee. Except as in this act otherwise provided, the municipal authorities may provide by ordinance or resolution or in such trust indenture, for the payment of the proceeds of the sale of the bonds and the revenues of the works to such officer, board or depository, as it may determine, for the custody thereof, and for the method of distribution thereof, with such safeguards and restrictions as it may determine.
Sec. 16. At or before the issuance of any such bonds, the municipal authorities shall, by ordinance or resolution, provide for a sinking fund for the payment of the bonds and the interest thereon, and the payment of the charges of banks or trust companies for making payment of such bonds, and interest, out of the net revenues of said works, and shall set aside and pledge a sufficient amount of the net revenues of the works hereby defined to meet the revenues of the works remaining after the payment of the reasonable expense of operation, repair and maintenance, such amount to be paid by the board into and sinking fund at intervals, to be determined by ordinance or resolution adopted prior to the issuance of the bonds, for (a) the interest upon such bonds as such interest shall fall due; and (b) the necessary fiscal agency charges for paying bonds and interest; (c) the payment of the bonds as they fall due, or if all bonds mature at one time, the proper maintenance of a sinking fund sufficient for the payment thereof at such time, and (d) a margin for safety and for the payment of premium upon bonds retired by call or purchase as herein provided, which margin, together with unused surplus of such margin carried forward from the preceding year, shall equal ten (10%) per cent of all other amounts so required to be paid into the sinking fund. Such required payments shall constitute a first charge upon all the net revenues of the works. Prior to the issuance of the bonds, the board may, by ordinance or resolution, be given the right to use or direct the trustee or the State Sinking Fund Commission to use such sinking fund, or any part thereof, in the purchase of any of the outstanding bonds payable therefrom, at the market prices thereof, but not exceeding the price, if any, at which the same shall in the same year be payable or redeemable, and all bonds redeemed or purchased shall forthwith be cancelled, and shall not again be issued. After the payments into the sinking fund as herein required, the board may at any time in its discretion, transfer all or any part of the balance of the net revenues, after reserving an amount deemed by the board sufficient for operation, repair and maintenance for an ensuing period of not less than twelve months and for depreciation, into the sinking fund, or into a fund for extensions, betterments and additions to the works.

All amounts for sinking fund and interest, as and when set
apart for the payment of same, shall be remitted to the State
Sinking Fund Commission at such periods as shall be desig-
nated in the ordinance, but in any event at least thirty days
previous to the time interest or principal payments become
due, to be retained and paid out by said commission con-
sistent with provisions of this act and the order pursuant to
which such bonds have been issued. The State Sinking Fund
Commission is hereby authorized to act as fiscal agent for the
administration of such sinking fund under any order passed
pursuant to the provisions of this act and shall invest all sink-
ing funds as provided by general law.

Sec. 17. Municipal authorities shall have the power, and it
shall be their duty, by ordinance or resolution, to establish and
maintain just and equitable rates or charges for the use and
services rendered by such works, to be paid by the person using
the same or receiving the services thereof, and may readjust such
rates or charges from time to time. Such rates or charges shall
be sufficient in each year for the payment of the proper and
reasonable expenses of operation, repair, replacements and
maintenance of the works, and for the payment of the sums
herein required to be paid into the sinking fund.
Revenues collected pursuant to this section shall be deemed
the revenues of the works. No such rates or charges shall be
established until after a public hearing at which all the users
of the works and/or owners of the property served, or to be
served thereby, and others interested, shall have an opportunity
to be heard concerning the proposed rates or charges. After
introduction of proposal of the ordinance or resolution fixing
such rates or charges and before the same is finally enacted or
passed, notice of such hearing, setting forth the proposed
schedule of such rates or charges, shall be given by publishing
same once each week for two successive weeks in two newspapers
of opposite political faith published in such municipality, or in
one newspaper, if only one political faith is represented by
newspapers in the said municipality, or, if there be no news-
papers so published, then such ordinances shall be posted in
at least three public places therein, the first publication or
posting of said notice to be at least ten days before the date fixed
in such notice for the hearing, which hearing may be adjourned
from time to time. No other or further notice to parties at in-
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30 terest shall be required. After such hearing the ordinance or res-
31 olution establishing rates or charges, either as originally pro-
32 posed or introduced, or as modified and amended, shall be passed
33 or adopted and put into effect. A copy of the schedule of such
34 rates and charges so established shall be kept on file in the office
35 of the board having charge of the operation of such works, and
36 also in the office of the municipal authorities, and shall be open
37 to inspection by all parties interested. The rates or charges so
38 established for any class of users or property served, shall be ex-
39 tended to cover any additional class of users or property there-
40 after served which fall within the same class, without the neces-
41 sity of any hearing or notice. Any change or readjustment of
42 rates may be made in the same manner as such rates or charges
43 were originally established as hereinabove provided. The aggre-
44 gate of the rates or charges shall always be sufficient for such ex-
45 pense of operation, repairs and maintenance, and for such sink-
46 ing fund payments. If any service rate, charge or fee so estab-
47 lished shall not be paid within thirty days after the same is due,
48 the amount thereof may be recovered by the board in a civil
49 action in the name of the municipality, and in the case of
50 charges due for services rendered, such charges, if not paid
51 when due, may, if council so provide in the ordinance provided
52 for under section six of this act, constitute a lien upon the
53 premises served by such works, which lien may be foreclosed
54 against such lot, parcel of land or building so served, in accord-
55 ance with the laws relating to the foreclosure of liens on real
56 property. Upon failure of any person receiving any such serv-
57 ice to pay for same when due, the board may discontinue such
58 service without notice.

Sec. 18. If any party in interest is dissatisfied with the rates
2 fixed under the provisions of the foregoing section, such party
3 shall have the right to appeal to the public service commission
4 of West Virginia at any time within thirty days after the fixing
5 of such rates by the municipal authorities, but the rates so fixed
6 by the municipal authorities under the provisions of the fore-
7 going section shall remain in full force and effect, until set
8 aside, altered or amended by the public service commission.

Sec. 19. Any municipality issuing revenue bonds under the
2 provisions of this act, shall install and maintain a proper system
3 of accounting, showing the amount of revenue received and the
4 application of the same, and the municipal authorities shall, at
5 least once a year, cause such accounts to be properly audited by
6 a competent auditor, and the report of such auditor shall be
7 open for inspection at all proper times to any taxpayer, citizen
8 of said municipality, or person receiving service from said
9 works, or any holder of bonds issued under the provisions of
10 this act, or anyone acting for and in behalf of such taxpayer,
11 citizen or bond holder. The treasurer of such municipality, or
12 other official or institution specifically charged by it with the
13 duty, shall be custodian of the funds derived from income re-
14 ceived from said works, constructed either in whole or in part
15 under the provisions of this statute, and shall give proper bond
16 for the faithful discharge of his or its duties as such custodian,
17 which bond shall be fixed and approved by the municipal au-
18 thorities. All of the funds received as income from said works,
19 constructed in whole or in part under the provisions of this act,
20 and all funds received from the sale of revenue bonds issued to
21 construct such works, shall be kept separate and apart from
22 other funds of the municipality, and separate accounts shall be
23 maintained for the several items required to be set up by section
24 fifteen of this act.

Sec. 20. The municipality shall be subject to the same charg-
2 and rates established as hereinabove provided, or to charges and
3 rates established in harmony therewith, for service rendered the
4 municipality, and shall pay such rates and charges, when due.
5 from corporate funds, and the same shall be deemed to be a
6 part of the revenues of the works as herein defined, and may be
7 applied as herein provided for the application of such revenue.

Sec. 21. The municipal authorities may, in their discretion,
2 provide by ordinance that the custody, administration, operation
3 and maintenance of public works shall be under the supervision
4 and control of a board as provided by section three hereof, and
5 in such case, the municipal authorities may provide, by ordi-
6 nance or resolution, for said board to exercise such of the func-
7 tions of the municipal authorities in connection with the matter
8 as they deem proper, and may provide for said board to receive
9 such compensation as such authorities may deem proper, all of
10 which authority and compensation shall be specifically provided
11 for by ordinance or resolution. All compensation and expense
12 of such board shall be paid solely from funds provided under
13 the authority of this act. Such board shall have power to estab-
14 lish by-laws, rules and regulations for its own government.

Sec. 22. In the event bonds issued hereunder are not secured
2 by a trust indenture, provided for in Section 15 of this act,
3 there shall be, and there is hereby, created a statutory mortgage
4 lien upon such municipal public works acquired or constructed
5 under the provisions of this act, which shall exist in favor of
6 the holder of said bonds, and each of them, and to and in favor
7 of the holder of the coupons attached to said bonds, and such
8 municipal public works shall remain subject to such statutory
9 mortgage lien until payment in full of the principal and interest
10 of said bonds. Any holder of bonds issued under the provisions
11 of this act, or of any coupons representing interest accrued
12 thereon, may, either at law or in equity, enforce the statutory
13 mortgage lien hereby conferred and may, by proper suit, compel
14 the performance of the duties of the officials of the municipality
15 set forth in this act. If there be default in the payment of the
16 principal of and/or interest upon any of said bonds, any court
17 having jurisdiction in any proper action may appoint a receiver
18 to administer said municipal public works on behalf of the
19 municipality, with power to charge and collect rents or income
20 sufficient to provide for the payment of said bonds and interest
21 thereon and for the payment of the operating expenses and to
22 apply the income, rents or other revenue in conformity with this
23 act and the order providing for the issuance of said bonds.

Sec. 23. No property shall be acquired under this act upon
2 which any lien or other encumbrance exists, unless at the time
3 such property is acquired a sufficient sum of money be deposited
4 in trust to pay and redeem such lien or encumbrance in full.

Sec. 24. Any holder of any such bonds, or any of the coupons
2 attached thereto, and the trustee, if any, except to the extent of
3 the rights herein given, may be restricted by said ordinance or
4 resolution authorizing issuance of the bonds, or by the trust
5 indenture, may either at law or in equity, by suit, action, man-
6 damus, or other proper proceeding, protect and enforce any
7 and all rights granted hereunder or under such ordinance, reso-
8 lution or trust indenture, and may enforce and compel perform-
9 ance of all duties required by this act, or by such ordinances,
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10 resolution or trust indenture to be performed by the munici-
11 pality issuing the bonds, or by the board or any officer, including
12 the making and collecting of reasonable and sufficient charges
13 and rates for services rendered by the works. If there be any
14 failure to pay the principal or interest of any of the bonds on
15 the date therein named for such payment, any court having
16 jurisdiction may appoint a receiver to administer the works on
17 behalf of the municipality, and the bond holders and/or trustees,
18 except as so restricted, with power to charge and collect rates
19 sufficient to provide for the payment of the expenses of opera-
20 tion, repair and maintenance, and also to pay any bonds and
21 interest outstanding, and to apply the revenues in conformity
22 with this act, and the said ordinance, resolution and/or trust
23 indenture: Provided, however, That rates established in the
24 manner provided by section seventeen of this act shall not be
25 changed, except in the manner therein provided, with the right
26 of appeal to the public service commission of West Virginia.

Sec. 25. The authority herein given shall be in addition to
2 and not in derogation of any power existing in any municipality
3 under any constitutional, statutory or charter provisions which
4 it may now have, or may hereafter acquire or adopt. For all
5 purposes of this act, municipalities shall have jurisdiction for
6 ten miles outside of the corporate limits thereof, except where
7 such zone would overlap with another municipality, in which
8 event the meridian line of the overlapping zone shall be the
9 dividing line of their respective jurisdictions.

Sec. 26. This act shall, without reference to any other statute,
2 be deemed full authority for the construction, acquisition, im-
3 provement, equipment, maintenance, operation and repair of the
4 works herein provided for, and for the issuance and sale of the
5 bonds by this act authorized, and shall be construed as an
6 additional alternative method therefor, and for the financing
7 thereof, and no petition or other or further proceeding in respect
8 to the construction or acquisition or improvement of the works,
9 or to the acquisition or sale of bonds to the improvement of the
10 works, or to the issuance or sale of bonds under this act, and no
11 publication of any resolution, ordinance, notice or proceeding
12 relating to such construction, improvement or acquisition, or to
13 the issuance or sale of such bonds shall be required, except such
14 as are prescribed in this act, any provisions of other statutes of
15 the state to the contrary notwithstanding.

Sec. 27. This act being necessary for the public health, safety
2 and welfare, shall be liberally construed to effectuate the pur-
3 poses thereof.

Sec. 28. The sections and provisions of this act are separable,
2 and not matters of mutual essential inducement, and it is the
3 intention to confer the whole or any part of the power herein
4 provided for, and if any section, sections, provision or provisions,
5 or parts thereof, is or are for any reason held to be illegal, it is
6 the intention that the remaining sections and provisions, or parts
7 thereof, shall remain in full force and effect.

CHAPTER 69

( House Bill No. 167—By Mr. Gentry)

AN ACT to amend and reenact sections ten, twelve, thirteen, fourteen,
15 fifteen, eighteen and twenty, article six, chapter eight of
16 the code of West Virginia, one thousand nine hundred thirty-
17 one, relating to firemen’s and policemen’s pension or relief
18 fund.

[Passed March 8, 1935; in effect from passage. Became a law without the
19 approval of the Governor.]

Sec. 10. Pension or relief funds in paid
20 municipal fire and police de-
21 partments under civil service;
22 board of trustees to administer.

Sec. 12. Number, selection and terms of
23 board members; the vote; when
24 election held; vacancies;
25 organization of board; compensa-
26 tion and duties of secretary.

Sec. 13. Procedure for establishment of
27 fund.

Sec. 14. Levies to establish fund; pay-
28 ment into fund by members of
29 departments.

Sec. 15. Duties and bond of treasurer of
30 fund.

Sec. 18. Retirement of members for per-
31 manent physical or mental dis-
32 ability; temporary disability
33 by injury or sickness; medical
34 examination before appoint-
35 ment; exception as to present
36 members; re-examination and
37 restoration of members to duty.

Sec. 20. Retirement upon request at
38 seventy-five dollars per month,
39 if applicant is fifty years old
40 and has served twenty-three
41 years; pension of ninety dol-
42 lars per month to permanently
43 disabled members; absence
44 from service because of sick-
45 ness or injury not construed as
46 time out of service.

Be it enacted by the Legislature of West Virginia:

That section ten, twelve, thirteen, fourteen, fifteen, eighteen.
twenty, article six, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, be amended and reenacted to read as follows:

Section 10. In any municipal corporation in this state having, or which may hereafter have, a fire department and a police department, or either of such departments, supported in whole or in part at public expense, the council or other governing body shall, by ordinance provide for the establishment and maintenance of a firemen's pension or relief fund, and for a policemen's pension or relief fund, for the purposes hereinafter enumerated: Provided, however, That this act shall not apply to any paid police or fire department that is not under civil service, and thereupon there shall be created boards of trustees who shall administer and distribute the funds authorized to be raised by this section and succeeding sections.

Sec. 12. The said board of trustees of the firemen's pension or relief fund shall consist of the mayor or other chief executive officer of the municipal corporation and four members of the fire department, to be chosen as follows: The mayor or other chief executive officer of such municipal corporation shall give notice of an election to be held on the second Monday of the month following the passage of the ordinance mentioned in the tenth section hereof, or following the passage of this act, which notice shall be served upon each member of the fire department and which shall notify each member that between the hours of nine in the forenoon and six in the afternoon, on the day designated for such election, the election will be held for such purpose and that each member shall send under seal, in writing, the names of four persons, members of such fire department, voted for; and all votes so cast shall be counted and canvassed by the mayor or other chief executive officer and the council for the first election after the passage of this amendment, and thereafter the votes shall be counted by the then existing members of such pension board, who after such election shall announce the result, and the four members of the fire department receiving the highest number of votes shall, with the mayor or other chief executive officer, constitute "The Board of Trustees of the Firemen's Pension or Relief Fund". The four members of the fire department shall be chosen and shall
serve as follows: The member receiving the highest number of votes shall serve for a period of four years, the member receiving the second highest number of votes shall serve for a period of three years, the member receiving the third highest number of votes shall serve for a period of two years, and the member receiving the fourth highest number of votes shall serve for a period of one year. After the election specified above the said board of trustees shall hold a similar election each year to elect one member to succeed for a term of four years the retiring member. In the case of a tie vote being received by any two persons for the office of trustee, such tie vote shall be decided by casting lots, or in any other way which may be agreed upon by the persons for whom such tie vote was cast. The result of such election shall be entered in the record of the proceedings of said board and the members so elected shall except as hereinabove specified serve for four years and until their successors are elected and have qualified. The election for such members of the board of trustees shall be held annually upon the second Monday of the same month upon which the first election occurred. In case of vacancy by death, resignation, or otherwise, among the members so elected, the remaining members shall choose the successor, or successors, until the next annual election at which latter time all vacancies shall be filled. The presiding officer of the board of trustees shall be the mayor or other chief executive officer of such municipal corporation, and the secretary thereof shall be appointed by said board. It shall be the duty of such secretary to keep a full and permanent record of all the proceedings of the board, and said trustees may fix his compensation for this work, which shall be paid out of the funds of said firemen’s pension or relief fund.

Sec. 13. The method of procedure for the establishment of a policemen’s pension or relief fund shall be in all respects the same as provided for the formation of the firemen’s pension or relief fund in the succeeding section: Provided, however, that there shall be a separate board of trustees, composed of the mayor or other chief executive officer of the municipal corporation and four members from the police department, the four members to be elected in the same manner as provided
9 for the election of firemen to the firemen's pension or relief fund in the preceding section.

Sec. 14. In every municipality there shall be a firemen's pension or relief fund and a policemen's pension or relief fund which shall be maintained as follows: The council or other governing body of each municipality shall levy annually in the manner provided by law for other municipal levies, and include within the maximum levy or levies permitted by law, and if necessary in excess of any charter provision, a tax not exceeding one cent on each one hundred dollars of all real and personal property as listed for taxation in such municipality for the firemen's pension or relief fund, and a like levy not exceeding one cent on each one hundred dollars on all real and personal property as listed for taxation in such municipality for a policemen's pension fund. The amount of tax to be levied if less than the one cent provided for above may be fixed and determined by said boards of trustees as aforesaid, and certified to the council or other governing body of such municipality. Provided further, That in any city or municipality of twenty thousand population or less the laying of the levy herein provided for shall be within the discretion of the common council or other body of like power and duties in such city or municipality.

The levies authorized under this section, or any part of them, may by the council or other governing body be laid in addition to all other municipal levies, and to that extent beyond the limit of levy imposed by the charter of such municipality; and such levies shall supersede and if necessary exclude levies for other purposes if such priority or exclusion is necessary under limitations upon taxes or tax levies imposed by law. Such corporations are authorized to take by gift, grant, devise or bequest, any money or real or personal property, upon such terms as to the investment and expenditures thereof as may be fixed by the grantor or determined by said trustees.

In addition to all other sums provided for pensions in this section, it shall be the duty of every municipal corporation to assess and collect from each member of such fire department and police department, the sum of one dollar each month, which sum shall be deducted from the monthly pay of such person, and the amount so collected shall become a regular
part of the firemen’s pension fund, if collected from a fireman, and of the policemen’s pension fund, if collected from a police-
man.

Sec. 15. The treasurer of every municipality shall be the custodian of all funds of the firemen’s and policemen’s pension or relief fund, and shall deposit and pay out the same upon and in accordance with any proper order of the board of trustees. Such treasurer shall be liable upon his official bond as treasurer for the faithful performance of his duties in respect to such fund or funds, and the official bond of the treasurer covering such fund or funds shall be executed with a good and financially responsible surety company, authorized to do business in this state, as surety for such funds. Such fund or funds shall not be used for any other purpose than provided herein.

Sec. 18. If any member of such fire department or police department of any such municipality shall become and be found upon examination by a majority of a board of medical examiners, which board shall consist of not less than three physicians appointed by the board of trustees, to have become so physically or mentally permanently disabled by reason of services rendered in the performance of his duties in such department, as to render necessary his retirement from all service in such department, or if any member who has been such a member of either of such departments for a period of not less than five consecutive years preceding his disability become and be found upon such an examination to have become so physically or mentally permanently disabled, regardless of the cause therefor, as to render necessary his retirement from all services in such department, such board of trustees shall retire such permanently disabled persons from all services in such department, and said board of trustees of such pension or relief fund shall authorize the payment to such permanently disabled persons monthly from the pension fund the amounts as fixed by the rules hereinafter provided for. If any member of such department shall at any time be injured or become sick, so as to render such member temporarily disabled, he shall be paid from said pension or relief fund the amount to be determined by the rules established, as aforesaid, during such disability for not exceeding
twenty-six weeks. No person shall be eligible for any pension unless such member shall have presented himself for an examination at the time of his appointment to the department and his condition was then approved by a majority of a board of medical examiners appointed as aforesaid by such pension board: Provided, however, That this provision shall not apply to any person who is a member of either of said departments at the time of the enactment of this act.

Any person who has been heretofore, or who shall hereafter be, allowed a pension under the provisions of this act may be required by such board to be re-examined at any time and if he is then not disabled as aforesaid he shall be ordered by the mayor or other chief executive officer of the municipality to return to duty in his former position in the fire or police department, as the case may be, and his pension discontinued: Provided, however, That this provision shall not apply to any person until such person can and shall be restored to his former position in such department.

Sec. 20. Any member of a municipal fire department or police department who is entitled to the benefits of said fund, and who has been in the continuous service of such department for twenty-three years, and shall have reached the age of fifty years, may, upon written application to the board of trustees, be retired from all service from such department without medical examination or disability, and on such retirement the board of trustees shall authorize the payment to such retired member during the remainder of his life of seventy-five dollars per month. A member of such department who may have served twenty-three years, but not continuously, and shall have reached the age of fifty years, shall be entitled to the benefits of this section, provided he shall not have been out of the service for a period longer than two years.

The sum to be paid to permanently disabled members shall be at the rate of ninety dollars per month, which shall be paid regardless of the position in the department of such disabled member.

Absence from service because of sickness or injury shall not be construed as time out of service.

All acts and parts of acts, general and special, inconsistent with this act, are hereby repealed.
CHAPTER 70

(Senate Bill No. 22—By Mr. Fleming)

AN ACT to amend article eight, chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, by adding thereto section seven, providing for the naming of the site of the West Virginia Training School.

[Passed January 23, 1935; in effect from passage. Approved by the Governor.]

Sec. 1. Name of site of West Virginia training school to be known as Spring Run.

Be it enacted by the Legislature of West Virginia:

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

Section 7. The name of the site of the “West Virginia Training School” shall hereafter be known as “Spring Run”.

CHAPTER 71

(Senate Bill No. 75—By Mr. Rouss)

AN ACT to amend and reenact chapters forty-seven and forty-eight, acts of the Legislature of West Virginia, first extraordinary session, one thousand nine hundred thirty-three, creating a West Virginia racing commission, to provide revenue for the general fund by the regulation and licensing of horse racing and the operation of the pari-mutuel system of wagering within the state.

[Passed March 8, 1935; in effect from passage. Became a law without the approval of the Governor.]

Sec. 1. West Virginia racing commission established; location of office; meetings and report to governor; number; bi-partisan; confirmed by Senate; terms; powers and duties.

Sec. 2. Compensation of members fixed by governor; appointment and compensation of secretary, steward and employees; how compensation paid.
Sec. 3. Taxes from operation of pari-mutuel pools deposited in state treasury to credit of general fund.

4. License for horse racing for stake, purse or reward; when license not required.

5. What application for license to state; granting or rejection of application; reasons for refusal to be given; review by mandamus, of finding of commission.

6. Per diem tax on tracks one mile or more in length; on tracks less than one mile in length; exception; amount and payment of tax on total contribution to all pari-mutuel pools; applicant, before license granted, to show ability to pay license fees, purses, etc.; when bond required.

Sec. 7. Only pari-mutuel system of wagering permitted; permissible commissions deducted by licensee; breakage calculated to the dime; minors not permitted to wager; appointment, compensation and powers of supervisor of pari-mutuel pools.

8. Penalty for conducting race meet without required license.

9. Prescribed license tax to be in lieu of all other license, etc., taxes of state; no tax by municipalities.

10. Gaming statutes not to apply to licensed pari-mutuel system of wagering.

11. Commission to license jockeys, etc.; relief fund for; sources and purposes for which disbursed.

12. Definition of words and phrases.

Be it enacted by the Legislature of West Virginia:

That chapters forty-seven and forty-eight, acts of the Legislature of West Virginia, first extraordinary session, one thousand nine hundred thirty-three, be amended and reenacted to read as follows:

Section 1. There is hereby created the West Virginia racing commission, which shall be a corporation and, as such, may contract and be contracted with, and shall have a corporate seal. Said commission shall have its principal office in the state capitol at Charleston, and shall meet annually at its office in the month of January, and at such other times and places as shall be designated by its chairman. It shall also make and publish annually a report to the governor of the business transacted by it.

The commission shall consist of three members, not more than two of whom shall at any one time belong to the same political party. They shall be appointed by the governor by and with the advice and consent of the Senate. The term of office of the members of such commission shall be four years, except that of the first appointees, one shall be appointed for two years, one for three years and one for four years, and their appointments shall be made within twenty days after this bill shall become effective, and their successors shall thereafter be appointed for terms of four years each. Said commission shall have all the powers necessary to carry out fully and effectively all the purposes of this act and shall have full power to pre-
scribe rules, regulations and conditions under which all races shall be conducted within the state of West Virginia. The commission may at any time for the violation of any rule or for any fraudulent practices, require the removal of any official or employee employed by any licensee hereunder, and shall have power to summon witnesses and to administer oaths or affirmations to such witnesses and take testimony whenever in the judgment of said commission it may be necessary for the discharge of its duties. False swearing on the part of any witness shall be deemed perjury and shall be punished as such.

Sec. 2. The compensation of the members of the commission shall be fixed by the governor. The commission shall appoint a secretary and steward to represent the commission, and such additional help as shall be necessary to administer the details provided for in this act, and shall fix their compensation and actual expenses, and the compensation and actual expenses of the members of the commission, shall be paid from the funds in the hands of the state treasurer collected from the license tax on pari-mutuel wagering when not otherwise provided in the budget; but no such expenses shall be paid unless an itemized account thereof, under oath, be first filed with the state auditor.

Sec. 3. All revenue collected as taxes from the operation of pari-mutuel pools shall be paid directly to the treasurer of the state of West Virginia and be deposited by him to the credit of the general fund of the state.

Sec. 4. No person shall hereafter hold or conduct any horse race meeting within the state of West Virginia whereat horse racing shall be permitted for any stake, purse or reward except under the license of the West Virginia racing commission. However, nothing in this act shall be construed to prevent in any way the use of any grounds, enclosure, or race track owned and controlled by any person for any local, county or state fair, agriculture or live stock exposition, even though racing be conducted thereat, when no wagering or pool selling upon the result of the racing so held thereat is permitted within the knowledge or acquiescence of the person conducting the same and when the pari-mutuel pool system of wagering is not conducted.

Sec. 5. Any person desiring to conduct a horse race meeting
2 within the state of West Virginia and to permit or conduct 3 pari-mutuel pools shall apply to the West Virginia racing com- 4 mission for a license to do so. Such application shall be filed 5 with the commission at least thirty days prior to the first day of 6 each horse race meeting which said person proposes to hold or 7 conduct. The commission shall prescribe blank forms in making 8 such applications. Such application shall specify the days upon 9 which said race meeting is to be conducted. It shall state the 10 name of the person making such application, the post office ad- 11 dress of the person making such application, the number of days 12 he intends to hold or conduct such meeting (which shall be 13 successive week days, excluding Sundays,) and the location of 14 the place or track or enclosure where he proposes to hold or 15 conduct such race meeting, and shall supply such other data and 16 information as the commission shall prescribe.

Within ten days after the filing of such application with the 18 commission, the commission shall grant or reject any application 19 for a license for any cause deemed by it sufficient. If said 20 license is refused, said commission shall publicly state its reasons 21 for the refusal, and said reasons shall be written in full and 22 attached to the application so refused, which refusal and reasons 23 for same shall, at all times, be subject to inspection upon appli- 24 cation of anyone desiring to inspect same. Said findings shall 25 be subject to review by mandamus in any court of this state 26 having jurisdiction, with the right to appeal to the supreme 27 court of appeals in the manner prescribed by law.

Sec. 6. A person operating any horse race track one mile 2 or more in length shall pay for each day upon which horse races 3 are run a license tax of five hundred dollars; any race track 4 less than one mile in length shall pay for each day upon which 5 horse races are run a license tax of two hundred fifty 6 dollars: Provided, however, That the per diem tax shall not 7 apply to horse shows or county fairs at which racing is con- 8 ducted for not more than four days. Any person licensed by 9 the commission to conduct racing and to permit and conduct 10 pari-mutuel wagering under this act, shall in addition to the 11 aforementioned tax, pay to the racing commission of the state 12 of West Virginia a tax therefor of one per cent of the total 13 contribution to all pari-mutuel pools conducted or made at any 14 and every race meeting licensed under this act. Said pay-
ments shall be made to the commission or its agent after the last race on each day and every day of each and every race meeting, and shall be made from all contributions to all pari-mutuel pools to each and every race of the day, which payments shall be deposited with the treasurer of the state of West Virginia.

Any person making application for a license for a meeting to be held on any track in the state of West Virginia, shall, when required, furnish satisfactory evidence to the commission of his or their ability to pay license fees, purses, salaries of officials and other expenses incident to the meeting. In the event the applicant is not able to furnish such satisfactory evidence of his or their ability to pay such expenses and fees, then the commission may require bond or other adequate security for not more than four successive days before such license is issued.

Sec. 7. A person licensed by the commission shall permit only the pari-mutuel system of wagering within the enclosure at which horse racing is held, and the commission deducted by the licensee from the said pari-mutuel pools shall not exceed ten per cent of the total pari-mutuel pools for the day, including the license fee of the gross amount handled hereinbefore provided for, and the breakage, which shall be made and calculated to the dime: Provided, however, That no holder of such license shall permit or allow any person under the age of twenty-one years to wager thereat, knowing or having reason to believe that such person is under the age of twenty-one years. Any violation of this proviso shall be punishable by revocation of license.

A supervisor of pari-mutuel pools shall be appointed by the commission and shall be compensated by said commission. Said supervisor shall have free access to the space or enclosure where the pari-mutuel pool system of wagering is conducted or calculated at any race meeting to which he shall be assigned for the purpose of ascertaining whether or not said licensee is retaining only the commission provided for in said section, and shall have general supervisory powers over the operation of the pari-mutuel pools. He shall also, for the same purposes only, have full and free access to all records and papers pertaining to such pari-mutuel pool system of wagering, and shall report to the commission in writing, under oath, whether or not the
25 licensee has retained any commissions in excess of those per-
26 mitted under this act.

Sec. 8. Any person aiding or abetting in the conduct of
2 any meeting in the state of West Virginia at which racing and
3 wagering on the same is permitted, without a license duly
4 issued and not revoked, and not suspended by the commission,
5 shall be guilty of a misdemeanor, and upon conviction, shall
6 be punished by a fine of not less than five thousand dollars and
7 not more than ten thousand dollars, for each day of such un-
8 authorized meeting, or by imprisonment not exceeding one year,
9 or by both fine and imprisonment, in the discretion of the
10 court.

Sec. 9. The license tax herein imposed shall be in lieu of all
2 other license, income, excise, special or franchise taxes of the
3 state of West Virginia, and no county, city, town, or other
4 municipality or other political subdivision of the state of West
5 Virginia shall be authorized or empowered to levy or impose
6 any license, income, excise, special or franchise tax on any
7 such person engaged in the business of conducting a meeting
8 at which horse races are run for stakes, purses or reward
9 under the jurisdiction of and being licensed by the commission,
10 or on the operation or maintenance of any pari-mutuel machine
11 or similar device, or on the sale of any commodity during a
12 meeting at which horse races are run, or at any such horse
13 race track.

Sec. 10. Section one, article ten, chapter sixty-one of the
2 code of West Virginia, one thousand nine hundred thirty-one,
3 relating to gaming tables and devices, shall not apply to the
4 pari-mutuel pool system of wagering in manner and form as
5 provided for in this act at any meeting within the state of
6 West Virginia whereat horse racing shall be permitted for any
7 stake, purse or reward, by any person having license for hold-
8 ing or conducting such horse race meeting as provided by
9 this act.

Sec. 11. The commission may license jockeys, trainers and
2 grooms, register colors, assumed names, apprentice contracts,
3 authorized agents, and charge a fee therefor. All moneys col-
4 lected from fees as well as moneys collected from fines imposed
5 by the stewards, starter or other racing official shall be paid
6 into a relief fund and paid out on order of the commission for 7 the expenses of hospitalization, medical care, and/or funeral 8 expenses of jockeys, trainers or other employees at said race 9 meeting, who become ill or are injured while in the discharge 10 of their duties under the jurisdiction of the commission. If at 11 any time, this fund has a balance greater than is deemed neces- 12 sary for the payment of expenses, the commission may apply 13 the remainder to the operating expenses of the commission.

Sec. 12. Definitions and explanations of certain technical 2 terms and words used in this act are as follows:
3 "Pari-mutuel" is a French word meaning, "a mutuel or 4 collective pool that can be divided among those who have con- 5 tributed their wagers to one central agency, the odds to be 6 reckoned in accordance to the collective amounts wagered upon 7 each contestant running in a race upon which the pool is made, 8 but the total to be divided among the first three contestants on 9 the basis of the number of wagers on these". A pool is, "a 10 combination of interests in a joint wagering enterprise, or a 11 stake in such enterprise." In the division of a pool there 12 occurs a percentage left over. This is known as "legitimate 13 breakage." "To the dime" is defined to mean that wagers 14 shall be figured to and paid to the dime.
15 All other acts, whether general or local, public or private, or 16 previous grants or franchises, inconsistent with the provisions 17 of this act are hereby repealed.

CHAPTER 72
(Senate Bill No. 117—By Mr. Paull, by request)

AN ACT to amend and reenact sections one and five, chapter four, acts of the Legislature of West Virginia, regular session, one thousand nine hundred thirty-one, relating to the state board of aeronautics.

[Passed March 9, 1935; in effect ninety days from passage. Became a law without the approval of the Governor.]

Sec. 1. West Virginia board of aeronautics to consist of three mem- bers to be appointed by the governor; number; term; bi- partisan; state road commis- | Sec. 5. (a) Federal license required for operation of aircraft; ex- ceptions; (b) pilot's license; ex- ceptions.

Sec.
Be it enacted by the Legislature of West Virginia:

That sections one and five, chapter four, acts of the Legislature of West Virginia, regular session, one thousand nine hundred thirty-one, be amended and reenacted to read as follows:

Section 1. There is hereby created a board of aeronautics, to be known as "The West Virginia Board of Aeronautics," to consist of three members to be appointed by the governor for the term of two years, to serve without pay, no more than two of whom shall be members of the same political party, and one of whom shall be the state road commissioner.

Sec. 5. (a) The public safety requiring and the advantages of uniform regulation making it desirable in the interest of aeronautical progress that aircraft operating within this state should conform with respect to design, construction, and airworthiness to the standards prescribed by the United States government with respect to navigation of civil aircraft subject to its jurisdiction, any person shall not operate, or pilot, or navigate, or cause or authorize to be operated, piloted, or navigated, any aircraft within the state unless such aircraft has an appropriate effective license, issued by the department of commerce of the United States: Provided, however, That this restriction shall not apply to public aircraft of the United States, or public aircraft of any state, territory or possession thereof, or to aircraft licensed by a foreign country with which the United States has a reciprocal agreement covering the operations of such licensed aircraft: Provided further, That the West Virginia board of aeronautics may, in its discretion, waive this provision in the interest of a non-passenger carrying flight solely for inspection or test purposes.

(b) The public safety requiring and the advantages of uniform regulation making it desirable in the interest of aeronautical progress that a person engaging within this state in navigating aircraft in any form of navigation, shall have the qualifications necessary for obtaining and holding a pilot's license issued by the department of commerce of the United States, any person shall not pilot any aircraft in this state, unless such person is the holder of a correct, effective pilot's license issued by the department of commerce of the United States: Provided, however, That this restriction shall not apply
30 to those persons operating public aircraft of the United States, 31 or public aircraft of any state, territory, or possession thereof, 32 or operating any aircraft licensed by a foreign country with 33 which the United States has a reciprocal agreement covering 34 the operation of such licensed aircraft. 35 All acts or parts of acts inconsistent herewith are hereby 36 repealed.

CHAPTER 73

(Senate Bill No. 118—By Mr. Paull, by request)

AN ACT to amend and reenact section nine, article two-(a), chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended by chapter forty, acts of the Legislature of West Virginia, first extraordinary session, one thousand nine hundred thirty-three, relating to roads and highways.

(Passed March 9, 1935; in effect ninety days from passage. Approved by the Governor.)

Sec. 9. Powers of state road commissioner, including construction and maintenance of airports and landing fields.

Be it enacted by the Legislature of West Virginia:

That section nine, article two-(a), chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended by chapter forty, acts of the Legislature of West Virginia, first extraordinary session, one thousand nine hundred thirty-three, be amended and reenacted to read as follows:

Section 9. The commissioner, in addition to the other powers granted by this chapter, shall have the sole authority to:

1. Exercise general supervision over the state road program and the construction and maintenance of the state roads;
2. Make rules and regulations for the government of his department;
3. Sign and execute, in the name of the "State Road Commission" any contract or agreement with the federal government or its departments, subdivisions of the state, corporations, associations, copartnerships and individuals;
11 (4) Supervise the fiscal affairs and responsibilities of the department;
12 (5) Make a general road or highway plan of the state and compile and publish information relative to the mileage, character and condition of the roads;
13 (6) Determine the various methods of road construction best adapted to the various sections in the state and establish standards for the construction and maintenance of roads and highways;
14 (7) Conduct investigations and experiments, hold public meetings and attend meetings and conventions inside or outside of the state as may, in his judgment, tend to promote better highway construction;
15 (8) Cooperate with state and national organizations in experiments and work for the advancement of highway construction;
16 (9) Enter private lands to make surveys or inspections for road purposes;
17 (10) Acquire land necessary for roads and road maintenance;
18 (11) Procure photostatic copies of any or all public records on file at the state capitol of Virginia which the commissioner may deem necessary or proper in ascertaining the location of rights-of-way of public roads located or established in what is now the state of West Virginia. A copy of any such photostatic copies so made, when certified by the commissioner, may be admitted as evidence in lieu of the original in any of the courts of this state;
19 (12) Administer the motor vehicle law of this state as provided in section twelve, article two-(a), chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended by chapter forty, acts of the Legislature, first extraordinary session, one thousand nine hundred thirty-three;
20 (13) Keep a complete and accurate record of all proceedings, record and file all bonds and contracts taken or entered into, and assume responsibility for the custody and preservation of all papers and documents pertaining to his office. Rules and regulations shall be recorded in a book especially kept for that purpose, and may be, in his discretion, published for general circulation. All other records and entries necessary
52 to show the official conduct of the department shall be preserved
53 and shall be public records and open for inspection during
54 business hours;
55 (14) Purchase as provided by law all equipment necessary
56 for the conduct of his department, and dispose of any equip-
57 ment either by public or private sale when such equipment
58 can no longer be used to advantage. The proceeds of such
59 sale shall be paid to the state treasurer and credited to the
60 state road fund;
61 (15) Conduct hearings as provided by this chapter;
62 (16) Report to the governor each year all information
63 relative to the operation of the department and the construction
64 and maintenance of the state roads, and make such other re-
65 ports and recommendations as may be required by the governor
66 or which, in his judgment, would be beneficial to the general
67 public;
68 (17) Exercise any other power that may be necessary or
69 proper for the orderly conduct of his business and the effective
70 discharge of his duties, and invoke any legal or equitable
71 remedies for the enforcement of his orders or the provisions
72 of this department; and
73 (18) As a member of the West Virginia board of aeronautics,
74 exercise general supervision of construction and maintenance
75 of such airports and landing fields as are under the jurisdiction
76 of said board, and make a study and general plan of a state-
77 wide system of airports and landing fields.
78 All acts or parts of acts inconsistent herewith are hereby
79 repealed.

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CHAPTER 74

(Senate Bill No. 253—By Mr. Jones, by request)

AN ACT to amend and reenact section three, chapter two, acts of
the Legislature of West Virginia, regular session, one thousand
nine hundred thirty-one, relating to the department of public
welfare.
Be it enacted by the Legislature of West Virginia:

That section three, chapter two, acts of the Legislature, regular session, one thousand nine hundred thirty-one, be amended and reenacted to read as follows:

Section 3. For the purpose of keeping public interest in the various phases of welfare work sustained, the director shall maintain close contact with an advisory council, with which he shall confer on matters of major policy, composed of the president and three vice presidents of the West Virginia crippled children’s society, the head of each veterans’ organization in the state, and the president and vice president of the state organization of county welfare boards, and the president and two vice presidents of the West Virginia federation of woman’s clubs, which council shall serve without pay. On recommendation of the West Virginia crippled children’s society, the director shall appoint an advisory staff of three orthopedic surgeons, who shall, while acting in such advisory capacity, serve without pay, for the purpose of examining the credentials, and recommending the appointment, of orthopedic surgeons, to be engaged by the department. The director shall provide a division for crippled children, a division for dependent and neglected children, and a division for veterans’ affairs within the department, and each division shall be charged specifically with the conduct of its own affairs. The director is authorized to provide such additional divisions as he may deem necessary by reason of the participation of his department jointly with the federal government in matters of public welfare.
one, and to amend and reenact sections twelve, fourteen and nineteen of said article three, all relating to child welfare.

[Passed March 8, 1933; in effect from passage. Became a law without the approval of the Governor.]

Sec. 12. Physical and mental examination of children before commitment to board; acceptance or refusal by board.

Sec. 14. Committed children to remain public wards until married or twenty-one years old, unless returned to parents or guardian by court order.

Sec. 19. Placing of children in private homes or private boarding homes.

Be it enacted by the Legislature of West Virginia:

That section ten, article three, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, be repealed and that sections twelve, fourteen and nineteen of said article three be amended and reenacted to read as follows:

Section 12. All children, before being committed to the board, shall be given a physical and mental examination, using blank forms prepared and furnished by the board for the purpose, and the board, in its discretion, after considering the results of said examination, may accept or refuse to accept any child for commitment to the board.

Sec. 14. All children who are declared public wards under the provisions of this article shall remain public wards until they attain the age of twenty-one years or are married, which ever shall first occur, unless by order of the court or judge by whom such children were so declared, upon a proper showing, they shall be returned to their parents, or other guardian, or shall be adopted in the manner prescribed by law.

Sec. 19. The state board of children's guardians may, when in its discretion it shall appear proper, place any children in its care or custody in suitable private homes, and in such cases the said board, and the person or persons with whom said child or children are placed, shall observe and be governed by all of the provisions of the laws of this state concerning the placing of children in private homes and the rules and regulations of said board; and when necessary said board may place such children as need special care or supervision in private boarding homes.
CHAPTER 76

(Com. Sub. for Senate Bill No. 270—Originating in the Senate Committee on the Judiciary)

AN ACT to repeal section fifteen, article one, and all of article two, chapter twenty-five, and to add a new chapter twenty-five-(a) to the code of West Virginia, one thousand nine hundred thirty-one, to create a department of purchases.

[Passed March 9, 1935; in effect from passage. Became a law without the approval of the Governor.]

ARTICLE I

Sec.
1. Definition of words and phrases.
2. Department of purchases created.
3. To what departments act applies.
4. Appointment, confirmation and term of director of purchases.
5. Oath and bond of director.
6. Qualifications of director.
7. Offices, office hours, books and records of director.
8. Salary and traveling expenses of director.
9. Assistants and employees appointed by director to serve during his pleasure.
10. Employees may exercise powers and duties of director, except signing contracts; director responsible for acts.
11. Powers and duties of director.
12. Approval by the governor of rules and regulations of director; purposes of rules and regulations.
13. Standardization committee; number and selection of members.
14. Duties of committee; standard specifications adopted to govern purchases; exception.
15. Annual report by director to governor.
16. Preference to be given commodities and printing produced in state.
17. Director to advise with heads of state institutions producing commodities.
18. Facilities of department to be furnished to local governmental bodies in state.

ARTICLE II

Sec.
1. Competitive bids for purchases and for sale of obsolete property.
2. Publication of solicitation for sealed bids for expenditures over two thousand dollars.
3. Purchases in open market on competitive bids.
4. Bids to be based on adopted standard specifications; open market orders on contracts to lowest responsible bidder; action when bids uniform; record of bids open to inspection.
5. Contracts to be signed by director; form approved; filing with auditor.
6. When, except in emergency, order for delivery on open market not to be awarded.
7. Authorization by director of emergency purchase in open market; report of to director, by head of department.
8. Revolving fund for volume purchases: amount; accumulation and administration of fund.
9. When purchase or contract of a department void; when head of department personally liable.
10. Purchase, or substitution, of particular trade name or brand.

ARTICLE III

Sec.
1. Director to contract for public printing and printing paper for departments.
2. Director to supply departments with printing; printing plants at state institutions.
3. Provisions of section twelve of article one to apply to this article.
4. Director to furnish legislative printing; legislative joint supervisor of printing.
5. Director to have charge of printing of decisions of supreme court of appeals; number of volumes; provisions as to pub-
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Sec.
6. Limitation on number of copies of departmental annual or biennial reports.
7. Printing, binding and stationery to be paid from current expense appropriations for department.
8. Printing paper and stationery to be issued by director as needed.
9. Director to be custodian of West Virginia reports and acts of the legislature; delivery to state law librarian; sale of remaining volumes.
10. Provisions as to furnishing state paper stock to contractor for state printing.

ARTICLE IV.
Sec.
1. Stock for liquor stores to be purchased by liquor control commission; present right of a

Be it enacted by the Legislature of West Virginia:

That section fifteen, article one, and all of article two, chapter twenty-five, be repealed, and a new chapter twenty-five-(a) be added to the code of West Virginia, one thousand nine hundred thirty-one, to read as follows:

ARTICLE I

Section 1. For the purpose of this chapter:

Sec. 2. In order that every possible economy in the purchase of commodities, printing and contractual services may be realized through a system of centralized purchasing, there is hereby created the department of purchases.

Sec. 3. The provisions of this chapter for the purchase of commodities, printing and contractual services shall apply to
3 all of the departments of the state government, except as is
4 otherwise provided by this chapter or by law.

Sec. 4. There is hereby created the office of director of pur-
2 chases. The director shall be appointed by the governor, by
3 and with the advice and consent of the senate, and shall serve
4 during the will and pleasure of the governor.
5 The director shall devote his entire time to the duties of his
6 office.

Sec. 5. The director, before entering upon the duties of his
2 office, shall take and subscribe to the oath prescribed by section
3 five, article four of the constitution. He shall execute a bond
4 in the penalty of twenty-five thousand dollars, approved by the
5 governor, in form prescribed by the attorney general, and con-
6 ditioned upon the faithful performance of his duties and the
7 accounting for all money and property coming into his custody
8 by virtue of his office. The bond and oath shall be filed with
9 the secretary of state.

Sec. 6. The governor shall select the director with special
2 reference to his ability and fitness to perform the duties of his
3 office.

Sec. 7. The offices of the director shall be located at the
2 state capitol. The director shall keep his offices open at all
3 reasonable times for the transaction of public business. He
4 shall keep, in his offices, accurate books, accounts and records
5 of all transactions of his department, and such books, accounts
6 and records shall be public records and shall at all proper times
7 be available for inspection by any taxpayer of the state except
8 as to private bids or quotations provided for in section four,
9 article two of this chapter.

Sec. 8. The director shall receive an annual salary of five
2 thousand dollars. He shall also receive necessary traveling
3 expenses incident to the performance of his duties. Requisitions
4 for traveling expenses shall be accompanied by a sworn and
5 itemized statement which shall be filed with the auditor and
6 preserved as a public record.

Sec. 9. The director shall appoint or employ such assistants
2 and employees as may be necessary to the efficient operation
3 of his department and fix their salaries. All assistants and employees shall be appointed or employed to serve during the will and pleasure of the director.

Sec. 10. All powers and duties vested in the director, except the power to sign contracts, may be exercised by the appointees or employees of the director under his direction, but the director shall be responsible for their acts.

Sec. 11. The director shall be the executive officer of the department of purchases and shall have the following powers and duties:

(1) Purchase or contract for, in the name of the state, the commodities, printing and contractual services required by the departments of the state government;
(2) Apply and enforce standard specifications established in accordance with section fourteen of this article;
(3) Negotiate for all grounds, buildings, office or other space required by state departments;
(4) Have charge of central storerooms for the supply of departments;
(5) Transfer to or between departments or sell commodities that are surplus, obsolete or unused;
(6) Make and keep current an inventory of all removable equipment belonging to the state;
(7) Establish and maintain a laboratory for the testing of commodities, and make use of existing facilities in state institutions for that purpose.

Sec. 12. The director, with the approval of the governor, shall adopt and amend rules and regulations for the following purposes:

(1) Authorize a department to purchase directly, specified commodities and contractual services and prescribe the manner in which such purchases shall be made;
(2) Authorize, in writing, a department to purchase commodities or contractual services in the open market for immediate delivery in emergencies, define such emergencies, and prescribe the manner in which such purchases shall be made and reported to the director; and for the purposes mentioned in paragraphs one and two of this section, the head of any
department, or the financial governing board of any institution, may, with the approval of the director, make requisition upon the auditor for a sum to be known as an advance allowance account, in no case to exceed five per cent of the total of the appropriations for any such department; and the auditor shall draw his warrant upon the treasurer for such amounts. All such advance allowance accounts shall be accounted for by the head of the department or institution once every thirty days or oftener if required by the state auditor or director or the governing board or the head of the department, and requisitions and warrants may likewise be drawn for reimbursing such advance allowance accounts as the expenditures therefrom have been accounted for;

(3) Prescribe the manner in which commodities shall be purchased, delivered, stored and distributed;

(4) Prescribe the time for making requisitions and estimates, the future period which they are to cover, the form in which they shall be submitted, and the manner of their authentication;

(5) Prescribe the manner of inspecting all deliveries of commodities, and of making chemical and physical tests of samples submitted with bids, and samples of deliveries to determine compliance with specifications;

(6) Require monthly reports by departments of stocks of commodities on hand, and prescribe the form of such reports;

(7) Provide for the transfer to or between departments of commodities which are surplus with one department but which may be needed by another, and for the disposal by sale, after receipt of competitive bids, of commodities which are obsolete or unused;

(8) Prescribe the amount of deposit or bond to be submitted with a bid or contract, and the amount of deposit to be given for the faithful performance of a contract;

(9) Prescribe the manner in which claims for commodities and contractual services delivered to departments shall be submitted, examined, approved and paid;

(10) Provide for such other matters as may be necessary to give effect to the foregoing rules and regulations and the provisions of this chapter.

Sec. 13. There is hereby created a standardization com-
2 mittee which shall be composed of not more than seven members
3 including the director, as chairman, and one representative of
4 each of the following: The state road commission, the depart-
5 ments of the state government other than institutions, the state
6 educational institutions, and the state charitable and correct-
7 ional institutions. The members of the committee, other than
8 the chairman, shall be designated by the governor from among
9 the officers and employees of the state, who are best informed
10 with regard to the requirements of their departments and of
11 the state government.
12 The members of the committee shall serve without additional
13 compensation.

Sec. 14. The duties of the committee shall be:
2 (1) Advise the director and the governor in the adoption
3 and amendment of the rules and regulations which shall pre-
4 scribe the purchasing policy of the state;
5 (2) Classify the requirements of the state government for
6 commodities and contractual services;
7 (3) Adopt as standards, the minimum number of qualities,
8 sizes and varieties of commodities and contractual services con-
9 sistent with the successful operation of state government;
10 (4) Prepare and adopt written specifications describing such
11 standards.
12 In the preparation and revision of standard specifications,
13 the committee shall seek the advice, assistance and cooperation
14 of the departments concerned, to ascertain their precise require-
15 ments. Each specification for commodities or contractual
16 services shall, so far as possible, satisfy the requirements of
17 the majority of the departments. After adoption, standard
18 specifications shall, until revised or rescinded, apply alike in
19 terms and effect to every future purchase or contract for the
20 commodities or contractual services described in the specifica-
21 tions; but the director, with the approval of the governor,
22 may, for good cause, exempt a department from the standard
23 specifications.

Sec. 15. The director shall annually report to the governor
2 concerning the conduct of his department, the purchases made
3 by him for state departments, and such other information as
the governor may request. He shall make such other reports as the governor may require.

Sec. 16. The director shall, in the purchases of commodities and printing, give preference, so far as may be practicable, and not conflicting with the provisions of this chapter, to commodities and printing produced in this state.

Sec. 17. The director shall advise with the heads of the various state institutions producing commodities, with the view to making these articles suitable for the needs of state departments.

Sec. 18. The director shall make available the facilities and services of his department to county, school, municipal and other local government bodies within this state. The actual expenses incurred thereby shall be paid by the local government body.

ARTICLE II

Section 1. A purchase of, and contract for commodities and contractual services, and a sale of personal property that has become obsolete and unusable, shall be based, wherever possible, on competitive bids.

Sec. 2. The director shall solicit sealed bids for an expenditure or sale that is estimated to exceed two thousand dollars. Bids shall be obtained by public notice inserted at least twice in a newspaper of statewide circulation, at least two weeks before the final date of submitting bids. The director may also solicit sealed bids by sending requests by mail to prospective suppliers and by posting notice on a bulletin board in his office.

Sec. 3. The director may make a purchase or sale of less than two thousand dollars in amount in the open market, but such purchase or sale shall, wherever possible, be based on at least three competitive bids.

Sec. 4. Bids shall be based on the standard specifications adopted by the committee in accordance with the provisions of section fourteen of article one of this chapter. All open market orders or contracts made by the director or by a state
5 department shall be awarded to the lowest responsible bidder, taking into consideration the qualities of the articles to be supplied, their conformity with specifications, their suitability to the requirements of the state government, and the delivery terms. Any or all bids may be rejected. If all bids received on a pending contract are for the same unit price or total amount, the director shall have authority to reject all bids, and to purchase the required commodities or contractual services in the open market, if the price paid in the open market does not exceed the bid prices.

Each bid, with the name of the bidder, shall be entered on a record, and each record, with the successful bid indicated thereon, shall, after the award of the order or contract, be open to public inspection.

Sec. 5. Contracts shall be signed by the director in the name of the state. They shall be approved as to form by the attorney general. A contract that requires more than six months for its fulfillment shall be filed with the state auditor.

Sec. 6. Except in emergency, an order for delivery on a contract or open market order for commodities or contractual services for a state department shall not be awarded until it has been certified to the director that the unencumbered balance in the appropriation concerned, in excess of all unpaid obligations, is sufficient to defray the cost of such order.

Sec. 7. The director may authorize, in writing, a state department to purchase in the open market, without filing requisition or estimate, specific commodities for immediate delivery to meet bona fide emergencies arising from unforeseen causes, including delays by contractors, delays in transportation, and unanticipated volume of work. A report of any such purchase, together with a record of the competitive bids upon which it was based, shall be submitted at once to the director by the head of the state department concerned, together with a full account of the circumstances of the emergency. Such report shall be entered on a record and shall be open to public inspection.

Sec. 8. For the purpose of permitting volume purchases of standard commodities there is hereby created a revolving fund
3 for the use of the department of purchases. The amount of
4 the fund shall be fixed by the governor upon the recommenda-
5 tion of the director, but shall not exceed thirty-five thousand
6 dollars. The fund shall be accumulated and administered as
7 follows:
8 (1) At the beginning of each fiscal year the director shall
9 allocate the amount of the revolving fund to the several depart-
10 ments purchasing through the department of purchases in sub-
11 stantial proportion to the relative volume of purchases of
12 standard commodities by each department during the previous
13 fiscal year;
14 (2) The allocation shall be submitted to the governor for
15 his approval and if approved by him, the auditor shall charge
16 against the current expense appropriation for each department,
17 the amount of the allocation for that department, and shall
18 transfer the amounts to the revolving fund;
19 (3) The revolving fund shall be used by the director of
20 purchases to maintain a stock of commodities in current use
21 in state departments;
22 (4) When a department requisitions commodities that have
23 been purchased from the revolving fund, the department shall
24 pay for such purchases by reimbursing the revolving fund in
25 the amount of the requisition;
26 (5) When the director determines that the purchases of a
27 department for the remainder of the fiscal year, of commodities
28 kept in stock will not exceed the amount that the department
29 has advanced to the revolving fund, he shall notify the auditor,
30 and requisitions from the department after that date shall be
31 credited against the department’s pro rata share of the re-
32 volving fund, so that, at the close of the fiscal year, the fund
33 shall be exhausted and each department shall have had the
34 full use of the moneys advanced by it to the revolving fund.
35 But if, at the end of a fiscal year, a balance remains to the
36 credit of a department, the balance shall revert to the appro-
37 priation for that department.

Sec. 9. If a department purchases or contracts for com-
2 modities or contractual services contrary to the provisions of
3 this chapter or the rules and regulations made thereunder,
4 such purchase or contract shall be void and of no effect. The
5 head of such department shall be personally liable for the
costs of such purchase or contract, and, if already paid for out of state funds, the amount thereof may be recovered in the name of the state in an appropriate action instituted therefor.

Sec. 10. If a department requests the purchase of a commodity bearing a particular trade name or brand, and if the commodity is covered by standard specifications adopted as provided by section fourteen of article one, the director may substitute a commodity bearing a different trade name or brand, if the substituted commodity conforms to the same specifications and can be obtained at a lower price.

ARTICLE III

Section 1. The director shall contract for public printing and for printing paper for the use of departments in the manner provided for contracts under article two of this chapter, and in accordance with the specifications adopted as provided by section fourteen of article one.

Sec. 2. The director shall supply the departments with printing in the same manner as provided for commodities and contractual services under article two. But the provisions of this section shall not be construed to prohibit the state from maintaining at educational, benevolent, penal or correctional institutions printing plants for the purpose of instruction or for printing for a state department.

Sec. 3. The provisions of section twelve of article one, relating to the rules and regulations of the director, shall apply so far as applicable, to this article.

Sec. 4. The director shall furnish such printing as may be ordered by either house of the legislature. The clerks of the house of delegates and of the senate shall appoint a supervisor of printing who shall have general oversight and direction of the printing of the two houses, under the direction and supervision of the clerks. One-half of his compensation shall be paid by the senate and one-half by the house of delegates at a rate of not more than fifteen dollars per day.

Sec. 5. The director shall have charge and supervision of
the printing and binding of the reports of the decisions of the
supreme court of appeals of the state, and shall contract for
their publication in the manner provided for contracts under
article two. The contract shall provide for the publication of
fifteen hundred copies of each volume of the reports ordered
by the court to be printed on paper selected by the reporter of
the court and bound in the best quality of calf or standard
buckram. The size of type and page shall be prescribed by
the reporter. A volume shall be published according to the
terms of the contract whenever ordered by the court. The
reporter shall secure the copyright of each volume for the
benefit of the state. The reports shall be styled "West Vir-
ginia Reports".

The printing and binding of the reports shall be done under
the direction of and in the manner prescribed by the reporter,
subject to the control of the court. The reporter shall prefix
the printed report of each case the dates when the same was
submitted and decided. Each volume shall, if practicable,
contain the reports of at least eighty cases decided by the
court, and shall contain not more than nine hundred pages,
exclusive of the index and table of cases reported and cited.
Proof sheets shall be furnished by the printer to the reporter
and to each judge of the court, and such corrections and
modifications shall be made by the printer as the reporter or
any of the judges shall direct. If the work is not done in the
manner required by law, the reporter shall not approve the
volume and the director shall not accept it.

Sec. 6. Subject to the approval of the governor, the director
shall have the authority to limit the number of copies of annual
or biennial reports, bulletins and other publications ordered to
be printed by each department.

Sec. 7. Beginning with the fiscal year one thousand nine
hundred thirty-six, printing, binding and stationery for all
departments shall be paid for from the current expense appro-
priations for such departments.

Sec. 8. All printing paper and stationery shall be delivered
to the director, who shall have charge of the same and issue
it as needed.

Sec. 9. The director shall be custodian of the West Virginia
2 reports after they are printed and bound and approved by the
3 reporter, and of the acts of the legislature after they are
4 printed and bound and approved by the clerk of the house
5 of delegates. As soon as practicable after any new volume of
6 such reports or acts has been delivered to the director, not
7 including reprints of former volumes, he shall deliver to the
8 state law librarian sufficient copies to enable him to make
9 distribution thereof in the manner prescribed by sections five
10 and six, article eight, chapter fifty-one of the code of one
11 thousand nine hundred thirty-one.
12 The director shall sell such copies of the reports and acts as
13 remain after the distribution provided by law has been made
14 at a price to be fixed by him with the approval of the governor;
15 but in no case shall such price be less than the actual cost to
16 the state of the publication thereof. The proceeds of such
17 sales shall immediately be paid into the treasury.

Sec. 10. Paper stock, if furnished by the state to the con-
2 tractor, shall be billed at the current market price for the
3 grade furnished in the quantity furnished. It shall be un-
4 lawful and discriminatory for the director to furnish the con-
5 tractor with paper for any state work, unless all bidders are
6 notified in advance of placing their bids at the prices at which
7 the state will supply such stock. It shall also be unlawful for
8 the director to furnish the contractor any paper for other than
9 the state work under contract.

ARTICLE IV

Section 1. The application of this chapter shall be subject
2 to the following conditions:
3 (1) The purchases of stock for state liquor stores shall be
4 made by the West Virginia Liquor Control Commission;
5 (2) Whenever the authority to acquire property other than
6 commodities and printing, by lease, agreement, condemnation
7 or otherwise, is now specifically vested by law in a department,
8 that authority shall not be affected by the provisions of this
9 chapter;
10 Whenever this authority is not now specifically vested in a
11 department, such authority shall be exercised by the director
12 of purchases;
13 (3) In the purchase and contracting for textbooks by the
Sec. 2. The director, an assistant or employee shall not be financially interested, or have any beneficial personal interest, directly or indirectly, in the purchase of any commodities, printing or contractual services, nor in any firm, partnership, corporation or association furnishing them. The director, an assistant or employee shall not accept or receive directly or indirectly from any person, firm or corporation to whom a contract may be awarded, by rebate, gift or otherwise, any money or other thing of value whatsoever, or any promise. A person who violates this section shall be guilty of a misdemeanor, and upon conviction, shall be confined in jail not less than three months nor more than one year, or fined not less than fifty nor more than one thousand dollars, or both, in the discretion of the court.

Sec. 3. A person who violates a provision of this chapter shall be guilty of a misdemeanor and upon conviction shall be confined in jail not less than ten days nor more than one year, or fined not less than ten nor more than five hundred dollars, or both, in the discretion of the court.

Sec. 4. Section fifteen, article one, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, relating to the powers of the board of control, is hereby repealed.

Sec. 5. Article two, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, is hereby repealed.

Sec. 6. Except as is otherwise specifically provided by this chapter, a provision of the code of West Virginia, one thousand nine hundred thirty-one, or of a statute that vests in a department the authority to purchase commodities, printing or contractual services, is hereby repealed.

Sec. 7. If any part of this chapter is held to be unconstitutional or for any other reason invalid, the remaining parts shall not be affected thereby.
CHAPTER 77

(House Bill No. 128—By Mr. Gentry)

AN ACT to amend and reenact section thirty-eight, chapter one, acts of the Legislature of West Virginia, first extraordinary session, one thousand nine hundred thirty-three, relating to the appropriations for Huntington State Hospital.

[Passed March 4, 1935; in effect from passage. Became a law without the approval of the Governor.]

Be it enacted by the Legislature of West Virginia:

That section thirty-eight, chapter one, acts of the Legislature of West Virginia, first extraordinary session, one thousand nine hundred thirty-three, relating to appropriations for Huntington State Hospital, be amended and reenacted so as to read as follows:

Huntington State Hospital

<table>
<thead>
<tr>
<th>Sec.</th>
<th>Amending appropriations for</th>
<th>FERA projects and for purchase of farm for use of hospital.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sec.</td>
<td>Huntington State hospital for</td>
<td>fiscal year ending June 30, 1935,</td>
</tr>
</tbody>
</table>

Sec. 38. Current general expenses

<table>
<thead>
<tr>
<th>1934</th>
<th>1935</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 Current General Expenses—PAYABLE</td>
<td>83,000.00</td>
</tr>
<tr>
<td>3 OUT OF COLLECTIONS</td>
<td>50,000.00</td>
</tr>
<tr>
<td>4 Repairs and improvements</td>
<td>6,000.00</td>
</tr>
</tbody>
</table>

5 (a) Provided, however, That in the event general collection at said hospital shall, during the fiscal year ending June thirty, one thousand nine hundred thirty-five, exceed the sum of fifty thousand dollars hereinbefore appropriated for current general expenses from collections, then there is appropriated, payable only out of such surplus collections, the sum of twenty thousand dollars for the purpose of making repairs and improvements in connection with FERA or other federal work relief projects at said hospital, and to reimburse the current general expense fund for expenditures already made on FERA improvements.

(b) There is appropriated, payable solely from the Execu-
CHAPTER 78

(Com. Sub. for House Bill No. 160-Originating in the House Committee on the Judiciary)

AN ACT to amend and reenact sections three, four, five, six, eight, nine, ten, thirteen, fourteen, fifteen, sixteen and eighteen, article four, and to add to said article a new section designated nine-(a); and to amend and reenact section one, article five, and to add to said article new sections to be known as sections two, three, four, five and six, all of chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, relating to workmen's compensation law and the administration thereof.

[Passed March 9, 1935; in effect ninety days from passage. Became a law without the approval of the Governor.]

ARTICLE IV.

Sec.

3. (a) Payment from workmen's compensation fund for medicine, hospital treatment, artificial limbs, etc., not to exceed eight hundred dollars in any case.

(b) Payment to injured employee or to person furnishing services.

(c) When employee entitled under employment contract to medical and other treatment, expenses paid from compensation fund.

4. Payment of funeral expenses from fund; to whom may be paid.

5. When compensation to be paid for first week of disability.


8. Commissioner may order claimant to appear for medical examination.

9. Vocational rehabilitation expense in any case not to exceed eight hundred dollars; must be authorized by commissioner.

9-(a) Credits to employer when partial permanent disability, by reason of second injury, becomes total permanent disability.

10. Amounts, and to whom paid, of benefits when injury causes death within six years and disability has been continuous.

13. When payment may or may not be made to widow or widower.

14. For what period before injury the average weekly wage is taken as basis to compute benefits.
Sec. 15. Forms for, and time of applications for compensation; time extended when employer failed to report injury; when consular officers may represent non-resident aliens.

Sec. 16. Jurisdiction of commissioner continuing; modification of former findings or orders; time limitations on further awards; application for further adjustment to be decided within ninety days after filing; appeal from final determination.

Sec. 18. Compensation payments made only to employees or dependents; paid in periodical installments; exempt from claims of creditors; counsel fees under contract, amount and protection of.

ARTICLE V.

Sec. 1. Commissioner to notify employer, employee, etc., of his action; time and place of hearing, if objection filed; decision of commissioner after hearing; appeal from, to board.

Sec. 2. Workmen’s compensation appeal board created; number, qualifications, appointment, terms, per diem, meetings and organization.

Sec. 3. Procedure for an appeal to the board; action on by board.

Sec. 4. Appeal from decision of board to supreme court of appeals; procedure for; bond of nonresident if review granted him; docketing and trial of appeal; attorney general to represent board; costs.

Sec. 5. Protection of claimant’s attorney in collection of fee.

Sec. 6. Article applies also to all cases arising under section nine, article two of this chapter.

Be it enacted by the Legislature of West Virginia:

That sections three, four, five, six, eight, nine, ten, thirteen, fourteen, fifteen, sixteen and eighteen, article four, be amended and reenacted, and that a new section designated section nine-(a) be added thereto; that section one, article five, be amended and reenacted, and new sections to be known as sections two, three, four, five and six, be added thereto, all of chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, to read as follows:

ARTICLE IV.

Sec. 3. The commissioner shall disburse and pay from the fund for such personal injuries to such employees as may be entitled thereto hereunder as follows:

(a) Such sums for medicine, medical, surgical, dental, hospital treatment, crutches, artificial limbs and such other and additional approved mechanical appliances as may be reasonably required, not however, in any case to exceed the sum of eight hundred dollars.

(b) Payment for such medicine, medical, surgical, dental, hospital treatment, crutches, artificial limbs and such other and additional approved mechanical appliances authorized under subdivision (a) hereof may be made to the injured employee, or to the person or persons who have furnished such service, or who have advanced payment for same, as the commissioner may deem proper.
15  (c) When an employee is entitled, under contract connected
16 with his employment or by reason of a hospital subscription
17 list, to medical, surgical, dental, or hospital treatment, for in-
18 juries sustained in the course of, resulting from, or arising out
19 of his employment compensable under the provisions of this
20 chapter, shall be paid for from the compensation fund, as
21 therein provided.

Sec. 4. In case the personal injury causes death, and dis-
2 ability is total and continuous from the date of such injury
3 to date of death, reasonable funeral expenses, not to exceed
4 one hundred and fifty dollars, shall be paid from the fund, pay-
5 ment to be made to the persons who have furnished the service
6 and supplies, or to the persons who have advanced payment for
7 same, as the commissioner may deem proper, in addition to such
8 award as may be made to the employee's dependents.

Sec. 5. If the period of disability does not last longer than
2 one week from the day the employee leaves work as the result
3 of the injury, no award shall be allowed, except the disburse-
4 ments provided for in the two next preceding sections, but if
5 the period of disability last longer than twenty-one days from
6 the day the employee leaves work as a result of the injury, an
7 award shall be allowed for the first week of such disability.

Sec. 6. Where compensation is due an employee under the
2 provisions of this chapter, such compensation shall be provided
3 in the following schedule:
4 (a) If the injury causes temporary total disability, the
5 employee shall receive during the continuance thereof sixty-
6 six and two-thirds per cent of his average weekly earnings, not
7 to exceed a maximum of sixteen dollars per week nor to be
8 less than a minimum of eight dollars per week;
9 (b) Subdivision (a) shall be limited as follows: Aggre-
10 gate award for a single injury causing temporary disability
11 shall be for a period not exceeding fifty-two weeks: Provided,
12 That in case an injured employee, by reason of having an
13 ununited fracture or having undergone a surgical operation
14 to correct a vicious union following a fracture, or for the
15 repair of an ununited fracture, or having suffered an injury
16 to the spine or pelvic bones which is of a temporary nature,
17 or for any ankylose joint, is disabled for a longer period than
fifty-two weeks, the period during which compensation shall be paid may be, but shall not exceed, seventy-eight weeks; (c) If the injury causes permanent disability, the percent-age of disability to total disability shall be determined and the award computed and allowed as follows:

For a two per cent disability, sixty-six and two-thirds per cent of the average weekly earnings for a period of eight weeks,

For a five per cent disability, sixty-six and two-thirds per cent of the average weekly earnings for a period of twenty weeks,

For a ten per cent disability, sixty-six and two-thirds per cent of the average weekly earnings for a period of forty weeks.

For a fifteen per cent disability, sixty-six and two-thirds per cent of the average weekly earnings for a period of sixty weeks,

For a twenty per cent disability, sixty-six and two-thirds per cent of the average weekly earnings for a period of eighty weeks,

For a thirty per cent disability, sixty-six and two-thirds per cent of the average weekly earnings for a period of one hundred and twenty weeks,

For a forty per cent disability, sixty-six and two-thirds per cent of the average weekly earnings for a period of one hundred and sixty weeks,

For a fifty per cent disability, sixty-six and two-thirds per cent of the average weekly earnings for a period of two hundred weeks,

For a sixty per cent disability, sixty-six and two-thirds per cent of the average weekly earnings for a period of two hundred and forty weeks,

For a seventy per cent disability, sixty-six and two-thirds per cent of the average weekly earnings for a period of two hundred and eighty weeks,

For an eighty per cent disability, sixty-six and two-thirds per cent of the average weekly earnings for a period of three hundred and twenty weeks,

For an eighty-five per cent disability, sixty-six and two-thirds per cent of the average weekly earnings for a period of three hundred and forty weeks,
For a disability from eighty-five to one hundred per cent, sixty-six and two-thirds per cent of the average weekly earnings during the remainder of life,

Awards for permanent disability of from two per cent to eighty-five per cent shall be computed on the basis of four weeks' compensation for each per cent of disability determined;

(d) If the injury results in the total loss by severance of any of the members named in this subdivision, the percentage of disability shall be determined in accordance with the following table, and award made as provided in subdivision (c) of this section:

- The loss of a great toe shall be considered a ten per cent disability,
- The loss of a great toe (one phalange) shall be considered a five per cent disability,
- The loss of other toes shall be considered a four per cent disability,
- The loss of other toes (one phalange) shall be considered a two per cent disability,
- The loss of all toes shall be considered a twenty-five per cent disability,
- The loss of forepart of foot shall be considered a thirty per cent disability,
- The loss of foot shall be considered a thirty-five per cent disability,
- The loss of leg shall be considered a forty-five per cent disability,
- The loss of thigh shall be considered a fifty per cent disability,
- The loss of thigh at hip joint shall be considered a sixty per cent disability,
- The loss of little or fourth finger (one phalange) shall be considered a three per cent disability,
- The loss of little or fourth finger shall be considered a five per cent disability,
- The loss of ring or third finger (one phalange) shall be considered a three per cent disability,
- The loss of ring or third finger shall be considered a five per cent disability,
98 The loss of middle or second finger (one phalange) shall be considered a three per cent disability,
99 The loss of middle or second finger shall be considered a seven per cent disability,
100 The loss of index or first finger (one phalange) shall be considered a six per cent disability,
101 The loss of index or first finger shall be considered a ten per cent disability,
102 The loss of thumb (one phalange) shall be considered a twelve per cent disability,
103 The loss of thumb shall be considered a twenty per cent disability,
104 The loss of thumb and index finger shall be considered a thirty-two per cent disability,
105 The loss of index and middle finger shall be considered a twenty per cent disability,
106 The loss of middle and ring finger shall be considered a fifteen per cent disability,
107 The loss of ring and little finger shall be considered a ten per cent disability,
108 The loss of thumb, index and middle finger shall be considered a forty per cent disability,
109 The loss of index, middle and ring finger shall be considered a thirty per cent disability,
110 The loss of middle, ring and little finger shall be considered a twenty per cent disability,
111 The loss of four fingers shall be considered a thirty-two per cent disability,
112 The loss of hand shall be considered a fifty per cent disability,
113 The loss of forearm shall be considered a fifty-five per cent disability,
114 The loss of an arm shall be considered a sixty per cent disability;
115 (e) The total loss of one eye, or the total and irrecoverable loss of the sight thereof shall be considered a thirty-three per cent disability, and the injured employee shall be entitled to compensation for a period of one hundred and thirty-two weeks,
116 For the partial loss of vision in one, or both eyes, the per-
137 centage of disability shall be determined by the commissioner, using as a basis the total loss of one eye;
139-149 (f) The award for permanent disabilities intermediate to those fixed by the foregoing schedule and permanent disability of from two per cent to eighty-five per cent shall be in the same proportion and shall be computed and allowed by the commissioner;
154 (g) The percentage of all permanent disabilities other than those enumerated in subdivisions (c), (d), (e), and (f) of this section shall be determined by the commissioner, using as a basis the loss of an arm at or above the elbow, and award made in accordance with the schedule in subdivision (c);
159 (h) Compensation payable under any subdivision of this section shall be limited as follows: Not to exceed a maximum of sixteen dollars per week, nor to be less than a minimum of eight dollars per week;
163 (i) Where an injury results in temporary total disability for which compensation is awarded under subdivision (a) of this section, and such injury is later determined permanent partial disability under subdivision (c), the amount of compensation so paid shall be considered as payment of the compensation payable for such injury in accordance with the schedule in subdivision (c). Compensation under this section shall be payable only to the injured employee, and the right thereto shall not vest in his or her estate; except that such compensation as may have accrued to the date of his or her death shall be paid to the dependents of such injured employee, if there be such dependents at the time of death;
175 (j) The following permanent disabilities shall be conclusively presumed to be total in character:
177 Loss of both eyes or the sight thereof,
178 Loss of both hands or the use thereof,
179 Loss of both feet or the use thereof,
180 Loss of one hand and one foot,
181 Any injury resulting in total disability.
182 In all other cases permanent disability shall be determined by the commissioner in accordance with the facts in the case, and award made in accordance with the schedule in subdivision (c). Provided, That the claimant shall have the right of
appeal from the decision of the commissioner as provided by article five of this chapter.

Sec. 8. The commissioner shall have authority, after due notice to the employer and claimant whenever in his opinion it shall be necessary, to order a claimant to appear for examination before a medical examiner selected by the commissioner.

Sec. 9. In cases where an employee has sustained a permanent disability and such fact has been determined by the commissioner, and the employee can be physically and vocationally rehabilitated and returned to remunerative employment by vocation training, by the use of crutches, artificial limbs, and/or other approved mechanical appliances, or by medicines, medical, surgical, dental or hospital treatment, the commissioner shall forthwith, after due notice to the employer, expend such an amount as may be necessary for the aforesaid purposes, not, however, in any case, to exceed the sum of eight hundred dollars. No payment, however, shall be made for such purposes as provided by this section unless authorized by the commissioner prior to the rendering of such treatment.

Sec. 10. In case the personal injury causes death within the period of six years and the disability is continuous from date of such injury until date of death, the benefits shall be in the amounts, and to the persons, as follows:
(a) If there be no dependents, the disbursements shall be limited to the expense provided for in sections three and four of this article;

(b) If the deceased employee be under the age of twenty-one years and unmarried and leave a wholly dependent father or mother, the father, or if there be no father, the mother shall be entitled to a payment of sixty-six and two-thirds per cent of the average weekly wages of the deceased employee, not to exceed a maximum of seven dollars per week, to continue for such period of six years after the date of death as the commissioner in the case may determine: Provided, however, That in case the deceased employee be under the age of sixteen years at such time of death, payment shall continue until such employee would have been twenty-one years of age: Provided, however, That payment of compensation awarded under this subdivision to a dependent father shall be continued and paid to his surviving widow, mother of the deceased employee, to continue as per original award to father. Compensation in either case shall cease upon the death of the dependent;

(c) If the deceased employee be under the age of twenty-one and unmarried and leave a partially dependent father or mother, the father, or if there be no father, the mother shall be entitled to a payment of sixty-six and two-thirds per cent of the average weekly wages, not to exceed a maximum of seven dollars per week, to continue until such employee would have been twenty-one years of age;

(d) If the deceased employee leaves a dependent widow or invalid widower, the payment shall be thirty dollars per month until death or remarriage of such widow or widower, and in addition five dollars per month for each child under sixteen years of age, to be paid until such child reaches such age, or, if an invalid child, to continue as long as such child remains an invalid: Provided, That if such widow or invalid widower shall remarry within two years from the date of the death of such employee, such widow or widower shall be paid at the time of remarriage twenty per cent of the amount that would be due for the period remaining between the date of such remarriage and the end of ten years from the date of death of said employee, and such widow or widower shall be advised in writing by the commissioner of his or her rights under this proviso at the time of making the original award: Provided further, That if upon
If the deceased employee be a widow or widower and leave a child or children under the age of sixteen years, the payment shall be ten dollars per month to each child until he or she reaches the age of sixteen years.

In all awards of compensation to children, the award shall be until they reach the age of sixteen years or their death prior thereto;

(e) If the deceased employee be an adult and there be no dependent widow, or widower, or child under sixteen years of age, but there are wholly dependent persons at the time of death, the payment shall be fifty per cent of the average monthly support actually received from the employee during the preceding twelve months, to continue for the remainder of the period between the date of death and six years after the date of injury, and shall not amount to more than a maximum of twenty dollars per month;

(f) If the deceased employee be an adult and there be no dependent widow, widower or child under sixteen years of age, or wholly dependent person, but there are partly dependent persons at the time of death, the payment shall be fifty per cent of the average monthly support actually received from the employee during the preceding twelve months, and to continue for such portion of the period of six years after the date of death as the commissioner in the case may determine, and not to amount to more than a maximum of twenty dollars per month.

Compensation under subdivisions (e) and (f) hereof shall cease upon the death of the dependent, and the rights thereto shall not vest in his or her estate;

(g) Dependent, as used in this chapter, shall mean a widow, invalid widower, child under sixteen years of age, invalid child, or a posthumous child, who, at the time of the injury causing death, is dependent in whole or part for his or her support upon the earnings of the employee; also, the following persons who are and continue to be residents of the United States or its
82 territorial possessions: step child under sixteen years of age; 
83 child under sixteen years of age legally adopted prior to the in-
84 jury causing death; father, mother, grandfather or grand-
85 mother, who, at the time of the injury causing death, is depend-
86 ent in whole or in part for his or her support upon the earn-
87 ings of the employee; an invalid brother or sister wholly de-
88 pendent for his or her support upon the earnings of the em-
89 ployee at the time of the injury causing death.

Sec. 13. Notwithstanding anything herein contained, no sum 
2 shall be paid to a widow or widower who shall have abandoned 
3 the employee before the injury causing death, but nothing here- 
4 in contained shall be construed to preclude a widow or widower 
5 from receiving compensation in accordance with section ten of 
6 this article, if such widow or widower has been abandoned 
7 within a period of two years by said employee for any reason 
8 except such reason as would have entitled the deceased employee 
9 to an annulment, a divorce from the bonds of matrimony or a 
10 divorce from bed and board as provided in article two, chapter 
11 forty-eight of this code.

Sec. 14. The average weekly wage earnings of the injured 
2 person at the time of the injury shall be taken as the basis 
3 upon which to compute the benefits. The time of injury with-
4 in the meaning of this section shall be sixty days, six months, 
5 or twelve months immediately preceding the date of the in-
6 jury, whichever is most favorable to the injured employee.

Sec. 15. To entitle any employee or dependent of a de-
2 ceased employee to compensation under this chapter, the appli-
3 cation therefor must be made on a form or forms prescribed 
4 by the commissioner and filed in the office of the commissioner 
5 within six months from and after the date of injury or death, 
6 as the case may be, and all proofs of dependency in fatal cases 
7 must be filed with the commissioner within nine months from 
8 and after the date of death: Provided, That in case an em-
9 ployer fails to report an injury within six months from and 
10 after the date such injury is received, the commissioner shall 
11 accept the application for compensation filed by the employee 
12 after the expiration of six months but within twelve months 
13 from the date of such injury: Provided further, That if such 
14 employee shows by competent evidence that the employer had
knowledge of such injury and failed to file a report thereof, then such employee shall have an additional year within which to file his application for compensation, and the commissioner shall receive such application so filed by such employee, and award compensation to an employee who would have been so entitled had the injury been reported and application filed within the prescribed period of six months. Nonresident aliens may be officially represented by the consular officers of the country of which such aliens may be citizens or subjects, but no compensation shall be paid to any nonresident aliens in fatal cases through the consular officers of the country of which such aliens may be citizens or subjects until such consular officer or a representative of such consular officer is appointed personal representative of the deceased party by proper authority in the county in which the deceased resided, or in which, the seat of government is located. Nothing herein contained shall be construed as giving such consular officer the right to make application for compensation in behalf of nonresident aliens.

Sec. 16. The power and jurisdiction of the commissioner over each case shall be continuing, and he may from time to time, after due notice to the employer, make such modifications or changes with respect to former findings or orders as may be justified: Provided, That no further award may be made in fatal cases except within two years after the death of the employee, or, in cases of non-fatal injuries, except within three years after payments for temporary disability shall have ceased and within one year after the commissioner shall have made the last payment in any permanent disability case.

In any case where an injured employee under this section shall make application in writing for a further adjustment of his claim, the commissioner shall finally pass upon and determine the merits of such claim within ninety days after the filing thereof, and after such final determination the claimant shall have the right of an appeal as provided by article five of this chapter.

Sec. 18. Except by this section provided compensation shall be paid only to such employees or their dependents, and shall be exempt from all claims of creditors and from any attachment, execution, or assignment other than compensation to counsel for legal services under a bona fide contract between such coun-
sel and the claimant not exceeding twenty-five per cent of the total amount of the award in favor of the claimant. Payments may be made in such periodical installments as may seem best to the commissioner in each case, not exceeding one month apart. In all cases where compensation is awarded or increased, the amount thereof shall be calculated and paid from the date of disability. The counsel representing the claimant under lawful contract may file with the commissioner a copy thereof and it shall be the duty of the commissioner to protect such attorney in the collection of the amount provided for therein from any award made by the commissioner in favor of the claimant, if the amount agreed be not in conflict with the provisions of this chapter.

ARTICLE V.

Section 1. The commissioner shall have full power and authority to hear and determine all questions within his jurisdiction, but upon the making or refusing to make any award, or upon the making or refusing to make any modification or change with respect to former findings or orders, as provided by section sixteen, article four, of this chapter, the commissioner shall give notice in writing to the employer, employee, claimant, or dependent, as the case may be, of his action, which action shall state the time allowed for an appeal to the board and such action shall be final unless the employer, employee, claimant, or dependent shall, within thirty days after receipt of such notice, object in writing to such finding. Upon receipt of such objection of the employer, employee, claimant, or dependent, the commissioner shall, within thirty days from the receipt of any objection to his action or finding as aforesaid, set a time and place for the hearing of evidence. Any such hearing may be by the commissioner or by his duly authorized representative at the county seat of the county wherein the employer resides, or at any other place which may be agreed upon by the interested parties, having due regard for the convenience of witnesses. Both the employer and claimant shall be notified of such hearing at least ten days in advance. The evidence taken at such hearing shall be transcribed and become a part of the record of the proceedings, together with other records thereof in the commissioner’s office. After such hearing the commissioner, within sixty days, shall render his decision affirming, reversing or modifying
his former action, which shall be final: Provided, however,

That the claimant or the employer may, within ninety days after
notice of the final action of the commissioner, apply to the board
herein created for a review of such decision.

Sec. 2. There is hereby created a board to be known as the
"Workmen's Compensation Appeal Board", which shall be re-
ferred to in this article as the "board", to be composed of three
members, none of whom shall be a contributor of the compen-
sation fund or in any way connected with a contributor thereto
and none of whom shall be a beneficiary of the compensation
fund or in any way connected with a beneficiary thereof. Two
members of such board shall be of opposite politics to the
third, and all three shall be citizens of this state who have re-
sided therein for a period of at least five years. All members
of said board shall be appointed by the governor for a term of six
years, except that the persons first appointed under this act
shall be appointed to serve, one for two, one for four and one
for six years. The governor is hereby vested with power to re-
move any member of the board according to section four, article
four, chapter six of this code. The members of such board
shall be paid for their services a compensation of twenty dol-
ars per day for each day they are in session, which shall be the
total compensation, including any and all expenses, of such
member or members. The governor shall designate one of the
members of said board as chairman thereof, and said board
shall meet at the capital or at such other places throughout the
state as it may determine in regular sessions to be fixed by the
board. No more than six sessions shall be held during any one
year and no session shall continue more than twenty consecu-
tive calendar days. All clerical services required by the board
shall be paid by the compensation commissioner from any funds
at his disposal.

Sec. 3. Any employer, employee, claimant, or dependent who
shall feel aggrieved at any action of the commissioner under
this chapter shall have the right to appeal to the board cre-
at ed in section two of this article for a review of such action.
The aggrieved party shall file a written notice of appeal with
the compensation commissioner, directed to said board, within
a period of ninety days from the date of the action complained
of, and the commissioner shall notify the other party immedi-
9 ately upon the filing of said notice of appeal. The commis-
10 sioner shall also notify the members of said board and shall
11 make up a transcript of the record of the proceedings before
12 him, and the board shall review the action of the commissioner
13 complained of within thirty days after the filing of such pe-
14 tition or at the next meeting of said board after the expiration
15 of thirty days therefrom. At any such hearing the board shall
16 consider the record before it as furnished by the commissioner
17 and upon motion of either party or upon its own motion said
18 board may remand said cause to the commissioner for the
19 taking of such new, additional or further evidence as in the
20 opinion of the board may be necessary to arrive at a fair and
21 just decision; and thereupon the board shall sustain the finding
22 of the commissioner or enter such order or make such award
23 as the commissioner should have made and shall thereupon
24 certify the same to the commissioner, who shall proceed in ac-
25 cordance therewith. All evidence taken before the board shall
26 be transcribed and become a part of the record in the case, and
27 either party before the board may be represented by counsel.
28 All appeals from the action of the commissioner shall be de-
29 cided by said board within sixty days after the date of the
30 filing thereof.

Sec. 4. From any decision of the board an appeal may be
2 prosecuted by either party to the supreme court of appeals.
3 After any hearing before the board the applicant desiring to ap-
4 peal to the supreme court of appeals shall file a petition before
5 said court against the board and other party (claimant or em-
6 ployer, as the case may be), within a period of ninety days,
7 and the board and other party shall be notified of the foregoing
8 by the clerk of said court of the filing of such petition and re-
9 view. And the board shall, within ten days after receipt of
10 such notice, file with the clerk of said court the record of the
11 proceedings had before it, including a transcript of the evi-
12 dence. The court, or any judge thereof, may thereupon decide
13 whether a review shall be granted or not, and if such review
14 be granted to a nonresident of this state he shall execute and
15 file before the clerk of said court, before such proceedings for
16 review becomes effective, a bond with security to be approved
17 by said clerk conditioned to pay all costs which may be
18 awarded against him on such review. If a review be granted,
19 the board and the opposing party (claimant or employer), or
20 their attorneys, shall be notified of the fact by mail, by the
21 clerk of said court. If a review be granted as aforesaid, the
22 case shall be heard by said court in the same manner as other
23 cases before it, save and except that neither the record nor
24 briefs need be printed and that every such review granted prior
25 to thirty days before the beginning of any term shall be placed
26 upon the docket for such term. The attorney general, without
27 extra compensation, shall represent the board on such review.
28 The supreme court on such review shall determine the matter
29 and certify its decision to the board and the commissioner. The
30 cost of such proceedings, including a reasonable attorney’s fee,
31 not exceeding one hundred dollars, to the claimant’s attorney,
32 shall be fixed by the court and taxed against the employer if the
33 latter be unsuccessful, and if the claimant be unsuccessful, such
34 costs, not including attorney’s fees, shall be taxed against the
35 commissioner, payable out of any funds available in his hands,
36 or shall be taxed against the claimant, in the discretion of the
37 court.

Sec. 5. In the event that an attorney shall appear for any
2 claimant in any proceedings had before the commissioner, the
3 board, or the supreme court of appeals, such attorney may file
4 with the commissioner a copy of his contract of employment
5 with such claimant, and it shall be the duty of the commis-
6 sioner to protect such attorney in the collection of his fees
7 from any award made by the commissioner, the board or the
8 supreme court of appeals under rules and regulations to be fixed
9 by said commissioner, having due regard to the rights of both
10 claimant and attorney.

Sec. 6. The provisions of this article shall also apply to all
2 cases arising under section nine, article two, of this chapter.

CHAPTER 79

(House Bill No. 331—By Mr. Wysong, by request)

AN ACT to amend chapter twenty-three of the code of West
Virginia, one thousand nine hundred thirty-one, relating to
workmen’s compensation by the addition of a new article
thereof designated as article six, consisting of sections one to
eighteen, inclusive; providing for compensation for disability, disablement or death resulting from silicosis, and defining silicosis.

[Passed March 8, 1933; in effect from passage. Became a law without the approval of the Governor.]

Be it enacted by the Legislature of West Virginia:

That chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, be, and the same is hereby,
amended by the addition of a new article thereto designated as article six, consisting of sections one to eighteen, inclusive, so as to read as follows:

ARTICLE VI.

Section 1. The provisions of this article shall be administered by the state compensation commissioner, and the provisions of article one of this chapter are applicable hereto. All charges and expenses peculiar to the administration of this article shall in the proportionate amount be chargeable to and paid out of the workmen's compensation silicosis fund.

Sec. 2. (a) In order that compensation for the disease of silicosis as herein defined might be paid to all persons employed within this state in interstate or intrastate work as defined by section ten, article two of this chapter, and in the service of those employers legally doing or authorized to do business in this state and who elect to qualify under and subject themselves to the provisions of this article, the commissioner shall make the necessary separate classifications of the various industries for those employers who so elect, and the commissioner shall make such classifications and fix the rate of premiums in the manner provided by section four of article two of this chapter. Those employers who do not elect to come within the provisions of this article shall not be subject to the provisions of article two of this chapter except as otherwise specifically provided in this article. The assessments and premiums paid by such employers so electing shall be kept by the commissioner in a separate fund to be known and designated as "workmen's compensation silicosis fund."

(b) For the purpose of creating the workmen's compensation silicosis fund, each employer electing to become subject thereto under the provisions of this article shall make his election and pay the premiums in the manner provided by section five of article two of this chapter.

(c) Every employer electing to come under the provisions of this article shall give the information, and make the necessary reports, to the commissioner as provided by sections two and three of article two of this chapter.

(d) Except as otherwise herein specifically provided, all the provisions of this chapter relating to premiums and assessments
30 paid into, and disbursements for benefits, compensation, medi-
31 cal and hospital treatment, funeral expenses, and other charges
32 from, the fund designated as "workmen's compensation fund,''
33 and the limitations of the amounts to be thereby expended, shall
34 likewise apply to the fund designated as "workmen's compensa-
35 tion silicosis fund;' and the term "workmen's compen-
36 sation fund' as used in this chapter, whenever applicable,
37 shall be construed to mean and include the term "workmen's
38 compensation silicosis fund.''

Sec. 3. Each employer electing to pay the premiums pro-
2 vided by this article into the workmen's compensation silicosis
3 fund, or electing to make direct payments of compensation as
4 provided by section nine of article two of this chapter, shall
5 post, and keep posted, in conspicuous places about his place
6 or places of business, typewritten or printed notices in the
7 form prescribed by the commissioner, stating the fact that such
8 employer has made such election, and the same when so posted
9 shall constitute sufficient notice to all his employees, and to the
10 parents of any minor employees, of the fact that the employer
11 has made such election; and any employer who makes such
12 election shall not thereafter be liable to respond in damages at
13 common law or by statute for the disease or death of any
14 employee because of silicosis during the period in which such
15 employer shall not be in default in the payment of such premi-
16 ums and shall have complied fully with all other provisions of
17 this article.

Sec. 4. (a) The commissioner shall establish a fund, to be
2 known as "workmen's compensation silicosis fund,' from the
3 premiums and other funds paid thereto by employers who
4 have elected to pay and have paid the premiums applicable to
5 such employers under the provisions of this article relating to
6 silicosis, for the benefit of employees of employers who have
7 paid the premiums applicable to such employers, and have
8 otherwise complied fully with the provisions of section five,
9 article two of this chapter, and for the benefit of the depend-
10 ents of such employees, and for the payment of the adminis-
11 tration expenses of this article, and shall adopt rules and regu-
12 lations in respect to the collection, maintenance and disburse-
13 ment of such funds not in conflict with the provisions of this
14 chapter.
(b) Ten per cent of all that shall hereafter be paid into the workmen’s compensation silicosis fund shall be set aside for the creation of a sufficient surplus fund, within the discretion of the commissioner, not exceeding one hundred thousand dollars, after which time the sum of five per cent of all the money paid into such fund shall be credited to such surplus fund until such time as in the judgment of the commissioner such surplus fund shall be sufficiently large to cover the catastrophe hazard and all losses not otherwise specifically provided for in this article.

(c) Employers electing as provided by this chapter to individually and directly compensate their employees having silicosis, or their dependents, shall do so in the manner prescribed by the compensation commissioner, and shall make all reports and execute all blanks, forms and papers as directed by said commissioner and as herein provided in this chapter.

(d) The custody, investment and disbursement of the workmen’s compensation silicosis fund shall be in the manner and form prescribed by section two, article three, of this chapter, and any and all amendments thereto.

Sec. 5. The commissioner shall disburse the workmen’s compensation silicosis fund to the employees of such employers as are not delinquent in the payment of premiums for the last month in which said employees have been exposed to silicon dioxide dust in harmful quantities and who have otherwise complied fully with the provisions of this article, and which employees shall have contracted silicosis in this state in the course of and resulting from their employment, or to the dependents, if any, of such employees, in case death has ensued, according to the provisions hereinafter made.

Where an employee suffers from the disease of silicosis as hereinafter defined, or dies as the result of such disease, and the disease is due to the nature of an occupation or process in which he was employed at any time within one year previous to such disease, and claim therefor has been made within one year after the last exposure of said employee to silicon dioxide dust in harmful quantities, the employee, or in case of death his dependents, shall be entitled to compensation for silicosis as provided herein: Provided, however, That compensation
shall not be payable for the disease of silicosis, or death resulting therefrom, unless the employee has been exposed to the inhalation of silicon dioxide dust in harmful quantities over a period of not less than two years in the same employment in this state.

For the purpose of this article, silicosis is defined as an insidious fibrotic disease of the lung or lungs due to the prolonged inhalation and accumulation sustained in the course of and resulting from his employment, of minute particles of dust containing silicon dioxide (SiO₂) over such a period of time and in such amounts as result in the substitution of fibrous tissue for normal lung tissues; and the term "silicosis" as used herein shall also include silicosis accompanied by tuberculosis of the lungs evidenced by the presence of tubercle bacillus in the sputum.

Sec. 6. Notwithstanding anything hereinbefore or hereinafter contained, no employee or dependent of any employee shall be entitled to receive any sum from the workmen's compensation silicosis 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 contracting the disease of silicosis caused by wilful misconduct, wilful self-exposure as defined herein, disobedience to such rules and regulations as may be adopted by the employer and approved by the commissioner, and which rules and regulations have been and are kept posted in conspicuous places in and about the premises, or the failure of such employee to use or make use of any protective or safety appliance or appliances prescribed by the commissioner and furnished by the employer for the use of or applicable to such employee; nor shall any employee or dependent thereof maintain any action for damages on account of disability arising from the disease of silicosis contracted through wilful self-exposure as defined herein. For the purposes of this article and to prevent employees from contracting silicosis, the commissioner may require all employers to adopt rules which have been approved by him for the protection and safety of his employees, and keep the same posted in conspicuous places in and about the premises; and the commissioner shall require employers to install, use or adopt
such protective or safety appliance or appliances as in the commissioner's opinion are necessary for the protection of the employees. If silicosis or death therefrom result to any employee from the deliberate intention of his employer to produce silicosis or death therefrom, the employee, the widow, widower, child or dependent of the employee, shall have the privilege to take under this article, 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. As used in this section, the term, "deliberate intention," shall mean conscious and wilful determination.

As used in this section, the term "wilful self-exposure," causing the contraction of the disease of silicosis, shall include: (1) Failure or omission on the part of an employee to observe such rules and regulations as may be adopted by the employer and approved by the commissioner and which rules and regulations have been and are kept posted in a conspicuous place in and about the premises; (2) Failure or omission on the part of an employee truthfully to state to the best of his knowledge in answer to inquiry made by the employer the place, duration, and nature of previous employment; (3) Failure or omission on the part of an employee truthfully to answer to the best of his knowledge in answer to an inquiry made by the employer full information about the previous status of his health, habits, and medical attention that he or his blood relatives may have heretofore received.

Sec. 7. An employee shall, for the purposes hereof, be deemed to have silicosis: (1) In the first stage when it is found by the commissioner that the earliest detectable specific signs of silicosis are present, whether or not capacity for work is or has been impaired by such silicosis; (2) In the second stage when it is found by the commissioner that definite and specific physical signs of silicosis are present, and that capacity for work is or has been impaired by that disease; (3) In the third stage when it is found by the commissioner that the employee has silicosis accompanied by tuberculosis of the lungs evidenced by the presence of tubercle bacillus in the sputum. Where compensation for silicosis is due an employee under the provisions hereof, such compensation shall be provided in
the following schedule: (a) If the employee is suffering from silicosis in the first stage, the employee shall receive the sum of five hundred dollars as compensation in full for said disease that he has sustained as a result of and in the course of his employment, said sum to be payable as a lump sum or in periodic installments in the discretion of the commissioner, and shall be a final payment and operate as a full release by the employee for compensation and for any claim against the employer that the employee may thereafter have for silicosis, and irrespective of whether the employee thereafter continues in the same employment, he shall not have the right to receive any or further compensation or make any claim because of silicosis either to the compensation commissioner or against his employer, anything to the contrary in this chapter notwithstanding; (b) If the employee is suffering from silicosis in the second stage, the employee shall receive the sum of one thousand dollars as compensation in full for said disease that he has sustained as a result of and in the course of his employment, said sum to be payable as a lump sum or in periodic installments in the discretion of the commissioner, and shall be a final payment and operate as a full release by the employee for compensation and for any claim against the employer that the employee may thereafter have for silicosis, and irrespective of whether the employee thereafter continues in the same employment, he shall not have the right to receive any or further compensation or make any claim because of silicosis either to the commissioner or against his employer, anything to the contrary in this chapter notwithstanding; (c) If the employee is suffering from silicosis in the third stage, the compensation shall be paid therefor in the same manner and at the same rate as is provided for permanent disability under the provisions of subdivisions (c), (f) and (h) of section six, article four, of this chapter; (d) If the employee dies from silicosis within one year from the date of the last exposure of the employee to silicon dioxide dust in harmful quantities, the benefits shall be in the amounts and to the persons provided for in section one, article four of this chapter; as to such benefits sections eleven to fourteen, inclusive, of article four of this chapter shall apply.

Sec. 8. The commissioner shall have power, after due notice
2 to the employer, and whenever in his opinion it shall be neces-
3 sary, to order a claimant to appear for examination before the
4 medical board hereinafter provided. Claimant shall be en-
5 titled to reasonable traveling and other expenses necessarily
6 incurred by him in obeying such order, which shall be paid out
7 of the workmen's compensation silicosis fund within the amount
8 allowed for medical, surgical and hospital treatment.

Sec. 9. (a) To entitle any employee to compensation for
2 silicosis under the provisions hereof, the application therefor
3 must be made on a form or forms prescribed by the commis-
4 sioner and filed in the office of the commissioner within one
5 year from and after the date of the last injurious exposure to
6 silicon dioxide dust, or in case of death, the application shall
7 be filed as aforesaid by the dependent of such employee within
8 one year from and after the date of the last injurious exposure
9 to silicon dioxide dust.
10 (b) Nonresident aliens may be officially represented by the
11 consular officers of the country of which such aliens may be
12 citizens or subjects: Provided, That nothing herein contained
13 shall be construed as giving such consular officer the right to
14 make application for compensation in behalf of the nonresident
15 aliens.

Sec. 10. Unless the employer during the continuance of
2 employment shall have actual knowledge that the employee has
3 contracted silicosis, or unless the employee or some one on his
4 behalf or his dependents shall give written notice of a claim
5 that such employee has contracted silicosis, within a period
6 of one year from the date when said employee shall have ceased
7 to be a subject to injurious exposure to silicon dioxide dust in
8 employment with said employer, no compensation shall be
9 allowed and paid on account of death or disability of such em-
10 ployee by reason of silicosis.

Sec. 11. On the hearing of a claim for compensation for
2 silicosis, the commissioner shall hear, determine and file findings
3 covering, but not limited thereto, the following nonmedical
4 questions:
5 (a) Whether the employee was in fact, within one year prior
6 to the filing of his claim, in the employ of the employer, and,
7 if so, the duration of such employment and whether or not
8 such employment was subject to the provisions hereof:
WORKMEN’S COMPENSATION FOR SILICOSIS  [Ch. 79

Sec. 12. There shall be a medical board, known as the "silicosis medical board," which shall consist of three licensed physicians, who shall be appointed by the commissioner. No person shall be appointed as a member of said board, or as a consultant thereto, who has not by special study or experience, or both, acquired special knowledge of pulmonary diseases. All members of the silicosis medical board shall be physicians of good professional standing, admitted to practice medicine and surgery in this state, and two of said physicians shall be roentgenologists. One of the board shall be designated annually as chairman by the commissioner. The term of office of each member of such board shall be six years, except that the terms of the members first appointed shall be two, four and six years, respectively. The function of such board shall be to determine all medical questions to cases of compensation for silicosis under the direction and supervision of the commissioner. The commissioner, from time to time, shall fix the per diem salary, computed on the basis of actual time devoted to the discharge of their duties, to be paid each member of such board, and they shall also be entitled to reasonable and necessary traveling and other expenses incurred while actually engaged in the performance of their duties.

Sec. 13. The silicosis medical board, upon reference to it
2 by the commissioner of a case of silicosis, shall notify the em-
3 ployee, or in case he is dead the claimant, and the employer,
4 to appear before such board at a time and place stated in the
5 notice. If the employee be living; he shall appear before the
6 board at the time and place specified and submit to such ex-
7aminations, including clinical and X-ray examinations, as the
8 board may require. If a physician licensed to practice medi-
9cine in the state shall make affidavit that the employee is phys-
10ically unable to appear at the time and place designated by
11 the board, such board shall, on notice to the proper parties,
12 change the place and time of examination to such other place
13 and time as may reasonably facilitate the hearing or exam-
14ination of the employee. The employee, or in case he is dead,
15 the claimant, and the employer shall also produce as evidence
16 to the board all reports of medical and X-ray examinations
17 which may be in their respective possession or control, showing
18 the past or present condition of the employee. If the employee
19 be dead, the notice of the board shall further require that the
20 claimant produce necessary consents and permits so that an
21 autopsy may be performed, if the board shall so direct. When
22 in the opinion of the board an autopsy is deemed necessary to
23 accurately and scientifically ascertain and determine the cause
24 of death, such autopsy examination shall be ordered by the
25 board, which shall designate a duly licensed physician, a path-
26ologist, or such other specialists as may be deemed necessary
27 by the board, to make such examination and tests to determine
28 the cause of death and certify his or their written findings,
29 in triplicate, with said board, and which findings shall be public
30 records. In the event that a claimant for compensation for
31 such death refuses to consent and permit such autopsy to be
32 made, all rights for compensation shall thereupon be forfeited.
33 The employee, or if he be dead, the claimant, and the em-
34ployer, shall be entitled to be present at all examinations con-
35ducted by the board, and to be represented by attorneys and
36 physicians.

Sec. 14. The silicosis medical board, as soon as practicable,
2 after it has completed its investigation, shall make its written
3 report, in triplicate, to the commissioner of its findings and
4 conclusions on every medical question in controversy, and the
5 commissioner shall send one copy thereof to the employee or
6 claimant and one copy to the employer, and the said board shall
also return to and file with the commissioner all the evidence, as well as all statements under oath, if any, of the persons who appeared before it on behalf of the employee or claimant, or employer, and also all medical reports and X-ray examinations produced by or on behalf of the employee or claimant, or employer.

The findings and conclusions of the said board shall set forth, among other things, the following:

(a) Whether or not the claimant or the deceased employee has contracted silicosis, and, if so, the stage thereof;

(b) If the claimant or the deceased employee has contracted such disease, whether or not the exposure in the employment, with said employer, was sufficient to have caused silicosis or to have injuriously aggravated an existing silicosis;

(c) What, if any, physician appeared before the board on behalf of the claimant, and what, if any, X-rays were produced by or on behalf of the claimant, and what, if any, physician appeared before the board on behalf of the employer, and what, if any, X-rays were produced by or on behalf of the employer.

If either party object to the whole or any part of such findings and conclusions of the board, he shall file with the commissioner, within ten days of the mailing of said copy to him unless for good cause shown the commissioner extends said time, his objections, in writing, thereto, specifying the particular statements of the board's findings and conclusions to which he objects. After the time has expired for the filing of objections to the findings and conclusions of the board, the commissioner shall proceed to act as provided in this chapter.

If objection has been filed to the findings and conclusions of the board, notice thereof shall be given to the board, and the members thereof joining in such findings and conclusions shall appear at the time fixed by the commissioner for the hearing to submit to examination and cross-examination in respect to such findings and conclusions. At such hearing evidence to controvert the findings and conclusions of the board shall be limited to examination and cross-examination of the members of the board appearing,
and in addition thereto only the testimony of such physician
or physicians as may have appeared before the board on behalf
of the claimant or the employer, or each, and participated in
all of the examinations conducted by such board: Provided,
That if such physician shall have died or is physically unable
to attend, after appearing before said board, the party whom
he represented may select any other duly licensed physician of
West Virginia and may introduce his testimony in addition to
that of the one who has so died or is so physically unable to
attend.

Sec. 15. The provisions hereof shall not apply to cases of
silicosis in which the last injurious exposure to silicon dioxide
dust in harmful quantities occurred before the provisions
hereof shall have taken effect: Provided, That any employer
hereunder may elect to provide and pay compensation here-
der for silicosis in which the last injurious exposure to the
hazards of such disease occurred before the provisions hereof
shall have taken effect by filing notice of such election with the
commissioner and posting copies of said notice in conspicuous
places on his premises, and every employee who is employed
at the time of posting such notice shall be deemed to have ac-
cepted all the provisions hereof and shall be bound thereby
unless within thirty days after the filing and posting of such
notice such employee shall file a notice to the contrary with the
commissioner, whose duty it shall be to immediately notify the
employer: Provided further, That any employer and any for-
mer employee thereof prior to the date the provisions hereof
take effect, when such former employee claims to have con-
tracted silicosis, may by an agreement in writing elect to accept
the provisions hereof, whereupon such former employee shall
file his application with the commissioner, and the commissioner
is hereby authorized to act in such cases, in which event all
charges for administration and other expenses shall be charged
to the particular employer, and if the commissioner finds that
compensation should be paid, he shall determine the total
amount and all administration charges thereof and assess same
against the particular employer, who shall at once make pay-
ment of the full amount thereof into the workmen's compen-
sation silicosis fund, and such amount so awarded shall be
disbursed by the commissioner as in any other case arising under
the provisions hereof.
Sec. 16. Compensation shall be paid only to or for the use of such employees, or their dependents, as herein provided, and shall be exempt from all claims of creditors and from any attachment, execution or assignment. Payments shall be made in such periodical installments as may seem best to the commissioner in each case.

Sec. 17. Any person who shall knowingly and with fraudulent intent secure or attempt to secure larger compensation, or compensation for a longer term than he is entitled to, from the workmen's compensation silicosis fund, or knowingly and with like intent secure or attempt to secure compensation from such fund when he is not entitled thereto, or shall knowingly and with like intent aid or abet anyone in the commission of the offenses herein set forth, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not exceeding five hundred dollars or imprisoned not exceeding twelve months, or both, in the discretion of the court, and if the person so convicted is receiving compensation from such fund, he shall from and after such conviction cease to receive such compensation.

Sec. 18. The provisions of section one, article five of this chapter, providing for the finality of the commissioner's rulings and the review by the supreme court of appeals, are applicable to the provisions of this article. All acts and parts of acts in conflict with this act, or any part thereof, are hereby repealed. The various provisions of this act shall be construed as separable and several, and should any of the provisions, sentences, clauses or parts thereof be construed or held unconstitutional, or for any other reason invalid, the remaining provisions of this act shall not be thereby affected.

CHAPTER 80
(House Bill No. 476—By Mr. Thomas)

AN ACT to amend and reenact sections ninety-one and ninety-two, chapter one, acts of the Legislature of West Virginia, first extraordinary session, one thousand nine hundred thirty-three,
relating to the appropriations from the state road commission fund to the state road commission.

[Passed March 9, 1935; in effect from passage. Became a law without the approval of the Governor.]

Be it enacted by the Legislature of West Virginia:

That sections ninety-one and ninety-two, chapter one, acts of the Legislature of West Virginia, first extraordinary session, one thousand nine hundred thirty-three, be amended and reenacted to read as follows:

**STATE ROAD COMMISSION**

*Administrative Expense*

<table>
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<th>Sec. 91. Salary of the Commissioner</th>
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| To pay the honorarium per diem of four members of the State Road Commission | 1,200.00 | 1,200.00 |
| Salaries of engineers, clerks, stenographers, property accounting, recording and other assistants | 100,000.00 | 120,000.00 |
|  Traveling expenses | 16,000.00 | 16,000.00 |
|  Office rent, including heat, light, water and janitor service, including automobile bureau | 10,000.00 | 10,000.00 |
|  Current general expenses, including automobile bureau | 50,000.00 | 65,000.00 |
|  Federal Aid Supervision | 3,000.00 | 3,000.00 |
|  For operation of toll bridges, clerk hire, office and traveling expenses | 3,500.00 | 4,500.00 |
|  Furniture and fixtures | 5,000.00 | 6,500.00 |
|  To pay salaries of county road supervisors and assistant road supervisors | 175,000.00 | 126,000.00 |
CHAPTER 81

(House Bill No. 532—By Mr. Davis)

AN ACT to amend and reenact section five, article nine, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, relating to the board of the school fund.

[Passed March 9, 1935; in effect from passage. Became a law without the approval of the Governor.]

Sec. 5. Sources of the school fund; board of the school fund to manage fund; authorized investments; organisation of board; state treasurer custodian of investments; records; board may acquire, hold and sell real estate for designated purposes; board to determine time and manner of sales.

Be it enacted by the Legislature of West Virginia:

That section five, article nine, chapter eighteen of the code of...
Section 5. All such sums as have accrued to this state from the several sources enumerated in section four, article twelve of the constitution, not in excess of one million dollars, shall be set apart as a separate fund to be called "the school fund," and the governor, state superintendent of free schools, auditor and treasurer shall be a corporation under the name of "The Board of the School Fund," and shall have the management, control and investment of said fund, as provided by section four, article twelve of the constitution. Such fund shall be invested in the interest-bearing securities of the United States, or securities, the payment of which as to both principal and interest, has been guaranteed by the United States, or of this state, or of any county, city, town or village, or school district of this state, or, if such interest-bearing securities cannot be obtained, then such fund shall be invested in such other solvent interest-bearing securities as shall be approved by such board. The governor shall be president of the board, and in his absence the board shall choose one of their number to preside temporarily in his place. The auditor shall be secretary of the board. The state treasurer shall be custodian of all investments made by such board. A record shall be kept of all the proceedings and be signed by the president and secretary, and a copy thereof, certified by the secretary of the board, shall be evidence in all cases in which the original would be. A majority of the board shall constitute a quorum for the transaction of business.

The board may acquire, own, hold, use, receive rents and issues from, dispose of and convey, real estate, subject to the following limitations, and for the following purposes:

(a) Such as shall have been mortgaged to it, or conveyed to trustees, as security for debts in its favor;

(b) Such as shall be conveyed to it in satisfaction of debts, or in partial payment of debts, previously contracted;

(c) Such as it has heretofore purchased, or shall hereafter purchase, at sales under judgments, decrees, trust deeds or mortgages in its favor, or shall purchase at private sale, to secure and effectuate the payment of debts due to it.

Any real estate acquired by the board under clauses (b) and (c) shall be disposed of by the board at the earliest practicable
362 Refund of Gasoline Tax [Ch. 82

40 date, but the board shall have a reasonable discretion in the 
41 matter of the time to dispose of such property in order to pre-
42 vent unnecessary losses; and such property, in the discretion 
43 of the board, may be sold either at public sale or at private 
44 sale and for cash or on such other terms as the board may 
45 deem expedient.

CHAPTER 82

(Senate Bill No. 119—By Mr. Paull, by request)

AN ACT to amend and reenact section twenty, article fourteen, 
chapter eleven of the code of West Virginia, one thousand 
nine hundred thirty-one, relating to taxation of gasoline.

[Passed March 9, 1935; in effect ninety days from passage. Became a law without 
the approval of the Governor.]

Sec. Sec.
20. Refund of tax on gasoline used 
for certain designated pur­
poses: how refund obtained; 
time limit on application for; 
no refund when gasoline re-
used to propel motor vehicle; 
tax not refunded, kept in sep-
arate account, when gasoline 
used for navigation.

Be it enacted by the Legislature of West Virginia:

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

Section 20. Any person who shall buy, in quantities of twenty-
2 five gallons or more at any one time, any gasoline as defined in 
3 this article, for the purpose of, and the same is actually used 
4 for, operating and propelling boats, aeroplanes, tractors used 
5 for agricultural or other purposes, road rollers, steam shovels, 
6 compressors, pumps, stationary gas engines, threshing machines 
7 or other gasoline operated machinery, except motor vehicles, 
8 or who shall purchase and use such gasoline for cleaning and 
9 dyeing or for manufacturing or other commercial uses, except 
10 in motor vehicles, which gasoline shall have been previously 
11 included in the measure by which the excise tax imposed by 
12 this article is determined, shall be reimbursed and repaid a sum 
13 equal to the amount of such tax, upon presenting to the tax 
14 commissioner an affidavit accompanied by a ticket or invoice
15 from the distributor or retail dealer, showing such purchase,
16 which affidavit shall set forth the total amount of such gasoline
17 purchased and used by such consumer, other than in motor
18 vehicles operated in this state, and how used; and the tax
19 commissioner upon the receipt of such affidavit and ticket or
20 invoice shall cause to be refunded to such consumer such tax
21 paid on gasoline purchased and used other than for motor
22 vehicles as aforesaid: Provided, That the tax commissioner shall
23 cause refund to be made under authority of this section only
24 when application for refund, as herein provided, is filed with
25 the tax commissioner, upon forms prepared and furnished by
26 the tax commissioner, within sixty days from the date of pur-
27 chase or delivery of the gasoline: Provided further, That no
28 refund shall be allowed under authority of this section on
29 gasoline purchased and used for any purpose when the same
30 shall be reused for the purpose of propelling motor vehicles:
31 Provided further, That any excise tax which has been imposed
32 upon gasoline purchased for and actually used in avigation,
33 and for which application for refund, as herein provided, has
34 not been filed with the tax commissioner, as herein provided,
35 shall be transferred to the separate account provided by section
36 six, chapter four, acts of the Legislature of West Virginia,
37 regular session, one thousand nine hundred thirty-one.
38 All acts or parts of acts inconsistent herewith are hereby
39 repealed.

CHAPTER 83
(Senate Bill No. 146—By Mr. Hodges)

AN ACT to amend and reenact section six, article three, chapter
twenty-four of the code of West Virginia, one thousand nine
hundred thirty-one, relating to the payment of special license
fees by public utilities.

[Passed February 20, 1935: In effect from passage. Approved by the Governor.]
Be it enacted by the Legislature of West Virginia:

Section 6. (a) All public utilities subject to the provisions of this chapter shall pay a special license fee in addition to those now required by law. The amount of such fees shall be fixed by the auditor and levied by him upon each of such public utilities according to the value of its property as ascertained by the last assessment, and shall be apportioned among such public utilities upon the basis of such valuation, so as to produce a revenue of eighty thousand dollars per annum, which fees shall be paid on or before the twentieth day of January in each year. Such sum of eighty thousand dollars, together with that provided in sub-section (b) hereof shall be paid into the state treasury and kept as a special fund, designated "Public Service Commission Fund", to be appropriated as provided by law for the purpose of paying the expenses of the commission, and salaries, compensations, costs and expenses of its employees.

(b) All public utilities subject to the provisions of this chapter shall pay a special license fee in addition to any and all fees now required by law. The amount of such fees shall be fixed by the auditor and levied by him upon each of such public utilities, in the proportion which the total gross revenue derived from intra-state business done by each of such public utilities in the calendar year next preceding bears to the total gross revenue derived from intra-state business done in such year by all public utilities subject to regulation by the public service commission, so as to produce a revenue of one hundred and fifty thousand dollars per annum, in addition to such fees as may be fixed by the auditor under the provisions of sub-section (a) hereof and which fees shall be paid on or before the first day of July in each year. Such sum of one hundred and fifty thousand dollars shall be paid into the state treasury and be kept, appropriated and used as provided in sub-section (a) hereof.

(c) Any balance remaining in said fund at the end of any fiscal year shall not revert to the treasury but shall be credited by the auditor upon the amounts to be raised for the next
36 fiscal year, under sub-sections (a) and (b), on the same basis
37 and in the same proportion as said fund was raised under said
38 sub-sections.

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CHAPTER 84

(Senate Bill No. 211—By Mr. Hodges)

AN ACT to continue the application of surtaxes on sales, privileges,
productions, business and incomes, and the general consumers
sales tax.

[Passed March 9, 1935; in effect July 1, 1935. Approved by the Governor.]

ARTICLE I.

Sec.
1. Reason for continuation of emergency surtaxes.
3. Upon whom surtax laid; amount; exemptions from surtax.
4. Upon whom surtax laid; amount.
5. Taxes for privilege of doing business in state from July 1, 1935,
to June 30, 1937.
6. Payable quarterly.
7. What provisions apply to administration, collection and enforcement of taxes imposed by
section three.
8. What provisions apply to administration, collection and enforcement of taxes imposed by
section four.
9. Proceeds of tax paid into state fund, general revenue.

ARTICLE II.

Sec.
1. General consumers sales tax continued.
2. Definition of words and phrases.
3. Amount of tax: purchaser to pay tax to retailer; retailer to ac-
count to state for total of all taxes collected.
4. Burden of proof on seller that sale was not at retail; pre-
sumption.
5. Tax on gross proceeds of retail sales of natural resources, prod-
uct or manufactured product.
6. Tax on furnishing services, ex-
cept professional and personal,
Sec. 20. Tax commissioner to keep records of all moneys received by him; to preserve returns for five years.

Sec. 21. Facts obtained in administration of act not to be divulged; exceptions.

Sec. 22. Proceeds of tax for support of free schools.

Sec. 23. Provisions of article terminate on June 30, 1937.

ARTICLE III.

Sec. 1. Rules and regulations of tax commissioner for enforcement and administration of act.

Sec. 2. What powers and duties of tax commissioner hereunder may be exercised by his appointees.

Sec. 3. Penalty for violation of act or rules and regulations.

Sec. 4. If provision invalid, remaining provisions not affected.

Be it enacted by the Legislature of West Virginia:

ARTICLE I.

Section 1. Because the enabling legislation under the "Tax Limitation Amendment" has required adjustments which have greatly reduced the revenue of the state, it is necessary that emergency surtaxes be continued to provide funds essential to the conduct of government.

Sec. 2. This act may be cited as "The Supplemental (Emergency) Revenue Act of one thousand nine hundred thirty-five."

Sec. 3. Every person taxable under subsections (a), (b), (c), (d) and (g) of section two, article thirteen, chapter eleven, code of West Virginia, one thousand nine hundred thirty-one, as amended by chapter thirty-three, acts of the first extraordinary session, one thousand nine hundred thirty-three, shall pay, in addition to the taxes imposed by that act, and in addition to all other taxes, an additional emergency surtax of three-tenths of each tax imposed by subsections (a), (b), (c), (d) and (g), section two, article thirteen, chapter eleven, code of one thousand nine hundred thirty-one, as amended by chapter thirty-three, acts of the first extraordinary session, one thousand nine hundred thirty-three, but there shall be no additional tax on any public service or utility business conducted wholly within the state by a corporation organized under the laws of this state with a capital stock of fifty thousand dollars or less and which does not generate its own current or any part thereof, nor on water companies or upon privileges taxed under subsection (c), except in case of wholesalers or jobbers.

Sec. 4. Each person taxable under sections two, three, four, or five, article twelve-(a), chapter eleven, code of one thousand three hundred thirty-one, as amended by chapter thirty-three,
acts of the first extraordinary session, one thousand nine hundred thirty-three, shall pay, in addition to that tax and all other taxes, an additional emergency surtax of three-tenths of the tax imposed by the above mentioned article.

Sec. 5. The taxes imposed by this title are for the privilege of doing business within this state during the operation of this act and shall be calculated for a period beginning July first, one thousand nine hundred thirty-five, and ending June thirtieth, one thousand nine hundred thirty-seven, in the same manner as the taxes imposed by articles twelve-(a) and thirteen, chapter eleven, code of one thousand nine hundred thirty-one, as amended by chapter thirty-three, acts of the first extraordinary session, one thousand nine hundred thirty-three.

Sec. 6. The taxes imposed by sections three and four, shall be paid quarterly on the first of November, February, May and August.

Sec. 7. Except as otherwise provided by this act, the provisions for the administration, collection, and enforcement of taxes imposed by article thirteen, chapter eleven of the code as amended by chapter thirty-three, acts of the first extraordinary session, one thousand nine hundred thirty-three, shall apply, so far as applicable, to the administration, collection and enforcement of the taxes imposed by section three of this article.

Sec. 8. Except as otherwise provided by this act, the provisions for the administration, collection and enforcement of taxes imposed by article twelve-(a), chapter eleven of the code, as amended by chapter thirty-three, acts of the first extraordinary session, one thousand nine hundred thirty-three, shall apply so far as applicable to the administration, collection and enforcement of the taxes imposed by section four of this article.

Sec. 9. The proceeds of the taxes imposed by this title shall be paid into the state fund, general revenue, and be expended in such manner as may be provided by law.

Sec. 10. All provisions of this article shall terminate and cease to be of effect upon the thirtieth day of June, one thousand nine hundred thirty-seven. The termination of this article shall not affect the enforcement of any right, liability, or duty arising during or out of the operation thereof.
ARTICLE II.

Section 1. In order to meet the fiscal needs created by shifting the base of taxation from general property, it is declared essential that a general consumers sales tax be continued.

Sec. 2. For the purposes of this article:

1. "Person" shall mean any person, firm, partnership, association, corporation, guardian, or committee;
2. "Tax commissioner" shall mean the state tax commissioner;
3. "Gross proceeds" shall mean the amount received in money, credits, property or other consideration from sales at retail within this state, without deduction on account of the cost of the property sold, amounts paid for interest or discounts, or other expenses whatsoever. Losses shall not be deducted, but deductions may be made to the amount of credits or refunds for returned goods and of the sale price of any article accepted as part payment on any new article sold, if the full sale price of the new article is included in "gross proceeds";
4. "Sales at retail" shall mean any transaction by which the ownership of tangible personal property is transferred for a consideration, when the transfer is made in the ordinary course of the transferor's business and is made to the transferee for consumption or use or any other purpose, save resale, without change or processing, in the form of tangible personal property. "Sale at retail" includes conditional sales and transactions under whatever name whereby title is ultimately to pass, although possession is retained for security;
5. "Sale at retail" shall not include an isolated transaction in which any tangible personal property is sold, transferred, offered for sale, or delivered by the owner thereof, or by his representative for the owner's account, such sale, transfer, offer for sale or delivery not being made in the ordinary course of repeated and successive transactions of a like character by such owner or on his account by such representative;
6. "Retail dealer" shall mean a person engaged in the business of sale at retail in this state, or one who furnishes services taxed by this article;
7. "Wholesale dealer" shall mean a person engaged in this state in the business of selling to a retail dealer in this state
for resale only, or of selling machinery, supplies and material,
in wholesale quantities, to contractors, or to persons engaged
in manufacturing in this state or in the production of natural
resources;
8. "Business" shall include all activities engaged in or
caused to be engaged in with the object of gain or economic
benefit, direct or indirect;
9. "Tax" shall include all taxes, interest or penalties levied
hereunder;
10. "Purchaser" shall mean a person who purchases tangible
personal property, or a service taxed by this article;
11. "Personal services" shall include those:
(a) Compensated by the payment of wages in the ordinary
course of employment;
(b) Rendered to the person of an individual without, at
the same time, selling tangible personal property or the use of
such property, such as nursing, barbering, shoe shining, manu-
curing, and similar services;
12. "Taxpayer" shall mean a retail dealer.

Sec. 3. For the privilege of engaging in the business of
selling tangible personal property at retail, and of dispensing
certain selected services defined in section six of this article,
a retail dealer shall collect from a purchaser a tax of two
per cent of the gross proceeds of each separate transaction,
and shall pay the amount collected to the tax commissioner in
accordance with the provisions of this article.
A purchaser shall pay the amount of the tax to the retail
dealer. The retail dealer shall keep the tax paid by the pur-
chaser separate and apart from the proceeds of sale and shall
account to the state for all the tax paid by the purchaser.
There shall be no tax on sales where the monetary considera-
tion is five cents or less. On each sale where the monetary
consideration is from six cents to fifty cents, both inclusive, the
tax payable by the purchaser shall be one cent; on each sale
where the monetary consideration is from fifty-one cents to one
dollar, both inclusive, the tax payable by the purchaser shall
be two cents, and on each fifty cents of such monetary con-
sideration, or fractional part thereof, in excess of one dollar,
the tax payable by the purchaser shall be one cent.
No profit shall accrue to any person by virtue of the pro-
22 visions of this section, as a result of the collection of the tax 23 herein levied upon purchasers, notwithstanding that the total 24 amount of such taxes collected may be in excess of the amount 25 for which such person would be liable by the application of 26 the levy of two per cent to the gross proceeds of his sales, 27 and the total of all taxes collected by any such person shall 28 be returned and remitted to the tax commissioner as herein- 29 after provided.

Sec. 4. The burden of proving that a sale was not at retail 2 shall be upon the seller, unless he takes from the purchaser a 3 certificate signed by and bearing the address of the purchaser 4 to the effect that the property was purchased for resale. To 5 prevent evasion, it shall be presumed that all proceeds are 6 subject to the tax until the contrary is clearly established.

Sec. 5. A person exercising the privilege of producing for 2 sale, profit or commercial use, any natural resources, product 3 or manufactured product, and engaging in the business of 4 selling at retail any such product not otherwise exempted here- 5 in shall make returns of the gross proceeds of such retail sales 6 and pay the tax imposed by this title.

Sec. 6. The provisions of this title shall apply not only to 2 selling tangible personal property, but also to the furnishing 3 of all services, except professional and personal services, and 4 except those services furnished by corporations subject to the 5 control of the public service commission and the state road 6 commission.

Sec. 7. The provisions of this title shall not apply to: 2 1. Sales of gasoline, taxable under article fourteen, chapter 3 eleven of the code of one thousand nine hundred thirty-one; 4 2. Sales of gas, steam and water delivered to consumers 5 through mains or pipes, and sales of electricity; 6 3. Sales of school books required to be used in any of the 7 schools of this state; 8 4. Sales by or to the state, its institutions or subdivisions, 9 and sales to the United States, including sales to agencies of 10 federal, state or local governments for distribution in public 11 welfare or relief work; 12 5. Sales on motor vehicles which are titled by the state road 13 commission.
Sec. 8. It is the intent of this article that the tax levied hereunder shall be passed on to and be paid by the consumer. The amount of the tax shall be added to the sales price, and shall constitute a part of that price and be collectible as such.

Sec. 9. A person engaged in any business taxable hereunder shall not advertise or hold out to the public, in any manner, directly or indirectly, that he will absorb all or any part of the tax, or that the tax imposed by this article is not to be considered an element in the price to the consumer. A person who violates this provision shall be guilty of a misdemeanor and upon conviction shall be punishable by a fine of not less than fifty, nor more than one thousand dollars, or imprisonment in the county jail for not exceeding one year, or both in the discretion of the court.

Sec. 10. To provide uniform methods of adding the average equivalent of the tax to the selling price in each sale or transaction subject to the tax, appropriate rules and regulations, except as otherwise herein provided, may be agreed upon or adopted by competing taxpayers or associations of taxpayers, except that all collections shall be made on the basis of the total transaction at the time of sale, without regard to the value of the separate items making up the total amount of the sale. Such rules and regulations, if they do not involve price fixing, shall not be deemed illegal as in restraint of trade or commerce. The tax commissioner shall cooperate in formulating such rules and regulations, and, in the event appropriate rules and regulations are not submitted to him within thirty days after this act takes effect, or within a reasonable extended period fixed by the tax commissioner, he shall himself formulate and promulgate appropriate rules and regulations to effectuate the purpose of this section.

Sec. 11. A taxpayer doing business wholly or partly on a credit basis shall require the purchaser to pay the full amount of tax due upon a credit sale, at the time such sale is made, or within thirty days thereafter. This section shall not operate to relieve from the tax, credit business done during the operation of this title but realized on in money or money’s worth thereafter.

Sec. 12. Any person engaged in the business of making
2 sales at retail who is at the same time engaged in some other
3 kind of business, occupation, or profession, not taxable under
4 this title, shall keep books to show separately the transactions
5 used in determining the tax base herein taxed. In the event
6 of such person failing to keep such separate books, there
7 shall be levied upon him a tax based upon the entire gross
8 proceeds of both or all of his business.

Sec. 13. In determining gross proceeds of sales from one
2 to another of affiliated companies or persons, or under other
3 circumstances where the relation between the buyer and the
4 seller is such that gross proceeds from a sale are not indicative
5 of the true value of the subject matter of the sale, the tax
6 commissioner shall prescribe uniform and equitable rules for
7 determining the amount upon which the tax shall be levied,
8 corresponding as nearly as possible to gross proceeds from
9 the sale of similar products of like quality or character where
10 no common interest exists between the parties.

Sec. 14. The taxes levied hereunder shall be a personal
2 obligation of the taxpayer and shall be due and payable in
3 monthly installments, on or before the fifteenth day of the
4 month next succeeding the month in which the tax accrued.
5 The taxpayer shall, on or before the fifteenth day of each
6 month, make out and mail to the tax commissioner a return
7 for the preceding month, in the form prescribed by the tax
8 commissioner, showing (a) the total gross proceeds of his
9 business for that month; (b) the gross proceeds of his business
10 upon which the tax is computed; (c) the amount of the tax
11 for which he is liable; and (d) any further information neces-
12 sary in the computation and collection of the tax which the
13 tax commissioner may require. A remittance for the amount
14 of the tax shall accompany the return. A monthly return
15 shall be signed by the taxpayer or his duly authorized agent.
16 A taxpayer who fails to file his return and remit the tax as
17 prescribed in this section shall, in addition to all other penalties,
18 pay a penalty of six per cent of the amount of the tax collected
19 during the period reported. The tax commissioner shall in all
20 cases collect this penalty.

Sec. 15. The tax commissioner may, upon written request,
2 authorize a taxpayer whose books and records are not kept
3 on a monthly basis to file returns at other times than those
4 specified in the preceding section, but in no event shall a
5 taxpayer make less than one return a calendar month, except
6 as provided by section sixteen.

Sec. 16. When the total tax for which a person is liable
2 does not exceed ten dollars for any month, he may make quar-
3 terly return on or before the fifteenth day of the first month
4 in the next succeeding quarter in lieu of monthly returns.

Sec. 17. On or before thirty days after the end of the tax
2 year, each person liable for the payment of a tax hereunder
3 shall make an annual return in such form as may be required
4 by the tax commissioner, showing total gross proceeds of his
5 business for the preceding tax year, gross proceeds upon
6 which the tax for that year was computed, and any other
7 information necessary in the computation or collection of the
8 tax that the tax commissioner may require. After deducting
9 the amount of prior payments during the tax year, the tax-
10 payer shall transmit the return with a remittance for any
11 remaining tax, payable by him during the preceding tax year,
12 to the tax commissioner. The taxpayer or his duly authorized
13 agent, shall verify the return under oath. The tax commis-
14 sioner for good cause shown, may, on written application of
15 a taxpayer, extend the time for making his annual return.

Sec. 18. A person engaging in two or more places in the
2 same business or businesses of like character, taxable here-
3 under, shall file consolidated returns covering all such business
4 activities engaged in within this state.

Sec. 19. A person liable for the tax imposed hereunder
2 shall keep the records, render under oath the statements,
3 make returns, and comply with the rules and regulations that
4 the tax commissioner may, from time to time, require. The
5 tax commissioner may require such records, statements or
6 returns, upon notice, from any person in order to determine
7 whether he is liable to the tax hereunder. The tax commis-
8 sioner may require preservation of records for not to exceed
9 five years, and may, at any time, through his authorized
10 agents, inspect all books and accounts of the taxpayer, in-
11 cluding banking accounts, which in any way enter into the
record of the business out of which the tax imposed herein arises.

Sec. 20. The tax commissioner shall keep full and accurate records of all moneys received by him. He shall preserve all returns filed with him hereunder for five years.

Sec. 21. Unless, in compliance with a judicial order, or as may be required by the proper administration hereof, the tax commissioner, his agents and employees and former tax commissioners, agents and employees shall not divulge facts or information obtained in the administration hereof.

Sec. 22. The proceeds of the tax imposed by this article shall be devoted to the support of the free schools, and be expended in such manner as may be provided by law.

Sec. 23. All provisions of this article shall terminate and cease to be of effect upon the thirtieth day of June, one thousand nine hundred thirty-seven. The termination thereof shall not affect the enforcement of any right, liability, or duty arising during or out of the operation hereof.

ARTICLE III.

Section 1. The tax commissioner shall have the authority to promulgate and enforce reasonable rules and regulations necessary to the administration and enforcement of the provisions of this act.

Sec. 2. Except for the promulgation of rules and regulations, any power or duty conferred upon the tax commissioner by this act may be exercised under his direction by his employees or appointees; but the tax commissioner shall be responsible for their acts.

Sec. 3. Except as herein otherwise provided a person who wilfully violates any of the provisions of this act, or any lawful rule or regulation promulgated under it, shall be guilty of a misdemeanor and upon conviction, shall be fined not less than fifty nor more than five thousand dollars.

Sec. 4. The provisions of this act shall be construed as severable and if any part is held to be unconstitutional, or for any other reason invalid, the remaining provisions shall not
be affected. If the application of the tax imposed by this act to any particular taxpayer or to any period of time is held to be invalid, its application to other taxpayers and to other periods of time shall not be affected thereby.

CHAPTER 85

(Senate Bill No. 233—By Mr. Barnhart)

AN ACT to provide for the collection of delinquent corporation license taxes.

(Passed March 8, 1935: in effect from passage. Approved by the Governor.)

Sec. 1. Charter rights and franchises of corporation dissolved or charter rights forfeited for nonpayment of charter tax restored if tax paid prior to December 1, 1935.

Sec. 2. Auditor to receive and deposit in treasury delinquent charter taxes; certificate by auditor of reinstatement of charter rights, franchises and privileges.

Be it enacted by the Legislature of West Virginia:

Section 1. Any corporation, delinquent in the payment of its annual license (charter) tax, and which has been dissolved or its charter rights forfeited in any suit or proceeding brought under the provisions of section seventy-seven, article twelve, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, may be reinstated and restored to all of its charter rights and franchises by payment to the auditor of the license taxes so levied and assessed, together with all license taxes which would have been levied and assessed against such corporation had there been no such dissolution or forfeiture, without interest, penalties, and costs, if the same shall be paid prior to December thirty-first, one thousand nine hundred thirty-five.

Sec. 2. The auditor shall receive payment of all delinquent license (charter) taxes on corporations, and shall account for and deposit the same in the state treasury. Upon payment of such taxes as aforesaid the auditor shall execute and deliver to the corporation paying the same a certificate of reinstatement, which certificate shall have the effect of reinstating and restoring such corporation to all of its charter rights, franchises, and privileges.
CHAPTER 86

(Senate Bill No. 283—By Mr. Hodges, by request)

AN ACT to amend section two, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended by section two, article thirteen, chapter thirty-three, acts of the Legislature, first extraordinary session, one thousand nine hundred thirty-three, and to amend said article thirteen by adding thereto sections two-(a) to two-(i), inclusive, relating to business, occupation and privilege taxes.

[Passed March 9, 1935; in effect from passage. Approved by the Governor.]

Sec. 2. Annual privilege taxes, levied on account of business and other activities; basis for tax on products shipped out of the state before sale; rules and regulations by tax commissioner to determine value of sales from one to another affiliated company or person; provision as to gross income; gross proceeds of retail sales of natural resources or manufactured products taxed; when such sales at wholesale not taxed; sale of manufactured products outside state; coal, etc., used or consumed in producer's business.

2-(a). Amount of tax on production of coal and other natural resource products.

2-(b). Measure of tax on manufactured or compounded products.

2-(c). Measure and amount of tax on selling tangible property; exceptions.

2-(d). Measure and amount of tax on public service or utility business; exceptions.

2-(e). Amount of tax on business of contracting.

2-(f). Amount of tax on business of banking.

2-(g). Amount of tax on business of operating theatre and other amusements.

2-(h). Amount of tax on service business or calling not otherwise specifically taxed.

2-(i). Amount of tax on business of collecting rentals, royalties, etc.; exceptions when included in personal net income tax; act to take effect January 1, 1935, and tax to be for calendar year of 1935.

Be it enacted by the Legislature of West Virginia:

That section two, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended by section two, article thirteen, chapter thirty-three, acts of the Legislature, first extraordinary session, one thousand nine hundred thirty-three, be amended and reenacted and that said article thirteen be amended by the addition thereto of sections two-(a) to two-(i), inclusive, to read as follows:

Section 2. There is hereby levied and shall be collected 2 annual privilege taxes against the persons, on account of the 3 business and other activities, and in the amounts to be deter-
mined by the application of rates against values or gross income as set forth in sections two-(a) to two-(i) inclusive, of this article.

If any person liable for any tax under sections two-(a) or two-(b) shall ship or transport his products or any part thereof out of the state without making sale of such products, the value of the products in the condition or form in which they exist immediately before transportation out of the state shall be the basis for the assessment of the tax imposed in said sections. The tax commissioner shall prescribe equitable and uniform rules for ascertaining such value.

In determining value, however, as regards sales from one to another of affiliated companies or persons, or under other circumstances where the relation between the buyer and seller is such that the gross proceeds from the sale are not indicative of the true value of the subject matter of the sale, the tax commissioner shall prescribe uniform and equitable rules for determining the value upon which such privilege tax shall be levied, corresponding as nearly as possible to the gross proceeds from the sale of similar products of like quality or character where no common interest exists between the buyer and seller but the circumstances and conditions are otherwise similar.

Gross income included in the measure of the tax under sections two-(a) and two-(b) of this article, except in the case of production of natural gas, shall neither be added nor deducted in computing the tax levied under the other sections of this article.

A person exercising any privilege taxable under sections two-(a) or two-(b) of this article and engaging in the business of selling his natural resources or manufactured products at retail in this state shall be required to make returns of the gross proceeds of such retail sales and pay the tax imposed in section two-(c) of this article for the privilege of engaging in the business of selling such natural resources or manufactured products at retail in this state. But any person exercising any privilege taxable under sections two-(a) or two-(b) of this article and engaging in the business of selling his natural resources or manufactured products to manufacturers, wholesalers or jobbers, and in the case of limestone, sand, gravel or other mineral product, to commercial consumers, shall not be required to pay the tax imposed in section...
two-(c) of this article for the privilege of selling such natural
resource products or manufactured products at wholesale.

Manufacturers exercising any privilege taxable under section
two-(b) of this article shall not be required to pay the tax
imposed in section two-(c) of this article for the privilege of
selling their manufactured products for delivery outside of this
state, but the gross income derived from the sale of such manu-
factured products outside of this state shall be included in
determining the measure of the tax imposed on such manu-
facterer in section two-(b).

A person exercising privileges taxable under the other sec-
tions of this article, producing coal, oil, natural gas, minerals,
timber or other natural resource products the production of
which is taxable under section two-(a), and using or consuming
the same in his business, shall be deemed to be engaged in the
business of mining and producing coal, oil, natural gas, minerals,
timber or other natural resource products for sale, profit or
commercial use, and shall be required to make returns on
account of the production of the business showing the gross
proceeds or equivalent in accordance with uniform and
equitable rules for determining the value upon which such
privilege tax shall be levied, corresponding as nearly as pos-
sible to the gross proceeds from the sale of similar products of
like quality or character by other taxpayers, which rules the
tax commissioner shall prescribe.

Sec. 2-(a). Upon every person engaging or continuing within
this state in the business of producing for sale, profit, or com-
mercial use any natural resource products, the amount of such
tax to be equal to the value of the articles produced as shown
by the gross proceeds derived from the sale thereof by the
producer, except as hereinafter provided, multiplied by the
respective rates as follows: Coal, one per cent; limestone or
sandstone, quarried or mined, one and one-half per cent; oil,
three per cent; natural gas, in excess of the value of five thou-
sand dollars, six per cent; blast furnace slag, three per cent;
sand, gravel or other mineral product, not quarried or mined,
three per cent; timber, one and one-half per cent; other natural
resource products, two per cent. The measure of this tax is
the value of the entire production in this state, regardless of
the place of sale or the fact that delivery may be made to
points outside the state.
Sec. 2-(b). Upon every person engaging or continuing within this state in the business of manufacturing, compounding, or preparing for sale, profit, or commercial use, either directly or through the activity of others in whole or part, any article or articles, substance or substances, commodity or commodities, or electric power not produced by public utilities taxable under other provisions of this article, the amount of the tax to be equal to the value of the article, substance, commodities or electric power manufactured, compounded or prepared for sale, as shown by the gross proceeds derived from the sale thereof by the manufacturer or person compounding or preparing the same except as hereinafter provided, multiplied by a rate of three-tenths of one per cent. The measure of this tax is the value of the entire product manufactured, compounded, or prepared in this state for sale, profit or commercial use, regardless of the place of sale or the fact that deliveries may be made to points outside the state.

Sec. 2-(c). Upon every person engaging or continuing within this state in the business of selling any tangible property whatsoever, real or personal, except sales by any person engaging or continuing in the business of horticulture, agriculture or grazing, or if selling stocks, bonds or other evidences of indebtedness, there is likewise hereby levied, and shall be collected, a tax equivalent to one-half of one per cent of the gross income of the business, except that in the case of a wholesaler or jobber, the tax shall be equal to fifteen one-hundredths of one per cent of the gross income of the business.

Sec. 2-(d). Upon any person engaging or continuing within this state in any public service or utility business, except railroad, railroad car, express, pipe line, telephone and telegraph companies, water carriers by steamboat or steamship and motor vehicle carriers, there is likewise hereby levied and shall be collected taxes on account of the business engaged in equal to the gross income of the business multiplied by the respective rates as follows: Street and interurban and electric railways, one per cent; water companies, four per cent, except as to income from municipally owned water plants; electric light and power companies, four per cent on sales and demand charges for domestic purposes and commercial lighting and three per cent on sales and demand charges for all other purposes, except
as to income from municipally owned plants producing or purchasing electricity and distributing same; natural gas companies, three per cent on the gross income, said gross income for this purpose to be determined by deducting from gross income from all sales to consumers the amount of the tax paid by the taxpayers under section two-(a) of this article; toll bridge companies, three per cent; and upon all other public service or utility business, two per cent. The measure of this tax shall not include gross income derived from commerce between this state and other states of the United States or between this state and foreign countries.

Sec. 2-(e). Upon every person engaging or continuing within this state in the business of contracting, the tax shall be equal to two per cent of the gross income of the business.

Sec. 2-(f). Upon every person engaging or continuing within this state in the business of banking, the tax shall be equal to five-tenths of one per cent of the gross income of the business.

Sec. 2-(g). Upon every person engaging or continuing within this state in the business of operating a theatre, opera house, moving picture show, vaudeville, amusement park, dance hall, skating rink, race track, radio broadcasting station or any other place at which amusements are offered to the public, the tax shall be equal to one half of one per cent of the gross income of the business.

Sec. 2-(h). Upon every person engaging or continuing within this state in any service business or calling not otherwise specifically taxed under this act, there is likewise hereby levied and shall be collected a tax equal to one per cent of the gross income of any such business.

Sec. 2-(i). Upon every person engaging or continuing within this state in the business of collecting incomes from the use of real or personal property or of any interest therein, whether by lease, conveyance or otherwise, and whether the return be in the form of rentals, royalties, fees, interest or otherwise, the tax shall be one per cent of the gross income of any such activity: Provided, That any person who shall make return of

and pay a personal net income tax on the incomes covered by
9 this section two-(i) shall not be required to pay the tax herein
10 imposed upon said incomes.
11 This act shall take effect as of January first, one thousand
12 nine hundred thirty-five, and the first tax assessed under it
13 shall be upon the calendar year one thousand nine hundred
14 thirty-five.

CHAPTER 87

(Senate Bill No. 291—By Mr. Hodges, by request)

AN ACT to amend article one, chapter eleven of the code of West
Virginia, one thousand nine hundred thirty-one, by adding
section two-(a), relating to the refunding of excess payment
of taxes.

[Passed March 9, 1935; in effect from passage. Became a law without the approval
of the Governor.]

Sec. 2- (a). Refund by collecting official of
taxes unlawfully required and
paid into state treasury; petition for to be filed within one
year from payment; procedure; when refund not to be made.

Be it enacted by the Legislature of West Virginia:

That article one, chapter eleven of the code of West Virginia,
one thousand nine hundred thirty-one, be amended by adding
section two-(a), relating to the refunding of excess payment of
taxes, to read as follows:

Section 2-(a). On and after the effective date of this act, any
taxpayer claiming to be aggrieved through being required to
pay any tax into the treasury of this state, may, within one year
from the date of such payment, and not after, file with the
official or department through which the tax was paid, a petition
in writing to have refunded to him any such tax, or any part
thereof, the payment whereof is claimed by him to have been
required unlawfully; and if, on such petition, and the proofs
filed in support thereof, the official collecting the same shall be
of the opinion that the payment of the tax collected, or any part
thereof was improperly required, he shall refund the same to
the taxpayer by the issuance of his or its requisition on the
treasury; and the auditor shall issue his warrant on the treas-
urer therefor, payable to the taxpayer entitled to the refund,
15 and the treasurer shall pay such warrant out of the fund into
16 which the amount so refunded was originally paid: Provided,
17 however, That no refund shall be made, at any time, on any
18 claim involving the valuation, assessment or appraisement of
19 which was fixed at the time the tax was originally paid.

CHAPTER 88

(Com. Sub. for House Bill No. 197—Originating in the House Committee
on the Judiciary)

AN ACT to amend and reenact section fifty-seven, article twelve,
chapter eleven of the code of West Virginia, one thousand
nine hundred thirty-one, as amended by chapter fifty-five, acts
of the Legislature of West Virginia, one thousand nine hun­
dred thirty-one, and as last amended and reenacted by chap­
ter thirty-five, acts of the Legislature, first extraordinary ses-
session, one thousand nine hundred thirty-three, relating to
hawkers and peddlers.

[Passed March 8, 1935; in effect ninety days from passage. Became a law without
the approval of the Governor.]

Sec. 57. Tax on hawker or peddler traveling without vehicle; traveling
with vehicle, tax dependent on capacity of vehicle; carrying of license and markings on vehi-
cle; license co-extensive with state; definition of hawker or peddler; exceptions; exempted person to secure license receipt

Sec. showing exemption; penalties for violation of act; jurisdiction of offenses under act; duty of department of public safety to enforce act; tax commis-
sioner to promulgate rules and regulations; if part of section invalid, remainder of section not affected.

Be it enacted by the Legislature of West Virginia:

That section fifty-seven, article twelve, chapter eleven of the
code of the West Virginia, one thousand nine hundred thirty-one,
as amended by chapter fifty-five, acts of the Legislature of West
Virginia, one thousand nine hundred thirty-one, and as last amended and reenacted by chapter thirty-five, acts of the Legislature, first extraordinary session, one thousand nine hundred thirty-three, be amended and reenacted to read as follows:

Section 57. On every license to act as hawker or peddler,
2 if the person licensed travel without a vehicle, ten dollars; if he
2-a travels with a vehicle of not more than one-half ton capacity,
3 fifteen dollars; if he travel with a vehicle of not more than one
4 ton capacity, twenty-five dollars; if he travel with a vehicle of 5 more than one ton capacity, but not exceeding two tons’ capac- 6 ity, seventy-five dollars; if he travel with a vehicle of more than 7 two tons’ capacity, but not exceeding three tons’ capacity, one 8 hundred fifty dollars; and if he travel with a vehicle of more 9 than three tons’ capacity, two hundred fifty dollars, plus one 10 hundred dollars for each additional ton or fraction thereof 11 over four tons’ capacity; and the person licensed shall pay at 12 the same rates for each and every vehicle. Such person shall 13 carry his license in some conspicuous place in his vehicle or 14 about his pack; and in addition thereto such licensee shall cause 15 to be painted or stencilled in a conspicuous place on the left- 16 hand side of his vehicle the number of such license and the 17 words “West Virginia Hawker and Peddler” and the fiscal 18 year for which said license is issued, which said information 19 shall be in black letters on a white background, and the whole 20 thereof shall be at least eight by twenty inches in size. Such 21 license shall be co-extensive of and with the entire state. 22 All persons, firms and corporations who shall carry goods, 23 wares or merchandise from place to place, either in person or 24 by agent or employee, and offer to sell or barter, or actually 25 sell or barter, and at the same time deliver, any of said goods, 26 wares or merchandise to any purchaser, at wholesale or retail, 27 shall be deemed a hawker or peddler under this article, except 27-a that nothing in this article shall be construed as levying a 27-b license tax on an agent or traveling salesman of a manufac- 27-c turer or wholesaler who may directly supply articles manu- 27-d factured or handled by such manufacturer or wholesaler to 27-e customer engaged in merchandising at retail at bona fide, 27-f fixed, and stationary places of business. 28 All persons, firms or corporations who do have and keep 29 a regular place of business in this state with a stock of goods, 30 wares or merchandise thereat for sale, and whether or not said 31 place is open at all times during the usual business hours for 32 business, who shall, elsewhere than at such regular place of 33 business, personally, or through their agents, offer for sale, or 34 sell, and at the same time of such offering for sale, deliver 35-6 goods, wares and merchandise, shall also be deemed hawkers 37 or peddlers as aforesaid; and all persons, firms or corpora- 38 tions who do not have and keep a regular place of business 39 in this state as aforesaid and who in person or by agent offer
for sale, or sell, and at the same time of such sale have for de-
livery, and deliver, goods, wares or merchandise, shall also be
d deemed hawkers or peddlers as aforesaid; but nothing con-
tained in this article shall apply to those who sell, or offer for
sale, in person or by their employees, petroleum products, ice,
a wood, meats, milk, bread, cakes, pies and other bakery prod-
ucts, butter, eggs, poultry, vegetables, fruits or other family or
farm supplies, grown or produced by them, and not purchased
by them for sale. Nothing in this article shall be construed as
requiring a license of a person or persons engaged or continu-
ing in the business or calling of agriculture, horticulture or
grazing, to sell or offer to sell individually or collectively,
one or more for the other or others, the products derived from
his or their business or calling aforesaid; nor of a person or
persons engaged in the business of operating a retail merchan-
dise store in a rural community to exchange goods from such
store for agricultural products or to sell or offer to sell agric-
cultural products acquired by such store in the due course of
business of barter and sale; nor as requiring a license of a
wholesaler or jobber engaged in the sale of soft drinks, ice
cream, or nonintoxicating beer duly licensed under other pro-
visions of the law relating thereto; nor of a mechanic or others
to sell or offer to sell articles of his or their own production:
Provided, That each farmer or other person exempt from
license as above provided, shall obtain from the clerk of the
county court of the county of his residence or from the clerk
of the county where he proposes to sell, a license receipt, with-
out cost, showing that he is so exempt, and which shall run
for a period of one year after the issuance thereof and be co-
extensive of and with the entire state; but to obtain such
license receipt he shall make an affidavit as to the facts en-
titling him to such exemption on a form to be prescribed by
the tax commissioner of this state.
If any person for himself or for another person shall act as
hawker or peddler without having a license or carry on his
vehicle a greater load than is called for by his license as
above required, he shall be guilty of a misdemeanor, and upon
conviction thereof shall be fined not less than twenty-five dol-
lars nor more than one hundred dollars, or be confined in the
county jail not exceeding sixty days or both such fine and
imprisonment, in the discretion of the court; and each day or
part thereof upon which said person or persons shall act as
hawker or peddler without such license or shall carry on his
vehicle a greater load than his license permits, shall constitute
a separate offense hereunder.
Justices of the peace shall have concurrent jurisdiction with
the circuit and other courts having jurisdiction for the trial
of all offenses arising under this section.
It shall be the duty of the superintendent of the department
of public safety and the police force under his control, city
police, sheriffs and other public officers to apprehend and cause
to be punished violators of this section.
The tax commissioner shall have the power and authority
to promulgate rules and regulations necessary to carry out
the provisions of this act, including the following:
(a) Rules and regulations with reference to application
for license and the issuance of such license;
(b) Rules and regulations for the revocation of license in
in case of violation of this section, or any rules or reg-
ulations issued in pursuance of authority hereby given.
In the event that any clause or part of this section shall be
declared invalid, such adjudication shall not affect the rest of
the section.
All acts or parts of acts inconsistent herewith are hereby
repealed.

CHAPTER 89

(AN ACT to amend chapter eleven of the code of West Virginia,
one thousand nine hundred thirty-one, by adding thereto ar-
ticle thirteen-A, relating to a personal net income tax.

[Passed March 9, 1935; in effect ninety days from passage. Approved
by the Governor.]

ARTICLE XIII—A.

Section 1. How act cited.
Section 2. Definitions of words and phrases.
Section 3. Graduated tax on net income of
resident of state.
Section 4. Graduated tax on net income of
nonresident from designated
sources.
Section 5. On what income tax first levied.
Section 6. On income of what estates and
trusts tax levied.
Section 7. Return by fiduciary.
Sec.
8. How net income of estate or trust computed; exemptions.
9. When fiduciary's return to include distributive shares.
10. How net income of estate or trust determined and paid; exemptions; trust created by, or for nonresident.
11. Tax when distribution of income is in discretion of fiduciary; when distributive share computed in net income of beneficiary.
12. Tax on distribution from trust created by employer for employees.
13. When income from trust included in computing income of settlor.
14. When income of trust may be applied in certain ways by settlor.
15. Definition of the term "in the discretion of the grantor".
16. Distributive share of income from partnership charged to individual partners.
17. Return of partnership business by members; how net income of partnership determined.
19. When net income computed on basis of calendar year.
20. When accounting period changed by taxpayer.
21. What gross income includes.
22. What gross income of nonresident includes.
23. When all items of gross income included in return for year in which received.
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25. Deductions allowed in computing net income.
25-(a). Deduction or non-deduction of loss from sale of stocks or securities.
27. Return by taxpayer regularly selling personal property on installment plan.
28. Return in case of casual sale of personal property when price does not exceed five hundred dollars, or of sale of real property.
29. Definition of “initial payments.”
30. Determination of gain or loss from sale of property.
31. When exchange of property deemed a conversion of assets without gain or loss; stock or securities received on organization of corporation; reorganization, merger or consolidation of corporation.
32. Commissioner may require inventory.

Sec.
33. Allowable deductions from net income.
34. When credits allowed nonresident on income tax.
35. Who required to make returns of gross income.
36. Separate or joint returns by husband and wife living together; when returns not required from married persons, dependents, minors or incompetents.
37. Return by agent, etc., when taxpayer unable to make.
38. Return by non-resident to show gross income from sources both within and without state.
39. What return of partnership to show.
40. What return of fiduciary to show.
41. Form and time of filing, of return.
42. Report to tax commissioner by employer of yearly salary and other payments exceeding six hundred dollars.
43. When commissioner may require filing of return or supplementary return.
44. When tax to be paid; interest, when time extended; when check for, not paid.
45. Commissioner to compute tax; procedure and penalties when return understates amount of tax; refund of excess payment.
46. Assessment by commissioner of back taxes for five years; notice to taxpayer.
47. Levy by sheriff, upon warrant of commissioner, for tax; filing with clerk of circuit court; entries by clerk in judgment docket; lien, after entry; duty of sheriff; action, if warrant not satisfied in full.
48. Tax a personal debt to state.
49. Action by attorney general to recover tax.
50. Commissioner may waive or reduce additional tax or interest.
51. Penalties assessed by commissioner upon failure, without fraudulent intent, to pay tax; when done with fraudulent intent; criminal liability and penalty; when failure to do any required act, deemed committed at office of tax commissioner in Charleston; certificate of commissioner prima facie evidence.
52. Assessment of tax and penalty when taxpayer, after notice, fails to file, or correct, return.
53. Application by taxpayer for revision of tax assessed against him; hearing and adjustment; refund. If found excessive; when double amount to be collected.
54. Appeal to circuit court from determination of tax commissioner.
55. Powers of commissioner in ascer-
Sec. 56. Appointment by commissioner. With approval of governor, officer, or other person, commissioner may appoint agents, etc., and delegation of duties and powers; oath and bond of appointees; premium on bond.

Sec. 57. When information obtained under this act deemed confidential; exceptions; penalty for violation of.

Be it enacted by the Legislature of West Virginia:

That chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, be amended by the addition thereto of article thirteen-A, to read as follows:

ARTICLE XIII-A.

Section 1. Short Title. This act shall be known and may be cited as the "Personal Income Tax Act."

Sec. 2. Definitions. For the purpose of this act, the word:

"Commissioner" means the state tax commissioner.

"Taxpayer" includes any individual or fiduciary, subject to a tax imposed by this article, or whose income is in whole or in part subject to a tax imposed by this article.

"Individual" means a natural person.

"Person" includes individuals, fiduciaries and partnerships.

"Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person, whether individual or corporate, acting in any fiduciary capacity, for any person, trust or estate.

"Resident" applies only to natural persons and includes for the purpose of determining liability to the tax imposed by this article upon or with reference to the income of any taxable year, any person domiciled in the state of West Virginia, and any other person who maintains a permanent place of abode within the state, and spends in the aggregate more than six months of the taxable year within the state.

"Non-resident" when used in connection with this article shall apply only to natural persons whose domicile is without the state of West Virginia, or who maintains a place of abode without the state, and spends in the aggregate more than six months of the taxable year without the state.

"Tax year" means the calendar year in which the tax is payable.
"Income year" means the calendar year or the fiscal year, upon the basis of which the net income is computed under this article, if no fiscal year has been established it means the calendar year. "Fiscal year" means an accounting period of twelve months, ending the last day of any month other than December. "Paid" for the purpose of the deductions under this article means "paid or accrued" or "paid or incurred" and the words "paid or accrued", "paid or incurred" shall be construed according to the methods of accounting upon the basis of which the net income is computed under this article. "Received" for the purpose of the computation of the net income under this article means "received or accrued" and the words "received or accrued" shall be construed according to the methods of accounting upon the basis of which the net income is computed under this article. "Net income" shall mean the gross income as defined in sections twenty-one and twenty-four less the deductions allowed by section twenty-five. "Gross income" means such income as defined in sections twenty-one and twenty-four of this article. "Dividend" means any distribution made by a corporation out of its earnings or profits to its shareholders or members, whether in cash or in other property or in stock of the corporation, other than stock dividends. "Stock dividends" means new stock issued for surplus or profits capitalized, to shareholders in proportion to their previous holdings. "Withholding agent" includes all individuals, corporations, associations and partnerships, in whatever capacity acting, including leasees, or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of the state, or of any municipal corporation or political subdivision of the state, having the control, receipt, custody, disposal or payment, of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments or other fixed or determinable annual or periodical gains, profits, and income taxable under this article. "Includes" and "including" when used in a definition contained in this article shall not be deemed to exclude other things otherwise within the meaning of the term defined.
Sec. 3. Every resident of this state, annually shall pay, upon
his entire net income, after deducting the exemptions provided
in section thirty-three of this article, a tax computed on the
following rates:
On the first one thousand dollars of net income or any part
thereof one per cent.
On the second one thousand dollars of net income or any
part thereof one and one-fourth per cent.
On the third one thousand dollars of net income or any part
thereof one and one-half per cent.
On the fourth one thousand dollars of net income or any
part thereof one and three-fourths per cent.
On the fifth one thousand dollars of net income or any part
thereof two per cent.
On all net income in excess of the sixth thousand, three
per cent.

Sec. 4. Every individual not a resident of this state, an-
ually, shall pay upon his entire net income from all tangible
property owned and all intangible property having a business
situs within the state and from every business, trade, pro-
fession or occupation carried on in this state, after deducting
the exemptions provided in section thirty-three of this article,
a tax at the rates specified in section three of this article.

Sec. 5. The tax imposed by this article shall first be levied,
collected and paid in the year one thousand nine hundred
thirty-six with respect to the taxable income for the calendar
year one thousand nine hundred thirty-five, or in the case of
any taxable year ending during the year one thousand nine
hundred thirty-five, the portion of such taxable year beginning
January first, one thousand nine hundred thirty-five.

Sec. 6. The tax imposed by this article shall apply to estates
and trusts, and shall be levied, collected and paid annually upon
the net income of estates or any kind of property held in trust,
including net income:
1. Received by estates of deceased persons during the period
of administration or settlement of the estate.
2. Accumulated in trust for the benefit of unborn or un-
ascertained persons or persons with contingent interests.
3. Held for future distribution under the terms of a will or
trust.
4. To be distributed to the beneficiaries periodically whether or not at regular intervals.

5. Collected by a guardian of an infant to be held or distributed as the court may direct.

6. Of an estate during the period of administration or settlement which section ten of this article permits to be deducted from the net income upon which the tax is to be paid by the fiduciary.

Sec. 7. The fiduciary shall make the return of income for the estate of trust for which he acts, whether such income be taxable to the estate or trust or to the beneficiaries.

Sec. 8. The net income of an estate or trust shall be computed in the same manner and on the same basis as provided in this article for individual taxpayers, except that there shall also be allowed as a deduction, any part of the gross income which pursuant to the terms of the will or deed creating the trust, is paid to or held for:

1. The United States, any state, territory or any political subdivision thereof, or the District of Columbia.

2. Any corporation or association organized and operated exclusively for religious, charitable, scientific or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual.

Sec. 9. In cases under subdivisions four, five and six of section six, the fiduciary shall include in the return a statement of each beneficiary’s distributive share of such net income, whether or not distributed before the close of the taxable year for which the return is made.

Sec. 10. In cases under subdivisions one, two and three of section six, the tax shall be imposed upon the estate or trust with respect to the net income of the estate or trust and shall be paid by the fiduciary, except that in determining the net income of the estate of any deceased person during the period of administration or settlement there may be deducted the amount of any income property held for or credited to any legatee, heir or other beneficiary. In such cases the estate or trust shall be allowed the exemptions allowed to single persons under section thirty-three, and in such cases an estate or trust created by a person not a resident or for the benefit
12 of a person not a resident shall be subject to tax only to the
13 extent to which individuals other than residents are liable
14 under section twenty-five.

Sec. 11. In cases under subdivisions four, five and six of
2 section six, if the distribution of income is in the discretion
3 of the fiduciary, either as to the beneficiaries to whom pay-
4 able or as to the amounts to which any beneficiary is entitled,
5 the tax shall be imposed upon the estate or trust in the manner
6 provided in section ten but without the deduction of any
7 amounts of income paid or credited to any such beneficiary.
8 In all other cases under subdivisions four, five and six of sec-
9 tion six, the tax shall not be paid by the fiduciary, but there
10 shall be included in computing the net income of each bene-
11 ficiary his distributive share whether distributed or not, of
12 the net income of the estate or trust for the taxable year,
13 or if his net income for such taxable year is computed upon
14 the basis of a period different from that upon the basis of
15 which the net income of the estate or trust is computed, then
16 his distributive share of the net income of the estate or trust
17 for any accounting period of such estate or trust ending within
18 the fiscal or calendar year upon the basis of which such bene-
19 ficiary’s net income is computed. In such cases the income
20 of a beneficiary not a resident, derived through such estate
21 or trust, shall be taxable only to the extent provided in section
22 twenty-two, for individuals other than residents.

Sec. 12. A trust created by an employer as a part of a stock
2 bonus, pension or profit-sharing plan for the exclusive benefit
3 of some or all of his employees, to which contributions are
4 made by such employer, or employees, or both, for the purpose
5 of distributing to such employees the earnings and principal
6 of the fund accumulated by the trust in accordance with such
7 plan, shall not be taxable under section six, but any amount
8 actually distributed or made available to any distributee shall
9 be taxable to him in the year in which so distributed or made
10 available to the extent that it exceeds the amounts paid in by
11 the employee, whether he, his designee or successor be the
12 distributee.

Sec. 13. Where at any time the power to revest in the
2 settler title to any part of the corpus of the trust is vested
3 in the settler alone, or in a person not having a substantial
Sec. 14. The net income or that part of the net income of a trust shall be computed as a part of the income of the settler if in the discretion of the settler it is or may be:
1. Held or accumulated for future distribution to the settler.
2. Distributed to the settler.
3. Applied to the payment of premiums of policies of insurance upon the life of the settler (except policies of insurance irrevocably payable for the purposes and in the manner specified in subdivision two, section eight of this article).

Sec. 15. As used in sections thirteen and fourteen, the term "in the discretion of the grantor" means "in the discretion of the grantor, either alone or in conjunction with any person not having a substantial adverse interest in the disposition of the part of the income in question."

Sec. 16. Individuals carrying on business in partnerships shall be liable for income tax only as individuals. There shall be included in computing the net income of each partner his distributive share, whether distributed or not, of the net income of the partnership for the taxable year, or if his net income for such taxable year is computed upon the basis of a period different from that upon the basis of which the net income of the partnership is computed, then his distributive share of the net income of the partnership for any accounting period of the partnership ending within the fiscal or calendar year upon the basis of which the partner's net income is computed.

Sec. 17. The commissioner may require taxpayers who are members of partnerships to make a return, stating the gross receipts and net gains or profits of the partnership for any taxable year. The net income of the partnership shall be computed in the same manner and on the same basis as the net income of individuals, except that the personal exemptions provided for in section thirty-three shall be allowed only to the individual partners.
Sec. 18. Net income shall be computed upon the basis of the taxpayer's annual accounting period and shall be made:

1. In accordance with the methods of accounting regularly employed by the taxpayer in keeping his books, unless no method of accounting has been employed or if the method employed does not clearly reflect the income, then
2. Upon such basis and in such manner as in the opinion of the commissioner clearly and fairly reflects the taxpayer's income.

Sec. 19. If the taxpayer's annual accounting period is other than a fiscal year, or if the taxpayer has no annual accounting period or does not keep books, net income shall be computed on the basis of the calendar year.

Sec. 20. If the taxpayer changes his accounting period from fiscal year to calendar year, from calendar year to fiscal year, or from one fiscal year to another, the net income shall, with the approval of the commissioner and subject to the provisions of section eighteen be computed on the basis of the new accounting period.

Sec. 21. "Gross income" includes gains, profits, and income derived from:

1. Salaries, wages, or compensation for personal service, of whatever kind and in whatever form paid.
2. Professions, vocations, trades, businesses, commerce or sales.
3. Dealings in property, whether real or personal, growing out of the ownership, use of, or interest in such property.
4. Interest, rent, dividends, securities.
5. The transaction of any business, carried on for gain or profit.
6. Any source whatever, including gain, profit or income derived through estates or trusts by the beneficiaries thereof, whether as distributed or distributable shares.

Sec. 22. In the case of non-resident tax-payers; "gross income" includes only the gross income from sources set forth in section four of this article.

Sec. 23. The taxpayer shall include all items of gross income in his return for the tax year in which the items were received, unless under the methods of accounting permitted
by this article such items may be accounted for at a different
period.

Sec. 24. The following items shall not be included in gross
income and shall be exempt from taxation under this article:
1. Amounts received under a life insurance contract paid by
reason of the death of the insured, whether in a single sum or
installments (but if such amounts are held by the insurer
under an agreement to pay interest thereon, the interest pay-
ments shall be included in gross income).
2. The amount received by the insured as a return of pre-
mium paid by him under life insurance, endowment or annuity
contract either during the term or at the maturity of the term
mentioned in the contract or upon the surrender of the con-
tract.
3. The value of property acquired by gift, bequest, devise
or descent (but the income from such property shall be in-
eluded in gross income).
4. Interest upon the obligations of the United States or its
possessions, the District of Columbia, or upon obligations of
the state of West Virginia or any political subdivision thereof.
5. Salaries, wages, and other compensation received from the
United States.
6. Any amount received through accident, or health insur-
ance, or under workman's compensation acts, as compensation
for personal injury or sickness, plus the amount of damages
received whether by suit or agreement on account of such
injury or sickness or through the war risk insurance act or
any law for the benefit or relief of injured or disabled mem-
ers of the military or naval forces of the United States.
7. Stock dividends when received by a shareholder, unless
before or after the distribution of the dividend the corporation
proceeds to cancel or redeem its stock so as to make the distri-
bution and cancellation or redemption in whole or in part
essentially equivalent to the distribution of a taxable dividend
in which case the amount so distributed shall be treated as a
taxable dividend and included in gross income; and stock
dividends shall be considered in computing gain, profit or
income upon the sale, exchange, or other disposition of stock
upon which a stock dividend has been declared or of the stock
included in such stock dividend.
8. Money and property received or derived from suit,
40 settlement or compromise because of injury to reputation,
41 property or person.
42 9. The value of food and goods produced by the taxpayer
43 and consumed or used by his immediate family.

Sec. 25. In computing net income the taxpayer may
deduct:
1 1. Ordinary and necessary expenses (including a reason-
4 able allowance for salaries and other compensation for
5 personal services actually rendered, and rentals or other pay-
6 ments required to be made as a condition to the continued
7 use or possession of property to which the taxpayer has
8 not taken or is not taking title or in which he has no equity)
9 if paid for or incurred during the tax year in
10 (a) Carrying on a trade or business
11 (b) The production of income required to be included in
12 gross income under this article.
13 2. All interest paid or accrued during the taxable year on
14 indebtedness.
15 3. Income taxes payable to the United States upon income
16 earned in West Virginia; property taxes upon real and per-
17 sonal property situated in this state, except those assessed
18 against local benefits of a kind tending to increase the value
19 of the property assessed.
20 4. Losses sustained during the tax year and not compen-
21 sated for by insurance or otherwise, if incurred in trade or
22 business. The basis for determining the amount of the dedu-
23 tion under this subdivision or under subdivisions five and
24 six of this section shall be the same as is provided in section
25 thirty-one of this article.
26 5. Losses sustained during the tax year and not compen-
27 sated for by insurance or otherwise, if incurred in any
28 transaction entered into for profit, except wagering trans-
29 actions though not connected with trade or business; but in
30 the case of a taxpayer other than a resident of the state, only
31 as to such transactions in real property or in tangible per-
32 sonal property having an actual situs within the state.
33 6. Losses sustained during the tax year on property not
34 connected with the trade or business (but in case of a tax-
35 payer other than a resident, only of real property or tangible
36 personal property having an actual situs within the state)
37 if arising from fires, storms, or other casualty or from theft,  
38 and not compensated for by insurance or otherwise.  
39 7. Debts ascertained to be worthless and charged off  
40 within the tax year. In the case of a debt existing on Janu-  
41 ary first, one thousand nine hundred thirty-five, no more  
42 than its fair market value on that date shall be deducted.  
43 A worthless debt arising since January first, one thousand  
44 nine hundred thirty-five, from unpaid wages, salary,  
45 rent, or any other similar item of taxable income, is not an  
46 allowable deduction, unless the income which such item repre-  
47 sents has been included as income by the taxpayer in a return  
48 rendered under this article, or under chapter thirty-three, acts  
49 of the first extraordinary session of one thousand nine hun-  
50 dred thirty-three.  
51 8. A reasonable allowance for the exhaustion, wear and  
52 tear of property, the income from which is required to be in-  
53 cluded in gross income under this article, used in the trade  
54 or business, including a reasonable allowance for obsolescence.  
55 In case of property held by one person with remainder to  
56 another person, the deduction shall be computed as if the life  
57 tenant were the absolute owner of the property and shall be  
58 allowed to the life tenant. In the case of property held in  
59 trust the allowable deduction shall be apportioned between  
60 the income beneficiaries and the trustee in accordance with  
61 the pertinent provisions of the instrument creating the trust  
62 or in the absence of such provisions, on the basis of the trust  
63 income allocable to each.  
64 9. In the case of timber, mines, and other natural deposits,  
65 except oil and gas wells, a reasonable allowance for depletion  
66 and for depreciation of improvements, according to the  
67 peculiar conditions in each case, based upon cost including  
68 cost of development not otherwise deducted. In case of such  
69 properties acquired prior to January first, one thousand nine  
70 hundred thirty-five, the fair market value of the tax-  
71 payer’s interest in the property on that date shall be taken  
72 in lieu of cost up to that date except in the case of mines  
73 discovered by the taxpayer on or after January first, one  
74 thousand nine hundred thirty-five, and not acquired as  
75 the result of a purchase of a proven tract or lease, where  
76 the fair market value of the property is materially disprop-  
77 portionate to the cost, the depletion allowance shall be based
78 upon the fair market value of the property at the date of
79 discovery or within thirty days thereafter; but such deple-
80 tion allowance based on discovery value shall not exceed
81 fifty per cent of the net income of the taxpayer (computed
82 without allowance for depletion) from the property upon
83 which the discovery was made, except that in no case shall
84 the depletion allowance be less than it would be if computed
85 without reference to discovery value. Discoveries shall in-
86 clude minerals in commercial quantities contained in veins or
87 deposits discovered in an existing mine or mining tract by
88 the taxpayer after January first, one thousand nine hundred
89 thirty-five, if the vein or deposit thus discovered was not
90 merely the uninterrupted extension of a continuing com-
91 mercial vein or deposit already known to exist, and if the
92 discovered minerals are of sufficient value and quantity that
93 they could be separately mined and marketed at a profit.
94 In the case of oil and gas wells the allowance for depletion
95 shall be twenty-five per cent of the gross income from the
96 property during the tax year. Such allowance shall not ex-
97 ceed fifty per cent of the net income of the taxpayer (com-
98 puted without allowance for depletion) from the property,
99 except that in no case shall the depletion allowance be less
100 than it would be if computed without reference to this para-
101 graph. Such reasonable allowance in all the above cases to
102 be made under rules and regulations to be prescribed by the
103 commissioner. In the case of leases the deductions allowed
104 by this subdivision shall be equitably apportioned between
105 the lessor and the lessee.
106 10. In the case of a taxpayer other than a resident of the
107 state the deduction allowed in this section shall be allowed
108 only if, and to the extent that, they are connected with in-
109 come arising from sources within the state and taxable under
110 this chapter to a non-resident taxpayer; the apportionment
111 and allocation of deductions with respect to sources of income
112 within and without the state shall be determined under the
113 rules and regulations to be prescribed by the commissioner.

Sec. 25-(a). In the case of any loss claimed to have been
2 sustained from any sale or other disposition of shares of stock
3 or securities where it appears that, within a period beginning
thirty days before the date of such sale or disposition and
ending thirty days after such date, the taxpayer has acquired
by purchase or by an exchange upon which the entire amount
of gain or loss was recognized by law, or has entered into a
contract or option so to acquire, substantially identical stock
or securities, then no deduction for the loss shall be allowed
under section 25 (5). If the amount of stock or securities
acquired or covered by contract or option to acquire is less
than the amount of stock or securities sold or otherwise dis-
posed of, then the particular shares of stock or securities, the
loss from the sale or other disposition of which is not de-
ductible, shall be determined under rules and regulations
prescribed by the commissioner. If the amount of stock or
securities acquired or covered by a contract or option to ac-
quire is less than the amount of stock or securities sold or
otherwise disposed of, then the particular shares of stock or
securities, the acquisition of which or the contract or option
to acquire which resulted in the non-deductibility of the loss,
shall be determined under rules and regulations prescribed by
the commissioner.

Sec. 26. In computing net income no deduction shall in any
case be allowed in respect of:
1. Personal living or family expenses;
2. An amount paid out for new buildings or for permanent
improvements or betterments made to increase the value of
any property or estate;
3. An amount expended in restoring property or in making
good the exhaustion thereof for which an allowance is or has
been made.
4. Premiums paid on any life insurance policy, covering the
life of any officer or employee, or of any person financially
interested in any trade or business carried on by the taxpayer,
when the taxpayer is directly or indirectly a beneficiary under
such policy.

Sec. 27. A taxpayer who regularly sells or otherwise dis-
poses of personal property on the installment plan may return
as income therefrom in any tax year that proportion of the
installment payments actually received in that year which the
total profit realized or to be realized when the payment is com-
pleted, bears to the total contract price.
Sec. 28. In the case of a casual sale or other casual disposition of personal property for a price exceeding five hundred dollars, or of a sale or other disposition of real property, if in either case the initial payments do not exceed one-fourth of the purchase price, the income may be returned on the basis and in the manner prescribed in section twenty-seven.

Sec. 29. As used in section twenty-eight the term "initial payments" means the payments received in cash or property at the time of sale, or other disposition, plus all payments made up to and at the time of transfer of title, provided that both the sale, or other disposition, and the transfer of title occur in the same taxable period. The term "initial payments" shall not include evidence of indebtedness of the purchaser of amounts secured by the property sold or otherwise disposed of.

Sec. 30. The basis for determining the gain or loss from the sale or other disposition of property, real or personal or mixed, shall be, in the case of property:

1. Acquired before January first, one thousand nine hundred thirty-five, the fair market price or value as of that date, if the price or value exceeds the original cost, and in all other cases the cost.

2. Included in the last preceding inventory used in determining net income in a return under this article, the inventory value.

The final distribution to the taxpayer of the assets of a corporation shall be treated as a sale of the stock or securities of the corporation owned by him and the gain or loss shall be computed accordingly.

Sec. 31. When property is exchanged for other property, the property received in exchange, for the purpose of determining gain or loss, shall be treated as the equivalent of cash to the amount of its fair market value, if a market exists in which all the property so received can be disposed of at the time of exchange for a reasonably certain and definite price in cash; otherwise, such exchange shall be considered as a conversion of assets from one form to another, from which no gain or loss shall be deemed to arise.

In the case of the organization of a corporation, the stock or securities received shall be considered to take the place of
12 property transferred therefor and no gain or loss shall be
13 deemed to arise therefrom.
14 Where in connection with the reorganization, merger or con-
15 solidation of a corporation, a taxpayer receives, in the place of
16 stock or securities owned by him new stock or securities, the
17 basis of computing the gain or loss, if any, shall be, in case
18 the stock or securities owned were acquired before January
19 first, one thousand nine hundred thirty-five, the fair market
20 price or value thereof as of that date, if such price or value
21 exceeds the original cost, and in all other cases the cost thereof.

Sec. 32. The commissioner may direct a taxpayer to prepare
2 an inventory, conforming to the best accounting practice of
3 the trade or business and clearly reflecting the taxpayer’s in-
4 come when he believes an inventory is necessary to determine
5 the income of the taxpayer.

Sec. 33. There shall be deducted from net income the fol-
2 lowing exemptions:
3 1. In the case of a single individual, a personal exemption
4 of six hundred dollars;
5 2. In the case of the head of a family or a married person
6 living with husband or wife, a personal exemption of one thou-
7 sand three hundred dollars. A husband and wife living to-
8 gether shall receive but one personal exemption. If such hus-
9 band and wife make separate returns, the personal exemption
10 may be taken by either or divided between them;
11 3. Two hundred dollars for each individual (other than hus-
12 band or wife) dependent upon and receiving his chief support
13 from the taxpayer, if such dependent individual is under
14 eighteen years of age or is incapable of self-support because
15 mentally or physically defective;
16 4. If the status of the taxpayer, in so far as it affects the
17 exemptions allowed by this section, changes during the tax
18 year, and exemptions shall be apportioned, under rules and
19 regulations prescribed by the tax commissioner.

Sec. 34. If the law of the domicile of a non-resident tax-
2 payer:
3 1. Grants a credit to residents of this state which is sub-
4 stantially similar to the one granted by this section, or
5 2. Imposes a tax upon the personal income of its residents
6 derived from sources in this state and exempts from taxation
7 the personal incomes of residents of this state, the tax commis-
8 sioner shall credit the amount of income tax payable by him
9 under this article with such proportion of the tax payable by
10 him to the state or county of his domicile as his income subject
11 to taxation under this article bears to his entire income upon
12 which the tax payable to the state or county of his domicile was
13 imposed.

Sec. 35. Every person whose gross income, annually, exceeds
2 the amount of the exemption of net income under section thirty-
3 three of this article, except for exemptions for dependents,
4 shall make under oath a return stating specifically the items
5 of his gross income and the deductions and credits allowed
6 by this article.

Sec. 36. In the case of husband and wife living together
2 each shall make such a return, or the income of each shall be
3 included in a single joint return, in which case the tax shall be
4 computed on the aggregate income. But no return shall be
5 required in the following cases:
6 1. In the case of a married person living with husband or
7 wife on the last day of the tax year whose income was included
8 in a joint return.
9 2. In the case of a married woman living with her husband
10 on the last day of the tax year, who had no separate gross
11 income for the tax year.
12 3. Dependent individuals who receive their chief support
13 from a head of a family and who are under twenty-one years
14 of age or incapable of self-support because mentally or physi-
15 cally defective and whose income, if any, is included in the
16 gross income of such head of a family.
17 4. Minor or incompetent individuals whose income, if any,
18 would be taxable to or subject to a return by a head of a
19 family, guardian or other fiduciary.

Sec. 37. If a taxpayer is unable to make his own return the
2 return shall be made by his authorized agent or by his guardian
3 or other person charged with the care of his person or property.

Sec. 38. A non-resident taxpayer shall not be entitled to
2 the deductions authorized by section twenty-five unless he
3 makes under oath a complete return of his gross income from
4 sources both within and without the state.
Sec. 39. Every partnership shall make a return for each tax year, stating the items of its gross income and the deductions allowed by this article, and shall include in the return the names and addresses of the individuals who would be entitled to share in the net income if distributed and the amount of the distributive share of each individual. The return shall be sworn to by at least one of the partners.

Sec. 40. Every fiduciary (except a receiver legally in possession of part only of the property of a taxpayer) shall make under oath a return for the individual or estate or trust for whom he acts, as follows:

1. If he acts for an individual whose entire income from whatever sources derived is in his charge.
2. If he acts (a) for an estate of a deceased person during the period of administration or settlement, whether or not the income of the estate during the period of administration or settlement is properly paid or credited to any legatee, heir or other beneficiary; (b) for an estate or trust the income of which is accumulated in trust for the benefit of unborn or unascertained persons, or persons with contingent interests; or (c) for an estate or trust the income of which is held for future distribution or is distributable in the discretion of the fiduciary under the terms of a will or trust.
3. If he acts (a) for an estate or trust the income of which is to be distributed to the beneficiaries periodically; or (b) as the guardian of an infant whose income is to be held or distributed as the court may direct.

The return made by a fiduciary shall state specifically the items of the gross income and the deductions, exemptions, and credits allowed by this article. Under such regulations as the tax commissioner may prescribe, a return made by one or more joint fiduciaries shall be a sufficient compliance with the above requirement. The fiduciary shall make oath that he has sufficient knowledge of the affairs of the individual, estate or trust for whom or which he acts, to enable him to make the return, and that the same is, to the best of his knowledge and belief, true and correct.

Fiduciaries required to make returns under this article shall be subject to all the provisions of this article which apply to taxpayers.
Sec. 41. Returns shall be in the form the commissioner may prescribe, and shall be filed with the commissioner on or before the fifteenth day of March of each year, if the return is made on the basis of the calendar year, or if the return is made on the basis of a fiscal year, then within thirty days following the close of the fiscal year. On application, the tax commissioner may grant a reasonable extension of time, not exceeding two months, for filing returns whenever in his judgment good cause exists therefor.

Sec. 42. In order to aid in the effective administration of this article and the procurement of a complete set of returns, the tax commissioner, under such reasonable rules and regulations as are necessary, may require a person who pays during the calendar year to another person within this state, six hundred dollars or more, as salary, compensation for personal services, or for fixed or determinable gain, profit or income, to report every such payment and the name and address of the recipient, if known.

Sec. 43. If the commissioner shall be of the opinion that any taxpayer has failed to file a return, or to include in a return filed, either intentionally or through error, items of taxable income, he may require from such taxpayer a return, or a supplementary return, under oath, in such form as he shall prescribe, of all the items of income which the taxpayer received during the year for which the return is made, whether or not taxable under the provisions of this article. If from a supplementary return, or otherwise, the commissioner finds that any items of income, taxable under this article, have been omitted from the original return, he may require the taxpayer to add the item to his original return. The supplementary return and the correction of the original return, shall not relieve the taxpayer from any of the penalties to which he may be liable under any provision of this article. The commissioner may proceed under the provisions of section forty-six of this article whether or not he requires a return or a supplementary return under this section.

Sec. 44. The full amount of the tax shall be paid to the commissioner at the time fixed by section forty-one for filing the return. If the time for filing the return is extended, interest at the rate of six per cent per year, from the time
5 when the return was originally due shall be added and paid.
6 Under such regulations as the commissioner may prescribe
7 the tax may be paid with uncertified check, but if such a check
8 is not paid by the bank on which it is drawn, the taxpayer by
9 whom the check is tendered shall remain liable for the payment
10 of the tax and for all legal penalties, the same as if such check
11 had not been tendered.

Sec. 45. As soon as practicable after the return is filed, the
2 commissioner shall examine it and compute the tax, and the
3 amount so computed by the commissioner shall be the tax. If
4 the tax found due shall be greater than the amount paid, the
5 excess shall be paid to the commissioner within thirty days
6 after notice of the amount is mailed by the commissioner.
7 If the return is made in good faith and the understatement
8 of the tax is not due to any fault of the taxpayer, there shall
9 be no penalty or additional tax added because of such under-
10 statement, but interest shall be added to the amount of the
11 deficiency at the rate of one per cent for each month or fraction
12 of a month.
13 If the understatement is due to negligence on the part of
14 the taxpayer, but without intent to defraud, there shall be
15 added to the amount of the deficiency five per cent thereof,
16 and in addition, interest at the rate of one per cent per month
17 or fraction of a month shall be added.
18 If the understatement is false or fraudulent, with intent to
19 evade the tax, the tax on the additional income discovered to
20 be taxable shall be doubled and an additional one per cent per
21 month or fraction of a month shall be added.
22 The interest provided for in this section shall in all cases be
23 computed from the date the tax was originally due to the date
24 of payment.
25 If the amount of the tax found due shall be less than the
26 amount paid, the excess shall be refunded by the commissioner
27 out of the proceeds of the tax retained by him.

Sec. 46. If the commissioner discovers that the income of
2 a taxpayer, or a portion thereof, has not been assessed, at
3 any time within five years after the time when the return was
4 due, he may assess the same and give notice to the taxpayer
5 of such assessment, and such taxpayer shall thereupon have
6 an opportunity, within thirty days, to confer with the com-
missioner as to the proposed assessment. The limitation of two years to the assessment of such tax or additional tax shall not apply to the assessment of additional taxes upon fraudulent returns. After the expiration of thirty days from such notification the commissioner shall assess the income of such taxpayer or any portion thereof which he believes has not theretofore been assessed and shall give notice to the taxpayers so assessed, of the amount of the tax and interest and penalties, if any, and the amount thereof shall be due and payable within thirty days from the date of the mailing of such notice. The provisions of this article with respect to revision and appeal shall apply to a tax so assessed.

Sec. 47. If any tax imposed by this article or any portion of such tax be not paid within sixty days after it becomes due, the commissioner shall issue a warrant directed to the sheriff of any county of the state commanding him to levy upon and sell the real and personal property found within his county of the person owing the tax, for the payment of the amount thereof, with the added penalties, interests and the cost of executing the warrant, and to return such warrant to the commissioner and pay to him the money collected by virtue thereof within sixty days after the receipt of such warrant. The sheriff shall within five days after the receipt of the warrant, file with the clerk of the circuit court a copy thereof, and thereupon the clerk shall enter in the judgment docket, in the column for judgment debtors the name of the taxpayer mentioned in the warrant, and in appropriate columns the amount of the tax or portion thereof and penalties for which the warrant is issued and the date when such copy is filed, and thereupon the amount of such warrant so docketed shall become a lien upon the title to and interest in real property or chattels real of the person against whom it is issued in the same manner as a judgment duly docketed in the office of such clerk. The said sheriff shall thereupon proceed upon the same in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against properties upon judgment of a court of record, and shall be entitled to the same fees for his services, in executing the warrant, to be collected in the same manner. If a warrant be returned not satisfied in full, the commissioner shall have the same remedies to enforce the claim for taxes against the taxpayer as if the
30 state had recovered judgment against the taxpayer for the
31 amount of the tax.

Sec. 48. Every tax imposed by this article and all increases,
interest and penalties thereon, shall become, from the time it is
due and payable, a personal debt, from the person liable to pay
the same, to the state of West Virginia.

Sec. 49. Action may be brought at any time by the attorney
general at the instance of the commissioner, in the name of the
state to recover the tax, penalty or interest due under this
article.

Sec. 50. Upon a record of his reasons therefor, the commis-
sioner may waive or reduce any of the additional taxes or in-
terest provided for in section forty-five of this article.

Sec. 51. If a person without fraudulent intent fails to pay
a tax or to make a return or supply information within the
time required by this article, he shall be liable to a penalty,
in addition to all other taxes, interests and penalties, provided
for by this article, of not more than one hundred dollars, to be
assessed by the commissioner and collected in the same manner
as an additional tax found due under section forty-six.

If a person with intent to evade a requirement of this article
or a lawful requirement of the commissioner thereunder, fails
to pay a tax or to make a return or supply information re-
quired by this article, or with like intent, makes a false or
fraudulent return or statement, or supplies false or fraudulent
information, he shall be liable to a penalty of not more than
one thousand dollars. This penalty shall be recovered by the
attorney general in the name of the state, by action in a court
of competent jurisdiction.

In addition to such penalty, the taxpayer shall be guilty of
a misdemeanor and, upon conviction, shall be fined not to
exceed one thousand dollars or be imprisoned not to exceed one
year, or both, in the discretion of the court.

The failure to do any act required by or under the pro-
visions of this article shall be deemed to be an act committed
in part at the office of the tax commissioner in Charleston.
The certificate of the commissioner that a taxpayer has not
complied with the provisions of this section shall be prima facie
evidence of that fact.
Sec. 52. If a taxpayer, who has failed to file a return or has filed an incorrect or insufficient return and has been notified by the commissioner of his delinquency, refuses or neglects within twenty days after such notice to file a proper return, or files a fraudulent return, the commissioner shall determine the income of such taxpayer according to his best information and belief and assess the same at not more than double the amount so determined. The commissioner may in his discretion allow further time for the filing of a return in such case.

Sec. 53. A taxpayer may apply to the commissioner for revision of the tax assessed against him, at any time within one year from the time of the filing of the return or from the date of the notice of the assessment of an additional tax. The commissioner shall grant a hearing thereon and if, upon such hearing, he determines that the tax is excessive or incorrect, he shall resettle the same according to the law and the facts and adjust the computation of tax accordingly. The commissioner shall notify the taxpayer of his determination and shall refund to the taxpayer the amount, if any, paid in excess of the tax found by him to be due. If the taxpayer has failed, without good cause, to file a return within the time prescribed by section forty-one, or has filed a fraudulent return, or, having filed an incorrect return, has failed, after notice, to file a proper return, the commissioner shall not reduce the tax below double the amount for which the taxpayer is found to be properly assessed.

Sec. 54. A taxpayer may appeal from the determination of the commissioner any time within thirty days after the determination. He shall file a complaint in the circuit court of the county in which he resides, or if not a resident, in which he conducts his business, trade or occupation, or has taxable income. Thereupon, appropriate proceedings shall be had and the relief, if any, to which the taxpayer may be entitled may be granted and any taxes, interest or penalties found by the court to be in excess of those legally assessed shall be ordered refunded to the taxpayer, with interest from time of payment.

Sec. 55. The commissioner, for the purpose of ascertaining the correctness of a return or for the purpose of making an estimate of the taxable income of a taxpayer, may by an agent:
4 1. Examine books, papers, records or memoranda, bearing
upon the matters required to be included in the return.
6 2. Require the attendance of the taxpayer or of any other
7 person having knowledge of his income.
8 3. Take testimony and require proof material for his infor-
9 mation.
10 4. Administer oath necessary for the administration of this
11 article.

Sec. 56. The commissioner may, with the approval of the
2 governor, appoint such officers, agents and employees as are
3 necessary for the administration of this article; and he may
4 delegate to them such duties and powers as he may from time
5 to time prescribe.
6 The commissioner may require such of the officers, agents
7 and employees as he may designate, to take the constitutional
8 oath and to give bond for the faithful performance of their
9 duties. All premiums on such bonds shall be paid by the
10 commissioner out of money appropriated for the purpose of
11 this article.

Sec. 57. The commissioner or any officer, agent or employee,
2 except when necessary to the enforcement of this article or as
3 required by judicial or legislative process, shall not divulge
4 or make known:
5 1. The business affairs, operations or information obtained
6 by an investigation of records and equipment of any person
7 visited or examined in the discharge of official duty.
8 2. The amount or sources of income, profits, losses, expendi-
9 tures or any particular thereof, set forth or disclosed in any
10 return.
11 3. Permit any return or copy thereof to be seen or examined
12 by any person except as provided by law.
13 However, the commissioner may authorize examination of
14 such returns by other state officers, or if a reciprocal arrange-
15 ment exists, by tax officials of another state, or the federal
16 government.
17 A person violating a provision of this section shall be guilty
18 of a misdemeanor, and upon conviction, punished by a fine
19 not to exceed one thousand dollars or by imprisonment not
20 exceeding one year, or both, at the discretion of the court.

Sec. 58. The commissioner may make such rules and regu-
2 lations, not inconsistent with this article, as are necessary to 3 enforce its provisions.

Sec. 59. The commissioner shall pay all taxes, fees, interest, 2 and penalties collected under this article into the state treasury.

Sec. 60. If any part of this article shall, for any reason, 2 be adjudged by a court to be invalid, such judgment shall not 3 affect, impair or invalidate the remainder of this article, but 4 shall be confined in its operation to the part thereof directly 5 involved in the controversy in which such judgment was ren- 6 dered.

Sec. 61. This article shall take effect as of January first, 2 one thousand nine hundred thirty-five, and the first tax to be 3 assessed under this article shall be computed upon income re- 4 ceived during the calendar year one thousand nine hundred 5 thirty-five.

CHAPTER 90

(Senate Bill No. 138—By Mr. Paul, by request)

AN ACT to amend and reenact section one, article four, chapter thirty-seven of the code of West Virginia, one thousand nine hundred thirty-one, relating to partition of lands owned in common by several persons, or persons and the state, providing for jurisdiction of courts to try such cases, and permitting the state to be made a party thereto.

[Passed March 9, 1935: In effect ninety days from passage. Became a law without the approval of the Governor.]

Sec. 1. Tenants in common, joint tenants and copar-

Be it enacted by the Legislature of West Virginia:

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

Section 1. Tenants in common, joint tenants and copar-
2 ceners, shall be compellable to make partition, and the circuit
3 court of the county wherein the land or estate, or any part
4 thereof, may be, shall have jurisdiction, in cases of partition.
5 and in the exercise of such jurisdiction, may take cognizance
6 of all questions of law affecting the legal title, that may arise
7 in any proceedings.
8 The state hereafter shall, whenever it is an owner of an
9 undivided interest in any land or real estate together with
10 other persons, become a party plaintiff in any proceeding by
11 any person entitled to demand partition under the first sen-
12 tence of this section. Before instituting suit for partition the
13 person entitled to demand it shall notify the proper official
14 who has supervision of such state land and thereafter they
15 shall proceed as they deem best. In all such cases resulting
16 in partition or sale the costs of suit shall come from the pro-
17 ceeds of sale. No state official in charge of state lands shall
18 refuse to perform his duty in any case where any person is
19 entitled to demand a partition, or sale under this article.

CHAPTER 91

(House Bill No. 44—By Mr. Strouss)

AN ACT to amend and reenact sections thirty-two and thirty three,
article ten, chapter eleven of the code of West Virginia, one
thousand nine hundred thirty-one, relating to the redemption
of any portion or portions of, or any undivided interest or in-
terests in any tract or tracts of land or town or city lot, re-
turned delinquent for the nonpayment of taxes thereon and
purchased by the state of West Virginia.

(Passed March 8, 1935; in effect ninety days from passage. Approved
by the Governor.)
Ch. 91[  REDEMPTION OF UNDIVIDED INTERESTS  411

Be it enacted by the Legislature of West Virginia:

That sections thirty-two and thirty-three, article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, be and the same are hereby amended and reenacted to read as follows:

Section 32. Any person having a right to redeem any tract or part of a tract of land, or any town or city lot purchased by the state at a sale therefor for the nonpayment of the taxes thereon, who may desire to redeem a less quantity than the whole amount sold, may have the part or parts thereof which he desires to redeem surveyed and laid off by metes and bounds, and shall return a plat and description thereof to the clerk of the county court of the county in which the same was so sold, who shall record the same in the deed book in his office together with the affidavits thereto attached, required by the next succeeding section.

Any person having a right to redeem any undivided interest in any tract of land, town or city lot purchased by the state at a sale therefor for the nonpayment of the taxes thereon, who may desire to redeem such undivided interest, may have the assessment divided by the assessor of said county who shall certify to the auditor the former owners of all interests therein and the interests so owned by each and the proportionate part of the assessed value of each interest.

Sec. 33. To every such plat and description there shall be an affidavit appended by the surveyor or person making the same, that such plat and description and the quantity of land mentioned therein is, as he verily believes, correct; and the clerk shall give to the person filing the same a certificate of the fact of the filing of such plat or plats, and of the quantity of land contained therein, and, if there be more than one such plat, the quantity contained in each. Upon the presentation of such certificate to the auditor, and the payment into the treasury of the proper proportion of the taxes and interest due on such part or parts of the land or undivided interest in the land, so sold, as the quantity so proposed to be redeemed bears to the whole tract or part of a tract sold and purchased by the state as aforesaid, the auditor shall issue his certificate of redemption as hereinbefore provided for the part or parts of such real
16 estate or undivided interest in the land, so redeemed. If such
17 real estate be redeemed in separate parcels, the same shall be
18 entered and charged with taxes on the land books of the proper
19 county in separate parcels, as contained in the plats and de-
20 scriptions thereof filed and recorded in the office of the clerk of
21 the county court as aforesaid.
22 The auditor shall issue certificates of redemption for undi-
23 vided interests hereunder, and alter and correct the records in
24 his office to show the facts as its interests redeemed and unre-
25 deemed, and notify the county clerk and assessor accordingly.
26 Every such certificate of any assessor showing the former
27 owners of the undivided interests and the proportions formerly
28 owned or held by each as required in the last preceding section,
29 shall be likewise presented to the auditor and upon the payment
30 of the proportionate amount of tax due on such undivided in-
31 terest so to be redeemed according to the valuations placed
32 thereon by said assessor the auditor shall likewise issue his cer-
33 tificate of redemption the same as hereinbefore provided for.
34 Every such certificate so presented to the auditor shall be
35 by him carefully preserved in his office and the fact of such
36 redemption, with the amount of taxes so redeemed, the name
37 and interest of the person or persons so redeeming, and the
38 names and interest of owners of the remaining undivided in-
39 terests not so redeemed shall be certified by the auditor to the
40 commissioner of school lands of said county with the list of
41 lands purchased by the state for such year, and not redeemed,
42 that the remaining interests only may be disposed of by said
43 commissioner of school lands in the manner provided by law.
44 And in like manner it shall be the duty of the commissioner of
45 school lands to allow the redemption of any such portion of a
46 tract or tracts of land, or of a town or city lot, or of an undi-
47 vided interest in such tract, or lot after the list of lands so pur-
48 chased by the state and not redeemed from the auditor shall be
49 certified to him by the auditor, in the same manner and time as
50 is provided for the redemption of entire tracts or lots from him.
AN ACT to amend and reenact section twenty-three, article nine, chapter seventeen, acts of the Legislature of West Virginia, first extraordinary session, one thousand nine hundred thirty-three, relating to the redemption of any portion or portions of any undivided interest or interests in any tract or tracts of land or town or city lot, returned delinquent for nonpayment of taxes thereon.

[Passed March 8, 1935; in effect ninety days from passage. Approved by the Governor.]

Sec. 23. The sheriff or collector of every county shall, at or before the session of the county court at which the county levy is to be laid, present to such court three lists, mentioned in section twenty of this article, for examination. The court having become satisfied of the correctness of such lists, or having corrected them if erroneous, shall direct their clerk to certify copies thereof to the auditor. The original lists shall be preserved by the clerk in his office, and the list of real estate delinquent shall be recorded by the clerk in a well-bound book to be kept by him for the purpose. Such taxes shall bear interest at the rate of three-fourths of one per cent per month, and the sheriff shall collect the taxes and interests. If any taxpayer, whose property is returned delinquent shall pay the taxes and interest before the sale hereinafter provided for,
the sheriff shall give him a duplicate receipt one of which shall be filed with the clerk of the county court, who shall note such payment in the margin of the record of such delinquency. The sheriff shall account for all delinquent tax collections in the same way he accounts for other taxes.

Any person owning any part of a tract or parcel of land or of any town or city lot, the whole of which has been returned delinquent in the name of another, or any person owning any undivided interest in a tract or parcel of land, or in any town or city lot, assessed in its entirety to one, more or all of the owners thereof, may, if he or they desire to pay the taxes on such portion of said property or on his undivided interest in the same, do so upon complying with the requirements of sections thirty-two and thirty-three, article ten, chapter eleven in reference to the redemption of land where the same has been sold and purchased by the state: Provided, however, That if the part upon which any such person desire to pay the tax shall be a town or city lot and the same shall be designated by number or other definite description upon any plat of such town or addition thereto filed in the county clerk’s office, and there shall be any data on the land books where such land is charged from which the sheriff can correctly ascertain the taxes properly chargeable to such lot, it shall be his duty to compute the proper proportion of taxes chargeable to such lot or part of lot, and upon payment of the same such lot shall be discharged from said delinquency without any other proceeding being necessary.

And if there be no such data on the land books where such land or town or city lot is charged, such person so desiring to redeem such portion or undivided interest in the same may secure from the assessor of said county a certificate showing a division of the values of the part or interest so to be redeemed, and the owner or owners thereof, from which the sheriff shall compute the proper proportion of taxes upon the part, lot, part of lot or undivided interest so to be redeemed. The sheriff shall return all such certificates to the clerk of the county court of his said county, where the same shall be filed for preservation.
AN ACT to amend chapters eleven and thirty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as herefore amended, by amending and reenacting section nine, article four, chapter forty, acts of the Legislature of West Virginia, regular session, one thousand nine hundred thirty-three, relating to assessments of land, estates in land and undivided interests therein authorizing the separate assessment of undivided interests therein to the respective owners or groups of same on request to the county assessor, and validating former assessments of such interests, advertisements, delinquencies, sales, forfeitures, redemptions and tax deeds thereunder, so far as the state is concerned, in each such undivided interest; protecting the owner of an undivided interest therein who has or shall pay his portion of the taxes thereon, and rendering liable separately such undivided interest not in any way appearing on the land books for any year or years on which the taxes have not been or shall from time to time not be paid as if such an undivided interest were separately assessed as a separate tract, and facilitating the collection of taxes on an undivided interest where the tax on such undivided interest has not already been paid.

Sees.

9. Separate assessment of undivided interests in land; when so assessed, such interest considered as separate tract; validation of separate assessment heretofore made; revesting of title acquired by state through forfeiture or sale; rights of third party acquiring valid title; entry and back taxing of undivided interest; estoppel when taxes unpaid; separate assessment of surface and sub-surface or timber rights; separate assessment of undivided interest in any such rights; definition of "owner;"

Sec.

laws as to taxation, redemption, etc., to apply to undivided interests; tax purchase by co-tenant of all interests, when no fiduciary relationship; in tax sales, title to only the part sold passes; redemption of state's title to part or all of tract from auditor; auditor's certificate of redemption; time of redemption; lien of redeemer of co-owner's interest; rights of parties in adjudicated or pending suits not affected by act; if part of act invalid, remaining part not affected.

Be it enacted by the Legislature of West Virginia:

That section nine, article four, chapter forty, acts of the Legis-
lature of West Virginia, regular session, one thousand nine hundred thirty-three, be amended and reenacted to read as follows:

Section 9. Whenever in chapter eleven or chapter thirty-seven, the words land or lands or tract or tracts of lands, or lot or lots, or real estate, or part or parcel of a tract or lot, or estate or estates in land or aliquot part of land, are used, they shall be read to include an undivided interest in land and an undivided interest in any estate in land, and such interests may be by the assessor charged to such owner on the land books separately to each owner according to his interest therein and shall be subject to all the provisions of chapters eleven and thirty-seven in relation to assessments, advertisements, delinquencies, sales, forfeitures, redemptions and tax deeds as now apply to entire tracts, so far as the state is concerned. Each such undivided interest so separately assessed shall be considered as if such undivided interest were a separate tract. And any such assessment of an undivided interest heretofore made upon which the taxes shall have been duly paid, and any return of delinquency or sale for taxes based on such an assessment, shall, so far as the state is concerned, be treated and held as valid and sufficient; and in such case any and all title which has become vested in the state because of any forfeiture or sale of any such interest when so assessed shall be vested in the party who would have had the title and been entitled to said interest if this section had been valid and in force when such assessment was made, but such validation shall not extend to the deprivation of title of such a third party as shall have meanwhile acquired valid title thereto by virtue of other provisions of law. Upon proper showing to the assessor, such an undivided interest shall be entered on the land books at the instance of the owner or the state and be back-taxed as if it were a separate tract; but any person whose land or undivided interest therein is delinquent or as to which there is a purported assessment on which the taxes are unpaid for any of the years one thousand nine hundred twenty-six to one thousand nine hundred thirty-four, inclusive, shall be estopped from pleading at law or in equity any defect in the assessment, advertisement, delinquency, sale, forfeiture, redemption or tax deed so long as the taxes or any part of same on such land or undivided interest therein are unpaid. When any person be-
39 comes the owner of the surface, and another or others become
40 the owner of the coal, oil, gas, ore, limestone, fireclay, or other
41 minerals or mineral substances in and under the same, or of the
42 timber thereon, the assessor shall assess such respective estates,
43 or any undivided interest therein, to the respective owners
44 thereof, or to groups of same requesting such group assessment,
45 at their true and actual value, according to the rule prescribed
46 in this chapter. When any person or persons are, or become,
47 the owner or owners of any undivided interest or interests in
48 land, or in the surface, coal, oil, gas, ore, limestone, fireclay,
49 timber or other estate or estates therein, the owner or owners
50 of such undivided interest or interests shall have their land,
51 or estate or interest or undivided interest in such land, or in
52 such estate in land, entered on the land books of the county
53 in which it or a part of it is situated, and cause himself to be
54 charged with taxes legally levied on such interest or undivided
55 interest, but may on request of such owner to the assessor, and
56 without consent or acquiescence of the other joint owner or
57 owners of the other undivided interest or interests have such
58 undivided interest or interests assessed to him or them sepa-
59 rately and independently of the other undivided interest or
60 interests therein; and all such assessments of undivided in-
61 terests heretofore entered on the assessment books are hereby
62 validated in so far as the same are now in, or liable to vest in
63 the state. The words "owner or owners" as used in this section
64 shall include any claimant or claimants who now appear as
65 such on the assessment books or are entitled to have the land
66 or interest in land or interest in an estate in land claimed by
67 him or them to be entered and assessed for taxation. All acts
68 and parts of acts relating to the taxation, delinquency, sale,
69 procuring of tax deeds by individual purchasers, advertise-
70 ment, forfeiture and redemption of lands or real estate shall
71 also apply with the same force to said estates in land, and any
72 cotenant, coparcener or joint tenant, in the absence of satis-
73 factory proof of a fiduciary relationship, shall be entitled to
74 acquire by tax purchase for his own account the interest of
75 any, or all of his co-owners in any tract, lot, estate or parcel
76 of land, without being required to hold the same under any
77 constructive trust; and the burden of proof shall rest on any
person alleging such a constructive trust, and such a constructive trust shall prima facie be non-existent.

In any tax sale by a sheriff, school commissioner or commissioner of forfeited lands, only the tract, lot, estate, interest or undivided interest proceeded against in that particular instance shall pass to the purchaser, so far as the state is concerned, so that any other estate, interest or undivided interest in the same tract not embraced in such sale shall not be affected by such sale, nor shall the title, or rights of the owners or claimants of such other estate, interest, or undivided interest in land be affected thereby.

When for any year or years after one thousand nine hundred twenty-five, the undivided interest of any person shall not have been entered and taxed on the land books, or where such interest may have been assessed, and taxes thereon for any one or more, or all, of said years shall not have been paid to the state, such person, or his successor in title, or a co-owner of same, shall be entitled to redeem his and/or any or all of his co-owners’ interest from the state, so far as the state has title or claim thereto by reason of such non-entry or nonpayment of taxes, and the same has not been vested in third persons under the laws of West Virginia, upon application to the auditor in writing, and payment of such amount as the auditor shall find to be due the state on account of taxes that should have been paid; and in such cases the auditor shall issue certificates of redemption in manner and form provided by law for redemption of land, and such redemption shall thereafter estop the state from asserting any claim to such interest on account of such non-entry or nonpayment of taxes: Provided, however, that redemption under this section shall be made prior to the time the state shall sell the same, in any proceeding for the purpose, or before January first, one thousand nine hundred thirty-nine, whichever first occurs; but the failure of any person, owning, claiming, or having the right to redeem any other undivided interest in the land, or estate in land, to redeem as aforesaid, shall in nowise affect, impair the right of, or preclude any co-owner from redeeming his interest under this section. The owner may be permitted by the auditor, upon application in writing, to redeem said land or estate in land or his undivided interest therein, to the extent that the title thereto has
not passed to strangers, by payment of such an amount as the tax­es on same respectively would have been with interest and penalties. If one co-owner redeems the undivided interest of one or more of his co-owners by paying the taxes on same as above, such co-owner so redeeming shall be subrogated to the lien of the state for so much of such taxes as should have been paid by such other co-owner against the interest of such other co-owner in such property. He shall lose his right to such lien, however, unless within one year after such redemption by him he shall file with the clerk of the county court his claim in writing against such other co-owner, accompanied by the tax receipt or a duplicate thereof. The clerk shall docket such claim on the judgment lien docket in his office and properly index the same. Such lien may be enforced as other liens are enforced.

Nothing in this act shall affect the right of any party to any action or suit heretofore finally adjudicated, or that may be now pending or that may be instituted on or before the first day of July, one thousand nine hundred thirty-five. If any part of this act is, for any reason, declared unconsti­tutional, the decision of the court shall not affect the validity of any of the remaining portions.

All acts or parts of acts inconsistent herewith are hereby repealed.

CHAPTER 94

(Senate Bill No. 30—By Mr. Spillers)

AN ACT to amend article five, chapter thirty-five of the code of West Virginia, one thousand nine hundred thirty-one, by adding thereto a new section to be known as section six, pro­viding for the creation and validation of perpetual trusts for the care, preservation, maintenance, improvement or embellish­ment of cemetery or burial lots, public or private, and structures and growths thereon.

[Passed February 28, 1935; In effect from passage. Became a law without the approval of the Governor.]

Sec. 6. Purposes for which express trusts for perpetual care of cemetery or burial lot may be created; when trustee may use income for general upkeep; who may act as trustee; in­vestment of funds.
Be it enacted by the Legislature of West Virginia:

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

Section 6. Express trusts may hereafter be created for the perpetual care, preservation, maintenance, improvement and/or embellishment of any cemetery or burial lot, public or private, and of the appurtenances of any such lot, including the erection, repair, preservation and/or removal of mausoleums, tombs, monuments, gravestones, fences, railings, walks, and/or other structure or structures thereon, and the planting, trimming, watering and/or removing of any tree, shrub or other plant or plants thereon. Any such trust heretofore created shall be valid. Any such trust whether created heretofore or hereafter, may provide for the accumulation of income for any of the aforesaid purposes, but if and when the accumulations so authorized exceed the replacement cost of all structures upon such lot, the trustee of such trust may, either with or without authorization of any court having jurisdiction in the premises, divert the excess thereover to the general upkeep of the cemetery. Any person or any association of persons or corporation authorized by the laws of this state to act as trustee, may serve as trustee of any such trust. The funds in any such trust shall be invested in the manner provided in the instrument creating same, but, in the absence of any such provisions, in the manner provided by article six, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one.

CHAPTER 95

(Senate Bill No. 37—By Mr. Randolph)

AN ACT to amend and reenact chapter fifty-seven, acts of the Legislature of West Virginia, regular session, one thousand
nine hundred thirty-three, relating to the rate of wages to be paid to workmen and mechanics employed in construction of public improvements.

[Passed February 22, 1935; in effect from passage. Became a law without the approval of the Governor.]

Sec. 1. Definitions of words and phrases.

Sec. 2. A fair minimum rate of wages to be paid workmen on public improvement: how ascertained; printed on bidding blanks.

Sec. 3. Contract between public authority and contractor to provide for a wage rate not less than the one fixed.

Sec. 4. Wage rates for the several classes employed to be kept posted at site of work.

Sec. 5. Penalty for violation of act by contractor: action by employee against contractor if paid less than minimum wage.

Sec. 6. Act not to apply to PWA contracts or those involving federal grant regulations.

Sec. 7. If section invalid, remainder not affected.

Be it enacted by the Legislature of West Virginia:

That chapter fifty-seven, acts of the Legislature of West Virginia, regular session, one thousand nine hundred thirty-three, relating to the rate of wages to be paid to workmen and mechanics employed in construction of public improvements, be amended and reenacted, to read as follows:

Section 1. The term "public authority," as used in this act, shall mean any officer, board or commission of the state of West Virginia, or any political subdivision thereof, authorized by law to enter into a contract for the construction of a public improvement. The term "construction," as used in this act, shall mean any construction, reconstruction, improvement, enlargement or repair of any public improvement. The term "public improvement," as used in this act, shall include all buildings, roads, streets, alleys, sewers, ditches, sewage disposal plants, waterworks, and all other structures or works constructed by the state of West Virginia or any political subdivision thereof. The term "locality," as used in this act, shall mean the county wherein the physical work upon any public improvement is being performed.

Sec. 2. Any public authority authorized to contract for a public improvement, shall, before advertising for bids for the construction thereof, fix and determine a fair minimum rate of wages to be paid by the successful bidder to the employees in the various branches or classes of the work, to be performed. The "fair minimum rate of wages," for the intents and
purposes of this act, shall be the rate of wage paid in the
locality as hereinbefore defined to the majority of workmen,
laborers or mechanics in the same trade or occupation. In the
event that it be determined that there is not a majority in the
same trade or occupation paid at the same rate, then the rate
paid to the greater number in such trade or occupation shall
be the minimum rate, provided such greater number constitutes
at least forty per cent of the laborers, workmen or mechanics
engaged in such trade or occupation; in the event that there is
less than forty per cent of the laborers, workmen or mechanics
engaged in the same trade or occupation in the same locality
paid the same rate, then the average rate paid such laborers,
workmen or mechanics in the same trade or occupation shall
be the minimum rate. The minimum rate of wages so fixed
shall be printed on the bidding blanks.

Sec. 3. In all cases where any public authority shall fix a
fair minimum rate or rates of wages as herein provided, the
contract executed between the public authority and the suc-
cessful bidder shall contain a provision requiring the successful
bidder and all his subcontractors to pay a rate or rates of
wages which shall not be less than the minimum rate or rates
of wages so fixed. It shall be the duty of the successful bidder
and all his subcontractors to strictly comply with such pro-
visions of the contract.

Sec. 4. A clearly legible statement of all minimum wage rates
to be paid the several classes of labor employed on the work
shall be kept posted in a prominent and easily accessible place
at the site of the work.

Sec. 5. Any contractor or subcontractor who shall violate the
wage provisions of such contract, or who shall suffer, permit or
require any employee to work for less than the minimum rate
of wages so fixed, shall be fined not less than fifty dollars nor
more than five hundred dollars. Any employee upon any public
improvement who is paid less than the fixed minimum rate of
wages applicable thereto may recover from the contractor or
subcontractor the difference between the fixed minimum rate
of wages and the amount paid to him, and in addition thereto
a penalty equal in amount to such difference.

Sec. 6. The provision of this act shall not apply to contracts
2 participated in by the United States public works administra-
3 tion or involving federal grant regulations.

Sec. 7. Each section of this act and every part thereof is
2 hereby declared to be an independent section or part of a sec-
3 tion, and if any section, subsection, sentence, clause or phrase
4 of this act shall for any reason be held unconstitutional, the
5 validity of the remaining phrases, clauses, sentences, subsec-
6 tions, and sections of this act shall not be affected thereby.
7 All acts and parts of acts in conflict with the provisions of
8 this act are hereby repealed.

CHAPTER 96

(Senate Bill No. 42—By Mr. Beacom, by request)

AN ACT to amend and reenact section three, article nine, chapter
twenty of the code of West Virginia, one thousand nine hun-
dred thirty-one, as amended by chapter five, acts of the
Legislature of West Virginia, regular session, one thousand
nine hundred thirty-three, and to amend and reenact section
four, article nine, chapter twenty of the code of West Virginia,
one thousand nine hundred thirty-one, relating to forest fires,
duties of commission and others in regard thereto, and pay-
ment for services rendered at forest fires.

[Passed March 9, 1933; in effect from passage. Became a law without
the approval of the Governor.]

Sec.
3. Duty and power of commission.  
   chief forester and forest pro-
   tectors in regard to forest
   fires; summoning or employ-
   ing of assistance; rate per
   hour of payment; penalty for
   refusing to assist.
4. Compensation for forest fire

Be it enacted by the Legislature of West Virginia:

That section three, article nine, chapter twenty of the code of
West Virginia, one thousand nine hundred thirty-one, as amended
by chapter five, acts of the Legislature of West Virginia, regular
session, one thousand nine hundred thirty-three, and section four,
article nine, chapter twenty of the code of West Virginia, one
thousand nine hundred thirty-one, be amended and reenacted to read as follows:

Section 3. The commission shall have authority and power to protect the forests against injury or destruction by fire, and it shall be the duty of the commission, the chief forester and forest protectors, upon receiving notice of any such forest fire, to employ all the necessary means to confine or extinguish the same. For this purpose authority is given to destroy fences, plow lands, or, in case of extreme emergency, to set backfires. The chief forester and forest protectors may, under the general supervision of the commission, in case of emergency, summon or employ persons to assist in fighting fires, who shall be paid for the actual time so employed in fighting fires, at a rate per hour to be determined from time to time for each county by the director of conservation: Provided, however, That such rate per hour so to be paid shall not exceed the rate per hour paid at such time for common labor by the state road commission in the county wherein such services are rendered. Any person who shall fail or refuse to assist in the fighting of such fires shall, unless such failure is due to physical inability, be guilty of a misdemeanor, and, upon conviction, be fined not less than ten nor more than twenty dollars for each offense.

Sec. 4. Compensation for all services rendered in confining, extinguishing or suppressing forest fires, except compensation for services rendered by the chief forester, district foresters and forest protectors, shall be charged against the state of West Virginia, and shall be paid out of the sum of fifty thousand dollars annually appropriated under the provisions of section nine, article nine, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended by chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred thirty-one. Each forest protector shall render to the commission at Charleston, within twenty days after the occurrence of a fire requiring payment for services above mentioned out of said fund, a sworn statement with the name or names of all persons who were summoned and assisted in the confining, extinguishing or suppressing of any such forest fire, the time spent by each, as well as the names of persons who furnished subsistence or supplies, or transportation therefor, and the amount of money due each for such services, sub-
19 Existence, supplies or transportation. Requisitions shall be issued and payment of the sums due for the services above mentioned shall be made in the same manner as is provided for the making of other expenditures by the commission under section ten, article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one.

CHAPTER 97

(Senate Bill No. 49—By Mr. Fleming)

AN ACT to encourage state and national industrial recovery by cooperating with the national government in fostering fair competition and for other purposes.

[Passed March 8, 1935; in effect from passage. Became a law without the approval of the Governor.]

Sec. 1. Existence of national and state emergencies declared; purposes of act and policies of state.

2. (a) Approval by Governor of codes of fair competition, after hearings and findings of certain facts: restrictions on code provisions: state codes, except as to administrative provisions, to conform to corresponding national codes: to he no duplication or overlapping of agencies or costs: governor, in condition of approval, to require conformity with national legislation and national codes.

(b) Provisions of codes as to collective bargaining, hours of labor and rates of pay; governor to prescribe orders, etc., to maintain conformity with national codes; violation of such orders, etc., a violation of act.

(d) Governor to cancel or modify code, order, etc., from time to time, to insure conformity to national code and national legislation.

(e) Provisions of approved code to be standards of fair competition; violation of standards, a violation of act.

3. (a) Presumption as to national codes: effective as state codes.

(b) Provisions of approved national code to be standards of fair competition; violation

Sec. of standards, a violation of act.

(c) Powers and duties of code authority administering national code as a state code: power to levy and collect assessments to support administration.

4. Provisions of approved agreements to be standards of fair competition; violation of standards, a violation of act.

5. Approved codes, orders, etc., to be filed with secretary of state: secretary to maintain a file of all national codes.

6. (a) Penalty for violation of any provision of act: conviction or acquittal under federal laws bar to prosecution hereunder: when such an acquittal not deemed an acquittal on the merits.

(b) Who may institute suit to prevent or restrain violations: jurisdiction.

(c) Duty of attorney general and prosecuting attorneys to enforce act; proceedings in name of state.


8. Action by employee receiving wages below minimum fixed by code to recover difference between wages received and minimum wages: additional sum
Be it enacted by the Legislature of West Virginia:

Section 1. The existence of a national emergency, productive of widespread unemployment and disorganization of industry, which burdens interstate and foreign commerce, affects the public welfare, and undermines the standards of living of the American people is hereby recognized, and it is hereby declared that such national emergency contributes to the existence of a similar state-wide emergency productive of similar conditions in this state, which affect the industry and commerce of this state and the welfare of its citizens, and that the existence of the state-wide emergency contributes to the existence of the national emergency. It is hereby declared to be the purposes of this act and the policies of this state, to supplement and to cooperate in effectuating national policy, to meet the emergency, to insure uniformity of state regulation of commerce with national regulations, to remove obstructions to the free flow of commerce which tend to diminish the amount thereof, and to provide for the general welfare, by promoting the organization of industry for the purpose of cooperative action among trade groups, by inducing and maintaining united action of labor and management under adequate governmental sanctions and supervision, by eliminating unfair competitive practices, by promoting the fullest possible utilization of the present productive capacity of industries, by avoiding undue restricting of production (except as may be temporarily required), by increasing the consumption of industrial and agricultural products by increasing purchasing power, by reducing and relieving unemployment, by improving standards of labor, and by otherwise rehabilitating industry and conserving natural resources. The foregoing policies shall be the standards for, and limitations upon the exercise by the governor of powers provided for in the subsequent sections of this act.
Sec. 2. (a) Upon application to the governor by one or more trade or industrial associations or groups, the governor shall approve a code or codes of fair competition for the trade or industry or subdivision thereof represented by the applicant or applicants, if the governor after such hearing as he may deem necessary finds: (1) That such associations or groups impose no inequitable restrictions on admission to membership therein, and are truly representative of such trades or industries or subdivisions thereof; and (2) that such code or codes are not designed to promote monopolies or to eliminate or oppress small enterprises and will not operate to discriminate against them, and will tend to effectuate the policy of this act: Provided, That such code or codes shall not permit monopolies or monopolistic practices: Provided further, That where such code or codes affect the services and welfare of persons engaged in other steps of the economic process, nothing in this section shall deprive such persons of the right to be heard prior to approval of such code or codes: Provided further, That such code, or codes, except as to administrative provisions, conforms to the corresponding national code of fair competition and agreement, if any, upon all matters which are the subject of provisions of such national code and agreement, and that the administrative provisions do not provide for any agency duplicating, overlapping or conflicting with any provided for in such national code and agreement, and that no provision is contained therein for assessing costs of code administration on members of the trade or industry or subdivision thereof if assessment of costs of code administration is provided for in such national code or agreement: Provided further, That the provisions of any such code are not inconsistent with any national legislation designed to effectuate policies corresponding to those set forth in section one of this act. The governor shall, as a condition of his approval of any code, require that the provisions thereof shall conform to any such national legislation and impose such other conditions (including requirements for the making of reports and the keeping of accounts), for the protection of consumers, competitors, employees, and others, and in furtherance of the public interest, and shall provide such exceptions to and exemptions from the provisions of such code, as he finds necessary to effectuate the policy and requirements herein declared: Provided further, That where there is a corresponding national code, he shall
impose conditions and provide exceptions and exemptions to maintain the conformity of such code and of his approval thereof with such corresponding national code and the order of approval thereof, respectively.

(b) Every code of fair competition approved under the provisions of this act shall contain the following conditions: (1) That employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; (2) that no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing or assisting a labor organization of his own choosing; and (3) that employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment approved or prescribed by the governor.

(c) The governor shall prescribe such orders, rules and regulations as he finds necessary to carry out the purposes and provisions of this act and to maintain conformity of such codes to the corresponding national codes and agreements, if any. and any violation of any such order, rule, or regulation shall be a violation of this act.

(d) The governor shall, from time to time, cancel or modify any code, order, approval, rule or regulation approved or issued under this act as he finds necessary to effectuate the policy and requirements herein declared and to maintain conformity to the corresponding national code, agreement, order, approval, rule, or regulation, and to national legislation designed to effectuate policies corresponding to those set forth in section one of this act, and such code of fair competition approved by the governor shall contain an express provision to this effect, in lieu of any similar corresponding provision in the corresponding national code, if any.

(e) After the governor shall have approved any such code, the provisions thereof shall be the standards of fair competition for such trade or industry or subdivision thereof, and any violation of such standards shall be deemed an unfair method of competition and a violation of this act.
Sec. 3. (a) National codes of fair competition for trades or industries or subdivisions thereof shall be presumed to effectuate the policy and requirements of this act and shall be effective as state codes for such trades or industries or subdivisions thereof with the same force and effect as if applied for and approved pursuant to section two hereof.

(b) After a national code of fair competition shall have been approved, issued or prescribed, the provisions of such code shall be effective as the standards of fair competition for such trade or industry or subdivision thereof and any violation of such standards shall be deemed an unfair method of competition and a violation of this act.

(c) Any code authority administering a national code of fair competition effective under this act as a state code shall have powers and duties for the administration of such code, corresponding to the powers and duties vested in it as a code authority for the administration of a national code. When a state code, or a national code effective as a state code, contains provisions for the levy of assessments upon members of the trade or industry or subdivision thereof, to support the administration of the code and such levy has been duly approved pursuant to the provisions of the applicable code, orders, rules, and regulations, the code authority administering such code is empowered to levy such assessments and to institute actions therefor in its own name in the justices’ courts and in other courts of competent jurisdiction of this state.

Sec. 4. Agreements, as hereinafter defined, when duly entered into or approved, shall be presumed to effectuate the policy of this act and shall be effective as the standards of fair competition for the persons, organizations, or groups, parties thereto, and any violations of any such standards shall be deemed an unfair method of competition and a violation of this act.

Sec. 5. All codes of fair competition, orders, rules, and regulations which are approved, issued or prescribed by the governor, pursuant to this act, shall be filed with the secretary of state. The secretary of state shall maintain a file of all national codes of fair competition.

Sec. 6. (a) Any violation of any provision of this act, shall be a misdemeanor and upon conviction thereof, an offender shall
STATE INDUSTRIAL RECOVERY ACT

3 be subject to a fine of not more than five hundred dollars for each offense, and each day such violation continues shall be deemed a separate offense. A judgment of conviction or acquittal on the merits under the laws of the United States shall be a bar to any prosecution hereunder for the same act or acts. Acquittal on the ground that the defendant was not engaged in a transaction subject to federal regulation shall not be deemed an acquittal on the merits for the purpose of this section.

(b) Any person whose interests may be affected, the attorney general, his assistants, or any prosecuting attorney of this state, may institute a suit to prevent and to restrain any violation of this act. The circuit courts of this state and other courts of competent jurisdiction shall have jurisdiction of such suits.

(c) It shall be the duty of the attorney general and also of the several prosecuting attorneys of this state to enforce this act by proceedings as herein provided for. For such purpose, the attorney general may appear in person or by his duly authorized deputy or assistant, or by any prosecuting attorney of this state acting pursuant to his direction, in any court of this state having jurisdiction, and conduct proceedings in the name of the state.

Sec. 7. While any code or agreement under this act is in effect, and for sixty days thereafter, such code or agreement, and any action taken during such period complying with the provisions of such code or agreement, shall be exempt from the provisions of the anti-trust laws of this state.

Sec. 8. Any employer, subject to the provisions of any code of fair competition or agreement, who pays any employee wages at a rate below the minimum provided for therein shall be liable to pay and shall pay to any such employee the difference between the wages actually received by such employee and those to which such employee would have been entitled if paid at the minimum rate provided for by such code or agreement, and such employee may bring an action to recover such sum. In any such action the employer shall be liable to pay and shall pay by way of damages an additional sum equal to the amount of wages found to be due and payable to such employee. Justices of the peace and the intermediate, common pleas and circuit courts of this state shall have jurisdiction of the action provided for by this section.
Sec. 9. Any copy of a national code of fair competition, any amendment thereof or any order, rule or regulation relating thereto and any agreement which bears the imprint of the United States government printing office, Washington, D. C., shall be admissible in evidence in the courts of this state, without certification or exemplification of any kind, as prima facie evidence of the contents of the original.

Sec. 10. To effectuate the policy and requirements of this act, the governor is hereby authorized with the consent of the national government to utilize such national agencies, officials and employees, and to consent to the utilization of such state and local officers and employees by the President and agencies of the United States as the governor may deem necessary for the administration of national codes of fair competition and agreements in so far as they are effective in this state under this act.

Sec. 11. In furtherance of the purposes of this act, all invitations to bidders hereafter made by this state, any political subdivision thereof, or any municipal corporation, or by an institution, agency, or department of any of them, shall contain a provision to the effect that no bid shall be considered unless it is accompanied by a certificate, duly executed by the bidder, stating that the bidder is complying with and will continue to comply with, each approved code of fair competition to which he is subject, or, if he is engaged in any trade or industry for which there is no such code, stating that as to such trade or industry, he has become a party to and is complying with and will continue to comply with an agreement as hereinafter defined. All contracts and purchase orders authorized by this state, any political subdivisions thereof, or any municipal corporation, or by any department, agency, or institution of any of them, shall contain a provision to the effect that the party awarded any such contract or purchase order shall comply with each approved code of fair competition to which he is subject, and if engaged in a trade or industry for which there is no such code, then as to such trade or industry, with an agreement, as aforesaid.

Sec. 12. This act shall remain in effect for a period of two years from the effective date hereof, unless prior to such date the National Industrial Recovery Act as passed and amended by the Congress of the United States or as may hereafter be passed
and amended by the Congress of the United States shall expire or be repealed, in which event and at the time of such expiration or appeal, this act shall cease to be in force and effect.

Sec. 13. As used in this act: The term, "national code of fair competition," means any code of fair competition which has been or may be approved, issued or prescribed by the President of the United States or by any national agency duly authorized for that purpose, as the standards of fair competition for any trade, industry or subdivision thereof, if such code will meet the requirements set forth in the clauses numbered one and two of paragraph (a) and the clauses numbered one, two and three, of paragraph (b) of section two of this act, and said term includes any limited code of fair competition so approved, issued or prescribed.

The word, "agreement", means any agreement which the President of the United States or any national agency duly authorized for that purpose has entered into with, or approved, between and among, persons engaged in a trade or industry, labor organizations and trade or industrial organizations, or groups, relating to any trade or industry, to aid in effectuating the policy of this act, if such agreement will meet the requirements set forth in clauses one, two and three of paragraph (b) of section two of this act.

The terms, "code of fair competition", "limited code of fair competition", and "agreement", include all supplements, amendments, modifications, exemptions and exceptions and all orders, rules and regulations applying to such code or agreement, or affecting its application or construction.

The word, "person", includes, but without limitation, any individual, partnership, association, trustee, receiver, assignee for the benefit of creditors, or corporations.

The word, "conform", means imposing identical duties, obligations, rights and powers by the use of identical language, as near as may be.

Sec. 14. If any provision of this act or the application thereof to any person or circumstance is held invalid, the remainder of this act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

Sec. 15. This act may be known and cited as "The West Virginia Industrial Recovery Act."
CHAPTER 98

(House Bill No. 54—By Mr. Paull, by request)

AN ACT to amend article one, chapter forty-eight, of the code of West Virginia, one thousand nine hundred thirty-one, by adding thereto section twenty-three, prohibiting ministers from soliciting the celebration of marriages and providing penalties for the violation thereof.

Sec. 23. Unlawful for minister to solicit celebration of marriage or to give any tip, present, etc., to have holders of marriage licenses brought or directed to him: penalty for violation; duty of prosecuting attorney to institute proceedings for revocation of minister's license to celebrate marriages.

Be it enacted by the Legislature of West Virginia:

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

Section 23. It shall be unlawful for any minister to solicit in any manner the celebration of any marriage ceremony and it shall be unlawful for a minister, by giving or making directly or indirectly, any tip, gift, present, subscription, contribution, loan or anything of value to reward any person who may accompany, bring, send or direct the holders of a marriage license to such minister. The penalty for a violation of the foregoing provisions shall be a revocation of the license of such minister to celebrate marriages and no such license shall thereafter be issued to him. It shall be the duty of the prosecuting attorney of the county wherein the violation occurs, to institute proceedings before the judge of the circuit court of said county to revoke said license, after reasonable notice thereof has been given to said minister. Said proceedings may be in term or vacation and the court shall determine all questions of law and fact.
CHAPTER 99

(Senate Bill No. 55—By Mr. Garrett)

AN ACT to amend and reenact section twenty, article two, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended by chapter forty-seven, acts of the Legislature, regular session, one thousand nine hundred thirty-three, relating to the payment of premiums on official bonds.

[Passed March 9, 1935; in effect ninety days from passage. Became a law without the approval of the Governor.]

Sec. 20. Maximum payment by state or political subdivision of five dollars per thousand per annum on premiums on official bonds and of seven and one-half dollars on sheriffs' bonds.

Be it enacted by the Legislature of West Virginia:

That section twenty, article two, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended by chapter forty-seven, acts of the Legislature, regular session, one thousand nine hundred thirty-three, be amended and reenacted to read as follows:

Section 20. Every officer or employee who is paid a salary, and who is required to give an official bond by virtue of the provisions of this article, and who furnishes a surety company bond, shall be reimbursed by the state, county, municipality or board of education, as the case may be, for the premium charged by the surety company for such bond, in an amount not exceeding five dollars per thousand per annum:

Provided, however, That the sheriff, of any county shall, with respect to bonds given after the year one thousand nine hundred thirty-five, be reimbursed for the premiums thereon, in an amount not to exceed seven dollars and a half per thousand per annum.

CHAPTER 100

(Senate Bill No. 70—By Mr. Sandridge, by request)

AN ACT making disposition of the exhibit of the State of West
Virginia, used at the Century of Progress Exhibition at Chicago.

[Passed March 9, 1935: in effect ninety days from passage. Approved by the Governor.]

Sec. 1. State exhibit at century of progress exhibition at Chicago committed to custody of board

Be it enacted by the Legislature of West Virginia:

Section 1. The exhibit heretofore had at the century of progress exhibition, assembled and erected at Chicago by the commissioner of agriculture pursuant to the provisions of senate concurrent resolution six, regular session, one thousand nine hundred thirty-three, which has been returned to the state of West Virginia as provided by said resolution and is now located at the state four-H camp at Jackson’s Mill, is hereby committed to the custody of the board of governors of West Virginia University, to be kept and preserved by said board at said state four-H camp at Jackson’s Mill, as other property of the state located at said camp and subject to the same laws and regulations applicable thereto.

CHAPTER 101
(Senate Bill No. 121—By Mr. Fleming)

AN ACT to provide for the registration and protection of the names, badges, mottoes, buttons, decorations, charms, emblems, rosettes, and other insignia of associations, lodges, orders, fraternal societies, beneficial societies, or fraternal and beneficial societies or associations, historical, military, or veterans’ organizations, labor unions, foundation, federation, or any other society, organization or association, degree, branch, subordinate lodge, or auxiliary thereof; to prohibit the wearing,
exhibition, display, or use of the same, by any person not entitled to wear, exhibit, display, or use the same; and fixing a penalty for the violation of this act.

[Passed March 9, 1935; in effect from passage. Became a law without the approval of the Governor.]

Sec. 1. Registration in office of secretary of state of badge, button, etc., of fraternal society, etc.

Sec. 2. Secretary of state to furnish blank applications for registration; what organizations registration to include.

Sec. 3. Secretary of state to keep record of registration, alteration or cancellation.

Sec. 4. When registration or alteration not permitted.

Sec. 5. Certificate of registration to petitioners.

Sec. 6. Penalty for wearing or using registered button, badge, etc., when not entitled to do so.

Sec. 7. Amount of secretary of state's fees; payment into state treasury.

Sec. 8. Inconsistent acts repealed.

Be it enacted by the Legislature of West Virginia:

Section 1. Any association, lodge, order, fraternal society, beneficial association, or fraternal and beneficial society or association, historical, military or veterans' organization, labor union, foundation, federation, or any other society, organization or association, degree, branch, subordinate lodge, or auxiliary thereof, whether incorporated or unincorporated, the principles and activities of which are not repugnant to the constitution and laws of the United States or this state, may register, in the office of the secretary of state, a facsimile, duplicate, or description of its name, badge, motto, button, decoration, charm, emblem, rosette or other insignia, and may, by reregistration, alter or cancel the same.

Sec. 2. Application for such registration, alteration, or cancellation, shall be made by the chief officer or officers of said association, lodge, order, fraternal society, beneficial association, or fraternal and beneficial society or association, historical, military, or veterans' organization, labor union, foundation, federation, or any other society, organization, or association, degree, branch, subordinate lodge, or auxiliary thereof, upon blanks to be provided by the secretary of state; and such registration shall be for the use, benefit, and on behalf of all associations, degrees, branches, subordinate lodges, and auxiliaries of said association, lodge, order, fraternal society, beneficial association, or fraternal and beneficial society or association, historical, military, or veterans' organization, labor union, foundation, federation, or any other society, organiza-
Sec. 3. The secretary of state shall keep a properly indexed record of the registration provided for by this act, which record shall also show any altered or cancelled registration.

Sec. 4. No registration shall be granted or alteration permitted to any association, lodge, order, fraternal society, benevolent association, or fraternal and beneficial society or association, historical, military, or veterans' organization, labor union, foundation, federation, or any other society, organization, or association, degree, branch, subordinate lodge, or auxiliary thereof, having a name, badge, motto, button, decoration, charm, emblem, rosette or other insignia, similar to, imitating, or so nearly resembling as to be calculated to deceive, any other name, badge, button, decoration, charm, emblem, rosette, or other insignia whatsoever, already registered pursuant to the provisions of this act.

Sec. 5. Upon granting registration as aforesaid, the secretary of state shall issue his certificate to the petitioners, setting forth the fact of such registration.

Sec. 6. Any person who shall wilfully wear, exhibit, display, print, or use, for any purpose, the badge, motto, button, decoration, charm, emblem, rosette or other insignia, of any such association or organization, herein mentioned, duly registered hereunder, unless he or she shall be entitled to use and wear the same under the constitution and by-laws, rules and regulations of such association and organization, shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine not exceeding twenty dollars, and, in default of payment, committed to jail for a period of not to exceed ten days.

Sec. 7. The fees of the secretary of state for registration, alteration, cancellation, searches made by him, and certificates issued by him, pursuant to this act, shall be the same as provided by law for similar services. The fees collected under this act shall be paid by the secretary of state into the state treasury.

Sec. 8. All acts or parts of acts inconsistent herewith are hereby repealed.
CHAPTER 102

(Senate Bill No. 122—By Mr. Beacom)

AN ACT requiring owners of coal mines that have been abandoned to give ten days’ notice to the conservation commission to reopen such old or abandoned mine wherein water or mine seepage has collected, providing for the proper manner to prevent destruction of fish in any stream, and providing penalties therefor.

[Passed February 27, 1935: In effect from passage. Approved by the Governor.]

Sec. 1. When old or abandoned mine shall not be reopened without ten days notice to director of conservation; what notice to state: reopening to be under direction of director; penalty for violation of act.

Be it enacted by the Legislature of West Virginia:

Section 1. Any person, without first giving to the director of conservation ten days’ notice thereof in writing, shall not reopen for any purpose whatsoever, any old or abandoned mine wherein water or mine seepage has collected or become impounded or exists in such manner or quantity that upon the opening of such mine such water or seepage may drain into any stream or water course. Such notice shall state clearly the name or names of the owner or owners of the mine proposed to be opened, its exact location, and the time of the proposed opening thereof.

Upon receipt of any such notice, the conservation commission shall send its representative or deputized agent to be present at the mine at the time designated in the notice for such opening, who shall have full supervision of the work of opening such mine with full authority to direct said work in such manner as to him seems proper and necessary to prevent the flow of mine water or seepage from such mine in such manner or quantity as will kill or be harmful to the fish in any stream or water course into which such mine water or seepage may flow directly or indirectly.

Any person failing to give notice as herein provided, or failing or refusing to submit to the supervision by the conservation commission of the work of any such opening, from which shall result harmful effects to or destruction of fish in any stream,
25 shall be guilty of a misdemeanor and upon conviction thereof
26 shall be fined not less than five hundred dollars nor more than
27 five thousand dollars.

CHAPTER 103

(Senate Bill No. 131—By Mr. Barnhart)

AN ACT to amend and reenact sections two, seven, nine, ten, eleven
and fourteen, article thirteen, chapter thirty of the code of West Virginia, one thousand, nine hundred thirty-one, as amended by chapter ten, acts of the Legislature of West Virginia, one thousand nine hundred thirty-one, relating to the registration of professional engineers.

[Passed March 1, 1935: in effect ninety days from passage. Approved
by the Governor.]

Be it enacted by the Legislature of West Virginia:

That sections two, seven, nine, ten, eleven and fourteen, article
thirteen, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended by chapter ten, acts of the Legislature of West Virginia, one thousand nine hundred thirty-one, be amended to read as follows:

Section 2. The term "professional engineer", as used in
this article, shall mean a person who, by reason of his knowl-
edge of mathematics, the physical sciences, and the principles
of engineering, acquired by professional education and prac-
tical experience, is qualified to engage in engineering practice
as hereinafter defined.

The practice of professional engineering within the meaning
and intent of this article includes any professional service, such
as consultation, investigation, evaluation, planning, design, or
responsible supervision of construction or operation, in con-
11 section with any public or private utilities, structures, build- 
12 ings, machines, equipment, processes, work, or projects, wherein 
13 the public welfare, or the safe-guarding of life, health or 
14 property is concerned or involved, when such professional serv-
15 ice requires the application of engineering principles and data. 
16 The term "board", as used in this article, shall mean the 
17 state board of registration for professional engineers, provided 
18 for by this article.

Sec. 7. Applications for registration shall be on forms pre- 
2 scribed and furnished by the board, shall contain statements 
3 made under oath showing the applicant's education and detail 
4 summary of his technical work, and shall contain not less than 
5 five references, of whom three or more shall have personal 
6 knowledge of his engineering experience.
7 The registration fee for professional engineers shall be ten 
8 dollars, five dollars of which shall accompany application, the 
9 remaining five dollars to be paid upon issuance of certificate.
10 Should the board deny the issuance of a certificate of registra-
11 tion to any applicant the initial fee deposited shall be retained 
12 as an examination fee.

Sec. 9. The board shall issue a certificate of registration 
2 upon payment of registration fee as provided for in this article, 
3 to any applicant who, in the opinion of the board, has satis-
4 factorily met all the requirements of this article. In case of 
5 such registration, the certificate shall authorize the practice of 
6 professional engineering in the branch or branches of engineer-
7 ing for which, in the opinion of the board, said applicant shows 
8 proper qualifications.
9 The issuance of a certificate of registration by this board 
10 shall be evidence that the person named therein is entitled to 
11 all the rights and privileges of a registered professional engi-
12 neer, while the said certificate remains unrevoked or unex-
13 pired.
14 Each registrant hereunder shall upon registration obtain a 
15 seal of the design authorized by the board, bearing the regis-
16 trant's name and the legend, "registered professional engi-
17 neer". Plans, specifications, plats, and reports, issued by a 
18 registrant shall be stamped with the said seal during the life 
19 of registrant's certificate, but it shall be unlawful for anyone 
20 to stamp or seal any document with said seal after the certificate
of the registrant named thereon has expired or has been re-
voiced, unless said certificate shall have been renewed or re-
issued.

Sec. 10. Certificates or registration shall expire on the last
day of the month of June following their issuance or removal
and shall become invalid on that date unless renewed. It shall
be the duty of the secretary of the board to notify every person
registered under this article, of the date of the expiration of his
certificate and the amount of the fee that shall be required for
renewal for one year; such notice shall be mailed at least one
month in advance of the date of the expiration of said certificate.
Renewal may be effected at any time during the month of June
by the payment of a uniform fee to be annually fixed by the
board, the amount thereof not to exceed five dollars. The failure
on the part of any registrant to renew his certificate annually in
the month of June as required above shall not deprive such
person of the right of renewal, but the fee to be paid for the
renewal of a certificate after the month of June shall be in-
creased ten per cent for each month or fraction of a month that
payment of renewal is delayed: Provided, however, That the
maximum fee for delayed renewal shall not exceed twice the
normal renewal fee.

Sec. 11. A firm, or a copartnership, or a corporation, or a
joint stock association may engage in the practice of profes-
sional engineering in this state only provided such practice is
carried on by professional engineers registered in the state.

Sec. 14. The following persons shall be exempted from regis-
tration under the provisions of this article, to-wit:

(a) A person not a resident of and having no established
place of business in this state, practicing or offering to prac-
tice herein the profession of engineering, when such practice
does not exceed in the aggregate more than sixty days in any
calendar year: Provided, That such person is legally qualified
by registration to practice the said profession in his own state
or country in which the requirements and qualifications for
obtaining a certificate of registration are not lower than those
specified in this article;

(b) A person not a resident of and having no established
place of business in this state, or who has recently become a
resident thereof, practicing or offering to practice herein for
15 more than sixty days in any calendar year the profession of
16 engineering if he shall have filed with the board an application
17 for a certificate of registration and shall have paid the fee
18 required by this article. Such exemption shall continue only
19 for such time as the board requires for the consideration of the
20 applicant for registration: Provided, That such a person is
21 legally qualified to practice said profession in his own state
22 or country;
23 (c) An employee of a person holding a certificate of registra-
24 tion in this state who is engaged in the practice of the pro-
25 fession of engineering and an employee of a person exempted
26 from registration by classes (a) and (b) of this section: Pro-
27 vided, That such practice does not include responsible charge
28 of design or supervision.
29 (d) Officers and employees of the government of the United
30 States of America while engaged within the state in the prac-
31 tice of the profession of engineering for said government.

CHAPTER 104

( Senate Bill No. 165—By Mr. Randolph )

AN ACT to amend and reenact chapter thirty-two of the code of
West Virginia, one thousand nine hundred thirty-one, as
amended by chapter forty-one, acts of the Legislature, first
extraordinary session, one thousand nine hundred thirty-three,
relating to speculative securities and fraudulent sales.

[Passed March 6, 1935; in effect ninety days from passage Became a law without
the approval of the Governor ]

ARTICLE I.

Sec.

1. Auditor as state commissioner of
securities with power to employ
assistants.
2. Definition of words and phrases.
3. To what classes of securities act
does not apply.
4. To what transactions act does not apply.
5. Registration by qualification of
securities to be sold in state,
unless exempt or sold in an
exempt transaction; register of
securities to be kept in office

Sec.
of commissioner; open to pub-
lic inspection.

6. Manner of registration by qual-
ification; information required
from applicant before registration;
verification by applicant of
statements, etc.: conditions
and restrictions on registration;
prospectus to be approved by
commissioner; fee for registra-
tion; what commissioner must find before registration;
expirations and renewal of cer-
tificate; renewal fee; separate
registration for different types.
Sec. etc., of securities.
7. Examinations by commissioner; expense of examination to be paid by applicant or issuer.
8. Limitation, by commissioner, of sale price of securities and commissions.
9. Written consent under seal, by non-resident issuer of appointment of commissioner as attorney in fact for service of process or pleading; commissioner to send issuer copy of process or pleading.
10. Revocation of certificate upon certain findings by commissioner; examination to ascertain facts; suspension of certificate during examination; notice of suspension to issuer and dealer.
11. Securities issued in reorganization, etc., to be registered prior to offer of plan; information to be furnished commissioner.
12. Registration of dealers or salesmen; what application for to show: commissioner as attorney for dealer for service of process; showing of good character and payment of fee; when partners and executive officers of corporation may act as salesmen; register of dealers and salesmen open to public inspection; renewals of registration; fee; changes in registration; examination of financial condition, etc., of dealers; copies of bills of confirmation, etc., of bank official or employee to be sent to president of institution and to commissioner of banking; registration revoked for failure; personal liability for losses; selling own contracts. If exempt; sale of undivided interests in mineral rights by unincorporated owner.
13. Refusal or revocation of registration under section twelve after hearing, on notice: notice to dealer of charges against salesman; hearing after revocation; suspension of registration pending hearing; examination of books of dealer during suspension.
14. Examination and audit of dealer or salesman, at his expense; receivership; jurisdiction of appointment of receiver.
15. In indictment, etc., under article, need not negative exceptions:
16. Securities issued for patent right, etc., to be placed and held in escrow.
17. Fraudulent or fictitious sales of securities; injunction against; jurisdiction.
18. Sales in violation of article voidable; liability of seller; action must be brought within one year; right of action lost upon refusal of refund.
19. Court review of commissioner's orders; pleading and proof; when additional evidence, by court order, before commissioner.
20. Fee turned into state treasury; commissioner to keep record of receipts and expenditures.
21. Commission to make, amend and rescind rules and regulations to carry out act and to cooperate with federal government.
22. When no presumption exists as to accuracy of documents filed with application for registration.
23. Stipulation waiving compliance with provisions of chapter void.
24. Penalty for fraudulent sales or schemes; form of indictment.
25. Penalty for false statements or concealing material fact.
26. Penalty for signing verified statement knowing it to contain false representation.
27. Penalty for knowingly evading provisions of this chapter in selling securities.

ARTICLE II.

Sec.

1. When detailed description and title of subdivisions, cemetery lots, mineral claims, etc., involving future improvements, to be filed with commissioner; registration as salesman; sale by owner.
2. Penalty for false advertising of merchandise, securities, service, etc.
3. In indictment, need not negative exceptions; presumption as to knowledge by accused.
4. If word, section, etc., invalid, remainder not affected.

Be it enacted by the Legislature of West Virginia:

That chapter thirty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended by chapter forty-one, acts of the Legislature, first extraordinary session, one thousand nine hundred thirty-three, be amended and reenacted to read as follows:
ARTICLE I.

Section 1. The auditor of this state is hereby made, and shall be, the commissioner of securities of this state, and he shall have power and authority to employ such assistants as are necessary for the administration of this chapter.

Sec. 2. When used in this chapter the following terms shall, unless the text otherwise indicates, have the following respective meanings:

(a) "Security" shall include any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, interests or shares in a patent right, copyright, trade mark, process or formula, collateral trust certificate, preorganization certificate or subscription, investment contract, certificate or share of or in an investment trust, certificate of deposit for a security, voting trust certificate, share, subscription or certificate of interest in oil, gas or other mineral rights, leaseholds, property or royalties, or any beneficial interest in or title to property, trustee shares, investment participating bonds and contracts covering or pertaining to the sale and/or purchase of securities on the installment plan, or any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing;

(b) "Person" shall include a natural person, a corporation, created under the laws of this or any other state, country, sovereignty, or political subdivision thereof, a partnership, an association, a syndicate, a joint stock company, a trust and any unincorporated organization. As used herein the term "trust" shall include only a trust where the interest or interests of the beneficiary or beneficiaries are evidenced by a security;

(c) "Sale" or "sell" shall include every contract of sale or disposition of, attempt or offer to dispose of, or the solicitation of an offer to buy a security or interest in a security, for value, including contracts and agreements whereby securities are sold, traded or exchanged for money, property and thing of value, or any transfer or agreement to transfer in trust or otherwise. Any security given or delivered with,
or as a bonus on account of any purchase of securities or any other things shall be conclusively presumed to constitute a part of the subject of such purchase and to have been sold for value. "Sale" or "sell" shall also include an exchange, an attempt to sell, an option of sale, a solicitation of a sale, a subscription or an offer to sell, directly or by an agent, or by a circular, letter, advertisement or otherwise;

(d) "Dealer" shall include every person other than a salesman who, in this state engaged either for all or part of his time, directly or through an agent, in the business of selling any securities issued by such person or another person or purchasing, exchanging or otherwise acquiring such securities from another for the purpose of reselling them or offering them for sale to the public, or offering, buying, selling, or otherwise dealing or trading in securities as agent or principal for a commission or at a profit, or buying, selling or otherwise dealing or trading in securities listed on any exchange or in consummating any contract between buyer or seller of securities, or who deals in futures or differences in market quotations of prices or value of any securities or accepts margins on purchases or sales of pretended purchases or sales of such securities, and shall include any person, group or committee acting for or agreeing or proposing to act for or in the interest of any security-holders in connection with or under the terms of or proposed terms of a plan, agreement, indenture, contract, deposit or trustee arrangement for a reorganization, capitalization or any other plan or proposal for the readjustment of finances of a person: Provided, That the word "dealer" shall not include a person having no place of business in this state who sells or offers to sell securities exclusively to brokers or dealers actually engaged in buying and selling securities as a business, and shall not include a bank or trust company dealing in securities for the benefit of its clients or depositors, and when such bank or trust company is not attempting to profit by such transactions but it shall be permitted to charge a reasonable service fee or reasonable commission only sufficient to cover the cost of providing such service;

(e) "Issuer" shall mean and include every person who issues or proposes to issue any security. Any natural person who acts as a promoter for and on behalf of a corporation,
trust or unincorporated association or partnership of any kind to be formed shall be deemed to be an issuer;

(f) "Salesman" shall include every natural person, other than a dealer, employed or appointed or authorized by a dealer or issuer to sell securities in any manner in this state. The partners of a partnership and the executive officers of a corporation or unincorporated organization or association registered as a dealer shall not be salesman within the meaning of this definition, nor shall such clerical or other employees of an issuer or dealer as are employed for work to which sale of securities is secondary and incidental and for which they receive no commission or salary: Provided, however, That the commissioner shall have authority to require registration of any partner, executive officer or employee herein above exempted if he determines that protection of the public necessitates such registration;

(g) "Agent" shall mean salesman as hereinabove defined;

(h) "Broker" shall mean dealer as hereinabove defined;

(i) "Commissioner" shall mean the commissioner of securities;

(j) The term "prospectus" shall mean and include any prospectus, notice, circular, advertisement, letter or communication written or by radio, which offers any security for sale except that:

(1) A communication shall not be deemed a prospectus if it is proved that prior to or at the same time with such communication a written prospectus, meeting the requirements of this act, was sent or given to the person to whom the communication was made, by the person making such communication or his principal; and,

(2) A notice, circular, advertisement, letter or communication in respect of a security shall not be deemed to be a prospectus, if it states from whom a written prospectus meeting the requirements of this act may be obtained and in addition does no more than identify the security, state the price thereof and state by whom orders will be executed.

Sec. 3. Except as hereinafter expressly provided, the provisions of this chapter shall not apply to any of the following classes of securities:

(a) Any security issued or guaranteed by the United States
5 or any territory or insular possession thereof, or by the Dis-
6 trict of Columbia, or by any state or political subdivision or
7 agency thereof;
8 (b) Any security issued by a national bank or by any
9 federal land bank or by a corporation created or acting as
10 an instrumentality of the government of the United States
11 pursuant to authority granted by the congress of the United
12 States, or any security issued by provisions of the federal
13 laws: Provided, That such corporation is subject to super-
14 vision or regulation by the government of the United States;
15 (c) Any security issued or guaranteed either as to principal,
16 interest or dividend by a corporation owning or operating a
17 railroad engaged in interstate commerce and under supervision
18 of the interstate commerce commission;
19 (d) Any security issued by a person organized and oper-
20 ated exclusively for educational, benevolent, fraternal, charit-
21 able or reformatory purposes and not for pecuniary profit, and
22 no part of the net earnings of which inures to the benefit of
23 any person, private stockholder or individual;
24 (e) Any security which has been regularly and continuously
25 listed on the New York stock exchange, the New York curb
26 exchange or the Chicago stock exchange for a period of not
27 less than two years: Provided, That the commissioner shall
28 have power and authority at any time to withdraw such exemp-
29 tion for any security or group of securities so listed, pending an
30 investigation and hearing on securities included in such order.
31 A date for hearing shall be set by the commissioner not more
32 than twenty days after such withdrawal order. The commis-
33 sioner, by ruling, may grant this same exemption to securities
34 listed on any other exchange following an application from
35 such exchange and after an investigation and examination has
36 been made by him. The expense of all hearings, investigations
37 and examinations shall be paid by the exchange making appli-
38 cation or receiving a hearing;
39 (f) Any security issued by a state bank, trust company,
40 building and loan association or savings institution, incorpo-
41 rated under the laws of and subject to the examination, super-
42 vision and control of any state or territory of the United
43 States or any insular possession thereof;
44 (g) Any insurance or endowment policy or annuity con-
tract or optional annuity contract, issued by a person licensed
and supervised by the insurance commissioner of this state;
(h) Any security other than common stock outstanding and
in the hands of the public for a period of not less than three
years upon which no default in payment of principal, interest
or dividend exists and upon which no such default has occurred
for a continuous immediately preceding period of three years:
Provided, That the issuer of such securities has continued
such payments of principal, interest or dividends as provided
at the time of original issue: Provided further, That no plan
or proposal of recapitalization, reorganization, rearrangement
of capitalization, or other form of readjustment of issuer’s
finances, has been made or a petition of voluntary or involun-
tary bankruptcy has been filed in any court by or for such
issuer within the preceding period of three years;
(i) Any securities bought or sold upon customers’ orders:
Provided, That such securities are bought or sold on an
exchange which, at the time of such transaction, is registered
as a national exchange by the securities and exchange commis-
sion: Provided further, That no solicitation is made of the
orders so executed.

Sec. 4. The provisions of this chapter shall not apply to any
of the following transactions:
(a) Any judicial, executor’s, administrator’s, guardian’s or
conservator’s sale or any sale by a receiver or trustee in in-
solvency or bankruptcy;
(b) An isolated transaction in which any security is sold
offered for sale, subscription or delivery by the owner thereof,
such sale or offer for sale, subscription or delivery not being
made in the course of repeated and successive transactions of
a like character by such owner;
(c) A sale upon a customer’s order of any security, if
sale is made to a person outside this state: Provided, That
such sale in another state is not a violation of the securities
laws of that state;
(d) The distribution by a corporation actively engaged in
the business authorized by its charter, of capital stock, bonds
or other securities to its stockholders or its other security-
holders as a stock dividend or other distribution out of earn-
ings or surplus;
(e) The sale, transfer or delivery to any broker or dealer: Provided, That such broker or dealer is actually engaged in buying and selling securities as a business;

(f) Bonds or notes secured by mortgage upon real estate where the entire mortgage together with all of the bonds or notes secured thereby are sold to a single purchaser at a single sale;

(g) The issue and delivery of any security in exchange for any other security of the same issuer pursuant to a right or conversion entitling the holder of the security surrendered in exchange to make such conversion: Provided, That the security so surrendered has been registered under the provisions of this act or was, when sold, exempt through the provisions of said act;

(h) Subscriptions to capital stock made by incorporators in a West Virginia corporation, such incorporators not exceeding five in number: Provided, That no public offering is made or commissions received for such subscriptions.

Sec. 5. No securities except of a class exempt under a provision of section three hereof or unless sold in any transaction exempt under a provision of section four hereof shall be sold within this state unless such securities shall have been registered by qualification as hereinafter defined.

A record of the registration of securities shall be kept in a register of securities to be kept in the office of the commissioner, in which register of securities shall also be recorded any order entered by the commissioner with respect to such securities. Such register and all information with respect to the securities registered therein shall be open to public inspection.

Sec. 6. All securities required by this article to be registered before being sold in this state, shall be registered only by qualification in the manner provided by this section. The commissioner shall receive and act upon applications to have securities registered by qualification, and may prescribe forms on which he may require such application to be submitted. Applications shall be in writing and shall be duly signed by applicant and sworn to by any person having knowledge of the facts, and filed in the office of the commissioner and may be made either by the issuer of the
securities for which registration is applied or by any registered
dealer desiring to sell the same within the state.

The commissioner may require the applicant to submit to
him the following information respecting the issuer or the
security or the person or persons obligated by such security,
and such other information as he may deem necessary to
enable him to ascertain whether such securities shall be
registered pursuant to the provisions of this section:

(a) The name under which the issuer is doing or intends
to do business;
(b) The name of the state or other sovereign power under
which the issuer is organized;
(c) The location of the issuer’s principal business office,
and if the issuer is a foreign or territorial person, the name
and address of its agents in the United States authorized to
receive notices;
(d) The names and addresses of the directors or persons
performing similar functions, and the chief executive, financial
and accounting officers chosen or to be chosen if the issuer
be a corporation, association, trust or other entity, of all
partners, if the issuer be a partnership, and of the issuer,
if the issuer be an individual, and of the promoters in the
case of a business to be formed, or formed within two years
prior to the filing of the application;
(e) Names and addresses of the underwriters;
(f) The names and address of all persons, if any, owning
of record or beneficially, if known, more than ten per cent
of any class of stock of the issuer or more than ten per cent
in the aggregate of the outstanding stock of the issuer as of
a date within twenty days prior to the filing of the applica-
tion;
(g) The amount of securities of the issuer held by any
person specified in subsections (d), (e) and (f) of this
section, as of a date within twenty days prior to the filing
of the application, and, if possible, as of one year prior there-
to, and the amount of the securities, for which the applica-
tion is filed, to which such persons have indicated their in-
tention to subscribe;
(h) The general character of the business actually trans-
acted or to be transacted by the issuer;
(i) A statement of the capitalization of the issuer, including the authorized and outstanding amounts of its capital stock and the proportion thereof paid up, the number of classes of shares in which such capital stock is divided, par value thereof, or, if it has no par value, the stated or assigned value thereof, a description of the respective voting rights, preferences, conversion and exchange rights, rights to dividends, profits, or capital of each class, with respect to each other class, including the retirement and liquidation rights or values thereof;

(j) A statement of the securities, if any, covered by options outstanding or to be created in connection with the securities to be offered;

(k) The amount of capital stock of each class issued or included in the shares of stock to be offered;

(l) The amount of funded debt outstanding and to be created by the securities to be offered and a description of such;

(m) The specific purposes, in detail, and the approximate amounts to be devoted to such purposes so far as determinable, for which the securities to be offered are to supply funds, and if the funds are to be raised in part from other sources the amounts thereof and the sources thereof shall be stated;

(n) The remuneration, paid or estimated to be paid, by the issuer or its predecessors, directly or indirectly during the past year, and ensuing year, to all officers and directors and to any other individuals if required by the commissioner;

(o) The price at which it is proposed that the securities shall be offered to the public or the methods by which such price is computed and a detailed statement as to all commissions paid or to be paid, directly or indirectly, in respect of the sale of the securities to be offered. Commissions shall include all cash, securities, contracts or anything else of value, paid, to be set aside, disposed of, or understandings with or for the benefit of any person in connection with the sale of such securities;

(p) The amount or estimated amounts, itemized in reason-
able detail, of all expenses other than commissions specified in subsection (o) of this section;

(q) The amount paid within two years preceding the filing of the application or intended to be paid to any professional and the consideration for any such payment;

(r) Full particulars of the nature and extent of the interest, if any, of every director, principal executive officer, and of every stockholder holding more than ten per cent of any class of stock or more than ten per cent in the aggregate of the stock of the issuer, in any property acquired, not in the ordinary course of business of the issuer, within two years preceding the filing of the application or proposed to be acquired at such date;

(s) The dates of and parties to, and the general effect concisely stated of every material contract made, not in the ordinary course of business, which contract is to be executed in whole or in part at or after the filing of the application or which contract has been made not more than two years before such filing;

(t) A detailed balance sheet as of a date not more than ninety days prior to the date of the filing of the application, and in the case of a new corporation or organization a pro forma balance sheet shall be submitted showing what the conditions of the company will be after the financing is completed and as of a date when the company begins business as authorized by its charter. Additional details and information regarding any item or items in the balance sheet shall be submitted as prescribed by the commissioner. There shall also be submitted a profit and loss statement of the issuer showing earnings and income, the nature and source thereof, and the expenses and fixed charges in such detail and such form as the commissioner shall prescribe, giving an estimated profit and loss statement for a new company or organization;

(u) A copy of any agreement or agreements made or to be made, including contracts or options effective at the time of registration or at some future date if such are in connection with, refer to or material to the sale of securities, (no public disclosure shall be required of any portion of any such contracts or agreements if the commissioner deter-
130 mines that the disclosure of such portion would impair the
131 value of the contract or agreement and would not be neces-
132 sary for the protection of the investors), a copy of the articles
133 of incorporation with all amendments thereof and of the
134 existing by-laws or instruments corresponding thereto, whatever the name, if the issuer be a corporation, a copy of all
135 instruments by which the trust is created or declared, if the
136 issuer is a trust, a copy of the articles of partnership or
137 association and all other papers pertaining to its organiza-
138 tion, if the issuer is a partnership, unincorporated associa-
139 tion, joint stock company, or any other form of organiza-
140 tion;
141 (v) A detailed statement prescribed by the commissioner
142 of all individuals who are officers, or who are employed as
143 promoters by the issuer, underwriter or dealer in securities;
144 (w) A copy of prospectus;
145 (x) Any other information as required and prescribed by
146 the commissioner as he may deem necessary and pertinent
147 in determining whether the applicant or issuer shall be
148 registered pursuant to the provisions of this section.
149 All of the statements, exhibits and documents of every
150 kind required by the commissioner under this section except
151 properly certified public documents, shall be verified by the
152 oath of the applicant or of the issuer in such manner and
153 form as may be prescribed by the commissioner.
154 The commissioner shall have power and authority to place
155 such conditions, limitations and restrictions on any registra-
156 tion as may be necessary to carry out the purposes of this
157 chapter.
158 The commissioner may require the use of a prospectus by
159 registered issuer and may require the printing therein of all
160 or any parts of the information required by this section to
161 be submitted with the application and may designate by
162 ruling how such prospectus may be used. Every prospectus
163 used, distributed or made available in this state must first
164 have the approval of the commissioner.
165 At the time of filing of application the applicant shall
166 pay to the commissioner one twentieth of one per cent of
167 the aggregate par value or offering price, whichever is
168 greater, of the securities to be sold in this state for which
the applicant is seeking registration, but in no case shall such fees be less than twenty-five dollars, nor more than three hundred dollars. In case of a stock having no par value, the offering price to the public shall be deemed to be the par value of such stock.

If, upon examination of any application, the commissioner shall find that the sale of the security referred to therein will not be fraudulent or will not work or tend to work a fraud upon the purchaser, or that the enterprise or business of the issuer is not based upon unsound business principles and that it is in every respect equitable, just and fair to the investor and after all provisions of this article have been complied with, the commissioner shall record the registration of such security in the register of securities and thereupon such security so registered may be sold by the issuer or by any registered dealer who has notified the commissioner of his intention to do so, in the manner hereinafter provided, subject, however, to the further order of the commissioner as hereinafter provided.

Every registration under this section shall expire on the thirtieth day of June in each year, but new registrations for the succeeding year shall be issued upon written application, the applicant furnishing the commissioner, upon request, information as hereinbefore provided in this section, and by paying to the commissioner a fee of one twentieth of one per cent of the aggregate par value or offering price, whichever is greater, of the securities to be sold in this state within the year authorized by registration, but in no case shall the fee be less than twenty-five dollars or more than three hundred dollars. Applications for renewals must be made not less than thirty days before the first day of the ensuing registration year, otherwise they shall be treated as original applications.

Each different type, class, series or kind of securities not exempt by sections three and four of this article shall require separate registration and the same requirements and regulations shall apply to each, and the registration fee paid by each. This does not apply to a serial issue of securities where the entire amount is issued at one time and where the only difference is in the maturity or interest date.
Investment trust securities shall be registered separately as herein provided where there is any change or difference from the registered security other than the maturity date of the trust.

Sec. 7. Every issuer whose securities have been registered for sale under section six of this article shall be subject to examination as to its methods of business and examination of its books and records by the commissioner or by his duly authorized representative at any time the commissioner may deem it advisable as a safeguard to investors, and any applicant for registration shall also be subject to such examination. The expense of such examination shall be paid by such applicant or issuer and the failure or refusal of such applicant or issuer to pay such expense upon the demand of the commissioner shall work a forfeiture of its right to registration in this state.

Sec. 8. The commissioner may limit the price at which securities, to be registered under section six hereof, either of par or no par value, may be sold, and may prescribe the amount of commission to be allowed on such sales, but this in no instance to exceed twenty per cent of the sale price, such percentage to include all expenses incidental to such sale including advertising or any other expense chargeable in any way to the sale of such securities.

Sec. 9. Upon any application for registration by qualification, under section six hereof, made by an issuer or registered dealer, where the issuer is not domiciled in this state, there shall be filed with such application the irrevocable written consent of the issuer that suits and actions growing out of the violation of any provision or provisions of this chapter, may be commenced against it in the proper court of any county in this state in which a cause of action may arise or in which the plaintiff may reside, by the service of any process or pleading authorized by the laws of this state, on the commissioner of securities, and by the acceptance of such service of process by the commissioner for and on behalf of such issuer, such consent stipulating and agreeing that such service of such process or pleading on such commissioner, or such acceptance by the commissioner, shall be taken and held in all courts
to be as valid and binding as if due service had been made upon the issuer himself and said written consent shall be authenticated by the seal of said issuer, if it has a seal, and by the acknowledged signature of a member of the copartnership or company, or by the acknowledged signature of any officer of the incorporated or unincorporated association, duly authorized by the resolution of the board of directors, trustees or managers of the corporations or association, and shall in such case be accompanied by a duly certified copy of the resolution of the board of directors, trustees or managers of the corporation or association, authorizing the officers to execute the same, but no such process shall be served on the commissioner or accepted by him less than ten days before the return thereof. In case any process or pleadings mentioned in this chapter are served upon the commissioner, or accepted by him, it shall be by duplicate copies, one of which shall be filed in the office of the commissioner and another immediately forwarded by registered mail to the principal office of the issuer against which such process or pleadings are directed.

Sec. 10. The commissioner may revoke the registration of any security by entering an order to that effect, with his findings in respect thereto, if upon examination into the affairs of the issuer of such security it shall appear that the issuer: (1) Is insolvent; or (2) has violated any of the provisions of this chapter or any order of the commissioner of which such issuer has notice; or (3) has been or is engaged or is about to engage in fraudulent transactions; or (4) is in any other way dishonest or has made any fraudulent representations in any prospectus, or in any circular or other literature that has been distributed concerning the issuer or its securities; or (5) is of bad business repute; or (6) does not conduct its business in accordance with law; or (7) that its affairs are in an unsound condition; or (8) that it would be detrimental to the interests of investors or prospective investors of the issuer to permit the continued sale of such securities already registered.

In making such examination the commissioner shall have access to and may compel the production of all the books and papers of such issuer, and he or his deputy commissioner may administer oaths to and examine the officers of such issuer or any other person connected therewith as to its business and
23 affairs, and may also require of such issuer any information or
24 exhibits provided for in section six of this article.
25 If any issuer shall refuse to permit an examination to be
26 made by the commissioner, it shall be proper ground for revo-
27 cation of registration.
28 The commissioner may enter an order suspending the right
29 to sell securities pending an investigation: Provided, That the
30 order shall state the commissioner's grounds for taking such
31 action.
32 Notice of the entry of such order shall be given personally
33 or by telephone, telegraph, or mail to the issuer and every
34 registered dealer who shall have notified the commissioner of
35 an intention to sell such security.

Sec. 11. Securities issued or to be issued to the security
2 holders or creditors of any person in the process of a bona fide
3 reorganization, recapitalization, merger, rearrangement of
4 capitalization or any other plan or proposal for the readjust-
5 ment of finances of such person including such plans resulting
6 from receivership or bankruptcy of such person shall be
7 registered as provided by section six of this article.
8 Registration must be made prior to the time of solicitation
9 and prior to the offer or proposal of any plan, agreement, con-
10 tract, indenture, deposit or trustee arrangement to the security
11 holders or creditors of such person.
12 The commissioner may require for such registration, informa-
13 tion and exhibits as provided in section six hereof for the
14 person issuing or to issue the new securities and also the person
15 having securities to be included in or affected by any such new
16 issue or proposed issue. The commissioner may also require
17 information about or related to any plan, indenture, agreement,
18 contract, deposit or trustee arrangement offered or proposed
19 and the commissioner may require any changes to be made in
20 such plan, indenture, agreement, contract, deposit or trustee
21 arrangement as he deems necessary for the protection of the
22 interests of investors.

Sec. 12. No dealer or salesman shall engage in business
2 in this state as such dealer or salesman or sell any securities,
3 including securities exempted in section three of this article,
4 or transact a brokerage or trading business or doing a
5 business of buying or selling securities listed or traded in
6 on any stock exchange, except in transactions exempt under
7 section four of this article, unless he has been registered as
8 a dealer or salesman in the office of the commissioner pursuant
9 to the provisions of this section.
10 An application for registration as a dealer shall be filed
11 in writing with the commissioner, in such form as he may
12 prescribe, duly verified by oath, which shall state the prin-
13 cipal office of the applicant, wherever situated, and the loca-
14 tion of the principal office and all branch offices in this state,
15 if any, the name or style of doing business, the names,
16 residences and business addresses of all persons interested in
17 the business as principals, copartners, officers and directors,
18 specifying as to each his capacity and title, the general plan
19 and character of business and the length of time the dealer
20 has been engaged in business, a financial statement in detail
21 showing the actual conditions of the dealer, classification and
22 condition of all margin or installment accounts, partner,
23 officer and director accounts, a list of securities sold in
24 West Virginia during the preceding year and so far as
25 possible a list of those to be sold or offered for sale when
26 the registration is completed, and such information to be
27 given in such detail as the commissioner may require. The
28 commissioner may also require such additional information
29 as to the applicant’s previous history, record and associa-
30 tion, as he may deem necessary to establish the good repute
31 in business of the applicant.
32 Every dealer shall file with his application an irrevocable
33 written consent to the service of process upon the commissioner
34 of securities in action against such dealer in manner and
35 form as hereinabove provided in section nine of this article.
36 If the commissioner shall find that the applicant is of
37 good repute, is solvent and has complied with the provisions
38 of this section including the payment of the fee hereinafter
39 provided he shall register such applicant as a dealer.
40 Upon the written application of a registered dealer and
41 general satisfactory showing as to good character and the
42 payment of the proper fee the commissioner shall register
43 as salesman of such dealer such natural persons as the dealer
44 may request.
45 The partners of a partnership and the executive officers
46 of a corporation or other association registered as a dealer
may act as salesmen during such time as such partnership, corporation or association is so registered without further registration as salesmen. The salesmen registered by a dealer may sell any securities for which the dealer registering such salesmen is registered.

The names and addresses of all persons approved for registration as dealers or salesmen and all orders with respect thereto shall be recorded in a register of dealers and salesmen kept in the office of the commissioner, together with all information and data secured by the commissioner relative to such dealers or salesmen, which shall be open to public inspection. Every registration under this section shall expire on the thirtieth day of June in each year, but new registrations for the succeeding years shall be issued upon written application and upon payment of the fee as hereinafter provided, and by filing of further statements or furnishing any further information specifically required by the commissioner. Applications for renewals must be made not less than thirty days before the first day of the ensuing year, otherwise they shall be treated as original applications. The fee for such registration and for each annual renewal shall be twenty-five dollars for each dealer and five dollars for each salesman.

Changes in registration occasioned by changes in personnel of a partnership or in the principals, copartners, officers or directors of any dealer may be made from time to time by written application setting forth the facts with respect to such change.

Every dealer registered under this section shall be subject to examination as to his financial condition or methods of business by the commissioner or by his duly authorized representative at the time the commissioner may deem it advisable, but not more than one such examination shall be made within each fiscal year. The expense of the examination shall be paid by the applicant and the failure or refusal of such applicant to pay such expense upon the demand of the commissioner shall work a forfeiture of his right to registration under this section.

Every dealer or salesman shall send a copy of all bills, confirmations or orders on transactions with any employee or active official of any bank, trust company or savings institution, to the president of the institution by which the per-
son is employed or in which the person is an official, and a
copy shall also be sent to the commissioner of banking of
the state of West Virginia. These copies of bills, confirma-
tions or orders shall be in the same form and detail as the
original and shall be sent at the same time as the original.
Any dealer or salesman violating the provisions of this para-
graph shall have his registration revoked by the commissioner
and shall be liable to such bank, trust company or savings
institution for any losses or damages incurred in any case
where such dealer or salesman failed to comply with this
 provision.
This section shall not apply to a person or its agents selling
exclusively its own contracts, if such contracts are exempt
from this act by section three, paragraph (g) of this chapter.
This section shall not apply to an unincorporated person
selling exclusively undivided interests in oil, gas or other
mineral rights if such unincorporated person is the bona fide
owner of the lease, interest, royalty or property in which he
is selling interests.

Sec. 13. Registration under section twelve of this article
may be refused or any registration granted may be revoked by
the commissioner if, after a reasonable notice and a hearing, the
commissioner determines that such applicant or registrant so
registered: (1) Has violated any provisions of this chapter or
any regulation made hereunder; (2) has made a material false
statement in the application for registration; (3) has been
guilty of a fraudulent act in connection with any sale of secu-
rities, or has been or is engaged or is about to engage in making
fictitious or pretended sales or purchases of any of such secu-
rities or has been or is engaged or is about to engage in any
practice or sales of securities which is fraudulent or in violation
of the law; (4) has demonstrated his unworthiness to transact
the business of dealer or salesman; (5) has been convicted of a
felony or any misdemeanor in which an essential element is
fraud; (6) has made any misrepresentations or false state-
ment to, or concealed any essential or material facts from any
person in the sale of a security to such person; (7) has failed
to account, to persons interested, for all money and property
received; (8) has not delivered, after a reasonable time, to
persons entitled thereto, securities held or agreed to be delivered
by the dealer or broker, as and when paid and due to be de-
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23 livered; (9) has made or is making misrepresentation of any essential or material fact to the commissioner or has violated the provisions of the laws of foreign state regulating the sale of securities therein; (10) is insolvent; (11) is selling, or offering for sale securities through any solicitor and agent not registered in compliance with the provisions of this act; (12) has been refused a license in any state or that any license in any state theretofore granted the applicant or registrant or any officer, director, member, partner, manager or trustee thereof has been cancelled, suspended, revoked or withdrawn for fraudulent conduct or violation of the law of such state regulating the sale of securities therein; (13) is or has been using practices in the sale of securities that work or tend to work a fraud; or (14) has refused to furnish or give pertinent data concerning the business of such dealer or salesman to the commissioner.

In cases of charges against the salesman notice thereof shall also be given the dealer employing such salesman.

The commissioner shall immediately notify the dealer or salesman his registration has been revoked, giving the reasons therefor and set a date, not later than ten days following the date of the revocation order, for a hearing and pending the hearing the commissioner shall have the power to order the suspension of such dealer's or salesman's registration. Such revocation is to become permanent twenty days following the date of the original revocation order unless otherwise specified or ordered by the commissioner. At the time that such revocation order becomes permanent, the commissioner shall issue a final order thereon and record with his findings in the register of dealers and salesmen.

During the period of suspension and pending a hearing the commissioner shall have access to and may make a thorough examination of all books and papers of such dealer or salesman and he or his deputy may administer oaths to and examine the officer of such dealer or any other person connected therewith, as to its business and affairs. If any dealer or salesman shall refuse to permit such examination to be made by the commissioner it shall be sufficient grounds for revocation of registration.

Sec. 14. The commissioner may make an examination, investigation and audit of any dealer or salesman including dealer
and salesman whose registration has been suspended or revoked and at the expense of such dealer or salesman. If, upon examination, it is found that the dealer is insolvent or if the records are in such condition that the commissioner is unable to determine the financial condition of the dealer, the commissioner may ask the appointment of a receiver to safeguard the interests of the public; the circuit court of Kanawha county or the county in which such dealer has its principal place of business shall have authority to appoint such receiver.

Sec. 15. It will not be necessary to negative any of the exemptions in this article provided in any complaint, information, indictment or any other writ or proceedings laid or brought under this article and the burden of proof of any such exemptions shall be upon the party claiming the benefit of such exemption and any person claiming the right to register under section six or section twelve, hereof, shall also have the burden of proving the right to register.

Sec. 16. If the statement containing information as to securities, as provided for in section six of this article, shall disclose that any such securities shall have been or shall be intended to be issued for any patent right, copyright, trademark, process, lease, formula or good will, or for promotion fees or expenses or for other intangible assets, the amount and nature thereof shall be fully set forth and the commissioner may require that such securities so issued in payment of such patent right, copyright, trademark, process, lease, formula or good will, or for promotion fees or expenses, or for other intangible assets, shall be delivered in escrow to the commissioner under an escrow agreement that the owners of such securities shall not be entitled to withdraw such securities from escrow until all other stockholders who have paid for their stock in cash shall have been paid a dividend or dividends aggregating not less than six per cent, shown to the satisfaction of said commissioner to have been actually earned on the investment in any common stock so held, and in case of dissolution or insolvency during the time such securities are held in escrow, that the owners of such securities shall not participate in the assets until after the owners of all other securities shall have been paid in full. The commissioner may require the owner of any securities placed in escrow to enter into an agreement that he will not sell or
24 otherwise dispose of such securities during the time they are
25 held in escrow.

Sec. 17. Whenever it shall appear to the commissioner,
2 either upon complaint or otherwise, that in the issuance, sale,
3 promotion, negotiation, advertisement or distribution of any
4 securities within this state, including any security exempted
5 under the provisions of section three, or in any transaction
6 exempted under the provisions of section four hereof, any
7 person, as defined in this article, shall have employed or em-
8 ploys, or is about to employ any device, scheme or artifice
9 to defraud or for obtaining money or property by means of
10 any false pretense, representation or promise, or that any such
11 person shall have made, makes or attempts to make in this
12 state fictitious or pretended purchase or sales of securities or
13 shall have engaged in or engages in or is about to engage
14 in any practice or transaction or course of business relating
15 to the purchase or sale of securities which is fraudulent or
16 in violation of law and which has operated or which would
17 operate as a fraud upon the purchaser, any one or all of
18 which devices, schemes, artifices, fictitious or pretended pur-
19 chases or sales of securities, practices, transactions and courses
20 of business which are hereby declared to be and are herein-
21 after referred to as fraudulent practices, the commissioner
22 may investigate, and whenever he shall believe from evidence
23 satisfactory to him that any such person has engaged in, is
24 engaged or about to engage in any of the practices or trans-
25 actions heretofore referred to, he may in addition to any other
26 remedies, bring an action in the circuit court of Kanawha
27 county in the name and on behalf of the state of West Vir-
28 ginia against such person and any other person or persons
29 heretofore concerned in or in any way participating in or
30 about to participate in such fraudulent practices, to enjoin
31 such person, and such other person or persons from continuing
32 such fraudulent practices or engaging therein or doing any
33 act or acts in furtherance thereof. In such action a judgment
34 may be entered awarding such injunction as may be proper.
35 In no case shall the commissioner incur any official or personal
36 liability by instituting injunction or other proceedings or
37 issuing rules, orders or regulations or by suspension, revoca-
38 tion or cancellation of any registration under this chapter.
Sec. 18. Every sale or contract for sale made in violation of any of the provisions of this article shall be voidable at the election of the purchaser and the person making such sale or contract for sale shall be liable to such purchaser in an action at law in any court of competent jurisdiction upon tender to the seller of the securities sold or of the contract made for the full amount paid by such purchaser, together with all taxable court costs and reasonable attorney's fees in any action or tender under this section: Provided, That no action shall be brought for the recovery of the purchase price after one year from the date of such sale or contract for sale: Provided further, That no purchaser otherwise entitled shall claim or have the benefit of this section who shall have refused or failed within thirty days from the date thereof to accept a written offer of the seller to take back the security in question and to refund the full amount paid by such purchaser, together with interest on such amount for the period from the date of payment by such purchaser down to the date of repayment, such interest to be computed as follows:

(a) In case such securities consist of interest bearing obligations, at the same rate as provided in such obligations;

(b) In case such securities consist of other than interest bearing obligations, at the rate of six per cent per annum, less, in every case, the amount of any income from such securities that may have been received by such purchaser.

Sec. 19. Any person aggrieved by an order of the commissioner in a proceeding under this act to which such person is a party may obtain a review of such order in the circuit court of Kanawha county, West Virginia, by filing in such court within thirty days after entry of such order a written petition praying that the order of the commissioner be modified or be set aside in whole or in part. A copy of such petition shall be forthwith served upon the commissioner and thereupon the commissioner shall certify and file in the court a transcript of the record upon which the order complained of was entered. No objection to the order of the commissioner shall be considered by the court unless such objection shall have been urged before the commissioner. The finding of the commissioner as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for
16 leave to adduce additional evidence and shall show to the
17 satisfaction of the court that such additional evidence is
18 material and that there were reasonable grounds for failure
19 to adduce such evidence in the hearing before the commis-
20 sioner, the court may order such additional evidence to be
21 taken before the commissioner and to be adduced upon the
22 hearing in such manner and upon such terms and conditions
23 as to the court may seem proper. The commissioner may
24 modify his findings, as to the facts, by reason of the additional
25 evidence so taken and he shall file such modified or new find-
26 ings, which, if supported by evidence, shall be conclusive and
27 his recommendations, if any, for the modification or setting
28 aside of the original order. The jurisdiction of the court
29 shall be exclusive and its judgment and decree, affirming,
30 modifying or setting aside, in whole or in part, any order of
31 the commissioner, shall be final, subject to an appeal from
32 the judgment of the said circuit court on the same terms and
33 conditions as an appeal is taken in civil actions. The com-
34 missioner shall not, by any court order be barred from there-
35 after revoking or altering such order for any proper cause
36 which may thereafter accrue or be discovered. If an order
37 of the commissioner shall be affirmed by the said circuit court
38 the person contesting such order shall not be barred after
39 thirty days from filing a new application provided such
40 application is not otherwise barred or limited.
41 The commencement of proceedings under this section shall
42 not, unless specifically ordered by the court, operate as a stay
43 of the commissioner’s order.

Sec. 20. All fees herein provided for shall be collected by
2 the commissioner and shall be turned into the state treasury,
3 and the commissioner shall keep a record of the receipts and
4 expenditures incurred in carrying out the provisions of this
5 article.

Sec. 21. The commissioner shall have authority to make,
2 amend and rescind such rules and regulations as may be
3 necessary to carry out the provisions of this chapter and to
4 prescribe the form or forms in which required information
5 shall be set forth.
6 The securities commissioner shall have the power to make
7 any reasonable rules and regulations he may deem necessary
8 to cooperate effectively with the securities and exchange commis-
9 sion or any other agency of the United States government
10 which may have supervision or control over the sale of securities
11 in interstate commerce under any law of the United States,
12 now or hereafter enforced, and which are not or would not be
13 in conflict with the laws of this state.

Sec. 22. Neither the fact that the application for registra-
2 tion of a security or of a dealer has been filed or is in effect
3 nor the fact that a stop order or other order is not in effect
4 with respect thereto, shall be deemed a finding by the com-
5 missioner that the application and all exhibits and documents
6 filed therewith are true and accurate on their face or that
7 they do not contain an untrue statement of fact or omit to
8 state a material fact or be held to mean that the commissioner
9 has in any way passed upon the merits of or given approval
10 to such issuer or dealer. It shall be unlawful to make, or
11 cause to be made, to any prospective purchaser, any representa-
12 tion contrary to the foregoing provisions of this section.

Sec. 23. Any condition, stipulation or provisions binding
2 any person acquiring any security to waive compliance with
3 any provisions of this chapter or of the rules and regulations
4 of the commissioner shall be void.

Sec. 24. Any person, issuer, dealer, salesman or agent, as
2 defined in section two of this article, or any or all of the
3 officers or agents thereof, alone or in conjunction with others,
4 having devised or intending to devise any scheme or artifice
5 to defraud any person or persons by or through the sale of
6 any securities, as defined in said section two, including securities
7 exempted from registration under section three of this article
8 and including transactions exempt under section four of this
9 article, or through the sale of real estate situate outside of
10 this state, who shall, for the purpose of executing or attempt-
11 ing to execute such scheme or artifice, commit any overt act
12 within this state shall be guilty of a felony, and upon con-
13 viction thereof, shall be punished by a fine of not more than
14 five thousand dollars, or by imprisonment in the penitentiary
15 for not more than five years, or by both such fine and im-
16 prisonment, in the discretion of the court.
An indictment under this section shall be sufficient if substantially as follows:

State of West Virginia,

County of ..................................................to-wit:

In the .................................... court of said county.

The grand jurors of the state of West Virginia in and for the body of the county of ........................................... and now attending said court, upon their oaths present that .......... , ............................ . as ...................................................... (Issuer, dealer, salesman, agent or officer, as the case may be), having devised or intending to devise a scheme or artifice to defraud, by or through the sale of certain securities, to-wit, (set out the security or securities here as defined in section two of this act), and who for the purpose of executing or intending to execute such scheme or artifice to defraud, on the ........... day of ...................... 19........ , and in the county of ........................................ did unlawfully and feloniously induce, ...................................... to subscribe and pay for ..................................... shares of the capital stock of ........................................... at ................................ dollars per share, making in all ................................ dollars worth of stock for which the said ...................................... subscribed and paid, (or state briefly any other overt act committed in pursuance of such scheme or artifice to defraud) against the peace and dignity of the state.

Sec. 25. Any person, issuer, dealer, salesman or agent, as defined in section two of this article, who shall, with intent to induce the purchase of any securities, as defined in said section two, including securities exempted from registration under section three of this article and including transactions exempt under section four of this article, or of any real estate situate outside of this state, knowingly or recklessly make any false statement, either oral or written, or knowingly or recklessly conceal any fact materially affecting the value of such securities, or of such real estate, shall be guilty of a felony, and upon conviction thereof, shall be punished by a fine of not more than five thousand dollars, or by imprisonment in the penitentiary for not more than five years, or by both such fine and imprisonment, in the discretion of the court.

Sec. 26. Any person signing any application form, statement, exhibit or document required to be verified and sworn to,
knowing any representation therein contained to be false or untrue (and the depositing of any such statement or document in the office of the commissioner in connection with any registration under this chapter, shall be deemed prima facie evidence of knowledge of the falsity thereof or of any representation therein contained, and of the willful signing of such statement or document), shall be guilty of a felony and upon conviction thereof shall be punished by a fine of not more than five thousand dollars or by imprisonment in the penitentiary for not more than five years, or by both such fine and imprisonment in the discretion of the court.

Sec. 27. Any person subject to the provisions of this chapter, who shall knowingly and with intent to evade the provisions of this chapter, sell any securities within this state without complying with the provisions of this chapter or who knowingly and with intent to evade the provisions of this chapter continues to sell, offer for sale or knowingly and with intent to evade the provisions of this chapter after his registration has been revoked or suspended, by the commissioner, or who shall otherwise neglect or refuse to comply with any of the provisions of this chapter, shall be guilty of a felony, and upon conviction thereof, shall be punished by a fine of not more than five thousand dollars, or by imprisonment in the penitentiary for not more than five years, or by both such fine and imprisonment, in the discretion of the court.

Sec. 28. This act may be cited as "The Act Regulating and Supervising the Sale of Securities".

ARTICLE II.

Section 1. Any person, partnership or corporation shall not sell or offer for sale, in this state, any lands, situate out of this state, which are to be planted in trees or vines or divided into town or suburban lots, or any unimproved or undeveloped lands, or any lands, including cemetery lots, cemetery privileges, burial rights or privileges, the value of which materially depends on the future performance of any stipulation or promise to furnish irrigation, transportation facilities, streets, sidewalks, sewers, gas, light or other value enhancing utility or improvement of any undivided part or share, whether an aliquot part or a part designated on any other basis, of any mine, mineral
12 claim, or other estate in any mine, or in the lands containing
13 the same, regardless of where located or situated, the value of
14 which materially depends on the future discovery or develop-
15 ment and production of the minerals, without first having filed
16 with the commissioner of securities a detailed description of
17 the property which, or any interest or part of share of which,
18 is proposed to be sold, and such information with respect to
19 the value thereof, and the title to such property or properties
20 as the commissioner of securities shall require, and without
21 causing such property to be registered by the commissioner of
22 securities in the manner provided for registration of securities
23 by qualification under article one of this chapter; and no per-
24 son shall sell or offer any such property for sale until he has
25 been registered as a salesman by the commissioner of securities
26 under the provisions for registering dealers and salesmen of
27 securities, contained in article one of this chapter. All of the
28 provisions contained in article one of this chapter governing
29 the registration of securities by qualification, and the registra-
30 tion of dealers and salesmen, and penalties provided therein,
31 shall apply to the registration of properties and salesmen under
32 this section: Provided, That nothing herein shall prevent any
33 bona fide owner of any such land, mine, mining lease, mineral
34 claim, or other property, or interest therein, from selling the
35 same on his own account and not as a part, or in furtherance.
36 of any promotion or development to the public.

Sec. 2. Any person or corporation who, with intent to sell
2 or in any wise dispose of merchandise, securities, service or
3 anything offered by such person or corporation, directly or
4 indirectly, to the public for sale or distribution, or with intent
5 to increase the consumption thereof, or to induce the public in
6 any manner to enter into any obligation relating thereto, or
7 to acquire title thereto, or any interest therein, makes, publishes,
8 disseminates, circulates, or places before the public, or causes,
9 directly or indirectly, to be made, published, disseminated, cir-
10 culated, or placed before the public in this state, in a news-
11 paper or other publication, or in the form of a book, notice.
12 handbill, poster, blue print, map, bill, tag, label, circular,
13 pamphlet, or letter, or in any other way, an advertisement of
14 any sort regarding merchandise, securities, service, land, lot.
15 or anything so offered to the public, which advertisement con-
16 tains any promise, assertion, representation or statement of
fact which is untrue, deceptive or misleading, shall be guilty of
a misdemeanor, and, upon conviction thereof, be punished by a
fine of not more than two thousand dollars, or confined in jail
for a period of not more than six months, or by both such fine
and imprisonment.

Sec. 3. In any indictment for violation of any provision of
this chapter it shall not be necessary to negative any exception
contained in any proviso or elsewhere, in this chapter. Any
person accused shall be deemed to have had knowledge of any
matter of fact when, by the exercise of reasonable diligence
before the commissioner of the offense with which he is charged.
his could have secured such knowledge.

Sec. 4. If any word, sentence, clause, paragraph, section,
part or provision of this act shall be declared unconstitutional
or invalid or ineffective by any court or other authority of
competent jurisdiction and power, such declaration shall not
affect any other section, part or provision hereof.

CHAPTER 105

AN ACT to repeal sections one to ten, inclusive, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, and to enact in lieu thereof sections one to six, inclusive, relating to crimes to property and fixing penalties for the conviction thereof.

(Passed March 9, 1935: in effect from passage. Became a law without the approval of the Governor.)

Sec. Penalty for wilfully and mali-
1. ciously burning, etc., of dwell-
ing house, outhouse, etc.; first
degree arson.

2. Penalty for wilfully and mali-
ciously burning, etc., of other
building or structure; second
degree arson.

3. Penalty for wilfully and mali-
ciously burning personal prop-
erty of another of the value of
twenty-five dollars; third de-
gree arson.

4(a) Penalty for attempts to commit
arson in above degrees: fourth
degree arson: (b) what consti-
tutes an attempt to burn build-
ing or property.

5. Penalty for burning, or attempt-
ing to burn, insured property.

6. Penalty for wilfully and mali-
ciously setting out fire on
lands; liability in civil action
to person injured.
Be it enacted by the Legislature of West Virginia:

That sections one to ten, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, be repealed and that sections one to six, inclusive, be enacted in lieu thereof, to read as follows:

Section 1. Any person who wilfully and maliciously sets fire to or burns or causes to be burned or who aids, counsels or procures the burning of any dwelling house, whether occupied, unoccupied or vacant, or any kitchen, shop, barn, stable or other outhouse that is parcel thereof, or belonging to or adjoining thereto, whether the property of himself or of another, shall be guilty of arson in the first degree, and upon conviction thereof, be sentenced to the penitentiary for not less than two nor more than twenty years.

Sec. 2. Any person who wilfully and maliciously sets fire to or burns or causes to be burned, or who aids, counsels or procures the burning of any building or structure of any class or character, whether the property of himself or of another, not included or described in the preceding section, shall be guilty of arson in the second degree, and upon conviction thereof, be sentenced to the penitentiary for not less than one nor more than ten years.

Sec. 3. Any person who wilfully and maliciously sets fire to or burns or causes to be burned, or who aids, counsels or procures the burning of any personal property of any class or character, (such property being of the value of not less than twenty-five dollars and the property of another person), shall be guilty of arson in the third degree and upon conviction thereof, be sentenced to the penitentiary for not less than one nor more than three years.

Sec. 4. (a) Any person who wilfully and maliciously attempts to set fire to, or attempts to burn or to aid, counsel or procure the burning of any of the buildings or property mentioned in the foregoing sections, or who commits any act preliminary thereto, or in furtherance thereof, shall be guilty of arson in the fourth degree and upon conviction thereof be sentenced to the penitentiary for not less than one nor more than two years, or fined not to exceed one thousand dollars.
9 (b) The placing or distributing of any inflammable, explosive or combustible material or substance, or any device in any building or property mentioned in the foregoing sections, in an arrangement or preparation with intent to eventually, wilfully and maliciously set fire to or burn same, or to procure the setting fire to or burning of same shall, for the purposes of this act constitute an attempt to burn such building or property.

Sec. 5. Any person who wilfully and with intent to injure or defraud the insurer sets fire to or burns or attempts so to do or cause to be burned or who aids, counsels or procures the burning of any building, structure or personal property, of any class or character, whether the property of himself or of another, which shall at the time be insured by any person against loss or damage by fire, shall be guilty of a felony and upon conviction thereof, be sentenced to the penitentiary for not less than one nor more than five years.

Sec. 6. If any person unlawfully and maliciously set fire to any woods, fence, grass, straw, or other thing capable of spreading fire on lands, he shall be guilty of a misdemeanor, and, upon conviction, shall be fined not exceeding five hundred dollars and confined in jail not less than two nor more than twelve months. He shall, moreover, be liable to any person injured thereby, or in consequence thereof, for double the amount of damages sustained by such person.

CHAPTER 106

(House Bill No. 131—By Mr. Parrish)

AN ACT to amend and reenact section twenty-one, article five, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended by chapter ninety-six, acts of the Legislature, second extraordinary session, one thousand nine hundred thirty-three, relating to certified copies of birth and death records, by permitting the state registrar to furnish same to the state welfare department, to county
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welfare departments and to organized charities, without charge.

[Passed March 7, 1935; in effect ninety days from passage. Approved by the Governor.]

Sec. 21. Certified copies of birth and death records from state registrar; fee: not to state legitimacy or illegitimacy; use as evidence; fee for search of files and records; fees turned into state treasury; when copies furnished without fee.

Be it enacted by the Legislature of West Virginia:

That section twenty-one, article five, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended by chapter ninety-six, acts of the Legislature, second extraordinary session, one thousand nine hundred thirty-three, be amended and reenacted to read as follows:

Section 21. The state registrar shall, upon request, supply to any applicant a certified copy of the record of any birth or death registered under the provisions of this article, for the making and certification of which he shall be entitled to a fee of fifty cents, to be paid by the applicant: Provided, That such copy shall not state that any child was either legitimate or illegitimate. Any such copy of the record of a birth or death, when properly certified by the state registrar, shall be prima facie evidence, in all courts and places, of the facts therein stated. For any search of the files and records when no certified copy is made, the state registrar shall be entitled to a fee of fifty cents for each hour or fractional part of an hour of time of search, said fee to be paid by the applicant. The state registrar shall keep a true and correct account of all fees by him received under the provisions of this article and turn the same over to the state treasurer: Provided, That the state registrar shall, upon the request of any parent or guardian, supply without fee a certificate limited to a statement as to the date of birth, of any child when the same shall be necessary for admission to school, or for the purpose of securing employment: Provided, That the United States bureau of census may obtain, without expense to the state, transcripts or certified copies of births and deaths without payment of the fees herein prescribed: Provided further, That the state registrar may furnish certified copies of birth and death records to the state welfare depart-
26. Ment, to county welfare departments and to organized charities, 27. free of charge, when such certificates are needed in presenting 28. claims to the federal government, or to the West Virginia relief 29. compensation department, and an accurate record shall be made 30. of all such certificates so furnished.

CHAPTER 107
(House Bill No. 140—By Mr. Dickerson)

AN ACT to amend article two, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, relating to safety measures in coal mines, by adding a section thereto.

[Passed February 23, 1935; in effect from passage. Became a law without the approval of the Governor.]

Sec. 83. Mine locomotives to be equipped with lifting jack and handle.

Be it enacted by the Legislature of West Virginia:

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

Section 83. Each mine locomotive shall be equipped at all times with a lifting jack and handle.

CHAPTER 108
(Com. Sub. for House Bill No. 168—Originating in the House Committee on the Judiciary)

AN ACT to amend article four, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, relating to notaries public, by amending and reenacting sections four and five thereof, and by adding thereto a new sec-
tion designated as section two-(a) providing for the qualifications of notaries public in more than one county.

[Passed February 22, 1935: in effect from passage. Approved by the Governor.]

Sec. 2-(a). A notary public appointed for any of the 2 counties of the state, upon filing in the office of the clerk of the 3 county court in any other county in the state a certificate of the 4 county clerk of the county for which he was appointed, setting 5 forth the fact of his appointment, the date thereof, and qualifi- 6 cations as such notary public and paying to said clerk of the 7 county court, where said certificate is filed, a fee of one dollar, 8 without any further qualification, shall thereupon have the right 9 to exercise all the functions of his office in the county in which 10 such certificate is filed, with the same effect in all respects as if 11 the same were exercised in the county in which he resides and 12 for which he was appointed.

The clerk of the county court of the county in which a 14 notary public resides and for which such notary public is 15 appointed, upon request, shall issue to such notary public 16 a certificate setting forth the fact of his appointment, the date 17 thereof, and qualification as such notary public, and that such 18 notary public is a resident of his county, and the clerk of the 19 county court shall insert therein the name of the county in 20 which such certificate is to be filed, for which certificate such 21 notary public shall pay a fee of one dollar to the clerk of the 22 county court for each such certificate so issued.

Sec. 4. A notary, under the regulations prescribed by law, 2 may take, within his county, and the county or counties to
3 which his commission has been extended, acknowledgments of 4 deeds and other writings. He shall be a conservator of the 5 peace within the county of his residence, and as such con- 6 servator shall exercise all the powers conferred by law upon 7 justices of the peace.

Sec. 5. The certificate of a notary of this state, in cases speci- 2 fied in the two preceding sections, may be under his signature, 3 without his notarial seal being affixed thereto: Provided, 4 That a notary public who affixes his seal to any instrument 5 or other writings shall affix his seal for the county in which the 6 acknowledgment is taken and the certificate is made.

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AN ACT to amend and reenact section twelve, article six, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, relating to appeals from valuations of property by the board of public works, and providing for appeals to the supreme court of appeals in certain cases.

[Passed February 10, 1935; in effect ninety days from passage. Approved by the Governor.]

Sec. 12. Appeal to circuit court by owner or operator from assessment of property by board of public works; jurisdiction; hearing, after notice to prosecuting attorneys; court may affirm, raise or lower assessment; appeal by state, owner or operator to supreme court of appeals when assessment is fifty thousand dollars or more.

Be it enacted by the Legislature of West Virginia:

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

Section 12. Any owner or operator claiming to be aggrieved 2 by any such decision may, within the time aforesaid, apply by 3 petition in writing to the circuit court of the county in which 4 the property so assessed is situated, or if such property be 5 situated in more than one county then in the county in which 6 the largest assessment of such owner or operator was made in
7 the next preceding year, for an appeal from the assessment and
8 valuation so made of all such property; and jurisdiction is here-
9 by conferred upon and declared to exist in the court to which
10 such application is made to grant, docket and hear such appeal:
11 and such appeal, as to all of the property so assessed, as well as
12 that situated in the county of the court so applied to, as that
13 situated in the several other counties, shall forthwith be al-
14 lowed by such court so applied to, and be heard by such court
15 as to all of such property as soon as possible after the appeal
16 is docketed; but notice in writing of such hearing shall be
17 given to the prosecuting attorney of each of the counties in
18 which such property so assessed is situated, and to the state tax
19 commissioner, at least ten days beforehand. Upon such hearing
20 the court shall hear all such legal evidence as shall be offered
21 on behalf of the state or any county, district or municipal cor-
22 poration interested, or on behalf of the appealing owner or op-
23 erator. If the court be satisfied that the value so fixed by the
24 board of public works is correct, it shall confirm the same, but
25 if it be satisfied that the value so fixed by said board is either
26 too high or too low, the court shall correct the valuation so made
27 and ascertained and fix the true and actual value of such prop-
28 erty according to the facts proved, and shall certify such value
29 to the auditor and to the secretary of the board of public works.
30 The state or the owner or operator may appeal to the supreme
31 court of appeals if the assessed value of the property be fifty
32 thousand dollars, or more.

CHAPTER 110

(House Bill No. 187—By Mr. Brotherton)

AN ACT providing that wages and salaries of all officials, clerks
and employees of any city, town or county shall be subject to
 garnishment or execution upon any judgment rendered against
them, unless otherwise exempt.

[Passed March 6, 1935; In effect from passage. Approved by the Governor.]
Be it enacted by the Legislature of West Virginia:

Section 1. The purpose of this act is to permit any creditor to garnish or attach the wages or salary of any debtor residing within this state, whether or not such debtor is in the employ of any municipality, county, or any other political subdivision of this state; and it is hereby declared to be the intent of the Legislature to declare this act to be in the interest of public policy.

Sec. 2. All officers, clerks, school teachers and employees, of any city, town or county who hold their office by virtue of authority from the Legislature, or by virtue of authority from the governor of the state of West Virginia, or by virtue of authority from any city, town, board of education or county, whether by election or by appointment, and who receive compensation for their services from the moneys of such city, town or county shall, for the purposes of attachment, suggestion, garnishment and execution, be deemed to be, and are officers, clerks or employees of such city, town or county, and their wages or salaries shall be subject to attachment, suggestion, garnishment or execution upon any judgment rendered against them, unless otherwise exempt.

CHAPTER 111

(House Bill No. 193—By Mr. Perry)

AN ACT to prohibit exhibition dances, endurance dances, and dance contests, commonly known and designated as "marathon dance" or "marathon contest", "walking contest", or other endurance contests of like kind, and participating therein, and providing penalties for the violation thereof.

[Passed February 27, 1935; in effect from passage. Became a law without the approval of the Governor.]

Sec. 1. Definition of "person.":
Sec. 2. Unlawful to conduct marathon dances or like endurance tests.
Sec. 3. Penalty for violation of act.
Sec. 4. Unlawful to compete as contestant: penalty.
Sec. 5. Act declared necessary for public welfare, etc.

Be it enacted by the Legislature of West Virginia:

Section 1. The word "person", as used, shall mean and be
Sec. 2. It shall be unlawful for any person to conduct, or manage, or operate any exhibition dance, endurance dance, or dance contest, sometimes commonly known and designated as "marathon dances" or "marathon contests", or any "walking contest", or endurance test of like kind.

Sec. 3. Any person violating any section of this act shall be fined not less than three hundred dollars, and each day such violation shall continue shall be a separate offense; and upon default of payment of any first or subsequent fine herein provided such person shall be imprisoned in the county jail for a period not exceeding thirty days for each offense.

Sec. 4. It shall be unlawful for any person to compete as a contestant in any public marathon dance, or other form of endurance dancing or contest at which dancers or contestants, in consideration of money prizes or other considerations, compete with each other in their ability to continue over long or indefinite periods of time. Any person violating this section shall be fined not less than one hundred dollars and each day such violation shall continue shall be a separate offense; and upon default in the payment of any first or subsequent fine herein provided such person shall be imprisoned in the county jail for a period not exceeding thirty days for each offense.

Sec. 5. This act is hereby declared to be necessary in the interest of public welfare, morals, health, and safety.

CHAPTER 112
(House Bill No. 196—By Messrs. Bailey and Jones, of McDowell)

AN ACT to amend and reenact section five, article one, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, relating to the national guard.

[Passed March 4, 1935; in effect from passage. Approved by the Governor.]
Be it enacted by the Legislature of West Virginia:

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

Section 5. The national guard of West Virginia shall consist of the commissioned officers, enlisted men, staff, corps and departments of West Virginia, regularly organized and maintained pursuant to law. The governor shall have power to alter, divide, annex, consolidate, disband or reorganize the same and create new organizations, and is hereby directed to organize a regiment of infantry and equip same composed of negro troops which regiment shall be organized and equipped in accordance with the provisions of the U. S. Army regulations governing same. He is directed to organize at least one battalion within one hundred twenty days after the passage of this bill or as soon thereafter as funds are available. He shall at all times have the power to create new organizations whenever, in his judgment, the efficiency of the state force will thereby be increased, except insofar as such action would be contrary to the provisions of the regulations of the war department governing the national guard; and he shall at anytime have power to change the organization of departments, brigades, regiments, battalions and companies so as to conform to any organization, system of drill, or instruction now or hereafter adopted for the army of the United States, and for that purpose the number of officers of the brigades, regiments, battalions and companies may be increased or diminished and their rank increased or reduced to the extent made necessary by such change. The officers of the foregoing departments shall be of like rank as officers of similar departments of the army of the United States and shall perform like duties. The number of such officers shall be determined by the governor, but this number shall be limited to the actual requirements of the different departments, and the governor may designate one officer as chief of a number of different departments, unless such action would be contrary to the regulations provided by the war department for the government of the national guard. The governor shall have the power, in case
34 of war, insurrection, invasion or imminent danger thereof, to
35 increase the force beyond the maximum now established by law
36 and to organize the same with the proper officers as the exigencies
37 of the service may require. In the event of the formation of any
38 such new organizations, officers holding commissions in the
39 national guard as organized at such time shall be eligible for
40 commission in such new organizations with like or higher grade
41 and rank, if found capable, after examination by a regular
42 authorized board, and shall be given preference over the one
43 not holding commission at the time.

CHAPTER 113

(House Bill No. 280—By Mr. Thomas)

AN ACT to promote the objects of the national housing act by au­
thorizing banks, savings banks, trust companies, building and
loan associations, industrial loan companies and insurance
companies to make loans pursuant to titles one and two of the
national housing act, and by authorizing executors, admin­
istrators, guardians, trustees, banks, savings banks, trust com­
panies, building and loan associations, industrial loan com­
panies, insurance companies and fraternal benefit societies to
invest in mortgages insured and in debentures issued by the
federal housing administrator and to invest in securities of
national mortgage associations, and to use such securities where
collateral or deposits are required by law.

[Passed February 25, 1935; In effect from passage. Approved by the Governor.]

Be it enacted by the Legislature of West Virginia:

Section 1. Banks, savings banks, trust companies, building
and loan associations, industrial loan companies and insurance companies are authorized:

(a) To make such loans and advances of credit and purchases of obligations representing loans and advances of credit as are eligible for insurance pursuant to title one, section two, of the national housing act, for the purpose of financing alterations, repairs and improvements upon real property made subsequent to June twenty-seventh, one thousand nine hundred thirty-four, and to obtain such insurance.

(b) To make such loans secured by real property or leasehold as the federal housing administrator insures or makes a commitment to insure pursuant to the provisions for mutual mortgage insurance in title two of the national housing act, for the purpose of financing the construction or purchase of dwellings and similar residential property and the refinancing of mortgages, and to obtain such insurance.

Sec. 2. (a) It shall be lawful for executors, administrators, guardians, trustees, banks, savings banks, trust companies, building and loan associations, industrial loan companies, insurance companies and fraternal benefit societies to invest their funds and the moneys in their custody or possession eligible for investment in bonds secured by mortgages insured by the federal housing administrator, and in debentures issued by the federal housing administrator in settlement of claims for insurance pursuant to title two of the national housing act, and in securities of national mortgage associations or similar national mortgage credit institutions now or hereafter organized under title three of the national housing act.

(b) The securities herein made eligible for investment may be used and shall be accepted as security for any depository bond or obligation where any kind of bonds or other securities are required or may by law be deposited as security.

Sec. 3. No law of this state requiring security upon which loans or investments may be made or prescribing the nature, amount or form of such security or prescribing or limiting interest rates upon loans or investments or prescribing or limiting the period for which loans or investments may be made shall be deemed to apply to loans or investments made pursuant to the foregoing paragraphs.

Sec. 4. The provisions of this act shall be severable and if any
2 of the provisions shall be held to be unconstitutional such decision shall not affect the validity of any of the remaining provisions of the act. It is hereby declared as the legislative intent that this act would have been adopted had such unconstitutional provisions not been included therein.

CHAPTER 114

(House Bill No. 408—By Mr. LaFon)

AN ACT to amend and reenact section one, article three, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, relating to the appointment of deputy sheriffs, local conservators of the peace, and to provide for their compensation and the appointment of deputy clerks of courts, deputy surveyors of lands, deputy assessors and other deputies to certain officers.

[Passed March 6, 1935; in effect from passage. Approved by the Governor.]

Sec. 1. (a) (1) Appointment of deputies, with consent of court, by clerk of courts.

(2) Appointment of deputies by sheriffs, surveyors of lands and assessors, with consent of county court.

(3) Appointment of temporary deputies by sheriff, with consent of court.

(4) Oath and powers of temporary deputies of sheriff: liability of sheriff for actions.

(5) Duties and compensation from public funds of sheriffs having more than two deputies: when gifts and donations do not constitute public funds.

(6) Penalty for appointment of deputy contrary to provisions of act.

(7) Jurisdiction of proceedings to vacate appointment of deputy.

(b) (1) Petition for appointment by sheriff of conservator of peace for unincorporated community: qualifications and powers of local conservator: subject to direction of principal only; sheriff to collect fees for services rendered by local conservator; salary paid from county treasury from fund contributed for the purpose: to receive no compensation except salary; oath of office: responsibility of principal for acts.

(2) Notice by sheriff to county court of appointment of local conservator: publication of notice by court: action on and costs of publication: what facts must be shown to county court and circuit court judge before consent to appointment.

(3) Powers (with limitations) and jurisdiction of local conservator of the peace: disposition of persons arrested.

(4) Local conservator a public officer and contributor to his compensation not his employer or answerable for his acts.

(5) Carrying of weapons by local conservator.

(6) Limitation on number of local conservators.

(7) Definition of "unincorporated community."

(8) What order of county court and circuit judge appointing local conservator to show.

(9) Local conservator not to act
Sec. as election official, or re-
main at polls or place of pol-
itical convention except to vote.

(10) Penalty for violation by lo-
cal conservator of clauses
(3) and (9): revocation of
appointment by sheriff and
county court: action to com-
pete.

Sec. (11) Local conservator to serve
during joint pleasure of
sheriff and county court;
removal for cause by cir-
cuit judge upon petition;
what petition to show;
hearing, after notice, on
petition, if part of act in-
valid, remainder not af-
fected.

Be it enacted by the Legislature of West Virginia:

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

Section 1. (a) (1) The clerk of the supreme court of ap-
peals, or of any circuit, criminal, common pleas, intermediate
or county court, or of any tribunal established by law in lieu
thereof, may, with the consent of the court, or such tribunal,
duly entered of record, appoint any person or persons his
deputy or deputies.

(2) A sheriff, surveyor of lands, or assessor may, with the
consent of the county court duly entered of record, appoint
any person or persons his deputy or deputies.

(3) A sheriff, when in the opinion of the judge of the
circuit court the public interest requires it, may, with the
assent of said court, duly entered of record, appoint any person
or persons his deputy or deputies to perform any temporary
service or duty.

(4) Each deputy so appointed shall take the same oath of
office required of his principal, and may, during his continuance
in office, perform and discharge any of the official duties of
his principal, and any default or misfeasance in office of the
deputy shall constitute a breach of the conditions of the official
bond of his principal.

(5) No sheriff, in any county in which there are more than
two deputies, or deputy sheriff shall perform any service
or duties, either private or public, except the duties required
by law of such sheriff or deputy, for, or receive any compen-
sation or remuneration, directly or indirectly, from, any person,
firm or corporation, for the performance of any private or pub-
lie services or duties. The sheriff and his deputies shall receive
for the performance of their public services and duties no
compensation or remuneration except such as may be regu-
larly provided and paid out of public funds to the amount
and in the manner provided by law. Gifts and donations by any person, firm or corporation to any governmental unit or officer thereof shall not constitute public funds within the meaning of this paragraph.

(6) Except as hereinafter expressly provided by paragraph (b) of this section no sheriff shall appoint or continue the appointment of any deputy contrary to the provisions hereof. Any sheriff or deputy sheriff who shall violate any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than five hundred dollars nor more than five thousand dollars, or confined in jail not to exceed one year, or both, in the discretion of the court.

(7) Circuit courts shall have jurisdiction in equity and mandamus, and the supreme court of appeals shall have jurisdiction in mandamus, upon the filing of a petition by the prosecuting attorney, the attorney general, or any three or more citizens of the county, to require any sheriff and the county court to vacate the appointment of any deputy, the appointment of which is made or continued in violation of the provisions hereof. Any such proceeding may be instituted and prosecuted by the attorney general either in the circuit court of Kanawha county or in the county for which such appointment was made.

(b) (1) Any resident or group of residents of any unincorporated community, as hereinafter defined, may petition the sheriff for the appointment of a local conservator of the peace and such sheriff, when in his opinion the public interests require it, may with the assent of said county court and the judge of the circuit court duly entered of record, either in term or vacation of any such court, appoint any person or persons a local conservator or conservators of the peace to perform the duties of a conservator of the peace outside of any incorporated city, town or village. No person shall be appointed such local conservator of the peace who has not been a bona fide resident and taxpayer of the county for at least one year prior to his appointment. Such local conservator of the peace during his continuance in office, may perform and discharge any of the official duties of the sheriff, subject nevertheless to the provisions of this section. No local conservator so appointed shall be subject to the direction or control of any person other
70 than his principal, and he shall not perform any services or
71 duties, either private or public, except the duties required by
72 law of conservators of the peace pursuant to the provisions
73 hereof, for any person, firm, or corporation. No such local
74 conservator shall be entitled to collect or receive any fees
75 provided by law to be paid to the sheriff or to a deputy sheriff,
76 but all fees provided by law for the sheriff, when such duties
77 and services are rendered by such local conservator, shall be
78 paid to the sheriff as regular collections of the sheriff’s office.
79 The local conservator shall be paid for the public services per-
80 formed by him a salary of not less than seventy-five dollars
81 per month out of the county treasury from a fund to be paid
82 into such treasury by a resident or the residents of the com-
83 munity for which he is appointed, for the sole purpose of
84 compensating such local conservator or conservators, and no
85 such local conservator shall receive any other compensation,
86 directly or indirectly, from any person, firm, or corporation,
87 for any private or public service, except the salary payable to
88 him for his public services and duties and from such fund,
89 except that he shall be entitled to witness and mileage fees
90 when a witness in a court of record. Each local conservator so
91 appointed shall take the same oath of office required of his
92 principal and any default or misfeasance in the office of such
93 local conservator shall constitute a breach of the conditions
94 of the official bond of his principal.
95 (2) When the sheriff shall have been petitioned for the
96 appointment of a local conservator and has determined that
97 the appointment is proper, he shall select the person whom he
98 proposes to have appointed such conservator and shall notify
99 the county court of the community for which such conservator
100 is to be appointed and the name of the person proposed for
101 such appointment. The county court shall thereupon cause
102 notice that the sheriff has recommended the appointment of
103 the person named as conservator for the community named to
104 be published one time each week for two successive weeks in
105 a newspaper of general circulation published in the county,
106 and if there be no newspaper published in the county, then in
107 any other newspaper published in the state having a general
108 circulation in the county, and designating a day not less than
109 five days after the last publication when the county court will
110 act upon the petition and recommendation. Neither the
count court nor the judge of the circuit court shall assent and approve the appointment of such local conservator until such publication has been made. The costs of the publication shall be paid by the person or persons petitioning for the appointment of the conservator.

No local conservator shall be appointed except it be made to appear to the satisfaction of the county court and the judge of the circuit court that because of the lack of sufficient funds, geographical location of the unincorporated community for which such conservator is to be appointed, or other good reason, the sheriff and his regular deputies and the constables of the county are not sufficient to afford proper local policing of such community and that the person or persons moving for the appointment of such local conservator have made satisfactory arrangements to compensate him for his services as such local conservator of the peace.

(3) Such local conservator of the peace shall have all the powers and duties of a regularly appointed deputy sheriff except that he shall not execute any civil process except such process as may be necessary to bring parties before the court in any action at law or suit in equity and subpoenas for witnesses within the unincorporated community for which he is appointed and within a distance of one mile outside the boundaries thereof, except as hereinafter expressly provided, but he shall not participate in any strike, unemployment boycott, or other industrial or labor dispute, nor serve any court process of any character relating thereto. He shall act as such local conservator only in the unincorporated community for which he is appointed, and within a distance of one mile from the boundaries thereof as fixed by the county court: Provided, however, That the authority of one local conservator shall not extend into any other unincorporated community for which another local conservator is appointed and acting, except as otherwise expressly provided by clause (6) of this paragraph, except that in fresh pursuit he may effect arrests anywhere in the county. He may also exercise the powers of a regularly appointed deputy anywhere in the county when required to guard or assist in guarding a payroll, or any other property of value in transit to or from the unincorporated community for which he is appointed. Any person arrested by such local conservator shall, with all convenient speed, be turned over
to the sheriff, or one of his regular deputies, or to a regular 
constable of the county to be dealt with according to law, and 
his authority for that purpose shall be co-extensive with the 
county.

(4) Any local conservator appointed to perform the duties 
of conservator of the peace shall be a public officer and the 
payment, or contribution to the payment or compensation of 
such local conservator shall not constitute the person, firm or 
corporation making such payment or contribution the em-
ployer of such local conservator and no person, firm or corpo-
ration paying, or contributing to the payment of compensation 
to such local conservator shall be answerable in law or in 
equity for any damages to person or property resulting from 
any official act of such local conservator.

(5) No person appointed such local conservator shall there-
by be entitled to carry weapons, but such local conservator may 
carry weapons when he shall be duly licensed and shall have 
given bond as provided by section two, article seven, chapter 
sixty-one of the code of West Virginia, one thousand nine 
hundred thirty-one.

(6) Not more than one local conservator of the peace shall 
be appointed, to perform the duties of conservator of the peace, 
for each two thousand five hundred inhabitants of the county 
as ascertained by the last regular decennial census after de-
ducting the number of inhabitants of the county residing in 
the incorporated cities, towns and villages in such county. Not 
more than one local conservator shall be appointed for any 
unincorporated community unless the population thereof ex-
ceed fifteen hundred people and in such case not more than 
two conservators shall be appointed for such community.

(7) The phrase ‘‘unincorporated community’’ within the 
meaning of this section shall mean any center of population 
wherein three hundred or more persons reside within an area 
of not more than one square mile.

(8) The county court and the judge of the circuit court 
in approving the appointment of a local conservator shall 
enter of record an order making such appointment and shall 
show therein the necessity for the appointment, the person 
or persons on whose motion the appointment is made, the ar-
angement for the payment of compensation to such local con-
servator, the unincorporated community, or communities, for
which the appointment is made, including the general boundary of each unincorporated community for which he is appointed.

(9) No local conservator shall act as an election official or remain in, about or near any voting place or place of political convention, further than is necessary for him to promptly cast his vote and retire from the voting place.

(10) Any local conservator violating any of the provisions of clauses (3) and (9) of this paragraph shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty dollars nor more than three hundred dollars, or be confined in the county jail not more than six months, or both, in the discretion of the court; and it shall be the duty of the sheriff and the county court to forthwith revoke his appointment irrespective of any criminal prosecution. A proceeding in mandamus or injunction shall lie in the circuit court and a proceeding in mandamus shall lie in the supreme court of appeals at the instance of the prosecuting attorney, the attorney general, or of any three or more citizens of the community for which such conservator is appointed, to require the performance of such duty by the sheriff and the county court.

(11) Such local conservator shall serve during the joint will and pleasure of the sheriff and the county court and his appointment may be revoked by order entered of record by the county court either with or without the assignment of cause therefor.

A local conservator may be removed by the judge of the circuit court, either in term or vacation, for drunkenness, gross immorality, incompetence, neglect of duty, or other good cause, upon the petition of three or more residents of the community for which he has been appointed. The petition shall set forth the cause or causes for which such removal is asked and shall show that demand for removal has been made of the sheriff and the county court and that the sheriff and the county court have failed to remove the local conservator. At least three copies of the petition shall be filed, and upon the filing of the petition the judge shall fix a time and place for a hearing thereon, which time shall not be less than ten days after the filing of the petition, and shall cause a copy thereof
to be served upon the sheriff and such local conservator at least ten days before the hearing thereon.

If any part, subsection, clause, sentence, phrase or application of this act is, for any reason, declared unconstitutional by a court of competent jurisdiction, such decision shall not affect the remaining portions of this act which shall remain in force as if such act had been passed without the unconstitutional part, subsection, clause, sentence, phrase or application having been incorporated herein, it being the legislative intent that this act would have been passed in the language remaining after the elimination of so much thereof as may be declared unconstitutional.

CHAPTER 115

(House Bill No. 473—By Mr. LaFon)

AN ACT to amend chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, by adding to article one thereof a new section to be numbered section eight; by adding to article two thereof two new sections to be numbered eleven and twelve; and by amending and reenacting section two, article two, and section two, article four of said chapter, all relating to the public service commission.

(Passed March 7, 1935; in effect ninety days from passage. Approved by the Governor.)

ARTICLE I.

Sec. 8. When an assistant attorney general to represent public service commission: salary, how paid and amount.

ARTICLE II.

Sec. 2. Powers of commission over public utilities subject to provisions of chapter; proceedings by commission to compel obedience to its orders; powers of commission to change intrastate rates or to prohibit discrimination; orders in effect until revoked or modified by commission or court.

11. Application by public utility to commission for certificate of public convenience and necessity; action on, after hearing; burden of proof on applicant.

12. What acts may not be done by a public utility without first obtaining the consent of the public service commission; when commission may give consent in advance or exempt transactions from provisions of section; commission to prescribe rules and regulations to enforce section; order of commission, with or without hearing; when, and to what extent sale, etc., of franchises, mergers, etc., void.

ARTICLE IV.

Sec. 2. Penalty for falsification or mutilation of, or failure to correct accounts, etc., of public utilities.
Be it enacted by the Legislature of West Virginia:

That chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, be amended as follows: By adding to article one a new section to be numbered section eight; by adding to article two thereof two new sections to be numbered eleven and twelve; and by amending and reenacting section two, article two, and section two, article four of said chapter, all to read as follows:

ARTICLE I

Section 8. The commission may, if it deems the same necessary, in the administration of the public service commission law, request the attorney general to employ or designate an assistant attorney general, under his supervision and direction, to represent the commission in proceedings before it on application, complaint, or otherwise, and proceedings of any nature in any and all courts or before administrative or executive boards and to act as legal adviser to the commission in all matters for which his services, in the opinion of the commission, are required, and may, if it deems the same proper, pay in part or all of the salary, compensation and expenses of said assistant attorney general so designated or employed; but the amount so paid, in no event shall exceed five thousand dollars per annum, which amount shall be payable as other salaries and expenses of the commission are paid.

ARTICLE II

Sec. 2. The commission is hereby given power to investigate all rates, methods and practices of public utilities subject to the provisions of this chapter; to require them to conform to the laws of this state and to all rules, regulations and orders of the commission not contrary to law; and to require copies of all reports, rates, classifications, schedules and time-tables in effect and used by such utility or other person, to be filed with the commission, and all other information desired by the commission relating to such investigation and requirements, including inventories of all property in such form and detail as the commission may prescribe. The commission may compel obedience to its lawful orders by mandamus or injunction or other proper proceedings in the name of the state in any circuit.
court having jurisdiction of the parties or of the subject matter, or the supreme court of appeals direct, and such proceedings shall have priority over all pending cases. The commission may change any intrastate rate, charge or toll which is unjust or unreasonable or any interstate charge with respect to matters of a purely local nature which have not been regulated by or pursuant to act of congress and may prescribe such rate, charge or toll as would be just and reasonable, and change or prohibit any practice, devise or method of service in order to prevent undue discrimination or favoritism between persons and between localities and between commodities for a like and contemporaneous service. But in no case shall the rate, toll or charge be more than the service is reasonably worth, considering the cost thereof. Every order entered by the commission shall continue in force until the expiration of the time, if any, named by the commission in such order, or until revoked or modified by the commission, unless the same be suspended, modified or revoked by order or decree of a court of competent jurisdiction.

Sec. 11. No public utility, person or corporation shall begin the construction of any plant, equipment, property or facility for furnishing to the public any of the services enumerated in section one, article two of this chapter, nor apply for, nor obtain any franchise, license or permit from any municipality or other governmental agency except ordinary extensions of existing systems in the usual course of business, unless and until it shall obtain from the public service commission a certificate of public convenience and necessity requiring such construction, franchise, license or permit. Upon the filing of any application for such certificate, and after hearing, the commission may, in its discretion, issue or refuse to issue, or issue in part and refuse in part, such certificate of convenience and necessity. The commission shall prescribe such rules and regulations as it may deem proper for the enforcement of the provisions of this section, and in establishing that public convenience and necessity do exist the burden of proof shall be upon the applicant.

Sec. 12. Unless the consent and approval of the public service commission of West Virginia is first obtained: (a) No
3 public utility subject to the provisions of this chapter, except 4 railroads other than street railroads, may enter into any con- 5 tract with any other utility to operate any line or plant of 6 any other utility subject thereto, nor which will enable such 7 public utility to operate their lines or plants in connection with 8 each other, but this shall not be construed to prevent physical 9 connections between utilities supplying the same service or 10 commodity, for temporary purposes only, upon condition, how- 11 ever, that prompt notice thereof be given to the commission 12 for such action, if any, as it may deem necessary, and there- 13 after the commission may require such connection to be re- 14 moved or discontinued; (b) no public utility subject to the 15 provisions of this chapter, except railroads other than street 16 railroads, may purchase, lease, or in any other manner acquire 17 control, direct or indirect, over the franchises, licenses, permits, 18 plants, equipment, business or other property of any other 19 utility; (c) no public utility subject to the provisions of this 20 chapter, except railroads other than street railroads, may 21 assign, transfer, lease, sell, or otherwise dispose of its franchises, 22 licenses, permits, plants, equipment, business or other property 23 or any part thereof; but this shall not be construed to prevent 24 the sale, lease, assignment or transfer by any public utility 25 of any tangible personal property which is not necessary or 26 useful, nor will become necessary or useful in the future, in 27 the performance of its duties to the public; (d) no public 28 utility subject to the provisions of this chapter, except rail- 29 roads other than street railroads, may, by any means, direct 30 or indirect, merge or consolidate its franchises, licenses, permits, 31 plants, equipment, business or other property with that of any 32 other public utility; (e) no public utility subject to the pro- 33 visions of this chapter, except railroads other than street rail- 34 roads, may purchase, acquire, take or receive any stock, stock 35 certificates, bonds, notes, or other evidence of indebtedness of 36 any other public utility; (f) no public utility subject to the pro- 37 visions of this chapter, except railroads other than street rail- 38 roads, may, by any means, direct or indirect, enter into any 39 contract or arrangement for management, construction, en- 40 gineering, supply, or financial services or for the furnishing 41 of any other service, property or thing, with any affiliated 42 corporation, person or interest.

The commission may grant its consent in advance or exempt
from the requirements of this section all assignments, transfers, leases, sales or other disposition of the whole or any part of the franchises, licenses, permits, plants, equipment, business or other property of any public utility, or any merger or consolidation thereof and every contract, purchase of stocks, arrangement or other transaction referred to in this section, upon proper showing that the terms and conditions thereof are reasonable and that neither party thereto is given an undue advantage over the other, and do not adversely affect the public in this state.

The commission shall prescribe such rules and regulations as, in its opinion, are necessary for the reasonable enforcement and administration of this section, including the procedure to be followed, the notice to be given of any hearing hereunder, if it deems a hearing necessary, and after such hearing or in case no hearing is required, the commission shall, if the public will be conveniently thereby, enter such order as it may deem proper and as the circumstances may require, attaching thereto such conditions as it may deem proper, consent to the entering into or doing of the things herein provided, without approving the terms and conditions thereof, and thereupon it shall be lawful to do the things provided for in such order.

Every assignment, transfer, lease, sale or other disposition of the whole or any part of the franchises, licenses, permits, plant, equipment, business or other property of any public utility, or any merger or consolidation thereof and every contract, purchase of stock, arrangement or other transaction referred to in this section made otherwise than as hereinbefore provided shall be void to the extent that the interests of the public in this state are adversely affected, but this shall not be construed to relieve any utility from any duty required by this section.

ARTICLE IV

Sec. 2. Any person, officer, agent or employee of any public utility subject to this chapter who shall knowingly or wilfully make any false entries in the accounts, account books, records or memoranda kept by any public utility, or who shall knowingly or wilfully destroy or mutilate any account books, record or memoranda useful for the enforcement or administration
7 of this chapter by the commission, or who shall alter or by 
8 any other means or devise falsify the record of any such 
9 accounts, account books, records or memoranda, or who shall 
10 knowingly or wilfully neglect or fail to make full, true and 
11 correct entries of or in such account, account book, record or 
12 memoranda of all the facts and transactions appertaining to 
13 such public utility, or who shall falsely make any statement 
14 required to be made to the commission, shall be deemed guilty 
15 of a felony, and, upon conviction thereof, shall be confined 
16 in the penitentiary not less than one year nor more than five 
17 years.

CHAPTER 116

(Senate Bill No. 209—By Mr. Rouss)

AN ACT to authorize the county board of education of Berkeley 
county to make transfer of money and funds from the ele­
mentary teachers' and high school teachers' funds to the ele­
mentary maintenance and high school maintenance funds for 
the fiscal year ending June thirtieth, one thousand nine hun­
dred thirty-five.

[Passed February 22, 1935; in effect from passage. Became a law without the 
approval of the Governor.]

Be it enacted by the Legislature of West Virginia:

Section 1. The county board of education of Berkeley county 
2 is hereby authorized to transfer from any part of the funds it 
3 may now have or may hereafter accumulate from this year's 
4 levy from the elementary teachers' fund to the elementary 
5 maintenance fund, and from the high school teachers' fund to 
6 the high school maintenance fund of said county such part or 
7 parts thereof, not to exceed in the aggregate twelve thousand 
8 dollars, as may be necessary to meet the requirements of said 
9 maintenance funds up to and including the end of the fiscal 
10 year ending June thirtieth, one thousand nine hundred thirty- 
11 five.
CHAPTER 117
(Senate Bill No. 241—By Mr. Beacom)

AN ACT to authorize the board of education of Cabell county to transfer certain funds now available in the general emergency fund to pay salaries due certain teachers in Guyandotte district for the school year one thousand nine hundred thirty-two—one thousand nine hundred thirty-three.

[Passed February 26, 1933; in effect from passage. Became a law without the approval of the Governor.]

Sec. 1. Cabell county board of education authorized to transfer any funds available in general emergency fund to compensate certain teachers in Guyandotte district.

Be it enacted by the Legislature of West Virginia:

Section 1. That the board of education of Cabell county is authorized to transfer any school fund or funds available in the general emergency fund to compensate certain teachers of Guyandotte district for services rendered during the fiscal year ending June thirty, one thousand nine hundred thirty-three.

CHAPTER 118
(Senate Bill No. 297—By Mr. Belknap)

AN ACT to authorize the board of education of the county of Calhoun to borrow money for the purpose of erecting a gymnasium and auditorium for the Calhoun county high school at Grantsville.

[Passed March 8, 1935; in effect from passage. Became a law without the approval of the Governor.]

Sec. 1. Calhoun county board of education authorized to borrow not to exceed fifty thousand dollars to build gymnasium and auditorium for Calhoun county high school: yearly budget appropriations to pay: location of building.

Be it enacted by the Legislature of West Virginia:

Section 1. The board of education of the county of Calhoun
2 is authorized to borrow money, in an amount not to exceed fifty
3 thousand dollars, on a long-term contract, plan or agreement,
4 from any federal agency authorized to make loans; said loan
5 to be used for the purpose of erecting a gymnasium and
6 auditorium to be used in connection with the activities of
7 the Calhoun county high school located in the town of Grants-
8 ville, county of Calhoun, state of West Virginia. Said board
9 is further authorized, for the purpose of securing said loan,
10 to make budget appropriations from year to year for the
11 purpose of liquidating said loan according to necessary pro-
12 visions of said contract and/or to do any and all other things
13 necessary and required by said federal agency necessary and
14 proper to obtain said loan, to secure the said federal agency for
15 the same, and to build, equip and maintain said building and to
16 carry out the provisions of this act: Provided, That said build-
17 ing is to be erected on the grounds now used for the Calhoun
18 county high school.

CHAPTER 119

(Senate Bill No. 24—By Mr. Elbin)

AN ACT to authorize and empower the board of education of
Marshall county, West Virginia, to convey land and to enter
into a contract and/or lease with the United States government
or any federal agency authorized to make or enter into such
contract and/or lease for the erection, construction, equip­
ment, leasing and renting of school building or buildings, with
an option to purchase same, and to provide for the payment of
a yearly rental for such by said board.

[Passed February 1, 1935; in effect from passage. Approved by the Governor.]

Section 1. That the board of education of Marshall county,
2 West Virginia, be and it is hereby authorized and empowered
3 to convey to the United States government or any federal
4 agency any lot, lots, parcel or parcels of land owned by it
5 which the said board may see fit to convey for the purposes
6 hereinafter expressed; and to contract with the United States
7 government or any federal agency to the end that said govern-
8 ment or agency, its or any of their agencies, or agents, thereunto
9 duly authorized, may build, erect, construct, equip and/or
10 furnish upon said property, any building or buildings to be
11 used for public school purposes; and to contract with said gov-
12 ernment or any federal agency for the yearly lease or rental
13 of said building or buildings, with the privilege of renewing
14 said lease from year to year, for a period of years, not exceed-
15 ing thirty, with the right to purchase said building or buildings
16 and land on which the same is or are situated and to apply
17 toward the purchase price thereof any and all rentals paid to
18 said government or agency under the provisions of this act;
19 and the said board shall pay to the said United States govern-
20 ment or any federal agency said yearly rental or rentals, for
21 the use and occupancy of said building or buildings if and when
22 the same are constructed, which said yearly rental or rentals, in
23 the aggregate, shall not exceed the total amount, and interest
24 thereon, expended by said government or agency on said project
25 or projects, and the said yearly rentals shall not exceed the
26 constitutional debt limitations; and to do any and all other
27 things required by said United States government or any fed-
28 eral agency which are necessary and proper to effectuate the
29 purpose of this act.

Sec. 2. The said board shall levy and collect annually
2 an amount sufficient to pay said rental or rentals for that par-
3 ticular year for the purposes aforesaid in the manner and
4 form as is provided by law.

Sec. 3. This act being necessary for the health, welfare,
2 convenience and education of the school children of Marshall
3 county, it should be liberally construed to effectuate the pur-
4 poses thereof.

Sec. 4. If any clause, sentence, section, provision or part
2 of this act shall be adjudged to be unconstitutional or invalid
3 for any reason by any court of competent jurisdiction, such
4 judgment shall not impair, affect or invalidate the remainder
5 of this act, which shall remain in full force and effect thereafter.
6 All acts and parts of acts inconsistent herewith are hereby
7 repealed insofar, and only so far, as they are inconsistent with
8 this particular act.

CHAPTER 120
(Senate Bill No. 277—By Mr. Curtis, by request)

AN ACT to authorize the board of education of Mason county,
West Virginia, to apply and expend for the payment of
principal and interest of bonded indebtedness hereafter to
be incurred, the proceeds of which are to be used for the
purpose of erecting and constructing a high school building
in said county, and authorizing the board of education of
Mason county, West Virginia, to call an election submitting
to the voters of said county, the question of issuing bonds,
the proceeds of which are to be used in the construction of
a high school building.

[Passed March 1, 1935: in effect from passage. Approved by the Governor.]

Sec. Sec.
1. Mason county board of education | Sec. voters: no indebtedness to be
authorized to use revenues al- | outstanding until existing bonded
located to pay pre-existing in- | indebtedness paid: election to
debtedness for erection of a | be held within nine months
high school building, after bond | from passage of act.
issue for same approved by

Be it enacted by the Legislature of West Virginia:

Section 1. The board of education of Mason county, West
Virginia, is hereby authorized to apply and expend the revenues
heretofore allocated under the provisions of chapter sixty-seven,
acts of the Legislature of West Virginia, second extraordinary
session, one thousand nine hundred thirty-three, for the pur-
pose of paying and satisfying pre-existing indebtedness to the
payment of the principal and interest of certain bonded in-
debtedness to be incurred by the said board of education of
Mason county, and to the holding of an election hereinafter
provided for, for the purpose of authorizing the issuance of
said bonds, and the raising of revenue therefrom for the
12 erection of a high school building in said Mason county, the
13 principal of which said indebtedness will not exceed one
14 hundred thousand dollars: Provided, however, That no such
15 indebtedness shall be incurred by the said board of education
16 of Mason county, unless authorized by the voters of said
17 county, at an election held for that purpose, as authorized by
18 the statutes of this state: Provided further, That no indebted-
19 ness shall be incurred by the said board of education of Mason
20 county hereunder, until all bonded indebtedness against the
21 said board of education of Mason county, existing at the date
22 of the enactment of the tax limitation amendment to the con-
23 stitution of this state, which is due and payable, shall have
24 been fully paid and satisfied: Provided further, That said
25 election shall be held and said bonds issued within nine months
26 from the date of the passage of this act.

CHAPTER 121

(House Bill No. 101—By Mr. Hiner)

AN ACT to authorize the county board of education of Pendleton county to transfer the sum of one thousand nine hundred thirty-seven dollars and eighty-nine cents to the general fund of said county.

[Passed March 8, 1935; in effect from passage. Became a law without the approval of the Governor.]

Sec. 1. Pendleton county board of education authorized to transfer funds to general county fund.

Be it enacted by the Legislature of West Virginia:

Section 1. The board of education of Pendleton county is hereby authorized to transfer from its funds to the general county fund of said county, the sum of one thousand nine hundred thirty-seven dollars and eighty-nine cents.
CHAPTER 122
(House Bill No. 418—By Mr. Beard)

AN ACT to permit the county court of Berkeley county to pay out of the county fund, provided for by chapter eighty-three, acts of the Legislature of West Virginia, regular session, one thousand nine hundred twenty-five, for turkeys killed by stray dogs.

[Passed February 22, 1935; in effect from passage. Became a law without the approval of the Governor.]

Sec. 1. Berkeley county court permitted to pay from county fund for turkeys killed by stray dogs.

Be it enacted by the Legislature of West Virginia:

Section 1. The county court of Berkeley county is hereby permitted to pay out of the county fund, provided for by chapter eighty-three, acts of the Legislature of West Virginia, regular session, one thousand nine hundred twenty-five, for turkeys killed by stray dogs in Berkeley county.

CHAPTER 123
(Sub. for House Bill No. 526—By Mr. Reed)

AN ACT to authorize the county court of Clay county to apply or expend for the payment of principal and interest of bonded indebtedness hereafter to be incurred for the purchase of erecting bridges, jail and library in said county.

[Passed March 9, 1935; in effect from passage. Became a law without the approval of the Governor.]

Sec. 1. Clay county court authorized from revenues allocated to pay pre-existing indebtedness, to pay principal and interest of bonded indebtedness to be incurred for a public library, county jail and two bridges: costs of projects and location of bridges; total cost; election to authorize expenditures; all existing indebtedness of county to be first paid.

Be it enacted by the Legislature of West Virginia:

Section 1. The county court of Clay county is hereby au-
2 authorized to apply and expend the revenues heretofore allocated under the provisions of chapter sixty-seven, acts of the Legislature of West Virginia, second extraordinary session, one thousand nine hundred thirty-three, for the purpose of paying and satisfying pre-existing contractual indebtedness to the payment of the principal and interest of certain bonded indebtedness to be incurred by the said county of Clay for a public library at a cost not to exceed two thousand dollars, a county jail not to exceed eight thousand dollars and two bridges not to exceed thirty thousand dollars each, and one of said bridges to be erected at the mouth of Little Sycamore or Big Sycamore on Elk river; the other to be erected at Paddy or Groves creek: Provided, however, That all of said improvements are to be made, otherwise void.

For the purpose of erecting and constructing in said county, a public library, county jail and two bridges. The principal of said indebtedness shall not exceed seventy thousand dollars: Provided, however, That no such bonded indebtedness shall be incurred by the said county court of said county unless authorized by the voters of said county at an election duly held for that purpose as authorized by the statutes of the state of West Virginia in such cases: Provided further, That no funds raised as aforesaid shall be expended by the county for the purposes heretofore set out until all of the indebtedness of the county which is due and payable shall have been fully paid and satisfied.

CHAPTER 124
(House Bill No. 223—By Mr. Proctor)

AN ACT to authorize the county court of Fayette County to expend funds for the improvement and maintenance of the Four-H camp in Fayette County.

[Passed February 8, 1935; in effect from passage. Approved by the Governor.]

Sec. 1. Fayette county court authorized to annually expend not to exceed three thousand dollars for county Four-H camp.
Be it enacted by the Legislature of West Virginia:

Section 1. The county court of Fayette county may expend annually from any funds available a sum not to exceed three thousand dollars for the improvement and maintenance of the Fayette county Four-H camp heretofore established.

CHAPTER 125

(House Bill No. 489—By Mr. Van Sickler)

AN ACT to authorize the county court of Greenbrier County, West Virginia, to levy and use, for the payment of principal of bonds and sinking funds requirements thereon, to be issued by the said county of Greenbrier, for the purpose of erecting a county jail, the levies apportioned for county indebtedness, bonded and otherwise, by section ten, chapter sixty-seven, acts of the Legislature of West Virginia, second extraordinary session, one thousand nine hundred thirty-three.

[Passed March 7, 1935; in effect from passage. Became a law without the approval of the Governor.]

Sec. 1. Greenbrier county court, from revenues allocated to pay county indebtedness, to pay bonds for erecting county jail; amount of bonded indebtedness; bond issue submitted to voters.

WHEREAS, The county jail of Greenbrier County is now in an unsafe, insecure, unsanitary and dilapidated condition and is incapable of adequate repairs; and

WHEREAS, An emergency is declared to exist in said county necessitating the erection of a new county jail therein; therefore

Be it enacted by the Legislature of West Virginia:

Section 1. The county court of Greenbrier County be and it is hereby authorized and empowered to levy, use and expend, for the purpose of erecting a county jail, the levies heretofore apportioned to the said county, for county indebtedness bonded and otherwise under the terms of section ten, chapter sixty-seven, acts of the Legislature of West Virginia, second extraordinary session, one thousand nine hundred thirty-three, for the purpose of paying the principal and sinking fund require-
ments of a certain series of bonds to be issued by said county, the proceeds of which are to be used in the erection of a county jail in said county: Provided, however, That the principal of said bonded indebtedness shall not exceed the sum of eighty thousand dollars: And provided further, That no bonded indebtedness shall be incurred hereunder unless authorized by the voters of said county of Greenbrier at an election duly held for that purpose, as provided for and authorized by the statutes of this state.

CHAPTER 126

(House Bill No. 513—By Mr. Thomas)

AN ACT to authorize the county court of Kanawha county, West Virginia, to appoint a cadastral engineer for said county; to provide qualifications for appointment of said engineer; to provide certain duties for his office; to provide for assistants; to provide for salaries for said engineer and assistants; and to authorize said county court to expend not to exceed ten thousand dollars per annum for the administration of the duties devolving upon said office.

[Passed March 8, 1935: in effect from passage. Became a law without the approval of the Governor.]

Sec. 1. Kanawha county court authorized to appoint a cadastral engineer.

Sec. 2. Levy, not to exceed ten thousand dollars, authorized for administration of duties of said engineer.

Sec. 3. Duties of cadastral engineer.

Sec. 4. Qualification of cadastral engineer.

Sec. 5. Number of assistants and salaries of engineer and assistants fixed by court.

Sec. 6. Court to furnish office, supplies, etc.

Sec. 7. Engineer may use relief labor.

Be it enacted by the Legislature of West Virginia:

Section 1. That in order to safeguard private and public property and keep the boundary lines thereof intact, and to assist the county units of government in their authorized functions that the county court of Kanawha county is hereby authorized to appoint a cadastral engineer for said county.

Sec. 2. That said court is hereby authorized to expend not to exceed ten thousand dollars per annum for the administra-
tion of the duties devolving upon said engineer, and that said court is hereby empowered to levy said amount for this purpose.

Sec. 3. The following prescribed duties shall be carried out by said engineer, at the discretion of the county court:
(1) Survey and map all property owned by the county court and the county board of education.
(2) Survey and map all public and family burying-grounds outside of municipalities.
(3) To plan a system of horizontal and vertical control for said county and execute same, and
(3-a) Reference subdivision and land lines to said control system.
(4) To keep all maps, plans, records accessible to public.
(5) To do such engineering work as may be required from time to time by the different departments of county government.
(6) To make annual progress report to county court.

Sec. 4. The county court shall appoint as cadastral engineer one who is a registered professional engineer under the laws of West Virginia, and classified as a "civil engineer."

Sec. 5. Such assistants as are necessary shall be appointed and the salaries of the engineer and assistants shall be set by said county court.

Sec. 6. Office for the engineer shall be located in court house and such equipments, supplies, transportation and other expenses shall be provided for by the county court from said allotment.

Sec. 7. Said engineer shall have authority to use relief labor.

CHAPTER 127
(House Bill No. 354—By Mr. Morris)

AN ACT authorizing the county court of Monongalia county to pay a fair and reasonable sum in settlement of the claims
for necessary nursing and hospital services provided certain persons while such persons were under arrest charged with committing the crime of arson in said county.

[Passed February 26, 1935; in effect from passage. Became a law without the approval of the Governor.]

Sec. 1. Monongalia county court authorized to pay hospital and nursing costs for certain prisoners.

Sec. 2. Such sums shall not include any fees for medical or surgical services. The total of the separate items of expense which the court is authorized to pay shall not exceed the sum of four hundred sixty-five dollars for nurses' fees, and the sum of one thousand one hundred dollars for hospitalization expenses.

Sec. 3. All such sums hereinbefore authorized to be paid by the county court shall be paid out of the general fund of said county, and charged to the expense of keeping prisoners.

CHAPTER 128
(Senate Bill No. 181—By Messrs. Elbin and Garrett)

AN ACT to authorize the county court of Marshall county to pay the Moundsville Echo and the Moundsville Journal, and the county court of Putnam county to pay the Putnam Democrat
and the Putnam Leader, and the county court of Jackson county to pay the Jackson Herald and the Mountaineer, and the county court of Clay county to pay the Clay Messenger for printing lists of real estate and lists of persons and property other than real estate in said counties, delinquent for the nonpayment of the taxes thereon for the year one thousand nine hundred thirty.

[Passed March 4, 1935; in effect from passage. Became a law without the approval of the Governor.]

Sec. 1. The county courts of Marshall, Putnam, Jackson and Clay counties authorized to pay designated newspapers for printing, in 1931, lists of property delinquent for non-payment of taxes.

Be it enacted by the Legislature of West Virginia:

Section 1. The county court of the county of Marshall is hereby authorized to pay the Moundsville Echo and The Moundsville Journal, newspapers of opposite politics published in said county, at the rate provided by law for publishing as required by law, in the month of June, one thousand nine hundred thirty-one, copies of the list of real estate and copies of the list of persons and property, other than real estate, of said county delinquent for the nonpayment of taxes thereon for the year one thousand nine hundred thirty; and the county court of the county of Putnam is hereby authorized and directed to pay the Putnam Democrat and the Putnam Leader, newspapers of opposite politics published in said county, at the rate provided by law for publishing as required by law, in the month of June, one thousand nine hundred thirty-one, copies of the list of real estate and copies of the list of persons and property, other than real estate of said county delinquent for the nonpayment of taxes thereon for the year one thousand nine hundred thirty; and the county court of Jackson county is authorized to pay the Jackson Herald and the Mountaineer, newspapers of opposite politics published in said county, at the rate provided by law for publishing, as required by law, in the month of June, one thousand nine hundred thirty-one, copies of the list of real estate and copies of the list of persons and property, other than real estate of said county delinquent for the nonpayment of taxes thereon for the year one thousand nine hundred thirty; and the county court of the county of Clay is hereby authorized
27 and directed to pay the Clay Messenger, a newspaper in said
28 county, at the rate provided by law for publishing as required
29 by law, in the month of June, one thousand nine hundred thirty-
30 one, copies of the list of real estate and copies of the lists of
31 persons and property, other than real estate of said county
32 delinquent for the nonpayment of taxes thereon, for the year
33 one thousand nine hundred thirty.

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### CHAPTER 129

(House Bill No. 276—By Mr. Gaylord)

AN ACT to amend and reenact section eight, chapter six, acts of the
Legislature of West Virginia, regular session, one thousand
nine hundred twenty-one, relating to the city of Clarksburg,
in the county of Harrison.

[Passed February 18, 1935; in effect from passage. Became a law without the
approval of the Governor.]

<table>
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| 8. Municipal candidates to be nom-
    inated in primaries; registra-
    tion of voters by wards; how |
    municipal elections conducted; |
    how ballots cast, returned and |
    canvassed; voting places and |
    election officers designated by |
    council; how cost of registra-
    tion and elections paid; double |
    election boards; precincts; qual-
    ification of voters; oath of elec-
    tion officials. |

Be it enacted by the Legislature of West Virginia:

That section eight, chapter six, acts of the Legislature regu-
lar session, one thousand nine hundred twenty-one, and known
as the charter of the city of Clarksburg, is hereby amended and
reenacted to read as follows:

Section 8. The candidates to be voted for at all general
2 municipal elections shall be nominated by primary elections.
3 The candidates to be voted for at the municipal election to be
4 held on the third Tuesday in April, one thousand nine hundred
5 thirty-five, shall be nominated at a primary to be held on the
6 first Tuesday in April, preceding the day fixed for the regular
7 election.
8 The city council shall cause a registration of the qualified
9 voters of each ward to be made, as provided by ordinance now
10 in effect, or hereafter adopted, and such registration shall be
made and elections shall be held, conducted and the result there-
of ascertained and declared in all respects as is or shall be
provided by state laws for the registering of voters and the
holding and conducting of primary elections throughout the
state for nominating candidates for state and county offices;
and the duties by the state laws imposed upon the county court
and the clerk thereof, in respect to general primary elections
shall be discharged by the city council and the city clerk,
respectively.

Regular municipal elections shall be held and conducted in
all respects as provided by law for conducting general elections
in the state of West Virginia; except that the names of candi-
dates nominated for office need not be published. The city
council shall perform all of the duties in regard to the election
which are imposed upon a county court in conducting a general
election in the state, and the city clerk shall perform all of the
duties which are imposed upon the clerk of the county court;
the city executive committee of each political party, and its
chairman shall perform all of the duties that the county execu-
tive committee and its chairman perform in the county, and the
city council in selecting officers to conduct the election and in
choosing ballot commissioners shall be bound by all of the laws
obligating a county court to select commissioners and clerks
which may be designated by a party executive committee or by
the chairman thereof.

The ballots shall be received, cast, counted, tabulated, and
returns made and canvassed in all respects as provided by law
for conducting general elections in the state of West Virginia,
except that the duties devolving upon the county court and the
clerk thereof under the general laws for conducting elections
in the state shall be discharged by the city council and the city
clerk.

The places for holding the elections shall be selected and pro-
vided by the city council, and the officers selected to conduct
the same shall receive the same compensation that is paid to
like officials selected to conduct general elections in the state.
The costs and expenses incurred in registering the voters and in
conducting and holding the primary and general elections shall
be paid one-half part thereof by the city, out of its general fund,
and one-half part thereof by the water board, out of its revenues.

A receiving board and a returning board of officials to conduct
the election may be appointed at any or all voting precincts
when in the judgment of the city council a double election board
is necessary to facilitate the holding of the election and counting
of the ballots. The city council may establish one or more voting
precincts in any ward and may fix the boundaries of such pre-
cincts.

Each resident of the city of Clarksburg, who is a citizen of the
United States, and who has resided in the state of West Virginia
for at least one year, and in the city of Clarksburg for at least
six months, and who is a bona fide resident of the ward and
election precinct in which he offers to vote, and who is not other-
wise disqualified by law, shall be entitled to vote.

All commissioners and clerks selected to conduct elections,
and all registrars, and all challengers, shall take the oath pre-
scribed by law before entering upon the discharge of their re-
spective duties.

All other acts or parts of acts, in conflict with the provisions
of this act, for the purpose of this act only, are hereby repealed.

CHAPTER 130

(House Bill No. 335—By Mr. Gaylord, by request)

AN ACT to amend and reenact sections seven, eight, nine, eleven,
fourteen, eighteen, thirty-eight, thirty-nine, forty, forty-two
and forty-seven, chapter six, acts of the Legislature of West
Virginia, regular session, one thousand nine hundred twenty-
one, relating to the city of Clarksburg, in the county of Har-
rison.

[Passed February 27, 1935; in effect from passage. Became a law without the
approval of the Governor.]
That sections seven, eight, nine, eleven, fourteen, eighteen, thirty-eight, thirty-nine, forty, forty-two and forty-seven, chapter six, acts of the Legislature, regular session, one thousand nine hundred twenty-one, and known as the charter of the city of Clarksburg, are hereby amended and reenacted to read as follows:

Section 7. The elective officers of the city of Clarksburg shall consist of a council composed of nine members, one to be elected from, and resident in, each ward of the city; and of a water board composed of four members. The members of the city council shall hold their respective offices for the term of two years, and the members of the water board shall hold their respective offices for the term of four years.

An election for officers under this act shall be held on the third Tuesday in April, in the year one thousand nine hundred thirty-five, and biennially thereafter, on the same day of the same month. The terms of the councilmen shall begin on the first day of May, next following the election, and the terms of the present members of the city council shall expire on the thirtieth day of April, one thousand nine hundred thirty-five.

At the election to be held on the third Tuesday in April, in the year one thousand nine hundred thirty-five, there shall be elected two members of the water board, the one receiving the highest number of votes shall serve for four years, and the one of opposite political faith receiving the next highest number of votes shall serve for two years, beginning on the first day of May, next following. The other members of the water board in office in the city of Clarksburg at the time this act becomes effective shall serve out the remainder of their respective terms, and at
each regular biennial election after one thousand nine hundred thirty-five, there shall be elected two members of the water board of opposite political faith to serve for a term of four years, beginning on the first day of May, next following the election. At each primary election there shall be nominated by each political party two candidates for the office of member of the water board, and the two candidates of opposite political faith receiving the highest number of votes at the general election shall serve as members of the board.

Any vacancy in the office of councilman shall be filled by appointment by the remaining members of the city council, for the unexpired term, and any vacancy on the water board shall be filled by appointment by the remaining members of the water board, for the unexpired term, but the person appointed to fill a vacancy on the water board shall be of the same political faith as his predecessor in said office. All appointive employees of the city, or their successors in employment, shall hold their respective employments until their respective successors shall have been chosen: Provided, however, That this act shall not become effective until it shall have been submitted to and shall have obtained the approval of a majority of the votes cast at the referendum herein provided. A referendum to the voters of the city of Clarksburg or a special election therein is hereby called and the same shall be held on the first Tuesday in April, one thousand nine hundred thirty-five, at the same time the primary election is held in said city for the nomination of candidates to be voted for at the regular biennial election following, for the purpose of submitting to the voters of the city of Clarksburg the question of the adoption or rejection of this act. At such referendum or special election all persons registered and qualified to vote for candidates at said primary election, shall be entitled to vote for or against this act. The registration books used in said primary election shall be used in said referendum. Said referendum shall be conducted and the results thereof ascertained and certified by the city council, sitting as a board of canvassers, and all of the provisions of the law of this state except as otherwise expressly provided in the charter of the city of Clarksburg, and except as otherwise inconsistent with the provisions of this act, are hereby made applicable to such referendum. The election officers appointed by the
city council to conduct the primary election shall serve as officers for the holding of said referendum. The referendum shall be by ballot and the ballot commissioners appointed to prepare the regular primary election ballots, shall also prepare the referendum ballots, and shall print thereon the following:

'BALLOT ON BI-PARTISAN WATER BOARD

☐ FOR ADOPTION OF BI-PARTISAN WATER BOARD

☐ AGAINST ADOPTION OF BI-PARTISAN WATER BOARD

The city council of the city of Clarksburg, sitting as a board of canvassers, shall ascertain the result of said referendum, at the same time it canvasses the votes cast at the primary election, and shall certify the result of said referendum to the secretary of state of the state of West Virginia, whereupon, if this act shall have been so adopted, the same shall to all intents and purposes become immediately effective, otherwise null and void and of no effect whatsoever.

No proclamation of the city council or the city manager or other official notice of said referendum shall be published or posted except that a copy of the referendum ballot shall be printed in each of the two Clarksburg newspapers of opposite political faith, one time prior to the holding of said referendum. All expenses of holding the referendum under this act shall be paid in the same manner as the costs of holding the primary and general elections are provided to be paid under existing law.

Sec. 8. The candidates to be voted for at all general municipal elections shall be nominated by primary elections: Provided, however, That all candidates to be voted for at the regular municipal election to be held on the third Tuesday in April, one thousand nine hundred thirty-five, shall be nominated at a primary to be held on the first Tuesday in April preceding the day fixed for holding the regular election, except in the event this act is adopted and approved at the referendum provided for in section seven hereof, then the two candidates of each political party running for members of the water board and receiving the highest number of votes in the primary elec-
tion, shall be the candidates of each political party at the general election; if there should be only one candidate of either party at the primary, then the city executive committee of that party shall, within forty-eight hours after the result of said referendum shall have been ascertained by the city council, name an additional candidate whose name shall be placed on the ballot as a candidate of the party naming him, to the end that each political party shall have two candidates for member of the water board to be voted on at said general election to be held for the year one thousand nine hundred thirty-five.

The council shall cause a registration of the qualified voters of each ward to be made as provided by ordinance now in effect or hereafter adopted, and such registration shall be made and elections shall be held, conducted and the result thereof ascertained and declared in all respects as is or shall be provided by state laws for the registering of voters and the holding and conducting of primary elections throughout the state for nominating candidates for office; and the duties by state laws imposed upon the county court and clerk thereof in respect to general primary elections shall be discharged by the city council and the city clerk, respectively.

Regular municipal elections shall be held and conducted in all respects as provided by law for conducting general elections in the state of West Virginia; except that the names of the candidates nominated for office need not be published. The city council shall perform all of the duties in regard to the election which are imposed upon a county court in conducting a general election in the state, and the city clerk shall perform all of the duties which are imposed upon the clerk of the county court; the city executive committee of each political party, and its chairman shall perform all of the duties that the county executive committee and its chairman perform in the county, and the city council in selecting officers to conduct the election and in choosing ballot commissioners shall be bound by all of the laws obligating a county court to select commissioners and clerks which may be designated by a party executive committee or by the chairman thereof.

The ballots shall be received, cast, counted, tabulated, and returns made and canvassed in all respects as provided by law for conducting general elections in the state of West Virginia, ex-
cept that the duties devolving upon the county court and the clerk thereof under the general laws for conducting elections in the state shall be discharged by the city council and the city clerk.

The places for holding the elections shall be selected and provided by the city council, and the officers selected to conduct the same shall receive the same compensation that is paid to like officials selected to conduct general elections in the state. The costs and expenses incurred in registering the voters and in conducting and holding the primary and general elections shall be paid one-half part thereof by the city, out of its general fund, and one-half part thereof by the water board, out of its revenues.

A receiving board and a counting board of officials to conduct the election may be appointed at any or all voting precincts when in the judgment of the city council a double election board is necessary to facilitate the holding of the election and counting of the ballots. The city council may establish one or more voting precincts in any ward and may fix the boundaries of such precincts.

Each resident of the city of Clarksburg, who is a citizen of the United States, and who has resided in the state of West Virginia for at least one year, and in the city of Clarksburg for at least six months, and who is a bona fide resident of the ward and election precinct in which he offers to vote, and who is not otherwise disqualified by law, shall be entitled to vote.

All commissioners and clerks selected to conduct elections, and all registrars and all challengers, shall take the oath prescribed by law before entering upon the discharge of their respective duties.

Sec. 9. All corporate powers of the city shall be vested in and exercised by the council, except as hereinafter conferred upon the water board. Each councilman shall have a right to vote on all questions coming before the council. Five or more members of the council shall constitute a quorum for the transaction of business, and the affirmative vote of at least a majority of all the members of the council shall be necessary to adopt any motion, resolution or ordinance, or pass any measure.

The city manager, hereinafter provided for, shall preside at
all meetings of the council when present, and in his absence, the
council shall select a presiding officer. The city manager or
other presiding officer shall have no power to veto any measure,
resolution or ordinance; and the city manager shall have no
vote upon the passage of the same. But every resolution, ordi-
nance or franchise passed by the city council must be signed by
the city manager and the city clerk or recorder, and must be
published and recorded before the same shall be effective, unless
otherwise provided in this act.

Sec. 11. For the administration of the affairs of the city
and of the powers conferred upon the city council, there are
created the following municipal offices:
City manager, city clerk or recorder, police court judge, city
collector and treasurer, city attorney, city engineer, who shall
be ex-officio street supervisor, city physician, chief of police, and
chief of the fire department.
The council shall have power to create additional administra-
tive offices and to abolish any of the offices by it created.
The city council shall at its first meeting, in the month of May,
following a municipal election, or as soon thereafter as practi-
cable, appoint by a majority vote, a city manager, and shall by
a like vote, at any regular or special meeting of the council, fill
any vacancy in said office.
The city manager may be removed at any time by the city
council, by the affirmative vote of two-thirds of all the members
thereof, after a public hearing, for any cause, reason or ground,
for which a member of the county court or other county officer
may be removed.
The city manager shall, by and with the advice and consent
of the city council, appoint a city clerk or recorder, a police
court judge, a city collector and treasurer, a city attorney,
a city engineer, who shall be ex-officio street supervisor, a city
physician, a chief of police and a chief of the fire department,
and officers to fill any other administrative offices which the
council shall create.
Any vacancy in any of said offices shall be filled by the city
manager with the consent of the council, and the assent of the
council in all cases shall be entered of record in the book contain-
ing the proceedings of the council.
The terms of all administrative officers shall be co-extensive
with the tenure of the city manager making the appointment,
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33 but said administrative officers may be dismissed and removed
34 from office by the city manager at any time for just cause: Provided, That the person dismissed or removed shall, upon request,
35 be entitled to a hearing before the council, and the city manager
36 shall reduce the charges against the removed officer to writing
37 and shall file the same with the city clerk at least five days
38 before the date set for the hearing before the council; unless
39 the council, by the affirmative vote of a majority of all the
40 members shall sustain the action of the manager, such ad-
41 ministrative officer shall be reinstated.
42
43 The council shall by ordinance or resolution, prescribe, fix and
44 limit the number of city policemen to be employed by the city,
45 and the number of employees in the fire department.

See. 14. The city manager shall occupy an office for the
1 transaction of the public business in the building or buildings
3 occupied by the city government, which office shall be kept open
4 on all secular days except legal holidays, for the transaction
5 of the public business. He shall devote all of his time to
6 the discharge of his official duties, and while holding the office
7 shall not engage in any other business or employment or hold
8 any other office. In addition to all other powers which may
9 be conferred upon the city manager by the city council, or by
10 the laws of the state of West Virginia, he shall exercise the
11 following powers:
12 (a) Supervise, control and direct the affairs and business
13 of all the administrative offices created in section eleven of this
14 act, or which shall hereafter be created by the council under the
15 authority therein contained, except the police department.
16 (b) Appoint and remove in the manner herein provided all
17 administrative officers and employ and discharge at will all other
18 employees of the city, except employees in the police depart-
19 ment and in the water department.
20 (c) Enforce in favor of the inhabitants of the city all terms
21 and conditions in their favor contained in any public utility
22 franchise and require the faithful discharge of obligations of
23 all public utilities.
24 (d) Attend and preside at all meetings of the council and
25 the water board, with the right to take part in the discussion of
26 all measures, and to vote upon all questions coming before the
27 water board, as a member thereof.
28 (e) Recommend to the council for adoption such measures
29 and resolutions as he may deem expedient.
30  (f) Act as budget commissioner and keep the city council fully advised as to the financial condition and needs of the city.
31  (g) Determine and decide on the plan and program for paving, sewering and otherwise improving the different streets and alleys in the city and fix and determine the order of time in which such streets and alleys shall be paved, sewered and otherwise improved.
32  (h) Determine and decide upon the kind and character of pavements, sidewalks, curbs, sewers and other improvements which shall be constructed and made upon and in any of the streets and alleys of the city.
33  (i) Employ competent experts to advise with him in planning the improvements of city streets and alleys, in specifying the kind and character of pavements, sidewalks, curbs and sewers, which shall be laid and constructed, and to supervise the performance of the work in paving, sewering and improving any street or streets, and alley or alleys; and by contract to specify and fix the compensation which any expert so employed by the city manager shall receive for his services, which contract shall not become binding or effective until approved by the city council and the fact of such approval entered of record.
34  (j) Authenticate all ordinances and resolutions passed by the council and sign the minutes of all meetings of the council. Immediately upon the meeting of the council the minutes of the preceding meeting shall be read and corrected if they contain any errors, and they shall be signed by the city manager and city clerk before the council proceeds to the transactions of any business.
35  (k) Act as purchasing agent and purchase all supplies and material for all departments of the city government except the water department; and make sale of all property of the city not needed or suitable for the public use in such manner as the council may direct: Provided, however, He shall not make any contract or purchase involving an expenditure in excess of $500 without first obtaining the assent of the council so to do. All supplies to be used by the city and all material purchased by the city for the construction of any public improvement shall be purchased on competitive bids. All proposals for such shall be upon precise specifications, and notice of the requirements of the city shall be given to dealers in supplies and materials of the
kind required who by reason of location are best able to furnish the same at the lowest price. All offers to sell supplies and materials to the city shall be attached to the accepted offer and filed and preserved in the office of the city clerk. All purchases shall be audited by the city council and only on approval of the council shall payment be made: Provided, however, That limited quantities of supplies and materials may be purchased in cases of emergency without delay necessary to secure competitive bids or offers to supply the same.

(1) Make and execute on behalf of the city all writings, contracts, deeds, and agreements, the making of which shall be authorized by the council or by the water board, or by any ordinance, resolution or statute.

(m) The city manager shall exercise any and all other powers conferred by the present laws of the state of West Virginia upon mayors of cities, towns or villages, or which shall be conferred upon such officers by any law hereafter enacted, not in conflict with the provisions of this act, except the powers herein, or in any such law, contained relating to the preservation of order and the enforcement of penal ordinances and statutes, which powers in this act are vested in the police court judge.

Sec. 18. The city attorney shall be a member of the bar of Harrison county in good standing and shall perform and discharge all duties and exercise all powers which shall be conferred upon him by any ordinance or resolution of the city council, and, in addition, he shall exercise the following powers:

(a) Be the legal adviser of and attorney and counsel for the city and for all of the administrative officers thereof, including the water board, in respect to their official duties.

(b) Prosecute and defend all suits for or against the city and prepare all contracts, bonds or other writings in which the city is concerned, and endorse on each his approval of the form and correctness thereof.

(c) Be prosecuting attorney of the police court and prosecute all cases brought before such court, and perform the same duties so far as applicable thereto as are required of the prosecuting attorney of the county.

(d) The city council and all administrative officers of the city
19 may require the opinion of the city attorney upon any question
20 of law involving their respective powers and the duties and he
21 shall furnish the same in writing.
22 (e) Apply in the name of the city to a court of competent
23 jurisdiction for an order by injunction restraining the misap-
24 plication of funds of the city or the abuse of its corporate powers,
25 or the execution or performance of any contract made on behalf
26 of the city in contravention of law, or which was procured by
26-a fraud or corruption.
27 (f) When an obligation or contract made on behalf of the
28 city granting a right or easement, or creating a public duty,
29 is evaded or violated, the city attorney shall require the specific
30 performance of the duty by any administrative officer by ap-
31 plication for a writ of mandamus to a court of competent juris-
32 diction.
33 The city manager or city council whenever the exigencies of
34 the business of the city require such action shall have the right
35 to employ special counsel to assist the city attorney.

Sec. 38. The members of the water board in office when this
2 act goes into effect shall serve out their original terms; and as
3 provided in section seven of the charter of the city, as herein
4 amended, two additional members shall be elected to serve on
5 the water board, but said members to be hereafter elected shall
6 be of opposite political faith; on and after May first, one thou-
7 sand nine hundred thirty-five, the two members now in office, to-
8 gether with the two members to be elected, and the city manager
9 of the city, shall compose the water board; after May first, one
10 thousand nine hundred thirty-seven, no more than two members
11 of the water board, the city manager excepted, shall be affiliated
12 with any one political party; nor elected on any one political
13 party ticket.
14 The city manager shall be the president of the water board.
15 and shall preside at all meetings when present, and in his ab-
16 sence the board shall select a presiding officer. The city man-
17 ager shall have the right to vote on any measure, motion, or
18 resolution, the same as any other member of the board.
19 At its first regular meeting after each regular election,
20 or as soon thereafter as practicable, the water board shall ap-
21 point a general manager for the water works plant, and a secre-
22 tary and treasurer of the water board, and the board may ap-
point the general manager as ex officio secretary and treasurer, or may by a concurrent resolution of the water board and the city council, appoint the city collector and treasurer as secretary and treasurer of the board, or said board may appoint any other duly qualified voter to act as its secretary and treasurer. The general manager and the secretary and treasurer of the water board shall devote all of his or their time to the public service of the city of Clarksburg, and while holding such office shall not be engaged in any other business or accept any other employment.

The water board may create and discontinue such other administrative offices and employments as in their judgment the needs of the department shall require, and fill by appointment all such administrative offices. The board shall prescribe and fix by resolution, the compensation to be paid to the general manager and to all other administrative officers and employees of the water board and the time and manner of making such payment. The general manager and all employees of the water department shall hold their respective offices and employments at and during the pleasure of the board.

Sec. 39. Regular meetings of the board shall be held monthly on a day designated by resolution of the board and special meetings may be called at any time by the city manager, or by any two members of the board. All meetings of the water board shall be open to the public. It shall require at least three members of the board to constitute a quorum for the transaction of business, and the affirmative vote of at least three members shall be necessary to pass any motion, measure or resolution.

Sec. 40. Each member of the water board shall receive a fee of five dollars for each regular and special meeting which he shall attend: Provided, however, That he shall not receive total compensation of more than one hundred dollars for any year. The city manager as such member of the board shall receive no compensation for his services, in addition to his salary as city manager. No person while a member of the water board shall hold any office or position of employment under the government of the city of Clarksburg.

Sec. 42. Subject at all times to the control of the water
board, the general manager shall have charge of all the water
works plant and system, and shall exercise supervision and
control over all of the employees of the water board. He shall
enforce all ordinances, rules and regulations heretofore adopted,
or which may hereafter be adopted by the water board, and all
laws of the state of West Virginia, applicable to the water
works system or plant, except that any ordinance or laws sub-
jecting any person to a fine or imprisonment for the violation
thereof shall be enforced by the police court judge. He shall
have general supervision of the pumping plants and stations
and filtration plant. He shall attend all meetings of the water
board; he shall act as purchasing agent for the water depart-
ment, and shall purchase all materials for the construction,
 improvement, or repair of the water system and all supplies
needed in the operation of the water plant or system, and ex-
cept in cases of emergency, all such purchases shall be upon
competitive bids. Dealers in supplies and materials of the kind
required shall be notified by him by letter of the requirements
of the water department, and asked to submit propositions for
furnishing the same, and the offer most advantageous to the
city, taking into consideration the quality, time of delivery, and
all other conditions, shall be accepted: Provided, however,
That he shall not make any contract or purchase involving an
expenditure in excess of five hundred dollars without first ob-
taining the consent of the water board.

All offers to furnish material and supplies shall be attached
to the accepted offer and shall be filed and preserved with the
records of the department.

He shall cause to be made and kept on file for public infor-
mation at the office of the board, complete maps, plans and
details showing the dams, pumping station, reservoirs, tanks,
pipes, valves, connections, water lines, fire hydrants, and all
other data necessary for a complete exhibition of the physical
properties of the water works plant or system, which maps or
plats shall be from time to time revised and extended.

The general manager shall so recommend to the board from
time to time the additions, changes, repairs and improvements
to the water works system or plant that he may deem necessary;
and he shall keep the board fully advised as to the financial
condition and the needs of the department; he shall perform all
other duties that may from time to time be required of him by
by the board, or by any law of the state of West Virginia.
The secretary of the water board shall attend all meetings of
the board and shall keep in a well-bound book a complete record
of all proceedings of said board, and shall, with the president of
the board, authenticate with his signature the record of the
proceedings of each meeting. He shall also affix his signature
to all other contracts, agreements, documents and papers as
may or shall be directed by the board.
The treasurer of the water board shall collect and preserve
all moneys and other revenues payable to the board, and shall
pay the same out only upon the order of the board in such
manner as it may by rules and resolutions prescribe. He shall
keep, or cause to be kept, full and accurate books of account
covering all the business and transactions of the water works
department of the city, charging the water board with all
moneys received from every source, and crediting the same with
all expenditures and disbursements.
He shall pay out of the moneys of the board only for the
purposes authorized by law, and upon vouchers drawn by him
and countersigned by the president of the board.
The treasurer of the water board shall, at the close of any
fiscal year, cause a complete audit to be made of all the books
and records of the department for the preceding year, by the
state tax commissioner or supervisor of public accounting for
the state of West Virginia, and he shall cause to be published,
the report made by the auditor, together with such other re-
port and information concerning the operation of the depart-
ment as may be deemed necessary for the information of the
public. A report of the auditor shall be published once in the
two principal newspapers of opposite politics published in the
city of Clarksburg, and the same shall constitute the financial
statement of the department, the publication of which is re-
quired by general law.

Sec. 47. The water board may employ special counsel or an
assistant counsel to the city attorney to assist and advise them
in the discharge of their duties whenever the occasion may war-
rant, and to institute, prosecute and defend for the water board
in the name of the city, suits, proceedings and prosecutions to
enforce the proper authority and obligations of the water board,
7 and to defend them in their rights, and to enable them to 
8 adequately discharge their duties; the cost of any litigation 
9 conducted by the water board, as well as all fees and compen-
10 sation for such special or assistant counsel employed by it, 
11 shall be paid by the water board out of the revenues of the 
12 water department.
13 All other acts and parts of acts in conflict with the provisions 
14 of this act, for the purpose of this act only, are hereby repealed.

### CHAPTER 131

(Senate Bill No. 39—By Mr. Canterbury)

AN ACT to amend and reenact sections four, six, seven, eight, 
nine (a), twelve, thirteen, sixteen, eighteen, nineteen, twenty, 
twenty-one, twenty-two and twenty-three, and to repeal 
section twenty-six, chapter one, acts of the Legislature of 
West Virginia, regular session, one thousand nine hundred 
twenty-seven (municipal charters), relating to the charter 
of the city of Hinton, and to repeal all acts and parts of 
acts inconsistent with the provisions of this act.

[Passed February 1, 1935; in effect ninety days from passage. Approved by the 
Governor.]

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Be it enacted by the Legislature of West Virginia:

That section twenty-six, chapter one, acts of the Legislature of West Virginia, regular session, one thousand nine hundred twenty-seven (municipal charters) is hereby repealed and sections four, six, seven, eight, nine-(a), twelve, thirteen, sixteen, eighteen, nineteen, twenty, twenty-one, twenty-two and twenty-three of said chapter are amended and reenacted to read as follows:

Section 4. The municipal authority of the city of Hinton shall consist of and be vested in a mayor and four members of the council, who shall be elected by the voters of the whole city; and the mayor and the four members of the council elected by the voters of the whole city as herein provided, shall constitute and be "the council of the city of Hinton."

Sec. 6. The subordinate officers of said city may consist of such officers as the council from time to time by ordinance may provide, including, at the discretion of the council, a city manager, recorder, chief of police, city attorney and city health officer. The salaries, powers and duties of any such subordinate officers appointed by the council shall be set out and designated in the ordinance providing for their appointment, which appointments shall be made in the manner hereinafter provided, but in no event shall the council appoint any of its members as a clerical assistant, recorder, or for the performance of any other duties than those of councilmen.

Sec. 7. The mayor and members of the council of the said city shall enter upon the duties of their respective offices on the first day of July next after their election, and continue for a period of two years, unless they shall sooner be removed from office for cause, by an affirmative vote of a majority of all the members elected to the council, after five days due notice, or shall resign. All subordinate and appointive officers shall enter upon the duties of their respective offices, as soon as they shall have been appointed and qualified, and give bond as required by this act or by ordinance of the city and shall hold and continue in their respective offices during the will and pleasure of the council.

All elective officers of the said city, shall continue in their respective offices until the end of their present terms of office, and their successors have been duly elected or appointed, qualified, and shall have given bond, as required by this act,
17 for the faithful performance of the duties of their respective
18 offices.

Sec. 8. No person shall be eligible to the office of mayor,
2 recorder, city manager or councilman, unless at the time of
3 his election, he is legally entitled to vote in the city election for
4 member of the common council, and was for the preceding
5 year assessed with taxes upon real or personal property within
6 said city, of the assessed aggregate value of five hundred dollars,
7 and shall have actually paid the taxes regularly assessed
8 against it. He shall be an actual bona fide citizen of the
9 United States of America, and a resident of the city for one
10 year last preceding his election. The mayor or any member
11 of the common council, ceasing to possess any of the qualifica-
12 tions specified in this section, or if convicted of any crime while
13 in office, or found guilty of malfeasance, misfeasance or non-
14 feasance by an affirmative vote of all the members elected
15 to the council, shall immediately forfeit his office, after being
16 first given five days notice in writing of the charges filed
17 against him by the mayor, any member of the council, or any
18 citizen of the city.

Sec. 9 (a). Any person who is eligible to hold the office
2 of mayor or member of the council of the said city, may file
3 with the city manager or recorder of said city, a certificate
4 declaring himself a candidate for the nomination for such
5 office, which certificate shall be in form or effect as follows:
6 I, ............................................ , do hereby certify that I am a
7 candidate for the nomination for the office of mayor of the
8 city of Hinton, (or for the office of member of the council
9 of the city of Hinton,) to represent the..................................
10 political party, and desire my name printed on the official
11 ballot of said party, to be voted at the city primary election to
12 be held in said city on the........day of............................, 19......
13 I further certify that I am a legally qualified voter of the
14 said city of Hinton, and state of West Virginia; that my
15 residence is No............., ....................................Street, in the said
16 city of Hinton; that I am eligible to hold said office and I am a
17 member of and affiliated with said political party, and that
18 I am a candidate for the said office in good faith.
19 ..............................................................................
20 (Signature of Candidate).
21 Subscribed, sworn to and acknowledged before me this...........
22 day of................................., 19.........
23 .................................................................
24 Notary Public.
25 Such announcement shall be signed and acknowledged by
26 the candidate before some officer qualified to administer oaths,
27 and such certificate shall be filed with the city manager at
28 least ten days before the date of such primary election.
29 (b) All candidates of any political party to be voted for at
30 any municipal election for the office of mayor and member of
31 the council of said city, shall be nominated by a primary
32 election, to be held and conducted in said city. All such
33 primary elections shall be held in said city on the second
34 Tuesday in May, next before the general city election in the
35 year in which the mayor and members of the council of said
36 city are to be elected. Such primary election shall be held in
37 the manner provided for in the nomination of state, county
38 and district officers by the general election laws of this state
39 in force at the time of such primary election, with the excep-
40 tion that the duties provided in the general election law to be
41 performed by the county court, shall be performed by the
42 council of said city, and the duties to be performed under
43 the general election laws by the clerks of the circuit court
44 and county court shall be performed by the city manager or
45 recorder of said city. The general election laws governing
46 primary elections in force at the time of such primary election
47 relating to the nomination of party candidates and officers of
48 elections, shall govern such city primary election, the same as
49 if such primary election laws were reenacted in ex tenso by
50 this act, with the exception that no political party shall nomi-
51 nate more than one candidate for mayor of said city, and four
52 candidates for members of the council of said city, at any
53 primary election.
54 The candidate of each political party for mayor receiving
55 the highest number of votes in the whole city, and the four
56 candidates of each political party for members of the council
57 in said city receiving the highest number of votes in the whole
58 city, shall be declared nominated as such political party’s can-
59 didate for mayor and members of the council of said city, and
60 their names shall be placed on the ballot for the general city
61 election, as the candidates of their respective political party
62 for mayor and such members of the council to be voted for at
63 such general city election.
64 (c) The general city election for the election of a mayor and
65 the four members of the council of said city shall be held on
66 the second Tuesday in June in the year one thousand nine
67 hundred thirty-five, and each two years thereafter; said gen-
68 eral city election shall be held and conducted under the pro-
69 visions of the general election laws of this state in force at
70 the date of such election and governed by the said general
71 election laws of this state in every respect, insofar as the
72 same are applicable to city elections, with the exception that
73 the duties to be performed by the county court shall be per-
74 formed by the council of the said city, and the duties to be
75 performed by the clerks of the county court and circuit court
76 shall be performed by the city manager or recorder of the
77 said city, respectively.
78 The returns of the election shall be made by the city officers
79 to the city manager or recorder, and by him submitted to the
80 council on the fifth day after such election, and the same shall
81 be canvassed, and the result thereof declared by the said coun-
82 cil on said day, or as soon as the council can finish and canvass
83 the returns of such election, whereupon the council shall cause
84 certificates of election to be issued and delivered to the per-
85 sons elected as mayor and members of the council of said
86 city.
87 (d) The mayor of the city of Hinton and the four members
88 of the council of said city so nominated and elected by the
89 voters of said city at the primary and city election held in
90 said city, as hereinbefore provided, shall hold and continue
91 in their respective offices as mayor and members of the council
92 of said city until the end of the thirtieth day of June, one
93 thousand nine hundred thirty-seven, when their respective
94 terms of office shall expire: Provided, That their successors
95 have been duly nominated and elected as hereinbefore pro-
96 vided: Provided, however, That the primary election held
97 under the act as amended for the nomination for mayor and
98 the four members of the council of said city, on the second
99 Tuesday in May, one thousand nine hundred thirty-five and
100 the general election for the election of mayor and the four
101 members of the council of said city, held on the second Tues-
102 day in June, one thousand nine hundred thirty-five, shall be
103 called, conducted and held in each of the eight voting pre-
104 cincts in said city of Hinton, as are now established and by
105 the boundaries of said eight voting precincts in said city of
106 Hinton as are now laid off and established, by the council of
107 the city of Hinton, in office on and before the first day of July,
108 one thousand nine hundred thirty-five.
109  (e) The council of the city of Hinton in office before the first
110 day of July, one thousand nine hundred thirty-five, shall ap-
111 point all election officers necessary to hold and conduct
112 such primary and said general city election, held on the
113 second Tuesday in May and the second Tuesday in June,
114 one thousand nine hundred thirty-five, respectively; they
115 shall furnish all necessary ballots and supplies for such
116 primary and general city election and shall canvass and
117 declare the result thereof, hear and decide all contests over
118 the nomination or election of any officer at such primary
119 or general city election and cause to be executed and
120 delivered certificates of election to the mayor and the four
121 members of the council of said city so elected, and shall do
122 any and all things necessary to hold and ascertain the result
123 of said primary and said city election.
124  (f) The council of the city of Hinton, now in office or in
125 office as soon as this act is amended, and goes into effect, shall
126 provide for the registration of voters in each of the eight
127 voting precincts of said city, as provided by this act as
128 amended, shall furnish all necessary registration books and
129 blanks to make such registration, appoint the registrars, which
130 registration shall be made immediately after the appointment
131 of such registrars, and the said council of the city of Hinton
132 shall hold a regular or special session on the fifth day before
133 the first primary and city election to pass upon such registra-
134 tion and correct the same in the manner provided by this
135 act.
136  (g) Each of the eight voting precincts of the city of Hinton,
137 as now established and the boundaries thereof, as now estab-
138 lished shall constitute, remain and be the eight voting pre-
139 cincts of said city, by the boundaries as now laid off and
140 established until the council of the said city of Hinton, shall
141 by ordinance, entered of record, change or designate. increase
142 or diminish said voting precincts and rearrange the boun-
143 daries of the same: Provided, however, That any new voting
144 precinct established or any change made in the voting pre-
145 cincts of the city shall be made by ordinance, regularly passed
146 by the council of the city of Hinton and notice thereof given
147 by publication in one democratic and one republican news-
148 paper of general circulation, published in Summers county,
149 at least thirty days before said change takes effect.

Sec. 12. All qualified voters within the city of Hinton en-
titled to vote in the municipal elections held therein, shall be
registered in like manner, as are qualified voters of West Vir-
ginia registered under general laws in reference to the election
of state and county officers, in effect at the time of such regis-
tration, and such general laws shall in all things apply thereto,
except the fee for such registration shall be five cents for each
qualified voter so registered, and the powers conferred upon
the county court and the clerk of the county court by the
general laws in reference to the registration of voters for gen-
eral elections of state and county officers are hereby conferred
upon the council of the city of Hinton, city manager, or re-
corder, respectively: Provided further, That the registrars for
each of the respective wards of said city shall be appointed by
the present council at a regular or special meeting of said
council held on the third Monday in April next preceding any
general election in said city, and that the said registrars shall
complete such registration of voters on or before the first
Tuesday in May following, and shall on the first Tuesday in
May sit for one day in their respective voting precincts for
the purpose of correcting such registration, and shall thereupon
immediately return the registration books of the respective
voting precincts to the city manager or recorder of said city.
And the council of said city shall hold a regular or special
meeting on the fifth day, Sunday excluded, prior to the date
for holding of the primary election in said city, for the purpose
of correcting such registration, and registering any voters of
said city who are qualified, and who shall have been omitted or
failed to have been registered by the registrars: Provided
further, That the council of said city shall meet again five days
prior to the general city election for the purpose of correcting
further the registration of the voters of said city, and shall add
to such registration lists the names of any qualified voters of
said city who shall appear in person for the purpose of being registered for said city election, and in all other respects the general laws of the state, pertaining to the registration of voters, shall govern the registration of voters for said city primary and general election, insofar as the same may be applicable thereto, unless otherwise provided by ordinance:

Provided, That in event the county court of Summers county shall change the regular voting precincts embraced in what is included in the territorial limits of the city by this act, for the election of county and district officers, the council may by ordinance provide for the adoption of the last registration of voters made in each of the precincts for the nomination and election of county and district officers, in lieu of the registration herein required to be made for city primaries and general elections. The council shall sit on the fifth day, Sunday excluded, prior to any city primary or election for the purpose of correcting the registration list, and shall correct the same by striking from the registration books so adopted the names of all persons who are not then qualified voters in each of the respective voting precincts, and shall add to such registration the names of all qualified voters who have been omitted from such list or who have become qualified to vote in such voting precinct by reason of their age, residence therein, or any other grounds that would legally qualify them to vote in such voting precinct; and such registration list when so corrected, may be adopted as the registration for any city primary or city election, under this act.

Sec. 13. The mayor and members of the council of said city, and all other officers provided for in this act, or that may be provided for by ordinances, shall, each, before entering upon the duties of their office, and within fifteen days after receiving their certificate of election, or appointment, take the oath or affirmation prescribed by law for all officers in this state, and make oath or affirmation that they will truly, faithfully and impartially, to the best of their ability, discharge the duties of their respective offices, so long as they may continue therein; said oath or affirmation may be taken before any person authorized to administer oaths in this state at the time the same is taken, or before the mayor of the said city, but in any event a copy of said oath of said office shall be filed with the city
manager or recorder, with the exception that the oath of office
of the city manager, as provided herein, shall be filed with
the mayor.

Sec. 16. The salary of the mayor shall not exceed three
hundred dollars per year, payable monthly out of the city
treasury. The salaries of the members of the city council shall
not exceed twenty-five dollars per year each, payable semi-
annually out of the city treasury. The salary of the city man-
ger, if one is appointed by the council, and of clerical assist-
ants used in the performance of duties in and for the city of
Hinton shall be fixed by the council by ordinance or by reso-
lution of the council appointing such city manager or clerks,
payable monthly out of the city treasury: Provided, however,
That the salary of any such clerical assistants and the salary
of the recorder shall not exceed the sum of thirty-five
dollars per month for any such appointee. The salary of the
chief of police and all regular police officers, the city attorney,
commissioner of health, and all other regular city officers and
employees provided for by ordinance, or by order of the coun-
cil, shall be fixed by the council at the time of, and in the order
or resolution appointing such officers or employees, and shall be
paid monthly out of the city treasury: Provided, That there
shall be deducted from the salary of each of the councilmen
five per cent of the annual salary so designated by the council,
for each regular meeting of the council that such member of
the council fails to attend. The salary, fees and compensation
of all police officers, and any other special officer of the city,
appointed by the mayor and the council shall be fixed and de-
termined by the council, and any such special officer so ap-
pointed, who is not paid a regular salary, shall not be entitled
to receive for his services any fees derived under the fee sys-
tem, which is provided by statute to be paid to constables for
like services, but that any special officer so appointed must be
placed on a regular salary so determined by the three-fifths vote
of the mayor and council.

Sec. 18. Whenever a vacancy for any cause shall occur in
the office of mayor or member of the council of said city,
the mayor and remaining members of the council, or in a case
of a vacancy in the office of mayor, the members of the council
of the said city, shall fill said vacancy by electing a mayor or
6 such member of the council to fill the office or offices for and 7 during the term of such officer.
8 In case of a vacancy in the office of the city manager, re- 9 corder or any other appointive officer of said city, the council 10 shall at its next regular meeting, or at a special meeting called 11 for the purpose, fill such vacancy in the same manner as such 12 officer was originally appointed or elected by the council.

Sec. 19. The mayor or any member of the council may be 2 removed from office by the council for intemperance, gross 3 immorality, gambling, malfeasance, misfeasance or nonfeasance 4 in office, inability to act, refusal or neglect to perform the duties 5 of their respective offices imposed by this act, upon being served 6 with a notice in writing of the charges preferred against such 7 officer at a regular meeting of said council, or a special meeting 8 called for the purpose, followed by a hearing to be had on said 9 charges not earlier than five days after the service of said notice 10 in writing on such officer so sought to be removed, and it shall 11 require an affirmative vote of a majority of all the members 12 elected to the council to remove such officer from the office to 13 which he shall have been elected. Any appointed officer who 14 holds his office at the pleasure of the council may be removed 15 from the office with or without cause, at any time by a like 16 vote of the council.

Sec. 20. The regular meetings of the council shall be publicly 2 held at such times and at such places in the city as it shall 3 from time to time ordain and appoint: Provided, That at the 4 first meeting of the council under this act, it shall provide by 5 ordinance or resolution entered of record, the time and place 6 of regular meetings of the council during the term of office, 7 and after each city election the new council elected shall, at 8 its first meeting, by like order or resolution, fix the time and 9 place for the regular meetings of the council during its term: 10 Provided further, That at no time shall a place be so designated 11 for a meeting of the council, either regular or special, to be 12 held at a place other than in the property which is owned by 13 the city. It shall be lawful for the council, by ordinance or 14 resolution entered of record, to vest in the mayor, or any 15 member or members of the city council, the authority to 16 call special meetings and to prescribe the mode and manner of 17 the giving of notice to the members of the council of the times
and places of such special meetings. If a quorum of the members of the council fail to attend any regular or special meeting, those in attendance shall have authority to compel the attendance of the absent members under such reasonable penalty as may be provided by ordinance. The council shall provide for at least one regular meeting of the council in each month, and such other regular meetings as it deems necessary. In no event shall any meeting, either regular, special or executive be closed to the public.

Sec. 21. The presence of the mayor or the president of the council, and three other members of the council shall be necessary to constitute a quorum for the transaction of business at all meetings of the council of said city.

Sec. 22. The mayor, or in his absence, the president of the council, shall preside at the meetings of said council, and shall have a vote on all matters before the council for consideration, the same as any member of the council, but in no event shall the said mayor or presiding officer have power and authority to cast the deciding vote on any matter where he has voted as a member of the council: Provided, That it shall require the affirmative vote of a majority of all the members elected to the council to appoint or remove any officer and to pass any ordinance, franchise, resolution for bond issues or other matters required by this act.

Sec. 23. At the first meeting of the city council provided for by this act, the council shall elect one of its members as president of the council, who shall hold such office during the term of said council, and who shall be ex-officio vice-mayor of the said city. In case of temporary absence of the mayor from the city or his inability to act from any cause, or during any vacancy in the office of mayor, the said president of the council shall preside over the council and perform the duties of the mayor; and, in addition to presiding over said council, he is hereby vested with all the powers necessary for the performance of the duties of the mayor of said city while acting as such mayor, including the authority of the mayor pertaining to civil and criminal jurisdiction, and shall perform such other duties as may be required of him by the council.

All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.
CHAPTER 132

(House Bill No. 305—By Mr. Perry)

AN ACT to amend and reenact section fifty-two, chapter one hundred sixty-one, acts of the Legislature of West Virginia, second extraordinary session, one thousand nine hundred thirty-three, relating to civil service under the Huntington charter.

[Passed March 0, 1935: in effect from passage. Became a law without the approval of the Governor.]

Sec. 52. Civil service board created; how appointed; removal and terms of members; duties of board; meetings; city clerk ex officio clerk of board; appointments by board to police and fire departments; appointment of special officers by mayor; removal, for cause, of persons now under civil service; rules and regulations by mayor for operation of departments; suspension, for cause; appeal to board and hearing; dismissal upon charges; appeal to board and hearing; board’s rules governing conduct on or off duty; penalty for violation; what board to consider as to applicants; record of examinations kept by board.

Be it enacted by the Legislature of West Virginia:

That section fifty-two, chapter one hundred sixty-one, acts of the Legislature of West Virginia, second extraordinary session, one thousand nine hundred thirty-three, be amended and reenacted to read as follows:

Section 52. The city shall create a board to be styled “the civil service board,” consisting of four members and the mayor, or a member ex-officio. The mayor shall preside at all meetings of the board, but shall have the right to vote only in case of a tie on any question arising before the board. The mayor shall appoint two members of the board from each of the dominant political parties of the city, and they shall be appointed and confirmed. In this manner, the mayor shall transmit to the council the names of the persons whom he appoints to the civil service board; and the council may, at its next regular meeting, or special meeting called for that purpose, or at any adjournment thereof for not more than five days, reject any or all of said appointments so made by the mayor by majority vote of the members of council present at such meeting. If any one of such appointees is rejected by...
the council, the action thereabout shall be transmitted to the
mayor, who shall, without delay, transmit to the council the
name of another person or persons, as the case may be, for
such office, and action thereon by the council shall be in the
same manner as in the first instance, and, if rejected, then the
mayor shall transmit another name, or other names, for mem-
ers of said board until the council shall not have, in the man-
er herein provided, rejected the person or persons so appoint-
ed by the mayor for said board. All such appointments by
the mayor shall stand approved and as final, unless rejected by
the council at the time and in the manner herein prescribed.

A member of the civil service board may be removed from
office in the manner and for the causes provided for the re-
moval of the mayor by section ten of this act. The term of
office of the members of said board shall be the same as that
for which the mayor was elected: Provided, That the mem-
ers of the present civil service board shall hold their positions
on said board until their successors shall have been named,
in the manner herein provided, by the mayor elected at the
general election, one thousand nine hundred thirty-four.

The duties of the civil service board shall be to examine
and certify all applications for positions in the police de-
partments or fire department, except the chiefs thereof; to
hear and determine all appeals made by members of either of
those departments, who are under civil service; to hear evi-
dence, summon witnesses and render judgments in all cases
in which charges have been preferred against any officer of
either of those departments; to make promotions of members
of either of the departments when it is deemed advisable for
increased efficiency; to make rules and regulations governing
the actions of the board and to keep the same in the records
of its proceedings.

The civil service board shall hold meetings for the purpose
of examining and certifying the eligibles to the appointment
of the police department and fire department, and to that
end shall give at least ten days' public notice of the time,
place and purpose of such meetings. The board may be called
into special session by the mayor or by a majority of its mem-
ers for the purpose of disposing of any matters coming with-
in its purview. The board shall hold at least two meetings
during any calendar year, and as many more meetings as may
be necessary to meet the requirements for the efficient manage
ment of its affairs.

The city clerk shall be ex officio clerk of said board.

Appointments to the police department and fire depart-
ment shall be made, by the civil service board, from the ap-
plicants for said respective positions, which applicants, under
civil service examinations, receive any average grade of sixty
or more, giving preference to the applicant receiving the
highest grade and whose grade certificate is the oldest, and
likewise making such appointments so as not to give either of
the dominant political parties in the city, as nearly as may be,
more than one-half of the total number of men under civil
service in either department. The mayor shall appoint special
officers, if any, for either or both of said departments, from
the approved civil service lists for said departments, respec-
tively, keeping political division as hereinbefore set out: Pro-
vided, That no person shall serve, as a special officer, for more
than thirty days in any one calendar year. When the list of
names of applicants who are eligible as prescribed in this sec-
tion shall have been exhausted, or when either dominant po-
itical party shall be entitled to appointment and there shall
be no member of such party eligible on the list, then such ap-
pointment may be made from the list of persons who may
apply therefor, disregarding those applicants who stood the
civil service examination and received thereon a grade below
sixty.

All persons now under civil service in either of said de-
partments shall have advantage of civil service and shall con-
tinue in office unless removed for cause and in the manner
provided in this section.

Policemen and firemen now in office, and those hereafter
appointed, shall obey all the rules and regulations promul-
gated by the mayor for the organization and operation of the
respective departments which, when posted at the headquar-
ters of the respective departments, shall be notice thereof.
Any violation of said rules by any member of the department
shall be sufficient cause for his suspension or dismissal in the
manner provided in this section.

The mayor, or chief of either the police department or fire
department by and with the mayor’s consent, may, as a mat-
ter of discipline, suspend, without pay, for a period of not
exceeding thirty days, any officer or member of either of those
departments, for just cause, by giving such officer or member
written notice of such suspension, defining the cause or causes
therefor. Such suspended officer or member shall have the
right, within ten days, but not later, to appeal to the civil serv-
vice board, if he deems such suspension unjust. If such ac-
cused officer or member, upon a hearing before the civil service
board, is found not guilty, then he shall immediately report
for duty, and he shall be paid for the time lost by his suspen-
sion. The mayor may, upon evidence of reasonable cause
therefor, dismiss any member of the police department or fire
department, by giving written notice to such person, clearly
defining the charges preferred against him, and fixing a time,
not later than ten days from that time, on which such mem-
ber may appear for trial before the civil service board; and
should the board, upon trial, find him guilty of the charges
preferred, the dismissal by the mayor shall stand affirmed,
without pay from the time of his dismissal by the mayor. But
if such person shall be acquitted of the charges preferred by
the mayor, he shall be reinstated to his position and shall be
paid for the time lost by him because of his dismissal by the
mayor. The action of the civil service board thereabout, in
either the event of suspension or dismissal by the mayor or
the board as aforesaid, shall be final, and no appeal therefrom
shall lie.

The civil service board may make reasonable rules govern-
ing the conduct of all persons while on duty and off duty,
who are under civil service, in addition to the rules promul-
gated by the mayor; and the violation of such rules may be
cause for suspension or dismissal as provided in this section;
but causes for suspension or dismissal, as herein provided, is
not limited to the violation of said rules promulgated by the
board.

In making examinations and determining the fitness and
qualifications for positions the civil service board shall take
into consideration the size, health, physical appearance, habits
and moral surroundings of the applicant; and after such ex-
aminations the board shall at once place on record in the
minutes of the civil service board the result of such examina-
tion, giving the names of the applicants, positions sought by
them, and their respective percentages based on one hundred.
138 and stating the political party, if any, to which the applicant 139 holds allegiance.

CHAPTER 133
(House Bill No. 49—By Mr. Anderson)

AN ACT to amend and reenact section nine, chapter five, acts of the Legislature of West Virginia, one thousand nine hundred nine, entitled "An act to incorporate the city of Keystone, McDowell County, West Virginia", relating to the charter of the city of Keystone.

[Passed February 12, 1935; in effect from passage. Approved by the Governor.]

Sec. 9. Date of municipal election; division of city for election purposes; representation of political parties on double election boards; registration of voters; nominating conventions, filing list of nominees with recorder; how elections conducted.

Be it enacted by the Legislature of West Virginia:

That section nine, chapter five, acts of the Legislature, one thousand nine hundred nine, be amended and reenacted to read as follows:

Section 9. The next election for mayor, recorder and five councilmen of the city of Keystone, shall be held on the first Thursday in February, one thousand nine hundred thirty-six, and every two years thereafter there shall be an election held on the first Thursday in February for the purpose of electing a mayor, recorder and five councilmen of said city. They shall be elected by the voters of the whole city. For the purpose of conducting and holding such election, and all subsequent elections, the territory of said city shall be divided into two parts. One part thereof shall be that portion of the territory of said city lying east of the city hall, situate in said county; and the other portion thereof shall be the remainder of the territory of said city, lying west of said city hall. For each of said two portions of said city there shall be appointed by the common council a double election board; that is, a receiving board, consisting of three commissioners and two clerks, and a counting board, consisting of three commissioners and two clerks. Any
person residing in said city shall be eligible for appointment and to serve as an election officer, regardless of the portion of the city in which he resides: Provided, however, That no person who is an employee of said city in the capacity of chief of police, police officer, or otherwise, and/or who has been in the employ of said city during the six months immediately preceding any city election, shall be qualified for appointment or shall be eligible for appointment as an election officer. The dominant political party in said city shall be entitled to have appointed as election officers on the receiving board, two commissioners and one clerk; on the counting board, two commissioners and one clerk. The political party in said city for whose candidates the next highest vote was cast at the last city election shall be entitled to have appointed as election officers on the receiving board, one commissioner and one clerk; and on the counting board, one commissioner and one clerk. The voters of said city shall be registered in accordance with general law of the state of West Virginia relating to registration of voters in general elections, and candidates for each of the two dominant political parties in said city for the officers hereinbefore in this section named shall be nominated by the voters of the two dominant political parties in said city in convention assembled: Provided further, That nothing herein contained shall prevent any group of citizens or voters in said city from nominating candidates in accordance with section twenty-nine and section thirty, article four, chapter three of the code of West Virginia, one thousand nine hundred thirty-one. The conventions of the two dominant political parties for the purpose of nominating candidates shall be held at least thirty days before any election at which the offices of mayor, recorder and five councilmen are to be filled; and a list of the candidates so nominated shall be certified to and filed with the recorder of said city at least fifteen days before any such election. In all other respects, all elections, within said city, shall be held, conducted and the results thereof ascertained, certified, returned and determined in accordance with the constitution of the state of West Virginia and the general laws of the state relating to elections.
CHAPTER 134

(House Bill No. 50—By Mr. Anderson)

AN ACT to amend and reenact section seven, chapter seventeen, acts of the Legislature of West Virginia, (Municipal Charters) regular session, one thousand nine hundred twenty-five, entitled "An act to incorporate the city of Kimball, in McDowell county."

[Passed February 12, 1935; in effect from passage. Approved by the Governor.]

Sec. 7. Qualifications of elective officers; subordinate officers need not, at time or appointment, live within corporate limits.

Be it enacted by the Legislature of West Virginia:

That section seven, chapter seventeen, acts of the Legislature of West Virginia (Municipal Charters), regular session, one thousand nine hundred twenty-five, be amended and reenacted to read as follows:

Section 7. No person shall be eligible to the office of mayor, recorder or councilman unless, at the time of his election, he is legally entitled to vote in the city election for members of the common council, and was the preceding year, assessed with taxes upon property, within the said city, of the assessed valuation of two hundred dollars, and shall have actually paid the taxes so assessed, including his capitation tax. A person in order to be eligible to hold any subordinate office, (such as the office of chief of police, or police officers), in said city need not at the time of his appointment be actual residents within the corporate limits of said city.

CHAPTER 135

(House Bill No. 171—By Messrs. Paul and Winter)

AN ACT to amend and reenact section four, chapter one hundred twenty-four, acts of the Legislature of West Virginia, regular session, one thousand nine hundred thirty-three, relating to the
charter of the city of Logan; providing for the nomination by primary election of candidates for mayor and councilmen to be voted upon at municipal elections as provided by the charter of said city, and providing for the election of municipal executive committeemen by the several political parties.

[Passed February 5, 1935; in effect from passage. Approved by the Governor.]

Sec. 4. Municipal candidates to be nominated in primary; date of primary; appointment of judges and poll clerks; challengers; city executive committees to continue in office; compensation of election officials; form of announcement of candidacy; filing; publication of list of candidates; ballots, form; precinct committeemen; certificates of announcement; oath; how primary and general elections conducted and returns canvassed; the vote; expense paid by city; hours polls open; recounts; election duties and powers of mayor's secretary and of mayor and council; canvassing vote and declaring result.

Be it enacted by the Legislature of West Virginia:

That section four, chapter one hundred twenty-four, acts of the Legislature of West Virginia, regular session, one thousand nine hundred thirty-three, be and same hereby is amended and re-enacted as follows:

Section 4. Candidates to be voted for at all general municipal elections at which a mayor and councilmen are to be elected under the provisions of this charter shall be nominated at a primary election, and no other names shall be printed on the ballots used at the general election except those selected in the manner prescribed by this amendment to the charter.

The first primary election for mayor and councilmen under this amendment to the charter shall be held on the second Tuesday in March, one thousand nine hundred thirty-five, and every primary election for mayor and councilmen shall be held biennially thereafter on the second Tuesday in March.

At a meeting of the city council to be held on the last Tuesday in February preceding every primary and general election for the offices of mayor and councilmen there shall be appointed three judges and two poll clerks for said primary and general election for each voting precinct in the city in the manner herein provided.

One judge and one poll clerk shall be appointed from each of the two political parties which at the last preceding state and county election cast the highest number of votes in Logan
21 county, and if at any time during said meeting of council the
22 city executive committee of either political party from which
23 said judges and poll clerks are to be selected or appointed shall
24 present to said council a writing signed by them, or by the
25 chairman of said committee in their behalf, requesting the ap-
26 pointment of qualified voters of their political party who are
27 otherwise qualified to act as such officers under the laws of
28 West Virginia, it shall be the duty of said council to appoint
29 the persons named in such writing as such election officers.
30 The remaining judge for each election precinct in the city
31 may be of either of the above named political parties, and shall
32 be appointed by the council.
33 The said city executive committees, or the chairman thereof,
34 may appoint a challenger for each election precinct in the city,
35 subject to the same provisions governing the appointment,
36 qualifications and duties of challengers as set forth in the elec-
37 tion laws of the state of West Virginia.
38 The city executive committees now existing shall continue in
39 office and to function until their successors are elected under
40 this act.
41 Such judges, poll clerks and challengers shall receive for
42 their services the same compensation that is provided by state
43 law for compensation for such similar officers and said election
44 officers shall have the same duties and responsibilities, and shall
45 take and subscribe to the same oaths, and shall conduct the elec-
46 tions in conformity with and be subject to the same regulations
47 and penalties as are provided by the state law governing elec-
48 tions and offenses against the same in so far as the same may be
49 applicable.
50 Any person who is eligible to hold the office of mayor or coun-
51 cilman may file in the mayor’s office a certificate declaring
52 himself a candidate for the nomination of such, which certificate
53 shall be in the form and effect as follows:
54 I, .................................... , hereby certify that I am a candidate
55 for the nomination for the office of mayor (or councilman), to
56 represent the ...................... party, and desire my name printed
57 on the official ballot of said party to be voted at the primary
58 election to be held on the second Tuesday in March, 19........ ; that
59 I am a qualified voter of the City of Logan, County of Logan,
60 and State of West Virginia; that my residence is in the City of
61 Logan; that I am eligible to hold the said office; that I am a
62 member of and affiliated with said political party; that I am
63 a candidate for said office in good faith.
64 ..............................................................
65 (Signature of Candidate)
66 Subscribed to and acknowledged before me this .......... day
67 of .............., 19........
68 ..............................................................
69 (Signature of officer taking affidavit)
70 Such certificate shall be filed in the mayor's office at least
71 ten days before the primary election day, and shall be signed
72 and acknowledged by the candidate before some officer qual-
73 fied to administer oaths, who shall certify the same.
74 Immediately upon the expiration of the time for filing the
75 above certificates the mayor shall cause to be published for one
76 week in two newspapers of opposite politics in said city the
77 names of the persons as they are to appear upon the respective
78 primary ballots of each political party, and the said mayor shall
79 thereupon have the primary ballots printed and authenticated
80 with a facsimile of his signature. There shall be a separate
81 primary ballot of candidates for each political party who have
82 filed their petition as required by this act on different color of
83 paper, and the primary ballot of no two political parties shall
84 be of the same color or tint. The same color shall be used for
85 sample primary ballots of each party, but there shall be printed
86 across the face of such sample ballot in large words “sample
87 ballot” but no sample ballot shall be voted or counted. Said
88 official primary ballots shall be printed in accordance with the
89 election laws of West Virginia governing the printing of ballots
90 for state and county elections, and shall be of the form and effect
91 as follows:
92
93 OFFICIAL BALLOT OF
94 The ............... Party
95 The City of Logan, Primary Election, March ........, 19........
96 (To vote for a candidate mark an “X” in the square opposite
97 to the left of his name.)
98
99 FOR MAYOR.
100 (Vote for One)
101 □ A □ B
102 □ C □ D
103 □ E □ F
104 FOR COUNCILMEN
Official ballot, attest:

Facsimile of the signature, ...................... Mayor.

On the back of the ballot there shall be printed in black ink, plain and legible, the name of the political party as contained in the heading followed by the word "ballot." Under this designation shall be printed two blank lines, followed by the words "poll clerks."

At said primary election to be held on the second Tuesday in March, one thousand nine hundred thirty-five, and biennially on the second Tuesday in March thereafter, the said political parties of the city shall elect one committeeman from each voting precinct in the city to serve until the next primary election, or until their successors are elected and qualified.

Candidates for the office of committeeman shall file in the mayor's office a certificate declaring themselves as in the case of candidates for the nomination of mayor and councilman and their names shall be placed upon separate ballots for each voting precinct as in the primary ballot. Upon the result of the election of committeemen being declared, the successful candidates shall qualify by taking an oath to faithfully perform the duties of their office to the best of their skill and judgment.

Unless otherwise provided in this amendment to the charter all primary and general elections held in said city shall be conducted and the results thereof certified and returned, and officially determined in accordance with the provisions of the election laws of the state of West Virginia in force at the time of holding said elections, and the penalties therein prescribed for offenses relating to said elections shall be enforced against the defenders of said municipal election. On the day following a primary election the city council shall canvass the returns received from the polling precincts, and declare the results thereof. The candidate on each ticket receiving the highest number of votes for mayor and the five candidates on each ticket receiving the highest number of votes for councilman shall be the candidates whose names shall be
placed upon the ballots at the next ensuing general election, and the committeeman from each voting precinct for each party receiving the highest number of votes shall be declared elected.

If two or more persons on the same ticket receive an equal number of votes for the nomination of the same office, or in case of committeemen for the same office, and more than the other candidates, so that there is no choice at the primary, or election of committeemen, the city council shall determine by lot the name out of those voted on at the primary and tied as aforesaid to be placed on the ballots for the next ensuing general election, or as the case may be, the committeeman elected.

The necessary and legitimate expenses of the holding of any such primary, as well as of any regular or special municipal election in said city, for ballots, stationary forms, ballot boxes, booths, voting places, registrars, judges, clerks and challengers and notices of the election shall be paid by the city. At every such primary or general election the polls shall open at six-thirty a.m. and close at six-thirty p.m.

In the event of a demand by any candidate for a recount of the votes cast at any primary or general election held in said city or in the event of the institution of a proceeding to contest said election, the council in office at the time of said election shall pass on and decide such recount or contest of election in like manner as provided for in contests for state, county and district officers and the council by their proceedings in such cases shall as nearly as practicable conform with like proceedings of the county court in such cases. Candidates desiring a recount shall file their application with the council immediately upon the completion of the canvassing of the votes and the said council shall continue in session from day to day until such recount is completed, and the result declared, using due diligence to the end that the result of the primary election be declared in due time for the printing and publication of the ballot for the general election as herein provided for.

Unless otherwise herein provided in this amendment to the charter, the secretary to the mayor shall be charged with all the duties and responsibilities which under the general election laws of West Virginia devolve upon the clerks of the county court and the circuit court, and the mayor and council
185 shall be charged with all the duties and responsibilities which
186 under the general election laws of West Virginia devolve upon
187 the board of canvassers, and upon the county court, and they
188 shall be subject to all the penalties therein prescribed for of-
189 fenses relating to elections.

190 The candidates thus nominated by each of said political
191 parties for the office of mayor and councilman receiving the
192 largest vote in the ensuing city election shall be declared elected.
193 On the Thursday next following any election hereunder the
194 council shall meet and canvass, ascertain, declare and record
195 the results of said election. The general election laws gov-
196 erning the ascertainment and declaration of the results of elec-
197 tion of county officers and relating to appeals and proceed-
198 ings for review or reversal of decisions of the board of can-
199 vassers concerning the same are hereby made applicable to all
200 elections of officers held under this act.

CHAPTER 136

( House Bill No. 23—By Mr. Simmons)

AN ACT to amend and reenact section six, chapter eighty-two, acts
of the Legislature of West Virginia, one thousand nine hundred
eleven; and section seven, chapter eighty-two, acts of the Legis-
lature of West Virginia, one thousand nine hundred eleven, as
amended and reenacted by chapter sixteen, acts of the Legislature
of West Virginia, one thousand nine hundred twenty-one, and as
amended and reenacted by chapter seventy-six, acts of the Legis-
lature of West Virginia, one thousand nine hundred twenty-
three, and as amended and reenacted by chapter seventy-nine,
acts of the Legislature of West Virginia, one thousand nine hun-
dred thirty-one, relating to the charter of the city of Mounds-
ville, in the county of Marshall; changing the time for holding
elections in said municipality, and changing the date of the
beginning and expiration of the terms of office of all elective
city officials.

[Passed February 8, 1925; In effect from passage. Became a law without the
approval of the Governor.]

Sec. 6. Election date; qualifications of voters; how elections con-
ducted; contests; tie vote.

Sec. 7. Terms of elective and appointive officers; council to fix compen-
sation of members.
Be it enacted by the Legislature of West Virginia:

That section six, chapter eighty-two, acts of the Legislature of West Virginia, one thousand nine hundred eleven; and section seven, chapter eighty-two, acts of the Legislature of West Virginia, one thousand nine hundred eleven, as amended and reenacted by chapter sixteen, acts of the Legislature of West Virginia, one thousand nine hundred twenty-one, and as amended and reenacted by chapter seventy-six, acts of the Legislature of West Virginia, one thousand nine hundred twenty-three, and as amended and reenacted by chapter seventy-nine, acts of the Legislature of West Virginia, one thousand nine hundred thirty-one, relating to the charter of the city of Moundsville, in the county of Marshall; changing the time for holding elections in said municipality, and changing the date of the beginning and expiration of the terms of office of all elective officials, be amended and reenacted to read as follows:

Section 6. The first election held hereunder shall be on the first Tuesday in June, in the year one thousand nine hundred thirty-five, and biennially thereafter. Every person who has been a bona fide resident of the city for sixty days next preceding any election, and who is otherwise a qualified voter under the constitution and laws of the state, shall be entitled to vote at such election, in the ward in which he resides. The election, including the nominations for office, either by convention or primary or otherwise, shall be held, conducted and the results thereof be ascertained, returned and determined under such rules and regulations as may be prescribed by the council, which shall not be inconsistent with the general laws of the state governing municipal elections, and shall conform are nearly as practicable to such laws. Contested elections shall be heard and decided by council, and the proceedings therein shall conform as nearly as may be to similar proceedings in the case of county and district officers. The council shall be the judge of the election, return and qualification of its own members. In case two or more persons receive an equal number of votes for the same office, if such number be the highest cast for such office, the city council shall decide by vote which of them shall be returned elected, and shall make their return accordingly.

Sec. 7. The terms of office of the mayor, city clerk, chief
2 of police and city solicitor shall begin on the first day of July
3 next succeeding their election and shall be for the term of two
4 years, and until their successor shall have been elected and quali-
5 fied. The treasurer, health officer, street commissioner, city
6 engineer and sewer inspector shall be appointed by the coun-
7 cil, and shall hold their offices during the pleasure of the coun-
8 cil. Any former incumbent shall be ineligible for a second ap-
9 pointment unless he shall have fully settled up the business of
10 his former term or terms. At the first election held after this
11 act goes into effect, there shall be elected a mayor, city clerk,
12 chief of police and solicitor, whose terms of office shall begin
13 on the first day of July next succeeding their election and shall
14 be for the term of two years, or until a successor is elected and
15 qualified; and one councilman from each ward, whose term of
16 office shall begin on the first day of July next succeeding said
17 election, and shall be for the term of four years and until his
18 successor is elected and qualified.
19 The council of said city shall have the right to fix a compensa-
20 tion for the members thereof, which compensation, however,
21 shall not exceed one hundred and fifty dollars per year to each
22 member.

CHAPTER 137
(House Bill No. 529—By Mr. Hertnick)

AN ACT to amend and reenact sections three, four, five, eight,
nine and ten, acts of the Legislature of West Virginia, one
thousand eight hundred ninety-one, relating to the town char-
ter of New Cumberland, and the rescinding of sections one and
thirteen, chapter forty-seven, acts of the Legislature, one thou-
sand eight hundred ninety-seven, insofar as sections one and
thirteen have been adopted and made a part of the charter of
said town of New Cumberland, and the enactment of sections
thirty-nine, forty, forty-one, forty-two, forty-three, forty-four,
and forty-five.
[Passed March 7, 1935; in effect from passage. Became a law without the approval of the Governor.]

Sec. 3. Elective municipal officers; what elective and appointive offices are not incompatible; eligibility of elective officers.

Sec. 4. Election dates; qualification of voters; how elections held; contested elections.

Sec. 5. Terms of elective and appointive officers; when determined by lot.

Sec. 8. Ward boundaries; publication of notices of changes.

Sec. 9. General powers of council.

Sec. 10. Powers of council to adopt ordinances; limitation on penalty of fine and imprisonment.

Sec. 39. Referendum on act; form of ballot.

Sec. 40. How referendum election conducted.

Sec. 41. Duties of council if act adopted by voters.

Sec. 42. Present officers to continue; qualification of newly elected officers.

Sec. 43. Adoption of state municipal code by council.

Sec. 44. What ordinances, etc., to remain in effect.

Sec. 45. Inconsistent acts repealed: if part of act invalid remainder not affected.

Be it enacted by the Legislature of West Virginia:

Section 3. The officers of said town shall be mayor, recorder, 2 and two councilmen from each ward, a sergeant, and street 3 commissioner. The mayor and recorder shall be elected by the 4 qualified voters of the town, and the councilmen by the quali- 5 fied voters of the respective wards, and together shall consti- 6 tute the common council of said town. The other officers of 7 this section shall be appointed by council, but offices of mayor, 8 sergeant, and street commissioner shall not be incompatible, 9 neither shall the offices of recorder, street commissioner, ser- 10 geant, and policeman be incompatible, and all the appoint- 11 ive offices insofar as is possible may be held in whole or in part 12 by the mayor or the recorder or either by the mayor and the 13 recorder, and such consolidation of offices shall not be deemed 14 incompatible. No person shall be eligible to any elective office 15 unless he is a legal voter and was for the preceding year as- 16 sessed with and paid taxes upon at least one hundred dollars 17 worth of real or personal property therein.

Sec. 4. The first election under this act shall be held on the 2 second Tuesday of June, one thousand nine hundred thirty-five, 3 and there shall be an election held on the second Tuesday of 4 June every two years thereafter. The vote of said election 5 shall be by ballot. All persons who shall have been bona fide 6 residents of the town three months next preceding any elec- 7 tion, and entitled to vote under the constitution and laws of the 8 state, shall be entitled to vote at such election, but only in the 9 ward of their residence. The said election shall be held and 10 conducted at such places and under such rules and regulations
11 not inconsistent with the laws regulating district elections, as
12 may be prescribed by the council. Contested elections shall
13 be heard and decided by the council, and the proceedings shall
14 conform as nearly as may be to similar proceedings in case of
15 county and district officers. The council shall be the judge of
16 the election returns and qualifications of its own members.

Sec. 5. The terms of the office of mayor and recorder shall
2 be two years each, and of councilmen shall be four years, be-
3 ginning the first Tuesday in July next succeeding their elec-
4 tion and continuing until their successors are elected and qual-
5 i ed; except that the term of office of one of the councilmen
6 from each of the wards elected at the first election provided
7 shall be determined by lot, one for the two year term and one
8 for the four year term, in the presence of and under the direc-
9 tion of the council. The term of all officers appointed by council
10 shall be as prescribed by council, but shall not exceed two
11 years.

Sec. 8. The territory of said town is hereby divided into
2 three wards as follows:
3 That part lying north of the center of Madison street shall
4 constitute the first ward.
5 That part lying between the center of Madison street and
6 the center of Sedgwick street shall constitute the second ward.
7 That part lying south of the center of Sedgwick street shall
8 constitute the third ward.
9 The lines between the wards are understood to run from the
10 west boundary of the town to the east boundary by lines pro-
11 jected through the center of each of the said streets and ave-
12 nes.
13 The council may, after two years after the passage of this
14 act, by ordinance, change the boundaries of the several wards
15 and may decrease the number of said wards; but no change
16 of boundaries for the decrease of the number of wards shall be
17 made until notice of such change of boundaries has been given
18 by order of council by publication in the newspapers of said
19 town, for two successive weeks prior to meeting of council at
20 which such ordinance is proposed for passage, and said notice
21 shall name the time of such meeting.

Sec. 9. The council of said town shall have the power to lay
2 off. vacate, close, open, alter, grade and keep in good repair and
free from obstructions the roads, streets, alleys, pavements, sidewalks, crosswalks, drains, sewers and gutters therein for the use of citizens, or the public; to improve and light the streets, alleys, buildings, and grounds of said town; to regulate the width of pavements and sidewalks on the streets and alleys, and to order the pavement, sidewalk, footways, drains and gutters to be kept in order, free and clean by the owners or occupants of the property (real) next adjacent thereto; to establish and regulate markets, prescribe the time of holding the same; provide suitable and convenient buildings therefor, and prevent the forestalling and regranting of such markets; to prevent injury or annoyance to the public or individuals from anything dangerous, offensive, or unwholesome; to prohibit or regulate slaughter houses, tan houses, or soap factories within the town limits; or the exercise of any unhealthy or offensive business, trade, or employment; to abate all nuisances within the town limits, or to require or compel the abatement or removal thereof, by or at the expense of the person causing the same, or by or at the expense of the owner of the ground on which they are placed or found; to be caused to be filled up, raised, or drained, by or at the expense of the owner any town lot or tract of land covered or subject to be covered by stagnant water; to prevent horses, hogs, cattle, sheep, or other animals and fowls of all kinds from going or being at large in said town; and as one means of prevention, to provide for impounding and confining such animals and fowls, and for failure to reclaim, for the sale thereof; to protect places of divine worship, and to preserve order in and about the premises where and when such worship is held; to regulate the keeping of gun powder and other inflammable and dangerous substances; to provide for the regular building of houses or other structures, and for the making and maintaining of division fences by the owners of adjoining premises, and for the proper drainage of town lots or other parcels of land, by or at the expense of the owner thereof; to provide against danger or damage by fire; to punish for assault and battery; to prevent loitering in or visiting houses of ill-fame, or loitering in saloons or on the streets, to prevent lewd or lascivious conduct, the sale or exhibition of indecent pictures, or other representations; to prevent and punish for gambling, the desecra-
tion of the Sabbath Day, profane swearing; to prevent the ill-
legal sale of intoxicating liquors, drinks, mixtures and prepar-
ations, and to provide the penalties for such cases; to protect
the persons of those residing within the town; to appoint when
necessary or advisable a police force, permanent or temporary,
to assist the sergeant in the discharge of his duties; to build
or purchase, or lease and use a suitable place of imprisonment
within or near the said town, for the safe-keeping or punish-
ment of persons charged with or convicted of the violation of
ordinances; to erect or authorize, or prohibit the erection of
electric, gas, or water works within the town limits; to pre-
vent injury to such works or the pollution of any water or gas
used, or intended to be used by the public or by individuals; to
provide for and regulate the weighing or measuring of hay, coal,
and lumber, and other articles sold, or kept for sale within the
said town; to establish, construct, alter, remove and repair land-
ings, wharves, and docks, and to establish and collect rates and
charges for the use thereof; to regulate the running and speed of
cars, automobiles, trucks, and other vehicles within the said town;
to create by ordinance such committees or boards and delegate such
authority thereto as may be deemed necessary or advisable;
to provide for the annual assessment of the taxable property
therein and for a revenue for the town for municipal purposes,
and to appropriate such revenue to its expense; and generally to,
take such measures as may be advisable or necessary to protect
the property, both public and private within the town; to pre-
serve and maintain the peace, quiet and good order therein,
and preserve the health, safety and comfort and well being
of the inhabitants thereof.

Sec. 10. To carry into effect these enumerated powers and
all others by this act, or by general laws conferred upon
the said town, or its council, or any of its officers, the said
council shall have and possess full authority to make, pass,
and adopt all needful ordinances, by-laws, and resolutions, not
repugnant to the constitution of the United States, or of this
state, and to enforce any and all ordinances, by-laws, orders, or
resolutions by prescribing for a violation thereof fines and pen-
alties and imprisonments, either in the county jail of Hancock
county, or in the town prison, if there be one. Such fines and
terms of imprisonment shall not exceed the penalties im-
12 posed by the state for like offenses. Such fines and penalties shall be imposed and recovered, and such imprisonment inflicted and enforced, by and under the judgment of the mayor of said town, or in case of his absence or inability to act, then the recorder may act in his place, or one of the justices within the district of Clay.

Sec. 39. This act shall be submitted to the said voters at the regular town election on March eleventh, one thousand nine hundred thirty-five, or at a special election to be held in the said town of New Cumberland on the second Tuesday of the month next succeeding the calendar month in which this act is enacted by the Legislature of West Virginia. Notice of such special election shall be given by publication two weeks prior to the date of the election.

The ballots to be used at such election shall be in the following form:

PROPOSED CHANGES OF TOWN CHARTER OF NEW CUMBERLAND

☐ For Ratification

☐ Against Ratification

Sec. 40. It shall be the duty of the mayor, recorder, and council, in office at the time of the submission of the changes in the charter to the voters, to perform all the duties in relation to holding such election as required by the general laws in holding municipal elections.

Sec. 41. If this act be adopted by the majority of the votes cast at said election then the mayor, recorder, and councilmen in office at the time of the adoption shall hold an election as made and provided in section four of this act, for the purposes of electing a mayor, recorder, and six councilmen, and the designation by lot the councilmen selected for the two year and four year terms as provided in section five, as to the two year and four year terms of councilmen.

Sec. 42. During the interim between the time when this act shall take effect and its adoption by the votes cast at a special election for ratification or rejection, the present officers of the
4 town shall have and exercise the same authority as made and
5 provided in the old charter. On and after the second Tues-
6 day in July, one thousand nine hundred thirty-five, all officers
7 elected on the second Tuesday in June, one thousand nine hun-
8 dred thirty-five, shall take office, after qualifying, and all offi-
9 cers elected March eleven, one thousand nine hundred thirty-
10 five, shall terminate, unless reelected under the provisions of
11 this act.

Sec. 43. The town council may by ordinance or ordinances
2 adopt any sections now in the state municipal code, or that
3 hereafter may be adopted as a part of the said state municipal
4 code.

Sec. 44. All ordinances, by-laws, resolutions, and rules of the
2 town of New Cumberland in force at the time of the passage
3 of this act and the adoption thereof by the votes so cast in its
4 ratification, which are not inconsistent therewith, shall be and
5 remain in full force and effect, until amended or repealed by
6 the council of said town.

Sec. 45. All acts and parts of acts in conflict and inconsist-
2 ent with this act are hereby repealed. If any clause, para-
3 graph, or section of this act should be declared to be unconsti-
4 tutional, all remaining clauses, paragraphs, and sections thereof
5 shall not be affected thereby.

CHAPTER 138

(House Bill No. 446—By Mr. Lantz)

AN ACT to amend and reenact section thirty, chapter nine, acts
of the Legislature of West Virginia, one thousand nine hun-
dred twenty-seven (Municipal Charters), and known as the
"Charter of the Town of New Martinsville," all relating to
and being part of the charter of the town of New Martinsville.

[Passed March 7, 1935; in effect from passage. Became a law without the
approval of the Governor.]

Sec. 30. General powers of council.

Be it enacted by the Legislature of West Virginia:

That section thirty, chapter nine, acts of the Legislature, one
thousand nine hundred twenty-seven, be amended and reenacted to read as follows:

Section 30. The council of said town shall have the following general powers enumerated in the subdivision of this section, as follows:

1. To lay off, open, close, vacate or maintain public grounds, parks, and public places, and name and rename the same, to have control and supervision thereover, to protect the same from damages or other injury by persons or property, to fix fines and punishments for any injury thereto in violation of any of the orders of said council, and to maintain good order and prevent violation of the ordinances of said city therein or thereon.

2. To protect divine worship within the limits of said town, and to fix fines and punishment for disturbance of any assemblage of people, then and there met for the worship of God, to prohibit any interference with or disturbance of divine worship or an assemblage of people met together for the worship of God, by any person or persons loitering about the premises or places where such worship is being had or such assemblage is met, or from loitering in the public streets or public places adjacent thereto in such manner as to interrupt such worship.

3. To acquire, either by purchase, condemnation or other modes provided by general law, ground within said city for such streets and alleys as the council may deem proper; to locate, lay off, vacate, close, alter, grade, straighten, widen, or narrow, pave or repave, construct and keep in good repair, the roads, streets, alleys, pavements, sidewalks, crosswalks, drains, viaducts and gutters therein, and such bridges as may be owned or built by the said city, for the use of the public or of any of the citizens thereof, and to improve and light the same and to keep the same clean and free from obstruction of every kind: Provided, That the municipality shall not be liable for or responsible in damages for injuries to persons or property caused by or from any defect or obstruction in or on any street or alley within said town that has been or may be taken over by the state road commission, under and by virtue of the laws of the state; nor shall said municipality be liable in damages for injuries to persons or property caused by or from a defect or obstruction in or on the plat of ground between the
40 gutter or curb of any street and the paved or plank sidewalks
41 extending there along or between any such sidewalks and the
42 property lying next adjacent thereto, unless the municipality
43 had actual notice of such defect or obstruction prior to the
44 time of the injury complained of: And provided further, That
45 where said town shall be required to respond in damages by
46 reason of injury to persons or property occasioned by the fail-
47 ure of any abutting owner to so provide or keep in repair any
48 sidewalk along such property, after being notified by the coun-
49 cil to do so, that such property owner shall be liable to the
50 town for any sum of money, costs and counsel fees which it
51 has been required to pay by reason thereof.
52 (4) To regulate the width of sidewalks and the streets and
53 the width and the care of the public grounds or grass plots
54 abutting thereon, and to order the sidewalks, footways, cross-
55 ways, drains and gutters to be curbed, paved or repaved and
56 kept in good order, free and clean, and to provide for the re-
57 removal of snow and ice therefrom, and for sprinkling the
58 same by the owners or occupants of the real property next ad-
59 jacent thereto, and to provide and enforce punishments for
60 obstructing, injuring or preventing the free and proper use
61 thereof, and to provide and enforce fines and penalties for
62 throwing therein or thereon any paper, glass, rubbish, decay-
63 ing substances or other things that would make said streets,
64 sidewalks, grass plots, crosswalks, drains or gutters unsightly
65 and unhealthy.
66 (5) To regulate the use of the walks, highways, bridges,
67 streets, alleys and gutters and the rate of speed or travel
68 thereon, and to prevent and punish for fast riding or driving
69 thereon of any horse, bicycle, wheeled vehicle, wagon, steam
70 or electric or traction engine, motor car or automobile, and to
71 prevent injury to such streets, alleys, roads and highways from
72 overloaded or improperly loaded vehicles, and from dragging
73 logs or other matter therein, and to regulate the speed of en-
74 gines or trains or street cars upon or across any of such streets,
75 alleys, highways, bridges, public places or any other place
76 where the council deems the public safety requires such regu-
77 lation; and otherwise regulate the use and manner of operation
78 of said vehicles.
79 (6) To regulate the planting, trimming and preservation of
80 shade trees, by persons and by corporations, in streets, alleys, roads, public grounds and places, and shall require the owner of adjacent property to trim or remove any shade tree or ornamental shrubbery or other tree that in the opinion of the council is an obstruction to the streets, alleys, or sidewalks, or a menace to public safety.

(7) The council shall have the right to require the owner or occupier of any property in the city to keep his premises clean and free from all matters that would endanger the health of the town, and may require the removal of any waste paper or waste material of any kind or character upon the private property of any citizen or property owner that would cause the spread of fire or when the council deems the same should be removed; and may require the removal or straightening of any fence, wire, palings, or other material enclosing any lot, when, in the opinion of the council, the same is dangerous or obstructs or encroaches upon the streets, alleys or sidewalks:

Provided, That in all such cases, if the owner or occupier of such property fails to do any of the things enumerated in this section required by the council, the council may take such action as may be necessary to perform such acts and the expense thereof shall be charged against the property owner and collected as taxes are collected.

(8) To regulate the making of division fences of an unsightly nature and party walls by the owners of adjoining and adjacent premises and lots, in so far as the same shall not be in conflict with general law.

(9) To regulate or require drainage by the owner or occupier of any lot or other real estate, by proper drains, ditches, and sewers, and to require the owner or occupier of any lot to fill the same, at his own expense, so that water will not collect in a body thereon, or so that the same will not become a menace to public health.

(10) To regulate or prohibit street carnivals, or street fairs or street parades, advertising exhibition, or other exhibitions thereon, or the exhibition of goods, wares, merchandise, material or artificial curiosities upon any street, sidewalk, alley or public place of said town.

(11) To regulate or prohibit the ringing of bells, blowing of steam whistles, or use of hand-organs, or other instruments of an annoying character, or other music of itinerant performers
121 in the streets, or public speaking and preaching in the streets,
122 roads, parks or public places of the municipality.
123 (12) To license, regulate or prohibit auctioneering.
124 (13) To license, regulate or prohibit the sale of goods, wares, merchandise, drugs, or medicine on the streets or other public places.
127 (14) To prevent the illegal sale, offering or exposing for sale, or advertising of spirituous liquors, wine, porter, ale, beer, or drinks of a like nature.
130 (15) To prevent the illegal sale of tobacco, cigars, snuff, or cigarettes, within said municipality.
132 (16) To regulate, control or prohibit runners for hotels, boarding houses and eating houses, and to regulate draymen or persons hauling or transporting for hire at and about the railroad depots and stations and other public places and in an assemblage of people within said city.
137 (17) To regulate, assess and collect a license fee for the said town for the doing of anything or the carrying on of any business for which a state license is required: Provided, however, that when anything for which a state license is required is to be done within the limits of said town, the council may decide whether such license may be granted or not, and if granted, it shall be assessed and collected the same as if granted by the county court of Wetzel county.
145 (18) To establish, when the council may deem proper, locate and keep in repair, market places, market houses, and regulate markets, prescribe the time for holding the same, to authorize the seizure thereat and destruction of any and all such foods and drink products as shall be found unwholesome, dangerous or offensive, and without recourse against the municipality for its cost or value.
152 (19) To regulate the sale of food and drink products, milk, fresh meats, fish and vegetables, and to provide penalties for the sale of any such that are unwholesome or unfit for use.
155 (20) To regulate and provide for the weighing of hay, coal and other articles for sale in the markets, or to residents of said town.
158 (21) To require merchants and other persons selling goods, foods or materials that must be weighed, to keep correct scales, to seize and destroy such as are found to be incorrect
and not corrected after due and proper notice to the owner or
person using the same, without damage or expense to the
municipality for the value thereof.
(22) To prevent injury or annoyance to the public or indi-
viduals from anything dangerous, offensive or unwholesome.
(23) To regulate the keeping, handling and transportation
of explosives and dangerous combustibles within the munici-
pality; and to regulate or prohibit the use of fireworks or gun-
powder, toy pistols, air rifles, or guns, within the said
municipality.
(24) To regulate or prohibit the erection or operation or
maintenance in what the council deems an improper locality
within said city, any blacksmith shop, livery stable, bar, stable,
cattle pen, poultry house, pig pen, privy, bill board, sign
board, gas or other engine, coal plant, or coal bin, or any other
thing that may in the opinion of the council be a menace to
persons or property or public safety, or that would injure
private property or annoy citizens of said municipality.
(25) To regulate or prohibit the placing of signs and the
use of walls or walks for signs; to regulate or prevent the dis-
tribution or posting of any sign or bill, either on paper or
painted, that in the opinion of the council or mayor, is inde-
cent, immoral or unsightly.
(26) To define by ordinance what shall constitute a nui-
sance, and to abate all nuisances whether defined or not. and
to require the removal or abatement, at the expense of the
owner thereof, of any obnoxious business, building, sign board
signs or other thing, which in the opinion of the council is a
nuisance.
(27) To regulate or prohibit the distribution of hand bills,
circulars and other advertisements of like kind, on the streets,
roads, alleys and public places, or the placing of same in pri-
vate yards, buildings or other structures, without having first
procured the consent of the owner or occupier of such
property.
(28) To regulate or prohibit within the municipality or
within one mile of its corporate limits, the erection or main-
tenance of any slaughter house, soap factory, glue factory,
lamp black factory, tannery, or other house, shop or factory
of like kind or character.
(29) To establish within said municipality public drinking fountains and water troughs; and to regulate the time and place and manner of bathing in pools, streams and public waters within the police jurisdiction of said municipal corporation.

(30) To prohibit the keeping and/or prevent the running at large in the town of dogs, hogs, cattle, sheep, horses and other animals, and/or fowls and domesticated birds of all kinds; and to establish and maintain places for their detention, make regulations respecting the same, to appoint a pound master and define his duties and provide for the sale or disposition of such animals and fowls impounded.

(31) To arrest, convict and punish any person for committing adultery or fornication, or for any lewd or lascivious cohabitation or conduct within said town, and for keeping an assignation house, house of ill-fame, or for leasing or letting to any other person any house or other building to be kept or used as such, or for knowingly permitting any house, under the control of or owned by any person to be used as an assignation house or house of ill-fame; and to convict and punish for frequenting, entering or loitering in any assignation house or house of ill-fame within said municipality.

(32) To arrest, convict and punish any person for importing, printing, publishing, selling, giving away, exhibiting, or distributing any book, picture or device, or other thing containing any obscene picture or language, or making any indecent representation.

(33) To define, restrain, convict and punish loiterers, vagrants, mendicants, beggars, tramps, common prostitutes, and their associates, and drunken or disorderly persons within the municipality, and to provide for their arrest and manner of punishment.

(34) To prevent and prohibit the use of indecent or profane language within the corporate limits, and to provide and fix punishment therefor.

(35) To prevent and prohibit any tumult, riot, quarrel, angry contention, abusive language, or swearing, and to prevent the use of insulting epithets, assaults, assault and battery, and fix the fines and punishment therefor.

(36) To prevent and prohibit trespass upon private prop-
241. Such property or the doing of anything which would annoy the owner,
242. or occupier of any premises, and to fix and provide fines and
243. punishments therefor.
244. (37) To provide against danger or damages by fire, and to
245. that end, to require, when the council may think necessary, an
246. inspection of all the properties within the said town, and to
247. require the owner or occupier of any property in which a de-
248. fective or dangerous chimney, wires, flue or other dangerous
249. condition is found, to immediately repair the same, and to pre-
250. vent the use thereof until repaired as required.
251. (38) To prohibit and prevent intoxication or drunkenness,
252. and the drinking of intoxicants in any public place, store,
253. street or alley, and to fix fines and penalties therefor.
254. (39) To prohibit and punish for larceny where the amount
255. stolen is less than twenty dollars.
256. (40) To prohibit, prevent and punish for anything that is
257. against the good morals and common decency, or that would
258. tend to corruption, vice or crime.
259. (4) To protect the public schools in said town, and to pro-
260. hibit and prevent any disturbance thereof in and about the
261. buildings or upon the grounds, and to prevent injury, destruct-
262. tion, or defacement of any school property or building.
263. (42) To establish a board of health and vest it with the
264. necessary power to maintain its object, and to fix fines and
265. penalties for any violation of its lawful orders.
266. (43) To establish quarantine, and to erect and maintain
267. pest houses and places of detention, and to make and enforce
268. necessary orders for controlling or preventing the spread of
269. infectious and contagious diseases, and for abating pestilence.
270. (44) To prohibit the bringing into the corporate limits by
271. railroads, carriers, persons or by or in any other manner, per-
272. sons who are paupers or persons who are afflicted with con-
273. tagious diseases; to punish by fine or imprisonment, or both,
274. any person who shall bring into the corporate limits any such
275. pauper or person afflicted with contagious disease, knowing or
276. having reason to believe, at the time, that such person is a
276a. pauper or afflicted with such contagious disease, and to col-
276b. lect and recover from any such railroad company, carrier, or
276c. other person, the expense of keeping and maintaining such
276d. pauper or diseased person, until such person can be lawfully
276e removed from the corporate limits.

(45) To arrest, convict and punish any person for cruelty, unnecessarily or needlessly beating, torturing, mutilating, killing, or overloading, or overdriving, or wilfully depriving of necessary sustenance, any horse or other domestic animal.

(46) To regulate the hitching of horses within the corporate limits, and the driving of cows and cattle through, upon and along the streets and alleys of said town.

(47) To prohibit, prevent and punish for the pollution of any stream of water running into or through the said municipality; and to prohibit and prevent the throwing into any such stream of any trash, dirt, filth, offal, decayed substances or matters, or anything that would make said water unhealthy or unfit for domestic use.

(48) To prohibit, prevent and punish for any desecration of the Sabbath day; prohibit the playing of any game, exhibiting any show, theatre, picture show, and the keeping open of business places, except hotels, eating houses, boarding houses, restaurants, and drug stores and other places of necessity or charity.

(49) To restrain, prevent and punish fraudulent practices of any kind or character within the municipality.

(50) To arrest, convict and punish any person for gambling or keeping any gaming table, commonly called "faro bank," or table and chips used in playing such game; crap, crap table, chips or dice used in playing such game; or roulette or the wheel, chips or other equipment used in playing such game; or keno table or table of like kind or device used in playing the same; or table of like kind under any denomination, whether the game or games be played with cards, dice, or otherwise on which anything is bet or wagered, whether the same be played in any public or private room or residence; and may convict and punish any person who shall be a partner or concerned in interest in the keeping of any such gambling devices heretofore enumerated, or in any game played, such as hereby prohibited, or in keeping or maintaining any gambling house or place of gambling for money, or anything of value; and shall have the right to destroy such gambling paraphernalia as may be found on any such premises; and any officer armed with a warrant for the arrest of any person engaged in such unlawful game or
316 for the search of any room in which gambling is suspected, or
317 for the seizure of any gambling paraphernalia, shall have the
318 right to break into any building, other than a private dwelling
319 house, without notice or demand, and into a private dwelling
320 or room, after demand and refusal to open same: Provided,
321 however, That no search or seizure shall be made except in the
322 manner provided by general law.
323 (51) To restrain all felons and persons guilty of offenses
324 against the state or the United States, and deliver them over
325 to the authorities or court having jurisdiction of the offense
326 whereof such persons are accused.
327 (52) To apprehend and punish any person who, without a
328 state license therefor, is guilty of carrying about his person,
329 within the municipality, any revolver or other pistol, dirk,
330 bowie knife, sling shot, razor, billy, metallic or other false
331 knuckle, or any other dangerous or deadly weapons of like
332 kind and character, as provided by the code of West
333 Virginia, or any amendment thereof, and the punishment
334 therefor, whether for the first or other offenses, shall be that
335 prescribed by said code for any person guilty under the mis-
336 demeanor clause provided therein: Provided, That the mayor,
337 acting as ex officio justice of the peace, may, after enforc-
338 ing this ordinance, hold the offender to answer to an indict-
339 ment in the circuit court of Wetzel county for such offense,
340 under the state law.
341 (53) To regulate the erection, construction, alteration and
342 repair of dwelling houses, buildings and other structures,
343 within the municipality, to issue permits therefor and to com-
344 pel the numbering of such houses and buildings by the owners
345 and occupiers thereof; and to prescribe by ordinance the dis-
346 tance which dwelling houses, and other structures in resident
347 districts shall be set back from the sidewalk.
348 (54) To regulate the hanging of doors, the construction of
349 stairways and elevators, and require fire escapes in theatres,
350 churches, school buildings, factories and other places deemed
351 necessary by the council.
352 (55) To establish fire limits and to regulate the construction
353 of buildings, and designate materials to be used in the con-
354 struction of buildings within such limits.
355 (56) To regulate the building of fire walls, fire places, chim-
(57) To require any building that, in the opinion of the council is dangerous, to be repaired, altered or removed by the owners thereof or put in a safe condition, such as the council may approve, at the expense of such owner or occupier, and to provide punishments for failure to comply with any order of the council concerning same.

(58) To regulate the height, construction and inspection of all new buildings hereafter erected, the alteration and repair of any buildings now or hereafter erected, to require permits to be obtained of the council therefor, and the submission of plans and specifications to the council for its approval; to regulate the limits within which it shall be lawful to erect any steps, porticos, bay windows, awnings, signs, columns, piers, or other projection or structural ornaments of any kind for the houses or buildings on any street or alley.

(59) To provide for the prevention and extinguishing of fires, and for this purpose, the council may equip and govern fire companies, prescribe the powers and duties of such companies and departments, and of the several officers thereof, or may authorize volunteer fire companies, under such rules and regulations as the council may prescribe and impose on those who fail to obey any lawful command of the officer in charge of any such company, or volunteer company, any penalty which the council is authorized to impose for violation of an ordinance, and to give authority to any such fire officer to direct the pulling down or destruction of any building, fence, wall or other thing, if such officer deem it necessary to prevent the spreading of any fire which is being extinguished under the direction of such officer, and without any liability on the municipality for damages therefor.

(60) To protect the persons and property within the corporate limits and preserve the peace and good order therein, and for this purpose, to appoint, when necessary, a police force and such other officers as may be deemed necessary; and to provide a lockup, jail or other suitable place to confine persons sentenced to imprisonment for violation of the ordinances of said town: Provided, however, That the jail of Wetzel
396 county may be used for that purpose, if authorized by the
397 county court of said county.
398  (61) To require any person violating any of the ordinances
399 of said city, or any order from which a fine, imprisonment or
400 both is imposed, to work upon the streets of said town in case
401 of nonpayment of said fine, until the same is paid by such
402 labor, or in case imprisonment is imposed, to work upon the
403 streets of said town during the term of such imprisonment in
404 addition to the payment of such fine, under such regulations
405 as the council may prescribe.
406  (62) To prescribe the powers, define the duties of the officers
407 appointed under the corporate authority, fix their terms of
408 service and compensation, if not otherwise prescribed by this
409 chapter, and to require and take from them bonds, when deemed
410 necessary payable to the state of West Virginia, or the town of
411 New Martinsville with the sureties, and in such penalties as
412 may be prescribed, conditioned for the faithful discharge of
413 their respective duties: *Provided*, That the compensation of
414 any officer, elected or appointed, shall not be increased nor
415 diminished during the time for which he is elected or ap-
416 pointed, unless due notice of such intention is first served on
417 the officer interested.
418  (63) To make regulations with respect to, and have super-
419 vision and control over the erection, removal and relocation
420 of all telephone, telegraph, electric light or other poles within
421 said town, and the extension of wires, lines or poles by any
422 individuals or corporations.
423  (64) To acquire, erect, operate and manage or authorize
424 or prohibit the erection of gas works, electric light works or
425 water works within the town limits; to prevent injury to such
426 works or the pollution of any gas or water used or intended to
427 be used by the public or by individuals; and to do all things
428 necessary to adequately supply said city and the inhabitants
429 thereof with pure, healthful and wholesome water; and to re-
430 quire any company furnishing gas or electricity for sale or dis-
431 tribution in said city, to furnish an adequate supply thereof:
432 to require gas fixtures, electric light wires, telephone wires
433 and all apparatus used in connection with any of these, to
434 be kept in repair and suitable for use, and free from danger,
435 so far as practicable; to use, generate, distribute, sell and
control electricity, water and gas for heat, light and power and to furnish light for the streets, highways, buildings, stores and other places in and about said town.

(65) To acquire, erect, provide, manage and operate an incinerator or incinerators, machinery and equipment for disposal of garbage and other waste matter; to provide, furnish, maintain and operate and/or contract for a system of garbage removal for the said town, including the power to fully regulate the service charges and service in connection therewith, and to promulgate such rules and regulations concerning the use thereof as may be necessary for the safe and efficient handling of such business.

(66) To require any gas company or person furnishing gas for said town or the inhabitants thereof, to put in standard meters for the measurement thereof, and may appoint a competent person to inspect the meters and remove the same if not standard and in good order; to prevent injury to any gas works, electric light works, water system, sewerage system or garbage system or any gas meter within said municipality.

(67) The council shall have the right to own, maintain, operate and control any electric light plant within said town, or to provide for, or purchase electric power and to use, generate, distribute, sell and control electricity and gas for heat, light and power, and to furnish light for the streets, houses, buildings, stores and other places in and about said town, and for such electricity other than that furnished for the municipality in lighting its streets, or public places, it may charge reasonable rates, but such rates in all cases shall be uniform; and such electric light plant shall be under the supervision and control of the council, and its wires, poles, distributing system and machinery shall be kept in such repair so that as little danger as possible shall arise therefrom, and so that same will furnish an adequate supply of electricity to all persons in said town desiring to use same.

(68) The council shall have the right to provide a sewerage system for said town, and may require the owner of any property abutting upon any street or alley in which a sewer has been laid or placed, to connect a sewer leading from his or her property or lot into any public sewer which is located in such street or alley adjoining the same, and if the owner or occu-
pier of said lot or property fails or refused to do so, after hav-
ing been given reasonable notice, the council may enter upon
such lot and construct such sewers, and may levy the actual
cost thereof against the lot upon which the same is built and
collect such costs from the owner of such lot in the same
manner as city or state taxes are collected; in addition thereto,
the council may punish by fine, or fine and imprisonment, any
person who permits any drainage from his residence or lot to
enter upon any property after a sewer has been placed in the
street or alley adjacent to his property, to which he should
connect, after notice has been given to him by the council to
make such connection. The council may provide by ordinance
for the inspection of all sewer connections by some person ap-
pointed by council and provide for the assessment of the cost
of such inspection upon the property owner, which cost may be
collected the same as taxes or as otherwise provided by coun-
cil.

(69) The council shall have the right to impose fines and
penalties for any interference with or destruction of the sewer
system or any part thereof in said town, or for the destruction
of or damages to any street, alley or sidewalk in said town, or
any improper use thereof; it shall have the right to regulate
or prevent the use of the sidewalk for bicycles, push carts,
sleds, tricycles, roller skates and other things of like character
and to fix fines and penalties for violation of the ordinances
respecting same.

(70) To grant by ordinance or resolution permits for the
temporary use of such parts of its streets, roads, alleys and
public places as the council may deem proper and right to be
used in construction, alteration or repair of buildings located
thereon, or for such other purposes as the council may deem
proper and right, and under such regulations and for such
time as the council may prescribe.

(71) The council may buy, lease and operate either with-
in or without the municipality, stone quarries, crushers and
land for said purposes or for the purpose of furnishing a sup-
ply of stone or other material suitable for macadamizing or
paving the streets, sidewalks and alleys, and improving public
property.

(72) To operate by ordinance such committees or boards,
and delegate such authority thereto as may be deemed necessary or advisable by the council; and to employ such legal counsel on behalf of the town, from time to time, as the council may deem necessary to protect the interests of the town.

(73) The council may, within any prescribed area, prohibit the erection on any street or in any square, of any building, or of any addition to any building more than ten feet high, unless the outer walls thereof be made of brick and mortar or other fire-proof material, and may require the removal of any building or addition which shall be hereafter erected contrary to this prohibition, at the expense of the owner or owners thereof.

(74) The council shall keep all roads, streets and alleys within its limits passable and in good repair.

(75) In the enforcement of the ordinances, orders, rules, regulations and by-laws of the said town, no fine shall be imposed exceeding five hundred dollars, and no person shall be imprisoned or compelled to labor on the streets of said town, as hereinbefore provided, exceeding six months; provided, violations of the road laws or automobile laws, may be punished by fines and penalties prescribed by general law, unless different fines and penalties are expressly prescribed by the ordinances of said town.

(76) It shall be the express duty of the council to present charges against any of its members, or any officer of the town, who fails to perform, or who does not promptly and diligently perform any duty prescribed by this act, or by any ordinance or resolution of the council, and upon hearing thereof before the council, after notice to such officer, he shall be removed from office by the council, if the charges be found correct.

(77) To provide for the payment of all appointive officers and employees.

(78) To exercise all of the legislative functions of the town government, and shall have the right to demand of any town official, or employee, information, explanation, facts, details, correspondence, or other papers affecting the town's interests; and it shall be deemed misfeasance and neglect of duty for such official or employee to fail or refuse to comply with such demands.

The council shall have the power, under this section, to
require the acting head official of any municipal gas, water, electric, garbage and/or sewerage department to prepare or cause to be prepared a chart or map of any or all municipal water lines, gas lines, electric lines, sewerage lines and/or garbage routes; and if such be not furnished within a reasonable and fixed time after notice thereof, to the council, the defaulting official or officials may be removed or fined in the discretion of the council.

(79) The council shall have the power and authority to levy, assess and collect taxes upon the real and personal property within said town, including the taxation of dogs kept in said town: Provided, That such levy and assessment of taxes shall be uniform with respect to persons and property within the jurisdiction of said town: And provided further, That such levy, assessment and collection of taxes shall be made in accordance with the acts of the Legislature of West Virginia now existing or hereafter enacted, and in accordance with the provisions of the constitution of the state of West Virginia and amendments thereto.

To provide a revenue for the town for municipal purposes and to appropriate such revenue to its expenses.

But said town shall not hereafter be allowed to become indebted in any manner for any purpose to an amount including the existing indebtedness, in the aggregate, exceeding five per cent of the value of the taxable property therein, to be ascertained by the last assessment for state and county purposes previous to the incurring of such indebtedness, without at the same time providing for the collection of a direct annual tax sufficient to pay annually the interest on such debt and the principal thereon within and not exceeding thirty-four years: Provided, That no debt shall be contracted under this charter unless all questions connected with the same shall have been first submitted to a vote of the people and have received three-fifths of all the votes cast for and against the same.

The council shall have the power and authority to levy and assess a poll tax of not more than one dollar upon each male resident of said municipal corporation over twenty-one years of age.

(80) The council shall have the power to grant franchises, but shall not grant any such franchise to any person, or
corporation, within said town limits which shall be either exclusive or perpetual, but all such grants shall have annexed to them the power to rescind, revoke, alter, modify or regulate the exercises of any such franchise; and said council shall have power on ten days notice, and for cause, to revoke, rescind, alter or modify, the exercise of any such franchise; and no franchise involving the use of any of the public property, streets, alleys, sidewalks, crosswalks or involving the use or occupancy of the same, shall be granted except by an ordinance to that effect; and no such ordinance shall be passed unless the question of the granting of such franchise shall have been first submitted to a vote of the people, and shall have and receive a majority of all the votes cast upon the question: Provided, That such submission shall have been petitioned for by at least one-tenth of the qualified voters of said town, to be ascertained according to the number of votes cast at the last preceding election.

The council shall have the right, power and authority to require the owner of any real property abutting upon any sidewalk or footway in the town to curb, recurb, pave, repave, or keep the same clean; and if the occupant and/or owner shall fail or refuse to keep the same clean, or if the owner shall fail or refuse to curb, recurb, pave or repave any such sidewalk or footway in the manner or within the time required by the council, it shall be the right and duty of the council to cause the same to be done at the expense of the municipality and to assess the amount of such expense upon such owner or occupant, as the case may be; and such expenses may be collected by the town in the manner herein provided by the collection of municipal taxes.

The council shall have the power and authority to regulate the use of and altitude at which airplanes, airships or balloons may be flown or navigated over the municipality as well as the right and power to punish for intoxicated avigation over the municipality: Provided, however, That any ordinances enacted under this section shall not be inconsistent with the general laws of the state in relation to the same.

The council shall have the power and authority to restrain, prevent and punish the stealing of any gas, water or electric energy, or the tampering with any mains, pipes,
665 meters, or any other device or appliance used in connection
666 with the aforesaid, conducting, supplying, or being used in
667 somewise in connection therewith, of gas, water or electric
668 energy: Provided, That any enactment of this section shall
669 be consistent with the general laws of the state.
670 (84) The council shall have authority and power to pass
671 such ordinances as may be deemed necessary or advisable
672 to carry out the provisions of this charter and to protect all
673 property, public or private, within said town; to preserve
674 and maintain peace, quiet and good order therein; and to
675 preserve and promote the health, safety and wellbeing of
676 the inhabitants of said town.
677 (85) Except as herein otherwise provided, the powers of
678 the council of said town shall also be co-extensive with the
679 powers of town and city councils generally as provided by the
680 general laws and statutes of the state of West Virginia.
681 (86) All acts or parts of acts inconsistent with this act are
682 hereby repealed, but this act shall not be construed to repeal,
683 change or modify any previous act, not inconsistent with this
684 act, authorizing the town of New Martinsville to contract
685 debts or to borrow money, or to take away any of the powers
686 conveyed by general law upon said town, or upon the mayor
687 or council or any officers, except so far as the same may be
688 inconsistent with the powers hereby conferred.

CHAPTER 139

(Senate Bill No. 33—By Mr. Greene)

AN ACT to amend and reenact sections twelve, thirteen, nineteen
and fifty-two, chapter one hundred thirty-six, acts of the
Legislature of West Virginia, regular session, one thousand
nine hundred thirty-three, relating to the charter of the city
of Williamson.

[Passed February 15, 1935; in effect ninety days from passage. Became a law
without the approval of the Governor.]

Sec. 12. City executive committees of political parties chosen a ward
conventions; number, qualifications, terms and organization; vacancies.

Sec. 13. Ward nominating conventions
Sec. for councilmen; publication of notice; organizing; city convention to nominate mayor; delegates; publication of notice; rules and regulations governing; list of nominees to city clerk; filling vacancies; election dates; election officials; powers of council as to elections; nominations by petition.

10. Meetings of council; voting; mayor a members; duties of city clerk as clerk to council; place and time of meetings; order of business.

52. Maximum salaries; monthly payments; fees, fines, etc., paid into city treasury.

Be it enacted by the Legislature of West Virginia:

That sections twelve, thirteen, nineteen and fifty-two, chapter one hundred thirty-six, acts of the Legislature of West Virginia, regular session, one thousand nine hundred thirty-three, be amended and reenacted to read as follows:

Section 12. City executive committees for each of the two political parties which cast the greatest number of votes in the last regular election held in said city shall be chosen at the ward conventions hereinafter mentioned. Said executive committees shall be composed of one man and one woman from each of the wards in said city, who shall be residents and qualified voters of the wards from which they are elected, respectively, and shall hold office for a period of three years. They shall meet immediately after the adjournment of the city conventions of each of said political parties, nominating candidates for mayor of said city, as hereinafter provided, and organize by electing a chairman, a secretary, and a treasurer, from the city at large, and the chairman so elected shall be entitled to cast one vote and that only in the event of a tie vote by the members of said committee upon any matter before them. The present members of the executive committees of said parties shall continue in office until their successors are elected as hereinafter provided.

19 If a vacancy shall occur in the office of committeeman or committeewoman, the remaining members of the committee may elect a successor, who shall fill the unexpired term until the next regular ward convention.

Sec. 13. Candidates of each political party for councilmen shall be nominated by mass conventions of the voters of the several wards of said city. The candidates for mayor shall be nominated by the delegated representatives of the political parties, assembled in a city convention for the entire city. On or before the second Tuesday of April, one thousand nine hundred thirty-seven, and on or before the
8 second Tuesday of April of every third year thereafter, each of said political parties shall hold a mass convention in each of the several wards of said city, for the purpose of nominating a candidate for councilman, selecting committee members from said wards and selecting delegates to the city convention to nominate a candidate for mayor. Said conventions shall be called by the executive committee of the party holding the same, and the date, hour and place of holding such convention shall be published in two separate newspapers, published in said city, once each week for two consecutive weeks prior to the time of holding such conventions. Said ward conventions for the several wards shall be called as herein provided and held on the same date and at the same hour. The male member of the executive committee for said ward of the party holding said convention shall attend and preside thereat until a permanent organization shall be perfected: Provided, however, That should the male member of said committee be absent or from any cause be unable to attend said convention, then it shall be the duty of the female member thereof to preside thereat until a permanent organization shall be perfected.
The wards shall be entitled to one delegate for each fifty votes, or fractional part thereof, cast at the last preceding general election in said city for the office of mayor, and the delegates to the city convention shall be apportioned among the several wards of said city for each of said political parties, accordingly.

At least thirty-five days before every regular election in said city, the party executive committee shall designate the place, date and hour of the holding of the city conventions, for the purpose of nominating candidates for mayor, which shall be not less than twenty days before said election. Notice of said convention shall be published in two newspapers published in said city once each week, for two consecutive weeks, prior to the date of the holding of said conventions. The chairman of the executive committee of the party holding said convention shall attend and preside thereat until a permanent organization shall be perfected.
The city executive committee of each party so holding such convention shall have authority to make such rules and regulations governing the holding of such convention as it
49 may deem proper, including all parliamentary rules and
50 regulations governing the deliberation of such convention.

51 And within five days after the holding of such convention,
52 the city executive committee of each party shall cause to be
53 furnished to the city clerk a complete list of the persons
54 nominated by that party for the offices of mayor and council-
55 men, such list so furnished to be duly sworn to and attested
56 by the chairman and the secretary of such city executive com-
57 mittee.

58 And in the event that a vacancy occurs in the list of such
59 nominees, after such convention has been held, then the said
60 city executive committee shall have authority to designate
61 some other qualified citizen of the city as such nominee, the
62 name of such nominee or nominees to be certified in like
63 manner to the said city clerk.

64 The first election in said city, to be held under this
65 amendment of the charter of said city, shall be held on the
66 third Tuesday in May, one thousand nine hundred thirty-
67 seven, and on the third Tuesday in May of every third year
68 thereafter.

69 On the first Tuesday in May, one thousand nine hundred
70 thirty-seven, and on the first Tuesday in May of every third
71 year thereafter, the council shall hold a meeting for the
72 purpose of making arrangements and preparations for the
73 holding of such election. And at such meeting the council
74 of the city shall appoint three qualified voters of the city as
75 commissioners of election for each voting precinct in said
76 city. Said commissioners of election shall be persons of good
77 standing and character, and not addicted to drunkenness, and
78 not more than two of said commissioners of election shall
79 belong to the same political party. If at any time during
80 said meeting, or prior thereto, the city executive committee
81 of the two political parties which cast the greatest number
82 of votes in the last preceding regular city election, shall
83 present to said city council a writing signed by the chairman
84 of such executive committee, giving a list of persons from
85 that political party as such commissioners of election, then,
86 in appointing such commissioners of election the city council
87 shall appoint said commissioners of election from the list or
88 lists so presented to the city council. Every such writing
so presented shall be filed, preserved and kept by the clerk of the council in his office.

The city council shall have authority to provide all necessary and suitable means, equipment and appliances for the holding of such elections, and may adopt all necessary rules, ordinances, and regulations governing the same as may appear proper.

In addition to the methods prescribed for the nomination of candidates, candidates for the offices of mayor and councilmen may be nominated as follows, that is to say: If, not less than fifteen days prior to the date of the election, a petition signed by not less than three hundred of the qualified voters of the city shall be presented and filed with the clerk of the city, asking that the name or names of candidates be placed upon the ballot, then it shall be the duty of the city council to cause such name or names to be so placed upon the official ballot to be used in such election.

Sec. 19. The council of the city shall hold regular meetings on the second and fourth Fridays of each month, and shall hold such special meetings as may from time to time be called as hereinafter provided for.

The mayor shall have authority to call any special meeting of the council; and likewise a special meeting of the council may be called upon a joint notice of not less than three members of the council; but before holding such special meeting, the mayor, or if called as aforesaid by not less than three members of the council, then such three members, shall cause the city clerk to post notice thereof at the front door of the municipal building of the city, at least twenty-four hours prior to such special meeting, and to give personal notice to each member of the council at least twelve hours in advance thereof where possible.

All regular and special meetings of the council shall be presided over by the mayor, and in his absence by a mayor pro tem to be chosen from their number by the councilmen present; three members of the council present shall constitute a quorum for the transaction of business.

Each member of the council shall be entitled to one vote. But no member of the council, or the mayor, shall vote upon or take part in the consideration of any question, measure, or
24 proposition in which he is or may be interested otherwise than
25 as a resident of the city.
26 The mayor shall be a member of the city council, and shall
27 be entitled to one vote only as a member thereof. The clerk
28 of the city, chosen in the manner hereinafter provided, shall
29 attend upon all meetings of the council, but shall be entitled
30 to no vote, nor shall he take part in any consideration or dis-
31 cussion of the council upon any matter, except when called
32 upon or invited by the council to take part therein. He shall
33 furnish any and all data or information that may be desired
34 by the members of the council relating to the business of the
35 city. The clerk shall have charge of all record books and
36 minute books, of the council and city, and shall also have charge
37 of the council journal. He shall faithfully and accurately
38 record the minutes and proceedings of all meetings of the
39 council, which shall be recorded in the council journal; all
40 such records of the council journal shall be duly authenticated
41 and attested by the mayor and the city clerk, as hereinafter
42 provided. And the said clerk shall in all matters act as the
43 secretary to the council.
44 All meetings of the council shall be held in the council room
45 or council chamber provided therefor in the municipal building
46 of said city, and shall be held at such hour of the day as may
47 be designated by the council. At its first meeting, after the
48 qualification of the first mayor and councilmen holding office
49 hereunder and thence at the first meeting of the mayor and
50 councilmen taking office after each election hereunder, the
51 council of the city shall fix upon and adopt a certain hour or
52 time of the day at which all meetings of the council shall be
53 held. But such hours so adopted shall be subject to change
54 by vote of the members of the council. The following schedule
55 or order of business shall be followed and observed by the coun-
56 cil at their said meetings:
57 First: The mayor, or mayor pro tem, shall direct the clerk
58 of the council to call the roll of the members of the council,
59 who shall answer to their respective names as called; in the
60 council journal the clerk shall record the names of the members
61 present and the names of the members absent.
62 Second: The mayor, or mayor pro tem, shall call upon the
63 clerk to read aloud from the council journal the minutes of
64 the previous meeting of the council, and in no event shall the
full and accurate reading thereof be dispensed with; and after
the reading thereof, the minutes of the previous meeting may
by vote or action of the council be corrected, if proper so to do,
and otherwise the same shall stand approved as read. Imme-
diately after which the said minutes shall be thereupon duly
attested by the mayor and clerk.

Third: The council shall thereupon take up for consideration,
discussion, and action, if necessary, all uncompleted or un-
finished business not previously disposed of or acted upon.

Fourth: The council shall thereupon take up for consider-
ation, discussion, and action, if necessary, such new matters or
new business as may come before the council.

Fifth: The council shall thereupon take up such miscella-
neous matters as may come before it, including any matters
that may be brought before it by any citizen or resident of the
city or other person; and any person desiring to bring any
matter to the attention of the council shall in all cases be given
a full opportunity to present such matter.

Sec. 52. The annual salaries of the officers of the city, to be
appointed or elected hereunder, shall be paid by the council
out of the city treasury, and the salaries of certain officers and
officials shall not exceed the following respective amounts:
Mayor of the city, twenty-four hundred dollars; city clerk,
eighteen hundred dollars; each councilman other than the
mayor, three hundred dollars; city attorney, one thousand dol-
ars; stenographers and bookkeepers, twelve hundred dollars;
city health officer, twelve hundred dollars; assistant health offi-
cer, six hundred dollars: Provided, however, That no member
of the council shall either directly or indirectly receive any
other compensation or emolument for any service rendered the
said city in any capacity save and except as above provided,
nor shall any member of said council be either directly or indi-
rectly interested in the furnishing of any supplies or in the
doing or performance of any contract procured or made for
or in behalf of the city.

The salaries as above set forth are to be paid out of the city
treasury proportionately at the end of each month, but are
never to be paid in advance. All fees, fines, commissions, and
emoluments, except salaries, shall be taxed and collected, and
when so collected shall be paid into the treasury of the city by
the officers, respectively, for the absolute use of the city.
CHAPTER 140

(Senate Bill No. 212—By Mr. Spillers)

AN ACT to amend and reenact sections five, six, twelve, thirteen and eighteen of "The Greater Wheeling Charter", chapter twenty-one, acts of the Legislature of West Virginia, one thousand nine hundred fifteen, approved by the majority of the voters of the city of Wheeling at an election held on the fourth Thursday of May, one thousand nine hundred fifteen, as last amended and reenacted by chapter six, acts of the Legislature of West Virginia (municipal charters), one thousand nine hundred twenty-nine, relating to the charter of the city of Wheeling.

[Passed March 5, 1935; in effect from passage. Became a law without the approval of the Governor.]

Be it enacted by the Legislature of West Virginia:

That sections five, six, twelve, thirteen and eighteen of "The Greater Wheeling Charter", chapter twenty-one, acts of the Legislature of West Virginia, one thousand nine hundred fifteen, approved by the majority of the voters of the city of Wheeling at an election held on the fourth Thursday of May, one thousand nine hundred fifteen, as last amended and reenacted by chapter six, acts of the Legislature of West Virginia (municipal charters), one thousand nine hundred twenty-nine, be amended and reenacted to read as follows:

Section 5. The first election for manager-mayor and councilmen under this amendment to the charter shall be held on the fourth Thursday in May, one thousand nine hundred
five, and every regular city election for manager-mayor and councilmen shall be held every four years thereafter on the fourth Thursday in May. All elections for manager-mayor and councilmen shall be conducted and the results ascertained and declared in accordance with the election laws of West Virginia in effect at the time of said election so far as the same may be applicable and not inconsistent with any of the provisions of this act, except that all other elections or votes on any question by the qualified voters of said city shall be held or taken at such places under the supervision of such persons and subject to such regulations as are consistent with the said election laws of West Virginia and ordained by council. The city council at its regular meeting held on the first Tuesday in April next before every election for the offices of manager-mayor and councilmen shall appoint for each voting precinct in the city two competent persons as registrars one each from the two political parties which at the last preceding state and county election cast the highest number of votes in the county of Ohio but the city executive committee of such political parties may present to the council a writing signed by the chairman of the committee of each party requesting the appointment of a qualified voter of his political party, as registrar, with his city address, for each precinct in the city and the council shall appoint the person named in such writing as such registrar. No person shall be eligible to appointment as a registrar, or in any way act as such, who has been convicted of a felony, or who holds any elective or appointive office or is an employee under the laws of the city of Wheeling, county of Ohio, state of West Virginia or of the United States or who is not a qualified voter in the precinct for which he is appointed, or who can not read and write the English language. If such registrar shall fail or refuse to serve, the vacancy shall be filled either by the city council, or the manager-mayor of the city in vacation, in the manner hereinbefore provided for the appointment of registrars, and the city clerk shall notify all such persons of their appointment as registrars. Said registrars shall, before entering upon the discharge of their duties, take an oath to support the constitution of the United States, the constitution of West Virginia, and to per-
form the duties of their office to the best of their ability and
that they are legal members of the party for which they are
respectively appointed. The said oath shall be filed in the
office of the city clerk. The city clerk shall cause to be pre-
pared suitable books and blanks for the registration of the
voters and such books shall be so arranged as required by
law for the registration of voters for general elections held
in the state of West Virginia and all the provisions, duties
and obligations as set forth in the election laws of West Vir-
ginia shall apply to the registration of voters hereunder, ex-
cept as herein otherwise set out, and the city clerk shall
perform the duties required of the county clerk.

As soon as possible after their appointment the registrars
shall proceed to register the names of all the qualified voters
in their respective precincts and shall complete said registra-
tion on or before the third Thursday in April preceding said
election, and, for the purpose of amending, correcting and
completing said registration, shall sit together at some con-
venient place within the voting precinct for two days, com-
mencing the fourth Thursday in April preceding said election,
from nine o'clock A. M. to one o'clock P. M. and from two
o'clock P. M. to nine o'clock P. M., and shall give notice of the
time and place of their sitting for such registration and cor-
rection by posting written or printed notices of the time and
place of such sitting for five days prior thereto at not less
than three of the most conspicuous places in said voting pre-
cinct, one of which shall be at the place of voting in said
precinct. At the time of said sitting the books of registration
shall be open for public inspection, and the said registrars,
in the manner hereinbefore provided shall register all qualified
voters who have not theretofore been so registered by them
and complete and finish their registration of the voters within
their said precinct and make out two alphabetical lists of the
registered voters within said precinct entitled to vote at the
ensuing election as registered by them and shall sign and
return the same to the city clerk on or before the first Thurs-
day in May preceding said election; each of the said registrars
shall receive the same compensation as may be provided by
the laws of West Virginia for the performance of similar
duties in state and county elections. The registration books
84 shall be sent to the polling place along with the ballots and
85 no person who is not duly registered thereon shall be allowed
86 to vote at said election.

Sec. 6. Said city shall have a city council of not less than
2 twelve members composed of one member from each ward in
3 said city. All councilmen shall take office on the first day of
4 July, following their election, and shall serve for a term of
5 four years and until their successors are elected and have
6 qualified, unless sooner removed from office as hereinafter
7 provided. They shall be residents and qualified voters of their
9 respective wards in said city. No one elected a member of
9 such city council or manager-mayor shall be eligible to hold
10 such office who shall be interested directly or indirectly in
11 the profits or emoluments of any contract, job, work or service
12 for the city, or in any sale to it of any property, real or
13 personal; or be, directly or indirectly, a holder or owner of
14 any bond or stock of any public utility corporation enjoying
15 a franchise privilege or easement in or from such city; or be
16 an officer, agent, trustee, servant or employee of such a cor-
17 poration. If any such person shall serve or attempt or con-
18 tinue to serve as a member of such city council or manager-
19 mayor, who is not eligible for such office, he shall be guilty of
20 a felony, and upon conviction thereof, be confined in the peni-
21 tentiary of this state not less than one nor more than five
22 years. The manager-mayor shall be nominated and elected
23 from the city at large and shall serve for a term of four years
24 and until his successor is elected and has qualified, unless
25 sooner removed from office as hereinafter provided. He shall
26 be the chairman or presiding officer of council and shall be
27 known officially as the manager-mayor of the city and recog-
28 nized as such for ceremonial purposes, and for the purpose
29 of being served with civil process against the city, and for the
30 performance of all duties imposed upon him by this charter.

Sec. 12. The council shall appoint the following named
2 officers of the city, to-wit: A clerk who shall be known as the
3 city clerk and who shall keep all records of the meetings of
4 the city council and perform such other duties as may be re-
5 quired by this charter or the council; an auditor who shall
6 be known as the city auditor and who shall audit the finances
Sec. 13. The duties and powers of the manager-mayor shall be:

(a) To see that the laws and ordinances are enforced;
(b) To appoint the following officers of the city: A city solicitor who shall perform such duties as are prescribed in this charter or as the city council by ordinance shall prescribe; a judge of police court, a chief of police, a chief of fire department, a city health officer, such commissioners of municipal loans and bond issues as may be required by state law or city ordinances and all other officers and employees of the city except those whom council is authorized to appoint by the preceding section. Said officers and employees so appointed shall continue in their offices and/or employment during the will and pleasure of the manager-mayor. All such appointments and/or employments shall be upon merit and fitness alone.
(c) To exercise supervision and control over all departments and divisions created herein or that hereafter may be created
by the council, except the council and other officers by it
appointed;
(d) To attend all meetings of council with the right to take
part in discussions, and he shall have the right to cast the
deciding vote in case of a tie.
(e) To recommend to the council for adoption such measure
as he may deem necessary or expedient;
(f) To keep the council fully advised as to the financial
condition and needs of the city;
(g) To supervise the conduct and performance of their
duties by other officers and employees of the city, except the
members of the city council, reporting to such council any
failure of performance of duty by any of the other appointees
of such council and enforcing the proper performance of their
duties by the officers and employees appointed by him, to the
end that the city’s business shall be efficiently and economically
transacted;
h) To perform such other duties as may be prescribed by
this amendment to the charter or be required of him by ordi-
nance or resolution of the council. The manager-mayor shall
devote his whole working time to the performance of the
duties of his office, and while occupying such office he is not
to be engaged directly or indirectly or be interested in any
other business than the performance of his duties concerning
the affairs of the city of Wheeling.
Wherever the term councilman at large, mayor, or city
manager is used in any of the sections of the charter of the
city of Wheeling in effect at the time of the passage of this
amendment, or is used in any of the ordinances of said city
in effect at the time of the passage of this amendment, it shall
mean the manager-mayor, who shall perform all duties and
exercise such rights as have heretofore been delegated to the
above named officials.

Sec. 18. Candidates to be voted for at all general municipal
elections at which a manager-mayor and councilmen are to be
elected under the provisions of this charter shall be nominated
at a primary election and no other names shall be printed on
the ballots used at the general elections except those selected
in the manner prescribed by this amendment to the charter.
The first primary election for manager-mayor and council-
8 men under this amendment to the charter, shall be held on the
9 second Thursday in May, one thousand nine hundred thirty-
10 five, and every primary election for manager-mayor and
11 councilmen shall be held every four years thereafter on the
12 second Thursday in May.
13 At the regular meeting of the city council held on the first
14 Tuesday in May preceding every primary and general election
15 for the offices of manager-mayor and councilmen there shall
16 be appointed three judges and two poll clerks for said pri-
17 mary and general election for each voting precinct in the city
18 in the manner herein provided. One judge and one poll clerk
19 shall be appointed from each of the two political parties which
20 at the last preceding state and county election cast the highest
21 number of votes in Ohio county, and if at any time during the
22 said meeting of council the city executive committee of either
23 political party from which said judges and poll clerks are to
24 be selected or appointed shall present to said council a writing
25 signed by them or by the chairman of said committee in their
26 behalf requesting the appointment of qualified voters of their
27 political party with their city address and who are otherwise
28 qualified to act as such officials under the laws of West
29 Virginia it shall be the duty of the said council to appoint
30 the persons named in such writing as such election officials.
31 The remaining judge for each election precinct in the city
32 may be a member of either of the above named political parties
33 and shall be appointed by council.
34 All acts and parts of acts in conflict herewith are hereby
35 repealed.

CHAPTER 141

(Senate Bill No. 204—By Mr. Spillers)

AN ACT to provide a new charter for the city of Wheeling; to
provide for a special election on the question of ratification
or rejection thereof, to amend and reenact, and consolidate
into one act, chapter twenty-one, acts of the Legislature
of West Virginia, one thousand nine hundred fifteen
(municipal charters), chapter one hundred seventeen, acts of
one thousand nine hundred seventeen, chapter eleven, acts of one thousand nine hundred nineteen (municipal charters), chapter fourteen, acts of one thousand nine hundred nineteen (municipal charters), chapter thirty-one, acts of one thousand nine hundred twenty-one (municipal charters), chapter seventy-three, acts of one thousand nine hundred twenty-five (municipal charters), chapter five, acts of one thousand nine hundred twenty-seven (municipal charters), chapter six, acts of one thousand nine hundred twenty-nine (municipal charters), chapter eighty-three, acts of one thousand nine hundred thirty-one, regular session, chapter twenty-three, acts of one thousand nine hundred thirty-two, extraordinary session, chapter one hundred thirty-five, acts of one thousand nine hundred thirty-three, regular session, chapter one hundred twenty-one, acts of one thousand nine hundred thirty-three, first extraordinary session, and chapter one hundred sixty-nine, acts of one thousand nine hundred thirty-three, second extraordinary session, and to repeal all acts and parts of acts inconsistent herewith.

[Passed March 5, 1935: in effect from passage. Became a law without the approval of the Governor.]

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Annual settlement by collecting officer: procedure; penalty.

### Section 70
How elections for councilmen conducted; single election boards; election officials.

### Section 71
Registration of voters: political affiliations not to be shown.

### Section 72
How elections on questions submitted to voters conducted; when separate ballots and bal-
Sec. 71. Lot boxes required; canvass of ballots.

72. Qualifications of voters.

73. Provisions when councilmen nominated by petition.

74. Form of nominating petition.

75. Examination of nominating petition by city clerk; notice by clerk to nominee; acceptance of nomination.

76. Form of ballots for members of council and instructions to voters.

77. Writing in names on ballots; manner of printing ballots.

78. City manager, with consent of council, to designate a central place to publicly count ballots; central counting board.

79. Return of ballots to, and counting by, central counting board.

80. Rules for counting ballots by central counting board; statement of election returns to clerks; recount by central counting board; costs of recount.

81. Right of group of six or more candidates to appoint witnesses, challengers, etc., at election and presence of candidates, press and public at count.

82. Powers of council as to mechanical devices for sorting and tabulating ballots, etc.

83. Removal of councilman from office upon petition of voters; presence of candidates, press and public at count.

84. Penalty for bribery of city official.

85. Penalty for attempting to bribe city official.

86. Penalty for demanding or receiving bribe by city official.

87. Compelling testimony of participants in bribery or attempted bribery; immunity of witness.

88. Penalty for violations of act not otherwise fixed.

89. How boundaries of city may be enlarged.

90. Purchase of, or building, bridges over east channel of the Ohio river; contracts with existing bridge companies for free passage of pedestrians.

91. Duty of owner and council as to proposed subdivisions; duties as to unapproved subdivisions.

92. Provisions as to paving streets and alleys; apportionment of cost between property owners and railways; lien of assessment for costs; enforcement of lien; published notice by clerk of assessment of costs; hearing on assessment; appeal to circuit court; assessment paid in ten annual payments; lien of assessment on traction companies; when unrecorded lien void; street paving fund.

93. Paving upon petition of abutting property owners.

94. Provisions concerning grants for switches or tramways, at grade, on streets or alleys.

95. Copies of ordinances, etc., as prima facie evidence.

96. All fees for official services to be paid to city treasurer.

97. Provisions as to petitions provided in charter; as to nominating petitions, section applies only to examination.

98. If any provision invalid, remainder not affected.

PART II

Sec. 1. The words "this charter" refer to charter provided in Part 1.

2. Referendum on adoption of charter; date of special election.

3. Publication of whole of act before referendum with notice by clerk; form of notice.

4. Form and number of ballots for special election.

5. Appointment, qualifications and compensation of special election officials.

6. Polling places, equipment and supplies for special election.

7. Registration of voters.

8. Recounts; bonds for costs of.

9. Special election day not a legal holiday.

PART III

Sec. 1. When charter, if ratified, takes effect.

2. If ratified, newly elected councilmen take office July 1, 1933.

3. If ratified when election for councilmen held; commissioners and polling places; central counting place; director of the count and his assistants.

4. Council to furnish supplies and equipment and compensate election officials.

5. How election conducted and result ascertained.

6. Completion of registration lists.

7. Nomination for council by petition; examination of petitions by city clerk; acceptance of candidacies.

8. Existing ordinances in effect until amended or repealed.

9. Existing contracts, franchises, etc., and existing indebtedness of city to bind city; provision as to void or nonbinding contracts, etc.
Be it enacted by the Legislature of West Virginia:

PART I

Subject to ratification by the electorate of the city of Wheeling, at a special election to be held on April eighteen, one thousand nine hundred thirty-five, chapter twenty-one, acts of one thousand nine hundred fifteen (municipal charters), chapter one hundred seventeen, acts of one thousand nine hundred seventeen, chapter eleven, acts of one thousand nine hundred nineteen (municipal charters), chapter fourteen, acts of one thousand nine hundred nineteen (municipal charters), chapter thirty-one, acts of one thousand nine hundred twenty-one (municipal charters), chapter seventy-three, acts of one thousand nine hundred twenty-three, chapter seven, acts of one thousand nine hundred twenty-five, (municipal charters), chapter five, acts of one thousand nine hundred twenty-seven, (municipal charters), chapter six, acts of one thousand nine hundred twenty-nine (municipal charters), chapter eighty-three, acts of one thousand nine hundred thirty-one, chapter twenty-three, acts of one thousand nine hundred thirty-two, an act of March ten, one thousand nine hundred thirty-three (Senate Bill number one hundred twelve, regular session, one thousand nine hundred thirty-three), chapter one hundred twenty-one, acts of the first extraordinary session one thousand nine hundred thirty-three, and chapter one hundred sixty-nine, acts of the second extraordinary session, one thousand nine hundred thirty-three, are hereby amended and re-enacted, and consolidated into the act to read as follows:

Section 1. The inhabitants of the portion of the county of Ohio, in the state of West Virginia, within the limits of the city of Wheeling as they now are, or as they may hereafter be, shall be and continue a body politic and corporate, by the name and style of "The City of Wheeling," and as such, and by that name, shall have perpetual succession, and may contract and be contracted with, sue and be sued, plead or be impleaded, answer and be answered unto, and may purchase, acquire by condemnation proceedings for public use, take, receive, hold and use goods and chattels, lands and tenements and choses in action, or any interest, right or estate therein, either for the proper use of said city, or in trust for the benefit of any person or association therein; and the same may
grant, sell, convey, transfer and assign, let, pledge, mortgage, charge and encumber, in any case and in any manner in which it would be lawful for private individuals so to do, except where its powers may be limited by law; and may have and use a common seal, and alter and renew the same at pleasure; and generally shall have all the rights, franchises, capacities and powers appertaining to municipal corporations in this state.

All real and personal estate, and all funds, rights, titles, taxes, credits and claims, and rights or action owned by the city of Wheeling immediately before this charter takes effect or which are then held in trust or have been appropriated for the use or benefit of said city or of the inhabitants thereof, shall be and the same are hereby transferred to and vested in the city of Wheeling under this charter.

Sec. 2. The city of Wheeling shall have all powers of local self-government and home rule that are now, or hereafter may be, granted to municipalities under the constitution and laws of the state, as well as all other powers possible for a municipality to have, whether such power or powers be expressly enumerated in this charter or not, and without any further action on the part of the Legislature. All such powers shall be exercised in the manner prescribed in this charter, or if not prescribed herein, in such manner as shall be provided by ordinance of council.

Sec. 3. All legislative powers of the city shall be vested, subject to the terms of this charter and of the constitution of the state, in the council. The council shall have authority to pass all ordinances necessary and proper to carry into full force and effect any power, capacity, authority, or jurisdiction which is or shall be granted to, or fixed in the said city, or in the council or any officer of said city; and to provide for the enforcement of any or all of their ordinances by reasonable fines and penalties, or by imprisoning offenders against such ordinances, and by compelling them to labor, without compensation, at any of the public works or improvements undertaken by said city, or by any or all of said modes: Provided, however, That no person shall be imprisoned or compelled to
Sec. 4. On the fourth Thursday in May in the year nineteen hundred thirty-nine, and every four years thereafter, a council of nine members shall be elected from the city at large for a term of four years, commencing on the first day of July next after their election, and they shall, unless sooner removed as provided in this charter, serve until their successors are elected and qualified. No one shall be eligible to a seat in council who shall not be, when nominated, a qualified voter in the city of Wheeling. No person shall be eligible to a seat in council who has been convicted of bribery, perjury, felony, or other infamous crime. Such other qualifications as are provided in section twenty-two, article four, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, shall not be applicable, because section eight of this charter makes such qualifications unnecessary. When the office of councilman becomes vacant, the vacancy shall be filled by election by the council for the unexpired term, or until the next city-wide election, whichever shall come first. Each member of council shall receive as compensation the sum of one thousand two hundred dollars per annum, payable monthly, and no member of council shall receive any additional emoluments, allowances or bonuses on any account.

Sec. 5. Every councilman, before he enters upon the duties of his office, shall make before someone authorized by law to administer oaths, and file with the city clerk, an oath or affirmation to support and defend the constitution of the United States and the state of West Virginia and to perform the duties of his office faithfully, honestly and to the best of his skill and judgment.

Sec. 6. A majority of the members elected to the council shall be a quorum to do business, but a less number may adjourn from time to time. All legislative action shall be by ordinance except where otherwise required by the constitution or the laws of the state. The council shall keep a journal of its proceedings which shall be a public record. At the desire of any member the yeas and nays shall be entered upon the journal, and on the passage of every ordinance, the vote shall
9 be taken by yeas and nays and entered on the journal and
10 no ordinance shall be passed without the concurrence of a
11 majority of the members elected to council. At least one reg-
12 ular meeting shall be held every week as may be provided by
13 ordinance. Special meetings shall be held on the request of
14 any two members upon twelve hours’ notice to each member and
15 advertisement once in a newspaper of general circulation in
16 the city. The proceedings of the council shall be public.

Sec. 7. Every ordinance shall be fully and distinctly read
2 on two different meetings unless three-fourths of the members
3 elected to council dispense with this rule. No ordinance shall
4 contain more than one subject, which shall be clearly expressed
5 in its title, and no ordinance shall be revived or amended
6 unless the new ordinance contains the entire ordinance re-
7 vived, or the section or sections amended, and the section or
8 sections so amended shall be repealed. Council may adopt
9 codification ordinances, codifying, revising and rearranging
10 the ordinances of the city or any portion of such ordinances.
11 Every ordinance and resolution of council shall be recorded
12 in the office of the city clerk, and shall be a public record. The
13 clerk shall prepare and keep a full and proper index of all
14 ordinances, as well as separate indices of other proceedings of
15 council.

Sec. 8. Any member of council having any interest, direct
2 or indirect, other than as a citizen of Wheeling, in any matter
3 to be acted upon in any way by council, shall have no vote on
4 such matter, nor shall he be privileged to take part in the
5 discussion thereof except by unanimous consent, and, upon
6 the request of any other member of council he shall retire
7 from the session until such matter has been disposed of.

Sec. 9. Every ordinance, resolution or action changing the
2 precinct boundaries or otherwise redistricting the city, or
3 annexing any municipality or territory, or appropriating
4 money in excess of one hundred dollars, or ordering any street
5 improvements or sewer, or granting any franchise, or any right
6 to occupy or use the streets, highways, bridges, or public places
7 in the city, or any part thereof, for any purpose, shall be com-
8 plete in the form in which it is finally passed, and remain on file
9 with the city clerk for public inspection at least one week before
the final passage or adoption thereof. No franchise, or right to
occupy or to use the streets, highways, bridges, or public
places in the city, or any part thereof, shall be granted, re-
newed, altered, amended, repealed or extended except by
ordinance: Provided, however, That nothing contained herein
shall prohibit council from empowering the city licensing
officer from granting permits to churches, community associa-
tions and the like, for the use of portions of city streets for
street fairs and fetes of similar character.

Sec. 10. No ordinance, resolution or action of the council
changing the precinct boundaries or otherwise redistricting
the city, or annexing any municipality or territory, or grant-
ing to any corporation, firm, person, or association, or com-
bination of persons any privilege, right, license, easement, or
franchise, to establish, maintain or conduct in the city any
public utility, except when otherwise required by the general
laws of this state, shall go into effect before thirty days from
the time of its final passage, and not then unless within two
days after passage, Sundays and holidays excepted, the same
shall have been published in two newspapers, published and
generally circulated in said city. And if during said thirty
days, a petition signed by one thousand electors of the city
protesting against the passage of such ordinance, resolution or
action, be presented to council, the said ordinance, resolution
or action shall thereupon, be suspended from going into oper-
ation, and it shall be the duty of council to reconsider the
same, and if the same is not entirely repealed, the council
shall submit the ordinance, resolution or action as is provided
in relation to referendum of ordinances, to the vote of the
electors of the city either at the next general municipal elec-
tion or at a special municipal election to be called for that pur-
pose, and such ordinance, resolution or action shall not go into
effect or become operative unless a majority of the qualified
electors voting on the same, shall vote in favor thereof. Such
petition shall conform to the provisions of section ninety-eight
of this charter and shall be submitted, examined and certified
in the manner provided in said section ninety-eight.

Sec. 11. Any proposed ordinance may be submitted to the
2 council by petition, signed by one thousand electors of the
city. Such petition shall be conformed as provided by section
ninety-eight of this charter, and shall be submitted, examined
and certified in the manner provided in said section ninety-
eight. If the petition be certified to council as provided in
section ninety-eight of this charter, and contains a request
that the said ordinance be submitted to a vote of the people,
if not passed by the council, the council shall either (a) pass
such ordinance without alteration within twenty days after
attachment of the clerk's certificate of sufficiency to the said
petition, or (b) forthwith after the clerk shall attach to the
said petition his certificate of sufficiency, the council shall call
a special election, unless a general municipal election is to be
held within ninety days thereafter, and at such special or
general municipal election, such ordinance shall be submitted
without alteration to the vote of the electors of said city. If
a majority of the votes cast be in favor thereof, such ordi-
nance shall thereupon become a valid and binding ordinance
of the city, and any ordinance proposed by petition, or which
has been adopted by a vote of the people, shall not be re-
pealed or amended except by a majority vote of the people.
Any number of proposed ordinances may be voted upon at
the same election in accordance with the provisions of this
section, but there shall not be more than one special election
in any period of six months for such purpose. Whenever any
ordinance or proposition is required by this charter to be
submitted to the voters of the city at any election, the city
clerk shall cause such ordinance or proposition to be published
once in two daily newspapers, published in said city, such
publication to be not more than twenty days or less than
fifteen days before such election.

Sec. 12. Council shall have authority to grant franchises,
subject to the provisions of this charter.

Sec. 13. Franchises, rights or privileges may be granted
by the council, allowing to persons, firms or corporations
for a limited time, such occupancy of portions of the streets,
alleys or public grounds of the city, as may be deemed by
it necessary for works of public utility and service, such
as steam railroad tracks, street railway tracks, poles and
trolley wires, telephone and telegraph poles, electric light and
8 other electric poles, wires and conduits, and subways, and
9 gas, steam and heating pipe lines. But no such franchise,
10 right or privilege shall hereafter be granted by the council,
11 except under the following restrictions and conditions:
12 First, No ordinance granting any franchise, right or privi-
13 lege, for the use of streets, alleys or public grounds of the
14 city, for any of the purposes of public utility above named,
15 or for any other purpose of like nature shall be passed unless
16 it shall have been first offered at a regular meeting of the
17 council, and notice of the object, nature and full extent of
18 such franchise, right or privilege shall have been published
19 daily for at least thirty days (Sundays excepted) by the
20 applicant, in some daily newspaper published in the city of
21 Wheeling before being acted upon. The vote thereon shall
22 be taken by yeas and nays and the same entered upon the
23 journal of the proceedings of the meetings of the council;
24 Second, If no time be expressly provided in the grant, the
25 franchise, right or privilege shall be granted for one year
26 only, and in no case shall the same extend for a period ex-
27 ceeding thirty years. Nor shall any grant of a franchise,
28 right or privilege be made without the reservation on the
29 part of the city of the right to alter, amend or repeal the
30 same at any time during its term, should the grantee fail
31 to do those things which the said grant of franchise, right
32 or privilege stipulates that the grantee shall do, or, should
33 the grantee do such things as by the said grant of franchise,
34 right or privilege the grantee is prohibited from doing: Pro-
35 vided, That after notice by the city to the grantee, specifying
36 wherein the grantee has failed to comply with the terms of
37 the grant, the grantee shall not within three months from
38 the service of such notice comply with such terms;
39 Third, No grant of any franchise shall be made without,
40 at the time of making it, providing that the grantee shall
41 indemnify the city against all damages caused by the con-
42 struction, operation or maintenance of any works, under the
43 grant. All reasonable additional provisions and conditions
44 may be made for the protection of the public from unneces-
45 sary damages or inconveniences by reason of such works and
46 the maintenance or operation thereof;
47 Fourth, No grant of any franchise, right, or privilege shall
be made without, at the time of making it, providing that the city shall receive in consideration therefor, a compensation, to be paid annually during the whole period: Provided, however, that the principle of competition shall be employed by the council where the same is offered, so that the franchise, right or privilege with prescribed terms and conditions as to its extent and as to the rates to be charged the public by it for its services will be given to the person, firm or corporation bidding or agreeing to pay therefor to the city the highest compensation, or so that the franchise, right or privilege with prescribed conditions as to its extent and the compensation that must be paid therefor, will be given to the person, firm or corporation that will agree to render service to the public at the lowest rates. But where revenue or tolls to be charged the public and revenue to the city are joint points of deliberation, the council may take both points into consideration with probable good or ill service of competing applicants, and grant any such franchise to the applicant, the grant to whom will result in the greatest benefit to the largest number of citizens of the city, in the council's judgment;

Fifth, The council shall, in suitable terms, make it an express condition of the grant of any such franchise, right or privilege, where it is for a work that is useful chiefly to the local public, that at the expiration of such franchise, grant, right or privilege, the grantee shall, if required by the council, sell to the city the physical plant in the city, at what it is then worth, independent of any value based upon the earning power thereof, and may also provide a means of arbitration or otherwise for determining what such value may be;

Sixth, In case a petition for stay of ordinance is presented, in accordance with section ten, and a special election is called for the purpose of accepting or rejecting the application for a franchise, right or privilege, the applicant for same shall deposit with the city, the amount of expenses of said election, which shall be applied to the payment of such expenses, if the franchise is granted, otherwise to be returned to the applicant;

Seventh, No franchise, right or privilege referred to in
88 this section can be granted unless on the affirmative vote of
89 at least two-thirds of the membership of council;
90 Eighth, The provisions of this section, however, shall
91 not apply to grants made under section ninety-five of this
92 charter. No renewal of any franchise, right or privilege
93 for any such work or public utility or service as is mentioned
94 herein, granted for a period of more than three years, shall
95 in any manner be granted until within three years of the
96 time of its expiration. The non-user of a franchise, right
97 or privilege in or upon any street or alley, or public ground,
98 for a period continuously of one year, shall vacate and
99 annul the same as to the portion so allowed to go into
100 disuse.

Sec. 14. No public improvement, the cost or the part of
2 the cost of which is to be specially assessed on the owners of
3 property, shall be made without the concurrence of two-thirds
4 of the members elected to the council, unless the owners of a
5 majority of the foot frontage to be assessed, petition in writing
6 therefor, in which case the council shall be authorized (a ma-
7 jority of the members elected thereto concurring) to ordain such
8 improvement.

Sec. 15. If the council proposes to order and cause the
2 grading, paving, curbing or other improving of any street
3 or alley or the construction of any sewer or other drainage,
4 to be paid in whole or in part by any foreign corporation as
5 owner of any property abutting or bounding on such street,
6 alley, sewer or other improvement, or whose property abutting
7 or abounding thereon may be assessed with such improvement,
8 in whole or in part, such foreign corporation shall be given
9 notice of such proposal by service upon or acceptance by the
10 state auditor, at least thirty days before the enactment or
11 adoption of any ordinance or resolution relating to such work
12 or improvement or declaring the necessity or purpose thereof;
13 which said notice shall set forth substantially the nature of
14 the work to be proposed, the extent thereof; its location and
15 the manner of paying for the same; and no ordinance or reso-
16 lution shall be binding upon any such foreign corporation unless
17 such notice shall have been so given. Non-residents of the
18 state, other than foreign corporations, who shall be affected
19 by such ordinances or resolutions, shall be notified thereof by
20 the city clerk by registered mail, if the address of such non-
21 resident be known to him, and if such notice be practicable.

Sec. 16. Council shall appoint such commissioners of
2 municipal loans and bond issues as may be required by laws
3 of the state.

Sec. 17. Council shall provide by ordinance for the issuing
2 of all city licenses, the license fees, and the various kinds of
3 licenses, and the terms, requirements and conditions upon
4 which licenses shall be issued.

Sec. 18. The existing departments, commissions, boards and
2 other branches of the city government are continued, unless
3 changed by the provisions of this charter or by ordinance of
4 the council. Within six months after this charter becomes
5 effective, the council shall by ordinance adopt an administrative
6 code providing for a complete plan of administrative organiza-
7 tion of the city government. Thereafter, except as established
8 by the provisions of this charter, the council may change,
9 abolish, combine and rearrange the departments, commissions,
10 boards and other branches of the city government provided for
11 in said administrative code, but an ordinance creating, com-
12 bining, abolishing or decreasing the powers of any department,
13 commission, board or other branch, shall require a vote of
14 three-fourths of the members elected to the council, except the
15 ordinance adopting an administrative code.

Sec. 19. At its first meeting in July following the regular
2 municipal election, the council shall choose one of its members
3 as presiding officer, who shall have the title of mayor. The
4 mayor shall preside at the meetings of the council and perform
5 such other duties as may be prescribed by this charter or as
6 may be imposed by the council, consistent with his office. He
7 shall have no power of veto. He shall be recognized as the
8 official head of the city for all ceremonial purposes, by the
9 courts for the purpose of serving civil process, and by the
10 governor for military purposes. In time of public danger or
11 emergency, he may, with the consent of the council, take com-
12 mand of the police, maintain order and enforce the law. The
13 council may by ordinance provide for a salary to be paid the
14 mayor in addition to his salary as councilman.

Sec. 20. The council shall also at its first meeting in July
2 following the regular municipal election, choose one of its mem-
3 bers as vice-mayor. The vice-mayor shall perform the duties 4 of the mayor during his absence or disability. In the event 5 of the death, removal or resignation of the mayor, the council 6 shall choose one of its members as mayor for the unexpired 7 term. No additional compensation shall attach to the office of 8 vice-mayor.

Sec. 21. The appointments to be made by the mayor shall 2 be made with the advice and consent of the council, and such 3 appointees shall serve at the pleasure of council.

Sec. 22. There is hereby created a commission to be known ? as the traffic commission, whose duty it shall be to pass rules 3 and regulations concerning the parking of automobiles and 4 other vehicles, and regulating the same on the public thorough- 5 fares in the city of Wheeling. Such rules and regulations, 6 when passed and promulgated by said commission, shall have 7 the same force and effect as ordinances passed by the council 8 of the city of Wheeling until altered, repealed, revoked or 9 amended by said council. Said commission shall be composed 10 of five citizens of Wheeling, none of whom shall be state, 11 county or city officials, and said commissioners shall be ap- 12 pointed by the mayor and serve at the pleasure of council.

Sec. 23. For the purpose of promoting the health, safety, 2 morals or the general welfare of the community, the council 3 may pass and cause to be enforced such ordinances as it shall 4 deem necessary or proper to regulate and restrict the height, 5 number of stories, size of buildings and other structures, per- 6 centage of lot that may be occupied, the size of yards, courts, and 7 other open spaces, the density of population and the location and 8 use of buildings, structures and land for trade, industry, resi- 9 dence or other purposes. For any or all of said purposes, 10 council may divide the city and the districts into such number, 11 shape, and area as may be deemed best suited to carry out the 12 purposes of this act, and within such districts it may regulate 13 and restrict the erection, construction, reconstruction, alter- 14 ation, repair or use of buildings, structures, or land; all such 15 regulations shall be uniform for each class or kind of build- 16 ings throughout each district but the regulation in one dis- 17 trict may differ from those in other districts. Such regulations 18 shall be made in accordance with a comprehensive plan and
19 design to lessen the congestion; to secure safety from fire, panic, 
20 or other danger; to promote health and general welfare; to 
21 provide adequate light and air; to prevent the crowding of 
22 land; to avoid undue concentration of population; to facili- 
23 tate the adequate provision for transportation, water, sewer-
24 age, schools, parks, and other requirements. Such regulations 
25 shall be made with reasonable consideration being given to 
26 the character of the district and its peculiar suitability for 
27 particular uses, and with the view to conserve the value of 
28 buildings and encourage the most appropriate use of land 
29 throughout the city of Wheeling. Council shall provide for 
30 the manner in which such regulations and restrictions and the 
31 boundaries of such districts shall be determined, established 
32 and enforced, and from time to time may amend, supplement, 
33 or change: Provided, however, That no such regulations, re-
34 strictions or boundaries shall become effective until after public 
35 hearing in relation thereto, at which parties interested and citi-
36 zens shall have an opportunity to be heard. At least fifteen 
37 days’ notice of the time such regulations are to be presented 
38 shall be published in at least two newspapers published and 
39 circulated in the city of Wheeling. 
40 Council may appoint a commission to be known as the “zon-
41 ing commission” consisting of five members, who shall be citi-
42 zens of the city of Wheeling, to recommend the determination 
43 of the various districts and appropriate regulations to be en-
44 forced therein. 
45 Council may provide by ordinance for the enforcement of this 
46 section or of any ordinance or regulations made thereunder. 
47 The violation of this section or of any such ordinances or regu-
48 lations adopted or made is hereby declared to be a misdemeanor 
49 and council may provide for the punishment and fine or im 
50 prisonment or both of any violation thereof. 
51 In case any building or structure is erected or constructed, 
52 altered, repaired, converted, or maintained, or any building, 
53 structure or land is used in violation of this section or of any 
54 ordinance or any other regulation made under authority con-
55 ferred hereby, said council in addition to other remedies may 
56 in the name of the city, bring an appropriate action or pro-
57 ceeding to prevent such unlawful erection, construction, alter-
58 ations, repair, conversion, maintenance or use, and to restrain, 
59 correct or abate such violations, to prevent the occupancy of
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said building, structure, or land or to prevent any illegal act,
conduct, business, or use in or about such premises.

Sec. 24. The council may cause to be taken or damaged for
the use of the city, for streets, alleys, markets, bridges, public
squares, parks, play-grounds, and other municipal purposes,
including occupation by sewer, water pipes, gas pipes, heating
pipes, compressed air pipes and electric or other subways, any
private property within the city, (but where such use is to
secure or improve the water supply, or for park, play-grounds
sanitary or cemetery purposes, outside the limits of the city)
but no such property shall be taken or damaged without just
compensation. The compensation, if it cannot be determined
by agreement with the owner of the property so taken or dam-
aged, shall be ascertained in such manner as is or may be pre-
scribed by general law for the condemnation of land for pub-
lic purposes. In addition to all other levies provided by law,
the council of the city of Wheeling shall have the right to
levy annually not to exceed five cents on each one hundred
dollars of the assessed valuation of the property within the
limits of the city according to the last assessment thereof for
state and county purposes, for the purpose of obtaining and
maintaining parks, play-grounds and recreation centers.

For the management of that plat of ground heretofore known
as Wheeling Park, and donated to the city of Wheeling on the
eighteenth day of December, one thousand nine hundred twen-
ty-four, for use as a municipal park, and for the management
of the other parks of Wheeling there shall be, and there is
hereby created a commission to be known as "Wheeling Park
Commission," and the same is hereby made a body corporate,
and by that name the commission may sue and be sued; plead
and be impleaded; and contract and be contracted with. The
said commission shall consist of five citizens of the city of
Wheeling, who shall be appointed in the manner hereinafter set
out, and who shall serve without compensation and shall hold no
remunerative political office, either state, county or municipal;
and no member of the commission shall be eligible to appoint-
ment to any remunerative office or position under the juris-
diction of the commission. The commissioners in office at the
time this charter becomes effective shall continue in office for
the duration of the terms for which they were appointed, and
thereafter their successors shall be appointed either by the
board of directors of the Wheeling chamber of commerce or by the city manager, as the case may be, which appointed the commissioner whose place is being filled. The respective successors shall be appointed for the term of five years each, excepting that any person appointed to fill a vacancy occurring, before the expiration of a term, shall serve only for the unexpired term; any commissioner shall be eligible for reappointment: Provided further, That any vacancy created either by the expiration of a term, or otherwise, shall be filled by the appointing body, either the board of directors of the Wheeling chamber of commerce, or the city manager, as the case may be, which appointed the commissioner whose place on the commission is being filled. Upon the appointment of said commission the members thereof shall elect from among their number a chairman and a secretary-treasurer who shall hold office for one year and be eligible for re-election. Annually thereafter the commission shall organize by the election of a secretary-treasurer and such other officers from its own number as it may deem advisable. Members of the commission may be removed from office in the same manner as provided for the removal of county officers under section seven, article six, chapter six of the code of West Virginia, one thousand nine hundred thirty-one. The commission shall have all and sole power necessary, convenient and advisable for the proper care, equipment and management of the said Wheeling park and other parks heretofore and hereafter acquired by the city of Wheeling, either by gift or purchase, and shall make such rules and regulations as it shall deem expedient for the care and management thereof.

In order to provide for the purchase of the equipment for use in Wheeling park and Oglebay park (Waddington) and for the maintenance and upkeep of said Wheeling park and Oglebay park, the city council of Wheeling shall levy annually ten cents, or lesser amount, if requested by the commission, on each one hundred dollars of the assessed valuation of the property within the limits of the city, according to the last assessment thereof for state and county purposes. The proceeds of this ten cent levy shall be for the exclusive use of said Wheeling park. Oglebay park and any other parks heretofore or hereafter acquired as aforesaid by the city of Wheeling, and shall be disbursed only upon the order of the commission evidenced by
Sec. 25. The council shall appoint a city manager who shall be the chief executive and administrative officer of the city, and except as provided in section twenty-six of this charter, he shall be appointed solely on the basis of his executive and administrative qualifications and need not, when elected, be a resident of the city or state, unless the constitution of the state shall provide otherwise. No member of the council shall be chosen as city manager. The city manager shall be appointed for an indefinite term as hereinafter provided. He shall be removable at any time at the pleasure of the council. If removed at any time after he has served six months, he may demand written charges and the right to be heard thereon at a public meeting of the council prior to the date on which his final removal shall take effect, but pending and during such hearing the council may suspend him from office. The action of the council in suspending or removing the city manager shall be final, it being the intention of this charter to vest all authority and fix all responsibility for such suspension or removal in the council. The council may designate some other officer of the city to perform the duties of the city manager during his absence or disability. The city manager shall receive such compensation as may be fixed by the council.

Sec. 26. Before entering upon the duties of city manager, he shall make, before some one authorized by law to administer oaths, and file with the city clerk an oath or affirmation to support and defend the constitution of the United States and of this state and to perform the duties of his office faithfully and to the best of his skill and judgment. No person shall be eligible to the office of city manager who has been convicted of bribery, perjury, felony or other infamous crime. Before entering unto the discharge of his duties, the city manager shall give a good and sufficient bond, payable to the city in such amount as may be prescribed by council but not less than ten thousand dollars, conditioned upon the faithful performance of his duties, and with a corporate surety authorized to do business within the state; and such bond shall be filed with the city clerk after being approved as to form.
and surety by a judge of the circuit court of Ohio county. The premium on such bond shall be payable by the city.

Sec. 27. It shall be the duty of the city manager to act as chief conservator of the peace within the city; to supervise the administration of the affairs of the city, except as otherwise specified in this charter; to see that the ordinances of the city and the laws of the state are enforced; to make all appointments and removals in the administrative and executive services except as otherwise provided in this charter; to make such recommendations to the council concerning the affairs of the city, as may to him seem desirable; to keep the council advised of the financial condition and future needs of the city; to prepare and submit to the council the annual budget estimate; to prepare and submit to the council such reports as may be required by that body, and to perform such other duties as may be prescribed by this charter or required of him by ordinance or resolution of the council. Except as otherwise provided in this charter, all other executive and administrative powers conferred by the laws of the state upon any municipal official shall be exercised by the city manager or persons designated by him.

Sec. 28. The city manager shall negotiate and enter into all contracts upon behalf of the city, except those of the park commission, and as otherwise provided in this charter. Such contracts to be negotiated and entered into by the city manager shall be within the limits of the budget and within the limits and purposes of the allocations of the budget, as determined by the purposes and subject matters of the contracts. If any such contract involves the expenditure of more than five hundred dollars, or the performance thereof extends beyond the budget year, or involves the expenditure of money not within the budget, such contract must be ratified by council, in the form of an ordinance, and the fact of ratification attested thereon by the city clerk before execution by the city manager. The city manager shall report in writing to council his negotiations and the terms of the contracts requiring their ratification, and the council may in such cases alter, amend, ratify or reject any such contract. Any contract executed by the
Sec. 29. In all cases required by ordinance or in which he 
may deem it advisable, the city manager shall take of any 
person appointed by him a bond, payable to the city of Wheel-
ing conditioned on the faithful performance of his duties, and 
in such amount as may be required by council, or if there be 
no requirement of council, in such amount as the city manager 
shall deem requisite. Such bonds shall be filed with the city 
clerk. No person shall be appointed in the executive or ad-
ministrative services of the city who has been convicted of 
bribery, perjury, felony or other infamous crime. But resi-
dence within the city at the time of such appointment shall 
not be a necessary qualification for appointment unless the 
constitution of the state shall provide otherwise. If the city 
manager or any other officer of the city shall be a member, 
manager, officer or stockholder of any partnership, business, 
firm or corporation, which by contract furnishes material and 
supplies to the city or to any workmen or contractor for the 
city, that shall not of itself constitute a disqualification for 
office under this charter. Unless otherwise provided by this 
charter or by ordinance, the city manager shall fix the com-
ensation for all persons in the executive and administrative 
services of the city, within the limits and terms of the budget.

Sec. 30. The city manager and such other officers of the city 
as may be designated by vote of the council, shall be entitled 
to seats in the council. None of said officials shall have a vote 
in the council, but the city manager shall have the right to 
discuss any matter coming before the council, and the other 
oficers shall be entitled to discuss any matter before the council, 
relating to their respective departments and offices.

Sec. 31. No person in the executive or administrative services 
shall directly or indirectly give, solicit or receive, or in any 
manner be concerned in giving, soliciting or receiving any as-
ignment, subscription, or contribution for any political party 
or for any candidate. No person in the executive or admini-
strative services of the city shall be an officer or member of 
any political committee, nor shall such person take an active 
part in any political campaign. Any violation of this section
Sec. 32. Neither the council nor any of its committees or members shall interfere in any way with the appointment or removal of any of the officers or employees in the executive or administrative services. Except for the purpose of inquiry, the council and its members shall deal with that part of the executive and administrative services for which the city manager is responsible, solely through the city manager.

Sec. 33. The city manager shall appoint a city solicitor. No person shall be eligible to the office who is not an attorney at law, duly admitted to practice in this state. He shall serve the council, officers, commissioners, and boards of the city as legal counsel and attorney, and shall represent the city in all proceedings in court. He shall act as prosecuting attorney in the municipal court. He shall perform all other duties which the council may impose upon him consistent with his office. The solicitor shall appoint his assistants and fix their salaries, but the maximum number of assistants and the total amounts of the assistants’ salaries shall be fixed by council. The assistants shall hold their offices at the pleasure of the solicitor.

Sec. 34. The city manager shall appoint a city treasurer, who shall perform the duties as may be prescribed by ordinance and consistent with the office. He shall have the custody of all city funds, and shall disburse same only by proper authority.

Sec. 35. The mayor shall appoint a city clerk, to serve at the pleasure of council. The city clerk shall keep the minutes and other proceedings of council and shall perform such other duties as may be imposed by this charter or by ordinance.

Sec. 36. The city health officer incumbent at the time this charter becomes effective shall continue in office until the expiration of the term for which he was appointed. Thereafter, the city manager shall appoint the city health officer, and the city manager may by contract with the board of commissioners of Ohio county, provide that the same person may be appointed to the office of city health officer and also be selected by the board of commissioners as county health officer, during
9 the same period of time, and perform similar duties for the
10 city of Wheeling and county of Ohio. Such contract shall pro-
11 vide for the city and county to share all expenses including
12 compensation of such city-county health officer on a basis to be
13 stated in the contract. Such contract, on the part of the city,
14 must be ratified by council before it shall become effective.

Sec. 37. The city manager shall appoint, among other heads
2 of departments, the chief of police, and the chief of the fire
3 department.

Sec. 38. The mayor shall appoint a city auditor, who shall
2 be the chief fiscal officer of the city. He shall exercise super-
3 vision over all accounts, and accounts shall be kept showing
4 the financial transactions of all departments of the city upon
5 forms prescribed by him and approved by the city manager
6 and the council. He shall submit to the city manager and to
7 the council at its second meeting in each month a summary
8 statement of revenues and expenses for the preceding month,
9 detailed as to appropriations and funds in such manner as to
10 show the exact financial condition of the city and of each de-
11 partment, office and branch thereof. He shall perform such
12 other duties as may be imposed upon him by ordinance of the
13 council. He shall prepare and submit to the city manager
14 such information as shall be required by the city manager
15 for the preparation of an annual budget. He shall appoint his
16 subordinates, if subordinates be provided by ordinance. The
17 city accountant incumbent at the time this charter becomes
18 effective shall continue in office as city auditor unless and until
19 a successor is appointed and qualifies.

Sec. 39. The city manager shall appoint a city licensing
2 officer, or if he sees fit, may require some other city officer to as-
3 sume the duties of city licensing officer. The city licensing officer
4 shall issue all city licenses and he shall be governed by the
5 provisions of the ordinances relating to licenses and the ap-
6 plicable laws of the state: Provided, however, That he may,
7 before issuing any license, require the affidavit of any appli-
8 cant, setting forth that such applicant is a proper party for
9 such license, and that all terms, requirements and conditions
10 of the licensing laws pertaining to the license applied for have
11 been met: Provided further, That he may, before issuing any
license, make an investigation to determine whether such terms, 
requirements and conditions have in fact been met: And pro-
vided further, That all applications for beer and/or liquor 
licenses shall be thoroughly investigated by him before any such 
license shall be issued. The city licensing officer and/or council 
may revoke any license issued by the city licensing officer for 
any violation of law pertaining to such license.

Sec. 40. The city manager shall appoint a judge of the 
police court, from among the members of the Ohio county bar.

Sec. 41. The judge of the police court shall appoint a clerk 
of the police court from among the members of the police force 
of the city.

Sec. 42. The judge of the police court shall preside over 
said court and try and determine all cases over which said 
court has jurisdiction. In the event of his temporary absence 
or disability, the city manager shall appoint a member of the 
Ohio county bar to preside over said court, and perform the 
duties of the judge thereof, during the absence or disability 
of the regular judge, and the judge's salary shall be trans-
ferred to and paid such temporary judge for the time he serves 
as such judge.

Sec. 43. The judge of the police court shall have jurisdiction 
over all offenses against, or violation of, the ordinances of said 
city, and full authority to punish in any manner lawfully 
prescribed by such ordinances, the offenders against or violators 
of the same: Provided, however, That no jury shall be allowed 
in any trial and said court for the violation of any ordinance 
of said city.

The said judge of the police court shall have the same 
criminal and civil jurisdiction and powers within the county 
of Ohio as is now provided by law for justices of the peace 
elected in said county.

Sec. 44. The proceedings for the recovery of the fines or for 
the enforcement of the penalty prescribed by any ordinance 
shall conform to the regulations so far as they are applicable, 
prescribed in the code of West Virginia for civil proceedings 
before justices of the peace; but the judge or the clerk of said 
court may, for good cause, shown by affidavit, by an endorse-
ment upon the summons, order the defendant or defendants
8 to be arrested and brought before the said court to be dealt
9 with according to law.

Sec. 45. In cases where evidence discloses such a violation
2 within the city, of a law of the state, that, in the opinion of
3 the judge of the police court, the person accused should be
4 committed to await the action of the grand jury upon an
5 accusation made, the judge of the police court shall have the
6 same jurisdiction and power as a justice of the peace in the
7 county of Ohio, in regard to the apprehension, commitment
8 and admission to bail of the person so accused; and, in the
9 exercise of such jurisdiction and powers, shall be governed
10 by the same regulations.

Sec. 46. The sessions of said court shall be at such time
2 and places as the council of said city shall by ordinance direct.

Sec. 47. The said court shall have full power and authority
2 to enforce its orders and judgments, by any process of law
3 which may be necessary and proper for the purpose, and all
4 processes, executions and orders of said court shall be signed
5 by the judge or clerk thereof. Such process and executions
6 shall be directed to the chief of police of said city, and be
7 executed by him or one of his deputies. In the execution of
8 any process or order of said court, the chief of police or deputy
9 shall have the same powers, be governed in his proceedings by
10 the same rules of law, and be subject to the same liabilities as
11 the sheriff of Ohio county, West Virginia, in the performance
12 of like services. There may be charged for the services of such
13 officer the same fees as the sheriff is entitled to charge for like
14 services, but all such fees, as well as all fines imposed by said
15 court, shall be collected by the chief of police, and accounted
16 for and paid by him to the treasurer of the city. The city
17 shall in no event be liable for any such fees.

Sec. 48. The clerk of said court shall have authority to
2 administer oaths within said city, and shall perform such
3 duties as may be required by the judge of said court, or be
4 prescribed by rule or order of the council. Such clerk may
5 charge the same fees for his services as are now allowed to be
6 charged by justices of the peace for like services, and such
7 fees shall be collected by him in like manner as fees of the clerk
8 of the circuit court are collected; but all such fees shall be
Sec. 49. A docket and other books required for the records and a seal shall be provided for the said court by the council, and the seal may be altered or renewed as the said court may direct. Full faith and credit shall be given to the records of said court, and the certificates of its judge or clerk whether the seal of said court be affixed thereto or not, in like manner and with the same effect as if the same were records of the circuit court or certificates of the judge of a circuit court similarly authenticated.

Sec. 50. The said police court shall have power, upon rendering judgment against a defendant charged with the violation of an ordinance of the city, to render judgment against him also for the costs of prosecution. In every suit or prosecution for the violation of an ordinance the said court shall cause the person or persons at whose instance it was instituted to be designated upon the warrant or writ issued to arrest or summon the person charged, and if the person or persons charged shall not be convicted in such court, and such court shall be of the opinion that no sufficient or probable cause existed for the institution of the said suit or prosecution, then judgment for the costs of the city, and of the defendant, or of either of them, as the court shall deem just, shall be rendered against the person or persons at whose instance such suit or prosecution was instituted.

Sec. 51. From the judgment of the police court in any case in which there is unpaid a fine of ten dollars or more, or imprisonment, or both, or in any case involving the validity of an ordinance of the said city, an appeal shall lie as a matter of right, to the criminal court of said Ohio county, either on behalf of the defendant or the city, and in any case where a fine is imposed, on demand of the defendant, such fine must be fixed at not less than ten dollars, so that such appeal may be taken; but no defendant shall be entitled to such appeal until and unless he execute before the said police court, or its clerk, bond in such penalty, not exceeding two hundred dollars, as the said police court may prescribe, conditioned for the performance of the judgment or order of the criminal court of said county made or rendered upon such appeal. Every such
bond shall be with security approved by the said police court or its clerk; but in any case in which an appeal is taken or granted on behalf of the city, no bond or security shall be required. Every such appeal shall be proceeded within the criminal court in the same manner as is provided by law for the proceedings in such criminal court, in cases appealed from justices of the peace. If on such appeal judgment be against the appellant it shall also be against the sureties on his appeal bond for costs, and for any fine or pecuniary penalty adjudged against him. No such appeal shall be allowed after ten days from the date of any final order or judgment desired to be appealed from.

Sec. 52. The provisions of the general laws of West Virginia which require and provide civil service in and for municipal fire and police departments in this state, and which do not exclude Wheeling from the operation thereof, shall apply to the fire and police departments of Wheeling.

Sec. 53. The council shall prepare a civil service ordinance which shall be applicable to the fire and police departments and to all employees in the administrative services of the city, and which shall provide for one civil service commission for the city. Such ordinance shall be adopted within one year after this charter becomes effective; and after its adoption it shall not be altered or amended in any material respect except by three-fourths vote of all members elected to council, after notice of such proposed amendment has been published in two Wheeling newspapers of general circulation in the city not later than three days before such proposed amendment is to be acted upon; nor shall such ordinance be repealed except by majority vote of the electorate of the city. Until the general civil service ordinance provided herein shall have been adopted, the civil service laws applicable to the Wheeling police department and the Wheeling fire department at the time this charter becomes effective shall have the force and effect of provisions of the charter of the city.

Sec. 54. At the end of each year the city council shall cause a full and complete examination of all the books and accounts of the city to be made by the city auditor or by other
4 competent accountants and shall publish the result of such
5 examination in connection with the annual city financial state-
6 ment required by law.

Sec. 55. If, at the beginning of the term of office of the first
2 council elected in said city under the provisions of this charter,
3 the appropriations for the expenditures of the city government
4 for the current fiscal year have been made, said council shall
5 have power, by ordinance, to revise, to repeal or change said
6 appropriations, and to make additional appropriations.

Sec. 56. The fiscal year of the city of Wheeling shall be fixed
2 by ordinance.

Sec. 57. All property, real and personal, within the city
2 which is subject to taxation under the constitution and laws
3 of the state of West Virginia, shall be assessed for and subject
4 to taxation for the benefit of said city.

Sec. 58. The council may, by ordinance, levy an annual
2 capitation tax of not exceeding one dollar upon each inhab-
3 itant or tithable of city, who, under the constitution of this
4 state, is subject to a capitation tax.

Sec. 59. The county assessor or other officer assessing prop-
2 erty in Ohio county, for taxation for state and county pur-
3 poses, shall furnish to the council of the city of Wheeling, a
4 transcript of the assessment of real and personal property
5 within said city liable to taxation by the state, on or before the
6 first day of August of each year, and he shall receive such
7 compensation therefor as may be fixed by said council.

Sec. 60. Subject to the limitations of the state laws pre-
2 scribing the aggregate of all levies for city purposes, the coun-
3 cil shall annually cause to be levied and raised by a general
4 tax upon all taxable property in the city:
5 (1) An amount sufficient to pay the interest and any install-
6 ment of principal falling due within the year upon all bonds
7 of the public debt of the city, which shall be kept in a sep-
8 arate fund, to be called the public debt fund.
9 (2) An amount which, with the revenue from the water
10 works, and any other revenue-producing works or property
11 owned by or in charge of the city, will be sufficient to defray
12 the expenses for the next fiscal year of all of the works and
property, and an amount sufficient to pay the salaries of all
officers of the city, and the wages of all employees of the city,
and all necessary ordinary and contingent expenses of the
city, not otherwise provided for, which, with all other moneys
received by the city, not belonging to any other fund speci-
fied by this charter, shall be kept as a separate fund, to be called
the general city fund.

Sec. 61. If any person against whom or upon whose prop-
erty any tax shall be lawfully assessed for the benefit of said
city shall not wholly pay such tax on or before the first day
of July after the same shall become due, it shall be lawful for
the officer authorized to collect such tax to take reasonable dis-
tress of any personal property in said city, belonging to said
delinquent, or in which he or she shall have any right or in-
terest, and sell such property, right or interest at public auction
in said city, having given ten days' notice of the time and
place of sale by advertisement posted in some public place
in the city, and published or posted in such other manner as
may be prescribed by ordinance of said city, if the council shall
by ordinance require any other or more ample advertisement,
and, out of the proceeds of such sale, after defraying all proper
expenses, to pay to the said city the said tax or so much thereof
as shall be delinquent, and return the remainder, if any, to the
owner of the property so levied on and sold. All taxes on real
and personal property therein assessed and collected by said
city for its corporate purposes, must be uniform with respect to
persons and property within the jurisdiction of the city.

Sec. 62. All taxes assessed upon real estate, for the benefit
of said city, shall remain a lien thereon, bearing interest at
the rate of six per cent per annum until the same be fully
paid. Such lien may be enforced by suit in equity in the
circuit court of Ohio county, West Virginia, by the leasing or
sale of such real estate, under the decree of such court, where
the amount involved, exclusive of interest and costs, exceeds
fifty dollars. If the amount involved is fifty dollars or less,
exclusive of interest and costs, suit may be brought before any
justice of the peace of said Ohio county, and the judgment
obtained enforced by execution or suit in equity in said cir-
cuit court. The officer charged with the duty of collecting any
13 municipal taxes of any kind of said city, shall have all the 14 powers now or hereafter given by law to the sheriff of said 15 county for collection of state or county taxes therein.

Sec. 63. Water rents shall be distrained for and collected 2 in the same manner as taxes owing to the city may be enforced. 3 The collection of water rents shall also be enforced by shut- 4 ting off the supply of water from delinquents, and the refusal 5 thereafter to furnish water to delinquents until all arrearages 6 are paid.

Sec. 64. In addition to all other means for the collection 2 thereof, all taxes and water rents, as well as all other demands 3 due to the city, may be recovered by an appropriate suit or 4 proceeding, in the name of the city, before any justice of Ohio 5 county, if the amount be within his jurisdiction, or in the 6 circuit court of said county, if within the jurisdiction of said 7 circuit court.

Sec. 65. No disbursing officer of the city shall issue any 2 order or check for the payment of money for any work, mat- 3 ter or thing contracted for or ordered by the council or any 4 officer or employee of the city, which shall have been so con- 5 tracted for or ordered wholly or in part in excess of the 6 amount which shall have been previously set by ordinance or 7 resolution as the limit of expenses of the department to which 8 such work, matter or thing belongs, or in excess of the amount 9 previously appropriated for the payment thereof, or in the 10 city treasury available for such payment. The foregoing pro- 11 vision of this section is intended as a restraining provision, 12 and it is further declared that no act of such disbursing offi- 13 cer shall be in any-wise held to render valid any debt contracted 14 by or on behalf of the city in violation of the constitution and 15 laws of the state. If any such officer of the city, as is men- 16 tioned in the first sentence of this section, shall violate the 17 provisions thereof, he shall be disqualified from holding his 18 office, and shall forfeit and pay for such violation to the city 19 a fine of not less than twenty dollars, nor more than one hun- 20 dred dollars, or be imprisoned for a term not exceeding one 21 year, or both.

Sec. 66. No debt shall be incurred by said city even with
2 the consent of the voters, to an amount, including existing
3 indebtedness, in the aggregate exceeding the amount fixed
4 by law of the state of West Virginia.

Sec. 67. The city of Wheeling is hereby authorized to issue
2 and sell its bonds: Provided, That the said city shall not by
3 such issue and sale of bonds cause the aggregate of its debts
4 of every kind whatsoever to exceed five per cent of the
5 valuation of the taxable property therein, which value shall be
6 ascertained by the last assessment for state and county taxes
7 previous to the issue of said bonds, nor shall said city make
8 such issue and sale without at the same time providing for the
9 collection of a direct annual tax of an amount sufficient to pay
10 the annual interest of such debt and the principal thereof
11 within and not exceeding thirty-four years.
12 No bonds shall be issued by said city unless all questions
13 connected with the same shall have been first submitted to the
14 qualified voters of said city and have received three-fifths of
15 all the votes cast for and against the same.
16 When the council shall deem it expedient to issue bonds,
17 an ordinance specifying the purpose and amount for which
18 such bonds are to be issued, shall be adopted by them at a
19 regular meeting and it shall then be the duty of the mayor
20 of the city to issue a proclamation reciting said ordinance and
21 appointing a day at which an election shall be held by the
22 qualified voters of the city to decide whether they will ratify
23 or reject said ordinance. Any bond ordinance may be voted
24 on at the time of holding any general municipal election or a
25 special election may be held for the purpose of submitting said
26 ordinance to a vote of the people. If a bond ordinance is
27 submitted to a vote at the time of a general municipal election,
28 separate ballots shall be provided therefor. Such proclama-
29 tion shall be published in two morning newspapers published
30 in the city, once a week for two successive weeks previous to
31 the day of the election.
32 More than one ordinance may be submitted at any election,
33 but each ordinance shall be separately voted upon; any ordi-
34 nance may specify more than one purpose for which said bonds
35 are to be issued: Provided, however, That the amount to be
36 appropriated for each purpose is also specified therein. The
37 proclamation issued by the mayor, as hereinbefore provided,
shall specify the aggregate amount of indebtedness, outstanding and authorized, of the city existing at the date of the proclamation.

Bonds issued by the city shall be of the denomination of one hundred dollars or multiples thereof, not exceeding one thousand dollars. They shall be payable not less than one nor more than thirty-four years after date. They shall bear not more than six per cent interest and the interest shall be payable annually or semi-annually. No debt shall be created by the city as a bonded debt except when issued under the provisions of this charter.

It shall be unlawful for the officers of the city to privately issue or sell directly or indirectly any bond or bonds to be used in payment for work or material to be furnished, but all such bonds shall be publicly sold to the highest bidder in writing to be approved by the officers conducting the sale, for cash, or its equivalent in bonds previously issued by the city, and the money arising therefrom shall be used for the purpose specified in the ordinance providing for the issuing of same; before any sale of such bonds, said sale shall be advertised in some newspapers, not exceeding four, in or out of said city, once a week for four weeks previous to said sale.

The treasurer of the city of Wheeling and his sureties shall be liable for the sinking fund and the amount levied for may be levied for a sinking fund and to pay interest on the bonded debt, and it shall be applied to the purposes for which it was levied or for investment in United States bonds or bonds of the city, as the council may direct, to be used for the payment of principal and interest of any bonded debt of the city.

Bonds of the city shall not be sold at less than their par value. The council shall provide in its ordinance that bonds of the city be signed by the mayor and city clerk and sealed with the seal of the city.

Should any of the fund derived from the issuance and sale of bonds of the city be diverted by the council or any officer or officers of the city from the purpose for which said bonds were issued and sold, such councilman or city officer using same or consenting to or aiding in the use thereof for such other purpose, shall be guilty of a misdemeanor and punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment for not less
than thirty days nor more than one year, or both fine and
imprisonment.

The city may issue and sell its bonds for any purpose for
which a municipality may issue bonds. After the council shall
have passed an ordinance providing for the submission of a
bond issue to the voters of the city, the mayor, with the con-
sent and approval of council, shall appoint a committee con-
sisting of not less than five residents and citizens of the city
of Wheeling, which committee shall act in an advisory
capacity, with the city council in all matters relating to the
issuance and sale of such bonds, and with the city manager in
the awarding of contracts and expenditures of the funds de-
rived from a sale of such bonds. The names of the members
of such committee shall be published in the proclamation issued
by the mayor prior to the holding of the election on any such
bond issue.

Sec. 68. The council shall provide by ordinance for the
deposit of all public moneys of the city, in such bank or banks,
situated within the city, as offer, at competitive bidding, the
highest rate of interest and give a good and sufficient bond to
the city, to secure the accounting for and due payment over
of such public money, with security approved by the council.
The security shall always be in a sum not less than ten per
cent in excess of the maximum amount at any time deposited,
but there shall not be deposited in any one bank an amount
in excess of the paid-in capital stock and surplus of such
bank, and not in any event to exceed one million dollars. In such
ordinance the council may determine the method by which
such bids shall be received, the authority which shall receive
them, the duration of the contracts respecting deposits of
public money, and all details for carrying this section into
effect. Proceedings in connection with such competitive bid-
ing and the deposit of money shall be conducted in such
manner as to insure full publicity, and shall be open at all
times to the inspection of any citizen. As to any deposits made
under authority of an ordinance of the council, passed pur-
suant to this section, neither the depositing officer, nor other
persons so depositing, nor such officers, sureties shall be liable
for any loss occasioned by the deposit, or in any wise growing
out of it.

Sec. 69. All officers of the city of Wheeling, who shall collect
or receive, or whose official duty it is, or shall be, to collect, receive, hold or pay out any money belonging to, or which is or shall be, for the use of said city, shall make annual account and settlement therefor. Such settlement, when made, shall be subject to exceptions, and take such direction, and have only such force and effect as may be provided by law; but in all cases, such settlements shall be recorded and be open to examination of the people, at such convenient place or places as may be appointed by ordinance of the city.

Any person violating any of the provisions of this section shall be guilty of a misdemeanor, and fined not less than fifty dollars nor more than one hundred dollars, or imprisoned not less than two nor more than twelve months, or punished by both such fine and imprisonment.

Sec. 70. All elections for councilmen shall be conducted by the election authorities prescribed by the general election laws of the state, and the provisions of the general election laws, insofar as they are not inconsistent with the provisions of this charter, shall apply to all such elections except as to the counting of the ballots, and the canvassing of the votes cast, and except as otherwise provided in this charter or by ordinance. The duties imposed by the general laws upon county clerks and circuit clerks shall devolve upon the city clerk, and the duties imposed by the general laws upon the county courts shall devolve upon the mayor and council. Each precinct shall have a single election board, regardless of the number of voters therein, and commissioners of election and poll clerks shall be appointed without regard to political party affiliation.

Sec. 71. The registration of voters for all city elections shall be done in the manner provided by the general laws of the state appertaining to the registration of voters for municipal elections; that is to say, chapter fifty of the acts of the second extraordinary session of one thousand nine hundred thirty-three: Provided, however, That the political party affiliations of the persons registered shall not be designated on the registration list prepared by the city clerk for any municipal election.

Sec. 72. All elections on questions submitted to the voters of the city shall be conducted by the election authorities pre-
3 scribed by the general election laws of the state, and the pro-
4 visions of the general election laws of the state, in so far as
5 they are not inconsistent with this charter, shall apply to all
6 such elections, except as otherwise provided by this charter or
7 by ordinance. The duties imposed by the general election laws
8 of the state upon circuit clerks and county clerks shall devolve
9 upon the city clerk, and the duties imposed by said laws upon
10 county courts shall devolve upon the mayor and council. Each
11 precinct shall have a single election board, regardless of the
12 number of voters therein, and commissioners of election and
13 poll clerks shall be appointed without regard for political party
14 affiliation. When an election on a question or questions sub-
15 mitted to the voters is held concurrently with an election for
16 councilmen, the ballots for councilmen shall be cast in boxes
17 other than those in which the ballots on such question or ques-
18 tions are cast. On the closing of the polls, the commissioners
19 of election and poll clerks in each precinct shall proceed to
20 count the votes cast on such question or questions in accord
21 with the provisions of the general election laws of the state,
22 and if one of the commissioners of election is absent from such
23 count by reason of having taken the precincts ballot box con-
24 taining the ballots cast for councilmen to the central counting
25 place, the count shall not be invalidated by reason thereof.
26 The votes cast on questions submitted to voters shall be can-
27 vassed by council in the manner prescribed by the general
28 election laws of the state.

Sec. 73. Every person qualified by law to vote for members
2 of the legislature of the state, who shall have been a resident
3 of the city for at least one year preceding the election, shall
4 be entitled to vote at elections for councilmen and on questions
5 authorized by law to be determined by popular vote.

Sec. 74. Any person eligible to the council may be placed
2 in nomination therefor only by a petition filed in his behalf
3 with the city clerk and signed by not less than three hundred
4 nor more than five hundred electors. The signatures to nomi-
5 nating petitions need not be appended to one paper, but to
6 each separate paper there shall be attached the affidavit of the
7 circulator thereof, stating that each signature thereto was made
8 in his presence and is the genuine signature of the person
9 whose name it purports to be and that, to the best of his
10 knowledge and belief, such persons are qualified voters of the
11 city. Each signer of a petition shall sign his name in ink or
12 indelible pencil and, after his name shall designate his residence
13 by street and number, or other description sufficient to identify
14 the place, and give the date when his signature was made. If
15 any elector signs petitions for more than two candidates, his
16 signature shall be invalid except as to the first two petitions
17 signed by him.

Sec. 75. The form of nominating petition papers shall be
2 substantially as follows:
3 We, the undersigned, here present .................................... whose
4 residence is ........................................... Wheeling, West Virginia,
5 as a candidate for the council, to be voted for at the election
6 to be held on the .................... day of May, 19........; and we in-
7 dividually certify that we are qualified to vote for candidates
8 for the council; that we have not signed more than one petition
9 nominating any other person for the council to be voted for
10 at such election, and we believe that the person whose name
11 we are hereby presenting is qualified to serve as a member
12 of council.
13 Name Street and Number Date
14 .................................. ---------------------------------- ············· ..................... .
15 ··································................................. .
16 ................................. .
17 State of West Virginia,
18 Ohio county, ss,:
19 ........................................ being duly sworn, deposes and says
20 that he is the circulator of this petition paper and that the
21 signatures appended thereto were made in his presence, and
22 are the genuine signatures of the persons they purport to be; and
23 that, to the best of his knowledge and belief they are qualified
24 voters of Wheeling.
25 ...
26 Taken and sworn to before me this..............................day of
27 ........................................, 19....... 
28

Sec. 76. All separate papers comprising a nominating
2 petition shall be assembled and filed with the city clerk as one
3 instrument at least forty-five days prior to the election. Within
4 eight days after the filing of a nominating petition the city
5 clerk shall notify the person named therein as a candidate
6 whether the petition is found to satisfy all the prescribed con-
7 ditions. Any eligible person placed in nomination as herein-
8 before provided, shall have his name printed on the ballots if
9 within seven days after such notification, he shall have filed with
10 the city clerk a written acceptance of the nomination. All nom-
11 inating petitions shall be examined by the city clerk in the man-
12 ner provided in this charter for the examination of petitions. If
13 a nominating petition is insufficient or invalid for any reason,
14 the city clerk shall notify the person named therein as a can-
15 didate, and such person shall then have three days in which
16 to cause to be filed a valid petition and if such valid petition
17 then be filed along with the candidate's acceptance of nomina-
18 tion, such person if eligible, shall have his name printed on the
19 ballots.

Sec. 77. Ballots used in electing members of the city council
2 shall be without party mark or designation, and shall be marked
3 by the electors according to the instructions printed thereon
4 under the heading "Directions to Voters," as specified in this
5 section. The ballots shall be in form substantially as follows:
6
REGULAR CITY ELECTION
7
May .................. 19........
8
Direction to Voters
9 Put the figure 1 in the square opposite name of your first
10 choice. Express your second, third, and other choices by
11 putting the figure 2 opposite the name of your second choice,
12 the figure 3 opposite the name of your third choice, and so on.
13 You may express thus as many choices as you please without
14 any regard to the number being elected.
15 Your ballot will be counted for your first choice if it can
16 be used to help elect him. If it cannot help elect him, it will
17 be transferred to the highest of your other choices whom it
18 can help.
19 You cannot hurt any of those you prefer by marking lower
20 choice for others. The more choices you express, the surer
21 you are to make your ballot count for one of them. But do not
22 feel obliged to express choices which you do not really have.
23 Do not put the same figure opposite more than one name.
If you spoil this ballot, tear it across once, return it to the election officer in charge of the ballots and get another from him.

CANDIDATES FOR THE COUNCIL

A. B. ........................................
C. D. ........................................

Sec. 78. A blank space shall be left on the ballots below the printed names of the candidates. In any such space an elector may write the name of any person eligible to the council, and votes cast for such person shall be counted as though for candidates whose names are printed on the ballot.

The names of candidates for the council shall be printed on the ballots in rotation as follows:

The ballots shall be printed in as many series as there are candidates for the council. The whole number of ballots to be printed shall be divided by the number of series and the quotient so obtained shall be the number of ballots printed in each series. In printing the first series of ballots the names of candidates shall be arranged in the alphabetical order of their surnames. After printing the first series the first name shall be placed last and the next series printed, and this process shall be repeated until each name shall have been printed first in one series. The ballots so printed shall be combined in tablets to be supplied to the various voting places. Each tablet shall contain substantially the same number of ballots from each series, and so far as practicable, the ballots shall be combined in such manner that two or more from the same series shall not be together in a tablet.

Sec. 79. Previous to every election of the council the city manager, with the advice and consent of the council, shall designate a central counting place, where the ballots shall be brought together and counted publicly, appoint a competent person to act as director of the count; employ a sufficient staff of assistants, and make suitable arrangements for the counting of the ballots, subject only to the provisions of this charter. Such director and his assistants shall constitute the central counting board.

Sec. 80. As soon as the polls have closed, the election officials at each polling place shall seal the ballot box used for
3 ballots for the council without opening it, and shall send it at
4 once by the commissioner of election designated for such pur-
5 pose, to the central counting place with a record of the number
6 of ballots for the council which they have given out to be voted,
7 less those returned to them as spoiled and unused. At the
8 central counting place the ballot boxes shall be opened by the
9 central counting board and the numbers of ballots found therein
10 recorded and compared with the record sent from the voting
11 places. Any discrepancies discovered shall be recorded and
12 dealt with according to the principles laid down by the general
13 election laws of the state as far as such principles may be appli-
14 cable.

Sec. 81. Ballots cast for the election of members of the
2 council shall be counted and the results determined by the
3 central counting board according to the following rules:
4 (a) On all ballots a cross without other mark shall be con-
5 sidered equivalent to the figure 1. So far as may be consistent
6 with the general election laws, every ballot from which the first
7 choice of the voters can be clearly ascertained shall be con-
8 sidered valid.
9 (b) The ballots shall first be sorted and counted according
10 to the first choices of the voters. The ballots from each
11 precinct cast for each candidate as first choice shall be put up
12 in a separate package, which shall be properly marked on the
13 outside to show the number of ballots therein, the precinct
14 from which they were received and the name of the candidate
15 for whom they were cast. The ballots declared invalid shall
16 also be put up in a separate package, properly marked on the
17 outside.
18 (c) The central counting board shall first determine which
19 ballots are invalid. A ballot shall be set aside as invalid if it
20 does not show clearly which candidate the voter prefers to all
21 others, or if it contains words or marks apparently intended
22 to identify the voter. All ballots, including those found invalid
23 by the central counting board, shall be set aside and preserved
24 until thirty days after the count is finished, and thereafter,
25 upon request of any candidate, until controversy arising there-
26 on shall have been terminated.
27 (d) The central counting board shall thereupon place to-
28 gether all the precinct packages of first choice ballots cast for
29 each candidate and shall then, in the case of each candidate.
30 number the said first choice ballots, as they come, consecutively
31 (1, 2, 3, 4, etc.). Council may, by ordinance establish the
32 order in which the precinct packages shall be taken for this
33 purpose. In default of such provision, the central counting
34 board may adopt any convenient order, but the same order
35 shall be followed as to all the candidates. All ballots received
36 by each candidate during the entire course of the counts, shall
37 be consecutively numbered, so that the last number at all times
38 shall correspond to the total vote of the candidate.
39 (e) The whole number of valid ballots cast shall then be
40 divided by a number greater by one than the number of seats
41 to be filled. The next whole number larger than the resulting
42 quotient is the quota or constituency that suffices to elect a
43 member.
44 (f) All candidates the number of whose ballots on the first
45 count equals or exceeds the quota shall then be declared elected.
46 (g) All votes obtained by any candidate in excess of the
47 quota shall be termed his surplus.
48 (h) Any surpluses there may be shall next be transferred,
49 the largest surplus first, then the next largest, and so on, ac-
50 cording to the following rules:
51 (i) In the transfer of the surplus, transferable ballots up to
52 the number of votes in the surplus shall be transferred to the
53 continuing candidates marked on them as the next choice, in
54 accordance with the rule (m). The omission of any con-
55 secutive figure in the designation of choices shall not invalidate
56 the ballot as to subsequent choices; the choices shall be taken
57 in the order of the figures used. The particular ballots to be
58 taken for transfer as the surplus of a candidate shall be ob-
59 tained according to the following rule:
60 The ballot marked by the central counting board with the
61 figure corresponding to the integer nearest that fraction of
62 which the numerator is the total vote of the candidate, and the
denominator the surplus of said candidate, as, for example, 5
63 or 6, shall be first taken if transferable. Then each next
64 higher multiple of said figure such as 10, 15, 20, etc., or 12,
65 18, 24, etc., until the entire surplus is taken. If the multiples
66 do not produce sufficient transferable ballots, the ballots with
67 the figures next succeeding the multiples shall be taken, as 6,
68 11, 16, etc., or 7, 13, 19, etc., as the case may be. This shall be
done until the entire surplus is taken. Any ballot so selected that is not a "transferable ballot" shall be left to the credit of the candidate whose surplus is being transferred.

(j) "Transferable ballots" means ballots from which the next choice of the voter for some continuing candidate can be clearly ascertained. A "continuing candidate" is a candidate as yet neither elected nor defeated.

(k) The votes standing to the credit of each candidate shall be added and a tabulation of results made whenever a comparison of the votes of the several candidates is necessary to determine the next step in the procedure.

(l) After the transfer of all surpluses (or after the first count if no candidate received a surplus) every candidate who has no votes to his credit shall be declared defeated. Thereupon the candidate lowest on the poll as it stands shall be declared defeated and all his transferable ballots transferred to each candidate, each ballot being transferred to the credit of that continuing candidate next preferred by the voter in accordance with rule (m). Thereupon the candidate then lowest shall be declared defeated and all his transferable ballots transferred in the same way. Thus the lowest candidate shall be declared defeated one after another and their transferable ballots transferred to continuing candidates.

(m) Whenever in the transfer of a surplus or of the ballots of a defeated candidate the vote of any candidate becomes equal to the quota he shall immediately be declared elected and no further transfer to him shall be made.

(n) When candidates to the number of seats to be filled have received a quota and have therefore been declared elected, all other candidates shall be declared defeated and the election shall be at an end; or when the number of continuing candidates is reduced to the number of seats still to be filled, those candidates shall be declared elected whether they have received the full quota or not, and the election shall be at an end; but in such event, the ballots of the candidate last declared defeated shall be distributed among the candidates last declared elected up to the amount of their quotas, according to the rules herein set forth.

(o) If, when a candidate is to be declared defeated, two or more candidates at the bottom of the poll have the same number of votes, that one of the tied candidates shall first be de-
clared defeated who was credited with the fewest votes at the end of the count next preceding, and any further tie shall be decided on the same principle. Any tie not otherwise provided for shall be decided by lot.

When the election is at an end, the central counting board shall prepare a statement of election returns, certify to the correctness thereof, and file same with the city clerk, as a public record, within three days after the count is concluded.

Any recount of the ballots shall be made by the central counting board in accordance with this section except that the reference to voting precincts may be disregarded. In any recount every ballot shall be made to take the same course it took in the original counting, unless there is discovered a mistake that requires its taking a different course. In such case any required changes shall be made in the course taken by the ballot. These principles shall apply also to the correction of any error that may be discovered during the original counting. Any defeated candidate may demand a recount within five days after the filing of the election returns with the city clerk, but if such recount does not result in the election of such defeated candidate, he shall pay the costs of such recount.

Sec. 82. At each municipal election any six or more candidates for council who shall file a written application with the city clerk at least ten days before said election, shall be entitled to exercise all the rights granted by the election laws of the state to a political party in regard to the appointment of witnesses, challengers and inspectors of election at the polling booths. In addition to such rights, said group of candidates shall be entitled to appoint two witnesses to the count in the central counting board. Application for the appointment of such witnesses to the count must be in writing to the city clerk at least ten days before the election. Credentials shall be issued by the city clerk, to such witnesses to the count which shall grant such witnesses full power and authority to move anywhere within the central counting quarter, to inspect all activities of the count and to exercise all rights and powers, which may be conferred on witnesses and inspectors of election under the election laws. The candidates or their agents, and representatives of the press, shall be afforded every facility for being present and witnessing these opera-
20 tions; also the public so far as may be consistent with good
21 order and with convenience in counting and transferring of
22 the ballots.

Sec. 83. The council shall have power to provide for the
2 the use of mechanical or other devices for making and sort-
3 ing the ballots and tabulating the results, and to modify the
4 form of the ballot, the directions to voters, and the details in
5 respect to the method of counting and transferring ballots
6 accordingly: Provided, however, That no change shall be made
7 which will alter the principles of the voting or of the counting.

Sec. 84. Any city councilman may be removed from office
2 by the following procedure: A petition signed by at least two
3 thousand qualified voters of Wheeling shall be filed with the
4 city clerk, which petition shall contain a general statement
5 of the grounds for which the removal is sought. Such peti-
6 tion shall be submitted, examined and certified in a manner
7 provided in this charter, and if such petition be deemed suffi-
8 cient by the city clerk, he shall certify the same to the city
9 council without delay. Upon receipt of such petition, the
10 council shall order and fix a date for holding a special recall
11 election, not less than thirty days nor more than fifty days from
12 the date of the clerk's certificate. The council shall publish
13 notice of said election once a week for three successive weeks
14 in two newspapers of general circulation in the city; all ar-
15 rangements for holding such election shall be made and the
16 same shall be made and the same shall be conducted, and the
17 results ascertained, as is provided in section seventy-two of this
18 charter. The ballot for such recall election shall be substan-
19 tially of the following form and effect:

20 OFFICIAL BALLOT

21 ........................................day of........................................, 19........

22 Special recall election for the removal of A. B.........................

23 □ For the recall of A. B..............................................

24 □ Against the recall of A. B.........................................

25 Should a majority of the votes cast be in favor of recalling
26 the councilman, subject to this provision, such councilman
27 shall forthwith forfeit his seat and the council shall, at its next
meeting following said recall election, appoint a successor to such office for the unexpired term of same. If a recall petition bears the signatures of five thousand qualified voters of the city, when certified to council, the councilman named therein shall be suspended from office pending the result of the recall election.

The said method of removal shall be cumulative and in addition to any other methods of removal provided by law. No recall petition shall be filed within ninety days succeeding or preceding any regular council election.

Sec. 85. Any person who shall bribe, by directly or indirectly giving to or bestowing upon a member of the council of the city, or other officer thereof, any money, testimonial or other valuable thing, or do any act beneficial to such officer, in order to influence him in the performance of any of his official or public duties, shall be deemed guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary of the state of West Virginia, for a term of not less than two years nor more than five years, and shall, moreover, be forever disqualified from holding any office or position of honor, trust or profit in said city.

Sec. 86. Any person attempting to bribe, by offering or proposing to give any officer or member of council of the said city of Wheeling money, testimonial, or other valuable thing, or to do any act beneficial to such officer or member of council in the performance of his official or public duties, shall be deemed guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary of the state of West Virginia, for not less than one year, nor more than three years, and shall, moreover, be forever disqualified from holding any office of honor, trust or profit in said city.

Sec. 87. If any member of the council of the city of Wheeling, or other officer of the said city shall demand or receive from any corporation, company, firm or person, any money, testimonial or other valuable thing, for the performance of any of his official or public duties, or for refusal or failure to perform the same, or for any vote or influence he may give or withhold as such member of council or other officer, or for making any particular nomination or appointment, he shall
9 be deemed guilty of felony, and, upon conviction thereof, shall
10 be imprisoned in the penitentiary of the state of West Vir-
11 ginia, for not less than five years, nor more than ten years;
12 and shall, moreover, be forever disqualified from holding any
13 office or position of honor, trust or profit in said city.

Sec. 88. Any person bribing or attempting to bribe, or
2 demanding or receiving a bribe, fee, reward or testimonial,
3 as set forth in any of the three next preceding sections, shall
4 be compelled to testify against any person or persons who have
5 committed any of the offenses in said sections mentioned:
6 Provided, That any persons so compelled to testify shall be
7 exempted from trial and punishment for the offense of which
8 he may have been guilty, and concerning which he is com-
9 pelled to testify.

Sec. 89. Any person who shall violate any of the provisions
2 of this charter, for the violation of which no punishment has
3 been provided herein, shall be deemed guilty of a misdemeanor,
4 and upon conviction thereof, shall be punished by a fine not
5 exceeding one hundred ($100) dollars, or by imprisonment in
6 the county jail not exceeding one year, or by both such fine
7 and imprisonment.

Sec. 90. The city of Wheeling may from time to time
2 hereafter enlarge the boundaries of the city only by and with
3 the consent of a majority of the inhabitants of the territory
4 proposed to be annexed, who are qualified voters of the state
5 of West Virginia, voting upon the subject at a general election
6 held in Ohio county, West Virginia, for state, county, judicial
7 or district officer, the votes upon the question of annexation
8 to be by ballots for the purpose of voting on such question
9 only, to be deposited in a ballot box or boxes separate and
10 distinct from the others used at such election, and the election
11 to be held after a notice thereof published in two newspapers
12 published in said city of Wheeling, once a week for four
13 successive weeks, and to be conducted, and the result thereof
14 duly ascertained, declared, certified and made a matter of
15 record, by the same officers who perform the like duties in
16 relation to the votes upon other matters at such general election,
17 and the ballots shall be prepared for voting upon such question
18 by the same officers as the other ballots for use at such election
19 and so far as applicable all the provisions of chapter three of
20 the code of West Virginia shall apply to the election upon
21 such annexation question.
22 Provided, however, That all expenses of holding such
23 elections, in so far as pertaining to such annexation, the pay-
24 ment whereof is not now provided for by law, shall be paid
25 by the city of Wheeling: Provided further, That, if the
26 territory proposed to be annexed is part or all of the land
27 embraced within the boundaries of any other municipal corpo-
28 ration, before the election on such annexation question is held
29 the council of the city of Wheeling and such other municipal
30 corporation must agree upon the terms upon which the annexa-
31 tion is to be made and such terms shall be inserted in the
32 published notice of election, the vote taken on such question of
33 annexation in a municipal corporation in which part or all
34 of the territory, proposed to be annexed, is located, and the
35 vote on annexation in territory not within a municipal corpo-
36 ration, must be taken separately and not together.
37 A majority of the votes cast upon the question of annexation
38 in any municipal corporation must be in the affirmative to
39 authorize the annexation of any of the territory thereof, and
40 a majority of the votes cast upon such question in territory
41 not in such corporation must be in the affirmative to authorize
42 the annexation of any of the last mentioned territory.
43 In the event that a majority of the votes upon the question
44 of annexation shall be in the affirmative, the council of the
45 said city of Wheeling shall by ordinance carry out the terms
46 of agreement upon which the annexation is to be made.
47 Any territory annexed must be contiguous to a boundary
48 or boundaries of the city of Wheeling existing at the time of
49 the annexation.

Sec. 91. The council may by ordinance purchase both toll
2 bridges now existing (but not one thereof only), or build a
3 bridge, over the east channel of the Ohio river, connecting
4 Wheeling island with the other portions of the city; but no
5 debt shall be created in the making of such purchase, except
6 upon full compliance with the provisions of this charter, and
7 of the constitution of this state. Upon acquiring such bridges,
8 or building such bridge, the city may maintain the same and
make all needful and reasonable regulations in regard to the
care thereof, and may, if it desires so to do, charge and collect
reasonable tolls for the use thereof. The city shall have the
right to enter into contracts with the two bridge companies
owning such existing bridges, charging toll for passage over
same, for free passage of pedestrians over such bridges (but
not over one only); but such contract shall be entered into
only when petitioned for, as provided in the initiative and
referendum section of this charter, and after ratification by
the voters of said city.

Sec. 92. It shall be the duty of any owner or owners of
any land in the city desiring to lay out or divide such land
into lots, with streets, alleys, ways or lanes, to first submit to
the council a plat showing the proposed lots, streets, alleys,
ways, or lanes, and the proposed grades, sewers and drainage
thereof, as well as the municipal improvements which may be
required thereto, for its approval before filing the same for
record, or selling any of such lots. Before the council shall
approve the same, the owner or owners of such land shall
dedicate the proposed streets, alleys, ways or lanes on such
plat to public use; and the clerk of the county court shall
not record such plat, nor shall any of the lots be sold or con-
veyed until the council shall have caused an endorsement of
its approval to be placed thereon. If any land in said city
shall have been heretofore laid out or divided and a plat there-
recorded, or lots sold therefrom, before the approval of
the council, it shall be the duty of the council and other officers
of the city, before making any improvements on or in the
streets, alleys, ways or lanes laid out on such land, to require
from the owner or owners of the land, or from purchasers
of lots therein, the payment of such sum or sums as will in
the opinion of the council, compensate the city for the increased
cost or decreased value, or both, of the municipal improvements
the city may desire to make on such land, occasioned by the
imperfect or improper plan of such laying out, or division,
before any such improvements are made by the city.

Sec. 93. The council may cause any street or alley to be
paved between the sidewalks, with cobble, asphalt, stone,
brick, or other suitable materials, under such regulations as
shall be fixed by ordinance upon the lowest and best terms to be obtained by advertisement for bids or proposals therefor by the council as herein provided; or the council may provide that such work be done without the intervention of contractors or middlemen; and two-thirds of the cost of such paving, shall be assessed against the owners of the lots or fractional parts of lots abutting or bounding on that part of the street or alley so paved in proportion to the distance of the frontage owned by each, except in the case of a street whereon a railway of any kind is being operated, the railway company, or owner of such railway shall upon thirty days' notice in writing from the city, pave with like material and in a like manner as the city paves the residue of the streets, or pay for the new paving if done by the city, between the rails and a foot outside of the rails, and the residue of the space between the tracks where more than one are on the street, and the remaining two-thirds by the owners of the abutting property on both sides of said street or alley on which said railway is being operated, the intersections of two streets, or of a street and alley, or of two alleys, to be paved at the expense of the city. But where the intersection is crossed by a railway track or tracks of any kind, the railway company or owner of such tracks shall pay for the paving of so much of such intersection as is between its rails and one foot outside of such rails, as well as the residue of the space between double tracks. In case two street railway tracks belonging to different owners are on a street, the cost of paving between such tracks on such street shall be paid one-half by the owner or owners of each of such tracks.

The sum or sums of money thus assessed for paving shall be a lien on the lots or fractional parts of lots upon which they are assessed, which lien may be enforced by a suit in equity in the name of the city, in the circuit court of Ohio county, West Virginia, or the same, or any installment thereof, may be collected by a suit at law before such court, or before any justice of the peace of said county if the amount involved does not exceed three hundred dollars exclusive of interest and costs.

Immediately upon the completion and acceptance of any
such paving, the council shall direct the city clerk to cause to be published a notice, which shall name and describe the location of the portion of the street or alley upon which said paving shall have been constructed; give the name or names of the owners of each lot abutting or bounding upon such portion of the street or alley, if known, and if the name or names of the owners of any lot or fractional part of a lot are unknown, such lot shall be described with reasonable certainty in order that the same may be identified; and the number of feet that each lot or fractional part of a lot abuts upon such paved portion, as well as the amount assessed against each lot or fractional part of a lot, for the cost of paying. Said notice shall cite all owners of lots or fractional parts of lots, abutting upon the portion of the street or alley which has been paved, to appear before the council at a regular meeting thereof, within thirty days from the first publication of the notice, and show cause, if they can, why the assessment aforesaid should not become final, which notice shall be published once a week for two successive weeks in one or more newspapers of general circulation published in said city. The council shall, upon the request of any one or more of the owners of said lots or fractional parts of lots, appoint a day to hear the grievances of said owner or owners, and may alter or amend any assessment made against any one or more of said owners for good cause shown. The city clerk shall give notice to all persons claiming to be injured by said assessment, of the time and place of holding the meeting of the council to hear such grievances, which meeting shall be held within ten days after the clerk shall have given the last mentioned notice. The council may adjourn the hearing from time to time. In case any owner or owners of abutting property fail within such thirty days to complain to the council of any grievance or injury they may have suffered, by reason of the assessment aforesaid or to appear before the council for the purpose of having the same corrected on the day appointed by the council for the hearing of such grievances as have been complained of, the assessment as laid shall be final. The findings of said council shall be subject to correction by said circuit court, upon appeal, which must be taken and perfected within thirty days from the finding and
be heard and determined by such court without delay, having precedence of other cases on the court's docket. The rights conferred by this section are cumulative and shall not be exhausted as to any particular street or alley by reason of having been once exercised.

One-tenth of the amount assessed against the property owner of the cost of the paving shall be paid within one year after the completion and acceptance of the work, and the remaining nine-tenths thereof shall be paid in nine equal annual installments, with interest, payable annually, payable at such times as the city shall collect taxes for other purposes. Where the city does the paving which is required to be done by the traction companies under their franchise rights of this charter one-tenth of the costs thereof shall be due and payable within one year after the completion and acceptance of the work, and the remaining nine-tenths thereof shall be paid in nine equal installments, with interest payable annually, payable at such times as the city shall collect taxes for other purposes.

The cost of such work shall constitute a lien on all of the property of the traction companies, which lien may be enforced by a suit in equity in the name of the city in the circuit court of Ohio county, West Virginia, or the same or any installments thereof may be collected by a suit at law before such court. But a lien upon any real estate created by virtue of this section shall be void as to any purchasers of any such real estate unless the city shall, within sixty days after the completion and acceptance of the paving by the city, cause to be recorded in the office of the clerk of the county court an abstract of such assessment, giving the location of the real estate affected, the name of the owner and the date and amount of the assessment, which recordation shall be in a well bound book to be furnished by the city and be preserved in said clerk's office. And it is hereby made the duty of said county clerk to record said abstracts; for the recordation of each of which said clerk shall receive a fee of twenty-five cents to be paid by the city.

All moneys appropriated for the paving, repaving or re-
pairing of streets or alleys shall be used for that purpose only, and the revenue received by the city from assessments against any and all property or property owners shall be placed in a "street paving" fund and shall be considered and treated the same as moneys appropriated for that purpose.

Sec. 94. If two-thirds, or more, of the owners of the property abutting on any street or alley, or any section thereof which shall lie between intersecting streets or alleys shall desire same to be paved or repaved between the curbs, and shall present a petition to the council, setting forth their desire and describing the street or alley, or the section thereof desired to be paved or repaved, the council shall, within a reasonable time cause the said work to be done, after the method set forth in the next preceding section, the provisions of which section shall apply to the last named paving or repaving.

Sec. 95. Permission may be given to a person, firm or private corporation, not engaged in conducting a public utility business, to place a switch or tramway on a part of a public street or alley, at grade, for his own or its own use, but the grant shall be so limited as not to exceed ten years, and a charge, in the nature of an annual rental or license charge for the same, payable to the city, may be fixed by the council.

All grants under this section shall be subject to the following restrictions and conditions:

If no time is expressly provided in the grant, it shall be for one year only.

It shall provide that the grantee shall indemnify and save harmless the city against all suits, loss or damage, by reason of the construction or maintenance of such switch or tramway, and that said grant may be altered, amended or repealed upon satisfactory evidence that the grantee has failed to comply with its provisions. Reasonable provisions must be made to protect the public from unnecessary damage or inconvenience by reason of such switch or tramway and the operation or maintenance thereof.

Sec. 96. All copies purporting to be copies of the ordinances of said city or extracts from the journal or minutes of the council, which shall be printed by the authority of the council, or which shall be certified to be correct by the mayor of said city under the seal thereof, shall be received by all courts and
6 magistrates of this state as prima facie evidence of the tenor of such ordinances, and of the acts and proceedings of the council therein set forth.

Sec. 97. All fees and money paid to an officer of the city, for an official service, shall belong to the city and be paid at once into the city treasury by such officer, the salary or compensation given by the city to its officers respectively, being all the compensation they shall be entitled to for any official service.

Sec. 98. Signatures to petitions provided in this charter need not be appended to one paper, but each paper bearing signatures shall state, at the top thereof, the purpose of the petition, and there shall be attached thereto the affidavit of the circulator thereof stating that each signature was made in his presence on the date specified, and is the genuine signature of the person whose name it purports to be, and, in cases required signatures of qualified voters, that such person is to the best of his knowledge and belief a qualified voter of the city of Wheeling. Opposite each signature is to be given the place of residence in Wheeling of each signer, by street and number where possible, and the date such person signed the petition. All separate papers comprising a petition shall be assembled and filed with the city clerk as one instrument. Upon receiving any petition, the city clerk shall immediately examine the same, and if found to contain the number of valid signatures requisite for the purpose specified therein and that it complies with the requirements hereof, he shall certify such petition to be in good form and shall forthwith transmit such petition to the council. If such petition does not contain the requisite number of valid signatures or fails to comply with the requirements hereof in any other respect, the city clerk shall state in writing the defect or defects therein and shall return it to the party who filed it. If the petition is returned to the city clerk within ten days thereafter, and then is found to meet the requirements hereof, the city clerk shall certify same to be in good form, and shall transmit same to the council forthwith. The council may allow the city clerk such reasonable sum as may be necessary to secure any additional help required to assist him in the examination of any petition or petitions, or the city manager may be directed to assign to the city clerk competent city employ-
Sec. 99. If any provision of this charter be held to be un-2
constitutional, this shall not affect the validity, force or effect
3 of any other provision.

Sec. 100. All acts and parts of acts inconsistent herewith are
2 hereby repealed.

PART II

Section 1. When the words "this charter" are used anywhere
2 in this act, they shall be construed to mean the charter pro-
3 vided in Part I of this act.

Sec. 2. The question of ratification or rejection of this
2 charter shall be submitted to the electorate of the city of
3 Wheeling at a special election which shall be held within the city
4 on the third Thursday in April of 1935. The general election
5 laws of the state shall be applicable to the said special election,
6 as to the preparation therefor, the conduct thereof and the de-
7 termination and declaration of the result, and also as to offenses
8 and penalties; except where otherwise provided in this act or
9 where by the nature of the provisions of this act, the general
10 election laws could not consistently be applicable. The city
11 clerk shall be charged with all duties and responsibilities which
12 under the general election laws of the state devolve upon ballot
13 commissioners and upon the clerks of the county courts and the
14 circuit courts, and the manager-mayor and council shall be
15 charged with all the duties and responsibilities which under the
16 general election laws of the state devolve upon the board of
17 canvassers and upon the county courts, and they shall be subject
18 to all the penalties and offenses relating to elections.

Sec. 3. On or before the first day of April, 1935, the clerk
2 of the city of Wheeling shall cause the whole of this act to be
3 published in two daily newspapers of general circulation within
4 the city together with the following notice: "Notice to the
5 Citizens of Wheeling. Printed herewith is a copy of an act
6 of the legislature of................................., 1935, being Senate
7 Bill Number 204, which proposes a new charter for the city
8 of Wheeling. Part I of the following act constitutes the pro-
9 posed charter. All qualified voters of Wheeling will be afforded
the opportunity of voting on the question of ratification of this proposed charter at a special election to be held within the city on April 18. A majority vote shall be necessary for ratification. Part II of the said act provides for the special election, and part III of the said act provides when and how the new charter shall become effective in the event that it is ratified by the electors of Wheeling at the said special election.

Said notice shall be signed by the city clerk and shall be followed by a full copy of this act. No further publication shall be required.

Sec. 4. The ballots to be used at the said special election shall be in form and effect as follows:

OFFICIAL BALLOT

On the question of ratification of the proposed charter for the City of Wheeling contained in the act of the legislature of ............................................................, 1935, Senate Bill No. 204:

For ratification of the proposed charter.

Against ratification of the proposed charter.

On the reverse side thereof shall be printed two blank lines with the words "poll clerks" printed underneath. Ballots shall be printed only in the amount of 1 1/8 times the number of registered voters.

Sec. 5. The council of the city of Wheeling, at its regular meeting on the second Tuesday in April, 1935, shall appoint two commissioners of election and two poll clerks for each election precinct within the city, and such appointments shall be made without respect for the political party affiliation of the appointees; but the appointment shall be made in so far as possible so that to have in each precinct, one commissioner of election and one poll clerk known to be in favor of ratification of this charter, and one commissioner of election and one poll clerk known to be against ratification of this charter, and for that purpose, council may require that prospective commissioners of election and poll clerks shall submit their affidavits setting forth whether they are in favor of, or against ratification of this charter. The commissioners of election and poll clerks so appointed shall constitute the election boards of the several precincts and no precinct shall have more than one
17 election board, regardless of the number of registered voters
18 therein. The commissioners of election and poll clerks so ap-
19 pointed shall conduct the election within their respective pre-
20 cincts and shall be vested with such authority as is prescribed
21 in the general election laws of the state. Each commissioner
22 of election and poll clerk shall receive $4.00 as compensation
23 for his services and no more.

Sec. 6. On or before the second Tuesday in April, 1935, the
2 council of the city of Wheeling shall, in open session, designate
3 the polling places in each precinct for the special election
4 herein provided. The regular polling places as heretofore es-
5 tablished by custom shall be designated in every case in which
6 this direction shall be practicable. The council shall provide
7 all equipment and supplies necessary to hold the election and
8 to ascertain the results thereof, and shall compensate all
9 election officials as herein provided.

Sec. 7. Chapter 50 of the acts of the second extraordinary
2 session, 1933, shall apply as to the registration of voters for
3 the election herein provided, and council shall, before the first
4 day of April, 1935, provide for two sessions of council one
5 week apart, between the dates of April first and April fifteenth,
6 1935, for the purpose of registration of voters as provided in
7 said act of the legislature. Notice of such sessions, and the
8 purpose, time and place thereof shall be published at least once
9 in two newspapers of general circulation in Wheeling on April
10 1, 1935.

Sec. 8. Any twenty qualified voters of the city of Wheeling
2 shall have all the rights granted by general election laws of the
3 state to a candidate, in regard to recounts: Provided, however,
4 That each of such twenty voters shall post a bond with the city
5 clerk in the amount of two hundred dollars, payable to the city
6 of Wheeling, and conditioned upon the payment of costs of such
7 recount if the result of said election is not changed thereby.
8 Each bond shall have corporate surety and shall be approved
9 as to form and sufficiency by one of the judges of the circuit
10 court of Ohio county.

Sec. 9. The third Thursday of April, 1935, shall not be a
2 legal holiday in the city of Wheeling, and offices and places of
business of all city of Wheeling and Ohio county officials and employees shall be open for business as usual, and such officials and employees shall perform their usual duties throughout said day: Provided, however, That every city and county official and employee who is qualified to vote at the said election, shall be given a reasonable opportunity to do so.

PART III

Section 1. If a majority of the ballots legally cast at the special election provided in Part II of this act shall be marked "for ratification of the proposed charter" this charter shall be declared to have been ratified, and Part I of this act shall become effective on the first day of July, 1935, and shall then and thereafter constitute the charter of the city of Wheeling. But if a majority of the ballots legally cast at said election shall be marked "against ratification of the proposed charter" this charter shall be declared to have been rejected, and it shall have no force and effect whatsoever, and the provisions of the present charter shall continue in full force and effect.

Sec. 2. If this charter be ratified as aforesaid, nine councilmen shall be elected from the city at large, for a term of four years and until their successors are elected and qualified, in the manner provided hereinafter in this act. Said nine councilmen shall take office on the first day of July, 1935, and shall then and constitute the first council under this charter; and the primary and general elections required by the present charter shall be dispensed with.

Sec. 3. If this charter be ratified, a general election for the election of nine councilmen shall be held on the first Tuesday in June, 1935. At their regular meeting on the third Tuesday in May, 1935, the council shall appoint three commissioners of election and two poll clerks for each voting precinct, without regard to political party affiliations. Council shall, at the same meeting, designate a polling place for each precinct, and the regular polling places as established by custom shall be designated in all cases where it is practicable to follow this direction. The commissioners of election and poll clerks so appointed shall constitute the election boards for the several precincts, and they shall have all powers and authority conferred on election boards.
by general laws; but no precinct shall have more than one elec-
tion board. At the same council meeting aforesaid, the council
shall designate a large hall, centrally located within the city, as
the central counting place; and the manager-mayor shall desig-
nate a qualified person as director of the count, and a sufficient
number of qualified persons as assistants to the director of the
count, and said director of the count and his assistants shall
constitute the central counting board, and shall have all the
powers and authority vested by law in commissioners of election,
poll clerks, and boards of canvassers. In selecting the director
of the count and his assistants, the manager-mayor may choose
qualified persons who may be non-residents of the city or the
state.

Sec. 4. Council shall provide all supplies and equipment
necessary to hold the said election on the first Tuesday in June,
1935, and to ascertain the result thereof; and shall compensate
all election and counting board officials in such amounts as may
be provided by law, or if no provision be made, in such amounts
as shall be just and reasonable, as shall be provided by ordi-
rance, after consideration of recommendations of the manager-
 mayor.

Sec. 5. In conducting the said election and in ascertaining
the result thereof, the provisions of this charter and of the gen-
eral laws of the state shall be applicable insofar as they are con-
sistent with the provisions of Part III of this act, and in cases
of conflict between the general law and this charter, the pro-
visions of this charter shall prevail and control. The powers
and duties prescribed by law for clerks of county court and
clerks of circuit courts, and for ballot commissioners, shall de-
vote upon the city clerk, and the powers and duties prescribed
by law for county courts shall devolve upon the manager-mayor
and council; except that the central counting board shall count
and canvass all votes cast.

Sec. 6. The registration lists used in the special election of
April 18, 1935, shall be used in the election herein provided,
but council shall sit as a board of registrars during the after-
noon of May 28, 1935, and at least once prior thereto, for the
purpose of completing the registration.

Sec. 7. Candidates for the new council shall be nominated by
petition, as provided in this charter, except that nominating petitions shall be filed with the city clerk before noon of the 4th of May, 1935, and the city clerk shall have until noon May 11th to examine such petitions and to notify the persons named therein as candidates. Acceptances of candidacies, (and amended petitions, accompanied by acceptances of candidacies, in cases requiring such action) must be filed with the city clerk before noon on the 16th day of May, 1935. The names of all persons duly nominated shall be printed on the ballots, which shall be prepared by the city clerk, in accord with the provisions of this charter.

Sec. 8. All ordinances and resolutions of council in force immediately prior to the time this charter takes effect, and not inconsistent with its provisions or with the laws of the state, shall continue in force until amended or repealed by council.

Sec. 9. All contracts, grants, easements, rights, privileges or consents on, in or relative to any street, alley or public ground or property of said city made by the council of said city or by any board or officer thereof immediately prior to this charter taking effect (in the event of the ratification of this charter) and all other contracts, grants, easements, rights, privileges or consents entered into or granted by the said city or its council, at any time prior to this charter taking effect, and which are in effect immediately prior thereto shall continue in full force and effect and be respected and complied with by the city of Wheeling; and all indebtedness incurred by the said city prior to this charter going into effect shall be binding upon the city of Wheeling under this charter and be paid by it out of its revenues: Provided, however, That nothing in this section shall be construed to give effect to any obligation, contract, grant, easement, right, privilege or consent which shall be void or not binding upon the city of Wheeling immediately prior to the time this charter takes effect.

CHAPTER 142

(House Bill No. 319—By Mr. Roberts, by request)

AN ACT to amend and reenact section twenty-four, chapter one hundred sixty-seven, acts of the Legislature of West Virginia,
one thousand nine hundred twenty-one, and as the same was amended by chapter one hundred one, acts of the Legislature of West Virginia, one thousand nine hundred thirty-one; section three, chapter twenty-eight, acts of the Legislature of West Virginia, one thousand eight hundred ninety-three, as the same relates to the term of office of the judge, the jurisdiction and the salary of the judge of the common pleas court of Cabell County.

[Passed March 7, 1935; in effect from passage. Approved by the Governor.]

Sec. 3. Judge of common pleas court. 

Be it enacted by the Legislature of West Virginia:

That section three, chapter twenty-eight, acts of the Legislature of West Virginia, one thousand eight hundred ninety-three; and section twenty-four, chapter one hundred sixty-seven, acts of the Legislature of West Virginia, one thousand nine hundred twenty-one, as amended by chapter one hundred one, acts of the Legislature of West Virginia, one thousand nine hundred thirty-one, be amended and reenacted to read as follows:

Section 3. There shall, at the general election to be held in this state on the Tuesday after the first Monday of November, one thousand nine hundred thirty-six, and every eight years thereafter, be elected by the legal voters of said county, a judge of the common pleas court of Cabell County, who shall be a resident member of the bar of said county and shall be disqualified from practicing law in all the courts of this state during his continuance in office, who shall preside over said court for the term of eight years from the first day of January, succeeding his election, and shall be, except as to his term of office and jurisdiction, subject to the laws in force governing circuit judges. The judge of said court may be removed from office for the same reasons and in the same manner as judges of circuit courts. And if from any cause the office shall become vacant, the vacancy shall be filled in the same manner as in the case of a vacancy in the office of the judge of the circuit court.

Sec. 24. The said court shall also have common and con-
2 current with the circuit court of Cabell County, supervision
3 and control of all proceedings before justices and other inferior
4 tribunals by mandamus, prohibition and certiorari; original
5 and general jurisdiction of all cases of habeas corpus, mand-
6 mus, quo warranto and prohibition; of all cases in equity in-
7 cluding jurisdiction in equity to remove any cloud on the title
8 to real property, or any part thereof, or any estate, right or
9 interest therein, and to determine questions of title with re-
10 spect thereto, without requiring allegations or proof of actual
11 possession of the same; of all crimes and misdemeanors; and
12 shall have appellate jurisdiction in all cases, civil and criminal,
13 where an appeal, writ of error or supersedeas may be allowed
14 to the judgment or proceedings of any inferior tribunal, and all
15 such other authority and jurisdiction within the said Cabell
16 County as is now or may hereafter be given or granted to the
17 circuit court of Cabell County, except original jurisdiction in
18 matters of law where the amount in controversy, exclusive of
19 interest and costs, exceeds fifty dollars.
20 The judge of the common pleas court shall receive for his
21 services six thousand dollars annually, payable in monthly in-
22 stallments, beginning on the first day of January, one thousand
23 nine hundred thirty-seven, which amount shall be provided for
24 and paid by the county court out of the treasury of said Cabell
25 County, and which provision as to salary shall not repeal the
26 existing provisions until the said first day of January, one
27 thousand nine hundred thirty-seven.
28 All acts or parts of acts inconsistent or in conflict with this
29 act are hereby repealed.

CHAPTER 143

(House Bill No. 365—By Mr. Wolfe)

AN ACT to authorize and empower the city of Grafton, a munici-
pal corporation in Taylor County, West Virginia, to set aside
annually from the general revenues of said city a sum not
exceeding five thousand dollars annually to be used in main-
taining, equipping and operating a municipally-owned hos-
pital and for the hospitalization of the poor of said city, the
sum so set aside to constitute a part of the income and reve-
nues of said hospital and authorizing the use thereof for any purpose connected with the hospital including liquidation of any debts which may constitute or be a lien or charge upon the income of said hospital.

[Passed March 5, 1935; in effect from passage. Became a law without the approval of the Governor.]

Sec 1. City of Grafton authorized to use general city funds to operate a municipally owned hospital; amount not to exceed five thousand dollars annually; purposes for which used.

Be it enacted by the Legislature of West Virginia:

Section 1. The city of Grafton, a municipal corporation in Taylor County, West Virginia, is authorized and empowered to annually set aside from the general revenues of the city of Grafton a sum not to exceed five thousand dollars annually, to be used for the purpose of maintaining, equipping and operating a municipally-owned hospital and for the relief, accommodation and hospitalization of the poor and indigent of the city of Grafton who are admitted to said hospital for treatment and hospital care, and which said sum, upon being allocated and set apart, as herein provided, shall constitute a part of the revenues and income of said hospital and may be used for any purpose in connection with said hospital, the maintenance, operation or equipping thereof, the hospitalization of the poor and indigent of the city and for the liquidation and payment of any debts which may by virtue of any contract or by operation of law be a lien or charge upon the revenues and income of said hospital, and the said city and the commission thereof are authorized to enact and put in force proper ordinances or resolutions to fully carry out the provisions of this act.

CHAPTER 144

(Senate Bill No. 124—By Mr. Fleming)

AN ACT to vest in the state road commission of West Virginia the control, management and upkeep of the bridge over the Cheat river, near Erwin in Preston county, known as the "Old Covered Bridge."
Sec. 1. Management, upkeep, etc., of "Old Covered Bridge" near Erwin, Preston county, vested in state road commission: appropriation for restoration and upkeep.

WHEREAS, The bridge over the Cheat river, near Erwin, in Preston county known as "The Old Covered Bridge" is now one hundred years old, and

WHEREAS, By reason of its unique architectural features, said bridge is of historical value and an object of interest to the thousands of tourists who travel United States route fifty on which it is located, and

WHEREAS, A new and modern bridge to accommodate present day highway traffic has been built in the immediate vicinity of said covered bridge and it is desired to preserve said covered bridge as a historical and interesting object; therefore,

Be it enacted by the Legislature of West Virginia:

Section 1. For the purpose of preserving as a historical object, the bridge over Cheat river, on United States route fifty, near Erwin, in Preston county, known as the "Old Covered Bridge," the management, control and upkeep of said bridge, which is no longer used for traffic, is vested in and delegated to the state road commission of West Virginia. Said commission from such funds as it may have, is authorized and directed to expend such amount as may be necessary, not to exceed fifteen hundred dollars to restore said bridge and its approaches and to beautify its surroundings, and thereafter such sum annually, not to exceed one hundred dollars, for the upkeep of said bridge and its surroundings.

CHAPTER 145

(House Bill No. 398—By Mr. Underwood)

AN ACT to amend and reenact chapter twenty-two, acts of the Legislature of West Virginia, regular session, one thousand nine hundred seven, as amended and reenacted by chapter one hundred forty-three, acts of the Legislature of West Virginia.
regular session, one thousand nine hundred fifteen; and cre­
ating the board of trustees of county school and public library.

[Passed March 1, 1935; in effect from passage. Approved by the Governor.]
11 of the board shall receive no compensation for their services. 
12 The board shall hold such meetings and make such by-laws, not 
13 inconsistent with the laws of this state, as it shall determine. 
14 Three members of the board shall constitute a quorum. An-
15 nually, at the first meeting of the board following the first day 
16 of August, it shall choose a president and a secretary from 
17 among its own members, who shall serve until their successors 
18 are chosen; vacancies shall be filled by the board. The sheriff 
19 of Tyler county shall be ex-officio treasurer of the board; he 
20 shall keep all moneys received for its use in a separate fund 
21 to be known as the "library fund"; he shall be liable on his 
22 official bond to the board for such moneys, and shall annually 
23 account therefor to it in like manner as he accounts for other 
24 public moneys.

Sec. 3. All books and library supplies, materials and equip-
2 ment contained in the library hereinafter mentioned or be-
3 longing thereto are hereby transferred to and vested in said 
4 board. All persons having custody or control of any moneys 
5 belonging to or held for the use or benefit of said library or the 
6 agency created by the acts of the Legislature mentioned in the 
7 title of this act shall forthwith pay the same over to the sheriff 
8 of Tyler county who shall place the same in said library fund; 
9 and the board may maintain in its own name all remedies pro-
10 vided by law or equity for the recovery of said books, library 
11 supplies, materials and equipment, and moneys.

Sec. 4. The board shall maintain and continue, as a public 
2 institution, the library now located in the municipal building 
3 of the city of Sistersville; shall purchase such additional books 
4 and library supplies, materials and equipment and make such 
5 repairs to those on hand as may be proper; shall employ and 
6 compensate a librarian and assistants; and shall make such 
7 rules and regulations for the conduct and maintenance of such 
8 library as to it may seem proper, except as may be herein 
9 otherwise provided.

Sec. 5. No charge shall be made for the use, for reasonable 
2 time, of the books in said library to any pupil or teacher of 
3 the public schools of Tyler county; charges may be made for 
4 such use to others as in the discretion of the board may be
proper. All charges received for such use shall be paid by those receiving the same to the sheriff of Tyler county, who shall place the same in said library fund.

Sec. 6. Disbursements shall be made from said library fund by said sheriff only upon order of the board, signed by its president and counter-signed by its secretary.

Sec. 7. The council of the city of Sistersville shall provide adequate housing facilities for the maintenance and continuance of said library and shall furnish necessary light, heat and janitor service for the same, free of charge.

Sec. 8. The board of education of Tyler county shall from time to time pay into said library fund sufficient additional amounts as may be necessary to pay the cost and expense of maintaining and continuing said library, but not to exceed twelve hundred dollars per annum.

Sec. 9. All acts and parts of acts inconsistent herewith are hereby repealed.
RESOLUTIONS

HOUSE CONCURRENT RESOLUTION NO. 1
(By Mr. Thomas)
[Adopted January 9, 1935.]

Raising a joint committee to inform the Governor that the Legislature is organized.

Resolved by the House of Delegates, the Senate concurring therein:

That a joint committee be appointed, three by the Speaker of the House of Delegates and three by the President of the Senate, to wait upon the Governor and to inform him that the Legislature is organized with a quorum of each house present, and is prepared to receive any message or communication he is pleased to make, and is ready to proceed with the business of the session.

HOUSE CONCURRENT RESOLUTION NO. 2
(By Mr. Adkins)
[Adopted January 9, 1935.]

Providing for a joint assembly.

Resolved by the House of Delegates, the Senate concurring therein:

That the Legislature meet in joint assembly in the chamber of the House of Delegates at 1:00 o’clock, P. M., this day, to hear the biennial message of His Excellency, Governor H. G. Kump.

HOUSE CONCURRENT RESOLUTION NO. 3
(By Mr. Thomas)
[Adopted January 28, 1935.]

Raising a Joint Committee on Alcoholic Beverage Control.
Resolved by the House of Delegates, the Senate concurring therein:

That a Joint Committee to be known as the "Committee on Alcoholic Beverage Control," to consist of the President of the Senate, the Speaker of the House of Delegates, the Chairman of the Senate Committee on Finance, the Chairman of the House Committee on Taxation and Finance, the Chairman and Members of the House Committee on the Judiciary, the Chairman and Members of the Senate Committee on the Judiciary, be and is hereby raised to hold public hearing upon legislation to carry out the provisions of the "Prohibition Repeal Amendment" to section forty-six, article six of the state constitution; and, be it

Resolved further, That all bills introduced in the two houses relating to this subject and to regulating and licensing the sale of beer, wine and other alcoholic beverages, shall be referred to this committee for hearing thereon only; and, be it

Resolved further, That said committee shall incur no expenses to the state in its work, unless it shall receive specific authorization from the Legislature therefor.

HOUSE CONCURRENT RESOLUTION NO. 4

(By Mr. James)

[Adopted January 15, 1935.]

Raising a Joint Committee on Joint Rules.

Resolved by the House of Delegates, the Senate concurring therein:

That a Joint Committee on Joint Rules is hereby raised to consist of the President of the Senate and the Speaker of the House of Delegates, two members of the Senate, to be appointed by the President, and two members of the House of Delegates, to be appointed by the Speaker, to consider and report on Joint Rules for the Senate and House of Delegates.
HOUSE CONCURRENT RESOLUTION NO. 5

(BY MR. GENTRY)

[Adopted January 15, 1935.]

Relating to the payment by the Auditor of mileage and contingent and other expenses of the one thousand nine hundred thirty-five session of the Legislature.

Resolved by the House of Delegates, the Senate concurring therein:

That the Auditor, in advance of the appropriation for the purpose, is hereby authorized, upon proper warrants of the Clerk of the Senate and the Clerk of the House of Delegates, to pay the mileage of the members of the Senate and the House of Delegates; bills incurred and services furnished to the Legislature for this session, including contingent expenses; the per diem of the officers and attaches of the Senate and House of Delegates and for legislative printing of this session, as the accounts for same may come due.

HOUSE CONCURRENT RESOLUTION NO. 7

(BY MR. PEITER)

[Adopted January 17, 1935.]

Extending the time allowed the Board of Public Works for submitting the budget for the ensuing fiscal years.

WHEREAS, Under sub-section B, section fifty-one, article six of the state constitution, the Board of Public Works shall submit to the Legislature within ten days after the convening thereof, unless such time shall be extended by the Legislature for the sessions at which the budget is to be submitted, two budgets, one for each of the ensuing fiscal years; and

WHEREAS, The Governor and the Board of Public Works have requested the President of the Senate and the Speaker of the House of Delegates, to request their respective bodies for an extension of the time within which the biennial budget bill shall be submitted to the Legislature; therefore, be it

Resolved by the House of Delegates, the Senate concurring therein:
That the Legislature hereby extends the time in which the Board of Public Works shall submit the budget until February 4, 1935.

HOUSE CONCURRENT RESOLUTION NO. 10

(BY MR. ERHARD)

[Adopted February 4, 1935.]

Raising a special committee to investigate and report to the Legislature concerning establishing a state park at Black Water Falls in Tucker county and at Blennerhassett Island in Wood county.

Resolved by the House of Delegates, the Senate concurring therein:

That the Speaker of the House of Delegates and the President of the Senate are hereby directed to appoint a special committee of three from the membership of each house to investigate and report to the Legislature upon the advisability of establishing a state park at Black Water Falls in Tucker County and at Blennerhassett Island in Wood County, West Virginia.

HOUSE CONCURRENT RESOLUTION NO. 14

(BY MR. MCCOY)

[Adopted January 30, 1935.]

Extending birthday greetings to President Roosevelt.

WHEREAS, Today is the birthday of President Franklin D. Roosevelt; and

WHEREAS, Presidential birthday balls are appropriately being held throughout the nation tonight for the benefit of the Warm Springs Foundation in Georgia, which was founded by the President for the treatment of infantile paralysis; therefore, be it

Resolved by the House of Delegates, the Senate concurring therein:

That the Legislature of West Virginia hereby extends its greetings and best wishes to President Roosevelt, and expresses the hope that he may enjoy many happy returns of this day; and, be it
Further Resolved, That the clerks of the two houses transmit a copy of this resolution to the President.

HOUSE CONCURRENT RESOLUTION NO. 15

(By Mr. LaFon)

[Adopted February 4, 1935.]

Raising a Joint Assembly to receive a special message on the Budget, from His Excellency, the Governor.

Resolved by the House of Delegates, the Senate concurring therein:

That upon the introduction of the Budget Bill into the House of Delegates and the Senate, the two houses shall thereafter, at the convenience of His Excellency, the Governor, meet in joint assembly in the chamber of the House of Delegates to receive his special message thereon.

HOUSE CONCURRENT RESOLUTION NO. 17

(By Mr. Erhard)

[Adopted February 18, 1935.]

Authorizing payment of expenses of the special committee raised under House Concurrent Resolution No. 10, to investigate and report to the Legislature concerning establishment of a state park at Blackwater Falls, in Tucker County, and Blennerhassett Island in Wood county.

Whereas, Under authority of House Concurrent Resolution No. 10, the special committee to investigate and report to the Legislature on the advisability of establishing a state park at Blackwater Falls in Tucker county and Blennerhassett Island in Wood county, will necessarily incur certain expenses in visiting these places; and

Whereas, Since the adoption of House Concurrent Resolution No. 10, the committee has been instructed to also report upon the advisability of establishing a state park at the falls in the Tygarts Valley River, at Valley Falls, in Marion and Taylor counties, and also to report upon the advisability of establishing a state park at
the battleground of Philippi, Barbour county, by Senate Concurrent Resolution No. 5, and Senate Concurrent Resolution No. 6, respectively; therefore, be it

Resolved by the House of Delegates, the Senate concurring therein:

That upon the requisition of the Chairman of said special committee, the Clerk of the Senate and the Clerk of the House of Delegates are hereby authorized and directed to draw their warrants upon the Auditor in an amount not to exceed one hundred fifty dollars from each house, payable out of the contingent funds of the respective houses.

HOUSE CONCURRENT RESOLUTION NO. 18

(BY MR. BUTLER)

[Adopted February 18, 1935.]

Raising a special committee to confer with federal officials.

WHEREAS, It is a known and established fact that a great portion of the land in West Virginia used for agricultural purposes, due to long and continued wear, is vitally in need of lime; and

WHEREAS, The commercial price of lime makes it prohibitive for the farmers of West Virginia to purchase same; and

WHEREAS, the federal government has worked out a program whereby crushed lime has been made available at a reduced price to farmers in the state of Wisconsin and elsewhere, through the use of E. R. A. labor and in connection with the soil erosion projects; and

WHEREAS, The farmers of West Virginia have for over a year been endeavoring to secure such a project in this state and at the present time are insistent that some action be started along this line; therefore, be it

Resolved by the House of Delegates, the Senate concurring therein:

That a special committee of six is hereby raised, three from the Senate, to be appointed by the President, and three from the House of Delegates, to be appointed by the Speaker, to confer with the
Honorabie William N. Beehler and other federal officials in regard to this matter and to report back to the Legislature.

**HOUSE CONCURRENT RESOLUTION NO. 19**

**(BY MR. ADAMS)**

[Adopted February 20, 1935.]

Requesting the postoffice department to establish a North-South air mail line from Pittsburgh to Greensboro.

WHEREAS, Congressman John Kee has requested the post office department to establish a North-South Air Mail Line from Pittsburgh, Pa., to Greensboro, N. C., which line would intersect the mail air line from New York to all southern points; and

WHEREAS, This proposed line would traverse West Virginia and furnish air mail service to the most populous sections of the state and that Charleston would intersect the east-west line; therefore,

be it

*Resolved by the House of Delegates, the Senate concurring therein:*

That the Legislature of West Virginia hereby requests the postoffice department to establish said line from Pittsburgh to Greensboro; and, be it

*Further Resolved, That the Clerk of the House of Delegates send a copy of this resolution to the Postmaster General and a copy to Congressman Kee.*

**HOUSE CONCURRENT RESOLUTION NO. 20**

**(BY MR. LANTZ)**

[Adopted February 21, 1935.]

Concerning allotment of PWA funds in West Virginia for road building.

WHEREAS, West Virginia was allotted only twenty-one million dollars of the sixty-two million dollars that would have been due the state on an equitable distribution of PWA funds distributed in the past; and
WHEREAS, A fair allotment to West Virginia of the proposed appropriation for PWA service in the future will be approximately fifty-eight million dollars; and

WHEREAS, Ernest L. Bailey, State Road Commissioner of West Virginia, has asked for an allotment of twenty million dollars to be used for construction and improvement of non-federal roads in this state; and

WHEREAS, The allotment of twenty million dollars added to such amounts as the state can provide, will provide local employment for rural residents; provide farm to market roads; provide for rural mail delivery; permit consolidation of rural schools; and permit rural home owners to seek employment in nearby industrial centers while enjoying country life and the products of their farms and gardens; therefore, be it

Resolved by the House of Delegates, the Senate concurring therein:

That we approve and earnestly join in the request of Ernest L. Bailey, State Road Commissioner, that the amount of twenty million dollars be allotted to West Virginia from PWA funds, when made available by action of the Congress, to be used under the direction of the state road commissioner for the construction and improvement of non-federal roads in this state; and, be it

Further Resolved, That the clerks of the Senate and House of Delegates have copies of this resolution sent to the President of the United States and to each of the United States Senators and members of the House of Representatives from West Virginia.

HOUSE CONCURRENT RESOLUTION NO. 23

(By Mr. Butcher)

(Adopted February 23, 1935.)

Providing for the negotiation of federal funds for the purchase of Blennerhassett Island, the construction of a bridge thereto and the restoration of Blennerhassett Castle and other buildings.

WHEREAS, Blennerhassett Island is located in West Virginia on the Ohio river near Parkersburg, which island, because of its unique
historic association is renowned throughout the world, and is not now accessible to tourists and travelers; and

WHEREAS, If the buildings were restored to their original condition and a bridge to the island constructed it would be a magnet which would draw to West Virginia innumerable tourists and travelers; therefore, be it

Resolved by the House of Delegates, the Senate concurring therein:

That the State Road Commissioner and the State Director of Conservation of West Virginia be authorized and empowered to negotiate and secure federal funds in the form of loan or grant, or both, in the amount found to be necessary for the purchase of the land, the restoration of the castle and buildings, the construction of a bridge or other means of access to Blennerhassett Island from the main land, and for other necessary improvements and the maintenance thereof; and for said purposes the said State Road Commissioner and State Director of Conservation are authorized, empowered and directed to ask the Federal authorities charged with appropriating moneys for such purposes for the allocation of such a sum of money as they find to be necessary.

When and if said funds are secured, the said commissioner and director are authorized and empowered, by and through their engineers, agents and employees, to purchase the land, restore the former buildings, construct a bridge and other means of access to said Blennerhassett Island and make such other improvements as appear to be necessary to place the island and its buildings in good condition and attractive to tourists visiting our state, as well as to our citizens; all of which will provide employment for the unemployed.

HOUSE CONCURRENT RESOLUTION NO. 24
(BY MR. SIMMONS)
[Adopted February 28, 1935.]
Relating to the Grave Creek Mound, providing for the negotiation of federal funds for the purchase of adjoining lands, the
improvement of same lands, the construction of appropriate structures, the restoration of the Mound, and the transfer of the Mound to the Federal Government if deemed expedient.

WHEREAS, The Grave Creek Mound, located in the city of Moundsville is of interest, historically, to the people of the nation as well as of our state; and

WHEREAS, The Mound is hedged in by buildings and streets; and

WHEREAS, The state and Federal Governments are active in their efforts to preserve, mark and develop sites of historic interest as parks for the benefit of people of this and future generations; therefore, be it

Resolved by the House of Delegates, the Senate concurring therein:

That the State Director of Conservation of West Virginia is authorized and empowered to negotiate and secure Federal Funds in the form of loan or grant, or both, in the amount found to be necessary for the purchase and improvement of lands adjoining the Mound and for the construction of appropriate structures, and the State Director of Conservation is hereby authorized, empowered and directed to request the Federal authorities charged with the allocation of such moneys to allocate a sufficient amount to create a park adjoining the Mound; and, be it

Further Resolved, That when such funds are secured the State Director of Conservation is authorized and empowered by and through his engineers, agents and employees, to purchase the necessary lands, to improve same and to construct such structures as may be deemed necessary and appropriate and the said Conservation Commissioner shall also use his good offices to enlist the interest and cooperation of the Federal Government in this enterprise, in an effort to induce the Federal Government to take over said Grave Creek Mound as a National monument. In the event such can be consummated, then the state of West Virginia shall, through the proper officials, convey to the Federal Government all of its rights, title and interests in said Mound with all the appurtenances thereto belonging.
HOUSE CONCURRENT RESOLUTION NO. 25

(BY MR. DAVIS)

[Adopted March 5, 1935.]

Granting permission to introduce a bill relating to the board of the school fund.

Resolved by the Legislature of West Virginia, two-thirds of all the members of each House present and voting, concurring therein:

That permission is hereby given to introduce a bill with the following title:

“A Bill to amend and reenact section five, article nine, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, relating to the board of the school fund.”

HOUSE CONCURRENT RESOLUTION NO. 27

(BY MESSRS. SHAHAN AND OLDHAM)

[Adopted March 9, 1935.]

Commending members of the press who have reported the proceedings of this session of the Legislature.

WHEREAS, The West Virginia Legislature, in regular session, has enacted numerous laws of great moment and importance to the citizens of this state; and

WHEREAS, It is necessary that the citizenry receive accurate and comprehensive information of the acts of the Legislature; and

WHEREAS, The members of the press galleries of both houses have been in constant attendance at all sessions, preparing information on the acts of the Legislature for the benefit of the people of West Virginia; therefore, be it

Resolved by the House of Delegates, the Senate concurring therein:

That the Legislature commends the members of the press for their untiring efforts to disseminate all proceedings of this body, their courteous and wholehearted cooperation with officers and members of the Legislature and the fair and comprehensive manner in which said proceedings have been presented to the public.
HOUSE CONCURRENT RESOLUTION NO. 28

(BY MR. THOMAS)

[Adopted March 9, 1935.]

Granting permission to introduce two bills appropriating money to the general school fund.

Resolved by the Legislature of West Virginia, two-thirds of all the members of each House present and voting, concurring therein:

That permission is hereby granted to introduce two bills with the following titles:

"A Bill to appropriate moneys from the treasury to further supplement the general school fund for the fiscal year, one thousand nine hundred thirty-four—one thousand nine hundred thirty-five,"

And,

"A Bill to make a supplementary appropriation from the general revenue to the general school fund."

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HOUSE CONCURRENT RESOLUTION NO. 29

(BY MR. HINER)

[Adopted March 9, 1935.]

Granting permission to introduce a bill appropriating money out of the Workmen’s Compensation Fund to provide for the salaries, personnel and expenses of House Bill No. 160, passed at this session.

Resolved by the Legislature of West Virginia, two-thirds of all the members of each House present and voting, concurring therein:

That permission is hereby given to introduce a bill with the following title:

"A Bill to appropriate funds out of the Workmen’s Compensation Fund in order that the provisions of house bill number one hundred sixty, passed at this session of the Legislature, may be put into effect."
HOUSE CONCURRENT RESOLUTION NO. 30

(BY MR. STROUSS)

[Adopted March 11, 1935.]

Authorizing the payment of expenses for services and supplies after the closing of this session of the Legislature.

Resolved by the House of Delegates, the Senate concurring therein:

That the Legislature of West Virginia hereby authorizes the payment of expenses for services and supplies incurred after the close of the extension of this session of the Legislature, in completing the work of this session of the Legislature and that the Auditor is hereby authorized and directed to honor and pay the warrants of the Clerk of the Senate and the Clerk of the House of Delegates, drawn in favor of persons for services performed or supplies furnished, as authorized by either separate or concurrent actions of the two houses; and, be it

Further resolved, That all extensions of per diems authorized by House Resolution No. 55 and House Resolution No. 56, and by Senate Resolutions for similar purposes are hereby declared to be authorized by the Legislature, and shall have the same force and effect as if they were incorporated herein.

HOUSE JOINT RESOLUTION NO. 3

(BY MR. BROTHERTON)

[Adopted March 8, 1935.]

Proposing an amendment to the state constitution, amending section thirty-five of article six thereof.

Resolved by the Legislature of West Virginia, two-thirds of all the members elected to each house agreeing thereto:

That the question of ratification or rejection of an amendment to the constitution of West Virginia, shall be submitted to the voters of the state at the next general election, to be held in the year one thousand nine hundred thirty-six, which proposed amendment is as follows:

That section thirty-five of article six of the constitution of the
state, be and the same is hereby repealed and the following inserted in lieu thereof:

Section 35. The state of West Virginia shall never be made defendant in any court of law or equity, except the state of West Virginia, including any subdivision thereof or any municipality therein, or any officer, agent or employee thereof, may be made defendant in any garnishment or attachment proceeding, as garnishee or suggestee.

HOUSE RESOLUTION NO. 1
(BY MR. VAN SICKLER)
[Adopted January 9, 1935]

Adopting rules for the House of Delegates.

Resolved by the House of Delegates:

That the rules of the House of Delegates for the second extraordinary session, one thousand nine hundred thirty-three, shall govern the proceedings of this House, pending the action of the Committee on Rules, hereafter to be appointed.

HOUSE RESOLUTION NO. 2
(BY MR. LAFON)
[Adopted January 9, 1935]

Raising a committee to inform the Senate that the House of Delegates is organized.

Resolved by the House of Delegates:

That the Speaker appoint a committee of three to inform the Senate that the House of Delegates is organized by the election of Honorable John J. Pelter as Speaker and Honorable John S. Hall as Clerk, and is ready to proceed with the business of the session.
HOUSE RESOLUTION NO. 3

(By Mr. Roberts)

[Adopted January 9, 1933]

Raising a committee to arrange for the seating of members.

Resolved by the House of Delegates:

That the Speaker is hereby authorized to appoint a committee of three to arrange with the Sergeant-at-Arms for the proper seating of the members of this body in order that the different delegations may be seated together, and that individual members and delegations may be given every possible convenience and accommodation in seating arrangements.

HOUSE RESOLUTION NO. 4

(By Mr. Strouss)

[Adopted January 10, 1935]

Granting time to J. A. Harmon for taking depositions in contest case.

Whereas, J. A. Harmon, of Putnam county, West Virginia, did on the 24th day of November, 1934, serve notice upon H. W. Bayer, of Putnam county, West Virginia that he would contest his election to the House of Delegates from said county, and did, in said notice, set forth the grounds upon which he, the said J. A. Harmon, would contest certain enumerated precincts in said Putnam county; and

Whereas, The said J. A. Harmon has filed with the Clerk of the House of Delegates an attested copy of the proceedings taken and had before the county court of Putnam county, in which said proceedings it appears that the said J. A. Harmon alleges the irregularities in the quoting and accounting of votes in precincts therein enumerated and set forth; and

Whereas, It appears that the said J. A. Harmon failed to take the depositions of witnesses in support of the grounds upon which he relies to contest the right of said H. W. Bayer to retain his seat in said House of Delegates; and
WHEREAS, The said J. A. Harmon desires additional time in which to take the said depositions; therefore, be it

Resolved by the House of Delegates:

That ten days from the adoption of this resolution, is hereby granted unto the said J. A. Harmon, in which to take the depositions of witnesses in support of the allegations and grounds upon which the said J. A. Harmon seeks to contest the said election.

HOUSE RESOLUTION NO. 5

(By Mr. LaFon)

(Originating in the Committee on Rules.)

[Adopted January 10, 1935.]

Authorizing the appointment of attaches for this session of the Legislature.

Resolved by the House of Delegates:

That the Speaker of the House of Delegates be, and he is hereby authorized to appoint for the House of Delegates, the following attaches and other employees to receive the per diems as herein provided, during this session:

(1) For the Clerk's office the following:

Two record clerks at seven dollars per day;
Two roll call clerks at six dollars per day;
Ten proofreaders at seven dollars per day;
Six copyholders at six dollars per day;
One clerk to the Committee on Enrolled bills at seven dollars per day;
One messenger at four dollars per day;
Two stenographers at seven dollars per day;
One Journal clerk at ten dollars per day;
One Journal stenographer at ten dollars per day.

(2) For other offices and positions the following:

One Chaplain at six dollars per day;
One clerk and two stenographers to the Committee on Taxa-
tion and Finance at ten and eight dollars per day, respectively;  
One clerk and two stenographers to the Committee on the Judiciary at ten and eight dollars per day, respectively;  
One clerk and one stenographer to the Committee on Roads at eight dollars per day each;  
One clerk and one stenographer to the Committee on Education at eight and seven dollars per day, respectively;  
Eight committee clerks to be assigned by the Speaker at six dollars per day each;  
One supervisor of stenographers at ten dollar per day;  
Twenty-eight stenographers at seven dollars per day;  
One chief Journal Room clerk at seven dollars per day;  
Twelve assistant Journal Room clerks at six dollars per day;  
One mailing clerk at seven dollars per day;  
One assistant mailing clerk at six dollars per day;  
Ten pages at four dollars per day;  
Six assistants to the Sergeant-at-Arms at six dollars per day;  
Eight assistant doorkeepers at five dollars per day;  
One clerk to the Sergeant-at-Arms at ten dollars per day;  
One stenographer to the Sergeant-at-Arms at five dollars per day;  
One ladies' cloak room attendant at five dollars per day;  
Four men's cloak room attendants at five dollars per day;  
Ten janitors at four dollars per day;  
One night watchman at six dollars per day; and, be it

**Further Resolved**, That the secretary and stenographer to the Speaker, as provided for by the rules of the House, shall receive ten and eight dollars per day, respectively; and that the secretary and stenographer to the Clerk as provided for by the rules, shall receive seven and ten dollars per day, respectively; and, be it

**Further Resolved**, That the Clerk of the House shall receive twenty dollars per day; that the Sergeant-at-Arms and Doorkeeper shall each receive ten dollars per day; and that the three assistant clerks provided for by section nine, article one, chapter four of the code, shall each receive ten dollars per day; and, be it

**Further Resolved**, That all of the appointments made under authority of this resolution shall be certified to the Auditor and Treasurer by the Clerk, and the Clerk is hereby authorized to draw
his warrants or requisitions upon the Auditor in favor of the persons so appointed and the Auditor shall honor and pay such warrants when presented and charge same to the "per diem of officers and attaches" fund of the House of Delegates. The clerk shall draw his warrants in favor of officers, attaches and other employees, for consecutive days from the date of the opening of this session, at the per diems herein set out, until such time as their services shall cease. The Speaker shall require each of said employees to perform such duties as shall be assigned him and is hereby given authority to dispense with the service of any attaché or attaches for any such time or number of days as their services shall not be needed during the session and they shall not be paid for such time, nor shall other persons be appointed in their places for any such time as they may be suspended when not needed.

HOUSE RESOLUTION NO. 6

(BY MR. CALVERT)

[Adopted January 10, 1935.]

Relating to the death of M. R. Brannen.

WHEREAS, Mr. M. R. Brannen, a useful and public spirited citizen of Cabin Creek, Kanawha county, departed this life on January 10, 1935; therefore, be it

Resolved by the House of Delegates:

That this body regrets the passing of this valuable citizen, and hereby extends its sympathy to the bereaved family and friends; and, be it

Further Resolved, That the Clerk of this House send a copy of this resolution to the widow of the deceased.

HOUSE RESOLUTION NO. 7

(BY MR. HINER)

[Adopted January 14, 1935.]

Authorizing the Clerk to draw his warrants upon the Auditor for postage.

Resolved by the House of Delegates:
That the Clerk of the House of Delegates is hereby authorized to draw his warrants upon the Auditor for postage to be used for mailing Journals to persons on the member’s mailing list and in mailing out bills and Journals to persons requesting same and for mailing such documents as may be authorized. The same shall be paid out of the contingent fund of the House of Delegates in advance of the appropriation for the purpose. Said warrants shall be drawn as needed for these purposes.

HOUSE RESOLUTION NO. 8
(By Mr. Proctor)
[Adopted January 14, 1935.]
Providing for a mailing list for Journals of this session.

Resolved by the House of Delegates:
That the Clerk of the House of Delegates is hereby authorized to arrange for mailing out the daily Journals of this session. Each member shall be permitted to furnish a list of ten names to the Clerk to be placed upon said mailing list, and the Clerk shall see that the mailing clerks mail the Journals to such persons as are placed upon said list, and the Clerk is also authorized to mail Journals and bills to such persons as may request same.

HOUSE RESOLUTION NO. 9
(By Mr. Lantz)
[Adopted January 16, 1935.]
Directing the Clerk to have additional copies of the Governor’s biennial message to the Legislature printed.

WHEREAS, The biennial message of His Excellency, Governor Kump, delivered to the joint session of the Legislature on the ninth day of January, 1935, was one of the best documents in the history of West Virginia; and

WHEREAS, The address has been highly praised by the leading newspapers of all political faiths throughout the state; and
WHEREAS, There is urgent demand for copies of the address by the citizens of the state; therefore, be it

Resolved by the House of Delegates:

That the Clerk of the House is hereby authorized to have printed fifteen hundred additional copies of the Governor’s address for distribution by the members of the House of Delegates.

HOUSE RESOLUTION NO. 10
(By Mr. Neal)
[Adopted January 17, 1935.]

Authorizing the Sergeant-at-Arms to purchase codes for the House of Delegates.

Resolved by the House of Delegates:

That the Sergeant-at-Arms is hereby authorized and directed to purchase six copies of Michie’s Annotated Code, edition, one thousand nine hundred thirty-two, with supplement thereto, for the use of the House of Delegates, to be distributed as the Speaker may direct, and said codes shall be purchased from a West Virginia firm.

HOUSE RESOLUTION NO. 11
(By Mr. Haythe)
[Adopted January 16, 1935.]

Authorizing the Clerk to mail copies of the Governor’s address to the Legislature.

WHEREAS, The Governor’s message delivered to the joint assembly of the House and Senate in the House Chamber, January 11, 1935, is regarded as one of the ablest and most enlightening of any address delivered to a Legislature for many years, containing information valuable to the public as well as to the members of the Senate and House; and

WHEREAS, By House Resolution No. 8, adopted January 15, 1935, each delegate is permitted to furnish the Clerk a mailing list
of ten names selected from his constituents, to whom the Clerk shall mail the Journal and copies of bills; therefore, be it

Resolved by the House of Delegates:

That the Clerk is hereby authorized and directed to secure and mail to each of the parties placed on said mailing list a copy of the Governor's message.

HOUSE RESOLUTION NO. 12
(By Mr. Bayer)
[Adopted January 17, 1935.]
To promote and expedite the work of the Legislature.

Resolved by the House of Delegates:

That the several committees of the House of Delegates do proceed with due diligence and dispatch in considering and reporting the various bills referred to them to the end that this Legislature may be able to adjourn sine die within the constitutional limits of sixty days.

HOUSE RESOLUTION NO. 13
(By Mr. Gentry)
[Adopted January 16, 1935.]
Commending the publication known as West Virginia Highways, a good roads and scenic magazine.

Resolved by the House of Delegates:

That this House congratulates the publishers of West Virginia Highways, in giving to the state a magazine devoted to advertising our unsurpassed scenery and splendid highways. The enthusiasm and interest of every West Virginian should be aroused and gratified by the purposes outlined for the future in the issue now upon our desks.
HOUSE RESOLUTION NO. 14
(By Mr. McCoy)
[Adopted January 10, 1935.]
Concerning the illness of Delegate Doringer.
Resolved by the House of Delegates:
That the sympathy of this body is hereby extended to the Honorable Fred L. Doringer, a Delegate from the county of Marion, on account of his illness; and, be it
Further Resolved, That the Clerk of the House of Delegates is hereby directed to send a copy of this resolution to Delegate Doringer with the hope that he may speedily recover and be able to take part in the business of this session.

HOUSE RESOLUTION NO. 15
(By Mr. Oldham)
[Adopted January 17, 1935.]
Authorizing the payment of the salary of the Honorable Carl B. Galbraith.
Whereas, The Honorable Carl B. Galbraith has been appointed by the Governor of this state, as a member of the House of Delegates from Ohio county, to fill the vacancy caused by the resignation of the Honorable J. J. P. O'Brien; therefore, be it
Resolved by the House of Delegates:
That the Auditor and Treasurer are hereby authorized and directed to pay five hundred dollars to Mr. Galbraith, as salary for the year one thousand nine hundred thirty-five, in advance of the appropriation for the purpose.

HOUSE RESOLUTION NO. 16
(By Mr. Russer)
[Adopted January 17, 1935.]
Concerning the death of John V. Reister.
Whereas, The members of this House have been saddened by
the tragic death of Hon. John V. Reister, assistant mayor-manager of the city of Wheeling, while he was enroute to Charleston for the purpose of joining with officials of other municipalities in promoting a program designed in the interest of the state of West Virginia; and

Whereas, Mr. Reister was one of the outstanding public officials and citizens of Wheeling and of the northern panhandle of West Virginia, and had contributed much to the development of that section of the state; therefore, be it

Resolved by the House of Delegates:

That this body express its sense of the loss that has been suffered by the state in the passing of Mr. Reister, and extend its sincere sympathy to the bereaved family; and be it

Further Resolved: That the Clerk of the House send a copy of this resolution to the widow of the deceased.

HOUSE RESOLUTION NO. 17
(By Mr. Oldham)
[Adopted January 21, 1935.]

Requesting the Auditor to report to the House of Delegates such information as he may have, relative to shortages and irregularities in the accounts of Justices of the Peace, and as to vicious practices by said officers.

Whereas, It has been brought to the attention of the members of this body, through press reports and otherwise, that there exists in the offices of the justices of the peace throughout the state flagrant abuses growing out of the fee system and delinquencies in the settlement of accounts on moneys due the state; and

Whereas, It has been specifically called to the attention of this body that the audit of accounts of various justices and ex-justices of the peace reveal large shortages for which no settlement has been made; and

Whereas, It appearing that the Auditor after diligent inquiry and investigation is in possession of facts relating to these short-
ages, abuses, practices and usurpation of power in these courts; therefore, be it

Resolved by the House of Delegates:

That the Honorable Edgar B. Sims, Auditor of the state of West Virginia, be and he is hereby requested to make report and file before this body any and all shortages, irregularities and vicious practices which upon investigation he has found to exist in these said justice of the peace courts.

HOUSE RESOLUTION NO. 18

(By Mr. LaFon)

(Originating in the Committee on Rules)

[Adopted January 21, 1935.]

Relating to appointment of attaches.

WHEREAS, Under House Resolution No. 5, adopted January 10, 1935, the Speaker was authorized to appoint ten pages and ten janitors; and

WHEREAS, The Speaker has determined that the House will not need this number of pages and janitors, but that it will need more clerks for proofreading and other purposes than has been provided for; therefore, be it

Resolved by the House of Delegates:

That the number of janitors is hereby reduced to four and the number of pages to five and that the Speaker is hereby authorized to appoint not to exceed eleven clerks, to be assigned by him, said clerks to receive the same per diem as that of the committee clerks to be assigned by the Speaker, provided for in House Resolution No. 5. This change shall not increase the total number of attaches heretofore authorized.

HOUSE RESOLUTION NO. 19

(By Mr. Shahan)

[Adopted January 22, 1935.]

Raising a committee to investigate the Relief Administration and Welfare Department in Randolph county.
WHEREAS, There have been hundreds of complaints of mismanage-
ment, charges of nepotism, favoritism, political preference and
gross inefficiency in the handling of administration affairs of relief
and relief activities in Randolph County; and

WHEREAS, On the 30th day of November, 1934, gross irregulari-
ties in the management and administration of relief funds had be-
come so noticeable that those in charge were asked to furnish cer-
tain information relative to the expenditures and administrative
operation of relief in that county; and

WHEREAS, This request was refused and another request for the
same information was made December 27, and the desired informa-
tion as requested has never been furnished; and

WHEREAS, The requests made were fair and pertaining to such
information as this Legislature should know, and that such requests
also provided that if for any reason whatsoever the relief officials
were unable to furnish the desired information that statistical help
would be furnished for the purpose of taking such data from the
records; and

WHEREAS, This Legislature, before making any appropriations
for relief purposes, should know whether such funds are being mis-
managed, stolen or misused, to the end that relief may be admin-
istered impartially, unselfishly and honestly to all who need such
relief; therefore, be it

Resolved by the House of Delegates:

That the Speaker is authorized to appoint five members of the
House of Delegates who shall serve as a committee to investigate
thoroughly the entire Relief Administration and Welfare Depart-
ment in Randolph County and their activities.

The committee shall have the power to summons and compel the
attendance of witnesses and shall have power to administer oaths.
It may also compel the officials and those in charge to produce any
records or papers which the committee deems necessary to the
conduct of the investigation.

The committee shall report its findings to the Legislature. The
Clerk is authorized to draw his warrant for the expense of this in-
vestigation in advance of the appropriation therefor: Provided,
however, That the expense of such investigation shall not exceed five
hundred dollars.
HOUSE RESOLUTION NO. 20

(BY MR. BIBB)

[Adopted January 21, 1935.]

Concerning the death of the Honorable George T. Watson.

WHEREAS, The late George T. Watson, State Compensation Commissioner, has departed this life; and

WHEREAS, He was one of West Virginia’s leading citizens and business men, having been connected with the mining industry all of his life; and to know him personally was to love him; and

WHEREAS, Mr. Watson served his state well and faithfully during his tenure of office; therefore, be it

Resolved by the House of Delegates:

That we deplore the loss of this state official and extend to his family our heartfelt sympathy; and, be it

Further Resolved, That a copy of this resolution be transmitted by the Clerk to the family of the deceased.

HOUSE RESOLUTION NO. 21

(BY MR. LAFON)

[Adopted January 23, 1935.]

Authorizing payment for services rendered preliminary to opening of this session.

Resolved by the House of Delegates:

That the Clerk is hereby directed to draw his warrants upon the Auditor in favor of the following persons in the amounts herein set out, for services rendered the Legislature, preliminary to the opening of the House of Delegates:

<table>
<thead>
<tr>
<th></th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>John S. Hall, Clerk</td>
<td>$180.00</td>
</tr>
<tr>
<td>O. C. Parsons</td>
<td>100.00</td>
</tr>
<tr>
<td>W. W. Martin, Sergeant-at-Arms</td>
<td>$309.60</td>
</tr>
</tbody>
</table>

Services included six trips to Charleston, including mileage and one day’s per diem at $26.60 per trip after close of last session, and fifteen days services at $10.00 per day preliminary to opening of this session.
Fred H. Goff, nine days at six dollars ................................... 54.00
Ernest Crawford, Clerk to Sergeant-at-Arms .................... 100.00
Elizabeth Cottrill, 19 days at $6.00 ..................................... 114.00
Bill Arnold, 7 days at $4.00 ................................................. 28.00
C. R. Banta, 2 days at $4.00 ................................................... 8.00
Steve Callas, 8 days at $4.00 ................................................. 32.00
Frank Curry, 23 days at $6.00 .............................................. 138.00
Boisy Green, 22 days at $4.00 .............................................. 88.00
Othello Green, 7 days at $4.00 ............................................. 28.00
Oscar Howard, 25 days at $4.00 ........................................... 100.00
Clarence Pryor, 4 days at $4.00 ......................................... 16.00
Bill Quarrels, 19 days at $4.00 ........................................... 76.00
Bob Ross, 14 days at $6.00 ................................................... 84.00
Samuel Spots, 4 days at $4.00 ............................................. 16.00
Neal Thompson, 3 days at $4.00 ......................................... 12.00
Sam White, 8 days at $4.00 ................................................... 32.00
W. A. Walker, 7 days at $4.00 ............................................. 28.00
Scott Warrington, 13 days at $4.00 ..................................... 52.00
L. L. Berry, 13 days at $4.00 ................................................. 52.00
F. J. Randolph, 3 days at $4.00 ......................................... 12.00
Bill Miller, 3 days at $4.00 ................................................... 12.00
Ed Tilman, 4 days at $4.00 ................................................... 16.00
Raymond Bush, 16 days at $4.00 ........................................... 64.00
E. G. Thorne, 19 days at $6.00 .............................................. 114.00
Henry Randolph, 19 days at $4.00 ....................................... 76.00
Walter Pettigrew, 20 days at $4.00 ....................................... 80.00
Clyde Echols, 19 days at $4.00 ............................................. 76.00
Don Sampson, 17 days at $4.00 ............................................. 68.00
F. J. Craig, 8 days at $4.00 ................................................... 32.00

All of said amounts to be paid out of "the per diem officers and attaches fund."

HOUSE RESOLUTION NO. 22
(By Messrs. Wolfe and Bishoff)
[Adopted January 24, 1935.]

Concerning the death of John Barton Payne.

WHEREAS, The state and nation has been saddened by the notice
of the death of the Honorable John Barton Payne, Chairman of the American Red Cross; and

WHEREAS, The death of this great man, a native son of West Virginia, whose life has been an inspiration to all with whom he came in contact, whose work as head of the great humanitarian organization, the American Red Cross, has been of untold benefit to humanity all over the world; and

WHEREAS, The said John Barton Payne started his great career in this, his native state, being born at Pruntytown, Taylor county, later moving to Kingwood, Preston County, where he was admitted to the practice of law, and became mayor of that town; and

WHEREAS, The state and nation has been saddened by the death of this eminent son of West Virginia; therefore, be it

Resolved by the House of Delegates:

That we deplore the loss of this great humanitarian, and that this body express its sense of the loss that has been suffered by the state and nation in the passing of John Barton Payne, and extend its sincere sympathy to the bereaved family; and, be it

Further Resolved, That the Clerk of the House of Delegates send a copy of this resolution to the family of the deceased.

HOUSE RESOLUTION NO. 23

(By Mr. Gaylord)

[Adopted January 28, 1935.]

Concerning the death of the Honorable Ernest D. Lewis.

WHEREAS, The Honorable Ernest Daniel Lewis, a former member of the House of Delegates from Harrison County has departed this life; and

WHEREAS, He was one of Harrison County’s leading citizens, a prominent lawyer, a former member of the Public Service Commission and a devoted servant of the people; and

WHEREAS, Mr. Lewis served his county well and faithfully in the Legislature; therefore, be it

Resolved by the House of Delegates:
That we deplore the loss of this former member and extend to
his family our heartfelt sympathy; and, be it

Further Resolved, That a copy of this resolution be transmitted,
by the Clerk, to the family of the deceased.

HOUSE RESOLUTION NO. 24
(By Mr. Thomas, by request)

[Adopted February 11, 1935.]

Authorizing payment to James M. Mason for services as clerk to
a special committee during the 1933 session of the Legislature.

WHEREAS, House Concurrent Resolution No. 15 was adopted by
the Legislature of West Virginia, February 9, 1933; and

WHEREAS, Pursuant to said resolution, a joint committee of the
House of Delegates and Senate was appointed to investigate the
matters pertaining thereto; and

WHEREAS, Said committee found it necessary to employ aid in
investigating the matters relating to said inquiry; and

WHEREAS, Said committee employed James M. Mason to assist it
as a clerk and investigator; and

WHEREAS, Under the terms of the resolution, the House and
Senate were jointly liable for the expense of said investigation; and

WHEREAS, The Senate has paid its share of the liability of the
expense of said investigation, but the House has omitted to pay said
Mason for his services; and

WHEREAS, Said committee owes Mason for his services the sum
of $350.00, which amount was recommended by the Chairman of
the committee as a reasonable compensation for his services; there­
fore, be it

Resolved by the House of Delegates:

That the Clerk of the House of Delegates be and he is hereby
authorized to draw his warrant upon the auditor in favor of James
M. Mason, in the sum of $350.00 in payment of his services as clerk
to said investigating committee, payable out of the contingent fund
of the House of Delegates; in advance of the appropriation for the
purpose.
HOUSE RESOLUTION NO. 25

(BY MR. GENTRY)

[Adopted January 30, 1935.]

Requesting the state and all subdivisions thereof to discontinue the use of printing, multigraphing, folding and binding equipment now operated by various departments of the state, and to let this work in the regular manner as provided for by statute.

WHEREAS, There has been a growing tendency in recent years for various departments of our state government, schools and institutions to install expensive printing, multigraphing, folding and binding equipment with which to print and otherwise manufacture the various work used by these departments; and

WHEREAS, These governmental agencies are supported in whole or in part by the taxes paid by the printers and other private business enterprises; and

WHEREAS, The saving achieved by such practices are inconsequential when compared with the harm done to the business concerned; and

WHEREAS, The installation of these printing facilities in various state departments, schools and institutions is generally made the excuse for creation of additional political patronage with the ultimate result that the saving which might be effected in the cost of government is eliminated; and

WHEREAS, The state thus comes in direct competition with the private business in the state, and formal protest of this practice has been made by the commercial relief printing industry of West Virginia through its organization, the Appalachian-Ohio Valley Printers, Incorporated; therefore, be it

Resolved by the House of Delegates:

That the state of West Virginia and all of its departments and institutions be and the same are hereby urged and implored to discontinue the use of printing equipment now operated by various departments, except as a disciplinary measure in penal institutions, and let this work in the regular manner as provided for by statute.
HOUSE RESOLUTION NO. 28

(BY MR. THOMAS)

[Adopted February 8, 1933.]

Instructing Sergeant-at-Arms to enforce certain rules.

WHEREAS, Rule 136, sets forth the only persons to be admitted upon the floor of the House, except by permission of the Speaker; and

WHEREAS, Since the beginning of this session numerous persons have been admitted upon the floor that were not entitled to this privilege; and

WHEREAS, Contrary to the rules of this House, attaches have been admitted to the floor when they were not engaged in work for the House; and

WHEREAS, Under paragraph (f) of Rule 138, no person is entitled to admission to the press tables who does not hold a correspondent’s card, and attaches and other persons have been occupying the seats at these table and thereby interfering with the work of the newspaper correspondents; therefore, be it

Resolved by the House of Delegates:

That the Sergeant-at-Arms is hereby instructed to keep all attaches and other persons not entitled to the privilege of the floor, off the floor during the sessions of the House, to keep all persons not accredited as newspaper correspondents away from the press tables and to keep the hall at the main entrance to the chamber clear; and, be it

Further Resolved, That the Speaker and Clerk furnish the Sergeant-at-Arms with a list of the persons and attaches needed at the Clerk’s desk and that the Sergeant-at-Arms shall see that no other person or attache be permitted thereat.
HOUSE RESOLUTION NO. 29

(BY MR. PAUL)

[Adopted February 11, 1935.]

Concerning the death of Major Tom B. Davis.

WHEREAS, The members of this House have been saddened by the passing of a valuable and beloved member of the administration, in the death of Major Tom B. Davis, superintendent of capitol building and grounds; and

WHEREAS, Major Davis was widely known throughout the state, and was one of its most public-spirited and loyal citizens; therefore, be it

Resolved by the House of Delegates:

That this body express its realization of deep loss suffered by the state in the passing of Major Davis, and extend its sincere sympathy to the bereaved family; and be it

Further Resolved: That the Clerk of the House send a copy of this resolution to the widow of the deceased.

HOUSE RESOLUTION NO. 31

(BY MR. HINER)

[Adopted February 12, 1935.]

Concerning the illness of Delegate Welton.

WHEREAS, The Honorable Arch J. Welton, the Delegate from the County of Grant is seriously ill in the Cumberland Memorial hospital at Cumberland, Md.; therefore, be it

Resolved by the House of Delegates:

That the sympathy of this body is hereby extended to Mr. Welton, together with the wish that he may have a speedy recovery; and, be it

Further Resolved, That the Sergeant-at-Arms is hereby directed to send flowers to Mr. Welton, as a token of the high regard which the members of this body have for him and that the Clerk shall send a copy of this resolution to Mr. Welton.
HOUSE RESOLUTION NO. 32

(BY MR. UNDERWOOD)

[Adopted February 12, 1935.]

Concerning the birthday of Abraham Lincoln.

WHEREAS, This is the birthday of the immortal Abraham Lincoln, the great President of the United States, who liberated from the bondage of slavery an entire race of people; saved the union from dismemberment and is the founder of the great Republican party; and,

WHEREAS, He is recognized throughout the civilized world as one of the few great leaders of men, and the memory of this great man shall always live so long as people believe in mercy, charity and freedom of the human races, therefore, be it

Resolved by the House of Delegates:

That this memorial be printed in the Journal.

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HOUSE RESOLUTION NO. 34

(BY MR. GAYLORD)

[Adopted February 15, 1935.]

Providing for the appointment of a delegation to attend the Second Interstate Assembly at Washington, D. C.

WHEREAS, The Second Interstate Assembly has been called by the Council of State Governments and the American Legislators' Association, to be held on Thursday, Friday, and Saturday, February 28, and March 1-2, 1935, at the Mayflower Hotel, Washington, D. C., to consider federal and state tax policies on the basis of the recommendations submitted by the Interstate Commission on Conflicting Taxation, which was established two years ago by the First Assembly; and

WHEREAS, It is apparent that substantial benefits would result from closer contacts between the legislative and administrative divisions of the various state governments, and that many governmental difficulties are aggravated by the absence of adequate facilities for conference between these bodies; and
WHEREAS, The present economic emergency creates an imperative necessity now emphasized by the President’s program of economic security for joint council and concerted action; and,

WHEREAS, It is believed that the moment has now arrived for establishing adequate means for communication and conference between the states and the federal government; and

WHEREAS, The House of Delegates of this state is invited to send its delegates to this conference, to be chosen in such manner as this body may determine; therefore, be it

Resolved by the House of Delegates:

That the House of Delegates of the state of West Virginia hereby authorizes the Speaker of the House of Delegates to appoint three members as a delegation to the Interstate Assembly, which convenes in Washington, D. C., on February 28, 1935. Such delegation shall be without power to commit the House of Delegates to action. The Clerk of the House of Delegates upon certification to him by said delegation, or its chairman, shall draw his warrant upon the Auditor, payable out of the contingent fund of the House of Delegates, in an amount not to exceed the sum of one hundred and fifty dollars, for the attendance of said delegation on said assembly.

The Clerk of the House of Delegates is directed to advise the corresponding secretary of the conference in care of the American Legislators’ Association, Drezel avenue and Fifty-eighth street, Chicago, Illinois, of the appointment of such delegation.

HOUSE RESOLUTION NO. 35

(By Mr. Breedlove)

[Adopted February 18, 1935.]

Requesting the removal of William N. Beehler, Administrator of the West Virginia Relief Administration.

WHEREAS, Ever since the appointment of William N. Beehler as relief administrator for West Virginia there has been serious and widespread complaint emanating from various counties within the state concerning the method of administration of relief; and
WHEREAS, Apparently very little effort has been made on the part of the administrator to correct the mistakes that have been made; and

WHEREAS, Honorable H. G. Kump, Governor, and Honorable M. M. Neely, United States Senator, and the six incumbent congressmen from West Virginia, have protested in vain the retention of the said Beehler in office and have requested his removal; and

WHEREAS, Inasmuch as the state of West Virginia furnishes part of the funds that are used for relief purposes within the state and it is felt that a West Virginian should be appointed to the responsible office of relief administrator, or at least that the wishes of state and federal officials should be respected in the appointment of such officials; therefore, be it

Resolved by the House of Delegates:

That the House of Delegates of West Virginia go on record as being opposed to the continuance in office of William N. Beehler as relief administrator, and that Honorable Harry L. Hopkins, administrator of the federal emergency relief administration, be requested to remove the said Beehler from office and to appoint in his stead, another person, preferably a West Virginian, for this important office.

The Clerk of the House of Delegates is directed to furnish copies of this resolution to the President of the United States, Honorable H. G. Kump, Governor of West Virginia, Honorable M. M. Neely, United States Senator, the six congressmen from West Virginia and Honorable Harry L. Hopkins, federal emergency relief administrator.

HOUSE RESOLUTION NO. 37

(By Mr. Proctor)

(Adopted February 18, 1935.)

Inviting "'AMOS 'N ANDY'" to address the House of Delegates.

WHEREAS, It appears from public announcements that Freeman J. Gosden and Charles Correll, familiarly known to the American public as "'AMOS 'N ANDY', will be in Charleston on Wednesday the twentieth instant; and
WHEREAS, The said gentlemen are generally recognized as two of the great American radio entertainers; therefore, be it

Resolved by the House of Delegates:

That the said Freeman J. Gosden and Charles Correll be and they are hereby invited to address the House of Delegates at its session Wednesday afternoon, February 20, 1935, the said invitation being extended also to the Kingfish, Brother Crawford, Lightnin', Madame Queen, Ruby Taylor and Henry Van Porter; and, be it

Further Resolved, That a committee of three to be appointed by the Speaker, be and is hereby directed to present a copy of this resolution to the said Freeman J. Gosden and Charles Correll, and extend in person the invitation herein provided for.

HOUSE RESOLUTION NO. 38

(By Mr. Vandall)

[Adopted March 1, 1935.]

Authorizing the payment of a sum of money to Roberts brothers for damages to their real estate caused by agents of the state road commission while constructing state highway number thirty-five through their lands in Wirt county.

WHEREAS, L. R. Roberts and J. A. Roberts, partners doing business in the firm name of Roberts Brothers, at Burning Springs in Wirt county, have heretofore filed a claim with the state road commission for damages, in the sum of forty-five hundred dollars, caused to their real estate in Wirt county while constructing state highway route number thirty-five through their land in which the surface of their said land was under-cut to such an extent as to take away the support of the hillside land above said highway or road on which were located three producing oil wells and a dwelling house, by means of which said land was caused to break, slip and slide in such manner as to destroy said three producing oil wells and later involving a fourth well and the tubing and casing contained in such well; also to break up, injure and destroy the surface of a plot of ground on which a valuable dwelling house is located; and
WHEREAS, Said claimants caused the matter to be presented to the West Virginia Legislature at its one thousand nine hundred thirty-one session and the sum of twenty-five hundred dollars was found in their favor by the Committee on Claims and Grievances and was included in the budget bill as passed by the House in that session but afterwards eliminated in a conference between committees of the House and Senate and the claim as recommended by the Committee on Claims and Grievances was not paid; and

WHEREAS, Said claim was again presented to said Legislature at its regular session of one thousand nine hundred thirty-three and referred to the House Committee on Claims and Grievances and said committee heard the evidence of Joseph M. McKinney a road district engineer then in charge of state route number thirty-five and Colonel C. P. Fortney who conceded that said claimants had been damaged and as a result of said hearing said committee recommended the payment to claimants the sum of twenty-five hundred dollars; and

WHEREAS, Said claim is found to be just and a proper charge against the state road fund allocated to Wirt County and is yet unpaid; therefore, be it

Resolved by the House of Delegates:

That the sum of forty-five hundred dollars be allowed and the budget commission be and it is hereby requested to include the said sum of forty-five hundred dollars in a supplementary budget bill as provided by subsection-(c), section fifty-one, article six of the constitution of the state, to be paid to said Roberts Brothers for damages to their real estate caused by the building of state highway number thirty-five through said real estate; which sum should be paid to Roberts Brothers and charged to the state road fund allocated to Wirt county.

HOUSE RESOLUTION NO. 39

(By Mr. Van Sickler)

[Adopted March 4, 1935.]

Raising a special committee to investigate the cost and advisability of installing a voting machine in the House of Delegates.

Resolved by the House of Delegates:
That the Speaker be and is hereby authorized to appoint a special committee of three to investigate the cost and advisability of installing an automatic voting machine for the House of Delegates. Said committee shall make its investigation and report to this body as soon as practicable.

HOUSE RESOLUTION NO. 40

(By Mr. Beeler)

[Adopted February 21, 1935.]

Providing for a Washington's birthday observance program.

Whereas, Tomorrow, February 22, is the anniversary of the birth of George Washington; and

Whereas, A program has been arranged by the George Washington Foundation Association for 1:00 o'clock P. M. tomorrow at the state capitol; therefore, be it

Resolved by the House of Delegates:

That the House of Delegates hereby extends an invitation to the persons sponsoring this program to hold their services in this hall tomorrow at 1:00 o'clock P. M.; and, be it

Further Resolved, That an invitation be extended to the Senate to attend this service in observance of the birthday of George Washington.

HOUSE RESOLUTION NO. 41

(By Mr. Linger)

[Adopted March 7, 1935.]

Relating to purchases by state schools, institutions, schools, departments, etc.

Resolved by the House of Delegates:

That it is the sense of this body that no state school, school, institution, department, purchasing department or other agency of the state purchase any article or commodity whatsoever from any merchant, firm, individual or corporation not registered with the
secretary of state to do business in the state of West Virginia, unless such merchant, firm, individual or corporation shall have first satisfied the state agency as above set out that said merchant, firm, individual or corporation has satisfied every judgment issued in this state against any such merchant, firm, individual or corporation: Provided, That the purchasing agency as above set out, has been notified of a judgment existing and on record in the courts of this state.

HOUSE RESOLUTION NO. 43

(By Mr. LaFon)

[Adopted February 27, 1935.]

Authorizing the Committee on Rules to arrange a special calendar.

Resolved by the House of Delegates:

That after Wednesday, February 27, 1935, the Committee on Rules shall arrange a special daily calendar, to be known as the special calendar and until the calendar so arranged is disposed of, nothing on the regular House Calendar shall be considered or take precedence over said Special Calendar: Provided, That the Special Calendar shall not interfere with the Local Calendar on Friday of each week.

HOUSE RESOLUTION NO. 45

(By Mr. Doringer)

[Adopted March 11, 1935.]

Creating a Committee on Interstate Cooperation.

WHEREAS, There are several conflicting regulatory laws among our neighboring states; and

WHEREAS, These conflicts cause many unsatisfactory situations to many citizens of our state; and

WHEREAS, Many of these situations can be eliminated by the proper cooperation of the states; therefore, be it

Resolved by the House of Delegates:
That there is hereby created a special committee of the House of Delegates to be known as the Committee on Interstate Cooperation, said committee to be composed of five members to be appointed by the Speaker; and, be it

Further Resolved, That the members of said committee for the present session shall be forthwith appointed by the Speaker of the House of Delegates. This Committee shall devote its attention primarily to the improvement of relationships of the government of this state with the government of the forty-seven other states, and more especially with the governments of neighboring states. This committee shall also give attention to the more effective cooperation of the government of this state with the federal government; and, be it

Further Resolved, That this committee shall also constitute the Council of the American Legislators' Association for the House of Delegates.

HOUSE RESOLUTION NO. 46

(BY MR. RUSSEK)

[Adopted February 28, 1935.]

Concerning organization of third house by attaches.

WHEREAS, The so-called third house of the Legislature formed of the attaches of the House of Delegates, has already organized; and

WHEREAS, The aim of the third house will be to mimic the members of the Legislature and provide fun for the galleries; and

WHEREAS, Harry Burke has been elected Speaker; Randolph Ruddle, Clerk; Barney Saville, Sergeant-at-arms; and W. D. Miller, Doorkeeper; therefore, be it

Resolved by the House of Delegates:

That this body go on record favoring the third house and that this body congratulate the successful candidates for office in this organization; and, be it

Further Resolved, That a copy of this resolution be placed in the hands of the successful candidates for offices of the third house.
HOUSE RESOLUTION NO. 47

(BY MR. BISHOFF)

[Adopted March 1, 1935.]

Concerning fire at Terra Alta.

WHEREAS, It has just come to the attention of the members of this House, that the town of Terra Alta, in Preston County, has within the past few hours suffered a disastrous fire, this being the second fire which has visited said town within the past year and has resulted in great loss to the citizens of said town and caused them to suffer many inconveniences; therefore, be it

Resolved by the House of Delegates:

That the sympathy of this body be and is hereby extended to citizens of said town; and, be it

Further Resolved, That the Clerk be and is hereby instructed to communicate this resolution to the mayor of Terra Alta; and, be it

Further Resolved, That the Clerk be instructed to wire the Relief Administrator in Preston County to give such aid as is possible for such administration to render to the people of said town.

HOUSE RESOLUTION NO. 48

(BY MR. BROTHERTON)

[Adopted March 5, 1935.]

Concerning a banquet in honor of the Speaker of the House of Delegates.

WHEREAS, This House has an able, fair and courteous presiding officer; and

WHEREAS, During this session of the Legislature, he has been accommodating and has extended to the members of this body every consideration and favor within his power; and

WHEREAS, As an indication of the high regard the members of the House have for the Speaker and as a token of their appreciation of his many acts of kindness, the members of this body have arranged a banquet in honor of the distinguished and capable Speaker,
which banquet will be held at the Kanawha hotel at 6:30 o'clock P M. this evening; therefore, be it

Resolved by the House of Delegates:

That the Honorable Speaker is hereby notified of this event in his honor and is respectfully invited to attend the banquet.

HOUSE RESOLUTION NO. 49
(By Mr. Morris)
[Adopted March 5, 1935.]
Relating to payment of adjusted service certificates issued to Veterans of the World War.

Resolved by the House of Delegates:

That it is the opinion of this body that the Congress of the United States should authorize the immediate payment of the balance of the Adjusted Service Certificates which were issued to veterans of the World War; and, be it

Further Resolved, That a copy of this resolution be sent to Hon. M. M. Neely and Hon. Rush D. Holt, Senators from West Virginia, and to Honorables Robert L. Ramsey, Jennings Randolph, Andrew Edmiston, George W. Johnson, John Kee and Joe L. Smith, members from West Virginia of the House of Representatives.

HOUSE RESOLUTION NO. 51
(By Mr. Pelter)
[Adopted March 7, 1935.]
Names of participants in battle of Point Pleasant to be inscribed on tablet to be placed on the monument there.

Resolved by the House of Delegates:

That the Point Pleasant Battle Monument Commission be and it is hereby authorized and requested to cause to be inscribed on bronze tablets to be attached to the base of the Point Pleasant Battle Monument, when such base shall have been provided for, the names of all of the officers and men who participated in the battle of the
Revolution fought on October tenth, one thousand seven hundred
and seventy-four, at Point Pleasant, now in West Virginia as ascer­
tained and listed by the Point Pleasant Battle Monument Com­
mission, under the provisions of chapter forty-three, acts of the
Legislature of West Virginia, one thousand nine hundred thirty-one,
and reported to the Governor, and to provide space in such tablets
for inscription of the names of such other officers and men who
participated in said battle, as shall hereafter be ascertained and
listed under the provisions of said chapter forty-three.

HOUSE RESOLUTION NO. 53
(BY MR. VAN SICKLER)
[Adopted March 8, 1935.]

Authorizing the purchase and installation of an Electrical Roll
Call System in the House Chamber of the Capitol of the state of
West Virginia.

WHEREAS, A special committee has heretofore been appointed to
investigate the desirability and practicability of the installation of
an electrical roll call system in the House Chamber of the Capitol
of the state of West Virginia; and

WHEREAS, Said committee has reported favorably upon the in­
stallation of such system; and

WHEREAS, It appears that the installation of said system would
not only result in a great saving of time in the conduct of the busi­
ness of the House of Delegates of West Virginia, but would likewise
result in a substantial saving of money to the taxpayers of said
state, and that in the construction of the Capitol of the state of
West Virginia, the architect with commendable foresight, has
already provided for the installation of such electrical roll call sys­
tem and installed the proper conduits and other equipment prepara­
tory to the installation of such system, which constitutes a substan­
tial investment by the state of West Virginia, from which no benefit
can be derived until such electrical roll call system has been installed
in connection therewith; therefore, be it

Resolved by the House of Delegates:

That such electrical roll call system be installed in the chamber
of the House of Delegates of the state of West Virginia at the earliest date possible, such system to be substantially of the same kind and character as that which has heretofore been installed in the capitol of Virginia, Wisconsin, Louisiana, Nebraska, Iowa, Texas and California, which have adopted and installed an electrical roll call system; and, be it

Further Resolved, That the Speaker of the House of Delegates, the Chairman of the Committee on Taxation and Finance, the Chairman of the Committee on the Judiciary, and the Chairman of the committee heretofore appointed to investigate the feasibility and practicability of the installation of an electrical roll call system in the House Chamber, are hereby designated as a committee to procure the installation of such electrical roll call system and prescribe the terms of a contract to be entered into with some responsible person, firm, or corporation for the installation of such system, and said committee is authorized and directed to prepare and procure the execution and delivery of said contract to be executed by the Clerk of the House of Delegates on behalf of the House of Delegates of the state of West Virginia, with the person, firm or corporation so selected to install such system, at a cost of not to exceed the sum of thirty-five thousand ($35,000.00) dollars, to be paid as follows, to-wit: One-third of the cost of the installation of said system to be paid in cash upon the execution and delivery of a contract for the installation thereof, one-third to be paid when the wires and indicator boards are installed, and the balance when the installation of said system has been completed and is ready for operation and approved by the said Clerk of the House.

The Clerk of the House is hereby authorized and directed to draw his warrants upon the Auditor of the state of West Virginia in favor of the person, firm or corporation installing said system, pursuant to the terms of the contract relative thereto, and the Auditor shall honor and pay such warrants when presented and charge the same to the contingent fund of the House of Delegates.

HOUSE RESOLUTION NO. 54

(By Mr. Gaylord)

[Adopted March 9, 1935.]

Authorizing payment of the expenses of the special committee
raised under House Resolution No. 34, to attend the Second Interstate Assembly at Washington.

Whereas, Under the authority of House Resolution No. 34, adopted February 13, 1935, a special committee was raised to attend the second interstate assembly at Washington, D. C., on February 28, 1935, and March 1-2, 1935; and

Whereas, Said committee has filed its report of the proceedings of said assembly; and

Whereas, Said House Resolution No. 34 provided for the payment of the expenses of the committee, in a sum not to exceed one hundred and fifty dollars; and

Whereas, Said sum of one hundred and fifty dollars was not sufficient to meet the necessary, actual and legitimate expenses of said committee; therefore, be it

Resolved by the House of Delegates:

That the Clerk of the House of Delegates upon certification to him by the chairman of said delegation, shall draw his warrant upon the Auditor, payable out of the contingent fund of the House of Delegates for an additional amount, not to exceed the sum of seventy-five dollars, for the expenses of said delegation.

HOUSE RESOLUTION NO. 55
(By Mr. James)
(Originating in the Committee on Rules)
[Adopted March 9, 1935.]

Providing for the printing of corrected Journals and Bills of the House of Delegates for this session of the Legislature and for the completion of the work of the session.

Resolved by the House of Delegates:

That for the purpose of completing the work of this session in arranging and filing of all bills, resolutions and other official papers in the Clerk’s office, and for indexing and proofreading of the corrected Journals and Bills of the House of Delegates and printing thereof, the time of the Clerk, Secretary to the Clerk, Journal Clerk,
Journal Stenographer, three assistant Clerks and three proofreaders is extended for ninety days; the time of six stenographers is extended for ten days; the time of four janitors is extended for five days, and the time of one janitor is extended for thirty days; the time of two Mailing Clerks for the central postoffice is extended for ten days; the time of the Clerk to the Committee on Enrolled Bills is extended for ten days; the time of the Chief Journal Room Clerk is extended for twenty days, and six Assistant Journal Room Clerks is extended for ten days; the time of one Mailing Clerk is extended for ten days; the time of the Supervisor of Stenographers is extended for ten days; the time of the Secretary and Stenographer to the Speaker is extended for thirty days; and, be it

**Further Resolved,** That for the purpose of arranging the offices and committee rooms and performing the other duties of his office, the time of the Sergeant-at-Arms is extended for sixty days, four Assistant Sergeant-at-Arms is extended seven days, and the time of one assistant Sergeant-at-Arms is extended for ten days; and, be it

**Resolved Further,** That the per diem of the persons given extensions in this resolution, shall be the same as that paid for the same positions during this regular session of the Legislature.

The Clerk shall draw his warrants upon the Auditor in favor of the persons entitled to per diems under this resolution for consecutive days until such time as their services cease, and the Auditor shall honor and pay such warrants when presented and charge same to the contingent fund of the House of Delegates.

**HOUSE RESOLUTION NO. 56**

*(By Mr. James)*

*(Originating in the Committee on Rules)*

*[Adopted March 9, 1935.]*

Authorizing the printing and distribution of the acts of the Legislature, regular session, one thousand nine hundred thirty-five.

**Resolved by the House of Delegates:**

That under authority of section thirteen, article one, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, the Clerk of the House of Delegates is hereby directed to have
printed by the public printer three thousand advanced copies of
the acts of this session of the Legislature, properly headnoted, and
with a full table of contents, and in paper binding, for distribution
among the members of the Legislature, judges of the Supreme
Court of Appeals, circuit, criminal and intermediate courts, and
the county officials.

The public printer shall print and deliver said advance copies as
soon as possible after the adjournment of this session. The Clerk
of the Senate shall be furnished sufficient copies to forward by mail
or express ten of said copies to each member of the State Senate,
and the Clerk of the House of Delegates shall forward by mail or
express ten copies of said acts to each member of the House of
Delegates as soon as the same are printed and available for dis­
tribution. The Clerk of the House of Delegates shall also furnish
one copy to each of the state officials, judges of the Supreme Court
of Appeals, circuit, criminal, common pleas and intermediate courts
of this state, and shall forward to the county clerk of each county
sufficient copies to furnish one copy to each county office, the re­
mainder, if any, shall be delivered to the superintendent of public
printing for distribution by him. The Clerk of the House of Dele­
gates is also authorized and directed to have printed in signature
form for advance sheets, any general law which he may deem to
be of sufficient importance to be issued and distributed in this form.

To pay postage or expressage on said advance copies, the sum of
two hundred dollars is hereby directed to be paid by the Auditor
from the Contingent Fund of the House of Delegates upon proper
warrants of the Clerk.

For the work required in printing and distributing advanced
copies of the acts and for the proofreading, indexing and printing
the bound volumes of the acts of this session of the Legislature,
the time of the Clerk of the House of Delegates and the following
assistants is extended for the time herein set-out, at the same per
diem as paid during this session of the Legislature; to-wit:

The Clerk, Secretary to Clerk, two Assistant Clerks, the Journal
Clerk, the Journal Stenographer, seven clerks, and three proof­
readers is extended for sixty days.

The Clerk shall draw his warrants upon the Auditor in favor of
the persons entitled to per diems under this resolution for con-
secutive days until such time as their services cease, and the Auditor shall honor and pay such warrants when presented and charge same to the contingent fund of the House of Delegates.

HOUSE RESOLUTION NO. 57

(BY MR. SHAHAN)

[Adopted March 11, 1935.]

Authorizing the payment of attaches for the extension of this regular session.

Resolved by the House of Delegates:

That the Clerk of the House of Delegates is hereby authorized to draw his warrants in favor of each attache of the House of Delegates for the two days of the extension of this session of the Legislature at the same per diem as paid during the sixty days of the session. Said per diems shall be paid from the contingent fund of the House of Delegates.

HOUSE RESOLUTION NO. 58

(BY MR. UNDERWOOD)

[Adopted March 11, 1935.]

Requesting the Charleston Interurban Railway Company to put signs on buses.

WHEREAS, The Charleston Interurban Railway Company has several buses leaving from the same place on Capitol street; and

WHEREAS, These buses do not have signs on the rear of same, designating the routes they travel, thereby causing much inconvenience to members of the Legislature and other persons desiring to ride the bus to the state capitol; therefore, be it

Resolved by the House of Delegates:

That the Charleston Interurban Railway Company is hereby requested to place proper signs on these buses designating the routes they travel.
HOUSE RESOLUTION NO. 60

(BY MR. VICKERS)

[Adopted March 11, 1935.]

Directing the Clerk to mail members Journals, Bills and Acts of this session.

Resolved by the House of Delegates:

That the Clerk of the House of Delegates is hereby authorized and directed to mail to each member of this body a copy of the corrected Journal of the House, a copy of the Printed Bills and ten copies of the bound volumes of the acts of this session of the Legislature, when the same are printed and bound.

HOUSE RESOLUTION NO. 61

(BY MR. AMOS)

[Adopted March 11, 1935.]

Notifying the Senate that the House of Delegates is ready to adjourn sine die.

Resolved by the House of Delegates:

That a committee of three be appointed by the Speaker to notify the Senate that the House of Delegates has completed its labors and is ready to adjourn sine die.
SENATE CONCURRENT RESOLUTION NO. 3
(BY MR. HELMICK)
[Adopted January 30, 1935.]

Raising a commission to erect suitable markers or monuments on the battlefield at Carrick’s Ford, on Cheat river, in Tucker county.

Resolved by the Senate, the House of Delegates concurring therein:

That a commission of six, consisting of three members of the Senate to be appointed by the President of the Senate, and three members of the House of Delegates to be appointed by the Speaker of the House, is hereby raised to erect suitable markers or monuments on the battlefield at Carrick’s Ford, on Cheat river, in Tucker county, to commemorate the memories of Brigadier General Robert Selden Garnett, commanding the Confederate forces, and of those of the Union and Confederate forces who lost their lives in this battle.

The members of said commission shall receive only their actual, necessary expenses incurred in carrying out the provisions of this resolution. The commission is authorized to expend not more than three thousand dollars in the erection of suitable markers or monuments on said battlefield. The expense of the members of the commission and the cost of said markers or monuments, not to exceed the sum of thirty-five hundred dollars, is hereby appropriated out of the treasury, out of any moneys not otherwise appropriated, and shall be paid by the Auditor upon the requisition of the chairman of said commission.

SENATE CONCURRENT RESOLUTION NO. 5
(BY MR. SMITH)
[Adopted February 13, 1935.]

Concerning the establishment of a state park at the Falls of the Tygarts Valley river, in Marion and Taylor counties.

Resolved by the Senate, the House of Delegates concurring therein:

That the President of the Senate and the Speaker of the House
of Delegates are hereby directed to instruct the special committee appointed by them to investigate and report upon the advisability of establishing state parks at Black Water Falls, in Tucker county, and at Blennerhassett Island, in Wood county, to include in said investigation and report information as to the advisability of establishing a state park at the Falls of the Tygart Valley river, at Valley Falls, in Marion and Taylor counties.

SENATE CONCURRENT RESOLUTION NO. 6

(By Mr. Sandridge)

[Adopted February 14, 1935.]

Concerning the establishment of a state park at the battleground of Philippi, Barbour county, to commemorate the first land battle of the Civil War.

Resolved by the Senate, the House of Delegates concurring therein:

That the special committee appointed to investigate and report upon the advisability of establishing state parks at Black Water Falls, in Tucker county and at Blennerhassett Island, in Wood county, is directed to include in said investigation and report information as to the advisability of establishing a state park at the battleground of Philippi, Barbour county.

SENATE CONCURRENT RESOLUTION NO. 9

(By Mr. Paull)

[Adopted February 20, 1935.]

Providing for a joint assembly.

Resolved by the Senate, the House of Delegates concurring therein:

That a joint session of the Legislature of West Virginia be held in the chamber of the House of Delegates on Wednesday, February 27th, 1935, at 2:15 P. M., to hear a message from his Excellency, the Honorable H. G. Kump, Governor of the State of West Virginia.
SENATE CONCURRENT RESOLUTION NO. 10

(By Mr. Paull)

[Adopted March 1, 1935.]

Raising a joint committee to study and report to the Governor and to the Legislature, concerning legislation on problems of social security and other subjects appurtenant thereto.

Whereas, The Governor has requested that the Legislature appoint a committee for the purpose of making a study of certain federal legislation dealing with social security and other subjects, with particular reference to the coordination of prospective enactments by the Legislature of this state therewith; therefore, be it

Resolved by the Senate, the House of Delegates concurring therein:

That a committee of twelve be appointed by the Legislature, five by the President of the Senate and five by the Speaker of the House, the President of the Senate and Speaker of the House to be ex officio member of said committee, to study the subjects of such federal legislation and the problem of coordinating state legislation therewith, and make its report to the Governor of West Virginia and to the Legislature at the earliest opportunity.

Said committee is hereby authorized to meet in the city of Charleston or elsewhere, as it may determine, the expenses of the members of said committee to be paid equally from the contingent funds of the Senate and House of Delegates upon certificate of the chairman of said committee. Said committee is further authorized, should it deem it advisable, to employ such legal counsel and assistants as it may deem necessary.

SENATE CONCURRENT RESOLUTION NO. 11

(By Mr. Smith)

[Adopted March 9, 1935.]

Raising a special committee to study and report upon the needs and conditions of the teaching profession of the state.

Whereas, Existing provisions of law relating to teachers' retire-
ment fund and permanent tenure are considered inadequate to meet
the present needs of the profession; and,

Whereas, It is the recommendation of teachers throughout the
state as expressed through their professional organizations and educa-
tion departments that proper steps be taken for the enactment
of an adequate and well-considered teachers' retirement and per-
manent tenure law; and,

Whereas, It is recognized that a careful study and survey should
be made to ascertain and make available pertinent and reliable
data relating to such proposed legislation, best adapted to the needs
peculiar to our state, as prerequisites to the enactment of such a
law; therefore, be it

Resolved by the Senate, the House of Delegates concurring
therein:

That the Governor, on or before the first day of May, one thou-
sand nine hundred thirty-five, shall appoint a committee of five to
make a general study, without cost to the state, of the subject as
herein proposed and, particularly in its relation to the needs and
conditions peculiar to the teaching profession of this state. Said
committee shall consist of one member from the state congress of
parents and teachers, one from each of the committees on insurance
of the Senate and House, respectively, one from the state education
association, and one from the state department of education; and,

Further resolved, That said committee report to the next regular
session of the Legislature the result of its study, together with such
conclusions and recommendations as shall, in the judgment of the
committee, be most desirable for consideration by the Legislature as
features of proposed laws relating to teachers' retirement and per-
manent tenure, and shall report to said Legislature, a bill or bills
embodying its recommendations and conclusions.

SENATE CONCURRENT RESOLUTION NO. 12
(By Mr. Belknap)
[Adopted March 7, 1935.]

Granting permission to introduce a bill authorizing the county
board of education of Calhoun county to borrow money.
Resolved by the Legislature of West Virginia, two-thirds of all the members of each House, present and voting, concurring therein:

That permission is hereby given to introduce a bill with the following title:

"A Bill to authorize the board of education of the county of Calhoun to borrow money for the purpose of erecting a gymnasium and auditorium for the Calhoun county high school at Grantsville."

SENATE CONCURRENT RESOLUTION NO. 13

(By Mr. Helsley, by request)

[Adopted March 7, 1935.]

Approving an official colonial inaugural celebration, annually, by the state of West Virginia for the purpose of financing the proposed George Washington Foundation as a national shrine in West Virginia at the historic town of Bath, Berkeley Springs, for the benefit to mankind.

Whereas, On March 16, 1934, the Senate of West Virginia and the House of Delegates concurring therein, unanimously approved the organization of "The George Washington Foundation Association" for the purpose of carrying on the great humanitarian project begun by the Founder of our Nation nearly two centuries ago; and

Whereas, On March 18, 1934, the George Washington Foundation Association was organized in the Senate chamber of the capitol of West Virginia on the anniversary of Washington's pioneer visit to "Y. Fam'd Warm Springe"; and

Whereas, On April 30, 1934, in the Womans' Clubhouse Charleston, the first election of officers of the association was held on the anniversary of the first inauguration of the first President of the United States, (this day being known as "President's Day"); and

Whereas, In observance of the Founder's birthday, February 22, 1935, a charter was granted to the George Washington Foundation Association for the perpetuation of the medicinal springs as a health center; and
WHEREAS, The proposed Washington Foundation Shrine, for the perpetuation of the historic springs made famous by the prestige of the "Father of His Country" throughout his lifetime, will be nation wide in interest; and

WHEREAS, The plan proposed in the Washington Bicentennial Year 1932, to finance the foundation by the continuance of the national celebration of the Founder's birthday, annually, to aid in the national health program was not unlike the recent celebrations of the President's birthdays which have proved the merit of such a plan; and

WHEREAS, Historic "Bath" is the first and only health resort in America that was sponsored and promoted by the great Washington who took his family there for many weeks at a time "to try y. effects and y. water;" therefore, be it

Resolved by the Senate, the House of Delegates concurring therein:

That colonial celebrations to finance the George Washington Foundation as a national shrine within our sovereign state for the welfare of suffering humanity, be officially opened in the capitol of West Virginia on the anniversary of the first inauguration of the first President of the United States, April 30, 1935; and similar celebrations be held throughout West Virginia at this time; and that a copy of this resolution be sent to the Congress of the United States for the approval of a national colonial celebration, annually, in observance of the Founder's birthday or of the anniversary of the first inauguration, so that each state in the Union may have a permanent active interest in the foundation and thus establish a friendly and humanitarian relationship that cannot otherwise be achieved, be and the same is hereby approved.

SENATE CONCURRENT RESOLUTION NO. 14

(By Mr. Barnhart)

[Adopted March 9, 1935.]

Providing for the introduction of a bill submitting a constitutional amendment to the voters of the state.

Resolved by the Legislature of West Virginia, two-thirds of all the members of each House, present and voting, concurring therein:
That permission is hereby given to introduce a bill with the following title:

“A Bill to provide for the submission to the voters of the state of an amendment to the constitution as follows: Amending section thirty-five of article six thereof, permitting the state and subdivisions thereof to be made suggestee or garnishee.”

SENATE CONCURRENT RESOLUTION NO. 15
(BY MR. JONES)
[Adopted March 11, 1935.]

Authorizing the withdrawal of Eng. Com. Sub. for House Bill No. 257, known as the “Budget Bill,” from the conference committee.

Resolved by the Senate, the House of Delegates concurring therein:

That Eng. Com. Sub. for House Bill No. 257, known as the “Budget Bill,” is hereby withdrawn from the conference committee, for the purpose of considering an amendment thereto, submitted this day by the Board of Public Works.

SENATE CONCURRENT RESOLUTION NO. 16
(BY MR. PAULL)
[Adopted March 11, 1935.]

Authorizing the return of Eng. Com. Sub. for House Bill No. 257, known as the “Budget Bill” to the conference committee thereon.

Resolved by the Senate, the House of Delegates concurring therein:

That upon the passage by each House of Eng. Com. Sub. for House Bill No. 257, known as the “Budget Bill”, as this day amended by the Board of Public Works and which amendment was received by the Senate and the House of Delegates, said bill shall be returned to the conference committee.
SENATE CONCURRENT RESOLUTION NO. 17

(BY MR. PAULL)

[Adopted March 11, 1935.]

Raising a joint committee to wait upon the Governor.

Resolved by the Senate, the House of Delegates concurring therein:

That a joint committee of six, consisting of three on the part of the Senate, to be appointed by the President thereof, and three on the part of the House of Delegates, to be appointed by the Speaker thereof, be appointed to notify the Governor that the Legislature is ready, under the constitution, to adjourn sine die, and ask him if he has any further communications to make.

SENATE JOINT RESOLUTION NO. 3

(BY MR. FLEMING)

[Adopted March 9, 1935.]

Proposing an amendment to the constitution of the state, amending article six by adding section thirty-nine-(a) thereto.

Resolved by the Legislature of West Virginia, two-thirds of all the members elected to each House agreeing thereto:

That the question of ratification or rejection of an amendment to the constitution of West Virginia shall be submitted to the voters of the state at the next general election to be held in the year one thousand nine hundred thirty-six, which proposed amendment is as follows:

That article six of the constitution of West Virginia be amended by adding section thirty-nine-(a) thereto, which is as follows:

Sec. 39-(a). No local or special law shall hereafter be passed incorporating cities, towns or villages, or amending their charters. The Legislature shall provide by general laws for the incorporation and government of cities, towns and villages and shall classify such municipal corporations, upon the basis of population, into not less than two nor more than five classes. Such general laws shall restrict the powers of such cities, towns and villages to borrow money and contract debts, and shall limit the rate of taxes for municipal
purposes, in accordance with section one, article ten of the Constitu­tion of the State of West Virginia. Under such general laws, the electors of each municipal corporation, wherein the population ex­ceeds two thousand, shall have power and authority to frame, adopt and amend the charter of such corporation, or to amend an exist­ting charter thereof, and through its legally constituted authority, may pass all laws and ordinances relating to its municipal affairs: Provided, That any such charter or amendment thereto, and any such law or ordinance so adopted, shall be invalid and void if in­consistent or in conflict with this constitution or the general laws of the state then in effect, or thereafter from time to time enacted.

SENATE RESOLUTION NO. 1

(By Mr. Jones)

[Adopted January 9, 1935.]

Appointment of committee to notify House that Senate is organized.

Resolved by the Senate:

That the President of the Senate be and he is hereby authorized to appoint a committee of three to inform the House of Delegates that the Senate is organized by the election of Honorable Charles E. Hodges as President and Mr. Charles Lively as Clerk, and is ready to proceed with the business of the session.

SENATE RESOLUTION NO. 2

(By Mr. Rouss)

[Adopted January 9, 1935.]

Concerning the death of Senator Helsley’s mother.

Whereas, The Senate has learned with deep regret of the death of the mother of Senator Helsley, of the Fifteenth district; there­fore, be it

Resolved by the Senate:

That the sympathy of the Senate is extended to Senator Helsley and his family in their bereavement.
SENATE RESOLUTION NO. 3
(BY MR. MITCHELL)

[Adopted January 10, 1935.]

Adopting rules of the Senate.

Resolved by the Senate:

That the rules of the Senate, second extraordinary session, one thousand nine hundred thirty-three, be adopted as the rules of the Senate for this session pending a report from the Committee on Rules.

SENATE RESOLUTION NO. 4
(BY MR. CANTERBURY)

[Adopted January 10, 1935.]

Relating to the mailing of journals and bills.

Resolved by the Senate:

That the Clerk of the Senate is authorized to have mailed from the Senate document room copies of the bills and daily journals of the Senate to addresses to be furnished to the Clerk by the members of the Senate, twenty of which such addresses may be submitted by each member of the Senate, and that the expense of such mailing, including postage, be paid out of the contingent fund of the Senate by the Auditor, in advance of the appropriation therefor, upon proper requisition drawn by the Clerk of the Senate.

SENATE RESOLUTION NO. 5
(BY MR. HODGES)

(Originating in the Committee on Rules)

[Adopted January 14, 1935.]

Authorizing the appointment of attaches.

Resolved by the Senate:

That the President of the Senate is authorized to make the following appointments, viz:
Nine floor stenographers at $7.00 per day each;
Three committee stenographers at $7.00 per day each;
Two clerks at $7.00 per day each;
Two committee clerks-at-large at $10.00 per day each;
One clerk to Committee on Finance at $10.00 per day;
One clerk to Committee on the Judiciary at $10.00 per day;
One clerk to the Sergeant-at-Arms at $7.00 per day;
One secretary to the Minority at $12.00 per day;
One clerk to the Minority Leader at $9.00 per day;
One secretary to the President at $12.00 per day;
One messenger to the President at $4.00 per day;
One Chaplain at $5.00 per day;
Four assistant doorkeepers at $7.00 per day each;
One night watchman at $6.00 per day;
Five pages at $4.00 per day each;
Two cloakroom attendants at $4.00 per day each;

Resolved further, That the Clerk of the Senate is authorized to
make the following appointments of assistant clerks, viz:

Two at $12.00 per day each;
Five at $9.00 per day each;
Seven at $8.00 per day each;
Two at $7.00 per day each;
Seven at $6.00 per day each.

Resolved further, That the Sergeant-at-Arms shall receive $10.00
per day; the Doorkeeper $10.00 per day; and the Clerk $20.00
per day.

The Clerk shall draw his warrants upon the Auditor in favor
of the officers and attaches herein appointed for consecutive days
from the date of the opening of this session at the per diems
herein set out, and the Auditor shall honor and pay such warrants
in advance of the appropriation for the purpose, when presented,
and charge same to the "per diem of officers and attaches" fund
of the Senate.

The President and the Clerk shall require said employees to
perform the duties assigned to them and they are authorized and
directed to remove any of such employees whose work is not
satisfactory and to appoint another in his place.
SENATE RESOLUTION NO. 6
(By MR. Rouss)
[Adopted January 16, 1935]

Appointment of assistant janitors.

WHEREAS, Thomas B. Davis, Superintendent of Capitol buildings and grounds, under authority of section twenty-two, article one, chapter five of the code, has designated six assistants for the janitor work of the Senate for this session; therefore, be it

Resolved by the Senate:

That the per diem of said assistant janitors is fixed at four dollars, and that of the said Thomas B. Davis, is fixed at two dollars, as the Senate’s one-half of his per diem.

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SENATE RESOLUTION NO. 7
(By MR. Sandridge)
[Adopted January 23, 1935]

Authorizing payment to W. B. Baker for services to the Senate, regular session, one thousand nine hundred thirty-three.

Resolved by the Senate:

That the Clerk of the Senate is directed to draw his warrant upon the Auditor, payable out of the contingent fund of the Senate, in favor of W. B. Baker for eight days’ services as assistant door-keeper to the Senate, regular session, one thousand nine hundred thirty-three, at a per diem of eight dollars.

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SENATE RESOLUTION NO. 8
(By MR. Millender)
[Adopted January 23, 1935]

Providing for an investigation of the Purchasing Department of the State of West Virginia.

WHEREAS, It has been brought to the attention of many members of the Senate and to a great portion of the public at large, that charges are prevalent that certain abuses and irregularities of the
privileges have occurred in the purchasing department under the supervision of James A. Tierney, state director of purchases, and his assistants; and

WHEREAS, It is the opinion of the Senate of West Virginia that such charges should be investigated in order to learn if such abuses and irregularities have occurred and are still occurring, and if not, that the public may know that such charges and accusations are false; and

WHEREAS, The consolidation of all purchases under one purchasing head may have led to a preconceived idea of irregularity; therefore, be it

Resolved by the Senate:

That a select committee of five members with minority representation, be appointed by the President of the Senate, with authority and direction to make inquiry into the administration of the purchasing department of the state of West Virginia. Said committee shall have access to any and all records in said purchasing department for the purpose of this investigation. Said committee shall have power and authority to administer oaths, subpoena witnesses, compel attendance and compel the production of documents of all kinds, and shall have the right to call upon the state director of purchases and any of his subordinates and employees for such assistance and information as they may be able to furnish. Said committee shall have access to all books and records in said department, and may call upon and require the attaches of the Senate to render such service and assistance as may be necessary for the committee to properly perform its duties. Said committee shall be limited to the sum of three hundred dollars for the expenses of its investigations but no part of said amount shall be used to employ legal aid.

Said committee is hereby empowered with all necessary authority to investigate any and all purchases made by the state director of purchases or any of his subordinates, either regular or emergency. Said committee shall report to the Senate at this session of the Legislature, its findings in connection with this investigation of said department, together with its conclusions and such recommendations as said committee may deem proper, and if irregularities are found, a copy of said report shall be forthwith filed
with the Governor of this state, together with the recommendations of said committee, in order that he may take whatever action he may deem expedient, according to the findings of this committee.

The expense of said investigation by said committee shall be paid out of the contingent fund of the Senate.

**SENATE RESOLUTION NO. 9**
*(By Mr. Hodges)*
*(Originating in the Committee on Rules)*

[Adopted January 23, 1935]

Payment for services preliminary to the organization of the Senate.

*Resolved by the Senate:*

That the following amounts be allowed, payable out of the contingent fund of the Senate, for work of the Sergeant-at-Arms and the others named herein for services preliminary to the organization of the Senate in this session.

C. D. Elliott ......................................................... $150.00
John Holsclaw .................................................... 4.00
C. W. Bell ................................................................ 15.00
Lewis G. Dinkle .................................................. 50.00
Herbert Eccles ..................................................... 25.00
Raymond Bush ..................................................... 15.00

**SENATE RESOLUTION NO. 10**
*(By Mr. Elbin)*

[Adopted January 23, 1935]

Memorial services for the late Senator John C. Myers.

*Whereas,* Honorable John C. Myers, a Senator from the Second Senatorial district, has, since the last session of this body, departed this life; therefore, be it

*Resolved by the Senate:*

That as a fitting tribute to the memory of this distinguished
Senator and citizen, memorial services be held in the Chamber of the Senate at two thirty o’clock, P. M., Thursday, February seventh, one thousand nine hundred thirty-five; and, be it

Resolved further, That the Clerk of the Senate transmit a copy of this resolution to the family of the deceased and to the House of Delegates, with an invitation to them from the Senate to attend the memorial services.

SENATE RESOLUTION NO. 12
(By Mr. Paul)
(Originating in the Committee on Rules)
[Adopted January 30, 1935]

Authorizing payment of expenses of a member of the committee to attend the inter-state truck and bus conference, held in Harrisburg, Pennsylvania.

WHEREAS, The inter-state truck and bus conference was held in Harrisburg, Pennsylvania, October 20 and 21, 1933; and

WHEREAS, The President appointed a committee to attend this meeting; and

WHEREAS, A. L. Helmick, one of the members of such committee, attended the conference and incurred a total expense of thirty-six dollars and fifty cents; therefore, be it

Resolved by the Senate:

That the Clerk is hereby directed to draw his warrant upon the Auditor in favor of the said A. L. Helmick for the sum of thirty-six dollars and fifty cents, payable out of the contingent fund of the Senate.

SENATE RESOLUTION NO. 13
(By Mr. Hodges)
(Originating in the Committee on Rules)
[Adopted January 31, 1935]

Authorizing the Committee on Rules to purchase furniture.

Resolved by the Senate:
SENATE RESOLUTIONS

That the Committee on Rules is authorized to purchase furniture for four committee rooms and furniture and furnishings for the Senate reception room. The expenditures incurred in the purchase of such furniture and furnishings shall be paid by the Auditor out of the contingent fund of the Senate upon the requisition of the Clerk of the Senate for the same.

SENATE RESOLUTION NO. 14

(By Mr. Mathews)

[Adopted February 12, 1935.]

Providing for the appointment of a delegation to attend the Second Interstate Assembly at Washington, D. C.

WHEREAS, The Second Interstate Assembly has been called by the Council of State Governments and the American Legislators' Association, to be held on Thursday, Friday, and Saturday, February 28, and March 1-2, 1935, at the Mayflower Hotel, Washington, D. C., to consider federal and state tax policies on the basis of the recommendations submitted by the Interstate Commission on Conflicting Taxation, which was established two years ago by the First Assembly; and

WHEREAS, It is apparent that substantial benefits would result from closer contacts between the legislative and administrative divisions of the various state governments, and that many governmental difficulties are aggravated by the absence of adequate facilities for conference between these bodies; and

WHEREAS, The present economic emergency creates an imperative necessity now emphasized by the President's program of economic security for joint council and concerted action; and

WHEREAS, It is believed that the moment has now arrived for establishing adequate means for communication and conference between the states and the federal government; and

WHEREAS, The Senate of this state is invited to send its delegates to this conference, to be chosen in such manner as this body may determine; therefore, be it

Resolved by the Senate:
That the Senate of the state of West Virginia hereby authorizes the President of the Senate to appoint three senators, of whom the President shall be one, as a delegation to the Interstate Assembly, which convenes in Washington, D. C., on February 28, 1935. Such delegation shall be without power to commit the Senate to action. The Clerk of the Senate upon certification to him by said delegation, or its chairman, shall draw his warrant upon the Auditor, payable out of the contingent fund of the Senate, in an amount not to exceed the sum of one hundred and fifty dollars, for the attendance of said delegation on said assembly.

The Clerk of the Senate is directed to advise the corresponding secretary of the conference in care of the American Legislators' Association, Drexel avenue and Fifty-eighth street, Chicago, Illinois, of the appointment of such delegation.

SENATE RESOLUTION NO. 16
(BY MR. PAULL)
[Adopted February 28, 1935.]

Authorizing the Committee on Rules to arrange a special calendar.

Resolved by the Senate:

That the Committee on Rules is hereby authorized to arrange a calendar for each day to be known as "special calendar" and until the calendar so arranged by the committee is disposed of no matter on the regular calendar shall be considered or take precedence over said special calendar, subject to the provisions of Senate rule No. 68.

SENATE RESOLUTION NO. 17
(BY MR. SANDRIDGE)
[Adopted March 1, 1936.]

Names of participants in battle of Point Pleasant to be inscribed on tablet to be placed on the monument there.

Resolved by the Senate:
That the Point Pleasant Battle Monument Commission be and it is hereby authorized and requested to cause to be inscribed on bronze tablets to be attached to the base of the Point Pleasant Battle Monument, when such base shall have been provided for, the names of all of the officers and men who participated in the battle of the Revolution fought on October tenth, one thousand seven hundred and seventy-four, at Point Pleasant, now in West Virginia, as ascertained and listed by the Point Pleasant Battle Monument Commission, under the provisions of chapter forty-three, acts of the Legislature of West Virginia, one thousand nine hundred thirty-one, and reported to the Governor, and to provide space in such tablets for inscription of the names of such other officers and men who participated in said battle, shall hereafter be ascertained and listed under the provisions of said chapter forty-three.

SENATE RESOLUTION NO. 18

(By Mr. Smith)

[Adopted March 4, 1935.]

Raising a committee to study the problems of water power development in the state.

Resolved by the Senate:

That the Chairman of the Senate Committee on the Judiciary is requested to appoint a sub-committee of three members of the committee for the purpose of studying the water power bills now before the Senate and the water power development situation in West Virginia. Said sub-committee shall report its findings to the next regular session of the West Virginia State Senate, or to any special session held between this date and said next regular session.

The members of the sub-committee shall be reimbursed for their actual expenses incurred in carrying out the provisions of the resolution in an amount not to exceed one hundred dollars per member to be paid from the contingent fund of the Senate on the warrant of the Clerk drawn upon the Auditor.
SENATE RESOLUTION NO. 19

(Originating in the Committee on the Judiciary)

[Adopted March 6, 1935.]

Raising a special committee to study the Workmen’s Compensation Law.

WHEREAS, Bills have been introduced during the present regular session of the Legislature, proposing legislation that might prove detrimental to the workmen’s compensation fund, and add heavy burdens to the subscribers to the fund; and

WHEREAS, These proposals are of such tremendous importance to thousands of workmen who are beneficiaries under the humane and beneficient statute and to the subscribers to the fund; and

WHEREAS, This fund for more than twenty years has been administered by a branch of the executive department of the state government; therefore, be it

Resolved by the Senate:

That the Governor appoint a special committee of three members, one to represent employers, one to represent employees and one having actuarial knowledge, the last of whom shall not be connected with the West Virginia Compensation Department, to make a comprehensive survey of the workmen’s compensation law of this state, its administration by the compensation department, and a study of like statutes in surrounding states, particularly with reference to a study of appeals from findings of fact to the court. Said committee shall report its findings to the next regular session of the Legislature, or at any prior session of the Legislature at which the said committee may be ready to report.

The expenses of said committee shall be paid from the Senate contingent fund in an amount not to exceed three thousand dollars, upon the warrant of the Clerk of the Senate drawn upon the Auditor upon certification of the amount of said expenses to the Clerk by said committee. An accounting of said expenses shall be made to the Clerk for certification to the Auditor and shall be included in the report of the committee.
SENATE RESOLUTION NO. 21

(By Mr. Mitchell)

[Adopted March 8, 1935.]

Concerning the illness of Honorable M. Z. White.

Whereas, The Senate has just learned of the serious illness of the Honorable M. Z. White, a former member of this body for many terms and its presiding officer from 1923 to 1933; therefore, be it

Resolved by the Senate:

That the Senate express its deepest regret over this sudden illness to which Senator White has been subjected, its sympathy to him and his family and its sincere hope that the illness may be of short duration and the recovery speedy and complete. The Clerk of the Senate is directed to send flowers to Senator White for the Senate.

SENATE RESOLUTION NO. 22

(By Mr. Paull)

(Originating in the Committee on Rules)

[Adopted March 9, 1935.]

Concerning the privileges of the floor.

Resolved by the Senate:

That for the remainder of this legislative day, no person shall be allowed upon the floor of the Senate, while the Senate is in session, other than members of the Legislature, attaches on official business, persons bearing official messages from the Governor, and working members of the press.

SENATE RESOLUTION NO. 23

(By Mr. Randolph)

[Adopted March 9, 1935.]

Authorizing payment of the expenses of the special committee raised under Senate Resolution No. 14 to attend the Second Interstate Assembly at Washington, D. C.
WHEREAS, Under the authority of Senate Resolution No. 14, adopted February 12, 1935, a special committee was raised to attend the Second Interstate Assembly at Washington, D. C., on February 28, 1935, and March 1-2, 1935; and

WHEREAS, Said committee has filed its report of the proceedings of said assembly; and

WHEREAS, Said Senate Resolution No. 14 provided for the payment of the expenses of the committee, in a sum not to exceed one hundred fifty dollars; and

WHEREAS, Said sum of one hundred and fifty dollars was not sufficient to meet the necessary, actual and legitimate expenses of said committee; therefore, be it

Resolved by the Senate:

That the Clerk of the Senate upon certification to him by the chairman of said delegation, shall draw his warrant upon the Auditor, payable out of the contingent fund of the Senate for an additional amount, not to exceed the sum of seventy-five dollars, for the expenses of said delegation.

SENATE RESOLUTION NO. 24

(By Mr. Helmick)

(Originating in the Committee on Rules)

[Adopted March 11, 1935.]

Janitor service after adjournment.

Resolved by the Senate:

That, in order that the work incident to the proper cleaning of the Senate part of the capitol preparatory to closing between sessions may be taken care of, the time of the assistant superintendent of capitol building and grounds, at a per diem of two dollars, and five assistant janitors heretofore appointed at a per diem of four dollars, is hereby extended for five days each.


Resolved by the Senate:

That in order to complete the work of the session in arranging and filing of all bills, resolutions, petitions and other official papers in the Clerk's office and document room, and to allow time for proofreading, printing and indexing the corrected Journal and arranging and printing its several appendices, and in printing and indexing the volume of Senate Bills, and in completing the work in the mailing and document rooms and in performing other services incident to the closing of this session of the Legislature, the per diem of the Clerk at $20.00 and of two assistant clerks at $12.00 each and of one assistant clerk at $9.00 is extended for one hundred and twenty days; one assistant clerk at $12.00 for sixty days; one assistant clerk at $9.00 for ninety days; one assistant clerk at $9.00 for thirty days; one assistant clerk at $9.00 for ten days; one assistant clerk at $6.00 for thirty days; one assistant clerk at $5.00 for ninety days; thirteen stenographers at $7.00 for five days each; six journal and mailing room clerks at $6.00 for five days each; one journal and mailing room clerk for three days and one for two days at $6.00 per day each; one enrolled bill clerk at $9.00 for ten days; secretary to the President at $12.00 for forty-five days; clerk to the Minority Leader at $9.00 for thirty days; clerk to the Sergeant-at-Arms at $7.00 for fifteen days; six printing clerks at $8.00 for seventy-five days each; one printing clerk at $8.00 for one hundred and twenty days; messenger to the President at $4.00 for five days; the Sergeant-at-Arms at $10.00 for forty-five days, and woman's cloakroom attendant at $4.00 for five days.

The Clerk, together with the Clerk of the House of Delegates, is hereby directed to have printed by the public printer three thousand advance copies of the Acts of this session, exclusive of municipal charters, properly headnoted, and with a full table of contents, and in paper binding, for distribution among the
members of the Legislature, judges of the Supreme Court of Appeals, and of the circuit, criminal and intermediate courts, circuit and county clerks, sheriffs and prosecuting attorneys.

Said public printer shall print and deliver said advance copies to the clerks of the two houses as soon as possible after the adjournment of this session. Upon receipt of the same, the clerks shall, without delay, forward by mail or express to each member of the Senate and House of Delegates at least ten of said advance copies, and one copy to each of the state officials, and the remainder, if any, they shall deliver to the superintendent of printing and stationery for distribution.

The said clerks are also authorized and directed to have printed in signature form for advance sheets any general law which they may deem of sufficient importance to be issued and distributed in that form. The sum of one hundred dollars out of the contingent fund of the Senate is hereby directed to be paid by the Auditor, upon proper warrant to pay the postage or expressage on said advance copies.

For the extra work provided for in this resolution, the time of the Clerk of the Senate at $20.00 and two assistant clerks at $12.00 and one assistant clerk at $8.00 per diem each, respectively, is extended for thirty days.

All extensions provided for herein shall begin at the end of the extension of this session of the Legislature.

The compensation of those designated hereunder shall be paid out of the contingent fund of the Senate for consecutive days upon proper requisition drawn by the Clerk of the Senate upon the Auditor.

SENATE RESOLUTION NO. 26
(BY MR. HOWARD)
[Adopted March 11, 1935.]

Committee to notify House of Delegates.

Resolved by the Senate:

That a committee of two be appointed by the President to notify the House of Delegates that the Senate is ready to adjourn sine die.
*CHAPTER 58

(House Bill No. 190—By Mr. Norton)

AN ACT to amend and reenact section eleven, article three, chapter forty of the code of West Virginia, one thousand nine hundred thirty-one, relating to the refiling of conditional sales contracts.

[Passed February 22, 1933; in effect ninety days from passage. Approved by the Governor.]

Sec. 11. Time for which conditional sales contracts are made valid by filing; extension of time of validity by refiling or re-recording.

Be it enacted by the Legislature of West Virginia:

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

Section 11. The filing of any conditional sale contract, here-2 tofore or hereafter filed, pursuant to the provisions of sections 3 five, six and seven of this article, shall be valid for a period 4 of five years only from the date of such filing. The recording 5 of the contracts provided for by section eight of this article shall 6 be valid for a period of fifteen years only. The validity of the 7 filing or recording may in each case be extended for successive 8 additional periods of two years from the date of refiling or re- 9 recording by filing or recording in the proper filing district a 10 copy of the original contract within thirty days next preceding 11 the expiration of each period, with a statement attached, signed 12 by the seller, showing that the contract is in force and the 13 amount remaining to be paid thereon. Such copy, with state- 14 ment attached, shall be filed or recorded in the same manner as 15 a contract or copy for the first time, and the filing or recording 16 officer shall be entitled to a like fee as upon the original filing 17 or recording.

*An act of the Legislature, regular session, 1933. Due to an error in make-up in printing the acts of that session line 5 was omitted, and for that reason the act is reprinted correctly in this volume.
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