

**ACTS**  
**OF THE**  
**FORTY-FOURTH**  
**LEGISLATURE**  
**OF**  
**WEST VIRGINIA**



**REGULAR SESSION**  
**1939**





## FOREWORD

All the acts of the 1939 Regular Session of the Forty-Fourth Legislature are included in this volume. It also contains all Concurrent and Joint Resolutions adopted, as well as all Senate and House Resolutions adopted by the respective bodies.

During the sixty day session, which convened January 11, 1939, 290 Senate Bills and 459 House Bills were introduced. Of these 749 Bills, 73 Senate Bills and 112 House Bills passed both Houses. However, the Governor vetoed one bill (S. B. No. 57), which left a total of 184 new laws enacted by the 1939 Legislature.

There were seven Senate Joint, 18 Senate Concurrent and 28 Senate Resolutions offered, of which two Senate Joint, eleven Senate Concurrent and 22 Senate Resolutions were adopted. Eleven House Joint, 28 House Concurrent and 34 House Resolutions were offered, of which one House Joint, 13 House Concurrent and 26 House Resolutions were likewise adopted.

Advance copies of the Acts of this session were distributed as directed by House Concurrent Resolution No. 27. No provision is made for free distribution of the bound volumes, except those furnished the members of the Legislature. Copies of this volume, indexed and bound in buckram, may be purchased from the Supervisor of Printing in the State Department of Purchases for \$2.00 per volume.

JOHN S. HALL, *Clerk,*  
*House of Delegates.*



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# LEGISLATURE OF WEST VIRGINIA

## MEMBERS, OFFICERS AND STANDING COMMITTEES

### REGULAR SESSION, 1939

#### SENATE OFFICERS

*President*—WILLIAM M. LAFON, Union.  
*Clerk*—CHARLES LIVELY, Weston.  
*Sergeant-at-Arms*—ALFRED K. HAYS, Parkersburg.  
*Doorkeeper*—ARTHUR M. MARTIN, Huntington.

District	Members	Address
First	James Paull (D) ..... *Thomas Sweeney (R) .....	Wellsburg Wheeling
Second	*D. B. Ealy (R) ..... L. B. Snyder (D) .....	Moundsville New Martinsville
Third	Dan B. Fleming (D) ..... *L. J. Morris (D) .....	St. Marys Grantsville
Fourth	*B. Cleo Casto (D) ..... Howard S. Johnson (R) .....	Kenna Point Pleasant
Fifth	*A. M. Martin (D) ..... C. Frank Millender (D) .....	Barboursville Wayne
Sixth	J. Robt. Anderson (D) ..... *John H. Greene (D) .....	Northfork Williamson
Seventh	C. N. Hall (D) ..... John J. Peiter (D) .....	Hamlin Stollings
Eighth	Roy F. Jimison (D) ..... *S. H. Robertson (D) .....	Kayford Clendenin
Ninth	*T. E. Bibb (D) ..... Ward Wylie (D) .....	Beckley Mullens
Tenth	W. Broughton Johnston (D) ..... *William M. LaFon (D) .....	Princeton Union
Eleventh	† W. N. Jasper (D) ..... Emmett O. Wiseman (D) .....	Lewisburg Fayetteville
Twelfth	Fred C. Allen (D) ..... J. Buhl Shahan (D) .....	Marlinton Elkins
Thirteenth	George Jackson (D) ..... *Byron B. Randolph (D) .....	Jane Lew Clarksburg
Fourteenth	*William J. Hussion (D) ..... Earl H. Smith (D) .....	Grafton Fairmont
Fifteenth	A. L. Helmick (R) ..... *G. O. Young (R) .....	Thomas Buckhannon
Sixteenth	D. Grove Moler (D) ..... *J. A. Proctor (D) .....	Martinsburg Berkeley Springs

\* Hold-over Senators who will serve in the 1941 Legislature.

† Died April 26, 1939.

(D) Democrats	27
(R) Republicans	5
Total	32



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## Standing Committees of the Senate

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### RULES

Messrs. LaFon (Mr. President) (*Chairman ex officio*), Paull, Fleming, Allen and Helmick.

### PRIVILEGES AND ELECTIONS

Messrs. Moler (*Chairman*), Morris, Millender, Greene, Hall, Shahan, Randolph, Sweeney and Helmick.

### THE JUDICIARY

Messrs. Paull (*Chairman*), Fleming, Casto, Martin, Greene, Hall, Pelter, Jimison, Wylie, Johnston (of Mercer), Allen, Randolph, Hussion, Jackson, Moler, Ealy, Helmick and Young.

### FINANCE

Messrs. Allen (*Chairman*), Paull, Snyder, Fleming, Morris, Millender, Martin, Greene, Hall, Robertson, Bibb, Jasper, Jackson, Smith, Proctor, Johnson (of Mason) Helmick and Young.

### EDUCATION

Messrs. Smith (*Chairman*), Paull, Fleming, Martin, Pelter, Robertson, Wiseman, Johnson (of Mason) and Helmick.

### COUNTIES AND MUNICIPAL CORPORATIONS

Messrs. Anderson (*Chairman*), Jasper, Robertson, Casto, Wylie, Paull, Martin, Helmick and Ealy.

### ROADS AND NAVIGATION

Messrs. Bibb (*Chairman*), Snyder, Morris, Casto, Millender, Anderson, Pelter, Jimison, Johnston (of Mercer), Wiseman, Jackson, Randolph, Hussion, Proctor, Sweeney, Ealy and Helmick.

### BANKS AND CORPORATIONS

Messrs. Jasper (*Chairman*), Snyder, Pelter, Robertson, Allen, Randolph, Proctor, Helmick and Young.

### PUBLIC BUILDINGS AND HUMANE INSTITUTIONS

Messrs. Jackson (*Chairman*), Snyder, Fleming, Martin, Jimison, Bibb, Jasper, Hussion, Randolph, Johnson (of Mason) and Young.

### THE PENITENTIARY

Messrs. Fleming (*Chairman*), Snyder, Hall, Jimison, Wiseman, Smith, Moler, Ealy and Young.

**RAILROADS**

Messrs. Proctor (*Chairman*), Morris, Jimison, Bibb, Johnston (of Mercer), Jasper, Jackson, Ealy and Helmick.

**MILITIA**

Messrs. Pelter (*Chairman*), Anderson, Wylie, Johnston (of Mercer), Shahan, Hussion, Moler, Sweeney and Johnson (of Mason).

**FEDERAL RELATIONS**

Messrs. Snyder (*Chairman*), Fleming, Casto, Jimison, Bibb, Johnston (of Mercer), Wiseman, Johnson (of Mason) and Young.

**INSURANCE**

Messrs. Johnston (of Mercer) (*Chairman*), Paull, Martin, Hall, Pelter, Wiseman, Moler, Johnson (of Mason) and Young.

**AGRICULTURE**

Messrs. Casto (*Chairman*), Morris, Millender, Hall, Wiseman, Allen, Proctor, Ealy and Johnson (of Mason).

**MINES AND MINING**

Messrs. Hall (*Chairman*), Jasper, Anderson, Greene, Bibb, Allen, Hussion, Ealy and Helmick.

**MEDICINE AND SANITATION**

Messrs. Wylie (*Chairman*), Snyder, Greene, Pelter, Wiseman, Allen, Moler, Johnson (of Mason) and Young.

**LABOR**

Messrs. Greene (*Chairman*), Snyder, Casto, Pelter, Wylie, Hussion, Proctor, Johnson (of Mason) and Young.

**CLAIMS AND GRIEVANCES**

Messrs. Morris (*Chairman*), Paull, Millender, Hall, Pelter, Wiseman, Allen, Ealy and Helmick.

**FORFEITED, DELINQUENT AND UNAPPROPRIATED LANDS**

Messrs. Hussion (*Chairman*), Morris, Greene, Robertson, Johnston (of Mercer), Jackson, Moler, Sweeney and Young.

**PUBLIC LIBRARY**

Messrs. Martin (*Chairman*), Snyder, Hall, Bibb, Shahan, Jackson, Proctor, Sweeney and Johnson (of Mason).

**PUBLIC PRINTING**

Messrs. Jimison (*Chairman*), Fleming, Millender, Anderson, Wiseman, Jackson, Moler, Johnson (of Mason) and Young.

TO EXAMINE CLERK'S OFFICE

Messrs. Moler (*Chairman*), Hall and Young.

TEMPERANCE

Messrs. Martin (*Chairman*), Casto, Greene, Jasper, Shahan, Jackson, Moler, Sweeney and Helmick.

FORESTRY AND CONSERVATION

Messrs. Robertson (*Chairman*), Morris, Casto, Millender, Wylie, Wiseman, Allen, Smith, Proctor, Sweeney and Young.

REDISTRICTING

Messrs. Millender (*Chairman*), Paull, Fleming, Anderson, Bibb Wiseman, Randolph, Helmick and Young.

INTERSTATE COOPERATION

Messrs. Randolph (*Chairman*), Allen, Johnston (of Mercer), Casto and Helmick.

JOINT COMMITTEE ON ENROLLED BILLS ON THE PART OF THE SENATE

Messrs. Wiseman (*Chairman*), Millender, Johnston (of Mercer), Jackson and Young.

JOINT COMMITTEE ON JOINT RULES ON THE PART OF THE SENATE

Messrs. LaFon (Mr. President) (*Chairman ex officio*), Fleming and Helmick.

## HOUSE OF DELEGATES

### OFFICERS

*Speaker*—JAMES KAY THOMAS, Charleston

*Clerk*—JOHN S. HALL, Williamson

*Sergeant-at-Arms*—HARRY HOLSWADE, Spencer

*Doorkeeper*—JOE B. CROZIER, Iaeger

County	Name	Address
Barbour	William Taylor George, Jr. (D)	Philippi
Berkeley	Charles R. Beard (R)	Martinsburg
Boone	E. E. White (D)	Madison
Braxton	L. T. Harvey (D)	Frametown
Brooke	L. Reed Clark (R)	Wellsburg
Cabell	Mike Casey (D)	Huntington
	John G. Hudson (D)	Huntington
	Chas. G. Rhodes (D)	Huntington
	Claude V. Swann (D)	Huntington
	Andrew R. Winters (D)	Huntington
Calhoun	C. A. Jarvis (D)	Grantsville
Clay	Ralph R. Lockhart (D)	Clay
Doddridge	S. Lee Smith (R)	West Union
Fayette	R. L. Matthews (D)	Montgomery
	Magee McClung (D)	Fayetteville
	J. Alex Tinsley (D)	Ansted
	Mrs. Nell W. Walker (D)	Winona
Gillmer	Paul H. Kidd (D)	Glenville
Grant	Melvin C. Muntzing (R)	Petersburg
Greenbrier	John H. Bowling (D)	White Sulphur Sp'gs
	Charles L. McClung (D)	Quinwood
Hampshire	William T. Milleson (D)	Springfield
Hancock	George E. Loucas (R)	Weirton
Hardy	C. C. Heishman (D)	Wardensville
Harrison	Howard J. James (D)	Clarksburg
	Edgar E. Righter (D)	Shinnston, Rt. 2
	Fred L. Shinn (D)	Clarksburg
	E. L. Simpson (D)	Clarksburg
Jackson	Jack W. Walker (R)	Ripley
Jefferson	Wm. Fontaine Alexander (D)	Charles Town
Kanawha	John E. Amos (D)	Charleston
	W. T. Brotherton (D)	Charleston
	Carl C. Calvert (D)	Chelyan
	I. L. Cavender (D)	Charleston
	William T. Haniffin (D)	St. Albans
	Walter L. Hurley (D)	Mammoth
	K. L. McClung (D)	Charleston
Lewis	James K. Thomas (D)	Charleston
	Kenneth S. Kurtz (R)	Weston
	Frank M. Adkins (D)	Hamlin
Lincoln	Lonnie E. Butcher (D)	Logan
Logan	Carl McCoy (D)	Man
	Lester Perry (D)	Logan
Marion	Haymond A. Alltop (D)	Fairmont
	John L. Gill (D)	Fairmont
	Russell D. Meredith (D)	Fairmont

County	Name	Address
Marshall	Everett F. Moore (R)	Moundsville
	Floyd R. Yoho (R)	Moundsville
Mason	George A. Rairden (R)	Leon
Mercer	O. H. Ballard (D)	Princeton
	John W. Haldren (D)	Bluefield
	A. A. Hopkins (D)	Bluefield
Mineral	John I. Rogers (R)	Keyser
Mingo	Mark Russell, Jr. (D)	Williamson
	Glenn Taylor (D)	Matewan
Monongalia	Harold D. Slaven (D)	Morgantown
	Junius M. Strouss (D)	Morgantown
Monroe	J. O. Mitchell (D)	Union
Morgau	Harvey D. Beejer (R)	Berkeley Springs
McDowell	J. C. Hansbarger (D)	Kyle
	Fleming A. Jones, Jr. (D)	Welch
	Harry R. Pauley (D)	Jaeger
	George Wilson Vick (D)	Anawalt
	Cecil W. Wilson (D)	Elkhorn
Nicholas	J. A. Neal (D)	Fenwick
Ohio	J. Wm. Cummins (R)	Wheeling
	Cuyler E. Ewing (R)	Wheeling
	Wm. A. Hannig (R)	Elm Grove
	Tom H. Johnson (R)	Wheeling
Pendleton	William D. Anderson (D)	Franklin
Pleasants	J. C. Powell (R)	St. Marys
Pocahontas	June McElwee (D)	Marlinton
Preston	Clarence B. Bishoff (R)	Manheim
Putnam	Homer A. Erwin (D)	Hurricane
Raleigh	O. C. Flint (D)	Beckley
	J. Leroy Huffman (D)	Beckley
	B. E. Meadows (D)	Winding Gulf
Randolph	John W. Bosworth (D)	Elkins
Ritchie	Robert Morris (R)	Harrisville
Roane	Everett Starcher (D)	Spencer
Summers	Forest L. McNeer (D)	Hinton
Taylor	Lloyd Lawrence Shriver (D)	Grafton
Tucker	J. C. Cooper, Jr. (D)	Thomas
Tyler	Orren L. Jones (R)	Middlebourne
Upshur	Perce J. Ross (R)	Buckhannon
Wayne	Epison A. Cole (D)	Ceredo
	Frank C. Lake (D)	Kenova
Webster	H. Clay Mace (D)	Webster Springs
Wetzel	Herbert Schupbach (D)	New Martinsville
Wirt	Robert F. Hickman (R)	Elizabeth
Wood	Francis H. Bickel (D)	Parkersburg
	Spencer K. Creel (R)	Parkersburg
	Ben F. Nern (R)	Parkersburg
Wyoming	Fred Deal (D)	Glen Morrison

(D) Democrats ..... 70  
 (R) Republicans ..... 24

Total ..... 94

## Standing Committees of the House of Delegates

### AGRICULTURE

Messrs. Brotherton (*Chairman*), Milleson (*Vice Chairman*), Alexander, Anderson, Cavender, Deal, Harvey, Heishman, Hopkins, McClung (of Greenbrier), Meredith, Mitchell, Neal, Righter, Hickman, Muntzing, Ross and Walker (of Jackson).

### ARTS, SCIENCE, AND GENERAL IMPROVEMENTS

Messrs. Bosworth (*Chairman*), Brotherton, Hopkins, Righter, Slaven, Tinsley, Mrs. Walker (of Fayette), Messrs. Beard, Morris, Muntzing and Smith.

### BANKS AND CORPORATIONS

Messrs. White (*Chairman*), Mrs. Walker (of Fayette) (*Vice Chairman*), Messrs. Ballard, Calvert, Cole, Erwin, Jarvis, McClung, (of Kanawha), McElwee, McNeer, Rhodes, Russell, Beeler, Ewing, Hannig, Johnson and Walker (of Jackson).

### CLAIMS AND GRIEVANCES

Messrs. Winters (*Chairman*), Hansbarger (*Vice Chairman*), Cavender, Flint, Haldren, Hanifin, McCoy, Milleson, Shinn, Tinsley, Wilson, Bishoff, Jones (of Tyler), Loucas and Yoho.

### COUNTIES, DISTRICTS AND MUNICIPAL CORPORATIONS

Messrs. Erwin (*Chairman*), Rhodes (*Vice Chairman*), Adkins, Bickel, Butcher, Calvert, Hanifin, Hansbarger, Hurley, Lake, Mace, Meredith, McClung (of Fayette), McClung (of Greenbrier), McNeer, Swann, Taylor, Vick, Jones (of Tyler), Kurtz, Nern and Walker (of Jackson).

### EDUCATION

Messrs. McNeer (*Chairman*), Perry (*Vice Chairman*), Amos, Anderson, Hanifin, Hansbarger, Harvey, Hopkins, Huffman, Jarvis, Jones (of McDowell), McClung (of Fayette), Schupbach, Shriver, Simpson, Taylor, Mrs. Walker (of Fayette), Messrs. Winters, Bishoff, Jones (of Tyler), Ross and Smith.

### ELECTIONS AND PRIVILEGES

Messrs. Huffman (*Chairman*), Cole (*Vice Chairman*), Adkins, Alltop, Flint, Hurley, McCoy, Mitchell, Rhodes, Shriver, Starcher, Clark, Hickman, Rairden and Walker (of Jackson).

## EXECUTIVE OFFICES AND LIBRARY

Messrs. George (*Chairman*), McClung (of Greenbrier) (*Vice Chairman*), Brotherton, Gill, Hansbarger, Heishman, Hudson, McCoy, Slaven, Starcher, Creel, Ewing, Morris and Muntzing.

## FEDERAL RELATIONS

Messrs. Kidd (*Chairman*), Vick (*Vice Chairman*), Alltop, Ballard, Cole, Heishman, Jones (of McDowell), Perry, Russell, Shinn, Slaven, Wilson. Hannig, Loucas and Rogers.

## FORESTRY AND CONSERVATION

Messrs. McElwee (*Chairman*), Bowling (*Vice Chairman*), Alexander, Alltop, Cavender, Cooper, Heishman, Mace, Matthews McClung (of Fayette), Meadows, Milleson, Mitchell, Creel, Powell, Rogers and Ross.

## FORFEITED, DELINQUENT AND UNAPPROPRIATED LANDS

Messrs. Gill (*Chairman*), Heishman (*Vice Chairman*), Anderson, Ballard, Bosworth, Calvert, Cavender, James, Kidd, Matthews, Meadows, Shinn, Johnson, Loucas, Moore and Morris.

## GAME AND FISH

Messrs. Calvert (*Chairman*), Haldren (*Vice Chairman*), Alexander, Anderson, Bowling, Casey, Cooper, Erwin, George, Hanifin, Huffman, Kidd, Mace, McElwee, Mitchell, Righter, Schupbach, Shriver, Simpson, Creel, Powell, Ross and Yoho.

## HUMANE INSTITUTIONS AND PUBLIC BUILDINGS

Messrs. Meredith (*Chairman*), Shriver (*Vice Chairman*), Cole, Erwin, Haldren, Harvey, Hudson, James, Jarvis, Lockhart, Matthews, McClung (of Greenbrier), Rhodes, Slaven, Starcher, Beard, Ewing, Walker (of Jackson) and Yoho.

## INSURANCE

Messrs. Alexander (*Chairman*), Ballard (*Vice Chairman*), Alltop, Amos, Bickel, Cavender, Flint, Gill, Harvey, McClung (of Fayette), Shriver, Swann, Taylor, Vick, Wilson, Winters, Cummins, Kurtz, Moore and Smith.

## JUDICIARY

Messrs. Shinn (*Chairman*), Amos (*Vice Chairman*), Calvert, George, Hudson, James, Jones (of McDowell), Kidd, Lake, McElwee, Meredith, Pauley, Russell, Slaven, Starcher, Swann, Cummins, Johnson, Kurtz, Moore and Powell.

**LABOR**

Messrs. Haldren (*Chairman*), Flint (*Vice Chairman*), Adkins, Alltop, Butcher, Casey, Cole, Cooper, Deal, Kidd, Mace, Neal, Pauley, Shriver, Starcher, Swann, Mrs. Walker (of Fayette), Messrs. Wilson, Bishoff, Hannig, Jones (of Tyler) and Loucas.

**MEDICINE AND SANITATION**

Messrs. Swann (*Chairman*), Lockhart (*Vice Chairman*), Butcher, Deal, Erwin, George, Hudson, Huffman, McClung (of Fayette), Schupbach, Simpson, Mrs. Walker (of Fayette), Messrs. White, Wilson, Clark, Johnson, Morris, Muntzing and Rogers.

**MILITARY AFFAIRS**

Messrs. Jones (of McDowell) (*Chairman*), Schupbach (*Vice Chairman*), Alltop, Bosworth, Butcher, Lockhart, McClung (of Fayette), McClung (of Kanawha), Mitchell, Shriver, Simpson, Tinsley, Bishoff, Creel, Cummins and Yoho.

**MINES AND MINING**

Messrs. Pauley (*Chairman*), Starcher (*Vice Chairman*), Adkins, Bickel, Flint, Gill, Haldren, Hurley, Lake, Mace, McClung (of Greenbrier), McClung (of Kanawha), McCoy, Meadows, Simpson, Tinsley, Vick, White, Winters, Beeler, Johnson, Moore and Ross.

**PENITENTIARY**

Messrs. Harvey (*Chairman*), Meadows (*Vice Chairman*), Adkins, Bowling, Flint, Hurley, Jarvis, McClung (of Greenbrier), McCoy, McNeer, Pauley, Perry, Righter, Russell, Shriver, Tinsley, Beeler, Loucas and Nern.

**PRINTING AND CONTINGENT EXPENSES**

Messrs. Anderson (*Chairman*), Cooper (*Vice Chairman*), Hanifin, Huffman, McElwee, Schupbach, Hickman, Morris, Nern and Rogers.

**RAILROADS**

Messrs. Jarvis (*Chairman*), Casey (*Vice Chairman*), Alexander, Amos, Bickel, George, Hanifin, Lake, Milleson, Neal, Pauley, Perry, Vick, Mrs. Walker (of Fayette), Messrs. Beeler, Cummins, Jones (of Tyler), Kurtz and Moore.

**REDISTRICTING**

Messrs. Russell (*Chairman*), Matthews (*Vice Chairman*), Adkins, Alexander, Brotherton, Butcher, Hudson, James, Jones (of McDowell), Lockhart, Neal, Schupbach, Shriver, Hickman, Nern, Powell and Rairden.



**ROADS**

Messrs. Taylor (*Chairman*), McClung (of Kanawha) (*Vice Chairman*), Ballard, Bowling, Cooper, Deal, Hurley, James, Kidd, Lake, Lockhart, Mace, McClung (of Fayette), Meadows, Meredith, Perry, Rhodes, Vick, Bishoff, Hannig, Hickman and Muntzig.

**RULES**

Messrs. Thomas (Mr. Speaker) (*Chairman*), Calvert, Matthews, Shinn, Strouss, Swann, Kurtz and Moore.

**STATE BOUNDARIES**

Messrs. Butcher (*Chairman*), Deal (*Vice Chairman*), Bosworth, Cole, Hopkins, Winters, Beard, Clark and Powell.

**TAXATION AND FINANCE**

Messrs. Strouss (*Chairman*), Righter (*Vice Chairman*), Bickel, Bowling, Brotherton, Casey, Erwin, Gill, Hansbarger, Jarvis, Matthews, McClung (of Kanawha), McNeer, Milleson, Taylor, White, Beeler, Clark, Ewing, Rairden and Smith.

**TEMPERANCE**

Messrs. Neal (*Chairman*), Hopkins (*Vice Chairman*), Bosworth, Calvert, Casey, George, Harvey, Hurley, McClung (of Fayette), Meredith, White, Wilson, Beard, Hannig, Rairden and Yoho.

**JOINT COMMITTEE ON ENROLLED BILLS ON THE PART OF THE HOUSE**

Mrs. Walker (of Fayette) (*Chairman*), Messrs. Cooper, Hanifin, Taylor and Beeler.

**JOINT COMMITTEE ON JOINT RULES ON THE PART OF THE HOUSE**

Messrs. Thomas (Mr. Speaker) (*Chairman ex officio*), Amos and Kurtz.



# LEGISLATURE OF WEST VIRGINIA

## ACTS OF 1939

### REGULAR SESSION

### CHAPTER 1.

(Senate Bill No. 243—By Mr. Fleming)

AN ACT to amend article one, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, by adding thereto a new section designated as section four-a, relating to the power and authority of the commissioner of agriculture to accept and receive donations, gifts, grants, contributions, moneys, services, real estate, and other things of value, and to use and expend the same; and empowering said commissioner to enter into cooperative agreements for the carrying out of the laws relating to agriculture.

[Passed March 9, 1939; in effect ninety days from passage. Approved by the Governor.]

#### Article 1. Department of Agriculture.

##### Section

4-a. Commissioner authorized to accept gifts, etc., and enter into cooperative agreements.

*Be it enacted by the Legislature of West Virginia:*

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

Section 4-a. *Commissioner Authorized to Accept Gifts, etc., and Enter into Cooperative Agreements.* The commissioner of agriculture is hereby empowered and he shall have

4 authority to accept and receive donations, gifts, contributions,  
5 grants, and appropriations of money, services, materials,  
6 real estate or other things of value from the United States  
7 department of agriculture, or any of its divisions or bureaus,  
8 and he shall have authority to use, utilize, develop, or expend  
9 such money, services, material, or other contributions in  
10 conformity with the conditions and provisions set forth in  
11 such grants, appropriations, or donations.

12 By and with the approval of the governor, the commis-  
13 sioner may accept and receive donations, gifts, contributions,  
14 and grants of money, services, materials, real estate, and  
15 other things of value from individuals, partnerships, asso-  
16 ciations, or corporations, and he shall have authority to  
17 utilize such contributions to encourage, promote and de-  
18 velop the agricultural interests or industries of the state.

19 The commissioner is hereby empowered, and he shall have  
20 authority, to enter into agreements with any department  
21 of state government for the purpose of carrying out any  
22 regulatory laws where or when any related functions or  
23 duties exist. He shall also have authority to enter into  
24 agreements with any city council or county court of the  
25 state of West Virginia, for carrying out the provisions of the  
26 agricultural laws over which he has enforcement authority.

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## CHAPTER 2

(House Bill No. 197—By Mr. Brotherton)

AN ACT defining a public market, providing for the issuing of permits for public markets and the licensing of weighmen, auctioneers, and graders employed at public markets; providing for the establishment of a market zone surrounding a public market handling livestock; providing for the prevention and control of contagious diseases of livestock; providing for the refusal, suspension, or revocation of permits and licenses; providing for annual meetings of public market owners; prescribing the powers and duties of the commissioner of agriculture, and penalties for violations; providing for the

payment of fees; and repealing acts and parts of acts inconsistent herewith.

[Passed March 3, 1939; in effect ninety days from passage. Approved by the Governor.]

## Public Markets

### Section

1. Public market defined.
2. Public markets subject to regulation by the state.
3. Operation of public markets.
4. Permits to operate; application for and hearing on.
5. Permits for existing markets.
6. Fee for permits.
7. Revocation or suspension of permits.
8. Applicant for permit to furnish surety bond.
9. Appeals from order of the commissioner.
10. Licensing of weighmen and auctioneers; fees; sale of livestock by weight.
11. Sale of products on grades, classifications or standards; licenses; fees.
12. Licenses; duration; renewals; refusal, revocation or suspension.
13. Unlawful for licensed weighman, grader or auctioneer to buy or trade at public market in which employed; false weighing.
14. Testing and inspection of livestock for infectious diseases; fees; records.
15. Annual meetings to establish uniform standards, grades and market practices.
16. Record of transactions; inspection by commissioner or agents.
17. Authority of commissioner to enforce act.
18. Fees paid into special fund in state treasury.
19. Penalties for violations of act or rules and regulations.
20. Provisions of act severable.
21. Inconsistent acts repealed.

*Be it enacted by the Legislature of West Virginia:*

Section 1. *Public Market Defined.* A public market is any  
2 place of business where livestock, poultry, and other agricul-  
3 tural or horticultural products are received and sold at public  
4 auction.

Sec. 2. *Public Markets Subject to Regulation by the State.*  
2 All public markets, as defined in section one, are hereby de-  
3 clared to be affected with a public interest and subject to  
4 regulation by the state for the general welfare as in this act  
5 provided.

Sec. 3. *Operation of Public Markets.* No public market  
2 shall hereafter be operated in this state by any person, part-  
3 nership, firm, association, or corporation except in accordance  
4 with the provisions of this act.

Sec. 4. *Permits to Operate; Application for and Hearing*

2 On. It shall be unlawful for any public market to be operated  
3 in this state without first having obtained from the commis-  
4 sioner of agriculture of West Virginia a permit therefor. Upon  
5 the filing of an application for such permit, the commissioner  
6 shall fix a time and place for hearing thereon and, after hear-  
7 ing, if it appear that the public interest require the same and  
8 that there is sufficient need for such market in the locality in  
9 which it is proposed to be established, shall grant such per-  
10 mit, or deny the same if the contrary appear.

Sec. 5. *Permits for Existing Markets.* All public mar-

2 kets in bona fide operation during the year one thousand nine  
3 hundred thirty-eight, shall, on application and proof of such  
4 operation, be granted such permit by the commissioner.

Sec. 6. *Fee for Permits.* All permittees shall pay to the

2 commissioner a fee of ten dollars on or before the first day of  
3 July of each year.

Sec. 7. *Revocation or Suspension of Permits.* The commis-

2 sioner may at any time, for violations of this act, upon not  
3 less than fifteen days' notice to the grantee of such permit  
4 and an opportunity to be heard, revoke or suspend any  
5 permit theretofore granted.

Sec. 8. *Applicant for Permit to Furnish Surety Bond.* Be-

2 fore the granting of any such permit, the applicant shall ex-  
3 ecute and deliver to the commissioner a surety bond condi-  
4 tioned as the commissioner may require and acceptable to him,  
5 payable to the state of West Virginia, for the benefit of the  
6 consignors at said market of livestock, poultry, and other  
7 agricultural and horticultural products, who have been  
8 wronged or damaged by any fraud or fraudulent practices  
9 of the market and so adjudged by a court of competent juris-  
10 diction and who shall have the right of action for damage for  
11 compensation against such bond. A holder of a permit, who  
12 shall have been in operation not less than twelve months, shall  
13 maintain and deliver such bond to said commissioner as afore-  
14 said in an amount not to exceed the average of his or its  
15 weekly sales during the preceding calendar year.

Sec. 9. *Appeals from Order of the Commissioner.* Any

2 party feeling aggrieved by the entry of a final order by the  
3 commissioner, affecting him or it, may present a petition in  
4 writing to the supreme court of appeals, or to a judge thereof  
5 in vacation, within thirty days after the entry of such order,  
6 praying for the suspension of such final order. The applicant  
7 shall deliver a copy of such petition to the commissioner  
8 before presenting the same to the court or the judge. The  
9 court or judge shall fix a time for the hearing on the applica-  
10 tion, but such hearing, unless by agreement of the parties,  
11 shall not be held, sooner than five days after its presentation;  
12 and notice of the time and place of such hearing shall be  
13 forthwith delivered to the commissioner, so that the com-  
14 missioner may be represented at such hearing. If the court  
15 or the judge after such hearing be of the opinion that a  
16 suspending order should issue, the court or the judge may  
17 require bond, upon such conditions and in such penalty, and  
18 impose such terms and conditions upon the petitioner, as are  
19 just and reasonable. For such hearing the commissioner shall  
20 file with the clerk of said court all papers, documents, evi-  
21 dence, and records or certified copies thereof as were before  
22 the commissioner at the hearing or investigation resulting in  
23 the entry of the order from which the petitioner appeals.  
24 The commissioner shall file with the court before the day  
25 fixed for the final hearing a written statement of his reasons  
26 for the entry of such order, and after arguments by counsel  
27 the court shall decide the matter in controversy as may seem  
28 to be just and right.

*Sec. 10. Licensing of Weighmen and Auctioneers; Fees;*

2 *Sale of Livestock by Weight.* It shall be unlawful for any per-  
3 son to serve in the capacity of weighman, or auctioneer at any  
4 public market without first having secured a license. Applica-  
5 tions for such licenses shall be made on forms furnished by  
6 the commissioner and shall be accompanied by a fee of two  
7 dollars and fifty cents for either weighman or auctioneer and  
8 shall contain such information as may be required.

9 All livestock sold by weight at any public market shall be  
10 sold subject to weight at place of sale on day sold by  
11 auctioneer.

Sec. 11. *Sale of Products on Grades, Classification or Standards; Licenses; Fees.* It shall be unlawful for any public market to represent that livestock, poultry, and other agricultural and horticultural products are being sold at such market on grades, classifications, or standards adaptable to such products unless such grading, classifying, or standardizing has been made or approved by a person licensed by the commissioner. Applications for such a license shall be made on forms furnished by the commissioner and shall be accompanied by a fee of two dollars and fifty cents and shall contain such information as may be required.

Sec. 12. *Licenses; Duration; Renewals; Refusal, Revocation or Suspension.* All licenses issued in accordance with the provisions of this act shall be for a period of one year and shall expire on June thirtieth next following date of issue. All applications for the renewal of any such licenses shall be made in the same manner as for the original license.

The commissioner may refuse to grant a license or may revoke or suspend any license issued under the provisions of this act, for the violation of any of the provisions of this act or of any of the rules and regulations adopted pursuant to the provisions of this act: *Provided*, That before such suspension or revocation becomes effective the party shall be notified by the commissioner of his intention to refuse, revoke, or suspend and the party shall be given ten days in which to request a hearing before the commissioner, which request shall be made in writing by registered mail. The commissioner is hereby authorized to summon witnesses for and to take testimony at such hearings.

Sec. 13. *Unlawful for Licensed Weighman, Grader or Auctioneer to Buy or Trade at Public Market in Which Employed; False Weighing.* It shall be unlawful for any weighman, grader, or auctioneer, licensed in accordance with the provisions of this act, to buy or trade in any livestock or other agricultural and horticultural products, graded, weighed, or auctioned by him, either for himself or partnership at any public market in which he is employed, or to misweigh or falsely report any weights or otherwise fraudu-



10 lently manipulate the scales to produce a weight other than  
11 the true and actual weight of any livestock, poultry, or other  
12 agricultural and horticultural products consigned to and sold  
13 at any public market.

Sec. 14. *Testing and Inspection of Livestock for Infectious Diseases; Fees; Records.* For the purpose of preventing the spread of infecticus disease among livestock and poultry when and where the same is sold at a public market the commissioner shall have authority and shall establish and define an area surrounding a public market inside of which area, so defined, it shall be unlawful for any person, firm, association, partnership, or corporation to buy or sell to, or exchange with, another, unless such person, firm, association, partnership or corporation shall comply with all the provisions of this act and the rules and regulations as provided in this act.

At any public market where livestock is received, sold, offered or exposed for sale for purposes other than slaughter, the same shall be inspected for livestock diseases by a licensed and accredited veterinarian who shall be employed by the commissioner of agriculture and shall have authority to carry out the provisions of this section and enforce the provisions of article nine, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one.

The management of such market shall collect a fee of fifty cents per head for cattle when tested for bangs disease, and ten cents per head for hogs when treated for the prevention of cholera. In addition thereto they shall collect from the purchaser the actual cost of vaccines or biological products used in the testing of such animals. Such vaccines or biological products shall be approved by the commissioner.

It shall be the duty of each veterinarian to keep a record of all animals tested by him on forms furnished by the commissioner; such records shall be made in duplicate, the original to be forwarded to the commissioner, and the duplicate to be furnished to the public market at which such testing was done.

On the first day of each month the public market shall forward to the commissioner all moneys due for testing done during the previous month.

Sec. 15. *Annual Meetings to Establish Uniform Standards,*

2 *Grades and Market Practices.* The commissioner shall an-  
3 nually, on or before the fifteenth day of January, call to-  
4 gether in public meeting the president and manager, or other  
5 officials, of livestock auction markets within the state for the  
6 purpose of establishing uniform standards and grades of  
7 livestock and uniform market practices and procedure for  
8 the operation of livestock auction markets in this state.

Sec. 16. *Record of Transactions; Inspection by Com-*  
2 *missioner or Agents.* It shall be the duty of, and the officers of  
3 a public market are hereby required, to keep complete and ac-  
4 curate records of all transactions at a public market. The  
5 commissioner or his agents shall have at all reasonable hours,  
6 the right to enter the premises of any public market to exam-  
7 ine the books and records of such market, and to make any  
8 other inspections necessary, for the purpose of carrying out  
9 the provisions of this act.

Sec. 17 *Authority of Commissioner to Enforce Act.* The  
2 commissioner shall be charged with the enforcement of this  
3 act. He shall have full authority and power to make and en-  
4 force rules and regulations necessary to carry out the pro-  
5 visions of this act, and may employ such agents or other as-  
6 sistants as he may deem necessary for the proper enforce-  
7 ment of this act.

8 In the event any of the provisions or requirements of this  
9 act should be a duplication or in conflict with the authority  
10 exercised by the Secretary of Agriculture under the Packers  
11 and Stockyard act of the United States Congress, then the  
12 provisions and requirements of this act shall not apply.

Sec. 18. *Fees Paid Into Special Fund in State Treasury.*  
2 All fees collected by the commissioner by virtue of this act  
3 shall be paid into the state treasury and credited to a special  
4 fund to be appropriated as provided by law for the purpose  
5 of paying the salaries and expenses of the commissioner's  
6 employees in administering this act.

Sec. 19. *Penalties for Violation of Act or Rules and Regu-*  
2 *lations.* Any person, firm, association, or corporation vio-  
3 lating any of the provisions of this act, or of the rules and  
4 regulations adopted pursuant to the provisions thereof, shall

5    be guilty of a misdemeanor, and upon conviction thereof shall  
6    be punished by a fine of not less than fifty dollars nor more  
7    than two hundred dollars for the first offense, and not less  
8    than four hundred dollars nor more than one thousand dollars  
9    for the second offense.

Sec. 20. *Provisions of Act Severable.* If any provisions of  
2    this act are declared unconstitutional or the applicability  
3    thereof to any person or circumstances is held invalid, the  
4    constitutionality of the remainder of the act and the appli-  
5    cability thereof to other persons and circumstances shall not  
6    be affected thereby.

Sec. 21. *Inconsistent Acts Repealed.* All acts or parts of  
2    acts inconsistent with this act are hereby repealed.

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## CHAPTER 3

(House Bill No. 192—By Mr. Milleson)

AN ACT to amend and reenact articles two and three, chapter nine-  
teen of the code of West Virginia, one thousand nine hundred  
thirty-one, relating to markets and the sale of farm products  
by commission merchants.

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[Passed March 4, 1939; in effect ninety days from passage. Approved by the  
Governor.]

### Article

#### 2. Markets.

#### 3. Sale of Farm Products by Commission Merchants.

*Be it enacted by the Legislature of West Virginia:*

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

### Article 2. Markets.

#### Section

1. Definitions.
2. Duties and powers of commissioner.
3. Commissioner to cooperate with federal authorities.
4. Quarantines or inspection areas.
5. Inspection and grading of agricultural products; charges.

6. Inspection and quarantine powers of commissioner.
7. What agricultural products may not be sold.
8. Market bulletins.
9. Inspectors, graders and assistants.
10. Commissioner to enforce act.
11. Penalties.

Section 1. *Definitions.* For the purpose of this act the following definitions shall prevail:

(a) Person includes individual, partnership, corporation and association.

(b) Agricultural products include livestock and livestock products, poultry and poultry products, fruits and fruit products, vegetables and vegetable products, grains and hays and the products derived therefrom, tobacco, syrups, honey, and other products derived from the business of farming; including such other products as may be manufactured, derived, or prepared from agricultural products, raw or processed, which are used as food for man or other animals.

(c) Commissioner means the "Commissioner of Agriculture" of the state of West Virginia.

(d) Commission merchant means any person, firm, corporation, association, or partnership engaged in the business of receiving agricultural products on consignment and selling or distributing the same for a commission.

Sec. 2. *Duties and Powers of Commissioner.* In order to develop and encourage home industry and to protect and promote the interests of producers and provide consumers with food products of uniform grade and quality at fair and reasonable prices, it shall be the duty of the commissioner and he shall have authority to promote, regulate, and supervise a system of marketing agricultural products in the state of West Virginia. He shall assist producers and handlers in the grading, classification, and standardization of agricultural products at public markets, concentration points, packing, grading and processing plants and other places where agricultural products are assembled for distribution.

Sec. 3. *Commissioner to Cooperate with Federal Authorities.*

In carrying out the provisions of this act the commissioner shall cooperate with the United States Department of Agriculture and its several bureaus and divisions and the departments of the several states. The commissioner shall investi-

6 gate the methods employed by the United States Department  
7 of Agriculture for the promotion of economical and efficient  
8 marketing of agricultural products and he shall have author-  
9 ity to establish and publish weights, grades, standards, classifi-  
10 cations, and rules and regulations for the production, handling,  
11 and distribution of agricultural products in this state, and he  
12 shall, so far as the same are applicable and practicable, util-  
13 ize and apply the rules, regulations, classifications, standards  
14 and grades, and official methods of examinations and analysis  
15 of the United States Department of Agriculture and its sev-  
16 eral bureaus and divisions.

Sec. 4. *Quarantines or Inspection Areas.* For the pur-  
2 pose of protecting the health of the state and to prevent  
3 the infection, contamination or reduction in the standards  
4 of products produced within the state, the commissioner of  
5 agriculture may, acting within the police power of the state,  
6 inspect and establish quarantines over all agricultural pro-  
7 ducts and the means of their importation. In the establish-  
8 ment of such quarantine or inspection the commissioner shall  
9 give notice in writing of such quarantine or inspection area,  
10 specify its boundaries, the duration of the inspection, and the  
11 purpose thereof, and provide for notification of the proper  
12 authorities and the posting of the area.

Sec. 5. *Inspection and Grading of Agricultural Products;*  
2 *Charges.* The commissioner may comply with the request of  
3 any person for official inspection of agricultural products and  
4 he or his agents shall have authority to inspect and determine  
5 the grade and quality of agricultural products at public mar-  
6 kets, concentration points, packing, grading, and processing  
7 plants and other places where agricultural products are as-  
8 sembled for distribution; the commissioner shall establish and  
9 publish a schedule of charges for such inspection and grading  
10 service; and it shall be his duty and he shall have authority  
11 to collect such charges for such inspection and grading serv-  
12 ices, which moneys shall be paid into the state treasury and  
13 reappropriated to the department of agriculture for the ad-  
14 ministration of this act.

Sec. 6. *Inspection and Quarantine Powers of Commis-*  
2 *sioner.* The commissioner or his agents shall during business

3 hours have access to any place, premises, or conveyances where  
4 agricultural products are produced, handled, stored, trans-  
5 ported, distributed, or sold, and to examine the books and rec-  
6 ords of any person affected by the provisions of this act. They  
7 shall have the power and authority to detain, embargo, or  
8 quarantine agricultural products when suspected of or found  
9 to be in violation of the provisions of this act, by affixing  
10 thereto a tag or other appropriate marking and giving notice  
11 thereof in writing. It shall be unlawful for any person to re-  
12 move or dispose of such detained, embargoed, or quarantined  
13 agricultural product by sale or otherwise without the permis-  
14 sion of the commissioner or his agent or the courts. When  
15 an agricultural product detained, embargoed, or quarantined,  
16 as aforesaid, has been found by such agent to be in violation  
17 of the provisions of this act, he shall petition any court of  
18 competent jurisdiction, for the condemnation or disposal of  
19 such product.

Sec. 7. *What Agricultural Products May Not be Sold.* It  
2 shall be unlawful for any person to sell, offer, or expose for  
3 sale, or exchange or have in his possession with intent to  
4 sell, offer or expose for sale or exchange any agricultural pro-  
5 duct in this state which is:

6 (1) Infected with any contagious or communicable di-  
7 sease; or

8 (2) Which consists in whole or in part of any filthy, put-  
9 rid or decomposed substance; or

10 (3) Which has been prepared, packed, or held under un-  
11 sanitary conditions whereby it may have become contamin-  
12 ated or rendered injurious to health; or

13 (4) If it or its container is composed in whole or in part,  
14 of any poisonous or deleterious substance injurious to health;  
15 or

16 (5) If any valuable constituent has been in whole or in  
17 part omitted or abstracted therefrom; or

18 (6) If any substance has been substituted wholly or in  
19 part therefor; or

20 (7) If damage or inferiority has been concealed in any  
21 manner; or

22 (8) If its labeling is false or misleading; or

23      (9) If it is offered for sale under the name of another  
24 food; or

25      (10) If it is an imitation of another food, unless its label  
26 bears in prominent type the word "imitation"; or

27      (11) If its container is so made, formed, or filled as to be  
28 misleading; or

29      (12) If the labeling thereon does not identify the pro-  
30 ducer, manufacturer or handler thereof, and an accurate  
31 statement of the quantity of the contents in terms of weight,  
32 measure, or numerical count; or

33      (13) If any substance has been added thereto or mixed  
34 or packed therewith so as to increase its bulk or weight, or  
35 reduce its quality or strength, or make it appear better or  
36 of greater value than it is.

37      Nothing herein contained shall prohibit the sale of live-  
38 stock for immediate slaughter in accordance with the meat  
39 inspection regulations of the United States Department of  
40 Agriculture.

Sec. 8. *Market Bulletins.* It shall be the duty of the  
2 commissioner to publish bulletins setting forth the quo-  
3 tations for agricultural products sold in the principal mar-  
4 kets of the state. The bulletins shall also contain informa-  
5 tion concerning the available surplus of the principal agri-  
6 cultural products and the demand for such products in the  
7 markets of the state, and other markets where agricultural  
8 products are customarily sold. The commissioner may  
9 periodically prepare and distribute bulletins containing:

10      (1) The official grades, classifications and standards for  
11 agricultural products;

12      (2) The methods for marking, advertising, and using such  
13 grades, classifications, and standards;

14      (3) Lists of the principal markets in the state and the  
15 principal markets outside of the state where agricultural pro-  
16 ducts are sold or distributed;

17      (4) Such other information which may be of value or  
18 assistance in the production, handling, and marketing of ag-  
19 ricultural products.

Sec. 9. *Inspectors, Graders and Assistants.* The commis-  
2 sioner may employ and he shall have authority to certify such

3 inspectors, graders, and assistants as are necessary to enforce  
4 the provisions of this act. He shall prescribe their duties and  
5 fix their salaries. It shall be unlawful for any person to repre-  
6 sent that he is an inspector, grader, or agent of the commis-  
7 sioner unless he is certified by the commissioner.

Sec. 10. *Commissioner to Enforce Act.* The commis-  
2 sioner of agriculture shall be charged with the enforce-  
3 ment of this act and shall have authority to make and en-  
4 force rules and regulations for the administration of this act.

Sec. 11. *Penalties.* Any person who shall violate any of  
2 the provisions of this act, or who shall obstruct or hinder the  
3 commissioner or any officer or employee, in the performance  
4 of his duties under this act, shall be guilty of a misdemeanor,  
5 and, upon conviction thereof, shall, for the first offense, be  
6 fined not more than one hundred dollars, and upon convic-  
7 tion for each subsequent offense be fined not more than five  
8 hundred dollars, and in addition to such fine may be con-  
9 fined in the county jail for not more than ninety days.

### Article 3. Sale of Farm Products by Commission Merchants.

#### Section

1. License required; fee.
2. Applicant to furnish surety bond.
3. Refusal or revocation of license.
4. Suit and recovery on bond.
5. Penalties for violation of act; separate offenses; moneys collected to be deposited in state treasury in special fund; provisions of act severable.

Section 1. *License Required; Fee.* A person engaged in the  
2 business of a commission merchant in this state dealing in  
3 the sale, purchase, or consignment of agricultural products  
4 shall before carrying on such business procure a license from  
5 the commissioner. Application for such license shall be made  
6 on forms prescribed by the commissioner and shall be ac-  
7 companied by a fee of ten dollars. Such license shall be re-  
8 newed annually on or before the first day of July.

Sec. 2. *Applicant to Furnish Surety Bond.* Prior to the is-  
2 suance of a license for commission merchant, the applicant  
3 shall execute and deliver to the commissioner a surety bond  
4 conditioned as the commissioner may require and acceptable  
5 to him, payable to the state of West Virginia, for the benefit  
6 of consignors who have been wronged or damaged by fraud or



7 fraudulent practices of the commission merchant and so ad-  
8 judged by a court of competent jurisdiction and who shall  
9 have the right of action for damage for compensation against  
10 such bond.

Sec. 3. *Refusal or Revocation of License.* The commissioner  
2 may refuse to grant a license or may revoke a license already  
3 granted when he is satisfied that the applicant or licensee has:

4 (1) Failed to satisfy a money judgment properly served  
5 against him;

6 (2) Made false, fraudulent or improper charges or re-  
7 turns for the handling, sale, storage, or other services in  
8 connection with agricultural products;

9 (3) Failed or refused to render an account of sales or  
10 make prompt settlement thereon;

11 (4) Knowingly made false or misleading statements as to  
12 the condition, quality, or quantity of agricultural products  
13 received, handled, stored, or held by him for sale;

14 (5) Made false or misleading statements concerning mar-  
15 ket conditions, with the intent to deceive;

16 (6) Combined or conspired to fix prices either directly or  
17 indirectly;

18 (7) Purchased for his own account agricultural products  
19 received by him upon consignment without prior notice to the  
20 consignor in writing, or at an agreed price fixed by the con-  
21 signor;

22 (8) Made fictitious sales or has been guilty of collusion to  
23 defraud the consignor;

24 (9) Has reconsigned agricultural products without the  
25 written consent of the consignor or without notice to the con-  
26 signor that all or a part of his shipment has been reconsigned;

27 (10) Sold consigned goods to another person, exchange,  
28 association, or corporation in which the consignee has a  
29 financial interest without notice in writing to the consignor  
30 of such interest.

Sec. 4. *Suit and Recovery on Bond.* A person injured by the  
2 failure of a commission merchant to pay over the full amount  
3 received on any sale, less commissions and charges may recover  
4 on the bond of the commission merchant the amount due him  
5 by a suit brought in the name of the State of West Virginia

6 for the use of the injured person. No recovery shall be had  
7 on the bond in excess of the penalty thereof. In case of mul-  
8 tiple claims in excess of the bond, each claimant shall re-  
9 cover his pro rata share.

Sec. 5. *Penalties for Violation of Act; Moneys Collected to  
2 be Deposited in State Treasury in Special Fund; Provisions  
3 of Act Severable.* A commission merchant who violates any  
4 of the provisions of this act shall be guilty of a misdemeanor.  
5 and upon conviction shall be fined not more than one hun-  
6 dred dollars for the first offense, and not less than one hun-  
7 dred dollars nor more than two hundred dollars for each sub-  
8 sequent offense. Each transaction engaged in by an unlicensed  
9 commission merchant shall constitute a separate offense.

10 All moneys collected under this act shall be deposited with  
11 the treasurer of the state of West Virginia and shall be kept  
12 in a separate fund to be designated as the "general mar-  
13 keting fund" and reappropriated to the department of agri-  
14 culture for the administration of this act.

15 If any clause, sentence, paragraph or part of this act shall  
16 for any reason, be adjudged by any court of competent juris-  
17 diction to be invalid, such judgment shall not affect, impair,  
18 or invalidate the remainder of this act, but shall be confined  
19 in its operation to the clause, sentence, paragraph, or any  
20 part thereof directly involved in the controversy in which  
21 said judgment has been rendered.

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## CHAPTER 4

(House Bill No. 139—By Mr. Brotherton)

AN ACT to amend and reenact sections twenty-five, twenty-six and  
twenty-seven, article twelve, chapter nineteen of the code of  
West Virginia, one thousand nine hundred thirty-one, chang-  
ing the registration fee for nurserymen and dealers in nursery  
stock and providing for additional regulations for agents, and

to amend said article twelve, by the addition thereto of a new section, to be designated section thirty-two, pertaining to the sale of nursery stock.

[Passed March 10, 1939; in effect ninety days from passage. Approved by the Governor.]

## **Article 12. Insects and Plant Diseases.**

### **Section**

25. Registration of nurserymen.
26. Dealers' registration certificates.
27. Salesmen; agents' permits; certificates of authority.
32. Official tags, form and cost; nursery stock to have tag attached.

*Be it enacted by the Legislature of West Virginia:*

That sections twenty-five, twenty-six and twenty-seven, article twelve, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, be amended and reenacted, and that section thirty-two, added thereto, be enacted, to read as follows:

Section 25. *Registration of Nurserymen.* It shall be unlawful for any person, either for himself or as agent for another, to offer for sale, sell, deliver or give away, within the bounds of this state, any plants known as nursery stock, unless such person shall have first procured from the commissioner a certificate of registration, which certificate shall contain such rules and regulations concerning the sale of nursery stock as the commissioner may prescribe, who shall have full power, and is hereby authorized and required, to cancel and withdraw any certificate upon satisfactory evidence that any rules and regulations governing the sale of nursery stock within this state have been violated by the holder of the same. The commissioner shall not issue any certificate of registration except on the filing with the commissioner of a certified copy of a certificate of inspection, as specified in sections twenty-one and twenty-four of this article, accompanied by a fee of five dollars from all resident nurserymen; all other nurserymen shall pay a fee of fifteen dollars for each nursery registration. All such certificates as may be granted shall expire and become null and void June thirtieth next succeeding the issuance thereof. Any person, either for himself or as agent for another, who shall sell, offer for

23 sale, deliver or give away any plants, commonly known as  
24 nursery stock without exhibiting a copy of the certificate of  
25 registration as herein provided for to each and every person  
26 whom he shall sell, offer for sale, deliver or give away any  
27 such plants, shall be guilty of a misdemeanor, and, upon con-  
28 viction thereof, shall be fined as provided in section thirty  
29 of this article. This section shall not be construed so as to  
30 prevent a neighbor from giving away a plant or tree which  
31 is not from a nursery.

Sec. 26. *Dealers' Registration Certificates.* Every dealer  
2 engaged in selling or soliciting orders for nursery stock  
3 within this state shall secure a dealer's certificate by furnish-  
4 ing a sworn affidavit that he will buy and sell only stock  
5 which has been duly inspected and certified by an official state  
6 inspector, and that he will maintain with the commissioner  
7 a list of all sources from which he secures his stock, accom-  
8 panied by a fee of five dollars from all resident dealers in  
9 nursery stock for each store or place of business operated; all  
10 other dealers shall pay a fee of fifteen dollars for each regis-  
11 tration. Such certificate shall expire and become null and void  
12 June thirtieth next succeeding the date of issuance thereof.

Sec. 27. *Salesmen; Agents' Permits; Certificates of Author-  
2 ity.* Any person growing or dealing in nursery stock, before re-  
3 ceiving such certificate of registration, shall file with the com-  
4 missioner the names and addresses of all traveling salesmen or  
5 agents representing such person in this state, and shall subse-  
6 quently file with the commissioner the names and addresses of  
7 any other traveling salesmen or agents when so employed. The  
8 commissioner shall issue an agent's permit to such repre-  
9 sentatives upon the payment of one dollar, and it shall be  
10 unlawful for any party to solicit orders without such a permit.  
11 All permits shall expire and become null and void June  
12 thirtieth next succeeding the issuance thereof, but may be  
13 revoked by the commissioner for cause. For the purpose of  
14 this section the term "agent" shall mean any person who  
15 solicits orders for nursery stock but who does not keep the  
16 nursery stock on hands for which an order is written; those  
17 having nursery stock in their possession and making direct  
18 sales therefrom shall be classed as dealers in nursery stock,

19 and shall be subject to the provisions of section twenty-six.  
20 Any person, firm or corporation acting as an agent for an-  
21 other in the sale of nursery stock in this state shall carry  
22 with him, at all times when engaged in selling such stock,  
23 a certificate in writing signed by his principal, and properly  
24 acknowledged, and his agent's permit showing his authority  
25 to act as such an agent, and upon request shall exhibit the  
26 same to the purchaser and shall leave with the purchaser a  
27 copy of the purchase contract.

Sec. 32. *Official Tags; Form and Cost; Nursery Stock to*  
2 *Have Tag Attached.* Certificates or permits required to be  
3 attached to each parcel of nursery stock delivered or given  
4 away by a nurseryman as provided in section twenty-four,  
5 and official tags required to be attached to all shipments of  
6 nursery stock from without the state, as provided in the same  
7 section, shall refer to a tag, the forms of which shall be pre-  
8 scribed and furnished by the commissioner, as provided in  
9 sections twenty-four and twenty-five, and shall be furnished  
10 for the fees prescribed by the commissioner but at no time  
11 shall such fees exceed two and one-half cents for each tag so  
12 issued. Shipping tags may be issued without cost for single  
13 non-commercial shipments or for commercial shipments pass-  
14 ing through the state. Shipments consigned to the commis-  
15 sioner, however, do not need such authorization as herein  
16 provided.

17 It shall be unlawful for any dealer in nursery stock to de-  
18 liver or give away plants commonly known as nursery stock  
19 which do not carry plainly attached to each lot a similar tag  
20 as required of nurserymen in section twenty-four.

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## CHAPTER 5

(Senate Bill No. 199—By Mr. LaFon, Mr. President)

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AN ACT to amend chapter nineteen of the code of West Virginia,  
one thousand nine hundred thirty-one, as last amended, by  
adding thereto article twenty-one-a, relating to the establish-  
ment of soil conservation districts, to engage in conserving

soil resources and preventing and controlling soil erosion; to establish the state soil conservation committee, and to define its powers and duties; to provide for the creation of soil conservation districts; to define the powers and duties of soil conservation districts, and to provide for the exercise of such powers, including the power to acquire property by purchase, gift, and otherwise; to empower such districts to adopt programs and regulations for the discontinuance of land-use practices contributing to soil wastage and soil erosion, and the adoption and carrying out of soil-conserving land-use practices, and to provide for the enforcement of such programs and regulations; to provide for establishing boards of adjustment in connection with land-use regulations, and to define their functions and powers; to enable flood control measures; to provide for financial assistance to such soil conservation districts; and to provide for the discontinuance of such soil conservation districts.

[Passed March 10, 1939; in effect ninety days from passage. Approved by the Governor.]

## **Article 21-A. Soil Conservation Districts.**

### **Section**

1. Title of act.
2. Legislative determinations and declaration of policy.
3. Definitions.
4. State soil conservation committee.
5. Creation of soil conservation districts.
6. Election of three supervisors for each district.
7. Appointment or election, qualifications and tenure of supervisors; powers and duties.
8. Powers of districts and supervisors.
9. Adoption of land-use regulations.
10. Powers and duties of supervisors under regulations; suits to enforce.
11. Board of adjustment.
12. Cooperation between districts.
13. State agencies to cooperate.
14. Discontinuance of districts.
15. Provisions of act severable.
16. Inconsistent acts repealed.

*Be it enacted by the Legislature of West Virginia:*

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

Section 1. *Title of Act.* This act may be known and cited  
2 as the "Soil Conservation Districts Law of West Virginia."

Sec. 2. *Legislative Determinations and Declaration of Pol-*  
2 *icy.* It is hereby declared, as a matter of legislative deter-  
3 mination:

4 A. That the farm and grazing lands of the state of West  
5 Virginia are among the basic assets of the state and that the  
6 preservation of these lands is necessary to protect and pro-  
7 mote the health, safety, and general welfare of its people;  
8 that improper land-use practices have caused and have con-  
9 tributed to, and are now causing and contributing to, a  
10 progressively more serious erosion of the farm and grazing  
11 lands of this state by water; that the breaking of natural  
12 grass, plant, and forest cover has interfered with the natural  
13 factors of soil stabilization, causing loosening of soil and  
14 exhaustion of humus, and developing a soil condition that  
15 favors erosion; that the topsoil is being washed out of fields  
16 and pastures; that there has been an accelerated washing  
17 of sloping fields; that these processes of erosion by water  
18 speed up with removal of absorptive topsoil, causing ex-  
19 posure of less absorptive and less protective but more erosive  
20 subsoil; that failure by any land owner to conserve the soil  
21 and control erosion upon his lands causes a washing of soil  
22 and water from his lands onto other lands and makes the  
23 conservation of soil and control of erosion of such other lands  
24 difficult or impossible.

25 B. That the consequences of such soil erosion in the form  
26 of soil-washing are the silting and sedimentation of stream  
27 channels, reservoirs, dams, ditches, and harbors; the piling  
28 up of soil on lower slopes, and its deposit over alluvial  
29 plains; the reduction in productivity or outright ruin of  
30 rich bottom lands by overwash of poor subsoil material, sand,  
31 and gravel swept out of the hills; deterioration of soil and  
32 its fertility, deterioration of crops grown thereon, and de-  
33 clining acre yields despite development of scientific processes  
34 for increasing such yields; loss of soil and water which  
35 causes destruction of food and cover for wildlife; the  
36 washing of soil into streams which silts over spawning  
37 beds, and destroys water plants, diminishing the food supply  
38 of fish; a diminishing of the under-ground water reserve,  
39 which causes water shortages, intensifies periods of drought,

40 and causes crop failures; and increase in the speed and  
41 volume of rainfall run-off, causing severe and increasing  
42 floods, which bring suffering, disease, and death; impoverish-  
43 ment of families attempting to farm eroding and eroded  
44 lands, damage to roads, highways, railways, farm buildings,  
45 and other property from floods; and losses in navigation,  
46 hydro-electric power, municipal water supply, irrigation  
47 developments, farming and grazing.

48 C. That to conserve soil resources and control and pre-  
49 vent soil erosion and to enable flood control programs, it is  
50 necessary that land-use practices contributing to soil  
51 wastage and soil erosion be discouraged and discontinued,  
52 and appropriate soil-conserving land-use practices be  
53 adopted and carried out; that among the procedures neces-  
54 sary for widespread adoption, are the carrying on of engi-  
55 neering operations such as the construction of terraces,  
56 terrace outlets, check-dams, dikes, ponds, ditches, and the  
57 like; the utilization of strip cropping, lister furrowing,  
58 contour cultivating, and contour furrowing; land irrigation;  
59 seeding and planting of waste, sloping, abandoned, or eroded  
60 lands to water-conserving and erosion-preventing plants,  
61 trees, and grasses; forestation and reforestation; rotation  
62 of crops; soil stabilization with trees, grasses, legumes, and  
63 other thick-growing, soil-holding crops; retardation of run-  
64 off by increasing absorption of rainfall; and retirement from  
65 cultivation of steep, highly erosive areas and areas now  
66 badly gullied or otherwise eroded.

67 D. It is hereby declared to be the policy of the Legislature  
68 to provide for the conservation of the soil and soil resources  
69 of this state, and for the control and prevention of soil  
70 erosion, and thereby to preserve natural resources, control  
71 floods, prevent impairment of dams and reservoirs, assist  
72 in maintaining the navigability of rivers and harbors, pre-  
73 serve wildlife, protect the tax base, protect public lands,  
74 and protect and promote the health, safety, and general  
75 welfare of the people of this state.

76 E. This act contemplates that the incidental costs of  
77 organizing soil conservation districts will be met by the  
78 state, while the expense of operating the districts so orga-  
79 nized, will be provided primarily by the United States and/or  
80 any of its agencies, with the understanding that the owners or



81 occupiers will contribute funds, labor, materials and equip-  
82 ment to aid the carrying out of erosion control measures  
83 on their lands.

Sec. 3. *Definitions.* Wherever used or referred to in this  
2 act, unless a different meaning clearly appears from the  
3 context:

4 (1) "District" or "soil conservation district" means a  
5 subdivision of this state, organized in accordance with the  
6 provisions of this act, for the purposes, with the powers, and  
7 subject to the restrictions hereinafter set forth.

8 (2) "Supervisor" means one of the members of the  
9 governing body of a district, elected or appointed in ac-  
10 cordance with the provisions of this act.

11 (3) "Committee" or "state soil conservation committee"  
12 means the agency created in section four of this act.

13 (4) "Petition" means a petition filed under the pro-  
14 visions of subsection-a of section five of this act for the  
15 creation of a district.

16 (5) "State" means the state of West Virginia.

17 (6) "Agency of this state" includes the government of  
18 this state and any subdivision, agency, or instrumentality,  
19 corporate or otherwise, of the government of this state.

20 (7) "United States" or "agencies of the United States"  
21 includes the United States of America, the soil conservation  
22 service of the United States department of agriculture, and  
23 any other agency or instrumentality, corporate or otherwise,  
24 of the United States of America.

25 (8) "Land owners" or "owners of land" includes any  
26 person or persons, firm, or corporation who shall hold title  
27 to three or more acres of any lands lying within a district  
28 organized under the provisions of this act.

29 (9) "Land occupier" or "occupier of land" includes any  
30 person, firm, or corporation who shall hold title to, or shall  
31 be in possession of, any lands lying within a district  
32 organized under the provisions of this act, whether as owner,  
33 lessee, renter, or tenant.

34 (10) "Due notice" means notice published at least twice,  
35 with an interval of at least seven days between the two  
36 publication dates, in two newspapers of opposite politics and of  
37 general circulation published in the county in which is located  
38 the appropriate area, or if no such publication of general circu-

39 lation be available, by posting at a reasonable number of con-  
40 spicuous places within the appropriate area, such posting to in-  
41 clude, where possible, posting at public places where it may be  
42 customary to post notices concerning county or municipal  
43 affairs generally. At any hearing held pursuant to such notice  
44 at the time and place designated in such notice, adjournment  
45 may be made from time to time without the necessity of re-  
46 newing such notice for such adjourned dates.

47 (11) The terms "soil conservation," "erosion control,"  
48 or "erosion prevention projects," when used throughout the  
49 act, shall denote those projects that have been established by  
50 federal agencies in cooperation with state agencies for the pur-  
51 pose of demonstrating soil erosion control and water conserva-  
52 tion practices.

Sec. 4. *State Soil Conservation Committee.* A. There is  
2 hereby established, to serve as an agency of the state and to  
3 perform the functions conferred upon it in this act, the state  
4 soil conservation committee. The committee shall consist  
5 of seven members. The following shall serve, ex officio, as  
6 members of the committee: the director of the state agri-  
7 cultural extension service; the director of the state agri-  
8 cultural experiment station; the director of the state con-  
9 servation commission; and the state commissioner of agri-  
10 culture, who shall be chairman of the committee.

11 The governor shall appoint as additional members of the  
12 committee, three representative citizens. The term of mem-  
13 bers thus appointed shall be four years, except that of the  
14 first members so appointed, one shall be appointed for a term  
15 of two years, one for a term of three years, and one for a  
16 term of four years. In the event of a vacancy, appointment  
17 shall be for the unexpired term.

18 The committee may invite the secretary of agriculture  
19 of the United States of America to appoint one person to serve  
20 with the committee as an advisory member.

21 The committee shall keep a record of its official actions,  
22 shall adopt a seal, which seal shall be judicially noticed, and  
23 may perform such acts, hold such public hearings, and pro-  
24 mulgate such rules and regulations as may be necessary for  
25 the execution of its functions under this act.

26 B. The state soil conservation committee may employ an  
27 administrative officer and such technical experts and such

28 other agents and employees, permanent and temporary, as it  
29 may require, and shall determine their qualifications, duties,  
30 and compensation. The committee may call upon the  
31 attorney general of the state for such legal services as  
32 it may require. It shall have authority to delegate  
33 to its chairman, to one or more of its members, or  
34 to one or more agents or employees, such powers  
35 and duties as it may deem proper. The committee  
36 is empowered to secure necessary and suitable office  
37 accommodations, and the necessary supplies and equipment.  
38 Upon request of the committee, for the purpose of carrying  
39 out any of its functions, the supervising officer of any state  
40 agency, or of any state institution of learning shall, insofar  
41 as may be possible under available appropriations, and  
42 having due regard to the needs of the agency to which the  
43 request is directed, assign or detail to the committee mem-  
44 bers of the staff or personnel of such agency or institution  
45 of learning, and make such special reports, surveys, or  
46 studies as the committee may request.

47 C. A member of the committee shall hold office so long  
48 as he shall retain the office by virtue of which he shall be  
49 serving on the committee. A majority of the committee shall  
50 constitute a quorum, and the concurrence of a majority in  
51 any matter within their duties shall be required for its  
52 determination. The chairman and members of the committee  
53 shall receive no compensation for their services on the com-  
54 mittee, but shall be entitled to expenses, including traveling  
55 expenses, necessarily incurred in the discharge of their  
56 duties on the committee. The committee shall provide for  
57 the execution of surety bonds for all employees and officers  
58 who shall be entrusted with funds or property; shall provide  
59 for the keeping of a full and accurate public record of all  
60 proceedings and of all resolutions, regulations, and orders  
61 issued or adopted; and shall provide for an annual audit  
62 of the accounts of receipts and disbursements.

63 D. In addition to the duties and powers hereinafter con-  
64 ferred upon the state soil conservation committee, it shall  
65 have the following duties and powers:

66 (1) To offer such assistance as may be appropriate to the  
67 supervisors of soil conservation districts, organized as pro-

68 vided hereinafter, in the carrying out of any of their powers  
69 and programs;

70 (2) To keep the supervisors of each of the several dis-  
71 tricts organized under the provisions of this act informed of  
72 the activities and experience of all other districts organized  
73 hereunder, and to facilitate an interchange of advice and  
74 experience between such districts and cooperation between  
75 them;

76 (3) To coordinate the programs of the several soil  
77 conservation districts organized hereunder so far as this  
78 may be done by advice and consultation;

79 (4) To secure the cooperation and assistance of the  
80 United States and any of its agencies, and of agencies of this  
81 state, in the work of such districts;

82 (5) To disseminate information throughout the state con-  
83 cerning the activities and programs of the soil conservation  
84 districts organized hereunder, and to encourage the forma-  
85 tion of such districts in areas where their organization is  
86 desirable;

87 (6) To accept and receive donations, gifts, contributions,  
88 grants and appropriations, in money, services, materials or  
89 otherwise, from the United States or any of its agencies,  
90 from the state of West Virginia, or from other sources, and  
91 to use or expend such money, services, materials, or other  
92 contributions, in carrying on its administrative duties as set  
93 forth herein or in assisting the operations of any soil con-  
94 servation district.

Sec. 5. *Creation of Soil Conservation Districts.* A. Any  
2 twenty-five owners of land lying within the limits of the ter-  
3 ritory proposed to be organized into a district may file a  
4 petition with the state soil conservation committee asking that  
5 a soil conservation district be organized to function in the ter-  
6 ritory described in the petition. Such petition shall set forth:

7 (1) The proposed name of said district;

8 (2) That there is need, in the interest of the public health,  
9 safety and welfare, for a soil conservation district to function  
10 in the territory described in the petition;

11 (3) A description of the territory proposed to be organized  
12 as a district, which description shall not be required to be given  
13 by metes and bounds or by legal subdivisions, but shall be  
14 deemed sufficient if generally accurate;

15 (4) A request that the state soil conservation committee  
16 duly define the boundaries for such district; that a referendum  
17 be held within the territory so defined on the question of the  
18 creation of a soil conservation district in such territory; and  
19 that the committee determine that such a district be created.

20 Where more than one petition is filed covering neighboring  
21 parts of the same region, whether or not these areas overlap,  
22 the state soil conservation committee may consolidate all or  
23 any such petitions.

24 B. Within thirty days after such a petition has been filed  
25 with the state soil conservation committee, it shall cause due  
26 notice to be given of a proposed hearing upon the question  
27 of the desirability and necessity, in the interest of the public  
28 health, safety, and welfare, of the creation of such district,  
29 upon the question of the appropriate boundaries to be assigned  
30 to such district, upon the propriety of the petition and other  
31 proceedings taken under this act, and upon all questions  
32 relevant to such inquiries. All owners of land within the  
33 limits of the territory described in the petition, and of lands  
34 within any territory considered for addition to such described  
35 territory, and all other interested parties, shall have the right  
36 to attend such hearings and to be heard. If it shall appear  
37 upon the hearing that it may be desirable to include within  
38 the proposed district territory outside of the area within  
39 which due notice of the hearing has been given, the hearing  
40 shall be adjourned and due notice of further hearing shall be  
41 given throughout the entire area considered for inclusion in  
42 the district, and such further hearing held. After such  
43 hearing, if the committee shall determine, upon the facts  
44 presented at such hearing and upon such other relevant facts  
45 and information as may be available, that there is need, in  
46 the interest of the public health, safety, and welfare, for a  
47 soil conservation district to function in the territory consid-  
48 ered at the hearing, it shall make and record such determina-  
49 tion, and shall define, by metes and bounds or by legal sub-  
50 divisions, the boundaries of such district. Districts thus de-  
51 fined may be a watershed or portion thereof, and nothing in  
52 this act shall be interpreted to exclude from consideration  
53 small areas often constituting a very small part of a large  
54 watershed. The district may be large or small, but in making  
55 such determination and in defining such boundaries, the com-  
56 mittee shall give due weight and consideration to the topog-

raphy of the area considered and of the state, the composition of soils therein, the distribution of erosion, the prevailing land-use practices, the desirability and necessity of including within the boundaries the particular lands under consideration and the benefits such lands may receive from being included within such boundaries, the relation of the proposed area to existing watersheds and agricultural regions, and to other soil conservation districts already organized or proposed for organization under the provisions of this act, and such other physical, geographical, and economic factors as are relevant, having due regard to the legislative determinations set forth in section two of this act. The territory to be included within such boundaries need not be contiguous. If the committee shall determine after such hearing, after due consideration of the said relevant facts, that there is no need for a soil conservation district to function in the territory considered at the hearing, it shall make and record such determination and shall deny the petition. After six months shall have expired from the date of the denial of any such petition, subsequent petitions covering the same or substantially the same territory may be filed as aforesaid and new hearings held and determinations made thereon.

C. After the committee has made and recorded a determination that there is need, in the interest of the public health, safety, and welfare, for the organization of a district in a particular territory and has defined the boundaries thereof, it shall consider the question whether the operation of a district within such boundaries with the powers conferred upon soil conservation districts in this act is administratively practicable and feasible. To assist the committee in the determination of such administrative practicability and feasibility, it shall be the duty of the committee, within a reasonable time after entry of the finding that there is need for the organization of the proposed district and the determination of the boundaries thereof, to hold a referendum within the proposed district upon the proposition of the creation of the district, and to cause due notice of such referendum to be given. The question shall be submitted by ballots upon which the words "For creation of a soil conservation district of the lands below described and lying in the county (ies) of \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_" and "Against creation of a soil conservation district of the lands

99 below described and lying in the county (ies) of .....  
100 ....., and .....” shall appear, with  
101 a square before each proposition and a direction to insert an  
102 X mark in the square before one or the other of said proposi-  
103 tions as the voter may favor or oppose creation of such district.  
104 The ballot shall set forth the boundaries of such proposed  
105 district as determined by the committee. All owners of lands  
106 lying within the boundaries of the territory, as determined  
107 by the state soil conservation committee, shall be eligible to vote  
108 in such referendum.

109 D. The committee shall pay all expenses for the issuance  
110 of such notices and the conduct of such hearings and ref-  
111 erenda, and shall supervise the conduct of such hearings and  
112 referenda. It shall issue appropriate regulations governing  
113 the conduct of such hearings and referenda, and providing  
114 for the registration prior to the date of the referendum of all  
115 eligible voters, or prescribing some other appropriate pro-  
116 cedure for the determination of those eligible as voters in  
117 such referendum. No informalities in the conduct of such  
118 referendum or in any matter relating thereto shall invalidate  
119 said referendum or the result thereof if notice thereof shall  
120 have been given substantially as herein provided and said  
121 referendum shall have been fairly conducted.

122 E. The committee shall publish the result of such referen-  
123 dum and shall thereafter consider and determine whether  
124 the operation of the district within the defined boundaries is  
125 administratively practicable and feasible. If the committee  
126 shall determine that the operation of such district is not ad-  
127 ministratively practicable and feasible, it shall record such  
128 determination and deny the petition. If the committee shall  
129 determine that the operation of such district is administrative-  
130 ly practicable and feasible, it shall record such determination  
131 and shall proceed with the organization of the district in the  
132 manner hereinafter provided. In making such determination  
133 the committee shall give due regard and weight to the at-  
134 titudes of the occupiers of lands lying within the defined  
135 boundaries, the number of land owners eligible to vote in such  
136 referendum who shall have voted, the proportion of the votes  
137 cast in such referendum in favor of the creation of the district  
138 to the total number of votes cast, the approximate wealth and  
139 income of the land occupiers of the proposed district, the

140 probable expense of carrying on erosion-control operations  
141 within such district, and such other economic and social fac-  
142 tors as may be relevant to such determination, having due  
143 regard to the legislative determinations set forth in section  
144 two of this act: *Provided, however,* That the committee shall  
145 not have authority to determine that the operation of the  
146 proposed district within the defined boundaries is administra-  
147 tively practicable and feasible unless at least sixty per centum  
148 of the votes cast in the referendum upon the proposition of  
149 creation of the district shall have been cast in favor of the  
150 creation of such district.

151 F. If the committee shall determine that the operation of  
152 the proposed district within the defined boundaries is ad-  
153 ministratively practicable and feasible, it shall appoint two  
154 supervisors to act, with the three supervisors elected as pro-  
155 vided hereinafter, as the governing body of the district.

156 G. The two appointed supervisors shall present to the  
157 secretary of state an application signed by them which shall  
158 set forth (and such application need contain no detail other  
159 than the mere recitals): (1) that a petition for the creation  
160 of the district was filed with the state soil conservation com-  
161 mittee pursuant to the provisions of this act, and that the  
162 proceedings specified in this act were taken pursuant to such  
163 petition; that the application is being filed in order to com-  
164 plete the organization of the district under this act; and that  
165 the committee has appointed them as supervisors; (2) the  
166 name and official residence of each of the supervisors, to-  
167 gether with a certified copy of the appointments evidencing  
168 their right to office; (3) the term of office of each of the  
169 supervisors; (4) the name which is proposed for the district;  
170 and (5) the location of the principal office of the supervisors  
171 of the district. The application shall be subscribed and sworn  
172 to by each of the said supervisors before an officer authorized  
173 by the laws of this state to take and certify oaths, who shall  
174 certify upon the application that he personally knows the  
175 supervisors and knows them to be the officers as affirmed in  
176 the application, and that each has subscribed thereto in the  
177 officer's presence. The application shall be accompanied by  
178 a statement by the state soil conservation committee, which  
179 shall certify (and such statement need contain no detail other  
180 than the mere recitals) that a petition was filed, notice issued,  
181 and hearing held as aforesaid; that the committee did duly



182 determine that there is need, in the interest of the public  
183 health, safety, and welfare, for a soil conservation district  
184 to function in the proposed territory and did define the boun-  
185 daries thereof; that notice was given and a referendum held  
186 on the question of the creation of such district; and that  
187 the result of such referendum showed a majority of the votes  
188 cast in such referendum to be in favor of the creation of the  
189 district; that thereafter the committee did duly determine  
190 that the operation of the proposed district is administratively  
191 practicable and feasible. The said statement shall set forth  
192 the boundaries of the district as they have been defined by the  
193 committee.

194 The secretary of state shall examine the application and  
195 statement and, if he finds that the name proposed for the  
196 district is not identical with that of any other soil conserva-  
197 tion district of this state or so nearly similar as to lead to  
198 confusion or uncertainty, he shall file them and shall record  
199 them in an appropriate book of record in his office. If the  
200 secretary of state shall find that the name proposed for the  
201 district is identical with that of any other soil conservation  
202 district of this state, or so nearly similar as to lead to con-  
203 fusion and uncertainty, he shall certify such fact to the state  
204 soil conservation committee, which shall thereupon submit to  
205 the secretary of state a new name for the said district, which  
206 shall not be subject to such defects. Upon receipt of such  
207 new name, free of such defects, the secretary of state shall  
208 record the application and statement, with the name so modi-  
209 fied, in an appropriate book of record in his office. The sec-  
210 retary of state shall make and issue to the said supervisors a  
211 certificate, under the seal of the state, of the due organization  
212 of the said district, and shall record such certificate with the  
213 application and statement. The boundaries of such district  
214 shall include the territory as determined by the state soil  
215 conservation committee as aforesaid, but in no event shall  
216 they include any area included within the boundaries of  
217 another soil conservation district organized under the pro-  
218 visions of this act.

219 H. After six months shall have expired from the date of  
220 entry of a determination by the state soil conservation com-  
221 mittee that operation of a proposed district is not admin-  
222 istratively practicable and feasible, and denial of a petition  
223 pursuant to such determination, subsequent petitions may be

224 filed as aforesaid, and action taken thereon in accordance  
225 with the provisions of this act.

226 I. Petitions for including additional territory within an  
227 existing district may be filed with the state soil conservation  
228 committee, and the proceedings herein provided for in the  
229 case of petitions to organize a district shall be observed in the  
230 case of petitions for such inclusion. The committee shall  
231 prescribe the form for such petitions, which shall be as nearly  
232 as may be in the form prescribed in this act for petitions to  
233 organize a district. Where the total number of land owners  
234 in the area proposed for inclusion shall be less than twenty-  
235 five, the petition may be filed when signed by a majority  
236 of the land owners of such area, and in such case no referen-  
237 dum need be held. In referenda upon petitions for such in-  
238 clusion, all owners of land lying within the proposed addi-  
239 tional area shall be eligible to vote.

240 J. In any suit, action, or proceeding involving the validity  
241 or enforcement of, or relating to, any contract, proceeding.  
242 or action of the district, the district shall be deemed to have  
243 been established in accordance with the provisions of this  
244 act upon proof of the issuance of the aforesaid certificate by  
245 the secretary of state. A copy of such certificate duly certified  
246 by the secretary of state shall be admissible in evidence in  
247 any such suit, action, or proceeding and shall be proof of the  
248 filing and contents thereof.

*Sec. 6. Election of Three Supervisors for Each District.*

2 Within thirty days after the date of issuance by the secretary  
3 of state of a certificate of organization of a soil conservation  
4 district, nominating petitions may be filed with the state  
5 soil conservation committee to nominate candidates for super-  
6 visors of such district. The committee shall have authority  
7 to extend the time within which nominating petitions may be  
8 filed. No such nominating petition shall be accepted by the  
9 committee unless it shall be subscribed by twenty-five or more  
10 owners of lands lying within the boundaries of such district.  
11 Land owners may sign more than one such nominating peti-  
12 tion to nominate more than one candidate for supervisor.  
13 The committee shall give due notice of an election to be held  
14 for the election of three supervisors for the district. The  
15 names of all nominees on behalf of whom such nominating  
16 petitions have been filed within the time herein designated,

17 shall appear, arranged in the alphabetical order of the sur-  
18 names, upon ballots, with a square before each name and a  
19 direction to insert an X mark in the square before any three  
20 names to indicate the voter's preference. All owners of lands  
21 lying within the district shall be eligible to vote in such elec-  
22 tion. Only such land owners shall be eligible to vote. The  
23 three candidates who shall receive the largest number, re-  
24 spectively, of the votes cast in such election shall be the elected  
25 supervisors for such district. The committee shall pay all  
26 the expenses of such election, shall supervise the conduct  
27 thereof, shall prescribe regulations governing the conduct  
28 of such election and the determination of the eligibility of  
29 voters therein, and shall make public the results thereof.

*Sec. 7. Appointment or Election, Qualifications and Tenure*  
2 *of Supervisors; Powers and Duties.* The governing body of  
3 the district shall consist of five supervisors, appointed or  
4 elected as provided in preceding sections. The two supervisors  
5 appointed by the committee shall be persons who are by train-  
6 ing and experience qualified to perform the specialized skilled  
7 services which will be required of them in the performance of  
8 their duties hereunder, and must be legal residents and land  
9 owners of the district.

10 The supervisor shall designate a chairman and may, from  
11 time to time, change such designation. The term of office of  
12 each supervisor shall be three years, except that the super-  
13 visors who are first appointed shall be designated to serve for  
14 terms of one and two years respectively, from the date of their  
15 appointment. A supervisor shall hold office until his suc-  
16 cessor has been elected or appointed. The selection of suc-  
17 cessors to fill a vacancy shall be made in the same manner in  
18 which the retiring supervisors were selected. A majority of  
19 the supervisors shall constitute a quorum and the concurrence  
20 of a majority in any matter within their duties shall be re-  
21 quired for its determination. A supervisor shall be entitled  
22 to expenses, and a per diem not to exceed four dollars when  
23 engaged in the performance of his duties.

24 The supervisors may with the approval of the state com-  
25 mittee employ a secretary, technical experts, and such other  
26 officers, agents, and employees, permanent and temporary,  
27 as they may require, and shall determine their qualifications,

28 duties, and compensation. The supervisors may delegate  
29 to their chairman, to one or more supervisors, or to one or  
30 more agents, or employees, such administrative powers and  
31 duties as they may deem proper. The supervisors shall fur-  
32 nish to the state soil conservation committee, upon request,  
33 copies of such ordinances, rules, regulations, orders, contracts,  
34 forms, and other documents as they shall adopt or employ,  
35 and such other information concerning their activities as it  
36 may require in the performance of its duties under this act.

37 The supervisors shall provide for the execution of surety  
38 bonds for all employees and officers who shall be entrusted  
39 with bonds or property; shall provide for the keeping of a  
40 full and accurate record of all proceedings and of all resolu-  
41 tions, regulations, and orders issued or adopted; and shall  
42 provide for an annual audit of the accounts of receipts and  
43 disbursements. Any supervisor may be removed by the state  
44 soil conservation committee, upon notice and hearing, for  
45 neglect of duty or malfeasance in office, but for no other  
46 reason.

47 The supervisors may invite the legislative body of any  
48 municipality or county located near the territory comprised  
49 within the district to designate a representative to advise  
50 and consult with the supervisors of the district on all ques-  
51 tions of program and policy which may affect the property,  
52 water supply, or other interests of such municipality or  
53 county.

Sec. 8. *Powers of Districts and Supervisors.* A soil conser-  
2 vation district organized under the provisions of this act  
3 shall have the following powers, and the supervisors thereof  
4 shall have the following powers, in addition to others granted  
5 in other sections of this act:

6 (1) To conduct surveys, investigations, and research re-  
7 lating to the character of soil erosion and the preventive  
8 and control measures needed, to publish the results of such  
9 surveys, investigations, or research, and to disseminate  
10 information concerning such preventive and control meas-  
11 ures: *Provided, however,* That in order to avoid duplication  
12 of research activities, no district shall initiate any research  
13 program or publish the results except with the approval of  
14 the state committee and in cooperation with the government

15 of this state or any of its agencies, or with the United States  
16 or any of its agencies;

17 (2) To conduct demonstrational projects within the dis-  
18 trict on lands owned or controlled by this state or any of its  
19 agencies, with the consent and cooperation of the agency  
20 administering and having jurisdiction thereof, and on any  
21 other lands within the district upon obtaining the consent  
22 of the owner and occupier of such lands or the necessary  
23 rights or interests in such lands, in order to demonstrate by  
24 example the means, methods and measures by which soil  
25 and soil resources may be conserved, and soil erosion in the  
26 form of soil washing may be prevented and controlled;

27 (3) To carry out preventive and control measures within  
28 the district including, but not limited to, engineering  
29 operations, methods of cultivation, the growing of  
30 vegetation, changes in use of land, and the meas-  
31 ures listed in subsection C of section two of this  
32 act, on lands owned or controlled by this state  
33 or any of its agencies, with the consent and co-  
34 operation of the agency administering and having  
35 jurisdiction thereof, and on any other lands within the dis-  
36 trict upon obtaining the consent of the owner and occupier  
37 of such lands or the necessary rights or interests in such  
38 lands;

39 (4) To cooperate, or enter into agreements with, and  
40 within the limits of appropriations duly made available to it  
41 by law, to furnish financial or other aid to, any agency,  
42 governmental or otherwise, or any occupier of lands within  
43 the district, in the carrying on of erosion-control and pre-  
44 vention operations within the district, subject to such con-  
45 ditions as the supervisors may deem necessary to advance  
46 the purposes of this act;

47 (5) To obtain options upon and to acquire, by purchase,  
48 exchange, lease, gift, grant, bequest, devise, or otherwise,  
49 any property, real or personal, or rights or interests therein;  
50 to maintain, administer, and improve any properties ac-  
51 quired, to receive income from such properties and to ex-  
52 pend such income in carrying out the purposes and pro-  
53 visions of this act; and to sell, lease, or otherwise dispose of  
54 any of its property or interests therein in furtherance of the  
55 purposes and the provisions of this act;

56 (6) To make available, on such terms as it shall prescribe,  
57 to land occupiers within the district, agricultural and engi-  
58 neering machinery and equipment, fertilizer, seeds, and  
59 seedlings, and such other material or equipment, as will  
60 assist such land occupiers to carry on operations upon their  
61 lands for the conservation of soil resources and for the pre-  
62 vention and control of soil erosion;

63 (7) To construct, improve, and maintain such structures  
64 as may be necessary or convenient for the performance of  
65 any of the operations authorized in this act;

66 (8) To develop with the approval of the state committee  
67 comprehensive plans for the conservation of soil resources  
68 and for the control and prevention of soil erosion within the  
69 district, which plans shall specify in such detail as may be  
70 possible, the acts, procedures, performances, and avoidances  
71 which are necessary or desirable for the effectuation of such  
72 plans, including the specification of engineering operations,  
73 methods of cultivation, the growing of vegetation, cropping  
74 programs, tillage practices, and changes in use of land;  
75 and to publish such plans and information and bring them  
76 to the attention of occupiers of lands within the district;

77 (9) To take over, by purchase, lease, or other-  
78 wise, and to administer any soil-conservation, erosion-  
79 control, or erosion-prevention project located within  
80 its boundaries undertaken by the United States or any of its  
81 agencies, or by this state or any of its agencies; to manage,  
82 as agent of the United States or any of its agencies, or of this  
83 state or any of its agencies, any soil-conservation, erosion-  
84 control, or erosion-prevention project within its boundaries;  
85 to act as agent for the United States, or any of its agencies,  
86 or for this state or any of its agencies, in connection with the  
87 acquisition, construction, operation, or administration of any  
88 soil-conservation, erosion-control, or erosion-prevention  
89 project within its boundaries; to accept donations, gifts,  
90 contributions and grants in money, services, materials, or  
91 otherwise, from the United States or any of its agencies, or  
92 from this state or any of its agencies, or from any other  
93 source, and to use or expend such money, services, materials,  
94 or other contributions in carrying on its operations;

95 (10) To sue and be sued in the name of the district; to  
96 have a seal, which seal shall be judicially noticed; to have

97 perpetual succession unless terminated as hereinafter pro-  
98 vided; to make and execute contracts and other instruments,  
99 necessary or convenient to the exercise of its powers; to  
100 make, and from time to time amend and repeal, rules and  
101 regulations not inconsistent with this act, to carry into effect  
102 its purposes and powers;

103 (11) As a condition to this extending of any benefits  
104 under this act to, or the performance of work upon, any  
105 lands, the supervisors may require contributions in money,  
106 services, materials, or otherwise to any operations con-  
107 ferring such benefits, and may require land occupiers to  
108 enter into and perform such agreements or covenants as to  
109 the permanent use of such lands as will tend to prevent or  
110 control erosion thereon;

111 (12) No provisions with respect to the acquisition, opera-  
112 tion, or disposition of property by other public bodies shall  
113 be applicable to a district organized hereunder in its  
114 acquisition, operation and disposition of property unless the  
115 Legislature shall specifically so state.

Sec. 9. *Adoption of Land-Use Regulations.* A. The super-  
2 visors of any district shall have authority to formulate  
3 regulations governing the use of lands within the district  
4 in the interest of conserving soil and soil resources and pre-  
5 venting and controlling soil erosion. The supervisors shall  
6 conduct such public meetings and public hearings upon  
7 tentative regulations as may be necessary to assist them in  
8 this work. The supervisors shall not have authority to  
9 enact such land-use regulations into law until after they  
10 shall have caused due notice to be given of their intention  
11 to conduct a referendum for submission of such regulations  
12 to the owners of lands lying within the boundaries of the  
13 district for their indication of approval or disapproval of  
14 such proposed regulations, and until after the supervisors  
15 have considered the result of such referendum. The pro-  
16 posed regulations shall be embodied in a proposed ordinance.  
17 Copies of such proposed ordinance shall be available for the  
18 inspection of all eligible voters during the period between  
19 publication of such notice and the date of the referendum.  
20 The notices of the referendum shall recite the contents of  
21 such proposed ordinance, or shall state where copies of such  
22 proposed ordinance may be examined. The question shall be

submitted by ballots, upon which the words "For approval of proposed ordinance No. ...., prescribing land-use regulations for conservation of soil and prevention of erosion" and "Against approval of proposed ordinance No. ...., prescribing land-use regulations for conservation of soil and prevention of erosion" shall appear, with a square before each proposition and a direction to insert an X mark in the square before one or the other of said propositions as the voter may favor or oppose approval of such proposed ordinance. The supervisors shall supervise such referendum, shall prescribe appropriate regulations governing the conduct thereof, and shall publish the result thereof. All owners of lands within the district shall be eligible to vote in such referendum. Only such land owners shall be eligible to vote. No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

The supervisors shall not have authority to enact such proposed ordinance into law unless at least sixty per centum of the votes cast in such referendum shall have been cast for approval of the said proposed ordinance. The approval of the proposed ordinance by sixty per centum of the votes cast in such referendum shall not be deemed to require the supervisor to enact such proposed ordinance into law. No ordinance shall become effective without the approval of the state committee. Land-use regulations adopted pursuant to the provisions of this act shall be binding on all land occupiers within such district.

B. Any owner of land within such district may at any time file a petition with the supervisors asking that any or all of the land-use regulations adopted by the supervisors under the provisions of this article shall be amended, supplemented, or repealed. Land-use regulations adopted pursuant to the provisions of this act shall not be amended, supplemented, or repealed except in accordance with the procedure prescribed in this act for adoption of land-use regulations.

C. Regulations to be adopted by the supervisors under



64 the provisions of this act may include:

65 (a) Provisions requiring the construction of terraces,  
66 terrace outlets, check dams, dikes, ponds, ditches, and other  
67 necessary structures;

68 (b) Provisions requiring observance of particular  
69 methods of cultivation including contour cultivating, con-  
70 tour furrowing, lister furrowing, sowing, planting, strip  
71 cropping, seeding and planting of lands to water-conserving  
72 and erosion-preventing plants, trees and grasses, forestation  
73 and reforestation;

74 (c) Specifications of cropping programs and tillage  
75 practices to be observed;

76 (d) Provisions limiting the cultivation of highly erosive  
77 areas or of areas on which erosion may not be adequately con-  
78 trolled if cultivation is carried on;

79 (e) Provisions for such other means, measures, operations  
80 and programs as may assist conservation of soil resources  
81 and prevent or control soil erosion in the district, having due  
82 regard to the legislative findings set forth in section two of  
83 this act.

84 D. The regulations shall be uniform throughout the  
85 territory comprised within the district except that the super-  
86 visors may classify the lands within the district with refer-  
87 ence to such factors as soil type, degree of slope, degree of  
88 erosion threatened or existing, cropping and tillage practices  
89 in use, and other relevant factors, and may provide regu-  
90 lations varying with the type or class of land affected, but  
91 uniform as to all lands within each class or type. Copies of  
92 land-use regulations adopted under the provisions of this act  
93 shall be printed and made available to all owners and  
94 occupiers of lands lying within the district.

95 E. In formulating and enacting such land-use regula-  
96 tions, the supervisors shall give due weight and con-  
97 sideration to the respective total acreages for and against  
98 the establishment of the regulations, to the topography of  
99 the area considered and of the state, the composition of  
100 soils therein, the distribution of erosion, the prevailing land-  
101 use practices, the desirability and necessity of including  
102 within the regulations the particular lands under considera-  
103 tion and the benefits such lands may receive from being  
104 included within such regulations, the relation of the pro-

105 posed area to existing watersheds and agricultural regions,  
106 and to other soil conservation districts already organized  
107 or proposed for organization under the provisions of this act,  
108 and such other physical, geographical, and economic factors  
109 as are relevant, having due regard to the legislative de-  
110 termination set forth in section two of this act.

Sec. 10. *Powers and Duties of Supervisors Under Regula-  
tion; Suits to Enforce.* The supervisors shall have authority  
to go upon any lands within the district to determine whether  
land-use regulations adopted under the provisions of section  
nine of this act are being observed.

Where the supervisors of any district shall find that any  
of the provisions of land-use regulations adopted in ac-  
cordance with the provisions of section nine hereof are not  
being observed on particular lands, and that such non-  
observance tends to increase erosion on such lands and is  
interfering with the prevention or control of erosion on other  
lands within the district, the supervisors may present to the  
circuit court for the county in which the lands of the de-  
fendant may lie, a bill in equity, duly verified, setting forth  
the adoption of the land-use regulations, the failure of the  
defendant land occupier to observe such regulations, and  
to perform particular work, operations, or avoidances as  
required thereby, and that such nonobservance tends to in-  
crease erosion on such lands and is interfering with the pre-  
vention or control of erosion on other lands within the  
district, and praying the court to require the defendant to  
perform the work, operations, or avoidances within a  
reasonable time and to order that if the defendant shall fail  
so to perform the supervisors may go on the land, perform  
the work or other operations or otherwise bring the con-  
dition of such lands into conformity with the requirements  
of such regulations, and recover the costs and expenses  
thereof, with interest, from the occupiers of such land.  
Upon the presentation of such bill in equity, the court shall  
cause process to be issued against the defendant, and shall  
hear the case. If it shall appear to the court that testimony  
is necessary for the proper disposition of the matter, it may  
take evidence, or appoint a special commissioner to take  
such evidence as it may direct and report the same to the

35 court with his findings of fact and conclusions of law, which  
36 shall constitute a part of the proceedings upon which the  
37 determination of the court shall be made. In ascertaining  
38 whether the land-use regulations are reasonable and just,  
39 the court may inquire into the extent to which the super-  
40 visors have been guided by the administrative standards set  
41 forth in section nine, paragraph E. The court may dis-  
42 miss the bill; or it may require the defendant to perform the  
43 work, operations, or avoidances, and may provide that upon  
44 the failure of the defendant to initiate such performance  
45 within the time specified in the decree of the court and to  
46 prosecute the same to completion with reasonable diligence,  
47 the supervisors may enter upon the lands involved and per-  
48 form the work or operations or otherwise bring the condition  
49 of such lands into conformity with the requirements of the  
50 regulations and recover the costs and expenses thereof,  
51 with interest at the rate of five per centum per annum, from  
52 the occupier of such lands. In all cases where the person in  
53 possession of lands, who shall fail to perform such work,  
54 operations, or avoidances shall not be the owner, the owner  
55 of such lands shall be joined as party defendant.

56 The court shall retain jurisdiction of the case until after  
57 the work has been completed. Upon completion of such  
58 work pursuant to such decree of the court the supervisors  
59 may apply to the court, notice thereof being served upon the  
60 defendant in the case, stating the costs and expenses sus-  
61 tained by them in the performance of the work and praying  
62 judgment therefor with interest. The court shall have juris-  
63 diction to enter judgment for the amount of such costs and  
64 expenses, with interest at the rate of five per centum per  
65 annum until paid, together with the costs of suit, including  
66 a reasonable attorney's fee to be fixed by the court.

Sec. 11. *Board of Adjustment.* A. Where the supervisors  
2 of any district organized under the provision of this act shall  
3 adopt any ordinance prescribing land-use regulations in ac-  
4 cordance with the provisions of section nine hereof, they shall  
5 further provide by ordinance for the establishment of a board  
6 of adjustment. Such board of adjustment shall consist of  
7 three members, each to be appointed for a term of three  
8 years, except that the members first appointed shall be ap-

9 pointed for terms of one, two, and three years, respectively.  
10 The members of each such board of adjustment shall be ap-  
11 pointed by the state soil conservation committee, and shall  
12 serve at the will and pleasure of the committee.

13 Vacancies in the board of adjustment shall be filled in the  
14 same manner as original appointments, and shall be for the  
15 unexpired term of the member whose term becomes vacant.  
16 Members of the state soil conservation committee and the  
17 supervisors of the district shall be ineligible to appointment  
18 as members of the board of adjustment during their tenure  
19 of such other office. The members of the board of adjustment  
20 shall receive no compensation for their services, but they shall  
21 be entitled to expenses, including traveling expenses, neces-  
22 sarily incurred in the discharge of their duties. The state  
23 committee shall pay the necessary administrative and other  
24 expenses of operation incurred by the board, upon the certifi-  
25 cate of the chairman of the board.

26 B. The board of adjustment shall adopt rules to govern its  
27 procedures, which rules shall be in accordance with the pro-  
28 visions of this act and with the provisions of any ordinance  
29 adopted pursuant to this section. The board shall designate a  
30 chairman from among its members, and may, from time to time,  
31 change such designation. Meetings of the board shall be held at  
32 the call of the chairman and at such other times as the board  
33 may determine. Any two members of the board shall constitute  
34 a quorum. The chairman, or in his absence such other mem-  
35 ber of the board as he may designate to serve as acting chair-  
36 man, may administer oaths and compel the attendance of wit-  
37 nesses. All meetings of the board shall be open to the public.  
38 The board shall keep a full and accurate record of all pro-  
39 ceedings, of all documents filed with it, and of all orders en-  
40 tered, which shall be filed in the office of the board and shall  
41 be a public record.

42 C. Any land occupier may file a petition with the board of  
43 adjustment alleging that there are great practical difficulties  
44 or unnecessary hardship in the way of his carrying out upon  
45 his lands the land-use regulations prescribed by ordinance  
46 approved by the supervisors, and praying the board to au-  
47 thorize a variance from the terms of the land-use regulations  
48 in the application of such regulations to the lands occupied  
49 by the petitioner. Copies of such petition shall be served

50 by the petitioner upon the chairman of the supervisors of the  
51 district within which his lands are located and upon the  
52 chairman of the state soil conservation committee. The board  
53 of adjustment shall fix a time for the hearing of the petition  
54 and cause due notice of such hearing to be given. The super-  
55 visors of the district and the state soil conservation committee  
56 shall have the right to appear and be heard at such hearing.  
57 Any occupier of lands lying within the district who shall object  
58 to the authorizing of the variance prayed for may intervene  
59 and become a party to the proceedings. Any party to the  
60 hearing before the board may appear in person, by agent,  
61 or by attorney. If, upon the facts presented at such hearing,  
62 the board shall determine that there are great practical diffi-  
63 culties or unnecessary hardship in the way of applying the  
64 strict letter of any of the land-use regulations upon the lands  
65 of the petitioner, it shall make and record such determination  
66 and shall make and record findings of fact as to the specific  
67 conditions which establish such great practical difficulties or  
68 unnecessary hardship. Upon the basis of such findings and  
69 determination, the board shall have power by order to au-  
70 thorize such variance from the terms of the land-use regula-  
71 tions, in their application to the lands of the petitioner, as  
72 will relieve such great practical difficulties or unnecessary  
73 hardship and will not be contrary to the public interest, and  
74 such that the spirit of the land-use regulations shall be ob-  
75 served, the public health, safety, and welfare secured, and  
76 substantial justice done.

77 D. Any petitioner aggrieved by an order of the board  
78 granting or denying, in whole or in part, the relief sought, the  
79 supervisors of the district or any intervening party, may  
80 obtain a review of such order in the circuit court of the  
81 county in which the land lies, by filing in such a court a pe-  
82 tition praying that the order of the board be modified or set  
83 aside. A copy of such petition shall forthwith be served upon  
84 the parties to the hearing before the board and thereupon  
85 the party seeking review shall file in the court a transcript of  
86 the entire record in the proceedings, certified by the board,  
87 including the documents and testimony upon which the order  
88 complained of was entered, and the findings, determination,  
89 and order of the board. Upon such filing, the court shall cause

90 notice thereof to be served upon the parties and shall have  
91 jurisdiction of the proceedings and of the questions deter-  
92 mined or to be determined therein, and shall have power to  
93 grant such temporary relief as it deems just and proper, and to  
94 make and enter a decree enforcing or setting aside, in whole  
95 or in part, the order of the board. No contention that has  
96 not been urged before the board shall be considered by the  
97 court unless the failure or neglect to urge such contention  
98 shall be excused because of extraordinary circumstances. The  
99 findings of the board as to the facts, if supported by evidence,  
100 shall be conclusive. If any party shall apply to the court  
101 for leave to produce additional evidence and shall show to the  
102 satisfaction of the court that such evidence is material and  
103 that there were reasonable grounds for the failure to produce  
104 such evidence in the hearing before the board, the court may  
105 order such additional evidence to be taken before the board  
106 and to be made a part of the transcript. The board may  
107 modify its findings as to the facts or make new findings, taking  
108 into consideration the additional evidence so taken and filed,  
109 and it shall file such modified or new findings which, if sup-  
110 ported by evidence, shall be conclusive, and shall file with the  
111 court its recommendations, if any, for the setting aside of its  
112 original order. The jurisdiction of the court shall be conclusive  
113 and its judgment and decree shall be final, except that the same  
114 shall be subject to review in the same manner as are other  
115 judgments or decrees of the court.

2       Sec. 12. *Cooperation Between Districts.* The supervisors  
3 of any two or more districts organized under the provisions  
4 of this act may cooperate with one another in the exercise  
5 of any or all powers conferred in this act.

2       Sec. 13. *State Agencies to Cooperate.* Agencies of this  
3 state which shall have jurisdiction over or be charged with  
4 the administration of, any state-owned lands, and of any  
5 county, or other governmental subdivision of the state, which  
6 shall have jurisdiction over, or be charged with the admin-  
7 istration of, any county-owned or other publicly-owned lands,  
8 lying within the boundaries of any district organized here-  
9 under, may cooperate with the supervisors of such districts in  
the effectuation of programs and operations undertaken by

10 the supervisors under the provisions of this act. When such  
11 cooperation is undertaken, the supervisors of such districts  
12 shall be given free access to enter and perform work upon  
13 such publicly-owned lands. In connection with land-use regu-  
14 lations adopted pursuant to section nine of this act, the state,  
15 through its proper agency, and governmental subdivisions of  
16 the state, may cooperate in the effectuation of such regulations.

Sec. 14. *Discontinuance of Districts.* At any time after  
2 five years following the organization of a district under the  
3 provisions of this act, any twenty-five owners of land lying  
4 within the boundaries of such district may file a petition  
5 with the state soil conservation committee praying that the  
6 operations of the district be terminated and the existence of  
7 the district discontinued. The committee may conduct such  
8 public meetings and public hearings upon such petition as  
9 may be necessary to assist it in the consideration thereof.  
10 Within sixty days after such a petition has been received  
11 by the committee it shall give due notice of the holding of a  
12 referendum, and shall supervise such referendum, and issue  
13 appropriate regulations governing the conduct thereof. The  
14 question shall be submitted by ballots upon which the words  
15 "For terminating the existence of the ..... (name of  
16 the soil conservation district to be here inserted)" and  
17 "Against terminating the existence of the ..... (name of the  
18 soil conservation district to be here inserted)" shall appear,  
19 with a square before each proposition and a direction to  
20 insert an X mark in the square before one or the other of  
21 said propositions as the voter may favor or oppose discon-  
22 tinuance of such district. All owners of lands lying within  
23 the boundaries of the district shall be eligible to vote in such  
24 referendum. Only such land owners shall be eligible to vote.  
25 No informalities in the conduct of such referendum or in  
26 any matters relating thereto shall invalidate said referendum  
27 or the result thereof if notice thereof shall have been given  
28 substantially as herein provided and said referendum shall  
29 have been fairly conducted.

30 The committee shall publish the result of such referendum  
31 and shall thereafter consider and determine whether the con-  
32 tinued operation of the district within the defined boundaries  
33 is administratively practicable and feasible. If the com-

34 mittee shall determine that the continued operation of such  
35 district is administratively practicable and feasible, it shall  
36 record such determination and deny the petition. If the  
37 committee shall determine that the continued operation of  
38 such district is not administratively practicable and feasible,  
39 it shall record such determination and shall certify such  
40 determination to the supervisors of the district. In making  
41 such determination the committee shall give due regard and  
42 weight to the attitudes of the owners of lands lying within  
43 the district, the number of land owners eligible to vote in  
44 such referendum who shall have voted, the proportion of the  
45 votes cast in such referendum in favor of the discontinuance  
46 of the district to the total number of votes cast, the ap-  
47 proximate wealth and income of the land occupiers of the  
48 district, the probable expense of carrying on erosion control  
49 operations within such district, and such other economic and  
50 social factors as may be relevant to such determination,  
51 having due regard to the legislative findings set forth in  
52 section two of this act: *Provided, however,* That the com-  
53 mittee shall not have authority to determine that the con-  
54 tinued operation of the district is administratively practicable  
55 and feasible unless at least a majority of the votes cast in  
56 the referendum shall have been cast in favor of the con-  
57 tinuance of such district.

58 Upon receipt from the state soil conservation committee,  
59 of certification that the committee has determined  
60 that the continued operation of the district is not  
61 administratively practicable and feasible, pursuant  
62 to the provisions of this section, the supervisors  
63 shall forthwith proceed to terminate the affairs of the dis-  
64 trict. The supervisors shall dispose of all property belonging  
65 to the district at public auction and shall pay over the  
66 proceeds of such sale to be converted into the state treasury.  
67 The supervisors shall thereupon file an application, duly  
68 verified, with the secretary of state for the discontinuance  
69 of such district, and shall transmit with such application the  
70 certificate of the state soil conservation committee setting  
71 forth the determination of the committee that the continued  
72 operation of such district is not administratively practicable  
73 and feasible. The application shall recite that the property  
74 of the district has been disposed of and the proceeds paid



75 over as in this section provided, and shall set forth a full  
76 accounting of such properties and proceeds of the sale.  
77 The secretary of state shall issue to the supervisors a certi-  
78 ficate of dissolution and shall record such certificate in an  
79 appropriate book of record in his office.

80 Upon issuance of a certificate of dissolution under the  
81 provisions of this section, all regulations theretofore adopted  
82 and in force within such district shall be of no further force  
83 and effect. All contracts theretofore entered into, to which  
84 the district or supervisors are parties, shall remain in force  
85 and effect for the period provided in such contracts. The  
86 state soil conservation committee shall be substituted for  
87 the district or supervisors as party to such contracts. The  
88 committee shall be entitled to all benefits and subject to all  
89 liabilities under such contracts and shall have the same right  
90 and liability to perform, to require performance, to sue and  
91 be sued thereon, and to modify or terminate such contracts  
92 by mutual consent or otherwise, as the supervisor of the  
93 district would have had. Such dissolution shall not affect  
94 the lien of any judgment entered under the provisions of  
95 section ten of this act, nor the pendency of any action in-  
96 stituted under the provisions of such section, and the com-  
97 mittee shall succeed to all the rights and obligations of the  
98 district or supervisors as to such liens and actions.

99 The state soil conservation committee shall not entertain  
100 petitions for the discontinuance of any district nor conduct  
101 referenda upon such petitions nor make determinations  
102 pursuant to such petitions in accordance with the provisions  
103 of this act, more often than once in three years.

Sec. 15. *Provisions of Act Severable.* If any provision of  
2 this act, or the administrative application of any provision to  
3 any person or circumstance, is held invalid, the remainder of  
4 the act, and the application of such provision to other persons  
5 or circumstances, shall not be affected thereby.

Sec. 16. *Inconsistent Acts Repealed.* Insofar as any of  
2 the provisions of this act are inconsistent with the provisions  
3 of any other law, the provisions of this act shall be con-  
4 trolling.

## CHAPTER 6

(House Bill No. 93—By Mr. Speaker, Mr. Thomas)

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 8, 1939; in effect from passage.]

### Title

1. General Provisions.
2. Appropriations.
3. Administration.

### Title 1. General Provisions.

#### Section

1. General policy.
2. Definitions.
3. Classification of appropriations.
4. Method of expenditure.
5. Limitation on expenditures.
6. Maximum expenditures.

*Be it enacted by the Legislature of West Virginia:*

Section 1. *General Policy.* The purpose of this act is to  
2 appropriate money necessary for economical and efficient dis-  
3 charge of the duties and responsibilities of the state and its  
4 agencies during the fiscal years one thousand nine hundred  
5 forty and one thousand nine hundred forty-one. To give  
6 effect to this purpose, the board of public works shall supervise  
7 the fiscal policy, control the assumption of obligations, and  
8 regulate the expenditures of the agencies of the state.

Sec. 2. *Definitions.* For the purpose of this act:

- 2 "Board" shall mean the board of public works;
- 3 "Spending unit" shall mean the department, agency, or  
4 institution to which an appropriation is made.
- 5 The "fiscal year one thousand nine hundred forty"  
6 shall mean the period from July first, one thousand nine hun-  
7 dred thirty-nine through June thirtieth, one thousand nine

8 hundred forty; and the "fiscal year one thousand nine  
9 hundred forty-one" shall mean the period from July first,  
10 one thousand nine hundred forty through June thirtieth,  
11 one thousand nine hundred forty-one.

12 "From collections" shall mean that part of the total  
13 appropriation which must be collected by the spending unit  
14 to be available for expenditure. If the authorized amount of  
15 collections is not collected, the total appropriation for the  
16 spending unit shall be reduced automatically by the amount  
17 of the deficiency in the collection. If the amount collected  
18 exceeds the amount designated "from collections" the excess  
19 shall be set aside in a special surplus fund and may be ex-  
20 pended for the purpose of the spending unit as provided by  
21 section thirty-two of Senate Bill number one hundred seven-  
22 teen, acts of the Legislature, regular session, one thousand  
23 nine hundred thirty-nine.

Sec. 3. *Classification of Appropriations.* An appropriation  
2 for:

3 "Personal services" shall be expended only for the payment  
4 of salaries, wages, fees, and other compensation for skill, work,  
5 or employment;

6 "Current expenses" shall be expended only for operating  
7 costs other than personal services or capital outlay;

8 "Buildings" shall include construction and alteration of  
9 structures and the improvement of lands and shall include  
10 shelter, support, storage, protection, or the improvement of a  
11 natural condition;

12 "Lands" shall be expended only for the purchase of land  
13 or interests in lands;

14 "Equipment" shall be expended only for things which have  
15 an appreciable and calculable period of usefulness in excess  
16 of one year;

17 "Repairs and alterations" shall include all expenditures for  
18 materials, supplies and labor used in repairing and altering  
19 buildings, grounds and equipment.

Sec. 4. *Method of Expenditure.* Money appropriated by  
2 this act, unless otherwise specifically directed, shall be appro-  
3 priated and expended according to the provisions of article  
4 three, chapter twelve of the code of one thousand nine hundred

5 thirty-one, or according to any law detailing a procedure  
6 specifically limiting that article.

Sec. 5. *Limitations on Expenditures.* The expenditure of  
2 money appropriated by this act shall be limited to the specific  
3 amount appropriated to each item. There shall be no transfer  
4 of amounts between items of the appropriation of the spend-  
5 ing unit without prior authorization by the board of public  
6 works, as provided by section thirty-one of Senate Bill number  
7 one hundred seventeen, acts of the Legislature, regular session,  
8 one thousand nine hundred thirty-nine.

Sec. 6. *Maximum Expenditures.* No authority or require-  
2 ment of law shall be interpreted as requiring or permitting  
3 an expenditure in excess of the appropriations set out in this  
4 act.

## Title 2. Appropriations.

### Section

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Section 1. "Governmental Appropriations." From the 2 state fund, general revenue, except as otherwise provided, there 3 is hereby appropriated conditionally upon the fulfillment of 4 the provisions set forth in Senate Bill number one hundred 5 seventeen, acts of the Legislature, regular session, one thou- 6 sand nine hundred thirty-nine, the following amounts, as 7 itemized, for expenditures during the fiscal years one thousand 8 nine hundred forty and one thousand nine hundred forty-one.

## LEGISLATIVE

## 1—Senate

## Acct. No. 101

	Fiscal Years	
	1939-40	1940-41
1 Salaries of members.....	\$ 17,000.00	\$ 16,000.00
2 Mileage of members.....	913.20	
3 Compensation and per diem of		
4 officers and attaches.....	44,512.00	
5 Contingent fund of the Senate.....	47,000.00	
6 To pay Charles Lively for editing,		
7 compiling and publishing the		

8	West Virginia Blue Book under	
9	the same provisions as to distri-	
10	bution as were adopted in the	
11	session of one thousand nine	
12	hundred twenty-one, including	
13	all expenses incurred in the em-	
14	ployment of contributors, prepa-	
15	ration of matter, clerical hire,	
16	stenographic services and proof	
17	reading, and for shipping	
18	charges in connection with the	
19	distribution of the book; which	
20	distribution shall include seven-	
21	ty-five copies each to members of	
22	the Legislature;	
23	For the fiscal year ending June	
24	thirty, one thousand nine hun-	
25	dred forty .....	10,000.00
26	For the fiscal year ending June	
27	thirty, one thousand nine hun-	
28	dred forty-one .....	8,000.00
29	The clerk of the Senate is author-	
30	ized to draw his warrants upon	
31	the Auditor, payable out of the	
32	contingent fund of the Senate,	
33	for any bills for supplies and	
34	services that may have been in-	
35	curred by the Senate and not	
36	included in the appropriation	
37	bill, and for bills for supplies	
38	and services incurred after ad-	
39	journalment, the requisition for	
40	same to be accompanied by bills	
41	to be filed with the auditor.	
42	To aid in the discharge of his legis-	
43	lative duties, the clerk may, be-	
44	ginning September fifteenth, one	
45	thousand nine hundred thirty-	
46	nine, expend for stenographic	
47	services a sum not exceeding	



48 eighteen hundred dollars per  
 49 annum, payable monthly from  
 50 the contingent fund of the  
 51 Senate.

*2—House of Delegates*

Acct. No. 102

1	Salaries of members.....	\$ 47,000.00	\$ 47,000.00
2	Mileage of members.....	2,706.60	
3	Speaker House of Delegates as pre-		
4	siding officer 60 days at \$2.00....	120.00	
5	Compensation of Clerk, 60 days....	1,200.00	
6	Compensation of Sergeant-at-		
7	Arms, 60 days.....	600.00	
8	Compensation of Doorkeeper, 60		
9	days .....	600.00	
10	Services preliminary to opening of		
11	session .....	727.00	
12	Attaches and other employees.....	72,710.00	
13	Resolutions No. 5, 9, 27.....	357.66	
14	Supplies and Postage.....	7,939.13	
15	Rose City Press.....	703.25	
16	M. P. Geene .....	640.00	
17	John Henry Williams.....	90.00	
18	George Duiguid .....	90.00	
19	R. S. Petit.....	80.00	
20	Contingent Fund .....	65,000.00	
21	The Clerk of the House of Dele-		
22	gates with the approval of the		
23	Speaker of the House, is author-		
24	ized to draw his requisition upon		
25	the Auditor, payable out of the		
26	contingent fund, for any bills		
27	for supplies and services that		
28	may have been incurred by the		
29	House of Delegates and not in-		
30	cluded in this appropriation bill,		
31	for bills for supplies and serv-		
32	ices incurred after adjournment,		
33	the requisition for same to be		

34 accompanied by a bill to be filed  
35 with the Auditor, but no pay-  
36 ment shall be made to attaches  
37 under this paragraph.  
38 For duties imposed by law and by  
39 the House of Delegates, includ-  
40 ing the salary allowed by law as  
41 keeper of the rolls, beginning  
42 March twelve, one thousand nine  
43 hundred thirty-nine, the Clerk  
44 of the House of Delegates shall  
45 be paid a monthly salary at the  
46 rate of five thousand dollars per  
47 annum, payable from the con-  
48 tingent fund of the House of  
49 Delegates, and the Clerk may  
50 employ a secretary at a salary of  
51 not to exceed eighteen hundred  
52 dollars per annum, payable  
53 monthly from the same fund.  
54 During sessions of the Legislature  
55 the Clerk of the House of Dele-  
56 gates shall keep his office open  
57 during such hours as the House  
58 may direct. When the Legisla-  
59 ture is not in session the office of  
60 the Clerk of the House of Dele-  
61 gates shall be kept open as other  
62 public offices in the capitol are  
63 kept open.

### 3—*Joint Expenses*

Acct. No. 103

1 To pay the cost of Legislative  
2 printing and stationery, the ap-  
3 propriation to be available for  
4 the year ending June thirty, one  
5 thousand nine hundred thirty-  
6 nine. If this work is not com-  
7 pleted prior to June thirty, one

8 thousand nine hundred thirty-  
 9 nine, then the appropriation  
 10 shall continue in full until com-  
 11 pleted .....\$ 90,000.00

## JUDICIAL

6—*Supreme Court of Appeals*

## Acct. No. 110

1	Salaries of Judges.....	\$ 50,000.00	\$ 50,000.00
2	Other Personal Services.....	41,930.00	41,930.00
3	Current Expenses .....	10,000.00	10,000.00
4	Publication of Reports of the		
5	Constitutional Convention of		
6	1861-62 .....	10,000.00	
7	Total .....	\$ 111,930.00	\$ 101,930.00

7—*Circuit Courts*

## Acct. No. 111

1	Salaries of Judges of the Circuit		
2	Courts .....	\$ 161,500.00	\$ 161,500.00
3	Current Expenses .....	22,000.00	22,000.00
4	Total .....	\$ 183,500.00	\$ 183,500.00

8—*Compensation of Special Judges*

## Acct. No. 113

1	To pay salaries of Special Judges		
2	Total .....	\$ 7,500.00	\$ 7,500.00

9—*State Law Library*

## Acct. No. 114

1	Personal Services including sal-		
2	aries of Librarian and assistants \$	5,600.00	\$ 5,600.00
3	Current Expenses .....	700.00	700.00
4	Equipment .....	5,000.00	5,000.00
5	Total .....	\$ 11,300.00	\$ 11,300.00

10—*Criminal Charges*

Acct. No. 119

1	Total .....	\$ 125,000.00	\$ 125,000.00
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## EXECUTIVE

120—*Governor's Office*

Acct. No. 120 .

1	Salary of Governor.....	\$ 8,000.00	\$ 8,000.00
2	Other Personal Services, in-		
3	cluding salaries of secre-		
4	taries, stenographers and assist-		
5	ants .....	15,000.00	15,000.00
6	Civil Contingent and Current Ex-		
7	penses .....	20,000.00	20,000.00
8	To be expended upon the order of		
9	the Governor. One hundred		
10	dollars annual dues to the Gov-		
11	ernors' Conference shall be in-		
12	cluded in this item.		
13	Emergency Fund .....	100,000.00	100,000.00
14	To be expended upon the order		
15	of the Governor, of which \$25,-		
16	000.00 may be expended each		
17	year for such research and tech-		
18	nical services as the Governor		
19	may require.		
20	If for any reason the financial		
21	cooperation of the United States		
22	Employment Service be with-		
23	drawn from the Employment		
24	Service Division of the Unem-		
25	ployment Compensation Depart-		
26	ment an amount not to exceed		
27	\$45,000 annually may be ex-		
28	pended in aid of the State Em-		
29	ployment Service if other funds		
30	be not available.		
31	Any unexpended balance remain-		
32	ing in the Emergency Fund at		

33	the close of the fiscal year 1939-		
34	40 is hereby reappropriated for		
35	expenditure during the fiscal		
36	year 1940-41		
37	Custodial .....	13,500.00	13,500.00
38	To be used for Current General		
39	Expenses including official		
40	functions, and any additional		
41	household expenses thereby in-		
42	curred.		
43	Total .....	\$ 156,500.00	\$ 156,500.00

122—*Pardon Attorney*

## Acct. No. 122

1	Personal Services, including salary		
2	of the Pardon Attorney and		
3	stenographer .....	\$ 5,400.00	\$ 5,400.00
4	Current Expenses .....	600.00	600.00
5	Total .....	\$ 6,000.00	\$ 6,000.00

123—*Parole and Probation Investigation and Supervision*

## Acct. No. 123

1	To pay expenses Parole and Pro-		
2	bation Investigation and Super-		
3	vision .....	\$ 50,000.00	\$ 50,000.00

## FISCAL

150—*Auditor's Office*

## Acct. No. 150

1	Salary of State Auditor .....	\$ 5,000.00	\$ 5,000.00
2	Other Personal Services .....	75,700.00	75,700.00
3	Current Expenses .....	12,680.00	12,680.00
4	Equipment .....	4,435.00	5,950.00
5	Total .....	\$ 97,815.00	\$ 99,330.00
6	From Collections .....	8,000.00	8,000.00

151—*Auditor's Office—Land Department*

Acct. No. 704

## TO BE PAID FROM THE GENERAL SCHOOL FUND:

1	Personal Services .....	\$	44,000.00	\$	44,000.00
2	Current Expenses .....		2,000.00		2,000.00
3	Equipment .....		500.00		500.00
4	Total .....	\$	46,500.00	\$	46,500.00
5	In addition to the total appropri-				
6	ation for the Auditor's Office,				
7	Land Department, there is here-				
8	by appropriated a sum sufficient				
9	to pay the costs of publication re-				
10	quired by section eight, article				
11	three, chapter thirty-seven, of				
12	the code of West Virginia, one				
13	thousand nine hundred thirty-				
14	one, as amended.				

16—*Treasurer's Office*

Acct. No. 160

1	Salary of State Treasurer .....	\$	5,000.00	\$	5,000.00
2	Other Personal Services .....		30,500.00		30,500.00
3	Current Expenses .....		4,500.00		6,000.00
4	Equipment .....		3,000.00		5,000.00
5	Total .....	\$	43,000.00	\$	46,500.00

17—*Sinking Fund Commission*

Acct. No. 170

1	Personal Services .....	\$	9,300.00	\$	9,300.00
2	Current Expenses .....		500.00		500.00
3	Total .....	\$	9,800.00	\$	9,800.00

180—*Tax Commissioner*

Acct. No. 180

1	Salary of Tax Commissioner .....	\$	6,000.00	\$	6,000.00
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2	Other Personal Services .....	255,540.00	255,540.00
3	Current Expenses .....	140,000.00	140,000.00
4	Equipment .....	7,500.00	7,500.00
5	Total .....	\$ 409,040.00	\$ 409,040.00

183—*Tax Commissioner—Gasoline Department*

## Acct. No. 671

## TO BE PAID FROM THE STATE ROAD FUND:

1	Personal Services .....	\$ 11,700.00	\$ 11,700.00
2	Current Expenses .....	6,132.00	6,132.00
3	Equipment .....	2,000.00	2,000.00
4	Total .....	\$ 19,832.00	\$ 19,832.00

19—*West Virginia Board of Control*

## Acct. No. 190

1	Salaries of the three Members of		
2	the Board of Control .....	\$ 15,000.00	\$ 15,000.00
3	Other Personal Services .....	23,500.00	23,500.00
4	Current Expenses .....	8,000.00	8,000.00
5	Equipment .....	900.00	900.00
6	Total .....	\$ 47,400.00	\$ 47,400.00

21—*Director of the Budget*

## Acct. No. 210

1	Personal Services, including salary		
2	of Director of the Budget .....	\$ 23,000.00	\$ 23,000.00
3	Current Expenses .....	1,800.00	3,500.00
4	Equipment .....	500.00	500.00
5	Total .....	\$ 25,300.00	\$ 27,000.00

## LEGAL

26—*Attorney General*

## Acct. No. 240

1	Salary of the Attorney General ....	\$ 5,000.00	\$ 5,000.00
2	Other Personal Services .....	37,500.00	37,500.00

3	Current Expenses .....	4,000.00	4,000.00
4	Equipment .....	1,250.00	1,250.00
5	Contingent .....	1,500.00	1,500.00

6	Total .....	\$ 49,250.00	\$ 49,250.00
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*27—Commission on Uniform State Laws*

Acct. No. 2456

1	Total .....	\$ 600.00	\$ 600.00
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INCORPORATING AND RECORDING

*29—Secretary of State*

Acct. No. 250

1	Salary of Secretary of State .....	\$ 5,000.00	\$ 5,000.00
2	Other Personal Services .....	15,547.00	15,547.00
3	Current Expenses .....	2,800.00	2,800.00
4	Equipment .....	75.00	75.00

5	Total .....	\$ 23,422.00	\$ 23,422.00
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CUSTODIAL AND SERVICE

*31—Capitol Building and Grounds*

Acct. No. 270

1	Personal Services .....	\$ 66,060.00	\$ 66,060.00
2	Current Expenses .....	33,900.00	33,900.00
3	Repairs and Alterations .....	10,000.00	10,000.00
4	Equipment .....	1,000.00	1,000.00
5	To pay estimated paving cost to		
6	City of Charleston for executive		
7	mansion property facing Vir-		
8	ginia Street .....	780.00	

9	Total .....	\$ 111,740.00	\$ 110,960.00
---	-------------	---------------	---------------

*32—Central Mailing Office*

Acct. No. 280

1	Personal Services .....	\$ 8,240.00	\$ 8,240.00
2	Current Expenses .....	61,070.00	61,070.00



3	Equipment .....	200.00	200.00
4	Total .....	\$ 69,510.00	\$ 69,510.00

*33—Purchasing Department*

## Acct. No. 290

1	Salary of Director of Purchases....	\$ 6,000.00	\$ 6,000.00
2	Other Personal Services .....	32,000.00	32,000.00
3	Current Expenses .....	6,000.00	6,000.00
4	Equipment .....	500.00	500.00
5	Total .....	\$ 44,500.00	\$ 44,500.00
6	The revolving fund appropriated		
7	by Chapter 76, Acts of the Leg-		
8	islature, Regular Session, 1935,		
9	for printing, binding and sta-		
10	tionery is hereby reappropri-		
11	ated for the fiscal years 1939-		
12	40 and 1940-41.		

## EDUCATIONAL

*360—State Board of Education*

## Acct. No. 700

## TO BE PAID FROM THE GENERAL SCHOOL FUND:

1	Salaries of Members of the State		
2	Board of Education .....	\$ 4,800.00	\$ 4,800.00
3	Other Personal Services .....	7,000.00	7,000.00
4	Current Expenses .....	2,465.00	4,335.00
5	Equipment .....	300.00	300.00
6	Out-of-State Aid to Negroes .....	9,000.00	9,000.00
7	Total .....	\$ 23,565.00	\$ 25,435.00

*361—State Board of Education—Vocational Division*

## TO BE PAID FROM THE GENERAL SCHOOL FUND:

## Acct. No. 701

1	Personal Services .....	\$ 9,000.00	\$ 9,000.00
2	Current Expenses .....	5,800.00	5,800.00
3	Equipment .....	200.00	200.00

4	Vocational Aid .....	34,795.00	34,795.00
5	Total .....	\$ 49,795.00	\$ 49,795.00

362—*State Board of Education—Rehabilitation Division*

Acct. No. 702

## TO BE PAID FROM THE GENERAL SCHOOL FUND:

1	Personal Services .....	\$ 8,530.00	\$ 8,530.00
2	Current Expenses .....	17,545.00	17,545.00
3	Total .....	\$ 26,075.00	\$ 26,075.00

370—*Department of Education*

Acct. No. 703

## TO BE PAID FROM THE GENERAL SCHOOL FUND:

1	Salary of Superintendent of Free		
2	Schools .....	\$ 5,000.00	\$ 5,000.00
3	Other Personal Services .....	59,500.00	59,500.00
4	Current Expenses .....	42,765.00	42,765.00
5	Equipment .....	1,235.00	1,235.00
6	Salaries of County Superintend-		
7	ents .....	62,000.00	62,000.00
8	Total .....	\$ 170,500.00	\$ 170,500.00

9 Out of the above appropriation  
 10 an amount not to exceed  
 11 \$15,000.00 each year from the  
 12 Personal Service Account and  
 13 \$5,000.00 each year from the  
 14 Current Expense Account shall  
 15 be available for expenditure at  
 16 the direction of the Board of  
 17 School Finance in the perform-  
 18 ance of its duties as prescribed  
 19 by law.

371—*Department of Education*

Acct. No. 6407

1	State Aid to supplement the		
2	General School Fund .....	\$13,300,000.00	\$13,300,000.00

- 3 To be transferred to the General  
 4 School Fund upon the requisition of the Governor.  
 5  
 6 To be distributed pursuant to  
 7 Chapter 18, Article 9, Section 6  
 8 of the Code as last amended  
 9 by H. B. No. 1, Acts 1939  
 10 Legislature, except that not  
 11 more than \$100,000.00 each  
 12 year may upon recommendation of the Board of School  
 13 Finance be allocated and disbursed by the Board of Public  
 14 Works to aid marginal  
 15 counties in adjusting their operations to the new State Aid  
 16 Plan.  
 17  
 18  
 19

372—*Department of Education*

Acct. No. 6408

- 1 Textbooks for Schools (to be expended in the manner to be provided by law) .....\$ 150,000.00 \$ 150,000.00

373—*Teachers' Retirement*

Acct. No. 6409

- 1 To pay retired teachers as provided in House Bill 200, Acts of the Legislature, Regular Session, 1939 ..... 50,000.00 50,000.00

39—*West Virginia University*

Acct. No. 300

- |  |                 |                 |
|--|-----------------|-----------------|
| 1 Personal Services, including salary of President ..... | \$ 825,800.00   | \$ 825,800.00   |
| 2 Current Expenses .....                                 | 121,600.00      | 121,600.00      |
| 3 Repairs and Alterations .....                          | 33,000.00       | 33,000.00       |
| 4 Equipment .....  | 61,375.00       | 61,375.00       |
| 5  |                 |                 |
| 6 Total .....  | \$ 1,041,775.00 | \$ 1,041,775.00 |
| 7 From Collections .....                                 | 275,000.00      | 275,000.00      |

390—*West Virginia University Mining and Industrial Extension*

## Acct. No. 301

1 Personal Services .....	\$ 26,300.00	\$ 26,300.00
2 Current Expenses .....	8,700.00	8,700.00
3 Repairs and Alterations .....	170.00	170.00
4 Equipment .....	150.00	150.00
5 Total .....	\$ 35,320.00	\$ 35,320.00

391—*West Virginia University Agricultural, Horticultural and  
Home Economics Extension*

## Acct. No. 302

1 Personal Services .....	\$ 44,525.00	\$ 44,525.00
2 Current Expenses .....	4,910.00	4,910.00
3 Repairs and Alterations .....	450.00	450.00
4 Equipment .....	760.00	760.00
5 Total .....	\$ 50,645.00	\$ 50,645.00

392—*West Virginia University—Jackson's Mill—4-H Camp*

## Acct. No. 303

1 Personal Services .....	\$ 11,575.00	\$ 11,575.00
2 Current Expenses .....	7,560.00	7,560.00
3 Repairs and Alterations .....	3,950.00	3,950.00
4 Equipment .....	2,915.00	2,915.00
5 Total .....	\$ 26,000.00	\$ 26,000.00

393—*West Virginia University—Cooperation with Oglebay  
Institute*

## Acct. No. 304

1 Personal Services .....	\$ 2,300.00	\$ 2,300.00
2 Current Expenses .....	430.00	430.00
3 Total .....	\$ 2,730.00	\$ 2,730.00

394—*West Virginia University Extension Division*

## Acct. No. 305

1	To pay salaries and traveling ex-			
2	penses of County Agricultural			
3	agents, .			
4	Total .....	\$	60,000.00	\$ 60,000.00

395—*West Virginia University Agricultural Experiment Station*

## Acct. No. 310

1	Personal Services .....	\$	33,300.00	\$ 33,300.00
2	Current Expenses .....		6,080.00	6,080.00
3	Repairs and Alterations .....		1,600.00	1,600.00
4	Equipment .....		1,130.00	1,130.00
5	Total .....	\$	42,110.00	\$ 42,110.00

396—*West Virginia University Experiment Farm—Kearneysville*

## Acct. No. 311

1	Current Expenses .....	\$	860.00	\$ 860.00
2	Equipment .....		335.00	335.00
3	Total .....	\$	1,195.00	\$ 1,195.00

397—*West Virginia University—Reymann Memorial Farm*

## Acct. No. 312

1	Current Expenses .....	\$	860.00	\$ 860.00
2	Equipment .....		335.00	335.00
3	To build barn .....		13,000.00	
4	Total .....	\$	14,195.00	\$ 1,195.00

398—*West Virginia University—Inwood Apple Packing Plant*

## Acct. No. 313

1	For the maintenance and oper-			
2	ation of Inwood Apple Packing			
3	Plant,			
4	Total .....	\$	3,900.00	\$ 3,900.00

**400—Potomac State School of West Virginia University****Acct. No. 315**

1	Personal Services, including salary			
2	of President .....	\$	49,778.00	\$ 49,778.00
3	Current Expenses .....		8,821.00	8,821.00
4	Repairs and Alterations .....		2,000.00	2,000.00
5	Equipment .....		1,000.00	1,000.00
6	Total .....	\$	61,599.00	\$ 61,599.00
7	From Collections .....		13,000.00	13,000.00

**401—Marshall College****Acct. No. 320**

1	Personal Services, including salary			
2	of President .....	\$	273,000.00	\$ 273,000.00
3	Current Expenses .....		30,000.00	30,000.00
4	Repairs and Alterations .....		10,000.00	10,000.00
5	Equipment .....		10,000.00	10,000.00
6	Buildings (To pay Fairfield Sta-			
7	dium Corporation) .....		5,000.00	5,000.00
8	To replace income loss because			
9	of 1937 flood applicable to in-			
10	terest and bonds on Marshall			
11	College Dormitories, P.W.A.			
12	Docket, W. Va. 1009-R.....		6,280.00	
13	Total .....	\$	334,280.00	\$ 328,000.00
14	From Collections .....		125,000.00	125,000.00

**402—Fairmont State Teachers College****Acct. No. 321**

1	Personal Services, including salary			
2	of President .....	\$	136,000.00	\$ 136,000.00
3	Current Expenses .....		13,000.00	13,000.00
4	Repairs and Alterations .....		3,000.00	3,000.00
5	Equipment .....		3,000.00	3,000.00
6	Total .....	\$	155,000.00	\$ 155,000.00
7	From Collections .....		50,000.00	50,000.00

403—*Glenville State Teachers College*

## Acct. No. 322

1	Personal Services, including salary			
2	of President .....	\$	70,000.00	\$ 70,000.00
3	Current Expenses .....		10,000.00	10,000.00
4	Repairs and Alterations .....		3,000.00	3,000.00
5	Equipment .....		3,000.00	3,000.00
6	Total .....	\$	86,000.00	\$ 86,000.00
7	From Collections .....		27,500.00	27,500.00

404—*West Liberty State Teachers College*

## Acct. No. 323

1	Personal Services, including salary			
2	of President .....	\$	60,000.00	\$ 60,000.00
3	Current Expenses .....		8,000.00	8,000.00
4	Repairs and Alterations .....		3,500.00	2,000.00
5	Equipment .....		2,000.00	2,000.00
6	Total .....	\$	73,500.00	\$ 72,000.00
7	From Collections .....		19,000.00	19,000.00

405—*Shepherd State Teachers College*

## Acct. No. 324

1	Personal Services, including salary			
2	of President .....	\$	57,000.00	\$ 57,000.00
3	Current Expenses .....		9,000.00	9,000.00
4	Repairs and Alterations .....		3,000.00	3,000.00
5	Equipment .....		3,000.00	2,000.00
6	Total .....	\$	72,000.00	\$ 71,000.00
7	From Collections .....		19,000.00	19,000.00

406—*Concord State Teachers College*

## Acct. No. 325

1	Personal Services, including salary			
2	of President .....	\$	95,000.00	\$ 95,000.00
3	Current Expenses .....		14,000.00	14,000.00
4	Repairs and Alterations .....		2,000.00	2,000.00

5	Equipment .....	3,000.00	3,000.00
6	New Dormitory Equipment, P. W.		
7	A. Docket W. Va. 1214-F .....	7,500.00	
8	Total .....	\$ 121,500.00	\$ 114,000.00
9	From Collections .....	42,500.00	42,500.00

407—*New River State College*

## Acct. No. 327

1	Personal Services, including salary		
2	of President .....	\$ 84,500.00	\$ 84,500.00
3	Current Expenses .....	10,000.00	10,000.00
4	Repairs and Alterations .....	3,000.00	3,000.00
5	Equipment .....	10,000.00	10,000.00
6	New Dormitory Equipment, P. W.		
7	A. Docket W. Va. 1228-F .....	10,900.00	
8	Total .....	118,400.00	107,500.00
9	From Collections .....	26,500.00	26,500.00

408—*West Virginia State College*

## Acct. No. 328

1	Personal Services, including salary		
2	of President .....	\$ 142,500.00	\$ 142,500.00
3	Current Expenses .....	38,000.00	38,000.00
4	Repairs and Alterations .....	13,000.00	13,000.00
5	Equipment .....	10,000.00	10,000.00
6	Extension Service .....	15,000.00	15,000.00
7	Total .....	\$ 218,500.00	\$ 218,500.00
8	From Collections .....	48,500.00	48,500.00

408-A—*4-H Camp for Colored Boys and Girls*

## Acct. No. 3289

1	For maintenance and operation of		
2	4-H Camp,		
3	Total .....	\$ 4,000.00	\$ 6,000.00



## 409—Bluefield State Teachers College

## Acct. No. 329

1	Personal Services, including salary			
2	of President .....	\$	56,500.00	\$ 56,500.00
3	Current Expenses .....		10,000.00	10,000.00
4	Repairs and Alterations .....		5,000.00	5,000.00
5	Equipment .....		3,500.00	3,500.00
6	New Dormitory Equipment .....		14,000.00	
7	Library Equipment (Replacing			
8	furniture and fixtures destroyed			
9	by fire) .....		4,528.00	
10	Total .....	\$	93,528.00	\$ 75,000.00
11	From Collections .....		13,500.00	13,500.00

## 410—Storer College

## Acct. No. 330

1	Total .....	\$	10,000.00	\$ 10,000.00
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## 420—West Virginia Schools for the Deaf and Blind

## Acct. No. 333

1	Personal Services, including salary			
2	of Superintendent .....	\$	102,000.00	\$ 102,000.00
3	Current Expenses .....		53,500.00	53,500.00
4	Repairs and Alterations .....		4,000.00	4,000.00
5	Equipment .....		3,000.00	3,000.00
6	Buildings (To cooperate with			
7	Town of Romney in the con-			
8	struction of a sanitary sewer			
9	system) .....		5,000.00	
10	Total .....	\$	167,500.00	\$ 162,500.00

## 421—West Virginia Schools for the Colored Deaf and Blind

## Acct. No. 334

1	Personal Services, including salary			
2	of Superintendent .....	\$	15,100.00	\$ 15,100.00
3	Current Expenses .....		11,000.00	11,000.00
4	Repairs and Alterations .....		1,000.00	1,000.00

5	Equipment .....	1,000.00		1,000.00
6	Total .....	\$ 28,100.00	\$	28,100.00

44—*Department of Archives and History*

## Acct. No. 340

1	Personal Services, including salary			
2	of State Archivist and Historian..\$	10,800.00	\$	10,800.00
3	Current Expenses .....	2,740.00		3,140.00
4	Equipment .....	1,250.00		1,250.00
5	Total .....	\$ 14,790.00	\$	15,190.00

45—*West Virginia Library Commission*

## Acct. No. 350

1	To be expended subject to the			
2	approval of the Board of Pub-			
3	lic Works.			
4	Total .....	\$ 2,500.00	\$	2,500.00

## CHARITIES AND CORRECTION

460—*West Virginia Industrial School for Boys*

## Acct. No. 370

1	Personal Services, including salary			
2	of Superintendent .....	\$ 45,690.00	\$	45,690.00
3	Current Expenses .....	45,000.00		45,000.00
4	Repairs and Alterations .....	5,000.00		5,000.00
5	Equipment .....	3,000.00		3,000.00
6	Total .....	\$ 98,690.00	\$	98,690.00
7	From Collections .....	20,000.00		20,000.00
8	Out of the appropriation for Per-			
9	sonal Services, \$600.00 shall be			
10	paid each year in monthly in-			
11	stallments to each of the follow-			
12	ing persons:			
13	Lelia Arnett, widow of U. G. Ar-			
14	nett, killed by an inmate while			
15	on duty.			
16	George A. Barnard, employee, per-			

- 17 manently disabled by an inmate  
18 while on duty.

461—*West Virginia Industrial School for Colored Boys*

Acct. No. 371

1	Personal Services, including salary			
2	of Superintendent .....	\$	9,290.00	\$ 9,290.00
3	Current Expenses .....		14,000.00	14,000.00
4	Repairs and Alterations .....		1,500.00	1,500.00
5	Equipment .....		500.00	500.00
6	Total .....	\$	25,290.00	\$ 25,290.00
7	From Collections .....		4,800.00	4,800.00

462—*West Virginia Industrial Home for Girls*

Acct. No. 372

1	Personal Services, including salary			
2	of Superintendent .....	\$	23,500.00	\$ 23,500.00
3	Current Expenses .....		30,500.00	30,500.00
4	Repairs and Alterations .....		3,000.00	3,000.00
5	Equipment .....		2,000.00	2,000.00
6	Total .....	\$	59,000.00	\$ 59,000.00
7	From Collections .....		12,000.00	12,000.00

463—*West Virginia Industrial Home for Colored Girls*

Acct. No. 373

1	Personal Services, including salary			
2	of Superintendent .....	\$	4,500.00	\$ 4,500.00
3	Current Expenses .....		6,000.00	6,000.00
4	Repairs and Alterations .....		500.00	500.00
5	Equipment .....		500.00	500.00
6	Total .....	\$	11,500.00	\$ 11,500.00
7	From Collections .....		1,500.00	1,500.00

47—*West Virginia Penitentiary*

Acct. No. 375

1	Personal Services, including salary			
2	of Warden .....	\$	156,760.00	\$ 156,760.00
3	Current Expenses .....		192,000.00	192,000.00

4	Repairs and Alterations .....	10,000.00	10,000.00
5	Equipment .....	15,000.00	10,000.00
6	Buildings (New Walls and Cell		
7	Blocks) .....	14,520.00	14,520.00
8	Maintenance and operation of		
9	Medium Security Prison .....		50,000.00
10	Total .....	\$ 388,280.00	\$ 433,280.00
11	Out of the appropriation for		
12	Personal Services, \$600.00 shall		
13	be paid each year in monthly in-		
14	stallments to Ray Estep, perma-		
15	nently injured while employed		
16	in the Penitentiary coal mine.		

## 49—West Virginia Children's Home

## Acct. No. 380

1	Personal Services, including salary		
2	of Superintendent .....	\$ 10,220.00	\$ 10,220.00
3	Current Expenses .....	13,500.00	13,500.00
4	Repairs and Alterations .....	1,000.00	1,000.00
5	Equipment .....	1,000.00	1,000.00
6	To pay City of Elkins for paving	747.25	
7	Total .....	\$ 26,467.25	\$ 25,720.00
8	From Collections .....	3,750.00	3,750.00

## 491—West Virginia Colored Children's Home

## Acct. No. 381

1	Personal Services, including salary		
2	of Superintendent .....	\$ 5,200.00	\$ 5,200.00
3	Current Expenses .....	8,000.00	8,000.00
4	Repairs and Alterations .....	1,000.00	1,000.00
5	Equipment .....	500.00	500.00
6	Total .....	\$ 14,700.00	\$ 14,700.00
7	From Collections .....	2,700.00	2,700.00

**492—West Virginia Home for Aged and Infirm Colored  
Men and Women**

**Acct. No. 382**

1	Personal Services, including salary		
2	of Superintendent .....	\$ 5,940.00	\$ 5,940.00
3	Current Expenses .....	11,000.00	11,000.00
4	Repairs and Alterations .....	500.00	500.00
5	Equipment .....	200.00	200.00
6	Total .....	\$ 17,640.00	\$ 17,640.00
7	From Collections .....	10,500.00	10,500.00

**493—West Virginia Training School**

**Acct. No. 383**

1	Personal Services, including salary		
2	of Superintendent .....	\$ 14,140.00	\$ 14,140.00
3	Current Expenses .....	15,000.00	15,000.00
4	Repairs and Alterations .....	2,000.00	2,000.00
5	Equipment .....	1,000.00	1,000.00
6	Total .....	\$ 32,140.00	\$ 32,140.00
7	From Collections .....	4,000.00	4,000.00

**HEALTH AND WELFARE**

**520—State Health Department and Public Health Council**

**Acct. No. 400**

1	Salary of Commissioner .....	\$ 5,000.00	\$ 5,000.00
2	Other Personal Services .....	110,400.00	110,400.00
3	Current Expenses .....	39,000.00	39,000.00
4	Equipment .....	1,000.00	1,000.00
5	Total .....	\$ 155,400.00	\$ 155,400.00
6	From Collections .....	15,000.00	15,000.00

**521—State Water Commission**

**Acct. No. 401**

1	For current operating expenses,		
2	Total .....	\$ 4,000.00	\$ 4,000.00

522—*State Committee of Barbers and Beauticians*

## Acct. No. 402

1	Personal Services, including sal-			
2	ary of Director .....	\$	14,900.00	\$ 14,900.00
3	Current Expenses .....		13,000.00	13,000.00
4	Total .....	\$	27,900.00	\$ 27,900.00
5	From Collections .....		27,900.00	27,900.00

530—*Department of Public Assistance*

## Acct. No. 641

1	Public Assistance Grants and the			
2	cost of administration thereof:			
3	(Federal Program for Old-age			
4	Assistance, Aid to the Blind,			
5	and Aid to Dependent Chil-			
6	dren) .....	\$	3,150,000.00	\$ 3,150,000.00
7	General Relief Grants and other			
8	provisions of the Public Welfare			
9	Law of 1936, the cost of admin-			
10	istration thereof and the main-			
11	tenance of Camps .....	\$	3,100,000.00	\$ 2,800,000.00
12	Children of World War Veterans..		1,800.00	1,800.00
13	Total .....	\$	6,251,800.00	\$ 5,951,800.00
14	The unexpended balance, if any			
15	remaining in the appropriation			
16	for this department as of June			
17	30th, 1939, is hereby re-appro-			
18	priated for expenditure in the			
19	fiscal year 1939-40. Upon re-			
20	quest and recommendation of			
21	the State Director and State			
22	Advisory Board, the Board			
23	of Public Works may make			
24	available for expenditure any			
25	amount of this appropriation			
26	at any time during the			
27	biennium as the need may arise.			

531—*Bureau of Negro Welfare and Statistics*

## Acct. No. 403

1	Salary of Director .....	\$	3,600.00	\$	3,600.00
2	Other Personal Services .....		3,000.00		3,000.00
3	Current Expenses .....		1,500.00		1,500.00
4	Equipment .....		200.00		200.00
5	Total .....	\$	8,300.00	\$	8,300.00

540—*Weston State Hospital*

## Acct. No. 420

1	Personal Services, including sal-				
2	ary of Superintendent .....	\$	120,000.00	\$	120,000.00
3	Current Expenses .....		135,000.00		135,000.00
4	Repairs and Alterations .....		20,000.00		20,000.00
5	Equipment .....		6,000.00		6,000.00
6	To reimburse the West Virginia				
7	Water Company for moneys ad-				
8	vanced for the construction of				
9	a sanitary sewer .....		3,000.00		
10	Total .....	\$	284,000.00	\$	281,000.00
11	From Collections .....		23,000.00.		23,000.00

541—*Spencer State Hospital*

## Acct. No. 421

1	Personal Services, including sal-				
2	ary of Superintendent .....	\$	60,000.00	\$	60,000.00
3	Current Expenses .....		78,000.00		78,000.00
4	Repairs and Alterations .....		6,000.00		6,000.00
5	Equipment .....		4,000.00		4,000.00
6	To pay Martha Burdette, widow of				
7	J. M. Burdette who died on May				
8	3, 1937, as result of injuries re-				
9	ceived while performing his du-				
10	ties as a regular employee of the				
11	State, to be available for pay-				
12	ment during the fiscal year				

13	1938-1939 .....	\$	500.00		
14	Total .....	\$	148,500.00	\$	148,000.00
15	From Collections .....		21,200.00		21,200.00
16	Out of the appropriations for Per-				
17	sonal Services, \$360.00 shall be				
18	paid each year, in monthly in-				
19	stallments to Martha Burdette,				
20	widow of J. M. Burdette, who				
21	died as a result of injuries re-				
22	ceived while performing his du-				
23	ties as a regular employee of				
24	the State.				

542—*Huntington State Hospital*

## Acct. No. 422

1	Personal Services, including sal-				
2	ary of Superintendent .....	\$	59,800.00	\$	59,800.00
3	Current Expenses .....		90,000.00		90,000.00
4	Repairs and Alterations .....		7,000.00		7,000.00
5	Equipment .....		13,000.00		4,000.00
6	Total .....	\$	169,800.00	\$	160,800.00
7	From Collections .....		57,730.00		57,730.00

543—*Lakin State Hospital*

## Acct. No. 423

1	Personal Services, including sal-				
2	ary of Superintendent .....	\$	27,000.00	\$	27,000.00
3	Current Expenses .....		37,000.00		37,000.00
4	Repairs and Alterations .....		3,000.00		3,000.00
5	Equipment .....		3,000.00		3,000.00
6	Total .....	\$	70,000.00	\$	70,000.00
7	From Collections .....		10,000.00		10,000.00

544—*McKendree Emergency Hospital*

## Acct. No. 424

1	Personal Services, including sal-				
2	ary of Superintendent .....	\$	19,190.00	\$	19,190.00



3	Current Expenses .....	21,660.00	21,660.00
4	Repairs and Alterations.....	2,000.00	2,000.00
5	Equipment .....	2,000.00	2,000.00
6	Total .....	\$ 44,850.00	\$ 44,850.00
7	From Collections .....	22,000.00	22,000.00

## 545—Fairmont Emergency Hospital

## Acct. No. 425

1	Personal Services, including sal-		
2	ary of Superintendent .....	\$ 18,626.00	\$ 18,626.00
3	Current Expenses .....	26,075.00	26,075.00
4	Repairs and Alterations .....	1,500.00	1,500.00
5	Equipment .....	2,000.00	2,000.00
6	Total .....	\$ 48,201.00	\$ 48,201.00
7	From Collections .....	20,000.00	20,000.00

## 546—Welch Emergency Hospital

## Acct. No. 426

1	Personal Services, including sal-		
2	ary of Superintendent .....	\$ 23,230.00	\$ 23,230.00
3	Current Expenses .....	21,095.00	21,095.00
4	Repairs and Alterations .....	2,000.00	2,000.00
5	Equipment .....	2,000.00	2,000.00
6	Total .....	\$ 48,325.00	\$ 48,325.00
7	From Collections .....	24,000.00	24,000.00

## 548—Hopemont Sanitarium

## Acct. No. 430

1	Personal Services, including sal-		
2	ary of Superintendent .....	\$ 138,832.00	\$ 138,832.00
3	Current Expenses .....	170,000.00	170,000.00
4	Repairs and Alterations .....	7,500.00	7,500.00
5	Equipment .....	5,000.00	5,000.00
6	Total .....	\$ 321,332.00	\$ 321,332.00
7	From Collections .....	150,000.00	150,000.00

549—*Pinecrest Sanitarium*

## Acct. No. 431

1	Personal Services, including sal-		
2	ary of Superintendent .....	\$ 134,500.00	\$ 140,500.00
3	Current Expenses .....	170,360.00	182,360.00
4	Repairs and Alterations .....	5,500.00	5,500.00
5	Equipment .....	11,000.00	6,000.00
6	Total .....	\$ 321,360.00	\$ 334,360.00
7	From Collections .....	150,000.00	166,500.00

550—*Denmar Sanitarium*

## Acct. No. 432

1	Personal Services, including sal-		
2	ary of Superintendent .....	\$ 29,400.00	\$ 29,400.00
3	Current Expenses .....	37,500.00	37,500.00
4	Repairs and Alterations .....	2,500.00	2,500.00
5	Equipment .....	3,000.00	3,000.00
6	Total .....	\$ 72,400.00	\$ 72,400.00
7	From Collections .....	29,000.00	29,000.00

551—*Tuberculosis Field Clinics*

## Acct. No. 435

1	Total .....	\$ 10,000.00	\$ 10,000.00
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553—*Berkeley Springs Sanitarium*

## Acct. No. 436

1	Personal Services, including sal-		
2	ary of Superintendent .....	\$ 4,500.00	\$ 4,500.00
3	Current Expenses .....	3,000.00	3,000.00
4	Repairs and Alterations .....	1,000.00	1,000.00
5	Equipment .....	500.00	500.00
6	Total .....	\$ 9,000.00	\$ 9,000.00
7	From Collections .....	5,000.00	5,000.00

## BUSINESS AND INDUSTRIAL RELATIONS

57—*Bureau of Labor and Department of Weights & Measures*

## Acct. No. 450

1	Salary of Commissioner .....	\$ 4,000.00	\$ 4,000.00
2	Other Personal Services .....	27,340.00	27,340.00
3	Current Expenses .....	16,615.00	16,615.00
4	Equipment .....	500.00	500.00
5	Total .....	\$ 48,455.00	\$ 48,455.00

58—*State Unemployment Compensation Commission—  
Reemployment Division*

## Acct. No. 6412

1	Total .....	\$ 45,000.00	\$ 45,000.00
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59—*Department of Mines*

## Acct. No. 460

1	Salary of Chief .....	\$ 6,000.00	\$ 6,000.00
2	Other Personal Services .....	156,250.00	156,250.00
3	Current Expenses .....	65,950.00	65,950.00
4	Repairs and Alterations .....	8,500.00	8,500.00
5	Equipment .....	10,000.00	10,000.00
6	For printing and issuing Miners'		
7	Certificates as provided in Senate		
8	Bill 45, Acts of the Legislature,		
9	Regular Session, 1939 .....	7,500.00	
10	Total .....	\$ 254,200.00	\$ 246,700.00

600—*Public Service Commission*

## Acct. No. 470

1	Salaries of three Members of the		
2	Public Service Commission.		
3	Total .....	\$ 17,000.00	\$ 17,000.00

601—*Public Service Commission*

## Acct. No. 6617

1	Personal Services .....	\$ 196,000.00	\$ 196,000.00
2	Current Expenses .....	30,000.00	30,000.00

3	Equipment .....	4,000.00	4,000.00
4	Total .....	\$ 230,000.00	\$ 230,000.00
5	The total amount of this appro-		
6	priation shall be paid from		
7	Special Revenue Fund out of		
8	collections for special license		
9	fees from public service corpor-		
10	ations, as provided by law.		
11	Out of the above appropriation,		
12	not more than \$800.00 may be		
13	expended annually for the main-		
14	tenance of the office of the Gen-		
15	eral Solicitor of the National		
16	Association of Railroads and		
17	Utilities Commissioners, and for		
18	representation in matters be-		
19	fore the Interstate Commission		
20	and other Federal Depart-		
21	ments, at Washington, D. C.		
22	Out of the above appropriation,		
23	\$1,800.00 may be expended an-		
24	nually to cooperate with the		
25	U. S. Geological Survey in		
26	stream flow measurement.		

## 602—Public Service Commission—Motor Carrier Division

Acct. No. 6624

- 1 All special license fees or other
- 2 receipts collected for or by the
- 3 Public Service Commission pur-
- 4 suant to and in the exercise of
- 5 regulatory authority over motor
- 6 vehicle carriers, to be paid into
- 7 the special fund designated
- 8 "Public Service Commission
- 9 Motor Carrier Fund," as au-
- 10 thorized and provided by law,
- 11 are hereby appropriated for the
- 12 purpose of paying the expenses

13 of the Commission, salaries of  
 14 the commissioners and the sal-  
 15 aries, compensation, costs and  
 16 expenses of its employees in ad-  
 17 ministering such law, and for  
 18 the expenditures by the Public  
 19 Service Commission for the ad-  
 20 ministration of such regulation,  
 21 as authorized and provided by  
 22 law.

### 61—*Department of Banking*

Acct. No. 480

1 Salary of Commissioner .....	\$ 6,000.00	\$ 6,000.00
2 Other Personal Services .....	19,450.00	19,450.00
3 Current Expenses .....	19,625.00	19,625.00
4 Equipment .....	1,000.00	1,000.00
5 Total .....	\$ 46,075.00	\$ 46,075.00
6 From Collections .....	5,000.00	5,000.00

### 63—*Compensation Commission*

Acct. No. 900

#### TO BE PAID FROM THE COMPENSATION FUND:

1 Salary of Commissioner .....	\$ 5,000.00	\$ 5,083.00
2 Other Personal Services .....	208,540.00	208,540.00
3 Current Expenses .....	90,150.00	90,150.00
4 Repairs and Alterations .....	1,650.00	1,650.00
5 Equipment .....	10,000.00	10,000.00
6 Total .....	\$ 315,340.00	\$ 315,423.00

7 There is hereby authorized to be  
 8 paid out of the appropriation  
 9 for Current Expenses the  
 10 amount necessary for the  
 11 premiums on bonds given by the  
 12 State Treasurer and bond  
 13 custodian for the protection of  
 14 the Compensation Fund.

63a—*Workmen's Compensation Commission: Silicosis*

Acct. No. 901

## TO BE PAID FROM THE WORKMEN'S COMPENSATION SILICOSIS FUND:

1 To administer the Workmen's			
2 Compensation Silicosis Fund as			
3 provided in Chapter 79, Acts			
4 of the regular session, 1935			
5 Legislature, and to pay prem-			
6 ium on bond of the state			
7 treasurer as custodian of the			
8 fund.			
9 Total .....	\$ 35,000.00	\$	35,000.00

64—*West Virginia Liquor Control Commission*

Acct. No. 6676

1 Salaries of three Members of the			
2 Commission .....	\$ 18,000.00	\$	18,000.00
3 Other Personal Services .....	290,000.00		290,000.00
4 Current Expenses .....	55,000.00		55,000.00
5 Total .....	\$ 363,000.00	\$	363,000.00

6 The total amount of this appro-  
 7 priation shall be paid from the  
 8 Special Revenue Fund out of  
 9 liquor revenues.

10 The above appropriation does not  
 11 include the salaries of store  
 12 personnel, store operating ex-  
 13 penses or equipment, purchase  
 14 and transportation of liquor, or  
 15 equipment for administration  
 16 offices.

17 There is hereby appropriated from  
 18 liquor revenues, in addition to  
 19 the above appropriation, the  
 20 necessary amounts to pay salar-  
 21 ies of store personnel, store op-  
 22 erating expenses, purchase and

- 23 transportation of liquor, and  
 24 purchase of administration  
 25 equipment.

65—*Racing Commission*

Acct. No. 6082

1	Total .....	\$ 15,000.00	\$ 15,000.00
2	From Collections .....	15,000.00	15,000.00

650—*Participation in New York World Fair*

Acct. No. 4726

1	Total .....	\$ 20,000.00	\$ 20,000.00
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651—*Commission on Interstate Cooperation*

Acct. No. 4727

1	Total .....	\$ 3,500.00	\$ 3,500.00
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652—*Bureau of Aeronautics*

Acct. No. 6086

1	Total .....	\$ 15,000.00	\$ 15,000.00
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653—*Advertising*

Acct. No. 4728

1	To be expended in accordance with		
2	the provisions of Senate Bill No.		
3	20, Acts of the Legislature,		
4	Regular Session, 1939 .....	25,000.00	25,000.00

## HIGHWAYS

670—*State Road Commission—General Administration and Engineering*

Acct. No. 670

## TO BE PAID FROM THE STATE ROAD FUND:

1	Salary of Commissioner .....	\$ 6,000.00	\$ 6,000.00
2	Other Personal Services .....	444,000.00	444,000.00
3	Current Expenses .....	55,000.00	55,000.00

4	Equipment .....	34,000.00	10,000.00
5	Materials and Supplies .....	125,000.00	125,000.00
6	Total .....	\$ 664,000.00	\$ 640,000.00
7	In addition to the foregoing ap-		
8	propriations and any other ap-		
9	propriations or claims, as au-		
10	thorized by this act to be paid		
11	out of state road fund, the bal-		
12	ance or residue of the annual		
13	receipts of the state road fund		
14	are hereby appropriated for the		
15	payment of interest on and		
16	principal of outstanding road		
17	bonds, for maintenance and		
18	construction and reconstruc-		
19	tion of state roads, in ac-		
20	cordance with the provisions		
21	of article three, chapter seven-		
22	teen of the code of West Vir-		
23	ginia, one thousand nine hun-		
24	dred and thirt y - o n e, as		
25	amended.		

672—*State Road Commission*

Acct. No. 6406

## TO BE PAID FROM GENERAL REVENUE FUND:

1	To supplement the State Road		
2	Fund for maintenance, con-		
3	struction and reconstruction of		
4	Secondary Roads, including co-		
5	operation with the Works Prog-		
6	ress Administration or other		
7	substitute agency; to be trans-		
8	ferred to the Road Fund upon		
9	the requisition of the Governor.		
10	Total .....	\$ 1,900,000.00	\$ 1,900,000.00
11	This amount to be in addition to		
12	the revenue made available by		



- 13 the provisions of Senate Com.  
 14 Sub. for H. B. No. 186, an Act  
 15 of the Legislature, regular ses-  
 16 sion, 1939.

## AGRICULTURE

### 70—Department of Agriculture

#### Acct. No. 510

1	Salary of Commissioner .....	\$	5,000.00	\$	5,000.00
2	Other Personal Services .....		71,580.00		71,580.00
3	Current Expenses .....		52,800.00		52,800.00
4	Equipment .....		2,800.00		2,800.00
5	For the Eradication and Preven-				
6	tion of live stock diseases to be				
7	expended in cooperation with				
8	the Federal Government .....		32,400.00		32,400.00
9	Total .....	\$	164,580.00	\$	164,580.00
10	From Collections .....		45,000.00		45,000.00

### 70a—Department of Agriculture—Soil Conservation

#### Acct. No. 510

1	To provide for the organization				
2	of Soil Conservation Districts....	\$	5,000.00	\$	5,000.00
3	Total .....	\$	5,000.00	\$	5,000.00

### 71—Agricultural Fairs and Association Awards

#### Acct. No. 515

1	Incorporated County and District				
2	Fairs .....	\$	5,000.00	\$	5,000.00
3	Regional 4-H Fairs .....		1,800.00		1,800.00
4	State Fair .....		2,500.00		2,500.00
5	Agricultural and Industrial Ex-				
6	hibits .....		3,000.00		3,000.00
7	Total .....	\$	12,300.00	\$	12,300.00

# CONSERVATION AND DEVELOPMENT

## 730—*West Virginia Geological Survey*

Acct. No. 520

1	Personal Services, including sal-			
2	ary of State Geologist .....	\$	27,520.00	\$ 27,520.00
3	Current Expenses .....		15,200.00	15,200.00
4	Equipment .....		1,350.00	1,350.00
5	Total .....	\$	44,070.00	\$ 44,070.00
6	From Collections .....		1,000.00	1,000.00
7	Of the above Current Expense			
8	Appropriation not more than			
9	\$3,200 may be used each year			
10	of the biennium to cooperate			
11	with the United States Geologi-			
12	cal Survey in Stream-flow meas-			
13	urement.			

## 731—*Conservation Commission—General Administration* *Division of Game, Fish and Forestry*

Acct. No. 6612

1	Salary of Commissioner .....	\$	5,000.00	\$ 5,000.00
2	Other Personal Services .....		22,600.00	22,600.00
3	Current Expenses .....		22,600.00	22,600.00
4	Equipment .....		1,000.00	1,000.00
5	Total .....	\$	51,200.00	\$ 51,200.00
6	The total amount of this appro-			
7	priation shall be paid from the			
8	Special Revenue fees collected			
9	by the Conservation Commis-			
10	sion. This appropriation is for			
11	administration purposes only			
12	and shall not be construed as a			
13	limit upon the expenditure			
14	from the Special Revenue			
15	collections of said department,			
16	except for administration.			

*732—Conservation Commission—Division of Forestry*

## Acct. No. 521

1	For superintendence, maintenance			
2	and operating of State Forests,			
3	Total .....	\$	25,000.00	\$ 25,000.00

*733—Conservation Commission—Division of State Parks*

## Acct. No. 522

1	Personal Services .....	\$	45,490.00	\$ 48,240.00
2	Current Expenses .....		25,000.00	31,410.00
3	Repairs and Alterations .....		10,000.00	9,000.00
4	Equipment .....		15,000.00	16,600.00
5	Buildings .....		23,510.00	14,750.00
6	Lands .....		6,000.00	5,000.00
7	Total .....	\$	125,000.00	\$ 125,000.00
8	From Collections .....		23,500.00	30,000.00

*734—Clarke-McNary*

## Acct. No. 522

1	For cooperation with the United			
2	States Department of Agricul-			
3	ture in fire prevention and con-			
4	trol.			
5	Total .....	\$	50,000.00	\$ 50,000.00
6	Out of the above appropriation,			
7	\$360.00 each year shall be paid			
8	to Fleet Bailey in monthly in-			
9	stallments of \$30.00 each for in-			
10	juries he received while en route			
11	to fight forest fires on the 19th			
12	day of April, 1937.			

*740—Droop Mountain Battlefield Monument*

## Acct. No. 5609

1	For maintenance of Historical			
2	Monument.			
3	Total .....	\$	100.00	\$ 100.00

*741—Point Pleasant Battle Monument Commission*

Acct. No. 5619

1	For maintenance of Historical			
2	Monument.			
3	Total .....	\$	1,000.00	\$ 1,000.00

*742—Rumseyan Society*

Acct. No. 5629

1	For maintenance of Historical			
2	Monument.			
3	Total .....	\$	100.00	\$ 100.00

*743—Morgan Morgan Memorial*

Acct. No. 5639

1	For maintenance of Historical			
2	Monument.			
3	Total .....	\$	25.00	\$ 25.00

*744—Grafton G. A. R. Post*

Acct. No. 5649

1	In aid of Memorial Day Patriotic			
2	Exercises.			
3	Total .....	\$	500.00	\$ 500.00

## PROTECTION

*770—Department of Public Safety*

Acct. No. 570

1	Salary of Superintendent .....	\$	6,000.00	\$ 6,000.00
2	Other Personal Services .....		302,140.00	304,380.00
3	Current Expenses .....		254,300.00	252,060.00
4	Repairs and Alterations .....		7,560.00	7,560.00
5	Equipment .....		5,000.00	5,000.00
6	Total .....	\$	575,000.00	\$ 575,000.00

770a—*Department of Public Safety—Radio Division*

## Acct. No. 570

1	To establish, operate and main-			
2	tain radio stations for the De			
3	partment of Public Safety,			
4	Total .....	\$	100,000.00	\$ 50,000.00
5	If deemed necessary, and only			
6	with the approval of the Gover-			
7	nor, land may be purchased and			
8	buildings erected for the hous-			
9	ing of equipment and men.			

771—*Department of Public Safety*

## Acct. No. 6720

## TO BE PAID FROM THE STATE ROAD FUND:

1	For the enforcement of traffic			
2	violations,			
3	Total .....	\$	30,000.00	\$ 30,000.00

772—*Adjutant General: State Militia*

## Acct. No. 580

1	Salary of Adjutant General .....	\$	4,000.00	\$	4,000.00
2	Other Personal Services .....		7,680.00		7,680.00
3	Current Expenses .....		57,501.00		57,501.00
4	Repairs and Alterations .....		4,000.00		4,000.00
5	Equipment .....		3,000.00		3,000.00
6	Compensation of Commanding Of-				
7	ficers, Clerical Services and				
8	Care of Property .....		41,638.00		41,638.00
9	Total .....	\$	117,819.00	\$	117,819.00
10	Of the above appropriation,				
11	\$2,000.00 shall be expended an-				
12	nually from Personal Services				
13	and \$7,000.00 annually from				
14	Current Expenses for maintain-				
15	ing a colored unit of the state				
16	militia as authorized by law,				

17 when, and if a Negro unit is au-  
 18 thorized by the War Depart-  
 19 ment.

20 Out of the appropriation "Com-  
 21 pensation of Commanding Offi-  
 22 cers, Clerical Services and Care  
 23 of Property", \$325.00 shall be  
 24 paid to Oscar Butcher for in-  
 25 juries received while in line of  
 26 duty in National Guard Camp  
 27 at Parkersburg, West Virginia,  
 28 in 1915, which, in addition to  
 29 the amount previously paid for  
 30 said injuries, is equal to the  
 31 compensation that claimant  
 32 would have received for such  
 33 injury.

773—*Auditor's Office—Fire Marshal*

Acct. No. 6605

1	Personal Services .....	\$	18,440.00	\$	18,440.00
2	Current Expenses .....		7,100.00		7,100.00
3	Equipment .....		1,000.00		1,000.00
4	Total .....	\$	26,540.00	\$	26,540.00

5 The total amount of this appro-  
 6 priation shall be paid from the  
 7 Special Revenue collections of  
 8 special tax of  $\frac{1}{2}$  of one per cent  
 9 of fire insurance companies  
 10 premiums as provided by the  
 11 Code of West Virginia 1931.

774—*Insurance Fund*

Acct. No. 590

1	To aid in replacing losses by fire.		
2	Total .....	\$	40,000.00

3 This appropriation shall be avail-  
 4 able in either year of the bien-

- 5 nium and transferred upon the  
6 order of the Governor.

775—*Fire Insurance*

Acct. No. 591

1	To be expended under the Rules		
2	and Regulations established by		
3	the Board of Control to pay		
4	fire insurance premiums on		
5	buildings and contents of State		
6	Institutions .....	20,000.00	20,000.00

780—*State Board of Law Examiners*

Acct. No. 6005

1	To pay the per diem of mem-		
2	bers and other general ex-		
3	penses,		
4	Total .....	\$ 1,500.00	\$ 1,500.00

781—*State Board of Examiners of Accountants*

Acct. No. 6007

1	To pay the per diem of mem-		
2	bers and other general ex-		
3	penses,		
4	Total .....	\$ 1,000.00	\$ 1,000.00
5	From Collections .....	1,000.00	1,000.00

782—*State Athletic Commission*

Acct. No. 6017

1	To pay the per diem of mem-		
2	bers and other general ex-		
3	penses,		
4	Total .....	\$ 3,500.00	\$ 3,500.00
5	From Collections .....	3,500.00	3,500.00

783—*State Board of Examiners of Registered Nurses*

Acct. No. 6044

- 1 To pay the per diem of mem-

2	bers and other general ex-			
3	penses,			
4	Total .....	\$	3,700.00	\$ 3,700.00
5	From Collections .....		3,700.00	3,700.00

784—*State Board of Dental Examiners*

Acct. No. 6045

1	To pay the per diem of mem-			
2	bers and other general ex-			
3	penses,			
4	Total .....	\$	1,000.00	\$ 1,000.00
5	From Collections .....		1,000.00	1,000.00

785—*State Board of Pharmacy*

Acct. No. 6046

1	To pay the per diem of mem-			
2	bers and other general ex-			
3	penses,			
4	Total .....	\$	5,000.00	\$ 5,000.00
5	From Collections .....		5,000.00	5,000.00

786—*State Board of Osteopathy*

Acct. No. 6047

1	To pay the per diem of mem-			
2	bers and other general ex-			
3	penses,			
4	Total .....	\$	500.00	\$ 500.00
5	From Collections .....		500.00	500.00

787—*State Board of Optometry*

Acct. No. 6048

1	To pay the per diem of mem-			
2	bers and other general ex-			
3	penses,			
4	Total .....	\$	1,500.00	\$ 1,500.00
5	From Collections .....		1,500.00	1,500.00



788—*State Board of Embalmers and Funeral Directors*

Acct. No. 6049

1	To pay the per diem of mem-			
2	bers and other general ex-			
3	penses,			
4	Total .....	\$	5,000.00	\$ 5,000.00
5	From Collections .....		5,000.00	5,000.00

789—*State Board of Registration for Professional Engineers*

Acct. No. 6068

1	To pay the per diem of mem-			
2	bers and other general ex-			
3	penses,			
4	Total .....	\$	3,500.00	\$ 3,500.00
5	From Collections .....		3,500.00	3,500.00

790—*State Board of Examiners for Architects*

Acct. No. 6069

1	To pay the per diem of mem-			
2	bers and other general ex-			
3	penses,			
4	Total .....	\$	2,000.00	\$ 2,000.00
5	From Collections .....		2,000.00	2,000.00

791—*State Board of Examiners for Veterinarians*

Acct. No. 6076

1	To pay the per diem of mem-			
2	bers and other general ex-			
3	penses,			
4	Total .....	\$	500.00	\$ 500.00
5	From Collections .....		500.00	500.00

THE FOLLOWING SEVEN SUPPLEMENTAL APPROPRIATIONS  
AVAILABLE FOR EXPENDITURE UPON DATE OF PASSAGE

7—*Circuit Courts*

Acct. No. 111

1	To supplement the 1938-39 Per-	
2	sonal Service and Current Ex-	

3	pense accounts,		
4	Personal Services .....	\$	9,042.00
5	Current Expenses .....		5,798.00
6	Total .....	\$	14,840.00

8—*Compensation of Special Judges*

Acct. No. 113

1	To supplement the 1938-39 appro-		
2	priation for Special Judges,		
3	Total .....	\$	10,979.00

371—*Department of Education*

Acct. No. 6407

1	To supplement the General School		
2	Fund for the fiscal year 1938-39		
3	to be transferred upon order		
4	of the Governor.....	\$	750,000.00
5	The above appropriation shall be		
6	distributed as supplemental or		
7	secondary aid to school districts		
8	in the manner provided by law:		
9	except that not exceeding		
10	\$50,000.00 may be made avail-		
11	able to counties not receiving sec-		
12	ondary aid which were not finan-		
13	cially able to complete the nine		
14	months school year 1937-38 and		
15	will not be able, without this		
16	allocation, to complete the cur-		
17	rent school year 1938-39; but no		
18	part of this amount shall be		
19	expended except in accordance		
20	with the minimum standards		
21	applicable to counties regularly		
22	receiving secondary aid: <i>Pro-</i>		
23	<i>vided</i> , That all such allocations		
24	for supplemental or secondary		
25	aid to school districts shall, be-		

26 fore payment thereof, be ap-  
27 proved by the Board of Public  
28 Works.

47—*West Virginia Penitentiary*

Acct. No. 375

1	To supplement Account No. 375	
2	made by the 1937 Session of the	
3	Legislature for the purchase of	
4	land and construction of the	
5	first unit of the Medium Secur-	
6	ity Prison .....	\$ 123,200.00
7	To purchase land now under op-	
8	tion .....	\$ 50,000.00
9	Total .....	\$ 173,200.00
10	The above appropriations are to	
11	be available for expenditure in	
12	the fiscal year 1938-39.	

549—*Pinecrest Sanitarium*

Acct. No. 431

1	To supplement the appropriations	
2	for the fiscal year 1938-39, be-	
3	cause of increased facilities, as	
4	follows:	
5	Personal Services .....	\$ 11,190.00
6	Current Expenses .....	33,855.00
7	Equipment for new laundry .....	16,000.00
8	Total .....	\$ 61,045.00
9	From Collections .....	6,000.00

550—*Denmar Sanitarium*

Acct. No. 432

1	To supplement the appropriations	
2	for the fiscal year 1938-39, be-	
3	cause of increased facilities, as	
4	follows:	

5	Personal Services .....	\$	2,620.00
6	Current Expenses .....		3,000.00
7	Equipment .....		9,900.00

8	Total .....	\$	15,520.00
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151—*Auditor's Office—Land Department*

Acct. No. 704

TO BE PAID FROM THE GENERAL SCHOOL FUND:

1	To supplement the appropriation		
2	for Personal Services for the		
3	fiscal year 1938-39,		
4	Total .....	\$	13,840.00

Sec. 2. *Claims Against the State.* Appropriations for claims  
2 against the State are for the remainder of the fiscal year end-  
3 ing June 30, 1939, and to remain in effect until June 30, 1940.  
*Refunding erroneous payments made to the state for Inheritance,*  
*Transfer and Estate Tax*

TO BE PAID FROM THE GENERAL REVENUE FUND:

Acct. No. 6449

1	Alicia J. Bell Estate .....	\$	137.54
2	Charles H. Bibbee Estate .....		16.48
3	Louisa M. Gardner Estate .....		2,222.68
4	A. S. List Estate .....		696.81
5	Isabelle W. Robb Estate .....		1,034.66
6	B. M. Spurr Estate .....		3,921.64
7	Emma O. Stifel Estate .....		2,284.10
8	W. E. Stone Estate .....		21,873.52
9	Cletus Stout Estate .....		25.92
10	Frank Cox Estate .....		11,037.38
11	R. G. Quarrier Estate .....		807.76
12	Total .....	\$	44,058.49

*Refunding erroneous payments made to the State for Gross*  
*Sales Taxes*

TO BE PAID FROM THE GENERAL REVENUE FUND:

Acct. No. 6449

1	Fourco Glass Company .....	\$	1,146.59
2	G. F. Ray & Sons Gas Co.....		52.68

3	Caravasos Real Estate Co. ....	19.73
4	Cooperative Fuel Co. ....	212.43
5	Mrs. Florence Emery .....	82.21
6	J. W. & McAllester Rudle.....	104.03
7	General Brokerage Co. ....	61.95
8	C. R. Wolfe & Wesley Wolfe .....	62.07
9	Alba Marl Lime Co. ....	311.11
10	Wooster Drilling Co. ....	836.03
11	Hoffman Brothers Drilling Co. ....	594.50
12	D. F. Wilson & Sons, Inc.....	383.16
13	Croft Lumber Co. ....	1,976.81
14	Engel & Warner .....	1,077.46
15	G. W. Schrock .....	8.42
16	Wohl Shoe Co., Inc. ....	49.12
17	Maryland & W. Va. Lumber Co.....	4,264.82
18	Consolidated Brokerage Co. ....	235.62
19	Thompson-Brown Sand Co. ....	310.81
20	Thomas F. Downing, M. D. ....	118.87
21	W. H. Satterfield .....	162.75
22	T. R. McMillan Service Station.....	13.49
23	Worley Walker .....	133.78
24	Columbian Carbon Co. ....	686.45
25	Blair Motors, Inc. ....	444.17
26	H. B. Glass .....	105.23
27	White Oak Coal Co. ....	243.07
28	Grocers' Wholesale Co. ....	130.43
29	N. H. Cain .....	155.55
30	Kelly's Creek Improvement Co. ....	177.68
31	New River Lumber Co. ....	604.12
32	Total .....	\$ 14,765.14

*Refunding erroneous payments made to the State for Consumers  
Sales Taxes*

TO BE PAID FROM THE GENERAL REVENUE FUND:

Acct. No. 6449

1	Walter M. Stephens .....	\$ 188.33
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*Refunding erroneous payments made to the State for Real Estate  
License Tax*

TO BE PAID FROM THE GENERAL SCHOOL FUND:

Acct. No. 707

1	Howard L. Swisher .....	\$	50.00
2	Sanders & Miller, Inc. ....		50.00
3	N. B. Najally .....		50.00
4	Geo. B. Short, Inc. ....		50.00
5	J. R. Murphy & Co. ....		50.00
6	R. Paull Holland .....		50.00
7	T. W. Johnson .....		50.00
8	Davis Real Estate & Insurance Agency.....		50.00
9	M. C. Lough Estate .....		50.00
10	A. S. Cooper Realty Co. ....		50.00
11	Trevy Nutter .....		50.00
12	Parkersburg Realty Co. ....		50.00
13	C. H. Dowler .....		50.00
14	J. A. Mendenhall .....		50.00
15	J. S. Tairol, Inc. ....		50.00
16	Damos Fotinos .....		50.00
17	A. C. Davis .....		50.00
18	Geza Kokochak .....		50.00
19	Citizens Mutual Trust Co. ....		50.00
20	B. F. Williams .....		50.00
21	Total .....	\$	1,000.00

- 1 To pay claims against the State Road Commission resulting  
 2 from personal injury or property damages, this amount is ap-  
 3 propriated for the remainder of fiscal year ending June 30, 1939,  
 4 and to remain in effect until June 30, 1940, to be paid as  
 5 follows:

TO BE PAID FROM THE STATE ROAD FUND:

Acct. No. 6856

1	R. T. Kelley .....	\$	27.05
2	Cecil Keneda .....		1,001.00
3	Walter Purdy .....		5.36
4	S. W. Hainor .....		37.18
5	D. C. Midkiff .....		125.87
6	J. W. Roten.....		13.93

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7 W. H. Marrs .....	24.25
8 Buford-McLane .....	44.53
9 D. E. Corra .....	19.38
10 Charles S. Colliflower .....	33.00
11 Samuel H. Kirk .....	6.63
12 A. D. Lanham .....	9.95
13 T. W. Heironimus .....	27.70
14 Oscar Little .....	27.60
15 Sophia Kavros .....	162.00
16 Robert Milliken .....	87.56
17 C. D. Stricklin .....	27.79
18 Dr. L. G. Sheets .....	53.50
19 Elmer Richmond .....	8.62
20 George Campbell .....	18.01
21 Jesse Deverick .....	115.40
22 Argil Harold .....	14.79
23 C. H. Nelson .....	11.90
24 Everett Legg .....	753.15
25 Pete Wallace .....	32.24
26 W. L. Anderson .....	13.00
27 James E. Nowlin .....	10.00
28 Mrs. Millie Nicewander .....	50.00
29 Carl Shrewsbury .....	13.70
30 G. W. Scanland .....	20.00
31 Eugene Fletcher .....	3.00
32 Estyl Lambert .....	190.75
33 Donald McFarland .....	36.00
34 Harrisonburg Candy & Fruit	
35 Company .....	30.40
36 W. P. Cooper .....	30.60
37 R. E. L. Currence .....	25.00
37a Diamond Ice & Coal Company..	30.09
38 General Motors Acceptance Cor-	
39 poration .....	18.36
40 Capitol Motor Sales .....	10.19
41 P. A. Donley .....	38.07
42 C. R. Miller .....	188.85
43 W. H. Gifford .....	39.07
44 W. D. Adams .....	15.00

45 C. W. Alfred .....	2.00
46 Edgar Baxter .....	11.00
47 Jacob F. Bennett .....	1,248.00
48 Alvin Bishoff .....	45.00
49-50 Walter C. Bonnett .....	34.00
51 Barney Brown .....	157.60
52 Barney Brown .....	2,400.80
53 J. W. Burgess .....	2.50
54 George Cecile .....	332.59
55 Conrad E. Chaddock .....	8.50
56 Harvey Chappell .....	408.64
57 Walter Clark .....	4.00
58 Truman Collins .....	108.00
59 Truman Collins .....	2,805.30
60 Wm. L. Conner .....	25.40
61 W. C. Coslett.....	7.00
62 Carl C. Cramer .....	15.00
63 Dr. L. L. Cramer .....	7.00
64 Burson Davis .....	5.00
65 Joseph L. Dean .....	45.00
66 Helen Clayton Deck .....	240.00
67 C. J. Fallis .....	7.00
68 Orlie Fay .....	44.25
69 Orlie Fay .....	404.45
70 Dr. C. P. S. Ford .....	44.00
71 Lee Foster .....	5.00
72 Callaway Frazier .....	5.00
73 T. J. Frazier .....	9.00
74 E. B. Freeman .....	4.50
75 Paul Frum .....	86.00
76 S. M. Gillilan .....	3.00
77 Olan Hall .....	5.00
78 Luther Harless .....	116.96
79 R. L. R. Harless .....	9.00
80 George Hebb .....	11.50
81 Roy L. Hilbert .....	25.20
82 Ben Hissam .....	8.50
83 Raymond Hodge .....	366.30
84 Roy Holden .....	16.50



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85	Virgil Jones .....	3.00
86	Bob Justice .....	101.04
87	J. C. (Joe) Knotts .....	16.50
88	Herman Knowlton .....	78.00
89	B. C. Kyle .....	2.50
90	Sterling Lambert .....	5.00
91	Russell Lamb .....	28.00
92	Charles Lantz .....	1,600.00
93	Russell Lemon .....	17.50
94	Robert Lipscomb .....	13.50
95	L. L. Lloyd .....	908.70
96	V. E. Lowery .....	25.00
97	Elmer Lucas .....	211.32
98	Charles G. Lutes .....	15.00
99	Paul Martin .....	48.00
100	Raymond Mattern .....	49.10
101	Charles G. Maxwell .....	9.00
102	Roscoe Meadows .....	1,729.93
103	W. A. Meadows .....	38.40
104	Dr. Chas G. Morgan .....	6.50
105	R. C. Morris .....	2.00
106	Eustace Morrison .....	6.50
107	Frank Morrow .....	73.96
108	Alice E. McClung .....	730.00
109	P. E. McFerren .....	8.50
110	H. D. McLaughlin .....	13.00
111	Andrew McLean .....	8.00
112	Dale Newcome .....	14.50
113	Oak Hill Hospital .....	15.00
114	Charles Ogden .....	5.00
115	Chilt Oxley .....	5.00
116	N. N. Parker .....	39.00
117	Marion Perkins .....	3.00
118	Charles Plumley .....	4.50
119	J. L. Poling .....	3.00
120	Phay N. Posey .....	6.50
121	Albert Pumphrey .....	6.00
122	Frank Purdy .....	640.00
123	Verle Pyles .....	7.00
124	Charles G. Rhodes .....	20.00

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125 Frank Roberts .....	300.00
126 Carl Ross .....	8.00
127 Earl Russell .....	11.00
128 Henry Sanders .....	73.64
129 Mrs. Effie Savage .....	960.00
130 Harve Scott .....	7.00
131 Charles Sears .....	10.00
132 Harry Sellards .....	222.00
133 Jack Shanklin .....	69.00
134 Thomas Shields .....	22.50
134a Mrs. Lottie Skelton .....	1,347.50
135 W. L. Smith .....	4.00
136 Hollie Stewart .....	89.60
137 I. C. Summers .....	46.00
138 Ray Swisher .....	1,099.50
139 Ray Swisher .....	210.00
140 Dr. Howard C. Toepfer .....	10.00
141 Andy Ward .....	10.00
142 D. M. West .....	125.00
143 D. M. West .....	98.28
144 William Willard .....	24.50
145 Ed Williams .....	3.00
146 Robert A. Wilson .....	1,727.70
147 Wirt B. Wilson .....	4.50
148 George Woofter .....	6.00
149 Frank E. Wright .....	157.50
150 Elmer Yoho .....	3.00
151 Dr. Sidney F. Yoho .....	12.50
152 Wayne A. Youst .....	14.00
153 Roscoe Meadows .....	75.00
154 B. F. Flanagan .....	20.00
155 Ralph C. Keffer .....	37.70
156 A. H. & Ethel Rodgers .....	1,046.00
157 Mrs. Anna Clevenger, in her own 158 right, and as guardian for 159 Sylvester Clevenger and Rosa 160 Lee Clevenger .....	1,453.50
161 A. I. McCort .....	36.00
162 Barney Brown .....	5.00

163 Orval Chapman .....	26.50
164 E. M. Sinnet, Clerk of the Cir-	
165 cuit Court of Roane County to	
166 indemnify Harry Nay .....	1,722.95
167 Rev. W. T. Wallace .....	51.07
168 Mary L. Sirokman .....	17.40
169 E. F. Wick .....	56.22
170 Fairmont Machinery Company ..	171.11
171 Paul J. Gaul .....	33.75
172 Edward Marshall .....	241.46
173 Grover White, administrator of	
174 the estate of W. A. White, de-	
175 ceased .....	3,008.00
176 J. C. Alderman .....	370.76
177 Mrs. Irene Norris .....	90.00
178 Thomas Johnson .....	2,459.05
179 Cary L. Hines .....	50.00
180 Alton Isaacs .....	2,052.40
181 J. J. VanGilder.....	131.25
182 William Paugh .....	172.50
183 Seneca Motor Company.....	250.00

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184 Total .....	\$ 39,303.75
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1 To pay J. E. Greiner Company,	
2 Consulting Engineers, Balti-	
3 more, Md., for services, ren-	
4 dered on Hinton Bridge, pay-	
5 able from State Road Fund.....	\$ 3,988.33
6 To pay Forest Riddel for injuries	
7 received while guarding prison-	
8 ers at State Soad Camp at Har-	
9 man, West Virginia, on April	
10 17th, 1936, there is hereby ap-	
11 propriated \$720.00 to be paid in	
12 in twenty-four monthly install-	
13 ments of \$30.00 each, during dis-	
14 ability.	

## 900—BONDED OBLIGATIONS

Acct. No. 6476

Sec. 3. *Bonded Obligations.*

2 There is hereby appropriated out  
3 of the General Revenue Fund to  
4 meet the principal and interest  
5 requirements of funding bonds  
6 authorized under Chapter 58 of  
7 the First Extraordinary Session  
8 of the 1933 Legislature to pay  
9 non-bonded debts existing at the  
10 time of the adoption of the Tax  
11 Limitation Amendment.....\$ 397,188.00 \$ 385,938.00

Sec. 4. *Capital Expenditures*

2 *Contingent Upon Additional Rev-*  
3 *enues.* The following items are  
4 appropriated from the General  
5 Revenue funds subject to the fol-  
6 lowing terms and conditions:

7 (1) The following items are  
8 hereby appropriated and are to be  
9 available for expenditure only  
10 upon the creation of a surplus in  
11 the treasury or upon the ascer-  
12 tainment that the scale of business  
13 operations is such as to insure a  
14 surplus in the treasury.

15 The revenue estimates upon  
16 which the foregoing and definite-  
17 ly appropriated budget items  
18 were based were, for each fiscal  
19 year 1939-1940 and 1940-1941,  
20 \$31,110,000, including institution-  
21 al collections and professional  
22 board receipts and upon estimates  
23 of retirements into the State treas-  
24 ury for non-expenditure from said  
25 appropriations of approximately

26 \$75,000.00 for each of said fiscal  
26a years.

27 (2) None of the following items  
28 of this section shall be considered  
29 available for expenditure until it  
30 shall have been ascertained by the  
31 Board of Public Works, but shall  
32 then be available for expenditure,  
33 by order entered of record that  
34 the standards of business oper-  
35 ations shall have reached and  
36 shall have been maintained at, for  
37 three months, a level insuring  
38 revenue yields in excess of the  
39 estimates herein mentioned con-  
40 stituting a surplus in an amount  
41 or amounts sufficient to sustain  
42 any one or more of the items here-  
43 inafter named. The facts warrant-  
44 ing the same, the Board of Public  
45 Works may make such finding,  
46 severally or collectively, with re-  
47 spect to any one or more of the  
48 items of this section.

49 (3) The order in which the  
50 items of this section are named  
51 indicates a legislative preference  
52 in order of expenditure based  
53 upon institutional needs, but,  
54 having regard to the amount of  
55 revenues available, if any, the ex-  
56 penditure within which construc-  
57 tion may be undertaken, and any  
58 other attending circumstance, the  
59 Board of Public Works may  
60 authorize the expenditure of any  
61 one or more of said items without  
62 regard to the order of priority in  
63 which they are here listed.

64 (4) The amounts of the sev-

65 eral items are suggestive, and  
66 the Board of Public Works  
67 may revise these estimates  
68 downward without restriction and  
69 may increase them severally by  
70 not more than twenty-five per-  
71 cent.

72 (5) The expenditure au-  
73 thorized may be for a completed  
74 unit or uncompleted units of a  
75 larger plan, and if Federal aid  
76 for Public Works Construction  
77 according to the Public Works  
78 Administration, or similar, plan  
79 be available, such fact may be con-  
80 sidered by the Board of Public  
81 Works, and the construction of a  
82 completed plan may be author-  
83 ized, revenues therefore being  
84 available, and the limitation of  
85 amounts hereinbefore stated shall  
86 not be applicable or restrictive.

87 (6) Should Federal funds be  
88 available to match such surplus  
89 State funds, if any, in an amount  
90 sufficient to permit the con-  
91 struction of all of the items herein  
92 named, the Board of Public  
93 Works may make available any  
94 additional surplus funds for the  
95 construction of other needed  
96 buildings and improvements at  
97 any of the several State institu-  
98 tions, educational, eleemosynary,  
99 or penal.

100 Subject to the foregoing con-  
101 ditions, the following appropria-  
102 tions are made for the construc-  
103 tion, including, if necessary,

104 necessary land acquisition and	
105 equipment, of the following	
106 buildings:	
107 (1) To install machinery for	
108 State use production at West	
109 Virginia Penitentiary .....	\$ 50,000
110 (2) Additional unit, Medium	
111 Security Prison .....	300,000
112 (3) Additional Tuberculosis	
113 Sanitarium unit and Nurses	
114 Quarters, Pinecrest Sanitarium	300,000
115 (4) Additional unit for Insane	
116 Hospital, Weston .....	250,000
117 (5) Fireproofing North Wing	
118 and other non-fireproofed units	
119 of Weston State Hospital.....	375,000
120 (6) For Secondary Roads.....	300,000
121 (7) Additional unit Girls In-	
122 dustrial School .....	150,000
123 (8) West Virginia University	
124 Mineral Industries Building.....	750,000
125 (9) West Virginia State Col-	
126 lege for either Science or Physi-	
127 cal Education building .....	250,000
128 (10) New River State College	
129 for an Arts and Crafts building	200,000
130 (11) Concord State College for	
131 Library building .....	150,000
132 (12) Fairmont State College,	
133 Department of Physical Educa-	
134 tion .....	150,000

Sec. 5 *Special Revenue Appropriations.* There is hereby  
 2 appropriated for expenditure during the fiscal years one thou-  
 3 sand nine hundred forty and one thousand nine hundred forty-  
 4 one: Appropriations made by general law from special revenue  
 5 which is not paid into the state fund as general revenue under  
 6 the provisions of section two, article two, chapter twelve of the  
 7 code of West Virginia, one thousand nine hundred thirty-one.

Sec. 6. *Appropriations Revived and Extended.* A part of an

2 appropriation to a spending unit that remains unexpended at  
3 the end of the fiscal year one thousand nine hundred  
4 forty may, by order of the board of public works, be revived  
5 and expended to meet unforeseen contingencies arising during  
6 the fiscal year one thousand nine hundred forty-one.

Sec. 7. *Specific Statutory Appropriations.* Whenever the  
2 specific payment of a definite sum of money is required by  
3 general law such sum shall be paid from the proper item  
4 appropriated by this act.

Sec. 8. *Specific Funds and Collection Accounts.* A fund or  
2 collections account, which by law is dedicated to a specific use,  
3 is hereby appropriated in sufficient amount to meet all lawful  
4 demands upon the fund or collection account, and shall be  
5 expended according to the provisions of article three, chapter  
6 twelve of the code of one thousand nine hundred thirty-one.

Sec. 9. *Appropriations for Refunding Erroneous Payments.*  
2 Money that has been erroneously paid into the state treasury  
3 is hereby appropriated out of the fund into which it was paid  
4 for refund to the proper person.

5 When the officer authorized by law to collect money for the  
6 state finds that a sum has been erroneously paid he shall issue  
7 his requisition upon the auditor for the refunding of the  
8 proper amount. The auditor shall issue his warrant to the  
9 treasurer and the treasurer shall pay the warrant out of the  
10 fund into which the amount was originally paid.

Sec. 10. *Contingent Fund.* A contingent fund may be ex-  
2 pended as appropriated, with the approval of the board of  
3 public works, when the expenditure will improve the govern-  
4 mental service and care for unexpended contingencies. A part  
5 of a contingent fund that remains unexpended at the end of  
6 the first fiscal year shall automatically become available for ex-  
7 penditure during the second fiscal year.

8 The expenditure of the governor's civil contingent fund,  
9 and the legislative contingent funds shall not be conditioned  
10 upon the approval of the board of public works.



Sec. 11. *Sinking Fund Deficiencies.* 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. 12. *Appropriations from Forfeitures, Taxes, Licenses and Filing Fees.* There is hereby appropriated from all forfeitures, license fees, filing fees and taxes collected by the State Tax Commissioner, all necessary salaries and expenses authorized by law to be expended in the collection of such forfeitures, license fees, filing fees and taxes. All such salaries and expenses, authorized by law as aforesaid, shall be paid by the Tax Commissioner through the State Treasury out of gross collections. Any part of 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. 13. *Appropriations for Local Government.* 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. 14. *Printing Cost.* The cost of printing, binding, and stationery for each spending unit shall be paid from the current expense appropriation for the spending unit.

Sec. 15. *Total Appropriation.* 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. *General School Fund.* 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 3. Administration.

#### Section

1. Appropriations conditional.
2. Suspension of certain acts.
3. Constitutionality.

Section 1. *Appropriations Conditional.* The expenditure of the appropriations made by this act, except those appropriations made to the legislative and judicial branches of the state government, are conditioned upon the compliance by the spending unit with the requirements of article five, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended by Senate bill number one hundred seventeen, acts of the Legislature, regular session, one thousand nine hundred thirty-nine.

Sec. 2. *Suspension of Certain Acts.* A provision of another act, or of the code of West Virginia, one thousand nine hundred thirty-one, as amended, which is in conflict with the provisions of this act is hereby suspended during the operation of this act.

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

## CHAPTER 7

(Com. Sub. for House Bill No. 405—Originating in the House Committee on Taxation and Finance)

AN ACT to amend and reenact account number three hundred, item thirty-nine, section one, title two, chapter one, acts of the Legislature of West Virginia, regular session, one thousand nine hundred thirty-seven, known as the budget bill, relating to appropriations for West Virginia university.

[Passed March 8, 1939; in effect from passage. Became a law without the approval of the Governor.]

### Title 2. Appropriations.

#### Section

#### 1. Governmental appropriations.

#### EDUCATIONAL

West Virginia university—Acct. No. 300.

*Be it enacted by the Legislature of West Virginia:*

That account number three hundred, item thirty-nine, section one, title two, chapter one, acts of the Legislature, regular session, one thousand nine hundred thirty-seven, be amended and reenacted to read as follows:

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-eight and one thousand nine hundred thirty-nine.

#### 39—West Virginia University

#### Acct. No. 300

1	Personal Services, including	27-38	38-39
2	salary of President .....	\$ 788,100.00	\$ 788,100.00
3	Current Expenses .....	120,600.00	120,600.00
4	Repairs and Alterations .....	21,830.00	21,830.00

5 Equipment .....	71,375.00	71,375.00
6 For the full payment of the fol-		
7 lowing unpaid accounts and		
8 obligations incurred in relation		
9 to athletic activities at West Vir-		
10 ginia University, as audited and		
11 approved by the Board of Con-		
12 trol, up to and including March		
13 13, 1937, and re-certified by said		
14 Board February 24, 1939, said		
15 appropriation to be available		
16 for payment during either fiscal		
17 year:		
18 Lough - Simpson Gro-		
19 cery Co. .... \$	79.15	
20 Morgantown Printing &		
21 Publishing Co. ....	628.05	
22 Frank E. Conner.....	337.00	
23 L. G. Balfour Co.....	1,007.00	
24 Chesney M. Ramage.....	250.00	
25 P. Goldsmith & Sons Co.	226.65	
26 Western Union Tele-		
27 graph Co. ....	215.58	
28 Hotel McAlpin .....	561.27	
29 White Star Lines .....	318.54	
30 Monongahela Transport		
31 Co. ....	185.75	
32 McNitts, Inc. ....	425.67	
33 Peerless Laundry Co. ....	275.52	
34 Athletic Trainers Sup-		
35 ply Co. ....	453.04	
36 Henry Bennett, Jr. ....	66.55	
37 Treman King Athletic		
38 Goods Corp. ....	173.39	
39 Champion Knitwear Co.,		
40 Inc. ....	1,616.11	
41 Johnson & Johnson .....	251.03	
42 Universal Match Corp.....	141.20	
43 John F. Glover .....	2,794.55	
44 Virginia Laundry Co.....	441.77	

45	Monongahela Building	
46	Co. ....	450.00
47	S. S. Kresge Co. ....	82.80
48	Kemper-Thomas Co. ....	2,317.41
49	H. C. Baker Hardware	
50	Co. ....	1,038.64
51	A. G. Spalding & Bro. ....	20,762.01
52	Pennsylvania State Col.	
53	lege ....	15,000.00
54	Duquesne University ....	1,307.62
55	Washington & Jefferson	
56	College ....	8,157.94
57	Marquette University ....	2,500.00
58	Temple University ....	5,500.00
59	Kansas State College. ....	10,000.00
60	J. G. Jacobs, Contractor. ....	4,125.22
61	Richard Aspinall (unpaid	
62	salary) ....	2,000.00
63	R. C. Tucker (unpaid	
64	salary) ....	180.00
65	Chas. C. Tallman (un-	
66	paid salary) ....	429.96
67	L. M. Stoops (unpaid	
68	salary) ....	720.00
69	I. E. Rogers (unpaid sal-	
70	ary) ....	8,408.31
71	H. A. Stansbury (unpaid	
72	salary) ....	5,476.37
73	W. E. Mahan (unpaid	
74	salary) ....	700.00
75	South Side Bank & Trust	
76	Co. (note) (Wheeling)	
77	Principal \$7,501.26	
78	Int. to	
79	4/15/39 ....	131.28 7,632.54
80	National Bank of Fair-	
81	mont (note) Princi-	
82	pal ....	3,877.69
83	Int. to	
84	4/15/39 ....	1,133.59 5,011.29

85	Second National Bank		
86	Morgantown (note)		
87	Principal .....	797.34	
88	Int. to		
89	4/15/39.....	583.51	1,380.85
90	U. S. Collector of Inter-		
91	nal Revenue .....	9,026.39	
92			
		\$ 75,000.00	\$ 55,000.00

93	Total .....	\$1,076,905.00	\$1,056,905.00
94	<i>From Collections</i> .....	250,000.00	250,000.00

95 It is the finding of the Legislature:  
 96 That the above listed unpaid ac-  
 97 counts and obligations in rela-  
 98 tion to athletic activities at West  
 99 Virginia University represent  
 100 indebtedness authorized and in-  
 101 curred (largely during the years  
 102 1930-1933) by the regularly con-  
 103 stituted authorities of the Uni-  
 104 versity;  
 105 That these accounts were not paid  
 106 and the deficit thus created be-  
 107 cause athletic income, actually  
 108 available for the payment of  
 109 these accounts at that time, was  
 110 diverted to pay interest and  
 111 principal on outstanding bonds  
 112 of The West Virginia University  
 113 Stadium Corporation;  
 114 That the Legislature of one thou-  
 115 sand nine hundred thirty-seven  
 116 approved these obligations and  
 117 accounts and appropriated the  
 118 necessary sum to pay said obli-  
 119 gations and accounts in full, but  
 120 that the same have not yet been  
 121 paid, because of prior uncertain-  
 122 ties;

123 That said appropriation remains  
124 unexpended in the treasury of  
125 the state and can be used with-  
126 out affecting the biennial budget  
127 now pending before the Legisla-  
128 ture of one thousand nine hun-  
129 dred thirty nine;

130 That this amendment and reenact-  
131 ment of the said appropriation  
132 of one thousand nine hundred  
133 thirty-seven is not a new appro-  
134 priation and can be made in-  
135 dependently of the pending bud-  
136 get bill for the ensuing biennium  
137 and is made for the purpose of  
138 clarifying the act of one thou-  
139 sand nine hundred thirty-seven.

C

## CHAPTER 8

(House Bill No. 212—By Mr. White)

AN ACT to amend and reenact section nineteen, article eight, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, relating to declaration and payment of dividends by banking institutions.

[Passed March 4, 1939; in effect ninety days from passage. Approved by the Governor.]

**Article 8. Business Operations and Supervision of Banking Institutions, Industrial Loan Companies and Building and Loan Associations.**

**Section**

**19. Dividends.**

*Be it enacted by the Legislature of West Virginia:*

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

Section 19. *Dividends.* The directors of any banking institution may, annually or semiannually, declare and pay dividends. Before the declaration of any dividend, at least one-tenth part of the net profits of the preceding calendar year shall be carried to its surplus fund until the same shall equal fifty per cent of the amount of its capital stock. No dividend shall be declared, except from earnings remaining after deducting all losses, all sums due for expenses, and all overdue debts upon which no interest has been paid for a period of six months, unless the same are well secured, and in process of collection, and such other items as the commissioner of banking may direct. Any director voting to pay any dividend, in violation of the provisions of this section, shall be personally liable to the creditors of such banking institution for any loss occasioned thereby, and shall be guilty of a misdemeanor.

## CHAPTER 9

(House Bill No. 213—By Mr. White)

AN ACT to amend and reenact section sixteen, article four, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, relating to liability of stockholders of banking institutions.

[Passed March 2, 1939; in effect from passage. Approved by the Governor.]

### Article 4. Banking Institutions.

#### Section

16. Liability of stockholders.

*Be it enacted by the Legislature of West Virginia:*

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

Section 16. *Liability of Stockholders.* Each stockholder of any banking institution, organized under the laws of this state, in addition to the liability imposed upon him as a



4 stockholder of a corporation under the provisions of article  
5 one of this chapter, shall be liable to the creditors of the  
6 banking institution, on obligations accruing while he is a  
7 shareholder, to an amount equal to the par value of the  
8 shares of stock held by him; and no sale or transfer of the  
9 shares of stock made by any such stockholder, after the  
10 liability of the banking institution originated or accrued,  
11 shall relieve the stockholder from the liability imposed by this  
12 section. Any proceeding in equity to enforce the liability  
13 of stockholders imposed by this section may be prosecuted  
14 severally against any one stockholder or jointly against any  
15 number of stockholders: *Provided*, That the additional lia-  
16 bility imposed upon such stockholders by this section shall  
17 not apply on and after the first day of July, one thousand  
18 nine hundred thirty-nine, with respect to any such institu-  
19 tion, so long as such institution, in pursuance of the pro-  
20 visions of chapter seventeen, acts of the Legislature, one  
21 thousand nine hundred thirty-five, has its deposits insured  
22 by the federal deposit insurance corporation, or by any other  
23 similar federal instrumentality that may be hereafter created,  
24 provided there shall be such instrumentality in existence and  
25 available for the purpose: *Provided further*, That such ad-  
26 ditional liability shall not apply on and after the first day  
27 of July, one thousand nine hundred thirty-nine, with respect  
28 to any banking institution from and after the time it shall  
29 obtain from the commissioner of banking a certificate setting  
30 forth that such institution has, as ascertained by him, an  
31 unimpaired surplus equal to at least fifty per cent of the  
32 authorized capital of such institution. Upon application by  
33 any banking institution to the commissioner of banking for  
34 such certificate, the commissioner shall ascertain whether such  
35 institution has in fact such unimpaired surplus, and if such  
36 unimpaired surplus be found by him to exist, then he shall  
37 issue such certificate. If impairment of such surplus shall  
38 thereafter occur, such impairment shall not impose further or  
39 additional liability upon the stockholders of such institu-  
40 tion: *And provided further*, That not less than three months  
41 prior to the first day of July, one thousand nine hundred  
42 thirty-nine, such institution shall have caused notices of such  
43 prospective termination of liability to be published in a news-

44 paper published in the city, town, or county in which such  
45 institution is located, and if no newspaper is published in  
46 such city, town, or county, then in a newspaper of general  
47 circulation therein. If the institution fail to give such no-  
48 tice, as and when above provided, a termination of such ad-  
49 ditional liability may thereafter be accomplished as of the  
50 date three months subsequent to publication of the notice in  
51 the manner above provided.

52 Nothing in this section shall affect or impair the authority  
53 of the officers and directors of a banking institution to cause  
54 to be made good any impairment of the capital of such in-  
55 stitution, under the provisions of section fourteen, article  
56 eight of this chapter.

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## CHAPTER 10

(House Bill No. 57—By Mr. Hudson and Mr. Casey)

AN ACT to authorize the county court of Cabell county to provide additional compensation for special judges of the circuit court within said county.

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[Passed February 16, 1939; in effect from passage. Became a law without the approval of the Governor.]

### Section

1. County court of Cabell county authorized to provide additional compensation for special judges of the circuit court.

*Be it enacted by the Legislature of West Virginia:*

Section 1. *County Court of Cabell County Authorized to Provide Additional Compensation for Special Judges of the Circuit Court.* The county court of Cabell county is hereby authorized to provide additional compensation for special judges of the circuit court in said county: *Provided, That* the amount of such additional compensation for any such special judge, when added to the compensation payable to him out of the state treasury, shall not exceed the amount of the salary of the regular judge in whose place and stead such special judge serves.

- 11 The additional compensation herein provided may be pay-  
12 able by the said county court of Cabell county.

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## CHAPTER 11

(House Bill No. 122—By Mr. Amos, by request)

AN ACT to amend and reenact sections one-m and one-r, article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, fixing the time for holding the regular terms of court for the thirteenth and eighteenth judicial circuits.

[Passed February 16, 1939; in effect ninety days from passage. Approved by the Governor.]

### Article 2. Circuit Courts; Circuit, Criminal and Intermediate Judges.

#### Section

- 1-m. Thirteenth circuit, terms of court.  
1-r. Eighteenth circuit, terms of court.

*Be it enacted by the Legislature of West Virginia:*

That sections one-m and one-r, 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-m. *Thirteenth Circuit; Terms of Court.* For the  
2 county of Kanawha, on the fourth Monday in January, and  
3 the second Monday in May and September.

- Sec. 1-r. *Eighteenth Circuit; Terms of Court.* For the  
2 county of Preston, on the second Tuesday in March and June  
3 and the fourth Tuesday in October.  
4 All acts inconsistent with this act are hereby repealed.

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## CHAPTER 12

(Senate Bill No. 132—By Mr. Young, by request)

AN ACT to amend and reenact section one-t, article two, chapter fifty-one of the code of West Virginia, one thousand nine hun-

dred thirty-one, relating to the time of terms of the circuit court for the counties of Randolph and Upshur.

[Passed March 3, 1939; in effect ninety days from passage. Approved by the Governor.]

**Article 2. Circuit Courts; Circuit, Criminal and Intermediate Judges.**

**Section**

1-t. Twentieth circuit, terms of court.

*Be it enacted by the Legislature of West Virginia:*

That section one-t, 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-t. *Twentieth Circuit, Terms of Court.* For the  
2 county of Randolph, on the third Tuesday in February and  
3 May, and the second Tuesday in October.  
4 For the county of Upshur, on the second Monday in  
5 January, April and September.

## CHAPTER 13

(Com. Sub. for House Bill No. 285—Originating in the House Committee on the Judiciary)

AN ACT to amend and reenact section one-u, article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, relating to and fixing the time of holding terms of the circuit court in the twenty-first judicial circuit, consisting of the counties of Mineral, Tucker and Grant.

[Passed March 10, 1939; in effect from passage. Approved by the Governor.]

**Article 2. Circuit Courts; Circuit, Criminal and Intermediate Judges.**

**Section**

1-u. Twenty-first circuit, terms of court.

*Be it enacted by the Legislature of West Virginia:*

That section one-u, 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-u. *Twenty-first Circuit, Terms of Court.* For  
2 the county of Grant on the first Tuesday in April, the second

3 Tuesday in July, and the third Tuesday in November.

4 For the county of Mineral, on the third Tuesday in Janu-  
5 ary and April, the fourth Tuesday in July and the third  
6 Tuesday in October.

7 For the county of Tucker, on the first Tuesday in March  
8 and June, and the third Tuesday in September and De-  
9 cember.

## CHAPTER 14

(Senate Bill No. 258—By Mr. LaFon, Mr. President)

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 fifty-one of and adding sections fifty-two, fifty-three and fifty-four to article six thereof, the said amendment to be known as the "Budget Amendment".

[Passed March 10, 1939; in effect ninety days from passage. Approved by the Governor.]

### Section

1. Submitting an amendment to article six of the constitution, amending section fifty-one, and adding sections fifty-two, fifty-three and fifty-four to said article.
2. Amendment to be known as the "budget amendment".
3. Form of ballot; election.
4. Certificates of election commissioners; canvass of vote; certifying result.
5. Proclamation of result of election by governor.
6. Publication of proposed amendment by governor.

*Be it enacted by the Legislature of West Virginia:*

Section 1. *Submitting an Amendment to Article Six of the Constitution, Amending Section Fifty-one, and Adding Sections Fifty-Two, Fifty-Three and Fifty-Four to Said Article.*  
The question of the ratification or rejection of an amendment to the constitution of the state of West Virginia, proposed in accordance with the provisions of section two of article fourteen of said constitution, amending section fifty-one of and adding sections fifty-two, fifty-three and fifty-four to article six thereof, shall be submitted to the voters of the state at the next general election to be held in the year one thousand nine hundred forty, which proposed amendment is as follows:

*Proposed Amendment***Article 6. Legislature.****Section 51. *Budget and Supplementary Appropriation***

2 *Bills.* The Legislature shall make appropriations from the  
3 treasury only by a budget bill or a supplementary appropriation  
4 bill. A budget bill shall be passed at each regular ses-  
5 sion of the Legislature, or at an extraordinary session if neces-  
6 sary, and shall provide for all expenditures, disbursements  
7 and outstanding obligations of the state during the ensuing  
8 biennium. In anticipation of the enactment of the budget  
9 bill, the Legislature may provide for the payment of its ex-  
10 penses.

11 A supplementary appropriation bill shall be limited to a  
12 single object or purpose therein stated and shall provide spe-  
13 cific means for meeting the appropriations contained therein,  
14 unless it shall appear from the budgets that the revenues are  
15 available. A supplementary appropriation bill shall not be  
16 passed at a regular session of the Legislature until after the  
17 budget bill has been finally adopted except upon specific rec-  
18 ommendation of the governor. Supplementary appropriation  
19 bills may be passed at an extraordinary session of the Legis-  
20 lature.

21 A budget bill or a supplementary appropriation bill shall be  
22 enacted only in accordance with sections fifty-two to fifty-four,  
23 inclusive, of this article.

Sec. 52. *Preparation of Budget.* Within ten days after  
2 the convening of the Legislature in regular session, unless such  
3 time shall be extended by the Legislature, the governor shall  
4 transmit to the Legislature a budget prepared by him, in such  
5 form as the Legislature may prescribe. The budget shall classi-  
6 fy and itemize anticipated revenues and receipts from all  
7 sources from which such expenditures, disbursements, and  
8 outstanding obligations are to be met. It shall contain  
9 classified and itemized statements of all proposed expendi-  
10 tures, and disbursements, and outstanding obligations to  
11 be met during the ensuing biennium. The governor shall  
12 have the authority to require all information which he  
13 deems necessary for the preparation of the budget from  
14 any department, institution or other agency of the state  
15 government.

Sec. 53. *Action on Budget Bill.* The governor shall  
2 submit with the budget a single bill, to be called the "bud-  
3 get bill," which shall provide for all expenditures, dis-  
4 bursements, and outstanding obligations for each year of  
5 the ensuing biennium. The presiding officer of each house  
6 shall promptly cause the bill to be introduced therein.  
7 The governor may supplement or correct the budget or  
8 the budget bill at any time before final passage.

9 The Legislature shall not amend the budget bill so as to  
10 create a deficit; nor shall it reduce the items relating to the  
11 judiciary; nor shall the salary or compensation of any pub-  
12 lic officer be increased or diminished during his term of  
13 office.

14 The Legislature shall not finally adjourn a regular session  
15 until the budget bill has been finally passed. If the budget  
16 bill has not been finally passed three days before the ex-  
17 piration of the regular session, it shall be the duty of the  
18 governor to issue a proclamation extending the session for  
19 such further period as may in his judgment be necessary  
20 for the passage of the bill. No other matter, than the bud-  
21 get bill and provision for the cost of the session, shall be  
22 considered during such an extended session.

Sec. 54. *Action of Governor; How Bill Becomes Law.*  
2 Every budget bill or supplementary appropriation bill  
3 passed by a majority of the members elected to each house  
4 of the Legislature shall, before it becomes a law, be presented  
5 to the governor. The governor may veto the bill, or he may  
6 disapprove or reduce items or parts of items contained therein.  
7 If he approves he shall sign it and thereupon it shall become  
8 a law. The bill, items or parts thereof, disapproved or re-  
9 duced by the governor, shall be returned with his objections  
10 to each house of the Legislature.

11 Each house shall enter the objections at large upon its jour-  
12 nal and proceed to reconsider. If, after reconsideration, two-  
13 thirds of the members elected to each house agree to pass the  
14 bill, or such items or parts thereof, as were disapproved or re-  
15 duced, the bill, items or parts thereof, approved by two-thirds  
16 of such members, shall become law, notwithstanding the ob-  
17 jections of the governor. In all such cases, the vote of each  
18 house shall be determined by yeas and nays to be entered on  
19 the journal.

20 A bill, item or part thereof, which is not returned by the  
21 governor within five days (Sundays excepted) after the bill  
22 has been presented to him shall become a law in like man-  
23 ner as if he had signed the bill, unless the Legislature, by ad-  
24 journment, prevents such return, in which case it shall be filed  
25 in the office of the secretary of state, within five days after  
26 such adjournment, and shall become law; or it shall be so filed  
27 within such five days with the objections of the governor, in  
28 which case it shall become law to the extent not disapproved  
29 by the governor.

Sec. 2. *Amendment to be Known as the "Budget Amend-  
2 ment."* For convenience in referring to said proposed amend-  
3 ment and in the preparation of the form of the ballot herein-  
4 after provided for, said proposed amendment is hereby desig-  
5 nated and shall be known as the "Budget Amendment".

Sec. 3. *Form of Ballot; Election.* For the purpose of en-  
2 abling the voters of the state to vote on the question of said  
3 proposed amendment to the constitution at the general election  
4 to be held in the year one thousand nine hundred forty, the  
5 board of ballot commissioners of each county is hereby re-  
6 quired to place upon, and at the foot of, the official ballot to  
7 be voted at said election, the following:

8 Ballot on constitutional "Budget Amendment" amending  
9 section fifty-one of and adding sections fifty-two, fifty-three  
10 and fifty-four to article six of the state constitution.

11 ☐ For ratification of "Budget Amendment".

12 ☐ Against ratification of "Budget Amendment".

13 The election on the proposed amendment, at each place of  
14 voting, shall be superintended, conducted and returned, and  
15 the result thereof ascertained by the same officers and in the  
16 same manner as the election of officers to be voted for at said  
17 election, and all of the provisions of law relating to general  
18 elections, including all duties to be performed by any officer  
19 or board, as far as applicable and not inconsistent with any-  
20 thing herein contained, shall apply to the election held under  
21 the provisions of this act, except when it is herein otherwise  
22 provided. The ballots cast on the question of said proposed  
23 amendment shall be counted as other ballots cast at said elec-  
24 tion.

Sec. 4. *Certificates of Election Commissioners; Canvass of*



2 *Vote; Certifying Result.* As soon as the result is ascertained,  
3 the commissioners, or a majority of them, and the canvassers  
4 (if there be any), or a majority of them, at each place of vot-  
5 ing, shall make out and sign two certificates thereof in the fol-  
6 lowing form or to the following effect:

7 "We, the undersigned who acted as commissioners (or can-  
8 vassers, as the case may be), of the election held at precinct  
9 number ....., in the district of ....., in the county  
10 of ....., on the ..... day of November, one  
11 thousand nine hundred forty, upon the question of the rati-  
12 fication or rejection of the proposed constitutional amend-  
13 ment to article six, do hereby certify that the result of said  
14 election is as follows:

15 Amending section fifty-one of and adding sections fifty-two,  
16 fifty-three and fifty-four to article six:

17 For ratification of "Budget Amendment" ..... votes.

18 Against ratification of "Budget Amendment" ..... votes.

19 Given under our hands this ..... day of November, one  
20 thousand nine hundred forty."

21 The said two certificates shall correspond with each other in  
22 all respects, and contain the full and true returns of said  
23 election at each place of voting on said questions. The said  
24 commissioners, or any one of them (or said canvassers, or any  
25 one of them, as the case may be), shall within four days, ex-  
26 cluding Sunday, after that on which said election was held,  
27 deliver one of said certificates to the clerk of the county court  
28 of the county, together with the ballots, and the other to the  
29 clerk of the circuit court of the county.

30 The said certificates, together with the ballots cast on the  
31 question of said proposed amendment, shall be laid before the  
32 commissioners of the county court at the courthouse at the  
33 same time the ballots, poll books and the certificates of the  
34 election for the members of the Legislature are laid before  
35 them; and as soon as the result of said election in the county  
36 upon the question of such ratification or rejection is ascer-  
37 tained, two certificates of such result shall be made out and  
38 signed by said commissioners, as a board of canvassers, in the  
39 following form or to the following effect:

40 "We, the board of canvassers of the county of .....,  
41 having carefully and impartially examined the returns of the  
42 election held in said county, in each district thereof, on the

43 ..... day of November, one thousand nine hundred forty, do  
44 certify that the result of the election in said county on the  
45 question of the ratification or rejection of the proposed con-  
46 stitutional amendment to article six is as follows:

47 For ratification of "Budget Amendment" ..... votes.

48 Against ratification of "Budget Amendment" ..... votes.

49 Given under our hands this ..... day of .....  
50 one thousand nine hundred forty."

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

Sec. 5. *Proclamation of Result of Election by Governor.*

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

Sec. 6. *Publication of Proposed Amendment by Governor.*

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

## CHAPTER 15

(Senate Bill No. 257—By Mr. LaFon, Mr. President)

AN ACT to provide for the submission to the voters of the state of  
an amendment to the constitution of the state of West Vir-

ginia, amending sections one, two, eight and seventeen of article seven thereof, the said amendment to be known as the "Elective State Officials Amendment".

[Passed March 11, 1939; in effect ninety days from passage. Approved by the Governor.]

#### Section

1. Submitting an amendment to article seven of the constitution, amending sections one, two, eight and seventeen of said article.
2. Amendment to be known as "elective state officials amendment."
3. Form of ballot; election.
4. Certificates of election commissioners; canvass of votes; certifying result.
5. Proclamation of result of election by governor.
6. Publication of proposed amendment by governor.

*Be it enacted by the Legislature of West Virginia:*

Section 1. *Submitting an Amendment to Article Seven of the Constitution, Amending Sections One, Two, Eight and Seventeen of Said Article.* The question of the ratification or rejection of an amendment to the constitution of the state of West Virginia, proposed in accordance with the provisions of section two of article fourteen of said constitution, amending sections one, two, eight and seventeen of article seven thereof, shall be submitted to the voters of the state at the next general election to be held in the year one thousand nine hundred forty, which proposed amendment is as follows:

#### *Proposed Amendment*

#### **Article 7. Executive Department.**

Section 1. *State Officials to be Elected.* The governor shall be the head of the executive department. The governor, a state auditor and an attorney general shall be elected by vote of the people. They shall reside at the seat of government during their terms of office and keep there the public records, books and papers pertaining to their respective offices. They shall perform such duties as may be prescribed by law. The attorney general shall be ex officio reporter of the supreme court of appeals.

Sec. 2. *Election and Terms.* An election for governor, auditor and attorney general shall be held at such times and places as may be prescribed by law. Their terms of office shall

4 be four years and shall commence on the first Monday after  
5 the second Wednesday of January next after their election.

Sec. 8. *Appointment of Officers.* The governor shall nomi-  
2 nate, and by and with the advice and consent of the senate  
3 (a majority of all the senators elected concurring by yeas and  
4 nays) appoint all heads of such executive departments as may  
5 be established by law, and all other officers whose offices may  
6 be created by law and whose appointment or election is not  
7 otherwise provided for. Provisions may be made by law for  
8 the appointment of the state superintendent of free schools by  
9 a board appointed by the governor. In no event shall any  
10 such head of an executive department or such other officer  
11 be appointed or elected by the Legislaturc.

Sec. 17. *Vacancies; Accounts and Reports; When Amend-*  
2 *ment Effective.* If the office of state auditor or attorney gener-  
3 al becomes vacant by death, resignation or otherwise, it shall  
4 be the duty of the governor to fill the office by appointment,  
5 and the appointee shall hold his office until his successor is duly  
6 elected and qualified as prescribed by law.

Sec. 2. *Amendment to be Known as the "Elective State Of-*  
2 *ficials Amendment"*. For convenience in referring to said pro-  
3 posed amendment and in the preparation of the form of the  
4 ballot hereinafter provided for, said proposed amendment is  
5 hereby designated and shall be known as the "Elective State  
6 Officials Amendment".

Sec. 3. *Form of Ballot; Election.* For the purpose of  
2 enabling the voters of the state to vote on the question of said  
3 proposed amendment to the constitution at the general election  
4 to be held in the year one thousand nine hundred forty, the  
5 board of ballot commissioners of each county is hereby required  
6 to place upon, and at the foot of, the official ballot to be voted  
7 at said election, the following:

8 Ballot on constitutional "Elective State Officials Amend-  
9 ment" amending sections one, two, eight and seventeen of  
10 article seven of the state constitution.

11 ☐ For ratification of "Elective State Officials Amend-  
12 ment".

13 ☐ Against ratification of "Elective State Officials Amend-  
14 ment".

15 The election on the proposed amendment, at each place of  
16 voting, shall be superintended, conducted and returned, and  
17 the result thereof ascertained by the same officers and in the  
18 same manner as the election of officers to be voted for at said  
19 election, and all of the provisions of law relating to general  
20 elections, including all duties to be performed by any officer  
21 or board, as far as applicable and not inconsistent with any-  
22 thing herein contained, shall apply to the election held under  
23 the provisions of this act, except when it is herein otherwise  
24 provided. The ballots cast on the question of said proposed  
25 amendment shall be counted as other ballots cast at said elec-  
26 tion.

Sec. 4. *Certificates of Election Commissioners; Canvass of*  
2 *Vote; Certifying Result.* As soon as the result is ascertained,  
3 the commissioners, or a majority of them, and the canvassers  
4 (if there be any), or a majority of them, at each place of  
5 voting, shall make out and sign two certificates thereof in the  
6 following form or to the following effect:

7 "We, the undersigned who acted as commissioners (or can-  
8 vassers, as the case may be), of the election held at precinct  
9 number ....., in the district of ....., in  
10 the county of ....., on the ..... day of  
11 November, one thousand nine hundred forty, upon the ques-  
12 tion of the ratification or rejection of the proposed constitu-  
13 tional amendment to article seven, do hereby certify that the  
14 result of said election is as follows:

15 Amending sections one, two, eight and seventeen of article  
16 seven:

17 For ratification of "Elective State Officials Amendment"  
18 .....votes.

19 Against ratification of "Elective State Officials Amend-  
20 ment" ..... votes.

21 Given under our hands this ..... day of November,  
22 one thousand nine hundred forty."

23 The said two certificates shall correspond with each other  
24 in all respects, and contain the full and true returns of said  
25 election at each place of voting on said questions. The said  
26 commissioners, or any one of them (or said canvassers, or any  
27 one of them, as the case may be), shall within four days, ex-  
28 cluding Sunday, after that on which said election was held,  
29 deliver one of said certificates to the clerk of the county court

30 of the county, together with the ballots, and the other to the  
31 clerk of the circuit court of the county.

32 The said certificates, together with the ballots cast on the  
33 question of said proposed amendment, shall be laid before the  
34 commissioners of the county court at the courthouse at the  
35 same time the ballots, poll books and the certificates of the  
36 election for the members of the Legislature are laid before  
37 them; and as soon as the result of said election in the county  
38 upon the question of such ratification or rejection is ascer-  
39 tained, two certificates of such result shall be made out and  
40 signed by said commissioners, as a board of canvassers, in  
41 the following form or to the following effect:

42 "We, the board of canvassers of the county of .....,  
43 having carefully and impartially examined the returns of the  
44 election held in said county, in each district thereof, on the  
45 ..... day of November, one thousand nine hundred  
46 forty, do certify that the result of the election in said county  
47 on the question of the ratification or rejection of the proposed  
48 constitutional amendment to article seven is as follows:

49 For ratification of "Elective State Officials Amendment"  
50 ..... votes.

51 Against ratification of "Elective State Officials Amend-  
52 ment" ..... votes.

53 Given under our hands this ..... day of .....,  
54 one thousand nine hundred forty."

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

Sec. 5. *Proclamation of Result of Election by Governor.*

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

*Sec. 6. Publication of Proposed Amendment by Governor.*

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

## CHAPTER 16

(House Bill No. 300—By Mr. Speaker, Mr. Thomas)

AN ACT to provide for the submission to the voters of the state of an amendment to article eight of the constitution of the state of West Virginia, to be known as the "Judiciary Amendment".

[Passed March 8, 1939; in effect ninety days from passage. Approved by the Governor.]

### Section

1. Submitting an amendment to article eight of the constitution.
2. Amendment to be known as the "judiciary amendment".
3. Form of ballot; election.
4. Certificates of election commissioners; canvass of vote; certifying result.
5. Proclamation of result of election by governor.
6. Publication of proposed amendment by governor.

*Be it enacted by the Legislature of West Virginia:*

Section 1. *Submitting an Amendment to Article Eight of the Constitution.* The question of the ratification or rejection of an amendment to the constitution of the state of West Virginia, proposed in accordance with the provisions of section two, article fourteen of said constitution, amending article eight of said constitution, by substituting a new article eight in lieu of said article as it now exists, shall be submitted to the voters of the state at the next general election to be held in the year one thousand nine hundred forty, which proposed amendment is as follows:

*Proposed Amendment***Article 8. Judicial Department.**

Section 1. *Judicial Department.* The judicial power of the  
2 state shall be vested in a supreme court of appeals, in cir-  
3 cuit courts, in such inferior courts and tribunals as are herein  
4 authorized, and in the judges of each of said courts and  
5 tribunals.

Sec. 2. *Supreme Court of Appeals.* The supreme court  
2 of appeals shall consist of five judges. They shall be elected  
3 by the voters of the state and shall hold office for the term  
4 of twelve years, unless sooner removed in a manner pre-  
5 scribed by this constitution. They shall receive such salaries  
6 as may be fixed by law, and the salary of no judge  
7 shall be diminished during the term for which such judge  
8 shall have been elected. Any judge in office when this article  
9 takes effect shall continue in office until his term shall expire,  
10 unless sooner removed in a manner prescribed by this constitu-  
11 tion. A majority of the judges of such court shall be a  
12 quorum for the transaction of business.

Sec. 3. *Provisions for Filling Supreme Court Vacancies.*  
2 If from any cause a vacancy shall occur in the supreme  
3 court of appeals, the governor shall issue a writ of election  
4 to fill such vacancy at the next general election for the resi-  
5 due of the term; and in the meantime, he shall fill such va-  
6 cancy by appointment until a judge shall be elected and  
7 qualified. But if the unexpired term be less than two years,  
8 the governor shall fill such vacancy by appointment for the  
9 unexpired term. The Legislature shall make provision by  
10 law for selection of a substitute judge to act in lieu of any  
11 judge of such court during his temporary incapacity to per-  
12 form the duties of his office and shall fix the compensation  
13 of such substitute judge.

Sec. 4. *Scope of Jurisdiction of Supreme Court of Ap-  
2 peals.* The supreme court of appeals shall have original  
3 jurisdiction in cases of habeas corpus, mandamus, prohi-  
4 bition and certiorari. It shall have appellate jurisdiction in  
5 civil cases where the matter in controversy, exclusive of in-  
6 terest and costs, is of greater value or amount than three



7 hundred dollars; in controversies concerning the title or  
8 boundaries of land, the probate of wills, or the appointment  
9 or qualification of a personal representative, guardian, com-  
10 mittee or curator; in controversies concerning a mill, road,  
11 way, ferry, or landing, or concerning the right of a corpor-  
12 ation or county to levy tolls or taxes; in cases of quo war-  
13 ranto, habeas corpus, mandamus, certiorari, and prohibition;  
14 and in cases involving freedom or the constitutionality of a  
15 law. It shall have appellate jurisdiction in criminal cases  
16 where there has been a conviction of a felony or a misde-  
17 meanor in a circuit court, and such appellate jurisdiction  
18 where there has been a conviction in a criminal case in an in-  
19 ferior court as may be conferred upon it by law. It shall  
20 have such other appellate jurisdiction, in both civil and  
21 criminal cases, as may be prescribed by law. It shall have  
22 general supervisory control over all circuit and inferior  
23 courts and tribunals under such regulations as may be pre-  
24 scribed by law. In cases relating to the public revenue,  
25 whether civil or criminal, the right of appeal shall belong to  
26 the state as well as the defendant.

2     *Sec. 5. Writ of Error, Supersedeas and Appeals; Scope*  
3     *and Form of Decisions.* A writ of error, supersedeas, or ap-  
4     peal for review by the supreme court of appeals of any ac-  
5     tion, suit or proceeding shall be allowed only by the supreme  
6     court of appeals, or a judge thereof, upon a petition assign-  
7     ing error in the judgment, decree or procedure of the cir-  
8     cuit or inferior court, and then only after said court or  
9     judge shall have examined and considered the record and as-  
10    signment of errors and shall be satisfied that there is error  
11    in such judgment, decree or procedure, or that the record  
12    presents a point proper for the consideration of the supreme  
13    court of appeals.

13    No decision rendered by the supreme court of appeals  
14    shall be considered as binding upon any of the circuit or in-  
15    ferior courts of the state, except in the particular case de-  
16    cided, unless at least three judges of said court concur therein.

17    When a judgment or decree is reversed, modified or af-  
18    firmed by the supreme court of appeals, every point fairly  
19    arising upon the record shall be considered and decided; the  
20    reasons therefor shall be concisely stated in writing and pre-

21 served with the record; and it shall be the duty of the court  
22 to prepare a syllabus of the points adjudicated in each case  
23 in which at least three judges of said court concur. The  
24 syllabus shall be prefixed to the published report of the  
25 case.

Sec. 6. *Officers of the Supreme Court of Appeals.* The  
2 officers of the supreme court of appeals, except the re-  
3 porter, shall be appointed and may be removed by the court  
4 or, in vacation of the court, by the judges thereof. Their  
5 duties and compensation shall be prescribed by law.

Sec. 7. *Terms of Supreme Court of Appeals.* At least two  
2 terms of the supreme court of appeals shall be held an-  
3 nually at such times and places as may be prescribed by  
4 law.

Sec. 8. *Circuit Courts and the Judges and Terms Thereof.*  
2 The existing judicial circuits shall remain as they are until  
3 changed by law, but the Legislature may rearrange the cir-  
4 cuits at any session thereof next preceding any general elec-  
5 tion of the judges of said circuits, and may increase or di-  
6 minish the number thereof. A judge of a circuit court in of-  
7 fice at the time of any such change shall continue a judge of  
8 the circuit in which he shall reside after such change until  
9 the expiration of the term for which he shall have been  
10 elected, unless sooner removed in a manner prescribed by this  
11 constitution.

12 The judges shall be elected in each circuit by the voters  
13 thereof. The number of judges to be elected in each circuit  
14 shall be in proportion to the population of the circuit to be  
15 determined by the latest official census of the United States.  
16 The Legislature shall determine the proportion, which shall  
17 be as nearly as practicable uniform for all the circuits in  
18 the state. Each of the judges so elected shall hold office  
19 for the term of eight years, unless sooner removed in a man-  
20 ner prescribed by this constitution, but the Legislature shall,  
21 if necessary, fix at less than eight years the first term of the  
22 first judge elected to fill any newly created circuit judgeship  
23 in order that the terms of all circuit judges may expire at  
24 the same time. A vacancy in the office of judge of the cir-  
25 cuit court shall be filled in the same manner as a vacancy in

26 the office of judge of the supreme court of appeals. Dur-  
27 ing his continuance in office, a judge of a circuit court shall  
28 reside in the circuit of which he is a judge. Any judge of a  
29 circuit court in office when this article takes effect shall con-  
30 tinue in office until his term expires, unless sooner removed  
31 in a manner prescribed by this constitution.

32 At least three regular terms of the circuit court shall in  
33 each year be held in every county in the state. Provision by  
34 law may be made for holding special terms of the circuit  
35 court. Provision by law may also be made for holding regu-  
36 lar and special terms thereof when, from any cause, a judge  
37 shall fail to attend or cannot properly preside. A judge of  
38 any circuit may be authorized by the Legislature or may be  
39 authorized or required by the supreme court of appeals to  
40 hold court in any other circuit. Until action is taken by the  
41 supreme court of appeals, the Legislature shall by law  
42 make provision for dividing the business of those circuits in  
43 which there shall be more than one judge among the judges  
44 thereof so as to promote and secure the convenient and ex-  
45 peditious transaction of such business.

Sec. 9. *Jurisdiction of Circuit Courts.* The circuit courts  
2 shall have supervision and control of all proceedings before  
3 all inferior tribunals in their respective counties by man-  
4 damus, prohibition and certiorari. They shall, except in cases  
5 confined exclusively by this constitution to some other tri-  
6 bunal, have original and general jurisdiction of all matters  
7 at law where the amount in controversy, exclusive of inter-  
8 est and costs, exceeds two hundred dollars; of all cases of  
9 habeas corpus, mandamus, quo warranto and prohibition;  
10 and of all crimes and misdemeanors. They shall have ex-  
11 clusive, original and general jurisdiction in all cases in  
12 equity. They shall have appellate jurisdiction in all cases,  
13 civil and criminal, where an appeal, writ of error, or super-  
14 sedeas may be allowed to the judgment or proceedings of  
15 any county court, summary court, or inferior tribunal. The  
16 circuit courts shall have all judicial power, authority, and  
17 jurisdiction not vested by this constitution or by the laws  
18 consistent therewith in some other court or tribunal. They  
19 shall also have such other jurisdiction, whether supervisory,

20 original, appellate, or concurrent, as is or may be prescribed  
21 by law.

Sec. 10. *General Provisions Relating to Judges.* All judges  
2 of the supreme court of appeals and of the circuit courts  
3 shall be commissioned by the governor and shall receive such  
4 salaries as may be fixed by law. The salary of no judge  
5 shall be diminished during the term for which he shall have  
6 been elected. Such judges may receive the mileage provided  
7 by law. No judge, during his term of office, shall practice  
8 the profession of law; nor shall he hold any other office  
9 than that of judge, or accept any appointment or public  
10 trust, under this or any other government, except as pro-  
11 vided by law; nor shall he, during his continuance in office,  
12 be eligible to any political office, or become a candidate for  
13 any elective office or nomination thereto, except a judicial  
14 office; and the violation of any of these provisions shall va-  
15 cate his office.

Sec. 11. *How Judges May be Removed from Office.* Any  
2 judge of the supreme court of appeals or of a circuit court  
3 may be removed from office by a vote of two-thirds of the  
4 members elected to each house of the Legislature, each  
5 house voting separately, when from age, disease, mental or  
6 bodily infirmity, or intemperance, he is incapable of dis-  
7 charging the duties of his office. No judge shall be removed  
8 by virtue of this section unless he shall have had an oppor-  
9 tunity to be heard in a joint meeting of both houses, nor  
10 unless he shall have received notice of the proceeding, with  
11 a statement of the cause or causes alleged for his removal,  
12 at least twenty days before the day on which action is taken.  
13 Such notice may be given only upon the vote of a majority  
14 of the members of each house present. In case of removal,  
15 a statement of the cause or causes of removal shall be enter-  
16 ed upon the journal of each house.

Sec. 12. *Clerks of Circuit Courts.* The voters of each  
2 county shall elect a clerk of the circuit court, whose term  
3 of office shall be six years. His duties and compensation and  
4 the manner of removing him from office shall be prescribed  
5 by law. He may be required by law to perform duties in  
6 addition to those pertaining to his office as clerk of the cir-

7 cuit court. When a vacancy shall occur in the office, the  
8 circuit court or the judge or judges thereof in vacation shall  
9 fill the same by appointment until the next general election.  
10 If the vacancy shall not be filled within ten days, then it shall  
11 be filled by the governor by appointment. In any case in  
12 respect to which the clerk shall be so situated as to make it  
13 improper for him to act, the said court shall appoint a clerk  
14 to act therein. The clerks of said courts in office when this  
15 article takes effect shall remain therein for the term for which  
16 they were elected, unless sooner removed in the manner pre-  
17 scribed by law.

Sec. 13. *Summary Courts.* The Legislature shall establish  
2 in each county in the state a summary court. The Legislature  
3 shall determine the number of judges to be elected for each  
4 summary court and may provide for the election of one or  
5 more judges to preside over the summary courts of two or  
6 more contiguous counties. Each summary judge shall be  
7 elected by the voters of the county or counties in which he  
8 shall preside. Each of the judges so elected shall hold his  
9 office for the term of four years, unless sooner removed in a  
10 manner prescribed by this constitution. No person shall be  
11 entitled to hold the office of summary judge unless at the time  
12 of his election and during his continuance in office he be a  
13 resident of the county or of one of the counties for which he  
14 is elected. The minimum age requirement for a judge of the  
15 summary court shall be twenty-five years, but nothing herein  
16 contained shall be construed as requiring that a summary  
17 judge be a lawyer. A summary judge shall be commis-  
18 sioned by the governor, shall receive such salary, allowance  
19 and mileage as may be fixed by law, which shall not be in-  
20 creased or diminished during the term for which he shall have  
21 been elected, and shall be paid, in the manner prescribed by  
22 law, by the county or counties for which he shall have been  
23 elected. Except as provided by law, no judge, during the term  
24 of his office, shall practice the profession of law; nor, except as  
25 provided by law, shall he hold any other office than that of  
26 judge, or accept any appointment or public trust, under this  
27 or any other government; nor shall he, during his continu-  
28 ance in office, be eligible to any political office, or become a

29 candidate for any elective office or nomination thereto, except  
30 a judicial office; and the violation of any of these provisions  
31 shall vacate his office. A summary judge may be removed from  
32 office by the supreme court of appeals when from age, dis-  
33 ease, mental or bodily infirmity, or intemperance, he is in-  
34 capable of discharging the duties of his office. The procedure  
35 for such removal shall be prescribed by law. Any judge against  
36 whom a proceeding for removal from office is to be instituted  
37 shall, prior thereto, receive reasonable notice of the cause, or  
38 causes, alleged for such removal.

39 In those counties where there shall be more than one sum-  
40 mary judge, the Legislature shall, until action is taken by  
41 the supreme court of appeals, make such provision for the  
42 distribution, assignment and conduct of the business of such  
43 court as shall promote and secure the convenient and ex-  
44 peditious transaction thereof. A summary judge shall not  
45 be absent from his official duties except as may be prescribed  
46 by law. Provision shall be made by law for the conduct of  
47 the business of a summary court in cases where it is im-  
48 proper for a summary judge to act, or when he is absent,  
49 or when, for any reason, he cannot exercise the jurisdiction  
50 of such court, and for filling a vacancy in the office of sum-  
51 mary judge.

52 The jurisdiction of a summary court shall extend through-  
53 out the county, shall be uniform for all counties of the state,  
54 and shall be subject to such regulations as to the venue of ac-  
55 tions and the counties in which process may be executed or  
56 served on parties or witnesses as may be established by law.  
57 Times and places for holding such court may be regulated by  
58 law, but, in the absence of such regulation, such court may  
59 be held at any time and anywhere within the county.

60 Summary courts shall have such jurisdiction, original or  
61 appellate, in criminal matters as may be prescribed by law.  
62 In criminal cases, the procedure may be by information or  
63 warrant of arrest, without presentment or indictment by a  
64 grand jury. They shall have original jurisdiction in all  
65 civil actions at law wherein the amount in controversy or the  
66 value of personal property in controversy, or the aggregate  
67 of such amount and value, exclusive of interest and costs,  
68 shall not exceed five hundred dollars, except such actions as

69 may be excluded from their jurisdiction by law; and in ac-  
70 tions of unlawful detainer of real estate when the title thereto  
71 is not in controversy.

72 Appeals or writs of error shall lie from the judg-  
73 ments of a summary court to the circuit court of the  
74 county, and writs of error shall lie from the supreme court of  
75 appeals to judgments of a summary court, in such cases and  
76 in such manner as may be prescribed by law.

77 No judgment of a summary court in any action involving  
78 real estate or any right pertaining thereto shall bar the title  
79 of any party or any remedy therefor; and no person shall be  
80 put in jeopardy of life or liberty for a felony in such court.

81 A trial jury in a summary court shall consist of six jurors.

Sec. 14. *Municipal Courts.* The Legislature may provide  
2 for the establishment in any incorporated city, town or vil-  
3 lage of a municipal, police or mayor's court, which shall  
4 have jurisdiction to enforce municipal ordinances, subject to  
5 appeal to the circuit court. All such courts heretofore estab-  
6 lished shall, until otherwise provided by law, remain as at  
7 present constituted insofar as their jurisdiction to enforce  
8 municipal ordinances is concerned, but any other jurisdic-  
9 tion now exercised by such a court shall cease with the ex-  
10 piration of the term of office of the judge thereof.

Sec. 15. *Jurisdiction and Terms of Office of Superseded*  
2 *Courts, Judges and Justices; Transfer of Causes.* The terms  
3 of office of all justices of the peace and constables, elected or  
4 appointed, and qualified and serving at the time of the adop-  
5 tion of this article, are hereby extended to and including the  
6 thirty-first day of December, in the year one thousand nine  
7 hundred forty-two. A vacancy appointment of a justice of  
8 the peace or constable, made after this article is adopted, shall  
9 terminate on the thirty-first day of December, in the year one  
10 thousand nine hundred forty-two. No justice of the peace  
11 shall hold office after the thirty-first day of December in  
12 the year one thousand nine hundred forty-two; nor shall  
13 a judge of an inferior court of record of limited jurisdiction  
14 elected to office in the year one thousand nine hundred  
15 forty hold office after the thirty-first day of December in the  
16 year one thousand nine hundred forty-four. Otherwise,

17 the adoption of this article shall not affect the term of office,  
18 or the jurisdiction during such term, of a judge of any in-  
19 ferior court of record of limited jurisdiction in office, or elected  
20 to office, at the time when this article takes effect, or the juris-  
21 diction of such court during such term of office; or the term  
22 of office, or the jurisdiction during such term, of any justice  
23 of the peace in office, or elected to office, at such time. All  
24 actions, suits and proceedings pending in any inferior court  
25 of record of limited jurisdiction in any county at the time  
26 when the jurisdiction of such court shall cease with the expira-  
27 tion of the term of office of the judge thereof shall be trans-  
28 ferred to the circuit court of the county and be prosecuted  
29 therein as if originally instituted in such circuit court. When-  
30 ever the jurisdiction of any justice of the peace shall cease  
31 with the expiration of his term of office, all matters then pend-  
32 ing before him shall be transferred to the summary court of  
33 the county, if it has jurisdiction thereof; otherwise, to the  
34 circuit court of the county. After such transfer, such matters  
35 shall be disposed of in the summary court or the circuit court  
36 as if originally pending therein.

Sec. 16. *Issuance of Writs, Warrants, and Process; Ad-*  
2 *mission to Bail.* The Legislature may designate courts, tri-  
3 bunals or officers who shall have the power to issue such  
4 writs, warrants and other process as may be prescribed by  
5 law; may provide for the selection of other persons for the  
6 purpose of exercising such powers; and may specify before  
7 what courts, tribunals, officers, or persons such writs, war-  
8 rants or other process shall be returnable. The Legislature  
9 may also designate courts, tribunals, or officers who shall  
10 have the power to admit persons to bail and may provide  
11 for the selection of other persons for the purpose of exercis-  
12 ing such power. The powers mentioned in this section shall  
13 be exercised under such regulations as shall be prescribed by  
14 law; but no person exercising such powers shall be compen-  
15 sated therefor on a fee basis.

Sec. 17. *Parts of Common Law Effective; Matters Pend-*  
2 *ing in Circuit Courts.* Such parts of the common law and  
3 of the laws of this state as are in force when this article  
4 goes into operation, and are not repugnant thereto, shall be



5 and continue the law of the state until altered or repealed  
6 by the Legislature. All civil and criminal suits and proceed-  
7 ings pending in the circuit courts of this state shall remain  
8 and be prosecuted in the circuit courts of the counties in  
9 which they are pending.

Sec. 18. *County Courts.* Except as otherwise provided in  
2 this article, there shall be in each county in the state a  
3 county court composed of three commissioners. Two of said  
4 commissioners shall be a quorum for the transaction of busi-  
5 ness. Four regular sessions of said court shall be held in  
6 each year, at such times as may be fixed and entered of rec-  
7 ord by the said court. Provision may be made by law for  
8 holding special sessions of said court.

Sec. 19. *County Commissioners.* The commissioners shall  
2 be elected by the voters of the county and shall hold their  
3 office for the term of six years, except that, at the first meet-  
4 ing of said commissioners, if all shall have been elected at  
5 the same time, they shall designate by lot, or otherwise, in  
6 such manner as they may determine, one of their number who  
7 shall hold his office for the term of two years, one for four  
8 years, and one for six years, so that one shall be elected  
9 every two years. No two of said commissioners shall be  
10 elected from the same magisterial district. If two or more  
11 persons residing in the same district shall receive the greater  
12 numbers of votes cast at any election, then only the one  
13 of such persons receiving the highest number shall be de-  
14 clared elected, and the person residing in another district  
15 who shall receive the next highest number of votes shall be  
16 declared elected. A commissioner in office at the time when  
17 this article takes effect shall remain therein until the ex-  
18 piration of his term of office, unless sooner removed in the  
19 manner provided by this constitution. Said commissioners  
20 shall annually elect one of their number president. Each  
21 commissioner shall receive such salary as may be prescribed  
22 by law and no commissioner shall receive for his services,  
23 other than such salary, any reward, compensation or benefit  
24 out of public funds; nor shall he be interested in any con-  
25 tract with the county.

Sec. 20. *Powers of County Courts.* The county courts, through their clerks, except as may be otherwise provided by law, shall have the custody of all deeds and other papers presented for record in their counties, and the same shall be preserved therein, or otherwise disposed of, as prescribed by law. They shall, under such regulations as may be prescribed by law, have the superintendence and administration of the internal police and fiscal affairs of the county, including, where such functions are not required by law to be performed by some other agency, the establishment and regulation of roads, ways, bridges, public landings, ferries and mills, and shall have authority to lay and disburse county levies; but no license for the sale of intoxicating liquors in any incorporated city, town or village shall be granted without the consent of the municipal authorities thereof first had and obtained. They shall, in all cases of contest, judge of the election, qualification and return of their own members, and of all county and district officers, subject to such regulations, by appeal or otherwise, as may be prescribed by law. Such courts may exercise such other powers, and perform such other duties, not of a judicial nature, as may be prescribed by law. Such tribunals as have been heretofore established by the Legislature and are now in existence under and by virtue of the thirty-fourth section of the eighth article of the constitution of one thousand eight hundred seventy-two, for police and fiscal purposes, shall, until otherwise provided by law, remain and continue as at present constituted in the counties in which they have been respectively established, and shall be and act as to police and fiscal matters in lieu of the county court created by this article until otherwise provided by law. And, until otherwise provided by law, such clerk as is mentioned in the twenty-second section of this article shall exercise any powers and discharge any duties heretofore conferred on, or required of, any court or tribunal established for judicial purposes under said article and section of the constitution of one thousand eight hundred seventy-two, or the clerk of such court or tribunal, respectively, respecting the recording and preservation of deeds and other papers presented for record.

Sec. 21. *Jurisdiction in Matters of Probate, etc.* Jurisdiction in all matters of probate, the appointment and qualification of a personal representative, guardian, committee, or curator, and the settlement of their accounts, and in the matter of apprentices, shall be in such courts or tribunals and the clerks thereof as may be prescribed by law, such jurisdiction to be exercised by such courts, tribunals or clerks, respectively, to the extent and in the manner to be prescribed by law; but, until the Legislature shall provide otherwise, jurisdiction in all such matters shall remain in the county courts and the clerks thereof, under such regulations as are now or may be hereafter prescribed by law. Should jurisdiction in such matters be changed, provision shall be made by law for the transfer of all such matters then pending in the county courts to the courts or tribunals to which such jurisdiction shall have been transferred, and such disposition shall be made of records and papers in the offices of clerks of the county courts relating to matters of probate, the appointment and qualification of personal representatives, guardians, committees, and curators and the settlement of their accounts, and in the matter of apprentices, as shall be prescribed by law.

Sec. 22. *Clerk of the County Court.* Except as otherwise provided by law, the voters of each county shall elect a clerk of the county court, whose term of office shall be six years. His duties and compensation and the manner of his removal from office shall be prescribed by law. The clerks of said courts now in office shall remain therein for the terms for which they have been elected, unless sooner removed therefrom in the manner prescribed by law.

Sec. 23. *Districting of Counties.* Each county shall be laid off into districts, not less than three nor more than ten in number, and as nearly equal as may be in territory and population. The districts as they now exist shall remain until changed by the county court.

Sec. 24. *Re-formation of County Courts.* The Legislature shall, upon the application of any county, reform, alter or modify the county court established by this article in such county, and, in lieu thereof, with the assent of a majority of

5 the voters of such county voting at an election, create an-  
6 other tribunal for the transaction of the business required  
7 to be performed by the county court created by this article;  
8 and in such case, all the provisions of this article in relation  
9 to the county court shall be applicable to the tribunal estab-  
10 lished in lieu of said court. Any such tribunal now estab-  
11 lished, or which shall be established, shall continue to act in  
12 lieu of the county court until otherwise provided by law.

Sec. 25. *Vacancies in Offices.* Vacancies in the office of  
2 a commissioner and in the office of clerk of the county court  
3 in any county shall be filled by the county court of the  
4 county until the next general election. If there be at the  
5 same time in the same county more than one vacancy in the  
6 office of commissioner, such vacancies shall be filled by the  
7 governor by appointment until the next general election.

Sec. 26. *Office of Constable Abolished.* The provisions of sec-  
2 tion thirteen of article six and the provisions of sections two  
3 and seven of article nine of this constitution, to the extent  
4 only that they provide for the office of constable, are hereby  
5 repealed after the thirty-first day of December in the year one  
6 thousand nine hundred forty-two.

Sec. 2. *Amendment to be Known as the "Judiciary Amend-*  
2 *ment"*. For convenience in referring to said proposed amend-  
3 ment and in the preparation of the form of the ballot herein-  
4 after provided for, said proposed amendment is hereby desig-  
5 nated and shall be known as the "Judiciary Amendment."

Sec. 3. *Form of Ballot; Election.* For the purpose of  
2 enabling the voters of the state to vote on the question of said  
3 proposed amendment to the constitution at the general elec-  
4 tion to be held in the year one thousand nine hundred forty,  
5 the board of ballot commissioners of each county is hereby  
6 required to place upon, and at the foot of, the official ballot  
7 to be voted at said election, the following:

8 Ballot on constitutional "Judiciary Amendment" amending  
9 article eight of the state constitution.

10 ☐ For ratification of "Judiciary Amendment".

11 ☐ Against ratification of "Judiciary Amendment".

12 The election on the proposed amendment, at each place  
13 of voting, shall be superintended, conducted and returned,

14 and the result thereof ascertained by the same officers and in  
15 the same manner as the election of officers to be voted for at  
16 said election; and all of the provisions of law relating to gen-  
17 eral elections, including all duties to be performed by any  
18 officer or board, as far as applicable and not inconsistent with  
19 anything herein contained, shall apply to the election held  
20 under the provisions of this act, except when it is herein  
21 otherwise provided. The ballots cast on the question of said  
22 proposed amendment shall be counted as other ballots cast at  
23 said election.

Sec. 4. *Certificates of Election Commissioners; Canvass of*  
2 *Vote; Certifying Result.* As soon as the result is ascertained  
3 the commissioners, or a majority of them, and the canvassers  
4 (if there be any), or a majority of them, at each place of  
5 voting, shall make out and sign two certificates thereof in  
6 the following form or to the following effect:

7 "We, the undersigned, who acted as commissioners (or  
8 canvassers, as the case may be), of the election held at pre-  
9 cinct number....., in the district of ....., in the  
10 county of ....., on the..... day of November, one  
11 thousand nine hundred forty, upon the question of the ratifi-  
12 cation or rejection of the proposed constitutional amendment  
13 to article eight, do hereby certify that the result of said elec-  
14 tion is as follows:

15 Amending article eight:

16 For ratification of "Judiciary Amendment".....votes.

17 Against ratification of "Judiciary Amendment".....votes.

18 Given under our hands this ..... day of November, one  
19 thousand nine hundred forty."

20 The said two certificates shall correspond with each other  
21 in all respects, and contain the full and true returns of said  
22 election at each place of voting on said question. The said  
23 commissioners, or any one of them (or said canvassers, or  
24 any one of them, as the case may be), shall within four days,  
25 excluding Sunday, after that on which said election was  
26 held, deliver one of said certificates to the clerk of the coun-  
27 ty court of his county, together with the ballots, and the  
28 other to the clerk of the circuit court of his county.

29 The said certificates, together with the ballots cast on the  
30 question of said proposed amendment, shall be laid before

31 the commissioners of the county court at the courthouse at  
32 the same time the ballots, poll books and the certificates  
33 of the election for the members of the Legislature are laid be-  
34 fore them; and as soon as the result of said election in the  
35 county upon the question of such ratification or rejection is  
36 ascertained, two certificates of such result shall be made out  
37 and signed by said commissioners, as a board of canvassers,  
38 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 forty, do  
43 certify that the result of the election in said county, on the  
44 question of the ratification or rejection of the proposed con-  
45 stitutional amendment to article eight, is as follows:

46 For ratification of "Judiciary Amendment".....votes.

47 Against ratification of "Judiciary Amendment".....votes.

48 Given under our hands this.....day of....., one  
49 thousand nine hundred forty."

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

Sec. 5. *Proclamation of Result of Election by Governor.*

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

Sec. 6. *Publication of Proposed Amendment by Governor.*

2 The governor shall cause the said proposed amendment, with  
3 the proper designation for the same as hereinbefore adopted,  
4 to be published one time, at least three months before such

5 election, in some newspaper in every county in this state in  
6 which a newspaper is printed, at a price to be agreed upon  
7 in advance in writing, and the cost of such advertising shall  
8 in the first instance, if found necessary by him, be paid out  
9 of the governor's contingent fund and be afterwards repaid  
10 to such fund by appropriation of the Legislature.

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## CHAPTER 17

(Senate Bill No. 24—By Mr. Wylie)

AN ACT to amend and reenact section five, article two, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to compensation of county assessors and deputies.

[Passed March 3, 1939; in effect ninety days from passage. Became a law without the approval of the Governor.]

### Article 2. Assessors.

#### Section

#### 5. Compensation of assessors and deputies.

*Be it enacted by the Legislature of West Virginia:*

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

Section 5. *Compensation of Assessors and Deputies.* The annual salary of the assessor in each county shall be as follows:  
2 Barbour county, two thousand two hundred dollars; Berkeley  
3 county, two thousand dollars; Boone county, two thousand one  
4 hundred dollars; Braxton county, one thousand eight hundred  
5 dollars; Brooke county, one thousand eight hundred dollars;  
6 Cabell county, three thousand six hundred dollars; Calhoun  
7 county, one thousand two hundred dollars; Clay county,  
8 ty, one thousand four hundred forty dollars; Doddridge  
9 county, one thousand four hundred forty dollars; Fayette  
10 county, three thousand six hundred dollars; Gilmer county,  
11 one thousand six hundred twenty dollars; Grant county, one  
12

13 thousand dollars; Greenbrier county, one thousand eight  
14 hundred dollars; Hampshire county, one thousand four hun-  
15 dred forty dollars; Hancock county, two thousand two hun-  
16 dred dollars; Hardy county, one thousand three hundred  
17 fifty dollars; Harrison county, four thousand dollars;  
18 Jackson county, one thousand three hundred fifty dollars;  
19 Jefferson county, two thousand dollars; Kanawha coun-  
20 ty, five thousand dollars; Lewis county, two thousand  
21 six hundred dollars; Lincoln county, two thousand dollars;  
22 Logan county, three thousand dollars; Marion county, three  
23 thousand dollars; Marshall county, two thousand eight hun-  
24 dred dollars; Mason county, one thousand eight hundred  
25 dollars; Mercer county, three thousand six hundred dol-  
26 lars; Mineral county, two thousand dollars; Mingo county,  
27 two thousand seven hundred dollars; Monongalia county,  
28 two thousand four hundred dollars; Monroe county, one  
29 thousand three hundred fifty dollars; McDowell county,  
30 three thousand six hundred dollars; Morgan county, one  
31 thousand two hundred dollars; Nicholas county, one thou-  
32 sand eight hundred twenty dollars; Ohio county, three  
33 thousand six hundred dollars; Pendleton county, one thou-  
34 sand two hundred dollars; Pleasants county, one thousand  
35 two hundred dollars; Pocahontas county, one thousand two  
36 hundred dollars; Preston county, two thousand two hundred  
37 ten dollars; Putnam county, one thousand eight hundred  
38 dollars; Raleigh county, three thousand dollars; Randolph  
39 county, two thousand five hundred dollars; Ritchie county,  
40 one thousand six hundred dollars; Roane county, one thou-  
41 sand six hundred twenty dollars; Summers county, one thou-  
42 sand five hundred dollars; Taylor county, two thousand  
43 dollars; Tucker county, one thousand six hundred dollars;  
44 Tyler county, two thousand two hundred dollars; Upshur  
45 county, two thousand dollars; Wayne county, two thousand  
46 two hundred ten dollars; Webster county, one thousand  
47 three hundred fifty dollars; Wetzel county, two thousand  
48 six hundred dollars; Wirt county, one thousand one hundred  
49 dollars; Wood county, two thousand dollars; Wyoming  
50 county, two thousand four hundred dollars.

51 In addition to the above salary each assessor shall receive a



52 commission of ten per cent on all state school, road and mu-  
53 nicipal capitation taxes collected by him.

54 The salaries of assessors and their deputies, assistants and  
55 employees shall be paid out of the county fund at the time  
56 and in the manner now provided by law for paying other  
57 county officers.

## CHAPTER 18

(Senate Bill No. 211—By Mr. Young)

AN ACT to amend and reenact sections two and three, article seven, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended and reenacted by chapter nineteen, acts of the Legislature of West Virginia, extraordinary session, one thousand nine hundred thirty-two, and as further amended and reenacted by chapter eighty-three, acts of the Legislature of West Virginia, regular session, one thousand nine hundred thirty-seven, relating to the salaries of clerks of the county courts and clerks of the circuit courts.

[Passed March 11, 1939; in effect ninety days from passage. Became a law without the approval of the Governor.]

### Article 7. Salaries; Deputies and Assistants and Their Salaries.

#### Section

2. Salaries of county clerks.
3. Salaries of circuit clerks.

*Be it enacted by the Legislature of West Virginia:*

That sections two and three, article seven, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended and reenacted by chapter nineteen, acts of the Legislature of West Virginia, extraordinary session, one thousand nine hundred thirty-two, and as further amended and reenacted by chapter eighty-three, acts of the Legislature of West Virginia, regular session, one thousand nine hundred thirty-seven, be amended and reenacted to read as follows:

- Section 2. *Salaries of County Clerks.* The annual compensation of the clerk of the county court in each county shall be as follows: Barbour county, two thousand two hundred dollars; Berkeley county, two thousand five hundred dollars;

5 Boone county, two thousand four hundred dollars; Braxton  
6 county, two thousand two hundred dollars; Brooke county,  
7 one thousand nine hundred dollars; Cabell county, four thou-  
8 sand five hundred dollars; Calhoun county, one thousand seven  
9 hundred dollars; Clay county, one thousand seven hundred  
10 dollars; Doddridge county, one thousand eight hundred dol-  
11 lars; Fayette county, three thousand two hundred dollars;  
12 Gilmer county, one thousand eight hundred dollars; Green-  
13 brier county, two thousand five hundred dollars; Hampshire  
14 county, one thousand eight hundred dollars; Hancock county,  
15 one thousand eight hundred dollars; Harrison county, four  
16 thousand dollars; Jackson county, one thousand eight hun-  
17 dred dollars; Jefferson county, two thousand dollars; Ka-  
18 nawha county, five thousand five hundred dollars; Lewis  
19 county, two thousand five hundred dollars; Lincoln county,  
20 two thousand four hundred dollars; Logan county, three thou-  
21 sand three hundred dollars; Marion county, four thousand  
22 eight hundred dollars; Marshall county, three thousand dol-  
23 lars; Mason county, two thousand five hundred dollars; Mc-  
24 Dowell county, four thousand five hundred dollars; Mercer  
25 county, three thousand six hundred dollars; Mineral county,  
26 three thousand dollars; Mingo county, three thousand dollars;  
27 Monongalia county, three thousand five hundred dollars;  
28 Monroe county, one thousand five hundred dollars; Morgan  
29 county, one thousand seven hundred dollars; Nicholas county,  
30 two thousand two hundred fifty dollars; Ohio county, four  
31 thousand dollars; Pleasants county, one thousand eight hun-  
32 dred dollars; Pocahontas county, one thousand eight hundred  
33 dollars; Preston county, two thousand three hundred dollars;  
34 Putnam county, two thousand two hundred dollars; Raleigh  
35 county, three thousand six hundred dollars; Randolph county,  
36 two thousand eight hundred dollars; Ritchie county, two thou-  
37 sand five hundred dollars; Roane county, two thousand two  
38 hundred dollars; Summers county, one thousand six hundred  
39 dollars; Taylor county, two thousand dollars; Tucker county,  
40 one thousand nine hundred dollars; Tyler county, two thou-  
41 sand dollars; Upshur county, two thousand five hundred dol-  
42 lars; Wayne county, two thousand four hundred dollars;  
43 Webster county, two thousand dollars; Wetzel county, two  
44 thousand six hundred dollars; Wirt county, one thousand two  
45 hundred dollars; Wood county, three thousand six hundred  
46 dollars; Wyoming county, three thousand dollars.

Sec. 3. *Salaries of Circuit Clerks.* The annual compensation of the clerk of the circuit court (or clerk of the circuit and criminal or intermediate or other court of limited jurisdiction) in each county shall be as follows: Barbour county, two thousand dollars; Berkeley county, two thousand dollars; Boone county, two thousand dollars; Braxton county, two thousand dollars; Brooke county, one thousand eight hundred dollars; Cabell county, four thousand five hundred dollars; Calhoun county, one thousand two hundred dollars; Clay county, one thousand four hundred dollars; Doddridge county, one thousand five hundred dollars; Fayette county, three thousand dollars; Gilmer county, one thousand six hundred dollars; Greenbrier county, one thousand eight hundred dollars; Hampshire county, one thousand said dollars; Hancock county, one thousand eight hundred dollars; Harrison county, four thousand dollars; Jackson county, one thousand five hundred dollars; Jefferson county, two thousand dollars; Kanawha county, five thousand five hundred dollars; Lewis county, two thousand two hundred dollars; Lincoln county, two thousand dollars; Logan county, three thousand dollars; Marion county, four thousand eight hundred dollars; Marshall county, two thousand four hundred dollars; Mason county, one thousand eight hundred dollars; McDowell county, four thousand five hundred dollars; Mercer county, three thousand six hundred dollars; Mineral county, three thousand dollars; Mingo county, three thousand dollars; Monongalia county, three thousand five hundred dollars; Monroe county, one thousand two hundred dollars; Morgan county, nine hundred dollars; Nicholas county, two thousand dollars; Ohio county, five thousand dollars; Pleasants county, one thousand three hundred fifty dollars; Pocahontas county, one thousand eight hundred dollars; Preston county, two thousand dollars; Putnam county, one thousand eight hundred dollars; Raleigh county, three thousand three hundred dollars; Randolph county, two thousand six hundred dollars; Ritchie county, one thousand eight hundred dollars; Roane county, one thousand eight hundred dollars; Summers county, one thousand six hundred dollars; Taylor county, two thousand dollars; Tucker county, one thousand six hundred dollars; Tyler county, one thousand eight hundred dollars; Upshur county, two thousand five hundred dol-

42 lars; Wayne county, two thousand dollars; Webster county,  
43 one thousand eight hundred dollars; Wetzel county, two thou-  
44 sand dollars; Wirt county, nine hundred dollars; Wood  
45 county, three thousand dollars; Wyoming county, three thou-  
46 sand dollars.

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## CHAPTER 19

(Com. Sub. for Senate Bill No. 104—Originating in the Senate Committee  
on the Judiciary)

AN ACT to amend section seven, article seven, chapter seven of  
the code of West Virginia, one thousand nine hundred  
thirty-one, providing for determining and fixing an aggregate  
sum to be expended for deputies, assistants and other em-  
ployees of the offices of sheriff, clerk of the county court and  
clerk of the circuit court.

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[Passed March 9, 1939; in effect ninety days from passage. Approved by the  
Governor.]

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### **Article 7. Salaries; Deputies and Assistants and Their Salaries.**

#### **Section**

7. Deputies and assistants of sheriffs and clerks of the courts; salaries.

*Be it enacted by the Legislature of West Virginia:*

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

Section 7. *Deputies and Assistants of Sheriffs and Clerks of  
2 the Courts; Salaries.* The sheriff, clerk of the county court,  
3 clerk of the circuit court (clerk of the criminal, common  
4 pleas or intermediate courts), on or before December first  
5 of each year, shall file with the county court, or tribunal  
6 in lieu thereof, a detailed statement of the probable amount  
7 necessary to be expended for deputies, assistants, and other  
8 employees of their respective offices in the following calen-  
9 dar year. If any such officer shall fail to file the statement  
10 hereby required, he shall be guilty of a misdemeanor, and  
11 upon conviction thereof, shall be fined not less than fifty  
12 nor more than one hundred dollars, or imprisoned in the  
13 county jail not less than thirty days nor more than six

14 months, or both, in the discretion of the court. The county  
15 court, or tribunal in lieu thereof, shall, not later than fifteen  
16 days after the filing of such statement, take up and con-  
17 sider the same and shall determine and fix an aggregate  
18 sum to be expended for the period covered by such state-  
19 ment for the compensation of all such deputies, assistants  
20 and other employees of the respective officers, which shall  
21 be reasonable and proper, regard being had to the amount  
22 of labor necessary to be performed by those to receive the  
23 same, and shall enter upon its court record a finding of its  
24 action: *Provided*, That any clerk of a circuit court, feeling  
25 that the sum so fixed and determined is inadequate to enable  
26 him to properly conduct his office, may appeal to the circuit  
27 court of such county, which shall determine and fix a reason-  
28 able and just amount for the compensation of his deputies  
29 and assistants: *Provided further*, That any taxpayer feeling  
30 aggrieved at the allowance made by the county court to the  
31 sheriff, and any sheriff feeling that the business of his office  
32 cannot be conducted properly by the maximum allowance  
33 by the county court for office expenditures, or the number of  
34 deputies and their salaries, shall be allowed the right of  
35 appeal to the circuit court of such county for the purpose  
36 of determining the equity of such maximum allowance.

37 The officers herein named shall appoint and employ such  
38 deputies, assistants and other employees in the manner pro-  
39 vided by law, as may be necessary for their respective offices  
40 and fix their compensation, and shall file with the clerk of  
41 the county court, or other tribunal in lieu thereof, a state-  
42 ment in writing showing such action and setting forth the  
43 name of each deputy, assistant and employee, the time for  
44 which employed and the monthly compensation; but the  
45 compensation for all deputies, assistants and other em-  
46 ployees shall not exceed in the aggregate, for each office, the  
47 amount so fixed for that office as hereinbefore provided.  
48 The officers herein named shall have authority to discharge  
49 any deputy, assistant or other employee, by filing with the  
50 clerk of the county court, or tribunal in lieu thereof a state-  
51 ment in writing showing such action. All statements re-  
52 quired to be filed by this section shall be verified by the  
53 affidavit of the person making them, and among other things

54 contained in the affidavit shall be the statement that the  
55 amounts shown therein were the amounts actually paid or  
56 intended to be paid to the deputies, assistants, or other  
57 employees; that no rebates, agreement, understanding and  
58 expectation that any part thereof shall be repaid to him,  
59 and that nothing has heretofore been paid or promised him  
60 on that account, and that if he shall thereafter receive any  
61 money, or thing of value, on account thereof, he will account  
62 for and pay the same to the county. Until the statements  
63 required by this section have been filed, no allowances or  
64 payments shall be made to any officer for deputies, assistants  
65 or other employees.

## CHAPTER 20

(House Bill No. 99—By Mr. Mace)

AN ACT to amend and reenact section five, article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as the same was last amended and reenacted by chapter twenty-three, acts of the Legislature, regular session, one thousand nine hundred thirty-seven, relating to compensation of county courts for services other than services in court.

[Passed March 10, 1939; in effect ninety days from passage. Became a law without the approval of the Governor.]

### Article 1. County Courts Generally.

#### Section

#### 5. Duties and salaries of county commissioners.

*Be it enacted by the Legislature of West Virginia:*

That section five, article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as the same was last amended and reenacted by chapter twenty-three, acts of the Legislature, regular session, one thousand nine hundred thirty-seven, be amended and reenacted to read as follows:

#### Section 5. Duties and Salaries of County Commissioners.

2 It shall be the duty of the county commissioners of each  
3 county to visit each quarter and inspect institutions within  
4 their county for housing and caring for the poor, to inspect

5 the jails, and to investigate the conditions of the poor within  
6 their county not housed within such institutions; to visit  
7 detention homes for children within their counties, if any,  
8 and to visit and inspect bridges and bridge approaches under  
9 their control, and for reviewing and equalizing the assess-  
10 ments made by the assessor, and for duties of the county  
11 commissioners in cooperating with the county public assistance  
12 council, and for supervising the general management of the  
13 fiscal affairs and business of each county.

14 There shall be allowed and paid out of the county treasury,  
15 as other salaries are paid, to each county commissioner of  
16 each county, (except as otherwise provided by law for the  
17 county of Ohio), for services performed for such county  
18 concerning the visiting of the poor, the inspection of places  
19 of housing and caring for the poor, inspection of jails, bridges  
20 and bridge approaches, and for visiting detention homes for  
21 children, and for reviewing and equalizing the assessments  
22 made by the assessor, and for duties of the county commis-  
23 sioners in cooperating with the county public assistance  
24 council, and for supervising and general management of  
25 the fiscal affairs and business of each county, within their  
26 counties, and other county business by such commissioners  
27 in addition to compensation for services in court, the follow-  
28 ing sums of money, to-wit: The county of Barbour twenty-  
29 five dollars per month, the county of Berkeley, the president  
30 of the court seventy-five dollars, and the other members of the  
31 court fifty dollars per month, the county of Boone fifty dollars  
32 per month, the county of Braxton forty dollars per month,  
33 the county of Brooke fifty dollars per month, the county of  
34 Cabell two hundred dollars per month, the county of Calhoun  
35 thirty-five dollars per month, the county of Clay thirty-five  
36 dollars per month, the county of Doddridge twenty-five  
37 dollars per month, the county of Fayette one hundred fifty  
38 dollars per month, the county of Gilmer twenty-five dollars  
39 per month, the county of Grant twenty dollars per month,  
40 the county of Greenbrier fifty dollars per month, the county  
41 of Hampshire twenty-five dollars per month, the county of  
42 Hancock thirty-five dollars per month, the county of Hardy  
43 twenty-five dollars per month, the county of Harrison two  
44 hundred dollars per month, the county of Jackson twenty-

45 five dollars per month, the county of Jefferson thirty-five  
46 dollars per month, the county of Kanawha two hundred fifty  
47 dollars per month, the county of Lewis seventy-five dollars  
48 per month, the county of Lincoln fifty dollars per month,  
49 the county of Logan one hundred fifty dollars per month,  
50 the county of Marion two hundred dollars per month, the  
51 county of Marshall one hundred dollars per month, the county  
52 of Mason twenty-five dollars per month, the county of Mc-  
53 Dowell two hundred dollars per month, the county of Mercer  
54 one hundred twenty-five dollars per month, the county of Min-  
55 eral fifty dollars per month, the county of Mingo one hundred  
56 dollars per month, the county of Morgan twenty-five dollars  
57 per month, the county of Monroe twenty-five dollars per  
58 month, the county of Monongalia two hundred dollars per  
59 month, the county of Nicholas twenty-five dollars per month,  
60 the county of Pendleton twenty-five dollars per month, the  
61 county of Pleasants twenty-five dollars per month, the  
62 county of Pocahontas twenty-five dollars per month, the  
63 county of Preston, the president of the county court forty  
64 dollars, and other members of the court twenty-five dollars  
65 per month, the county of Putnam forty-five dollars per  
66 month, the county of Raleigh one hundred twenty-five dollars  
67 per month, the county of Randolph forty dollars per month,  
68 the county of Ritchie twenty-five dollars per month, the  
69 county of Roane twenty-five dollars per month, the county  
70 of Summers thirty-five dollars per month, the county of  
71 Taylor forty-five dollars per month, the county of Tucker  
72 twenty-five dollars per month, the county of Tyler forty  
73 dollars per month, the county of Upshur twenty-five dollars  
74 per month, the county of Wayne seventy-five dollars per  
75 month, the county of Webster thirty-five dollars per month,  
76 the county of Wetzel sixty-five dollars per month, the county  
77 of Wirt twenty-five dollars per month, the county of Wood one  
78 hundred fifty dollars per month, and the county of Wyoming  
79 thirty-five dollars per month.

80 All acts and parts of acts in conflict or inconsistent with  
81 the provisions hereof, are hereby repealed. The various pro-  
82 visions of this act shall be construed as separable and several,  
83 and should any of the provisions or parts thereof be construed  
84 or held to be unconstitutional, or for any other reason invalid,  
85 the remaining portions of this act shall not be affected thereby.



## CHAPTER 21

(House Bill No. 53—By Mr. Matthews)

AN ACT to amend and reenact sections five and six, article seven, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended and reenacted by chapters eighty-three and sixty-nine, respectively, acts of the Legislature, regular session, one thousand nine hundred thirty-seven, relating to salaries of prosecuting attorneys; and to assistants and stenographers or clerks for prosecuting attorneys; and when the court may appoint attorney to prosecute.

[Passed March 11, 1939: in effect ninety days from passage. Became a law without the approval of the Governor.]

### Article 7. Salaries; Deputies and Assistants and Their Salaries.

#### Section

5. Salaries of prosecuting attorneys.
6. Assistants and stenographers for prosecuting attorney; salaries; when court may appoint attorney to prosecute.

*Be it enacted by the Legislature of West Virginia:*

That sections five and six, article seven, chapter seven, of the code of West Virginia, one thousand nine hundred thirty-one, as last amended and reenacted by chapters eighty-three and sixty-nine, respectively, acts of the Legislature, regular session, one thousand nine hundred thirty-seven, be amended and reenacted to read as follows:

Section 5. *Salaries of Prosecuting Attorneys.* The annual  
2 compensation of the prosecuting attorney in each county,  
3 including the compensation provided by law for his services  
4 as attorney for boards of education and other administrative  
5 boards and officers in the county, shall be as follows: Barbour  
6 county, two thousand dollars; Berkeley county, one thousand  
7 eight hundred dollars; Boone county, two thousand four  
8 hundred dollars; Braxton county, one thousand eight hun-  
9 dred dollars; Brooke county, two thousand five hundred  
10 dollars; Cabell county, four thousand eight hundred dollars;  
11 Calhoun county, one thousand two hundred dollars; Clay  
12 county, one thousand six hundred dollars; Doddridge county,

13 one thousand two hundred dollars; Fayette county, not less  
14 than three thousand six hundred nor more than four  
15 thousand two hundred dollars; Gilmer county, one thousand  
16 five hundred dollars; Grant county, one thousand dollars;  
17 Greenbrier county, two thousand five hundred dollars; Hamp-  
18 shire county, one thousand dollars; Hancock county, two  
19 thousand four hundred dollars; Hardy county, one thousand  
20 dollars; Harrison county, four thousand dollars; Jackson  
21 county, one thousand two hundred dollars; Jefferson county,  
22 not less than one thousand two hundred dollars nor in excess  
23 of one thousand eight hundred dollars, the amount to be fixed  
24 within such limits by the county court of said county; Kan-  
25 awha county, six thousand dollars; Lewis county, not less  
26 than two thousand dollars nor more than two thousand four  
27 hundred dollars; Lincoln county, two thousand four hun-  
28 dred dollars; Logan county, three thousand six hundred dol-  
29 lars; Marion county, four thousand eight hundred dollars;  
30 Marshall county, three thousand dollars; Mason county, two  
31 thousand dollars; McDowell county, four thousand eight  
32 hundred dollars; Mercer county, three thousand six hundred  
33 dollars; Mineral county, two thousand dollars; Mingo county,  
34 four thousand two hundred dollars; Monongalia county,  
35 four thousand dollars; Monroe county, six hundred dol-  
36 lars; Morgan county, one thousand dollars; Nicholas county,  
37 two thousand two hundred dollars; Ohio county, four thou-  
38 sand seven hundred dollars; Pendleton county, six hun-  
39 dred dollars; Pleasants county, one thousand two hundred  
40 dollars; Pocahontas county, one thousand two hundred dol-  
41 lars; Preston county, two thousand five hundred dollars;  
42 Putnam county, one thousand eight hundred dollars; Raleigh  
43 county, not less than three thousand nor more than four  
44 thousand eight hundred dollars; Randolph county, three  
45 thousand dollars; Ritchie county, one thousand two hundred  
46 dollars; Roane county, one thousand five hundred dollars;  
47 Summers county, one thousand six hundred dollars; Taylor  
48 county, two thousand two hundred dollars; Tucker county,  
49 one thousand two hundred dollars; Tyler county, one thou-  
50 sand two hundred dollars; Upshur county, one thousand five  
51 hundred dollars; Wayne county, one thousand five hundred  
52 dollars; Webster county, one thousand eight hundred dollars;  
53 Wetzel county, two thousand dollars; Wirt county, six hun-

54 dred dollars; Wood county, three thousand six hundred dol-  
55 lars; Wyoming county, not less than three thousand dollars  
56 nor more than four thousand dollars.

57 This act shall not apply to any prosecuting attorney now  
58 holding office, during the term for which he was elected or  
59 appointed, prior to the passage of this act.

Sec. 6. *Assistants and Stenographers for Prosecuting At-*  
2 *torney; Salaries; When Court May Appoint Attorney to*  
3 *Prosecute.* Any prosecuting attorney may, with the assent of  
4 the county court of his county, entered of record, appoint one  
5 (and Ohio, Harrison, Kanawha, Fayette and Raleigh coun-  
6 ties two each) practicing attorney to assist him in the dis-  
7 charge of his official duties for and during his term of office,  
8 and such assistant shall take the same oath and may perform  
9 the same duties as his principal; and he may be removed from  
10 office as such at any time by his principal; and further he may  
11 be removed from his office as such assistant by the circuit court  
12 of the county in which he is appointed, for any cause for which  
13 his principal might be so removed. The compensation of such  
14 assistant shall be paid by the principal, except in the coun-  
15 ties of Barbour, Berkeley, Boone, Brooke, Cabell, Calhoun,  
16 Fayette, Harrison, Hancock, Kanawha, Lewis, Lincoln, Logan,  
17 Marion, Marshall, McDowell, Mercer, Mineral, Mingo, Mo-  
18 nongalia, Nicholas, Ohio, Putnam, Raleigh, Randolph, Sum-  
19 mers, Taylor, Wayne, Wetzel, Wood and Wyoming, and in  
20 said counties the county court thereof shall allow annually  
21 to such assistants such compensation to be paid out of the  
22 county treasury as is deemed reasonable by the court; in  
23 Ohio county for the first assistant, three thousand dollars,  
24 and for the second assistant not to exceed two thousand four  
25 hundred dollars; in Kanawha county for the first assistant,  
26 not less than four thousand nor more than five thousand dol-  
27 lars, and for the second assistant not less than three thou-  
28 sand nor more than four thousand dollars; in Marion county  
29 not less than two thousand nor more than three thousand  
30 dollars; in Raleigh county not more than three thousand dol-  
31 lars; in Harrison, Logan, McDowell, Mercer and Mingo coun-  
32 ties, not less than one thousand five hundred nor more than  
33 three thousand dollars; in Cabell, Summers and Wood coun-

34 ties, not less than one thousand nor more than two thousand  
35 dollars; in Fayette county for the first assistant, not less than  
36 two thousand four hundred nor more than three thousand  
37 two hundred dollars, and for the second assistant not to ex-  
38 ceed one thousand eight hundred dollars; in Boone and  
39 Wyoming counties, not less than one thousand two hundred  
40 nor more than one thousand eight hundred dollars; in Barbour  
41 county, one thousand dollars; in Monongalia county, two thou-  
42 sand dollars; in Berkeley and Wayne counties, not to exceed  
43 one thousand two hundred dollars; in Lewis, Lincoln, Mar-  
44 shall, Mineral, Nicholas and Randolph counties, not to exceed  
45 nine hundred dollars; in Wetzel county, not less than six hun-  
46 dred nor more than nine hundred dollars; in Taylor county,  
47 not to exceed six hundred dollars; in Putnam and Calhoun  
48 counties, three hundred dollars. In each case such compensa-  
49 tion shall include the compensation provided by law for such  
50 assistant's services as attorney for boards of education and  
51 other administrative boards and officers of the county.

52 In any case in which it would, in the opinion of the court.  
53 be improper for the prosecuting attorney and his assistant  
54 (if he has one) to act; or if the prosecuting attorney and  
55 his assistant be unable to act, such court shall appoint some  
56 competent practicing attorney to prosecute such case, and  
57 upon the performance of the service for which he was ap-  
58 pointed, the court shall certify that fact, with its opinion of  
59 what would be a reasonable allowance to such attorney for  
60 the service rendered, to the county court of the county and  
61 such sum, or a different sum, when allowed by the county  
62 court, shall be paid out of the county treasury: *Provided,*  
63 That nothing in this section shall be construed to prohibit the  
64 employment by any person of a competent attorney or at-  
65 torneys to assist in the prosecution of any person or corpor-  
66 ation charged with crime.

67 In each of the counties herein named except Harrison, and  
68 including Greenbrier, Lewis, Hampshire, Pocahontas, Pres-  
69 ton, Putnam, Ritchie, Roane and Upshur, the prosecuting at-  
70 torney may employ a stenographer for his office at a salary  
71 payable out of the county treasury of not less than nine hun-  
72 dred nor more than two thousand dollars per annum; except,

73 the annual salary of such stenographer in Barbour, Lewis,  
74 Pocahontas, Preston and Taylor counties shall not exceed one  
75 thousand two hundred dollars; in Upshur and Calhoun coun-  
76 ties shall not exceed nine hundred dollars; in Hampshire,  
77 Roane and Wetzel counties shall not exceed six hundred dol-  
78 lars; in Berkeley county shall not be less than six hundred  
79 dollars nor exceed one thousand two hundred dollars; in Put-  
80 nam and Ritchie counties shall be seven hundred dollars; in  
81 Boone county shall be one thousand two hundred dollars; in  
82 Webster county shall be six hundred dollars; and in Braxton  
83 and Jefferson counties shall not exceed nine hundred dollars:  
84 *Provided*, That in each of the last three named counties the  
85 prosecuting attorney may not employ a stenographer except  
86 with the consent of the county court entered of record.

87 In the county of Harrison the prosecuting attorney may  
88 employ two stenographers for his office at a salary for each  
89 stenographer of not less than nine hundred nor more than  
90 one thousand two hundred dollars per annum, payable out of  
91 the county treasury.

92 In the county of Clay the prosecuting attorney may em-  
93 ploy a clerk or a stenographer for his office at a salary of  
94 one thousand two hundred dollars per annum, payable out of  
95 the county treasury.

96 In the county of Mingo the prosecuting attorney may em-  
97 ploy one stenographer for his office at a salary not to exceed  
98 one thousand five hundred dollars per annum, payable out  
99 of the county treasury.

100 In the county of Jackson the prosecuting attorney may em-  
101 ploy one stenographer or clerk for his office at a salary of six  
102 hundred dollars per annum, payable out of the county  
103 treasury.

## CHAPTER 22

(Senate Bill No. 55—By Mr. Paull)

AN ACT to amend and reenact section eight, article four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to lists of transfer of title to be furnished monthly by county clerks to county assessors.

[Passed February 20, 1939; in effect ninety days from passage. Approved by the Governor.]

### Article 4. Assessment of Real Property.

#### Section

8. Lists of transfers of title for assessors.

*Be it enacted by the Legislature of West Virginia:*

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

Section 8. *Lists of Transfers of Title for Assessors.* The clerk of the county court shall, not later than the tenth day of each and every month, make out and deliver to the assessor a certified list showing all the transfers of title of land made in his county during the preceding month; such list shall show whether the transfer was made by will or by deed of conveyance, or by judgment or decree, the names of the devisors and devisees, the names of the grantors and grantees and the names of the parties in favor of and against whom such judgment or decree was rendered, with the title of the cause, the nature of the estate transferred, the character of interest in the land conveyed, the quantity and location of the land or interest transferred, and, if a part of a tract, of what tract it was a part when the whole tract was transferred, and reference to the book and page showing such transfer. From the list thus furnished, the assessor shall make the necessary changes in the land books for the current year, and shall value each tract of land or interest therein so transferred, at its true and actual value according to the rule established in this chapter. The clerk shall also, not later than the tenth day of each and every month, make out a list of all lands, if any, lying in another county and devised by wills recorded

23 in his office during the preceding month, and not before re-  
24 ported, stating in such list the date of the will in each case,  
25 when admitted to record, the names of the devisor and the  
26 devisee, and the description of the land devised; and, upon  
27 completion, and not later than the tenth day of each and  
28 every month, the clerk shall deliver or mail such list to the  
29 assessor of the county or counties where such lands are situ-  
30 ated.

## CHAPTER 23

(House Bill No. 9—By Mr. Speaker, Mr. Thomas)

AN ACT to amend and reenact section four, article eight, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, relating to the further confinement of convicts for second and third offenses.

[Passed February 20, 1939; in effect from passage. Approved by the Governor.]

### Article 8. Crimes by and Proceedings Against Convicts.

#### Section

4. Procedure in sentencing convicts to further confinement for second and third offenses.

#### *Be it enacted by the Legislature of West Virginia:*

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

Section 4. *Procedure in Sentencing Convicts to Further*  
2 *Confinement for Second and Third Offenses.* When a prisoner  
3 convicted of an offense and sentenced to confinement therefor  
4 in the penitentiary, is received therein, if he was before con-  
5 victed in the United States of a crime punishable by imprison-  
6 ment in a penitentiary and the record of his conviction does  
7 not show that he has been sentenced under sections eighteen  
8 or nineteen, article eleven, chapter sixty-one of this code, the  
9 warden of the penitentiary shall give information thereof,  
10 without delay, to the circuit court of the county of Marshall,  
11 whether it be alleged or not in the indictment on which he was

12 convicted that he had before been previously so convicted.  
 13 The court shall cause the convict to be brought before it, and  
 14 upon an information filed, setting forth the several records of  
 15 conviction, and alleging the identity of the prisoner with the  
 16 person named in each, shall require the convict named to say  
 17 whether he is the same person or not. If he say he is not, or  
 18 remain silent, his plea, or the fact of his silence, shall be en-  
 19 tered of record, and a jury shall be impaneled to inquire  
 20 whether the convict is the same person mentioned in the sev-  
 21 eral records. If the jury find that he is not the same person,  
 22 he shall be remanded to the penitentiary; but if they find  
 23 that he is the same person, or if he acknowledge in open court,  
 24 after being duly cautioned, that he is the same person, the  
 25 court shall sentence him to such further confinement as is  
 26 prescribed by article eleven, chapter sixty-one of this code,  
 27 on a second or third conviction, as the case may be.

## CHAPTER 24

(House Bill No. 7—By Mr. Speaker, Mr. Thomas)

AN ACT to amend and reenact section sixteen, article eleven, chap-  
 ter sixty-one of the code of West Virginia, one thousand nine  
 hundred thirty-one, relating to the term of imprisonment for  
 felony, and to repeal sections twenty-nine and thirty, article  
 five, chapter twenty-eight of the code of West Virginia, one  
 thousand nine hundred thirty-one.

[Passed February 20, 1939; in effect from passage. Approved by the Governor.]

### Article 11. General Provisions Concerning Crimes.

#### Section

16. Term of imprisonment for felony; indeterminate sentence.

*Be it enacted by the Legislature of West Virginia:*

That sections twenty-nine and thirty, article five, chapter twenty-eight of the code of West Virginia, one thousand nine hundred thirty-one, be repealed, and that section sixteen, article eleven, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, be amended and reenacted to read as follows:

Section 16. *Term of Imprisonment for Felony; Indeter-*



2 *minate Sentence.* Every sentence to the penitentiary of a per-  
3 son convicted of a felony, for which the maximum penalty pre-  
4 scribed by law is less than life imprisonment, shall be a gen-  
5 eral sentence of imprisonment in the penitentiary. In impos-  
6 ing this sentence, the judge may, however, designate a definite  
7 term, which designation may be considered by the director  
8 of probation and parole as the opinion of the judge  
9 under the facts and circumstances then appearing of the  
10 appropriate term recommended by him to be served by the  
11 person sentenced. Imprisonment under a general sentence  
12 shall not exceed the maximum term prescribed by law for the  
13 crime for which the prisoner was convicted, less such good  
14 time allowance as is provided by sections twenty-seven and  
15 twenty-seven-a, article five, chapter twenty-eight of this code,  
16 in the case of persons sentenced for a definite term. Every  
17 other sentence of imprisonment in the penitentiary shall be  
18 for a definite term or for life, as the court may determine.  
19 The term of imprisonment in jail, where that punishment is  
20 prescribed in the case of conviction for felony, shall be fixed  
21 by the court.

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## CHAPTER 25

(Senate Bill No. 119—By Mr. Johnston, of Mercer)

AN ACT to amend article ten, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, by amending and reenacting section eleven thereof, relating to lotteries and penalties therefor, and by adding thereto sections eleven-a and eleven-b, relating to "policy" and "numbers" lotteries, and prescribing penalties therefor.

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[Passed February 27, 1939; in effect ninety days from passage. Approved by the Governor.]

### Article 10. Crimes Against Public Policy.

#### Section

11. Lotteries; penalty.

11-a. "Policy" or "numbers": penalty.

11-b. Possession of "policy" or "numbers" slips unlawful.

*Be it enacted by the Legislature of West Virginia:*

That article ten, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, be amended by

amending and reenacting section eleven thereof, and by adding thereto sections eleven-a and eleven-b, to read as follows:

Section 11. *Lotteries; Penalty.* If any person shall set up  
2 or promote or be concerned in managing or drawing a  
3 lottery or raffle, for money or other thing of value, or  
4 knowingly permit such lottery in any house under his control, or knowingly permit money or other property to be  
5 raffled for in such house, or to be won therein, by throwing  
6 or using dice, or by any other game of chance, or knowingly  
7 permit the sale in such house of any chance or ticket, or  
8 share of a ticket, in a lottery, or any writing, certificate, bill,  
9 token or other device purporting or intended to guarantee  
10 or assure to any person, or to entitle him to a prize, or a share  
11 of, or interest in, a prize to be drawn in a lottery, or shall, for  
12 himself, or any other person, buy, sell, or transfer, or have in  
13 his possession for the purpose of sale, or with intent to exchange, negotiate, or transfer, or shall aid in selling, exchanging, negotiating, or transferring a chance or ticket, or a share  
14 of a ticket, in a lottery, or any such writing, certificate, bill,  
15 token or device, he shall be guilty of a misdemeanor, and,  
16 upon conviction, shall, in the discretion of the court, be confined in jail not more than one year or be fined not exceeding  
17 one thousand dollars, or both: *Provided, however,* That this  
18 section shall not be deemed to apply to that certain type or  
19 form of lottery or raffle designated and familiarly known as  
20 "policy" or "numbers".

Sec. 11-a. *"Policy" or "Numbers"; Penalty.* Any person  
2 who keeps, occupies or uses, or permits to be kept, occupied  
3 or used, a place, building, room, table, establishment or apparatus for "policy" or "numbers" playing or for the sale  
4 of what are commonly called "lottery policies," or who delivers or receives money or other valuable consideration in  
5 playing "policy" or "numbers," or in aiding in the playing  
6 thereof, or for what is commonly called a "lottery policy," or  
7 for any writing, or document in the nature of a bet, wager,  
8 or insurance upon the drawing or selection, or the drawn  
9 or selected numbers of any "policy" or "numbers" lottery;  
10 or who shall have in his possession, knowingly, any writing,  
11 paper or document, representing or being a record of any  
12 chance, share or interest in numbers sold, drawn or selected,  
13 or to be drawn or selected in what is commonly called "policy"

16 or "numbers," or in the nature of a bet, wager or insurance,  
17 upon the drawing or selection, or the drawn or selected num-  
18 bers of any "policy" or "numbers" lottery; or any paper,  
19 print, writing, number, device, policy slip, or article of any  
20 kind such as is commonly used in carrying on, promoting or  
21 playing the game commonly called "policy" or "numbers";  
22 or who is the owner, agent, superintendent, janitor or caretak-  
23 er of any place, building, or room where "policy" or "num-  
24 bers" playing or the sale of what are commonly called "lot-  
25 tery policies" is carried on with his knowledge or after notifi-  
26 cation that the premises are so used, permits such use to be  
27 continued, or who aids, assists, or abets in any manner, in  
28 any of the offenses, acts or matters herein named, shall be  
29 guilty of a felony, and upon conviction, shall, in the discretion  
30 of the court, either be confined in the penitentiary not less  
31 than one year nor more than five years, or be confined in jail  
32 not less than six nor more than twelve months and fined not  
33 less than two hundred dollars nor more than one thousand  
34 dollars. Upon commission of a second or subsequent offense  
35 under this section, he shall be guilty of a felony, and upon  
36 conviction shall be confined in the penitentiary of this state  
37 for a period of not less than two years nor more than ten years.

2     Sec. 11-b. *Possession of "Policy" or "Numbers" Slips Un-*  
3     *lawful.* The possession, by any person other than a public of-  
4     ficer acting in his official capacity, of any writing, paper, or  
5     document representing or being a record of any chance, share  
6     or interest in numbers, sold, given away, drawn, or selected, or  
7     to be drawn or selected, in what is commonly called "policy"  
8     or "numbers," or in the nature of a bet, wager or insurance  
9     upon the drawing or selection, or the drawn or selected num-  
10    bers of any "policy" or "numbers" lottery, or any paper,  
11    print, writing, numbers of device, policy slip, or article of any  
12    kind, such as is commonly used in carrying on, promoting or  
13    playing the game commonly called "policy" or "numbers,"  
14    is presumptive evidence of possession thereof knowingly and  
14    in violation of the provisions of section eleven-a of this article.

## CHAPTER 26

(House Bill No. 8—By Mr. Speaker, Mr. Thomas)

AN ACT to amend and reenact sections eighteen and nineteen, article eleven, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, relating to the punishment of second and third offenders.

[Passed February 20, 1939; in effect from passage. Approved by the Governor.]

### Article 11. General Provisions Concerning Crimes.

#### Section

18. Punishment for second offense of felony.

19. Punishment for third offense of felony.

*Be it enacted by the Legislature of West Virginia:*

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

Section 18. *Punishment for Second Offense of Felony.* When  
2 any person is convicted of an offense, and sentenced to con-  
3 finement therefor in the penitentiary, and it is alleged in the  
4 indictment on which the person is convicted, and admitted, or  
5 by the jury found, that the person had been before convicted in  
6 the United States of a crime punishable by imprisonment in a  
7 penitentiary, the court shall, if the sentence to be imposed is  
8 for a definite term of years, add five years to the time for which  
9 the person is or would be otherwise sentenced. Whenever in  
10 such case the court imposes an indeterminate sentence, five  
11 years shall be added to the maximum term of imprisonment  
12 otherwise provided for under such sentence.

Sec. 19. *Punishment for Third Offense of Felony.* When  
2 any such convict shall have been twice before convicted in  
3 the United States of a crime punishable by confinement in a  
4 penitentiary, the person shall be sentenced to be confined in the  
5 penitentiary for life. But before such sentence may be lawfully  
6 imposed, it must be alleged in the indictment on which the  
7 person is convicted, and admitted, or by the jury found, that  
8 such convict had theretofore been twice so convicted.

## CHAPTER 27

(Com. Sub. for House Bill No. 6—Originating in the House Committee on the Judiciary)

AN ACT to amend chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, by adding thereto a new article twelve, relating to probation and parole, and to repeal section twenty-two, article eleven, chapter sixty-one, and section twenty-eight, article five, chapter twenty-eight of the code of West Virginia, one thousand nine hundred thirty-one.

[Passed February 21, 1939; in effect from passage. Approved by the Governor.]

### Article 12. Probation and Parole.

#### Section

1. Courts having authority to place offenders on probation.
2. Eligibility for probation.
3. Suspension of sentence and release on probation.
4. Probation of offenders convicted in courts other than courts of record.
5. Probation officers.
6. Powers and duties of court or county probation officers.
7. Preliminary investigation; report on prospective probationers.
8. Record of order as to release on probation.
9. Conditions of release on probation.
10. Violation of probation; revocation and arrest.
11. Probation period; termination or extension; discharge; record.
12. Director of probation and parole.
13. Powers and duties of the director.
14. Officers and staff.
15. Powers and duties of state probation and parole officers.
16. Eligibility for parole.
17. Conditions of release on parole.
18. Period of parole.
19. Violation of parole; revocation and arrest.
20. To whom article applies.
21. Repeal of inconsistent laws.
22. Provisions of act severable.

#### *Be it enacted by the Legislature of West Virginia:*

That chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, be amended by adding thereto a new article to be numbered article twelve, to read as follows:

#### Section 1. *Courts Having Authority to Place Offenders on*

- 2 *Probation.* Any court of record of this state having original
- 3 jurisdiction of criminal actions shall have authority as pro-

4 vided in this article to place on probation any person con-  
5 victed of a crime.

Sec. 2. *Eligibility for Probation.* All persons not pre-  
2 viously convicted of felony who are found guilty of or plead  
3 guilty to any felony the maximum penalty for which is less  
4 than life imprisonment, and all persons whether previously  
5 convicted or not who are found guilty of or plead guilty to  
6 any misdemeanor shall be eligible for probation.

Sec. 3. *Suspension of Sentence and Release on Probation.*  
2 Whenever, upon the conviction of any person eligible for pro-  
3 bation under the preceding section, it shall appear to the  
4 satisfaction of the court that the character of the offender and  
5 the circumstances of the case indicate that he is not likely  
6 again to commit crime and that the public good does not re-  
7 quire that he be fined or imprisoned, the court, upon applica-  
8 tion or of its own motion, may suspend the imposition or  
9 execution of sentence and release the offender on probation  
10 for such period and upon such conditions as are provided by  
11 this article; but in no case, except as provided by the follow-  
12 ing section, shall the court have authority to suspend the  
13 execution of a sentence after the convicted person has been  
14 imprisoned for ten days under the sentence.

Sec. 4. *Probation of Offenders Convicted in Courts other*  
2 *than Courts of Record.* Whenever any person is found guilty  
3 of or pleads guilty to a crime in a court which is not a court  
4 of record, he may at any time within thirty days after im-  
5 position of sentence file with the court of record to which an  
6 appeal would lie, or with the judge thereof in vacation, his  
7 petition in writing together with a transcript of the docket  
8 of the court in which he was convicted, requesting that he be  
9 placed on probation, whereupon the court, or the judge  
10 thereof, shall have power to suspend the execution of  
11 sentence and to release the petitioner on probation.

Sec. 5. *Probation Officers.* The judge of any court having  
2 authority to place offenders on probation may appoint a court  
3 or county probation officer. In making this appointment,  
4 the judge may, if he so desires, select the sheriff of any county,  
5 who by virtue of such appointment shall *ex officio* be proba-  
6 tion officer for the county. In lieu of or in addition to the

7 probation officer provided for by this section, the judge may  
8 avail himself of services of state probation and parole officers.

Sec. 6. *Powers and Duties of Court or County Probation  
2 Officers.* Each court or county probation officer shall in-  
3 vestigate all cases referred to him for investigation by the  
4 court and shall report in writing thereon. He shall furnish  
5 to each person released on probation under his supervision a  
6 written statement of the conditions of his probation together  
7 with a copy of the rules and regulations prescribed by the  
8 court for the supervision of probationers. He shall keep him-  
9 self informed concerning the conduct and condition of those  
10 under his supervision and shall report thereon in writing as  
11 often as the court may require. He shall use all practicable  
12 and suitable methods to aid and encourage them and to bring  
13 about improvement in their conduct and condition. He shall  
14 keep detailed records of his work, shall keep accurate and  
15 complete accounts of and give receipts for all money collected  
16 from persons under his supervision, and shall pay over the  
17 money to such persons as the court may designate. He shall  
18 give bond with good security, to be approved by the court,  
19 in a penalty of not less than one thousand nor more than three  
20 thousand dollars, as the court may determine. He shall also  
21 perform such other duties as the court may require. He shall  
22 have authority, with or without an order or warrant, to arrest  
23 any probationer.

Sec. 7. *Preliminary Investigation; Report on Prospective  
2 Probationers.* When directed by the court, the probation  
3 officer shall make a careful investigation of, and a written re-  
4 port with recommendations concerning, any prospective proba-  
5 tioner. Insofar as practicable this report shall include  
6 information concerning the offender's court and criminal  
7 record, occupation, family background, education, habits  
8 and associations, mental and physical condition, the names,  
9 relationship, ages and condition of those dependent upon  
10 him for support, and such other facts as may aid the  
11 court in determining the propriety and conditions of his  
12 release on probation. No person convicted of felony shall be  
13 released on probation until this report shall have been pre-  
14 sented to and considered by the court. The court may in its

15 discretion request such a report concerning any person con-  
16 victed of a misdemeanor. A copy of all reports shall be filed  
17 with the director of probation and parole.

Sec. 8. *Record of Order as to Release on Probation.* Orders  
2 granting or refusing release on probation shall contain a brief  
3 statement by the court of the reasons for its action and shall be  
4 entered of record. A copy of all orders granting release on  
5 probation, of all orders refusing such release in felony cases,  
6 and of all orders revoking any previous order shall be sent by  
7 the clerk of the court to the director of probation and parole  
8 within five days after the making of the order.

Sec. 9. *Conditions of Release on Probation.* Release on  
2 probation shall be upon the following conditions:

3 (1) That the probationer shall not, during the term of  
4 his probation, violate any criminal law of this or any other  
5 state, or of the United States;

6 (2) That he shall not, during the term of his probation,  
7 leave the state without the consent of the court which placed  
8 him on probation;

9 (3) That he shall comply with the rules and regulations  
10 prescribed by the court or by the director of probation and  
11 parole, as the case may be, for his supervision by the proba-  
12 tion officer;

13 (4) That he shall enter into a bond in such sum as the court  
14 may direct, with or without sureties, to perform the conditions  
15 of his probation, which bond shall be payable to the state of  
16 West Virginia and shall be for the protection of all persons  
17 injured by any breach of the conditions of probation;

18 In addition, the court may impose, subject to modification  
19 at any time, any other conditions which it may deem advisable,  
20 including any of the following:

21 (1) That he shall make restitution or reparation, in whole  
22 or in part, immediately or within the period of probation, to  
23 any party injured by the crime for which he has been  
24 convicted;

25 (2) That he shall pay any fine assessed and the costs of  
26 the proceeding in such installments as the court may direct;

27 (3) That he shall make contribution from his earnings, in  
28 such sums as the court may direct, for the support of his de-  
29 pendants.



Sec. 10. *Violation of Probation; Revocation and Arrest.* If  
2 at any time during the period of probation there shall be  
3 reasonable cause to believe that the probationer has violated  
4 any of the conditions of his probation, the probation officer  
5 may arrest him with or without an order or warrant, or  
6 the court which placed him on probation, or the judge  
7 thereof in vacation, may issue an order for his arrest, where-  
8 upon he shall be brought before the court for a prompt  
9 and summary hearing. If it shall then appear to the satis-  
10 faction of the court that any condition of probation has been  
11 violated, the court may revoke the suspension of imposition  
12 or execution of sentence, impose sentence if none has been  
13 imposed, and order that sentence be executed. In computing  
14 the period for which the offender is to be imprisoned, the time  
15 between his release on probation and his arrest shall not be  
16 taken to be any part of the term of his sentence. If, despite  
17 a violation of the conditions of probation, the court shall be  
18 of the opinion that the interests of justice do not require that  
19 the probationer serve his sentence, it may, except when the  
20 violation was the commission of a felony, again release him  
21 on probation.

Sec. 11. *Probation Period; Termination or Extension; Dis-  
charge; Record.* The period of probation together with any  
2 extension thereof shall not exceed five years, unless the  
3 maximum period for which the probationer might have been  
4 imprisoned is more than five years, in which case it may be for  
5 such maximum period. Upon the termination of the pro-  
6 bation period, the probation officer shall report to the court  
7 the conduct of the probationer during the period of his  
8 probation, and the court may thereupon discharge the pro-  
9 bationer or extend the probation period. Whenever, before  
10 the end of the probation period the probationer has satis-  
11 factorily complied with all the conditions of his probation and  
12 it appears to the court that it is no longer necessary to con-  
13 tinue his supervision, the court may discharge him. All  
14 orders extending the probation period and all orders of dis-  
15 charge shall be entered in the records of the court, and a copy  
16 of all such orders shall be sent by the clerk of the court to the  
17 director of probation and parole within five days after the  
18 making of the order.  
19

Sec. 12. *Director of Probation and Parole.* The governor, by and with the advice and consent of the senate, shall appoint a director of probation and parole, whose term of office shall be four years. In the event of the inability of the director to act, the governor may appoint some person to act temporarily in his stead. The director shall not engage in any other business or profession, nor hold any other public office, nor shall he hold an office in any political party. He shall receive an annual salary, to be fixed by the governor, not to exceed six thousand dollars and necessary expenses incurred in the discharge of his official duties.

Sec. 13. *Powers and Duties of the Director.* The director of probation and parole, whenever he shall be of the opinion that the best interests of the state and of the prisoner will be subserved thereby, shall have authority to release on parole, with the approval of the governor, for such term and upon such conditions as are provided by this article, any person who is eligible for parole. In the case of a person sentenced to any penal or correctional institution of this state, it shall be the duty of the director, as soon as such person becomes eligible to consider the advisability of his release on parole, and in the event of a refusal to grant parole the director shall reconsider the case at least once every year thereafter as long as such person shall remain a prisoner. In the case of a person sentenced to any city or county jail in the state the director shall act only upon written application for parole. No order of the director granting release on parole shall be valid unless signed by the governor.

The director shall, with the approval of the governor, adopt rules and regulations governing the procedure in the granting of parole. He shall secure all available information which may aid in determining the advisability of releasing a prisoner on parole, including such a report as is required by section seven of this article in the case of prospective probationers.

The director shall have general supervisory control over all court or county probation officers. He shall be charged with the duty of supervising all criminals released on probation and placed in the charge of a state probation and parole officer, and of all criminals released on parole under this or

30 any former law of this state. He shall also be charged with  
31 the duty of supervising all probationers and parolees whose  
32 supervision may have been undertaken by this state by rea-  
33 son of any interstate compact entered into pursuant to the  
34 uniform act for out-of-state parolee supervision. The director  
35 shall prescribe rules and regulations for the supervision of  
36 probationers and parolees. All information, records and re-  
37 ports received by him shall be kept on permanent file.

38 The director and his designated agents shall at all times  
39 have access to criminals imprisoned in any penal or correc-  
40 tional institution of this state or in any city or county jail in  
41 this state, and shall have power to obtain any information or  
42 aid necessary to the performance of their duties from other  
43 departments and agencies of the state or of any political sub-  
44 division thereof.

45 The director shall, if so requested by the governor, in-  
46 vestigate and consider all applications for pardon, reprieve or  
47 commutation, and shall make recommendations thereon to the  
48 governor.

Sec. 14. *Officers and Staff.* The director of probation and  
2 parole shall have authority to appoint such state probation and  
3 parole officers as may be necessary to the proper administra-  
4 tion of this article, and to employ clerical assistants. He shall  
5 determine the qualifications of probation and parole officers  
6 and may from time to time conduct competitive examinations  
7 as a basis for their selection.

8 The state probation and parole officers shall receive annual  
9 salaries of not less than twenty-four hundred dollars nor  
10 more than thirty-six hundred dollars, to be fixed in each case  
11 by the director. The director shall also fix the salaries of all  
12 clerical assistants. All persons appointed or employed by  
13 the director shall be paid all necessary expenses incurred in  
14 the discharge of their duties.

Sec. 15. *Powers and Duties of State Probation and Parole*  
2 *Officers.* Each state probation and parole officer shall in-  
3 vestigate all cases referred to him for investigation by any  
4 court or by the director of probation and parole and shall  
5 report in writing thereon. He shall furnish to each person  
6 released on probation or parole under his supervision a

7 written statement of the conditions of his probation or parole  
8 together with a copy of the rules and regulations prescribed  
9 by the court or by the director, as the case may be, for the  
10 supervision of probationers and parolees. He shall keep him-  
11 self informed concerning the conduct and condition of each  
12 person under his supervision and shall report thereon in writ-  
13 ing as often as the court or the director may require. He shall  
14 use all practicable and suitable methods to aid and encourage  
15 persons on probation or parole and to bring about improve-  
16 ment in their conduct and condition. He shall keep detailed  
17 records of his work, shall keep accurate and complete accounts  
18 of and give receipts for all money collected from persons under  
19 his supervision, and shall pay over the money to such persons  
20 as the court or director may designate. He shall give bond  
21 with good security, to be approved by the director, in a  
22 penalty of not less than one thousand nor more than three  
23 thousand dollars, as the director may determine. He shall also  
24 perform such other duties as the director may require. He  
25 shall have authority, with or without an order or warrant, to  
26 arrest any probationer or parolee.

Sec. 16. *Eligibility for Parole.* Any person imprisoned in  
2 any penal or correctional institution of this state or in any  
3 city or county jail in this state under a sentence less than a  
4 life sentence, whether definite or indeterminate, who has not  
5 previously been twice convicted of felony, shall, except as  
6 provided by section nineteen of this article, be eligible for  
7 parole at any time. Except as provided in the case of one  
8 serving a life sentence, no person who has previously been  
9 twice convicted of felony may be released on parole until he  
10 has served the minimum term provided by law for the crime  
11 for which he was convicted. No person sentenced for life  
12 may be paroled until he has served ten years, and no person  
13 sentenced for life who has previously been twice convicted  
14 of felony may be paroled until he has served fifteen years.

Sec. 17. *Conditions of Release on Parole.* Release on parole  
2 shall be upon the following conditions:

3 (1) That the parolee shall not, during the period of his  
4 parole, violate any criminal law of this or any other state, or  
5 of the United States;

6 (2) That he shall not, during the period of his parole,

7 leave the state without the consent of the director of pro-  
8 bation and parole;

9 (3) That he shall comply with the rules and regulations  
10 prescribed by the director for his supervision by the pro-  
11 bation and parole officer;

12 (4) That he shall enter into a bond in such sum as the  
13 director may require, with or without sureties, to perform  
14 the conditions of his parole, which bond shall be payable to  
15 the state of West Virginia and shall be for the protection of  
16 all persons injured by any breach of the conditions of parole.

17 In addition, the director may impose, subject to modifica-  
18 tion at any time, any other conditions which he may deem  
19 advisable.

Sec. 18. *Period of Parole.* The period of parole shall in all  
2 cases be the maximum period for which, at the time of his re-  
3 lease, the parolee was subject to imprisonment under his sen-  
4 tence.

Sec. 19. *Violation of Parole; Revocation and Arrest.* If  
2 at any time during the period of parole, there shall be reason-  
3 able cause to believe that the parolee has violated any of the  
4 conditions of his parole, the probation and parole officer may  
5 arrest him with or without an order or warrant, or the director  
6 of probation and parole may issue a written order for his  
7 arrest, which order shall be a sufficient warrant for his arrest  
8 by any officer charged with the duty of executing an ordinary  
9 criminal process; whereupon, unless the director shall other-  
10 wise order, he shall be returned to the prison from which he  
11 was released. If upon a prompt and summary hearing, which  
12 the parolee and his counsel shall be given an opportunity to  
13 attend, it shall appear to the satisfaction of the director that  
14 the parolee has violated any condition of parole, the director  
15 may revoke the parole and may require him to serve in prison  
16 the whole or any part of the maximum period for which, at the  
17 time of his release, he was subject to imprisonment under his  
18 sentence: *Provided, however,* That if he has violated his parole  
19 by committing a felony, he shall be required to serve such  
20 maximum period, and during this period he shall be ineligible  
21 for further parole. If, despite a violation of the conditions of  
22 parole, the director shall be of the opinion that the interests of  
23 justice do not require that the parole be revoked, he may,

24 except when the violation was the commission of a felony,  
25 again release him on parole.

Sec. 20. *To Whom Article Applies.* The provisions of this  
2 article shall be applied to all persons who shall be convicted  
3 of a crime committed after this article takes effect. All persons  
4 convicted of a crime committed before this article takes effect,  
5 whether convicted before or after that time, shall remain sub-  
6 ject to the law in effect when the crime was committed, but  
7 any such person who consents to be subject to this article may  
8 avail himself of its provisions.

Sec. 21. *Repeal of Inconsistent Laws.* Section twenty-two,  
2 article eleven, chapter sixty-one, and section twenty-eight,  
3 article five, chapter twenty-eight of the code of West Virginia,  
4 one thousand nine hundred thirty-one, and all other laws  
5 or parts of laws inconsistent with this article are hereby re-  
6 pealed: *Provided, however,* That nothing in this article shall  
7 be construed to affect in any way the laws relating to juvenile  
8 probation and parole.

Sec. 22. *Provisions of Act Severable.* The provisions of  
2 this act shall be construed as severable and if any part is  
3 held unconstitutional, or for any other reason invalid, the  
4 remaining parts shall not be affected thereby.

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## CHAPTER 28

(Com. Sub. for House Bill No. 221—Originating in the House Committee  
on the Judiciary)

AN ACT to amend and reenact section twelve, article two, chap-  
ter sixty-one of the code of West Virginia, one thousand nine  
hundred thirty-one, relating to robbery, or attempted robbery,  
and the penalties therefor.

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[Passed March 11, 1939; in effect ninety days from passage. Approved by the  
Governor.]

### Article 2. Crimes Against the Person.

#### Section

12. Robbery or attempted robbery; penalties; bank robbery and as-  
saults in committing or attempting; penalties.

*Be it enacted by the Legislature of West Virginia:*

That section twelve, article two, chapter sixty-one of the code of

West Virginia, one thousand nine hundred thirty-one, be amended and reenacted to read as follows:

Section 12. *Robbery or Attempted Robbery; Penalties;*

2 *Bank Robbery and Assaults in Committing or Attempting;*

3 *Penalties.* If any person commit, or attempt to commit, robbery by partial strangulation or suffocation, or by striking  
4 or beating, or by other violence to the person, or by the  
5 threat or presenting of firearms, or other deadly weapon or  
6 instrumentality whatsoever, he shall be guilty of a felony,  
7 and, upon conviction, shall be confined in the penitentiary  
8 not less than ten years. If any person commit, or attempt to  
9 commit, a robbery in any other mode or by any other means,  
10 except as provided for in the succeeding paragraph of this  
11 section, he shall be guilty of a felony, and, upon conviction,  
12 shall be confined in the penitentiary not less than five years.

13 If any person (a) by force and violence, or by putting in  
14 fear, feloniously takes, or feloniously attempts to take, from  
15 the person or presence of another any property or money or  
16 any other thing of value belonging to, or in the care, custody,  
17 control, management or possession of, any bank, he shall be  
18 guilty of a felony, and, upon conviction, shall be confined in  
19 the penitentiary not less than ten nor more than twenty  
20 years; and if any person (b), in committing, or in attempt-  
21 ing to commit, any offense defined in the preceding clause  
22 (a) of this paragraph, assaults any person, or puts in  
23 jeopardy the life of any person by the use of a dangerous  
24 weapon or device, he shall be guilty of a felony, and, upon  
25 conviction, shall be confined in the penitentiary not less than  
26 ten nor more than twenty-five years.

27 All acts and parts of acts inconsistent herewith are hereby  
28 repealed.  
29

## CHAPTER 29

(House Bill No. 220—By Mr. White)

AN ACT to amend and reenact section four, article four, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, relating to accounts of expenditures of state funds and providing for the signing of checks issued by the state treasurer and for the signing of warrants issued by the state auditor.

[Passed March 11, 1939; in effect from passage. Approved by the Governor.]

### Article 4. Accounts, Reports and General Provisions.

#### Section

4. Accounts of expenditures; signing of checks and warrants; facsimile signatures and use of mechanical and electrical devices; forgery; penalty.

*Be it enacted by the Legislature of West Virginia:*

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

Section 4. *Accounts of Expenditures; Signing of Checks and Warrants; Facsimile Signatures and Use of Mechanical and Electrical Devices; Forgery; Penalty.* When the treasurer issues his check on a depository, he shall credit the same to the account of such depository, and charge it to the general account of receipts and disbursements mentioned in section two of this article. The auditor shall keep accounts of the particular heads of expenditures, and, when he issues his warrant on the treasurer, shall credit the treasurer's account therewith and charge the same under the particular head of expenditure to which it properly belongs, distinguishing especially the disbursements on account of the capital and the annual income of the school fund, as directed in section two of this article in relation to receipts belonging to the said fund. All checks when issued by the treasurer shall bear his signature, personally signed by him, or by such employees as are, in writing, authorized by him to make his signature thereto, or bear a facsimile of the treasurer's signature; all warrants when issued by the auditor shall bear his signature, personally



20 signed by him, or by such employees as are, in writing, author-  
21 ized by him to make his signature thereto, or bear a facsimile  
22 of the auditor's signature. Such signature of the treasurer, or  
23 auditor, respectively, may be made, however, by means of  
24 such mechanical or electrical device as the treasurer, or  
25 auditor, respectively, may select, after the same shall have  
26 been approved by the governor and the attorney general; any  
27 such mechanical or electrical device, as respectively selected,  
28 to be safely kept in their respective offices so that no one shall  
29 have access thereto except the treasurer, or the auditor, and  
30 such of their respective employees as may be authorized to  
31 respectively sign checks or warrants as hereinabove provided.  
32 If any person, other than the treasurer, or auditor, re-  
33 spectively, or their respective employees duly and respectively  
34 authorized by them so to do, as above provided, shall sign the  
35 name of the treasurer or the auditor, respectively, by the use  
36 of any mechanical or electrical device, or otherwise, or use  
37 the facsimile of the signature of either of them, on any check  
38 or warrant, or utter or attempt to employ as true such forged  
39 check or warrant, knowing the same to be forged, he shall be  
40 guilty of a felony, and upon conviction shall be confined in  
41 the penitentiary not less than two nor more than ten years.  
42 All acts and parts of acts inconsistent herewith are hereby  
43 repealed.

## CHAPTER 30

(House Bill No. 40—By Mr. Calvert)

AN ACT to amend and reenact sections two, three, four, five, six, seven, eight, nine, ten, eleven, twelve and fourteen, chapter eighty-two, acts of the Legislature of West Virginia, second extraordinary session, one thousand nine hundred thirty-three, relating to the practice of barbering and beauty culture.

[Passed February 24, 1939; in effect ninety days from passage. Approved by the Governor.]

### Barbering and Beauty Culture.

#### Section

2. Barbering and beauty culture defined.
3. Committee; chairman to approve and enforce rules and regulations;

- secretary; expenses of members; powers and duties of committee; inspectors.
4. General regulations; revocation of certificate for violation; collections and expenditures.
  5. Qualifications of applicants; fee; examination; registration certificate and fee.
  6. Renewal of registration; fee; blood test.
  7. Student's permit; qualifications; fee.
  8. Display of certificate of registration.
  9. Shops to be managed by registered barbers and beauticians; number of junior barbers or beauticians permitted; restrictions on buildings or rooms used as shops and businesses in; advertising of prices prohibited.
  10. Schools of barbering or beauty culture.
  11. Health certificates required before certificate of registration issued or renewed.
  12. Requirements to operate shops and schools; sanitary rules and regulations.
  14. Penalties for violation.

*Be it enacted by the Legislature of West Virginia:*

That sections two, three, four, five, six, seven, eight, nine, ten, eleven, twelve and fourteen, chapter eighty-two, 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. *Barbering and Beauty Culture Defined.* For the
- 2 purpose of this article "barbering" shall mean any one or
  - 3 combination of the following acts, when done on the human
  - 4 body and not for the treatment of disease, to-wit: Shaving,
  - 5 shaping and trimming the beard; cutting, singeing, sham-
  - 6 pooing or dyeing the hair, or applying tonics thereto; appli-
  - 7 cations, treatment or massages of the face, neck, or scalp
  - 8 with oils, creams, lotions, antiseptics, cosmetics, powders, clays
  - 9 or other preparations; and when the same are done to en-
  - 10 courage the use or sale of articles of trade, or for pay, reward
  - 11 or other compensation, whether to be received directly or
  - 12 indirectly.
  - 13 "Beauty culture" shall mean any one or combination of
  - 14 the following acts, when done on the human body and not
  - 15 for the treatment of disease, to-wit: The care, preservation
  - 16 and beautification of the hands and nails, (commonly called
  - 17 manicuring); the cleansing, curling, waving, permanent
  - 18 waving, straightening, arranging, dressing, bleaching, tinting,
  - 19 coloring and shaping the hair, including such cutting of the
  - 20 hair as is necessary for the purposes mentioned in this para-

21 graph; and the application to, or treatment and massage of  
22 the scalp, face, neck, arms, hands or upper part of the body  
23 with oils, creams, lotions, powders, clays, cosmetics, antiseptics,  
24 or other preparations; and when the same are done to  
25 encourage the use or sale of articles of trade, or for pay,  
26 reward or other compensation, whether to be received directly  
27 or indirectly.

28 The performance of any of the acts enumerated in this  
29 section shall not be deemed barbering or beauty culture when  
30 done by duly licensed physicians, surgeons, nurses or morticians,  
31 in the proper discharge of their professional duties.

Sec. 3. *Committee; Chairman to Approve and Enforce Rules and Regulations; Secretary; Expenses of Members; Powers and Duties of Committee; Inspectors.* The committee shall consist of the commissioner of health, ex officio, and four other members to be appointed by the governor, by and with the consent of the Senate, subject to removal by the governor at his will and pleasure. Of the four members thus appointed, one shall be an employing barber, one an employee barber, one an employing beautician, and one an employee beautician. One of the four so appointed shall be a member of the colored race. Each member of the committee so appointed shall have been engaged within this state in the practice of barbering or beauty culture, as the case may be, for a period of eight years immediately prior to his appointment, and not more than two of the four members of the committee so appointed shall belong to the same political party.

18 Within sixty days after this act becomes effective, the governor shall appoint one member to said committee for a term of four years, one member for a term of three years, one member for a term of two years, and one member for a term of one year, and on or before the expiration of the terms of appointment as hereinabove provided, and each year thereafter, the governor shall appoint one member of the committee to serve for four years. Any member of the committee so appointed shall be eligible for reappointment.

27 The commissioner of health shall be ex officio chairman of the committee, and the enforcement of all rules and regulations promulgated by the committee pertaining to sanitary

30 conditions of barber and beauty shops and pertaining to the  
31 registration and qualifications of barbers and beauticians  
32 shall be under his supervision and direction ; no order, rule or  
33 regulation promulgated by the committee shall be in force and  
34 effect until approved by the commissioner of health. The said  
35 committee shall designate one of its members, or some other  
36 person, to act as secretary of the committee, and it shall be the  
37 duty of said secretary to perform such duties as may be pre-  
38 scribed by the committee.

39 Each member of the committee, except the chairman, shall  
40 receive as compensation a per diem of ten dollars for each day  
41 said member is actually in attendance upon the sessions of the  
42 committee, plus an allowance for expenses which shall not ex-  
43 ceed four dollars for each day of such attendance, but such  
44 compensation for each member, exclusive of the allowance for  
45 expenses, shall not exceed the sum of three hundred dollars  
46 in any calendar year.

47 The committee shall examine all applicants for certificates  
48 of registration and shall issue said certificates to those entitled  
49 thereto ; collect examination and registration fees ; promulgate  
50 rules and regulations governing the operation of barber shops,  
51 beauty shops, and schools of barbering and beauty culture,  
52 including the prescribing of curriculums and standards of  
53 instructions for such schools ; promulgate rules and regula-  
54 tions for the physical examination of barbers, beauticians,  
55 junior barbers and beauticians, and students, and fix the  
56 standard form of report of such examinations ; establish and  
57 enforce sanitary regulations in barber shops, beauty shops,  
58 and schools of barbering and beauty culture ; enforce all  
59 such rules and regulations as are herein authorized ; and do  
60 all other things necessary to effectuate the purposes of this  
61 act in the interest and protection of public health.

62 The commissioner of health shall appoint not to exceed six  
63 inspectors, who shall be registered barbers and beauticians  
64 of this state, as herein provided, and it shall be their duty  
65 to make frequent inspections of all barber and beauty shops,  
66 schools of barbering and beauty culture in this state, and  
67 report all violations to the commissioner of health. The  
68 salaries and allowances for expenses of such inspectors shall  
69 be that fixed and allowed by the commissioner of health and

70 approved by the director of the budget, pursuant to said  
71 director's power to classify purposes and employments in  
72 the state government and its agencies.

Sec. 4. *General Regulations; Revocation of Certificate for  
2 Violation; Collections and Expenditures.* Every general regu-  
3 lation adopted by the committee shall state the day on which it  
4 takes effect, and a copy thereof, duly signed by the commis-  
5 sioner of health, shall be filed in the office of the secretary of  
6 state, and shall be published in such manner as the committee  
7 may determine. For any violation of any regulation so  
8 promulgated, when said regulation is reasonable and not in-  
9 consistent with law, the committee may cancel and revoke the  
10 certificate of registration issued such violator and/or may  
11 refuse to renew or reissue the same.

12 The expenditures of the committee shall not in any year  
13 exceed the amount of fees collected by the committee for that  
14 year. All money collected and received by the committee  
15 under the provisions of this act shall belong to the state and  
16 the committee or its chairman shall immediately turn same into  
17 the state treasury and record shall be made thereof; and the  
18 expenditures herein provided for, when authorized by the  
19 committee, shall be paid out by warrant on the treasurer of  
20 the state in form and manner provided by law.

Sec. 5. *Qualifications of Applicants; Fee; Examination; Reg-  
2 istration Certificate and Fee.* An applicant for registration as  
3 a barber or beautician shall present satisfactory evidence that  
4 he or she is at least eighteen years of age, of good moral char-  
5 acter and temperate habits, has completed at least the eighth  
6 grade of grammar school, or the equivalent thereof, and has  
7 been graduated from a school of barbering or beauty culture  
8 approved by the state committee of barbers and beauticians,  
9 and shall transmit with his application an examination fee of  
10 twenty dollars. The examination shall be of such character as  
11 to determine the qualifications and fitness of the applicant to  
12 practice barbering or beauty culture as defined by this article,  
13 and shall cover such subjects germane to the inquiry as the  
14 committee may deem proper. If the applicant successfully pas-  
15 ses such examination and is otherwise duly qualified, as re-  
16 quired by this section, and presents the proper certificate of  
17 health, the committee shall register the applicant as a duly

18 qualified junior barber or beautician, for which permit the fee  
19 shall be two dollars and fifty cents. Upon proof that the holder  
20 of such a certificate has served as a junior barber or beautician  
21 for a period of not less than twelve months from the original  
22 date of such certificate, accompanied by a certificate of health  
23 from a duly licensed physician, the committee shall issue to  
24 the applicant a certificate of registration authorizing the ap-  
25 plicant to practice barbering or beauty culture in this state.  
26 Any person who is able to furnish satisfactory proof that he  
27 has practiced barbering or beauty culture for at least twelve  
28 months prior to examination may be registered as a duly  
29 qualified barber or beautician immediately after he has passed  
30 the examination, without serving the specified twelve-month  
31 period as a junior barber or beautician. The committee shall  
32 charge for every certificate of registration, or renewal thereof,  
33 issued by it, a fee of five dollars.

Sec. 6. *Renewal of Registration; Fee; Blood Test.* Every  
2 registered barber or beautician who desires to continue in  
3 active practice or service shall, annually on or before the first  
4 day of January, renew his certificate of registration and pay  
5 an annual renewal fee of five dollars. An expired certificate  
6 of registration may be restored only upon the payment of  
7 one annual renewal fee. Every applicant for renewal, or  
8 restoration, of his or her certificate of registration shall sub-  
9 mit to the Wasserman, or other recognized blood test and  
10 shall submit the report thereon to the committee, together  
11 with a certificate of health from a duly licensed physician.

Sec. 7. *Student's Permit; Qualifications; Fee.* All stu-  
2 dents, before entering upon their studies in approved schools  
3 of barbering or beauty culture in this state shall apply for  
4 and receive a student's permit from the committee. The ap-  
5 plication shall be upon forms provided by the committee and  
6 shall include a health certificate from a duly licensed phy-  
7 sician. An applicant for registration as a student shall pre-  
8 sent satisfactory evidence that he or she is at least seventeen  
9 years of age, of good moral character and temperate habits,  
10 and has completed at least the eighth grade of grammar school  
11 or the equivalent thereof. If the applicant is otherwise quali-  
12 fied and upon payment of a fee of two dollars and fifty cents,

13 the committee shall register the applicant as a student barber  
14 or beautician and shall issue the applicant a certificate as  
15 such, which certificate shall be good during the prescribed  
16 period of study for such student. A student may perform any  
17 or all acts constituting barbering or beauty culture in a school  
18 of barbering or beauty culture under the immediate super-  
19 vision of a registered instructor, but not otherwise.

Sec. 8. *Display of Certificate of Registration.* Every person  
2 practicing barbering or beauty culture and every student and  
3 junior barber and beautician shall display his certificate of  
4 registration in a conspicuous place in the shop wherein he  
5 practices or is employed and whenever required shall exhibit  
6 such certificate to the state committee of barbers and beau-  
7 ticians or its authorized representative.

Sec. 9. *Shops To Be Managed By Registered Barbers and*  
2 *Beauticians; Number of Junior Barbers or Beauticians Per-*  
3 *mitted; Restrictions on Buildings or Rooms Used as Shops*  
4 *and Businesses in; Advertising of Prices Prohibited.* Every  
5 barber or beauty shop in this state shall be operated under the  
6 supervision and management of a barber or beautician who is  
7 registered as such in this state. Each barber or beauty shop  
8 in this state may employ at least one junior barber or beau-  
9 tician therein. However, in shops regularly employing more  
10 than three registered barbers or beauticians only one such  
11 junior barber or beautician may be employed for every three  
12 such registered barbers or beauticians, but in no event can  
13 more than three such junior barbers or beauticians be em-  
14 ployed in any one barber or beauty shop. No business or trade  
15 other than that of barbering shall be conducted in a barber  
16 shop and no business or trade other than that of beauty cul-  
17 ture shall be conducted in a beauty shop, except the display  
18 and/or sale of commodities or other articles used in connec-  
19 tion with barbering or beauty culture, and no such barber or  
20 beauty shop shall be operated in a store, dwelling house, or  
21 other building or space used for any purpose other than bar-  
22 bering or beauty culture unless such barber or beauty shop is  
23 separated by stationary partitions extending from floor to  
24 ceiling: *Provided*, That nothing herein contained shall be  
25 construed as prohibiting a barber shop from carrying on the

26 business of shoe shining or manicuring or both shoe shining  
27 and manicuring. A suitable sign shall be displayed at the  
28 main entrance of all barber and beauty shops, plainly indicat-  
29 ing the business conducted therein: *Provided, however,* That  
30 no sign shall be displayed outside any barber or beauty shop  
31 or inside the same, so as to be clearly visible from the outside  
32 and for the ostensible purpose of attracting trade, which in  
33 any way advertises the prices to be charged in such barber  
34 or beauty shop for services to be therein performed.

Sec. 10. *School of Barbering or Beauty Culture.* No person,  
2 firm or corporation, whether organized for profit or not, shall  
3 own or operate a school of barbering or beauty culture in this  
4 state without first obtaining a license so to do from the com-  
5 mittee, and no such license shall be issued unless the person or  
6 persons teaching or instructing therein have a high school  
7 education or equivalent thereto, and have for a period of not  
8 less than five years prior to such application been actively  
9 engaged as duly qualified barbers or beauticians, and are  
10 registered as such within this state. All applicants for license  
11 to operate a school of barbering or beauty culture shall submit  
12 to an examination by the committee relative to whether or not  
13 such proposed school is properly fitted and equipped to teach  
14 barbering or beauty culture. After passing said examination  
15 a license shall be issued by the committee to such applicant  
16 to open such school. All instructors in any such school of  
17 barbering or beauty culture shall first qualify as such by  
18 passing an examination submitted by the committee relative  
19 to their fitness and ability to instruct as such.

20 The license fee for each school of barbering and for each  
21 school of beauty culture shall be twenty-five dollars annually,  
22 to be paid in such manner as the committee may prescribe, on  
23 or before January first of each year. The license shall be  
24 prominently displayed in the school, and a suitable sign shall  
25 be kept on the front of the school which shall plainly indicate  
26 that a school of barbering or beauty culture is operated  
27 therein.

Sec. 11. *Health Certificates Required Before Certificate of*  
2 *Registration Issued or Renewed.* No person shall practice  
3 barbering or beauty culture or serve as a student or junior



4 barber or beautician in this state while having an infectious,  
5 contagious or communicable disease. No person shall be regis-  
6 tered as a barber, beautician, student, or junior barber or  
7 beautician until he or she shall have obtained a certificate of  
8 health from a licensed physician under article three of this  
9 chapter certifying said person to be free of all infectious,  
10 contagious and communicable diseases; which certificate shall  
11 be filed with the state committee of barbers and beauticians  
12 within ten days after the examination of the person is made  
13 by the physician, and photograph of the applicant must ac-  
14 company the application, with such certificate. The certificate  
15 shall be in such form as the committee may prescribe. A like  
16 certificate must be filed with the committee before any certifi-  
17 cate is renewed, and the examination must have been within  
18 thirty days prior to the beginning of the renewal period. The  
19 committee shall be empowered to compel any registered bar-  
20 ber, beautician, student, or junior barber or beautician, to  
21 submit to a physical examination and file a certificate of  
22 health at any time.

Sec. 12. *Requirements to Operate Shops and Schools; Sanitary Rules and Regulations.* It shall be unlawful for any person, firm or corporation to own or operate a beauty or barber shop, or a school of beauty culture or barbering, or to act as a barber or beautician, unless:  
6 (a) Such beauty shop, barber shop, or school of beauty  
7 culture or barbering shall before opening its place of business  
8 to the public, have been approved by the committee as having  
9 met all the requirements and qualifications for such places of  
10 business as are required by this article, and for this purpose,  
11 it shall be the duty of the owner or operator of each such  
12 beauty shop, barber shop, or school of beauty culture or bar-  
13 bering to notify the committee, in writing, at least ten days  
14 before the proposed opening date of such shop or school,  
15 whereupon it shall become the duty of the committee, through  
16 the inspectors herein provided for, to inspect such shops or  
17 schools, and if found to meet the requirements of this article  
18 respecting the same, to grant to it a certificate permitting it  
19 to do business as such. If, however, after the lapse of ten  
20 days after the giving of such notice of opening to the com-

21 mittee, an inspection is not made or such certificate of open-  
22 ing has not been granted or refused, the owner or operator of  
23 such shop or school may open provisionally, subject to later  
24 acquirement of such certificate and to all other provisions,  
25 rules and regulations provided for in this article;

26 (b) All such shops and schools, and bathrooms, toilets and  
27 adjoining rooms used in connection therewith, are kept clean,  
28 sanitary, well-lighted and ventilated at all times. The use of  
29 chunk alum, powder puffs and styptic pencils in any such  
30 shop or school is prohibited;

31 (c) Each barber, beautician, instructor, junior barber and  
32 beautician, and student, shall thoroughly cleanse his or her  
33 hands with soap and water immediately before serving any  
34 patron;

35 (d) Each patron is served with clean, freshly laundered  
36 linen which is kept in a closed cabinet used for that purpose  
37 alone. All linens, immediately after being used, shall be  
38 placed in a receptacle used for that purpose alone.

39 The committee shall prescribe such other rules and regula-  
40 tions in regard to sanitation and cleanliness in such shops  
41 and schools as it may deem proper and necessary and shall  
42 have power to enforce compliance therewith. Such rules and  
43 regulations shall be kept posted in a conspicuous place in  
44 each shop or school.

2 Sec. 14. *Penalties for Violation.* Any violation of the pro-  
3 visions of this article or of the rules and regulations of the  
4 committee, when promulgated by it as set out in section four  
5 of this article, shall constitute a misdemeanor, punishable,  
6 upon conviction, by a fine of not less than ten dollars nor  
7 more than one hundred dollars, or by imprisonment in the  
8 county jail for not more than sixty days, or by both such fine  
9 and imprisonment. Justices of the peace shall have con-  
10 current jurisdiction with circuit and criminal courts for the  
11 enforcement of the provisions of this article and the rules and  
regulations promulgated by the committee.

## CHAPTER 31

(House Bill No. 198—By Mr. Bowling, by request)

AN ACT to amend and reenact sections six and seven, article one, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, relating to public health.

[Passed March 4, 1939; in effect ninety days from passage. Became a law without the approval of the Governor.]

### Article 1. State Department of Health.

#### Section

6. General duties of state department of health.
7. Supervision over local sanitation.

*Be it enacted by the Legislature of West Virginia:*

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

#### *Section 6. General Duties of State Department of Health.*

- 2 The state department of health shall have the authority to
- 3 enforce all the laws of the state concerning the public health,
- 4 and shall take care to protect the life and health of the
- 5 inhabitants of the state, and to that end shall make or cause
- 6 to be made sanitary investigations and inquiries respecting
- 7 the cause of diseases, especially of epidemic, endemics, and
- 8 the means of prevention, suppression or control, the source
- 9 of mortality and the effects of localities, employments, habits
- 10 and circumstances of life on the public health, and shall
- 11 gather information in respect to these matters and kindred
- 12 subjects for diffusion among the people. It shall inspect and
- 13 examine food, drink and drugs offered for sale or public
- 14 consumption in such manner as shall be deemed necessary,
- 15 and shall report all violations of all laws of this state relating
- 16 to pure food, drink and drugs to the prosecuting attorney
- 17 of the county in which such violations occur, and lay before
- 18 such prosecuting attorney the evidence in its knowledge of
- 19 such violations. The commissioner of health or any member
- 20 of the public health council may make complaint and cause
- 21 proceedings to be instituted against any person or persons or

22 corporation for a violation of any of the health laws of this  
23 state, without the sanction of the prosecuting attorney of the  
24 county in which proceedings are instituted, if said officer fail  
25 or refuse to discharge his duty, and in no such cases shall  
26 they be required to give security for costs.

27 The public health council shall promulgate and enforce  
28 regulations covering the design of all public water systems,  
29 plumbing systems, sewerage systems and sewage treatment  
30 plants, swimming pools and excreta disposal methods in West  
31 Virginia, whether publicly or privately owned, and the  
32 operation and qualifications of chlorination plant operators,  
33 chemists, bacteriologists and superintendents of filtration, or  
34 others who are in actual charge of plant operation of all  
35 public water systems, sewage treatment plants and swimming  
36 pools.

37 Nothing herein contained shall be construed to give the  
38 state department of health the power to regulate or interfere  
39 with the drainage from any mine or manufacturing plant  
40 unless the drainage from said mine or manufacturing plant  
41 shall contain disease producing bacteria in sufficient numbers  
42 to endanger health, or organic or inorganic wastes of such  
43 nature as to cause the water intended for public or private  
44 water supplies to be unfit for use.

· Sec. 7. *Supervision Over Local Sanitation.* No county or  
2 municipal government, public or private institution, firm,  
3 corporation or company, person or persons shall establish  
4 any system or method of drainage, water supply, excreta  
5 disposal or system of garbage and refuse disposal in West  
6 Virginia unless the same is installed in accordance with plans  
7 and instruction issued by the state department of health or  
8 has been approved in writing by the state health commissioner  
9 or his authorized representative.

10 Whenever the state health commissioner or his authorized  
11 representative finds upon investigation that any system or  
12 method of plumbing, drainage, water supply, excreta dis-  
13 posal or garbage or refuse disposal, whether publicly or  
14 privately owned, is such as to endanger the public health  
15 or is creating a nuisance that is detrimental to health, the  
16 state health commissioner or his duly authorized representative

17 shall be empowered to issue an order requiring the owner of  
18 such system or method to make such alterations as may be  
19 required by the state health department to correct the im-  
20 proper condition within a reasonable time.

21 The personnel of the state health department shall be at  
22 the disposal of any county, municipality, firm, corporation,  
23 company, person or persons to consult and advise with them  
24 as to the most appropriate design, method of operation or  
25 alteration of the systems or methods outlined in this section.

26 Any county, municipality, public or private institution,  
27 firm, corporation, company, person or persons who shall  
28 violate any provision of this act shall be deemed guilty of a  
29 misdemeanor and upon conviction thereof shall be punished  
30 by a fine of not less than ten nor more than one hundred  
31 dollars.

32 The provisions of this act shall be construed as separable  
33 and severable, and should any of the provisions or parts  
34 thereof be held to be unconstitutional, or for any reason  
35 invalid, the remaining portions shall not be affected thereby.

36 All acts or parts of acts in conflict with this act are hereby  
37 repealed.

## CHAPTER 32

(House Bill No. 171—By Mr. Loucas)

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 last amended, relating to certified  
copies from birth and death records, and providing fees there-  
for.

[Passed March 10, 1939; in effect ninety days from passage. Became a law with-  
out the approval of the Governor.]

### Article 5. Vital Statistics.

#### Section

21. Certified copies from birth and death records; fees.

*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 last  
amended, be amended and reenacted to read as follows:

Section 21. *Certified Copies From Birth and Death Records; Fees.* 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: *Provided, however,* That when a request is made for a birth certificate of any person who has been legally adopted by any other person and there is filed with such request a certified copy of the decree of the court in such adoption proceedings, the state registrar shall, upon special request therefor, issue in lieu of a certified copy of the original record a special birth certificate showing only (a) the name of the proposed adopted person as changed by the decree of adoption, if changed; (b) the date and place of birth; (c) the names of the adopting parent or parents; and (d) the permanent file number of the original birth certificate. Such special certificate shall be accepted by all school authorities as evidence of the child's age for all purposes connected with employment or school attendance. For the making and certification of each certified copy of the record of any birth, death or of any special birth certificate, the state registrar shall be entitled to a fee of fifty cents to be paid by the applicant. Such copy shall not state that any child was either legitimate or illegitimate. Any such copy of the record of a birth or death, or such special birth certificate, 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 further,* 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 pre-

41 scribed: *And provided further*, That the state registrar may  
42 furnish certified copies of birth and death records to the state  
43 welfare department, to county welfare departments and to  
44 organized charities, free of charge, when such certificates are  
45 needed in presenting claims to the federal government, or to  
46 the West Virginia relief compensation department, and an  
47 accurate record shall be made of all such certificates so  
48 furnished.

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## CHAPTER 33

(House Bill No. 11—By Mr. George)

AN ACT to authorize the department of public safety to make settlement with Frank Cavalieri of a claim against Everett E. Stout, a member of the department of public safety.

[Passed March 8, 1939; in effect from passage. Approved by the Governor.]

### Section

1. Superintendent of department of public safety authorized to settle claim of Frank Cavalieri.

WHEREAS, Heretofore, on or about the fourth day of February, one thousand nine hundred twenty-nine, in the circuit court of Barbour county, West Virginia, a judgment was obtained in favor of Frank Cavalieri against Everett E. Stout, a member of the department of public safety, for alleged wrongs resulting from the official conduct of the said Everett E. Stout, as a member of the department of public safety, in the amount of four hundred dollars and costs; and,

WHEREAS, Through some inadvertence, an appeal from said judgment was not presented to the supreme court of appeals of West Virginia; and,

WHEREAS, The said Everett E. Stout, in the matters from which said judgment arose, was properly discharging his duties as a member of the department of public safety; therefore,

*Be it enacted by the Legislature of West Virginia:*

- Section 1. *Superintendent of Department of Public Safety*  
2 *Authorized to Settle Claim of Frank Cavalieri.* That the su-  
3 perintendent of the department of public safety is authorized  
4 to pay to the said Frank Cavalieri, his heirs or assigns, a sum

5 not to exceed four hundred dollars and costs in full settlement  
6 and discharge of said claim from any moneys now or here-  
7 after appropriated to the department of public safety, upon  
8 condition that the said Frank Cavalieri do execute, acknowl-  
9 edge and deliver to the said Everett E. Stout and the depart-  
10 ment of public safety a full and complete release and dis-  
11 charge of all persons, firms, or corporations, private or pub-  
12 lic, in any way connected with the facts out of which such  
13 claim arose.

## CHAPTER 34

(House Bill No. 91—By Mr. Speaker, Mr. Thomas)

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, as last amended by chapter twenty-eight, acts of the Legislature, regular session, one thousand nine hundred thirty-five, and by chapter ninety-one, acts of the Legislature, regular session, one thousand nine hundred thirty-seven, relating to a death, disability and retirement fund for members of the department of public safety and dependent members of their families, and relating to pensions for retired or disabled members of the department of public safety or dependent members of their families, and relating to a pension fund board to control and disburse such fund.

[Passed February 27, 1939; in effect July 1, 1939. Approved by the Governor.]

### Article 2. Department of Public Safety.

#### Section

27. Death, disability and retirement fund.

28. Pension fund board; payments from fund.

*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, as last amended, be amended and reenacted to read as follows:

Section 27. *Death, Disability and Retirement Fund.* There  
2 is hereby created a death, disability, and retirement fund for



3 the benefit of members of the department of public safety,  
4 or any dependent of a member or former member thereof.  
5 Into such fund shall be paid such amounts as have heretofore  
6 been collected by the superintendent of the department of  
7 public safety on account of fees for arrest, rewards, or from  
8 any other source permitted by law. There shall be paid into  
9 such fund such amounts arising in the future from the above  
10 named or any other sources permitted by law, designated by  
11 the superintendent of the department of public safety, except  
12 that no part of any fine shall be paid thereinto.

13 There shall be deducted from the monthly payroll of each  
14 member of the department of public safety six per cent of  
15 the amount of his salary, and an additional six per cent of the  
16 monthly salary of each member of the department of public  
17 safety shall be paid by the state of West Virginia out of the  
18 biennial appropriation for said department, which shall be  
19 paid into such fund. Any money so collected by the superin-  
20 tendent of the department of public safety shall be turned  
21 over to the state treasury, and the treasurer and auditor shall  
22 keep a separate account thereof on their books. Such funds  
23 shall be invested by the state board of public works in bonds  
24 of the government of the United States, the state of West  
25 Virginia, or any political subdivision thereof.

26 In the event the awards authorized by the pension fund  
27 board in any year exceed the amount derived from interest  
28 on investments, the superintendent is hereby empowered to  
29 transfer sufficient funds from the current expense appropria-  
30 tion of the department to the pension fund to meet the deficit.

Sec. 28. *Pension Fund Board; Payments from Fund.* (a)

2 The board of commissioners created by section twenty, article  
3 two, chapter fifteen of the code of West Virginia, one thou-  
4 sand nine hundred thirty-one, and the superintendent of the  
5 department of public safety shall constitute a pension fund  
6 board and shall have the power to make awards or to revise  
7 awards previously made for such times and under such terms  
8 and conditions as are hereinafter provided for, and shall make  
9 all necessary rules and regulations regarding the same not  
10 inconsistent with this act.

11 (b) Any member of the department of public safety who  
12 has served in said department for a period of twenty years

13 and who has reached the age of fifty-five years, upon applica-  
14 tion by said member to the superintendent of said department,  
15 together with certificate of service and with the approval of  
16 the board of commissioners, shall be retired and shall there-  
17 upon receive annually, in monthly installments, from said  
18 pension fund an amount equal to three per cent of the total  
19 salary earned by him during his service in the department:  
20 *Provided, however,* That any member of the department who  
21 has served in the department for a period of twenty years  
22 and who in the opinion of the pension fund board is incapable  
23 of performing his duties as a member of the department due  
24 to physical or other handicaps or defects, may be retired not-  
25 withstanding the fact that he may not have reached the age  
26 of fifty-five years, and shall thereupon receive annually, in  
27 monthly installments, from said pension fund an amount to  
28 be fixed by the pension fund board, but such amount shall in  
29 no case exceed three per cent of the total salary earned by him  
30 during his service in the department.

31 (c) Any member of said department of public safety who  
32 has heretofore received or who may hereafter receive perma-  
33 nent disability in the performance of his duty shall, upon  
34 certificate of disability of a physician designated for the pur-  
35 pose by the board of commissioners, be retired upon an annual  
36 pension of not less than two nor more than five per cent of  
37 twenty years' salary based on his average earnings while  
38 employed by the department: *Provided,* That in no case shall  
39 the total amount received be more than the total amount re-  
40 ceived when regularly employed as a member of the depart-  
41 ment.

42 (d) The widow or children under the age of sixteen years,  
43 or sole dependent parent of any member of the department of  
44 public safety who shall have heretofore or shall hereafter lose  
45 his life in the performance of his duty, or where death results  
46 from injury received in the performance of duty, shall receive  
47 an annual pension that shall not exceed two per cent of  
48 twenty years' salary based on his average earnings while em-  
49 ployed by the department: *Provided,* That in case of a widow  
50 and children such pension shall be for the widow and the  
51 children and shall be paid to the widow, and in case there are  
52 three or more children under the age of sixteen years and no

53 widow, the said children shall receive the pension in equal  
54 shares until they attain the age of sixteen years, and in case  
55 there are two children under the age of sixteen years and  
56 widow, they shall be paid such pension, but not to exceed  
57 fifteen dollars monthly each, until they attain the age of  
58 sixteen years, and in the case of only one child and no widow,  
59 he or she shall be paid such pension, but not to exceed fifteen  
60 dollars monthly, until he or she attains the age of sixteen  
61 years: *Provided further*, That in case there is no widow and  
62 no children under the age of sixteen years then such pension  
63 shall be paid to the parent or parents dependent upon the  
64 deceased member: *Provided further*, That if any widow en-  
65 titled to a pension aforesaid dies or remarries, then such  
66 pensions shall cease to be paid to such widow, or her estate,  
67 but shall be paid to each of said children, or child, until they  
68 reach the age of sixteen years. No such child shall receive  
69 more than fifteen dollars per month.

70 (e) Any member of the department of public safety who  
71 is released or who severs his connection with the department  
72 of public safety and who has served two full years or more  
73 with the department, shall, upon request, be refunded all de-  
74 ductions made from his salary, but without interest, on ac-  
75 count of this fund. But in the event that such refund is made,  
76 and such member subsequently reenlists, no credit shall be  
77 allowed to him for any former service. If any member is  
78 released or severs his connection with the department before  
79 he has served two full years, he shall forfeit his right to have  
80 refunded to him any such deductions.

81 (f) All outstanding annuities shall be paid from the cur-  
82 rent income to such fund and from the interest on or income  
83 from an accumulated fund amounting to one hundred and  
84 seven thousand dollars.

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

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

## CHAPTER 35

(House Bill No. 92—By Mr. Speaker, Mr. Thomas)

AN ACT to amend and reenact sections two, three, five and seven, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, relating to the organization of the department of public safety, providing for the appointment of inspector, headquarters and supply sergeants, civilian employees, and fixing their salaries; providing for the creation, appointment and equipment of companies and platoons; providing for the appointment and reappointment of members of the department of public safety and fixing salaries, qualifications, terms and bonds.

[Passed February 28, 1939; in effect July 1, 1939. Approved by the Governor.]

### Article 2. Department of Public Safety.

#### Section

2. Inspector; headquarters and supply sergeants; civilian employees; salaries.
3. Companies or platoons; how constituted; salaries and bonds of members.
5. Appointment and qualifications of members.
7. Reappointment of members.

*Be it enacted by the Legislature of West Virginia:*

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

- Section 2. *Inspector; Headquarters and Supply Sergeants; Civilian Employees; Salaries.* The superintendent shall appoint an inspector at an annual salary of three thousand six hundred dollars, with the grade of captain, and a headquarters sergeant and a supply sergeant at the annual salaries provided in section three of this article. He shall also appoint such civilian employees as may be necessary, whose salaries shall be fixed by the board of public works. Such inspector, headquarters sergeant and supply sergeant shall be enrolled and enlisted as members of the department of public safety.

Sec. 3. *Companies or Platoons; How Constituted; Salaries and Bonds of Members.* The superintendent shall create, appoint and equip a department of public safety which shall consist of four companies or platoons. Each company or platoon shall be composed of one captain, one lieutenant, one first sergeant, five sergeants, eight corporals, and such number of troopers as the superintendent may decide best, but such number of troopers shall not at any time be less than thirty, or more than fifty-five in any one company or platoon.

Members of the department shall receive salaries, as follows:

A captain shall receive an annual salary of twenty-four hundred dollars; a lieutenant shall receive an annual salary of twenty-one hundred dollars; the headquarters sergeant, supply sergeant and first sergeants shall each receive an annual salary of one thousand six hundred eighty dollars, and shall receive an increase of thirty dollars per annum during continuous service at their respective grades until a maximum annual salary of one thousand eight hundred dollars is paid; sergeants shall receive an annual salary of one thousand five hundred sixty dollars, and shall receive an increase of thirty dollars per annum during continuous service at the grade of sergeant until a maximum annual salary of one thousand six hundred eighty dollars is paid; corporals shall each receive an annual salary of one thousand four hundred forty dollars, and shall receive an increase of thirty dollars per annum during continuous service at the grade of corporal until a maximum annual salary of one thousand five hundred sixty dollars is paid; and each trooper shall receive a salary of fifty dollars per month for the first three months of his service, seventy-five dollars per month for the second three months, one hundred dollars per month for the next eighteen months, and thereafter shall receive an increase of thirty dollars per annum during continuous service at the grade of trooper until a maximum salary of one thousand four hundred forty dollars per annum is paid.

In applying the foregoing salary schedule where salary increases are provided for continuous service, all the members of the department in service at the time this act becomes effective shall be given credit for prior continuous service

41 in their respective grades, and shall be paid such salaries as  
42 the same length of continuous service would entitle them to  
43 receive under the provisions hereof.

44 Each member of the department of public safety, except  
45 the superintendent and civilian employees, shall, before en-  
46 tering upon the discharge of his duties, execute a bond with  
47 security in the sum of three thousand five hundred dollars,  
48 payable to the state of West Virginia, conditioned for the  
49 faithful performance of his duties as such, and such bond  
50 shall be approved as to form by the attorney general, and as  
51 to sufficiency by the board of public works, and the same  
52 shall be filed with the secretary of state and preserved in his  
53 office.

Sec. 5. *Appointment and Qualifications of Members.*

2 Preference in making appointments shall be given wher-  
3 ever possible to honorably discharged soldiers, sailors  
4 and marines of the United States army and navy. Each ap-  
5 plicant for appointment shall be a person not less than  
6 twenty-one nor more than forty-five years of age, of sound  
7 constitution, of good moral character, and shall be required  
8 to pass such mental and physical examinations as may be  
9 provided for by the rules and regulations promulgated by the  
10 superintendent. No person shall be barred from becoming a  
11 member of the department of public safety because of his re-  
12 ligious or political convictions.

Sec. 7. *Reappointment of Members.* No member who has

2 been removed, suspended or discharged under the provisions  
3 of this article shall be eligible to be again appointed to the  
4 department of public safety unless the consent of the gover-  
5 nor thereto in writing is first had and obtained.

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## CHAPTER 36

(Senate Bill No. 88—By Mr. Anderson)

AN ACT to amend and reenact section eleven, article two, chapter  
fifteen of the code of West Virginia, one thousand nine hundred

thirty-one, relating to the powers of the superintendent and of the officers and members of the department of public safety.

[Passed March 9, 1939; in effect from passage. Became a law without the approval of the Governor.]

## Article 2. Department of Public Safety.

### Section

#### 11. Powers of members.

*Be it enacted by the Legislature of West Virginia:*

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

- Section 11. *Powers of Members.* The superintendent and
- 2 each of the officers and members of the department of public
- 3 safety are hereby authorized and empowered as follows:
- 4 (a) To make arrests anywhere within the confines of the
- 5 state of any and all persons charged with the violation of
- 6 any law of this state, or of the United States, and when a wit-
- 7 ness to the perpetration of any offense or crime, or to the vio-
- 8 lation of any law of this state, or of the United States, may
- 9 arrest without warrant; to arrest and detain any and all per-
- 10 sons suspected of the commission of any felony or misdemeanor
- 11 whenever complaint is made and a warrant is issued thereon
- 12 for such arrest, and any and all persons so arrested shall
- 13 be forthwith brought before the proper tribunal for exami-
- 14 nation and trial in the county where the offense for which any
- 15 such arrest has been made was committed;
- 16 (b) To serve criminal process issued by any court or justice
- 17 of the peace anywhere within this state: *Provided, however,*
- 18 *That they shall not serve civil process;*
- 19 (c) To cooperate with local authorities in detecting crime
- 20 and in apprehending any person or persons engaged in or
- 21 suspected of the commission of any crime, misdemeanor or
- 22 offense against the law of this state, or of the United States,
- 23 or of any ordinance of any municipality in this state; and to
- 24 take affidavits in connection with any application to the state
- 25 road commission of West Virginia for any license or certifi-
- 26 cate that may be lawfully issued by that commission;
- 27 (d) Members of the department of public safety shall be
- 27a and are hereby created forest patrolmen, game and fish

wardens and deputy prohibition officers throughout the state to do and perform any and all duties and exercise any and all powers of such officers, and may apprehend and bring before any court or justice of the peace having jurisdiction of such matters, any one violating any of the provisions of chapters twenty, sixty, and sixty-one of this code, and any and all amendments thereto; and the department of public safety shall at any time be subject to the call of the commissioner of prohibition to aid the prohibition department in apprehending any person violating any of the provisions of said chapter sixty. They shall serve and execute warrants for the arrest of any person and warrants for the search of any premises issued by any properly constituted authority, and shall exercise all of the powers conferred by law upon a sheriff, constable or any other peace officer of this state, except that they shall not serve any civil process or exercise any of the powers of such officers in matters of a civil nature;

(e) Any member of the department of public safety knowing or having reason to believe that any one has violated the law may make complaint in writing before any court or officer having jurisdiction and procure a warrant for such offender, execute the same and bring such person before the proper tribunal having jurisdiction. He shall make return on all such warrants to such tribunals and his official title shall be "member of the department of public safety". Members of the department of public safety may execute any summons or process issued by any tribunal having jurisdiction requiring the attendance of any person as a witness before such tribunal and make return thereon as provided by law, and any return by a member of the department of public safety showing the manner of executing such warrant or process shall have the same force and effect as if made by a sheriff;

(f) Each member of the department of public safety, when called by the sheriff of any county, or when the governor by proclamation so directs, shall have full power and authority within such county, or within the territory defined by the governor, to direct and command absolutely the assistance of any sheriff, deputy sheriff, constable, chief of police, policeman, town marshal, game and fish warden, deputy prohibition officer and any and every peace officer of the state, or of any county or municipality therein, or of any able-bodied citizen



69 of the United States, to assist and aid in accomplishing the  
70 purposes expressed in this article. When so called, any officer  
71 or person shall, during the time his assistance is required, be  
72 and be considered to be, for all purposes, a member of the de-  
73 partment of public safety force and subject to all the pro-  
74 visions of this article.

## CHAPTER 37

(House Bill No. 444—By Mr. Matthews)

AN ACT to amend and reenact section three, article one, and section four, article three, chapter seventy-six, acts of the Legislature of West Virginia, regular session, one thousand nine hundred thirty-five, relating to the application of said chapter to departments of state government and to legislative printing.

[Passed March 11, 1939; in effect ninety days from passage. Became a law without the approval of the Governor.]

### Article

#### 1. General Provisions.

#### 3. Public Printing and Stationery; State Publications.

*Be it enacted by the Legislature of West Virginia:*

That section three, article one, and section four, article three, chapter seventy-six, acts of the Legislature, regular session, one thousand nine hundred thirty-five, be amended and reenacted to read as follows:

### Article 1. General Provisions.

#### Section

#### 3. Departments to which act applies.

Section 3. *Departments to Which Act Applies.* The provisions of this chapter for the purchase of commodities, printing and contractual services shall apply to all of the departments of the state government, except as is otherwise provided by this chapter or by law: *Provided, however,* That the provisions of this chapter shall in no wise apply to purchase of commodities, printing or contractual services of the legislative department, except as to contracting for legislative printing, unless the Legislature or either house thereof re-

10 quests the director to render specific services under the pro-  
11 visions of this chapter: *Provided further*, That the payment  
12 of legislative expenses shall not be subject to the approval of  
13 the director of the budget.

**Article 3. Public Printing and Stationery; State Publications.**

**Section**

**4. Legislative printing.**

Section 4. *Legislative Printing.* The contract for legislative  
2 printing shall be let on competitive bids by the director of  
3 purchases to a printer located at the state capital, and all  
4 legislative printing shall be done by the holder of the con-  
5 tract for this purpose. The clerk of the senate and the clerk  
6 of the house of delegates shall have exclusive control of all  
7 printing authorized by their respective legislative bodies.

8 Before presenting for payment, bills for legislative print-  
9 ing, the public printer shall have the same approved as correct  
10 and according to contract, by the department of purchases.  
11 A copy of all bills for printing shall be furnished the clerk  
12 of the house for which such printing is done. When bills  
13 are presented to the clerk of the senate or the clerk of the  
14 house of delegates, properly approved, he shall draw his  
15 requisition upon the auditor in the amount owed the public  
16 printer, payable from the legislative printing fund, and the  
17 auditor shall honor said requisition and issue a state draft  
18 thereon to the public printer.

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## CHAPTER 38

(House Bill No. 369—By Mr. Brotherton)

AN ACT approving, ratifying and enacting into law the "Ohio River Valley Water Sanitation Compact" for the prevention, abatement and control of pollution of the rivers, streams and waters in the Ohio river drainage basin and making the state of West Virginia a party thereto; creating the "Ohio River Valley Water Sanitation Commission"; providing for the mem-

bers of such commission from the state of West Virginia; and providing for the carrying out of said compact.

[Passed March 11, 1939; in effect ninety days from passage. Approved by the Governor.]

#### Section

1. Ohio river valley water sanitation compact approved.
2. Appointment of members of Ohio river valley water sanitation commission; state commissioner of health to be member ex officio.
3. Powers of commission; duties of state officers, departments, etc.; jurisdiction of circuit courts: enforcement of act.
4. Powers granted herein supplemental to other powers vested in commission.
5. Expenses of commission; appropriations; officers and employees; meetings.
6. When act to become effective.

*Be it enacted by the Legislature of West Virginia:*

#### Section 1. *Ohio River Valley Water Sanitation Compact*

- 2 *Approved.* The following Ohio River Valley Water Sanitation Compact, which has been negotiated by representatives of the states of Illinois, Indiana, Kentucky, New York, Ohio, Pennsylvania, Tennessee and West Virginia, is hereby approved, ratified, adopted, enacted into law, and entered into by the state of West Virginia as a party thereto and signatory state, namely:

#### OHIO RIVER VALLEY WATER SANITATION COMPACT

WHEREAS, A substantial part of the territory of each of the signatory States is situated within the drainage basin of the Ohio River; and

WHEREAS, The rapid increase in the population of the various metropolitan areas situate within the Ohio drainage basin, and the growth in industrial activity within that area, have resulted in recent years in an increasingly serious pollution of the waters and streams within the said drainage basin, constituting a grave menace to the health, welfare, and recreational facilities of the people living in such basin, and occasioning great economic loss; and

WHEREAS, The control of future pollution and the abatement of existing pollution in the waters of said basin are of prime importance to the people thereof, and can best be accomplished through the cooperation of the States situated therein, by and through a joint or common agency;

NOW, THEREFORE, The States of Illinois, Indiana, Kentucky, New York, Ohio, Pennsylvania, Tennessee and West Virginia do hereby covenant and agree as follows:

#### **Article I**

Each of the signatory States pledges to each of the other signatory States faithful cooperation in the control of future pollution in and abatement of existing pollution from the rivers, streams and waters in the Ohio River Basin which flow through, into or border upon any of such signatory States, and in order to effect such object, agrees to enact any necessary legislation to enable each such State to place and maintain the waters of said basin in a satisfactory sanitary condition, available for safe and satisfactory use as public and industrial water supplies after reasonable treatment, suitable for recreational usage, capable of maintaining fish and other aquatic life, free from unsightly or malodorous nuisances due to floating solids or sludge deposits, and adaptable to such other uses as may be legitimate.

#### **Article II**

The signatory States hereby create a district to be known as the "Ohio River Valley Water Sanitation District," hereinafter called the District, which shall embrace all territory within the signatory States, the water in which flows ultimately into the Ohio River, or its tributaries.

#### **Article III**

The signatory States hereby create the "Ohio River Valley Water Sanitation Commission," hereinafter called the Commission, which shall be a body corporate, with the powers and duties set forth herein, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the signatory States or by act or acts of the Congress of the United States.

#### **Article IV**

The Commission shall consist of three commissioners from each State, each of whom shall be a citizen of the State from which he is appointed, and three commissioners representing the United States Government. The commissioners from each State shall be chosen in the manner and for the terms provided by the laws of the State from which they shall be appointed, and any commissioner may be removed or suspended from office as provided by the law of the State from which he shall be appointed. The commissioners representing the United States shall be appointed by the President of the United States, or in such other manner as may be provided by Congress. The commissioners shall serve without compensation, but shall be paid their actual ex-

penses incurred in and incident to the performance of their duties; but nothing herein shall prevent the appointment of an officer or employee of any State or of the United States Government.

#### Article V

The Commission shall elect from its number a chairman and vice-chairman, and shall appoint, and at its pleasure remove or discharge, such officers and legal, clerical, expert and other assistants as may be required to carry the provisions of this compact into effect, and shall fix and determine their duties, qualifications and compensation. It shall adopt a seal and suitable by-laws, and shall adopt and promulgate rules and regulations for its management and control. It may establish and maintain one or more offices within the District for the transaction of its business, and may meet at any time or place. One or more commissioners from a majority of the member States shall constitute a quorum for the transaction of business.

The Commission shall submit to the Governor of each State, at such time as he may request, a budget of its estimated expenditures for such period as may be required by the laws of such State for presentation to the legislature thereof.

The Commission shall keep accurate books of account, showing in full its receipts and disbursements, and said books of account shall be open at any reasonable time to the inspection of such representatives of the respective signatory States as may be duly constituted for that purpose.

On or before the first day of December of each year, the Commission shall submit to the respective Governors of the signatory States a full and complete report of its activities for the preceding year.

The Commission shall not incur any obligations of any kind prior to the making of appropriations adequate to meet the same; nor shall the Commission pledge the credit of any of the signatory States, except by and with the authority of the legislature thereof.

#### Article VI

It is recognized by the signatory States that no single standard for the treatment of sewage or industrial wastes is applicable in all parts of the District due to such variable factors as size, flow, location, character, self-purification, and usage of waters within the District. The guiding principle of this compact shall be that pollution by sewage or industrial wastes originating within a signatory State shall not injuriously affect the various uses of the interstate waters as hereinbefore defined.

All sewage from municipalities or other political subdivision, public or private institutions, or corporations, discharged or permitted to flow

into these portions of the Ohio River and its tributary waters which form boundaries between, or are contiguous to, two or more signatory States, or which flow from one signatory State into another signatory State, shall be so treated, within a time reasonable for the construction of the necessary works, as to provide for substantially complete removal of settleable solids, and the removal of not less than forty-five per cent (45%) of the total suspended solids; provided that, in order to protect the public health or to preserve the waters for other legitimate purposes, including those specified in Article I, in specific instances such higher degree of treatment shall be used as may be determined to be necessary by the Commission after investigation, due notice and hearing.

All industrial wastes discharged or permitted to flow into the aforesaid waters shall be modified or treated, within a time reasonable for the construction of the necessary works, in order to protect the public health or to preserve the waters for other legitimate purposes, including those specified in Article I, to such degree as may be determined to be necessary by the Commission after investigation, due notice and hearing.

All sewage or industrial wastes discharged or permitted to flow into tributaries of the aforesaid waters situated wholly within one State shall be treated to that extent, if any, which may be necessary to maintain such waters in a sanitary and satisfactory condition at least equal to the condition of the waters of the interstate stream immediately above the confluence.

The Commission is hereby authorized to adopt, prescribe and promulgate rules, regulations and standards for administering and enforcing the provisions of this article.

#### Article VII

Nothing in this compact shall be construed to limit the powers of any signatory State, or to repeal or prevent the enactment of any legislation or the enforcement of any requirement by any signatory State, imposing additional conditions and restrictions to further lessen or prevent the pollution of waters within its jurisdiction.

#### Article VIII

The Commission shall conduct a survey of the territory included within the District, shall study the pollution problems of the District, and shall make a comprehensive report for the prevention or reduction of stream pollution therein. In preparing such report, the Commission shall confer with any national or regional planning body which may be established, and any department of the Federal Government authorized to deal with matters relating to the pollution problems of the District. The Commission shall draft and recommend to the gov-

ernors of the various signatory States uniform legislation dealing with the pollution of rivers, streams, and waters and other pollution problems within the District. The Commission shall consult with and advise the various States, communities, municipalities, corporations, persons, or other entities with regard to particular problems connected with the pollution of waters, particularly with regard to the construction of plants for the disposal of sewage, industrial and other waste. The Commission shall, more than one month prior to any regular meeting of the legislature of any State which is a party thereto, present to the Governor of the State its recommendations relating to enactments to be made by any legislature in furthering the intents and purposes of this compact.

#### **Article IX**

The Commission may from time to time, after investigation and after a hearing, issue an order or orders upon any municipality, corporation, person, or other entity discharging sewage or industrial waste into the Ohio River or any other river, stream or water, any part of which constitutes any part of the boundary line between any two or more of the signatory States, or into any stream any part of which flows from any portion of one signatory State through any portion of another signatory State. Any such order or orders may prescribe the date on or before which such discharge shall be wholly or partially discontinued, modified or treated or otherwise disposed of. The Commission shall give reasonable notice of the time and place of the hearing to the municipality, corporation or other entity against which such order is proposed. No such order shall go into effect unless and until it receives the assent of at least a majority of the commissioners from each of not less than a majority of the signatory States; and no such order upon a municipality, corporation, person or entity in any State shall go into effect unless and until it receives the assent of not less than a majority of the Commissioners from such State.

It shall be the duty of the municipality, corporation, person or other entity to comply with any such order issued against it or him by the Commission, and any court of general jurisdiction or any United States district court in any of the signatory States shall have the jurisdiction, by mandamus, injunction, specific performance or other form of remedy, to enforce any such order against any municipality, corporation or other entity domiciled or located within such State or whose discharge of the waste takes place within or adjoining such State, or against any employee, department or subdivision of such municipality, corporation, person or other entity; provided, however, such court may review the order and affirm, reverse or modify the same upon any of the grounds customarily applicable in proceedings for court review of administrative decisions. The Commission or, at its request, the Attorney General or other law enforcing official, shall have power to institute in such court any action for the enforcement of such order.

**Article X**

The signatory States agree to appropriate for the salaries, office and other administrative expenses, their proper proportion of the annual budget as determined by the Commission and approved by the Governors of the signatory States, one-half of such amount to be prorated among the several States in proportion to their population within the District at the last preceding federal census, the other half to be prorated in proportion to their land area within the District.

**Article XI**

This compact shall become effective upon ratification by the legislatures of a majority of the States located within the District and upon approval by the Congress of the United States; and shall become effective as to any additional States signing thereafter at the time of such signing.

IN WITNESS WHEREOF, the various signatory States have executed this compact through their respective compact commissioners.

*Sec. 2. Appointment of Members of Ohio River Valley*

2 *Water Sanitation Commission; State Commissioner of Health*  
3 *to be Ex Officio Member.* In pursuance of article four of said  
4 compact, there shall be three members of the "Ohio River  
5 Valley Water Sanitation Commission" from the state of West  
6 Virginia. The governor, by and with the advice and consent  
7 of the Senate, shall appoint two persons as two of such com-  
8 missioners, each of whom shall be a resident and citizen of  
9 this state. The terms of one of the said two commissioners  
10 first appointed shall be three years and of the other shall be  
11 six years; and their successors shall be appointed by the gov-  
12 ernor, by and with the advice and consent of the Senate for  
13 terms of six years each. Each commissioner shall hold office  
14 until his successor shall be appointed and qualified. Vacan-  
15 cies occurring in the office of any such commissioner from  
16 any reason or cause shall be filled by appointment by the  
17 governor, by and with the advice and consent of the Senate,  
18 for the unexpired term. The third commissioner from this  
19 state shall be the commissioner of health ex officio, and the  
20 term of any such ex officio commissioner shall terminate at  
21 the time he ceases to hold said office of commissioner of  
22 health, and his successor as a commissioner shall be his suc-



cessor as said commissioner of health. With the exception of the issuance of any order under the provisions of article nine of the compact, said ex officio commissioner may delegate, from time to time, to any deputy or other subordinate in his department or office, the power to be present and participate, including voting, as his representative or substitute at any meeting of or hearing by or other proceeding of the commission. The terms of each of the initial three members shall begin at the date of the appointment of the two appointive commissioners, provided the said compact shall then have gone into effect in accordance with article eleven of the compact; otherwise shall begin upon the date which said compact shall become effective in accordance with said article eleven.

Any commissioner may be removed from office by the governor.

Sec. 3. *Powers of Commission; Duties of State Officers, Departments, etc.; Jurisdiction of Circuit Courts; Enforcement of Act.* There is hereby granted to the commission and commissioners thereof all the powers provided for in the said compact and all the powers necessary or incidental to the carrying out of said compact in every particular. All officers of this state are hereby authorized and directed to do all things falling within their respective provinces and jurisdiction necessary to or incidental to the carrying out of said compact in every particular; it being hereby declared to be the policy of this state to perform and carry out the said compact and to accomplish the purposes thereof. All officers, bureaus, departments and persons of and in the state government or administration of this state of West Virginia are hereby authorized and directed at convenient times and upon request of the said commission to furnish the said commission with information and data possessed by them or any of them and to aid said commission by loan of personnel or other means lying within their legal powers respectively.

The circuit courts of this state are hereby granted the jurisdiction specified in article nine of said compact, and the attorney general or any other law-enforcing officer of this state is hereby granted the power to institute any action for

24 the enforcement of the orders of the commission as specified  
25 in said article nine of the compact.

Sec. 4. *Powers Granted Herein Supplemental to Other Powers Vested in Commission.* Any powers herein granted to the commission shall be regarded as in aid of and supplemental to and in no case a limitation upon any of the powers vested in said commission by other laws of this state or by the laws of the states of Illinois, Indiana, Kentucky, New York, Ohio, Pennsylvania, Tennessee, or by congress or the terms of said compact.

Sec. 5. *Expenses of Commission; Appropriations; Officers and Employees; Meetings.* The commissioners shall be reimbursed out of moneys appropriated for such purposes, all sums which they necessarily shall expend in the discharge of their duties as members of such commission.

There shall be appropriated to the commission out of any moneys in the state treasury unexpended and available therefor, and not otherwise appropriated, such sums as may be necessary for the uses and purposes of the commission in carrying out the provisions of this act and the payment of the proper proportion of the state of West Virginia of the annual budget of the "Ohio River Valley Water Sanitation Commission" in accordance with article ten of said compact.

The commission shall elect from its membership a chairman and may also select a secretary who need not be a member. The commission may employ such assistance as it may deem necessarily required, and the duties of such assistants shall be prescribed and their compensation fixed by the commission and paid out of the state treasury out of funds appropriated for such purposes upon the requisition of said commission.

The commission shall meet at such times and places as agreed upon by the commissioners or upon call of its chairman.

Sec. 6. *When Act to Become Effective.* This act shall take effect and become operative and the compact be executed for and on behalf of this state only from and after the approval, ratification, and adoption, and entering into thereof by the states of New York, Pennsylvania, Ohio, and Virginia.

## CHAPTER 39

(Senate Bill No. 117—By Mr. Allen)

AN ACT to add a new article five to chapter five of the code of West Virginia, one thousand nine hundred thirty-one, creating a state budget office, and defining the duties and powers thereof.

[Passed February 16, 1939; in effect ninety days from passage. Approved by the Governor.]

### Article 5. State Budget Office.

#### Section

1. Purpose of article.
2. Definitions.
3. State budget office created; powers and duties.
4. Director of the budget; appointment; duties.
5. Director; qualifications.
6. Director; oath and bond.
7. Director; offices.
8. Director; compensation.
9. Director; powers and duties.
10. Assistants and employees; compensation.
11. Delegation of powers and duties by director.
12. Requests for appropriations.
13. Content of requests.
14. Form of requests.
15. Information concerning state finances.
16. Appropriations for the judiciary.
17. Appropriations for the legislature.
18. Examination of requests for appropriations.
19. Appropriations for other than spending units.
20. Itemization of tentative budget.
21. Preparation of tentative budget submitted to board of public works.
22. Powers of the director in the administration of expenditures.
23. Reports on revenue collections.
24. Management accounting.
25. Expenditure schedules.
26. Examination and approval of expenditure schedules.
27. Reserve for emergencies.
28. Requests for quarterly allotments.
29. Limitation on expenditures.
30. Revival of appropriations.
31. Transfers between items of an appropriation.
32. Expenditure of excess in collections.
33. Reports by spending units.
34. Reduction of appropriations.
35. General fund; pro rata reductions.
36. Other funds; pro rata reductions.
37. Reductions after classification of appropriations.
38. Expenditure procedure, other than for purchases.
39. Expenditure procedure; purchases.
40. Legislative and judicial expenditures.
41. Annual inventories by spending units.

42. Classification of employment and compensation.
43. Classification of employment and compensation by certain departments.
44. Certification of personnel by spending officer.
45. Personnel, classification and compensation schedules.
46. Requisition for payment of personal services.
47. To whom personnel provisions not to apply.
48. Provisions of act severable; inconsistent acts repealed.

*Be it enacted by the Legislature of West Virginia:*

That a new article five be added to chapter five of the code of West Virginia, one thousand nine hundred thirty-one, to read as follows:

Section 1. *Purpose of Article.* The purpose of this article is to provide for the efficient and economical management of the financial affairs of the state by the creation of a state budget office; by providing uniform rules for the preparation of the state budget under section fifty-one, article six of the state constitution; and by providing a method for the planning, management and control of state expenditures, and the equalization of the compensation of personnel.

Sec. 2. *Definitions.* For the purpose of this article:

“Department” means the budget office.

“Director” means the director of the budget.

“Board” means the board of public works.

“Spending unit” means a department, agency or institution of the state government for which an appropriation is requested, or to which an appropriation is made by the Legislature.

“Spending officer” means the executive head of a spending unit, or a person designated by him.

Sec. 3. *State Budget Office Created; Powers and Duties.* There is hereby created in the state government a “budget office”. The budget office shall act as staff agency for the board of public works in the exercise of its powers and duties under section fifty-one, article six of the state constitution, and shall exercise and perform the other powers and duties conferred upon it by this article.

Sec. 4. *Director of the Budget; Appointment; Duties.* There is hereby created the office of “director of the budget”. The director shall be the executive and administrative head of the budget office.

5 The governor, as chairman of the board of public works,  
6 shall appoint the director of the budget. The director shall  
7 hold office at the will and pleasure of the governor, and shall  
8 devote his entire time to the duties of his office. He shall per-  
9 form his duties under the immediate supervision of the gov-  
10 ernor in his capacity as chairman of the board. The governor  
11 may require the director to perform such other duties, in  
12 connection with the administration of the fiscal affairs of the  
13 state, as are not by law vested in another state officer.

2 Sec. 5. *Director; Qualifications.* The director shall be se-  
3 lected with special reference to his training, experience and  
4 capacity to perform the duties imposed upon him by this  
5 article.

2 Sec. 6. *Director; Oath and Bond.* The director, before en-  
3 tering upon his duties shall take and subscribe to the oath pre-  
4 scribed by article four, section five of the state constitution.  
5 He shall execute a corporate surety bond in the sum of ten  
6 thousand dollars. The bond shall be in the form prescribed  
7 by the attorney general and shall be approved by the governor.  
8 The premiums upon the bond shall be paid out of the funds  
9 of the department. The oath and bond shall be filed with the  
10 secretary of state.

2 Sec. 7. *Director; Offices.* The offices of the director shall  
3 be located at the state capital. The director shall keep his  
4 offices open at all reasonable times for the transaction of  
5 business.

2 Sec. 8. *Director; Compensation.* The director shall receive  
3 an annual compensation to be fixed by the governor, but not  
4 in excess of six thousand dollars. He shall receive, in ad-  
5 dition, the necessary traveling expenses incident to the per-  
6 formance of his duties. Requisitions for traveling expenses  
7 shall be filed with the auditor and shall be preserved as a  
8 public record.

2 Sec. 9. *Director; Powers and Duties.* The director, under  
3 the immediate direction and supervision of the governor, shall  
4 have the power and duty to:

- 4 1. Exercise general supervision of, and make rules and  
5 regulations for, the government of his department;
- 6 2. Prepare, in accordance with this article, requests for ap-

- 7 appropriations, estimates of cost, and the form and contents  
8 of the state budget for submission to the board;  
9 3. Administer the budget in accordance with this article;  
10 4. Serve as staff agency to the board in the consideration  
11 of requests for appropriations and the preparation of the  
12 budget document;  
13 5. Make such investigations and submit such reports as the  
14 governor or board may require.  
15 6. Make a continuous study of state expenditures and  
16 make such recommendations to the governor for the more  
17 economical use of state funds as he shall find practicable;  
18 7. Render assistance to spending officers with respect to  
19 the fiscal affairs of spending units;  
20 8. Make an annual report to the governor with respect  
21 to the conduct of the department and the administration of  
22 the state finances;  
23 9. Exercise such other powers as are vested in him by  
24 this article, or which may be appropriate to the discharge of  
25 his duties.

Sec. 10. *Assistants and Employees; Compensation.* The di-  
2 rector shall appoint or employ such assistants and employees  
3 as may be necessary for the efficient operation of his depart-  
4 ment. The director shall fix the compensation of persons  
5 whom he appoints or employs subject to provisions of law  
6 and regulations pertaining to the classification and uniform  
7 compensation of personnel. Appointees and employees of the  
8 director shall serve during his will and pleasure.

Sec. 11. *Delegation of Powers and Duties by Director.* The  
2 powers and duties vested in the director by this article may be  
3 delegated by him to his assistants and employees, but the  
4 director shall be responsible for all official acts.

Sec. 12. *Requests for Appropriations.* The spending officer  
2 of each spending unit, other than the Legislature, shall on or  
3 before the fifteenth day of October of each year prior to the  
4 year in which the Legislature convenes in regular session,  
5 submit to the director a request for appropriations for each  
6 of the two fiscal years, next ensuing.

Sec. 13. *Content of Requests.* A request for appropriations  
2 for a spending unit shall specify and itemize in written form :

3 1. A statement showing the amount and kinds of revenue  
4 and receipts collected for the use of the spending agency dur-  
5 ing the next preceding fiscal year and anticipated collections  
6 for each of the two fiscal years next ensuing;

7 2. A statement by purposes and objects, of the amount of  
8 appropriations requested for the spending unit without de-  
9 ducting the amount of anticipated collections of special reve-  
10 nue, special general revenue, federal aid, or other receipts;

11 3. A statement showing the actual expenditures of the  
12 spending unit for the last preceding fiscal year and estimated  
13 expenditures for the current fiscal year itemized by purposes  
14 and objects, including those from regular and supplementary  
15 appropriations, federal aid, private contributions, transfers,  
16 allotments from an emergency or contingent fund, and any  
17 other expenditures made by or for the spending unit;

18 4. A statement showing the number, classification and com-  
19 pensation of persons employed by the spending unit distin-  
20 guishing between regular, special and casual employees during  
21 the last preceding fiscal year and during the current fiscal  
22 year. The statement shall show the personnel requirements  
23 in similar form for the two ensuing fiscal years for which ap-  
24 propriations are requested;

25 5. A statement showing in detail the purposes for which  
26 increased amounts of appropriations, if any, are requested,  
27 and giving a justification statement for the expenditure of the  
28 increased amount. A construction or other improvement re-  
29 quest shall show in detail the kind and scope of construction  
30 or improvement requested;

31 6. A statement of money claims against the state arising  
32 out of the activities of the spending unit;

33 7. Such other information as the director may request.

Sec. 14. *Form of Requests.* The director shall specify the  
2 form and the detail of itemization of requests for appropria-  
3 tions and statements to be submitted by a spending unit. He  
4 shall furnish blank forms for this purpose.

Sec. 15. *Information Concerning State Finances.* The di-  
2 rector shall, on or before the fifteenth day of October of each  
3 year preceding the year in which the Legislature meets in  
4 regular session, ascertain for the last preceding year and as  
5 estimated for the current fiscal year:

- 6 1. The condition of each of the funds of the state;
- 7 2. A statement of all revenue collections both general and
- 8 special;
- 9 3. Such other information relating to the finances of the
- 10 state as the governor may request.

Sec. 16. *Appropriations for the Judiciary.* The governor  
2 shall transmit to the director the appropriations required by  
3 law for the judiciary for each of the two fiscal years next  
4 ensuing and which have been certified to the governor by the  
5 auditor. The auditor shall certify such appropriations to  
6 the governor in accordance with section fifty-one, article six  
7 of the state constitution on or before October fifteenth of each  
8 year preceding the year in which the Legislature meets in  
9 regular session.

Sec. 17. *Appropriations for the Legislature.* The ap-  
2 propriations for the Legislature, certified for each house by  
3 its presiding officer, shall be transmitted to the director as  
4 soon as possible after the Legislature convenes in regular ses-  
5 sion.

Sec. 18. *Examination of Requests for Appropriations.* The  
2 director shall examine the requests of a spending unit with  
3 respect to requested appropriations, itemization, sufficiency of  
4 justification statements, and accuracy and completeness of all  
5 other information which the spending officer is required to  
6 submit.

7 If the director finds a request, report, or statement of a  
8 spending unit inaccurate, incomplete or inadequate, he shall  
9 consult with the spending officer of the unit and require the  
10 submission of the requests in proper form and content. The  
11 director shall assist spending officers in the preparation of  
12 their requests.

Sec. 19. *Appropriations for Other Than Spending Units.*  
2 A person or organization, other than a spending officer, who  
3 desires to request a general appropriation in the state budget,  
4 shall submit his request to the director on or before the  
5 fifteenth day of October of the year next preceding the year  
6 in which the Legislature meets in regular session. The re-  
7 quest shall be in the form prescribed by the director and shall  
8 be accompanied by a justification statement.



Sec. 20. *Itemization of Tentative Budget.* The tentative budget submitted by the director shall itemize appropriations separately for:

1. "Personal services" which shall mean salaries, wages, fees and other compensation for skill, work or employment;

2. "Current expense" which shall mean operating costs other than personal services, and shall not include equipment, repairs and alterations, buildings, or lands;

3. "Equipment" which shall mean equipment items which have an appreciable and calculable period of usefulness in excess of one year;

4. "Repairs and alterations" which shall mean repairs to structures and improvements to property which do not increase the capital asset;

5. "Buildings" which shall include construction and alteration of structures and the improvement of lands and shall include shelter, support, storage, protection, or the improvement of a natural condition;

6. "Lands" which shall mean the purchase of lands or interests in lands.

A spending unit or other person requesting an appropriation may submit a different itemization with the prior approval of the director, if the uniform itemization does not apply.

Sec. 21. *Preparation of Tentative Budget Submitted to Board of Public Works.* The director shall prepare for the consideration of the board a tentative budget for each of the two fiscal years next ensuing. The budget shall state, at least, actual amounts for the fiscal year next preceding, estimated amounts for the current fiscal year, and it shall state also the requested amounts, or estimates, for the two fiscal years next ensuing with respect to:

1. Appropriations requested by each spending unit and requested general appropriations;

2. The amount of the total of each appropriation to be paid out of collections;

3. Amounts and purposes of appropriations requested other than for spending units of the state;

4. Revenue of each of the funds of the state;

16 5. A summary statement of requests and revenues showing  
17 the amount of an anticipated surplus or deficit.

18 On or before December first, the director shall submit the  
19 tentative budgets to the board of public works. The director  
20 shall convey to the board all explanatory and justification  
21 statements and statements of personnel requirements of spend-  
22 ing units as reported and filed in his office.

Sec. 22. *Powers of the Director in the Administration of*  
2 *Expenditures.* The director shall supervise and control the  
3 expenditure of appropriations made by the Legislature except  
4 those made to the Legislature and those made to the judicial  
5 branch of the state government. The expenditure of an ap-  
6 propriation made by the Legislature shall be conditioned  
7 upon compliance by the spending unit with the provisions of  
8 this article. An appropriation made by the Legislature shall  
9 be expended only in accordance with this article.

Sec. 23. *Reports on Revenue Collections.* The director shall  
2 ascertain the collection of the revenue of the state and shall  
3 determine each quarter of the fiscal year the proportion which  
4 the amount actually collected bears to the collection estimated  
5 for that period. The director shall certify to the governor,  
6 as soon as possible after the close of each quarter, and at such  
7 other times as the governor may request, the condition of the  
8 state revenues and of the several funds of the state. For the  
9 purposes of this section the director shall have the authority  
10 to require all necessary estimates and reports from any  
11 spending unit of the state government.

Sec. 24. *Management Accounting.* The director shall for-  
2 mulate the requirements of a system of management account-  
3 ing for the planning, management and control of state ex-  
4 penditures. The requirements shall include methods for re-  
5 cording the collection of all income, amounts available for  
6 expenditure, obligations, encumbrances and disbursements  
7 for each spending unit. The director shall certify such re-  
8 quirements to the tax commissioner. The tax commissioner,  
9 as chief inspector and supervisor of public offices, shall incor-  
10 porate the requirements into a system of accounting for the  
11 state government. The system shall include the accounts  
12 to be kept by the director, the auditor, and the treasurer.  
13 The tax commissioner, by virtue of the authority vested in

14 him by article nine, chapter six of this code, shall, after the  
15 system has been approved by the board, require its use by all  
16 spending units.

17 This section shall not apply to the judiciary or to the legis-  
18 lative branch of the government.

Sec. 25. *Expenditure Schedules.* Prior to the beginning of  
2 each fiscal year the spending officer of a spending unit shall  
3 submit to the director a detailed expenditure schedule for the  
4 ensuing fiscal year. The schedule shall be submitted in such  
5 form and at such time as the director may require.

6 The schedule shall show:

7 1. A proposed monthly rate of expenditure for amounts  
8 appropriated for personal services.

9 2. A proposed quarterly rate of expenditure for amounts  
10 appropriated for current expenses and for equipment, repairs  
11 and alterations;

12 3. A proposed yearly plan of expenditure for amounts  
13 appropriated for buildings and lands.

14 The director may accept a differently itemized expenditure  
15 schedule from a spending unit to which the requirements of  
16 this section do not apply.

17 The director shall consult with and assist spending officers  
18 in the preparation of expenditure schedules.

Sec. 26. *Examination and Approval of Expenditure*  
2 *Schedules.* The director shall examine the expenditure  
3 schedule of each spending unit and if he finds that it con-  
4 forms to the requirements of this article and is in accordance  
5 with sound fiscal policy, he shall approve the schedule.

6 The expenditure of appropriations made to a spending unit  
7 shall be only in accordance with the approved expenditure  
8 schedule unless the schedule is amended with the consent of  
9 the director, or unless appropriations are reduced in accord-  
10 ance with the provisions of sections thirty-three to thirty-  
11 six, inclusive, of this article.

Sec. 27. *Reserve for Emergencies.* The director, with the  
2 approval of the governor, may require that an expenditure  
3 schedule provides for a reserve for emergencies out of the  
4 total amount appropriated to the spending unit. The amount  
5 of the reserve shall be determined by the director in consulta-  
6 tion with the spending officer.

Sec. 28. *Requests for Quarterly Allotments.* At least thirty days prior to the beginning of each quarter of the fiscal year, each spending officer shall submit to the director a request for an allotment of public funds sufficient to operate the unit during the ensuing quarter in accordance with the approved expenditure schedule.

The director shall examine the requests and if he finds that the amounts requested are in accordance with the approved expenditure schedules and are in accordance with sound fiscal policy he shall submit the requests to the board. The director shall also submit a summary statement showing the amounts expended under the budget for each preceding quarter of the fiscal year and the total amount requested for allotment during the ensuing quarter.

The board shall consider the amount of requests for allotment and the collection of revenues. If the board finds that the collection of revenue warrants the expenditure of the amount requested in the allotment, it shall approve the allotment of funds for the ensuing quarter. If the board finds that the collection of revenue does not warrant the allotment of the requested amount, it may reduce the amount of allotments pending the collection of sufficient revenue.

Sec. 29. *Limitation on Expenditures.* The expenditures of a spending unit during a quarter of the fiscal year shall not exceed the amount of the approved allotment, unless the board approves the expenditure of a larger amount. 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. 30. *Revival of Appropriations.* A part of an appropriation to a spending unit that remains unexpended at the end of the first fiscal year of the biennium may, by order of the board, be revived and expended to meet unforeseen contingencies arising during the ensuing fiscal year.

Sec. 31. *Transfers Between Items of an Appropriation.* Upon the written request of a spending officer, the director may, with the approval of the board, transfer amounts between items of the total appropriation for a spending unit in order to protect or increase the efficiency of the service, but a

6 transfer shall not increase the amount appropriated for per-  
7 sonal services.

Sec. 32. *Expenditure of Excess in Collections.* If the amount  
2 actually collected by a spending unit exceeds the amount  
3 which it is authorized to expend from collections, the excess in  
4 collections shall be set aside in a special surplus fund for the  
5 spending unit. Expenditures from this fund shall be made  
6 only in accordance with the following procedure:

7 The spending officer shall submit to the director:

8 1. A plan of expenditure showing the purposes for which  
9 the surplus is to be expended, and

10 2. A justification statement showing the reasons why the  
11 expenditure is necessary and desirable.

12 The director shall submit the request to the board with  
13 his recommendation.

14 If the board approves the plan of expenditure and justi-  
15 fication statement, and is satisfied that the expenditure is  
16 required to defray the additional cost of the service or activity  
17 of the spending unit, and that the expenditure is in accordance  
18 with sound fiscal policy, it may authorize the use of the surplus  
19 during the current or next fiscal year of the biennium.

20 An expenditure from a special surplus fund without the  
21 authorization of the board, or other than in accordance with  
22 this section shall be an unlawful use of public funds.

Sec. 33. *Reports by Spending Units.* A spending unit shall  
2 submit to the director such reports with respect to the work  
3 and expenditures of the unit as the director may request for  
4 the purposes of this article.

Sec. 34. *Reduction of Appropriations.* The board may re-  
2 duce appropriations according to any of the methods set  
3 forth in sections thirty-four, thirty-five, and thirty-six of  
4 this article.

Sec. 35. *General Fund; Pro Rata Reductions.* If the board  
2 determines that the amounts, or parts thereof, appropriated  
3 from the general revenue cannot be expended without  
4 creating an overdraft or a deficit in the general fund, it may  
5 instruct the director to reduce equally and pro rata all  
6 appropriations out of general revenue in such a degree as

7 may be necessary to prevent an overdraft or a deficit in the  
8 general fund.

Sec. 36. *Other Funds; Pro Rata Reductions.* The board, in  
2 the manner set forth in section thirty-four, may reduce  
3 appropriations from:

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

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

Sec. 37. *Reductions After Classification of Appropriations.* If  
2 the board determines that the reductions authorized in sections  
3 thirty-four and thirty-five will dangerously impair the exist-  
4 ence of the essential services of government, it may instruct the  
5 director to reduce the amount to be expended from separate  
6 appropriations in accordance with the following method:

- 7 1. The director shall first classify appropriations as  
8 follows:

9 Class one: For agencies collecting revenue and administer-  
10 ing the fiscal operations of government, including the offices  
11 and departments of the tax commissioner, auditor, treasurer,  
12 and sinking fund commission;

13 Class two: For agencies vested with the supervision, con-  
14 trol, and direction of executive policy and law enforcement,  
15 including the governor's office, the attorney general's office,  
16 and the department of public safety;

17 Class three: For state institutions, educational, charit-  
18 able and corrective;

19 Class four: For other departments and services of the  
20 state government;

21 Class five: For transfers from the general fund.

- 22 2. The director shall first reduce the appropriations from  
23 class five and then, if necessary, for the other classes in  
24 descending numerical order as follows: Class four, class  
25 three, class two, class one. All reductions shall be in  
26 multiples of five per cent, but a fixed relationship shall be  
27 maintained between the classes which shall be measured  
28 by a difference of five per cent in the rate of reduction. The  
29 maximum reduction shall not exceed twenty-five per cent

30 in class five and in the other classes it shall be proportional  
31 according to the following table:

32 Classes	Five	Four	Three	Two	One
33 Per cent	5%				
34 of reductions	10%	5%			
35 from	15%	10%	5%		
36 total	20%	15%	10%	5%	
37 appropriations	25%	20%	15%	10%	5%

Sec. 38. *Expenditure Procedure, Other Than for Purchases.*

2 A requisition for expenditure, other than an order for the  
3 purchase of commodities, shall be submitted as follows:

4 1. The spending officer shall prepare and submit to the  
5 director a requisition showing the amount, purpose, and  
6 appropriation from which the expenditure is requested;

7 2. The director shall examine the requisition and determine  
8 whether the amount is within the quarterly allotment, is in  
9 accordance with the expenditure schedule, and otherwise  
10 conforms to the provisions of this article and to sound fiscal  
11 policy;

12 3. If the director approves the requisition he shall en-  
13 cumber the proper account in the amount of the requisition  
14 and shall transmit the requisition to the auditor for dis-  
15 bursement in accordance with law.

Sec. 39. *Expenditure Procedure; Purchases.* If a requisi-  
2 tion is a request for purchase, the director after encumbering  
3 the proper account of the spending unit, shall transmit the  
4 requisition to the department of purchases for purchase in  
5 accordance with chapter twenty-five-a of this code, as  
6 amended.

Sec. 40. *Legislative and Judicial Expenditures.* The provi-  
2 sions of sections thirty-seven and thirty-eight of this article  
3 shall not apply to the expenditure of amounts appropriated  
4 for the use of the Legislature or for the judiciary. In the case  
5 of appropriations made for the Legislature, the clerk of the  
6 House of Delegates, or the clerk of the Senate, as the case  
7 may be, shall present his requisition directly to the auditor.  
8 In case of appropriations made for the judiciary, the clerk  
9 of the court shall present his requisition or claim directly  
10 to the auditor. In case of appropriations made for criminal  
11 charges, the clerk or other proper officer shall present his  
12 claim directly to the auditor.

2       Sec. 41. *Annual Inventories by Spending Units.* The spend-  
3       ing officer of each spending unit shall on or before July fif-  
4       teenth of each year, file with the director an inventory of all  
5       real and personal property, and of all equipment, supplies and  
6       commodities in its possession as of the close of the last fiscal  
      year.

      Sec. 42. *Classification of Employment and Compensation.*  
2       The director shall prepare and recommend a personnel  
3       classification which shall classify the offices and employments  
4       in the state government and its agencies so as to reflect the  
5       differences in training, experience, ability and responsibility  
6       required for different types or kinds of service or employ-  
7       ment, and shall recommend uniform salaries and wage scales  
8       within each class. The director may from time to time  
9       recommend amendments and revisions to the classification  
10      and compensation schedule. The director shall submit the  
11      plan to the board and if the board approves the plan, the  
12      classification of offices and employments and the uniform  
13      salary and wage scales shall control the employment and  
14      compensation of all persons employed in the state govern-  
15      ment.

16      The provisions of this section shall not apply to:

- 17      1. Institutions under the control of the state board of  
18      education, the board of governors of West Virginia uni-  
19      versity, and the board of control;
- 20      2. The department of public assistance;
- 21      3. The department of unemployment compensation.

      Sec. 43. *Classification of Employment and Compensation by  
2       Certain Departments.* The state board of education, the board  
3       of governors of West Virginia university, and the board of  
4       control as to the institutions under their control, and the di-  
5       rector of public assistance and the director of unemployment  
6       compensation as to their respective departments shall prepare  
7       personnel classification schedules in the same manner as the  
8       director prepares personnel classifications and uniform com-  
9       pensation schedules for the other departments of the state  
10      government. Personnel classifications and uniform compen-  
11      sation schedules shall be certified by the board or officer pre-  
12      paring them to the director.



Sec. 44. *Certification of Personnel by Spending Officer.* The  
2 spending officer of each spending unit, within thirty days prior  
3 to the beginning of each fiscal year, shall certify to the director  
4 a schedule of persons appointed to or employed by the spend-  
5 ing unit and showing the personnel classification and compen-  
6 sation approved for each person. Amounts appropriated for  
7 personnel services shall be expended upon requisition only  
8 for the appointees and employees included upon the personnel  
9 schedule and only in accordance with the rate of compensa-  
10 tion shown by the schedule.

Sec. 45. *Personnel, Classification and Compensation*  
2 *Schedules.* The director shall prepare schedules of the ap-  
3 proved or certified personnel showing the personnel employed  
4 in each spending unit of the state government and the classi-  
5 fication and compensation authorized to be paid for each per-  
6 son employed. Such schedules shall be preserved as a public  
7 record and shall be open to inspection by any person showing  
8 good cause.

Sec. 46. *Requisition for Payment of Personal Services.* A  
2 requisition for the payment of personal services shall upon re-  
3 ceipt by the director be checked against the personnel schedule  
4 for the spending unit. The director shall approve a requisition  
5 for personal services only if the amounts requested for ex-  
6 penditure are in accordance with the personnel schedule  
7 certified to the director.

Sec. 47. *To Whom Personnel Provisions Not to Apply.* The  
2 provisions of sections forty-one to forty-six, inclusive, shall not  
3 apply to personal services paid in the legislative branch of the  
4 state government, to salaries of the judiciary and employees  
5 of the judiciary, or to salaries of officers of the state govern-  
6 ment fixed by law.

Sec. 48. *Provisions of Act Severable; Inconsistent Acts Re-*  
2 *pealed.* The provisions of this act shall be construed as sever-  
3 able and if any part is held unconstitutional, or for any other  
4 reason, invalid, the remaining parts shall not be affected  
5 thereby.

6 All acts or parts of acts in conflict with the provisions of  
7 this act are hereby repealed.

## CHAPTER 40

(House Bill No. 253—By Mr. Speaker, Mr. Thomas)

AN ACT to amend and reenact section thirteen, article two, sections seven and twenty-four, article three, sections two, five and fifteen, article four, and sections three, twelve and sixteen, article six, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as enacted by chapter four, acts of the Legislature, regular session, one thousand nine hundred thirty-five, and as amended by chapter five, acts of the Legislature, regular session, one thousand nine hundred thirty-five, by chapter thirteen, acts of the Legislature, regular session, one thousand nine hundred thirty-seven, and by chapter fourteen, acts of the Legislature, regular session, one thousand nine hundred thirty-seven, relating to the state control of alcoholic liquors.

[Passed March 2, 1939; in effect from passage. Approved by the Governor.]

### Article

2. Liquor Control Commission.
3. Sales by Commission.
4. Licenses.
6. Miscellaneous Provisions.

*Be it enacted by the Legislature of West Virginia:*

That section thirteen, article two, sections seven and twenty-four, article three, sections two, five and fifteen, article four, and sections three, twelve and sixteen, article six, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as enacted by chapter four, acts of the Legislature, regular session, one thousand nine hundred thirty-five, as amended by chapter five, acts of the Legislature, regular session, one thousand nine hundred thirty-five, and by chapter thirteen, acts of the Legislature, regular session, one thousand nine hundred thirty-seven, and by chapter fourteen, acts of the Legislature, regular session, one thousand nine hundred thirty-seven, relating to the state control of alcoholic liquors, be amended and reenacted to read as follows:

**Article 2. Liquor Control Commission.****Section****13. Bonds of employees.**

Section 13. *Bonds of Employees.* The commission shall require every employee who collects fees or handles funds, or who has custody of equipment, supplies, and other property belonging to the state, to take the oath prescribed by section five, article four of the state constitution; and the commission shall require to be furnished by every employee, or shall itself obtain, a bond, insurance policy, indemnity contract, or other contract, protecting and indemnifying the state against any and all loss or damage that may be occasioned by the failure of the employee faithfully to perform the duties pertaining to his employment, and to account for, pay over and deliver to the proper officer or agent of the commission or state all moneys and other property which may come into his custody or under his control by virtue of his employment. Such bond, insurance policy, indemnity contract, or other contract, shall be in such form, and in such sum, and with such security, as may be prescribed or approved by the commission, and may cover any one employee or any number of employees. The premiums for all such bonds, insurance policies, indemnity contracts, or other contracts, shall be paid by the commission.

**Article 3. Sales by Commission.****Section**

7. Agencies classified; compensation and bond of agent.  
24. Authority of employees to make arrests; penalty for resisting or assaulting employee; powers of members of commission and employees to enforce provisions of chapter, etc.

Section 7. *Agencies Classified; Compensation and Bond of Agent.* The commission shall classify state agencies into not more than five 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 three 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

12 of his agency. An agent shall not, at any time, have on hand  
13 a stock of alcoholic liquors greater in value than the amount  
14 of his bond.

Sec. 24. *Authority of Employees to Make Arrests; Penalty for Resisting or Assaulting Employee; Powers of Members of Commission and Employees to Enforce Provisions of Chapter, etc.* 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:

- 9 (1) A violation of a provision of this chapter;
- 10 (2) Disorderly conduct.

11 The commission shall furnish its appointees and employees  
12 with an official badge as evidence of this authority.

13 A person who resists or commits an assault upon an ap-  
14 pointee or employee of the commission while engaged in the  
15 performance of his duties hereunder shall be guilty of a mis-  
16 demeanor and upon conviction thereof shall be punished by  
17 a fine of not less than fifty dollars nor more than five hundred  
18 dollars, or by confinement in jail not less than thirty days  
19 nor more than six months, or, in the discretion of the court,  
20 by both such fine and imprisonment.

21 Members of the commission are hereby vested, and such  
22 officers, agents and employees of the commission as shall be  
23 designated by the commission shall, upon being so designated,  
24 be vested, with like power and authority to enforce the pro-  
25 visions of this chapter and the criminal laws of the state  
26 relating thereto as are vested in sheriffs of counties and mem-  
27 bers of the department of public safety.

#### Article 4. Licenses.

##### Section

2. Separate licenses for manufacture.
5. Licenses for purchase at wholesale for industrial or scientific uses;  
wine for sacramental purposes.
15. Amount of license fees.

Section 2. *Separate Licenses for Manufacture.* The com-  
2 mission may grant licenses for the manufacture of alcoholic  
3 liquors. Separate licenses shall be issued to the following  
4 classes of manufacturing establishments:

- 5 (1) Distilleries, in which only alcoholic liquors other than  
6 wine or beer shall be manufactured;  
7 (2) Wineries, in which only wines shall be manufactured;  
8 (3) Breweries, in which beer shall be manufactured;  
9 (4) Bottling plants, in which beer only shall be bottled;  
10 (5) Industrial plants, in which alcohol is distilled, manu-  
11 factured, or otherwise produced for scientific, chemical,  
12 mechanical, or industrial purposes.  
13 Licenses for manufacture shall authorize the manufacture  
14 and sale of alcoholic liquors as provided by this chapter.

Sec. 5. *Licenses for Purchase at Wholesale for Industrial or Scientific Uses; Wine for Sacramental Purposes.* The commission may grant licenses to persons to purchase alcoholic liquors at wholesale from or through the West Virginia liquor control commission for industrial, or scientific uses, or for use in institutions as provided in article six, section five of this chapter, and may, by special permit for such fee as the commission may fix, authorize transactions at wholesale for the purchase of alcohol for scientific, chemical, mechanical or industrial purposes only; but, no license fee shall be required from institutions, departments, or agencies of the state government or any political subdivision thereof.

The commission may issue, without fee, special permits authorizing religious organizations to purchase, upon orders approved by the commission, wine for sacramental purposes.

Sec. 15. *Amount of License Fees.* 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:

4 (1) Distilleries, five hundred dollars;  
5 (2) Wineries, two hundred fifty dollars;  
6 (3) Breweries, two hundred fifty dollars;  
7 (4) Bottling plants, one hundred dollars;  
8 (5) Wholesale druggists, fifty dollars;  
9 (6) Institutions, ten dollars;  
10 (7) Industrial use, fifty dollars;  
11 (8) Industrial plants producing alcohol, two hundred fifty  
12 dollars;  
13 (9) Retail druggists, ten dollars.

**Article 6. Miscellaneous Provisions.****Section**

3. Chapter not applicable to certain uses of ethyl alcohol.  
12. Transportation of alcoholic liquors into or through state; permits; bond of permittee; penalties.  
16. Places deemed common and public nuisances; penalties; abatement; conspiracy; penalty.

**Section 3. Chapter Not Applicable to Certain Uses of Ethyl**

2 **Alcohol.** The provisions of this chapter relating to state  
3 monopoly shall not apply to ethyl alcohol used:

4 (1) For scientific, chemical, mechanical or industrial pur-  
5 poses;

6 (2) By those authorized to procure ethyl alcohol tax-free  
7 under the acts of congress and regulations thereunder;

8 (3) In the manufacture of denatured alcohol produced  
9 and used as provided by the acts of congress and regulations  
10 thereunder;

11 (4) In the manufacture of scientific, chemical, mechanical  
12 and industrial preparations or products unfit for beverage  
13 purposes.

14 Nothing in this section shall be so construed as to exempt  
15 such users of ethyl alcohol from the license and transportation  
16 provisions of this chapter.

**Sec. 12. Transportation of Alcoholic Liquors Into or**

2 **Through State; Permits; Bond of Permittee; Penalties.** The  
3 commission may adopt regulations governing the transporta-  
4 tion of alcoholic liquors, lawfully acquired, within, into or  
5 through the state in quantities in excess of one gallon as it may  
6 deem necessary to confine such transportation to legitimate  
7 purposes and may issue transportation permits in accordance  
8 with such regulations, collect a fee therefor, and shall require  
9 each person to whom such a permit is issued to furnish a bond  
10 in such form and amount and with such surety as the commis-  
11 sion shall direct, conditioned that he will exercise the privi-  
12 leges granted by such permit in conformity with the provisions  
13 of this chapter and the regulations of the commission, or in  
14 default thereof forfeit to the state school fund the sum of  
15 one hundred dollars for each breach recoverable by motion  
16 upon ten days' notice in any court having jurisdiction of the  
17 parties.

18 A person who, without authorization under this chapter,  
19 transports alcoholic liquors in quantities in excess of one

20 gallon or in any amount for the purpose of sale or in any  
21 amount manufactured or acquired contrary to the provisions  
22 of this chapter, shall be guilty of a misdemeanor, and upon  
23 conviction shall be fined not less than one hundred nor more  
24 than five hundred dollars, or confined in jail not to exceed  
25 one year, or both such fine and imprisonment for the first  
26 offense. Upon conviction of a second or subsequent offense,  
27 he shall be guilty of a felony and confined in the penitentiary  
28 of this state for a period of not less than one nor more than  
29 three years.

Sec. 16. *Places Deemed Common and Public Nuisances; Penalties; Abatement; Conspiracy; Penalty.* A place where  
2 alcoholic liquor is manufactured, sold, stored, possessed, given  
3 away, or furnished contrary to law shall be deemed a common  
4 and public nuisance. Boats, cars (including railroad and trac-  
5 tion passenger cars operating in this state), automobiles, wag-  
6 ons, water and aircraft, beasts of burden, or vehicles of any  
7 kind shall be deemed places within the meaning of this section  
8 and may be proceeded against under the provisions of section  
9 seventeen of this article. A person who shall maintain, or  
10 shall aid or abet or knowingly be associated with others in  
11 maintaining such common and public nuisance shall be guilty  
12 of a misdemeanor, and upon conviction thereof shall be  
13 punished by a fine of not less than one hundred nor more than  
14 five hundred dollars, or by confinement in jail not less than  
15 sixty days nor more than six months for each offense, and judg-  
16 ment shall be given that such nuisance be abated or closed as a  
17 place for the manufacture, sale, storage, possession, giving  
18 away, or furnishing contrary to law of alcoholic liquor, as  
19 the court may determine.  
20

21 If two or more persons conspire to maintain such common  
22 and public nuisance or to distill, manufacture, store, trans-  
23 port, sell, give away, or furnish alcoholic liquor in violation  
24 of any of the provisions of this chapter, and one or more of  
25 such persons do any act to effect the object of the conspiracy,  
26 each of the parties to such conspiracy shall be guilty of a  
27 misdemeanor and upon conviction thereof shall be punished  
28 by a fine of not less than one hundred dollars nor more than  
29 five hundred dollars or by confinement in jail for not less  
30 than one month or more than six months, or in the discretion  
31 of the court, by both such fine and imprisonment.

## CHAPTER 41

(House Bill No. 254—By Mr. Speaker, Mr. Thomas)

AN ACT to amend and reenact section eleven, article two, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as enacted by chapter four, acts of the Legislature, regular session, one thousand nine hundred thirty-five, relating to the state control of alcoholic liquors.

[Passed March 2, 1939; in effect from passage. Approved by the Governor.]

### Article 2. Liquor Control Commission.

#### Section

11. Powers and duties of commission.

*Be it enacted by the Legislature of West Virginia:*

That section eleven, article two, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as enacted by chapter four, acts of the Legislature, regular session, one thousand nine hundred thirty-five, relating to the state control of alcoholic liquors, be amended and reenacted to read as follows:

Section 11. *Powers and Duties of Commission.* The state  
2 liquor commission shall have the following powers and duties  
3 and any and all other powers and duties reasonably necessary  
4 and convenient for the purpose of this chapter:  
5 (1) Exercise general supervision of, and make rules and  
6 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 com-  
12 petitive bids, lands and buildings required for the purposes  
13 of this chapter. All such leases and agreements shall contain  
14 a condition whereby such leases or agreements shall terminate  
15 and all liability to the commission thereunder shall cease  
16 and determine, should the sale of alcoholic liquors be pro-  
17 hibited under the provisions of article five of this chapter.  
18 Nothing herein contained shall empower the commission to  
19 acquire title to any real estate, except that, with the approval



20 of the governor, the commission may purchase real estate for  
21 the purpose of one warehouse to be centrally located and pay  
22 therefor not to exceed sixty-seven thousand five hundred  
23 dollars;

24 (5) Keep a complete and accurate record of all proceed-  
25 ings, record and file all bonds and contracts taken or entered  
26 into, and assume responsibility for the custody and preserva-  
27 tion of all papers and documents pertaining to the commission;

28 (6) Purchase or lease as provided by law all equipment  
29 necessary for the conduct of the department;

30 (7) Report to the governor each year all information  
31 relative to the operation and functions of the department.  
32 They shall make such other reports and recommendations as  
33 may be required by the governor;

34 (8) Exercise any other power that may be necessary or  
35 proper for the orderly conduct of the business and the effective  
36 discharge of the duties of the commission;

37 (9) Invoke any legal or equitable remedies for the en-  
38 forcement of the orders of the commission or the provisions  
39 of this chapter;

40 (10) All writings required to be executed on behalf of the  
41 commission shall be signed by the chairman and attested by  
42 the secretary, except that in the absence of the chairman  
43 such writing may be executed by the other two members.

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## CHAPTER 42

(Senate Bill No. 20—By Mr. Randolph)

AN ACT creating the West Virginia Publicity Commission; and  
defining its organization, powers and purposes.

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[Passed March 8, 1939; in effect ninety days from passage. Approved by the  
Governor.]

### Section

1. West Virginia publicity commission created; offices; meetings; mem-  
bers; governor ex officio chairman.
2. Secretary and clerical assistants; compensation and expenses.
3. Powers and duties of commission.

*Be it enacted by the Legislature of West Virginia:*

Section 1. *West Virginia Publicity Commission Created;*

2 *Offices; Meetings; Members; Governor Ex Officio Chairman.*  
3 There is hereby created the West Virginia Publicity Commis-  
4 sion, which shall be a corporation, and, as such, may contract  
5 and be contracted with, and shall have a corporate seal. Said  
6 commission shall have its principal office in the state capitol at  
7 Charleston, and shall meet annually at its office in the month  
8 of January, and at such other times and places as shall be  
9 designated by its chairman.

10 The commission shall consist of the governor, who shall  
11 be the chairman of the commission, ex officio, and of the  
12 commissioner of agriculture, the state road commissioner,  
13 the conservation commissioner, and the superintendent of  
14 the department of public safety, all of whom shall be mem-  
15 bers of the commission, ex officio, and all of whom shall  
16 serve without additional compensation.

Sec. 2. *Secretary and Clerical Assistants; Compensation and*  
2 *Expenses.* The commission may appoint a secretary and such  
3 additional help as may be necessary to administer the details  
4 and carry out the purposes of this act, and shall fix the com-  
5 pensation and actual expenses of such secretary and additional  
6 help, which compensation and expenses shall be paid from the  
7 amount appropriated in the budget for said commission; but  
8 no such expenses shall be paid unless an itemized account  
9 thereof, under oath, be first filed with the state auditor.

Sec. 3. *Powers and Duties of Commission.* The commission  
2 shall have the power to plan and conduct a program or cam-  
3 paign of information, advertising, and publicity, which may  
4 include newspaper, magazine, outdoor and radio advertising,  
5 both within and without the state of West Virginia, and pre-  
6 pare the necessary forms and literature therefore, to adver-  
7 tise the scenic and historic attractions, and the industrial,  
8 educational and agricultural facilities, natural resources, ad-  
9 vantages and attractions of said state of West Virginia, and to  
10 contract for space or time in said advertising mediums, for the  
11 printing of such literature, and for space or land at fairs, ex-  
12 positions and festivals or other celebrations within and with-  
13 out the state, including suitable booths, exhibits, and build-  
14 ings, for appropriate display of West Virginia's resources, at-  
15 tractions and facilities, all within the limits of appropriations  
16 made for said commission. It shall encourage and co-ordinate

- 17 the activities of, and co-operate with, public and private  
18 institutions, departments, officials, organizations, societies  
19 and other groups and individuals engaged in publicizing the  
20 scenic and historic attractions, and the industrial, educational  
21 and agricultural facilities, natural resources, advantages and  
22 attractions of the state of West Virginia.

## CHAPTER 43

(House Bill No. 414—By Mr. Speaker, Mr. Thomas)

AN ACT creating a "state office building commission" of West Virginia, providing for its powers and duties, authorizing it to construct on lands of the state or lands to be acquired in the city of Charleston, West Virginia, a state office building, and charge rentals for the use thereof, and to issue office building revenue bonds, providing for the payment of said bonds solely from the earnings of such building, declaring that no debt of the state shall be incurred in the exercise of any of the powers granted hereby, and providing for the acceptance of grants or contributions toward the cost of such building.

[Passed March 9, 1939; in effect ninety days from passage. Approved by the Governor.]

### Section

1. State office building commission created; members; chairman and secretary; members to be paid expenses.
2. Definitions.
3. Powers of the commission.
4. Funds of commission.
5. City of Charleston authorized to dedicate streets, property, etc., to commission.
6. Contracts of commission to be secured by bond.
7. Commission empowered to issue state office revenue bonds; grants and gifts.
8. Trustee for holders of bonds.
9. Management and control of project.
10. Act not authority to create state debt.
11. Compliance with this act and state constitution only restrictions on construction and management of project.
12. Act to be liberally construed.
13. Provisions of act separable.

*Be it enacted by the Legislature of West Virginia:*

- Section 1. *State Office Building Commission Created; Mem-*  
2 *bers; Chairman and Secretary; Members to be Paid Expenses.*

3 There shall be and there hereby is created a commission to be  
4 known as "The State Office Building Commission of West  
5 Virginia", and the same is hereby made a body corporate,  
6 but is declared to be an agency of the state of West Virginia.  
7 It shall consist of the governor, the attorney general, and the  
8 director of the budget of the state of West Virginia. The  
9 governor shall be chairman and the director of the budget  
10 shall be secretary of the commission. The members of the  
11 commission shall be paid or reimbursed for their necessary  
12 expenses incurred under this act, but shall receive no com-  
13 pensation for their services as members or officers of the  
14 commission. Such expenses shall be paid solely from funds  
15 provided under the authority of this act, and the commission  
16 shall not proceed to exercise or carry out any authority or  
17 power herein given it to bind said commission beyond the  
18 extent to which money has been provided under the authority  
19 of this act.

Sec. 2. *Definitions.* The following terms, wherever used  
2 or referred to in this act, shall have the following meanings,  
3 unless a different meaning clearly appears from the con-  
4 text:

5 The term "commission" shall mean the state office building  
6 commission of West Virginia created by section one of this  
7 act, or if said commission shall be abolished, any board or  
8 officer succeeding to the principal functions thereof, or upon  
9 whom the powers given to said commission shall be given by  
10 law.

11 The term "bonds" shall mean bonds issued by the com-  
12 mission pursuant to this act.

13 The term "project" shall be deemed to mean collectively  
14 the acquisition of land, the construction of a building or  
15 buildings, together with incidental approaches, structures  
16 and facilities, herein authorized to be constructed.

17 The term "cost of project" shall embrace the cost of con-  
18 struction, the cost of all land, property, material and labor  
19 which are deemed essential thereto, cost of improvements,  
20 financing charges, interest during construction, and all other  
21 expenses, including legal fees, trustees', engineers' and archi-  
22 tects' fees which are necessarily or properly incidental to the  
23 project.

24 The term "rent" or "rental" shall include all moneys re-  
25 ceived for the use of any part of the project either from the  
26 state of West Virginia or any officer, department or public  
27 corporation thereof, or from any private corporation or per-  
28 son, provided that nothing in this act shall be taken to author-  
29 ize the payment by or on behalf of the state of any rent in  
30 excess of the fair rental value of property used by or for  
31 such state officer or department or public corporation in the  
32 exercise of his or its statutory duties.

Sec. 3. *Powers of the Commission.* The commission shall  
2 have power:

- 3 1. To sue and be sued, plead and be impleaded;
- 4 2. To have a seal and alter the same at pleasure;
- 5 3. To contract to acquire and to acquire, in the name of  
6 the commission or of the state, by purchase or otherwise, real  
7 property or rights or easements necessary or convenient for  
8 its corporate purposes;
- 9 4. To acquire, hold and dispose of personal property for  
10 its corporate purposes;
- 11 5. To make by-laws for the management and regulation of  
12 its affairs;
- 13 6. With the consent of the attorney general of the state of  
14 West Virginia to use the facilities of his office, assistants and  
15 employees in all legal matters relating to or pertaining to  
16 the commission;
- 17 7. To appoint officers, agents and employees, and fix their  
18 compensation;
- 19 8. To make contracts, and to execute all instruments  
20 necessary or convenient;
- 21 9. To construct a building or buildings on real property,  
22 which it may acquire, or which may be owned by the state  
23 of West Virginia, in the city of Charleston, as convenient as  
24 may be to the capitol building, together with incidental ap-  
25 proaches, structures and facilities, subject to such consent  
26 and approval of the city of Charleston in any case as may  
27 be necessary;
- 28 10. To maintain, construct and operate the project;
- 29 11. To charge rentals for the use of any part of the pro-  
30 ject, subject to and in accordance with such agreements with  
31 bondholders as may be made as hereinafter provided;

32 12. To issue negotiable bonds and to provide for the rights  
33 of the holders thereof;

34 13. To enter on any lands and premises for the purpose of  
35 making surveys, soundings and examinations;

36 14. To do all things necessary or convenient to carry out  
37 the powers given in this act.

Sec. 4. *Funds of Commission.* All moneys of the commis-  
2 sion from whatever source derived shall be paid to the treas-  
3 urer of the state of West Virginia, who shall not commingle  
4 said moneys with any other moneys, but shall deposit them  
5 in a separate bank account or accounts. The moneys in said  
6 accounts shall be paid out on check of the treasurer on  
7 requisition of the chairman of the commission, or of such  
8 other person as the commission may authorize to make such  
9 requisition. All deposits of such moneys shall, if required  
10 by the treasurer or the commission, be secured by obligations  
11 of the United States, of the state of West Virginia, or of the  
12 commission, of a market value equal at all times to the amount  
13 of the deposit, and all banking institutions are authorized to  
14 give such security for such deposits. The state auditor and  
15 his legally authorized representatives are hereby authorized  
16 and empowered from time to time to examine the accounts  
17 and books of the commission, including its receipts, disburse-  
18 ments, contracts, leases, sinking funds, investments, and any  
19 other matters relating to its financial standing.

Sec. 5. *City of Charleston Authorized to Dedicate Streets,  
2 Property, etc., to Commission.* Notwithstanding the provisions  
3 of any other law, the council of the city of Charleston is  
4 hereby authorized to dedicate to the commission for the pro-  
5 ject any street, real property, easements and/or rights in  
6 land owned by such city.

Sec. 6. *Contracts of Commission to be Secured by Bond.*  
2 The commission shall construct the project pursuant to a  
3 contract or contracts. Every such contract shall be secured  
4 by a bond meeting the requirements of section thirty-nine,  
5 article two, chapter thirty-eight of the code of West Virginia,  
6 one thousand nine hundred thirty-one.

Sec. 7. *Commission Empowered to Issue State Office Reve-*

2 *nue Bonds; Grants and Gifts.* The commission is hereby  
3 empowered to raise the cost of the project, as defined herein-  
4 above, by the issuance of state office building revenue bonds  
5 of the state, the principal of and interest on which bonds  
6 shall be payable solely from the special fund herein pro-  
7 vided for such payment. Such bonds shall be authorized by  
8 resolution of the commission, which shall recite an estimate  
9 by the commission of such cost, and shall provide for the  
10 issuance of bonds in an amount sufficient, when sold as here-  
11 inafter provided, to produce such cost, less the amount of  
12 any grant or grants, gift or gifts received, or in the opinion  
13 of the commission expected to be received from the United  
14 States of America or from any other source. The accept-  
15 ance by the commission of any and all such grants and gifts,  
16 whether in money or in land, labor or materials, is hereby  
17 expressly authorized. All such bonds shall have and are  
18 hereby declared to have all the qualities of negotiable in-  
19 struments under the law merchant. Such bonds shall bear  
20 interest at not more than four per cent per annum, payable  
21 semi-annually, and shall mature in not more than twenty-five  
22 years from their date or dates, and may be made redeemable  
23 at the option of the state, to be exercised by the commission,  
24 at such price and under such terms and conditions as the com-  
25 mission may fix prior to the issuance of such bonds. The com-  
26 mission shall determine the form of such bonds, including  
27 coupons to be attached thereto to evidence the right of in-  
28 terest payments, which bonds shall be signed by the chairman  
29 and secretary of the commission, under the great seal of the  
30 state, attested by the secretary of state, and the coupons at-  
31 tached thereto shall bear the facsimile signature of said chair-  
32 man of the commission. In case any of the officers whose sig-  
33 natures appear on the bonds or coupons shall cease to be such  
34 officers before the delivery of such bonds, such signatures  
35 shall nevertheless be valid and sufficient for all purposes the  
36 same as if they had remained in office until such delivery.  
37 The commission shall fix the denominations of said bonds, the  
38 principal and interest of which shall be payable at the office  
39 of the treasurer of the state of West Virginia, at the capitol  
40 of said state, or, at the option of the holder, at some bank or  
41 trust company in the city of New York to be named in the

42 bonds, in such medium as may be determined by the commis-  
43 sion. The said bonds shall be exempt from taxation by the  
44 state of West Virginia, or any county or municipality therein.  
45 The commission may provide for the registration of such  
46 bonds in the name of the owner as to principal alone, and as  
47 to both principal and interest under such terms and conditions  
48 as the commission may determine, and shall sell such bonds in  
49 such manner as it may determine to be for the best interest of  
50 the state, taking into consideration the financial responsibility  
51 of the purchaser, and the terms and conditions of the pur-  
52 chase, and especially the availability of the proceeds of the  
53 bonds when required for payment of the cost of the project,  
54 such sale to be made at a price not lower than a price which,  
55 computed upon standard tables of bond values, will show a net  
56 return of four per cent per annum to the purchaser upon the  
57 amount paid therefor. The proceeds of such bonds shall be  
58 used solely for the payment of the cost of the project, and  
59 shall be deposited and checked out as provided by section four  
60 of this act, and under such further restrictions, if any, as the  
61 commission may provide. If the proceeds of such bonds, by  
62 error in calculation or otherwise, shall be less than the cost  
63 of the project, additional bonds may in like manner be issued  
64 to provide the amount of the deficiency, and, unless otherwise  
65 provided for in the trust agreement hereinafter mentioned,  
66 shall be deemed to be of the same issue, and shall be entitled  
67 to payment from the same fund, without preference or prior-  
68 ity as the bonds before issued, provided that the aggregate  
69 amount of all issues of bonds outstanding at one time shall not  
70 exceed one million dollars. If the proceeds of bonds issued for  
71 the project shall exceed the cost thereof, the surplus shall be  
72 paid into the fund hereinafter provided for payment of the  
73 principal and interest of such bonds. Such fund may be used  
74 for the purchase of any of the outstanding bonds payable  
75 from such fund at the market price, but at not exceeding the  
76 price, if any, at which such bonds shall in the same year be  
77 redeemable, and all bonds redeemed or purchased shall forth-  
78 with be canceled, and shall not again be issued. Prior to the  
79 preparation of definitive bonds, the commission may, under  
80 like restrictions, issue temporary bonds with or without  
81 coupons, exchangeable for definitive bonds upon the issuance



82 of the latter. Such revenue bonds may be issued without any  
83 other proceedings or the happening of any other conditions or  
84 things than those proceedings, conditions and things which  
85 are specified and required by this act, or by the constitution  
86 of the state. Revenue bonds issued under the authority herein  
87 granted shall be eligible as investments for the workmen's  
88 compensation fund and as security for the deposit of all  
89 public funds.

Sec. 8. *Trustee for Holders of Bonds.* The commission  
2 may enter into an agreement or agreements with any trust  
3 company, or with any bank having the powers of a trust  
4 company, either within or outside of the state, as trustee  
5 for the holders of bonds issued hereunder, setting forth  
6 therein such duties of the state and of the commission in  
7 respect of the acquisition, construction, improvement, main-  
8 tenance, operation, repair and insurance of the project, the  
9 conservation and application of all moneys, the insurance of  
10 moneys on hand or on deposit, and the rights and remedies  
11 of the trustee and the holders of the bonds, as may be agreed  
12 upon with the original purchasers of such bonds, and in-  
13 cluding therein provisions restricting the individual right  
14 of action of bondholders as is customary in trust agreements  
15 respecting bonds and debentures of corporations, protecting  
16 and enforcing the rights and remedies of the trustee and  
17 the bondholders, and providing for approval by the original  
18 purchasers of the bonds of the appointment of consulting  
19 architects, and of the security given by those who contract to  
20 construct the building, and by any bank or trust company,  
21 in which the proceeds of bonds or rentals shall be deposited,  
22 and for approval by the consulting architects of all contracts  
23 for construction. All expenses incurred in carrying out such  
24 agreement may be treated as a part of the cost of mainte-  
25 nance, operation and repairs of the project.

Sec. 9. *Management and Control of Project.* The commis-  
2 sion shall properly maintain, repair, operate, manage and  
3 control the project, fix the rates of rental, and establish  
4 by-laws and rules and regulations for the use and operation  
5 of the project, and may make and enter into all contracts  
6 or agreements necessary and incidental to the performance

7 of its duties and the execution of its powers under this act.

Sec. 10. *Act Not Authority to Create State Debt.* Nothing  
2 in this act contained shall be so construed or interpreted as  
3 to authorize or permit the incurring of state debt of any  
4 kind or nature as contemplated by the provisions of the con-  
5 stitution of the state of West Virginia in relation to state  
6 debt.

Sec. 11. *Compliance with This Act and State Constitution*  
2 *Only Restrictions on Construction and Management of*  
3 *Project.* It shall not be necessary to secure from any officer  
4 or board not named in this act any approval or consent,  
5 or any certificate or finding, or to hold an election, or to  
6 take any proceedings whatever, either for the construction  
7 of such project, or the improvement, maintenance, operation  
8 or repair thereof, or for the issuance of bonds hereunder,  
9 except such as are prescribed by this act or are required by  
10 the constitution of the state.

Sec. 12. *Act to Be Liberally Construed.* This act being  
2 necessary for the health, welfare and convenience of the  
3 citizens of the state, it should be liberally construed to  
4 effectuate the purposes thereof.

Sec. 13. *Provisions of Act Separable.* The sections, pro-  
2 visions and parts of this act are separable, and are not matters  
3 of mutual essential inducement, and it is the intention to  
4 confer the whole or any part of the powers herein provided  
5 for, and if any of the sections or provisions, or parts thereof,  
6 are for any reason illegal, it is the intention that the remain-  
7 ing sections and provisions, or parts thereof, shall remain in  
8 full force and effect.

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## CHAPTER 44

(Senate Bill No. 18—By Mr. Young)

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AN ACT to amend and reenact sections one, three, nine and twenty-  
three, and to repeal section nineteen and reenact a new section  
nineteen, all of chapter forty-six, acts of the Legislature of

West Virginia, regular session, one thousand nine hundred thirty-five, relating to narcotic drugs, and amending said chapter forty-six, acts of the Legislature, regular session, one thousand nine hundred thirty-five, by adding thereto a new section twenty-nine, providing that said chapter shall be designated as article eight-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one.

[Passed March 8, 1939; in effect ninety days from passage. Approved by the Governor.]

### Article 8-a. Narcotic Drugs.

#### Section

1. Definitions.
3. License to manufacture, etc., or supply at wholesale.
9. Records to be kept by physicians, manufacturers, pharmacists and others.
19. Search warrants.
23. Penalties for violations.
29. Act designated as article of code.

#### *Be it enacted by the Legislature of West Virginia:*

That chapter forty-six, acts of the Legislature, regular session, one thousand nine hundred thirty-five, be and the same is hereby designated article eight-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one; that sections one, three, nine and twenty-three of said chapter be amended and re-enacted; that section nineteen be repealed and a new section nineteen enacted, all to read as follows:

Section 1. *Definitions.* The following words and phrases, as used in this article, 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 compound-

16 ing, mixing, cultivating, growing, or other process, produces  
17 or prepares narcotic drugs, but does not include a phar-  
18 macist who compounds narcotic drugs to be sold or dis-  
19 pensed on prescriptions.

20 (6) "Wholesaler" means a person who supplies narcotic  
21 drugs that he himself has not produced or prepared, on  
22 official written orders, but not prescriptions.

23 (7) "Pharmacist" means a licensed pharmacist as de-  
24 fined by the laws of this state.

25 (8) "Pharmacy owner" means the owner of a store or  
26 other place of business where narcotic drugs are compounded  
27 or dispensed by a registered pharmacist; but nothing in  
28 this article contained shall be construed as conferring on a  
29 person who is not registered or licensed as a pharmacist  
30 any authority, right or privilege that is not granted to him  
31 by the pharmacy laws of this state.

32 (9) "Hospital" means an institution for the care and  
33 treatment of the sick and injured, approved by the state  
34 board of pharmacy as proper to be entrusted with the  
35 custody of narcotic drugs and the professional use of  
36 narcotic drugs under the direction of a physician, dentist,  
37 or veterinarian.

38 (10) "Laboratory" means a laboratory approved by the  
39 state board of pharmacy as proper to be entrusted with the  
40 custody of narcotic drugs and the use of narcotic drugs for  
41 scientific and medical purposes and for purposes of instruc-  
42 tion.

43 (11) "Sale" includes barter, exchange, or offer therefor,  
44 and each such transaction made by any person, whether as  
45 principal, proprietor, agent, servant, or employee.

46 (12) "Coca leaves" includes cocaine and any compound,  
47 manufacture, salt, derivative, mixture, or preparation of  
48 coca leaves, except derivatives of coca leaves which do not  
49 contain cocaine, ecognine, or substances from which cocaine  
50 or ecognine may be synthesized or made.

51 (13) "Opium" includes morphine, codeine, and heroin,  
52 and any compound, manufacture, salt, derivative, mixture  
53 or preparation of opium.

54 (14) "Cannabis" includes all parts of the plant canna-  
55 bis sativa L., whether growing or not; the seeds thereof;  
56 the resin extracted from any part of the plant; and every

57 compound, manufacture, salt, derivative, mixture, or prepa-  
58 ration of such plant, its seeds, or resin; but shall not include  
59 the mature stalks of such plant, fiber produced from such  
60 stalks, oil or cake made from the seeds of such plant, or  
61 any other compound, manufacture, salt, derivative, mixture,  
62 or preparation of such mature stalks (except the resin ex-  
63 tracted therefrom), fiber, oil, or cake, of the sterilized seed  
64 of such plant which is incapable of germination.

65 (15) "Narcotic drugs" means coca leaves and opium,  
66 cannabis and other substances not chemically distinguish-  
67 able from them.

68 (16) "Federal narcotic laws" means the laws of the  
69 United States relating to opium, coca leaves, cannabis, and  
70 other narcotic drugs.

71 (17) "Official written order" means an order written  
72 on a form provided for that purpose by the United States  
73 commissioner of narcotics, under any laws of the United  
74 States making provision therefor, if such order forms are  
75 authorized and required by federal law, and if no such  
76 order form is provided, then on an official form provided for  
77 that purpose by the state board of pharmacy.

78 (18) "Dispense" includes distribute, leave with, give  
79 away, dispose of, or deliver.

80 (19) "Registry number" means the number assigned to  
81 each person registered under the federal narcotic laws.

Sec. 3. *License to Manufacture, etc., or Supply at Whole-*  
2 *sale.* No person shall manufacture, compound, mix, cultivate,  
3 grow, or by any other process produce or prepare narcotic  
4 drugs, and no person as a wholesaler shall supply the same,  
5 without having first obtained a license so to do from the state  
6 board of pharmacy.

7 A fee of three dollars shall be charged and collected by  
8 the state board of pharmacy for each manufacturer's and  
9 each wholesaler's license issued under the provision of this  
10 section. The license shall be for the calendar year, and  
11 shall be renewable on the first day of January of each year.

Sec. 9. *Records to be Kept by Physicians, Manufacturers,*  
2 *Pharmacists and Others.* (1) Every physician, dentist,  
3 veterinarian, or other person who is authorized to administer  
4 or professionally use narcotic drugs, shall keep a record of

5 such drugs received by him, and a record of all such drugs  
6 administered, dispensed, or professionally used by him other-  
7 wise than by prescription. The keeping of a record by any  
8 such person using small quantities of solutions or other prep-  
9 arations of such drugs for local application, of the quantity,  
10 character, and potency of such solutions or other preparations  
11 purchased or made up by him, and of the dates when purchased  
12 or made up, without keeping a record of the amount of such  
13 solution or other preparation applied by him to individual  
14 patients, shall constitute a sufficient compliance with this sub-  
15 section.

16 (2) Manufacturers and wholesalers shall keep records of  
17 all narcotic drugs compounded, mixed, cultivated, grown,  
18 or by any other process produced or prepared, and of all nar-  
19 cotic drugs received and disposed of by them, in accordance  
20 with the provisions of subsection five of this section.

21 (3) Pharmacists and pharmacy owners shall keep records  
22 of all narcotic drugs received and disposed of by them, in  
23 accordance with the provisions of subsection five of this  
24 section.

25 (4) Every person who purchases for resale, or who sells  
26 narcotic drug preparations exempted by section eight of this  
27 article, shall keep a record showing the quantities and kinds  
28 thereof received and sold, or disposed of otherwise, in accord-  
29 ance with the provisions of subsection five of this section.

30 (5) The form of records shall be prescribed by the state  
31 board of pharmacy. The record of narcotic drugs received  
32 shall in every case show the date of receipt, the name and ad-  
33 dress of the person from whom received, and the kind and  
34 quantity of drugs received, the kind and quantity of narcotic  
35 drugs produced or removed from process of manufacture, and  
36 the date of such production or removal from process of manu-  
37 facture; and the record shall in every case show the proportion  
38 of morphine, cocaine, or ecognine contained in or producible  
39 from crude opium of coca leaves received or produced, and  
40 the proportion of resin contained in or producible from the  
41 plant *cannabis sativa*, L., received or produced.

42 The record of all narcotic drugs sold, administered, com-  
43 pounded, dispensed, or otherwise disposed of, shall show the  
44 date of selling, administering, compounding, or dispensing,  
45 the name and address of the person to whom or for whose

46 use, or the owner and species of animal for which the drugs  
47 were sold, administered, compounded, or dispensed, and the  
48 kind and quantity of drugs. Every such record shall be kept  
49 for a period of two years from the date of the transaction  
50 recorded. The keeping of a record required by or under the  
51 federal narcotic laws, containing substantially the same in-  
52 formation as is specified above, shall constitute compliance  
53 with this section, except that every record shall contain a  
54 detailed list of narcotic drugs lost, destroyed, or stolen, if  
55 any, the kind and quantity of such drugs, and the date of the  
56 discovery of such loss, destruction, or theft.

Sec. 19. *Search Warrants.* If there be complaint, on oath,  
2 that any narcotic drug or drugs, as defined by this article, are  
3 being manufactured, sold, kept, stored, or in any manner  
4 held, used or concealed in a particular house or other place,  
5 in violation of law, a justice of the peace, circuit, criminal or  
6 intermediate court, or the judge thereof, in vacation, or the  
7 mayor of any city, town or village, or any person or tribunal  
8 which may hereafter be vested with authority to issue war-  
9 rants, to whom such complaint is made, if satisfied that there  
10 is a probable cause for such belief, shall issue a warrant to  
11 search such house or other place for narcotic drugs. Warrants  
12 may also be issued under this article for the search of any  
13 automobile, boat, conveyance or vehicle, or for the search of  
14 any trunk, grip or other article of baggage for narcotic  
15 drugs, and may be executed in any part of the state where  
16 the same are overtaken, and shall be returnable before any  
17 justice of the peace, circuit, criminal or intermediate court,  
18 or the judge thereof, in vacation, or the mayor of any city,  
19 town or village, or any person or tribunal which may here-  
20 after be vested with authority to issue warrants, within  
21 whose jurisdiction such automobile, boat, conveyance, ve-  
22 hicle, trunk, grip or other article of baggage, or any of them,  
23 were transported or attempted to be transported contrary to  
24 law.

25 An officer charged with the execution of a warrant issued  
26 under this section may, wherever it is necessary, break open  
27 and enter a house or other place herein described, or any  
28 conveyance, container or receptacle described in this section.  
29 Warrants issued under this section may be executed by any  
30 member of the department of public safety of West Vir-

31 ginia, sheriff or deputy sheriff of any county, constable, and  
32 the police officers of any incorporated city, town or village.

Sec. 23. *Penalties for Violations.* Any person violating  
2 any provision of this article, except section two, shall upon  
3 conviction be punished, for the first offense, by a fine not  
4 exceeding one hundred dollars, or by imprisonment in jail  
5 for not exceeding one year, or by both such fine and imprison-  
6 ment; and for any second or subsequent offense, by a fine not  
7 exceeding one thousand dollars, or by imprisonment for not  
8 exceeding five years in the penitentiary, or by both such fine  
9 and imprisonment.

10 Any person violating the provisions of section two of this  
11 article shall be guilty of a felony, and upon conviction thereof  
12 shall be punished by a fine not exceeding one thousand dollars,  
13 or by imprisonment for not exceeding ten years in the peni-  
14 tentiary, or by both such fine and imprisonment.

Sec. 29. *Act Designated as Article of Code.* Chapter  
2 forty-six, acts of the Legislature, regular session, one thou-  
3 sand nine hundred thirty-five, is hereby declared to be  
4 an amendment to chapter sixteen of the code of West Virginia,  
5 one thousand nine hundred thirty-one, and designated as  
6 article eight-a of said chapter.

## CHAPTER 45

(Senate Bill No. 106—By Mr. Allen)

AN ACT to amend article five, chapter thirty of the code of West  
Virginia, one thousand nine hundred thirty-one, as last  
amended, by adding thereto sections twenty, twenty-one and  
twenty-two, relating to equipment of drug stores and  
pharmacies and to the manufacture of drugs, medicines,  
dentifrices and cosmetics.

[Passed March 10, 1939; in effect ninety days from passage. Approved by the  
Governor.]

### Article 5. Pharmacists, Assistant Pharmacists and Drug Stores.

#### Section

20. Professional and technical equipment required for pharmacy or  
drug store; penalty.



21. Permit for manufacture, packaging, etc. of drugs, medicines, cosmetics, etc.; regulations as to sanitation and equipment; penalties; revocation of permit.
22. Hearings by board upon complaint.

*Be it enacted by the Legislature of West Virginia:*

That article five, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended by chapter thirty-seven, acts of the Legislature, first extraordinary session, one thousand nine hundred thirty-three, be amended by adding thereto sections twenty, twenty-one and twenty-two, to read as follows:

Section 20. *Professional and Technical Equipment Required*

2 *for Pharmacy or Drug Store; Penalty.* Every registered drug  
3 store or pharmacy must be equipped with proper pharma-  
4 ceutical utensils so that prescriptions can be properly filled  
5 and United States Pharmacopoeia and National Formulary  
6 preparations properly compounded. The board of pharmacy  
7 shall prescribe the minimum of such professional and technical  
8 equipment which a pharmacy or drug store shall at all times  
9 possess.

10 Any person violating this section, shall, upon conviction, be  
11 deemed guilty of a misdemeanor and fined not more than  
12 fifty dollars, and no permit shall be issued or continued for  
13 the conducting of a pharmacy or drug store which has not  
14 complied with the provisions of this section.

Sec. 21. *Permit for Manufacture, Packaging, etc. of Drugs,  
2 Medicines, Cosmetics, etc.; Regulations as to Sanitation and  
3 Equipment; Penalties; Revocation of Permit.* No drugs, or  
4 medicines, or toilet articles, dentifrices, or cosmetics, shall be  
5 manufactured, made, produced, packed, packaged or prepared  
6 within the state, except under the personal and immediate  
7 supervision of a registered pharmacist, or such other persons  
8 as may be approved by the board of pharmacy, after an in-  
9 vestigation and determination by the said board that they are  
10 qualified by scientific or technical training and/or experience  
11 to perform such duties of supervision as may be necessary to  
12 protect the public health and safety; and no person shall  
13 manufacture, make, produce, pack, package or prepare any  
14 such articles without first obtaining a permit so to do from the  
15 board of pharmacy. Such permit shall be subject to such rules

16 and regulations, with respect to sanitation and/or equipment,  
17 as the said board of pharmacy may from time to time adopt  
18 for the protection of the public health and safety.

19 The application for such permit shall be made on a form  
20 to be prescribed and furnished by the said board of pharmacy  
21 and shall be accompanied by the required fee of twenty-  
22 five dollars which amount shall also be paid as the fee for  
23 each renewal of such permit. Separate application shall be  
24 made and separate permits issued for each separate place  
25 of manufacture, making, producing, packing, packaging or  
26 preparation.

27 Permits issued under the provisions of this section shall  
28 be posted in a conspicuous place in the factory or place for  
29 which issued; such permits shall not be transferable, and  
30 shall expire on the thirtieth day of June following the date  
31 of issue and shall be renewed annually. Nothing in this sec-  
32 tion shall be construed to apply to those operating registered  
33 retail pharmacies or drug stores.

34 Any person, firm or corporation violating any of the pro-  
35 visions of this section, and any permittee hereunder who shall  
36 violate any of the conditions of this permit or any of the  
37 rules and regulations adopted by the said board of pharmacy  
38 in pursuance of the power hereby conferred, shall, upon con-  
39 viction, be deemed guilty of a misdemeanor and fined not  
40 more than fifty dollars for each offense, and each and every  
41 day such violation continues shall constitute a separate and  
42 distinct offense, and, upon conviction of a permittee, his  
43 permit shall also forthwith be revoked and become null and  
44 void.

45 Any person, firm, corporation, or any permittee hereunder  
46 who shall have been convicted of two or more successive  
47 violations of the provisions of this section or of the rules and  
48 regulations adopted by the board of pharmacy in pursuance  
49 of the power hereby conferred, shall at the discretion of the  
50 board of pharmacy have such permit permanently revoked,  
51 and the board of pharmacy is hereby authorized to refuse  
52 the issuance of further permits to such person, firm, cor-  
53 poration, or permittee.

Sec. 22. *Hearing by Board Upon Complaint.* Any person  
2 aggrieved by the rules or regulations promulgated by the said

3 board of pharmacy under the provisions of section twenty-  
4 one, shall be entitled to have his complaint set down for  
5 hearing by said board. Requests for such hearing shall be  
6 made in writing and shall specify in detail the basis for the  
7 complaint, and the hearing shall be held within ten days from  
8 the date of the receipt of said request by the said board, unless  
9 postponed by mutual agreement. The said board shall have  
10 the power to make such rules and regulations with respect to  
11 the conduct of such hearings as may be necessary.

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## CHAPTER 46

(House Bill No. 1—By Mr. Speaker, Mr. Thomas)

AN ACT to amend chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, by amending and reenacting section six, article nine, of said chapter, as heretofore amended and reenacted by chapter nine, acts of the Legislature, first extraordinary session, one thousand nine hundred thirty-three, and by chapter thirty-nine, acts of the Legislature, second extraordinary session, one thousand nine hundred thirty-three, to add a new section, designated section six-a, to said article nine, relating to the general school fund; and to further amend said chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, by adding thereto two new articles to be designated article nine-a and article nine-b, providing for the distribution of state aid to schools, and creating and defining the powers and duties of the board of school finance, respectively, all relating to school finance.

[Passed February 6, 1939; in effect April 15, 1939. Approved by the Governor.]

### Article

9. School Finances.

9-a. State Aid for Schools.

9-b. State Board of School Finance.

*Be it enacted by the Legislature of West Virginia:*

That chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, be amended by amending and reenacting section six, article nine of said chapter, as heretofore

amended, by adding a new section designated section six-a, to said article nine; and by adding two new articles, designated article nine-a and article nine-b, to said chapter eighteen, all to read as follows:

## **Article 9. School Finances.**

### **Section**

6. The general school fund.

6-a. Appropriations to be paid from the general school fund.

Section 6. *The General School Fund.* A separate school fund, to be called the "general school fund," shall be set apart for the support of the free schools of the state, and the revenue from the following sources and not otherwise appropriated shall be paid into it:

- (1) The proceeds from the capitation tax;
- (2) The income of the school funds;
- (3) The net proceeds of all fines and forfeitures which accrued to the state during the previous year, except fines referred to in section six, article eight of this chapter;
- (4) All moneys arising from the sources named in section four, article twelve of the Constitution, heretofore going to the "school fund" but as now amended going to the "general school fund";
- (5) All interest on public moneys received from state depositories;
- (6) State license tax on marriages;
- (7) State tax on forfeitures;
- (8) State tax on state licenses, except on motor vehicles and on owners, chauffeurs, operators and dealers in motor vehicles, hunting and fishing licenses and state licenses paid directly to the state auditor and secretary of state;
- (9) All funds from any source paid into the treasury for school purposes and not otherwise appropriated.

Sec. 6-a. *Appropriations to Be Paid from the General School Fund.* The proceeds of the general school fund shall be used for the following purposes according to the order and preferences stated below;

- (1) To pay the salary of the state superintendent of free schools, his necessary traveling expenses not to exceed five hundred dollars per year, and the contingent and other expenses of his office;

9 (2) To pay toward the salary of each county superin-  
10 tendent on the basis of twenty cents per pupil in average  
11 daily attendance for the preceding year, but the maximum  
12 amount supplied by the state for the salary of any county  
13 superintendent shall not exceed two thousand dollars;

14 (3) To pay any other appropriation made by the Legis-  
15 lature out of the fund;

16 (4) To pay state aid to county school districts in accord-  
17 ance with article nine-a of this chapter.

18 The state auditor, on or before the twentieth day of June  
19 of each year, after first deducting the amounts required  
20 under (1), (2) and (3) above, shall ascertain the amount  
21 of the general school fund available for distribution under  
22 (4) above and shall certify the same to the state board of  
23 school finance.

#### Article 9-a. State Aid for Schools.

##### Section

1. Distribution of state aid to free schools.
2. Definitions.
3. The foundation school program.
4. Preliminary computation by the state superintendent.
5. Computation; values to apply.
6. Weightings for instruction; computation.
7. Correction for size of school.
8. Number of weighted pupils.
9. Total of the foundation program.
10. Local share of revenue.
11. Allocation of state aid.
12. Certification of amount of state aid.
13. Disbursement of state aid to counties.
14. Audits of statistical reports.
15. Reports to the board of finance.

Section 1. *Distribution of State Aid to Free Schools.* The  
2 purpose of this article is to provide for the distribution of  
3 state aid for free schools among the several counties of the  
4 state. In enacting this method of computation and distribu-  
5 tion, the Legislature has the following specific purposes: To  
6 (1) Provide a method of distribution that will supply  
7 each county with the funds reasonably necessary to operate  
8 its schools on a basis that accords with the relative educa-  
9 tional needs of the several counties;  
10 (2) Establish a method of computation and allocation  
11 that as far as possible eliminates the need for the exercise

12 of state administrative discretion as to the requirements of  
13 the several counties;

14 (3) Give to each county every possible incentive to the  
15 constructive development of its school system, and to place  
16 with the county boards of education the responsibility for  
17 the preservation and improvement of the standards of local  
18 education;

19 (4) Coordinate the administration of state aid more  
20 closely with the general fiscal policies of the state.

21 With the foregoing purposes and objectives in view the  
22 allocation and administration of state aid is hereby con-  
23 ferred upon the state board of school finance.

Sec. 2. *Definitions.* For the purposes of this article:

2 "Board of finance" or "state board" means the state  
3 board of school finance.

4 "County board" means a county board of education.

5 "School" means a separately organized and administered  
6 unit of instruction.

7 "Non-isolated school" means any school which the board  
8 of finance determines, after consultation with the county  
9 board and county superintendent, may be consolidated with  
10 another school without adding to the total cost of schools in  
11 the county.

12 "Elementary school" means a school consisting only of  
13 grades below the ninth. Such a school, if non-isolated, shall  
14 be counted as one-fourth a school for the second and each  
15 succeeding distribution of aid under this article.

16 "High school" means a school consisting only of grades  
17 above the sixth organized for instruction by departments.  
18 A school consisting of more than four of such grades shall be  
19 counted as two high schools.

20 "Teacher" includes a principal.

21 "Certificate" means the certificate granted by the state  
22 superintendent in accordance with article seven of this  
23 chapter.

24 "Experience" shall mean the number of terms experience  
25 as a teacher.

26 "Average daily attendance" means (1) for the first dis-  
27 tribution of aid under this article, the total daily attendance  
28 divided by the actual number of days of school during the

29 term computed separately by individual schools; and (2) for  
30 the second and each succeeding distribution of aid under this  
31 article, the total daily attendance divided by one hundred  
32 sixty or the actual number of days of school during the term,  
33 whichever is larger, computed separately by individual schools.  
34 "Current school purposes" means the total levied under  
35 subsections two and three, section six-c, article eight, chap-  
36 ter eleven, as amended, but excluding any additional levy  
37 approved by vote of the people in accordance with section  
38 sixteen, article eight, chapter eleven of this code, as amended.

2     Sec. 3. *The Foundation School Program.* The founda-  
3     tion school program is hereby established as the basic essen-  
4     tial of free public education in this state for the purpose of  
5     computing the amount of state aid that each county shall  
6     receive. So far as funds available from state sources will  
7     permit, each county shall receive a sum which, together with  
8     the amount of local revenue reasonably to be expected, will  
9     pay the cost of the foundation school program as computed  
   in accordance with this article.

2     Sec. 4. *Preliminary Computation by the State Superin-*  
3     *tendent.* The state superintendent shall, on or before June  
4     fifteenth of each year, make preliminary computations of the  
5     amount of the foundation program for each county of the  
6     state in accordance with sections five to nine, inclusive, of  
7     this article. The superintendent shall submit his computa-  
8     tions to the board of finance. The board, after receiving the  
9     report of the state superintendent, shall proceed to make  
   final computations.

2     Sec. 5. *Computation; Values to Apply.* For the pur-  
3     pose of computing the foundation program, the following  
4     values shall be applied:

5     (1) Values shall be assigned for the number of terms of  
6     experience for each teacher as follows: for experience of  
7     from one to five terms, inclusive, three-fifths of the number  
8     of terms of experience; for experience of from six to nine  
9     terms, inclusive, two plus one-fifth of the total number of  
10    terms of experience; for experience of ten or more terms,  
   four.

11    (2) Values shall be assigned to teacher certification for

12 each certificate as follows, second grade certificate, thirteen;  
13 first grade certificate, seventeen; short normal certificate,  
14 eighteen; standard normal certificate, twenty; bachelor  
15 degree certificate, twenty-two; master degree certificate,  
16 twenty-four.

Sec. 6. *Weightings for Instruction; Computation.*

2 Weightings for elementary and for high school instruction  
3 shall be computed for each county by the application of the  
4 values fixed by section five as follows:

5 (1) The weighting for elementary instruction shall be  
6 computed by (a) adding together all the values assigned for  
7 experience and certification for all of the elementary teachers  
8 actually employed in the county during the preceding year  
9 and (b) dividing the total by twenty-eight times the number  
10 of such teachers;

11 (2) The weighting for high school instruction shall be  
12 computed by (a) adding together all the values assigned for  
13 experience and certification for all of the high school teachers  
14 actually employed in the county during the preceding year  
15 and (b) dividing the total by twenty-one times the number  
16 of such teachers.

Sec. 7. *Correction for Size of School.* Corrections for size  
2 of school shall be applied to the average daily attendance in  
3 each county on the basis of schools actually operated during  
4 the preceding year as follows:

5 (1) To the average daily attendance in elementary  
6 schools add fifty-thirds of the number of such schools;

7 (2) To the average daily attendance in high schools add  
8 fifteen-halves of the number of such schools.

Sec. 8. *Number of Weighted Pupils.* The average daily  
2 attendance corrected for size of school for each county shall  
3 then be adjusted by applying the weightings and amounts  
4 determined under section six as follows:

5 (1) The corrected average daily attendance in elementary  
6 schools shall be multiplied by the weighting for elementary  
7 instruction for that county;

8 (2) The corrected average daily attendance in high  
9 schools shall be multiplied by the weighting for high school  
10 instruction for that county.



11 The total of the numbers obtained under (1) and (2)  
12 above shall be the number of weighted pupils for the county.

Sec. 9. *Total of the Foundation Program.* For the first distribution of aid under this article, the total of the foundation program for a county shall be obtained by:

4 (1) Multiplying the number of weighted pupils for the  
5 county by fifty-one and three-tenths;

6 (2) Determining one-fourth the total amount expended  
7 by the county for transportation of elementary and high  
8 school pupils, excluding the purchase of busses, during the  
9 four year period ending the thirtieth day of June, one thousand nine hundred thirty-nine;

11 (3) Adding the amounts determined under (1) and (2)  
12 above; except, that for no county shall the amount allowed  
13 under (2) exceed four and one-half dollars per weighted  
14 pupil nor be less than one and three-fourths dollars per  
15 weighted pupil.

16 For the second and each succeeding distribution of aid  
17 under this article, the total of the foundation program for a  
18 county shall be obtained by:

19 (1) Multiplying the number of weighted pupils for the  
20 county by each of the following:

21 (a) Fifty and one-half;

22 (b) Five hundred times the total number of non-isolated  
23 elementary schools in the state divided by the total number  
24 of weighted pupils in the state;

25 (2) Determining the amount needed by each county to  
26 meet its transportation costs, including necessary costs for  
27 busses. In this determination, the board shall apply uniform  
28 rules in each county in measuring transportation needs, and  
29 shall take into consideration, at least, the following factors,  
30 based on data for the preceding year:

31 (a) The number of elementary pupils transported;

32 (b) The number of high school pupils transported;

33 (c) The length of bus routes;

34 (d) The condition of busses and transportation equipment;

35 (e) The average size of busses needed;

36 (f) The condition of the roads traveled;

37 (g) The number of schools to which pupils are transported.

38 (3) Adding the amounts determined under (1) and (2)

39 above; except, that the total, for all counties, of the amounts  
40 determined under subsection (2) above, shall not exceed  
41 three and one-half times the total number of weighted pupils  
42 in the state.

Sec. 10. *Local Share of Revenue.* The board of finance  
2 shall then determine for each county ninety-five per cent of  
3 the amount obtained by multiplying the classified assessed  
4 valuations of real, personal, and public utility property in  
5 the county as of the year one thousand nine hundred thirty-  
6 eight by the rates of levy authorized for current school pur-  
7 poses as of the current year. Any part of the allocation for  
8 current school purposes transferred in accordance with law  
9 to the county court to be used for current county purposes  
10 shall be deducted from the authorized current school levy of  
11 that county. The amount so obtained for each county shall  
12 be known as the local share of revenue.

Sec. 11. *Allocation of State Aid.* The board of finance shall  
2 then proceed to allocate the amount available for distribution  
3 as state aid (as certified by the state auditor in accordance  
4 with section six-a, article nine of this chapter) among the  
5 several counties as follows:

6 (1) The board shall first allocate to each county (a)  
7 forty-five per cent of the cost of the foundation program for  
8 that county, or (b) an amount equal to the difference be-  
9 tween the cost of the foundation program for that county  
10 and the local share of revenue for that county; whichever of  
11 (a) or (b) is greater.

12 (2) The board shall then allocate the amount remaining  
13 for distribution as state aid, after the requirements of (1)  
14 above have been met, among the several counties of the state  
15 in a uniform proportion to the amount actually levied for  
16 current school purposes in each county during the preceding  
17 year. The amount to be received by a county under this sub-  
18 section shall be computed by multiplying the amount avail-  
19 able for distribution to all counties by the amount actually  
20 levied for current school purposes by the county, divided by  
21 the amount actually levied for such purposes by all counties.

22 The amount of state aid to be received by each county  
23 shall be the sum of the amounts determined as the result of

24 (1) and (2) above, and shall be used by the several counties  
25 in the support of the schools generally.

26 During the first two years this act is in operation, no county  
27 shall employ more than the allotted number of teachers, with-  
28 out the prior consent of the board of school finance. By  
29 allotted number of teachers is meant the sum of three per  
30 centum of the corrected average daily attendance in elemen-  
31 tary schools and four per centum of the corrected average  
32 daily attendance in high schools. In determining the corrected  
33 average daily attendance, under this paragraph, a non-isolated  
34 elementary school shall be counted as one full school and not  
35 as one-fourth of a school.

Sec. 12. *Certification of Amount of State Aid.* On or  
2 before July fifteenth of each year the board of finance shall  
3 certify the amount of state aid allotted to each county to the  
4 county superintendent of schools, and shall certify the  
5 amounts allocated to the several counties to the state auditor  
6 and to the state superintendent.

Sec. 13. *Disbursement of State Aid to Counties.* The  
2 board of finance shall each year adopt a schedule for the  
3 disbursement of the amounts of state aid allocated to the  
4 several counties of the state. The board shall pay state aid  
5 by requisition on the state auditor in favor of the several  
6 county boards of education. So far as possible the install-  
7 ments of aid shall be so arranged as to facilitate the opera-  
8 tion of the schools pending the collection of local revenues.  
9 The schedule of payment shall be certified to the several  
10 county superintendents and to the state auditor at the same  
11 time and in the same manner as required by section twelve  
12 of this article for the certification of the total amount of aid  
13 to be paid.

Sec. 14. *Audits of Statistical Reports.* The board of  
2 finance, in connection with its inspection and supervision of  
3 school fiscal administration in the several counties, may make  
4 such additional inspections and audits as may be necessary  
5 to determine the accuracy of statistical reports submitted to  
6 the state superintendent or to the state board of school  
7 finance in connection with the computation and distribution  
8 of state aid. The state board shall cause proper corrections

9 to be made forthwith in any reports found to be inaccurate  
10 and shall also make such adjustments in the distribution of  
11 state aid to the county concerned as may be occasioned by the  
12 correction of data upon which the allocation of aid was based.

Sec. 15. *Reports to the Board of Finance.* The board of  
2 finance may, for the purpose of exercising the powers dele-  
3 gated to it by this article, require county boards of education  
4 and county superintendents to keep such records and to make  
5 such reports as the board may determine. The state board  
6 shall prescribe the form, content, and method of keeping  
7 records; and the form, content, and time of making reports.  
8 The state board may require that reports be made to the  
9 board or to the office of the state superintendent.  
10 A county board of education and a county superintendent  
11 shall keep records and make reports as required by the state  
12 board.

#### **Article 9-b. State Board of School Finance.**

##### **Section**

1. Purpose of article; construction.
2. Definitions.
3. State board of school finance.
4. General powers and duties.
5. School budgeting.
6. Submission and approval of budgets.
7. Determination by the board of finance before final approval of budget; length of term.
8. The standard term.
9. Uniform accounting systems for schools.
10. Restrictions on county boards.
11. Emergency and supplemental appropriations.
12. Practices of fiscal administration.
13. Inspection and audit of school finance administration.
14. The permanent improvement fund.
15. The permanent improvement fund; powers and duties of the board of finance.
16. The permanent improvement fund; investment.
17. Duties of county board and county superintendents.
18. Issuance and enforcement of orders.
19. Withholding of aid.
20. Fiscal reports to the board.
21. Reports by the board.
22. Provisions of act severable; conflicting acts repealed.

Section 1. *Purpose of Article; Construction.* Because of the  
2 adoption of the "Tax Limitation Amendment," it has become  
3 necessary for the state to participate to an increasing degree  
4 in the financing of the free public schools. In the fiscal year  
5 one thousand nine hundred thirty-eight—one thousand nine

6 hundred thirty-nine, this participation aggregated fifty-five  
7 per cent of the total expended by county boards of education  
8 for the operation of the schools of the state, and in seventeen  
9 counties state aid represented in excess of seventy per cent of  
10 the total amounts spent for public education in those counties.  
11 In consequence of this state investment in local education,  
12 the state has acquired a paramount interest in the sound and  
13 stable management of the financial affairs of county school  
14 districts so that the maximum effectiveness of education may  
15 be obtained from the expenditure of the limited funds  
16 available.

17 With the foregoing purposes in view, this article is en-  
18 acted to develop improved methods of financial administra-  
19 tion and to bring increased financial guidance and assistance  
20 to the management of county school affairs.

21 The provisions of this article shall be construed to be in  
22 addition to the authority now exercised by the tax commis-  
23 sioner as chief inspector and supervisor of public offices  
24 (under article nine, chapter six of the code), for the pur-  
25 poses of fidelity accounting and auditing. The intent of the  
26 Legislature is that the powers granted by this article to the  
27 state board of school finance over financial management shall  
28 in administration be fully coordinated with those of the tax  
29 commissioner over the legality and fidelity of public ex-  
30 penditures.

31 The provisions of this article shall be liberally construed  
32 to give effect to the purposes stated.

Sec. 2. *Definitions.* For the purposes of this article:

2 "Board of finance" means the state board of school finance.

3 "Budget" means the annual budget of school revenues  
4 and expenditures prepared and adopted by a county board of  
5 education in accordance with this article.

6 "Levy estimate" means the summary statement of the  
7 total budgeted school requirements prepared and adopted by  
8 a county board of education in accordance with law, in jus-  
9 tification of the amount levied upon taxable property within  
10 the county for the support of the local schools.

11 "Appropriation" means an item, or the amount of an  
12 item, budgeted by a county board of education for expendi-  
13 ture during the fiscal year.

14 "Expenditure schedule" means a schedule for the ex-  
15 penditure of amounts budgeted throughout the fiscal year  
16 and adopted in conjunction with the annual budget.

17 "County board" means a county board of education.

18 "Standard term" means nine months of school.

19 "Minimum term" means eight months of school.

Sec. 3. *State Board of School Finance.* There is hereby  
2 created the "State Board of School Finance" which shall  
3 consist of the state superintendent of free schools, as chair-  
4 man, the state tax commissioner, and the director of the  
5 budget as secretary. The members of the board shall serve  
6 without additional compensation. The board shall meet  
7 upon the call of the chairman or a majority of its members.  
8 It shall keep a minute record of all proceedings and a special  
9 record of general regulations and special orders. The meet-  
10 ing place of the board shall be at the state capital. The con-  
11 currence of a majority of the members shall be necessary for  
12 all official acts. The board shall exercise the powers and  
13 perform the duties conferred upon it by this article.

14 The personnel of the state departments represented upon  
15 the membership of the board shall be available to the board  
16 for performance of its powers and duties.

Sec. 4. *General Powers and Duties.* The board of finance,  
2 in addition to the specific powers and duties conferred upon  
3 it, shall advise and assist county boards of education and  
4 county superintendents in the planning and management of  
5 school finances to the end that the most effective program of  
6 public education be realized from the funds available for  
7 expenditure by the several counties.

8 In the exercise of its powers under this article, the board  
9 of finance shall not substitute its discretion and judgment  
10 for that of a county board of education with respect to the  
11 desirability or reasonability of a lawful school expenditure if  
12 the provisions of law and the orders of the board of finance  
13 are complied with by the county board. If, however, a  
14 county board fails or refuses to provide for the support of  
15 the standard school term, to adhere to the budget and the  
16 expenditure schedule, or to comply with other provisions of  
17 this article, the board of finance may require such action on

18 the part of the county board, not in violation of law, as the  
19 board of finance may find to be best calculated to restore  
20 the financial affairs of the county board to a proper and  
21 lawful basis.

Sec. 5. *School Budgeting.* The board of finance shall  
2 formulate and prescribe a uniform system of school district  
3 budgeting for the use of all county school districts to include,  
4 at least:

5 (1) Itemization schedules for estimating anticipated rev-  
6 enues and receipts of all kinds;

7 (2) Itemization schedules for estimating anticipated re-  
8 quirements for expenditure during the fiscal year;

9 (3) The form, classification and itemization of budget  
10 items for appropriation purposes;

11 (4) Expenditure schedules for the allotment of amounts  
12 of proposed expenditures throughout the fiscal year;

13 (5) A budget calendar fixing the dates by or upon which  
14 schedules shall be prepared, budgets adopted, and reports  
15 made to the board of finance;

16 (6) Methods and procedures of budgeting to be followed  
17 in the use of the uniform system.

Sec. 6. *Submission and Approval of Budgets.* A county  
2 board of education shall, on or before the day fixed by the  
3 budget calendar, submit its proposed budget to the board of  
4 finance together with such supporting schedules as the board  
5 may require.

6 A county board shall not finally adopt its budget until  
7 after the written approval of the board of finance has been  
8 received, and the levy estimate has been approved by the tax  
9 commissioner as required by law. If the tax commissioner  
10 finds that the levy estimate, based upon the budget, does not  
11 conform to the requirements of law, the board shall authorize  
12 and require such further revision of the budget as may be  
13 necessary for the correction of the levy estimate as required  
14 by the tax commissioner.

Sec. 7. *Determination by the Board of Finance Before Final  
2 Approval of Budget; Length of Term.* The board of finance,  
3 before giving its final approval to a proposed budget, shall  
4 require that:

5 (1) Estimates of revenue and receipts are reasonable and  
6 accurate;

7 (2) Amounts are budgeted so as to cover actual require-  
8 ments of school operation;

9 (3) Amounts are budgeted so as to maintain the schools of  
10 the county for the standard term; or, if a standard term can-  
11 not be maintained, amounts are budgeted so as to assure the  
12 maximum length of term possible, but for not less than the  
13 minimum term.

14 The board of finance may, if circumstances justify, author-  
15 ize any county board to budget for a period shorter than the  
16 standard term, but in no case for less than the minimum  
17 term. The board of finance shall give such authorization  
18 only if it finds, upon petition of the county board setting  
19 forth the circumstances in full, that the best interests of the  
20 county schools will be promoted by the use of available funds  
21 for purposes other than the maintenance of the maximum  
22 term possible in view of funds available for expenditure.

Sec. 8. *The Standard Term.* If the board of finance finds  
2 that the proposed budget for a county will not maintain the  
3 schools for the standard term, it may require that the budget  
4 be revised so as to assure a standard term. If a standard  
5 term cannot be supported, the board of finance may require  
6 that amounts budgeted be so adjusted as to assure the maxi-  
7 mum length of term, in view of funds available for ex-  
8 penditure.

9 For the purposes of this section the board of finance may  
10 require a county board to:

11 (1) Contract for the payment of teachers at not in excess  
12 of the monthly salaries fixed by section two, article seven of  
13 this chapter;

14 (2) Reduce the amount budgeted for maintenance so as  
15 to guarantee the payment of salaries for the standard term;

16 (3) Postpone expenditures for permanent improvements  
17 and capital outlays (except from the permanent improve-  
18 ment fund) until costs of instruction for the standard term  
19 have been paid;

20 (4) Adjust amounts budgeted in any other way so as to  
21 assure the maximum length of term possible.



Sec. 9. *Uniform Accounting Systems for Schools.* The

board of finance shall formulate the requirements of a uniform system of management accounting for the use of county school districts. The requirements shall include at least:

(1) The accrual accounting of all revenues and other receipts from whatever source;

(2) The accounting of expenditures under the several items of appropriation in accordance with the expenditure schedule;

(3) Monthly and quarterly reports of rate of expenditure, encumbrances, and free balances under the several items of appropriation;

(4) Methods of accounting practice and procedures to be followed in the use of the uniform system.

The accounting requirements so formulated shall be certified by the secretary of the board to the tax commissioner. The tax commissioner shall then incorporate the requirements into a uniform system of school district accounting and as chief inspector and supervisor of public offices, shall prescribe the use of the uniform system by all county school districts by virtue of the authority vested in him by section two, article nine, chapter six of this code.

Sec. 10. *Restrictions on County Boards.* County boards of education shall:

(1) Authorize the expenditure of funds and incur obligations only in accordance with the budget and the expenditure schedule;

(2) Make transfers between items of appropriation only with the prior written approval of the board of finance.

Sec. 11. *Emergency and Supplemental Appropriations.*

The board of finance shall, by uniform regulations, provide for:

(1) Emergency appropriation to provide for purposes for which no appropriation or an insufficient appropriation was made in the annual budget. An emergency appropriation shall be made only with the prior written approval of the board of finance which approval shall state the maximum amount of the emergency appropriation authorized. An

10 emergency appropriation may be paid by transfer from  
11 some regular item of appropriation or from revenues ac-  
12 tually collected in excess of anticipations as the board may  
13 direct;

14 (2) Supplemental appropriations to provide for lawful  
15 school expenditures during the fiscal year in addition to those  
16 provided for in the regular budget, made possible by actual  
17 collections of receipts in excess of anticipated collections. A  
18 supplemental appropriation shall be made only with the prior  
19 written approval of the board.

Sec. 12. *Practices of Fiscal Administration.* The state  
2 board of school finance may formulate the requirements of  
3 adequate practices of fiscal administration to be followed by  
4 county school districts. Such requirements may include:

5 (1) Procedures for the receipt, control and disbursement  
6 of county school funds;

7 (2) Forms for requisitions, purchase orders, disburse-  
8 ments and other necessary documents;

9 (3) Regulations for the performance of the powers and  
10 duties pertaining to school finance;

11 (4) Regulations for the exercise of the comptroller  
12 function;

13 (5) Other instructions and regulations for the proper  
14 procedures and practices of fiscal administration in the  
15 county schools.

16 The requirements formulated by the board of finance shall  
17 be certified by the secretary of the board to the tax commis-  
18 sioner. The tax commissioner as chief inspector and super-  
19 visor of public offices shall incorporate the requirements so  
20 certified in his instructions with respect to fiscal administra-  
21 tion and shall prescribe their use by all county school  
22 districts by virtue of the authority vested in him by section  
23 two, article nine, chapter six of this code.

Sec. 13. *Inspection and Audit of School Finance Adminis-*  
2 *tration.* The board of finance may, through its duly authorized  
3 representatives, make inspections and examinations of the fis-  
4 cal administration of a county school district. The inspection  
5 and examination may extend to any matter or practice sub-

6 ject to regulation by the state board. Regular and special  
7 audits shall be made by the tax commissioner, as required by  
8 law, but the board may make selective audits to determine  
9 the accuracy of statements and reports made by a county  
10 board or superintendent.

11 The report of the examination shall be certified to the  
12 county board of education, together with instructions for the  
13 correction of procedures and practices found to be not in  
14 accordance with the requirements of the state board. The  
15 county board shall comply with the instructions forthwith.

16 The state board, through its duly authorized representa-  
17 tives, shall have full access to all books, records, papers and  
18 documents of the county board of education.

Sec. 14. *The Permanent Improvement Fund.* A county  
2 board of education may establish a special fund for county  
3 school purposes to be known as the "permanent improvement  
4 fund." The fund shall consist of:

5 (1) The proceeds of the levy allocated to that purpose by  
6 section six-c, article eight, chapter eleven of the code, as  
7 amended;

8 (2) Unexpended balances of other funds transferred to  
9 the fund, with the approval of the board of finance, at the  
10 end of the fiscal year;

11 (3) Any other moneys authorized by law to be used for  
12 the purposes of the fund.

13 The proceeds of the fund shall be used only for the support  
14 of building and permanent improvement projects. The fund  
15 may be accumulated from year to year but moneys shall not  
16 be paid into the fund so as to increase the assets of the fund  
17 to a total amount in excess of twenty-five per cent of the  
18 amount of the foundation school program for that county for  
19 the same school year.

Sec. 15. *The Permanent Improvement Fund; Powers and  
2 Duties of the Board of Finance.* A county board shall treat  
3 the permanent improvement fund as a separate fund in the  
4 annual budget for county school purposes. Expenditures  
5 shall be made from the fund only in accordance with an  
6 appropriation made pursuant to the annual budget, or made

7 otherwise in accordance with this article. If the board of  
8 finance finds, in its examination of the budget of a county  
9 school district, that a county board has accumulated, or with  
10 proposed additions to the fund in the fiscal year will accumu-  
11 late, the fund of the county to an amount in excess of twenty-  
12 five per cent of the amount of the foundation school program  
13 of the county for the same fiscal year, the board of finance  
14 shall order that no moneys in excess of the limitation be  
15 appropriated for or paid into the fund. If the board of  
16 finance finds that the assets of the fund of a county exceed  
17 twenty-five per cent of the amount of the foundation school  
18 program for the county for the same year, the board may  
19 require that building and permanent improvement projects  
20 included in the annual budget, be paid for out of the fund.  
21 The board of finance shall administer this section so as to  
22 keep the accumulated assets of the fund, as near as may be,  
23 within the limitation of twenty-five per cent of the amount of  
24 the foundation school program.

*Sec. 16. The Permanent Improvement Fund; Investment.*

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

*Sec. 17. Duties of County Board and County Superin-*

2 *tendent.* A county board of education and a county super-  
3 intendent shall comply with the instructions of the state board

4 of school finance and shall perform the duties required of  
5 them in accordance with the provisions of this article

Sec. 18. *Issuance and Enforcement of Orders.* The board  
2 of finance shall enforce the requirements of and its regula-  
3 tions issued under this article. The board may issue orders  
4 to county boards of education requiring specific compliance  
5 with its instructions. If a county board fails or refuses to  
6 comply, the board may proceed to enforce its order by any  
7 appropriate remedy in any court of competent jurisdiction.

Sec. 19. *Withholding of Aid.* The board of finance may  
2 withhold payment of state aid from a county board that fails  
3 or refuses to comply with the provisions of this article or the  
4 requirements of the state board made in accordance there-  
5 with.

Sec. 20. *Fiscal Reports to the Board.* The state board of  
2 school finance may require, and prescribe the form of, fiscal  
3 reports to be made to the board at such times and to contain  
4 such information as the board may determine.

Sec. 21. *Reports by the Board.* The board of school  
2 finance shall make an annual report to the governor and to  
3 the Legislature pertaining to the work of the board and the  
4 finances of school districts. The board shall make such  
5 special reports as the governor or the Legislature may re-  
6 quest.

Sec. 22. *Provisions of Act Severable; Conflicting Acts*  
2 *Repealed.* The provisions of this act shall be construed as  
3 severable and if any part is held unconstitutional, or for any  
4 other reason invalid, the remaining parts shall not be affected  
5 thereby.

6 All acts or parts of acts in conflict with the provisions of  
7 this act are hereby repealed.

## CHAPTER 47

(Senate Bill No. 255—By Mr. Pelter)

AN ACT to amend and reenact section twenty-four, article seven, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as last amended, relating to the issuance of certificates valid in the junior and senior high schools of the state.

[Passed March 11, 1939; in effect ninety days from passage. Approved by the Governor.]

### Article 7. Teachers.

#### Section

24. Superintendents' and high school principals' certificates; high school certificates.

*Be it enacted by the Legislature of West Virginia:*

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

Section 24. *Superintendents' and High School Principals' Certificates; High School Certificates.* The state superintendent of schools shall have authority to issue superintendents' certificates and high school principals' certificates, valid for five years, upon application in due form to applicants who meet the requirements prescribed by the state board of education for such certificates. The state superintendent shall also have authority to issue high school certificates, valid for five years, upon application in due form, to graduates of the West Virginia university and to graduates of other approved colleges and universities in this and other states, if the collegiate courses of instruction completed by such graduates have included not less than sixteen semester hours in professional subjects: *Provided*, That each high school certificate issued under the provisions of this article shall show the field or fields in which the holder thereof is especially qualified to teach.

High school certificates shall be valid in all junior and senior high schools in the state and shall be required in all classified high schools.

## CHAPTER 48

(Senate Bill No. 229—By Mr. Smith, by request)

AN ACT to repeal section seven, and to amend and reenact sections one, two, three, four, five, six and eight, all of article eight, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, relating to compulsory school attendance and the establishment of continuation and evening schools.

[Passed March 10, 1939; in effect ninety days from passage. Became a law without the approval of the Governor.]

### Article 8. Compulsory School Attendance.

#### Section

1. Compulsory school attendance; exceptions; offenses; penalties.
2. County director of school attendance; appointment; assistants; qualifications; removal; powers; salary and traveling expenses; duties.
3. Reports by teachers of truancy cases.
4. Failure by county attendance director to perform duties; penalty.
5. Aiding or abetting violations of compulsory attendance; penalty.
6. Report and disposition of fines collected.
7. Repealed.
8. Continuation and part-time schools; evening schools and classes; provisions of act severable; inconsistent acts repealed.

#### *Be it enacted by the Legislature of West Virginia:*

That section seven be repealed, and that sections one, two, three, four, five, six, and eight be amended and reenacted, all of article eight, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, all to read as follows:

- Section 1. *Compulsory School Attendance; Exceptions; Offenses; Penalties.* Compulsory school attendance shall begin with the seventh birthday and continue to the sixteenth birthday. Every person who has legal or actual control of a child or children not less than seven nor more than sixteen years of age shall cause such child or children to attend a free day school for the full school term of the county where such person resides.
- Exemption from the foregoing requirement of compulsory public school attendance shall be made on behalf of any child for the following causes or conditions, each such cause or condition being subject to confirmation by the attendance authority of the county:

13      *Exemption A—Instruction in a Private, Parochial, or Other*  
14 *Approved School.* Such instruction shall be in a school ap-  
15 proved by the county board of education and for a time  
16 equal to the school term of the county for the year. In all  
17 such schools it shall be the duty of the principal or other  
18 person in control, upon the request of the county superin-  
19 tendent of schools, to furnish to the county board of educa-  
20 tion such information and records as may be required with  
21 respect to attendance, instruction, and progress of pupils  
22 enrolled between the ages of seven and sixteen years;

23      *Exemption B—Instruction in Home or Other Approved*  
24 *Place.* Such instruction shall be in the home of such child or  
25 children or at some other place approved by the county board  
26 of education and for a time equal to the school term of the  
27 county. The instruction in such cases shall be conducted  
28 by a person or persons who, in the judgment of the county  
29 superintendent and county board of education, are qualified  
30 to give instruction in subjects required to be taught in the  
31 free elementary schools of the state. It shall be the duty of  
32 the person or persons giving the instruction, upon request  
33 of the county superintendent, to furnish to the county board  
34 of education, such information and records as may be re-  
35 quired from time to time with respect to attendance, instruc-  
36 tion, and progress of pupils enrolled between the ages of  
37 seven and sixteen years receiving such instruction;

38      *Exemption C—Physical or Mental Incapacity.* Physical or  
39 mental incapacity shall consist of incapacity for school at-  
40 tendance and the performance of school work. In all cases  
41 of prolonged absence from school due to incapacity of the  
42 child to attend, the written statement of a licensed physician  
43 or authorized school nurse shall be required under the pro-  
44 visions of this article;

45      *Exemption D—Residence More Than Two Miles from School*  
46 *or School Bus Route.* The distance of residence from a school,  
47 or school bus route providing free transportation, shall be  
48 reckoned by the shortest practicable road or path, which  
49 contemplates travel through fields by right of permission  
50 from the land holders or their agents. It shall be the duty  
51 of the county board of education, subject to written consent  
52 of land holders, or their agents, to provide and maintain



53 safe footbridges across streams off the public highways  
54 where such are required for the safety and welfare of  
55 pupils, whose mode of travel from home to school or to  
56 school bus route, must necessarily be other than along the  
57 public highway in order for said road or path to be not  
58 over two miles from home to school or to school bus pro-  
59 viding free transportation;

60 Exemption E—*Hazardous Conditions*. Conditions rendering  
61 school attendance impossible or hazardous to the life, health,  
62 or safety of the child;

63 Exemption F—*High School Graduation*. Such exemption  
64 shall consist of regular graduation from a standard senior  
65 high school;

66 Exemption G—*Granting of Work Permits*. The county su-  
67 perintendent may, after due investigation, grant work per-  
68 mits to youths under sixteen years of age, subject to state  
69 and federal labor laws and regulations: *Provided*, That a  
70 work permit may not be granted on behalf of any youth of  
71 normal intelligence who has not completed the eighth grade  
72 of school;

73 Exemption H—*Serious Illness or Death in the Immediate*  
74 *Family of the Pupil*. It is expected that the county attend-  
75 ance director will ascertain the facts in all cases of such  
76 absences about which information is inadequate and report  
77 same to the county superintendent of schools;

78 Exemption I—*Destitution in the Home*. Exemption based  
79 on a condition of extreme destitution in the home may be  
80 granted only upon the written recommendation of the coun-  
81 ty attendance director to the county superintendent fol-  
81a lowing careful investigation of the case. A copy of the re-  
82 port confirming such condition and school exemption shall  
83 be placed with the county director of public assistance. This  
84 enactment contemplates every reasonable effort that may  
85 properly be taken on the part of both school and public as-  
86 sistance authorities for the relief of home conditions officially  
87 recognized as being so destitute as to deprive children of  
88 the privilege of school attendance. Exemption for this  
89 cause shall not be allowed when such destitution is relieved  
90 through public or private means;

91 Exemption J—*Church Ordinances; Observance of Regu-*  
92 *lar Church Ordinances*. The county board of education may

93 approve exemption for religious instruction upon written  
94 request of the person having legal or actual charge of a  
95 child or children: *Provided, however,* That such exemption  
96 shall be subject to the rules and regulations prescribed by  
97 the county superintendent and approved by the county  
98 board of education.

99 The completion of the eighth grade shall not exempt any  
100 child under sixteen years of age from the compulsory at-  
101 tendance provision of this article: *Provided,* That  
102 there is a public high school or other public school of ad-  
103 vanced grades or a school bus providing free transportation  
104 to any such school the route of which is within two miles of the  
105 child's home by the shortest practicable route or path as  
106 hereinbefore specified under exemption D of this sec-  
107 tion.

108 Any person who, after due notice has been served upon  
109 him as hereinafter provided, shall fail to cause a child or  
110 children in his legal or actual charge to attend school as  
111 hereinbefore provided, shall be guilty of a misdemeanor and  
112 shall, upon conviction thereof, be fined not less than three  
113 nor more than twenty dollars together with the costs of  
114 prosecution, or confined in jail not less than five nor more  
115 than twenty days. Every day a child is out of school con-  
116 trary to the provisions of this article shall constitute a  
117 separate offense. Justices of the peace shall have jurisdic-  
118 tion of offenses under this section.

119 Whenever a person accused of violating any of the pro-  
120 visions of this article has been tried and acquitted, the cost  
121 of prosecution shall be paid by the county board of educa-  
122 tion out of the maintenance fund of the county.

Sec. 2. *County Director of School Attendance; Appoint-  
2 ment; Assistants; Qualifications; Removal; Powers; Salary  
3 and Traveling Expenses; Duties.* The county board of educa-  
4 tion of every county shall, not later than August first of each  
5 year, appoint a county director of school attendance and fix  
6 his salary. Such person shall have the written recommendation  
7 of the county superintendent for the position. Assistant at-  
8 tendance directors, if in the judgment of the board of educa-  
9 tion such are to be appointed, shall be selected in like man-  
10 ner: *Provided, however,* That the number of assistant attend-

11   ance directors and the salaries fixed for them by the county  
12   board of education shall be subject to the approval of the  
13   state board of school finance. The county board of  
14   education may set up such special or professional quali-  
15   fications for attendance directors as are deemed expe-  
16   dient and proper. Attendance directors, before entering  
17   upon the duties of office, shall qualify as such including the  
18   special or professional qualifications set up and approved  
19   by a county board of education, and shall carry out the  
20   attendance provisions of this article under the direction of  
21   the county superintendent as agent for the county board of  
22   education.

23   The power of removal of the county attendance director or  
24   an assistant attendance director shall rest with the county  
25   board of education: *Provided, however,* That reasons for con-  
26   templated dismissal shall be reduced to writing, a copy of  
27   which shall be furnished the director in question with oppor-  
28   tunity to be heard in his own behalf by the county board of  
29   education. The decision of the county board of education shall  
30   be final.

31   The county attendance director shall diligently promote  
32   regular school attendance. He shall ascertain reasons for inex-  
33   cusable absences from school of pupils of compulsory school  
34   ages as defined under this act, and shall take such steps as are,  
35   in his discretion, best calculated to correct attitudes of parents  
36   and pupils which result in absences which investigation  
37   proves were possibly avoidable even though not clearly in  
38   violation of law.

39   If it is found that absence from school is in violation of law,  
40   the attendance director, in the case of first offense that school  
41   year, shall serve immediate written notice to the parent, guard-  
42   ian, or custodian of such child that the attendance of such  
43   child at school is required; and if the parent, guardian, or cus-  
44   todian does not immediately comply with the provisions of this  
45   article, then such attendance director shall make complaint  
46   against such parent, guardian, or custodian before a justice  
47   of the peace of the county: *Provided,* That for a subsequent  
48   offense in any school year no such notice shall be required.

49   When any doubt exists as to the age of a child absent from  
50   school, the attendance director shall have authority to require  
51   a properly attested birth certificate or an affidavit from the

52 parent, guardian, or custodian of such child, stating age of  
53 such child. The county attendance director, or his assistant,  
54 shall in the performance of his duties, as such officer, have  
55 authority to visit or enter any office, factory, or business  
56 house employing children; he shall also have the authority to  
57 arrest without warrant any child absent from school in vio-  
58 lation of the provisions of this article, and to place such child  
59 in the school in which such child is or should be enrolled.

60 The attendance directors shall be paid a monthly salary  
61 from the maintenance fund; but in no case shall payment be  
62 made of the monthly salary until the attendance director has  
63 filed with the county superintendent and county board of  
64 education by sworn statement a monthly report showing ac-  
65 tivities of his office with respect to the number of truancy cases  
66 investigated and the time actually spent in performing school  
67 attendance duties in the county for the month. In addition  
68 to the monthly salary an attendance officer may be reimbursed  
69 for necessary travel expense, not to exceed five cents per mile  
70 incurred in the performance of his official duties. Amounts  
71 allowed for travel expense shall be paid from the maintenance  
72 fund upon presentation of itemized, sworn statements counter-  
73 signed and approved by county superintendents of schools.  
74 An attendance director may not be paid more than twenty-five  
75 dollars in any month for travel. The salary and travel ex-  
76 pense of an attendance director may be paid only for those  
77 months school is in session.

78 The county attendance director shall be subject to direction  
79 by the county superintendent acting on behalf of the board.  
80 He shall devote full time to his duties as a school official dur-  
81 ing the months school is in session and shall be responsible  
82 for the efficient administration of attendance in his county.  
83 In addition to his duties directly relating to the administra-  
84 tion of attendance, the county attendance director shall also  
85 perform the following duties:

86 (a) Assist in directing the taking of the school census to  
87 see that it is taken at the time and in the manner provided  
88 by law;

89 (b) Provide each teacher of school at the opening of the  
90 term with a copy of the school census as taken for the previous  
91 year for that particular school;

- 92 (c) Advise with teachers on the comparison of enumera-  
93 tion and enrollment for the detection of possible delinquency;  
94 (d) Cooperate with existing state and federal agen-  
95 cies charged with the enforcement of child labor laws;  
96 (e) Prepare a report for submission by the county super-  
97 intendent to the state superintendent of schools on enforcement  
98 of compulsory attendance, and the cost thereof, at such times  
99 and in such detail as may be required; also, file with the county  
100 superintendent and county board of education at the close of  
101 each month a report showing activities of his office and the  
102 status of attendance in the county at the time;  
103 (f) Promote attendance in the county by the compilation  
104 of data for schools and by furnishing suggestions and recom-  
105 mendations for publication through school bulletins and the  
106 press, or for such purposes as the county superintendent may  
107 direct;  
108 (g) Participate in school functions such as Parent-  
109 Teacher associations, civic meetings, club meetings, and  
110 teachers' conferences by way of encouraging attendance and  
111 thereby promoting greater school efficiency;  
112 (h) Assist in such other ways as the county superintend-  
113 ent and/or board may direct for improving of school at-  
114 tendance.

Sec. 3. *Reports by Teachers of Truancy Cases.* It shall be  
2 the duty of all teachers of one-room schools and all principals  
3 of two or more rooms to make prompt reports to the county  
4 attendance director, or proper assistant, of all cases of truancy  
5 arising within the community served by the school. Said teach-  
6 ers and principals shall report on the form prescribed by the  
7 state superintendent for such purpose, or by telephone, or in  
8 person, the name and residence of any parent, guardian or  
9 custodian of a child enrolled in school between the age of  
10 seven and sixteen years who is or has been absent from school,  
11 and indicate whether such absence was or is without legal  
12 exemption if such information is in possession of the teacher  
13 or principal reporting.

14 It shall also be the duty of each said teacher and each said  
15 principal to ascertain and report promptly the name of any  
16 parent, guardian, or custodian of any child of compulsory  
17 school age, as herein defined, who belongs to the school re-

18 porting and has not enrolled in any school that year. By  
19 way of ascertaining the status of school attendance each said  
20 teacher and principal shall compare the school enumeration  
21 list with the school enrollment at the opening of the school  
22 term, and each month thereafter, or as directed by the county  
23 superintendent of schools, and report the same to the county  
24 attendance director: *Provided*, That any child belonging to  
25 a particular school subdistrict, but who is at the time enrolled  
26 in public school or other school outside the same shall be  
27 considered as belonging to the school in which enrolled and  
28 will, therefore, be included only in the report of attendance  
29 from the school in which said child is enrolled at the time.

Sec. 4. *Failure by County Attendance Director to Perform*  
2 *Duties; Penalty.* Any county attendance director or other  
3 person upon whom a duty is imposed under provisions of this  
4 article, who refuses or neglects to perform any duty or duties  
5 so imposed upon him, shall be guilty of a misdemeanor, and  
6 upon conviction thereof, shall be fined not less than five nor  
7 more than fifty dollars, and may be imprisoned not to exceed  
8 thirty days. In addition thereto, said director, having been  
9 convicted of refusal or negligence in the performance of duty  
10 as imposed by this article shall be subject to removal from  
11 office or position at the discretion of the county board of  
12 education.

Sec. 5. *Aiding or Abetting Violations of Compulsory At-*  
2 *tendance; Penalty.* Any person who induces or attempts to  
3 induce any child unlawfully to absent himself from school, or  
4 who harbours or employs any child of compulsory school age  
5 while the school to which he belongs and which he is required  
6 to attend is in session, or who employs such child within the  
7 term of such school on any day such school is in session with-  
8 out the written permission of the county superintendent of  
9 schools, or for a longer period than such work permit may  
10 specify shall be guilty of a misdemeanor; and, upon convic-  
11 tion thereof, shall be fined not less than twenty-five nor more  
12 than fifty dollars and may be confined in jail not less than  
13 ten nor more than thirty days.

Sec. 6. *Report and Disposition of Fines Collected.* All fines  
2 collected under provisions of this article shall be paid over at

3 once by the justice, or other proper official having jurisdiction  
4 in the case, to the sheriff and by him immediately credited to  
5 the county maintenance fund; and the county attendance di-  
6 rector shall file with the county superintendent and sheriff  
7 on the last day of each month an itemized statement of all  
8 fines imposed as herein provided.

Sec. 7. This section is repealed.

Sec. 8. *Continuation and Part-Time Schools; Evening  
2 Schools and Classes; Provisions of Act Severable; Inconsistent  
3 Acts Repealed.* County boards of education shall have author-  
4 ity, subject to the rules and regulations of the state board of  
5 education and the state superintendent of free schools, to es-  
6 tablish and maintain continuation and part-time schools, and  
7 evening schools or classes.

8 If any part of this act for any reason is declared unconsti-  
9 tutional the decision of the court shall not affect the validity  
10 of any remaining portion.

11 All existing provisions of law inconsistent with this act  
12 are hereby repealed.

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## CHAPTER 49

(House Bill No. 277—By Mr. Taylor)

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 amended by chapter eight, acts of the Legislature, first extraordinary session, one thousand nine hundred thirty-three, and as last amended by chapter sixty, acts of the Legislature, regular session, one thousand nine hundred thirty-five, relating to the authority of county boards of education, and authorizing the purchase of insurance against negligence.

[Passed March 10, 1939; in effect from passage. Approved by the Governor.]

### Article 5. District Board of Education.

#### Section

13. General control of schools; consolidation; transportation of pupils.  
*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 amended by chapter eight, acts of the Legislature, first extraordinary session, one thousand nine hundred thirty-three, and as last amended by chapter sixty, acts of the Legislature, regular session, one thousand nine hundred thirty-five, be amended and reenacted to read as follows:

Section 13. *General Control of Schools; Consolidation;*

2 *Transportation of Pupils.* The boards, subject to the provisions  
3 of this chapter and the rules and regulations of the state  
4 board, shall have authority:

5 (1) To control and manage all of the schools and school  
6 interests of the county;

7 (2) To establish needed high schools;

8 (3) To close any school which is unnecessary and to assign  
9 the pupils thereof to other schools;

10 (4) To consolidate schools;

11 (5) To close any elementary school whose average daily  
12 attendance falls below twenty pupils for two months in suc-  
13 cession, and send the pupils to other schools in the district  
14 or to schools in adjoining districts. The compensation of  
15 teachers in schools so closed shall cease;

16 (6) To provide at public expense adequate means of trans-  
17 portation for all children of school age who live more than two  
18 miles distant from school by the nearest available road or path;

19 (7) To provide at public expense for insurance against  
20 the negligence of the drivers of school busses, trucks, or other  
21 vehicles operated by the board; and if the transportation of  
22 pupils be let out to contract, then the contract therefor shall  
23 provide that the contractor shall carry insurance against negli-  
24 gence in such an amount as the board shall specify.

25 The board of any district may expend under such regula-  
26 tions as it establishes for each child an amount not to exceed  
27 the proportion of all school funds of the district that each  
28 child would be entitled to receive if all the funds were dis-  
29 tributed equally among all the children of school age in the  
30 district upon a per capita basis. No changes in textbooks  
31 except those provided by general law shall be made as a  
32 result of the passage of this act: *Provided, however,* That at  
33 least one year of instruction in the history of the state of  
34 West Virginia shall be given prior to the eighth grade.



## CHAPTER 50

(Senate Bill No. 62—By Mr. Smith, by request)

AN ACT to amend article seven, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as last amended, by amending and reenacting sections ten, eleven, twelve and thirteen thereof, and by adding thereto a new section designated as section twelve-a, relating to the enumeration of the physically and mentally handicapped and the illiterate.

[Passed February 6, 1939; in effect ninety days from passage. Approved by the Governor.]

### Article 7. Teachers.

#### Section

10. Enumeration of children of school age.
11. Children included in enumeration; classification.
12. Enumeration report; when county superintendent to have enumeration taken; payment of enumerator.
- 12-a. Enumeration of mentally or physically handicapped and illiterates.
13. Record and report of enumeration.

*Be it enacted by the Legislature of West Virginia:*

That article seven, chapter eighteen, of the code of West Virginia, one thousand nine hundred thirty-one, as last amended, be amended by amending and reenacting sections ten, eleven, twelve and thirteen thereof, and by adding thereto a new section designated as section twelve-a, all to read as follows:

Section 10. *Enumeration of Children of School Age.* The  
2 county superintendent shall require a school enumeration to  
3 be taken on or before the first day of October of each year.  
4 The enumeration shall distinguish between male and female,  
5 and between white and colored. It shall be taken by the  
6 teachers of the county without compensation therefor, on a  
7 form prescribed by the state superintendent of schools.

Sec. 11. *Children Included in Enumeration; Classification.*  
2 The school enumeration shall include all children and youths  
3 of ages four to twenty years, inclusive, as of the first day of  
4 September of the year in which taken, and shall classify them  
5 in groups according to years of age, each year to form a  
6 separate group.

2     *Sec. 12. Enumeration Report; When County Superintendent to Have Enumeration Taken; Payment of Enumerator.*  
3     The person responsible for making the school enumeration  
4     report shall verify the same, and shall accompany each such  
5     report with an affidavit that reasonable diligence was exer-  
6     cised in its preparation, and that he believes the same to be  
7     accurate. He shall deliver the report to the county superin-  
8     tendent not later than the first day of October. If he fails  
9     to do so, or if the report is found to be incomplete or in-  
10    accurate, the county superintendent shall deduct from the  
11    monthly salary of such person an amount sufficient to de-  
12    fray the expenses of a proper enumeration, and shall employ  
13    a competent person to make a prompt and accurate report.  
14    In such cases, the person so employed shall receive reasonable  
15    compensation for time actually necessary to prepare the re-  
16    port. Payment shall be made from the teachers' fund.

2     *Sec. 12-a. Enumeration of Mentally or Physically Handi-*  
3     *capped and Illiterates.* At the time of taking the school enu-  
4     meration teachers shall ascertain those on the enumeration  
5     list and also those beyond the school enumeration age who  
6     are mentally or physically handicapped, and those who are  
7     illiterate, and shall report all such persons on a special form  
8     prescribed by the state superintendent of schools. The special  
9     form shall designate the ages to be reported, and shall provide  
10    for a classification of the disabilities of handicapped persons  
11    under such headings as are considered proper. The report  
12    shall distinguish between male and female, and between white  
13    and colored. It shall be verified by affidavit affirming reason-  
14    able diligence and accuracy in its preparation and shall be  
15    delivered to the county superintendent with the school enu-  
16    meration.

2     *Sec. 13. Record and Report of Enumeration.* The county  
3     superintendent shall keep in his office a record of the school  
4     enumeration, and shall annually, on or before the fifteenth  
5     day of November, transmit a summary of such enumeration,  
6     and a summary of the enumeration required by section  
7     twelve-a of this article, to the state superintendent of schools,  
8     on forms prescribed by the state superintendent for the  
9     purpose.

## CHAPTER 51

(House Bill No. 204—By Mr. Speaker, Mr. Thomas)

AN ACT to provide free textbooks for pupils in the free and private schools of the state whose parents are unable to provide same.

[Passed March 9, 1939; in effect ninety days from passage. Approved by the Governor.]

### Section

1. Board of education to furnish textbooks to pupils whose parents are unable to provide same.
2. Board of school finance to distribute funds for purchasing of free textbooks.
3. How amount of money a county shall receive to be determined.
4. "Textbook aid account"; transfer of surplus to free textbook account; expenditures from.
5. Rules and regulations for care, distribution and use of free textbooks.

*Be it enacted by the Legislature of West Virginia:*

Section 1. *Board of Education to Furnish Textbooks to Pupils Whose Parents are Unable to Provide Same.* The board of education of each county shall provide the textbooks to be used in the free schools for the pupils of such schools whose parents, in the judgment of the board, are unable to provide the same; such textbooks shall be those adopted by the state board of education.

Sec. 2. *Board of School Finance to Distribute Funds for Purchasing of Free Textbooks.* In accordance with the provisions of this act, the board of school finance shall distribute among the several counties of the state the amounts made available under Acct. 6408 of the Budget Bill of one thousand nine hundred thirty-nine—one thousand nine hundred forty, and such other amounts as the Legislature may provide. The board of education of each county upon application of the proper authorities of any private school may likewise provide textbooks for the use of pupils therein in like manner as if such pupils were attending the free schools.

Sec. 3. *How Amount of Money a County Shall Receive to be Determined.* The amount of money that a county shall re-

3 ceive under the provisions of this act shall be determined as  
4 follows:

5 (1) By multiplying the number of weighted pupils for the  
6 county as determined under section eight of an act of the  
7 Legislature, regular session, one thousand nine hundred  
8 thirty-nine, known and designated as house bill number one,  
9 by four-tenths.

10 (2) Any additional funds available after disbursement un-  
11 der number one above, shall be disbursed to the several  
12 counties in the proportion that the number of weighted pu-  
13 pils in a county bears to the total number of weighted pupils  
14 in all counties.

Sec. 4. "*Textbook Aid Account*"; *Transfer of Surplus to*  
2 *Free Textbook Account; Expenditures From.* Except as pro-  
3 vided otherwise in this section, the money allocated to a county  
4 board of education under this act shall be kept by such county  
5 board in a separate account to be used for no other purpose,  
6 and to be known as the "Textbook Aid Account".

7 If, after two years of operation under this act, any textbook  
8 aid account shall show a surplus in excess of one dollar per  
9 each weighted pupil in the public schools of the county, such  
10 excess shall be transferred to a "Free Textbook Account" of  
11 the county. Expenditures from the free textbook account  
12 may be made at the discretion of the county board of educa-  
13 tion for the purchase of free textbooks irrespective of the  
14 ability or inability of the parents of the pupils to provide  
15 textbooks. Any county board of education which, at the time  
16 this act becomes effective, is and has been furnishing free  
17 textbooks irrespective of the ability or inability of the parents  
18 of the pupils to provide textbooks may transfer the money  
19 allocated for such county's "Textbook Aid Account" to its  
20 "Free Textbook Account" at the discretion of the county  
21 board of education and shall not be subject to the waiting  
22 period of two years nor to the condition of a surplus in its  
23 textbook aid account as provided above in this section.

Sec. 5. *Rules and Regulations for Care, Distribution*  
2 *and Use of Free Textbooks; Board of Education to Make*  
3 *Reports.* The board of school finance shall have author-  
4 ity to prescribe rules and regulations governing the care,

5 distribution, and use of textbooks provided under this act, in-  
6 cluding their rebinding and reconditioning, replacement, and  
7 return, storage facilities, and such other measures as may be  
8 necessary for the most efficient and economical administration  
9 of this act: *Provided, however,* That no used textbooks shall  
10 be transferred from white schools to negro schools, or from  
11 negro schools to white schools.

12 The board of school finance is further authorized to pre-  
13 scribe and require reports to be made by the various county  
14 boards of education concerning the expenditures and distri-  
15 butions and conditions of inventories at such time and in  
16 such form as the board may require.

17 The board of school finance may withhold the allotment  
18 to any county, under this act, for the violation of the rules  
19 and regulations herein authorized.

20 If any provisions of this act are declared unconstitutional  
21 or the applicability thereof to any person or circumstances is  
22 held invalid, the constitutionality of the remainder of the act  
23 and the applicability thereof to other persons and circum-  
24 stances shall not be affected thereby.

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## CHAPTER 52

(House Bill No. 205—By Mr. Speaker, Mr. Thomas)

AN ACT to amend section twenty-one, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to free textbooks.

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[Passed March 8, 1939; in effect ninety days from passage. Approved by the Governor.]

### Article 5. District Board of Education.

#### Section

#### 21. Free textbooks.

*Be it enacted by the Legislature of West Virginia:*

That section twenty-one, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended to read as follows:

Section 21. *Free Textbooks.* The board of education of  
2 every county may purchase the necessary textbooks to be used

3 in the free schools by the pupils thereof, and such textbooks  
4 shall be those adopted by the state board of education. If a  
5 county board of education determines to purchase and fur-  
6 nish free to such pupils the prescribed textbooks, it shall  
7 enter an order to that effect upon its records and shall cause  
8 such books to be purchased and kept in charge by the superin-  
9 tendent and furnished to the pupils of the free schools of the  
10 county as hereinafter provided. All such books shall be fur-  
11 nished by the board as prescribed by law and purchased at  
12 the net wholesale price.

13 In such case, at the commencement of every term, the su-  
14 perintendent shall deliver to the teachers thereof such books  
15 as may be necessary for the use of the several pupils therein  
16 for the ensuing term of school and take from them receipts  
17 showing the number and kind of books so received. It shall  
18 be the duty of such teachers to take charge of such books  
19 and to distribute them among the pupils of their schools as  
20 needed; and such teachers shall have and exercise general  
21 control of such books, and at the close of such term and be-  
22 fore receiving an order for salary for the last month of such  
23 term, shall collect and gather together all the books so used  
24 and deliver them to the superintendent.

25 If any of the books delivered to any pupil shall be un-  
26 necessarily injured or destroyed they shall be replaced by  
27 the pupil who injured or destroyed them.

## CHAPTER 53

(House Bill No. 303—By Mr. Speaker, Mr. Thomas)

AN ACT to amend and reenact section one, article seven, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, relating to the appointment and contracts of principals and teachers, and providing penalties.

[Passed March 11, 1939; in effect July 1, 1940. Approved by the Governor.]

### Article 7. Teachers.

#### Section

1. Appointment of teachers; contracts continuing; how terminated;

failure of teacher to perform contract or violation thereof; when act effective.

*Be it enacted by the Legislature of West Virginia:*

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

Section 1. *Appointment of Teachers; Contracts Continuing;*

2 *How Terminated; Failure of Teacher to Perform Contract or*  
3 *Violation Thereof; When Act Effective.* The board of educa-  
4 tion shall, upon appointing teachers pursuant to section four,  
5 article five of this chapter, fix their salaries as provided by  
6 section two of this article.

7 Before entering upon their duties, all teachers shall execute  
8 a contract with their boards of education, which contract shall  
9 state the salary to be paid and shall be in the form prescribed  
10 by the state superintendent of schools. Every such contract  
11 shall be signed by the teacher and by the president and secre-  
12 tary of the board of education, and when so signed shall be  
13 filed, together with the certificate of the teacher, by the secre-  
14 tary in the office of the board.

15 A teacher's contract, under this section, shall be a continu-  
16 ing contract of employment and shall remain in full force and  
17 effect except as modified by mutual consent of the school board  
18 and the teacher, unless and until terminated with written no-  
19 tice, stating cause or causes, to the teacher, by a majority vote  
20 of the full membership of the board before April first of the  
21 then current year, or by written resignation of the teacher be-  
22 fore that date. Such termination shall take effect at the close  
23 of the school year in which the contract is so terminated: *Pro-*  
24 *vided, however,* That the contract may be terminated at any  
25 time by mutual consent of the school board and the teacher,  
26 and that this section shall not affect the powers of a school  
27 board to suspend or dismiss a principal or teacher pursuant to  
28 section six of this article: *Provided further,* That a continu-  
29 ing contract shall not operate to prevent a teacher's dismissal  
30 based upon the lack of need for the teacher's services pursuant  
31 to the provisions of law relating to the allocation of teachers  
32 and pupil-teacher ratios. But in case of such dismissal, the  
33 teachers so dismissed shall be placed upon a preferred list in

34 the order of their length of service, and the school board shall  
35 give due consideration to such list and order if and when  
36 vacancies or need occur. A superintendent shall not be deemed  
37 a teacher within the meaning of this paragraph.

38 Any teacher who fails to fulfill his contract with the board,  
39 unless prevented from so doing by personal illness or other  
40 just cause, or unless released from such contract by the board,  
41 or who violates any lawful provision thereof, shall be dis-  
42 qualified to teach in any other public school in the state for  
43 the period of the next ensuing school year: *Provided, how-*  
44 *ever,* That marriage of a teacher shall not be considered a  
45 failure to fulfill, or violation of, the contract: *Provided, fur-*  
46 *ther,* That this act shall not become effective until on, or af-  
47 ter July one, one thousand nine hundred forty.

## CHAPTER 54

(House Bill No. 200—By Mr. Hopkins)

AN ACT to amend chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, by adding article seven-a, establishing a retirement system for aged and incapacitated teachers in the employ of county boards of education, and providing for the administration thereof.

[Passed March 10, 1939; in effect ninety days from passage. Approved by the Governor.]

### Article 7-a. State Teachers' Retirement Fund.

#### Section

1. Fund established; sources; custodian of fund.
2. Retirement fund board; powers and duties.
3. Board to make and enforce rules.
4. Board to meet at least once every four months.
5. When teacher is entitled to retire.
6. Retirement salary; amount; when fund pro rated.
7. Retirement salary to cease upon reemployment as teacher.
8. Teacher to draw only one retirement salary; county boards may supplement salaries or pay retirement benefits to other teachers.

*Be it enacted by the Legislature of West Virginia:*

That chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, be amended by adding article seven-a, as follows:

#### Section 1. *Fund Established; Sources; Custodian of Fund.*

- 2 There is hereby established a "State Teachers' Retirement



3 Fund'', which shall be made up of all moneys received from  
4 the following sources, or derived in the following manner:  
5 (1) Appropriations made by the Legislature from time  
6 to time to carry into effect the purposes of this article;  
7 (2) The income and interest derived from the investment  
8 of moneys contained in such fund;  
9 (3) All donations, legacies, gifts and bequests which shall  
10 be made to such fund, and all moneys which shall be obtained  
11 or contributed for the same purpose from any other sources.  
12 The treasurer of the state of West Virginia shall be cus-  
13 todian of the "State Teachers' Retirement Fund".

Sec. 2. *Retirement Fund Board; Powers and Duties.* The  
2 state board of education shall constitute the "State Teachers'  
3 Retirement Fund Board'', hereby created. The president and  
4 secretary of the state board of education shall be president  
5 and secretary, respectively, of the state teachers' retirement  
6 fund board.

7 The state teachers' retirement fund board, subject to the  
8 provisions of this article, shall have the power, and it shall be  
9 its duty:

10 (1) To approve and allow retirement salaries to public  
11 school teachers entitled to the same under the provisions of  
12 this article;

13 (2) Through its secretary, or other officer designated by  
14 it for that purpose, to audit all claims and demands for money  
15 expended or authorized to be expended by it, and certify all  
16 claims and demands against the state teachers' retirement  
17 fund, including all retirement salary demands, to the state  
18 auditor, who shall draw his warrant therefor upon the state  
19 treasurer, payable out of said fund: *Provided*, That no de-  
20 mand shall be allowed except after resolution duly passed  
21 at a meeting of the board by a majority of its members, which  
22 adoption shall be attested by the secretary;

23 (3) To prescribe the duties of its secretary and other  
24 officials;

25 (4) To conduct investigations in all matters relating to  
26 the operation of this article, and to subpoena witnesses and  
27 compel their attendance to testify before it in respect to such  
28 matters;

29 (5) To make rules and regulations not inconsistent with  
30 the provisions of this article, which shall have the force and  
31 effect of law. Such rules and regulations shall, among other  
32 things;

33 (a) Establish a system of accounts showing the condition  
34 of the state teachers' retirement fund, and receipts and dis-  
35 bursements for and on account of such fund;

36 (b) Prescribe the form of warrants, vouchers, receipts,  
37 reports, and accounts to be used in respect to said fund;

38 (c) Provide for the conduct and regulation of the meetings  
39 of the board and the operation of the business thereof;

40 (d) Prescribe the duties of boards of education in respect  
41 to providing the state teachers' retirement fund board with  
42 information needed in administering the provisions of this  
43 article;

44 (e) Provide for the enforcement and carrying into effect  
45 of the provisions of this article.

Sec. 3. *Board to Make and Enforce Rules.* In addition to  
2 the powers hereinbefore enumerated, the state teachers' re-  
3 tirement fund board shall make and enforce all necessary  
4 and proper rules and regulations to govern the method of  
5 applying for and obtaining retirement salaries provided for  
6 in this article, and to govern the method of determining the  
7 right of each applicant to such retirement salary: *Provided,*  
8 *however,* That in all cases legal proof of all necessary facts  
9 shall be required and kept on file.

Sec. 4. *Board to Meet at Least Once Every Four Months.*  
2 The state teachers' retirement fund board shall meet at least  
3 once every four months.

Sec. 5. *When Teacher is Entitled to Retire.* Beginning  
2 July first, one thousand nine hundred thirty-nine, and there-  
3 after, every teacher, as defined in section one-a, article one,  
4 chapter eight, acts of the Legislature, first extraordinary  
5 session, one thousand nine hundred thirty-three, in the em-  
6 ploy of a county board of education, who attains the age of  
7 sixty-two years after twenty-five years teaching service, shall  
8 be entitled to retire; or, if physically or mentally incapacitated  
9 for the proper performance of the duties of teacher, may be  
10 compelled to retire by the employing board: *Provided,* That

11 not less than twenty years of such service, including the ten  
12 years immediately preceding retirement, shall have been in  
13 the publicly supported schools of West Virginia: *And, pro-*  
14 *vided further*, That the last five years of such service imme-  
15 diately preceding retirement shall have been consecutive.  
16 Upon written application of any such teacher, accompanied  
17 by such evidence of eligibility as the state teachers' retire-  
18 ment fund board may prescribe, said board shall retire such  
19 teacher.

20 For purposes of this article, each year during which a  
21 teacher taught a full term of school shall be counted as one  
22 year of service, but only one year of service credit shall be  
23 allowed for any one school year.

Sec. 6. *Retirement Salary; Amount; When Fund Pro Rated.*

2 Every teacher retired by the state teachers' retirement fund  
3 board under the provisions of this article shall receive a  
4 monthly retirement salary equal to eight-tenths of a dollar  
5 multiplied by the number of years service credited to such  
6 teacher, payable twelve months per year out of the state  
7 teachers' retirement fund in the manner specified in section  
8 two of this article: *Provided, however*, That in case the re-  
9 sources of the state teachers' retirement fund are insufficient  
10 to permit payment of this amount to each teacher so retired  
11 for any year, the state teachers' retirement fund board shall,  
12 upon the basis hereinabove set forth, prorate such funds as  
13 are available for that year among all teachers retired accord-  
14 ing to the provisions of this article, and pay to each such  
15 teacher the amount thus determined.

Sec. 7. *Retirement Salary to Cease Upon Reemployment as*

2 *Teacher*. If any teacher retired under the provisions of this  
3 article shall be reemployed in the public schools of this state,  
4 such teacher's retirement salary shall cease. No retirement  
5 salary shall be paid to any teacher in service.

Sec. 8. *Teacher to Draw Only One Retirement Salary;*

2 *County Boards May Supplement Salaries or Pay Retirement*  
3 *Benefits to Other Teachers*. No teacher shall be permitted to  
4 draw from the state, directly or indirectly, more than one re-  
5 tirement salary. Nothing in this article shall be construed,  
6 however, as to prevent county boards of education or bodies

7 of teachers from supplementing the retirement salary received  
8 by any teacher from the state, or paying retirement benefits  
9 to teachers not eligible to receive retirement salaries under  
10 the provisions of this article, in accordance with such regula-  
11 tions as the state board of education may prescribe under  
12 authority of section forty-two, article seven, chapter eighteen  
13 of the code of West Virginia, one thousand nine hundred  
14 thirty-one.

## CHAPTER 55

(House Bill No. 299—By Mr. Speaker, Mr. Thomas)

AN ACT to amend and reenact section two, article seven, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended and reenacted by chapter eleven, acts of the Legislature, first extraordinary session, one thousand nine hundred thirty-three, and by chapter forty, acts of the Legislature, second extraordinary session, one thousand nine hundred thirty-three, relating to salaries for teachers.

[Passed March 11, 1939; in effect ninety days from passage. Approved by the Governor.]

### Article 7. Teachers.

#### Section

2. Salaries for teachers; basic salaries; advanced salaries.

*Be it enacted by the Legislature of West Virginia:*

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

Section 2. *Salaries for Teachers; Basic Salaries; Advanced Salaries.* Boards of education shall fix the rates of salary to be paid teachers in accordance with the following classifications and requirements:

5 (a) Basic salaries shall be the salaries fixed for teachers  
6 who are teaching their first regular term of school. Such  
7 salaries shall be fixed according to the following schedule:

8 (1) For teachers holding certificates of the rank of second  
9 grade, not less than sixty-five dollars a month;

10 (2) For teachers holding certificates of the rank of first  
11 grade, secured by examination or on credentials not equiva-  
12 lent to a short normal course of study, not less than eighty-  
13 five dollars a month;

14 (3) For teachers who have completed the short normal  
15 course or the normal training course in an approved high  
16 school, at least five dollars a month more than the rate fixed  
17 for teachers holding certificates of the rank of first grade  
18 secured by examination;

19 (4) For teachers who have completed the diploma course  
20 of study in a standard normal school, or who have had, in  
21 the opinion of the state board of education, equivalent train-  
22 ing, at least fifteen dollars a month more than the rate fixed  
23 for teachers holding certificates of the rank of first grade  
24 secured by examination;

25 (5) For teachers with a bachelor's degree earned in an  
26 approved institution holding a collegiate elementary, first  
27 class high school, or other certificate of equal rank, at least  
28 twenty-five dollars per month more than the rate fixed for  
29 teachers holding certificates of the rank of first grade, secured  
30 by examination;

31 (6) For teachers who have received a master's degree in  
32 an institution qualified and approved to do graduate work,  
33 holding the collegiate elementary, first class high school, or  
34 other certificate of equal rank, at least thirty-five dollars a  
35 month more than the rate fixed for teachers holding certi-  
36 ficates of the rank of first grade, secured by examination;

37 (7) For teachers who have received a doctor's degree from  
38 an approved institution of university rank, at least forty-five  
39 dollars a month more than the rate fixed for teachers holding  
40 certificates of the rank of first grade, secured by examination.

41 (b) Advanced salaries shall be the salaries fixed for  
42 teachers who have taught one or more regular terms of school.  
43 Such salaries shall be fixed according to the following schedule:

44 (1) For teachers who have taught one regular term of

45 school and not more than five regular terms, the rate of  
46 salary shall be the basic salary plus at least three dollars a  
47 month for the second term; the basic salary plus at least  
48 five dollars a month for the third term; the basic salary plus  
49 at least seven dollars and fifty cents for the fourth term;  
50 and the basic salary plus at least ten dollars a month for the  
51 fifth term;

52 (2) For teachers who have taught five regular terms of  
53 school and less than ten regular terms, the rate of salary shall  
54 be at least fifteen dollars more a month than the rate of the  
55 basic salary of teachers holding similar credentials;

56 (3) For teachers who have taught ten regular terms of  
57 school or more, the rate of salary shall be at least twenty  
58 dollars a month more than the rate of the basic salary for  
59 teachers holding similar credentials.

60 If a teacher who has taught one or more terms secures a  
61 diploma in the first grade certificate course, the short normal  
62 course, the standard normal course, in an approved collegiate  
63 course, or for a master's degree, his advanced salary shall  
64 be increased by at least as much as is allowed for such prepara-  
65 tion in each case in fixing basic salaries.

66 Basic salaries shall be uniform throughout the district for  
67 teachers holding similar credentials, and advanced salaries  
68 shall be uniform throughout the district for teachers in the  
69 same classifications as to experience, and holding similar  
70 credentials. But boards of education may fix higher salaries  
71 for principals of elementary and high schools, and any teachers  
72 assigned to or employed for duties in addition to their regular  
73 teaching duties, consistent with the extra duties and responsi-  
74 bilities of said positions.

75 In determining the number of regular terms of school a  
76 teacher has taught, boards of education shall credit as regular  
77 teaching service in the United States army and navy in the  
78 world war, and active work in educational positions other  
79 than teaching, but no teacher shall be given credit for teach-  
80 ing more than one regular term in any school year. Salaries  
81 of colored teachers shall be the same as the salaries of other  
82 teachers in the same district, with the same training and  
83 experience and holding similar credentials. Any board of  
84 education failing to comply with the provisions of this para-  
85 graph may be compelled to do so by mandamus.

## CHAPTER 56

(Senate Bill No. 247—By Mr. Anderson)

AN ACT authorizing and directing the sheriffs of the various counties to transfer to the credit of the building and maintenance fund of the boards of education of said counties all unused funds collected for the retirement of school bonds for the several magisterial or independent school districts of said counties, and providing for the expenditure thereof.

[Passed March 10, 1939; in effect ninety days from passage. Approved by the Governor.]

### Section

1. Transfer by sheriff of unneeded and unexpended funds collected to retire school bonds of magisterial or independent school districts; how funds to be used and expended.

*Be it enacted by the Legislature of West Virginia:*

Section 1. *Transfer by Sheriff of Unneeded and Unexpended Funds Collected to Retire School Bonds of Magisterial or Independent School Districts; How Funds to be Used and Expended.* The sheriffs of the various counties are hereby authorized and directed to transfer to the credit of the building and maintenance fund of the boards of education of their respective counties, all funds collected in any magisterial or independent school district of their said county for the retirement of school bonds of such magisterial or independent school district, and remaining after all of such bonds shall have been retired. Said funds shall be used in the same manner as other funds now to the credit of or which may hereafter be placed to the credit of the building and maintenance fund of said respective boards of education, but such funds hereby authorized and directed to be transferred shall only be expended in the respective magisterial or independent school districts from which such funds were collected.

## CHAPTER 57

(House Bill No. 194—By Mr. Cooper)

AN ACT to amend and reenact section five, article four, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, relating to nomination of candidates for offices.

[Passed March 8, 1939: in effect ninety days from passage. Approved by the Governor.]

### Article 4. Nomination of Candidates.

#### Section

#### 5. Nomination of candidates for offices.

*Be it enacted by the Legislature of West Virginia:*

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

Section 5. *Nomination of Candidates for Offices.* At each  
2 primary election, the candidate or candidates of each political  
3 party for all offices to be filled at the ensuing general election  
4 by the voters of the entire state, of each congressional dis-  
5 trict, of each state senatorial district, of each county and of  
6 each magisterial district, in the state, shall be nominated by  
7 the voters of the different political parties, except that no  
8 candidate for judge of the supreme court of appeals or judge  
9 of any circuit or inferior court or presidential elector shall  
10 be nominated at a primary election. The person receiving the  
11 highest number of votes of each political party in all cases  
12 wherein one person only is to be elected, and the persons re-  
13 ceiving the highest number of votes, to the number to be  
14 elected, in all cases in which two or more persons are to be  
15 elected to the same office, in and throughout the political  
16 division in which the person is a candidate, and voted for as  
17 such, shall be nominated as the party candidate, or candi-  
18 dates, for the office, or offices, for which they are voted for at  
19 the primary election: *Provided, however,* That with respect to  
20 nominations of commissioners of county courts no two of such  
21 commissioners shall be nominated as the party candidates



22 from the same magisterial district where more than one such  
23 commissioner is to be so nominated at any primary election,  
24 and if two or more persons residing in the same district shall  
25 in any case receive the greater number of votes cast at such  
26 primary election, then only the one of such persons receiving  
27 the highest number shall be declared nominated as the candi-  
28 date of his party, and the person living in another district  
29 who shall receive the next highest number of votes shall be  
30 declared nominated as the candidate of his party, and so on  
31 to the next highest in another district; and in no event shall  
32 any such candidate be nominated from the same magisterial  
33 district wherein an already elected or otherwise qualified  
34 member of such county court resides and who will continue  
35 to hold office after the beginning of the term for which such  
36 nomination is made: *Provided further*, That with respect to  
37 nominations of members of a county board of education no  
38 more than two of such members shall be nominated as the  
39 party candidates from the same magisterial district where  
40 more than two such members are to be so nominated at any  
41 primary election, and if more than two persons residing in  
42 the same district shall receive the greater number of votes  
43 cast at such primary election, then only the two of such per-  
44 sons receiving the highest number shall be declared nominated  
45 as the candidates of their party, and the person or persons  
46 living in another district who shall receive the next highest  
47 or two highest number of votes, as the case may be, shall be  
48 declared so nominated, and so on to the next highest in  
49 another district; and in no event shall any such candidate or  
50 candidates be nominated from the same magisterial district  
51 wherein two already elected or otherwise qualified members  
52 of such board of education reside and who will continue to  
53 hold office after the beginning of the term for which such  
54 nomination or nominations are made, except that, one such  
55 nomination may be made for the same magisterial district  
56 wherein only one such already elected or otherwise qualified  
57 member resides and will continue to hold office as aforesaid.

## CHAPTER 58

(Senate Bill No. 273—By Mr. LaFon, Mr. President)

AN ACT to amend and reenact section four, article four, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, relating to presidential preference in general primary elections.

[Passed March 10, 1939; in effect ninety days from passage. Approved by the Governor.]

### Article 4. Nomination of Candidates.

#### Section

#### 4. Presidential preference.

*Be it enacted by the Legislature of West Virginia:*

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

Section 4. *Presidential Preference.* In presidential election years, in addition to the candidates hereinbefore required to be nominated at the general primary election, the qualified voters of each political party shall have the opportunity of voting for their choice among those aspiring to be the candidates of their respective parties for president of the United States. The names of such aspirants shall be printed on the official election ballot of their respective parties, as provided in section twelve of this article, upon the filing with the secretary of state the announcement as provided in section six of this article, and the ballot shall be marked and the vote shall be counted, canvassed and returned under the same conditions as to names, certificates and other matters, as the names and certificates of the party aspirants for the party nomination for the office of governor.

## CHAPTER 59

(House Bill No. 222—By Mr. Haldren)

AN ACT to amend and reenact section twenty-eight, article five, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, relating to time allowed employees to vote, and providing penalties.

[Passed March 11, 1939; in effect ninety days from passage. Became a law without the approval of the Governor.]

### Article 5. Conducting Election; Ascertaining and Certifying the Result.

#### Section

28. Time allowed employees to vote; penalty.

*Be it enacted by the Legislature of West Virginia:*

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

#### Section 28. *Time Allowed Employees to Vote; Penalty.* Ev-

2 ery person entitled to vote at any election who may be em-  
3 ployed by any person, company, or corporation on the day on  
4 which an election shall be held in this state, shall on written  
5 demand of such employee, be given some period of three hours,  
6 or more if necessary, between the opening and the closing of  
7 the polls, on said day, for the purpose of enabling such person  
8 to repair to the place of voting to cast his vote and return;  
9 and he shall not be liable to any penalty and no deduction  
10 from his usual salary or wages on account of such absence.

11 Any company or corporation violating the provisions of  
12 this section shall be guilty of a misdemeanor, and, upon con-  
13 viction thereof shall be fined not less than five hundred nor  
14 more than one thousand dollars. Any person who may have  
15 employees, entitled to vote, or any officer, agent or manager  
16 of any company or corporation who shall violate the provisions  
17 of this section by failure or refusal, on demand of any em-  
18 ployee or employees, to arrange time for such employee or  
19 employees, entitled to vote, to vote, or in any way prevents  
20 or attempts to prevent any employee in the employ of such

21 person, company or corporation from attending any election,  
22 or from freely exercising his right of suffrage, at any election  
23 at which he is entitled to vote, shall, in each instance, be  
24 guilty of a misdemeanor, and, upon conviction thereof, shall  
25 be fined not less than one hundred nor more than five hundred  
26 dollars, or be confined in the county jail for not to exceed  
27 sixty days, or both fined and imprisoned, in the discretion  
28 of the court.

## CHAPTER 60

(Com. Sub. for Senate Bill No. 53—Originating in the Senate Committee  
on the Judiciary)

AN ACT to amend and reenact section thirteen, article four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the entry in the land books of lands purchased at tax sales.

[Passed February 20, 1939; in effect ninety days from passage. Approved by the Governor.]

### Article 4. Assessment of Real Estate.

#### Section

13. Lands purchased at tax sale for state or by an individual.

*Be it enacted by the Legislature of West Virginia:*

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

Section 13. *Lands Purchased at Tax Sale for State or by an Individual.* Real estate purchased for the state at a sale for taxes shall not be omitted from the land books but the officer whose duty it is to make out the same, shall duly enter, classify and value annually such real estate, as though no such sale had occurred, until such real estate is redeemed or otherwise disposed of by the state, but no taxes shall be extended thereon while the same remains the property of the state; and there shall be noted on the land books by the officer whose duty it is to make out the same, opposite the name of the former owner, the time when the same was purchased by the state and for what year's taxes sold, and such officer shall continue such memorandum in the land

14 books for succeeding years and until such real estate is  
15 redeemed or otherwise disposed of by the state; the auditor  
16 shall also keep a record of such purchase. When real estate  
17 so purchased has been redeemed the officer whose duty it is  
18 to make out the land books shall note the fact therein for  
19 the year in which the redemption was made and shall  
20 classify and value the same at its true and actual value  
21 according to the rule prescribed in this chapter, and taxes  
22 shall thereafter be assessed and extended against the same;  
23 the auditor shall, in the first month of the assessment year,  
24 certify to the officer whose duty it is to make out the land  
25 books, a list of such lands in his county as have been so  
26 redeemed within the preceding year. When real estate is  
27 sold to an individual for taxes, the officer whose duty it is to  
28 make out the land books shall continue to enter, classify and  
29 value such real estate annually in the land books in the name  
30 of the former owner until the purchaser obtains a deed  
31 therefor; such officer shall then enter the real estate so  
32 purchased in the name of the purchaser and shall classify  
33 and value the same according to the rule prescribed by this  
34 chapter. The assessor in listing, classifying and valuing  
35 property sold to the state, shall list the same alphabetically  
36 in said property books in such manner, preferably at the  
37 end of the list for each district, that such valuation shall  
38 not be included in the totals certified to the levying bodies  
39 for levy purposes.

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## CHAPTER 61

(Senate Bill No. 41—By Mr. Paull)

AN ACT to extend the time for redemption of real estate sold for the nonpayment of taxes assessed and levied thereon and purchased for the state, and/or forfeited, or forfeited for non-entry, or for any other cause, and providing the method or methods of computing the amount of taxes required for the redemption of such real estate with reference to its valuation and classification, requiring certificates of redemption and reports to be made by the auditor with respect to such real estate, requiring the auditor to accept payment of such delinquent taxes and disburse the same, and providing that in making

redemption of such real estate no interests, costs, fees or penalties shall be required to be paid for any year previous to the year one thousand nine hundred thirty-three, and providing penalties for violations.

[Passed March 2, 1939; in effect from passage. Approved by the Governor.]

**Section**

1. Extension of time for redemption of real estate forfeited or sold for the nonpayment of taxes.
2. Auditor to accept and disburse tax payments.

*Be it enacted by the Legislature of West Virginia:*

Section 1. *Extension of Time for Redemption of Real Estate Forfeited or Sold for the Nonpayment of Taxes.*

Notwithstanding the provisions of section thirty, article ten, chapter eleven, and sections one and five, article three, chapter thirty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as last amended, or the provisions of any other statute, the auditor of the state of West Virginia shall permit the previous owner of any real estate, or the heirs or assigns of such previous owner, or any person having a right to a lien on such real estate, or the right for charging same with a debt, sold for the nonpayment of taxes assessed and levied thereon and purchased for the state, or certified to the state auditor as ex officio state commissioner of forfeited lands, as forfeited for non-entry on the land books of the several counties, and including real estate certified as forfeited to the former commissioners of school lands of the respective counties including real estate against which suits have been instituted, but on which no sale or confirmation of sale has been made, to redeem such real estate, provided application to redeem shall be made on or before the thirtieth day of June, one thousand nine hundred thirty-nine, by paying to the auditor of the state of West Virginia, for deposit in the state treasury, as hereinafter provided, the amount of all state, county, school district, and other district taxes and all municipal corporation taxes including such taxes as were or should have been assessed thereon for the year in which the same was sold to the state, and such taxes that should have been assessed thereon for the year or years which said real estate was omitted from the land books, together with such additional sums as would

31 have accrued thereon, by assessment and levy for all subse-  
32 quent years' taxes, and prior to such redemption, if the same  
33 had not been purchased for the state, and/or forfeited for  
34 non-entry, or forfeited for any other cause.

35 In computing the amount of taxes required for redemption  
36 of real estate under the provisions of this act, where no taxes  
37 were extended thereon by reason of the title being vested in  
38 the state, the auditor shall in all cases use the valuation and  
39 classification, if any, as shown on the property books of the  
40 county wherein such real estate is situated and placed thereon  
41 by the county assessor and/or the board of review and equali-  
42 zation; and if no such valuation and classification is shown on  
43 such property books by reason of the title being vested in the  
44 state, the auditor shall compute the amount of taxes for such  
45 year or years on the basis of the last classification and valuation  
46 placed thereon by the assessor and/or board of review and  
47 equalization, and not otherwise: *Provided, however,* That  
48 if on the first day of January of any such year or years in  
49 which no classification or valuation appears upon the prop-  
50 erty books as aforesaid, substantial improvements were made  
51 or added to such real estate or destroyed thereon, the assessor  
52 shall, upon application of any person or persons entitled to  
53 redeem such real estate, classify and place a new valuation  
54 thereon, in accordance with the rule prescribed by section  
55 one, article three of chapter eleven of the code of West Vir-  
56 ginia, one thousand nine hundred thirty-one, as amended, and  
57 certify the same to the auditor, and such new valuation and  
58 classification shall be used by the auditor in computing the  
59 amount of taxes for such year or years: *Provided further,*  
60 That if the auditor is unable to ascertain from the property  
61 books the classification of any such real estate for any year  
62 or years subsequent to one thousand nine hundred thirty-  
63 two, and no substantial improvements were added thereto or  
64 destroyed thereon so as to warrant a new valuation as herein  
65 provided, he may apply to the county assessor for a proper  
66 classification of such real estate and upon receipt of such ap-  
67 plication from the auditor the assessor shall make such investi-  
68 gation and inspection of the real estate as need be and certify  
69 to the auditor a proper classification thereof for such year or  
70 years as required, and the auditor shall be governed by such  
71 certification in computing the amount of taxes for such year

72 or years; and any assessor who shall certify a new valuation  
73 or classification of real estate for any year or years, except  
74 as in this section provided, shall be guilty of malfeasance in  
75 office and upon conviction thereof shall be fined not less than  
76 one hundred dollars and shall be removed from office.

77 In making such redemption, no interest, costs, fees or pen-  
78 alties shall be required to be paid for any year or years prior  
79 to the year one thousand nine hundred thirty-three, but for  
80 the year one thousand nine hundred thirty-three and for the  
81 years subsequent thereto such interests, costs, fees and pen-  
82 alties shall be required to be paid as provided by law.

83 When real estate is redeemed from the auditor under the  
84 provisions of this act, he shall execute certificates of re-  
85 demption in triplicate, the original to be retained in the files  
86 of his office, one copy to be delivered to the person at whose  
87 instance said real estate is redeemed, and the second copy to  
88 be mailed to the clerk of the county court of the county  
89 wherein such real estate is situated, and said clerk shall file  
90 and index the same in his office and such redemption shall  
91 be noted on the delinquency and land sales records in  
92 his office for the year or years covered by such certificate.  
93 The auditor shall also report monthly to the assessors and  
94 to the county clerks of the several counties, all redemptions  
95 permitted under the provisions of this act, and such reports  
96 shall be recorded and indexed by the county clerk in a sep-  
97 arate volume to be provided for such purpose. No fee shall  
98 be charged for such recordation, filing or notations on the  
99 records in said clerk's office.

2 *Sec. 2. Auditor to Accept and Disburse Tax Pay-*  
3 *ments.* It shall be the duty of the auditor of this state to ac-  
4 cept payment of the taxes mentioned in section one of this  
act and to disburse same as other tax moneys are disbursed.

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## CHAPTER 62

(Senate Bill No. 42—By Mr. Paull)

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AN ACT to provide a moratorium for reports required to be made  
by the state commissioner of forfeited lands and for the in-



stitution and prosecution of suits for the sale of forfeited lands.

[Passed March 2, 1939; in effect from passage. Approved by the Governor.]

**Section**

1. Moratorium for reports and suits concerning forfeited lands; exceptions.

*Be it enacted by the Legislature of West Virginia:*

Section 1. *Moratorium for Reports and Suits Concerning Forfeited Lands; Exceptions.* Notwithstanding the provisions of sections eight and ten, article three, chapter thirty-seven of the code of West Virginia, as last amended, no report shall be made by the state commissioner of forfeited land to the circuit courts of the various counties respecting forfeited lands, and no suit shall be instituted or prosecuted for the sale of forfeited lands until after the thirtieth day of June, one thousand nine hundred thirty-nine: *Provided*, That such report may be made or such suit may be instituted and prosecuted at any time at the instance and request of the former owner or owners of any particular tract or tracts of land, or of a redeemable interest or interests therein, or such report may be made or such suit may be instituted and prosecuted at any time at the express direction and order of the court.

## CHAPTER 63

(House Bill No. 244—By Mr. White)

AN ACT to amend and reenact section thirty, article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, relating to redemption from tax purchase by the state; and providing that the person redeeming real estate delinquent for nonpayment of taxes thereon may be subrogated to the lien of the state.

[Passed March 11, 1939; in effect from passage. Approved by the Governor.]

### Article 10. Sale of Real Estate for Taxes.

**Section**

30. Redemption of real estate delinquent for nonpayment of taxes and

from tax purchase by state; subrogation of the person redeeming to the lien of the state, etc.

*Be it enacted by the Legislature of West Virginia:*

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

Section 30. *Redemption of Real Estate Delinquent for Non-payment of Taxes and from Tax Purchase by State; Subrogation of the Person Redeeming to the Lien of the State, etc.*

The previous owner of any real estate so sold and purchased for the state, his heirs or assigns, or any person having a right to charge it for a debt, may, within one year from the sale thereof, redeem the same by paying into the state treasury the amount of all state, state school, county, school district, independent school district and other district taxes, and all municipal corporation taxes, with the interest due on each class of taxes at the time of such purchase, including such taxes as were or should have been assessed thereon for the year in which the same was sold and the cost of publication of such real estate in the delinquent list, together with such additional sums as would have accrued thereon for all of such taxes if the same had not been purchased for the state, with interest thereon at the rate of twelve per cent per annum from the twentieth day of January in the year following that in which the same would have accrued. If the person redeeming the real estate purchased by the state, or redeeming the real estate before the sale thereof as delinquent for the nonpayment of the taxes thereon, is a person having a right to charge it for a debt, such person shall be subrogated to the lien of the state, state school, county, school district, other district taxes, and all municipal taxes in the amount paid by such person in making any such redemption, together with interest on such amount at the rate of six per cent per annum from the time of the payment thereof until paid; and such person shall have for such amount so paid by him, together with the interest thereon, the same priority over other liens on the real estate as the lien of the state, state school, county, school district, other district taxes, and all municipal taxes, except as to other taxes then due and unpaid

34 to the state, state school, county, school district, other district  
35 taxes, and all municipal corporation taxes, or thereafter to  
36 become due to the state, state school, county, school district,  
37 other district taxes, and all municipal corporations. It shall  
38 be the duty of such lien holder, or other person having the  
39 right to charge such real estate with a debt, to file his paid  
40 receipt from the sheriff or his official certificate of redemption  
41 from the state auditor with the county clerk of the county  
42 in which such real estate is located for recordation, and such  
43 person shall, in any foreclosure, vendor's lien, general  
44 creditors' suit, or in any suit brought for the purpose of  
45 selling real estate, be entitled to have the amount paid by him  
46 in redemption of such real estate, with interest thereon, de-  
47 creed to him as such lien.

48 All acts and parts of acts inconsistent herewith are hereby  
49 repealed.

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## CHAPTER 64

(Senate Bill No. 204—By Mr. LaFon, Mr. President)

AN ACT to amend chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by amending and reenacting section nine, article one-a; section one, article two; sections one, four, seven, eight, ten and twelve-a, article three; sections one, three, five, six, eleven, twelve and fourteen, article four; sections two and four, article five; sections one, two, four, five and seventeen, article six; sections one, three and eleven, article seven; sections one, two and three, article eight; sections one and five, article nine; and section four, article ten; and by repealing sections seven to ten, inclusive, article four; section three, article six; and section four, article eight; and by adding section eleven to article one-a; sections seven-a, seven-b, seven-c, seven-d, seven-e, eight-a and eight-b to article three; section three-a to article four; section two-h to article seven; section nine to article eight-a; sections four-a and six-a to article nine;

and section one-a to article ten, all relating to the game, fish and forests of the state.

[Passed March 9, 1939; in effect ninety days from passage. Became a law without the approval of the Governor.]

#### Article

- 1-a. Director of Conservation.
2. Game Protectors.
3. General Provisions Respecting Game, Birds, Fish and Frogs.
4. Game and Fur-bearing Animals.
5. Birds and Fowls.
6. Fish and Other Aquatic Life.
7. Hunting and Fishing Licenses.
8. State Forests, Game and Fish Refuges and Public Shooting Grounds.
- 8-a. Emergency Conservation Work; Cooperation with Federal Government.
9. Forests.
10. General Criminal Provisions.

*Be it enacted by the Legislature of West Virginia:*

That chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by amending and reenacting section nine, article one-a; section one, article two; sections one, four, seven, eight, ten and twelve-a, article three; sections one, three, five, six, eleven, twelve and fourteen, article four; sections two and four, article five; sections one, two, four, five and seventeen, article six; sections one, three and eleven, article seven; sections one, two and three, article eight; sections one and five, article nine; and section four, article ten; and by repealing sections seven to ten, inclusive, article four; section three, article six, and section four, article eight; and by adding section eleven to article one-a; sections seven-a, seven-b, seven-c, seven-d, seven-e, eight-a and eight-b to article three; section three-a to article four; section two-h to article seven; section nine to article eight-a; sections four-a and six-a to article nine; and section one-a to article ten, all to read as follows:

#### Article 1-a. Director of Conservation.

##### Section

9. Legal services by attorney general and prosecuting attorneys; employment of other attorneys.
11. Cooperation with federal government in wildlife projects.

Section 9. *Legal Services by Attorney General and Prosecuting Attorneys; Employment of other Attorneys.* The attorney general and his assistants and the prosecuting attorneys of

4 the several counties shall render to the director, without ad-  
5 ditional compensation, such legal services as he shall require  
6 of them in the discharge of his duties under the provisions of  
7 this chapter.

8 The director may, in an emergency and with prior ap-  
9 proval of the attorney general, employ an attorney to act  
10 in proceedings wherein criminal charges are brought against  
11 an employee or appointee of the commission because of  
12 action taken in the line of duty. Not to exceed one hun-  
13 dred dollars shall be so expended by the director in any one  
14 case.

Sec. 11. *Cooperation With Federal Government in Wild-*  
2 *life Projects.* The state of West Virginia hereby assents to the  
3 provisions of the act of Congress entitled "An Act to provide  
4 that the United States shall aid the states in wildlife restora-  
5 tion projects and for other purposes," approved September  
6 second, one thousand nine hundred thirty-seven, (Public No.  
7 four hundred fifteen, seventy-fifth Congress) and the director  
8 is hereby authorized, empowered and directed to perform such  
9 acts as may be necessary to the conduct and establishment of  
10 cooperative wildlife restoration projects, as defined in said  
11 act of Congress, in compliance with said act and with rules  
12 and regulations promulgated by the Secretary of Agri-  
13 culture thereunder. Funds accruing to the state from  
14 license fees paid by hunters shall not be diverted for any  
15 purpose other than the activities in this chapter.

## Article 2. Game Protectors.

### Section

1. Appointment; compensation; qualifications; uniforms.

Section 1. *Appointment; Compensation; Qualifications;*  
2 *Uniforms.* The director shall, in accordance with other pro-  
3 visions of general law relating to the appointment and  
4 compensation of the personnel of the state government, ap-  
5 point game protectors and fix their compensation. Game  
6 protectors shall serve during the will and pleasure of the  
7 director. The director may also appoint special game pro-  
8 tectors to serve for such periods of time as may be neces-  
9 sary.

10 Persons appointed as game protectors shall be men in-

11 terested and experienced in the work for which they are  
12 selected. They shall be selected as follows:

13 1. An applicant shall apply to the director for appoint-  
14 ment upon blanks furnished for that purpose by the di-  
15 rector;

16 2. The application shall be accompanied by the certificates  
17 of the judge of the circuit court, the sheriff, and the prosecut-  
18 ing attorney of the county in which the applicant resides to  
19 the effect that the applicant is a person of good moral  
20 character, not of intemperate habits, and has never been  
21 convicted of a felony and not more than once of a mis-  
22 demeanor;

23 3. The director shall examine the applicant with respect  
24 to his qualifications and fitness for the position. No person  
25 shall be appointed unless he passes the examination in a  
26 satisfactory manner. The director shall prescribe the kind,  
27 style and material of uniforms to be worn by game pro-  
28 tectors. Uniforms and other equipment furnished to game  
29 protectors shall be and remain the property of the state

### Article 3. General Provisions Respecting Game, Birds, Fish and Frogs.

#### Section

1. State ownership of game, birds, fish and frogs.
4. Unlawful acts on Sunday.
7. Possession of wild animals or wild birds, etc.
- 7-a. Permit for scientific or propagation purposes.
- 7-b. Permit for keeping of pets.
- 7-c. Permits for roadside menageries.
- 7-d. Permits; expiration and revocation; sales under.
- 7-e. Dealers in furs and pelts; licenses and permits; reports to di-  
rector; revocation of license.
8. Open seasons and bag limits; publication; change or suspension of  
open seasons; sectional meetings.
- 8-a. Suspension of hunting season in emergencies.
- 8-b. Penalties under sections eight and eight-a.
10. Sale of game, birds, fish or frogs.
- 12-a. License for private game preserve for purpose of propagating  
game for commercial purposes.

#### Section 1. *State Ownership of Game, Birds, Fish and Frogs.*

- 2 The ownership of, and the title to, all wild animals, wild birds,  
3 both resident and migratory, and all fish and frogs, and all  
4 other aquatic life, in the state of West Virginia, are hereby  
5 declared to be in the state, as trustee for the people, and no such  
6 wild animals, wild birds, fish or frogs, or other aquatic life,  
7 shall be taken or killed in any manner, or at any time, except

8 the person so taking or killing the same shall consent that the  
9 title thereto shall be and remain in the state of West Vir-  
10 ginia, for the purpose of regulating the taking, use and  
11 disposition of the same after such taking or killing; and the  
12 taking or killing of wild animals, birds, fish or frogs, and all  
13 other aquatic life, at any time or in any manner by any  
14 person, shall be deemed such consent. But nothing herein  
15 contained shall make unlawful the bringing in of game or  
16 fowl acquired lawfully in another state.

Sec. 4. *Unlawful Acts on Sunday.* It shall be unlawful  
2 on Sundays to:

3 1. Carry an uncased gun in the woods, fields or streams of  
4 this state, except at, or on the way to or from, a regularly  
5 used skeet, target or trap shooting ground;

6 2. Hunt, catch, kill, trap, injure or pursue with intent to  
7 catch, kill, trap or injure any wild animals, wild birds, or any  
8 other animal or bird protected under the provisions of this  
9 chapter.

Sec. 7. *Possession of Wild Animals or Wild Birds, etc.* No  
2 person shall have in his possession, except during the open sea-  
3 son therefor, any wild animals, wild birds, fish or frogs pro-  
4 tected under the provisions of this chapter, unless such pos-  
5 session is in accordance with a permit issued by the director  
6 under sections seven-a to seven-d, inclusive, of this article.

7 The director, or his duly authorized agents, may hunt, kill,  
8 capture or maintain in captivity, at any time, any wild ani-  
9 mals, wild birds, fish or frogs for the purpose of scientific re-  
10 search, propagation, protection or distribution.

Sec. 7-a. *Permit for Scientific or Propagation Purposes.*

2 The director may issue a permit to a person to hunt, kill, cap-  
3 ture or maintain in captivity wild animals, wild birds, fish or  
4 frogs, or any of them, exclusively for scientific or propagation  
5 purposes, but not for any commercial purposes. A permit  
6 shall be issued only upon written application to the director  
7 setting forth at least:

8 1. The number and kind of animals, birds, fish or frogs to  
9 be taken;

10 2. The purpose and manner of taking;

11 3. The name and residence of the person applying for the  
12 permit.

13 A fee of one dollar shall accompany each application.

Sec. 7-b. *Permit for Keeping of Pets.* The director may  
2 issue a permit to a person to keep and maintain in captivity  
3 as a pet, a wild animal or wild bird that has been acquired  
4 from a commercial dealer or during the legal open season. A  
5 permittee shall, upon the request of the director, furnish a de-  
6 tailed list of wild animals or wild birds kept under authority  
7 of the permit.

Sec. 7-c. *Permits for Roadside Menageries.* The director  
2 may issue a permit for the keeping and maintaining in cap-  
3 tivity of wild animals, wild birds, fish or frogs as a roadside  
4 menagerie. A permit shall not be issued unless:

5 1. The animals, birds, fish or frogs have been purchased  
6 from a licensed commercial dealer, either within or without  
7 the state, or have been taken during the legal open season in  
8 this state;

9 2. The director is satisfied that provisions for the housing  
10 and care of wild life to be kept in captivity and for the pro-  
11 tection of the public are proper and adequate.

12 A fee of fifteen dollars shall accompany each application for  
13 such permit.

14 The director shall adopt and enforce reasonable rules and  
15 regulations for the housing, care, treatment, feeding and sani-  
16 tation of animals, birds, fish or frogs kept in a roadside  
17 menagerie, and for the protection of the public against injury  
18 by them.

Sec. 7-d. *Permits; Expiration and Revocation; Sales Under.*  
2 A permit issued in accordance with sections seven-a to seven-c,  
3 inclusive, of this article, shall expire on the thirty-first day of  
4 December following the date of issue, and may be revoked by  
5 the director for cause. A permittee shall not sell or barter any  
6 animals, birds, fish or frogs, taken or held under authority of  
7 the permit, without the prior written permission of the di-  
8 rector: *Provided, however,* That a permittee under this sec-  
9 tion shall have the right to sell or transfer to his successor  
10 any roadside menagerie which he has been authorized to  
11 operate.

Sec. 7-e. *Dealers in Furs and Pelts; Licenses and Permits;*  
2 *Reports to Director; Revocation of License.* A person shall not



3 buy or deal in raw furs, pelts or skins of fur-bearing animals  
4 unless licensed so to do in accordance with this section.

5 The director may issue licenses for buying or dealing in raw  
6 furs, pelts, or skins of fur-bearing animals as follows:

7 1. A resident county license, which shall apply only to the  
8 county or counties designated on the license and shall be is-  
9 sued only to persons who have been bona fide residents of this  
10 state for a period of at least six months prior to the date of  
11 application, and of a county in which the privilege is to be  
12 exercised. A license shall apply to the county for which is-  
13 sued and to such adjacent counties as are designated in the  
14 application for the license. A fee of one dollar for each  
15 county shall accompany the application.

16 2. A resident state-wide license, which shall apply to all  
17 counties in the state and shall be issued only to persons who  
18 have been bona fide residents of this state for a period of at  
19 least six months prior to the date of application. A fee of  
20 ten dollars shall accompany the application.

21 3. A non-resident state-wide license, which shall apply to all  
22 counties in the state and shall be issued only to non-residents.  
23 A fee of fifty dollars shall accompany the application.

24 4. An agent's permit, which shall apply to a person em-  
25 ployed by a licensee under (1), (2), or (3) above, to buy or  
26 deal as an agent of the licensee other than at the place of busi-  
27 ness of the licensee. A fee of two dollars and fifty cents for  
28 each such agent shall accompany the application.

29 A license or permit shall expire on the last day of the calen-  
30 dar year during which it was issued. Fees collected under  
31 this section shall be paid into the state treasury forthwith in  
32 the same manner, and shall be credited to the same fund, as  
33 hunting and fishing license fees.

34 A licensee under this section shall, on or before April first  
35 of each year, make an annual report to the director with re-  
36 spect to the number and kind of furs purchased. The report  
37 shall be in the form and shall contain such information as the  
38 director may prescribe. Failure or refusal to make the re-  
39 port as required by the director shall be cause for revocation  
40 of, or refusal to renew, the license.

41 A license or permit issued under this section may be revoked  
42 for cause.

Sec. 8. *Open Seasons and Bag Limits; Publication;*

2 *Change or Suspension of Open Seasons; Sectional Meetings.*

3 The director shall, by regulation, fix the open seasons with  
4 respect to wild animals, fur-bearing animals, wild birds, fish  
5 and frogs. He may prescribe different open seasons of varying  
6 length in the several counties of the state. The director shall fix  
7 the open seasons for hunting and fishing in the several counties  
8 of the state as soon as possible after the first of each calendar  
9 year. Open seasons so fixed shall be published, upon determin-  
10 ation, in four newspapers of general circulation throughout  
11 the state at least once each week for two successive weeks.

12 The director may:

13 1. When he finds such action necessary to protect the  
14 forests or the wildlife of the state, change the bag limits on  
15 wild animals, wild birds, fur-bearing animals, fish and frogs.  
16 Before a change becomes effective, the director shall give no-  
17 tice by publication of the order in two newspapers of general  
18 circulation throughout the state, once each week for two suc-  
19 cessive weeks, with the last publication not later than two  
20 weeks prior to the date the change becomes effective;

21 2. Omit or suspend for a fixed and definite period, or  
22 change the date of open seasons for the catching of fish in a  
23 stream or part of a stream in this state. The order shall  
24 definitely fix the stream, or part thereof, by a proper descrip-  
25 tion. Before the suspension becomes effective, the director  
26 shall give notice by publication of the order once each week  
27 for two successive weeks in a newspaper of the county in which  
28 the stream is located;

29 3. Omit, limit, or suspend for a fixed and definite period  
30 open seasons for the killing of any wild animals or wild birds  
31 in any county. The order shall state the species and kinds  
32 of birds or animals and the period of limitation or suspension.  
33 Before the order becomes effective the director shall give no-  
34 tice by publication of the order in four newspapers of general  
35 circulation throughout the state, once each week for two suc-  
36 cessive weeks, with the last publication at least two weeks prior  
37 to the effective date of the order.

38 For the purpose of giving the various sections of the state  
39 an opportunity to be heard concerning open seasons for their  
40 respective areas, the director shall, and before such seasons  
41 are fixed for the various counties of the state as soon as practic-  
42 able after the beginning of each calendar year, hold meetings at

43 Beckley, Charleston, Elkins, Martinsburg, Morgantown and  
44 Parkersburg.

Sec. 8-a. *Suspension of Hunting Season in Emergencies.*

2 The director may, with the prior approval of the governor, in  
3 case of an emergency such as drought, forest fire hazard, or  
4 epidemic of disease among wild animals or wild birds suspend  
5 open hunting seasons upon any or all wild animals or wild  
6 birds in any or all counties of the state. The suspension shall  
7 continue during the existence of the emergency and until  
8 rescinded by the director. The director may, with prior ap-  
9 proval of the governor, add the period of suspension to the  
10 open season if conditions requiring the suspension have abated.  
11 Suspension of open seasons may be made upon twenty-four  
12 hours' notice. Notice shall be given by announcement through  
13 all licensed radio broadcasting stations in the state, and by  
14 delivery of a copy of the order of suspension to the associated  
15 press at the state capital and any seasons so suspended with  
16 prior approval of the governor shall be reopened through  
17 notification in the same manner.

Sec. 8-b. *Penalties under Sections Eight and Eight-a.* A per-  
2 son who fishes, or who hunts or kills, in violation of an order of  
3 the director issued in accordance with section eight or section  
4 eight-a of this article shall be guilty of a misdemeanor, and  
5 upon conviction shall be punished as provided by section  
6 fourteen of this article.

Sec. 10. *Sale of Game, Birds, Fish or Frogs.* No person  
2 shall purchase or offer to purchase, sell or offer to sell, expose  
3 for sale, or have in his possession for the purpose of sale:  
4 1. Any, or any part of, elk, deer, squirrel, rabbit, wild tur-  
5 key, ruffed grouse, quail, woodcock, wild duck, wild goose, wild  
6 swan, wild brant, snipe, sandpiper, or any of the song or  
7 insectivorous birds of the state; except as permitted by section  
8 twelve-a, article three of this chapter: *Provided, however,*  
9 That the sale of rabbits shall not be prohibited in Wayne  
10 County.

11 2. Any, or any part of, trout of any species, salmon of any  
12 species, pike of any species, pike, perch or wall-eyed pike,  
13 bass of any species, perch of any species, pickerel of any  
14 species, or any frog, caught or captured within this state,

15 except as permitted by section thirteen, article six of this  
16 chapter.

17 No person, including a common carrier, shall (except as per-  
18 mitted by section thirteen, article six of this chapter) trans-  
19 port, carry or convey, or receive for such purpose, any of the  
20 animals or birds, or of the fish or frogs, listed under (1) and  
21 (2) above, caught or killed in this state, if such person  
22 knows, or has reason to believe, that such animals, birds,  
23 fish or frogs have been or are to be sold.

24 The selling or exposing for sale, having in possession for  
25 sale, transporting or carrying in violation of this section  
26 shall each constitute a separate offense.

27 The director may extend the application of this section  
28 to animals, birds, fish or frogs not listed under (1) or (2)  
29 above, if he finds that such additional species require the  
30 protection accorded by this section.

31 The provisions of this section shall not apply to animals,  
32 birds, fish or frogs raised under the authority of a license  
33 issued in accordance with section twelve-a of this article.

Sec. 12-a. *License for Private Game Preserve for Purpose*  
2 *of Propagating Game for Commercial Purposes.* The director  
3 may issue a license for the operation of a private game pre-  
4 serve for propagation of game animals or game birds for  
5 commercial purposes. The license shall authorize the holder  
6 to breed or raise game as specified by the license and to sell  
7 the same dead or alive, or to sell the eggs of game birds, in  
8 accordance with regulations prescribed by the director.

9 A license issued under this section shall expire on the  
10 last day of the calendar year during which it was issued.  
11 The annual license fee shall be five dollars.

12 Application for a license under this section shall desig-  
13 nate the property whereon the preserve is to be established.  
14 Before the license is issued, the director shall determine  
15 that the property is properly enclosed, that the provisions  
16 for housing and sanitation are proper and adequate, and  
17 that the safety of the public is protected.

18 A licensee shall, before game of any kind, raised under  
19 the authority of a license, is shipped out of the state, offer  
20 the game for sale to the director. The director shall, with-  
21 in ten days, advise the licensee whether he will purchase.

- 22 If the director does not purchase, the game may be shipped  
23 to another state.  
24 The director may make such rules and regulations as he  
25 may find necessary and proper for the sale of game animals  
26 and birds raised by a licensee.  
27 The director may revoke a license issued under this sec-  
28 tion for cause.

#### **Article 4. Game and Fur-bearing Animals.**

##### **Section**

1. Game and fur-bearing animals defined; other species; publication.
3. Hunting deer; notice to game protector of accidental killing, etc.:  
    • official tag for legally killed deer; penalties.
- 3-a. Capture or killing of dogs chasing deer.
5. Hunting squirrels.
6. Hunting or possession of fur-bearing animals.
7. Repealed.
8. Repealed.
9. Repealed.
10. Repealed.
11. Hunting red foxes; chasing for sport.
12. Unlawful methods of hunting.
14. Traps and snares.

Section 1. *Game and Fur-bearing Animals Defined; Other Species; Publication.* For the purpose of this chapter, the following are game animals: Elk, deer, rabbits, gray, black and fox squirrels and raccoons; and the following are fur-bearing animals: opossums, beavers, otter, mink, raccoons, muskrat, skunk and red fox.

Whenever the director finds that the application of this chapter is necessary to the protection and preservation of any other species of wild animals, he may, by formal order, include such other species within the definition of game or fur-bearing animals, as the case may be, for the purposes of this chapter. The director shall give notice of this order by publication once each week for two successive weeks in two newspapers of general circulation throughout the state.

Sec. 3. *Hunting Deer; Notice to Game Protector of Accidental Killing, etc.; Official Tag for Legally Killed Deer; Penalties.* No person shall hunt, capture or kill any deer in this state except in open season. A licensed person may hunt, capture or kill a buck deer with one or both horns branched, but only during the open season fixed by the director for the county concerned. The provisions of this

8 section shall not apply to a licensed owner of deer which  
9 are kept in a park or field sufficiently enclosed reasonably  
10 to prevent escape therefrom.

11 No person shall:

12 1. Kill more than one deer in any one open season of  
13 the year;

14 2. Hunt, pursue, shoot or kill any fawn, doe, or deer  
15 other than a buck with one or both horns branched;

16 3. Have in his possession the fresh skin or any other part  
17 of a doe, fawn, or illegally killed buck;

18 4. Chase or hunt deer with dogs, or permit his dogs to  
19 hunt or chase deer;

20 5. Kill a deer that is being chased by, or is fleeing from dogs;

21 6. Catch, capture or kill any deer by means of poison baits,  
22 salt lick, natural or artificial, trap or snare, or devices of any  
23 kind;

24 7. Hunt, pursue, catch or kill a deer between sunset on one  
25 day and sunrise of the next day;

26 8. Kill or wound a deer while the deer is in a stream,  
27 lake or pond;

28 9. Participate further in the hunt after he has killed his  
29 legal limit of deer if he has firearms of any description in his  
30 possession;

31 10. Hunt deer with a shotgun using ammunition loaded with  
32 more than one solid ball, or rifles using rim-fire ammunition  
33 of less than twenty-five calibre.

34 A person who kills or wounds a deer by accident, such as  
35 by striking it with an automobile, or has knowledge that a  
36 deer is in distress for any reason whatever, shall promptly  
37 notify a game protector or other proper officer of the fact.

38 Any person who kills a deer during the open season shall  
39 securely attach to its head an official tag furnished by the  
40 director. The director shall furnish such official tags and  
41 shall distribute them to game protectors, county clerks, sher-  
42 iffs, state police, and other qualified officers. The tag shall  
43 specify the date and place of killing, the person by whom  
44 killed, the person hunting with him at the time, and the  
45 length and branching of horns or antlers. The person who  
46 killed the deer shall mail a duplicate of the tag to the director  
47 within five days after the deer is killed. The deer shall not  
48 be removed from the county where killed until the tag is at-

49 tached, and is checked and countersigned by a game protector  
50 or other duly authorized officer or agent of the director.

51 Any person who violates this section shall be guilty of a  
52 misdemeanor and, upon conviction, shall be fined not less than  
53 one hundred nor more than three hundred dollars, and con-  
54 fined in the county jail not less than thirty days, nor more  
55 than ninety days: *Provided, however,* That any person who  
56 kills a deer illegally during the open season therefor and  
57 voluntarily reports same to a game protector or other officer  
58 shall be fined not less than fifty dollars nor more than one  
59 hundred dollars.

Sec. 3-a. *Capture or Killing of Dogs Chasing Deer.* A game  
2 protector, or other duly authorized officer, shall take into pos-  
3 session any dog known to have hunted or chased deer and shall  
4 advertise in a newspaper of general circulation in the county,  
5 that he has the dog in his possession, giving a description of the  
6 dog and stating the circumstances under which it was taken.  
7 He shall hold the dog for a period of ten days, and shall  
8 report the facts in full to the director.

9 If, within ten days, the owner does not claim the dog, the  
10 game protector or other officer shall destroy it. In this event  
11 the cost of keep and advertising shall be paid by the director.

12 If, within ten days, the owner claims the dog, he may  
13 repossess it on the payment of the cost of advertising and  
14 the cost of keep, not exceeding fifty cents per day.

15 A game protector, or other duly authorized officer, after  
16 a bona fide but unsuccessful effort to capture dogs detected  
17 chasing or pursuing deer, may kill such dogs.

Sec. 5. *Hunting Squirrels.* No person shall, in any county  
2 of this state, hunt, capture or kill, grey, black or fox squirrels,  
3 or have in his possession a squirrel or any part thereof, in-  
4 cluding fresh pelts, except during the open season for that  
5 county, as fixed by the director.

Sec. 6. *Hunting or Possession of Fur-bearing Animals.* No  
2 person shall, in any county of this state, hunt, capture, trap or  
3 kill any fur-bearing animals as defined by section one of this  
4 article, or have in his possession any fur-bearing animal, or  
5 part thereof, except during the open season for that county.  
6 A person shall not have in his possession the fresh skin, or part  
7 thereof, of any fur-bearing animal within the period beginning

8 thirty days after the end of the open season and ending with  
9 the first day of the next succeeding open season for such  
10 animal in that county.

Sec. 7. This section is hereby repealed.

Sec. 8. This section is hereby repealed.

Sec. 9. This section is hereby repealed.

Sec. 10. This section is hereby repealed.

Sec. 11. *Hunting Red Foxes; Chasing for Sport.* No person  
2 shall pursue or injure a red fox in any county of this state,  
3 except during the open season for that county: *Provided, how-*  
4 *ever,* That the red fox may be chased for sport only, in the  
5 counties wherein the red fox is protected; but a person may, at  
6 any time, pursue, capture or kill, except by means of poison,  
7 a red fox upon his own land, or upon lands as to which he is a  
8 bona fide tenant or resident. A person shall not blow up a den  
9 or burrow of red foxes in which a red fox has taken refuge.

Sec. 12. *Unlawful Methods of Hunting.* No person shall,  
2 at any time:

3 1. Hunt wild animals at night by the use of a spot or jack  
4 light, or a light of any kind, except such animals as take  
5 refuge in trees;

6 2. Destroy or cut down a tree in which animals den or  
7 take refuge, merely for the purpose of taking such animals;

8 3. Kill wild animals or wild birds from an automobile,  
9 or other land conveyance, or from a motor-driven craft upon  
10 any of the waters of the state.

11 4. Kill squirrels from a craft upon any waters of the state.

Sec. 14. *Traps and Snares.* No person shall, at any time,  
2 set or maintain a snare, or other trap upon the improved or  
3 enclosed lands of another without the express permission of  
4 the owner or tenant of such lands. A person shall not set  
5 or maintain a steel or spring bear trap, or a deadfall upon any  
6 lands not his own, and then only on lands enclosed by a fence.

## Article 5. Birds and Fowls.

### Section

2. Hunting migratory game birds.

4. Hunting wild turkeys; report to director.

Section 2. *Hunting Migratory Game Birds.* No person shall



2 hunt, pursue, catch, capture or kill any wild duck, goose, brant,  
3 plover, snipe, woodcock, ortolan, sandpiper, or any other  
4 migratory game bird included in the terms of convention  
5 between the United States and Great Britain for the pro-  
6 tection of such birds, during the closed season prescribed  
7 for such birds by federal regulation adopted by the Secre-  
8 tary of Agriculture and approved by the President of the  
9 United States pursuant to the authority conferred by the  
10 act of Congress entitled "An Act to give effect to the con-  
11 vention between the United States and Great Britain for the  
12 protection of migratory birds, concluded at Wasbington,  
13 August sixteenth, nineteen hundred sixteen, and for other  
14 purposes," and known by the short title of the "Migratory  
15 Bird Treaty Act," or by any amendment thereof.

Sec. 4. *Hunting Wild Turkeys; Report to Director.* No  
2 person shall, in any county of this state, hunt, pursue, capture,  
3 wound, or kill any wild turkey, or have in his possession any  
4 wild turkey, or part thereof, except during the open season for  
5 that county. No person shall, during the open season, hunt,  
6 pursue, catch or kill wild turkey between sunset of one day  
7 and sunrise of the next day or kill more than one wild turkey  
8 in any open season.

9 A person who kills a wild turkey in this state shall report  
10 the kill to the director in writing, within twenty days,  
11 setting forth the date, time and place where killed, and  
12 whether the turkey was male or female.

## Article 6. Fish and Other Aquatic Life.

### Section

1. Game fish defined; open seasons and creel limits; special regula-  
tions.
2. Fishing out of season prohibited.
3. Repealed.
4. Minimum lengths of fish and creel limits.
5. Unlawful devices and methods of fishing.
17. Offenses generally; dynamiting or poisoning fish; penalties.

Section 1. *Game Fish Defined; Open Seasons and Creel*  
2 *Limits; Special Regulations.* For the purpose of this chapter  
3 the following are game fish: black bass, green bass, white bass,  
4 willow bass, trout, white salmon, jack salmon, jack fish, wall-  
5 eyed pike, muskallonge, pickerel and perch.

6 The director, for the purpose of protecting and conserving  
7 the fish and other aquatic animal life of the state, as provided

8 by section eight, article three of this chapter, may establish  
9 open and closed seasons and creel limits on any or all fish,  
10 and regulate the taking and use of all other aquatic life.  
11 But water dogs and big salamander shall not be protected  
12 at any time.

13 The director may prescribe and enforce special regulations  
14 to apply to a stream or any part thereof, that he places under  
15 observation for scientific purposes. Regulations may in-  
16 clude the filling out and filing of special reports by persons  
17 fishing in the stream.

Sec. 2. *Fishing Out of Season Prohibited.* No person shall  
2 in any county of this state fish for, catch, take, kill, destroy  
3 in any manner, or have in his possession, any fish or other  
4 aquatic life except during the open season fixed by the di-  
5 rector for that county, or for the streams, as the case  
6 may be.

Sec. 3. This section is hereby repealed.

Sec. 4. *Minimum Lengths of Fish and Creel Limits.* The  
2 director shall, by regulation, prescribe minimum lengths and  
3 creel limits for the various species and kinds of fish of the state.  
4 Fish less than the minimum length so prescribed shall be re-  
5 turned to the water, with as little injury as possible, immedi-  
6 ately after being caught.

Sec. 5. *Unlawful Devices and Methods of Fishing.* No  
2 person shall kill, catch, or attempt to kill or catch any fish at  
3 any time, by :

4 1. The use of seines, nets or traps, or devices of like  
5 nature without the written consent of the director. A person  
6 may use a seine not more than six feet in length, nor more  
7 than four feet in depth for securing minnows for angling,  
8 other than minnows classed by the director as game fish. A dip  
9 net so used shall not exceed thirty-six square feet in overall  
10 area, and its mesh shall not be smaller than one-quarter inch ;

11 2. Draining water out of any pool, pond or stream with  
12 intent to take or injure fish ;

13 3. The use of dynamite, or any like explosive or ex-  
14 plosive mixture ;

15 4. The use of a poisonous drug or substance ;

16 5. The use of electricity or lime ;

17 6. The use of firearms;

18 7. Gigging, spearing, gaffing, or grappling, except the  
19 director may permit gigging of non-game fish in a stream  
20 under the supervision of a representative of the director,  
21 other than during the months of April, May and June;

22 8. Any other means other than by rod, line and hooks,  
23 with natural or artificial lures.

24 A person shall not sell or purchase a seine more than six  
25 feet in length without the prior written permission of the  
26 director.

27 The provisions of this section shall not prevent the director  
28 from using such methods of catching fish as he shall find  
29 necessary and proper for the purposes of propagation and  
30 protection.

*Sec. 17. Offenses Generally; Dynamiting or Poisoning Fish;*

2 *Penalties.* A person violating any provision of this article,  
3 the punishment for which is not prescribed, shall be guilty  
4 of a misdemeanor, and upon conviction thereof, shall, for  
5 each offense, be fined not less than twenty nor more than one  
6 hundred dollars, or confined in jail not exceeding thirty days  
7 or both, or both such fine and imprisonment in the court's  
8 discretion.

9 Dynamiting of fish or the killing of fish by any like ex-  
10 plosive or explosives or poisonous mixture placed in stream  
11 or other waters of this state for the purpose of killing or  
12 taking fish, shall be a felony, punishable upon conviction  
13 thereof by imprisonment in the penitentiary for not less  
14 than six months, nor more than three years, and in the  
15 court's discretion, by an additional penalty of not more  
16 than five hundred dollars fine.

**Article 7. Hunting and Fishing Licenses.**

**Section**

1. Necessity for license.
- 2-h. Duplicate licenses.
3. Application for; to whom made.
11. Allocation of funds for forests and refuges.

Section 1. *Necessity for License.* No person above the age  
2 of fifteen years, who is a citizen of the United States, shall  
3 at any time, hunt, pursue, trap for, kill or catch any wild  
4 animals, or wild birds, or fish, kill or catch any fish or frogs,  
5 of any kind whatsoever, without first having secured a

6 license, and then only during the respective open seasons.  
7 A bona fide resident landowner of this state, or his resident  
8 children, or his bona fide resident tenant, may hunt, kill,  
9 pursue or catch any of the game animals and game birds or  
10 fish for, capture or kill any of the fish or frogs of this state  
11 on his own land during the open season therefor in accord-  
12 ance with regulations and provisions of law applying to  
13 such hunting and fishing, without obtaining a license so to  
14 do, if said land shall not have been designated and made, in  
15 manner provided by law, a state game refuge or reserve.  
16 No person under the age of fifteen years shall hunt upon  
17 the lands of another unless accompanied by a licensed adult.  
18 A resident or non-resident member of any club or organiza-  
19 tion or association of persons owning or leasing a game or  
20 fish reserve in this state shall not hunt or fish therein without  
21 securing a license.

Sec. 2-h. *Duplicate Licenses.* Whenever any license is  
2 lost the person to whom the license was issued may make  
3 application for a duplicate license to the county clerk from  
4 whom the license was purchased. The application shall be  
5 accompanied by a fee of fifty cents and an affidavit setting  
6 forth the circumstances.

7 A county clerk issuing a duplicate license shall indicate on  
8 the face of the license and on the stub that it is a "duplicate"  
9 and shall also show the original license number thereon.

10 The county clerk shall report the duplicate issued and attach  
11 the said affidavits to his regular monthly license report, to-  
12 gether with the fees so collected.

Sec. 3. *Application For; to Whom Made.* A person eligi-  
2 ble for a license under sections two-a to two-f, inclusive, of  
3 this article shall make application as follows:

4 1. A resident of this state shall make application to the  
5 clerk of the county court in any county of the state;

6 2. A non-resident of this state may make application to  
7 the clerk of the county court of any county in this state;

8 3. A citizen of Ohio applying for a class E license shall  
9 make application to the clerk of the county court of a county  
10 bordering upon the state of Ohio;

11 4. An alien, making application for a class F license,  
12 shall first apply to the director for the issuance of a permit  
13 to obtain a class F license. The director shall issue the

14 permit if he is satisfied that the applicant is legally entitled  
15 to a class F license and has bona fide intentions to exercise  
16 the license in accordance with the provisions of this chapter.  
17 After issuance of the permit an alien may apply to the clerk  
18 of the county court of any county in the state for the  
19 issuance of a class F license in the same manner as a non-  
20 resident of this state. A permit shall remain in force until  
21 revoked.

Sec. 11. *Allocation of Funds for Forests and Refuges.* The  
2 director shall each year, allocate ten per cent of the total  
3 revenue obtained from all classes of hunting and fishing  
4 licenses for the purchase of lands and the maintenance of  
5 state forests, and game and fish refuges. Not more than  
6 fifty per cent of the amount so allocated may be expended  
7 for patrolling such lands, protecting wild game and fish  
8 thereon, the improvement of wildlife habitat, and other  
9 necessary maintenance and operation.

#### Article 8. State Forests, Game and Fish Refuges and Public Shooting Grounds.

##### Section

1. Acquisition of suitable lands by director; maintenance thereof as state forests or game and fish refuges.
2. Establishment of game refuges and shooting grounds thereon; leasing lands therefor.
3. Game refuges on lands not owned by the state.
4. Repealed.

Section 1. *Acquisition of Suitable Lands by Director; Maintenance Thereof as State Forests or Game and Fish Refuges.* The director may with the consent of the governor  
2 purchase, in the name of the state, out of funds set aside for  
3 the purpose, or out of any unused funds in his hands, lands  
4 suitable for forest culture; state forests; fish refuges; game  
5 refuges or public shooting grounds. Purchase may be made on  
6 terms requiring not less than one-third of the purchase price  
7 to be paid at the time of the conveyance with the residue to be  
8 paid in not less than one or two years after date. Without the  
9 consent of the governor not more than five dollars per acre  
10 shall be paid for lands to be used as game refuges and public  
11 shooting grounds. The commission may also receive the gift of  
12 such lands by deed or bequest. In all cases of transfers to  
13 the state, the fee simple title shall pass to the state, except  
14  
15

16 for the reservation of minerals and mining rights to remove  
17 such minerals.

18 The director shall protect, preserve and maintain lands so  
19 acquired as state forests, game or fish refuges or public shoot-  
20 ing grounds, for the propagation and distribution of forest  
21 trees and for the protection, propagation and distribution of  
22 the fish, wild animals, and birds thereon. He may prescribe  
23 and enforce rules and regulations consistent with the laws of  
24 the state, to carry out that objective. The director may pre-  
25 scribe and enforce rules prohibiting all fishing and hunting,  
26 pursuing, catching, trapping, capturing and killing of fish,  
27 wild animals and birds upon such state forests, and game and  
28 fish refuges, for such length of time as he may deem proper.

29 The director may provide special regulations and open sea-  
30 sons for the taking of any wild birds, wild animals or fish on  
31 such lands in the manner provided by article three, section  
32 eight of this chapter.

Sec. 2. *Establishment of Game Refuges and Shooting*  
2 *Grounds Thereon; Leasing Lands Therefor.* The director shall  
3 establish and maintain game refuges and public shooting  
4 grounds on lands purchased, leased, or given for this purpose.  
5 Upon such state-owned forests, game refuges or other state-  
6 owned or leased lands under its administration, or lands pur-  
7 chased from funds derived from the sale of hunting and fish-  
8 ing licenses for the establishment of game refuges and public  
9 shooting grounds, or upon lands purchased in cooperation  
10 with any agency of the federal government or leased there-  
11 from or managed cooperatively therewith, the director shall  
12 regulate public shooting, and limit the number of game birds,  
13 game animals or game fish, which may be taken from such  
14 areas open to public shooting in any year. The director may  
15 establish special open seasons on any such lands, and may close  
16 any such areas, or parts thereof, to public shooting.

17 It shall be unlawful at any time to hunt, pursue or molest in  
18 any manner, any animals, birds or fowls on that section of any  
19 game refuge and public shooting grounds designated as the  
20 game refuge, except that any legally constituted game pro-  
21 tector or game refuge keeper or warden may hunt, pursue,  
22 catch and kill in any manner predatory animals and preda-  
23 tory birds thereon.

24 On the boundary of each state game refuge, there shall be

25 posted in conspicuous places, not more than one hundred and  
26 fifty yards apart, notices bearing the following words: "State  
27 game refuge—hunting is unlawful," and such other informa-  
28 tion or rules and regulations as the director may deem advis-  
29 able. On the boundary line of the area surrounding any such  
30 refuge which has been established as a public shooting grounds,  
31 the director shall have posted in conspicuous places, not more  
32 than one hundred and fifty yards apart, notices bearing the  
33 following words: "Public shooting grounds", together with  
34 information as to when hunting is legal on such tract.

35 The director shall also have the power to lease lands for  
36 this purpose for not less than ten year periods, the rental  
37 price thereof not to be more than the amount of the taxes  
38 on such land, and in no event to exceed ten cents per acre  
39 per annum.

Sec. 3. *Game Refuges on Lands not Owned by the State.*

2 The director may, with the consent of the owner, set apart any  
3 tract of land of one hundred acres or more in the state as a  
4 game refuge. When such lands have been set apart, the  
5 director shall manage them in the same manner and for the  
6 same purposes as game refuges owned by the state. Such lands  
7 not owned by the state and now operated by the director as  
8 game refuges shall, at the expiration of the agreement, be  
9 reorganized as game refuges or be discontinued.

Sec. 4. This section is hereby repealed.

**Article 8-a. Emergency Conservation Work; Cooperation with Federal Government.**

**Section**

9. Restaurants and other facilities at recreational areas.

Section 9. *Restaurants and Other Facilities at Recreational*  
2 *Areas.* The director may, in connection with recreational areas  
3 in state parks and state forests, operate commissaries, restau-  
4 rants and other establishments for the convenience of the  
5 public. For these purposes the director may purchase equip-  
6 ment, foodstuffs, supplies and commodities, according to law.

**Article 9. Forests.**

**Section**

1. Powers of director over forests; state forester and local forest protectors; compensation.

- 4-a. Forest fire seasons; permits for setting fires; invalidity and suspensions of permits.
- 5. Failure of person to extinguish fire started or used by him; penalty; starting fire on lands of another; penalty; throwing lighted matches, etc., on forest land during fire season.
- 6-a. Stationary engines; escape of fire from; penalty.

Section 1. *Powers of Director Over Forests; State Forester and Local Forest Protectors; Compensation.* The director shall have power and authority to protect the forests of the state against injury or destruction by fire, fungus or other disease, to study and make recommendations as to the proper methods for such protection and for forest culture, and to disseminate such information throughout the state. For these purposes the director shall appoint a state forester, who shall be a person duly qualified with technical forestry training and a graduate of a reputable school of forestry, with actual experience in handling forestry field organization.

The director shall appoint forest protectors for such forest fire districts as he designates. Local forest protectors shall hold office during the pleasure of the director. The director shall fix the salary to be paid to the state forester, and the compensation to be paid to local forest protectors and other employees.

Sec. 4-a. *Forest Fire Seasons; Permits for Setting Fires; Invalidity and Suspension of Permits.* The period of each year between March twentieth to May twentieth and October fifteenth to December fifteenth are hereby designated as forest fire seasons. No person shall, during the fire season, set on fire or cause to be set on fire any forest land, grass, stubble, brush or slash, either his own or the property of another, without first securing a written or printed permit from the director or his duly authorized agents. The director may prescribe the conditions upon which the permit will be issued and the precautions to be observed in setting such fires.

This section shall not be construed to require a permit for the burning of grass, stubble, brush or slash in small quantities and under adequate protection outside of, and not within, three hundred feet of any forest land. If any such burning results in the escape of fire and injury to the property of another such escape shall be prima facie evidence that the burning was not safe and was in violation of this section.

The director may refuse, revoke or postpone permits when



20 necessary to prevent danger to life or property. A permit ob-  
21 tained through wilful misrepresentation shall be invalid. If  
22 the director finds that conditions in any locality of the state  
23 so require, he may suspend any or all permits issued under this  
24 section and prohibit absolutely the use of fires.

Sec. 5. *Failure of Person to Extinguish Fire Started or  
2 Used by Him; Penalty; Starting Fire on Lands of Another;  
3 Penalty; Throwing Lighted Matches, etc., on Forest Land  
4 During Fire Season.* Any person who, by himself, or by his  
5 servants, agents or guides, or as the servant, agent or guide  
6 of any other person, shall build any fire, or use an abandoned  
7 fire, in a field, public or private road, or adjacent to, or in any  
8 woods or forest in this state, shall, before leaving such fire,  
9 totally extinguish the same; and upon failure to do so, such  
10 person or persons shall be deemed guilty of a misdemeanor,  
11 and, on conviction thereof, shall be fined not less than twenty-  
12 five dollars nor more than one hundred dollars and the cost of  
13 the prosecution, and, upon default in paying such fine and  
14 costs, shall be confined in the county jail not more than ninety  
15 days unless such fine and costs be sooner paid. A person who,  
16 in the course of clearing property of brush, undergrowth,  
17 leaves, dry grass or other harmful debris of any kind, uses  
18 incendiary means on the property of another, or who for any  
19 purpose wilfully starts a fire on the property of another, and  
20 as a result causes damage or destruction to the natural re-  
21 sources of such property or of adjacent property, shall be  
22 guilty of a felony, and upon conviction shall be fined not less  
23 than one hundred nor more than five hundred dollars, or  
24 imprisoned for not more than one year, or both, in the dis-  
25 cretion of the court.

26 A person shall not during the fire season throw any lighted  
27 matches, cigars, cigarettes, fire crackers, or other lighted ma-  
28 terial on any forest land, private road, public highway or  
29 railroad right-of-way within this state.

Sec. 6-a. *Stationary Engines; Escape of Fire From; Penalty.*  
2 During the fire season of each year no person, firm or corpor-  
3 ation shall use or operate a saw-mill, steam shovel or other  
4 stationary engine which is not provided with an adequate  
5 spark arrester and an ash pan kept in constant use and repair,  
6 within one-eighth of a mile of any forest land. Escape of fire

7 from such an engine shall be prima facie evidence that such  
8 appliance was not maintained properly in compliance with  
9 this section. A person, firm or corporation violating this sec-  
10 tion shall be guilty of a misdemeanor, and, upon conviction  
11 thereof, shall be fined not less than twenty nor more than two  
12 hundred dollars.

#### Article 10. General Criminal Provisions.

##### Section

1-a. Property used for illegal purposes; seizure; disposition.

4. Conspiracy to violate game or fish laws; withholding information;  
obstructing officers; penalty; provisions of act severable.

Section 1-a. *Property Used for Illegal Purposes; Seizure;*  
2 *Disposition.* A game protector or other duly authorized officer,  
3 when he takes a person into custody for violation of a pro-  
4 vision of this chapter, shall also take and impound any  
5 property found in the possession of the accused and susceptible  
6 of use in committing the offense of which the person is  
7 accused. Such property shall include firearms, fishing equip-  
8 ment, traps, boats, dogs, or any other device, appliance or  
9 conveyance.

10 If the accused is acquitted the property seized shall be  
11 returned. If the accused is convicted, and pays the fine and  
12 costs assessed, the property seized shall be returned, but if  
13 the accused fails to pay the fine and costs, the property shall  
14 be sold at public auction in such manner as the director may  
15 prescribe. The proceeds of the sale shall be applied toward  
16 the payment of the fine and costs. The remainder, if any,  
17 shall be paid to the owner of the seized property.

18 Whenever a person is convicted of a violation of this  
19 chapter a second time, the property seized at the time of  
20 arrest, shall in any case be declared forfeited to the state  
21 and shall be sold in the manner provided by this section.

22 Property seized, the use of which is forbidden by this  
23 chapter, or which is unfit or unsafe for further use, shall be  
24 declared forfeited to the state and shall be disposed of by the  
25 director.

Sec. 4. *Conspiracy to Violate Game or Fish Laws; With-*  
2 *holding Information; Obstructing Officers; Penalty; Pro-*  
3 *visions of Act Severable.* A person who shields or conspires  
4 with another in the commission of a game or fish violation or

5 who encourages a game or fish violation, or who upon inquiry,  
6 withholds information from the game protector or other officer,  
7 or who hinders, obstructs, or interferes with the attempts to  
8 hinder, obstruct or interfere with a game protector, or other  
9 officer in the performance of his duties herein shall be guilty of  
10 a misdemeanor, and upon conviction shall be fined not less than  
11 ten nor more than twenty-five dollars.

12 The provisions of this act shall be construed as severable,  
13 and should any provision be held unconstitutional, or for any  
14 other reason invalid, the remaining provisions shall not be  
15 affected thereby.

16 All acts or parts of acts in conflict with the provisions of  
17 this act are hereby repealed.

## CHAPTER 65

(Senate Bill No. 165—By Mr. Casto)

AN ACT to amend and reenact section thirteen, article four, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, relating to the ownership, possession and use of ferrets, and providing penalties.

[Passed March 10, 1939; in effect ninety days from passage. Became a law without the approval of the governor.]

### Article 4. Game and Fur-bearing Animals.

#### Section

13. Ferrets; permit to own and keep; tag; fee; revocation; use of; penalty.

*Be it enacted by the Legislature of West Virginia:*

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

Section 13. *Ferrets; Permit to Own and Keep; Tag; Fee; Revocation; Use of; Penalty.* It shall be unlawful for any  
2 person to own or have in his possession in this state a ferret,  
3 except for the purpose of ridding premises of rats or other  
4 vermin. Any person, upon application to the director of con-  
5 servation, showing that he is a bona fide resident of this state  
6 and a citizen thereof, and has not been convicted of a viola-  
7

8 tion of the game laws of this state, and that he has real need  
9 for a ferret for the purposes aforesaid, may procure from said  
10 director of conservation a permit to own and keep a ferret for  
11 such purposes. At the time of the issuance of such permit  
12 the director of conservation shall also give to the applicant a  
13 metal tag bearing a number, which said number shall be  
14 stamped upon said permit and which said tag shall be affixed  
15 and attached to the leg of the ferret at all times for purposes  
16 of identification. Such permit shall be good only as to the  
17 particular ferret involved. For the issuance of such permit  
18 and metal tag, the director shall charge a fee of one dollar.  
19 The director may revoke such permit at any time for a viola-  
20 tion of this section or a violation of any of the game laws of  
21 this state. All persons who have such permits to own ferrets  
22 shall keep such ferrets in their possession or as near as may  
23 be under their control at all times, and shall never permit the  
24 same to be used by any other person or persons, except under  
25 the owner's direct supervision and control for the purposes  
26 aforesaid, and such owner shall at all times carry with him  
27 said permit which he shall exhibit to any person charged with  
28 the enforcement of the game laws of this state upon demand  
29 being made therefor. Any person having a permit to own a  
30 ferret for the purposes aforesaid who shall use the same for  
31 any other purpose, or any person who shall own or possess a  
32 ferret in violation of this section, shall be guilty of a mis-  
33 demeanor and upon conviction thereof shall, for each offense,  
34 be fined not less than fifty dollars nor more than three hun-  
35 dred dollars, or confined in jail not less than thirty days nor  
36 more than ninety days, or both so fined and imprisoned, in  
37 the discretion of the court, and the confiscation of the ferret  
38 or ferrets.

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## CHAPTER 66

(Senate Bill No. 4—By Mr. LaFon, Mr. President)

AN ACT to amend chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, by adding thereto a new article, designated article five-b, providing for the suggestion of money due or to become due from the state, state

agencies or political subdivisions of the state and for the garnishment and suggestion of money or other personalty held by public officers, and to repeal chapter one hundred ten, acts of the Legislature, regular session, one thousand nine hundred thirty-five, relating to the garnishment and suggestion of salaries and wages of officers and employees of political subdivisions of the state.

[Passed March 9, 1939; in effect ninety days from passage. Approved by the Governor.]

**Article 5-b. Suggestion of the State and Political Subdivisions;  
Garnishment and Suggestion of Public Officers.**

**Section**

1. Definitions.
2. General provisions.
3. Suggestion of salary or wages.
4. Notice to the judgment debtor.
5. Service of suggestee execution.
6. Vacation and modification of suggestee executions.
7. Renewal of suggestee executions.
8. Fees.
9. Payment in satisfaction of execution.
10. Priority of suggestee executions over assignments.
11. Claims of contractors on public works.
12. Exemptions.
13. Accounting for moneys collected under suggestee executions.
14. Supreme court of appeals authorized to prescribe forms of suggestee executions.
15. Garnishment and suggestion of money and other personalty in the hands of public officers.
16. Construction of article; effect on existing law.
17. Act repealed.

***Be it enacted by the Legislature of West Virginia:***

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

**Section 1. Definitions.** For purposes of this article:

- 2     1. The term "suggestee execution" shall mean an execu-  
3     tion differing from an ordinary execution upon a judgment  
4     only in that it is directed against money due or to become due  
5     to the judgment debtor from the suggestee as therein set out.
- 6     2. The term "state agency" shall mean any department,  
7     institution, board, commission, bureau, or other agency of the  
8     state government, including a public corporation created to  
9     effect a state public improvement.
- 10    3. The term "political subdivision" shall mean any county,  
11    county board of education, municipal corporation, or any

12 other public corporation or governmental unit organized to  
13 perform one or more of the functions of local government or  
14 to effect a local public improvement.

15 4. The term "proper officer" shall mean the officer of the  
16 state, a state agency, or a political subdivision, as the case  
17 may be, upon whom to make service of suggestee executions  
18 under this article.

19 5. The term "judgment creditor" shall include the owner  
20 of a money decree.

Sec. 2. *General Provisions.* Upon the return of an exe-  
2 cution wholly or partly unsatisfied a judgment creditor may  
3 apply to the court in which the judgment was recovered or  
4 a court having jurisdiction of the same, without notice to the  
5 judgment debtor, for a suggestee execution against any money  
6 due or to become due within one year after the issuance of the  
7 same to the judgment debtor from the state, a state agency,  
8 or any political subdivision of the state. If satisfactory proof  
9 shall be made, by affidavit or otherwise, of such facts, and,  
10 where the execution is sought against salary or wages, of the  
11 fact that the amount due or to become due as salary or wages  
12 exceeds ten dollars per week, the court, if not a court of  
13 record, or if a court of record, the clerk thereof, shall issue  
14 a suggestee execution against such money due or to become due  
15 to the judgment debtor, and there shall be entered on the  
16 face thereof the day and hour of issuance.

17 Such execution and the expenses thereof shall, when served  
18 by the officer to whom delivered for collection in the manner  
19 hereinafter provided, upon the state, a state agency, or po-  
20 litical subdivision from which such money is due or may there-  
21 after become due to the judgment debtor, become a lien and  
22 continuing levy upon the sums due or to become due to the  
23 judgment debtor within one year after the issuance of the  
24 same (but not to exceed the specified amount of salary or  
25 wages as hereinafter provided) unless sooner satisfied and  
26 paid, vacated or modified as hereinafter provided.

27 Where more than one suggestee execution shall have been  
28 issued pursuant to the provisions of this section against the  
29 same judgment debtor, they shall be satisfied in the order of  
30 priority in which they are served upon the state, state agency,  
31 or political subdivision from which such money is due or shall  
32 become due. For purposes of determining such priority the

time that an execution served by mail, as hereinafter provided, shall be received, and not the time of admission of service, shall control. In the case of two or more executions received in the same mail delivery priority shall be accorded the one first issued.

Sec. 3. *Suggestion of Salary or Wages.* A suggestee execution issued under this article against salary or wages shall become a lien and continuing levy upon sums due or to become due to the judgment debtor as salary or wages to an amount equal to twenty per centum thereof and no more, but in no event shall the payments in satisfaction of such an execution reduce the amount payable to the judgment debtor to less than ten dollars per week. A suggestee execution against salary or wages shall contain the name of the judgment debtor and the bureau, office, department, institution or subdivision thereof of the state or political subdivision of the state, as the case may be, of which he is an officer or employee. If a person so employed shall resign or be dismissed while an execution issued hereunder against his salary or wages is wholly or partly unsatisfied, and he shall thereafter be reinstated or re-employed, the execution shall lapse and no further deduction shall be made with respect thereto from his salary or wages unless such reinstatement or re-employment shall occur within ninety days after such resignation or dismissal. A suggestee execution shall not be affected by the transfer of the officer or employee who is the judgment debtor from one bureau, office, department, institution or subdivision thereof of the state or a political subdivision to another if the officer upon whom service of the execution was made would be the proper officer for service of a suggestee execution against salary or wages due or to become due to the judgment debtor in the new employment.

Such an execution shall not become a lien against salary or wages payable by the state or a state agency within ten days after the service thereof or payable by a political subdivision within five days after the service thereof but shall become a lien and continuing levy upon the salary or wages which shall become due or owing to the judgment debtor thereafter during the life of the execution.

Only one suggestee execution against the salary or wages of a judgment debtor shall be satisfied at one time, except that

37 in the event two or more such executions have been served  
38 and satisfaction of the one having priority is completed with-  
39 out exhausting the amount of the salary or wages then due and  
40 payable that is subject to suggestion under this article the  
41 balance of such amount shall be paid in satisfaction, in the  
42 order of their priority, of junior suggestee executions against  
43 such salary or wages theretofore served.

Sec. 4. *Notice to the Judgment Debtor.* A certified copy  
2 of an execution issued under this article against salary or  
3 wages shall be served upon the judgment debtor. Such service  
4 shall be made by the court or the clerk of the court who issued  
5 the execution by enclosing the copy in a postpaid wrapper,  
6 addressed to the judgment debtor or his agent authorized to  
7 accept service of process, and forwarding the same by reg-  
8 istered mail, return receipt requested. The day and hour of  
9 such mailing shall be clearly noted on the face of the original  
10 execution and the officer to whom it is delivered for collection  
11 shall not make service upon the proper officer until the ex-  
12 piration of five days from that time. The fee for service of  
13 notice under this section shall be twenty-five cents without  
14 any additional allowance for postage, registry fee, or other ex-  
15 penses incurred in effecting service.

Sec. 5. *Service of Suggestee Execution.* An execution is-  
2 sued under this article against money due and owing or to  
3 become due and owing from the state, or a state agency which  
4 shall be payable on the warrant of the state auditor for the  
5 payment thereof directed to the judgment debtor must be  
6 served upon the state auditor at his office in Charleston. In  
7 the case of money payable directly by any state agency the  
8 execution shall be served upon the auditor of such agency,  
9 or, lacking such, upon the officer thereof whose duty it is to  
10 audit and/or to issue warrants, checks or orders for the pay-  
11 ment of such claims. Such service shall be made by exhibiting  
12 and at the same time delivering a true copy of the original  
13 execution, and paying the prescribed fee, to the proper officer,  
14 or to a person in his office designated and authorized by the  
15 state auditor or head of such department, institution, or  
16 agency, as the case may be, by writing filed in such office to  
17 receive it. Service of such an execution may be made by  
18 mail by the court or the clerk of the court who issued the  
19 execution or by the officer to whom the same is delivered or



20 by any credible person, by enclosing the original suggestee  
21 execution in a postpaid wrapper addressed to the proper  
22 officer and agency together with a true copy thereof and the  
23 amount of the prescribed fee. Service by mail shall not be  
24 deemed to be complete until duly admitted and until the  
25 original execution shall have been returned to the court or  
26 the clerk of the court who issued said execution. Such  
27 admission shall be made as soon as may be in the regular  
28 course of administration after receipt of the execution. The  
29 admission may be subscribed by the officer upon whom the  
30 service is required by this section to be made or by a person  
31 in his office designated and authorized by the state auditor or  
32 the head of a state agency, as the case may be, by writing  
33 filed in such office, to admit service of suggestee executions.

34 A suggestee execution against a political subdivision of the  
35 state shall be served upon the auditor thereof or the officer  
36 who, or the clerk of the board or any body which is charged  
37 with the duty of auditing and/or issuing warrants, checks or  
38 orders for the payment of such claims, in like manner as  
39 service hereunder upon state officers, except that service by  
40 mail shall not be sufficient or binding.

41 Service of a vacating or modifying order issued pursuant  
42 to section six of this article shall be made in the manner  
43 herein prescribed for the service of a suggestee execution.

*Sec. 6. Vacation and Modification of Suggestee Executions.*

2 Either party may apply at any time to the court, if a court  
3 not of record, or the court or a judge thereof, if a court of  
4 record, from which such an execution shall have issued, upon  
5 such notice to the other party as such court or judge shall  
6 direct for the vacation or modification of the execution. After  
7 conducting a hearing thereon, the court or judge shall vacate  
8 the execution if satisfaction of the same or the judgment be  
9 made out by affidavit or otherwise, and in any case may make  
10 such modification of the execution as shall be deemed just, and  
11 such execution as so modified shall continue in full force and  
12 effect until paid and satisfied, or until vacated or further so  
13 modified. Such an execution may be vacated at any time upon  
14 the application of the judgment creditor without notice or a  
15 hearing and in such a case the clerk of a court of record shall  
16 have power to vacate the execution if issued out of his court.

17 For the protection of the suggestee, the lien of a suggestee  
18 execution shall, as regards the suggestee, be deemed unaffected  
19 by a vacating or modifying order prior to service of such  
20 order upon the suggestee.

Sec. 7. *Renewal of Suggestee Executions.* A suggestee execution which shall expire wholly or partly unsatisfied may be renewed from time to time in the manner in which it was originally issued and for a like period. The renewal execution shall conform to the original save that it shall state in addition the fact that it is a renewal and shall be issued only for the balance due on the judgment. A renewal execution shall retain the same priority of lien as the original if, and only if, served within thirty days before the expiration of the life of the original.

Sec. 8. *Fees.* A filing fee of one dollar shall be paid the proper officer for each suggestee execution or renewal thereof served upon him. A filing fee of fifty cents shall be paid such officer for any other paper served upon him under this article. The sums so received shall, in cases where the state or a state agency is the suggestee, be paid into the state treasury, to the credit of the general fund, and, in cases where a political subdivision is suggestee, be paid over to the credit of its general fund.

The general laws governing the fees of courts and court officers shall apply to the duties and functions performed under this article. In no event, however, shall the fee for modifying or vacating a suggestee execution exceed one dollar.

Sec. 9. *Payment in Satisfaction of Execution.* It shall be the duty of the proper officer, after service of an execution under this article, bearing the notation required by section four hereof if directed against salary or wages, to pay to the court or the clerk of the court who issued the execution or to the officer presenting the same such sums as may be or shall thereafter become due to the judgment debtor from the suggestee, or the amount thereof prescribed in section three of this article in the case of salary or wages, during the life of the execution until it shall be wholly satisfied.

A public officer who shall either pay over or fail or refuse to pay over, in satisfaction of such execution, money due the judgment debtor shall be personally liable therefor only if he

14 shall have acted in bad faith, even though such payment or  
15 failure or refusal to pay shall have been in violation of the  
16 rights of one or more parties in interest.

17 If a political subdivision be the suggestee and shall fail or  
18 refuse to pay over to the officer who served the execution the  
19 amount due the judgment debtor or the required percentage  
20 thereof in the case of salary or wages, it shall be liable to an  
21 action therefor by the judgment creditor named in the exe-  
22 cution and the amount recovered in the action shall be ap-  
23 plied toward the payment of the execution.

24 No judgment may be recovered against the state as sug-  
25 gester but a judgment creditor may bring an action against  
26 the proper officer for a declaratory judgment establishing his  
27 right to have sums due or to become due to his judgment  
28 debtor or from the state or a state agency applied in satis-  
29 faction of a suggestee execution issued on his judgment  
30 pursuant to this article. Such an action may be brought  
31 against the state auditor only in the circuit court of  
32 Kanawha county. Costs shall be in the discretion of the  
33 court.

Sec. 10. *Priority of Suggestee Executions Over Assignments.*

2 An execution issued and served under this article shall have  
3 priority over an assignment filed with the proper officer sub-  
4 sequent to service of the notice required by section four hereof  
5 in the case of salary or wages and subsequent to service of the  
6 execution in any other case. This section is not intended and  
7 shall not be deemed to modify the now existing law governing  
8 the validity of the assignment of the salary or wages of a  
9 public officer or employee.

Sec. 11. *Claims of Contractors on Public Works.* An exe-  
2 cution issued and served under this article shall, in the case of  
3 money due or to become due to a contractor on public work,  
4 apply only to such sums as shall be payable to the contractor  
5 after completion and acceptance of the work. Certification  
6 of completion and acceptance by the officer or body whose duty  
7 it is to make such determination shall be sufficient evidence to  
8 the proper officer of the facts of completion and acceptance  
9 for purposes of making payment in satisfaction of suggestee  
10 executions issued under this article.

Sec. 12. *Exemptions.* A judgment debtor to whom money

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

15 Money due to any lawful beneficiary thereof from any work-  
16 men's compensation, unemployment compensation, pension or  
17 retirement, or public assistance or relief fund or system, shall  
18 not be subject to suggestion under this article.

19 Public obligations, whether in the form of bonds, notes, cer-  
20 tificates of indebtedness, or otherwise, and whether negotiable  
21 or non-negotiable, shall not be subject to suggestion under  
22 this article.

Sec. 13. *Accounting for Moneys Collected Under Suggestee*  
2 *Executions.* It shall be the duty of the officer to whom a sug-  
3 gestee execution shall be delivered to account for and pay  
4 over to the person entitled thereto all moneys collected on such  
5 execution, less his lawful fees and expenses for collecting the  
6 same. In case of salaries, wages or other claims payable  
7 periodically, such accounting and payment shall be made  
8 from time to time and at least once every three months from  
9 the time a levy shall have been made.

Sec. 14. *Supreme Court of Appeals Authorized to Prescribe*  
2 *Forms of Suggestee Executions.* In aid of the better admin-  
3 istration of this article the supreme court of appeals is here-  
4 by authorized to prescribe forms of suggestee executions con-  
5 formable to the provisions hereof. Forms so prescribed shall  
6 be followed in the preparation of all suggestee executions is-  
7 sued under this article from and after a date to be fixed by  
8 the supreme court of appeals in promulgating the same,  
9 which shall be not less than thirty nor more than ninety days  
10 after their certification as hereinafter provided. Copies of

11 forms so prescribed shall be certified by the clerk of the su-  
12 preme court of appeals to the clerk of each court of record in  
13 the state. It shall thereupon be the duty in turn of each such  
14 clerk to furnish each court not of record within the circuit  
15 district, or other territorial area constituting the territorial  
16 jurisdiction of his court, by registered mail, with true copies  
17 of the forms and at the same time to inform such court of the  
18 time when the action of the supreme court of appeals in  
19 prescribing the forms shall take effect.

Sec. 15. *Garnishment and Suggestion of Money and Other*  
2 *Personalty in the Hands of Public Officers.* Money and other  
3 personal property in the hands of a sheriff, constable, clerk of  
4 court, justice of the peace or other public officer who shall hold  
5 the same by virtue of his office and which belongs or is owed to  
6 any person shall be subject to garnishment and suggestion in  
7 the same manner and to the same extent as if held by him as  
8 a private individual, except that money or other property  
9 which is in *custodia legis* shall be paid or delivered into the  
10 court to abide the result of the suit, unless the court shall  
11 otherwise direct. This section does not apply to public prop-  
12 erty or funds.

Sec. 16. *Construction of Article; Effect on Existing Law.*  
2 Existing law governing the presentment, audit and allowance  
3 of claims against the state, a state agency, or a political sub-  
4 division is not affected hereby and the provisions hereof shall  
5 not be deemed to permit payments in excess of appropriations  
6 not otherwise permitted by law. This article is remedial in  
7 purpose, however, and shall be liberally construed to that end.

Sec. 17. *Act Repealed.* Chapter one hundred ten, acts of  
2 the Legislature, regular session, one thousand nine hundred  
3 thirty-five, is hereby repealed.

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## CHAPTER 67

(Senate Bill No. 5—By Mr. LaFon, Mr. President)

AN ACT to amend chapter thirty-eight of the code of West Vir-  
ginia, one thousand nine hundred thirty-one, by adding there-  
to a new article, designated article five-a, providing for the

suggestion of the salary and wages of persons engaged in private employment.

[Passed March 9, 1939; in effect ninety days from passage. Approved by the Governor.]

**Article 5-a. Suggestions of Salary and Wages of Persons Engaged in Private Employment.**

**Section**

1. Definitions.
2. Salary or wages subject to suggestion only as provided in this article.
3. General provisions.
4. Notice to the judgment debtor.
5. Service of suggestee executions upon suggestees; payment in satisfaction of such executions; action for failure or refusal to pay.
6. Vacation and modification of suggestee executions.
7. Renewal of suggestee executions.
8. Priority of suggestee executions over assignments.
9. Exemptions.
10. Accounting for moneys collected under suggestee executions.
11. Supreme court of appeals authorized to prescribe forms of suggestee executions.
12. Fees.
13. Construction of article.

*Be it enacted by the Legislature of West Virginia:*

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

**Section 1. Definitions.** For purposes of this article:

- 2 (1) "Salary" and "wages" shall be given their ordinary  
3 meaning but in any event shall include compensation measur-  
4 ed partly or wholly by commissions, percentages or share of  
5 profits or by other sums based upon work done or results pro-  
6 duced whether or not the judgment debtor is given a drawing  
7 account.
- 8 (2) The term "suggestee execution" shall mean an execu-  
9 tion differing from an ordinary execution upon a judgment  
10 only in that it is directed against money due or to become due  
11 to the judgment debtor from the suggestee as therein set out.
- 12 (3) The term "judgment creditor" shall include the own-  
13 er of a money decree.

**Sec. 2. Salary or Wages Subject to Suggestion Only as  
2 Provided in this Article.** Salary or wages payable to any  
3 person engaged in private employment, whether due and

4 owing or to become due and owing, shall be subject to sug-  
5 gession by judgment creditors only as provided by this article.

Sec. 3. *General Provisions.* Upon the return of an ex-  
2 ecution wholly or partly unsatisfied a judgment creditor may  
3 apply to the court in which the judgment was recovered or a  
4 court having jurisdiction of the same, without notice to the  
5 judgment debtor, for a suggestee execution against any mon-  
6 ey due or to become due within one year after the issuance  
7 of such execution to the judgment debtor as salary or wages  
8 arising out of any private employment. If satisfactory proof  
9 shall be made, by affidavit or otherwise, of such facts and the  
10 fact that the amount due or to become due as salary or wages  
11 exceeds ten dollars per week the court, if not a court of record,  
12 or if a court of record, the clerk thereof, shall issue a sug-  
13 gesslee execution against the salary or wages of the judgment  
14 debtor and upon presentation of such execution by the  
15 officer to whom delivered for collection to the person or per-  
16 sons from which such salary or wages are due and owing or  
17 thereafter may become due and owing to the judgment  
18 debtor, the execution and the expenses thereof shall become  
19 a lien and continuing levy upon the salary or wages due or  
20 to become due to the judgment debtor within one year after  
21 the issuance of the same, unless sooner vacated or modified  
22 as hereinafter provided, to an amount equal to twenty per  
23 centum thereof and no more, but in no event shall the pay-  
24 ments in satisfaction of such an execution reduce the amount  
25 payable to the judgment debtor to less than ten dollars per  
26 week. Only one such execution shall be satisfied, at one time,  
27 except that in the event two or more such executions have  
28 been served and satisfaction of the one having priority is  
29 completed without exhausting the amount or the salary or  
30 wages then due and payable that is subject to suggestion  
31 under this article the balance of such amount shall be paid  
32 in satisfaction, in the order of their priority, of junior sug-  
33 gesslee executions against such salary or wages theretofore  
34 served.

Sec. 4. *Notice to the Judgment Debtor.* A certified copy of  
2 an execution issued under this article against salary or wages  
3 shall be served upon the judgment debtor. Such service shall

4 be made by the court or the clerk of the court who issued the  
5 execution by enclosing the copy in a postpaid wrapper ad-  
6 dressed to the judgment debtor or his agent authorized to  
7 accept service of process and forwarding the same by regis-  
8 tered mail, return receipt requested. The day and hour of  
9 such mailing shall be clearly noted on the face of the original  
10 execution and the officer to whom it is delivered for collection  
11 shall not make service upon the suggestee until the ex-  
12 piration of five days from that time. The fee for service of  
13 notice under this section shall be twenty-five cents without  
14 any additional allowance for postage, registry fee, or other  
15 expenses incurred in effecting service.

Sec. 5. *Service of Suggestee Executions Upon Suggestees;*  
2 *Payment in Satisfaction of Such Executions; Action for Fail-*  
3 *ure or Refusal to Pay.* A suggestee execution issued under  
4 this article against salary or wages shall be served upon the  
5 suggestee in the same manner as a summons commencing an  
6 action is served. It shall be the duty of any person upon  
7 whom such an execution, bearing the notation required by  
8 section four hereof, shall be served, and who shall at that  
9 time be indebted or who shall thereafter become indebted to  
10 the judgment debtor named in the execution for salary or  
11 wages, and while the execution shall remain a lien upon  
12 said indebtedness, to pay over to the officer serving the same  
13 or to the judgment creditor such amount of said indebtedness  
14 as is required by section three hereof during the life of the  
15 execution until it shall be wholly satisfied. The sums so paid  
16 shall be deducted from the amounts payable to the judgment  
17 debtor and such payment shall be a bar to any action by him  
18 therefor.

19 If the suggestee upon whom the execution shall be served,  
20 shall fail or refuse to pay over to the officer serving the exe-  
21 cution or to the judgment creditor the required percentage  
22 of the indebtedness, he shall be liable to an action therefor  
23 by the judgment creditor named in the execution and the  
24 amount recovered in the action shall be applied in satisfac-  
25 tion of the execution.

Sec. 6. *Vacation and Modification of Suggestee Executions.*  
2 Either party may apply at any time to the court, if a court  
3 not of record, or the court or a judge thereof, if a court of



4 record, from which such an execution shall have issued, upon  
5 such notice to the other party as such court or judge shall  
6 direct for the vacation or modification of the execution. After  
7 conducting a hearing thereon, the court or judge shall vacate  
8 the execution if satisfaction of the same or the judgment be  
9 made out by affidavit or otherwise, and in any case may make  
10 such modification of the execution as shall be deemed just,  
11 and such execution as so modified shall continue in full force  
12 and effect until paid and satisfied, or until vacated or further  
13 so modified. Such an execution may be vacated at any time  
14 upon the application of the judgment creditor without notice  
15 or a hearing and in such a case the clerk of a court of record  
16 shall have power to vacate the execution if issued out of his  
17 court. For the protection of the suggestee the lien of a sug-  
18 gestee execution shall, as regards the suggestee, be deemed  
19 unaffected by a vacating or modifying order prior to service  
20 of such order upon the suggestee.

Sec. 7. *Renewal of Suggestee Executions.* A suggestee ex-  
2 ecution which shall expire wholly or partly unsatisfied may  
3 be renewed from time to time in the manner in which it was  
4 originally issued and for a like period. The renewal execu-  
5 tion shall conform to the original save that it shall state in  
6 addition the fact that it is a renewal and shall be issued only  
7 for the balance due on the judgment. A renewal execution  
8 shall retain the same priority of lien as the original if, and  
9 only if, served within thirty days before the expiration of the  
10 life of the original.

Sec. 8. *Priority of Suggestee Executions Over Assignments.*  
2 An execution issued and served under this article shall have  
3 priority over an assignment filed with the suggestee subse-  
4 quent to service of the notice required by section four hereof.

Sec. 9. *Exemptions.* A judgment debtor to whom money  
2 is due or to become due which would otherwise be subject to  
3 suggestion under this article may have the same exempted  
4 from levy in the manner and to the extent provided for by  
5 article eight of this chapter. The exemption may be claimed  
6 for sums currently accruing but must be asserted anew as to  
7 any salary or wages which shall begin to accrue after the next  
8 payment date. Such exemption shall not be binding upon a

9 suggestee unless and until a certificate of exemption or true  
10 copy thereof shall have been delivered to him.

Sec. 10. *Accounting for Moneys Collected Under Suggestee*  
2 *Executions.* It shall be the duty of the officer to whom a sug-  
3 gestee execution shall be delivered to account for and pay  
4 over to the person entitled thereto all moneys collected on  
5 such execution, less his lawful fees and expenses for col-  
6 lecting the same. Such accounting shall be made from time  
7 to time and at least once every month from the time a levy  
8 shall have been made.

Sec. 11. *Supreme Court of Appeals Authorized to Prescribe*  
2 *Forms of Suggestee Executions.* In aid of the better admin-  
3 istration of this article the supreme court of appeals is here-  
4 by authorized to prescribe forms of suggestee executions  
5 conformable to the provisions hereof. Forms so prescribed  
6 shall be followed in the preparation of all suggestee execu-  
7 tions issued under this article from and after a date to be  
8 fixed by the supreme court of appeals in promulgating the  
9 same, which shall not be less than thirty, nor more than ninety  
10 days after their certification as hereinafter provided. Copies  
11 of forms so prescribed shall be certified by the clerk of the  
12 supreme court of appeals to the clerk of each court of record  
13 in the state. It shall thereupon be the duty in turn of each  
14 such clerk to furnish each court not of record within the cir-  
15 cuit, district, or other territorial area constituting the terri-  
16 torial jurisdiction of his court, by registered mail, with true  
17 copies of the forms and at the same time to inform such court  
18 of the time when the action of the supreme court of appeals  
19 in prescribing the forms shall take effect.

Sec. 12. *Fees.* The general laws governing the fees of  
2 courts and court officers shall apply to the duties and func-  
3 tions performed under this article. In no event, however,  
4 shall the fee for modifying or vacating a suggestee execution  
5 exceed one dollar.

Sec. 13. *Construction of Article.* This article is remedial  
2 in purpose and shall be liberally construed to that end.

## CHAPTER 68

(Senate Bill No. 160—By Mr. Wylie)

AN ACT to amend chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, relating to insurance and annuity contracts, by adding thereto article twelve, relating to burial insurance.

[Passed March 6, 1939; in effect ninety days from passage. Approved by the Governor.]

### Article 12. Burial Insurance.

#### Section

1. Burial insurance defined.
2. Qualification to do burial insurance business.
3. Compliance by those now engaged in the business.
4. Payment of benefits in cash.
5. Penalty for violation of article.
6. Societies and organizations exempt.

*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, relating to insurance and annuity contracts, be amended by adding thereto article twelve, to read as follows:

Section 1. *Burial Insurance Defined.* "Burial insurance" as used in this article includes any kind of agreement, policy, contract, bond, assurance, guarantee or other arrangement, by by-law, regulation or otherwise, in or by which an insurer agrees to pay for any or all of the incidents of the burial of the body of a named or designated person.

Sec. 2. *Qualification to Do Burial Insurance Business.* Before engaging in the business of burial insurance any person, association or corporation desiring so to do shall comply with all the provisions of the laws of this state governing the organization, qualification and conduct of life insurance companies.

Sec. 3. *Compliance by Those Now Engaged in the Business.* In order to continue in the business of burial insurance any person, association or corporation now engaged therein, shall comply with the provisions of this article on or before July one, one thousand nine hundred forty.

Sec. 4. *Payment of Benefits in Cash.* All burial insurance  
2 benefits shall be paid in cash to the beneficiary. No person,  
3 association or corporation engaged in the business of burial  
4 insurance shall contract to pay or pay such insurance, or its  
5 benefits or any part of either, to any official undertaker or  
6 to any designated undertaker or undertaking concern or to  
7 any particular tradesman or business man.

Sec. 5. *Penalty for Violation of Article.* Any person, as-  
2 sociation or corporation violating any provision of this  
3 article shall be guilty of a misdemeanor and, upon conviction,  
4 shall be punished by a fine of not less than twenty dollars,  
5 nor more than fifty dollars, for each and every day that such  
6 violation continues.

Sec. 6. *Societies and Organizations Exempt.* This article  
2 shall not apply to fraternal benefit societies operating on the  
3 lodge system or to any organization of employees under a  
4 common employer.

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## CHAPTER 69

(Com. Sub. for Senate Bill No. 207—Originating in the Senate Committee  
on Insurance)

AN ACT to amend and reenact sections six, seven, thirty-one,  
thirty-two, thirty-three and thirty-four, article eight, chapter  
thirty-three of the code of West Virginia, one thousand nine  
hundred thirty-one, relating to fraternal beneficiary societies.

[Passed March 10, 1939; in effect from passage. Became a law without the  
approval of the Governor.]

### Article 8. Fraternal Beneficiary Societies.

#### Section

6. When interest of beneficiary in certificate vests; change of beneficiary; limit of scope of benefits.
7. Qualifications for membership; examination or declaration of insurability; minors; additional benefits; social members; juvenile certificates.
31. Child insurance.
32. Children's branches; initiation not required.

33. Rates on child insurance; use of funds.

34. General provisions for child insurance certificates.

*Be it enacted by the Legislature of West Virginia:*

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

*Section 6. When Interest of Beneficiary in Certificate Vests;*

2 *Change of Beneficiary; Limit of Scope of Benefits.* No bene-  
3 ficiary shall have or obtain any vested interest in the proceeds  
4 of any certificates until such certificates become due and pay-  
5 able in conformity with the provisions of the insurance con-  
6 tract. The insured member shall have the right at all times to  
7 change the beneficiary or beneficiaries in accordance with the  
8 constitution, by-laws, rules and regulations of the society.  
9 Every society may, by its constitution, by-laws, rules or regu-  
10 lations, limit the scope of benefits.

Sec. 7. *Qualifications for Membership; Examination or*  
2 *Declaration of Insurability; Minors; Additional Benefits; So-*  
3 *cial Members; Juvenile Certificates.* Any society may admit  
4 to beneficial membership any person not less than sixteen  
5 and not more than sixty years of age, at nearest birthday,  
6 who has been examined by a legally qualified physician,  
7 and whose examination has been supervised and approved in  
8 accordance with the laws of the society, or who has made dec-  
9 laration of insurability acceptable to the society, and any  
10 person so admitted prior to attaining the full age of twenty-  
11 one years shall be bound by the terms of his or her application  
12 and certificate, and by all the laws, rules, and regulations of  
13 the society, and shall be entitled to all the rights and privileges  
14 of membership therein, as fully and to the same extent as  
15 though he or she were not a minor at the time of applying for  
16 such beneficial membership: *Provided.* That any beneficial  
17 member of a society who shall apply for additional benefits  
18 more than six months after becoming a beneficial member,  
19 shall pass an additional medical examination or make an ad-  
20 ditional declaration of insurability, as required by the so-  
21 ciety. Nothing herein contained shall prevent such society  
22 from accepting general or social members, who shall have no

23 voice or vote in the management of the insurance affairs of  
24 the society, nor from issuing juvenile certificates on the lives  
25 of children under the age of sixteen years.

Sec. 31. *Child Insurance.* Any fraternal benefit society  
2 authorized to do business in this state may provide in its  
3 constitution or by-laws, in addition to other benefits pro-  
4 vided for therein, for the payment of insurance, endow-  
5 ment and annuity benefits, in accordance with the pro-  
6 visions of this chapter, upon the lives of children not more  
7 than sixteen years of age, at nearest birthday, upon the ap-  
8 plication of some adult person upon whom such child is de-  
9 pendent for support and maintenance, as the laws, rules and  
10 regulations of the society may provide.

Sec. 32. *Children's Branches; Initiation Not Required.*  
2 Any such society may, at its option, organize and operate  
3 branches for such children, and membership in local lodges  
4 or branches and initiation therein shall not be required of  
5 such children, nor shall they have any voice in the manage-  
6 ment of the society.

Sec. 33. *Rates on Child Insurance; Use of Funds.* Every  
2 such society insuring the lives of children shall require  
3 contributions to be made for the benefits provided upon such  
4 lives in amounts at least equal to those required by either  
5 the Standard Industrial Mortality Table or the American  
6 Experience Table of Mortality with Craig's or Buttolph's ex-  
7 tension thereof, with interest assumption of not more than  
8 four per centum per annum: *Provided*, That contributions  
9 may be waived or returns may be made from any surplus held  
10 in excess of reserve and other liabilities, as provided in the  
11 laws of the society: *And provided further*, That extra con-  
12 tributions shall be made if the reserves hereinafter provided  
13 for become impaired. Any such society may provide in its  
14 constitution or by-laws that mortuary payments, meaning that  
15 portion of contributions allocated to the mortuary fund and  
16 to the reserves on outstanding insurance certificates received  
17 under new certificates issued on and after January first, one  
18 thousand nine hundred thirty-nine, covering the lives of chil-  
19 dren, may be mingled with the mortuary or reserve funds held  
20 on classes of adult certificates on which adequate reserves are

21 maintained not lower than those required herein. Except as  
22 hereinafter provided, every such society shall maintain the  
23 mortuary and reserve funds on insurance, endowments and  
24 annuities on the lives of children, and the accretions thereto,  
25 separate and distinct from all other funds of the society, and  
26 the same shall be held as a trust fund available exclusively  
27 for the payment of benefits under such certificates.

Sec. 34. *General Provisions for Child Insurance Certificates.*

2 (1) Every such society issuing such benefit certificates shall  
3 maintain on all such certificates the reserves required by the  
4 standard of mortality and the rate of interest adopted by such  
5 societies for computing contributions.

6 (2) Any such society may provide that when a child who  
7 is eligible for benefit membership reaches a minimum age for  
8 such membership, such child may be so admitted into such  
9 society upon compliance with such requirements as may be  
10 provided by the laws of the society, and upon such admission  
11 any reserve upon such juvenile certificate shall be transferred  
12 to the benefit or reserve fund of the society.

13 (3) Every society issuing such benefit certificates shall  
14 have the right to provide in its constitution, by-laws, rules and  
15 regulations for payments on account of the society's expense  
16 or general fund, which payments may be mingled with the  
17 general fund of the society. The society shall have the power  
18 to provide for the designation of beneficiaries, and for chang-  
19 ing such designations, and in all other respects for the regu-  
20 lation, government and control of such certificates, and all  
21 rights, obligations and liabilities incident thereto and con-  
22 nected therewith.

23 (4) Neither the person who originally made application for  
24 benefits on account of any child, nor the beneficiary named in  
25 such beneficiary certificate, nor the person who paid the con-  
26 tributions shall have any vested right in such certificate, or  
27 in any new certificate issued to any child.

28 All acts and parts of acts in conflict herewith are hereby  
29 repealed.

## CHAPTER 70

(Senate Bill No. 105—By Mr. Wylie)

AN ACT to amend chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, by adding article thirteen, relating to group and family expense accident and health insurance.

[Passed March 10, 1939; in effect ninety days from passage. Became a law without the approval of the Governor.]

### Article 13. Group and Family Expense Accident and Health Insurance.

#### Section

1. Companies authorized to issue.
2. Group accident and group health insurance defined; limitation on group insurance; employer and employee defined; family expense accident and health insurance defined.
3. Approval of policy forms.
4. Standard provisions of group policies.
5. Standard provisions of family expense policies.
6. Classes of insurance not affected by article.
7. Provisions of article severable; inconsistent acts repealed.

*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 article thirteen, to read as follows:

- Section 1. *Companies Authorized to Issue.* Companies organized under the laws of this or of any other state or government authorized by the preceding article of this chapter to 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 other coverages appertaining to accident and health insurance, may also issue policies or contracts of group and family expense accident and health insurance, as hereinafter defined.

- Sec. 2. *Group Accident and Group Health Insurance Defined; Limitation on Group Insurance; Employer and Employee Defined; Family Expense Accident and Health Insurance Defined.* (1) Any contract of insurance which insures against loss or expense occasioned by death or bodily injury of the insured resulting from accident or from ac-



7 cidental means, which covers not less than twenty-five per-  
8 sons, shall be deemed a group accident insurance policy. Any  
9 contract of insurance which insures against loss or expense  
10 resulting from disease or sickness of the injured, and which  
11 covers not less than twenty-five persons, shall be deemed a  
12 group health insurance policy. Any contract of insurance  
13 which combines coverage of group accident insurance and of  
14 group health insurance shall be deemed a group accident  
15 and health insurance policy.

16 (2) No contract of group insurance as defined in subsec-  
17 tion (1) shall be made, issued or delivered in this state (other  
18 than as provided in subsection (3) or other than as a con-  
19 tinuation of a contract in force on the effective date of this  
20 act) except with or to an employer, or to an association of  
21 employees of one employer for the benefit of persons other  
22 than the employer or association, for amounts of insurance  
23 based on a plan precluding individual selection, subject to  
24 the following requirements:

25 (a) If the premium is paid by the employer the group shall  
26 comprise all employees or all of any class or classes thereof  
27 determined by conditions pertaining to the employment;

28 (b) If the premium is paid by the employer and employees  
29 jointly, or by the employees, the group shall comprise not less  
30 than seventy-five per cent of all employees of the employer or  
31 not less than seventy-five per cent of all employees of any  
32 class or classes thereof determined by conditions pertaining to  
33 the employment.

34 (3) A group of not less than twenty-five members of (1)  
35 a labor union, or (2) a non-profit corporation organized for  
36 purposes other than that of obtaining insurance, having a  
37 constitution and by-laws, and whose membership is confined  
38 to the employees of one employer, its affiliates or subsidiaries,  
39 or (3) an association of school employees or employees of a  
40 federal or a state government, or a political subdivision there-  
41 of, or (4) a volunteer fire company, may be insured under a  
42 contract of group insurance as defined in subsection (1) made  
43 with or issued to any such group for the benefit of persons  
44 other than the group on a plan precluding individual selection.

45 (4) Any of the benefits provided by any contract of group  
46 insurance as defined in this section may be extended so as to

47 cover dependents of insured employees or members.

48 (5) For the purposes of this section the term employer may  
49 be deemed to include any municipal corporation or the proper  
50 officers as such, of any unincorporated municipality, or any  
51 department of such corporation. The term employees may be  
52 deemed to include the employees of a single employer, the  
53 officers, managers and employees of an employer and of sub-  
54 subsidiary or affiliated corporations of a corporate employer and  
55 the individual proprietor, partners and employees of indivi-  
56 duals and firms of which the business is controlled by the in-  
57 sured employer through stock ownership contract or other-  
58 wise.

59 (6) Any contract of insurance which covers members of  
60 any one family only, including husband, wife and children,  
61 against the hazards mentioned in subsection (1) of this sec-  
62 tion, or any of them, shall be deemed a family expense acci-  
63 dent and health insurance policy.

Sec. 3. *Approval of Policy Forms.* (1) No policy of  
2 group or family expense accident or group or family expense  
3 health or group or family expense accident and health insur-  
4 ance and no certificate under any such policy shall be issued  
5 or delivered in this state unless and until a copy of the form  
6 thereof, and all forms of applications, riders and endorsements  
7 for use in connection with the issuance or renewal thereof,  
8 shall have been filed with the commissioner and formally ap-  
9 proved by him as conforming to the requirements of this act  
10 and not inconsistent with any other provisions of law applic-  
11 able thereto; nor shall any such form be issued or delivered in  
12 this state after the commissioner shall have notified the insurer  
13 filing such form of his disapproval of such form, even though  
14 the commissioner may have previously approved such form.  
15 The commissioner shall, within a reasonable time after the fil-  
16 ing of any such form, notify the insurer filing the same either of  
17 his approval or of his disapproval of such form; if disapproved  
18 he shall specify the reasons for the disapproval. If the com-  
19 missioner shall fail to notify the insurer filing such form of  
20 either his approval or disapproval of such form within thirty  
21 days of filing the same, then the insurer shall be permitted to  
22 issue or deliver such form in this state until the commissioner

23 shall notify the insurer of his disapproval. The action of the  
24 commissioner in disapproving any such form shall be subject  
25 to judicial review, by appeal to the common pleas court or  
26 other court of similar jurisdiction located at the seat of state  
27 government, if said appeal shall be taken within thirty days  
28 from the date of notice of said disapproval.

Sec. 4. *Standard Provisions of Group Policies.* (1) No  
2 policy of group accident or group health or group accident and  
3 health insurance and no certificate thereunder, shall be is-  
4 sued or delivered in this state unless the master policy con-  
5 tains in substance the provisions specified in paragraphs (a)  
6 to (o) following:

7 (a) A provision that no statement made by the applicant  
8 or applicants for insurance shall void the insurance or re-  
9 duce benefits thereunder unless contained in the written ap-  
10 plication signed by the applicant; and a provision that no  
11 agent has authority to change the policy or to waive any of  
12 its provisions and that no change in the policy shall be valid  
13 unless approved by an officer of the insurer and evidenced by  
14 endorsement on the policy;

15 (b) A provision that all statements contained in any  
16 such application shall, in the absence of fraud, be deemed rep-  
17 resentations and not warranties;

18 (c) A provision that all new employees of the employer or  
19 all new members of the organization, as the case may be, in the  
20 groups or classes eligible for insurance must from time to time  
21 be added to such groups or classes eligible for insurance;

22 (d) A provision that the insurer will issue to the em-  
23 ployer or other person or organization in whose name such  
24 policy is issued, for delivery to each member of the insured  
25 group, an individual certificate setting forth in summary form  
26 a statement of the essential features of the insurance coverage  
27 of such employee or such member, to whom benefits there-  
28 under are payable, and such additional information as the na-  
29 ture of the coverage justly requires;

30 (e) A provision to the effect that the insurability of any  
31 member of the insured group does not cease to exist or termi-  
32 nate, by reason of age alone, until such member has attained  
33 the age of sixty-five years;

34 (f) A provision stating the conditions under which the

35 insurer may decline to renew the policy;

36 (g) A provision specifying the ages, if any there be, to  
37 which the insurance provided therein shall be limited; the  
38 ages, if any there be, for which additional restrictions are  
39 placed on benefits, and the additional restrictions placed on  
40 the benefits at such ages;

41 (h) A provision that written notice of sickness or of in-  
42 jury must be given to the insurer within twenty days after  
43 the date such sickness or injury occurred. Failure to give  
44 notice within such time shall not invalidate or reduce any  
45 claim if it shall be shown not to have been reasonably possi-  
46 ble to give such notice and that notice was given as soon as was  
47 reasonably possible;

48 (i) A provision that in the case of claim for loss of time  
49 from disability, written proof of such loss must be furnished  
50 to the insurer within thirty days after the commencement of  
51 the period for which the insurer is liable, and that subsequent  
52 written proofs of the continuance of such disability must be  
53 furnished to the insurer at such intervals as the insurer may  
54 reasonably require, and that in the case of claim for any other  
55 loss, written proof of such loss must be furnished to the in-  
56 surer within ninety days after the date of such loss. Failure  
57 to furnish such proof within such time shall not invalidate nor  
58 reduce any claim if it shall be shown not to have been reason-  
59 ably possible to furnish such proof and that such proof was  
60 furnished as soon as was reasonably possible;

61 (j) A provision that the insurer will furnish to the policy-  
62 holder such forms as are usually furnished by it for filing  
63 proof of loss. If such forms are not furnished before the ex-  
64 piration of fifteen days after the insurer receives notice of  
65 any claim under the policy, the person making such claim  
66 shall be deemed to have complied with the requirements of  
67 the policy as to proof of loss upon submitting within the time  
68 fixed in the policy for filing proof of loss, written proof cover-  
69 ing the occurrence, character and extent of the loss for which  
70 claim is made;

71 (k) A provision that the insurer shall have the right and  
72 opportunity to examine the person of the insured when and  
73 so often as it may reasonably require during the pendency of  
74 claim under the policy and also the right and opportunity to  
75 make an autopsy in case of death where it is not prohibited  
76 by law;

77 (1) A provision that all benefits payable under the policy  
78 other than benefits for loss of time will be payable not more  
79 than sixty days after receipt of proof, and that, subject to  
80 due proof of loss, all accrued benefits payable under the policy  
81 for loss of time will be paid not later than at the expiration of  
82 each period of thirty days during the continuance of the  
83 period for which the insurer is liable, and that any balance  
84 remaining unpaid at the termination of such period will be  
85 paid immediately upon receipt of such proof;

86 (m) In any policy in which a beneficiary is designated, a  
87 provision that consent of the beneficiary shall not be requisite  
88 to any other changes in the policy or certificate, except as may  
89 be specifically provided by the policy;

90 (n) A provision that no action at law or in equity shall  
91 be brought to recover on the policy prior to the expiration of  
92 sixty days after proof of loss has been filed in accordance  
93 with the requirements of the policy and that no such action  
94 shall be brought at all unless brought within two years from  
95 the expiration of the time within which proof of loss is re-  
96 quired by the policy;

97 (o) A provision that if any time limitation in the policy  
98 with respect to giving notice of claim or furnishing proof of  
99 loss or bringing action on the policy is less than that per-  
100 mitted by the laws governing the question of such limitation,  
101 such limitation is extended to agree with the minimum period  
102 permitted by such laws.

103 (2) No policy of group accident, or group health or group  
104 accident and health insurance, and no certificate thereunder,  
105 shall be issued or delivered in this state, if such policy or cer-  
106 tificate contains any provision inconsistent with any of the  
107 provisions of this section, except that the commissioner may  
108 approve any provision in any such policy or certificate which  
109 in his opinion is more favorable to policyholders or certificate-  
110 holders than the provision herein prescribed.

Sec. 5. *Standard Provisions of Family Expense Policies.*

2 No policy of family expense accident or family expense health  
3 or family expense accident and health insurance, and no cer-  
4 tificate thereunder, shall be issued or delivered in this state  
5 unless the master policy contains, in substance, the provisions  
6 specified in paragraphs (a) and (b) following:

7 (a) A provision that the policy and the application of the  
8 head of the family shall constitute the entire contract between

9 the parties, and that all statements made by the head of the  
10 family shall, in the absence of fraud, be deemed representa-  
11 tions and not warranties, and that no statement shall be used  
12 in defense to a claim under the policy, unless it is contained  
13 in a written application;

14 (b) A provision that to the family group originally in-  
15 sured shall be added from time to time all new members of  
16 the family eligible for insurance in such family group.

*Sec. 6. Classes of Insurance Not Affected by Article. (1)*

2 Nothing in this article, however, shall apply to or affect any  
3 policy of liability or workmen's compensation insurance or  
4 any policy of insurance on which the premiums are payable  
5 weekly.

6 (2) Nothing in this article shall apply to nor in any way  
7 affect life insurance, endowment or annuity contracts or con-  
8 tracts supplemental thereto which contain no provisions re-  
9 lating to accident or health insurance, except (a) such as  
10 provide additional benefits in case of death by accidental  
11 means, and except (b) such as operate to safeguard such  
12 contracts against lapse, or to give a special surrender value,  
13 or special benefit, or an annuity, in the event that the in-  
14 sured or annuitant shall become totally and permanently dis-  
15 abled as defined by the contract or supplemental contract.

16 (3) Nothing in this article shall apply to or in any way  
17 affect fraternal benefit societies.

*Sec. 7. Provisions of Article Severable; Inconsistent Acts*

2 *Repealed.* If any section, paragraph, sentence, clause, word or  
3 application of any part hereof, be held unconstitutional, the  
4 same shall not affect the validity of the remaining portions.  
5 All acts and parts of acts in conflict with provisions hereof  
6 are hereby repealed.

## CHAPTER 71

(Senate Bill No. 177—By Mr. Johnston, of Mercer, by request)

AN ACT to amend and reenact section twenty-three, article three,  
chapter forty-eight of the code of West Virginia, one thousand  
nine hundred thirty-one, relating to insurance for the benefit of

married women; and the assignment of an insurance policy by a married woman.

[Passed March 6, 1939; in effect from passage. Approved by the Governor.]

**Article 3. Property, Rights and Liabilities of Married Women; Husband and Wife.**

**Section**

23. Insurance for benefit of married woman.

*Be it enacted by the Legislature of West Virginia:*

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

Section 23. *Insurance for Benefit of Married Woman.* Any married woman may, in her own name, or in the name of any third person, with his assent, as her trustee, cause to be insured for her sole use the life of her husband, for any definite period or for the term of his natural life; and any person, whether her husband or not, effecting any insurance on his own life, or on the life of another, may cause the same to be made payable to, or assign the policy to, a married woman, or to any person in trust for her or her benefit; and every such policy, when expressed to be for the benefit of, or assigned or made payable to, any married woman or any such trustee, shall be the property of such married woman, and shall inure to her own use and benefit, and in case of her surviving the period or term of such policy the amount of insurance shall be payable to her or her trustee for her own use and benefit, free from the control, disposition or claims of her husband, and of the person effecting or assigning such insurance, and from the claims of their respective representatives and creditors: *Provided, however,* That if the annual premium on any such policy shall exceed the sum of three hundred dollars and is paid by any person with intent to defraud his creditors, an amount equal to the premium so paid in excess of such sum, with interest thereon, shall inure to the benefit of such creditors, subject, however, to the statute of limitations: *Provided further,* That the company issuing the policy shall be discharged of all liability thereon by payment of its proceeds in accordance with its terms, unless before such payment the company shall have written notice, by or in behalf of a credit-

29 or, of a claim to recover for premiums paid with intent to  
30 defraud creditors, with specifications of the amount claimed.  
31 The amount of any such insurance may be made payable, in  
32 case of the death of such married woman before the period at  
33 which it became due, to her children, or her husband's chil-  
34 dren, or to their guardian if under age, for their use, as shall  
35 be provided in the policy: *Provided further*, That nothing here-  
36 in contained shall be so construed as to preclude a married  
37 woman from validly assigning all her right, title or interest in  
38 any such policy of insurance, either absolutely or as collateral  
39 security, to any person for a valuable consideration which  
40 inures either to said married woman, the person whose life  
41 is insured, or the person effecting such insurance.

## CHAPTER 72

(Com. Sub. for House Bill No. 163—Originating in the House Committee  
on Insurance)

AN ACT to amend and reenact section twenty, article four, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, providing for annual reports by fire insurance companies, for the creation of fire insurance statistical or actuarial service bureaus, for the examinations of such bureaus by the insurance commissioner, for the keeping and filing by fire insurance companies in the office of such bureaus of records of premium receipts and losses paid by fire insurance companies, and for the filing of such records by such bureaus in the office of the insurance commissioner, providing for review and change of rates, after hearing by the insurance commissioner, and providing for appeals from the rulings of the commissioner.

[Passed March 6, 1939; in effect ninety days from passage. Approved by the Governor.]

### Article 4. Fire and Marine Insurance.

#### Section

20. Fire insurance companies to file schedule of premium receipts and losses paid; statistical or actuarial service bureaus; change of rates by insurance commissioner; review.

*Be it enacted by the Legislature of West Virginia:*

That section twenty, article four, chapter thirty-three of the



code of West Virginia, one thousand nine hundred thirty-one, be amended and reenacted to read as follows:

Section 20. *Fire Insurance Companies to File Schedule of Premium Receipts and Losses Paid; Statistical or Actuarial Service Bureaus; Change of Rates by Insurance Commissioner; Review.* (a) Every fire insurance company or other insurer authorized to effect insurance against the risk of loss or damage by fire in this state shall on or before the first day of March of each calendar year file in the office of the insurance commissioner a classification schedule of premium receipts and losses paid on risks in the state of West Virginia during the preceding calendar year. Every such insurer shall be a member of a statistical or actuarial service bureau. Each such bureau shall maintain an office or offices in this state. No such insurer shall be a member of more than one such bureau which keeps statistics as to risks of the same kind of hazard. Such bureau shall admit to membership any such insurer authorized to do business in this state transacting business upon a like plan and applying therefor: *Provided, however,* That every such bureau serving stock fire insurance companies shall serve all stock fire insurance companies without distinction or discrimination: *And provided further,* That any such bureau serving mutual fire insurance companies shall serve all mutual fire insurance companies without distinction or discrimination. The expense of such bureau shall be borne by the members under reasonable rules and regulations of the bureau. Every such insurer shall, in its annual application for license, specify the statistical or actuarial service bureau or bureaus of which it is, or will upon receiving such license become a member. The insurance commissioner shall at any and all times have the authority to inspect the records of such bureau in regard to its methods of tabulation of data from daily reports to determine the correctness and completeness of same as to each class or classes of risks written by each fire insurance company, and have authority to require, when necessary, changes in such methods of tabulation so as to reflect the total premiums received and losses paid on any

37 class or classes of risks. The insurance commissioner may  
38 make and enforce whatever reasonable rules are necessary to  
39 secure information from such bureau as to premiums and  
40 losses by classes of risks.

41 (b) Every such insurer so authorized to do business in  
42 this state shall provide for the transmission to such bureau  
43 of copies of daily reports of all policies written covering  
44 properties within this state from which copies such bureau  
45 shall compile and transmit to the insurance commissioner,  
46 under the oath of an executive officer of such bureau, from  
47 time to time, at the discretion of the commissioner, but not  
48 oftener than monthly, gross fire premiums, less only return  
49 premiums, by occupational classes, not to exceed, however,  
50 twenty-six such classifications; and, by classification of towns  
51 based on the degree of fire protection available as employed  
52 by such company or companies in the application of rates.

53 (c) The insurance commissioner shall establish and main-  
54 tain in his office an adequate staff for assembling, compiling  
55 and recording such facts, information and figures pertaining  
56 to the experience of fire insurance companies licensed to do  
57 business in this state, as such companies and the statistical  
58 or actuarial service bureaus, in this chapter provided for, are,  
59 by this chapter, required to keep and submit.

60 (d) If at any time it shall appear to the commissioner  
61 that the rates charged in this state by the licensed insurers  
62 as a whole are excessive or unreasonable in that the results  
63 of the business of such insurers in this state during the five  
64 years next preceding the year in which investigation is so  
65 made, as indicated by the reports provided for herein, show  
66 an aggregate underwriting profit in excess of a reasonable  
67 amount upon any class or classes of risks, then the commis-  
68 sioner shall have the power to call a hearing in the matter  
69 and, after a hearing, to order a reduction in rates upon such  
70 class or classes of risks. If in the same manner it appears  
71 that the rates upon any class or classes of risks are insufficient  
72 to show a reasonable underwriting profit, then the commis-  
73 sioner shall have the power to increase the rates upon such  
74 class or classes of risks so as to produce a reasonable profit.

75 In determining the question of a reasonable underwriting  
76 profit the commissioner, as a protection to all policyholders,

77 shall give proper and reasonable consideration to the con-  
78 flagration or catastrophe hazard within and without this state.  
79 In ordering or permitting changes of rates, however, in ad-  
80 dition to loss experience by classes, the commissioner shall  
81 give due consideration to degrees of public fire protection,  
82 structural standards and occupancy and exposure hazards. In  
83 calling such hearing the commissioner shall serve notice in  
84 the manner prescribed by law upon the insurance companies  
85 or other insurers, rating bureaus and statistical or actuarial  
86 service bureaus which may be affected by any order made  
87 upon such hearing. In addition to such insurers, rating bu-  
88 reaus and statistical or actuarial service bureaus, any other  
89 person or corporation having an interest in the subject mat-  
90 ter may attend and become a party to such hearing. After  
91 such hearing the commissioner shall enter an order showing  
92 his findings in the premises. In the event that any party in  
93 interest is dissatisfied with such order, he or it may, within  
94 thirty days after the entry thereof, file a petition to the cir-  
95 cuit court of Kanawha county or to the judge thereof in va-  
96 cation for the review of such order. Before presenting his  
97 or its petition to the court or judge, the petitioner shall mail  
98 a copy thereof to the insurance commissioner. Upon the re-  
99 ceipt of such copy, the insurance commissioner shall forth-  
100 with transmit to the clerk of such court the record of the  
101 proceedings before him. The court or judge shall fix a time  
102 for the review of said proceedings at his earliest convenience.  
103 Notice in writing of the time and place of such hearing shall  
104 be given to the insurance commissioner at least ten days be-  
105 fore the date set therefor. The court or judge shall, without  
106 a jury, hear and determine the case upon the record of the  
107 proceedings before the insurance commissioner. The court or  
108 judge may enter an order revising or reversing the decision  
109 of the insurance commissioner, if it appears that the decision  
110 is clearly wrong, or may affirm such decision. The judgment  
111 of the circuit court or judge may be reviewed upon appeal in  
112 the supreme court of appeals. Pending such review the order  
113 of the commissioner shall be in full force and effect until  
114 final determination, unless the court, or the judge thereof sit-  
115 ting in vacation, before whom such review is pending shall  
116 enter an order directing that the existing rates shall remain in  
117 effect until final determination by the court.

## CHAPTER 73

(Senate Bill No. 287—By Mr. LaFon, Mr. President)

AN ACT to amend and reenact section eight, article eighteen, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, relating to costs in criminal cases before justices of the peace, including jailers' compensation for maintenance of prisoners.

[Passed March 9, 1939; in effect ninety days from passage. Approved by the Governor.]

### Article 18. Criminal Jurisdiction and Procedure; Appeals.

#### Section

#### 8. Costs; execution.

*Be it enacted by the Legislature of West Virginia:*

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

Section 8. *Costs; Execution.* Whether the trial is by jury  
2 or not, if the judgment be against the accused, it shall be for  
3 the costs of the proceeding in addition to the fine and term of  
4 imprisonment imposed, and when the accused is sentenced to  
5 imprisonment, whether a fine be also imposed or not, or is im-  
6 prisoned for nonpayment of a fine and costs, the jailer's com-  
7 pensation for maintenance of the prisoner shall be included in  
8 the costs and paid out of the general school fund of the county,  
9 provided a fine and costs have been assessed against and col-  
10 lected from the accused by the justice of the peace before  
11 whom tried, and by him paid into the general school fund,  
12 otherwise, to be paid out of the county fund general revenue.  
13 Execution, to be collected out of the personal property of the  
14 accused, may be issued on such judgment for fine and costs,  
15 or for the costs alone, if the judgment be for imprisonment  
16 and costs without fine. Fee bills may be issued against the  
17 accused for costs incurred at his instance, including the  
18 jailer's compensation, under the same regulations and with  
19 like effect as in civil suits.

## CHAPTER 74

(Senate Bill No. 240—By Mr. Paull)

AN ACT to amend and reenact sections one, two and eleven, article seventeen, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the fees of justices and constables in civil and criminal cases.

[Passed March 10, 1939; in effect ninety days from passage. Became a law without the approval of the Governor.]

### Article 17. Fees, Fines and Costs.

#### Section

1. Fees of justices in civil cases.
2. Fees of constables in civil cases.
11. Fees of justices in criminal cases.

*Be it enacted by the Legislature of West Virginia:*

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

Section 1. <i>Fees of Justices in Civil Cases.</i> Every justice of	
2 the peace shall be entitled to charge and receive the following	
3 fees in civil cases, and no other fees shall be charged by any	
4 justice in civil cases and proceedings before him:	
5 For entering suit and issuing summons or summonses,	
6 not to exceed two, issuing subpoena or subpoenas for	
7 not to exceed two witnesses, and making all neces-	
8 sary copies of said summonses and subpoenas, swear-	
9 ing not to exceed four persons, docketing the case,	
10 indexing and filing papers, receiving confession of	
11 judgment or rendering judgment by default and en-	
12 tering same together with satisfaction on docket, in-	
13 cluding the taxing of justice's and constable's costs....	\$3.00
14 For each summons or subpoena in excess of two.....	.20
15 For swearing each witness in excess of two, arbitrators	
16 or party.....	.10
17 For appointing special constables at request of either	
18 party .....	.25
19 For trying case (defense interposed), and entering	
20 judgment and satisfaction.....	1.00
21 For issuing order of attachment and necessary copies	

22	thereof, and taking bond.....	.75
23	For each additional attachment to recover on original	
24	judgment, and taking bond.....	.75
25	For issuing second summons together with copies there-	
26	of for nonresidents as provided by section ten, article	
27	nine of this chapter.....	.60
28	For issuing order of arrest or order of commitment.....	.50
29	For trial and judgment of any case of contempt.....	1.00
30	For taking and certifying any affidavit in writing, ex-	
31	cept to commence suit.....	.40
32	For every continuance.....	.20
33	For appointing a guardian for the suit of an infant	
34	plaintiff or defendant.....	.25
35	For settling and allowing interrogatories.....	.40
36	For entering agreement for arbitration.....	.40
37	For summons of arbitrators.....	.30
38	For every bond filed in a case and docketing of same,	
39	except bond in attachment case.....	.25
40	For ordering a jury, including the drawing for same.....	.50
41	For abstract of judgment for docketing in the office of	
42	the clerk of the county court.....	.25
43	For issuing execution and entering return thereof on	
44	docket .....	.50
45	For entering stay of execution.....	.25
46	For trying right of property levied on or attached.....	1.00
47	For transcript from docket.....	.50
48	For transmitting or delivering papers to the clerk of the	
49	circuit court in case of an appeal.....	.50
50	For taking and certifying acknowledgment of deed or	
51	other instrument of writing.....	.50
52	For taking depositions of witnesses if done in an hour	
53	or less.....	.75
54	If not done in an hour, for additional time at the rate,	
55	per hour, of.....	.75
56	For taking an inquest on a dead body, to be audited	
57	and paid from the treasury of the county.....	5.00
58	<i>Provided, however, That in an action brought before a</i>	
59	<i>justice to recover a sum of money where an attachment,</i>	
60	<i>garnishment or suggestion order is issued against the wages</i>	
61	<i>of a defendant and the claim is not contested, the maximum</i>	
62	<i>total fee covering all costs, to be charged by the justice in</i>	

63 such case, shall not exceed four dollars and fifty cents; and  
 64 if the claim is contested, the maximum total fee, covering  
 65 all costs, to be charged by the justice, shall not exceed five  
 66 dollars.

Sec. 2. *Fees of Constables in Civil Cases.* Every constable  
 2 shall be entitled to charge and receive the following fees in  
 3 civil cases:

4 For removing a person by virtue of a warrant issued	
5 under section fifteen, article one, chapter nine of this	
6 code, to be charged to the county court of the county	
7 for each mile of necessary travel, going and return-	
8 ing .....	\$0.05
9 For service and return of summons to commence a suit	
10 and for every additional summons.....	.75
11 For serving and returning order of attachment, for	
12 each garnishee summoned.....	.50
13 For taking property under order of attachment, includ-	
14 ing inventory and appraisement, besides the reason-	
15 able expenses of removing, securing and keeping the	
16 property attached.....	1.00
17 For subpoenas, for each person served therewith.....	.25
18 For summoning and returning a jury.....	1.50
19 For levying an execution or distress warrant on per-	
20 sonal property and return.....	1.00
21 For posting notices of sale.....	.40
22 For money collected, after levy, under execution or at-	
23 tachment and paid to the justice.....	5%
24 For making sale of personal property under distress	
25 warrant, after levy, upon the proceeds of such sale....	5%
26 If the claim under distress warrant be satisfied prior to	
27 sale the constable or other officer to whom the warrant to	
28 distrain was issued or the officer levying such warrant shall be	
29 entitled to receive and collect only such fees as are provided	
30 for in this section for making levy and also for posting	
31 notice of sale, if such notice was posted.	
32 For serving and returning other writs and notices not	
33 specified in this section, each.....	.75
34 For executing a writ of possession under section ten,	
35 article one of this chapter.....	2.00
36 For summoning the jury and witnesses for inquest on a	
37 dead body, to be audited and paid from the treasury	

38 of the county..... 3.00  
39 For services not otherwise provided for, the same fees  
40 as for a sheriff for similar cases.  
41 *Provided, however,* That in an action brought before a  
42 justice to recover a sum of money where an attachment,  
43 garnishment or suggestion order is issued against the wages  
44 of a defendant, the maximum total fee to be charged by the  
45 constable in such case shall not exceed one dollar and fifty  
46 cents.

Sec. 11. *Fees of Justices in Criminal Cases.* Every justice  
2 shall be entitled to a fee of three dollars in each criminal  
3 case and proceeding before him, which fee shall constitute  
4 his compensation for all official services performed by him  
5 in connection with any single case, including affidavit for  
6 warrant, warrant of arrest, trial, examination, recognizance,  
7 issuing subpoenas and copies thereof, warrants summoning  
8 and swearing a jury when required, swearing and certifying  
9 attendance of witnesses, entering judgment and taxing costs,  
10 issuing execution and any return thereon, granting an appeal,  
11 including the taking of bond or recognizance, and all other  
12 acts in connection therewith. Except, that he shall be allowed  
13 an additional fee of fifty cents for making and certifying a  
14 transcript of his docket in any particular case and trans-  
15 mitting the same to the clerk of the circuit court, the state  
16 road commission, or any other office to which he may be by  
17 law required to certify such transcript. And no other fees  
18 shall be taxed or charged by any justice in such cases and  
19 proceedings: *Provided, however,* That the provisions of this  
20 section shall not apply to the fees of justices earned by them  
21 prior to the seventeenth day of January, one thousand nine  
22 hundred thirty-five, but the justices shall be entitled to such  
23 fees theretofore earned as were authorized by law at the  
24 time said fees were earned, and the prosecuting attorneys,  
25 county courts and sheriffs may approve and pay such accrued  
26 costs in the same manner as was provided by the code of West  
27 Virginia, one thousand nine hundred thirty-one, prior to the  
28 enactment of chapters thirty-one and thirty-two, acts of the  
29 Legislature of West Virginia, regular session, one thousand  
30 nine hundred thirty-five.

31 For the purposes of this section, the fees herein provided  
32 shall cover any particular case and all proceedings therein,



33 and all misdemeanors growing out of the same act or series  
34 of acts covering the same subject matter and occurring at  
35 or about the same time shall be construed as one case, regard-  
36 less of the number of warrants issued in connection there-  
37 with and regardless of the number of persons charged there-  
38 with, whether such person be charged jointly or severally,  
39 unless separate trials by jury be demanded by one or more of  
40 said defendants and such separate trials be conducted, or un-  
41 less separate trials be necessarily conducted by reason of un-  
42 avoidable delays incident to the apprehension of one or more  
43 defendants, the attendance of material witnesses, or other legal  
44 cause. The above provisions, when applicable, shall likewise  
45 apply to preliminary hearings in felony cases. But the justice  
46 shall be entitled to the fees provided in this section only after  
47 he shall have conducted a trial of the case upon its merits, or  
48 shall have completed the usual and ordinary steps for a pre-  
49 liminary hearing upon a felony charge.

## CHAPTER 75

(House Bill No. 234—By Mr. Flint)

AN ACT to amend and reenact sections one to nine, inclusive, article six, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, relating to child labor.

[Passed March 8, 1939; in effect ninety days from passage. Approved by the Governor.]

### Article 6. Child Labor.

#### Section

1. Employment of children under sixteen.
2. Employment of children under eighteen in certain occupations; determination as to other occupations; appeal to supreme court.
3. Issuance of work permit; vacation work permit; special work permit.
4. Contents of work permit; forms, filing; revocation.
5. Age certificate for employer; inquiry as to age; revocation of certificate; supervision by state superintendent of schools.
6. Children in state institutions.
7. Hours and days of labor by minors; duty of employer to post notice thereof.
8. Supervision permits.
9. Enforcement of article.
10. Offenses; penalties.

*Be it enacted by the Legislature of West Virginia:*

That sections one to nine, inclusive, article six, chapter twenty-

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

Section 1. *Employment of Children Under Sixteen.* Except  
2 as permitted and authorized by the provisions of this article,  
3 no child under sixteen years of age shall be employed, per-  
4 mitted or suffered to work in, about, or in connection with  
5 any gainful occupation other than agriculture, horticulture or  
6 domestic service in a private home.

Sec. 2. *Employment of Children Under Eighteen in Certain*  
2 *Occupations; Determination as to Other Occupations; Ap-*  
3 *peal to Supreme Court.* No child under eighteen years of age  
4 shall be employed, permitted or suffered to work in any mine,  
5 quarry or tunnel; or in, about, or in connection with any of  
6 the following:

7 (1) Stone cutting or polishing;

8 (2) The manufacture or transportation of explosives or  
9 highly inflammable substances;

10 (3) Ore reduction works, smelters, hot rolling mills, furn-  
11 aces, foundries, forging shops, or in any other place in which  
12 the heating, melting or heat treatment of metals is carried on;

13 (4) Machinery used in the cold rolling of heavy metal  
14 stock, metal plate bending machines, or power-driven metal  
15 planing machines.

16 No child under eighteen years of age shall be employed  
17 or permitted to work in a public bowling alley, pool room or  
18 billiard room, or be permitted, employed or suffered to sell,  
19 dispense or serve beer, in any place or establishment where  
20 beer is served, sold or dispensed, if dancing is permitted or  
21 allowed in the same room in which such beer is served, sold or  
22 dispensed, or in any indecent, obscene or immoral exhibition  
23 or practice; nor shall a child under eighteen years of age  
24 be apprenticed, given away, let out or otherwise disposed  
25 of to any person or company to engage in the occupation or  
26 service of rope or wire walker, gymnast, contortionist, circus  
27 rider, acrobat or clown.

28 The state commissioner of labor, the state commissioner of  
29 health, and the state superintendent of free schools may,  
30 from time to time, after hearing duly had, determine whether  
31 or not any particular trade, process of manufacturing, or

32 occupation in which the employment of children under  
33 eighteen years of age is not already forbidden by law, or any  
34 particular method of carrying on such trade, process of  
35 manufacture, or occupation, is sufficiently dangerous to the  
36 lives or limbs, or injurious to the health or morals of chil-  
37 dren under eighteen years of age to justify their exclusion  
38 therefrom. No child under eighteen years of age shall be em-  
39 ployed or permitted to work in any occupation thus de-  
40 termined to be dangerous or injurious to such children. There  
41 shall be a right of appeal to the supreme court of appeals  
42 from any such determination.

Sec. 3. *Issuance of Work Permit; Vacation Work Permit;*  
2 *Special Work Permit.* No child under sixteen years of age  
3 shall be employed or permitted to work in any gainful occu-  
4 pation, unless the person, firm or corporation by whom such  
5 child is employed or permitted to work, obtains and keeps on  
6 file and accessible to officers charged with the enforcement of  
7 this article, a work permit issued by the superintendent of  
8 schools of the county in which such child resides, or by some  
9 person authorized by him in writing. Before any such work  
10 permit has been issued, it shall be necessary to obtain in writ-  
11 ing the consent of the parent or parents, guardian or custodian  
12 of such child. Whenever such work permit has been issued, or  
13 wherever an age certificate has been issued under the pro-  
14 visions of section five of this article, it shall be conclusive as  
15 to the age of the child on whose behalf such work permit or  
16 age certificate was issued.

17 The superintendent of schools, or person authorized by him  
18 in writing, shall issue such work permit only upon receipt of  
19 the following documents:

20 (1) A written statement, signed by the person for whom the  
21 child expects to work, that he intends legally to employ such  
22 child and agrees to return the work permit to the issuing officer  
23 within two days after the termination of such child's employ-  
24 ment.

25 (2) (a) A birth certificate, or attested transcript thereof,  
26 issued by the registrar of vital statistics or other officer  
27 charged with the duty of recording births; or

28 (b) A record of baptism, or a certificate or attested tran-

29 script thereof, showing the date of birth and place of bap-  
30 tism of the child; or

31 (c) A bona fide contemporary record of the date and  
32 place of the child's birth kept in the Bible in which the rec-  
33 ords of the births of the family of the child are preserved,  
34 or other documentary evidence approved by the state com-  
35 missioner of labor, such as a passport showing the age of the  
36 child, a certificate of arrival in the United States issued by  
37 the United States immigration officers and showing the age  
38 of the child, or a life insurance policy: *Provided*, That such  
39 other satisfactory documentary evidence shall have been in  
40 existence at least one year prior to the time it is offered in  
41 evidence: *Provided further*, That a school record or parent's,  
42 guardian's or custodian's affidavit, certificate or other writ-  
43 ten statement of age alone shall not be accepted;

44 (d) A certificate signed by the public health physician or  
45 a public school physician specifying what in the opinion of  
46 such physician is the physical age of the child. Such certificate  
47 shall show the height and weight of the child and other  
48 facts concerning its physical development revealed by exam-  
49 ination and upon which the opinion of the physician as to  
50 the physical age of the child is based. In determining such  
51 physical age the physician shall require that the school rec-  
52 ord or the school census record showing the child's age be  
53 submitted as supplementary evidence.

54 The issuing officer shall require first the proof of age speci-  
55 fied in subdivision-a and shall not accept the proof of age des-  
56 ignated in a subsequent subdivision until he shall be convinced  
57 that the proof specified in the preceding subdivision cannot be  
58 obtained.

59 (3) A certificate signed by the principal of the school last at-  
60 tended showing that the child can read and write correctly  
61 simple sentences in the English language, and that he has sat-  
62 isfactorily completed the studies covered in the first eight  
63 yearly grades of the public schools or their equivalent. In case  
64 such certificate cannot be obtained, then the officer issuing the  
65 work permit shall examine such child to determine whether he  
66 can meet the educational standard specified, and shall file in  
67 his office a statement setting forth the result of such examin-  
68 ation: *Provided*, That the superintendent of schools, or person

69 authorized by him in writing, shall have authority and is here-  
70 by empowered to issue a vacation work permit to a child six-  
71 teen years of age or over without requiring a statement that  
72 the child has completed the eighth grade course of study or its  
73 equivalent, as hereinbefore provided. Such vacation work per-  
74 mit shall be different in form and color from the regular work  
75 permit and shall be valid only during the time when the pub-  
76 lic schools of the district in which the child resides are not in  
77 session. Every vacation work permit shall be null and void on  
78 the day such public schools open for regular session: *Provided*  
79 *further*, That the superintendent of schools or person author-  
80 ized by him in writing shall have authority and is hereby em-  
81 powered to issue a special work permit to any boy fourteen  
82 years of age or over to work in non-factory employment out-  
83 side of school hours without requiring a statement that he has  
84 completed any school grade whatsoever.

85 (4) A certificate signed by a medical inspector of schools  
86 or public health officer stating that the child has been ex-  
87 amined by him and in his opinion has reached the normal  
88 development of a child of its age, and is in sound health  
89 and physically able to be employed in the occupation in which  
90 the child intends to engage.

Sec. 4. *Contents of Work Permit; Forms, Filing; Revoca-*  
2 *tion.* A work permit issued under this article shall set forth  
3 the full name and the date and place of birth of the child,  
4 with the name and address of his parents or parent, guardian  
5 or custodian. It shall certify that the child has appeared  
6 before the officer issuing the permit and submitted the proofs  
7 of age, physical fitness, schooling and prospective employment  
8 required in section three.

9 Printed forms for such permits and certificates shall be  
10 prepared and furnished by the state commissioner of labor  
11 to the superintendents of schools in the counties of the state.  
12 A copy of each permit issued shall be forwarded to the state  
13 commissioner of labor within four days after its issuance,  
14 and there shall be kept in the office of the issuing officer a  
15 record of all permits granted and of all applications denied  
16 as well as all certificates of age, schooling, physical fitness  
17 and prospective employment submitted by the applicants  
18 for permits.

19 The state commissioner of labor may at any time revoke  
20 a permit if in his judgment it was improperly issued, and  
21 for this purpose he is authorized to investigate the true age  
22 of any child employed, to hear evidence, and to require the  
23 production of relevant books and documents. If a permit  
24 is revoked, the issuing officer shall be notified of such action,  
25 and the child shall not thereafter be employed or permitted  
26 to labor until a new permit has been legally obtained or until  
27 he is of such age as to be outside the operation of this article.

Sec. 5. *Age Certificate for Employer; Inquiry as to Age; Revocation of Certificate; Supervision by State Superintendent of Schools.* Upon request of any employer who is desirous  
2 of employing a child who represents his or her age to be six-  
3 teen years or over, the officer charged with the issuance of work  
4 permits shall require of such child the proof of age specified in  
5 section three of this article, and, upon receipt thereof, if it be  
6 found that the child is actually sixteen years of age or over,  
7 shall issue to such employer a certificate showing the age and  
8 date and place of birth of such child. Such age certificate, when  
9 filed in the office of the employer, shall be accepted by an offi-  
10 cer charged with the enforcement of this article as evidence of  
11 the age of the child in whose name it was issued. Any officer  
12 charged with the enforcement of this article may inquire into  
13 the true age of a child apparently under the age of sixteen  
14 years who is employed or permitted to work in any gainful oc-  
15 cupation and for whom no work permit or age certificate is on  
16 file; and if the age of such child be found to be actually under  
17 sixteen years, the employment of such child in such occupation  
18 shall be deemed a violation of the provisions of this article.

21 The state commissioner of labor may at any time revoke  
22 any such age certificate if in his judgment it was improperly  
23 issued, and for this purpose he is authorized to investigate  
24 the true age of any child employed as in the case of work  
25 permits.

26 The issuance of work permits and of age certificates shall  
27 be under the supervision of the state superintendent of free  
28 schools, who shall seek at all times to standardize this work.

Sec. 6. *Children in State Institutions.* It shall be unlawful  
2 for superintendents or other persons in whose custody chil-

3 dren of state-operated industrial schools and homes are placed,  
4 to permit such children to be employed in factories or work-  
5 shops outside (but not within) such institutions without first  
6 securing for them the permit required by this article.

Sec. 7. *Hours and Days of Labor by Minors; Duty of Em-*  
2 *ployer to Post Notice Thereof.* No child under the age of six-  
3 teen years shall be employed or permitted to work in, about, or  
4 in connection with any gainful occupation, except agriculture,  
5 horticulture or domestic service in a private home, for more  
6 than six days in any one week, nor more than forty hours in  
7 any one week, nor more than eight hours in any one day; nor  
8 between the hours of eight o'clock in the evening and five  
9 o'clock in the morning of any day: *Provided*, That a child un-  
10 der sixteen years of age may be employed in a concert or in a  
11 theatrical performance up to the hour of eleven o'clock p. m.  
12 No child under the age of sixteen years shall be employed  
13 or permitted to work for more than five hours continuously  
14 without an interval of at least thirty minutes for a lunch  
15 period, and no period of less than thirty minutes shall, for  
16 the purposes of this section, be deemed to interrupt a con-  
17 tinuous period of work.

18 Every employer shall post and keep posted in a conspicuous  
19 place in every room or place where any child under sixteen  
20 years of age is employed or permitted to work, a printed  
21 notice setting forth the maximum number of hours such  
22 child may be required or permitted to work each week and  
23 each day of the week, the hours beginning and ending work  
24 each day, and the time allowed for meals. The printed form  
25 of such notice shall be furnished by the state commissioner  
26 of labor, and the employment of such child for a longer time  
27 in any week or day than so stated, or at any time other than  
28 as stated in such printed notice, shall be deemed a violation  
29 of the provisions of this section.

Sec. 8. *Supervision Permits.* The commissioner shall  
2 have authority to prescribe and issue supervision permits to  
3 meet special circumstances, and to prescribe the terms and  
4 conditions thereof.

5 The provisions of sections two, three and seven of this  
6 article shall not apply to a child's employment under a

7 supervision permit issued by the commissioner under this  
8 section. The commissioner shall issue a supervision permit  
9 only if he finds, after careful investigation, that the child,  
10 in his performance of the work contemplated, will be super-  
11 vised by a responsible party, and that the issuance of the  
12 supervision permit will promote the best interests of the child.  
13 A supervision permit shall be valid only so long as the  
14 terms and conditions prescribed by the commissioner and  
15 contained therein are complied with.

Sec. 9. *Enforcement of Article.* It shall be the duty of the  
2 state commissioner of labor, and of his authorized representa-  
3 tives within the department of labor, to enforce the provisions  
4 of this article. To aid in such enforcement, the commissioner  
5 and his authorized representatives shall have authority to  
6 enter and inspect any place or establishment covered by this  
7 article, and to have access to all files and records of employers  
8 the inspection of which is pertinent to the objects and pur-  
9 poses of this article. School officials, including truancy officers,  
10 shall lend to the commissioner all possible assistance toward  
11 effectuating such objects and purposes: *Provided, however,*  
12 That the provision relating to the employment of children  
13 in mines shall be enforced by the state department of mines,  
14 said department to make complaint against any person, firm  
15 or corporation violating any provision of this article and to  
16 prosecute the same before any court of competent jurisdiction.

Sec. 10. *Offenses; Penalties.* Any person who violates a pro-  
2 vision of this article, or any parent, guardian or custodian of a  
3 child, who permits such child to work in violation of the pro-  
4 visions of this article, or any school official who illegally issues  
5 a work permit, or any person who furnishes false evidence  
6 in reference to the age, birthplace or educational qualifica-  
7 tions of a child, under this article, shall be guilty of a mis-  
8 demeanor, and upon conviction thereof, shall for a first offense  
9 be fined not less than twenty nor more than fifty dollars; for  
10 a second or subsequent offense shall be fined not less than  
11 fifty nor more than two hundred dollars, or imprisoned for  
12 not more than thirty days, or both such fine and imprisonment  
13 in the discretion of the court.



## CHAPTER 76

(House Bill No. 233—By Mrs. Walker)

AN ACT to amend chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, by adding thereto a new article designated article seven, relating to industrial homework.

[Passed February 24, 1939; in effect ninety days from passage. Approved by the Governor.]

### Article 7. Industrial Homework.

#### Section

1. Purpose of article.
2. Definitions.
3. Prohibited industrial homework.
4. Investigations by commissioner.
5. Enforcement by commissioner.
6. Employer's permit.
7. Employer not to deliver material for industrial homework unless worker has certificate; labels.
8. Homeworker's certificate.
9. Unlawfully manufactured articles.
10. Revocation or suspension of permits and certificates; powers of commissioner.
11. Penalties.

*Be it enacted by the Legislature of West Virginia:*

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

Section 1. *Purpose of Article.* The provisions of this article  
2 are designed to protect the health and welfare of the people  
3 of the state, and are in necessary exercise of the state's police  
4 power.

Sec. 2. *Definitions.* For the purposes of this article:  
2 "Employer" means any person who, directly or indirectly,  
3 or through an employee, agent, independent contractor or  
4 any other person, delivers to another person any materials  
5 or articles to be manufactured in a home, not for the personal  
6 use of himself or a member of his family; but shall not include  
7 the several departments, agencies and institutions of the state  
8 of West Virginia, nor any of its political subdivisions.  
9 "Home" means any room, house, apartment or other

10 premises, whichever is the most extensive, used in whole or  
11 in part as a place of dwelling.

12 "Industrial Homework" means any manufacture, in the  
13 home, of materials or articles for an employer.

14 "Commissioner" means the state commissioner of labor.

Sec. 3. *Prohibited Industrial Homework.* The manufacture,  
2 or delivery for manufacture, of any of the following by indus-  
3 trial homework shall be unlawful and no permit or certificate  
4 issued under this article shall be deemed to authorize such  
5 manufacture or delivery:

- 6 (1) Tobacco;
- 7 (2) Drugs and poisons;
- 8 (3) Bandages and other sanitary goods;
- 9 (4) Explosives, fireworks, and articles of like character;
- 10 (5) Any other articles, the manufacture of which, in  
11 industrial homework, is in violation of this article or of any  
12 other labor law or of any health law of the state.

Sec. 4. *Investigations by Commissioner.* To carry out the  
2 purposes of this article, the commissioner shall have the power  
3 to make investigations into all phases of industrial homework  
4 in this state, including the investigation of any industry  
5 which employs industrial homeworkers.

6 No person shall interfere with or obstruct the commis-  
7 sioner or his authorized representatives in the carrying out  
8 of any investigation under this section.

Sec. 5. *Enforcement by Commissioner.* Whenever, after in-  
2 vestigation, or on the basis of other information in his posses-  
3 sion, the commissioner finds that a person has violated any pro-  
4 vision of section three, he shall take appropriate action to  
5 bring about the enforcement of such provision.

Sec. 6. *Employer's Permit.* No employer shall deliver or  
2 cause to be delivered to a person in this state any materials  
3 for manufacture by industrial homework unless and until  
4 such employer has obtained an employer's permit from the  
5 commissioner. Application for such permit shall be in the  
6 form prescribed by the commissioner.

7 An employer's permit shall be issued only after payment  
8 by the employer of a fee of fifty dollars, and shall be valid  
9 for a period of one year from its date of issuance unless

10 sooner revoked or suspended pursuant to section ten. All fees  
11 collected under this section shall be paid forthwith into the  
12 state treasury to the credit of the general fund.

Sec. 7. *Employer Not to Deliver Material for Industrial  
2 Homework Unless Worker Has Certificate; Labels.* No em-  
3 ployer shall deliver or cause to be delivered, in this state, any  
4 materials for manufacture by industrial homework unless  
5 the person to be engaged in such manufacture is in possession  
6 of a valid homemaker's certificate issued in accordance with  
7 this article.

8 No employer shall deliver or cause to be delivered to any  
9 person any materials for manufacture by industrial home-  
10 work unless there has been conspicuously affixed to each  
11 article, or, if this is not practicable, to the package or other  
12 container in which such materials are delivered, a label or  
13 other mark of identification bearing the employer's name and  
14 address printed or written legibly in English.

Sec. 8. *Homeworker's Certificate.* No person shall engage  
2 in industrial homework in this state unless and until he has  
3 obtained a homeworker's certificate from the commissioner.  
4 Application for such certificate shall be made in the form  
5 prescribed by the commissioner.

6 A homeworker's certificate shall be issued free of charge,  
7 and shall be valid for a period of one year from its date of  
8 issuance unless sooner revoked or suspended pursuant to  
9 section ten.

Sec. 9. *Unlawfully Manufactured Articles.* Any article  
2 which is being, or is to be, manufactured in a home in viola-  
3 tion of any provision of this article may be removed by the  
4 commissioner and retained by him. The commissioner shall,  
5 by registered mail, notify the employer of such removal and  
6 retention. Unless the articles so removed and retained are  
7 claimed within thirty days after the notification, they may  
8 be destroyed or otherwise disposed of.

Sec. 10. *Revocation or Suspension of Permits and Certifi-  
2 cates; Powers of Commissioner.* The commissioner is author-  
3 ized to revoke or suspend any employer's permit or homework-  
4 er's certificate for the violation of a provision of this article.

5 The commissioner is further authorized to prescribe the  
6 form of application for employers' permits and homeworkers'  
7 certificates, and to prescribe the form of and to issue such  
8 permits and certificates; and to do all other acts required of  
9 him under the provisions of this article.

Sec. 11. *Penalties.* A person who violates any provision of  
2 this article shall be guilty of a misdemeanor, and upon con-  
3 viction of such violation shall be fined not less than five nor  
4 more than fifty dollars and confined in jail not more than  
5 thirty days, or by both such fine and imprisonment in the  
6 discretion of the court.

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## CHAPTER 77

(Senate Bill No. 196—By Mr. LaFon, Mr. President)

AN ACT to amend and reenact sections thirty-one and thirty-three,  
article two, chapter thirty-eight of the code of West Virginia,  
one thousand nine hundred thirty-one, relating to laborers'  
liens against corporations.

[Passed March 9, 1939; in effect ninety days from passage. Became a law with-  
out the approval of the Governor.]

### Article 2. Mechanics' Liens.

#### Section

- 31. Laborer's lien against corporation; priority.
- 33. Record by clerk in cases of laborer's lien against a corporation.

*Be it enacted by the Legislature of West Virginia:*

That sections thirty-one and thirty-three, article two, chapter  
thirty-eight of the code of West Virginia, one thousand nine hun-  
dred thirty-one, be amended and reenacted to read as follows:

#### Section 31. *Laborer's Lien Against Corporation; Priority.*

- 2 Every workman, laborer or other person who shall do or per-
- 3 form any work or labor, for an incorporated company doing
- 4 business in this state, by virtue of a contract either directly
- 5 with such incorporated company or with its general contractor,
- 6 or with any sub-contractor, shall have a lien for the value of
- 7 such work or labor upon all real estate and personal property
- 8 of such company; and, to the extent and value of one month's

9 such work or labor, said lien shall have priority over any lien  
10 created by deed or otherwise on such real estate or personal  
11 property subsequent to the time when such work or labor  
12 was performed: *Provided, however,* That there shall be no  
13 priority of lien as against conditional sales of, or reservation  
14 of title to, machinery sold to such company; nor shall there  
15 be priority of lien as between the parties claiming under the  
16 provisions of this section.

Sec. 33. *Record by Clerk in Cases of Laborer's Lien Against*  
2 *a Corporation.* The clerk of the county court, to whom the  
3 notice of lien mentioned in the preceding section is presented,  
4 shall record the same in the mechanic's lien record. If the  
5 amount of the claim is for more than one month's work or  
6 labor, the record shall show, separately, the full amount of the  
7 claim and in addition thereto the amount of the claim for such  
8 month for which such prior lien is claimed.

9 If any part or parts of this act shall be held to be unconsti-  
10 tutional or invalid for any reason such unconstitutionality  
11 or invalidity shall not affect the validity of the remaining  
12 parts of this act. The Legislature hereby declares that it  
13 would have passed the remaining parts of this act if it had  
14 known that such part or parts thereof would be declared  
15 unconstitutional or invalid.

## CHAPTER 78

(Senate Bill No. 38—By Mr. Fleming)

AN ACT to amend article ten, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, by adding thereto sections eleven and twelve, relating to the acceptance by the state of West Virginia of any future federal appropriations in aid of local library service, and providing for the custody and disbursement of such federal funds.

[Passed March 10, 1939; in effect from passage. Approved by the Governor.]

### Article 10. Federal Aid and Gifts for Education.

#### Section

11. West Virginia library commission authorized to accept federal funds for library purposes; governor may supplement state appropriation.
12. Custody and disbursement of library funds.

*Be it enacted by the Legislature of West Virginia:*

That article ten, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, be amended by adding sections eleven and twelve to said article, to read as follows:

*Section 11. West Virginia Library Commission Authorized*

2 *to Accept Federal Funds for Library Purposes; Governor*  
3 *May Supplement State Appropriation.* The West Virginia  
4 library commission, established by section twelve, article one,  
5 chapter ten of this code, is hereby authorized and empowered  
6 to accept for the state of West Virginia any appropriations of  
7 money for rural library service, and for similar library pur-  
8 poses, that may hereafter be made out of the federal treasury  
9 by an act or acts of Congress.

10 Should the appropriation provided by the Legislature for  
11 the purpose prove insufficient in amount to meet the require-  
12 ments of the federal government relative to library pur-  
13 poses, the governor may supplement, from his contingent fund  
14 or from any other funds available for the purpose, said legis-  
15 lative appropriation by an amount sufficient to meet the said  
16 requirements of the federal government.

*Sec. 12. Custody and Disbursement of Library Funds.*

2 The treasurer of this state shall be the custodian of all  
3 moneys received by the state from appropriations made by  
4 any of the original or supplemental acts of Congress men-  
5 tioned or referred to in section eleven of this article, and  
6 specifically of all moneys received by the state from appro-  
7 priations for such library purposes that may hereafter be  
8 made by any act or acts of Congress; and he is authorized to  
9 receive and to provide for the proper custody of the same.  
10 He shall also be the custodian of such library moneys re-  
11 ceived by the state from any other agencies, private and/or  
12 otherwise; and he is similarly authorized to receive and pro-  
13 vide for the proper custody of these funds. The treasurer  
14 shall keep an accurate account of the moneys so received from  
15 whatever source, shall place the same to the credit of the  
16 West Virginia library commission; and, unless a different  
17 method is provided by law, he shall make disbursements there-  
18 from upon warrants of the state auditor issued on requisitions  
19 of the West Virginia library commission approved by the

20 state board of control. The said library commission shall  
21 make by-laws, rules and regulations for the allocation and  
22 administration of all library funds, and for the establishment  
23 of an adequate system of auditing and reporting such dis-  
24 bursements. The treasurer shall include in his biennial re-  
25 port to the governor a statement of his receipts and disburse-  
26 ments under the provisions of this section.

## CHAPTER 79

(Senate Bill No. 39—By Mr. Fleming)

AN ACT to amend article one, chapter ten of the code of West Virginia, one thousand nine hundred thirty-one, by adding thereto sections sixteen to twenty-one, inclusive, relating to the establishment and maintenance of regional library areas and regional libraries; to the collection and preservation of library data, statistics and surveys and to the availability of the results thereof; and to provide for the authorization of financial or other aid to public, school, traveling, regional or other libraries by the West Virginia library commission.

[Passed March 10, 1939; in effect from passage. Approved by the Governor.]

### Article 1. Public Libraries.

#### Section

16. Regional libraries and library areas; establishment and location.
17. Reference of plan to county courts; action on; alteration of plan.
18. Powers of West Virginia library commission over regional libraries.
19. Transfer of certain libraries to library commission.
20. Aid to libraries by library commission.
21. Collection and preservation of library data; surveys; use of data, etc.

*Be it enacted by the Legislature of West Virginia:*

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

Section 16. *Regional Libraries and Library Areas; Establishment and Location.* The West Virginia library commission is hereby authorized to develop a plan for the establishment and location of regional libraries, and library areas throughout the state, based on a detailed survey to be made

6 by the commission of the needs of the various localities of the  
7 state. A region shall include two or more counties.

Sec. 17. *Reference of Plan to County Courts; Action On;*

2 *Alteration of Plan.* On completion of the survey of any pro-  
3 posed region, the executive secretary of the commission shall  
4 refer the proposal to the county courts of all the counties in-  
5 cluded in such proposed region. The county courts shall act  
6 upon such proposal by resolution, and the votes of a majority  
7 of each of the county courts of the counties included in the  
8 proposed region shall be necessary for the adoption of such  
9 proposal. In case of the rejection of such proposal by the  
10 county courts of any of the counties included in such pro-  
11 posed region, the library commission is hereby authorized to  
12 alter its plan in accordance with such action in order to pro-  
13 vide for a region in such section of the state. The vote of a  
14 majority of each county court in the counties in such altered  
15 region shall be necessary for the adoption of such proposal.

Sec. 18. *Powers of West Virginia Library Commission*

2 *Over Regional Libraries.* The West Virginia library com-  
3 mission shall have the following powers for the establishment  
4 and maintenance of regional areas and regional libraries:

5 (a) To establish, maintain, and operate a public li-  
6 brary for the region;

7 (b) To appoint a librarian and the necessary assistants,  
8 and to fix their compensation, such appointments to be based  
9 upon merit and efficiency as determined by the commission.  
10 The librarian shall hold a certificate from an approved school  
11 of library science and shall have had not less than three years  
12 of practical experience in library work. Said library com-  
13 mission shall also have the power to remove said librarian and  
14 other assistants;

15 (c) To purchase books, periodicals, equipment and sup-  
16 plies;

17 (d) To purchase sites and erect buildings, and/or to lease  
18 suitable quarters, and to have supervision and control of said  
19 property;

20 (e) To borrow books from and lend books to other li-  
21 braries;

22 (f) To enter into contracts to receive service from or give



23 service to libraries within or without the region and to give  
24 service to municipalities without the region which have no li-  
25 braries, or to cooperate with and aid generally without such  
26 contracts, public, school, institutional and other libraries;

27 (g) To make such by-laws, rules and regulations not in-  
28 consistent with this act as may be expedient for the govern-  
29 ment of such regional library areas and the regional libraries  
30 therein, and for the purpose of carrying out the provisions of  
31 this act;

32 (h) To accept for the state of West Virginia any appro-  
33 priations of money that may hereafter be made out of the  
34 federal treasury by an act or acts of Congress and to disburse  
35 such funds for the purpose of carrying out the provisions of  
36 this act, in accordance with sections eleven and twelve, ar-  
37 ticle ten, chapter eighteen of the code of one thousand nine  
38 hundred thirty-one, as amended.

Sec. 19. *Transfer of Certain Libraries to Library Commis-*  
2 *sion.* After the establishment of a regional library area or re-  
3 gional library, as provided for in this act, the county court,  
4 legislative body of any city or town, the board of education of  
5 any county, or any other governing body of any political sub-  
6 division of this state, already maintaining a public, school or  
7 county library, may notify the West Virginia library com-  
8 mission and such county, city or town, or other subdivision  
9 library may be transferred to, leased to, or used by said li-  
10 brary commission for regional library purposes under such  
11 terms as may be mutually agreed upon between the said li-  
12 brary commission and the respective county courts, legisla-  
13 tive bodies of cities or towns, boards of education, or govern-  
14 ing bodies of other political subdivisions.

Sec. 20. *Aid to Libraries by Library Commission.* The  
2 West Virginia library commission is hereby authorized  
3 and empowered to render such aid and assistance, financial,  
4 advisory and/or otherwise, to public, school, county, or re-  
5 gional libraries, whether established or maintained by said  
6 library commission or not, under such conditions and rules  
7 as the said commission deems necessary to further the in-  
8 terests of the state and best increase the efficiency of the  
9 service it is expected to render the public.

Sec. 21. *Collection and Preservation of Library Data; Surveys; Use of Data, etc.* The West Virginia library commission is hereby authorized and empowered to collect and preserve statistics and other data, concerning libraries of any sort located within this state; to make surveys relating to the needs or conditions of such libraries or the library conditions of any city, town, county, regional library area, or other subdivision of this state; and to publish the results and findings thereof in accordance with the provisions of section fourteen of this article. The commission may employ all necessary personnel for any of these purposes, such appointments to be based on merit and efficiency as determined by the commission. Such data, surveys and findings of the library commission shall be available to all school, public, institutional, regional and/or other libraries within this state, whether proposed or established.

## CHAPTER 80

(House Bill No. 160—By Mr. Winters)

AN ACT to amend and reenact sections three and four, article eight, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, relating to the desertion or nonsupport of a wife or child.

[Passed March 10, 1939; in effect from passage. Approved by the Governor.]

### Article 8. Desertion or Nonsupport of Wife or Child.

#### Section

3. Order for support; release on bond; forfeiture; failure to furnish bond.
4. Appeal; bond; reconviction.

*Be it enacted by the Legislature of West Virginia:*

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

- Sec. 3. *Order for Support; Release on Bond; Forfeiture; Failure to Furnish Bond.* The justice of the peace or other court before whom such conviction is had, may, in lieu of the

4 penalty herein provided, or in addition thereto, having regard  
5 to the circumstances and financial ability or earning capacity  
6 of the defendant, require the defendant to pay a certain sum  
7 periodically to the wife or to the guardian, curator, custodian  
8 or trustee of such wife, child or children, which shall be sub-  
9 ject to change from time to time as circumstances may require,  
10 and may release the defendant upon his or her entering into a  
11 bond with good surety in the penalty of not less than five hun-  
12 dred dollars. The condition of the bond shall be to make pay-  
13 ments as aforesaid to the wife until the further order of the  
14 court or until the child or children arrive at the age of sixteen  
15 years, and to appear before the court in case default be made  
16 in the payment of such sums; and in case the defendant fails  
17 to make such payments, the justice or other court may order  
18 the rearrest of the defendant, and proceed with the trial  
19 under the original charge, or sentence him or her under the  
20 original charge, as the case may be, and in the case of for-  
21 feiture of the bond herein provided for, and enforcement  
22 thereof, the sum recovered may, in the discretion of the court  
23 wherein the forfeiture is enforced, be paid in whole or in  
24 part to the wife or to the guardian, curator, custodian or  
25 trustee of such wife or minor child or children, as the court  
26 may order; and in event the accused is unable to furnish  
27 bond as set out in this article, then the judge of the circuit  
28 court may direct that the defendant work on the public  
29 highways of this state or where he may obtain employment,  
30 and the judge of such court may order such payments to be  
31 made to the wife, guardian, custodian or trustee of such  
32 minor child or children as he may deem necessary for their  
33 maintenance, taking into consideration the station in life of  
34 the defendant and any other circumstances surrounding the  
35 case

Sec. 4. *Appeal; Bond; Reconviction.* If at the trial, any  
2 husband, person or parent shall be found guilty of a viola-  
3 tion of the provisions of this article, and desires to appeal  
4 from the decision of the justice trying such case, he shall  
5 give bond in the penalty of not less than five hundred dol-  
6 lars, with the condition that he shall appear before the court  
7 to which he appeals, and if upon trial on appeal, the defend-

8 ant is again found guilty of such charge, the payments to  
9 the wife, child or children, as the case may be, shall be fixed  
10 by the judge of the court to which appealed, in an amount  
11 to be determined by him, which may be either more or less  
12 than the amount fixed by the judgment from which appealed,  
13 having regard to the circumstances and financial ability and  
14 earning capacity of the defendant, and such amount as fixed  
15 by the said judge shall relate back to the date of the trial  
16 before the justice of the peace appealed from, and such bond  
17 shall be liable for the payments of such sums, and judgment  
18 therein may be entered thereon against the defendant and  
19 his surety, and the court may also enter such further judg-  
20 ment as may be proper under the provisions of this article.

## CHAPTER 81

(House Bill No. 117—By Mrs. Walker)

AN ACT to amend section six, article one, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended by chapter one hundred twenty-four, acts of the Legislature, regular session, one thousand nine hundred thirty-seven, and further to amend said article by adding thereto four new sections designated as sections six-a, six-b, six-c and six-d, relating to the application for and issuance of marriage licenses, providing certain measures to decrease the communication of syphilis and to prevent its spread, and providing penalties.

[Passed February 25, 1939; in effect ninety days from passage. Approved by the Governor.]

### Article 1. Marriage.

#### Section

6. Application for license; requirements for issuance of license.
- 6-a. Standard serological test.
- 6-b. Content and form of statements.
- 6-c. Issuance of license in case of emergency or extraordinary circumstances.
- 6-d. Penalties.
- 6-e. Provisions of act severable.

*Be it enacted by the Legislature of West Virginia:*

That section six, article one, chapter forty-eight of the code of

West Virginia, one thousand nine hundred thirty-one, as amended by chapter one hundred twenty-four, acts of the Legislature, regular session, one thousand nine hundred thirty-seven, be amended, and that new sections designated as sections six-a, six-b, six-c and six-d be added to said article one, to read as follows:

Section 6. *Application for License; Requirements for Issuance of License.* Every license for marriage shall be issued by the clerk of the county court of the county in which the female to be married usually resides: *Provided, however,* That such license shall be issued not sooner than three days after the filing with said clerk of a written application therefor. The day upon which such application is filed shall be counted as the first day, but two full days shall elapse after the day of such filing before the license shall be issued: *Provided further,* That before any such license is issued each applicant therefor shall file with the clerk a certificate or certificates from any physician duly licensed in the state, stating that each party thereto has been given such examination, including a standard serological test, as may be necessary for the discovery of syphilis, made not more than thirty days prior to the date of such application, and stating that in the opinion of the physician the person therein named either is not infected with syphilis or, if so infected, is not in the state of the disease which is or may later become communicable. Such examinations and tests as are required hereunder may be given as provided by section nineteen, article four, chapter sixteen of this code.

The application for a marriage license shall contain a statement of the full names of both parties, their respective ages and their places of birth and residence. It shall be signed by one or the other of the parties to the contemplated marriage, and shall be verified by such party to be true to the best of his or her knowledge and belief; and shall be recorded in the register of marriages provided for in section eleven of this article. The date of its filing shall be noted in said register, which notation or a certified copy thereof shall be legal evidence of the facts therein contained.

To the extent otherwise provided by section six-c of this article, the provisions of this section shall not apply. No

35 application for license shall be received nor any license issued  
36 on any Sunday, or before the hours of eight o'clock A. M.  
37 and after five o'clock P. M. on any week day.

Sec. 6-a. *Standard Serological Test.* A standard serological  
2 test, for the purposes of section six, shall be a laboratory test  
3 for syphilis approved by the state commissioner of health,  
4 and shall be performed by the state department of health or  
5 by a laboratory approved for this purpose by the state de-  
6 partment of health.

Sec. 6-b. *Content and Form of Statements.* Each physi-  
2 cian's statement, provided for in section six, shall be accom-  
3 panied by a statement from the person in charge of the lab-  
4 oratory making the serological test, or from some other per-  
5 son authorized by the person in charge of such laboratory to  
6 make such statement, setting forth the name of the test,  
7 the date it was completed, and the name and address of the  
8 person whose blood was tested, but not stating the result of  
9 the test, and shall be attached to the application and forth-  
10 with filed with the licensing authority. The physician's state-  
11 ment and the laboratory statement shall be on the same form  
12 sheet. Upon a separate form, a detailed report of the labor-  
13 atory test showing the result of the test shall be transmitted  
14 by the person in charge of the laboratory to the physician.

Sec. 6-c. *Issuance of License in Case of Emergency or Ex-*  
2 *traordinary Circumstances.* In case of an emergency or extra-  
3 ordinary circumstances, as shown by affidavit or other proof, a  
4 judge of the circuit court of the county in which an applica-  
5 tion for a marriage license is to be filed may direct the clerk of  
6 the county court by order, duly entered in the office of the  
7 clerk of the circuit court, to issue such license at any time be-  
8 fore the expiration of the three-day limit and to dispense with  
9 those requirements which relate to the filing with the licensing  
10 authority by either or both of the parties of the physician's  
11 certificate and laboratory statement. The order shall be accom-  
12 panied by a written memorandum from the judge reciting his  
13 reason or reasons for granting the order.

14 The order and the accompanying memorandum shall be at-  
15 tached to and filed with the application by the licensing  
16 authority who shall thereupon proceed with the issuance of-

17 the marriage license in accordance with the terms of the  
18 judge's order. The licensing authority and his clerks and  
19 employees shall hold the contents of the judge's memorandum  
20 in absolute confidence. In the absence or incapacity to act of  
21 the judge of the circuit court of the county in which the ap-  
22 plication is to be filed, the order and accompanying memor-  
23 andum may be made to the clerk of the county court of such  
24 county by the judge of any judicial circuit adjoining the  
25 circuit in which such county is situated.

Sec. 6-d. *Penalties.* Any applicant for a marriage license,  
2 any physician or representative of a laboratory who shall  
3 knowingly misrepresent any of the facts called for in the  
4 physician's statement or laboratory report, respectively; and  
5 any licensing authority who shall make a false entry as to the  
6 date of application for a marriage license; and any licensing  
7 authority who shall issue a marriage license prior to the end  
8 of the required three-day period or without the required  
9 physician's statement and laboratory report (unless these  
10 shall have been dispensed with by judicial order pur-  
11 suant to section six-c), or who shall issue such license despite  
12 his having reason to believe that any of the facts contained in  
13 said statement or report have been misrepresented, or shall  
14 issue a license on any Sunday or after five o'clock P. M. and  
15 before eight o'clock A. M. on any week day, shall be guilty  
16 of a misdemeanor, and upon conviction shall be fined not less  
17 than two hundred nor more than one thousand dollars, or  
18 confined in jail for not less than three nor more than nine  
19 months, or both such fine and confinement in the discretion  
20 of the court.

Sec. 6-e. *Provisions of Act Severable.* Each section of this  
2 act and every part thereof is hereby declared to be an inde-  
3 pendent section or part of a section, and if any section, sub-  
4 section, sentence, clause or phrase of this act shall for any  
5 reason be held unconstitutional, the validity of the remaining  
6 phrases, clauses, sentences, subsections and sections of this  
7 act shall not be affected thereby.

## CHAPTER 82

(Com. Sub. for Senate Bill No. 45—Originating in the Senate Committee on Mines and Mining)

AN ACT to amend and reenact section fifty-two, article two, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, and to add sections fifty-two-a, fifty-two-b, fifty-two-c and fifty-two-d to said article, relating to the instruction of coal mine employees and providing for the issuance of certificates of experience and qualification to coal miners.

[Passed February 28, 1939; in effect ninety days from passage. Approved by the Governor.]

### Article 2. Coal Mines.

#### Section

- 52. Instruction of employees.
- 52-a. Miner's certificate.
- 52-b. Revocation of certificate.
- 52-c. Appeals.
- 52-d. Penalties.

*Be it enacted by the Legislature of West Virginia:*

That section fifty-two, article two, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, be amended and reenacted, and that four new sections to be known as sections fifty-two-a, fifty-two-b, fifty-two-c and fifty-two-d be added to said article, all to read as follows:

Section 52. *Instruction of Employees.* No person, firm or corporation shall employ or cause any person to work in a coal mine in this state until after he has been instructed in the particular dangers incident to his work in such mine and until he has been furnished with a copy of the mining laws and rules of such mine. No inexperienced person shall be so employed except under the direct personal supervision and direction of the mine foreman, his assistant or such other experienced worker as may be designated by the mine foreman or his assistant. No inexperienced person shall be employed as an experienced coal miner until he has secured such certificate as is hereinafter provided for.

Sec. 52-a. *Miner's Certificate.* Any person who has worked as a coal miner in a coal mine in this state for a period of six successive months may make application to the state



4 department of mines for a miner's certificate. Such applica-  
5 tion shall be signed by the applicant and be in such form as  
6 the department of mines may prescribe, and shall include  
7 information regarding the experience and safety record of  
8 the applicant. The application shall be submitted to a mine  
9 foreman, duly licensed under the laws of West Virginia, who  
10 shall confirm the information contained in such application  
11 and transmit the same to the state department of mines. If  
12 such mine foreman shall refuse to confirm such information  
13 or to so transmit such application and a dispute shall arise in  
14 connection with such refusal, then the chief of the state de-  
15 partment of mines shall investigate and determine the facts  
16 in regard thereto. In the event that such applicant has not  
17 sustained a lost-time injury due to his own negligence during  
18 a six-months period immediately preceding the making of  
19 such application and has not wilfully violated the provisions  
20 of the mining code during such period, such certificate shall  
21 be issued. When it appears that such applicant is entitled  
22 to such certificate the same shall be issued by the chief of the  
23 state department of mines in the following form :

24 "This is to certify that..... of  
25 ..... is a qualified and experienced coal  
26 miner and has a satisfactory safety record."

27 On the reverse side of such certificate shall be set forth a  
28 description of the holder, sufficient to provide reasonable  
29 identification, and which shall be in such form as shall be  
30 prescribed by the chief of the department of mines. Such  
31 certificate shall be sufficient evidence that the holder thereof  
32 is, and may be employed as a competent, qualified and experi-  
33 enced coal miner.

34 Any person, regardless of race or nationality, who has  
35 worked as a coal miner in a coal mine, or mines, in this state,  
36 for a period of one year prior to the date this act takes effect,  
37 shall be entitled to such certificate as an experienced and  
38 qualified coal miner upon the filing of an application with the  
39 chief of the state department of mines which includes satis-  
40 factory information regarding the experience and safety  
41 record of the applicant confirmed by a mine foreman duly  
42 licensed under the laws of West Virginia. Such certificate  
43 shall be issued without cost to the applicant.

Sec. 52-b. *Revocation of Certificate.* Wilful violation of the mining code shall constitute cause for the revocation of a coal miner's certificate by the chief of the state department of mines. If any holder of a certificate transfers or attempts to transfer any such certificate, the same shall be revoked.

A person whose certificate has been revoked may apply for a new certificate after having worked six months as an inexperienced person in like manner as if he had not previously held such certificate, except that where the revocation has been for the transfer or attempted transfer of the certificate revoked he shall not be eligible to apply for a new certificate until he shall have worked not less than twelve months as an inexperienced person.

Sec. 52-c. *Appeals.* Any person feeling aggrieved by any ruling of the chief of the state department of mines, regarding the refusal, or granting, or revocation of a coal miner's certificate may appeal therefrom by certiorari to the circuit court of Kanawha county or to the circuit court of the county where the applicant resides.

Sec. 52-d. *Penalties.* The penalties provided for in section eighty-two of this article shall apply to sections fifty-two, fifty-two-a and fifty-two-b.

## CHAPTER 83

(House Bill No. 257—By Mr. Pauley)

AN ACT to amend and reenact section sixty-four, article two, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended by chapter forty-four, acts of the Legislature, regular session, one thousand nine hundred thirty-seven, relating to explosives, preparation of explosives for shots, and hauling explosives into the mine.

[Passed March 7, 1939; in effect ninety days from passage. Became a law without the approval of the Governor.]

### Article 2. Coal Mines.

#### Section

64. Explosives; preparation for shots; hauling explosives into mine.

*Be it enacted by the Legislature of West Virginia:*

That section sixty-four, article two, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as

amended by chapter forty-four, acts of the Legislature, regular session, one thousand nine hundred thirty-seven, be amended and reenacted to read as follows:

Section 64. *Explosives; Preparation for Shots; Hauling Explosives Into Mine.* In no case shall more than one kind of explosive be used in the same drill hole, and every blasting hole shall be tamped, except as is necessary to accomplish cushion blasting, full from the explosive to the mouth, and no coal dust or inflammable material shall be used for tamping. Cushion blasting shall not be allowed in any case unless written permission is granted by the department of mines. Dynamite shall not be used in blasting coal. No fuses or squibs shall be used unless permission is granted by the department of mines, and in no case shall fuses be used of less length than the drill hole.

Where permissible explosives are used the detonators and explosives shall be kept separate; and no black powder, high explosives or detonators shall be hauled on any trip operated by electric haulage motors, unless inclosed in non-conducting boxes approved by the department of mines.

Trips hauling explosives shall not carry workmen other than those operating the trip, and explosives shall not be hauled into or out of the mine within five minutes preceding or following any trips in which men are handled; and when traveling with air current, the explosive trip shall precede; if against the air current, the man trip shall precede.

Also whenever the department of mines may determine from its own investigation or by hearing had before the chief of the department of mines initiated by any party in interest that the safety of the employees in any mine or mines will be better promoted by otherwise hauling or transporting permissible explosives into or out of such mine or mines, the department of mines may adopt another method or methods of hauling or transporting permissible explosives into and out of such mine or mines by prescribing and promulgating rules and regulations therefor, and no operator shall be permitted to haul or transport such permissible explosives into or out of such mine or mines pursuant to and in accordance with such rules and regulations, except only when granted a certificate by the department of mines so to do.

## CHAPTER 84

(House Bill No. 390—By Mr. Clark)

AN ACT to promote and preserve the public health and welfare by regulating the mining of coal by uncovering therefrom the surface soil, which practice is commonly called "strip mining".

[Passed March 11, 1939; in effect ninety days from passage. Became a law without the approval of the Governor.]

### Section

1. Strip mining; legislative findings; permit and bond required to engage in.
2. Penalty; separate offenses.
3. Effective date of act as to certain properties.

*Be it enacted by the Legislature of West Virginia:*

Section 1. *Strip Mining; Legislative Findings; Permit and Bond Required to Engage in.* WHEREAS, the Legislature finds it to be a fact that the mining of coal by uncovering therefrom the surface soil, commonly called "strip mining", causes soil erosion, increases the hazards of floods, causes the pollution of streams of water, causes the accumulation of stagnated waters, destroys the utilization of surface lands for agricultural purposes, creates dangerous hazards in life and property, counteracts efforts for the conservation of soil and the preservation of natural resources of the state, and is generally injurious to public health and general welfare; therefore, it shall be unlawful for any person, firm or corporation to engage in the practice of mining for coal by uncovering therefrom the surface soil, unless such person or persons, firm or corporation shall first obtain a permit from the chief of the department of mines to conduct the operation of "strip mining", and enter into a cash bond or a bond with a corporate surety authorized to do business in this state, and conditioned that any such person carrying on the business of mining coal by uncovering from the surface soil therefrom, (commonly called "strip mining") shall, after the excavation thereof and within a reasonable time to be determined by the department of mines, replace said soil, subsoil or other strata removed

24 from said coal and refill any ditches, trenches or excavation  
25 made in stripping said coal, so as to minimize the hazards of  
26 floods, pollution of streams and water, accumulation of stag-  
27 nant water, and the destruction of said soil for agricultural  
28 purposes. The bond herein required shall be in an amount of  
29 not less than one hundred fifty dollars per acre for each acre  
30 of surface involved in said strip mining and shall be payable  
31 to the state of West Virginia. Said bond shall be approved  
32 by the chief of the department of mines and it shall be his  
33 duty to enforce the same in the event of any default thereon.

Sec. 2. *Penalty; Separate Offenses.* Any person, firm or cor-  
2 poration violating the provisions of this act shall be guilty of  
3 a misdemeanor and upon conviction thereof shall be punished  
4 by confinement in jail not more than one year or fined not  
5 less than fifty dollars or more than five hundred dollars, or  
6 by both such fine and imprisonment. Each day's failure to  
7 comply with the provisions of this act shall constitute a sep-  
8 arate and distinct offense, punishable as herein provided.

Sec. 3. *Effective Date of Act as to Certain Properties.* With  
2 respect to property or properties purchased or under option  
3 to purchase, or under lease or contract, for the purpose of  
4 strip mining, at the effective date of this act, this act shall be  
5 in force and effect on and after the first day of January, one  
6 thousand nine hundred forty-one.

7 All acts or parts of acts inconsistent with this act are  
8 hereby repealed.

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## CHAPTER 85

(Senate Bill No. 249—By Mr. Hall)

AN ACT to authorize and empower the chief of the department of  
mines and the state commissioner of labor, with respect to  
counties in which there is no county sealer of weights and  
measures, to enter into a cooperative arrangement or agreement  
concerning the testing of the correctness of scales and measures

used to weigh and measure coal mined by any corporation, company or person, and providing for the sharing of the cost incident thereto.

[Passed March 9, 1939; in effect ninety days from passage. Approved by the Governor.]

**Section**

1. Testing of scales and measures used to weigh and measure coal.

*Be it enacted by the Legislature of West Virginia:*

Section 1. *Testing of Scales and Measures Used to Weigh and Measure Coal.* The chief of the department of mines with respect to the duties of himself and his inspectors to test the correctness of scales and measures used for the weighing and measurement of coal mined by any corporation, company or person in any county in which there is no sealer of weights and measures as is provided in section seventy-three, article two, chapter twenty-two, of the code of West Virginia, one thousand nine hundred thirty-one, and the commissioner of labor with respect to his duties as ex officio commissioner of weights and measures, are hereby authorized and empowered to enter into such cooperative arrangement or agreement as may appear to be reasonably necessary and expedient concerning the testing of the correctness of such scales and measures, to the end that any of the powers, rights and duties of the chief of the department of mines and his inspectors with respect thereto may be assumed, taken over and exercised by said commissioner of labor, his deputies and inspectors. By such arrangement or agreement, the said chief of the department of mines may agree to pay to the said commissioner of labor, his deputies and inspectors from any moneys appropriated for the department of mines for personal services or current expenses such sum or sums as may be reasonably necessary to compensate or aid in compensating said commissioner of labor, his deputies and inspectors for the assumption and exercise of said powers, rights and duties.

## CHAPTER 86

(Com. Sub. for House Bill No. 65—Originating in the House Committee on the Judiciary)

AN ACT to amend and reenact sections two and three, article one, sections two and five, article two, section three, article three, section five, article five, and sections three and six, article six, all of chapter twenty-four-a of the code of West Virginia, one thousand nine hundred thirty-one, as enacted by chapter fifty, acts of the Legislature, regular session, one thousand nine hundred thirty-seven, relating to the powers and duties of the public service commission of West Virginia for the regulation of the transportation of passengers and property for hire, and of private carriers of property by motor vehicles over the public highways in West Virginia, and the payment of special license fees.

[Passed February 28, 1939; in effect ninety days from passage. Approved by the Governor.]

### Article

1. Purposes, Definitions and Exemptions.
2. Common Carriers by Motor Vehicle.
3. Contract Carriers by Motor Vehicle.
5. Powers and Duties of the Commission.
6. Duties and Privileges of Motor Carriers Subject to Regulation of the Commission.

### *Be it enacted by the Legislature of West Virginia:*

That sections two and three, article one, sections two and five, article two, section three, article three, section five, article five, and sections three and six, article six, all of chapter twenty-four-a of the code of West Virginia, one thousand nine hundred thirty-one, as enacted by chapter fifty, acts of the Legislature, regular session, one thousand nine hundred thirty-seven, be amended and reenacted to read as follows:

### **Article 1. Purposes, Definitions and Exemptions.**

#### **Section**

2. Definitions.
3. Exemptions.

Section 2. *Definitions.* When used in this act: (a) the  
2 term "motor vehicle" means, and includes, any automobile,  
3 truck, tractor, truck-tractor, trailer, semi-trailer, motor bus,

4 taxicab, any self-propelling motor-driven motor vehicle, or  
5 any combination thereof, used upon any public highway in  
6 this state for the purpose of transporting persons or property;  
7 (b) the term "public highway" means any public street,  
8 alley, road, or highway or thoroughfare of any kind in this  
9 state used by the public; (c) the term "commission" means the  
10 public service commission of West Virginia; (d) the term  
11 "person" means and includes any individual, firm, copartner-  
12 ship, corporation, company, association, or joint stock asso-  
13 ciation, and includes any trustee, receiver, assignee or per-  
14 sonal representative thereof; (e) the term "common carrier  
15 by motor vehicle" means any person who undertakes, whether  
16 directly or by lease or any other arrangement, to transport  
17 passengers or property, or any class or classes of property,  
18 for the general public over the highways of this state by  
19 motor vehicles for hire, whether over regular or irregular  
20 routes, including such motor vehicle operations of carriers  
21 by rail, water or air and of express or forwarding agencies;  
22 (f) the term "contract carrier by motor vehicle" means any  
23 person not included under paragraph (e) of this section, who  
24 under special and individual contracts or agreements, and  
25 whether directly or by a lease or any other arrangement,  
26 transports passengers or property over the highways in this  
27 state by motor vehicles for hire; (g) the term "motor carrier"  
28 includes both a common carrier by motor vehicle and a con-  
29 tract carrier by motor vehicle; (h) the term "private carrier  
30 of property by motor vehicle" means any person not in-  
31 cluded in the terms "common carrier by motor vehicle" and  
32 "contract carrier by motor vehicle" who transports over the  
33 highways in this state by motor vehicle property of which  
34 such person is the owner, lessee, or bailee, when such trans-  
35 port is for the purpose of sale, lease, rent, or bailment, or  
36 the furtherance of any commercial enterprise; (i) the term  
37 "exempt carrier" means any person operating a motor  
38 vehicle exempt from the provisions of this act under section  
39 three hereof.

Sec. 3. *Exemptions.* The provisions of this act, except  
2 where specifically otherwise provided, shall not apply to:  
3 (a) motor vehicles operated exclusively in the transportation



4 of the United States mail or in the transportation of news-  
5 papers; (b) motor vehicles owned and operated by the United  
6 States of America, the state of West Virginia, or any county,  
7 municipality, or county board of education, or by any de-  
8 partment thereof, and any motor vehicles operated under a  
9 contract with a county board of education exclusively for the  
10 transportation of children to and from school or such other  
11 legitimate transportation for the schools as the commission  
12 may specifically authorize; (c) motor vehicles owned and  
13 operated by farmers in the transportation of their own farm,  
14 orchard, or dairy products from point of production to market,  
15 or in the infrequent or seasonal transportation by one farmer  
16 for another in his immediate neighborhood of products of  
17 the farm, orchard, or dairy, or of supplies or commodities to  
18 be used on the farm, orchard, or dairy.

## Article 2. Common Carriers by Motor Vehicle.

### Section

2. Provisions of chapter to govern.

5. Certificate of convenience and necessity; hearing on application;  
transfer; revocation.

Section 2. *Provisions of Chapter to Govern.* No common car-  
2 rier by motor vehicle shall operate any motor facility for  
3 transportation of either persons or property for hire on any  
4 public highway in this state except in accordance with the  
5 provisions of this act, and no person, after January one, one  
6 thousand nine hundred forty, shall, at the same time, hold  
7 under this act a certificate as a common carrier and a per-  
8 mit as a contract carrier authorizing operations for the trans-  
9 portation of property by motor vehicles over the same route  
10 or within the same territory unless for good cause shown  
11 and the commission determines that such certificate and per-  
12 mit may be held consistent with the public interest and the  
13 policy stated in section one, article one of this act.

Sec. 5. *Certificate of Convenience and Necessity; Hearing*  
2 *on Application; Transfer; Revocation.* (a) It shall be un-  
3 lawful for any common carrier by motor vehicle to operate  
4 within this state without first having obtained from the com-  
5 mission a certificate of convenience and necessity. Upon the  
6 filing of an application for such certificate and after hearing

7 thereon, if the commission finds from the evidence that the  
8 public convenience and necessity require the proposed service  
9 or any part thereof, it shall issue the certificate as prayed  
10 for, or issue it for the partial exercise only of the privilege  
11 sought, and may attach to the exercise of the right granted  
12 by such certificate such terms and conditions as in its judg-  
13 ment the public convenience and necessity may require, and  
14 if the commission shall be of the opinion that the service ren-  
15 dered by any common carrier holding a certificate of con-  
16 venience and necessity over any route or routes in this state  
17 is in any respect inadequate or insufficient to meet the public  
18 needs, such certificate holder shall be given reasonable time  
19 and opportunity to remedy such inadequacy or insufficiency  
20 before any certificate shall be granted to an applicant pro-  
21 posing to operate over such route or routes as a common  
22 carrier. Before granting a certificate to a common carrier by  
23 motor vehicle the commission shall take into consideration  
24 existing transportation facilities in the territory for which  
25 a certificate is sought, and in case it finds from the evidence  
26 that the service furnished by existing transportation facili-  
27 ties is reasonably efficient and adequate, the commission shall  
28 not grant such certificate.

29 (b) The commission shall prescribe such rules and regu-  
30 lations as it may deem proper for the enforcement of the  
31 provisions of this section, and in establishing that public con-  
32 venience and necessity do exist the burden of proof shall be  
33 upon the applicant. The commission may designate any of  
34 its employees to take evidence at the hearing of any appli-  
35 cation for a certificate and submit findings of fact as a part  
36 of a report or reports to be made to the commission.

37 (c) No certificate issued in accordance with the terms of  
38 this act shall be construed to be either a franchise or irrevoc-  
39 able, or, to confer any property right upon the holder thereof.  
40 No certificate issued under this act shall be assigned or other-  
41 wise transferred without the approval of the commission.

42 (d) The commission may at any time, for good cause,  
43 suspend and, upon not less than fifteen days' notice to the  
44 grantee of any certificate and an opportunity to be heard, re-  
45 voke or amend any certificate.

**Article 3. Contract Carriers by Motor Vehicle.****Section****3. Permit; hearing on application; transfer; revocation.**

- Section 3. *Permit; Hearing on Application; Transfer; Revocation.* (a) It shall be unlawful for any contract carrier by motor vehicle to operate within this state without first having obtained from the commission a permit. Upon the filing of an application for such permit, the commission shall fix a time and place for hearing thereon and after hearing shall grant or deny the permit prayed for or grant it for the partial exercise only of the privilege sought, and may attach to the exercise of the privilege granted by such permit such terms and conditions as in its judgment are proper and will carry out the purpose of this act. No permit shall be granted unless the applicant has established to the satisfaction of the commission that the privilege sought will not endanger the safety of the public or unduly interfere with the use of the highways or impair unduly the condition or unduly increase the maintenance cost of such highways, directly, or indirectly, or impair the efficient public service of any authorized common carrier or common carriers adequately serving the same territory.
- (b) The commission shall prescribe such rules and regulations as it may deem proper for the enforcement of the provisions of this section and may designate any of its employees to take evidence at the hearing on any application for a permit and submit findings of fact as a part of a report or reports to be made to the commission.
- (c) No permit issued in accordance with the terms of this act shall be construed to be either a franchise or irrevocable or to confer any property right upon the holder thereof. No permit issued under this act shall be assigned or otherwise transferred without the approval of the commission.
- (d) The commission may at any time, for good cause, suspend and, upon not less than fifteen days' notice to the grantee of any permit and an opportunity to be heard, revoke or amend any permit.
- (e) Every contract carrier by motor vehicle who shall cease operation or abandon his rights under a permit issued shall notify the commission within thirty days of such cessation or abandonment.

**Article 5. Powers and Duties of the Commission.****Section****5. Further regulatory powers of commission.**

Section 5. *Further Regulatory Powers of Commission.* The commission may :

(a) Prescribe rules of practice and procedure, the method and manner of holding hearings, and for taking evidence on all matters that may come before it, and enter such orders as may be just and lawful. In the investigations, preparations, and hearings of cases, the commission shall not be bound by the technical rules of pleading and evidence. but in that respect it may exercise such discretion as will facilitate its efforts to understand and learn all the facts bearing upon the right and justness of the matters before it.

(b) Appoint such employees as may be necessary to carry out the provisions of this act, and shall fix their respective salaries or compensation. Such employees shall hold office during the pleasure of the commission. The commission may designate such employees as it deems necessary to take evidence at any hearing held or required by the provisions of this act, which employees are hereby empowered to administer oaths in all parts of the state so far as the exercise of such power is properly incidental to the performance of their duties in connection with the provisions of this act.

(c) Prescribe a schedule of fees to accompany applications for certificates of convenience and necessity and permits and for the filing and recordation of other papers with the commission. The commission shall likewise prescribe a schedule of fees to be charged for the certification of all records and papers and sums to be paid witnesses and other costs necessary and incident to hearings before it or its employees and order the same paid by the unsuccessful party. Sums collected in this manner, except witness fees, shall be paid into the state treasury and be credited to the public service commission motor carrier fund provided for in subsection (e) of section six of article six of this act. The witness fees shall be paid to the persons who are entitled thereto. The sums to be paid into the public service commission motor carrier fund representing the collections of any month shall be so paid on or before the tenth of the following month.

38 (d) Establish a system of accounts to be kept by motor  
39 carriers or classify motor carriers and establish a system of  
40 accounts for each class, and prescribe the manner in which  
41 such accounts shall be kept. It may also in its discretion pre-  
42 scribe the form of accounts, records, and memoranda to be  
43 kept by such motor carriers, including the accounts, records,  
44 and memoranda for the movement of traffic as well as the  
45 receipts and expenditures of moneys, and any other forms,  
46 records and memoranda which in the judgment of the com-  
47 mission may be necessary to carry out any of the provisions  
48 of this chapter.

49 (e) Require persons subject to the provisions of this chap-  
50 ter, to furnish any information which may be in their posses-  
51 sion, or obtainable from their accounting or other records, re-  
52 specting rates, charges, classifications, or practices in conduct-  
53 ing their business, and to furnish the commission at all times  
54 for inspection any books or papers or reports and statements,  
55 which reports and statements shall be under oath, when so re-  
56 quired by the commission, and the form of all reports required  
57 under this act shall be prescribed by the commission. The com-  
58 mission shall collect, receive and preserve the same, and shall  
59 annually tabulate and publish the same in statistical form, to-  
60 gether with the other acts and proceedings of the commission.

61 (f) Either as a commission or by any of its members, or  
62 by designated employees, subpoena witnesses and take testi-  
63 mony, and administer oaths to any witness in any proceed-  
64 ing or examination instituted before it or conducted by it  
65 with reference to any matter within its jurisdiction. In all  
66 hearings or proceedings before the commission or its desig-  
67 nated employees the evidence of witnesses and the produc-  
68 tion of documentary evidence may be required at any desig-  
69 nated place of hearing within the state; and in case of diso-  
70 bedience to a subpoena or other process the commission or any  
71 party to the proceedings before the commission may invoke  
72 the aid of any circuit court in the state in requiring the evi-  
73 dence and testimony of witnesses and the production of pa-  
74 pers, books, and documents. And such court, in case of re-  
75 fusals to obey the subpoena issued to any person or to any  
76 motor carrier subject to the provisions of this chapter, shall  
77 issue an order requiring such motor carrier or any person to

78 appear before the commission or designated employees and  
79 produce all books and papers, if so ordered, and give evi-  
80 dence touching the matter in question. Any failure to obey  
81 such order of the court may be punished by such court as  
82 contempt thereof. A claim that any such testimony or evi-  
83 dence may tend to incriminate the person giving the same  
84 shall not excuse such witness from testifying, but such wit-  
85 ness shall not be prosecuted for any offense concerning which  
86 he is compelled hereunder to testify.

87 (g) Require common carriers by motor vehicle and con-  
88 tract carriers by motor vehicle subject to the provisions of  
89 this act either to procure insurance from a company author-  
90 ized to write such insurance in West Virginia, or to qualify  
91 as a self-insurer, or to deposit such security, upon such terms  
92 and conditions and for such limits of liability as the com-  
93 mission shall determine to be necessary for the reasonable  
94 protection of the traveling, shipping, and general public  
95 against injury, loss, damage, or default for which such car-  
96 rier may be liable, and prescribe rules and regulations gov-  
97 erning the filing of evidence of such insurance and such se-  
98 curity with the commission. In fixing the amount of such in-  
99 surance policy or policies, the qualifications as a self-insurer,  
100 or the deposit of security, the commission shall give due con-  
101 sideration to the character and amount of traffic, the value of  
102 the property transported, the number of persons affected, and  
103 the degree of danger involved in any such motor carrier op-  
104 eration.

105 (h) Cooperate with the federal government and the in-  
106 terstate commerce commission of the United States or any  
107 other commission or organized delegated authority to regu-  
108 late interstate or foreign commerce by motor vehicles, and  
109 it shall be its duty so to do, to the end that the transporta-  
110 tion of persons and property by motor vehicles in interstate  
111 and foreign commerce into and through the state of West  
112 Virginia may be regulated and the laws of the United States  
113 and of the state of West Virginia enforced and adminis-  
114 tered cooperatively in the public interest.

115 (i) Make agreements on behalf of the state of West Vir-  
116 ginia with any other state or states providing for reciprocal

rights, privileges, and courtesies between the licensees or holders of certificates and permits of the said state or states and the state of West Virginia respecting licenses, certificates and permits, and the transportation of either persons or property into and through the respective state or states and the state of West Virginia, and all existing agreements between a state or states and the state of West Virginia for reciprocal rights, privileges, and courtesies may, provided constitutional and contractual rights are not violated, be declared void by the commission and new agreements negotiated.

(j) Promulgate safety rules and regulations applicable to motor vehicles subject to the provisions of this act and promulgate regulations governing the qualifications and maximum hours of service of drivers and chauffeurs of common and contract carriers by motor vehicle of passengers and property subject to the provisions of this act, and promulgate any other rules and regulations which the commission may deem proper to carry out the provisions and intent of this act.

#### **Article 6. Duties and Privileges of Motor Carriers Subject to Regulation of the Commission.**

##### **Section**

3. Procedure as to certificates of convenience and necessity and permits prior to act.
6. Special license fees.

Section 3. *Procedure as to Certificates of Convenience and Necessity and Permits Prior to Act.* Certificates of convenience and necessity and permits issued to motor carriers by state authorities under the authority of the laws of this state in effect prior to the date this act becomes effective shall remain in effect until confirmed, revoked or suspended by the commission, but persons who are the holders of such certificates and permits shall be subject to all provisions of this act. The procedure for confirming such certificates and permits shall be the same as is herein provided for issuing certificates and permits in the first instance: *Provided*, That if any common or contract carrier by motor vehicle of passengers, except by taxicab, was in operation on or prior to March one, one thousand nine hundred thirty-seven, and any common or contract carrier by motor vehicle of property and of passengers by taxicab for hire was in

operation on or prior to January one, one thousand nine hundred thirty-nine, over the route or routes or within the territory for which application is made and has so operated since the respective dates, except as to interruptions over which the applicant has no control, the commission shall issue such certificate or permit without requiring further proof that the public convenience and necessity will be served by such operation and without further proceedings if application for such certificate or permit to operate is made to the commission within ninety days from the effective date of this act: *Provided, however,* That the applicant in the case of a common or contract carrier by motor vehicle of passengers, except by taxicab, shall be required to submit proof of operation on or prior to March one, one thousand nine hundred thirty-seven, and in the case of a common or contract carrier by motor vehicle of property and of passengers by taxicab, of operation on or prior to January one, one thousand nine hundred thirty-nine, and continuously thereafter: *Provided further,* That pending determination of any application hereunder, the continuance of operation in which a common or contract carrier by motor vehicle of passengers, except by taxicab, was so engaged on or prior to March one, one thousand nine hundred thirty-seven, and the continuance of operation in which any common or contract carrier by motor vehicle of property and of passengers by taxicab was so engaged on or prior to January one, one thousand nine hundred thirty-nine, shall be lawful.

Sec. 6. *Special License Fees.* In addition to the license fees, registration fees, or taxes now required by law of common carriers by motor vehicle and of contract carriers by motor vehicle, subject to the provisions of this act, there shall be assessed against and collected from each such carrier annually a special license fee for the administration of this act, in an amount to be computed, to be collected, and to be used, as follows:

(a) Upon each motor vehicle, except semi-trailers, of such carriers of property, in accordance with its capacity as rated by its manufacturer,

Of one ton or less capacity.....\$ 9.00



13	Of over one ton to one and one-half tons capacity.....	\$13.50
14	Of over one and one-half tons to two tons capacity....	\$18.00
15	Of over two tons to three tons capacity.....	\$22.50
16	Of over three tons to four tons capacity.....	\$27.00
17	Of over four tons to five tons capacity.....	\$31.50
18	Of over five tons to six tons capacity.....	\$36.00
19	Of over six tons to seven tons capacity.....	\$40.50
20	Of over seven tons to eight tons capacity.....	\$45.00
21	Of over eight tons to nine tons capacity.....	\$49.50
22	Of over nine tons to ten tons capacity.....	\$54.00
23	Of over ten tons capacity, \$54.00 plus \$4.50 for each addi-	
24	itional ton of capacity in excess of ten tons.	

25 (b) Upon each semi-trailer of such carriers of property,  
26 in accordance with its capacity as rated by its manufacturer,  
27 in an amount of two-thirds of the amount provided for ve-  
28 hicles of its capacity in sub-section (a) of this section.

29 (c) Upon each motor vehicle of such carriers of passen-  
30 gers, in accordance with the seating capacity thereof,

31	Of ten passengers or less.....	\$13.50
32	Of eleven to twenty passengers, inclusive.....	\$22.50
33	Of twenty-one to thirty passengers, inclusive.....	\$31.50
34	Of thirty-one to forty passengers, inclusive.....	\$45.00
35	Of over forty passengers.....	\$54.00

36 (d) The special license fee herein provided for shall be  
37 paid to, and collected by, the state road commission of West  
38 Virginia at the same time and in the same manner as regis-  
39 tration fees and license fees required by the motor vehicle  
40 laws of the state of West Virginia are now paid and collected  
41 and no license or permit shall be issued by the state road  
42 commission to any motor carrier subject to the provisions of  
43 this act until it has paid to the state road commission of West  
44 Virginia the special license fee as herein provided.

45 (e) All special license fees collected by the state road com-  
46 mission by virtue of this act shall be paid into the state  
47 treasury and credited to the special fund designated public  
48 service commission motor carrier fund, to be appropriated  
49 as provided by law for the purpose of paying the expenses  
50 of the commission and the salaries, compensation, costs and  
51 expenses of administering this act. Each member of the com-  
52 mission shall receive a salary of fifteen hundred dollars per

53 annum as compensation for the administration of this act in  
54 addition to all other salary or compensation provided by law,  
55 to be paid in monthly installments from said fund, but in  
56 no event shall the salary of a commissioner exceed six thou-  
57 sand dollars per annum.

58 All acts or parts of acts inconsistent herewith are hereby  
59 repealed.

## CHAPTER 87

(Com. Sub. for House Bill No. 241—Originating in the House Committee  
on Roads)

AN ACT to amend chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, by adding thereto a new article to be designated article twenty-one, providing for the licensing of chauffeurs and other motor vehicle operators, for the suspension and revocation of such licenses for certain causes, and prescribing penalties for violations of certain provisions of this act; and repealing sections twenty-six, twenty-seven and thirty, article six, section twenty-six, article eight of said chapter, and chapter fifty-one, acts of the Legislature, regular session, one thousand nine hundred thirty-three.

[Passed March 10, 1939; in effect ninety days from passage. Approved by the Governor.]

### Article 21. Licensing of Chauffeurs and Other Motor Vehicle Operators.

#### Section

1. Operators and chauffeurs must be licensed.
2. Persons exempt from license.
3. Nonresidents; when exempt.
4. What persons shall not be licensed.
5. Special chauffeur's license for operators of school busses and vehicles used to transport passengers for compensation.
6. Learner's permit.
7. Application for learner's permit, operator's or chauffeur's license.
8. Examination of applicant for license.
9. Issuance of operator's and chauffeur's licenses; fees.
10. Restricted licenses.
11. Duplicate licenses.
12. Expiration of licenses; renewals; fees.
13. Notice of change of address or name.
14. Records to be kept by the commissioner.
15. Mandatory revocation of licenses.

16. Authority of commissioner to revoke or suspend licenses.
17. Reexamination of operators and chauffeurs.
18. Period of suspension or revocation.
19. Suspension of license upon conviction in another state.
20. Suspension of nonresident privileges; report of convictions.
21. Surrender and return of license.
22. Operation under foreign licenses during suspension or revocation prohibited.
23. Abstract of judgment of conviction for violation of motor vehicle laws to be sent to commissioner.
24. License to be carried and exhibited on demand.
25. Unlawful use of license.
26. Penalty for driving while license suspended, revoked or canceled.
27. Permitting unlicensed person to drive.
28. Penalties.
29. Delegation of powers and duties by commissioner.
30. Provisions of act severable.
31. Repeal of acts.
32. Effective date of act.

*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 repealing sections twenty-six, twenty-seven, and thirty, article six, section twenty-six, article eight of said chapter, and chapter fifty-one, acts of the Legislature, regular session, one thousand nine hundred thirty-three, and by the addition thereto of a new article to be designated article twenty-one, to read as follows:

*Section 1. Operators and Chauffeurs Must Be Licensed.*

- 2 (a) No person, except those hereinafter expressly exempted,
- 3 shall operate any motor vehicle or tractor, except tractors
- 4 used by bona fide farmers upon their farms and traveling
- 5 upon a public highway or street for a distance not to exceed
- 6 one mile from their respective farms, upon any street or
- 7 highway in this state unless such person has been licensed as
- 8 an operator or a chauffeur under the provisions of this article.
- 9 No person shall operate any motor vehicle or tractor, except
- 10 as hereinbefore provided, as a chauffeur unless he has been
- 11 licensed as a chauffeur.
- 12 (b) Any person licensed as a chauffeur under the pro-
- 13 visions of this article shall not be required to procure an
- 14 operator's license.

- Sec. 2. Persons Exempt From License.* Any person in the
- 2 service of the government of the United States when furnished
  - 3 with an operator's permit by any department of the govern-

4 ment of the United States and while operating an official  
5 motor vehicle in such service shall not be required to obtain  
6 an operator's or chauffeur's license.

Sec. 3. *Nonresidents; When Exempt.* (a) A nonresident of  
2 this state over the age of sixteen years who has been duly  
3 licensed as an operator or chauffeur under a law requiring  
4 the licensing of operators or chauffeurs in his home state or  
5 country and who has in his immediate possession either a  
6 valid operator's or chauffeur's license issued to him by his  
7 home state or country shall be permitted, without examination  
8 or license under this article, to operate a motor vehicle upon  
9 the highways of this state for a period not to exceed ninety  
10 days in any one calendar year, except that any such person  
11 must be licensed as a chauffeur hereunder before accepting  
12 employment as a chauffeur from a resident of this state or  
13 from a person or persons having a place of business in this  
14 state.

15 (b) It shall be unlawful for any nonresident of this  
16 state whose home state or country does not require the licensing  
17 of operators or chauffeurs, and who has not been licensed  
18 as an operator or chauffeur in his home state or country, to  
19 operate any motor vehicle upon any street or highway of  
20 this state without first making application for and obtaining  
21 a license as an operator or chauffeur under this article; but  
22 any such unlicensed nonresident, who is over the age of  
23 sixteen years, may operate a motor vehicle which has been  
24 duly registered for the current calendar year in the state  
25 or country of which the owner is a resident upon the streets  
26 and highways of this state for a period not to exceed ninety  
27 days in any one calendar year without making application  
28 for or obtaining an operator's or chauffeur's license under  
29 this article except that any such person must be licensed  
30 as a chauffeur hereunder before accepting employment as a  
31 chauffeur from a resident of this state or from a person or  
32 persons having a place of business in this state.

Sec. 4. *What Persons Shall Not Be Licensed.* The com-  
2 missioner shall not issue any learner's permit, operator's or  
3 chauffeur's license:

4 (1) To any person who is under the age of sixteen years,

5    except that the commissioner may, in his discretion and sub-  
6    ject to the provisions of this section, issue a license hereunder  
7    to any person under the age of sixteen years who was licensed  
8    as an operator or chauffeur under any prior act of the Legis-  
9    lature;

10    (2) To any person who is addicted to the use of intoxi-  
11    cating liquor, drugs, or narcotics;

12    (3) To any person who has been previously adjudged  
13    insane, an imbecile, idiot, or epileptic, or feebleminded, and  
14    who has not at the time of application been restored to com-  
15    petency by judicial decree or released from a hospital for the  
16    insane, feebleminded, or epileptic, upon a certificate of the  
17    superintendent or medical director of such institution that  
18    such person is competent, and not then unless the commis-  
19    sioner is satisfied that such person is competent to operate  
20    a motor vehicle or tractor with safety to persons or property;

21    (4) To any person who is afflicted with or suffering from  
22    such mental or physical disability or disease as would serve  
23    to prevent such person from exercising reasonable and ordi-  
24    nary control over a motor vehicle or tractor while operating  
25    such motor vehicle or tractor upon the streets or highways  
26    of this state. The words "physical disability or disease" shall  
27    not be construed to mean persons who are unable to hear  
28    and who have good vision and can demonstrate satisfactorily  
29    their ability to operate a motor vehicle or tractor with safety;

30    (5) To any person who is unable to read and understand  
31    highway warning or direction signs in the English language;

32    (6) To any person who is required to establish proof of  
33    his ability to respond in damages under the provisions of  
34    article twenty of this chapter and who has not established  
35    such proof;

36    (7) To any person whose operator's or chauffeur's license  
37    or other privilege to operate motor vehicles on the streets  
38    or highways of this state has been revoked or suspended and  
39    whose operator's or chauffeur's license or other privilege to  
40    operate motor vehicles has not been restored as provided by  
41    law;

42    (8) To any person who is required to take the examination  
43    provided for in section eight of this article and who has not  
44    passed such examination.

Sec. 5. *Special Chauffeur's License for Operators of School*

2 *Busses and Vehicles Used to Transport Passengers for Com-*  
3 *pensation.* (a) No person who is under the age of twenty-one  
4 years shall operate any motor vehicle in use as a school bus for  
5 the transportation of pupils and teachers to and from school,  
6 nor any motor vehicles used in the transportation of passengers  
7 for compensation, nor in either event until he has been  
8 licensed as a chauffeur and received a special chauffeur's  
9 license issued for such transportation.

10 (b) No such person shall be granted a special chauffeur's  
11 license unless he has had one year of experience as an operator  
12 or chauffeur prior to the application therefor.

13 (c) No such license shall be granted to any person when  
14 the commissioner has reasonable cause to believe that such  
15 person is not competent or fit to be so employed.

16 (d) The commissioner may impose such reasonable rules  
17 and regulations governing the issuance and the exercise of  
18 such special chauffeur's license as are necessary for the safety  
19 and welfare of the traveling public.

Sec. 6. *Learner's Permit.* The commissioner upon receiv-

2 ing from any person over the age of sixteen years an applica-  
3 tion for a learner's permit, which said application shall be  
4 accompanied by a fee of one dollar, may, in his discretion,  
5 issue to such person a permit authorizing such applicant,  
6 while having said permit in his immediate possession, to  
7 operate a motor vehicle or tractor upon the streets or high-  
8 ways for a period of sixty days from the date of issue, but,  
9 except when operating a motorcycle or tractor, such person  
10 must be accompanied by a licensed operator or chauffeur who  
11 is actually occupying a seat beside the permittee.

Sec. 7. *Application for Learner's Permit, Operator's or*

2 *Chauffeur's License.* Every application for a learner's permit,  
3 operator's or chauffeur's license shall be made upon a form  
4 provided by the commissioner and shall be verified by the  
5 applicant before a person authorized to administer oaths.  
6 Every said application shall be accompanied by the required  
7 fee and shall state the full name, including middle name or  
8 names, date of birth, sex, and resident address of the applicant,  
9 and briefly describe the applicant, and shall state whether

10 the applicant has theretofore been licensed as an operator  
11 or a chauffeur, and, if so, when and by what state or country,  
12 and whether any such license has ever been suspended or  
13 revoked, or whether an application for any such license has  
14 been refused, and, if so, the date of and the reason for such  
15 revocation, suspension, or refusal, and such other pertinent  
16 information as the commissioner may require.

Sec. 8. *Examination of Applicant for License.* (a) Before  
2 issuing any operator's or chauffeur's license the commissioner  
3 shall, except as otherwise provided in section twelve, require  
4 every applicant for any such license to appear for examina-  
5 tion before the superintendent of the department of public  
6 safety, or his representative. Said examination shall include  
7 a test of the applicant's eyesight, his ability to read and  
8 understand highway warning and direction signs in the  
9 English language, his knowledge of the motor vehicle laws  
10 of this state, and shall include an actual demonstration of  
11 his ability to exercise reasonable and ordinary control in  
12 the operation of a motor vehicle, and such further physical  
13 and mental examination as the commissioner finds necessary  
14 to determine the applicant's fitness to operate a motor vehicle  
15 or tractor. No such license shall be issued or renewed by the  
16 commissioner if the said superintendent, or his representative,  
17 shall make a report that the applicant failed to pass such  
18 examination. In the event an applicant fails to pass the  
19 examination required by this section, he shall be afforded an  
20 opportunity for reexamination, except that no applicant shall  
21 be examined twice within a period of one week.

22 (b) The commissioner shall adopt and promulgate regu-  
23 lations concerning the examination of applicants for operator's  
24 and chauffeur's licenses and the qualifications required of  
25 such applicants.

Sec. 9. *Issuance of Operator's and Chauffeur's Licenses;*  
2 *Fees.* The commissioner shall, upon payment of the fees here-  
3 inafter prescribed, issue to every applicant qualifying therefor  
4 an operator's or chauffeur's license as applied for, which  
5 license shall bear thereon a distinguishing number assigned to  
6 the license, the full name, age, residence address, and a brief  
7 description of the licensee, and a space upon which the  
8 licensee shall write his usual signature with pen and ink

9 immediately upon receipt of the license. No such license shall  
10 be valid until it has been so signed by the applicant.

11 The fee for the issuance of an operator's license shall be  
12 seventy-five cents. The fee for the issuance of a chauffeur's  
13 license shall be three dollars, except that a chauffeur's license  
14 may be issued on or after the first day of July in any year  
15 upon payment of a fee of one dollar and fifty cents.

Sec. 10. *Restricted Licenses.* (a) The commissioner upon  
2 issuing any operator's or chauffeur's license shall have the  
3 authority, whenever good cause appears, to impose restric-  
4 tions suitable to the licensee's driving ability with respect to  
5 the type of or special mechanical devices required on a motor  
6 vehicle which the licensee may operate, or such other restric-  
7 tions applicable to the licensee as the commissioner may de-  
8 termine to be appropriate to assure the safe operation of a  
9 motor vehicle by the licensee.

10 (b) The commissioner may issue a special restricted license  
11 or may set forth such restrictions upon the usual license form.

12 (c) The commissioner may, upon receiving satisfactory  
13 evidence of any violation of the restrictions imposed by virtue  
14 of any provision of this chapter, without preliminary hearing  
15 revoke or suspend such license, but the licensee thereof shall  
16 be entitled to a hearing as hereinafter provided in section  
17 sixteen (a) of this article.

18 (d) It shall be a misdemeanor for any person to operate  
19 a motor vehicle in any manner in violation of any restrictions  
20 imposed by virtue of any provision of this chapter.

Sec. 11. *Duplicate Licenses.* In the event that an operator's  
2 or chauffeur's license issued under the provisions of this  
3 article is lost or destroyed, the person to whom such license  
4 was issued may upon making proper application and upon  
5 payment of a fee of one dollar, obtain a duplicate thereof  
6 upon furnishing proof satisfactory to the commissioner that  
7 such license has been lost or destroyed.

Sec. 12. *Expiration of Licenses; Renewals; Fees.* (a) All  
2 operators' licenses issued under any prior act of the Legisla-  
3 ture relating to the licensing of motor vehicle operators shall  
4 expire as follows:



5 Operators' licenses issued prior to the twentieth day of  
6 March, one thousand nine hundred twenty-seven, shall expire  
7 on the first day of September, one thousand nine hundred  
8 thirty-nine, and shall thereafter be void;

9 Operators' licenses issued since the twentieth day of March,  
10 one thousand nine hundred twenty-seven, numbered from  
11 one to 100,000, inclusive, shall expire on the first day of Sep-  
12 tember, one thousand nine hundred thirty-nine, and shall  
13 thereafter be void;

14 Operators' licenses issued since the twentieth day of March,  
15 one thousand nine hundred twenty-seven, numbered from  
16 100,001 to 175,000, inclusive, shall expire on the first day of  
17 October, one thousand nine hundred thirty-nine, and shall  
18 thereafter be void;

19 Operators' licenses issued since the twentieth day of March,  
20 one thousand nine hundred twenty-seven, numbered from  
21 175,001 to 250,000, inclusive, shall expire on the first day of  
22 November, one thousand nine hundred thirty-nine, and shall  
23 thereafter be void;

24 Operators' licenses issued since the twentieth day of March,  
25 one thousand nine hundred twenty-seven, numbered from  
26 250,001 to 300,000, inclusive, shall expire on the first day of  
27 December, one thousand nine hundred thirty-nine, and shall  
28 thereafter be void.

29 Operators' licenses issued since the twentieth day of March,  
30 one thousand nine hundred twenty-seven, numbered from  
31 300,001 to 350,000, inclusive, shall expire on the first day of  
32 January, one thousand nine hundred forty, and shall there-  
33 after be void;

34 Operators' licenses issued since the twentieth day of March,  
35 one thousand nine hundred twenty-seven, numbered from  
36 350,001 to 400,000, inclusive, shall expire on the first day of  
37 February, one thousand nine hundred forty, and shall there-  
38 after be void;

39 Operators' licenses issued since the twentieth day of March,  
40 one thousand nine hundred twenty-seven, numbered from  
41 400,001 to 450,000, inclusive, shall expire on the first day of  
42 March, one thousand nine hundred forty, and shall thereafter  
43 be void;

44 Operators' licenses issued since the twentieth day of March,

45 one thousand nine hundred twenty-seven, numbered from  
46 450,001 to 500,000, inclusive, shall expire on the first day of  
47 April, one thousand nine hundred forty, and shall thereafter  
48 be void;

49 Operators' licenses issued since the twentieth day of March,  
50 one thousand nine hundred twenty-seven, numbered from  
51 500,001 to 550,000, inclusive, shall expire on the first day of  
52 May, one thousand nine hundred forty, and shall thereafter  
53 be void;

54 Operators' licenses issued since the twentieth day of March,  
55 one thousand nine hundred twenty-seven, numbered from  
56 550,001 to 650,000, inclusive, shall expire on the first day of  
57 June, one thousand nine hundred forty, and shall thereafter  
58 be void.

59 The commissioner may issue an operator's license here-  
60 under to any person licensed to operate motor vehicles under  
61 any prior act of the Legislature, whose license or other  
62 privilege to operate motor vehicles has not been canceled,  
63 revoked, or suspended and who shall make proper application  
64 for a license and pay the required fee of seventy-five cents on  
65 or before the date on which any operator's license issued to  
66 him under any prior act of the Legislature will expire as  
67 hereinbefore provided. The commissioner may, in his discre-  
68 tion, issue a license hereunder to any such applicant without  
69 examination.

70 (b) Any operator's license issued under the provisions  
71 of this article shall expire by its own limitation four years  
72 from the date of its issuance. Any license so expiring may  
73 be thereafter renewable for successive periods of four years  
74 on or before its expiration date upon application and upon  
75 payment of a fee of seventy-five cents for each such renewal.  
76 The commissioner may, in his discretion, renew any license  
77 without examination.

78 (c) The commissioner shall, upon proper application and  
79 upon payment of a fee of three dollars, issue a chauffeur's  
80 license to any person holding a valid chauffeur's license issued  
81 pursuant to the provisions of any prior act of the Legislature.  
82 The commissioner may, in his discretion, issue such chauffeur's  
83 license to any such applicant without examination. Any such  
84 chauffeur's license so issued shall expire by its own limitation

85 on the thirty-first day of December in the year following the  
86 issuance thereof, and shall be thereafter renewable for suc-  
87 cessive periods of one year upon application and upon pay-  
88 ment of the required fee as hereinafter provided in this section.

89 (d) Every chauffeur's license issued pursuant to the pro-  
90 visions of this article shall expire on the thirty-first day of  
91 December of each year and shall be renewable for successive  
92 periods of one year on or before its expiration date upon  
93 application and upon payment of a fee of three dollars for  
94 each such renewal, except that a chauffeur's license renewed  
95 on or after the first day of July may be renewed upon pay-  
96 ment of a fee of one dollar and fifty cents. The commissioner  
97 may, in his discretion, renew any chauffeur's license without  
98 examination.

Sec. 13. *Notice of Change of Address or Name.* Whenever  
2 any person after applying for or receiving an operator's or  
3 chauffeur's license shall move from the address named in such  
4 application or in the license issued to him, or when the name  
5 of the licensee is changed by marriage or otherwise such per-  
6 son shall within twenty days thereafter notify the commis-  
7 sioner in writing of his old and new address, or of such new  
8 and former names and of the number of any license then  
9 held by him.

Sec. 14. *Records to be Kept by the Commissioner.* The  
2 commissioner shall file every application for a learner's per-  
3 mit, operator's or chauffeur's license and shall properly index  
4 the same and maintain suitable records of all licenses issued  
5 and all applications for licenses denied, also a record of all  
6 licenses which have been revoked or suspended.

7 The commissioner shall also file all accident reports and  
8 abstracts of court records of convictions received by him  
9 under the laws of this state and in connection therewith  
10 maintain convenient records in order that an individual  
11 record of each licensee showing the convictions of such licensee  
12 for violation of any motor vehicle law and the motor vehicle  
13 accidents in which he has been involved shall be readily  
14 ascertainable and available for the consideration of the com-  
15 missioner upon any application for the issuance of or the  
16 renewal of any license and at other suitable times.

Sec. 15. *Mandatory Revocation of Licenses.* The commissioner shall forthwith revoke the license of any operator or the privilege of any person to operate a motor vehicle upon the streets or highways of this state upon receiving an official record of such operator's or chauffeur's or other person's conviction for any of the following offenses:

(1) Operating a motor vehicle while intoxicated or under the influence of intoxicating liquor, drugs, or narcotics in violation of any provision of a charter, or by-law, or ordinance of any incorporated municipality of this state;

(2) Knowingly permitting the operation of a motor vehicle by an intoxicated person or a person under the influence of intoxicating liquor, drugs, or narcotics in violation of any provision of a charter, or by-law, or ordinance of any incorporated municipality of this state;

(3) Involuntary manslaughter, or any crime of greater degree involving homicide, resulting from the use or operation of a motor vehicle;

(4) Any crime punishable as a felony under the provisions of this chapter or any other felony in the commission of which a motor vehicle is used;

(5) Three charges of reckless driving within a period of twelve months;

(6) Failure of operators of motor vehicles involved in a motor vehicle accident resulting in the death or injury to another person to stop and render assistance as required under the laws of this state.

Any license which has been so revoked shall not be reissued or renewed nor shall any new license be issued to any person whose privilege to operate motor vehicles has been so revoked before the expiration of six months from the date of such revocation nor thereafter until the licensee shall establish proof of his financial responsibility as provided in article twenty of this chapter.

Sec. 16. *Authority of Commissioner to Revoke or Suspend Licenses.* (a) The commissioner is hereby authorized to suspend the licenses of any operator or chauffeur or any learner's permit without preliminary hearing upon a showing by his records or other sufficient evidence that the licensee or permittee thereof:

7 (1) Was not entitled to the issuance of such license or  
8 permit;

9 (2) Failed to give the required or the correct informa-  
10 tion in his application or committed any fraud or misrepre-  
11 sented any fact in such application;

12 (3) Is incompetent to operate a motor vehicle or tractor  
13 with safety;

14 (4) Has operated a motor vehicle or tractor in violation  
15 of any restriction imposed on such license or permit by vir-  
16 tue of any of the provisions of this chapter.

17 Upon such suspension the commissioner shall immediately  
18 notify the licensee in writing, sent by registered mail to the  
19 address given by the licensee in applying for his said license,  
20 and, upon such licensee's request in writing made within  
21 thirty days after such notice is mailed, shall afford him an  
22 opportunity for hearing. Upon such hearing the commis-  
23 sioner shall either rescind his order of suspension or, good  
24 cause appearing therefor, extend such suspension or revoke  
25 such license.

26 (b) The commissioner may also, after due hearing, upon  
27 not less than five days' notice in writing, said notice to be  
28 sent by registered mail to the address given by the licensee in  
29 applying for his license, which shall constitute a sufficient  
30 form of notice, suspend or revoke any license or permit issued  
31 under the provisions of this article to any person for any of  
32 the following causes:

33 (1) That such person has committed an offense for which  
34 mandatory revocation of an operator's or chauffeur's license  
35 is required upon conviction;

36 (2) That the licensee has been convicted of or pleaded  
37 guilty to violating any of the provisions of this chapter;

38 (3) That such person has, by reckless or unlawful oper-  
39 ation of a motor vehicle, caused or contributed to an acci-  
40 dent resulting in death of or injury to any person or property  
41 damage;

42 (4) That such person is an habitual reckless or negligent  
43 operator of a motor vehicle;

44 (5) That such person is an habitual violator of the motor  
45 vehicle laws;

46 (6) For any of the causes set forth in subsection (a) of this  
47 section.

Sec. 17. *Reexamination of Operators and Chauffeurs.* The  
2 commissioner may, whenever he has reason to believe that any  
3 operator or chauffeur is incompetent or otherwise not quali-  
4 fied to operate a motor vehicle or tractor with safety, require  
5 such operator or chauffeur to appear before the superin-  
6 tendent of the department of public safety, or his representa-  
7 tive, and submit to a reexamination. A notice to appear for  
8 such reexamination shall be sent to the licensee by registered  
9 mail to the address given by such licensee in applying for his  
10 license, which said notice shall state the time and place at  
11 which such reexamination is to be conducted. If the licensee  
12 fail, except for good and sufficient reason, to appear for such  
13 reexamination at the time and place designated in the no-  
14 tice, or, if the said superintendent, or his representative, shall,  
15 after reexamination of the licensee, report that he is incom-  
16 petent or otherwise not qualified to operate a motor vehicle  
17 or tractor with safety, the commissioner shall suspend the  
18 license of such person. Upon such suspension the licensee  
19 shall be notified and afforded an opportunity for hearing as  
20 provided in section 16 (a) of this article.

Sec. 18. *Period of Suspension or Revocation.* The commis-  
2 sioner shall not suspend a license for a period to exceed six  
3 months, except that in any case where a license is suspended  
4 because of a mental or physical disability of the licensee, the  
5 commissioner shall not reissue or renew such license or issue  
6 any new license hereunder until such mental or physical dis-  
7 ability has been remedied or removed. In any case where  
8 a license is revoked, such license shall not in any event be re-  
9 issued or renewed or a new license issued hereunder before  
10 the expiration of six months from the date of such revoca-  
11 tion nor thereafter except at the discretion of the commis-  
12 sioner.

Sec. 19. *Suspension of License Upon Conviction in Another*  
2 *State.* The commissioner is authorized to suspend or revoke  
3 the license of any resident of this state who has been convicted  
4 in any other jurisdiction of an offense therein which if com-

mitted in this state would be the grounds for the suspension or revocation of the license of an operator or chauffeur.

Sec. 20. *Suspension of Nonresident Privileges; Report of Convictions.* (a) The privilege of operating a motor vehicle on the streets or highways of this state given to any nonresident operator of a motor vehicle shall be subject to suspension or revocation by the commissioner in like manner and for like cause as an operator's or chauffeur's license issued under this article may be revoked or suspended.

(b) The commissioner shall, upon receiving a record of the conviction in this state of a nonresident operator of a motor vehicle of any violation of the motor vehicle laws of this state, forward a report of such conviction to the motor vehicle administrator in the state wherein the person so convicted is a resident.

Sec. 21. *Surrender and Return of License.* Any person whose operator's or chauffeur's license or learner's permit has been suspended or revoked shall immediately surrender such license to the commissioner. Any person wilfully failing or refusing to surrender his license or permit when requested by the commissioner shall be guilty of a misdemeanor.

Sec. 22. *Operation Under Foreign Licenses During Suspension or Revocation Prohibited.* Any resident or nonresident whose operator's or chauffeur's license or privilege to operate a motor vehicle in this state has been suspended or revoked as provided in this article shall not operate a motor vehicle in this state under a license, permit, or registration certificate issued by another jurisdiction or otherwise during such suspension or after such revocation until authorized by the commissioner when and as permitted under this article.

Sec. 23. *Abstract of Judgment of Conviction for Violation of Motor Vehicle Laws to be Sent to Commissioner.* Whenever a conviction is had in any court of record, or in a justice's court, or in the police court or mayor's court of any incorporated municipality, for the violation of any law governing or regulating the licensing or operation of any motor vehicle under any of the provisions of this chapter, or for the violation of any provision of a charter, or by-law, or ordinance of such incorporated municipality governing or regulating the

10 operation of motor vehicles, except local parking regulations,  
11 the clerk of every such court, or the justice, or the clerk or  
12 recorder of such municipality, as the case may be, shall in  
13 each case transmit to the state road commissioner within  
14 seventy-two hours after such conviction is had a certified ab-  
15 stract of the judgment on such conviction.

16 Whenever any person is convicted of any offense for which  
17 a provision of this chapter makes mandatory the revocation or  
18 suspension of the operator's or chauffeur's license of such  
19 person by the commissioner, the court in which such convic-  
20 tion is had shall require the surrender to it of all operator's  
21 and chauffeur's licenses then held by the person so convicted  
22 and the clerk of every said court, or the justice, or the clerk  
23 or the recorder of a municipality, as the case may be, shall  
24 thereupon forward the same to the commissioner with the  
25 abstract of the judgment on such conviction.

26 Wilful failure, refusal or neglect to comply with the pro-  
27 visions of this section shall subject the person who is guilty  
28 thereof to a fine of not less than ten dollars nor more than  
29 fifty dollars and may be the grounds for removal from office.

Sec. 24. *License to be Carried and Exhibited on Demand.*

2 Every operator or chauffeur shall have his operator's or  
3 chauffeur's license in his immediate possession at all times  
4 when operating a motor vehicle or tractor and shall display  
5 the same upon demand of any law enforcement officer, or the  
6 state road commissioner or his duly authorized representa-  
7 tives.

Sec. 25. *Unlawful Use of License.* It shall be a misde-  
meanor for any person :

- 3 (1) To display or cause or permit to be displayed or have  
4 in his possession any canceled, revoked, suspended, fictitious,  
5 or fraudulently altered operator's or chauffeur's license ;
- 6 (2) To lend his operator's or chauffeur's license to an-  
7 other person or permit the use thereof by another person ;
- 8 (3) To display as his own any operator's or chauffeur's  
9 license not issued to him ;
- 10 (4) To fail or refuse to surrender to the commissioner  
11 upon his lawful demand any operator's or chauffeur's license  
12 which has been revoked, suspended or canceled ;



13 (5) To permit any unlawful use of any operator's or  
14 chauffeur's license issued to him;

15 (6) To use a false or fictitious name in any application  
16 for an operator's or chauffeur's license or learner's permit  
17 or to knowingly make a false statement or to knowingly con-  
18 ceal any material fact or commit any fraud in such applica-  
19 tion;

20 (7) To do any act forbidden or fail to perform any act  
21 required by this article.

Sec. 26. *Penalty for Driving While License Suspended, Re-  
2 voked or Canceled.* Any person whose operator's or chauffeur's  
3 license or other privilege to operate motor vehicles on the  
4 streets or highways of this state has been canceled, revoked, or  
5 suspended, and who operates any motor vehicle upon any  
6 street or highway of this state while such license or privilege is  
7 canceled, revoked, or suspended shall be guilty of a misde-  
8 meanor and upon conviction thereof shall be punished by a  
9 fine of not less than fifty nor more than two hundred dollars,  
10 or by imprisonment for not less than five days nor more than  
11 six months, or by both such fine and imprisonment.

Sec. 27. *Permitting Unlicensed Person to Drive.* No per-  
2 son shall authorize or knowingly permit a motor vehicle  
3 owned by him or under his control to be driven upon any  
4 highway of this state by any person who is not licensed  
5 hereunder or in violation of the provisions of this article.

Sec. 28. *Penalties.* (a) It shall be a misdemeanor for any  
2 person to violate any of the provisions of this article unless  
3 such violation is by this article or other law of this state  
4 declared to be a felony.

5 (b) Unless another penalty is in this article or by the  
6 laws of this state provided, every person convicted of a mis-  
7 demeanor for the violation of any provisions of this article  
8 shall be punished by a fine not to exceed five hundred dollars  
9 or by imprisonment not to exceed six months, or by both such  
10 fine and imprisonment.

Sec. 29. *Delegation of Powers and Duties by Commissioner.*  
2 All powers and duties vested in the commissioner by the pro-  
3 visions of this article may be exercised by the appointees or

4 employees of the commissioner, under his direction; but the  
5 commissioner shall be responsible for their acts.

Sec. 30. *Provisions of Act Severable.* If any part or parts of  
2 this act shall be held to be unconstitutional such unconstitu-  
3 tionality shall not affect the validity of the remaining parts of  
4 this act. The Legislature hereby declares that it would have  
5 passed the remaining parts of this act if it had known that  
6 such part or parts thereof would be declared unconstitutional.

Sec. 31. *Repeal of Acts.* Sections twenty-six, twenty-seven,  
2 and thirty, article six, and section twenty-six, article eight,  
3 chapter seventeen of the code of West Virginia, one thousand  
4 nine hundred thirty-one, and chapter fifty-one, acts of the  
5 Legislature, regular session, one thousand nine hundred  
6 thirty-three, are hereby expressly repealed, and any other  
7 act of the Legislature of West Virginia or any provision of  
8 the code of West Virginia, one thousand nine hundred thirty-  
9 one, as amended, which is inconsistent with the provisions  
10 of this act is hereby expressly repealed.

Sec. 32. *Effective Date of Act.* This act, except as herein  
2 otherwise provided, shall become effective on the first day of  
3 July, one thousand nine hundred thirty-nine.

## CHAPTER 88

(Senate Bill No. 130—By Mr. Bibb)

AN ACT regulating the use of highways by motor vehicles carry-  
ing other vehicles.

[Passed March 10, 1939; in effect ninety days from passage. Became a law with-  
out the approval of the Governor.]

### Section

1. Use of highways by motor vehicles carrying other vehicles; ex-  
ceptions; penalties.

*Be it enacted by the Legislature of West Virginia:*

Section 1. *Use of Highways by Motor Vehicles Carrying*  
2 *Other Vehicles; Exceptions; Penalties.* On and after July  
3 first, one thousand nine hundred forty, it shall be unlawful  
4 for any person to operate on the highways of this state:

5 (a) A vehicle having two levels, for the carriage of other  
6 vehicles;

7 (b) A vehicle carrying other vehicles, any of which is car-  
8 ried at a height of one hundred fifteen inches above the ground;

9 (c) A vehicle carrying other vehicles, any part of which  
10 is above the cab of the carrier vehicle, or over the head of the  
11 operator of such carrier vehicle;

12 (d) A vehicle carrying any other vehicle, any axle of  
13 which is more than three feet higher than any other axle on  
14 such carried vehicle.

15 (e) The provisions of this act shall not apply to any vehicle  
16 transporting other vehicles used in construction or mainte-  
17 nance work or in the development of power, coal, oil, natural  
18 gas or other minerals, or for agricultural purposes.

19 Any person violating any one of the provisions of this act  
20 shall, upon conviction, be sentenced to pay a fine of twenty-  
21 five dollars and costs, or may be sentenced to jail for a  
22 period of not more than five days.

## CHAPTER 89

(House Bill No. 313—By Mr. Taylor)

AN ACT to amend article eight, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, by adding thereto section twenty-seven-a, relating to the inspection by the state road commissioner, his duly authorized employees, and members of the department of public safety, of motor vehicles being operated on the public streets and highways; and providing penalties for the violation of the provisions of this act.

[Passed March 7, 1939; in effect from passage. Approved by the Governor.]

### Article 8. Traffic Regulations and Laws of the Road.

#### Section

27-a. Inspection of motor vehicles by commissioner and department of public safety.

*Be it enacted by the Legislature of West Virginia:*

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

Section 27-a. *Inspection of Motor Vehicles by Commissioner and Department of Public Safety.* The state road commissioner and his duly authorized employees and members of the department of public safety may at any time, upon reasonable cause to believe that a motor vehicle being operated upon the streets or highways of this state is unsafe or not equipped as required by law or by any regulation of the commissioner adopted pursuant to any law of this state, or that its equipment is not in proper adjustment or repair, require the driver of such vehicle to stop and submit such vehicle to an inspection and such test with reference thereto as may be appropriate.

In the event such vehicle and its equipment are found to be in safe condition and in full compliance with the laws of this state and the regulations of the commissioner, the officer making such inspection shall issue to the driver an official certificate of inspection and approval of such vehicle, specifying those parts or equipment so inspected and approved.

In the event such vehicle is found to be in unsafe condition or any required part or equipment is missing or is not in proper repair or adjustment, the officer shall give a written notice to the driver. Said notice shall require that such vehicle be placed in safe condition and its equipment in proper repair and adjustment, specifying the particulars with reference thereto and that a certificate of inspection and approval be obtained within five days.

No person operating a motor vehicle shall refuse to submit such vehicle to an inspection and test when required to do so by the commissioner, his duly authorized employees, or a member of the department of public safety.

No person shall operate any motor vehicle after receiving notice that such vehicle is not equipped as required by law or that its equipment is not in proper repair or adjustment, except as may be necessary to return such vehicle to the residence or place of business of the owner or to a garage, if within a distance of twenty miles, until said vehicle and its equipment has been placed in proper repair and adjustment and otherwise made to conform to the requirements of this act, and a certificate of inspection and approval shall be obtained as promptly as possible thereafter.

41 Any person violating the provisions of this section shall  
42 be guilty of a misdemeanor, and upon conviction thereof shall  
43 be fined not less than ten nor more than fifty dollars.

## CHAPTER 90

(House Bill No. 314—By Mr. Taylor)

AN ACT to amend article eight, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, by adding thereto a new section designated twenty-two-b, requiring adequate brakes for use on vehicles operated on the streets and highways of this state, prescribing the standard of performance for such brakes, and providing penalties for the violation of the provisions of this act; and repealing any provision of the code of West Virginia, one thousand nine hundred thirty-one, as amended, inconsistent with this act.

[Passed March 7, 1939; in effect from passage. Approved by the Governor.]

### Article 8. Traffic Regulations and Laws of the Road.

#### Section

22-b. Brakes required on motor vehicles, trailers, etc.; operating mechanism and performance ability; penalties.

*Be it enacted by the Legislature of West Virginia:*

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

Section 22-b. *Brakes Required on Motor Vehicles, Trailers, etc.; Operating Mechanism and Performance Ability; Penalties.* (a) Every motor vehicle, other than a motorcycle, when operated upon the streets or highways of this state, shall be equipped with brakes adequate to control the movement of and to stop and hold such vehicle, including two separate means of applying the brakes, each of which means shall be effective to apply the brakes to at least two wheels. If these two separate means of applying the brakes are connected in any way, they shall be so constructed that failure of any one part of the operating mechanism shall not leave the motor vehicle without brakes on at least two wheels.

13 Every motorcycle, and any other two or three-wheeled motor  
14 vehicle, when operated upon a highway, shall be equipped with  
15 at least one brake, which may be operated by hand or foot.

16 Every trailer or semi-trailer of gross weight of three thou-  
17 sand pounds or more when operated upon the streets or high-  
18 ways of this state shall be equipped with brakes adequate to  
19 control the movement of and to stop and hold such vehicle  
20 and so designed as to be applied by the driver of the towing  
21 motor vehicle from its cab, and said brakes shall be so de-  
22 signed and connected that in case of an accidental breakaway  
23 of the towed vehicle the brakes of such vehicle shall be auto-  
24 matically applied.

25 Every new motor vehicle, trailer or semi-trailer hereafter  
26 sold in this state and operated upon the streets and highways  
27 of this state shall be equipped with service brakes upon all  
28 wheels of every such vehicle, except any motorcycle, and ex-  
29 cept that any semi-trailer of less than fifteen hundred pounds  
30 gross weight need not be equipped with brakes.

31 One of the means of brake operation shall consist of a me-  
32 chanical connection from the operating lever to the brake  
33 shoes or bands and this brake shall be capable of holding  
34 the vehicle or any combination of vehicles stationary under  
35 any condition of loading on any up or down grade upon which  
36 it is operated.

37 The brake shoes operating within or upon the brake drums  
38 on the vehicle wheels of any motor vehicle may be used both  
39 for service and hand operation.

40 (b) Every motor vehicle or combination of motor-drawn  
41 vehicles shall be capable at all times and under all conditions  
42 of loading of being stopped on a dry, smooth, level road free  
43 from gravel and other loose material of a similar nature,  
44 upon application of the service (foot) brakes, within the dis-  
45 tances specified below, or shall be capable of being decelerated  
46 at a sustained rate corresponding to these distances:

	Feet to stop	
	from 20 miles	Deceleration in
	per hour	feet per second
50 Vehicles or combination of ve-		
51 hicles having brakes on all		
52 wheels .....	30	14

- 53 Vehicles or combination of ve-  
54 hicles not having brakes on  
55 all wheels ..... 40 10.7  
56 All brakes shall be maintained in good working order and  
57 shall be so adjusted as to operate as equally as practicable  
58 with respect to the wheels on opposite sides of the vehicle.  
59 (c) Any person operating a vehicle upon the streets and  
60 highways of this state without adequate brakes as required  
61 by this section shall be guilty of a misdemeanor, and upon  
62 conviction thereof shall be fined not less than five nor more  
63 than fifty dollars.  
64 (d) All prior acts of the Legislature or parts of acts,  
65 relating to brakes to be used on vehicles, inconsistent with  
66 this act, are hereby expressly repealed.

## CHAPTER 91

(Senate Bill No. 267—By Mr. Randolph)

AN ACT to authorize municipal corporations to create boards of park commissioners; to provide for the qualifications of the members thereof; to define the public duties and powers of such boards; to authorize such boards to purchase, hold, sell, and convey real or personal property, receive any gift, grant, donation, and bequest or devise; to authorize such boards to disburse such moneys as they may receive by appropriations or otherwise; to authorize municipalities to issue bonds, in accordance with law, for the purpose of establishing, maintaining, improving, extending, or operating public park systems; and to authorize the municipalities and such boards to do any and all things and acts which may be necessary or convenient to carry out and effectuate the purposes and provisions of this act.

[Passed March 9, 1939; in effect from passage. Became a law without the approval of the Governor.]

### Board of Park Commissioners.

#### Section

1. Definitions.
2. Municipalities may create.
3. Board a body corporate; perpetual existence; name; powers.
4. Members; qualifications; election or appointment; terms; disqualification.

5. Filling vacancies.
6. Oath of members; organization of board; secretary; treasurer.
7. Members to be paid expenses; not to be personally interested in contracts or property of board.
8. Office; powers.
9. Purchase, lease or condemnation of real estate.
10. Title to real and personal property acquired; location of real estate; realty sales by board; conveyances by board.
11. General powers of board; ordinances; counsel.
12. Charges for use of recreational facilities; use of funds.
13. Use of municipal appropriations and other funds.
14. Public park bonds; issuance; purpose; election expense; sale of bonds; use of proceeds; ordinances.
15. Construction of act.
16. Provisions of act severable.

*Be it enacted by the Legislature of West Virginia:*

Section 1. *Definitions.* (a) The term "municipality" as used  
2 in this act shall be construed to mean any city or incorporated  
3 town in the state of West Virginia; (b) the term "board"  
4 when hereinafter used in this act shall be construed to mean  
5 the board of park commissioners; and (c) the term "council"  
6 shall mean the chief legislative body of the city.

Sec. 2. *Municipalities May Create.* Every municipality in  
2 the state of West Virginia is hereby authorized and empow-  
3 ered, by ordinance, to create a board of park commissioners  
4 for the purpose of establishing, improving, developing, oper-  
5 ating and maintaining a municipal public park system.

Sec. 3. *Board a Body Corporate; Perpetual Existence;*  
2 *Name; Powers.* The board of park commissioners created by  
3 ordinance, enacted pursuant to the authority of this act, shall  
4 be a public corporate body, with perpetual existence and a  
5 corporate seal. It shall be known as the board of park commis-  
6 sioners of such municipality. It shall have the power to pur-  
7 chase, hold, sell, and convey real or personal property;  
8 receive any gift, grant, donation, and bequest or devise; sue  
9 and be sued; contract and be contracted with; and do any and  
10 all things and acts which may be necessary or convenient to  
11 carry out and effectuate the purposes and provisions of this  
12 act.

Sec. 4. *Members; Qualifications; Election or Appointment;*  
2 *Terms; Disqualification.* The board shall consist of three mem-  
3 bers, any two of whom shall constitute a quorum for the tran-  
4 saction of business, except as hereinafter provided. Each mem-



ber of said board shall be a bona fide resident of the municipality and shall own real estate within the limits of such municipality. The council of the municipality may provide either by the ordinance creating the board or by a subsequent ordinance for the appointment of the members thereof by the council, but unless and until it does so provide, the members of the board shall be elected by the duly qualified voters of the municipality at regular municipal elections. Such board members shall serve for terms of six years, and until their successors have been duly elected or appointed and qualified: *Provided, however,* That the council of the municipality shall appoint the members of the first board, such appointees to serve, one for a term of six years, one for a term of four years, and one for a term of two years. The ordinance creating the board shall fix the date upon which the terms of such board members shall begin. When any member of the board, during his term of office, shall cease to be a bona fide resident of the municipality or a freeholder thereof, he shall thereby be disqualified as a member of said board and his office shall thereupon be, and become, vacant.

Sec. 5. *Filling Vacancies.* When a vacancy occurs on said board by reason of death, resignation, change of residence from the municipality, or for any other cause, the remaining member or members of said board shall appoint a successor or successors, or if there should be no members left on said board, the council of the municipality shall appoint successors, and in either event the member or members so appointed shall serve until the next general municipal election of the municipality, at which election there shall be elected the necessary member or members to fill the unexpired term or terms.

Sec. 6. *Oath of Members; Organization of Board; Secretary; Treasurer.* After appointment or election, the members of the board shall qualify by taking and filing with the clerk or recorder of the municipality the oath prescribed by law for public officials, and they shall not be permitted to serve upon said board until they have so qualified. If any member of said board shall fail to so qualify on or before the date upon which he should assume the duties of his office, the other quali-

9    fied members of said board may declare his position vacant  
10   and appoint a successor, as hereinabove provided.

11    At the first meeting held after the first board has been ap-  
12   pointed, as hereinbefore provided, and thereafter on a date  
13   to be fixed by the ordinance creating such board, the  
14   members of the board shall organize by electing one of their  
15   number president, and another vice president, and by electing  
16   a secretary who need not be a member of the board. The  
17   secretary shall keep an accurate record of all the fiscal affairs  
18   of the board, and shall keep a minute book in which he shall  
19   record the proceedings and transactions of each meeting of  
20   the board. The secretary shall be paid such compensation  
21   for his services as the board shall fix from year to year. The  
22   city treasurer shall be ex officio treasurer of said board, and  
23   he shall take the oath prescribed by law and shall furnish such  
24   bond as may be required by said board.

*Sec. 7. Members to be Paid Expenses; Not to be Personally*  
2   *Interested in Contracts or Property of Board.* The members  
3   of said board shall receive no compensation for their serv-  
4   ices but they shall be entitled to reimbursement for any rea-  
5   sonable expenses incurred in the performance of their duties  
6   as members of said board. They shall not be personally in-  
7   terested directly or indirectly in any contract entered into by  
8   said board, or hold any remunerative position in connection  
9   with the construction, operation, or maintenance of any of  
10   the property under their control as members of said board.

*Sec. 8. Office; Powers.* The council shall furnish said board  
2   an office at the municipal building where it may hold its meet-  
3   ings and keep its records. The board shall have complete and  
4   exclusive control and management of all of the properties  
5   which it shall operate in connection with the public park sys-  
6   tem for the municipality, and shall have power to employ  
7   such persons as, in its opinion, may be necessary for the con-  
8   struction, operation, and maintenance of the property under  
9   its control, at such wages or salaries as it shall deem proper,  
10   and shall have full control of all employees.

*Sec. 9. Purchase, Lease or Condemnation of Real Estate.*  
2   The board shall have power to acquire by purchase, lease,  
3   or by exercise of the power of eminent domain, such land

4 or lands as it shall determine to be necessary or incidental to  
5 the construction, operation, and maintenance of a system of  
6 public parks, parkways, playgrounds, athletic fields, stadiums,  
7 swimming pools, skating rinks, and other like public recrea-  
8 tional facilities for the municipality.

Sec. 10. *Title to Real and Personal Property Acquired;*  
2 *Location of Real Estate; Realty Sales by Board; Conveyances*  
3 *by Board.* The board is authorized to take title in its or in  
4 the name of the municipality to all real and personal property  
5 acquired by it for the use of the public or useful to the public  
6 in the operation, maintenance, or enjoyment of all public  
7 parks, parkways, playgrounds, athletic fields, stadiums, swim-  
8 ming pools, skating rinks, and all other like public recreational  
9 facilities for the municipality, and shall manage and dispose  
10 of the same as, in its opinion, will best serve the interests of the  
11 public in carrying out the purposes of this act. The munic-  
12 ipality and all other public bodies owning real estate intended  
13 to be used for public parks are hereby authorized to convey  
14 the same to said board to be held by it for such purpose: *Pro-*  
15 *vided, however,* That nothing herein contained shall be con-  
16 strued as limiting said board from going beyond the terri-  
17 torial limits of the municipality, anywhere within the state  
18 of West Virginia, to lease, purchase, or otherwise acquire any  
19 real estate for the purposes herein set forth: *Provided fur-*  
20 *ther,* That said board shall have the right to sell and convey  
21 only such part of the real estate that it may acquire by gift,  
22 devise, purchase, or otherwise, as it may determine to be of  
23 no advantage in the operation, management and maintenance  
24 of said public parks, parkways, playgrounds, athletic fields,  
25 stadiums, swimming pools, skating rinks, and other like pub-  
26 lic recreational facilities; except that the board shall have  
27 authority and power to make such sales and conveyances of  
28 its real estate as may be necessary, desirable or convenient  
29 to enable the municipality to obtain the benefits of chapter  
30 eight, article four-a of the code of West Virginia, entitled  
31 "Municipal Public Works," or any other like act or legisla-  
32 tive authorization: *And provided further,* That under no  
33 circumstances shall any of such property be sold or con-  
34 veyed except by unanimous vote of all of the members of  
35 said board. All deeds conveying the real estate of said board

36 shall be executed in its official name by its president or  
37 vice president, and shall have its corporate seal affixed and  
38 duly attested by its secretary.

Sec. 11. *General Powers of Board; Ordinances; Counsel.*

2 The board shall have the necessary powers and authority to  
3 manage and control all public parks, parkways, playgrounds,  
4 athletic fields, stadiums, swimming pools, skating rinks, and  
5 other recreational facilities of all kinds used as a part of  
6 said public park system or as a means of maintaining  
7 places of beauty, education, and recreation, promoting the  
8 health, property, lives, decency, morality, and good order of  
9 the general public, and particularly of the inhabitants of the  
10 municipality and vicinity; to abate or cause to be abated all  
11 nuisances; to regulate or prohibit the selling of any article,  
12 goods, wares, or merchandise within said park system so  
13 designated; to regulate or prohibit the placing of signs, bill-  
14 boards, posters, and advertisements within said park system as  
15 so designated, or the grounds immediately adjacent thereto;  
16 to have the same kept in good order and free from obstruction  
17 for the use and benefit of the public; to restrict and prohibit  
18 vagrants, mendicants, beggars, tramps, prostitutes, or dis-  
19 orderly persons therefrom; to construct, improve, and repair  
20 such parks, parkways, playgrounds, athletic fields, stadiums,  
21 swimming pools, skating rinks, and other recreational  
22 facilities, on any grounds controlled by said board; to acquire  
23 for public use by lease or otherwise lands either within or  
24 without the municipal limits as they now exist, or may here-  
25 after be enlarged or diminished; to cause any public street,  
26 road, alley, bridle path, or walkway, which is a part of the  
27 public park system, to be graded, drained, and surfaced; to  
28 construct, operate, and maintain all necessary sewers and  
29 water lines in connection with said public park system; and  
30 to do any and all other things or acts which may in any way  
31 be necessary or incidental to the use and enjoyment of said  
32 public park system by the general public as a place or places  
33 of beauty, education, entertainment and recreation.

34 In order to accomplish the foregoing purposes, said board  
35 shall be empowered to make or promulgate such ordinances  
36 as may be necessary or incidental thereto; to enforce the  
37 same by appropriate proceedings in any proper tribunal of

38 this state, or any county, district, or municipality thereof,  
39 and to employ such police officers as it shall deem proper and  
40 necessary. The city attorney shall be the official counsel for  
41 said board and shall advise it on all legal matters, but said  
42 board may, in its own discretion, employ other or additional  
43 counsel.

Sec. 12. *Charges for Use of Recreational Facilities; Use of*  
2 *Funds.* The board may make reasonable charges to the public  
3 for the privilege of using any of the recreational facilities  
4 provided in said park or parks and may use the funds so re-  
5 ceived for the purpose of constructing, operating and main-  
6 taining said park or parks.

Sec. 13. *Use of Municipal Appropriations and Other Funds.*  
2 In carrying out the purposes of the act, the said board shall  
3 be authorized to receive and disburse for such purposes, any  
4 moneys appropriated to it by the council of the municipality,  
5 together with any other funds which may come into its hands  
6 by gift, grant, donation, bequest, devise, or from its own  
7 operation, or otherwise.

Sec. 14. *Public Park Bonds; Issuance; Purpose; Election*  
2 *Expense; Sale of Bonds; Use of Proceeds; Ordinances.* Every  
3 municipality is authorized to issue, in the manner prescribed  
4 by law, bonds for the purpose of raising funds to establish,  
5 maintain, improve, extend and operate, a system of public  
6 parks for such municipality, or to refund any bonds of the  
7 municipality, the proceeds of which were expended in the es-  
8 tablishing, maintaining, improving, extending or operating  
9 such public park system, or any part thereof. Any bonds is-  
10 sued for any of the purposes stated in this section shall con-  
11 tain in the title or subtitle thereto the words "public park  
12 bonds" in order to identify the same, and shall be of the  
13 form, denomination and maturity, and shall bear the rate of  
14 interest fixed by resolutions of the board of park commis-  
15 sioners of the municipality. The council may provide for  
16 issuing bonds for other lawful purposes of the municipality in  
17 the same ordinance in which provision shall be made for is-  
18 suing bonds authorized under this section. The board of park  
19 commissioners of the municipality shall pay all of the costs  
20 and expenses of any election which shall be held to authorize

21 the issuance of public park bonds only. The expenses of hold-  
22 ing an election to authorize the issuance of public park bonds  
23 and bonds for other municipal purposes shall be paid by the  
24 board of park commissioners and the municipality respect-  
25 ively, in the proportion that the public park bonds bear to the  
26 total amount of bonds authorized.

27 Whenever the council of the municipality and the  
28 requisite majority of the voters thereof shall authorize, in  
29 the manner prescribed by law, the issuance of bonds for  
30 the purpose of establishing, maintaining, improving, ex-  
31 tending and operating a system of public parks in the  
32 municipality, or for refunding any outstanding bonds, the  
33 proceeds of which were applied to any of said purposes,  
34 said bonds shall be issued and delivered to the board of  
35 park commissioners of the municipality to be by it sold in  
36 the manner prescribed by law, and the proceeds paid into  
37 the treasury of the board of park commissioners, and the  
38 same shall be applied and utilized by the board of park  
39 commissioners for the purposes prescribed by the ordinance  
40 authorizing the issuance of such bonds. In any ordinance  
41 for the issuance of bonds for such purposes, it shall be a  
42 sufficient statement of the purposes for creating the debt,  
43 to specify that the same is for the purpose of establishing,  
44 maintaining, improving, extending and operating a public  
45 park system for the municipality, without specifying the  
46 particular improvements, extensions, replacements or ad-  
47 ditions contemplated; but an ordinance for refunding  
48 bonds shall designate the issue and the number of bonds  
49 which it is proposed to refund.

Sec. 15. *Construction of Act.* The provisions of this act  
2 shall be construed as conferring additional authorization and  
3 powers upon municipal corporations enacting ordinances  
4 hereunder. and shall not be construed as affecting any  
5 authorization or power heretofore conferred upon any mu-  
6 nicipality by the Legislature of the state of West Virginia by  
7 general, special, local or municipal charters, or parts thereof.

Sec. 16. *Provisions of Act Severable.* The provisions of this  
2 act shall be considered severally, and should any one or more  
3 provisions thereof be declared unconstitutional the remain-

- 4 ing provisions, if capable of operation when standing with-  
5 out such unconstitutional provisions, shall be and remain in  
6 full force and effect.

## CHAPTER 92

(House Bill No. 324—By Mr. Bickel)

AN ACT to authorize and enable any municipality in the state to improve streets, public ways, alleys, sidewalks, or to construct sewers therein through the utilization of any money, work, labor or material furnished by the United States or any other governmental agency; to lay assessments upon abutting property for the proper proportion of cost of such improvements and public works not covered by such governmental assistance; to declare such assessments to be liens upon the abutting property; to prescribe the time for the payment of such assessments, and to authorize the issuance of interest-bearing certificates evidencing such assessments; to authorize the sale of such certificates by the municipality; to provide for the recording of a notice of each such assessment; and to authorize the municipality to make the necessary contracts in relation to the subject matter hereof.

[Passed March 11, 1939; in effect from passage. Became a law without the approval of the Governor.]

### Section

1. Powers of municipal corporations relating to street, sidewalk and sewer improvements.
2. Petition of abutting property owners favoring governmental project; what territory may be included; agreement for sale of assessment lien certificates; notice to foreign corporations affected.
3. Contracts; compliance by governmental agency not to be guaranteed.
4. What total cost to include; net cost.
5. Apportionment and assessment of net cost.
6. Lien of assessments; effective date and priority; recordation.
7. Enforcement of lien.
8. Assessment payable in installments; interest; release of lien; assessment lien certificates.
9. Publication of assessment; notice to property owners by personal service; hearing on assessment.

10. Provisions of act cumulative.
11. Provisions of act severable.
12. Duration of act.

*Be it enacted by the Legislature of West Virginia:*

Section 1. *Powers of Municipal Corporations Relating to Street, Sidewalk and Sewer Improvements.* Every municipal corporation in this state, whether existing and operating under a special charter or under general law, is hereby authorized and empowered, in addition to any other rights or powers conferred upon it by special charter or by any general law, relating to street, sidewalks or sewer improvements, to take advantage of a present situation and to avail itself of existing or future opportunities to obtain money, work, labor or material which may be furnished or provided by the United States or other governmental agency, to pave or repave and to curb any streets or alleys in such municipality and, if deemed advisable, to construct storm and sanitary sewers, or either of such sewers, in any street, public way, or alley, independently or in conjunction with paving upon the terms, conditions, and in the manner hereinafter set forth.

Sec. 2. *Petition of Abutting Property Owners Favoring Governmental Project; What Territory May be Included; Agreement for Sale of Assessment Lien Certificates; Notice to Foreign Corporations Affected.* Upon the petition in writing of persons owning the greater amount of frontage of property abutting upon both sides of a street or alley, between any two streets or between a street and an alley, specified and embraced within the project proposed to be submitted to the governmental agency whose assistance in the premises is sought, the governing body of any such municipality, by a lawful majority thereof, may, upon the approval of such project by such governmental agency, order and cause such street, or alley, or streets or alleys to be paved or repaved between the sidewalk lines, with cobblestone, brick, Belgian blocks, concrete, asphaltum or other material, and suitable curbs to be constructed if requisite, and suitable sidewalks to be constructed if requisite, and the storm sewers and sanitary sewers, or either of them, or any one or more of such improvements without the others, as may be determined by the governing body,



20 to be constructed therein or in such part or parts thereof as  
21 the governing body may determine.

22 The purpose of this section is to permit the inclusion of  
23 more than one street or alley, or block of a street or alley,  
24 in one project, in order to get for the municipality and the  
25 property owners as advantageous an agreement as possible  
26 with such governmental agency, but at the same time to  
27 include within the streets or alleys or portions thereof to be  
28 improved under the project only such stated portions of  
29 such streets or alleys as to which petition has been signed  
30 by the owners of as much as fifty-one per cent of the prop-  
31 erty abutting thereon between any two streets or between a  
32 street and an alley, and such blocks of a street or alley as  
33 to which the owners of such percentage of abutting property  
34 shall not have signed such petition shall be eliminated from  
35 the project: *Provided, however,* That the governing body  
36 shall not order any work to be done on any such improvements  
37 planned pursuant to this act, and shall not incur any expense  
38 for, or enter into any contract for, materials to be used in  
39 the making of such improvements, unless and until bona  
40 fide and binding agreement or agreements has or have been  
41 made between the municipality and some bank or banks, or  
42 other corporation or corporations, or some individual or in-  
43 dividuals, for the purchase by such banks, corporations or  
44 individuals, of the assessment lien certificates to be issued  
45 in respect to such project as provided for in section eight  
46 of this act. It is understood, and it is hereby declared to be  
47 the purpose of this act, that municipalities otherwise finan-  
48 cially unable to effect or secure desired street improvements  
49 may be enabled to do so through the assistance of other  
50 governmental agencies, and the provisions of this section  
51 are designed to prevent a municipality from incurring debt  
52 or obligations for that part of the expense of any such project  
53 to be borne by it unless and until it has been assured, as above  
54 provided, that the assessment lien certificates related to the  
55 particular project proposed, can be sold: *Provided further,*  
56 That where any foreign railroad or other foreign corporation  
57 is the owner of property abutting upon any street or alley  
58 sought to be improved under the provisions hereof, notice  
59 shall be given to such railroad or other foreign corporation

60 as prescribed by section one, article ten, chapter eight of the  
61 code of West Virginia, one thousand nine hundred thirty-one,  
62 before the adoption of any ordinance or resolution relating  
63 to, and providing for, such improvement.

Sec. 3. *Contracts; Compliance by Governmental Agency*  
2 *not to be Guaranteed.* Subject to the provisions of this act  
3 the municipality is authorized to enter into the contract or  
4 contracts requisite to accomplish the purposes of this act, pro-  
5 vided that the municipality shall not guarantee the completion  
6 of any work or project undertaken hereunder so far as con-  
7 cerns the money, work, labor or material to be furnished by a  
8 contributing governmental agency, but such contracts are to  
9 be conditional upon the contingency of the cessation or sus-  
10 pension of the governmental policy or practice under which  
11 such aid is furnished by the government or any agency  
12 thereof.

Sec. 4. *What Total Cost to Include; Net Cost.* In ascer-  
2 taining the total cost of the improvements in any project un-  
3 dertaken pursuant to this act, there shall be included the cost  
4 and expense of surveys, and of the printing and publishing  
5 of any ordinances or notices required to be printed or pub-  
6 lished in relation thereto, and the cost and value of all labor,  
7 work and materials furnished and used in completing said  
8 improvements, including cost of inspection. The cost and  
9 value of all labor, work and material and other assistance  
10 furnished by the government or contributing governmental  
11 agency concerned in the project, as ascertained and reported  
12 to the municipality by the said governmental agency, shall  
13 be deducted from the total cost, and the remainder, herein-  
14 after referred to as the net cost, shall be apportioned and  
15 assessed as hereinafter provided.

Sec. 5. *Apportionment and Assessment of Net Cost.* The  
2 net cost of the entire project shall be apportioned to, and as-  
3 sessed against, the owners of the properties abutting upon the  
4 street or streets, public ways, alley or alleys, upon which the  
5 improvements involved in the project shall have been made, in  
6 the proportion which the distance for which any particular lot  
7 abuts upon any street or alley so improved bears to the total

8 length of street or streets, public ways, alley or alleys, im-  
9 proved under such project, except that if the character of the  
10 improvements shall be different upon different streets, public  
11 ways or alleys, the net cost of the entire project may be  
12 equitably apportioned to the respective streets, public ways,  
13 or alleys, or portions thereof, in proportion to the character  
14 and cost of the improvements thereon; and the costs so ap-  
15 portioned to each respective street, public way, or alley, or  
16 portion thereof, shall be apportioned to and assessed against  
17 the owners of the properties abutting thereupon in proportion  
18 to the distance for which the lot owned abuts on such street,  
19 public way, alley, or portion thereof, so improved: *Provided,*  
20 That the fact that any lot or fractional part of a lot abuts on  
21 more than one street, or upon a street and an alley, one of  
22 which has been already improved in any one or more of the  
23 ways herein provided for, or the fact that more than one  
24 street or alley abutting for any one lot or fractional part of  
25 a lot shall be included in a project providing for improve-  
26 ments under the provisions of this act, for any one or more  
27 of such improvements, shall not preclude or inhibit such im-  
28 provement or improvements being constructed hereunder, if  
29 the conditions provided for in section two hereof as to signa-  
30 ture of petition shall have been complied with.

Sec. 6. *Lien of Assessments; Effective Date and Priority;*  
2 *Recordation.* The sum or sums of money assessed pursuant to  
3 the preceding section, together with the interest thereon, are  
4 hereby constituted and declared to be liens upon the several  
5 lots or fractional parts of lots abutting upon the street or  
6 streets or alley or alleys improved pursuant to the provisions  
7 of this act. Such liens shall be effective from the date the  
8 governing body of the municipality shall have declared, by  
9 resolution, that the work involved in said project has been  
10 completed and accepted, and such liens shall have priority  
11 over all other liens except those for taxes: *Provided, however,*  
12 That such assessments shall, after six months from the passage  
13 of such resolution referred to above in this section, cease to  
14 constitute liens against said property as against creditors of  
15 the owners thereof or purchasers thereof for value, without  
16 actual notice of such lien, unless within six months a state-  
17 ment of said liens showing the name of the owner of the

18 property, the location of the lot or tract of real estate affected,  
19 the name and designation of the project under which the  
20 improvements were made, the nature of the improvements  
21 and the name of the street or streets, public ways, alleys  
22 improved, upon which said real estate abuts, and the amount  
23 of the assessment, shall have been filed for record in the office  
24 of the clerk of the county court of the county in which said  
25 municipality is situated. It shall be and is hereby made the  
26 duty of the clerk of the county court to record such assess-  
27 ments in the trust deed books in the name of the municipality,  
28 and in the name of each person against whose property assess-  
29 ments have been made, and the said clerk shall be paid by  
30 the municipality a fee of ten cents for recording each item  
31 of assessment appearing on said statements.

Sec. 7. *Enforcement of Lien.* Any lien constituted by this  
2 act may be enforced by suit in equity in the circuit court of  
3 the county in which the municipality is situated; such suit  
4 may be maintained by and in the name of the municipality or  
5 by and in the name of the legal owner of any assessment lien  
6 certificate hereinafter provided for in this act.

Sec. 8. *Assessment Payable in Installments; Interest; Re-  
2 lease of Lien; Assessment Lien Certificates.* (a) Such assess-  
3 ment relating to any particular project shall be payable in  
4 such number of installments as the governing body of the mu-  
5 nicipality, before the making of said assessments, may have  
6 determined: *Provided*, That such installments shall not be  
7 spread over a period of more than five years.

8 (b) Such assessments, and each installment thereof, shall  
9 bear interest at the rate of five per cent per annum, until the  
10 date due of the installment; thereafter at the rate of six per  
11 cent: *Provided*, That in case any property owner shall pay the  
12 entire assessment against his property within thirty days from  
13 the date of the assessment he shall not be charged interest  
14 thereon for the time subsequent to such date.

15 (c) The owner of any property against which any assess-  
16 ment is made hereunder who has not paid such assessment  
17 in full within thirty days from its date, may pay at any  
18 time thereafter the whole of such assessment, or the whole  
19 of any installment thereof, with interest to the time of pay-

20 ment; and upon payment of the whole of any assessment,  
21 with its interest, if interest is chargeable hereunder, the gov-  
22 erning body of the municipality shall cause a release of the  
23 lien to be executed and delivered to the owner of the particular  
24 property covered by such assessment.

25 (d) Each such assessment installment may be evidenced  
26 by an assessment lien certificate in such form as the govern-  
27 ing body of the municipality may adopt; the municipality  
28 shall have power to sell any or all of such certificates, without  
29 recourse, for cash, to any bank or banks, or other corporation  
30 or corporations or to any individual or individuals for an  
31 amount not less than the principal thereof and the accrued  
32 interest thereon, and shall first apply the proceeds to the  
33 payment of the expense and indebtedness incurred by reason  
34 of such improvements.

35 (e) Each such assessment lien certificate shall be signed  
36 by the mayor and the clerk or recorder of the municipality;  
37 shall bear date of the day the council passed the resolution  
38 provided for in section six hereof, and shall state: The amount  
39 of the total assessment against the property named therein  
40 and the amount of the particular installment covered by the  
41 certificate, and that the amount thereof may be paid on or  
42 before the date to be named therein as the due date according  
43 to the schedule of installments adopted by the governing body;  
44 that the amount of the certificate bears interest at the rate  
45 of five per cent per annum to maturity; and at rate of  
46 six per cent per annum thereafter; the name of the owner  
47 of the lot or tract of real estate against whom and which the  
48 assessment has been made, the location of said real estate,  
49 with the name of the street or streets improved upon which  
50 such real estate abuts, and shall also identify the project  
51 under which were made the street improvements on account  
52 of which said assessment was made, shall give the date on  
53 which the municipal governing body passed the resolution  
54 directing the work to be done and the date on which the  
55 statement for lien was filed in the county clerk's office pur-  
56 suant to section six of this act; and shall further state that  
57 if said certificate is sold by the municipality, it is done with-  
58 out guarantee by, or recourse upon, the municipality, but  
59 carrying to the legal owner thereof all rights of the munici-

60 pality arising hereunder against the owner of the property  
61 described and against said property itself.

Sec. 9. *Publication of Assessment; Notice to Property Owners by Personal Service; Hearing on Assessment.* Immediately upon the completion and acceptance of any work or improvement constructed pursuant to this act and the passage by the governing body of the resolution referred to in section six hereof, the governing body shall direct the clerk or the recorder of the municipality to cause to be prepared a notice which shall name and describe the location of the street or streets or alley in or upon which said improvements shall have been constructed, give the name of the owner of each lot or fractional part of lot abutting or abounding upon said street or streets or alley; the number of feet of each lot or fractional part of lot abutting upon said streets or alley; the number of feet embraced in street or alley intersections, and the amount assessed against each lot or fractional part of lot. Said notice shall cite all owners of such lots or fractional parts of lots abutting to appear before the governing body at a regular meeting thereof within twenty days from the publication, or personal service, of such notice, to show cause, if any then can, why the assessments aforesaid should not become final. This notice shall be published once in one or more newspapers of general circulation published in said city, and the affidavits of the publishers showing the publication thereof as herein provided shall be recorded in the minutes of the governing body at its next regular meeting, or in lieu of such publication such notice may be given by personal service upon the owners of the lots or fractional parts of lots affected, and proof of such service shall be recorded in the same way as above provided for recording proof of service by publication. The governing body shall, upon the request of any one or more of the owners of lots or fractional parts of lots, appoint a day for the hearing of any grievances of such owner or owners and may correct or amend any assessment made against them, or any of them, for good cause shown. The clerk or recorder shall give notice to all persons claiming to be aggrieved by any such assessment of the time and place of such hearing, which hearing shall be begun within ten days after the expiration of the twenty days mentioned in

39 said notice and may be adjourned from time to time. In  
40 case any owner or owners of abutting property fail to com-  
41 plain of any damages or injury by reason of the assessments  
42 aforesaid or shall fail to appear for the purpose of having  
43 the same corrected, the assessments as to such owner or owners  
44 as laid by the governing body shall be final. Said assessments  
45 shall be recorded in the proper record book of the munic-  
46 ipality, and notice and statement as provided in section six  
47 thereof shall be recorded in the county clerk's office.

2 Sec. 10. *Provisions of Act Cumulative.* The provisions of  
3 this act are hereby declared to be cumulative in effect, and it  
4 is the intent and purpose of this act to confer upon municipal  
5 corporations additional powers to those already conferred  
6 upon such municipal corporations by their respective charters  
7 or by general law with relation to street or sewer improve-  
8 ments.

2 Sec. 11. *Provisions of Act Severable.* No part of this act  
3 shall be invalidated by the fact that any other part thereof  
4 is held to be invalid.

2 Sec. 12. *Duration of Act.* The provisions of this act shall  
3 be operative and of full force and effect until June thirtieth,  
4 one thousand nine hundred forty-one, only, and thereafter  
5 they shall be null and void without effect.

## CHAPTER 93

(House Bill No. 259—By Mr. Rhodes, by request)

AN ACT to authorize a municipal corporation to contract for and  
to render services in the prevention and extinguishing of fires  
upon property situated within three miles from its corporate  
limits.

[Passed March 4, 1939: In effect from passage. Became a law without the  
approval of the Governor.]

### Section

1. Municipalities authorized to contract for prevention and extin-  
guishment of fires within three miles of corporate limits.

*Be it enacted by the Legislature of West Virginia:*

Section 1. *Municipalities Authorized to Contract for Pre-  
vention and Extinguishment of Fires Within Three Miles of*

3 *Corporate Limits.* That a municipal corporation, now or here-  
4 after incorporated under general law or by special enact-  
5 ment or charter, shall have authority to contract for, and to  
6 render services in prevention and extinguishment of fires upon  
7 property situated within three miles from its corporate limits:  
8 *Provided,* That no contract under the authority hereof shall  
9 operate to impose any greater or different obligation or  
10 liability upon such municipality than that with respect of  
11 property within its corporate limits: *Provided further,* That  
12 nothing herein shall be construed as requiring such munic-  
13 ipality to contract for such services, but if such municipality  
14 shall elect to make such contract with any property owner,  
15 the same shall not be cancelled or annulled without the con-  
16 sent of such property owner, or his successor, so long as the  
17 latter shall not be in default: *And provided further,* That  
18 if such municipality elect to contract with respect of any  
19 property, it shall, if requested, contract on the basis and  
20 terms with respect of other property situated at approxi-  
21 mately the same distance from fire plugs, or other fixed fire  
22 apparatus of said municipality. Any contract under the  
23 authority hereof shall require the property owner to pay  
24 as consideration for said services an annual payment equiva-  
25 lent to fifteen per cent of the annual tax levied for current  
26 municipal purposes upon property within said munic-  
27 ipality of like assessed valuation to the property under con-  
28 tract. No contract under the authority hereof, and nothing  
29 herein contained, shall be construed as requiring or permit-  
30 ting any municipality to install or maintain any special or  
31 additional apparatus or equipment beyond that necessary  
32 for protection of property within its corporate limits. The  
33 annual payments provided for shall be payable on or before  
34 the first day of November of each calendar year in which  
35 any contract hereunder shall remain in effect, or upon such  
36 day as may be hereafter provided as the due date of the first  
37 installment of property taxes. If any annual payment shall  
38 be in default for a period of more than thirty days it shall  
39 bear interest at the same rate as that provided for delinquent  
40 property taxes, and shall be a lien upon the property subject



41 to contract, provided a notice of such lien be recorded in the  
42 proper deed of trust book in the office of the clerk of the  
43 county court in which such property is situate. Such lien  
44 shall be void at the expiration of one year after such defaulted  
45 annual payment shall have become due, unless within such  
46 year a suit in equity to enforce the same shall have been insti-  
47 tuted by said municipality. The municipality may, by action  
48 of law, collect any annual payment and its interest, at any  
49 time within five years after it shall have become due and upon  
50 default in any annual payment, the municipality may cancel  
51 such contract.

52 Any contract made under the authority hereof shall inure  
53 to the benefit of, and bind the successors in title of the  
54 person making the same, and such person, upon conveying  
55 the property subject to such contract, shall no longer be  
56 liable under such contract, except as to annual payments  
57 due prior to said conveyance and unpaid.

58 Any property owner may cancel any contract with respect  
59 of his property upon giving a thirty-day notice to the munic-  
60 ipality, if he is not in default with respect of any annual  
61 payment: *Provided*, That if such notice be given subsequent  
62 to July first of any calendar year, the next succeeding annual  
63 payment shall be made by said property owner as soon as  
64 the amount thereof is ascertainable. Upon cancellation, as  
65 aforesaid, the municipality shall deliver to the property owner,  
66 a recordable release discharging him and his property from  
67 any further lien or obligation with respect of said annual  
68 payments. Annual payments shall be made to such officials  
69 as the municipality, in any contract made under the authority  
70 hereof, shall designate to receive them, who shall likewise  
71 have authority to receive notice of cancellation, and execute  
72 upon behalf of such municipality the release hereinbefore  
73 provided.

## CHAPTER 94

(Com. Sub. for Senate Bill No. 83—Originating in the Senate Committee on the Judiciary)

AN ACT to amend and reenact section five, article two, chapter eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as enacted by chapter fifty-six, acts of the Legislature, regular session, one thousand nine hundred thirty-seven, relating to the charter board, and the number, qualifications and nomination of members thereof.

[Passed March 10, 1939; in effect ninety days from passage. Approved by the Governor.]

### Article 2. Home Rule Procedure; Charter Elections.

#### Section

5. Charter board; number; qualifications and nomination of members.

*Be it enacted by the Legislature of West Virginia:*

That section five, article two, chapter eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as enacted by chapter fifty-six, acts of the Legislature of West Virginia, regular session, one thousand nine hundred thirty-seven, be amended and reenacted to read as follows:

#### Section 5. Charter Board; Number; Qualifications and

2 *Nomination of Members.* A charter board shall consist of  
3 eleven members in a class I or class II city and seven mem-  
4 bers in a class III city. Members shall be elected at large.  
5 Any person who has been a qualified voter of a city for two  
6 years at the date of the election of members shall be eligible  
7 for membership on the charter board.

8 The governing body of a class I or class II city may  
9 nominate five candidates, and that of a class III city three  
10 candidates for members of a charter board. Other nomina-  
11 tions may be made by petition bearing the signatures,  
12 written in their own handwriting, of not less than two hun-  
13 dred registered voters of the city, or if there be no registra-  
14 tion of voters within the city, then a like number of duly  
15 qualified voters for the last preceding general city election.  
16 Nominations by the governing body shall be made in the  
17 initiatory ordinance. Nominating petitions may be filed at  
18 any time after the adoption of the initiatory ordinance and  
19 not less than ten days prior to the date fixed for the election.

## CHAPTER 95

(House Bill No. 328—By Mr. Speaker, Mr. Thomas)

AN ACT to amend and reenact section twenty-one, chapter fifty-seven, acts of the Legislature, regular session, one thousand nine hundred thirty-seven, relating to political activity of police officers.

[Passed March 11, 1939; in effect from passage. Became a law without the approval of the Governor.]

### Section

21. Political activity of police officers prohibited; petition for vacating appointment; action on; appeal.

*Be it enacted by the Legislature of West Virginia:*

That section twenty-one, chapter fifty-seven, acts of the Legislature, regular session, one thousand nine hundred thirty-seven, be amended and reenacted to read as follows:

#### Section 21. *Political Activity of Police Officers Prohibited;*

2 *Petition for Vacating Appointment; Action On; Appeal.*

3 (a) No police officer shall serve as an election official, nor shall  
4 he engage in any political activity, other than to vote, in behalf  
5 of, or in opposition to, any candidate, political party or public  
6 issue involved in any election. Any violation by a police officer  
7 of the provisions of this section shall automatically vacate his  
8 appointment.

9 (b) Any three citizens of this state, who are residents of the  
10 municipality in which such police officer may be employed,  
11 may file their written petition with the civil service commis-  
12 sion setting out therein the grounds upon which the appoint-  
13 ment of such police officer should be vacated for violation of  
14 subsection-a of this section. Notice of the filing of such petition  
15 shall be given by said commission to the accused police officer,  
16 which notice shall require the said officer to file written  
17 answer to the charges set out in the petition within thirty  
18 days of the date of said notice. The said petition and answer  
19 thereto, if any, shall be entered on the records of said civil  
20 service commission. If such answer is not filed within the

21 time stated, or any extension thereof for cause which in the  
22 discretion of the civil service commission may be granted,  
23 an order shall be entered by the commission declaring the  
24 appointment of said police officer vacated; if such answer  
25 is filed within the time stated, or any extension thereof for  
26 cause which in the discretion of the civil service commission  
27 may be granted, the accused officer may demand therein a  
28 public hearing on the charges, or the civil service commission  
29 may, in its discretion and without demand therefor, set a  
30 time for a public hearing on said charges, which time shall  
31 be within thirty days of the filing of said answer, subject,  
32 however, to any continuances thereof which may in the dis-  
33 cretion of the civil service commission be granted. A written  
34 record of all testimony taken at such hearing shall be kept  
35 and preserved by the civil service commission, which record  
36 shall be sealed and not be open to public inspection, if no  
37 appeal be taken from the action of the commission. The  
38 commission at the conclusion of the hearing, or as soon there-  
39 after as possible, shall enter an order sustaining in whole  
40 or in part the charges made, or shall dismiss the charges as  
41 unfounded. In the event the charges are sustained in whole  
42 or in part, the order shall also declare the appointment of  
43 said police officer to be vacated and thereupon the proper  
44 municipal authorities shall immediately remove said police  
45 officer from the police force and from the payroll of said  
46 municipality. Notice of the action of the commission shall  
47 be given by registered letter to the mayor or chief of police  
48 or other like officer of the municipality; and for failure to  
49 immediately comply with the order of the commission such  
50 officer or officers shall be punished for contempt, upon appli-  
51 cation of the commission to the circuit court of the county  
52 in which the municipality is located.

53 An appeal from the ruling of the commission may be had  
54 as provided for in section thirteen of this article.

## CHAPTER 96

(Senate Bill No. 51—By Mr. Johnston, of Mercer)

AN ACT to amend and reenact section eighteen, chapter twenty-five, acts of the Legislature of West Virginia, first extraordinary session, one thousand nine hundred thirty-three, relating to municipal revenue bonds for sewage works.

[Passed February 24, 1939; in effect from passage. Approved by the Governor.]

### Section

18. Supervision of sanitary board; qualifications, etc., of members; organization and compensation.

*Be it enacted by the Legislature of West Virginia:*

That section eighteen, chapter twenty-five, 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 18. *Supervision of Sanitary Board; Qualifications, etc., of Members; Organization and Compensation.* The governing body shall provide by ordinance that the custody, administration, operation and maintenance of such works shall be under the supervision and control of a sanitary board, created as herein provided. Such sanitary board shall be composed of the mayor of the municipality and two persons appointed by the governing body, one of whom, during the construction period, must be a registered professional engineer. The engineer member of the board need not be a resident of said municipality. After the construction of the plant has been completed, the engineer member may be succeeded by a person not an engineer. No officer or employee of the municipality, whether holding a paid or unpaid office, shall be eligible to appointment on said sanitary board until at least one year after the expiration of the term of his public office. Said appointees shall originally be appointed for terms of two and three years respectively, and upon the expiration of each such term and each succeeding term, an appointment of a successor shall be made in like manner for a term of three years. Vacancies shall be filled for an unexpired term in the same manner as the original appointment. Each member shall give

23 such bond, if any, as may be required by ordinance. Such  
24 mayor shall act as chairman of the sanitary board, which shall  
25 elect a vice chairman from its members and shall designate a  
26 secretary and treasurer (but the secretary and the treasurer  
27 may be one and the same), who need not be a member or  
28 members of the sanitary board. The vice chairman, secretary  
29 and treasurer shall hold office as such at the will of the sani-  
30 tary board. The members of the sanitary board shall receive  
31 such compensation for their services, either as a salary or as  
32 payments for meetings attended, as the governing body may  
33 determine, not in excess of twenty-five dollars per month for  
34 each member, and shall be entitled to payment for their rea-  
35 sonable expenses incurred in the performance of their duties.  
36 The governing body shall fix the reasonable compensation of  
37 the secretary and treasurer in its discretion, and shall fix the  
38 amounts of bond to be given by the treasurer. All compensa-  
39 tion, together with the expenses in this section referred to,  
40 shall be paid solely from funds provided under the authority  
41 of this act. The sanitary board shall have power to establish  
42 by-laws, rules and regulations for its own government.

## CHAPTER 97

(Senate Bill No. 36—By Mr. Allen)

AN ACT to amend and reenact section one, article twelve, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended and reenacted by chapter fifty-two, acts of the Legislature, regular session, one thousand nine hundred thirty-seven, relating to waterworks systems of municipal corporations.

[Passed February 28, 1939; in effect from passage. Approved by the Governor.]

### Section

1. Acquisition and operation of municipal waterworks; extension beyond corporate limits.

*Be it enacted by the Legislature of West Virginia:*

That section one, article twelve, chapter eight of the code of West Virginia, as amended by chapter fifty-two, acts of the

Legislature, regular session, one thousand nine hundred thirty-seven, be amended and reenacted to read as follows:

Section 1. *Acquisition and Operation of Municipal Water-works; Extension Beyond Corporate Limits.* Subject to, and in accordance with, the provisions of this article, any municipal corporation in the state of West Virginia may purchase, construct, extend, and operate, or lease to others for operation, a waterworks system, or construct and operate additions, betterments, and improvements to an existing waterworks system, within the corporate limits of said municipality and within the area included in a five-mile extension of the corporate limits of said municipality, notwithstanding any provision or limitation to the contrary in any other general law or municipal charter.

## CHAPTER 98

(Com. Sub. for Senate Bill No. 120—Originating in the Senate Committee on the Judiciary)

AN ACT relating to municipal water and sewer systems; providing means of consolidating the same, and, in connection therewith, the refunding of securities previously issued for any existing waterworks or sewerage system, or both, by municipalities.

[Passed March 11, 1939; in effect from passage. Became a law without the approval of the Governor.]

### Section

1. Definitions.
2. Combined waterworks and sewerage systems; general powers.
3. Refund of outstanding obligations or securities; issuance and exchange of bonds.
4. Ordinance; contents.
5. Publication of ordinance; posting; petition for referendum; election.
6. Bonds payable solely from revenue; not municipal indebtedness.
7. Powers of municipality to make regulations and rates; change in rates.
8. Lien of bonds; enforcement; receivership.
9. Revenues a special fund; how used.
10. Accounts; audit.
11. Submission of bond issue to a referendum not required.

12. Provisions of act cumulative.

13. Provisions of act severable.

*Be it enacted by the Legislature of West Virginia:*

Section 1. *Definitions.* When used in this act the term  
2 "waterworks" means and includes a waterworks system in  
3 its entirety or any integral part thereof, including mains,  
4 hydrants, meters, valves, standpipes, storage tanks, pump  
5 tanks, intakes, wells, impounding reservoirs, pumps, ma-  
6 chinery, purification plants, softening apparatus, and all  
7 other elements useful in connection with a water supply.

8 The term "sewerage system" means and includes any or  
9 all of the following: A sewerage treatment plant or plants,  
10 collecting, intercepting and outlet sewers, lateral sewers,  
11 and drains, force mains, conduits, pumping stations, ejector  
12 stations and all other appurtenances, extensions and im-  
13 provements necessary, useful or convenient for the collec-  
14 tion, treatment and disposal in a sanitary manner of sewage  
15 and industrial wastes.

16 The term "combined waterworks and sewerage system"  
17 means and includes a waterworks and sewerage system,  
18 which the municipality determines by ordinance to operate  
19 in combination.

20 The term "municipality" means and includes any city  
21 or incorporated town organized under any laws of the state  
22 of West Virginia.

23 The term "governing body" means and includes the  
24 mayor and city council of any such city and the president  
25 and board of trustees of any such incorporated town.

Sec. 2. *Combined Waterworks and Sewerage Systems;*

2 *General Powers.* Any municipality owning and operating  
3 a waterworks and sewerage system may provide for the  
4 inclusion of such waterworks and sewerage system in a  
5 combined waterworks and sewerage system under this  
6 act, and in connection therewith may provide for pay-  
7 ing or refunding any unpaid and outstanding obli-  
8 gations against either the waterworks or sewerage sys-  
9 tem, or both, which are payable solely from the reve-  
10 nues of any such waterworks or sewerage system, or any  
11 part or parts thereof included or combined in such combined  
12 waterworks and sewerage system. Any municipality owning



13 such a combined waterworks and sewerage system may im-  
14 pose and collect charges or rates for the use of such system  
15 as provided in this act.

Sec. 3. *Refund of Outstanding Obligations or Securities;*  
2 *Issuance and Exchange of Bonds.* Whenever a waterworks and  
3 sewerage system is included in a combined waterworks and  
4 sewerage system under this act and there are unpaid and out-  
5 standing water revenue bonds, water certificates, sewerage  
6 revenue bonds or any other obligations or securities previously  
7 issued which are payable solely from the revenues of such  
8 waterworks or such sewerage system or any part thereof, such  
9 outstanding obligations or securities may be refunded by the  
10 issue and exchange therefor of revenue bonds to be issued  
11 under this act with the consent of all of the respective  
12 holders of such outstanding obligations or securities. Such  
13 bonds may be sold in installments at different times, or an  
14 entire issue or series may be sold at one time. Such bonds  
15 shall bear interest at a rate not to exceed six per cent per  
16 annum payable semi-annually and shall mature within the  
17 period of usefulness of the project involved, to be determined  
18 by the governing body and in any event not more than forty  
19 years. Such bonds may be in such denomination or de-  
20 nominations, may be in such form, either coupon or register-  
21 ed, may carry such registration and conversion privileges,  
22 may be executed in such manner, may be payable in such  
23 medium of payment, at such place or places, may be subject  
24 to such terms of redemption, with or without a premium,  
25 may be declared or become due before the maturity date  
26 thereof, may provide for the replacement of mutilated, de-  
27 stroyed, stolen, or lost bonds, may be authenticated in such  
28 manner and upon compliance with such conditions, and  
29 may contain such other terms and covenants, as may be  
30 provided by ordinance of the governing body of the munici-  
31 pality. Notwithstanding the form or tenor thereof, and in  
32 the absence of an express recital on the face thereof that the  
33 bond is non-negotiable, all such bonds shall at all times be,  
34 and shall be treated as, negotiable instruments for all  
35 purposes. Such bonds shall be sold in such manner as the  
36 governing body shall determine and if issued to bear interest  
37 at the rate of six per cent per annum shall be sold for not

38 less than par and accrued interest. If any such bonds shall  
39 be issued to bear interest at a rate of less than six per cent  
40 per annum, the minimum price at which they may be sold  
41 shall be such that the interest cost to such municipality of the  
42 proceeds of such bonds shall not exceed six per cent per  
43 annum computed to maturity according to the standard  
44 table of bond values. In case any officer whose signature  
45 appears on such bonds or coupons attached thereto shall  
46 cease to be such officer before the delivery of the bonds to  
47 the purchaser, such signature shall nevertheless be valid  
48 and sufficient for all purposes, with the same effect as if he  
49 had remained in office until the delivery of the bonds. Such  
50 bonds shall have all the qualities of negotiable instruments  
51 under the law of this state. Whenever any outstanding  
52 obligations or securities previously issued which are payable  
53 solely from the revenues of any waterworks or sewerage  
54 system included in a combined waterworks and sewerage  
55 system under this act are refunded, such outstanding obli-  
56 gations or securities shall be surrendered and exchanged  
57 for revenue bonds of such combined waterworks and  
58 sewerage system of a total principal amount which shall not  
59 be more and may be less than the principal amount of the  
60 obligations or securities exchanged and interest thereon to  
61 the date of exchange. Provision may be made that each  
62 bond to be exchanged for refunding bonds shall be kept  
63 intact and shall not be cancelled or destroyed until the  
64 refunding bonds, and interest thereon, have been finally paid  
65 and discharged, but shall be stamped with a legend to the  
66 effect that such bond has been refunded pursuant to this  
67 act.

Sec. 4. *Ordinance; Contents.* The governing body of any  
2 municipality availing itself of the provisions of this act shall  
3 adopt an ordinance describing in a general way the contem-  
4 plated project. If it is intended to include in the combined  
5 waterworks and sewerage system any existing waterworks or  
6 any existing sewerage system, such ordinance shall determine  
7 that it be so included in such combined system and shall de-  
8 scribe in a general way such existing waterworks or sewerage  
9 system to be included in the combined waterworks and sewer-  
10 age system. Such ordinance shall state the means provided for

11 refunding any obligation unpaid and outstanding payable  
12 solely from the revenue of any such waterworks or sewerage  
13 system. Such ordinance shall determine the period of useful-  
14 ness of the contemplated project. Such ordinance shall fix  
15 the amount of revenue bonds proposed to be issued, the interest  
16 rate and any other details in connection with such bonds  
17 deemed advisable.

Sec. 5. *Publication of Ordinance; Posting; Petition for*  
2 *Referendum; Election.* After the ordinance for any project  
3 under this act has been adopted and approved, it shall be pub-  
4 lished once in a newspaper published and having a general cir-  
5 culation in the municipality undertaking such project, or, if  
6 there be no such newspaper, then by posting such ordinance in  
7 at least three of the most public places in such municipality.  
8 If no petition is filed with the clerk of the governing body as  
9 hereinafter provided, within ten days after the publication or  
10 posting of such ordinance, then after the expiration of such  
11 ten-day period such ordinance shall be in full force and effect,  
12 but if within such period of ten days a petition is filed with  
13 the clerk of such municipality signed by fifteen per cent of  
14 the number of voters voting for the presiding officer of the  
15 governing body at the last preceding general municipal elec-  
16 tion, asking that the question of combining such waterworks  
17 and sewerage systems as provided in such ordinance and the  
18 issuance of revenue bonds for refunding such obligations be  
19 submitted to the legal voters of the municipality, the govern-  
20 ing body of such municipality shall call a special election in  
21 the manner provided by law to vote upon such question. If it  
22 appears upon the canvass of the election by the governing body  
23 that a majority of the voters voting upon such question at such  
24 election voted in favor of combining such waterworks and sew-  
25 erage systems and the issuance of such revenue bonds, then  
26 such ordinance shall be in full force and effect, but if a ma-  
27 jority of the votes cast are against the combining of such  
28 waterworks and sewerage systems and the issuance of such  
29 revenue bonds, then such municipality shall proceed no further  
30 under such ordinance.

Sec. 6. *Bonds Payable Solely From Revenue; Not Mu-*  
2 *nicipal Indebtedness.* Revenue bonds issued under the  
3 provisions of this act shall be payable solely from the reve-

4 nues derived from the operation of the combined water-  
5 works and sewerage system on account of which such bonds  
6 are issued, and such bonds shall not in any event con-  
7 stitute an indebtedness of the municipality within the meaning  
8 of any constitutional or statutory limitation and it shall be so  
9 stated on the face of each bond.

Sec. 7. *Powers of Municipality to Make Regulations and*  
2 *Rates; Change in Rates.* The governing body of any munic-  
3 ipality availing itself of this act shall have power to make,  
4 enact and enforce all needful rules and regulations for the  
5 management and maintenance of the combined waterworks  
6 and sewerage system of such municipality and for the use  
7 thereof, and shall also have power to make, enact and enforce  
8 all needful rules and regulations and ordinances for the care  
9 and protection of any such system, which may be conducive  
10 to the preservation of the public health, comfort and conveni-  
11 ence and to rendering the water supply of such municipality  
12 pure and the sewerage harmless in so far as it is reasonably  
13 possible so to do, and any such municipality shall have power  
14 and it is hereby authorized to charge the inhabitants thereof  
15 during the period that said bonds are outstanding a reason-  
16 able compensation for the use and service of such combined  
17 waterworks and sewerage system and to establish charges or  
18 rates for such purpose, subject to the approval of the public  
19 service commission. Separate rates may be fixed for the water  
20 and sewer services respectively or single rates for the combined  
21 water and sewer services. Such charges or rates, whether  
22 separate or combined, shall be sufficient at all times to pay  
23 the cost of operation and maintenance of the combined water-  
24 works and sewerage system, provide an adequate reserve fund,  
25 an adequate depreciation fund and pay the principal of and  
26 interest upon all revenue bonds issued under this act. Charges  
27 or rates shall be established, revised and maintained by ordi-  
28 nance and become payable as the governing body may deter-  
29 mine by ordinance, and such rates may be changed from time  
30 to time as needful, consistently with the provisions of this  
31 act, and the rules and regulations, and the approval of the  
32 public service commission.

Sec. 8. *Lien of Bonds; Enforcement; Receivership.* There  
2 shall be and there is hereby created a statutory mortgage lien

3 upon such combined waterworks and sewerage system which  
4 shall exist in favor of the holder of bonds hereby authorized  
5 to be issued, and each of them, and to and in favor of the  
6 holder of the coupons attached to said bonds, and such com-  
7 bined waterworks and sewerage system shall remain subject to  
8 such statutory mortgage lien until payment in full of the  
9 principal and interest of said bonds. Any holder of bonds  
10 issued under the provisions hereof, or of any coupons repre-  
11 senting interest accrued thereon, may, either at law or in equ-  
12 ity, enforce the statutory mortgage lien hereby conferred, and  
13 may, by proper suit, compel the performance of the duties of  
14 the officials of the issuing municipality set forth herein. If  
15 there be default in the payment of the principal of and/or in-  
16 terest upon any of said bonds, any court having jurisdiction  
17 in any proper action may appoint a receiver to administer said  
18 combined waterworks and sewerage system on behalf of the  
19 municipality with power to charge and collect rates sufficient  
20 to provide for the payment of said bonds and interest thereon,  
21 and for the payment of the operating expenses and to apply  
22 the income and revenues in conformity herewith and the ordi-  
23 nance providing for the issuance of such bonds subject to  
24 the approval of the public service commission.

Sec. 9. *Revenues a Special Fund; How Used.* All revenues  
2 derived from the operation of any combined waterworks and  
3 sewerage system under this act shall be set aside as collected  
4 and deposited in a special fund of the municipality and used  
5 only for the purpose of paying the cost of operating and  
6 maintaining such system, providing an adequate reserve  
7 fund, an adequate depreciation fund, and paying the prin-  
8 cipal of and interest on the revenue bonds issued by the  
9 municipality under the provisions of this act.

Sec. 10. *Accounts; Audit.* Any municipality operating a  
2 combined waterworks and sewerage system under this act  
3 shall set up and maintain a proper system of accounts in ac-  
4 cordance with the requirements of the public service com-  
5 mission showing the amount of revenue received from such  
6 combined waterworks and sewerage system and the appli-  
7 cation of the same. At least once each year such municipality  
8 shall cause such accounts to be properly audited, and a report  
9 of such audit shall be open to the public for inspection at all  
10 reasonable times.

Sec. 11. *Submission of Bond Issue to a Referendum Not Required.* This act shall be construed as authorizing the issuance of revenue bonds provided for herein without submitting the proposition of approval of the same to the voters, as required in the case of the issuance of bonds payable out of taxes, levied for the payment of the same, except as herein provided.

Sec. 12. *Provisions of Act Cumulative.* The provisions of this act shall be cumulative and shall be considered as conferring separate and additional power on the municipalities of this state, and as an addition to and not a limitation on the power of any such municipality to construct or acquire or improve and extend waterworks and sewerage systems, impose and collect charges or rates, and issue bonds therefor under the laws now existing or that may hereafter be enacted.

Sec. 13. *Provisions of Act Severable.* The invalidity of any portion of this act shall not affect the validity of the remainder of this act.

## CHAPTER 99

(House Bill No. 418—By Mr. Ballard, by request)

AN ACT to amend and reenact section six, article seven, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, relating to amendment of affidavit.

[Passed March 9, 1939; in effect ninety days from passage. Became a law without the approval of the Governor.]

### Article 7. Attachment.

#### Section

##### 6. Amendment of affidavit.

*Be it enacted by the Legislature of West Virginia:*

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

Section 6. *Amendment of Affidavit.* The affidavit required by the first section of this article may be amended at any

3 time before or after the appearance of the defendant by the  
4 substitution of a new affidavit, complying with the require-  
5 ments of the statute and containing allegations of facts ex-  
6 isting at the time of making the former affidavit; and the  
7 new affidavit shall stand in lieu of the old one for all purposes.  
8 All acts or parts of acts inconsistent herewith are hereby  
9 repealed.

## CHAPTER 100

(Senate Bill No. 210—By Mr. Moler)

AN ACT to amend and reenact sections one and three, article three, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as last amended, relating to the appointment of commissioners of accounts, and providing for special commissioners of accounts in cases where the regularly appointed commissioner or commissioners of accounts cannot act or have resigned or been removed.

[Passed March 10, 1939: in effect from passage. Became a law without the approval of the Governor.]

### Article 3. Commissioners of Accounts; Their Powers and Duties Generally.

#### Section

1. Commissioners of accounts.
3. Special commissioners of accounts.

*Be it enacted by the Legislature of West Virginia:*

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

- Section 1. *Commissioners of Accounts.* The county court  
2 of each county shall appoint not more than four commission-  
3 ers of accounts, except that in counties in which there exists a  
4 separate tribunal for police and fiscal purposes, such tribunal  
5 shall appoint such commissioners of accounts: *Provided, That*  
6 in Barbour county there shall be appointed as aforesaid four

7 commissioners of accounts, not more than two of whom shall  
8 be from the same political party.

Sec. 3. *Special Commissioners of Accounts.* When, from  
2 any cause, none of the commissioners of accounts can act as to  
3 any matter or matters which may be passed on under the  
4 provisions of this chapter, such court or tribunal, as is men-  
5 tioned in section one of this article, may appoint some other  
6 person to act as to such matter or matters, and such person  
7 shall have the power and compensation and perform the du-  
8 ties of a commissioner of accounts. And when any commis-  
9 sioner of accounts resigns, or is removed, such court or tri-  
10 bunal may provide for the completion of the matters pre-  
11 viously referred to such commissioner.

## CHAPTER 101

(House Bill No. 130—By Mr. Shinn)

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, relating to the expenditure and investment of funds in the hands of fiduciaries.

[Passed March 11, 1939; in effect from passage. Became a law without the approval of the Governor.]

### Article 6. Investments by Fiduciaries.

#### Section

2. In what securities fiduciaries may invest trust funds.

*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, be amended and reenacted to read as follows:

#### Section 2. *In What Securities Fiduciaries May Invest*

2 *Trust Funds.* Any executor, administrator, guardian, curator,  
3 committee, trustee, or other fiduciary whose duty it may be  
4 to loan or invest money intrusted to him as such, may with-  
5 out any order of any court, invest the same or any part  
6 thereof in any of the following securities, and without liabil-



7 ity for any loss resulting from investments therein:

8 (a) In bonds or interest-bearing notes or obligations of  
9 the United States, or those for which the faith of the United  
10 States is distinctly pledged to provide for the payment of  
11 the principal and interest thereof, including bonds issued un-  
12 der the federal farm loan act;

13 (b) In bonds or interest-bearing notes or obligations of  
14 this state;

15 (c) In bonds of any state of the United States which has  
16 not within ten years previous to the making of such invest-  
17 ment defaulted in the payment of any part of either prin-  
18 cipal or interest on any of its bonds issued by authority of  
19 the legislature of such state;

20 (d) In the bonds or interest-bearing notes or obligations  
21 of any county, district, school district or independent school  
22 district, municipality, or any other political division of  
23 this state that have been issued pursuant to the authority of  
24 any law of this state, since the ninth day of May of the year  
25 one thousand nine hundred seventeen;

26 (e) In bonds and negotiable notes secured by first mort-  
27 gage or first trust deed upon improved real estate in this  
28 state where the amount secured by such mortgage or trust  
29 deed shall not at the time of making the same exceed eighty  
30 per cent of the assessed value, or fifty per cent of the appraised  
31 value as determined by wholly disinterested and independent  
32 appraisers, whichever value shall be the higher, of the real  
33 estate covered by such mortgage or trust deed, and when such  
34 mortgage or trust deed is accompanied by a satisfactory ab-  
35 stract of title, certificate of title, or title insurance policy,  
36 showing good title in the mortgagor when making such  
37 mortgage or trust deed, and by a fire insurance policy in an  
38 old line company with loss, if any, payable to the mortgagee  
39 or trustee as his interest may appear: *Provided*, That the rate  
40 of interest upon the above enumerated securities in this sub-  
41 section (e), in which such investments may be made, shall  
42 not be less than two per cent, nor more than seven per cent,  
43 per annum;

44 (f) In savings accounts and time deposits of bank or trust  
45 companies to the extent that such deposits are insured by the  
46 federal deposit insurance corporation, or by any other similar

47 federal instrumentality that may be hereafter created, pro-  
48 vided there shall be such an instrumentality in existence and  
49 available for the purpose, or, by bonds of solvent surety com-  
50 panies: *Provided*, That the rate of interest upon such savings  
51 accounts or time deposits shall not be less than the rate paid  
52 other depositors in such bank or trust company;

53 (g) In shares of state building and loan associations, or  
54 federal savings and loan associations, to the extent that such  
55 shares are insured by the Federal Savings and Loan Insur-  
56 ance Corporation, or by any other similar federal instrumen-  
57 tality that may be hereafter created, provided that there shall  
58 be such an instrumentality in existence and available for the  
59 purpose, or by bonds of solvent surety companies: *Provided*,  
60 That the dividend rate upon such shares shall not be less  
61 than the rate paid to other shareholders in such associations.

62 Trust funds received by executors, administrators, guar-  
63 dians, curators, committees, trustees and other fiduciaries  
64 may be kept invested in the securities originally received by  
65 them, unless otherwise ordered by a court having jurisdiction  
66 of the matter, as hereinafter provided, or unless the instru-  
67 ment under which the trust was created shall direct that a  
68 change of investment be made, and any such fiduciary shall  
69 not be liable for any loss that may occur by depreciation of  
70 such securities.

71 This section shall not apply where the instrument creating  
72 the trust, or the last will and testament of any testator, or  
73 any court having jurisdiction of the matter, specially directs  
74 in what securities the trust funds shall be invested, and every  
75 such court is hereby given power specially to direct by order  
76 or orders, from time to time, additional securities in which  
77 trust funds may be invested, and any investment thereof  
78 made in accordance with any such special direction shall be  
79 legal, and no executor, administrator, guardian, curator, com-  
80 mittee, trustee, or other fiduciary, shall be held liable for any  
81 loss resulting in any such case.

## CHAPTER 102

(House Bill No. 291—By Mr. Amos, by request)

AN ACT to amend and reenact sections one and two, article nine, chapter fifty-six of the code of West Virginia, one thousand nine hundred thirty-one, relating to the removal of civil causes.

[Passed March 11, 1939; in effect from passage. Became a law without the approval of the Governor.]

### Article 9. Removal of Causes.

#### Section

1. Removal of causes in general; notice; motion.
2. Removal where it is improper for judge to hear case.

*Be it enacted by the Legislature of West Virginia:*

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

#### Section 1. *Removal of Causes in General; Notice; Motion.*

2 A circuit court, or any court of limited jurisdiction estab-  
3 lished pursuant to the provisions of section nineteen, article  
4 eight of the constitution of this state, wherein an action,  
5 suit, motion or other civil proceeding is pending, or the judge  
6 thereof in vacation, may, on the motion of any party, after  
7 ten days' notice to the adverse party or his attorney, and  
8 for good cause shown, order such action, suit, motion or other  
9 civil proceeding to be removed, if pending in a circuit court,  
10 to any other circuit court, and if pending in any court of  
11 limited jurisdiction hereinbefore mentioned to the circuit  
12 court of that county: *Provided*, That the judge of such other  
13 circuit court in a case of removal from one circuit to an-  
14 other may decline to hear said cause, if, in his opinion, the  
15 demands and requirements of his office render it improper  
16 or inconvenient for him to do so.

#### Sec. 2. *Removal Where It is Improper for Judge to Hear*

2 *Case.* If the judge of any circuit or other court mentioned  
3 in the next preceding section, wherein an action, suit, motion  
4 or other civil proceeding is pending, is so situated as to

5 render it improper, in his opinion, for him to decide such  
6 case or preside at the trial thereof, such court or the judge  
7 thereof in vacation may, without motion or notice, order  
8 the case to be removed to any court to which it might be  
9 removed, on motion and notice, under the preceding section:  
10 *Provided*, That the judge of such other circuit court may  
11 decline to hear said cause, if, in his opinion, the demands  
12 and requirements of his office render it improper or incon-  
13 venient for him to do so.

## CHAPTER 103

(House Bill No. 302—By Mr. Speaker, Mr. Thomas)

AN ACT to amend chapter twenty-eight of the code of West Virginia, one thousand nine hundred thirty-one, by adding thereto a new article designated article five-a, establishing and continuing the West Virginia medium security prison, providing for its management and control and for the venue of trials of convicts therein.

[Passed March 7, 1939; in effect from passage. Approved by the Governor.]

### Article 5-a. West Virginia Medium Security Prison.

#### Section

1. Establishment and continuance.
2. Deputy warden; duties; bond.
3. Deemed part of penitentiary; laws applicable; exception.

#### *Be it enacted by the Legislature of West Virginia:*

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

Section 1. *Establishment and Continuance.* The prison  
2 farm near Huttonsville in the county of Randolph, under-  
3 taken pursuant to chapter eighty-six, acts of the Legislature  
4 of West Virginia, one thousand nine hundred thirty-seven, is  
5 hereby established, and shall be continued as the "West Vir-  
6 ginia Medium Security Prison."

Sec. 2. *Deputy Warden; Duties; Bond.* The warden of  
2 the penitentiary shall appoint a deputy warden to be in

3 charge of the medium security prison. The deputy warden's  
4 duties shall be fixed by the warden, and he shall be answer-  
5 able to the warden. He shall give bond in such sum as the  
6 board of control may require, in the same manner and under  
7 the same conditions as required of the warden.

Sec. 3. *Deemed Part of Penitentiary; Laws Applicable;*  
2 *Exception.* The medium security prison shall be deemed a  
3 part of the penitentiary, and all provisions of law applicable  
4 to the penitentiary shall, as nearly as may be, apply also to  
5 such prison, except that criminal proceedings against con-  
6 victs in the medium security prison shall be in the circuit  
7 court of the county of Randolph.

## CHAPTER 104

(House Bill No. 322—By Mr. Speaker, Mr. Thomas)

AN ACT to amend chapter twenty-eight of the code of West Virginia, one thousand nine hundred thirty-one, by adding thereto a new article designated article five-b, providing for the further utilization and employment of convict labor, by authorizing the manufacture or production of articles or products needed for the construction, operation, maintenance or use of any office, department, institution or agency supported in whole or in part by the state of West Virginia and of the political subdivisions thereof; providing for the control and supervision of such manufacture or production, sale or disposal of such articles or products and the financial and fiscal management relating thereto by the West Virginia board of control; appropriating and providing funds and means to accomplish the aforesaid purposes; providing for the regulation of the sale of prison-made goods; and providing penalties for violations respecting the aforesaid.

[Passed March 9, 1939; in effect ninety days from passage. Approved by the Governor.]

### Article 5-b. Prison-made Goods.

#### Section

1. Intent of article.
2. How cited.

3. Establishment of industries at penitentiary and other penal institutions; purpose and extent.
4. Purchase of goods by state agencies and political subdivisions.
5. Exceptions as to mandatory purchase requirement.
6. Auditor bound by voucher or warrant; intentional violation, penalty.
7. Catalogues of articles and products made and produced; distribution; estimates of needs by departments, etc.
8. Order of distribution of articles and products.
9. Board of control to fix prices.
10. Annual statements by heads of penal institutions.
11. Quarterly estimate of needs by departments.
12. Rules and Regulations by board of control.
13. Appropriation for buildings, equipment, etc.; self-liquidating contracts.
14. Revenue a special fund in state treasury; expenditure; limitation on amount; transfer of excess.
15. Sale of prison-made goods on open market; penalty.
16. Penalties.
17. Provisions of act severable.
18. Inconsistent acts repealed.

*Be it enacted by the Legislature of West Virginia:*

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

- Section 1. *Intent of Article.* Whereas, the means now provided for the employment of convict labor are inadequate to furnish a sufficient number of convicts with employment, it is hereby declared to be the intent of this act:
- 5 (a) To further provide more adequate, regular and suitable employment for the convicts of this state, consistent with proper penal purposes;
  - 8 (b) To further utilize the labor of convicts for self-maintenance and for reimbursing this state for expenses incurred by reason of their crimes and imprisonment;
  - 11 (c) To effect the requisitioning and disbursement of prison products directly through established state authorities with no possibility of private profits therefrom.

- Sec. 2. *How Cited.* This act may be cited as the "Prison-Made Goods Act of 1939".

- Sec. 3. *Establishment of Industries at Penitentiary and Other Penal Institutions; Purpose and Extent.* The West Virginia board of control is hereby authorized to purchase in the manner provided by law, equipment, raw materials and

5 supplies and to engage the supervisory personnel necessary to  
6 establish and maintain for this state at the penitentiary or  
7 any penal farm or institution now or hereafter under control  
8 of this board, industries for the utilization of services of con-  
9 victs in the manufacture or production of such articles or  
10 products as may be needed for the construction, operation,  
11 maintenance or use of any office, department, institution or  
12 agency supported in whole or in part by this state and the  
13 political subdivisions thereof.

*Sec. 4. Purchase of Goods by State Agencies and Political*  
2 *Subdivisions.* On and after the effective date of this act all  
3 offices, departments, institutions and agencies of this state  
4 which are supported in whole or in part by this state shall  
5 purchase, and all political subdivisions of this state may pur-  
6 chase, from the West Virginia board of control all articles or  
7 products required by such offices, departments, institutions,  
8 agencies or political subdivisions of this state, produced or  
9 manufactured by the West Virginia board of control, by con-  
10 vict labor, as provided for by this act, and no such article or  
11 product shall be purchased by any such office, department, in-  
12 stitution, or agency, from any other source, unless excepted  
13 from the provisions of this section, as hereinafter provided.

14 All purchases shall be made through the department of  
15 purchases, upon requisition by the proper authority of the  
16 office, department, institution, agency or political subdivision  
17 of this state requiring such articles or products.

*Sec. 5. Exceptions as to Mandatory Purchase Requirement.*  
2 Exceptions from the operation of the mandatory pro-  
3 visions of section four hereof may be made in any case  
4 where, in the opinion of the president of the West Virginia  
5 board of control, the state director of purchases, and the  
6 director of the budget, or a majority of them, who are hereby  
7 constituted a board for such purposes, the article or articles  
8 or product or products so produced or manufactured does or  
9 do not meet the reasonable requirements of or for such offi-  
10 ces, departments, institutions, agencies or, in any case, where  
11 the requisition made cannot be reasonably complied with on  
12 account of an insufficient supply of the articles or products  
13 required, or otherwise. No such office, department, institu-

tion or agency, shall be allowed to evade the intent and meaning of this section by slight variations from standards adopted by the West Virginia board of control, when the articles or products produced or manufactured by it, in accordance with its standards, are reasonably adapted to the actual needs of such office, department, institution, or agency.

Sec. 6. *Auditor Bound by Voucher or Warrant; Intentional Violation; Penalty.* No voucher, certificate, or warrant issued on the state auditor by any such office, department, institution, or agency shall be questioned by him or by the state treasurer on the grounds that this act has not been complied with by such office, department, institution, or agency, but if intentional violation of this act by any such office, department, institution, or agency continues, after notice from the governor to desist, such shall constitute a malfeasance in office and shall subject the person or persons responsible for this violation to suspension or removal from office.

Sec. 7. *Catalogues of Articles and Products Made and Produced; Distribution; Estimates of Needs by Departments, etc.* The West Virginia board of control shall cause to be prepared, annually, at such times as it may determine, catalogues containing the description of all articles and products manufactured or produced by it pursuant to the provisions of this act; copies of which catalogue shall be sent by it to all offices, departments, institutions and agencies of this state and made accessible to all political subdivisions of this state referred to in the preceding sections. At least thirty days before the commencement of each fiscal year, the proper official of each such office, department, institution, or agency, when required by the West Virginia board of control, shall report to the West Virginia board of control estimates for such fiscal year of the kind and amount of articles and products reasonably required for such ensuing year, referring in such estimates to the catalogue issued by the West Virginia board of control insofar as articles and products indicated are included in this catalogue.

Sec. 8. *Order of Distribution of Articles and Products.* The articles or products manufactured or produced by convict labor in accordance with the provisions of this act shall be



4 devoted, first, to fulfilling the requirements of the offices, de-  
5 partments, institutions and agencies of this state which are  
6 supported in whole or in part by this state, and, secondly, to  
7 supply the political subdivisions of this state with such ar-  
8 ticles and products.

Sec. 9. *Board of Control to Fix Prices.* The West Virginia  
2 board of control shall fix and determine the prices at which  
3 all articles or products manufactured or produced shall be  
4 furnished, which prices shall be uniform and nondiscrimin-  
5 ating to all, and shall be as near the usual market price for  
6 such as may be practicable.

Sec. 10. *Annual Statements by Heads of Penal Institutions.*  
2 The warden of the penitentiary and the manager or authori-  
3 ties by whatever name known having charge of the penal in-  
4 stitutions of this state shall annually make a full detailed  
5 statement of all materials, machinery, or other property pro-  
6 cured, and the cost thereof, and of the expenditures made  
7 during the last preceding year for manufacturing purposes,  
8 together with a statement of all materials then on hand to be  
9 manufactured, or in process of manufacture, or manufac-  
10 tured, and all machinery, fixtures or other appurtenances for  
11 the purpose of carrying on the labor of the convicts and the  
12 earnings realized during the last preceding year as the pro-  
13 ceeds of the labor of the convicts at the penitentiary or such  
14 penal institutions of this state, which statement shall be veri-  
15 fied by the oath of the warden or such manager or authorities  
16 having charge of such penal institutions to be just and true,  
17 and shall be by him or them forwarded to the West Virginia  
18 board of control within thirty days after the end of such last  
19 preceding year.

Sec. 11. *Quarterly Estimate of Needs by Departments.* Such  
2 warden, or manager or authorities having charge of a penal  
3 institution of this state shall quarterly make an estimate and  
4 detailed statement of all materials, machinery, fixtures, tools  
5 or other appurtenances or accommodations, and the cost  
6 thereof, which will in his or their judgment be necessary for  
7 carrying on the activities authorized by this act at such penal  
8 institution for the next ensuing quarter, or which in his or their  
9 judgment should be contracted for during such ensuing quar-

10 ter, which estimate shall be forwarded to the West Virginia  
11 board of control for its consideration and proper action rela-  
12 tive thereto, at least ten days before the beginning of such en-  
13 suing quarter.

Sec. 12. *Rules and Regulations by Board of Control.* The  
2 West Virginia board of control shall have power and author-  
3 ity to prepare and promulgate rules and regulations which  
4 are necessary to give effect to the provisions of this act with  
5 respect to matters of administration and procedure respecting  
6 the same.

Sec. 13. *Appropriation for Buildings, Equipment, etc; Self-liquidating Contracts.* In order to carry out the pro-  
2 visions of this act there is hereby appropriated out of the  
3 moneys in the state fund general revenue, not otherwise ap-  
4 propriated, the sum of fifty thousand dollars, and the West  
5 Virginia board of control is authorized to expend such moneys  
6 from such appropriation as may be necessary to erect build-  
7 ings, to purchase equipment, to procure tools, supplies and  
8 materials, to purchase, install or replace equipment, to em-  
9 ploy personnel, and otherwise to defray the necessary ex-  
10 penses incident to the employment of convicts as herein pro-  
11 vided, and further to aid in the above purposes the West  
12 Virginia board of control is empowered to enter into con-  
13 tracts and agreements with any person or persons upon a  
14 self-liquidating basis respecting the acquisition and purchase of  
15 any such equipment, tools, supplies and materials, to the end  
16 that the same may be paid for over a period of not exceeding  
17 three years, and the aggregate amount of such purchases or  
18 acquisitions not to exceed two hundred thousand dollars, such  
19 amounts to be payable solely out of the revenues derived from  
20 the activities authorized by this act. Nothing in this section  
21 shall be so construed or interpreted as to authorize or permit  
22 the incurring of a state debt of any kind or nature as con-  
23 templated by the constitution of this state in relation to  
24 such debt.

Sec. 14. *Revenue a Special Fund in State Treasury; Ex-  
2 penditure; Limitation on Amount; Transfer of Excess.* All  
3 moneys collected by the West Virginia board of control from

4 the sale or disposition of articles and products manufactured  
5 or produced by convict labor in accordance with the pro-  
6 visions of this act, shall be forthwith deposited with the  
7 state treasurer to be there kept and maintained as a special  
8 revolving account designated "Prison Industries Account",  
9 and such moneys so collected and deposited shall be used  
10 solely for the purchase of manufacturing supplies, equip-  
11 ment, machinery and materials used to carry out the purposes  
12 of this act, as well as for the payment of the necessary per-  
13 sonnel in charge thereof and to otherwise defray the neces-  
14 sary expenses incident thereto, all of which shall be under  
15 the direction and subject to the approval of the West Vir-  
16 ginia board of control: *Provided, however,* That such "Prison  
17 Industries Account" shall never be maintained in excess of  
18 the amount necessary to efficiently and properly carry out  
19 the intentions of this act, and in no event shall the "Prison  
20 Industries Account" be maintained in excess of the sum of  
21 two hundred thousand dollars. When, in the opinion of the  
22 governor, the "Prison Industries Account" has reached a  
23 sum in excess of the requirements of this act, such excess  
24 shall be transferred by the West Virginia board of control  
25 to the state fund, general revenue, and if the governor does  
26 not make such determination, any excess above two hundred  
27 thousand dollars shall be transferred to the state fund,  
28 general revenue, by the West Virginia board of control at  
29 the end of each fiscal year.

Sec. 15. *Sale of Prison-made Goods on Open Market; Pen-*  
2 *alty.* On and after the effective date of this act, it shall be  
3 unlawful to sell or offer for sale on the open market of this  
4 state any articles or products manufactured or produced,  
5 wholly or in part, in this or any other state by convicts or  
6 prisoners of this state, or any other state, except convicts  
7 or prisoners on parole or probation. Any person violating the  
8 provisions of this section shall be guilty of a misdemeanor  
9 and, upon conviction, be punished by a fine of not less than  
10 two hundred dollars nor more than five thousand dollars,  
11 or by imprisonment in jail not less than three months nor  
12 more than one year, or by both such fine and imprisonment,  
13 in the discretion of the court. Each such sale or offer for sale  
14 shall constitute a separate offense under this section.

Sec. 16. *Penalties.* Any person who wilfully violates any  
2 of the provisions of this act, other than section fifteen hereof,  
3 shall be guilty of a misdemeanor and, upon conviction, shall  
4 be confined in jail not less than ten days nor more than one  
5 year, or fined not less than ten dollars nor more than five  
6 hundred dollars, or both, in the discretion of the court.

Sec. 17. *Provisions of Act Severable.* If any section, sub-  
2 section, provision or sentence of this act or the application  
3 thereof to any person, or any circumstance, be held invalid,  
4 the remainder of the act and the application of any such sec-  
5 tion, subsection, provision or sentence to other persons or  
6 circumstances shall not be affected thereby.

Sec. 18. *Inconsistent Acts Repealed.* All acts and parts of  
2 acts inconsistent herewith are hereby repealed; however, this  
3 act is to be considered as supplementary, or additional, to  
4 other provisions of law now existing relative to the employ-  
5 ment of convicts.

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## CHAPTER 105

(House Bill No. 332—By Mr. Speaker, Mr. Thomas)

AN ACT to amend chapters nine and forty-nine of the code of West  
Virginia, one thousand nine hundred thirty-one, as enacted by  
chapter one, acts of the Legislature, first extraordinary ses-  
sion, one thousand nine hundred thirty-six, and as amended  
by chapters seventy-one to seventy-six, inclusive, acts of the  
Legislature, regular session, one thousand nine hundred thirty-  
seven, by amending chapter nine in section ten-a, article three;  
sections three, four, seventeen and thirty-six, article five; sec-  
tion fourteen, article six; section five, article nine; sections  
three, five, nine and ten, article ten; and further amending  
chapter nine by adding to article eleven a new section desig-  
nated section nineteen; and amending chapter forty-nine in

section four, article one; and sections two, three, four, fourteen, fifteen, seventeen and eighteen, article five, all relating to public welfare.

[Passed March 11, 1939; in effect from passage. Became a law without the approval of the Governor.]

#### CHAPTER

#### 9. Public Assistance and Relief.

#### 49. Child Welfare.

*Be it enacted by the Legislature of West Virginia:*

That chapters nine and forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as enacted by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred thirty-six, as amended by chapters seventy-one to seventy-six, inclusive, acts of the Legislature, regular session, one thousand nine hundred thirty-seven, be amended by amending chapter nine in section ten-a, article three; sections three, four, seventeen and thirty-six, article five; section fourteen, article six; section five, article nine; sections three, five, nine and ten, article ten; and that chapter nine be further amended by adding to article eleven a new section designated section nineteen; and that chapter forty-nine be amended in section four, article one; and sections two, three, four, fourteen, fifteen, seventeen and eighteen, article five, to read as follows:

### CHAPTER 9. PUBLIC ASSISTANCE AND RELIEF

#### Article

3. The Director of Public Assistance.
5. Public Assistance.
6. General Relief.
9. Physical Rehabilitation of Adult Persons.
10. Fiscal Provisions.
11. General Provisions.

#### Article 3. The Director of Public Assistance.

##### Section

- 10-a. Assembly institutions.

Section 10-a. *Assembly Institutions.* The state department, upon approval of the advisory board, may maintain such assembly institutions as are necessary for the temporary care, maintenance, and training of children and persons needing institutional protection.

**Article 5. Public Assistance.****Section**

- 3. Aged persons.
- 4. Blind persons.
- 17. Maximum amount.
- 36. Lien; amount; determination; exemption; release.

Section 3. *Aged Persons.* An aged person shall be eligible for public assistance who:

- (1) Has attained the age of sixty-five years;
- (2) Has resided in the state for at least one year immediately preceding the application;
- (3) Has not made an assignment or transfer of property for the purpose of qualifying for assistance, except as required by section twenty-nine of this article;
- (4) Is not in need of continuing institutional care because of his physical or mental condition;
- (5) Is not an inmate of a public institution. An inmate may apply for assistance to begin after the discharge from such institution;
- (6) Is actually in need and has not sufficient income or other resources to provide a subsistence compatible with decency and health.

Sec. 4. *Blind Persons.* A blind person shall be eligible for public assistance who:

- (1) Has vision in the better eye, with correcting glasses, of twenty two-hundredths or less or a disqualifying field defect sufficient to incapacitate him for self-support;
- (2) Has attained the age of twenty-one years;
- (3) Has resided in the state for at least one year immediately preceding the application;
- (4) Has not made an assignment or transfer of property for the purpose of qualifying for assistance, except as required by section twenty-nine of this article;
- (5) Is not an inmate of a public institution. An inmate may apply for assistance to begin after his discharge from such institution;
- (6) Is actually in need and has not sufficient income or other resources to provide a subsistence compatible with decency and health.

Sec. 17. *Maximum Amount.* The amount of public

2 assistance granted from all sources, including funds received  
3 from the federal government, shall not exceed in the case of:  
4 (1) An aged person, thirty dollars per month;  
5 (2) A blind person, thirty dollars per month;  
6 (3) A dependent child, eighteen dollars per month. If  
7 more than one child is accorded public assistance in the same  
8 family, the amount granted for the first child shall not exceed  
9 eighteen dollars per month and for each additional child af-  
10 ter the first, shall not exceed twelve dollars per month.

*Sec. 36. Lien; Amount; Determination; Exemption; Release.*

2 In the enforcement of a lien held by the state under this ar-  
3 ticle, real property to the value of fifteen hundred dollars and  
4 personal property to the value of two hundred dollars shall  
5 be exempt, and such exemption shall apply to the estate after  
6 the death of the recipient as well as during his lifetime. The  
7 foregoing exemptions shall apply to all reimbursement liens  
8 heretofore granted to the state and remaining unsatisfied at  
9 the time this act takes effect and all such liens are hereby ex-  
10 pressly released to the extent of, but not exceeding, said ex-  
11 emptions. No lien shall be required on real or personal prop-  
12 erty where the value of such property does not exceed the  
13 exemption for such property herein granted.

14 The value of the exemption shall be determined in the same  
15 manner as exemptions claimed in pursuance of section forty-  
16 eight, article six of the state constitution.

**Article 6. General Relief.**

**Section**

14. Visitation and supervision by county director.

*Section 14. Visitation and Supervision by County Director.*

2 For the purpose of assuring that general relief is continued  
3 no longer than necessary, and of rendering guidance and as-  
4 sistance leading to self-support, the county director shall:

- 5 (1) Visit, at least once each three months, a person receiv-  
6 ing general relief in his own home or in another place than  
7 an institution;  
8 (2) Visit, as often as the case requires, persons receiving  
9 institutional care or treatment;  
10 (3) Reinvestigate, and place before the county council

- 11 for review, a case of continued general relief at least once  
12 each year, or more often as the county council may direct.

### Article 9. Physical Rehabilitation of Adult Persons.

#### Section

5. Powers and duties of state department.

Section 5. *Powers and Duties of State Department.* In the  
2 administration of adult physical rehabilitation, the state de-  
3 partment shall:

- 4 (1) Supervise the treatment of physically handicapped  
5 adult persons during the period of treatment;  
6 (2) Provide surgical and medical treatment and hospital-  
7 ization as may be necessary for physically handicapped adult  
8 persons in the state;  
9 (3) Procure and furnish to a physically handicapped  
10 adult person artificial limbs and other orthopedic and pros-  
11 thetic appliances needed;  
12 (4) Cooperate with governmental, public, and private in-  
13 stitutions, and agencies engaged in activities relating to or  
14 connected with adult physical rehabilitation;  
15 (5) Exercise such other powers as may be necessary to  
16 the effective operation of this article.

### Article 10. Fiscal Provisions.

#### Section

3. General relief.  
5. County funds.  
9. Action by state director on application for grant from state fund.  
10. Determination by state board.

Section 3. *General Relief.* For the purpose of this article  
2 general relief shall mean cash or its equivalent in services or  
3 commodities expended upon the order of the county council  
4 or county director for general relief other than for care in  
5 a county infirmary, child shelter, or similar institution, ex-  
6 cept as to contributions provided for in section three-a, ar-  
7 ticle seven of this chapter.

Sec. 5. *County Funds.* The amount of the county fund  
2 provided each year by a county court shall not be less than  
3 fifteen per cent of the total which the county court is legally  
4 authorized to levy for current purposes by section ten, ar-  
5 ticle eight, chapter eleven of the code of West Virginia, one  
6 thousand nine hundred thirty-one, as amended, plus, if  
7 available, any additional portion of such total so authorized



8 to be levied for such purposes: *Provided, however,* That the  
9 said fifteen per cent of such total or such available ad-  
10 ditional portion thereof, or both, shall not be required to be  
11 provided by the county court if it shall be determined, prior  
12 to the laying of the county's levies, that an amount less than  
13 such per cent or such additional portion, or both, will be  
14 sufficient to meet the reasonably anticipated general relief  
15 needs of the county. Such a determination shall require the  
16 agreement of at least two of the following persons: The tax  
17 commissioner, the state director, and the member of the  
18 county court who is ex officio member of the county council  
19 at the time such determination is made. Such a determination  
20 shall be in writing; shall state the specific amount determined  
21 upon as sufficient to meet the reasonably anticipated general  
22 relief needs of the county; shall be signed by the three persons  
23 designated or by at least two of them; and shall be filed of  
24 record in the office of the tax commissioner. Complete dupli-  
25 cates shall be filed in the office of the state director and with  
26 the county court, respectively. The county court shall levy  
27 for general relief not less than the amount so determined  
28 and agreed: *Provided further,* That if a county court finds  
29 that expenditures mandatory under other provisions of law  
30 aggregate in excess of eighty-five per cent of the total amount  
31 which the county court is authorized by law to levy for  
32 current purposes, the court may petition the tax commissioner  
33 for authority to provide an amount less than that required  
34 by the first paragraph of this section. If the tax commissioner  
35 finds that other mandatory expenditures for the county will  
36 exceed eighty-five per cent of the authorized total levy for  
37 current purposes, he may authorize the county court to pro-  
38 vide a lesser amount than that required by said first para-  
39 graph, but he shall require the maximum amount possible  
40 under the circumstances.

Sec. 9. *Action by State Director on Application for Grant*  
2 *from State Fund.* Upon receipt of an application for a grant  
3 from the state fund the director shall examine the application  
4 and shall determine whether the county has conformed with  
5 the provisions of sections five, six and eight of this article.  
6 The director shall prepare a report and recommendation for  
7 submission to the state board.

Sec. 10. *Determination by State Board.* The state director shall submit his recommendations to the state board. The state board shall determine as to each county whether:

(1) A grant from the state fund is required to pay the cost of general relief during the fiscal period covered by the application;

(2) The cost of general relief for the fiscal period covered by the application is reasonable, both as to total cost and estimated cost per case;

(3) The county has conformed with the provisions of sections five, six and eight of this article.

If the state board determines that a grant from the state fund should be made to a county, it shall fix the proportion of the total cost of general relief in the county that shall be paid from the state fund. It shall set a total amount which the total of state grants to the county during the fiscal period covered shall not exceed.

The state board may hold a hearing upon the application of a county at which hearing the county council, the county court, citizens of the county, and other interested parties may be heard.

#### Article 11. General Provisions.

##### Section

19. Authority to examine witnesses, administer oaths and take affidavits.

Section 19. *Authority to Examine Witnesses, Administer Oaths and Take Affidavits.* The state director and employees of the state department of public assistance and county directors and employees of county councils shall have the power and authority to administer oaths, examine witnesses and take and certify affidavits in any matter or thing pertaining to the business of the state department of public assistance and county councils.

### CHAPTER 49. CHILD WELFARE

#### Article

1. **Purposes; Definitions.**

5. **Juvenile Courts.**

#### Article 1. Purposes; Definitions.

##### Section

4. Delinquent child.

Section 4. *Delinquent Child.* "Delinquent child" means a

2 person under the age of eighteen years who commits any of  
3 the following:

4 (1) Violates a law or municipal ordinance;

5 (2) Commits an act which if committed by an adult would  
6 be a crime not punishable by death or life imprisonment;

7 (3) Is incorrigible, ungovernable, or habitually dis-  
8 obedient and beyond the control of his parent, guardian, or  
9 other custodian;

10 (4) Is habitually truant;

11 (5) Without just cause and without the consent of his  
12 parent, guardian, or other custodian, repeatedly deserts his  
13 home or place of abode;

14 (6) Engages in an occupation which is in violation of law;

15 (7) Associates with immoral or vicious persons;

16 (8) Frequents a place the existence of which is in vio-  
17 lation of law;

18 (9) Deports himself so as to wilfully injure or endanger  
19 the morals or health of himself or others.

#### Article 5. Juvenile Courts.

##### Section

2. Children; continuing jurisdiction of court.

3. Criminal jurisdiction.

4. Children wards of the court; examination; fee.

14. Disposition of cases by court.

15. When child not committed to jail.

17. Probation officers.

18. Duty of probation officer; expenses.

##### Section 2. *Children: Continuing Jurisdiction of Court.*

2 "Child" means a person under the age of eighteen years.

3 When jurisdiction shall have been obtained by any court

4 of competent jurisdiction in the case of any child, such child

5 shall continue under the jurisdiction of the court until he be-

6 comes twenty-one years of age unless discharged prior there-

7 to or is committed to a correctional or other institution. A

8 person subject to the jurisdiction of the juvenile court may

9 be brought before it by either of the following means and no

10 other:

11 (a) By petition praying that the person be adjudged neg-  
12 lected or delinquent;

13 (b) Certification from any other court before which such  
14 person is brought, charged with the commission of a crime.

Sec. 3. *Criminal Jurisdiction.* Except as to a violation  
2 of law which if committed by an adult would be a capital  
3 offense, the juvenile court shall have exclusive jurisdiction to  
4 hear and determine criminal charges including a charge of  
5 violation of a municipal ordinance, against a person who is  
6 under eighteen years of age at the time of the alleged offense.

7 If during the pendency of a criminal proceeding against a  
8 person in a court other than a juvenile court, it shall be  
9 ascertained, or it shall appear, that the person was under the  
10 age of eighteen years at the time of the alleged offense, the  
11 court, judge or magistrate shall immediately transfer the  
12 case with all the papers, documents, and testimony connected  
13 therewith to the juvenile court having jurisdiction. The  
14 juvenile court shall proceed to hear and dispose of the case  
15 in the same manner as if it had been instituted in that court  
16 in the first instance.

Sec. 4. *Children Wards of the Court; Examination; Fee.* A  
2 person under the age of eighteen years who appears before the  
3 juvenile court in any capacity shall be deemed to be a ward  
4 of the court and protected accordingly. The juvenile court or  
5 judge thereof shall request the county health officer in any  
6 county employing a full time health officer, to make a physical  
7 and mental examination of the wards of the court as defined  
8 in section four of this article. Such health officer shall, as  
9 promptly as may be, furnish to the court or judge a written  
10 report of such examinations on forms to be furnished to said  
11 health officer by the court. In those counties not employing  
12 a full time health officer, the court or judge may designate  
13 a reputable physician of the county to make such mental and  
14 physical examinations and render such written reports. When  
15 any such mental and physical examination is made and any  
16 such report rendered, the county court shall pay to the ex-  
17 amining physician a sum not to exceed three dollars for each  
18 such mental and physical examination, upon certification of  
19 the fact of such examination to the county court by the  
20 juvenile court or the judge thereof.

Sec. 14. *Disposition of Cases by Court.* With a view to the  
2 welfare and interest of the child and of the state, the court or

3 judge may, after the proceedings, make any of the following  
4 dispositions:

5 (1) Treat the child as a neglected child, in which case  
6 the provision of article two of this chapter shall apply;

7 (2) Order the child placed under the supervision of a  
8 probation officer;

9 (3) If the child be over sixteen years of age at the time  
10 of the commission of the offense the court may, if the pro-  
11 ceedings originated as a criminal proceeding in a court other  
12 than a juvenile court, enter an order transferring the case  
13 back to the court of origin, or to any court in the county  
14 having criminal jurisdiction; or if the case originated on  
15 petition in juvenile court, the court may enter an order show-  
16 ing its refusal to take jurisdiction and permit the child to be  
17 proceeded against in accordance with the laws of the state  
18 governing the commission of crimes or violation of municipal  
19 ordinances;

20 (4) Commit the child to an industrial home or correctional  
21 institution for minors;

22 (5) Commit the child to any public or private institution  
23 or agency permitted by law to care for children;

24 (6) Commit the child to the care and custody of some  
25 suitable person who shall be appointed guardian of the person  
26 and custodian of the child;

27 (7) Enter any other order which seems to the court to be  
28 to the best interests of the child.

Sec. 15. *When Child Not Committed to Jail.* A child under  
2 sixteen years of age, whether delinquent or otherwise, shall not  
3 be committed to a jail or police station, except that any child  
4 over fourteen years of age who has been committed to an  
5 industrial home or correctional institution may be held in the  
6 juvenile department of a jail while awaiting transportation  
7 to the institution.

Sec. 17. *Probation Officers.* The county director shall be  
2 ex officio probation officer of the juvenile court. He may,  
3 with the approval of the juvenile court, designate one or  
4 more of his assistants or other employees of the county  
5 council to assist him in his duties as probation officer or to  
6 act in his stead.

Sec. 18. *Duty of Probation Officer; Expenses.* The clerk of a court shall notify, if practicable, the chief probation officer of the county when a child is brought before the court or judge. When notified, or if the probation officer otherwise obtains knowledge of such fact, he or one of his assistants shall:

(1) Make investigation of the case;

(2) Be present in court, or before the judge, to represent the interests of the child when the case is heard;

(3) Furnish such information and assistance as the court or judge may require;

(4) Take charge of the child before and after the trial, as may be directed by the court or judge.

The necessary expenses incurred by a probation officer acting pursuant to an order issued by a court of juvenile jurisdiction shall be borne by the county court unless such expenses are assumed by the state department.

## CHAPTER 106

(House Bill No. 29—By Mr. Brotherton)

AN ACT to amend and reenact section six, article three, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended and reenacted by chapter one, acts of the Legislature of West Virginia, first extraordinary session, one thousand nine hundred thirty-six, by adding thereto an additional subsection fourteen, providing services for the blind.

[Passed February 9, 1939; in effect ninety days from passage. Approved by the Governor.]

### Article 3. The Director of Public Assistance.

#### Section

#### 6. Powers and Duties.

*Be it enacted by the Legislature of West Virginia:*

That section six, article three, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended and reenacted by chapter one, acts of the Legislature of West Virginia, first extraordinary session, one thousand nine hundred thirty-six, is hereby amended and reenacted to read as follows:

Section 6. *Powers and Duties.* The director shall be the executive and administrative head of the department, and as such shall have the power and duty to:

(1) Exercise general supervision of, and make and revise rules and regulations for the government of the department;

(2) Prescribe uniform regulations pertaining to investigations, reinvestigations, and case supervision by county councils and directors;

(3) Prescribe uniform methods of recording and accounting to be employed by the county councils and directors;

(4) Sign and execute, in the name of the state, by "The State Department of Public Assistance", and by and with the consent and approval of the state board, any contract or agreement with the federal government or its agencies, other states, subdivisions of this state, corporations, associations, partnerships, or individuals;

(5) Supervise the fiscal affairs and responsibilities of the departments;

(6) Organize the department so as to comply with the requirements of this chapter and standards required by the federal legislation;

(7) Order, with the approval of the state board, two or more counties to employ a single county director and a joint staff of assistants and employees;

(8) Make such reports as will comply with the requirements of the federal legislation and the provisions of this chapter;

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

(10) Keep a complete and accurate record of all proceedings; record and file all bonds or contracts; and assume responsibility for the custody and preservation of all papers and documents pertaining to his office;

(11) Make an annual report to the governor of the condition, operation, and functioning of the department;

(12) Exercise any other powers necessary and proper to standardize state and county work, to expedite business, to assure fair consideration of application for aid, and to promote the efficiency of the service;

(13) Invoke any legal, equitable, or special remedies for

41 the enforcement of his orders or the provisions of this chapter;  
42 (14) Initiate or cooperate with other agencies in develop-  
43 ing services for the prevention of blindness, the conservation  
44 of vision, and the vocational and social adjustment of the  
45 blind.

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## CHAPTER 107

(House Bill No. 304—By Mr. Speaker, Mr. Thomas)

AN ACT to amend section nine, article six, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as enacted by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred thirty-six, relating to general relief.

[Passed March 7, 1939; in effect from passage. Approved by the Governor.]

### Article 6. General Relief.

#### Section

9. Order of county council; when work on public works required.

*Be it enacted by the Legislature of West Virginia:*

That section nine, article six, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as enacted by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred thirty-six, be amended to read as follows:

#### Section 9. *Order of County Council; When Work on Public*

2 *Works Required.* If a county council determines that general  
3 relief is necessary, it may:

4 (1) Fix the amount or value of a monthly or weekly grant,  
5 in money, food, or other necessities, to the needy person or to  
6 another for his use and benefit;

7 (2) Commit the person to the county infirmary for con-  
8 tinuing care;

9 (3) Order temporary medical or surgical treatment;

10 (4) Instruct the county director to accord such aid as may  
11 be appropriate to the case;

12 (5) Order any other appropriate assistance or care.

13 The state department may arrange with the state road com-



14 missionary, and with the governing bodies of political sub-  
15 divisions of the state, for the performance of work on the  
16 various public works activities by able-bodied male recipients  
17 of general relief. The state department may prescribe regula-  
18 tions under which the granting of general relief to an able-  
19 bodied male person shall be conditioned upon his engaging in  
20 and performing work on such public works activities as may  
21 be available pursuant to the arrangements herein authorized.

## CHAPTER 108

(House Bill No. 28—By Mr. Haldren)

AN ACT to name and permanently designate project WPGM two hundred eighty-four, a highway bridge on route fifty-two, crossing the Norfolk and Western railway at Poplar street in the city of Bluefield, Mercer county, West Virginia, as the Frank S. Easley Bridge.

[Passed February 2, 1939; in effect from passage. Approved by the Governor.]

### Section

1. The Frank S. Easley bridge.

*Be it enacted by the Legislature of West Virginia:*

Section 1. *The Frank S. Easley Bridge.* The highway bridge  
2 on route fifty-two crossing over the Norfolk and Western  
3 railway at Poplar street in the city of Bluefield, Mercer  
4 county, West Virginia, and being project WPGM two hun-  
5 dred eighty-four, shall hereafter be known and officially  
6 designated as the Frank S. Easley Bridge.  
7 The chamber of commerce of Bluefield, Mercer county,  
8 West Virginia, may conduct appropriate public dedication  
9 ceremonies to effectuate this act, at such time as they shall  
10 deem appropriate, during the year, one thousand nine hundred  
11 thirty-nine: *Provided, however,* That the state of West Vir-  
12 ginia shall incur no expense as a result of such dedication  
13 ceremonies.

## CHAPTER 109

(House Bill No. 281—By Mr. Alexander)

AN ACT to name and permanently designate an interstate bridge on West Virginia state route number forty-five, connecting with Maryland route number thirty-four, crossing the Potomac river at the city of Shepherdstown, West Virginia, as the James Rumsey bridge.

[Passed February 16, 1939; in effect from passage. Approved by the Governor.]

### Section

1. The James Rumsey bridge.

*Be it enacted by the Legislature of West Virginia:*

Section 1. *The James Rumsey Bridge.* The highway bridge  
2 on West Virginia state route number forty-five, connecting  
3 with Maryland route number thirty-four and crossing over  
4 the Potomac river at Shepherdstown, Jefferson county, West  
5 Virginia, shall hereafter be known and is hereby officially  
6 designated as the James Rumsey bridge. The historical  
7 society of Jefferson county and other organizations of that  
8 county may conduct appropriate public dedication ceremonies  
9 to effectuate this act, and may join with the state of Maryland,  
10 or any body or organization representing the state of Mary-  
11 land, in joint dedication ceremonies at such time and place  
12 as shall be deemed appropriate during the year one thousand  
13 nine hundred thirty-nine: *Provided, however,* That the state  
14 of West Virginia shall incur no expense as a result of such  
15 dedication ceremonies.

## CHAPTER 110

(House Bill No. 240—By Mr. Taylor)

AN ACT to amend article four, 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 hun-

dred thirty-three, and chapter seventy-eight, acts of the Legislature of West Virginia, regular session, one thousand nine hundred thirty-seven, by adding four new sections to be numbered twenty-one, twenty-two, twenty-three and twenty-four, relating to the designation, construction, maintenance and improvement of freeways.

[Passed March 4, 1939; in effect from passage. Approved by the Governor.]

Section

21. Freeways defined.
22. Powers of state road commissioner over freeways.
23. Designation of existing highway as freeway.
24. Regulation of access to freeways.

*Be it enacted by the Legislature of West Virginia:*

That article four, 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, and chapter seventy-eight, acts of the Legislature of West Virginia, regular session, one thousand nine hundred thirty-seven, be amended by adding sections twenty-one, twenty-two, twenty-three and twenty-four, to read as follows:

- Section 21. *Freeways Defined.* A freeway is a highway especially designed for through traffic, over which abutters have no easement or right of light, air or access to by reason of the fact that their property abuts upon such way.

- Sec. 22. *Powers of State Road Commissioner Over Freeways.* The state road commissioner shall have full power and authority to plan, designate, establish, acquire, open, construct, reconstruct, improve, maintain, discontinue and regulate the use of freeways within this state in the same manner in which the state road commissioner is now or may be authorized to plan, designate, establish, acquire, open, construct, reconstruct, improve, maintain, discontinue, and regulate the use of highways within this state. The state road commissioner shall also have any and all other additional authority and power relative to such freeways as is vested in him relative to highways, which shall include the authority and power to acquire by purchase, eminent domain, grant or

14 dedication, title to such lands or rights-of-way necessary for  
15 said freeways.

*Sec. 23. Designation of Existing Highway as Freeway.*

2 The state road commissioner may designate an existing high-  
3 way as or included within a freeway, and existing easements  
4 of access, light or air may be extinguished by purchase,  
5 eminent domain or grant, in accordance with the methods of  
6 obtaining rights-of-way for highway purposes.

*Sec. 24. Regulation of Access to Freeways.* The state road

2 commissioner is authorized and empowered to regulate and  
3 restrict access to any freeway established under the pro-  
4 visions of the preceding sections, from any existing highway,  
5 road, street or abutting property owner in such manner as he  
6 is authorized to regulate and restrict traffic upon highways,  
7 and access to any such freeway from any new highway, road  
8 or street shall be established by and with the consent of the  
9 state road commissioner.

## CHAPTER 111

(House Bill No. 356—By Mr. Taylor)

AN ACT to amend and reenact section nineteen, article four, 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, and chapter seventy-eight, acts of the Legislature, regular session, one thousand nine hundred thirty-seven, relating to contracts for road construction or material; convict labor.

[Passed March 10, 1939; in effect from passage. Approved by the Governor.]

### **Article 4. State Road System; Primary and Secondary Roads.**

#### **Section**

19. Contracts for road construction or material; convict labor.

*Be it enacted by the Legislature of West Virginia:*

That section nineteen, article four, 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, and chapter seventy-eight, acts of the Legislature, regular session, one thousand nine hundred thirty-seven, be amended and reenacted to read as follows:

Section 19. *Contracts for Road Construction or Material;*

2 *Convict Labor.* All work of construction and reconstruction  
3 of state roads and bridges, and the furnishing of all ma-  
4 terials and supplies therefor, and for the repair thereof, un-  
5 less manufactured or assembled by the commissioner, shall  
6 be done and furnished pursuant to contract except that the  
7 commissioner shall not be required to award any contract for  
8 work or for materials or supplies for an amount less than  
9 three thousand dollars. When the commissioner is about to  
10 construct, reconstruct, or improve any road or highway, he  
11 shall file with the clerk of the county court, or of the municipi-  
12 pality, as the case may be, in which such road lies, a certi-  
13 fied copy of the plans and specifications therefor, and a no-  
14 tice that the commissioner is about to enter upon and proceed  
15 with the work in question. If the work is to be done, or the  
16 materials therefor are to be furnished by contract, the com-  
17 missioner shall thereupon advertise once each week for at  
18 last two successive weeks in two newspapers of opposite poli-  
19 tics, if there be such, but if not, then in one newspaper  
20 published in each county or municipality in which the road  
21 lies, and once in at least one daily newspaper published in the  
22 city of Charleston, and in such other journals or magazines  
23 as may to the commissioner seem advisable, for sealed pro-  
24 posals for the construction or other improvement of such  
25 road, and for the furnishing of materials therefor, accurately  
26 describing the same, and stating the time and place for open-  
27 ing such proposals and reserving the right to reject any and  
28 all proposals: *Provided, however,* That whenever the esti-  
29 mated amount of any contract for work or for materials or  
30 supplies is less than three thousand dollars, the commissioner  
31 shall not be required to advertise the letting of said con-  
32 tract in newspapers as above required, but may award the  
33 contract to the lowest responsible bidder, when two or more  
34 sealed proposals or bids have been received by him, without  
35 such advertisement, but such contract shall not be so awarded

36 unless the bid of the successful bidder is three thousand dol-  
37 lars or less. The commissioner shall have the power to pre-  
38 scribe proper prequalifications of contractors bidding on state  
39 road construction work. To all sealed proposals there shall be  
40 attached the certified check of the bidder or bidder's bond  
41 acceptable to the commissioner, in such amount as the com-  
42 missioner shall specify in the advertisement, but not to ex-  
43 ceed five per cent of the aggregate amount of the bid; but  
44 such amount shall never be less than five hundred dollars.  
45 Such proposals shall be publicly opened and read at the time  
46 and place specified in the advertisement, and the contract for  
47 such work, or for the supplies or materials required therefor  
48 shall, if let, be awarded by the commissioner to the lowest re-  
49 sponsible bidder for the type of construction selected. In case  
50 the commissioner shall reject all bids, he may thereafter do  
51 the work with his own forces or with prison labor, or may re-  
52 advertise in the same manner as before and let a contract for  
53 such work pursuant thereto. But nothing in this section shall  
54 be so construed as to prevent the commissioner from building,  
55 constructing, reconstructing or repairing a road to any extent  
56 with prison labor without first advertising and rejecting bids  
57 therefor.

## CHAPTER 112

(House Bill No. 407—By Mr. Taylor)

AN ACT to amend and reenact section fifteen, article seventeen, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, relating to purchase or condemnation of toll bridges.

[Passed March 11, 1939; in effect from passage. Approved by the Governor.]

### Article 17. Toll Bridges.

#### Section

15. Authority to purchase or condemn toll bridges; eminent domain.

*Be it enacted by the Legislature of West Virginia:*

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

Section 15. *Authority to Purchase or Condemn Toll Bridges; Eminent Domain.* The state road commissioner may, with the approval of the governor, whenever he shall deem it expedient, purchase or condemn any toll bridge or bridges over and across any navigable river lying wholly or partly within the state, or forming a boundary of the state, or any such toll bridge or bridges wholly or partly constructed of such design or designs, and at such locations as he shall approve, or any franchises, permits, and/or contracts for the construction of any such bridge or bridges, title thereto to be taken in the name of the state; and payment of the consideration therefor, whether acquired by eminent domain or purchase, shall be solely by means of or with the proceeds of the bridge revenue bonds hereinafter authorized. The commissioner may also exercise in this state, and in any adjoining state, such powers of eminent domain as may be conferred upon him by any act of another state, or of the Congress of the United States, now in force or which may hereafter be enacted.

## CHAPTER 113

(House Bill No. 363—By Mr. Taylor)

AN ACT to amend and reenact section twenty-two, article seventeen, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended by chapter forty-four, acts of the Legislature of West Virginia, one thousand nine hundred thirty-one, relating to tolls to be charged on state toll bridges generally, on intrastate and interstate bridges, acquisition of existing bridges, bridge revenue bonds, and disposition of tolls.

[Passed March 11, 1939; in effect from passage. Approved by the Governor.]

### Article 17. Toll Bridges.

#### Section

22. Tolls to be charged; intrastate and interstate bridges; purchase of existing bridges; disposition of tolls.

*Be it enacted by the Legislature of West Virginia:*

That section twenty-two, article seventeen, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one,

as amended by chapter forty-four, acts of the Legislature of West Virginia, one thousand nine hundred thirty-one, be amended and reenacted to read as follows:

Section 22. *Tolls to Be Charged; Intrastate and Interstate Bridges; Purchase of Existing Bridges; Disposition of Tolls.* Tolls shall be fixed, charged and collected for transit over such bridges and shall be so fixed and adjusted, in respect of the aggregate of tolls from the bridge or bridges for which a single issue of bonds is issued, as to provide a fund sufficient to pay the principal and interest of such issue of bonds and to provide an additional fund to pay the cost of maintaining, repairing and operating such bridge or bridges, subject, however, to any applicable law or regulation of the United States of America now in force or hereafter to be enacted or made. Two or more bridges may be included in one issue of bonds, and intrastate and interstate bridges may be grouped in the same issue: *Provided*, That no existing bridge or bridges shall be acquired by purchase, eminent domain, or otherwise, unless the state road commissioner shall have determined, that the income therefrom, based upon the toll receipts for the next preceding fiscal or calendar year, will be sufficient to pay all expenses of operating and maintaining such bridge, in addition to the interest and sinking fund requirements of the bonds to be issued to pay the purchase price thereof. The tolls from the bridge or bridges for which a single issue of bonds is issued, except such part thereof as may be necessary to pay such cost of maintaining, repairing and operating during any period in which such cost is not otherwise provided for (during which period the tolls may be reduced accordingly), shall be transmitted each month to the state sinking fund commission and by it placed in a special fund which is hereby pledged to and charged with the payment of the principal of such bonds and the interest thereon, and to the redemption or repurchase of such bonds, such special fund to be a fund for all such bonds without distinction or priority of one over another. The moneys in such special fund, less a reserve for payment of interest, if not used by the sinking fund commission within a reasonable time for the purchase of bonds for cancellation at a price not exceeding the market price and not exceeding the redemption



- 38 price, shall be applied to the redemption of bonds by lot at  
39 the redemption price then applicable.

## CHAPTER 114

(House Bill No. 189—By Mr. Taylor)

AN ACT to amend and reenact sections two and ten, article eight, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, relating to traffic regulations and right-of-way on highways.

[Passed March 11, 1939; in effect from passage. Approved by the Governor.]

### Article 8. Traffic Regulations and Laws of the Road.

#### Section

2. Vehicles not in motion; entering traffic lane.  
10. Right-of-way; stop signs or traffic lights.

*Be it enacted by the Legislature of West Virginia:*

That sections two and ten, 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 2. *Vehicles Not in Motion; Entering Traffic Lane.*

- 2 All vehicles not in motion shall be placed with their sides as  
3 near the right-hand side of the highway as practicable, and in  
4 moving from such position the operator of any parked car  
5 shall give the right-of-way to moving vehicles approaching  
6 from either direction, and shall not enter any lane of traffic  
7 until assured that said lane is safely clear of moving vehicles.  
8 This section shall not apply to incorporated municipalities  
9 where such municipalities have ordinances governing this  
10 subject matter.

- Sec. 10. *Right-of-Way; Stop Signs or Traffic Lights.* An operator of a vehicle shall have the right-of-way over the operator of another vehicle who is approaching from the left of an intersecting highway, and shall give the right-of-way to an operator approaching from the right on an intersecting highway: *Provided, however,* That the state road commissioner is hereby authorized to erect stop signs or traffic lights at any highway intersections where, in his opinion, such stop signs or

9 traffic lights are desirable to control traffic otherwise than as  
10 above provided, and wherever the state road commissioner  
11 shall have erected and maintains a stop sign or traffic light  
12 at any road intersection in this state, then said stop sign or  
13 traffic light shall govern the traffic movement, and it shall be  
14 unlawful for the driver of any vehicle approaching said in-  
15 tersection on the road upon which said stop sign or traffic  
16 light has been erected and is maintained to fail to obey the  
17 sign or traffic light.

## CHAPTER 115

(Senate Bill No. 145—By Mr. Proctor)

AN ACT to amend and reenact chapter two, acts of the Legislature of West Virginia, regular session, one thousand nine hundred twenty-five, relating to the control, extension and improvement of the property known as Berkeley Springs, and providing further for the lease thereof.

[Passed March 10, 1939; in effect ninety days from passage. Became a law without the approval of the Governor.]

### Section

1. Continuation and control of state property at Berkeley Springs, Morgan county.
2. Duties and powers of board of control.
3. Institutional fees.
4. Gifts or appropriations.
5. Lease of property.

### *Be it enacted by the Legislature of West Virginia:*

Section 1. *Continuation and Control of State Property at Berkeley Springs, Morgan County.* The Berkeley Springs and the sanitarium heretofore established and located on the state property known as Bath Square, or Berkeley Springs property, in Morgan county, for the treatment of persons afflicted with rheumatism, diabetes, melitus and other diseases for which the waters from such springs are remedial, shall be continued, and shall be managed, directed and controlled as prescribed in article one, chapter twenty-five, of the code of West Virginia, one thousand nine hundred thirty-one, and amendments thereto.

Sec. 2. *Duties and Powers of Board of Control.* The state  
2 board of control shall provide plans necessary for the altera-  
3 tion of present buildings on said grounds and such new build-  
4 ings as may be necessary to provide. The state board of con-  
5 trol shall have power to acquire by purchase or condemna-  
6 tion such additional land adjacent or near to the said Bath  
7 square, as in its judgment may be necessary to carry out the  
8 intent and purpose of this act. All condemnation proceed-  
9 ings had hereunder shall be governed by chapter fifty-four  
10 of the code of West Virginia, one thousand nine hundred  
11 thirty-one, and amendments thereto.

12 The state board of control may make such disposition of  
13 the surplus water from such springs, as it may deem most ad-  
14 vantageous to the interests of the state.

Sec. 3. *Institutional Fees.* Patients shall be admitted to  
2 such institution for treatment upon payment of such fees as  
3 may be established by the board of control, which fees shall  
4 be reasonable, but patients from this state shall be allowed  
5 free treatment if not pecuniarily able to pay for same, under  
6 such reasonable regulations as the board of control may pre-  
7 scribe.

Sec. 4. *Gifts or Appropriations.* The state is hereby author-  
2 ized to receive gifts or appropriations from the government  
3 of the United States, or from any source, for the purpose set  
4 forth in this act, and the state board of control is authorized  
5 to enter into any reasonable agreements respecting the ex-  
6 penditures of same and the management of such institution.

Sec. 5. *Lease of Property.* Notwithstanding the other pro-  
2 visions of this act, the state board of control may lease the  
3 said property as a whole or otherwise, to any responsible per-  
4 son upon such terms and for such period as the board may  
5 determine, requiring of the lessee such bond for faithful per-  
6 formance as it may deem wise and expedient; which lease and  
7 the terms thereof shall be subject to the approval of the  
8 governor.

9 All acts or parts of acts inconsistent herewith are hereby  
10 repealed.

## CHAPTER 116

(House Bill No. 373—By Mr. Speaker, Mr. Thomas)

AN ACT to authorize the governor of the state of West Virginia, in the name of and for and on behalf of said state, to negotiate and agree with the city of Charleston, a municipal corporation, concerning the exchange of real property owned by the state of West Virginia, which now forms a part of the capitol and mansion grounds, and lies along Kanawha street in said city, for real property owned by said city of Charleston which adjoins said capitol and mansion grounds on Kanawha street in said city, and which said property of the state is needed in and about the Kanawha boulevard extension by said city of Charleston, and authorizing and empowering the governor to execute and receive, in the name of and for and on behalf of the state of West Virginia, any and all deeds, conveyances and agreements necessary to carry out the purposes aforesaid.

[Passed March 10, 1939; in effect from passage. Approved by the Governor.]

### Section

1. Governor authorized to exchange state property with city of Charleston for the purpose of Kanawha boulevard extension.

*Be it enacted by the Legislature of West Virginia:*

Section 1. *Governor Authorized to Exchange State Property With City of Charleston for the Purpose of Kanawha Boulevard Extension.* It appearing that there is necessity for the acquirement by the city of Charleston, a municipal corporation, of certain real property now belonging to the state of West Virginia, and forming a part of the capitol and mansion grounds, lying along Kanawha street in said city, in and about the construction of the Kanawha boulevard extension by said city of Charleston; and it further appearing that said city owns certain real property on and along said Kanawha street adjoining said capitol and mansion grounds, which is not needed for the purposes of said boulevard, and which will be beneficial to the state of West Virginia; the governor of said state is hereby empowered and authorized

15 to enter into such negotiations and agreements, and to exe-  
16 cute, in the name of and for and on behalf of the state of  
17 West Virginia, such agreements, deeds, and conveyances  
18 which may to him appear to be reasonably necessary to vest  
19 title in the city of Charleston, a municipal corporation, of  
20 such property belonging to the state of West Virginia and  
21 forming a part of the state capitol and mansion grounds, as  
22 aforesaid, as may be reasonably necessary for the use of the  
23 said city of Charleston in and about the construction of said  
24 Kanawha boulevard extension, and in exchange therefor, to  
25 receive, in the name of and for and on behalf of the state of  
26 West Virginia, of and from the said city of Charleston, such  
27 agreements, deeds and conveyances as may be reasonably  
28 necessary to vest title in the state of West Virginia of such  
29 property as said city owns adjacent to the state capitol and  
30 mansion grounds and lying on and along said Kanawha street,  
31 as aforesaid.

32 All agreements, deeds or conveyances executed or received  
33 under and by virtue of the authority herein given shall con-  
34 tain such words of conveyance, description, limitation or  
35 reservation as in the judgment of the governor shall be meet  
36 and proper to protect the rights, property and interests of  
37 the state of West Virginia, and at the same time to accom-  
38 plish the purposes aforesaid.

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## CHAPTER 117

(Senate Bill No. 288—By Mr. Johnson, of Mason)

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AN ACT authorizing the governor of this state to grant to the government of the United States, in aid and furtherance of river navigation, the right and privilege to locate, place and maintain, under the lighthouse or navigation laws of the United States, a beacon light on Tu-Endi-Wei Park, at Point Pleasant, West Virginia, under such conditions, and with such right and title in the government of the United States, as the governor shall agree upon with the government of the United States, through its representatives; and also the right and

privilege to erect and forever maintain on said park a river gauge board.

[Passed March 9, 1939; in effect from passage. Became a law without the approval of the Governor.]

**Section**

1. Governor authorized to grant federal government right to erect beacon light on Tu-Endi-Wei park at Point Pleasant.
2. Governor may delegate powers.
3. Authority to grant federal government right to erect river gauge board at said park.

*Be it enacted by the Legislature of West Virginia:*

Section 1. *Governor Authorized to Grant Federal Government Right to Erect Beacon Light on Tu-Endi-Wei Park at Point Pleasant.* That the governor of this state be, and he is hereby authorized and empowered to grant to the government of the United States the right and privilege to locate, place and forever maintain, under the lighthouse or other applicable laws of the United States of America, a beacon light of such kind and capacity, on such pedestal or house, as shall be agreed upon by the governor and such representatives, for use in connection with navigation, on Tu-Endi-Wei park, at Point Pleasant, West Virginia, and at the junction of the Ohio and Great Kanawha rivers, and at such place on said park as may be so agreed upon, and to sign, execute and deliver to said representatives, such deed or other instrument granting the said right and privilege, as may, in his judgment, be necessary and proper for the accomplishment of the said purpose: *Provided, however,* That in the accomplishment thereof no expense shall be imposed upon the state or incurred by it.

Sec. 2. *Governor May Delegate Powers.* In effectuating the purpose of the preceding section, the governor may delegate to the state board of control of this state and to the "Point Pleasant Battle Monument Commission," or either of them, such powers and duties as he shall deem it necessary or advisable to delegate unto them, or either of them; and the said state board of control and "Point Pleasant Battle Monument Commission," are and each of them is hereby authorized to accept donations and contributions of money, labor and ma-

10 terials, for use in erecting any part of said structure, to be  
 11 applied and used under the supervision and direction of said  
 12 state board of control.

Sec. 3. *Authority to Grant Federal Government Right to  
 2 Erect River Gauge Board at Said Park.* The governor of this  
 3 state is also hereby authorized and empowered to grant to the  
 4 government of the United States, the right and privilege  
 5 to erect and forever maintain on said park a river gauge  
 6 board, to be of such character and so located as not to mar  
 7 the beauty of said park, or unnecessarily obstruct or obscure  
 8 the view thereof, and shall be erected at the cost and expense  
 9 of the government of the United States.

## CHAPTER 118

(House Bill No. 424—By Mr. Speaker, Mr. Thomas)

AN ACT to amend article three, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by amending and reenacting section twelve thereof and by adding a new section to be designated as section fourteen-a, all relating to the assessment of properties of private corporations, building and loan associations and federal savings and loan associations.

[Passed March 11, 1939; in effect ninety days from passage. Became a law without the approval of the Governor.]

### Article 3. Assessments Generally.

#### Section

- 12. Assessment of corporate property; reports to assessor by corporations.
- 14-a. Assessment of capital and realty of building and loan association, and federal savings and loan association.

*Be it enacted by the Legislature of West Virginia:*

That article three, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be further amended by amending and reenacting section twelve thereof and by adding a new section to be designated as section fourteen-a, to read as follows:

Section 12. *Assessment of Corporate Property; Reports to*

2 *Assessor by Corporations.* Each incorporated company for-  
3 eign or domestic having its principal office or chief place of  
4 business in this state, or owning property subject to taxation  
5 in this state, except railroad, telegraph and express com-  
6 panies, telephone companies, pipe line, car line companies  
7 and other public utility companies, banking institutions,  
8 national banking associations, building and loan associations,  
9 federal savings and loan associations and industrial loan  
10 companies, shall annually, between the first day of the assess-  
11 ment year and the first day of May, make a written report,  
12 verified by the oath of the president or chief accounting officer,  
13 to the assessor of the county in which its principal office or  
14 chief place of business is situated, showing the following items,  
15 viz: (a) The amount of capital authorized to be employed  
16 by it; (b) the amount of cash capital paid on each share of  
17 stock; (c) the amount of money on hand or on deposit any-  
18 where subject to its check or draft, on the first day of the  
19 assessment year; (d) the amount of credits and investments  
20 other than its own capital stock held by it on said date, with  
21 their true and actual value; (e) the quantity, location and  
22 true and actual value of all of its real estate, and the magis-  
23 terial district or districts in which it is located; (f) the kinds,  
24 quantity and true and actual value of all its tangible prop-  
25 erty in each magisterial district in which it is located.

26 The oath required for this section shall be substantially as  
27 follows, viz:

28 State of West Virginia, County of.....,ss:

29 I, ....., president (treasurer or  
30 manager) of (here insert name of corporation), do solemnly  
31 swear (or affirm) that the foregoing is, to the best of my  
32 knowledge and judgment, true in all respects; that it contains  
33 a statement of all the real estate and personal property, in-  
34 cluding moneys, credits and investments belonging to said  
35 corporation; that the value affixed to such property is, in  
36 my opinion, its true and actual value, by which I mean the  
37 price at which it would sell if voluntarily offered for sale on  
38 such terms as are usually employed in selling such property,  
39 and not the price which might be realized at a forced or



40 auction sale; and said corporation has not, to my knowledge,  
41 during the sixty-day period immediately prior to the first  
42 day of the assessment year converted any of its assets into  
43 nontaxable securities or notes or other evidence of indebted-  
44 ness for the purpose of evading the assessment of taxes there-  
45 on; so help me, God.

46

47 The officer administering such oath shall append thereto  
48 the following certificate, viz:

49 Subscribed and sworn to before me by.....  
50 this the.....day of....., 19.....

51

Sec. 14-a. *Assessment of Capital and Realty of Building  
2 and Loan Association, and Federal Savings and Loan Asso-  
3 ciation.* The capital of every building and loan association  
4 and federal savings and loan association, as represented or  
5 evidenced by the investment shares and investment accounts  
6 in such association, shall be assessed at its true and actual  
7 value, according to the rules prescribed by this chapter, to  
8 such building and loan association or federal savings and loan  
9 association in the county, district and town where such asso-  
10 ciation is located: *Provided, however,* That such shares and  
11 such accounts held by the United States government or any of  
12 its agencies shall not be included in determining the assess-  
13 ment. The real and actual value of such capital, represented  
14 by the market value of such investment shares and investment  
15 accounts as aforesaid, shall be ascertained according to the  
16 best information which the assessor may be able to obtain  
17 whether from any return made by such association to any of-  
18 ficer of this state or the United States, from actual sales of  
19 such investment shares and investment accounts, from  
20 answers to questions by the assessor, as hereinafter provided,  
21 or from other trustworthy sources.

22 The secretary or principal accounting officer of every such  
23 building and loan association and federal savings and loan  
24 association shall cause to be kept a complete record of all  
25 such investment shares and investment accounts, which shall  
26 be open to the inspection of the assessors of the counties, and

27 the state tax commissioner or his assistants; and such secre-  
28 tary or officer shall answer under oath such questions as the  
29 assessor may ask him concerning the matters shown by such  
30 records and accounts, and concerning the value of such in-  
31 vestment shares and investment accounts, and shall be subject  
32 to the same penalties for failure to do so, which are imposed  
33 by law upon individuals failing to answer questions which  
34 the assessor is authorized to ask. The taxes levied and assessed  
35 upon the capital of every such building and loan association  
36 and federal savings and loan association, represented by the  
37 true and actual value of such investment shares and invest-  
38 ment accounts as aforesaid, shall be paid by such association  
39 in the same manner and at the same time as other taxes are  
40 required to be paid in such county, district and town.

41 The real estate of any such building and loan association or  
42 federal savings and loan association shall be assessed as in  
43 other cases, and a proportionate share of such assessed value  
44 shall be deducted in ascertaining the market value of such  
45 investment shares and investment accounts, but in ascertain-  
46 ing the true and actual value of such capital as represented  
47 by such investment shares and investment accounts as afore-  
48 said, the assessor shall take into consideration all earned  
49 reserves and undivided profits of any such association. And  
50 if the title to the building in which any such association does  
51 its business and the land on which such building stands is  
52 held by a separate corporation, in which any such association  
53 alone or together with another such association or bank com-  
54 pany or companies own stock, and such building and land  
55 be assessed in such separate corporation, a proportionate share  
56 of the assessed value of such real estate of such separate  
57 company shall be deducted in ascertaining the market value  
58 of the investment shares and investment accounts of such  
59 association. Every such association shall make a return to  
60 the assessor as of the first day of the assessment year.

## CHAPTER 119

(House Bill No. 136—By Mr. Strauss)

AN ACT repealing article twelve, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and chapter eighty-seven, acts of the Legislature, second extraordinary session, one thousand nine hundred thirty-three; and enacting in lieu thereof a new article twelve, chapter eleven, providing for and requiring state licenses to engage in or prosecute certain businesses, activities, trades or employments; and repealing all acts or parts of acts inconsistent therewith.

[Passed March 4, 1939; in effect from passage. Approved by the Governor.]

### Article 12. License Taxes.

#### Section

1. Definition.
2. License fees levied.
3. Hotel, eating place or restaurant.
4. Brokers.
5. Pawnbrokers.
6. Retail dealers in tobacco.
7. Bowling alleys.
8. Billiard or pool tables.
9. Bagatelle tables.
10. Slot machines and automatic devices.
11. Taxicab stands.
12. Merry-go-rounds and other amusement devices.
13. Skating rinks.
14. Public parks.
15. Shooting galleries.
16. Theatrical performances.
17. Show boats.
18. Exempt entertainments.
19. Circuses, carnivals and other public shows.
20. Fortune telling.
21. Sale of weapons.
22. Trading stamps.
23. Private banker or money broker.
24. Employment agent.
25. Goods sold at auction.
26. Auctioneers.
27. Sale of monuments, etc.
28. Collection agencies.
29. Nonresident fur dealer.
30. Soft drinks.
31. Junk dealers and their agents.
32. Hawkers and peddlers.
33. Itinerant vendors.

**Section**

34. Ferries.
40. Application for and issuance of licenses.
41. Conditions precedent to doing business.
42. Effect of state license.
43. Effect of state license within municipalities.
44. Designation of specific location on certificate.
45. Time for which licenses granted.
46. Appeals to tax commissioner.
47. Review by circuit court.
48. Appeals to supreme court of appeals.
49. Exhibition of licenses.
50. Licenses, a personal privilege.
51. Assignment of license.
52. Effect of change in partners or name of firm.
53. Change of place of business.
54. Revocation or alteration of license.
55. Transmittal to state auditor.
56. Proceeding by auditor against county clerk.
57. Penalty for neglect of duty.
58. Instructions and forms by tax commissioner.
59. Enforcement by tax commissioner.
60. Collection by distraint.
61. Injunction against unlicensed business.
62. Additional penalties when business transacted without license.
63. Collection of back taxes.
64. Criminal liability for violation of provisions of article; jurisdiction.
65. Provisions remedial.
66. Interpretation of sections forty through sixty-five.
75. Tax on corporations holding more than ten thousand acres of land.
76. Tax on charters; classification of corporations.
77. Relief from assessment of corporation license tax.
78. Amount of license tax on domestic corporations.
79. Assessment and collection of tax on domestic corporations.
80. License tax on foreign corporations.
81. Preliminary report by foreign corporations; assessment; collection of license taxes.
82. Annual fee of auditor as attorney in fact.
83. Notice to corporations taxable; statement on payment; tax as lien.
84. Publication of list of delinquent corporations.
85. Investigation of corporation delinquencies.
86. Suit to enforce payment of corporation license tax.
87. Process in such suit; record of forfeiture, revocation or dissolution.
88. Corporations exempt from license tax.
89. Monthly report by secretary of state to auditor as to corporations.
90. Duration of existing licenses.

***Be it Enacted by the Legislature of West Virginia:***

That article twelve, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and chapter eighty-seven, acts of the Legislature, second extraordinary session, one thousand nine hundred thirty-three, are hereby repealed; and a new article twelve, chapter eleven, providing for and requiring state licenses to engage in or prosecute certain businesses, activi-

ties or employments, as specified herein, is hereby enacted to read as follows.

Section 1. *Definition.* When used in this article the term  
2 "person" shall mean and include natural persons, partner-  
3 ships, associations, corporations, and all other organizations or  
4 groups by means of which any of the hereinafter specified  
5 businesses, activities, trades or employments are engaged in  
6 or prosecuted.

Sec. 2. *License Fees Levied.* No person shall, without a  
2 license, engage in or prosecute, within the state of West Vir-  
3 ginia, any of the businesses, activities, trades or employments  
4 named in the following sections of this article. The license  
5 fees hereinafter specified are hereby levied on every person  
6 engaging in or prosecuting, within this state, any such busi-  
7 nesses, activities, trades or employments.

Sec. 3. *Hotel, Eating Place or Restaurant.* The annual  
2 license fee to keep or maintain a hotel, tavern or tourists'  
3 home, where rooms are kept or maintained for transient  
4 guests, the charge for which is for a period of less than three  
5 days, or to keep or maintain a restaurant, or other eating  
6 place, not operated in connection with a hotel, tavern or  
7 tourists' home, shall be ten dollars.

8 Every building where food and lodging are usually furn-  
9 ished to travelers, and payment therefor required, shall be  
10 deemed a hotel or tavern. Every person licensed to keep or  
11 maintain a hotel or tavern shall constantly provide the same  
12 with lodging and food for travelers. If any person so licensed  
13 fails to comply with this section the license shall be revoked,  
14 pursuant to section fifty-four of this article.

Sec. 4. *Brokers.* The annual license fee to practice the  
2 business of stockbroker, or other broker (except pawnbroker)  
3 by buying or selling for others, stocks, securities or other per-  
4 sonal property, for commission or reward, shall be one hun-  
5 dred dollars.

Sec. 5. *Pawnbrokers.* The annual license fee to act as a  
2 pawnbroker shall be one hundred dollars.

Sec. 6. *Retail Dealers in Tobacco.* The annual license fee

2 to sell at retail cigarettes, cigarette papers or wrappers, and  
3 cigars, tobacco, snuff and other preparations of tobacco shall  
4 be ten dollars; and, to sell at retail cigars, tobacco, snuff and  
5 other preparations of tobacco other than cigarettes or cigarette  
6 papers or wrappers shall be five dollars. The giving away or  
7 furnishing of cigarette papers or wrappers in connection  
8 with the sale of tobacco, or other thing of value, shall be  
9 deemed to be a sale thereof under the provisions of this sec-  
10 tion.

Sec. 7. *Bowling Alleys.* The annual license fee to keep or  
2 maintain a bowling alley for public use where any charge is  
3 made for the use of the same, shall be twenty-five dollars;  
4 but if more than one be kept or maintained in the same  
5 building by the same person, the fee shall be twenty-five dol-  
6 lars for the first one and fifteen dollars for each additional one.  
7 The licensee, his agents or employees, shall not permit any  
8 person in any manner to bet or wager anything of value upon  
9 any game played upon such bowling alley. Such licensee, his  
10 agents or employees, shall not permit anyone to bring any in-  
11 toxicating liquors of any kind into such building or other  
12 place where such bowling alley is located.

Sec. 8. *Billiard or Pool Tables.* The annual license fee to  
2 keep or maintain a billiard or pool table, or table of like  
3 kind, for public use, where any charge is made for the use  
4 of the same, shall be twenty-five dollars; but if more than  
5 one of such tables be kept in the same building, by the same  
6 person, the fee shall be twenty-five dollars for the first one  
7 and fifteen dollars for each additional one.  
8 The licensee, his agents or employees, shall not permit any  
9 person under the age of eighteen years to play at such billiard  
10 or pool tables, and shall not permit any such person under the  
11 age of eighteen years to remain or loiter, whether playing at  
12 such billiard or pool tables or not, in the room where such  
13 billiard or pool tables are located; and such licensee, his  
14 agents or employees, shall not in any manner permit any-  
15 one to bet or wager anything of value upon any game played  
16 upon such billiard or pool tables. Such licensee, his agents or  
17 employees, shall not permit anyone to bring any intoxicating

18 liquors of any kind into such building or other place where  
19 such billiard or pool tables are located.

Sec. 9. *Bagatelle Tables.* The annual license fee to keep  
2 or maintain a bagatelle table, or other table of like kind, for  
3 public use, where any charge is made for the use of the same,  
4 shall be ten dollars; but if more than one of such tables be  
5 kept or maintained in the same building, by the same person,  
6 the fee shall be ten dollars for the first one, and five dollars  
7 for each additional one.

8 The licensee, his agents or employees, shall not permit any  
9 person under the age of eighteen years to play at such baga-  
10 telle table, or table of like kind, and shall not permit any such  
11 person under the age of eighteen years to remain or loiter,  
12 whether playing at such bagatelle table, or other table of like  
13 kind, or not, in the room where such table is located; and such  
14 licensee, his agents or employees, shall not in any manner  
15 permit anyone to bet or wager anything of value upon any  
16 game played upon such bagatelle table, or table of like kind.  
17 Such licensee, his agents or employees, shall not permit any-  
18 one to bring any intoxicating liquors of any kind into such  
19 building or other place where such tables are located.

Sec. 10. *Slot Machines and Automatic Devices.* The an-  
2 nual license fee to keep or maintain an automatic baggage or  
3 parcel checking machine, or device, which is used for the  
4 storage of baggage or parcels of any character, shall be fifty  
5 cents for each section of any such device which is operated  
6 on the coin-in-the-slot principle; the annual license fee to  
7 keep or maintain any automatic toilet locker or device, shall  
8 be fifty cents for every such locker or device; the annual li-  
9 cense fee to keep or maintain any other automatic penny slot  
10 machine or device, which is not a gambling device under any  
11 law of this state, shall be two dollars for every such machine  
12 or device; and, the annual license fee to keep or maintain any  
13 other automatic slot machine or device, which is not a  
14 gambling device, as aforesaid, shall be five dollars for every  
15 such machine or device.

16 The term "slot machine" when used in this section shall  
17 not be deemed to mean or include any pay telephone or post-

18 age stamp vending machine operated on the coin-in-the-slot  
19 principle.

20 In the event the owner of any automatic machine or de-  
21 vice refuses, neglects or fails to pay the license fee due upon  
22 any such machine or device, then the proprietor or owner of  
23 the business conducted in the store room or place where such  
24 machine is installed, operated or maintained, shall be liable  
25 for the payment of such license fee, and upon his refusal  
26 or failure to pay such fee the tax commissioner or his agents  
27 may take such machine or device into possession and deliver  
28 the same to the sheriff of the county in which such machine  
29 or device is found, or the sheriff of such county on his own  
30 initiative or upon order or direction of the state tax com-  
31 missioner, or his agents, may take such machine or device into  
32 possession, and in either event said machine or device shall  
33 be impounded until such license fee is paid; in the event the  
34 license fee and penalties are not paid to such sheriff within  
35 ten days from and after the date of such impounding, then  
36 the sheriff shall sell such machine or device in the manner  
37 provided by law for the sale of personal property for taxes,  
38 and from the proceeds thereof shall discharge and pay the  
39 license fee due on such machine or device and his costs, in-  
40 cluding costs of impounding, storage, penalties and other  
41 fees due the state and the sheriff; and the balance, if any  
42 there be, shall be forfeited to the state.

Sec. 11. *Taxicab Stands.* The annual license fee to keep  
2 or maintain a taxicab stand, or any place of like kind, shall  
3 be ten dollars.

4 The term "taxicab stand" as used in this section, shall  
5 mean and include any building or part thereof, parking  
6 place, telephone, or any other place from which one, or more,  
7 taxicab operates, even though such place may be kept or  
8 maintained in conjunction with any other business or busi-  
9 nesses.

10 The licensee, his agents or employees, shall not permit any  
11 unnecessary noise or disorderly conduct in such place, and  
12 shall not permit any intoxicating liquors to be brought in,  
13 or stored or kept in such place.

Sec. 12. *Merry-go-rounds and Other Amusement Devices.*



2 The license fee to operate a roller coaster, a merry-go-round,  
3 scenic railway, or device of like kind, for one week, shall be  
4 ten dollars; for three months, shall be thirty dollars; for  
5 six months, shall be fifty dollars; and for one year, shall be  
6 one hundred dollars. The license fee to run or operate a doll  
7 baby rack, cane rack, knife rack, striking machine, jingle  
8 board, artful dodger, candy wheel, or other scheme or device  
9 by which merchandise or other thing of value is disposed of  
10 by game of chance or like device, or human laundry device or  
11 dip device, for one week, shall be five dollars; for three  
12 months, shall be twenty dollars; for six months, shall be  
13 thirty dollars, and for one year shall be fifty dollars: *Pro-*  
14 *vided, however,* That in the event a doll baby rack, cane rack,  
15 knife rack, striking machine, jingle board, artful dodger,  
16 candy wheel, or other scheme or device by which merchandise  
17 or other thing of value is disposed of by game of chance or  
18 like device, or human laundry device, or dip device, is run or  
19 operated within a street or other carnival or show or in the  
20 vicinity of such carnival or show, the license fee shall be as  
21 provided in section nineteen of this article.

Sec. 13. *Skating Rinks.* The annual license fee to keep or  
2 maintain a skating rink for public use in a city or town with a  
3 population of thirty thousand or more, according to the last  
4 official census, shall be one hundred dollars; in a city or town  
5 with a population of more than ten thousand but less than  
6 thirty thousand population, as aforesaid, the fee shall be fifty  
7 dollars; in a city or town with a population of more than  
8 five thousand but less than ten thousand population, as afore-  
9 said, the fee shall be twenty-five dollars; and in a city or  
10 town with a population not exceeding five thousand, as afore-  
11 said, or at any other location within this state, the fee shall  
12 be fifteen dollars: *Provided, however,* That if such skating  
13 rink be kept or maintained outside of but within one mile of  
14 the corporate limits of any city or town, the license fee shall  
15 be the same as if such skating rink were kept or maintained  
16 within such city or town; and if outside of but within one  
17 mile of the corporate limits of two or more cities or towns,  
18 the license fee shall be the same as if such skating rink were  
19 kept or maintained within the largest of such cities or towns.

Sec. 14. *Public Parks.* The annual license fee to keep or  
2 maintain a public park for which admission is charged, in  
3 counties of over thirty thousand population, according to the  
4 last official census, shall be twenty-five dollars; in counties of  
5 less than thirty thousand but more than twenty thousand  
6 population, as aforesaid, the fee shall be fifteen dollars; in  
7 counties of less than twenty thousand population, as afore-  
8 said, the fee shall be ten dollars. Such license for such pub-  
9 lic park shall not be construed to cover or include any other  
10 activity for which a license is now required by law at or in  
11 the vicinity of such park.

Sec. 15. *Shooting Galleries.* The annual license fee to keep  
2 or maintain a shooting gallery for public use, shall be twenty-  
3 five dollars.

Sec. 16. *Theatrical Performances.* The license fee to con-  
2 duct a theatrical performance of any kind, if such perform-  
3 ance be given in a city or town with a population of twenty  
4 thousand, or more, according to the last official census, shall  
5 be twenty dollars for each week; if in a city or town with a  
6 population of more than ten thousand but less than twenty  
7 thousand, as aforesaid, the fee shall be fifteen dollars for  
8 each week; if in a city or town with a population of less than  
9 ten thousand, as aforesaid, or at any other place within this  
10 state, the fee shall be ten dollars for each week; but if such  
11 theatrical performance be conducted outside of but within  
12 one mile of the corporate limits of any city or town, the  
13 license fee shall be the same as if such performance were  
14 given within such city or town; and if outside of but within  
15 one mile of the corporate limits of two or more cities or  
16 towns, the fee for such performance shall be the same as if  
17 it had been given within the largest of such cities or towns.

18 No license for any such theatrical performance shall be  
19 issued for a period of less than one week.

20 *Provided, however,* That in lieu of the fees for conducting  
21 a theatrical performance, as above set out, a theatre, opera  
22 house or other permanent place for public shows, may be  
23 kept or maintained upon the payment of the license fee  
24 hereinafter specified. In a city or town with a population of  
25 thirty thousand or more, according to the last official cen-

26 sus, for three months, the fee shall be one hundred dollars;  
27 for six months, one hundred thirty dollars; and for one year,  
28 one hundred sixty dollars. In a city or town with a popula-  
29 tion of less than thirty thousand but more than twenty thou-  
30 sand, as aforesaid, for three months, the fee shall be seventy-  
31 five dollars; for six months, one hundred dollars; and for one  
32 year, one hundred twenty-five dollars. In a city or town with  
33 a population of less than twenty thousand but more than ten  
34 thousand, as aforesaid, for three months, the fee shall be  
35 forty dollars; for six months, sixty dollars; and for one year,  
36 one hundred dollars. In a city or town with a population of  
37 less than ten thousand but more than five thousand, as afore-  
38 said, for three months, the fee shall be twenty dollars; for  
39 six months, thirty dollars; and for one year, forty dollars.  
40 In a city or town with a population of less than five thou-  
41 sand but more than two thousand, as aforesaid, for three  
42 months, the fee shall be ten dollars; for six months, fifteen  
43 dollars; and for one year, twenty dollars. In a city or town  
44 with a population of less than two thousand, as aforesaid, or  
45 at any other place within the state, for three months, the  
46 fee shall be five dollars; for six months, eight dollars; and  
47 for one year, ten dollars.

48 *Provided, further,* That if such theatre, opera house, or  
49 other permanent place for public shows is conducted outside  
50 of but within one mile of the corporate limits of any city or  
51 town, the license fee shall be the same as if such perform-  
52 ance were given within such city or town; and, if outside of  
53 but within one mile of the corporate limits of two or more  
54 cities or towns, the license fee shall be the same as if it had  
55 been given within the largest of such cities or towns.

Sec. 17. *Show Boats.* The license fee to conduct theatrical  
2 or other performances of any kind, when such performances  
3 are confined exclusively to show boats plying the navigable  
4 streams of this state, for three months, shall be twenty-five  
5 dollars; for six months, shall be fifty dollars; and for one  
6 year, shall be one hundred dollars. Such license shall be  
7 issued by the state tax commissioner, and shall be coextensive  
8 with the state, but confined to the navigable streams of this  
9 state.

Sec. 18. *Exempt Entertainments.* The provisions of sections sixteen, seventeen and nineteen shall not apply to, and no license fee shall be assessed against or collected from any educational, literary, dramatic, musical or benevolent society not conducted for private profit, where such performance or exhibitions are confined to one county, unless professional or paid talent, other than director, is employed in such performances or exhibitions.

Sec. 19. *Circuses, Carnivals and Other Public Shows.* The license fee to exhibit a circus or menagerie, a circus and menagerie combined, wild west show, or other itinerant show not exhibited in a theatre, opera house or other permanent place for public shows, shall be based upon the number of railroad cars or motor trucks used to transport the property or equipment of such shows, but not including railroad cars or motor trucks used to transport the personnel thereof. If railroad cars are used the fee shall be four dollars for each car for each day on which any performance is given; if motor trucks are used the fee shall be three dollars for each truck for each day on which any performance is given.

The license fee to exhibit a street or other carnival shall be five dollars a week for each entertainment, performance or exhibition given at or in the vicinity of any such carnival. Each such entertainment, performance or exhibition shall require a separate license, whether or not shown under the same canvas and whether or not exhibited for additional compensation; and upon any such entertainment, performance or exhibition being concluded, so that an additional fee for admission is charged, an additional license fee shall be required for any further or additional entertainment, performance or exhibition. To operate any riding device of any kind at or in the vicinity of any street or carnival show, the fee shall be ten dollars a week for each such device. To keep or maintain any concession stand selling service, goods, wares or merchandise, such as food, soft drinks, ice cream, candy floss and the like, at or in the vicinity of such street or carnival show, the fee shall be five dollars a week for each such concession. To maintain any concession stand such as ball games, bingo, cane rack, penny pitch, pitch-till-you-win, strik-

32 ing machine, weighing machine, shooting gallery, artful  
33 dodger, bumper, fish pond, dart game, or other legitimate  
34 games of skill, none of which shall be controlled by the oper-  
35 ator, at or in the vicinity of any street or carnival show, the  
36 fee shall be ten dollars a week for each such concession. To  
37 operate or maintain a candy wheel or any other legitimate  
38 merchandise wheels, when operated without control of the op-  
39 erator, shall be twenty-five dollars a day. To operate or main-  
40 tain rides of all kinds shall be ten dollars each a week: *Pro-*  
41 *vided, however,* That such games as roll downs, blowers, spin-  
42 ners, swinging ball, creepers, race tracks, spot the spot, and  
43 all other games controlled by the operator are hereby for-  
44 bidden and no license shall be granted to any circus, show or  
45 street carnival where such games are operated: *Provided, fur-*  
46 *ther,* That no circus, show or street carnival shall be licensed  
47 which has any gypsy fortune tellers or gypsies connected  
48 therewith in any manner.

Sec. 20. *Fortune Telling.* The annual license to act as a  
2 fortune teller, palmist, phrenologist, spiritualist, medium,  
3 clairvoyant, mind reader, or any other person who performs  
4 the art or profession of telling the past or forecasting the fu-  
5 ture, shall be two hundred dollars; but such fee shall not be  
6 divisible.

Sec. 21. *Sale of Weapons.* The annual license fee to sell or  
2 offer for sale pistols, revolvers, dirks, slung shots, billies,  
3 bowie knives, metallic or other false knuckles, or other weap-  
4 ons of like kind, shall be ten dollars.

Sec. 22. *Trading Stamps.* The annual license fee to sell  
2 or offer for sale merchants' trading stamps, premium stamps  
3 or stamps or certificates of like nature, or to undertake to re-  
4 deem such stamps or certificates in money or goods, shall be  
5 one hundred dollars.

Sec. 23. *Private Banker or Money Broker.* The annual  
2 license fee to carry on the business of money broker or pri-  
3 vate banker, shall be twenty-five dollars. The term "money  
4 broker" or "private banker" shall include every person,  
5 other than a regularly organized banking institution or nat-  
6 ional banking association, that lends money on real or per-

7 sonal security, discounts paper, cashes time slips or scrip, or  
8 engages in any business of a similar or like character.

Sec. 24. *Employment Agent.* The annual license fee to  
2 conduct the business of an employment agent, to receive ap-  
3 plications for employment, to hire or contract with persons  
4 for employment shall be two hundred dollars, except that the  
5 annual license fee for an agency or registry for the employ-  
6 ment of nurses, practical nurses or undergraduate nurses,  
7 shall be twenty-five dollars.

8 When used in this section the term "employment agent"  
9 shall be deemed to mean and include the same persons as de-  
10 fined in section four of article two of chapter twenty-one of  
11 this code.

Sec. 25. *Goods Sold at Auction.* Any person offering for  
2 sale or furnishing for sale at auction, any goods, wares or  
3 merchandise, not assessed for taxation in any county in this  
4 state, pursuant to section eight, article five of this chapter,  
5 shall be required to obtain a permit from the clerk of the  
6 county court of such county before offering or furnishing  
7 such goods, wares or merchandise for sale at such auction;  
8 for which permit a fee of two dollars on every one hundred  
9 dollars' valuation of such goods shall be charged. Any per-  
10 son offering any goods, wares or merchandise for sale, in any  
11 county in this state, not assessed for taxation in such county,  
12 pursuant to said section eight, shall be required to have the  
13 same assessed by the assessor of such county, and such assess-  
14 ment shall be the same as other assessments in such county.  
15 In case any person shall refuse or neglect to obtain the per-  
16 mit as aforesaid, or to have such goods, wares or merchan-  
17 disse assessed as herein required, he shall be liable in the  
18 first instance to double the license required, and in the sec-  
19 ond instance, the assessor shall add as penalty for such fail-  
20 ure, one hundred percent to the taxes assessed. Such license  
21 fee shall be collected in the same manner as are other license  
22 fees.

Sec. 26. *Auctioneers.* The annual license fee to act as an  
2 auctioneer shall be five dollars; *Provided, however,* That, if  
3 such auctioneer act as such within an incorporated city or  
4 town, an additional fee of two dollars for every one thou-

5 sand population of such city or town, according to the last  
6 official census, shall be added. Such license shall be coexten-  
7 sive with the entire state, and shall not be subject to the re-  
8 strictions of section forty-four of this article.

9 The term "auctioneer" when used in this section shall not  
10 be deemed to mean or include any trustee, personal repre-  
11 sentative, guardian or committee selling property belonging  
12 to any estate or trust under his charge, or any officer or com-  
13 missioner selling property under the order, decree, execution  
14 or process of any court of this state or of the United States.

Sec. 27. *Sale of Monuments, etc.* The annual license fee  
2 to engage in the business of selling, offering for sale, solicit-  
3 ing or receiving orders for monuments, mausoleums, grave  
4 stones and grave markers, shall be one dollar.

Sec. 28. *Collection Agencies.* The annual license fee to con-  
2 duct the business of a collection agency in a city or town with  
3 a population of ten thousand or more according to the last  
4 official census shall be one hundred dollars; and in a city or  
5 town with a population not exceeding ten thousand, as afore-  
6 said, or at any other location within this state, the fee shall be  
7 twenty-five dollars. The provisions of this section shall also  
8 apply to nonresident agencies which do business in this state  
9 through or by means of one or more agents or solicitors:  
10 *Provided, however,* That before such certificate of license  
11 shall be issued to any person as defined in section one of this  
12 article, such person shall execute a continuing bond with some  
13 solvent surety company as surety thereon in the penalty of  
14 two thousand dollars, payable to the state of West Virginia,  
15 conditioned that such person will pay all damages accruing to  
16 anyone by reason of any unlawful act or action done, per-  
17 formed or taken by such person in and about the conduct  
18 of such collection agency. Said bond shall be approved as to  
19 such surety by the issuing agent thereof, and such bond shall  
20 be recorded in the office of the clerk of the county court of  
21 the county in which such collection agency is, or is proposed  
22 to be, operated; and the fact of the execution of such bond,  
23 the amount thereof, and the book and page number in which  
24 recorded shall be stamped upon the face of the certificate  
25 of license herein to be issued.

Sec. 29. *Nonresident Fur Dealer.* The annual license fee  
2 on a nonresident of this state to engage in the business of  
3 buying or offering to buy any fur, pelt, hide or skin within  
4 this state, shall be fifty dollars.

Sec. 30. *Soft Drinks.* The annual license fee to conduct  
2 the business of wholesaler, distributor, or manufacturer of  
3 any and all preparations of every kind, character and nature,  
4 whether carbonated or not, commonly known as soft drinks,  
5 including bevo, pablo, milo, moxie, ginger ale, near beer, coca  
6 cola, grape juice, fruit juices and pop, shall be one hundred  
7 dollars; and on every retailer of any of the above products,  
8 shall be five dollars: *Provided, however,* That this section  
9 shall not be construed as requiring a license of any person  
10 engaged in the wholesale or retail grocery business, who  
11 sells, as an incident thereof, canned or bottled fruit juices as  
12 herein defined.

13 The provisions of section forty-three of this article shall  
14 apply to wholesalers, distributors, manufacturers, and re-  
15 tailers as defined in this section only to the extent of per-  
16 mitting the municipality within which any place of business  
17 or warehouse of such wholesalers, distributors, manufacturers  
18 or retailers is situated, to levy and enforce a municipal license  
19 fee on such businesses. And no other city or town shall levy  
20 or enforce a municipal license fee on any such businesses.

Sec. 31. *Junk Dealers and Their Agents.* (a) The term  
2 "junk" as used in this section shall mean old or scrap  
3 gold, copper, brass, rope, rags, batteries, paper, rubber, auto-  
4 mobile parts, iron, steel and other old or scrap ferrous or  
5 nonferrous metals.

6 The term "junk dealers" shall include all persons engaged in  
7 the business of buying or selling junk as hereinabove defined.

8 The term "junk dealer's agents" shall include all persons  
9 who buy or sell junk as hereinbefore defined for or on be-  
10 half of a junk dealer, as hereinabove defined, but the term  
11 "junk dealer's agent" shall not be construed to include any  
12 persons regularly employed upon a salary by a regularly  
13 licensed junk dealer engaged in such business within the state  
14 of West Virginia.

15 The term "itinerant junk collector" shall include only



16 such persons who gather junk from place to place with  
17 the aid of a cart or vehicle, hand drawn or propelled, who  
18 have no fixed place of business.

19 The term "nonresident junk dealer" or "nonresident  
20 junk dealer's agent" shall include all persons who act as  
21 junk dealers or junk dealer's agents who are nonresidents  
22 of West Virginia, and all firms so engaged whose members  
23 are nonresidents of West Virginia and all corporations  
24 which have not been admitted to hold property and transact  
25 business in the state of West Virginia.

26 (b) No person within the state of West Virginia shall en-  
27 gage in the business of junk dealer, junk dealer's agent or  
28 itinerant junk collector without a state license therefor,  
29 which license shall be issued as provided in this article: *Pro-*  
30 *vided, however,* That no resident license shall be issued to any  
31 junk dealer, junk dealer's agent or itinerant junk collector  
32 who has not been a resident of the state of West Virginia for  
33 a period of at least one year prior to the application for  
34 such license.

35 (c) No corporation or firm shall engage in the business  
36 of junk dealer or junk dealer's agent in the state of West  
37 Virginia unless the officers or agents of such corporation or  
38 firm who engage in the business of junk dealer or junk  
39 dealer's agent, in behalf of such corporation or firm shall  
40 be eligible to be duly licensed as resident junk dealers or  
41 junk dealers agents in accordance with the provisions of  
42 this section.

43 (d) The annual license fee to act as a resident junk dealer  
44 shall be twenty-five dollars; to act as a junk dealer's agent,  
45 ten dollars; to act as a nonresident junk dealer or his agent  
46 who buys or solicits for the purchase of junk within the state,  
47 one hundred fifty dollars; to act as an itinerant junk collector,  
48 two dollars. Such licenses shall be coextensive with the state,  
49 but no nonresident licensee shall be permitted to maintain a  
50 fixed place of business within the state: *Provided, however,*  
51 That any nonresident junk dealer may purchase junk from  
52 any resident junk dealer without complying with the pro-  
53 visions of this section, but if said nonresident junk dealer  
54 comes into the state in any motor vehicle or horse drawn  
55 vehicle, said nonresident junk dealer shall not be permitted

56 to transport from the state in said vehicle or horse drawn  
57 wagon, junk purchased from resident junk dealers, unless  
58 there is a compliance with this section.

59 (e) Every resident junk dealer shall certify to the clerk of  
60 the county court issuing the license, the name or names of the  
61 agents for whom he desires a license certificate and shall give to  
62 each agent so engaged by him a certificate of authority, which  
63 certificate the agent shall at all times keep with his license and  
64 no such junk dealer's agent's license shall be valid and effective  
65 without such certificate of authority. The clerk of the county  
66 court who issues the licenses shall give to each license certificate  
67 a numerically designated permit, and such permit so given  
68 shall be plainly stenciled or printed as "Dealer's Permit  
69 No.....", "Agent's Permit No.....", "Itinerant Collec-  
70 tor's Permit No.....", "Nonresident Permit No.....",  
71 as the case may be, upon both sides of all trucks or other  
72 vehicles used in the collecting and transporting of junk. But  
73 the clerk shall not issue a junk dealer's agent's license until  
74 the applicant therefor shall first have presented a certificate  
75 from a duly licensed junk dealer showing such authorization,  
76 and no license shall be issued to a junk dealer's agent or itin-  
77 erant junk collector unless he shall file with the clerk an affi-  
78 davit setting out that such applicant has not been convicted of  
79 a felony; that he has not been convicted of a misdemeanor in  
80 connection with the junk business within a five year period  
81 prior to the time of his application, and that in the event the  
82 application is for a resident dealer's license that he has resided  
83 in the state for a period of one year next preceding the date of  
84 his application, which said certificate and affidavit shall be  
85 filed by the clerk issuing the license in his office.

86 The license fee herein provided shall not be divisible. No  
87 license hereunder shall be transferable.

88 No one who has been convicted of a felony shall be licensed  
89 as a junk dealer, junk dealer's agent, or itinerant junk col-  
90 lector, and no one convicted of a misdemeanor in connection  
91 with the junk business within a five year period prior to the  
92 passage of this article shall be licensed as a junk dealer, junk  
93 dealer's agent or itinerant junk collector.

94 No person, engaged in the junk business shall engage a  
95 person as a junk dealer's agent who is ineligible to receive a

96 resident junk dealer's or junk dealer's agent's license.

97 Any license issued upon false affidavit or any improper  
98 license issued hereunder shall be ipso facto void.

99 (f) It shall be unlawful for any person or persons to barter,  
100 purchase, exchange, buy or accept from any person whatso-  
101 ever, except plumbers, the owner or owners of buildings from  
102 which the material is taken, coal companies, industrial, manu-  
103 facturing and public utility companies, or the authorized  
104 agents of such companies, lawful owners and licensed junk  
105 dealers, copper trolley wire, aluminum wire, brass bearings or  
106 fittings, tools, drilling equipment, casings, tubing, pipe, ma-  
107 chinery of all kinds and characters, or lead, shipped or de-  
108 livered from points within this state. Every junk dealer pur-  
109 chasing any of the items mentioned in this subsection from the  
110 aforesaid persons, shall accurately list such purchase in a per-  
111 manent record showing kind and character of junk purchased,  
112 date of purchase and from whom purchased, which shall be  
113 open to the inspection of all law enforcement officers.

114 It shall be unlawful for any junk dealer to purchase any of  
115 the items mentioned in this subsection. except from the persons  
116 named aforesaid, without securing from the seller a bill of sale,  
117 receipt or other proof of lawful ownership, which shall be re-  
118 tained by such purchaser or dealer, and the said purchaser or  
119 dealer shall list in a record book the full name and address of  
120 the seller, a complete description of the kind and character of  
121 the junk or material purchased, the hour and day purchased,  
122 and the license number of any automobile or truck which may  
123 be used in making delivery of such junk or material, which  
124 record shall be open to the inspection of all law enforcement  
125 officers, and be preserved for a period of not less than one year.

126 Every nonresident junk dealer or nonresident junk dealer's  
127 agent, or itinerant junk collector, before transporting any of  
128 the items mentioned in this section from this state, shall  
129 register with the sheriff of the county where such purchase was  
130 made, a complete description of the property he proposes to  
131 transport from the state, showing the date of purchase, the  
132 names of the buyer and seller, the party to whom it is to be  
133 consigned, and the license number of any automobile or truck  
134 which may be employed in transporting such junk and shall  
135 leave such junk material in the county where purchased for

136 not less than five days after reporting to the sheriff, before  
137 removing from the county.

138 (g) Any person who shall violate any of the provisions of  
139 this section shall be guilty of a misdemeanor, and upon conviction  
140 thereof shall be fined not less than fifty dollars and not  
141 more than five hundred dollars, and upon a second conviction  
142 for an offense under this section, in addition to the fine, the  
143 license of the person so convicted of a second offense shall be  
144 revoked and no further license shall be granted to the said  
145 person so convicted; and it shall be the duty of any law enforcement  
146 officer to arrest, without a warrant, any person in  
147 charge of any vehicle used in the transportation of junk which  
148 does not have displayed thereon the permit number of the junk  
149 dealer or junk dealer's agent for whom such junk is being  
150 transported. The arresting officer shall hold in his possession  
151 any vehicle operated without a license until any fine imposed  
152 upon the driver or owner of the vehicle is paid and a proper  
153 license is obtained; upon failure to pay the fine and secure the  
154 license within ten days from conviction, the sheriff of the  
155 county in which said vehicle is held shall confiscate the same,  
156 and the sheriff shall give notice to the owner of the vehicle by  
157 publication in a newspaper of general circulation in said  
158 county, at least ten days prior to the date of sale, that the said  
159 vehicle will be sold at public auction to the highest bidder, and  
160 out of the funds derived the sheriff shall pay first to the justice  
161 of the peace the costs and fine, and secondly shall pay to the  
162 state of West Virginia a sufficient sum of money to secure a  
163 proper license, and any sums of money remaining in his hands  
164 shall be promptly transmitted to the owner of the truck by registered  
165 mail or otherwise. A report of said sale shall be made  
166 by the sheriff to the justice of the peace, who shall record  
167 the same in his docket where the record of the convictions  
168 and the fines is kept.

169 Any person engaged in any business other than the junk  
170 business shall have the right to convey junk which may have  
171 accumulated in connection with his business by vehicle or  
172 otherwise for the purpose of disposal or sale without complying  
173 with the provisions of this section, or may purchase  
174 and transport junk used in the operation of his business:  
175 *Provided, however,* That this section shall not apply to ve-

176 hicles used by common carriers in the transportation of junk  
177 as an incident to the business of such common carriers.

Sec. 32. *Hawkers and Peddlers.* (a) The annual license  
2 fee to act as a hawker or peddler, if the person licensed travels  
3 without a motor vehicle, shall be ten dollars; if he travels  
4 with a motor vehicle of not more than one-half ton capacity,  
5 fifteen dollars; if he travels with a motor vehicle of more than  
6 one-half ton capacity, but not exceeding one ton capacity,  
7 fifty dollars; if he travels with a motor vehicle of more than  
8 one ton capacity, but not exceeding two tons' capacity, one  
9 hundred dollars; and if he travels with a motor vehicle of  
10 more than two tons' capacity, one hundred fifty dollars, plus  
11 one hundred dollars for each additional ton or fraction  
12 thereof over two tons' capacity; and the person licensed shall  
13 pay at the same rate for each and every motor vehicle so used.  
14 Such person shall carry his license in some conspicuous place  
15 in his vehicle or about his pack; and in addition thereto he  
16 shall cause to be painted or stenciled in a conspicuous place on  
17 the left-hand side of his vehicle the number of such license and  
18 the words "West Virginia Hawker and Peddler" and the  
19 license year for which said license is issued, which said infor-  
20 mation shall be in black letters on a white background, and  
21 the whole thereof shall be at least eight by twenty inches in  
22 size. Such license shall be coextensive with the state, shall not  
23 be subject to the restrictions of section forty-four of this  
24 article, and shall not be assignable to any other person.

25 When used in this section, the term "sale" shall mean and  
26 include both sales for money payment or for barter, and  
27 offers to make any such sales.

28 Any person who shall carry goods, wares or merchandise  
29 from place to place, either in person or by agent or employee,  
30 and sell, for delivery at the same time, any such goods, wares  
31 or merchandise to any purchaser, at wholesale or retail, shall  
32 be deemed a hawker or peddler under this section.

33 (b) The provisions of this section shall not apply to any  
34 person who sells any goods, wares or merchandise to be de-  
35 livered in the future; or to any of the following who offer  
36 immediate delivery of the goods, wares or merchandise being  
37 sold:

38 1. Any person or persons engaged within this state in the

39 business or calling of agriculture, horticulture or grazing, who  
40 sells or sell individually or collectively, one or more for the  
41 other or others, the products derived from his or their business  
42 or calling aforesaid;

43 2. Any person engaged in the maintenance or operation of  
44 a retail merchandise store to exchange goods, wares or merchandise  
45 from such store for agricultural, horticultural or grazing products  
46 or to resell any such products received in due course of such business;  
47 nor to any other retail business concern, established and operating  
48 continuously for one year or more within this state in the sale of any  
49 product or products over regular routes;

51 3. Any wholesaler or jobber selling soft drinks or non-intoxicating  
52 beer for which he is duly licensed under other provisions of this chapter;

54 4. Any person who sells petroleum products, ice, wood, meats, milk,  
55 ice cream, bread, cakes, pies, and other bakery products, butter and  
56 eggs, manufactured, grown or produced by any such person and not  
57 purchased by him for resale;

58 5. Any sales by societies, groups or organizations acting for charitable,  
59 religious or benevolent purposes.

60 6. Any agent or salesman selling manufactured products, except green  
61 groceries and canned or bottled fruit products, produced by his employer,  
62 and who sells the same to retail dealers for the purpose of resale.

64 *Provided, however,* That any person exempt from license as  
65 above provided, shall obtain from the clerk of the county court of the  
66 county of his residence a license receipt, without cost, showing that he  
67 is so exempt, which shall be effective for the period as provided for  
68 annual licenses in this article and shall be coextensive with the entire  
69 state; but to obtain such license receipt he shall make an affidavit and  
70 produce such other evidence as to the facts entitling him to such exemption  
71 as the clerk, in his discretion, may require, which shall be on a form  
72 to be prescribed by the tax commissioner of this state.

2 **Sec. 33. Itinerant Vendors.** (a) When used in this section the term  
3 "itinerant vendor" shall mean and include all persons who engage or  
4 conduct within this state, either in one locality, or in traveling from  
5 place to place, a temporary or transient business of selling goods,  
6 wares and merchandise;

6 and who, for the purpose of carrying on such business, use,  
7 lease or occupy either in whole or in part, a room, building  
8 or other structure, or who use, lease or occupy for such pur-  
9 poses a room or rooms in any hotel or lodging house, for the  
10 exhibition and sale of such goods, wares and merchandise;  
11 and the person so engaged shall not be relieved from the pro-  
12 visions of this section by reason of association temporarily  
13 with any local dealer, trader, merchant or auctioneer, or by  
14 conducting such temporary or transient business in connec-  
15 tion with or as part of the business of, or in the name of, any  
16 local dealer, trader, merchant or auctioneer. The provisions  
17 of this section shall not apply to sales made to persons by  
18 commercial travelers, or selling agents in the usual course of  
19 business, nor to bona fide sales of goods, wares or merchandise  
20 by sample for future delivery; nor to hawkers or peddlers in  
21 the streets, roads or highways, from packs or vehicles, nor to  
22 persons selling meat or the products of the farm, garden or  
23 dairy, nor to any sales of goods, wares or merchandise on the  
24 grounds of any agricultural association during the continu-  
25 ance of any annual fair held by such association; nor to any  
26 sales by societies acting for charitable, religious or benevolent  
27 purposes; nor to judicial sales directed by law, or under the  
28 orders of any court; nor to the sales of the common necessities  
29 of life in any public market place.

30 (b) No itinerant vendor shall advertise, represent or hold  
31 forth a sale of goods, wares or merchandise as a bankrupt,  
32 insolvent, assignee, trustee, estate, executor, administrator,  
33 receiver, attorney, manufacturer's, wholesale or closing-out  
34 sale, or a sale of any goods damaged by smoke, fire, water or  
35 otherwise, unless before so doing he shall state in writing,  
36 under oath, to the clerk of the county in which such business  
37 is proposed to be conducted at the time he makes application  
38 for a license, hereinafter provided for, all the facts relating  
39 to the reason and character of such special sale or advertised,  
40 held forth, or represented, including a statement of the names  
41 of the persons from whom such goods, wares or merchandise  
42 were purchased, and the date of the delivery of the same to  
43 the person applying for license; the place, if any, where such  
44 goods, wares or merchandise were previously exposed for sale,  
45 and such details as are necessary to exactly locate and fully  
46 identify all such goods, wares and merchandise proposed to be

47 sold. And such itinerant vendor shall also include in such  
48 statement the name and residence of the owner or owners in  
49 whose interest the business is conducted, to be kept on file in  
50 the office of such clerk of the county court, and a record shall  
51 be kept by said clerk of all such statements, in convenient form  
52 and open to public inspection.

53 (c) Every itinerant vendor desiring to do business within  
54 this state shall deposit with such clerk of the county court the  
55 sum of five hundred dollars, as a special deposit, before a  
56 license shall be issued to him, as hereinafter provided, au-  
57 thorizing him to do business in this state, in conformity with  
58 the provisions of this article. Such deposit shall be held by  
59 such clerk for a period of thirty days after such itinerant  
60 vendor ceases to do business within this state, and after satis-  
61 fying all claims which shall be made against him under the  
62 next following subsection hereof, such clerk shall return such  
63 deposit or such portion thereof as remains in his hands to  
64 such itinerant vendor who deposited the same.

65 (d) The deposits so made with such clerk shall be subject  
66 to attachment and execution on behalf of creditors, whose  
67 claims arise in connection with the business conducted within  
68 this state, and to the payment of fines and penalties incurred  
69 by such itinerant vendor in violation of this article as may be  
70 fixed by the judgment of appropriate courts having jurisdic-  
71 tion thereof, as well as for any unpaid taxes assessed, laid or  
72 charged, by any proper authorities, upon such goods, wares  
73 and merchandise, and such deposit or any remaining portion  
74 thereof shall not be paid to such itinerant vendor until all  
75 outstanding claims or notices of claims, presented within  
76 thirty days after he ceases to do business, are settled in full.

77 (e) The annual license fee to carry on the business of  
78 itinerant vendor, shall be five hundred dollars, and no such  
79 license shall be issued, or such license tax assessed, for any  
80 period of less than one year.

81 (f) Every itinerant vendor who sells or exhibits for sale at  
82 public or private sale, any goods, wares or merchandise with-  
83 out first obtaining a license therefor, and in all other respects  
84 complying with the provisions of this article, or who makes  
85 any false statement in reference to the matter set out in sub-  
86 section (b) hereof, or who fails to comply with the require-  
87 ments of any of the sections of this article, and every person,



88 whether principal or agent, who, by circular, handbill, news-  
89 paper, or in any manner advertises such sale, as herein de-  
90 scribed, before proper licenses are issued to the vendor, and  
91 before he has complied with the provisions of this article, shall  
92 be guilty of a violation of this article, and shall be punished  
93 accordingly.

2 Sec. 34. *Ferries.* The annual license fee to operate a ferry  
2 for public use shall be five dollars.

2 Sec. 40. *Application for and Issuance of Licenses.* All the  
2 licenses provided for in this article shall be issued by the clerk  
3 of the county court of the county where such business, ac-  
4 tivity, trade or employment is proposed to be engaged in or  
5 prosecuted, or by any other official expressly designated as  
6 issuing agent, to any person making proper application, and  
7 tendering in full the proper fee as specified in this article.  
8 The said clerk, or other issuing agent, shall collect in full the  
9 proper fee and determine to his satisfaction that all the con-  
10 ditions precedent to the granting of such license have been  
11 fulfilled by the applicant before issuing a certificate of license.

12 The clerk of the county court, or other issuing agent, may  
13 obtain a certificate of license from the clerk of the circuit  
14 court in the same manner and under the same conditions as  
15 another person may obtain such certificate from the clerk of  
16 the county court. The clerk of the circuit court, in relation  
17 to such certificate issued by him, shall perform the same duties  
18 and be subject to the same penalties as the clerk of the county  
19 court would be in relation to a certificate issued by him.

2 Sec. 41. *Conditions Precedent to Doing Business.* Payment  
2 in full of the proper fee as specified in this article, the issu-  
3 ance of a certificate of license under the provisions of the  
4 preceding section, and the fulfillment of all terms and condi-  
5 tions of such grant shall be conditions precedent to the trans-  
6 action of any business, activity, trade or employment for  
7 which a license is required by this article.

2 Sec. 42. *Effect of State License.* Nothing in this article,  
2 and no payment or issuance of any certificate of license under  
3 the provisions hereof, shall be deemed to legalize any act  
4 which otherwise may be in violation of law, or to exempt any  
5 person from any penalty prescribed for such violation.

Sec. 43. *Effect of State License Within Municipalities.*

2 When any municipality is authorized by its charter or by  
3 any law of this state to impose a penalty for engaging in or  
4 prosecuting any business, activity, trade or employment  
5 within the limits of such municipality without first having  
6 obtained a license therefor pursuant to the ordinances of such  
7 town, no state license issued under this article shall exonerate  
8 the licensee from any such penalty, unless otherwise expressly  
9 provided, whether such penalty be greater or less than that  
10 imposed for the violation of the provisions of this article.

Sec. 44. *Designation of Specific Location on Certificate.*

2 Every certificate of license issued under the provisions of  
3 section forty of this article shall designate the location of such  
4 business, activity, trade or employment at some specified  
5 building or other definite place, unless expressly provided  
6 otherwise. Exercising any of the privileges granted by any  
7 such license elsewhere than at such specified building or other  
8 definite place shall be deemed to have been done without a  
9 license. Any certificate which does not contain the designation  
10 required by this section shall be null and void.

Sec. 45. *Time for Which Licenses Granted.* All annual

2 licenses issued under the provisions of this article shall be for  
3 a period of one year beginning on the first day of July and  
4 ending on the thirtieth day of the following June: *Provided,*  
5 *however,* That in the event any business, activity, trade or  
6 employment is begun after the first day of July of any year  
7 a license effective until the thirtieth day of the following June  
8 shall be issued upon the payment of that proportion of the  
9 annual fee designated by this article as the number of months  
10 remaining until the following thirtieth day of June, including  
11 the month during which such license shall have been issued,  
12 bears to twelve: *Provided further, however,* That no license  
13 for any purpose for any length of time shall be issued for  
14 less than two dollars. Each of the provisions of this section  
15 shall be deemed subject to expressly contrary provisions else-  
16 where in this article.

Sec. 46. *Appeals to Tax Commissioner.* Any person feeling

2 aggrieved by the decision of the clerk of the county court in  
3 refusing to issue any license provided for in this article, in

4 the amount of the fee assessed therefor, or in any other re-  
5 spect, or by the revocation of any such license by the county  
6 court may, within thirty days from the date of such decision,  
7 file a written petition with the state tax commissioner to re-  
8 view such decision. The tax commissioner, or his specially  
9 designated agent, shall review the decision and in his discre-  
10 tion affirm, reverse or alter the same in any respect; and by  
11 written notice direct the county clerk to issue or revoke the  
12 certificate of license, or alter any of the conditions or terms  
13 of its issuance, to conform to the findings of the tax commis-  
14 sioner. The tax commissioner, or his agents, in reviewing such  
15 decision, may administer oaths, take testimony, require the  
16 attendance of any witnesses having knowledge of the matter  
17 in controversy, and examine any pertinent books, papers,  
18 records, memoranda or equipment of the petitioner.

Sec. 47. *Review by Circuit Court.* Any person feeling  
2 aggrieved by the decision of the state tax commissioner un-  
3 der the provisions of the preceding section may, within thirty  
4 days from the date of such decision, file a petition with the  
5 circuit court of the county in which he resides, or in which  
6 he has exercised or proposes to exercise the privileges of the  
7 license in question, to review such decision. The circuit court  
8 shall review the decision and in its discretion affirm, reverse or  
9 alter the same in any respect; and enter an order directed  
10 to the county clerk to issue or revoke the certificate of li-  
11 cense or alter any of the conditions or terms of its issuance,  
12 to conform to the finding of the circuit court. Ten days'  
13 written notice of such hearing before the circuit court shall  
14 be given the state tax commissioner.

Sec. 48. *Appeals to Supreme Court of Appeals.* Any person  
2 feeling aggrieved by the decision of the circuit court under  
3 the provisions of the preceding section may appeal to the  
4 supreme court of appeals as in other civil cases.

Sec. 49. *Exhibition of Licenses.* Every person to whom a  
2 certificate of license shall be issued under the provisions of  
3 this article shall keep such certificate posted in a conspicu-  
4 ous position in the place where the privileges of such license  
5 are exercised.

6 Such certificate of license shall be produced for inspection

7 whenever required by the tax commissioner or his deputies  
8 or by the prosecuting attorney or sheriff of the county wherein  
9 the privileges of such license are exercised.

Sec. 50. *Licenses, a Personal Privilege.* Every license is-  
2 sued under the provisions of this article shall confer a per-  
3 sonal privilege only to transact the business, activity, trade  
4 or employment which may be the subject of the license and  
5 shall not be exercised except by the person holding the same  
6 unless and until assigned under the terms of the next section.  
7 After any such assignment, the license shall be a personal  
8 privilege of the assignee and shall not be exercised by any  
9 person other than such assignee, unless and until again as-  
10 signed under the terms of the next section.

Sec. 51. *Assignment of License.* Any license issued under  
2 the provisions of this article may, unless otherwise specifically  
3 provided, be assigned in the manner set out in this section to  
4 any person to whom it might have been originally granted,  
5 and in the event of the death of the licensee the license may  
6 be assigned by his personal representative in like manner and  
7 with like effect as might have been done by the licensee him-  
8 self. A memorandum of the same shall be endorsed on the  
9 face of the certificate of license by the assignor, and such  
10 memorandum attested by the clerk of the county court who  
11 granted the license, the state tax commissioner, or any of his  
12 agents. If the assignee would have been subject to a greater  
13 fee than the assignor, had the license originally been granted  
14 to him, such assignment shall be valid only after the pay-  
15 ment of the difference between such two fees, prorated how-  
16 ever in the same manner as provided by section forty-five of  
17 this article for the original issuance of licenses.

Sec. 52. *Effect of Change in Partners or Name of*  
2 *Firm.* No changes in the name of the firm, nor the taking in  
3 of one or more new partners, nor the withdrawal of one or  
4 more members of the firm, so long as at least one member re-  
5 mains the same, shall be considered as terminating the privi-  
6 leges of any license granted to such partners or firm.

Sec. 53. *Change of Place of Business.* Any license is-  
2 sued under the provisions of this article may, unless other-  
3 wise specifically provided, be altered in the manner set out in

4 this section so as to permit removal of such business, activity,  
5 trade or employment to another location within the same  
6 county if it might have been originally granted under such al-  
7 tered conditions. A memorandum of the same shall be en-  
8 dorsed on the face of the certificate of license by the holder  
9 thereof, and such memorandum attested by the clerk of the  
10 county court who granted the license, the state tax commis-  
11 sioner, or any of his agents. If the holder thereof would have  
12 been subject to a greater fee at the date of issuance than he  
13 actually paid, had the license originally been granted to be  
14 exercised at the proposed altered location, such alteration  
15 shall be valid only after the payment of the difference be-  
16 tween such two fees, prorated however in the same manner as  
17 provided by section forty-five of this article for the original  
18 issuance of licenses.

Sec. 54. *Revocation or Alteration of License.* Any license is-  
2 sued under the provisions of this article may be revoked, or  
3 any of the terms and conditions of its issuance altered by the  
4 county court whose clerk shall have granted the same, or by the  
5 state tax commissioner, upon written petition of any inter-  
6 ested person or upon its or his own motion, if a showing is  
7 made of the violation by the licensee of any of the terms or  
8 conditions of the license, or of any of the provisions of this  
9 article. Ten days' written notice of the proposed revocation  
10 and the privilege of being heard in person or by counsel shall  
11 be given the licensee. In the event the license is revoked any  
12 fee paid on account thereof shall be forfeited to the state.

Sec. 55. *Transmittal to State Auditor.* The clerk of every  
2 county court shall transmit to the state auditor on or before  
3 the fifteenth day of each month a true and complete list of  
4 all persons to whom certificates of licenses have been issued in  
5 his county during the next preceding month together with  
6 all the fees collected therefor, specifying in such list the date  
7 of every certificate, the amount of the fee assessed therefor,  
8 the amount actually paid and such other particulars as may  
9 be required by the state tax commissioner. Such list shall be  
10 verified by the affidavit of the clerk. If no certificate of li-  
11 cense was issued during any month, such fact shall be re-

12 ported to the auditor by the clerk of the county court, veri-  
13 fied by his affidavit.

Sec. 56. *Proceeding by Auditor Against County Clerk.* In the  
2 event any county clerk fails to account as required by the pre-  
3 ceding section, the state auditor may, at any time after three  
4 months following such failure, proceed by notice of motion or  
5 other appropriate action in any court having jurisdiction  
6 against such defaulting officer and the sureties on his official  
7 bond. Judgment shall be entered in the case as the law and  
8 equity may require, together with interest thereon at the rate  
9 of twelve per centum per annum from the time of such failure  
10 to account until actually paid.

Sec. 57. *Penalty for Neglect of Duty.* If any clerk of any  
2 county court, or any other public official, shall fail to per-  
3 form any duty required of him by this article, or to obey any  
4 lawful instructions of the state tax commissioner, pursuant  
5 to section fifty-eight of this article, he shall be liable to a  
6 penalty of not less than ten dollars, nor more than one hun-  
7 dred dollars for every such offense, in addition to all other  
8 penalties provided by law.

Sec. 58. *Instructions and Forms by Tax Commissioner.* The  
2 state tax commissioner shall give such instructions from time  
3 to time to the county courts, to the clerks of the county courts,  
4 sheriffs and other public officials respecting their duties under  
5 this article, as may seem to him expedient. He shall also  
6 supply such officials with such forms to be used in carrying  
7 out the provisions of this article as may seem to him ex-  
8 pedient, and all certificates of licenses issued shall be in sub-  
9 stantial compliance therewith.

Sec. 59. *Enforcement by Tax Commissioner.* In the event  
2 the tax commissioner shall discover any person transacting  
3 any business, activity, trade or employment for which a li-  
4 cense is required by this article, without having obtained  
5 such license, he shall issue a certificate of license to such per-  
6 son and collect the amount of the fee due. He shall keep a  
7 full and accurate record of all the licenses issued and fees  
8 collected by him and make return thereof to the state auditor  
9 in the manner prescribed by section fifty-five of this article

10 for like reports of county clerks. He may require the serv-  
11 ices of the sheriff in making collections. The state tax commis-  
12 sioner, with the approval of the governor, may appoint agents  
13 to collect fees required by, or to enforce in any other re-  
14 spect, the provisions of this article or article eleven of this  
15 chapter. The compensation of such agents shall be paid out  
16 of the taxes so collected. The tax commissioner, or his agents,  
17 shall charge, either for issuing a certificate of license or for  
18 attesting a memorandum of change or alteration on any cer-  
19 tificate, the same fees as provided for county clerks in section  
20 ten, article one, chapter fifty-nine of this code.

Sec. 60. *Collection by Distraint.* The clerk of the county  
2 court, the state tax commissioner, or his deputies, may dis-  
3 train upon any personal property, including intangibles, of  
4 any person delinquent in the payment of fees and penalties  
5 accrued and unpaid under the provisions of this article. The  
6 clerk of the county court, the tax commissioner, or his depu-  
7 ties, may require the assistance of the sheriff of any county  
8 in levying such distress in the county in which such sheriff  
9 is an officer. A sheriff so collecting taxes due hereunder shall  
10 be entitled to compensation in the amount of all penalties  
11 collected over and above the principal amount of the tax due,  
12 but in no case shall such compensation exceed twenty-five  
13 dollars. All taxes and penalties so collected, less the com-  
14 pensation above, shall be remitted within ten days after  
15 collection to the issuing agent at whose request distraint was  
16 made. The tax commissioner shall prescribe by general regu-  
17 lation the manner of remittance of such funds and of allow-  
18 ing the collecting officer the compensation due him under this  
19 section. The sheriff shall be authorized to distraint imme-  
20 diately upon request, as aforesaid, for the amount with  
21 which any person may have been assessed under the pro-  
22 visions of this article, and to sell upon ten days' notice so  
23 much of said person's personal property, subject to such dis-  
24 tress, as may be necessary to pay the tax so assessed, includ-  
25 ing penalties.

Sec. 61. *Injunction Against Unlicensed Business.* If any  
2 person engages in or prosecutes any business, activity, trade  
3 or employment contrary to any of the provisions of this ar-

4 ticle, whether without obtaining a license therefor before  
5 commencing the same, or by continuing the same after the  
6 termination of the effective period of any such license, the  
7 circuit court, or the judge thereof in vacation, of the county  
8 in which such violation occurred, shall, upon proper applica-  
9 tion in the name of the state, and after ten days' written no-  
10 tice thereof to such person, grant an injunction prohibiting  
11 such person from continuing such business, activity, trade or  
12 employment until he has fully complied with the provisions  
13 of this article. The remedy provided in this section shall be  
14 in addition to all other penalties and remedies provided by  
15 law.

*Sec. 62. Additional Penalties When Business Transacted*

2 *Without License.* Any person engaging in or prosecuting any  
3 business, activity, trade or employment contrary to the pro-  
4 visions of this article, whether without obtaining a license  
5 therefor before commencing the same, or by continuing the  
6 same after the termination of the effective period of any such  
7 license, shall, in addition to paying the license fee, be liable  
8 to the following penalties: If the license fee to which he is  
9 subject is an annual one, or for a period of one month or  
10 more, ten per cent of such fee for each month or part thereof  
11 during which he had been in default; if the license fee afore-  
12 said is for any period less than one month, ten per cent of  
13 such fee for each such period or part thereof during which he  
14 has been in default; and if the license fee aforesaid is for the  
15 doing of a single act, ten per cent of such fee or each such act  
16 done while in default. Such penalty shall be deemed a license  
17 fee and shall be assessed and collected in the manner prescribed  
18 in this article for other license fees, except that the certifi-  
19 cate of license issued therefor and the report thereof made to  
20 the state auditor shall indicate separately the amount of the  
21 license fee and the penalty. It shall be the duty of the officer  
22 who issues the certificate of license to state therein the full  
23 amount of the tax thereof and the penalty separately; and it  
24 shall be the duty of the officer charged with the collection of  
25 the tax on such license to collect the full amount thereof and  
26 the penalty. It shall be the duty of the auditor to charge the  
27 officer with the full amount of such tax and penalty.



2       Sec. 63. *Collection of Back Taxes.* Any person engaging  
3 in or prosecuting any business, activity, trade or employment  
4 contrary to the provisions of this article, whether without ob-  
5 taining a license therefor before commencing the same, or by  
6 continuing the same after the termination of the effective  
7 period of any such license, shall, in addition to all other pen-  
8 alties provided for in this article, be liable to the payment of  
9 all back taxes and penalties for a period not exceeding five  
years.

2       Sec. 64. *Criminal Liability for Violation of Provisions of*  
3 *Article; Jurisdiction.* Any person violating any of the pro-  
4 visions of this article shall be guilty of a misdemeanor and  
5 upon conviction thereof shall be fined not less than twenty nor  
6 more than one hundred dollars, or confined in jail not more  
7 than three months, or both, in the discretion of the court; and  
8 each day or part thereof that any violation shall continue  
9 shall be deemed to constitute a distinct and separate offense  
10 and be punishable accordingly. Justices of the peace shall  
11 have concurrent jurisdiction with any other courts having  
12 jurisdiction for the trial of all misdemeanors arising under  
this section.

2       Sec. 65. *Provisions Remedial.* The foregoing sections of  
3 this article shall in all cases be construed as remedial and  
not penal.

2       Sec. 66. *Interpretation of Sections Forty Through Sixty-*  
3 *Five.* None of the provisions of sections forty through sixty-  
4 five, inclusive, of this article, shall affect any of the following  
5 sections dealing with corporation land-holding or charter  
taxes, unless specifically so provided.

2       Sec. 75. *Tax on Corporations Holding More Than Ten*  
3 *Thousand Acres of Land.* Every corporation, including rail-  
4 road and other corporations, holding more than ten thousand  
5 acres of land in this state shall pay to the state a tax of five  
6 cents per acre for the privilege of acquiring and holding of  
7 land so acquired and held by it in addition to ten thousand  
8 acres. Such corporations shall, under the hand of the president  
9 and seal of the corporation, and attested by the secretary, ap-  
ply to the secretary of state for a certificate authorizing the

10 holding of the number of acres stated in such application, and  
11 pay the tax thereon; and it shall be the duty of the secretary  
12 of state to issue to such corporation a certificate stating the  
13 amount of tax paid and the number of acres on which paid, and  
14 the number of acres the corporation is thereby entitled to hold.  
15 Hereafter a domestic corporation shall state in its agreement  
16 for incorporation and a foreign corporation shall state in its  
17 application for authority to hold property and transact busi-  
18 ness in this state, the number of acres it desires to hold, and  
19 pay the taxes thereon to the secretary of state before the cer-  
20 tificate of incorporation or of authority is issued. If any corpo-  
21 ration desires to increase the number of acres it may hold, it  
22 shall make application therefor to the secretary of state. Such  
23 application shall be signed by the president of the corporation,  
24 sealed with its corporate seal, and attested by the secretary,  
25 and shall state the number of acres it then holds and the  
26 number of acres it desires to hold. The secretary of state  
27 shall collect the proper amount of tax and shall issue to the  
28 corporation a certificate reciting the number of acres the  
29 corporation may hold and the amount of tax paid to him. If  
30 any corporation shall fail to comply with the provisions of  
31 this section it shall be liable to a fine of not less than twenty-  
32 five nor more than five hundred dollars, and be liable to pay  
33 such tax due to the state with a penalty of ten per cent on the  
34 total amount due, and be liable to all the provisions of sec-  
35 tions eighty-six and eighty-seven of this article so far as  
36 they are applicable. All moneys received by the secretary  
37 of state under the provisions of this section shall be reported  
38 to the auditor, and paid into the state treasury in the man-  
39 ner prescribed for the payment of other moneys received by  
40 him. No corporation shall be required to pay the said tax of  
41 five cents per acre for license to hold any land in this state in  
42 excess of ten thousand acres for which such corporation shall  
43 have already paid a license tax at the time this law takes effect.

44 A corporation which has paid said tax may assign,  
45 without further payment by the assignee of the tax required  
46 hereunder, its license or authority to hold lands in excess of  
47 ten thousand acres provided the assignee shall be a corpora-  
48 tion organized solely to conduct the same general business and  
49 with the same stock ownership as the original licensee and

50 such assignment be accompanied by a conveyance and trans-  
51 fer to such assignee corporation of all the lands and other  
52 assets of the original licensee. Such assignment shall be filed  
53 with the secretary of state who, upon being satisfied that the  
54 assignee corporation has conformed to the foregoing require-  
55 ments, shall issue a certificate authorizing such assignee cor-  
56 poration to hold the same number of acres the original li-  
57 censee was authorized to hold.

Sec. 76. *Tax on Charters; Classification of Corporations.* For convenience in classification for prescribing and  
2 assessing license tax on charters or certificates of incorpor-  
3 ation, corporations are divided into two classes, domestic and  
4 foreign. A domestic corporation is (a) one incorporated by  
5 or under the laws of this state, or (b) under the laws of the  
6 state of Virginia before the twentieth day of June, eighteen  
7 hundred and sixty-three, and which has its principal place  
8 of business and chief works (if it have chief works) in this  
9 state. Every other corporation is a foreign corporation.  
10

Sec 77. *Relief from Assessment of Corporation License Tax.* Any corporation feeling aggrieved at the assessment of  
2 its license tax by the auditor, under the provisions of this ar-  
3 ticle may apply to the board of public works for relief; and  
4 the board shall have authority to consider such case, and also  
5 cases of the insolvency or financial distress of any corpor-  
6 ation or any other case involving such license tax. In any  
7 such case the board may fix the amount to be paid by such  
8 corporation in full discharge of the license tax and penalties  
9 due the state for the period named in the order made therein.  
10 Every such order shall be entered in the record of the board  
11 and a certified copy thereof shall be delivered to the auditor  
12 by the secretary of the board.  
13

Sec. 78. *Amount of License Tax on Domestic Corporations.*  
2 Every domestic corporation shall pay an annual license tax  
3 on its charter for the fiscal year beginning on the first day  
4 of July of each year, based on its authorized capital stock  
5 as follows: If the authorized capital stock be five thousand  
6 dollars, or less, twenty dollars; if more than five thousand  
7 dollars and not more than ten thousand dollars, thirty dol-

8 lars; if more than ten thousand dollars and not more than  
9 twenty-five thousand dollars, forty dollars; if more than  
10 twenty-five thousand dollars, and not more than fifty thou-  
11 sand dollars, fifty dollars; if more than fifty thousand dol-  
12 lars and not more than seventy-five thousand dollars, eighty  
13 dollars; if more than seventy-five thousand dollars and not  
14 more than one hundred thousand dollars, one hundred dollars;  
15 if more than one hundred thousand dollars and not more than  
16 one hundred and twenty-five thousand dollars, one hundred  
17 and ten dollars; if more than one hundred and twenty-five  
18 thousand dollars and not more than one hundred and fifty  
19 thousand dollars, one hundred and twenty dollars; if more  
20 than one hundred and fifty thousand dollars and not more  
21 than one hundred and seventy-five thousand dollars, one hun-  
22 dred and forty dollars; if more than one hundred and  
23 seventy-five thousand dollars and not more than two hundred  
24 thousand dollars, one hundred and fifty dollars; if more  
25 than two hundred thousand dollars and not more than one  
26 million dollars, one hundred and eighty dollars, and an ad-  
27 ditional twenty cents on each one thousand dollars, or frac-  
28 tion thereof, in excess of two hundred thousand dollars; if  
29 more than one million dollars and not more than fifteen mil-  
30 lion dollars, three hundred and forty dollars, and an ad-  
31 ditional fifteen cents on each one thousand dollars, or frac-  
32 tion thereof, in excess of one million dollars; if more than  
33 fifteen million dollars, twenty-five hundred dollars. The li-  
34 cense tax collected hereunder shall be in addition to the an-  
35 nual fee, if any, payable to the auditor as statutory attorney  
36 in fact. For the purpose of the assessment of the license tax  
37 provided by this section, and that provided by sections eighty  
38 and eighty-one of this article, and for no other purpose,  
39 shares of stock having no par value shall be presumed to be  
40 of the par value of twenty-five dollars each: *Provided, how-*  
41 *ever,* That if such stock was originally issued for a consider-  
42 ation greater than twenty-five dollars per share, such license  
43 taxes as are required to be paid to the auditor under the pro-  
44 visions of sections seventy-nine, eighty and eighty-one of this  
45 article shall be computed upon the basis of the consideration  
46 for which such stock was issued.

Sec. 79. *Assessment and Collection of Tax on Domestic Corporations.* When application is made to the secretary of state for a certificate of incorporation, it shall be his duty to make the assessment and collect the license tax for the first year before issuing such certificate. If such certificate be issued after the last day of the third month of the license year, he shall assess one-tenth of the amount of the annual tax for each month, or fractional part of a month, to ensue before the first day of the next license tax year; but in no case shall the amount assessed and collected be less than ten dollars in addition to the fee, if any, payable to the auditor as statutory attorney in fact. Thereafter, on or before the first day of the license tax year next following the date of the certificate of incorporation, and on or before the first day of each succeeding license tax year, the auditor shall collect such tax for a full year together with the statutory attorney fee; except that if the certificate of incorporation be issued on or after the first day of the second month preceding the beginning of the license tax year and before the first day of the ensuing license tax year, the secretary of state shall assess and collect the tax for the full year beginning on such first day of the license tax year in addition to the initial tax, together with the statutory attorney fee. The money so received by the secretary of state and the auditor shall be paid by them into the state treasury. Any corporation authorized by its charter to issue stock having no par value shall, within sixty days after its board of directors shall have authorized the issue of all or a portion of such stock under the provisions of article one, chapter thirty-one of this code, make a report to the auditor stating the number of shares of stock so authorized to be issued and the consideration for which such stock is authorized to be issued. Such report shall be verified by the affidavit of the president, secretary or other executive officer of such corporation.

Sec. 80. *License Tax on Foreign Corporations.* Every foreign corporation holding property or doing business in this state shall make report to the auditor annually in the third month preceding the beginning of the license tax year, in which report shall be set out: (a) The name of each cor-

6 poration, the name of the state or county by which incorpor-  
7 ated, the date of the incorporation, the date of the certificate  
8 of the secretary of state authorizing it to do business in this  
9 state, the place of its principal office, the names and post-  
10 office addresses of its president, secretary, and of its officers,  
11 if any, charged with the duty of making returns of its prop-  
12 erty for taxation and the name and post-office address of its  
13 attorney of record in this state; (b) the number of shares  
14 of its authorized capital stock having a par value and the  
15 par value of each share, and the number of its issued and  
16 outstanding shares and the par value of each share; (c) the  
17 number of shares of its authorized capital stock having no  
18 par value, the number of shares of such stock authorized to  
19 be issued and the considerations fixed for the issue of each  
20 share of the same by its charter or board of directors, and  
21 the number of shares thereof issued and outstanding; (d) the  
22 value of the property owned and used by such corporation  
23 within this state, where situate, of what it consists, and the  
24 number of acres of land it holds in this state, and the value  
25 of its property owned and used without this state; and (e)  
26 the proportion of its capital stock which is represented by  
27 property owned and used in the state of West Virginia. Such  
28 report shall be verified by the affidavit of the president, sec-  
29 retary or other executive officers of such corporation.

30 It shall be the duty of the auditor to assess and fix the  
31 license tax of such corporation according to the proportion of  
32 its issued and outstanding capital stock which is represented  
33 by its property owned and used in this state, which license  
34 tax shall be at the rate prescribed in section seventy-eight  
35 of this article, plus fifty per cent of such tax: *Provided*, That  
36 no such corporation shall pay an annual license tax of less  
37 than one hundred and fifty dollars, which shall be in ad-  
38 dition to the fee of the auditor as statutory attorney in fact.  
39 The auditor may in any case require such additional infor-  
40 mation as he may deem necessary to enable him to assess and  
41 fix the just amount of license tax of such corporation; and it  
42 shall be his duty to notify every such corporation of the  
43 amount so assessed by him, and it shall be the duty of the  
44 corporation to pay the same to the auditor of the state within  
45 thirty days thereafter, and if it fail to do so it shall be liable

46 to the penalties prescribed in sections eighty-six and eighty-  
47 seven of this article.

Sec. 81. *Preliminary Report by Foreign Corporations; Assessment; Collection of License Taxes.* Every foreign corporation at the time of its application for the certificate mentioned in section seventy-nine, article one of chapter thirty-one of this code, shall file with the secretary of state a report preliminary to the annual report hereinbefore provided for, which preliminary report shall contain sufficient information upon which to base an assessment of its license tax for the then current year. It shall be the duty of the secretary of state to make assessment of its license tax for such year, and he may require such further information as he may deem necessary for that purpose. Before issuing such certificate the secretary of state shall collect the amount of license tax he finds to be proper for the license tax year ending with the thirtieth day of the last month of the license tax year. If the certificate be issued after the last day of the third month of the license tax year and before the first day of the ensuing license tax year, the secretary of state shall assess and collect such taxes at the rate of one-tenth the amount of the annual license tax for each month or fractional part of a month to ensue before the first day of the ensuing license tax year. Thereafter on or before the first day of the license tax year next following the date of the certificate of authority and on or before every succeeding first day of the license tax year the auditor shall collect such tax for a full year: *Provided, That* if the certificate be issued in either of the last two months of the license tax year, the secretary of state shall assess and collect the license tax for such month, as well as for a full year beginning with the first day of the ensuing license tax year. When the auditor shall assess and collect the tax on any such foreign corporation, he may include in the tax for any year any amount that such corporation should have paid for any previous year and failed to pay. The collections hereunder shall be in addition to the annual fee of the auditor as statutory attorney in fact. All moneys collected by the secretary of state and the auditor shall be paid into the state treasury in the manner prescribed by law.

Sec. 82. *Annual Fee of Auditor as Attorney in Fact.* Every  
2 foreign corporation, and every domestic corporation whose  
3 principal place of business or chief works is located without  
4 this state, shall pay an annual fee of ten dollars for the  
5 services of the auditor as attorney in fact for such corpor-  
6 ation, which fee shall be due and payable at the same time,  
7 collected by the same officers, and accounted for in the same  
8 way, as the annual license tax.

Sec. 83. *Notice to Corporations Taxable; Statement on Pay-  
2 ment; Tax as Lien.* It shall be the duty of the auditor, be-  
3 tween the fifteenth day of the third month next preceding the  
4 first day of the license tax year and the fifteenth day of the  
5 second month next preceding the first day of the license tax  
6 year, in each year, to notify every corporation, liable to the  
7 tax imposed by this article, of the time of payment of such  
8 tax and the amount thereof, together with the fee, if any,  
9 payable to the auditor as statutory attorney in fact; such  
10 notices may be sent through the mails, addressed to the cor-  
11 poration at its last known post-office address as shown by the  
12 records in the office of the secretary of state. If the auditor  
13 shall make a mistake in the amount of such tax such corpora-  
14 tion may file a sworn certificate of the president, vice pres-  
15 ident or secretary of the corporation, showing such mistake,  
16 or showing the actual amount of tax due; and, in that event,  
17 it shall be the duty of the auditor to accept the amount due  
18 as shown by such certificate, unless contrary to provisions of  
19 this article. At the time of making payment to the auditor  
20 every domestic corporation shall deliver to him a statement  
21 which shall show the name of the corporation, the date of its  
22 charter, the name and post-office address of its attorney of  
23 record in this state, if any, the names and post-office addresses  
24 of its president, secretary and treasurer, the amount of its  
25 authorized capital stock, the number of acres of land it holds  
26 in this state if the number exceeds ten thousand acres, and  
27 such other facts as the auditor may require. Such statement  
28 shall be signed by the president, secretary or treasurer of the  
29 corporation. The amount of such tax shall be deemed a debt  
30 due the state, and shall be a lien as to an innocent purchaser  
31 for value, on the property and assets of the corporation prior  
32 to all other liens, except the lien of the taxes levied on its



33 property for state, county and district purposes, from the  
34 time a notice of such lien, specifying the year and the amount  
35 for which the lien is claimed, is filed in the office of the clerk  
36 of the county court of the county in which the property sub-  
37 ject to such liens is situated. Such clerk shall, upon the filing  
38 in his office of any such notice, record such notice in a sep-  
39 arate docket in his office to be known as "Corporation License  
40 Tax Lien Docket", and index the same in the name of the  
41 corporation against whom the lien is claimed. Upon payment  
42 of such lien debt there shall be executed by the auditor and  
43 delivered to the clerk of the county court in whose office  
44 notice of such lien is filed a release thereof, which said re-  
45 lease shall be filed and recorded by such clerk in like manner  
46 as releases of judgment liens are filed and recorded. Such  
47 tax shall be a preferred debt in case of insolvency.

Sec. 84. *Publication of List of Delinquent Corporations.* The  
2 auditor shall, between the first and fifteenth day of the second  
3 month of the license tax year in every year, publish in some  
4 daily newspaper of general circulation printed in this state, a  
5 list of all corporations failing to pay the license tax, or any  
6 part thereof, due therefrom on or before the first day of the  
7 first month of the license tax year. Such list shall contain the  
8 names of such delinquent corporations, arranged in two classes,  
9 domestic and foreign. The cost of such publication shall be paid  
10 by the auditor, when allowed by the board of public works,  
11 out of the moneys in the treasury. Any such delinquent cor-  
12 poration may, on or before the first day of the fifth month  
13 of the license tax year following or at any time before judg-  
14 ment or decree is entered as hereinafter provided, pay the  
15 amount of such tax and a penalty of one per cent per month  
16 for each month or fractional part thereof that such failure  
17 continued, but the amount of such penalty shall not be less  
18 than five dollars. After the publication of the list of delin-  
19 quent corporations by the auditor, he shall mail to the last  
20 known post-office address of each of such corporations a sup-  
21 plemental notice, together with a statement of the total  
22 amount of tax and penalties due therefrom, which notice shall  
23 be mailed at least thirty days before the first day of the fifth  
24 month of the license tax year.

Sec. 85. *Investigation of Corporation Delinquencies.* The  
2 auditor, with the approval of the governor, may appoint  
3 agents to investigate all violations of the provisions of this  
4 article concerning land holding or charter license taxes on  
5 corporations, and also for the purpose of collecting such taxes  
6 from all corporations which have not paid the same, whether  
7 due from domestic or foreign corporations. The compensation  
8 of all such agents shall be fixed by the board of public works.

Sec. 86. *Suit to Enforce Payment of Corporation License*  
2 *Tax.* Within thirty days after such first day of the fifth  
3 month of the license tax year the auditor shall certify to the  
4 governor and the secretary of state a list of all such delin-  
5 quent corporations, domestic and foreign. The secretary of  
6 state shall preserve the list in his office, and a certificate from  
7 him that the name of any corporation mentioned in such cer-  
8 tificate is delinquent in the payment of the license tax imposed  
9 by this article shall be prima facie evidence thereof. Within  
10 thirty days after receiving such list from the auditor the  
11 governor shall issue his proclamation, in which he shall de-  
12 clare the delinquency of every such corporation. A copy of  
13 such proclamation shall be filed and recorded in the office of  
14 the secretary of state, and be published in such newspapers  
15 as the governor may designate, not exceeding one in each con-  
16 gressional district; the costs of such publication shall be paid  
17 by the governor when allowed by the board of public works,  
18 sixty days after the date of the publication of such proclama-  
19 tion, it shall be the duty of the attorney general to institute  
20 on the chancery side of the circuit court, in the county in  
21 which the seat of government is, a suit or proceeding, or suits  
22 or proceedings, in the name of the state, in which such de-  
23 linquent corporations shall be made defendants; in the bill  
24 or petition so filed it shall only be necessary to allege that the  
25 corporations therein made defendants have failed to pay such  
26 license tax, and that each of them justly owes to the state the  
27 amount of license tax, penalty and fines stated therein, in  
28 connection with the name of the corporation, which amount  
29 shall be computed up to the first day of the month succeeding  
30 that in which such bill or petition is filed. No such corpora-  
31 tion shall interpose as a plea or defense in such suit the fact  
32 that the auditor failed to notify it as prescribed in this ar-

33 ticle, or that it failed to receive such notice, or that its name  
34 was not included in the list or proclamation hereinbefore  
35 mentioned. Upon the hearing of such suit, if it shall appear  
36 to the court that any such corporation has failed to pay any  
37 such license tax and the penalties and fines assessed against  
38 it, the court shall enter a decree or judgment against such  
39 corporation for the amount due, including the costs of the  
40 proceeding, or such portion of such costs as the court shall  
41 apportion to be paid by such corporation, and, if the same  
42 be not then and there paid, the court shall enter a decree if it  
43 be a domestic corporation, forfeiting its charter, rights and  
44 franchises; and if it be a foreign corporation, revoking its  
45 rights and privileges to hold property and transact business  
46 in this state. The amount of the judgment or decree including  
47 costs, entered against any corporation, and interest thereon  
48 until paid, may be collected by the attorney general, or be  
49 collected by the auditor in the same manner that other claims  
50 due the state are collected. In any such suit or proceeding  
51 the court may make such orders and decrees as it shall deem  
52 necessary and proper for a court of equity; and may appoint  
53 a receiver for any such corporation and order its assets mar-  
54 shalled and distributed among its creditors; and may, on  
55 motion of the attorney general, grant an injunction against  
56 any such corporation restraining it from the exercise of any  
57 franchise or the transaction of any business within this state,  
58 until such tax and the costs be paid. Any person or persons  
59 who shall exercise or attempt to exercise any powers under  
60 the charter of any such corporation, after the issuing of the  
61 governor's proclamation, shall be guilty of a misdemeanor,  
62 and shall be punished by imprisonment not exceeding one  
63 year, or a fine not exceeding one thousand dollars, or both,  
64 in the discretion of the court. The words "license tax" used  
65 in this section include, in addition to the amount of license  
66 tax proper, all penalties and fines accruing for failure to pay  
67 such tax, the annual fee of the auditor as statutory attorney  
68 in fact, and the cost of any suit or proceeding to enforce the  
69 collection of the same. When two or more corporations are  
70 included in one suit or proceeding the court shall apportion  
71 the cost thereof among them as it may deem just.

Sec. 87. *Process in Such Suit; Record of Forfeiture, Revocation or Dissolution.* In any such suit or proceeding process shall be served in the manner provided by law. The attorney general may cause a copy of any order of publication to be mailed to each corporation at its last known post-office address as aforesaid. It shall be the duty of the clerk of every court of this state in which any proceedings are had which result in the forfeiture of the charter of any corporation issued under the laws of this state, or result in the dissolution or extinction of any such corporation, or in the revocation of the rights and privileges, of any foreign corporation to do business in this state, to notify the secretary of state of any such forfeiture, dissolution, extinction or revocation, in which report he shall state the name of the court, the name of the corporation, the nature of the proceedings and the date of the order, decree or judgment, and such other pertinent matter as may be required by the secretary of state; and the secretary of state shall file and record such report in his office, and aptly note the same in the indexes of corporations kept in his office. If any clerk fail to make such report he shall be liable to a fine of not exceeding one hundred dollars.

Sec. 88. *Corporations Exempt from License Tax.* Nothing in sections seventy-five through eighty-nine inclusive of this article shall be construed as imposing a license tax on corporations chartered strictly for educational, literary, agricultural, scientific, religious or charitable purposes, or upon charters incorporating cemeteries or lodges of masons, odd fellows, or the like, or other charitable, fraternal or patriotic societies not incorporated for profit to the stockholders; but the secretary of state shall require full proof as to the character of any such corporation claiming such exemption from the payment of license tax. Every such corporation, however, shall, in the third month preceding the first day of the license tax year in each year, deliver to the auditor the statement required in section eighty-three of this article.

Sec. 89. *Monthly Report by Secretary of State to Auditor as to Corporations.* The secretary of state shall within twenty days after the close of each month make a report to the auditor for the preceding month, in which he shall set out the name of every corporation to which he issued a certificate of incorporation during the month, as well as the name of each

7 corporation to which he issued a certificate under section  
8 seventy-nine, article one, chapter thirty-one, of this code, with  
9 the amount of license tax paid to him by each; also he shall  
10 set out in such report the names of all corporations to which  
11 he issued, during such preceding month, certificates of in-  
12 crease or decrease of stock, or of shares of stock, or of par  
13 value of shares of stock; certificates of change of name or of  
14 change of location of principal office; and a statement of all  
15 moneys received by him during such preceding month from  
16 all sources and due to the state, and pay the same into the  
17 treasury; if he fail to do so it shall be the duty of the auditor  
18 to report such failure to the governor.

Sec. 90. *Duration of Existing License.* This article shall take  
2 effect from passage: *Provided, however,* That all licenses here-  
3 tofore issued shall remain in full force and effect during the  
4 period for which issued.

## CHAPTER 120

(House Bill No. 135—By Mr. Strouss)

AN ACT to amend article thirteen, chapter eleven of the code of  
West Virginia, one thousand nine hundred thirty-one, as  
amended, by adding a new section designated section two-f,  
and by amending and reenacting sections three, three-a, twelve  
and sixteen, all relating to privilege tax on business and occu-  
pations.

[Passed March 2, 1939; in effect ninety days from passage. Approved by the  
Governor.]

### Article 13. Business and Occupation Tax.

#### Section

- 2-f. Tax on business of industrial loan company.
- 3. Exemptions; non-exempt businesses.
- 3-a. Surtaxes; businesses exempt.
- 12. Lien of tax due and unpaid.
- 16. Prerequisite to final settlement with state or political subdivision contractor; penalty.

*Be it enacted by the Legislature of West Virginia:*

That article thirteen, chapter eleven of the code of West Vir-  
ginia, one thousand nine hundred thirty-one, as amended, be

amended by adding a new section designated two-f, and by amending and reenacting sections three, three-a, twelve and sixteen, all to read as follows:

Section 2-f. *Tax on Business of Industrial Loan Company.*

2 Upon every industrial loan company engaging or continuing  
3 in business in this state, the tax shall be equal to one per cent  
4 of the gross income of the business. The term "industrial loan  
5 company" as herein used shall mean any corporation formed  
6 under the provisions of article seven, chapter thirty-one of  
7 the code of West Virginia, one thousand nine hundred  
8 thirty-one, and any corporation formed, prior to the enact-  
9 ment of said article seven, with the approval of the commis-  
10 sioner of banking of this state under the laws governing  
11 formation of building and loan associations, whose plan of  
12 operation is as provided in said article seven.

Sec. 3. *Exemptions; Non-exempt Businesses.* There shall be  
2 an exemption in every case of twenty-five dollars in amount of  
3 tax computed under the provisions of this article. A person  
4 exercising a privilege taxable hereunder for a fractional part  
5 of a tax year shall be entitled to an exemption of the sum  
6 bearing the proportion to twenty-five dollars that the period  
7 of time the privilege is exercised bears to a whole year. Only  
8 one exemption shall be allowed to any one person, whether he  
9 exercises one or more privileges taxable hereunder.

10 The provisions of this article shall not apply to: (a) In-  
11 surance companies which pay the state of West Virginia a tax  
12 upon premiums: *Provided, however,* That said exemption shall  
13 not extend to that part of the gross income of insurance com-  
14 panies which is received for the use of real property, other  
15 than property in which any such company maintains its office  
16 or offices, in this state, whether such income be in the form of  
17 rentals or royalties; (b) persons engaged in the business of  
18 banking: *Provided, however,* That said exemption shall not  
19 extend to that part of the gross income of such persons which  
20 is received for the use of real property owned, other than the  
21 banking house or building in which the business of the bank  
22 is transacted, whether such income be in the form of rentals  
23 or royalties; (c) non-profit cemetery companies organized  
24 and operated for the exclusive benefit of their members:

25 (d) societies, organizations and associations organized and  
26 operated for the exclusive benefit of their members and not  
27 for profit; (e) corporations, associations and societies organ-  
28 ized and operated exclusively for religious or charitable pur-  
29 poses: *Provided, however,* That the exemptions of this section  
30 shall not apply to corporations or cooperative associations or-  
31 ganized under the provisions of article four, chapter nineteen  
32 of the code of West Virginia, one thousand nine hundred  
33 thirty-one, as amended; (f) building and loan associations and  
34 federal savings and loan associations.

Sec. 3-a. *Surtaxes; Businesses Exempt.* Every person tax-  
2 able under sections two-a, two-b, two-c, two-d and two-g of  
3 this article shall pay, in addition to that tax, and all other  
4 taxes, an additional surtax of three-tenths of each tax imposed  
5 by such sections.

6 The surtax imposed by this section shall not apply to:

7 (1) Water companies;

8 (2) Privileges taxed under section two-c except in the case  
9 of wholesalers or jobbers.

Sec. 12. *Lien of Tax Due and Unpaid.* A tax due and un-  
2 paid under this article shall be a debt due the state. It  
3 shall be a personal obligation of the taxpayer and shall be a  
4 lien upon all property used in the business or occupation upon  
5 which such tax is imposed and said lien shall have priority  
6 over all other liens and obligations except those due the  
7 United States. A penalty of five per cent of the tax shall be  
8 added for any default for thirty days or less, and for each  
9 succeeding thirty days elapsing before payment there shall  
10 be an additional penalty of one per cent, all of which penal-  
11 ties shall be secured by the lien herein provided.

Sec. 16. *Prerequisite to Final Settlement with State or Po-  
2 litical Subdivision Contractor; Penalty.* All state, county, dis-  
3 trict and municipal officers and agents making contracts on  
4 behalf of the state of West Virginia or any political sub-  
5 division thereof shall withhold payment in the final settle-  
6 ment of such contracts until the receipt of a certificate from  
7 the tax commissioner to the effect that all taxes levied or ac-  
8 crued under this article against the contractor with respect to  
9 such contracts have been paid. Any official violating this

10 section shall be guilty of a misdemeanor and, on conviction  
11 thereof, shall be fined not more than one thousand dollars or  
12 imprisoned not exceeding one year in the county jail, or shall  
13 be subject to both said fine and imprisonment, in the discre-  
14 tion of the court.

## CHAPTER 121

(House Bill No. 108—By Mr. Strouss)

AN ACT to amend article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as last amended, by adding a new section, to be designated as section eighteen-a, and by amending and reenacting sections one, two and twenty-nine of said article fifteen, all relating to a general consumers sales and service tax.

[Passed February 28, 1939; in effect from passage. Approved by the Governor.]

### Article 15. Consumers Sales Tax.

#### Section

1. General consumers sales and service tax imposed.
2. Definitions.
- 18-a. Receivership; bankruptcy; priority of tax.
29. Penalties; jurisdiction.

#### *Be it enacted by the Legislature of West Virginia:*

That article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as last amended, be further amended by adding a new section, to be designated section eighteen-a, and by amending and reenacting sections one, two and twenty-nine of said article fifteen, to read as follows:

- Section 1. *General Consumers Sales and Service Tax Imposed.* The purpose of this article is to impose a general consumers sales and service tax.

- Sec. 2. *Definitions.* For the purpose of this article:
- 2 (1) "Person" shall mean any person, firm, partnership,  
3 association, corporation, guardian, or committee.
  - 4 (2) "Tax commissioner" shall mean the state tax com-  
5 missioner.
  - 6 (3) "Gross proceeds" shall mean the amount received  
7 in money, credits, property or other consideration from sales



8 at retail within this state, without deduction on account of  
9 the cost of the property sold, amounts paid for interest or  
10 discounts, or other expenses whatsoever. Losses shall not be  
11 deducted, but any credit or refund made for goods returned  
12 may be deducted.

13 (4) "Sale at retail" shall mean any transaction by which  
14 the ownership of tangible personal property is transferred  
15 for a consideration, when the transfer is made in the ordinary  
16 course of the transferor's business and is made to the trans-  
17 feree for consumption or use or any other purpose, except  
18 resale in its original form without change or processing.  
19 "Sale at retail" includes conditional sales and transactions  
20 under whatever name whereby title is ultimately to pass,  
21 but presently retained for security. "Sale at retail" shall  
22 not include an isolated transaction in which any tangible  
23 personal property is sold, transferred, offered for sale, or  
24 delivered by the owner thereof, or by his representative for  
25 the owner's account, such sale, transfer, offer for sale or  
26 delivery not being made in the ordinary course of repeated  
27 and successive transactions of a like character by such owner  
28 or on his account by such representative.

29 (5) "Retail dealer" shall mean a person engaged in the  
30 business of sale at retail in this state, or one who furnishes  
31 services taxed by this article.

32 (6) "Wholesale dealer" shall mean a person engaged in  
33 this state in the business of selling to a retail dealer in this  
34 state for resale only, or of selling machinery, supplies and  
35 material in wholesale quantities, to contractors or to persons  
36 engaged in the business of manufacturing, transportation,  
37 transmission, communication or in the production of natural  
38 resources in this state.

39 (7) "Business" shall include all activities engaged in or  
40 caused to be engaged in with the object of gain or economic  
41 benefit, direct, or indirect.

42 (8) "Tax" shall include all taxes, interest or penalties  
43 levied hereunder.

44 (9) "Purchaser" shall mean a person who purchases  
45 tangible personal property or a service taxed by this article.

46 (10) "Service, or selected service" shall include all non-  
47 professional activities engaged in for other persons for a

48 consideration, which involve the rendering of a service as  
49 distinguished from the sale of tangible property, but shall  
50 not include personal services or the services rendered by an  
51 employee to his employer.

52 (11) "Personal service" shall include those:

53 (a) Compensated by the payment of wages in the ordinary  
54 course of employment;

55 (b) Rendered to the person of an individual without, at  
56 the same time, selling tangible personal property or the use  
57 of such property, such as nursing, barbering, shoe shining,  
58 manicuring, and similar services.

59 (12) "Taxpayer" shall mean a retail dealer.

Sec. 18-a. *Receivership; Bankruptcy; Priority of Tax.* In the  
2 distribution, voluntary or compulsory, in receivership, bank-  
3 ruptcy or otherwise, of the property or estate of any person,  
4 all taxes due and unpaid under this article shall be paid from  
5 the first money available for distribution, in priority to all  
6 claims and liens, except taxes and debts due the United States.  
7 Any person charged with the administration or distribution  
8 of any such property or estate who shall violate the provisions  
9 of this section, shall be personally liable for any taxes accrued  
10 and unpaid under this article which are chargeable against  
11 the person whose property or estate is in administration or  
12 distribution.

Sec. 29. *Penalties; Jurisdiction.* Except as herein other-  
2 wise provided, a person who wilfully violates any of  
3 the provisions of this article, or any lawful rule or regu-  
4 lation promulgated under it, shall be guilty of a misdemeanor,  
5 and, upon conviction, shall be fined not less than fifty dollars,  
6 nor more than three hundred dollars for the first offense;  
7 and for any second or subsequent offense, shall be guilty  
8 of a felony, and, upon conviction, shall be fined not less than  
9 five hundred dollars, nor more than five thousand dollars,  
10 and confined in the penitentiary not to exceed two years,  
11 either such fine or imprisonment, or both, in the discretion  
12 of the court. Justices of the peace shall have concurrent juris-  
13 diction with the circuit court, and any other courts having  
14 criminal jurisdiction in their county, for the trial of all  
15 misdemeanors arising under this article.

## CHAPTER 122

(House Bill No. 49—By Mr. White)

AN ACT to amend and reenact section eighty, article one, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, relating to the payment of annual corporation license tax by a domestic corporation upon voluntary dissolution.

[Passed February 27, 1939; in effect ninety days from passage. Approved by the Governor.]

### Article 1. Provisions Relating to Corporations Generally.

#### Section

80. Procedure upon voluntary dissolution of a domestic corporation.

*Be it enacted by the Legislature of West Virginia:*

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

Section 80. *Procedure Upon Voluntary Dissolution of a Domestic Corporation.* At any time during the fiscal year in which any corporation may be created and before it engages in the transaction of business and acquires any property other than the amounts paid in on subscriptions to its stock, the incorporators may abandon the corporation and by indorsing and signing a statement of the intention so to do on the certificate and returning the same to the secretary of state, the secretary of state on receipt thereof shall cancel and preserve such certificate of incorporation and the corporation created thereby shall be dissolved. If such charter shall have been recorded in the office of the clerk of the county court of any county in the state, the incorporators shall execute and acknowledge a writing setting forth the facts of the surrender and dissolution of the corporation and cause such writing to be recorded in the office of the clerk of the county court in which the certificate of incorporation is recorded, and the clerk shall note on the margin of the record book in which the certificate of incorporation is engrossed the fact of the dissolution of the corporation.

21 The stockholders at any time may resolve to discontinue  
22 the business of the corporation, at least sixty per cent of the  
23 shares of capital stock entitled to vote being present at the  
24 meeting and voting in favor of such discontinuance, and may  
25 divide the property and assets among those entitled thereto  
26 after paying all the debts and liabilities of the corporation.  
27 A copy of the resolution shall be certified by the president,  
28 or a vice-president under his hand and the seal of the cor-  
29 poration, to the secretary of state, who shall file the same in  
30 his office and shall issue a certificate under his hand and the  
31 great seal of the state reciting such resolution and certifying  
32 the dissolution of the corporation, but such certificate of  
33 dissolution shall not be issued unless and until the corpor-  
34 ation has paid into the state treasury any amount it may owe  
35 as license tax, including interests and penalties. The officers  
36 of the corporation shall cause the certificate of dissolution  
37 to be recorded in the office of the clerk of each county court  
38 of the state in which the certificate of incorporation is re-  
39 corded, and the clerk of the court shall note on the margin of  
40 the record book in which the certificate of incorporation is  
41 engrossed the fact and the date of the dissolution of the  
42 corporation. As soon as practicable after the passage of such  
43 resolution the directors and officers of the corporation shall  
44 cause the corporate assets to be applied to the payment of  
45 the corporate debts and liabilities, and no division of the as-  
46 sets among the stockholders shall be made until ample pro-  
47 vision has been made for the payment of all the debts and  
48 liabilities; and until notice of the resolution of dissolution  
49 shall have been published once a week for at least two suc-  
50 cessive weeks in some newspaper published or of general cir-  
51 culation in the county in which the principal office or place  
52 of business of the corporation is located. The right of the  
53 state or of any county, district or city therein for any license  
54 taxes accrued unto the date of dissolution, or any other taxes  
55 or claims, or the remedies for the collection thereof, shall  
56 not be impaired by the dissolution of the corporation.

## CHAPTER 123

(Senate Bill No. 52—By Mr. Paull)

AN ACT to amend and reenact section twenty-seven, article three, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended by chapter forty-one, acts of the Legislature, regular session, one thousand nine hundred thirty-three, relating to relief by county courts from erroneous assessments.

[Passed March 10, 1939; in effect from passage. Approved by the Governor.]

### Section

27. Relief in county court from erroneous assessments.

*Be it enacted by the Legislature of West Virginia:*

That section twenty-seven, article three, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended by chapter forty-one, acts of the Legislature, regular session, one thousand nine hundred thirty-three, be amended and reenacted to read as follows:

Section 27. *Relief in County Court From Erroneous Assessments.* Any taxpayer, or the prosecuting attorney or tax commissioner upon behalf of the state, county and districts, claiming to be aggrieved by any entry in the property books of the county, including entries with respect to classification and taxability of property, resulting from a clerical error, or a mistake occasioned by an unintentional or inadvertent act as distinguished from a mistake growing out of negligence or the exercise of poor judgment, may, within one year from the time the property books are delivered to the sheriff, apply for relief to the county court of the county in which such books are made out. Before the application is heard, the taxpayer shall give notice to the prosecuting attorney of the county, or the state shall give notice to the taxpayer, as the case may be. The application, whether by the taxpayer or the state, shall have precedence over all other business before the court; but any order or judgment shall show that either the prosecuting attorney or the tax commissioner was present defending the interests of the state, county and districts: *Provided, however,* That the provisions of this section shall

21 not be construed as giving county courts jurisdiction to con-  
22 sider any question involving the classification or taxability of  
23 property which has been the subject matter of an appeal un-  
24 der the provisions of section twenty-four-a of this article;  
25 and any other such clerical error or mistake involving the  
26 classification or taxability of property, may be corrected by the  
27 county court under the provisions of this section only when  
28 approved, in writing, by the county assessor.

29 In the event it is ascertained that the applicant is entitled  
30 to relief, any excess taxes already paid shall be refunded and,  
31 if charged but not paid, the applicant shall be released from  
32 the payment of such excess. Whenever any correction is  
33 made by the county court, the clerk shall certify copies of  
34 the order to the auditor, to the sheriff and to the assessor, and  
35 in the case of real estate, the assessor shall thereupon make  
36 a correction in accordance with the order in his land book for  
37 the next year. Any such order delivered to the sheriff or other  
38 collecting officer shall restrain him from collecting so much  
39 as is erroneously charged against the taxpayer, and, if already  
40 collected, shall compel him to refund the money if such officer  
41 has not already paid it into the treasury. In either case,  
42 when indorsed by the person exonerated, it shall be sufficient  
43 voucher to entitle the officer to a credit for so much in his  
44 settlement which he is required to make. If the applicant be  
45 the state, the order certified to the sheriff shall show the cor-  
46 rect amount of taxes due the state, county and districts and  
47 shall be sufficient to authorize collection in the same manner  
48 as for other state, county and district taxes.

## CHAPTER 124

(Senate Com. Sub. for House Bill No. 186—Originating in the Senate Committee on Finance)

AN ACT to amend and reenact sections one, two, seven, nineteen, twenty and twenty-two, article fourteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as last amended, relating to tax on gasoline.

[Passed March 3, 1939; in effect July 1, 1939. Approved by the Governor.]

### Article 14. Gasoline Tax.

#### Section

1. Definitions.
2. Annual license tax.
7. Transporting gasoline; delivery prohibited in certain cases; penalties.
19. Refund for gasoline exported, lost or destroyed.
20. Refund of tax on gasoline used for certain purposes.
22. Taxes to be used for road purposes.

#### *Be it enacted by the Legislature of West Virginia:*

That sections one, two, seven, nineteen, twenty and twenty-two, article fourteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as last amended, be amended and reenacted to read as follows:

#### Section 1. *Definitions.* When used in this article:

2 The term "gasoline" shall include any substance or com-  
3 bination of substances which is capable of use as a motor fuel  
4 for any internal combustion engine, and sold or used for that  
5 purpose.

6 The term "person" or the term "company" shall include  
7 any individual, firm, co-partnership, joint adventure, associa-  
8 tion, corporation, trust and any other group or combination  
9 acting as a unit, and the plural as well as the singular number,  
10 unless the intention to give a more limited meaning is dis-  
11 closed by the context, and when used in connection with the  
12 penalties imposed by this article, shall mean and include the  
13 officers, directors, trustees, or members of any firm, co-  
14 partnership, joint adventure, association, corporation, trust  
15 or any other group acting as a unit.

16 The term "distributor" shall mean and include every per-  
17 son who refines, produces, manufactures, compounds, or blends  
18 gasoline in this state for use or for sale to jobbers or consumers,

19 and every person who is now engaged, or who may hereafter  
20 engage, in his own name or in the name of his representative or  
21 agent in this state, in the selling of gasoline for the purpose of  
22 resale or distribution; and persons operating tank wagons into  
23 this state from places of business located outside this state  
24 and selling gasoline in quantities as desired by purchasers in  
25 this state without definite orders having been placed prior to  
26 the delivery of the product, shall be deemed distributors in this  
27 state.

28 The term "retail dealer" shall mean and include any per-  
29 son not a distributor who sells gasoline in this state to con-  
30 sumers only.

31 The term "importer" shall mean any person who purchases  
32 or obtains gasoline outside this state and uses the same within  
33 the state.

34 The term "sale" shall include any exchange, gift, or other  
35 disposition, and "purchase" shall include any acquisition of  
36 ownership.

37 The term "motor vehicle" shall mean automobiles, motor  
38 trucks and motorcycles, and shall include all other vehicles,  
39 engines or machines which are operated or propelled by com-  
40 bustion of gasoline.

Sec. 2. *Annual License Tax.* Every distributor shall pay  
2 an annual license tax of five dollars for each distributing sta-  
3 tion or place of business or agency located in this state at or  
4 from which gasoline is sold for resale or distribution or at  
5 which gasoline is produced, refined or compounded, and an  
6 annual license tax of one dollar for each filling station or place  
7 of business in this state from which gasoline is sold at retail.  
8 Such license tax for the last half of the calendar year one  
9 thousand nine hundred thirty-nine shall be due and payable  
10 on the first day of July, one thousand nine hundred thirty-  
11 nine; and such annual license tax shall be due and payable  
12 on or before the first day of January, one thousand nine hun-  
13 dred forty, and annually thereafter.

14 Persons operating tank wagons into this state from places  
15 of business located outside this state and selling gasoline in  
16 quantities as desired by purchasers in this state without  
17 definite orders having been placed prior to the delivery of the  
18 product, shall be deemed distributors in this state and shall



19 pay an annual license tax of five dollars on account of each  
20 place of business from which tank wagons are so operated.

21 Every other retail dealer shall pay an annual license tax of  
22 one dollar for each filling station or place of business in this  
23 state at which gasoline is sold. Such license tax for the last  
24 half of the calendar year one thousand nine hundred thirty-  
25 nine shall be due and payable on the first day of July, one  
26 thousand nine hundred thirty-nine, and such annual license  
27 tax shall be payable on or before the first day of January,  
28 one thousand nine hundred forty, and annually thereafter.  
29 The privilege granted through the payment of the annual  
30 license tax shall be conditioned upon the licensee complying  
31 with the requirements of this article pertaining to the filing  
32 of statements and the payment of the excise tax imposed by  
33 section three hereof.

34 It shall be the duty of every person intending to deal in  
35 gasoline in this state to make application to the state tax com-  
36 missioner for a license so to do, which application shall be ac-  
37 companied by the amount of the license tax herein required  
38 and shall state whether the applicant intends to engage in such  
39 business as a distributor or retail dealer, and shall designate  
40 the intended place or places of business. A license certificate  
41 for any person commencing business on or after July first in  
42 any year may be issued for the half year upon payment of  
43 half the annual license tax herein required. The license cer-  
44 tificate shall be posted or displayed and so kept at all times in  
45 public view at the place of business for which the same was  
46 issued.

47 The license certificates provided for herein shall not be  
48 transferable from one person to another nor from one location  
49 to another. If any person shall fail, neglect or refuse to pay  
50 the license tax herein imposed within the time prescribed,  
51 there shall automatically accrue a penalty of fifty per cent  
52 thereof, and the tax and the penalty shall be collected as  
53 hereinafter provided.

Sec. 7. *Transporting Gasoline; Delivery Prohibited In Cer-  
2 tain Cases; Penalties.* Any person transporting gasoline upon  
3 the public highway, except licensed distributors, shall carry  
4 either an invoice, sales memorandum, or waybill, designating  
5 the name of the seller, purchaser or consignee, and point of de-  
6 livery of the gasoline being transported. Any person violating

7 any of the provisions of this section shall be guilty of a misde-  
8 meanor, and shall, upon conviction thereof, be sentenced to  
9 pay a fine of not less than five dollars nor more than one hun-  
10 dred dollars.

11 The delivery of gasoline from a tank truck to the tank of  
12 a motor vehicle is prohibited, except in cases of emergency.  
13 Any person violating the provision of this section shall be  
14 fined not more than fifty dollars, or confined in jail not more  
15 than thirty days, or both, in the discretion of the court.

Sec. 19. *Refund for Gasoline Exported, Lost or Destroyed.*

2 Any distributor who shall export gasoline from West Virginia  
3 to any other state or nation may be refunded a sum equal to  
4 the amount of such excise tax paid on such gallonage upon  
5 application made on proper forms to the tax commissioner  
6 within thirty days after the close of the month in which  
7 such gasoline was exported. Any distributor who shall in  
8 the conduct of his wholesale gasoline business sustain  
9 losses of gasoline by reason of shrinkage or evaporation,  
10 which gasoline shall have been included in the measure by  
11 which the excise tax imposed by this article is determined,  
12 shall be refunded a sum equal to the amount of such excise  
13 tax on the gallonage lost, not to exceed one per cent of the  
14 gallonage handled during that month which has been pre-  
15 viously included in the measure by which the excise tax  
16 imposed by this article is determined: *Provided, however,*  
17 *That the tax commissioner shall cause refund to be made*  
18 *under authority of this section only when application for*  
19 *refund, as herein provided, is filed with the tax commis-*  
20 *sioner within thirty days after the close of the month during*  
21 *which the gasoline was exported or lost, on forms prescribed*  
22 *by the tax commissioner, of the quantity of and full details*  
23 *concerning such gasoline exported or lost.*

24 Every distributor shall be entitled to a refund from the  
25 state of West Virginia of the amount of gasoline tax paid by  
26 him, on any gasoline lost or destroyed, while he shall be the  
27 owner thereof, through fire, lightning, breakage, or flood:  
28 *Provided, however,* *That such distributor shall notify the tax*  
29 *commissioner in writing of such loss or destruction, and the*  
30 *amount of gasoline lost or destroyed, within ten days from*  
31 *the date of the discovery of such loss or destruction: Pro-*  
32 *vided further,* *That within thirty days after the discovery of*

33 such loss or destruction such distributor shall file with the  
34 tax commissioner an affidavit sworn to by him, setting forth  
35 in full the circumstances and amount of the loss or destruc-  
36 tion, and such other information with respect thereto as the  
37 tax commissioner may require.

Sec. 20. *Refund of Tax on Gasoline Used for Certain Pur-*  
2 *poses.* Any person who shall buy in quantities of twenty-five  
3 gallons or more, at any one time, gasoline as defined by this ar-  
4 ticle, for the purpose of and the same is actually used (a) as a  
5 motor fuel for diesel engines not operated upon the public  
6 highways or streets of this state, or (b) as a motor fuel to oper-  
7 ate tractors and gas engines or threshing machines for agricul-  
8 tural purposes, when such operation is not, in whole or in part,  
9 upon the public highways or streets of this state, or (c) as a  
10 motor fuel to operate aeroplanes or other aircraft, or (d) by  
11 any railway company subject to regulation by the public serv-  
12 ice commission of West Virginia, for any purpose other than  
13 upon the public highways or streets of this state, or (e) in the  
14 business of manufacturing, or in the production of natural  
15 resources, either as a motor fuel or for any other purpose  
16 except upon the public highways and streets of this state, or  
17 (f) as a cleaning fluid in any laundry or dry cleaning busi-  
18 ness, or (g) as a motor fuel in motor boats or other water  
19 craft operated upon the navigable streams of this state, may,  
20 if the gasoline tax imposed by this article shall have pre-  
21 viously been paid upon such gasoline, be refunded a sum  
22 equal to the amount of such tax, upon presenting to the tax  
23 commissioner an affidavit accompanied by original or top  
24 copy sales slips or invoices, or certified copies thereof, from  
25 the distributor or retail dealer, showing such purchases,  
26 together with evidence of payment thereof, which affidavit  
27 shall set forth the total amount of such gasoline purchased  
28 and used by such consumer, other than upon any public  
29 highways, streets or alleys of this state, and how used; and  
30 the tax commissioner upon the receipt of such affidavit and  
31 such paid sales slips or invoices shall cause to be refunded  
32 such tax paid on gasoline purchased and used as aforesaid.  
33 The right to receive any refund under the provisions of this  
34 article shall not be assignable and any assignment thereof  
35 shall be void and of no effect. Nor shall any payment be  
36 made to any person other than the original person entitled  
37 thereto using gasoline as hereinbefore in this section set

38 forth: *Provided, however,* That the tax commissioner shall  
39 cause refund to be made under authority of this section only  
40 when application for refund is filed with the tax commis-  
41 sioner, upon forms prepared and furnished by the tax com-  
42 missioner, within sixty days from the date of purchase or  
43 delivery of the gasoline.

Sec. 22. *Taxes to be Used for Road Purposes.* All taxes  
2 collected under the provisions of this article shall be paid  
3 into the state treasury and shall be used only for the purpose  
4 of the construction, reconstruction, maintenance and repair  
5 of roads and highways, and for the payment of the interest  
6 and sinking fund on state bonds issued for roads purposes.  
7 Unless necessary for such bond requirements, one-fifth of  
8 the taxes collected under the provisions of this article shall  
9 be used for secondary road purposes, until July first, one  
10 thousand nine hundred forty-one.

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## CHAPTER 125

(House Bill No. 107—By Mr. Strouss)

AN ACT to amend and reenact section three, article fourteen, chap-  
ter eleven of the code of West Virginia, one thousand nine  
hundred thirty-one, as last amended, relating to tax on gaso-  
line.

[Passed February 17, 1939; in effect June 30, 1939. Approved by the Governor.]

### Article 14. Gasoline Tax.

#### Section

3. Amount, duration, measure and lien of tax; notice of discontinu-  
ance, etc., of business.

*Be it enacted by the Legislature of West Virginia:*

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

Section 3. *Amount, Duration, Measure and Lien of Tax: No-*  
2 *tice of Discontinuance, etc., of Business.* There is hereby im-  
3 posed upon every person who is a distributor, retail dealer or

4 importer under the terms of this article, an excise tax based on  
5 the quantities of all gasoline produced, purchased, sold or used  
6 in this state, which tax shall, until July first, one thousand nine  
7 hundred forty-one, be equivalent to five cents per gallon there-  
8 of, and shall be paid as hereinafter provided. On and after  
9 July first, one thousand nine hundred forty-one, the tax  
10 herein provided shall be equivalent to four cents per gallon.

11 A distributor, importer, or retail dealer shall use as the  
12 measure of the tax the gallonage produced, purchased, sold  
13 or used in this state (as provided in section four of this  
14 article). Gallonage shall be included in the measure of the  
15 tax by refiners and producers when such gallonage has been  
16 placed into any tank from which withdrawals are made for  
17 sales or transfer to any other person.

18 The excise tax imposed by this article shall be paid by the  
19 person first producing, or receiving in this state, the gallonage  
20 of gasoline which under this article shall form the measure of  
21 such tax; but in no case shall any such gallonage be used more  
22 than once in determining taxes due hereunder. The taxes im-  
23 posed by this article are in addition to all other taxes now  
24 imposed by law.

25 The excise tax imposed by this article shall accrue from the  
26 date of production, purchase, sale or use of the gasoline. The  
27 penalties imposed by section thirteen of this article shall accrue  
28 from the date they become due and payable, and such taxes and  
29 penalties shall be and remain a charge and lien upon the prop-  
30 erties, both personal and real, of the person liable to pay such  
31 taxes and penalties, superior to any lien created after such  
32 taxes and penalties accrue. Whenever a distributor, importer  
33 or retail dealer ceases to engage in business within this state by  
34 reason of the discontinuance, sale or transfer of the business of  
35 such distributor, importer or retail dealer, it shall be his duty  
36 to notify the tax commissioner in writing at the time the dis-  
37 continuance, sale or transfer takes effect. Such notice shall give  
38 the date of discontinuance and in the event of a sale or transfer  
39 of the business, the date thereof and the name and address of  
40 the purchaser or transferee thereof; all taxes accruing under  
41 this article, but not yet due and payable under the provisions  
42 of this article shall, notwithstanding such provisions, become  
43 due and payable concurrently with such discontinuance, sale or

44 transfer, and it shall be the duty of such distributor, importer  
45 or retail dealer to make a report and pay all such taxes, and to  
46 surrender to the tax commissioner the license certificate there-  
47 tofore issued, under the provisions of this article.

48 Unless the notice shall have been given to the tax com-  
49 missioner as above provided, such purchaser or transferee  
50 shall be liable to the state of West Virginia for the amount  
51 of all taxes and penalties, under this article accrued against  
52 such distributor, importer or retail dealer so selling or trans-  
53 ferring his business, on the date of such sale or transfer, but  
54 only to the extent of the value of the property and business  
55 thereby acquired from such distributor, importer or retail  
56 dealer.

## CHAPTER 126

(Com. Sub. for House Bill No. 272—Originating in the House Committee  
on Taxation and Finance)

AN ACT to amend article eleven, chapter eleven of the code of  
West Virginia, one thousand nine hundred thirty-one, as  
amended, by amending and reenacting section one and by  
adding a new section, designated as section fourteen-b to said  
article eleven, relating to inheritance and transfer taxes.

[Passed March 10, 1939; in effect from passage. Approved by the Governor.]

### Article 11. Inheritance and Transfer Taxes.

#### Section

##### 1. When imposed.

14-b. Annuity and investment contracts; payments to beneficiaries;  
notice to tax commissioner; penalties.

*Be it enacted by the Legislature of West Virginia:*

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

Section 1. *When Imposed.* A tax, payable into the treas-  
2 ury of the state, shall be imposed upon the transfer, in trust,  
3 or otherwise, of any property, or interest therein, real, per-  
4 sonal, or mixed, if such transfer be: (a) By will or by laws

5 of this state regulating descent and distribution from any  
6 person who is a resident of the state at the time of his death  
7 and who shall die seized or possessed of property; (b) By  
8 will or by laws regulating descent and distribution of prop-  
9 erty within the state, or within its taxing jurisdiction, and  
10 the decedent was a nonresident of the state at the time of  
11 his death; (c) By a resident, or by a nonresident owning  
12 taxable property within the state or within its jurisdiction.  
13 by deed, grant, sale, or gift, made in contemplation of the  
14 death of the grantor, vendor, or donor, or intended to take  
15 effect in possession or enjoyment at or after such death, or  
16 where any change in the use or enjoyment of property in-  
17 cluded in such transfer, or the income thereof, may occur in  
18 the lifetime of the grantor, vendor, or donor, by reason of  
19 any power reserved to, or conferred upon, the grantor,  
20 vendor, or donor, either solely or in conjunction with any  
21 person, or persons, to alter, or to amend, or to revoke any  
22 transfer, or any portion thereof, as to the portion remaining  
23 at the time of death of the grantor, vendor, or donor, thus  
24 subject to alteration, amendment or revocation. If any one  
25 of the transfers mentioned in this subdivision is made for  
26 valuable consideration, the portion of the transfer for which  
27 the grantor, or vendor receives equivalent monetary value  
28 is not taxable, but the remaining portion thereof is taxable.  
29 Every transfer by deed, grant, sale or gift, made within  
30 three years prior to the death of the grantor, vendor, or  
31 donor, without adequate valuable consideration, shall be con-  
32 strued to have been made in contemplation of death within  
33 the meaning of this subdivision; (d) By any person who  
34 shall transfer any property which he owns, or shall cause any  
35 property to which he is absolutely entitled to be transferred  
36 to or vested in himself and any other person jointly, with  
37 the right of survivorship, in whole or in part, in such other  
38 person, a transfer shall be deemed to occur and to be taxable  
39 under the provisions of this article upon the vesting of such  
40 title in the survivor: *Provided, however,* That this subsection  
41 shall not apply to bank accounts payable to the class desig-  
42 nated in section two-a in a total amount of twenty-five hundred  
43 dollars or less; (e) To any person deriving an estate in prop-  
44 erty, coupled with a power of appointment, in which event

45 such estate shall be taxed as other limited estates; and when-  
46 ever any person shall exercise a power of appointment derived  
47 from any disposition of property made, which appointment  
48 when made shall be deemed a transfer taxable under the  
49 provisions of this article, in the same manner as though the  
50 property to which such appointment relates belonged abso-  
51 lutely to the donee of such power and had been bequeathed  
52 or devised by such donee by will; and whenever any person  
53 possessing such a power of appointment so derived shall omit  
54 or fail to exercise the same within the time provided therefor,  
55 in whole or in part, a transfer taxable under the provisions of  
56 this article shall be deemed to take place to the extent of such  
57 omission or failure, in the same manner as though the person  
58 thereby becoming entitled to the possession or enjoyment of  
59 the property to which such power related had succeeded  
60 thereto by a will of the donee of the power failing to exercise  
61 such power, and shall take effect at the time of such omission  
62 or failure: *Provided, however,* That in either of which events  
63 the tax commissioner, on the application of any person in  
64 interest or upon his own motion, may, after due notice to the  
65 known persons interested, apportion such taxes, first, as to the  
66 interest of the donee of the power of appointment, and second,  
67 to the remainder or reversionary interests of others at the  
68 highest probable rate applicable thereto, and shall make his  
69 certificate accordingly, which shall be forwarded and disposed  
70 of in the same manner as other certificates herein provided for.  
71 The portion of any such taxes apportioned as to the remainder  
72 or reversionary interest shall be paid out of the corpus of  
73 the estate in like manner as other assessments as if such  
74 interest had vested in possession; and, upon such assess-  
75 ment and payment of tax the matter shall become a finality;  
76 (f) By the terms of any annuity or investment contracts,  
77 or similar type or form of contract or policy, and shall be  
78 on the amount payable under any such contract or policy,  
79 on account of a death, to named beneficiaries, to his estate  
80 or in trust for the benefit of any individual or individuals,  
81 including (1) all such policies or contracts hereafter issued,  
82 and (2) all such policies or contracts now in force: *Pro-*  
83 *vided, however,* That there shall be exempt from the pro-  
84 visions of this subsection the proceeds of such contracts or



85 policies: (a) When the premiums on such policies or con-  
86 tracts were paid by the beneficiary named in such policy  
87 or contract, to the extent only of the ratio of premiums  
88 paid by the beneficiary bear to the total premiums paid;  
89 (b) when the proceeds of such policies or contracts have  
90 been assigned by the decedent for a valuable consideration  
91 either in form absolute or as collateral security for the pay-  
92 ment of a bona fide indebtedness of the decedent, to the  
93 extent that the proceeds thereof shall be necessary to pay  
94 and satisfy such indebtedness. It is provided, however, that  
95 no annuity settlement or arrangement accepted in lieu of  
96 cash settlement of a life insurance policy, whereby the pro-  
97 ceeds of such policy are payable in instalments, shall be  
98 subject to taxation under the provisions of this article, nor  
99 shall the provisions of this article apply to the proceeds of any  
100 policy of life or accident insurance payable to a named bene-  
101 ficiary or beneficiaries whether directly or in trust or other-  
102 wise.

103 Where annuity or investment contracts or policies are left  
104 by a decedent in such manner that the proceeds thereof cannot  
105 be subjected to the payment of his debts, and where the pro-  
106 ceeds of such annuity or investment contracts are received by  
107 beneficiaries thereof, the fact that the decedent may have  
108 been insolvent and that a portion of his debts may remain  
109 unpaid shall not affect the liability for inheritance tax on  
110 such proceeds.

Sec. 14-b. *Annuity and Investment Contracts; Payments to*  
2 *Beneficiaries; Notice to Tax Commissioner; Penalties.* Every  
3 corporation, partnership, association, individual, order or so-  
4 ciety authorized to transact annuity contracts, investment  
5 contracts, or similar types or forms of policy or contract busi-  
6 ness within this state which shall pay to any named bene-  
7 ficiary, estate or trustee upon the death of a resident of this  
8 state, the proceeds of any such contract or policy shall, on the  
9 date of such payment, give notice thereof, in writing, to the  
10 tax commissioner of West Virginia, stating (a) the amount of  
11 such payment, (b) the name and address of each beneficiary,  
12 and (c) the time and manner of payment: *Provided, however,*  
13 *That such notice shall not be required (1) when the policy or*  
14 *contract involved or the payment to be made is fifteen hun-*

15 dred dollars or less and is payable to the class designated in  
16 section two-a of this article, and (2) when the amount of the  
17 policy or payment to be made is one thousand dollars or less.  
18 Any such company so authorized to do business in this  
19 state, failing or refusing to comply with the provisions of  
20 this section, shall thereby become liable to the state for any  
21 amount of tax which may be due on the amount of payment  
22 concerning which such company failed or refused to file the  
23 notice prescribed by this section.

## CHAPTER 127

(House Bill No. 442—By Mr. McClung, of Kanawha)

AN ACT to amend article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, by adding thereto section two-j, relating to tax on oil and gas.

[Passed March 11, 1939; in effect ninety days from passage. Became a law without the approval of the Governor.]

### Article 13. Business and Occupation Tax.

#### Section

2-j. Production of oil and gas; measure of tax; deductions; exceptions.

*Be it enacted by the Legislature of West Virginia:*

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

Section 2-j. *Production of Oil and Gas; Measure of Tax; Deductions; Exceptions.* Every person engaging or continuing within this state in the business of severing oil, natural gas or petroleum products from the strata of the earth, or of operating oil or gas properties, shall use as the measure of the tax imposed by section two-a of this article the value of the entire production, with no deduction by reason of payments under contracts or agreements requiring payment, either in

9 money or in kind, to the owners of the royalty interest, excess  
10 royalty or working interest in such properties, where such  
11 payments are made in kind, the market value of the natural  
12 resource product or other thing so paid, at the time of pay-  
13 ment, shall be included in the measure of said tax. Every per-  
14 son who is hereby required to pay said tax measured by the  
15 entire production of the property operated, is hereby author-  
16 ized and empowered to deduct from any payment, in money or  
17 in kind, to the owners of any royalty interest, excess royalty  
18 or working interest in such properties, that proportion of the  
19 tax paid which the said royalty, excess royalty or working in-  
20 terest bears to the entire production; and there is hereby  
21 levied upon such royalty interest, excess royalty or working  
22 interest, such proportionate part of the tax imposed by said  
23 section two-a. The exemption of five thousand dollars granted  
24 to producers of natural gas, by said section two-a. shall be for  
25 the benefit of the owners of such royalty interest, excess roy-  
26 alty or working interest in the same proportion which the said  
27 royalty interest, excess royalty or working interest bears to  
28 the entire production, and the balance of said exemption shall  
29 be for the benefit of the person operating such properties.

30 No person shall be required to pay the tax imposed by  
31 section two-i of this article, upon income which is included  
32 in the measure of the tax imposed upon the production of  
33 oil, natural gas or other petroleum products by section two-a  
34 of this article.

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## CHAPTER 128

(House Bill No. 137—By Mr. Strouss)

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AN ACT to amend and reenact article thirteen-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as last amended, by repealing section twenty-five-a; by amending and reenacting sections two, four, twenty-four, twenty-five, twenty-eight, thirty, thirty-one, thirty-four, thirty-eight, forty-one, forty-four, forty-five, forty-six, forty-seven,

forty-eight, forty-nine, fifty, fifty-one, fifty-two, fifty-three, fifty-four and sixty; and by adding a new section designated sixty-two, all relating to personal net income tax.

[Passed March 3, 1939; in effect ninety days from passage. Approved by the Governor.]

### **Article 13-a. Personal Income Tax.**

#### **Section**

2. Definitions.
4. Tax on net income of nonresidents.
24. Items not included in gross income.
25. Deductions from gross income.
28. Return in case of casual sale of personal property, or of sale of real property.
30. Basis for determining gain or loss.
31. Recognition of gain or loss; exchanges.
34. Credits allowed nonresidents.
38. Return by nonresident.
41. Form for returns; time for filing.
44. When tax to be paid; interest and penalties.
45. Return to be an assessment.
46. Examination of returns and determination of tax; deficiency.
47. Additions to tax in case of deficiencies; interest.
48. Criminal penalties.
49. Assessment and collection of deficiencies.
50. Jeopardy assessments; termination of taxable year.
51. Time limitation on assessment and collection.
52. Restraint of assessment or collection.
53. Collection of unpaid taxes; interest and penalties.
54. Refunds.
60. Provisions of act severable.
62. When act to take effect.

#### *Be it enacted by the Legislature of West Virginia:*

That article thirteen-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as last amended, be amended and reenacted by repealing section twenty-five-a; by amending and reenacting sections two, four, twenty-four, twenty-five, twenty-eight, thirty, thirty-one, thirty-four, thirty-eight, forty-one, forty-four, forty-five, forty-six, forty-seven, forty-eight, forty-nine, fifty, fifty-one, fifty-two, fifty-three, fifty-four and sixty; and by adding a new section designated sixty-two; all to read as follows:

#### **Section 2. Definitions.** When used in this act:

- 2 "Commissioner" means the state tax commissioner.
- 3 "Taxpayer" includes any individual or fiduciary, subject

4 to a tax imposed by this article, or whose income is in whole  
5 or in part subject to a tax imposed by this article.

6 "Individual" means a natural person.

7 "Person" includes individuals, fiduciaries and partner-  
8 ships.

9 "Fiduciary" means a guardian, trustee, executor, admin-  
10 istrator, receiver, conservator, or any person, whether indi-  
11 vidual or corporate, acting in any fiduciary capacity, for any  
12 person, trust or estate.

13 "Partnership" includes a syndicate, group, pool, joint  
14 venture, joint ownership or other unincorporated organiza-  
15 tion, through or by means of which any business, financial  
16 operation, or venture is carried on, and which is not, within  
17 the meaning of this act, a trust or estate or a corporation;  
18 and the term "partner" includes a member in such a  
19 syndicate, group, pool, joint venture or joint ownership, or  
20 organization.

21 "Resident" means any person domiciled in the state of  
22 West Virginia, or who maintains a permanent place of abode  
23 within the state, or who spends more than six months of the  
24 taxable year within the state.

25 "Nonresident" means all other persons not included in the  
26 term "resident."

27 "Taxable year" means the calendar year, or the fiscal year  
28 ending during such calendar year, upon the basis of which the  
29 net income is computed under this article. "Taxable year"  
30 includes, in the case of a return made for a fractional part of  
31 a year under the provisions of this article or under regula-  
32 tions prescribed by the commissioner, the period for which  
33 such return is made, subject to the provisions of section  
34 eighteen.

35 "Fiscal year" means an accounting period of twelve  
36 months, ending the last day of any month other than De-  
37 cember.

38 The terms "tax" and "tax liability" shall include all taxes,  
39 interest and penalties accruing or imposed under this article.

40 "Paid" for the purpose of the deductions under this ar-  
41 ticle means "paid or accrued" or "paid or incurred" and  
42 the words "paid or accrued", "paid or incurred" shall be  
43 construed according to the methods of accounting upon the

44 basis of which the net income is computed under this article.  
45 "Received" for the purpose of the computation of the net  
46 income under this article means "received or accrued" and  
47 the words "received or accrued" shall be construed according  
48 to the methods of accounting upon the basis of which the net  
49 income is computed under this article.

50 "Gross income" means such income as is defined in sections  
51 twenty-one and twenty-four of this article.

52 "Net income" means "gross income" less the deductions  
53 allowed by sections eight and twenty-five of this article.

54 "Taxable net income" means "net income" less the ex-  
55 emptions and credits allowed by section thirty-three of this  
56 article.

57 "Dividend" means any distribution made by a corporation  
58 out of its earnings or profits to its shareholders or members,  
59 whether in cash or in other property or in stock of the cor-  
60 poration, other than stock dividends. If paid in property  
61 other than cash, such property shall be valued at its fair mar-  
62 ket value on the date of distribution.

63 "Stock dividends" mean new stock issued for surplus or  
64 profits capitalized, to common shareholders in proportion to  
65 their previous holdings.

66 "Includes" and "including" when used in a definition con-  
67 tained in this article shall not be deemed to exclude other  
68 things otherwise within the meaning of the term defined.

Sec. 4. *Tax on Net Income of Nonresidents.* Every in-  
2 dividual not a resident of this state, annually, shall pay  
3 upon his entire net income from all tangible property  
4 owned and all intangible property having a business situs  
5 within the state and from every business, trade, profession or  
6 occupation carried on in this state, after deducting the ex-  
7 emptions provided in section thirty-four of this article, a tax  
8 at the rates specified in section three of this article.

9 The term "business situs" as used in this section shall be  
10 deemed to have the same meaning as the situs of intangible  
11 personal property for ad valorem tax purposes, except that  
12 intangible property constituting the corpus of a trust, in  
13 whole or in part, and not connected with or used in carrying

14 on a trade or business within this state, shall not be treated  
15 as having such business situs within this state.

Sec. 24. *Items Not Included in Gross Income.* The following  
2 items shall not be included in gross income and shall be ex-  
3 empt from taxation under this article:

4 (1) Amounts received under a life insurance contract paid  
5 by reason of the death of the insured, whether in a single  
6 sum or installments, but if such amounts are held by the  
7 insurer under an agreement to pay interest thereon, the in-  
8 terest payments shall be included in gross income;

9 (2) The amount received by the insured as a return of  
10 premium paid by him under any life insurance, endowment  
11 or annuity contract either during the term or at the maturity  
12 of the term mentioned in the contract or upon the surrender  
13 of the contract;

14 (3) The value of property acquired by gift, bequest, de-  
15 vise or descent, but the income from such property shall be  
16 included in gross income;

17 (4) Interest upon the obligations of the United States or  
18 its possessions, the District of Columbia, or upon obligations  
19 of the state of West Virginia or any political subdivision  
20 thereof;

21 (5) Any amount received through accident, or health in-  
22 surance, or under workmen's compensation acts, as compen-  
23 sation for personal injury or sickness, plus the amount of  
24 damages received whether by suit or agreement on account of  
25 such injury or sickness or through the war risk insurance act  
26 or any law for the benefit or relief of injured or disabled  
27 members of the military or naval forces of the United  
28 States;

29 (6) Stock dividends when received by a shareholder, unless  
30 before or after the distribution of the dividend the cor-  
31 poration proceeds to cancel or redeem its stock so as to make  
32 the distribution and cancellation or redemption in whole or in  
33 part essentially equivalent to the distribution of a taxable  
34 dividend; and stock dividends shall be considered in com-  
35 puting gain, profit or income upon the sale, exchange, or  
36 other disposition of stock upon which a stock dividend has  
37 been declared or of the stock included in such stock dividend;

38 (7) Money and property received or derived from suit.

39 settlement or compromise because of injury to reputation,  
40 property or person ;

41 (8) The value of food and goods produced by the taxpayer  
42 and consumed or used by his immediate family ;

43 (9) Dividends received on shares of stock held in a na-  
44 tional banking association or any bank or trust company  
45 chartered under the laws of the state of West Virginia.

Sec. 25. *Deductions from Gross Income.* In computing net  
2 income there shall be allowed as deductions :

3 (1) Ordinary and necessary expenses, including a reason-  
4 able allowance for salaries and other compensation for per-  
5 sonal services actually rendered, and rentals or other pay-  
6 ments required to be made as a condition to the continued use  
7 or possession of property to which the taxpayer has not taken  
8 or is not taking title or in which he has no equity, if paid for  
9 or incurred during the taxable 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 within the taxable year on  
14 indebtedness, except on indebtedness incurred or continued to  
15 purchase or carry obligations the interest upon which is  
16 wholly exempt from the taxes imposed by this article ;

17 (3) Taxes paid or accrued within the taxable year, except :

18 (a) West Virginia income taxes under this article ;

19 (b) Estate, inheritance, legacy, succession and gift taxes,  
20 and

21 (c) Taxes assessed against local benefits of a kind tending  
22 to increase the value of the property assessed ;

23 (4) Losses sustained during the taxable year and not com-  
24 pensated for by insurance or otherwise :

25 (a) If incurred in trade or business, or

26 (b) If incurred in any transaction entered into for profit  
27 though not connected with the trade or business, or

28 (c) On property not connected with the trade or business,  
29 if the loss arises from fires, storms, shipwreck or other  
30 casualty, or from theft, but in the case of a nonresident, only  
31 on real property or tangible personal property having an  
32 actual situs within the state: *Provided, however,* That the  
33 basis for losses claimed under this subsection shall be adjusted



34 to the date of such loss as provided in section thirty of this  
35 article, regardless of the nondeductibility in any prior year  
36 of the items of such adjustment under the provisions of this  
37 section;

38 (5) In the case of any loss claimed to have been sustained  
39 from any sale or other disposition of shares of stock or secu-  
40 rities where it appears that, within a period beginning thirty  
41 days before the date of such sale or disposition and ending  
42 thirty days after such date, the taxpayer has acquired, by  
43 purchase or by an exchange upon which the entire amount of  
44 gain or loss was recognized by law, or has entered into a con-  
45 tract or option so to acquire, substantially identical stock or  
46 securities, then no deduction for the loss shall be allowed. If  
47 the amount of stock or securities acquired, or covered by con-  
48 tract or option to acquire, is less than the amount of stock or  
49 securities sold or otherwise disposed of, then the particular  
50 shares of stock or securities, the loss from the sale or other dis-  
51 position of which is not deductible, shall be determined under  
52 rules and regulations prescribed by the commissioner. If the  
53 amount of stock or securities acquired, or covered by a con-  
54 tract or option to acquire, is not less than the amount of stock  
55 or securities sold or otherwise disposed of, then the particular  
56 shares of stock or securities, the acquisition of which, or the  
57 contract or option to acquire which, resulted in the non-  
58 deductibility of the loss, shall be determined under rules and  
59 regulations prescribed by the commissioner;

60 (6) Debts ascertained to be worthless and charged off  
61 within the taxable year; and when satisfied that a debt is  
62 recoverable only in part, the commissioner may allow such  
63 debt, in an amount not in excess of the part charged off  
64 within the taxable year, as a deduction;

65 (7) A reasonable allowance for the exhaustion, wear and  
66 tear of property used in the trade or business, including a  
67 reasonable allowance for obsolescence. In the case of prop-  
68 erty held by one person for life with remainder to another  
69 person, the deduction shall be computed as if the life tenant  
70 were the absolute owner of the property and shall be allowed  
71 to the life tenant. In the case of property held in trust the  
72 allowable deduction shall be apportioned between the income  
73 beneficiaries and the trustee in accordance with the pertinent

74 provisions of the instrument creating the trust, or, in absence  
75 of such provisions, on the basis of the trust income allocable  
76 to each;

77 (8) In the case of mines, timber, oil and gas wells, and  
78 other natural deposits, a reasonable allowance for depletion,  
79 according to the peculiar conditions in each case; such reason-  
80 able allowance in all cases to be made under rules and regula-  
81 tions to be prescribed by the commissioner. In any case in  
82 which it is ascertained as a result of operations or of develop-  
83 ment work that the recoverable units are greater or less than  
84 the prior estimate thereof, then such prior estimate, but not  
85 the basis for depletion, shall be revised and the allowance  
86 under this paragraph for subsequent taxable years shall be  
87 based upon such revised estimate. In the case of leases the  
88 deductions shall be equitably apportioned between the lessor  
89 and lessee. In the case of property held by one person for life  
90 with remainder to another person, the deduction shall be com-  
91 puted as if the life tenant were the absolute owner of the  
92 property and shall be allowed to the life tenant. In the case  
93 of property held in trust the allowable deduction shall be  
94 apportioned between the income beneficiaries and the trustee  
95 in accordance with the pertinent provisions of the instrument  
96 creating the trust, or, in the absence of such provisions, on  
97 the basis of the trust income allocable to each;

98 (9) The basis for determining the amount of deduction for  
99 losses sustained and to be allowed, and for bad debts to be  
100 allowed, and for depletion, exhaustion, wear and tear and  
101 obsolescence, shall be the adjusted basis provided in section  
102 thirty of this article for determining the loss from the sale or  
103 other disposition of property;

104 (10) In lieu of the depletion allowance provided in subsec-  
105 tion eight above for oil and gas wells, the taxpayer may de-  
106 duct from the income of such oil and gas wells a depletion  
107 allowance equivalent to twenty-seven and one-half per cent  
108 of the gross income from the property during the tax year,  
109 excluding from such gross income an amount equal to any  
110 rents or royalties paid or incurred by the taxpayer in respect  
111 of the property. Such allowance shall not exceed fifty per  
112 cent of the net income of the taxpayer, computed without  
113 allowance for depletion, from the property, except that in no

114 case shall the depletion allowance be less than it would be if  
115 computed without reference to this subsection;

116 (11) In any case of two or more organizations, including  
117 corporations, trades, or businesses located both within and  
118 without the state, owned or controlled directly or indirectly  
119 by the same interest or interests, any one or more of which is  
120 or are taxable in whole or in part under this article, the com-  
121 missioner is authorized to distribute, apportion, or allocate  
122 gross income or deductions between or among such organiza-  
123 tions, including corporations, trades, or businesses, if he de-  
124 termines that such distribution, apportionment, or allocation is  
125 necessary in order to prevent evasion of taxes, or clearly to  
126 reflect the income of any such organizations, trades or busi-  
127 nesses, taxable hereunder.

128 In the case of a nonresident taxpayer, the deductions  
129 allowed by this section shall be allowed only if, and to the  
130 extent that, they are connected with income taxable under this  
131 article; the apportionment and allocation of both income and  
132 deductions with respect to sources of income within and  
133 without the state shall be determined under rules and regula-  
134 tions to be prescribed by the commissioner;

135 (12) Contributions to churches and charitable institu-  
136 tions within this state.

Sec. 28. *Return in Case of Casual Sale of Personal Property,*  
2 *or of Sale of Real Property.* In the case of a casual sale or  
3 other casual disposition of personal property for a price ex-  
4 ceeding five hundred dollars, or of a sale or other disposition  
5 of real property, if in either case the initial payments do not  
6 exceed thirty per cent of the sale price, the income may be  
7 returned on the basis and in the manner prescribed in sec-  
8 tion twenty-seven.

Sec. 30. *Basis for Determining Gain or Loss.* For the  
2 purpose of ascertaining the gain derived, or loss sustained,  
3 from the sale or other disposition of property, real, personal  
4 or mixed, subject to the adjustments as provided in subsec-  
5 tion four of this section, the basis shall be:

6 (1) In case of property acquired on or after January  
7 first, one thousand nine hundred thirty-five, the cost thereof,  
8 except:

9 (a) In the case of property which is, or should be, in-  
10 cluded in an inventory, the basis shall be the last inventory  
11 value thereof;

12 (b) In the case of property acquired by bequest, de-  
13 vise or descent or by any other transfer upon which a tax  
14 was paid under the provisions of article eleven of this  
15 chapter, the basis shall be the fair market value thereof, when  
16 acquired;

17 (c) In the case of property acquired by gift or by  
18 a transfer in trust, except property acquired as pro-  
19 vided in subsection (b) above, the basis shall be the  
20 same as it would be in the hands of the donor, grantor,  
21 or the last preceding owner by whom it was not ac-  
22 quired by gift, except that for the purpose of determ-  
23 ining loss the basis shall be the basis so determined  
24 or the fair market value of the property at the time  
25 of the gift or transfer in trust, whichever is lower. If  
26 the facts necessary to determine the basis in the hands of the  
27 donor, grantor, or the last preceding owner, are unknown to  
28 the donee or recipient, the commissioner may obtain such  
29 facts from such donor, grantor, or last preceding owner, or  
30 any other person cognizant thereof. If the commissioner  
31 finds it impracticable to obtain such facts, the basis in the  
32 hands of such donor, grantor, or last preceding owners, shall  
33 be the fair market value of such property as found by the  
34 commissioner as of the date, or approximate date at which,  
35 according to the best information that the commissioner is  
36 able to obtain, such property was acquired by such donor,  
37 grantor, or last preceding owner.

38 (2) In the case of property acquired prior to January  
39 first, one thousand nine hundred thirty-five, the basis shall  
40 be determined as provided in subsection one of this section,  
41 subject to the adjustments as provided in subsection four of  
42 this section, and as further qualified by the provisions of  
43 paragraphs (a), (b) and (c) of this subsection. In determin-  
44 ing the fair market value of stock in a corporation as of  
45 January first, one thousand nine hundred thirty-five, due  
46 regard shall be given to the fair market value of the assets of  
47 the corporation as of that date:

48 (a) If the amount realized from the sale or other dispo-

49 sition of property is in excess of the original cost and also  
50 in excess of the January first, one thousand nine hundred  
51 thirty-five, fair market value thereof, the gain to be included  
52 in gross income shall be the excess of the amount realized  
53 over the January first, one thousand nine hundred thirty-five,  
54 fair market value, if such fair market value is greater than  
55 the original cost, and if not, the excess of the amount realized  
56 over such cost;

57 (b) If the amount realized from the sale or other disposition  
58 of property is less than the original cost and also less  
59 than the January first, one thousand nine hundred thirty-five,  
60 fair market value thereof, the loss to be deducted from gross  
61 income shall be the difference between the amount realized  
62 and the January first, one thousand nine hundred thirty-five,  
63 fair market value, if such fair market value is less than the  
64 original cost, and if not, the difference between the amount  
65 realized and such cost;

66 (c) If the amount realized from the sale or other disposition  
67 of property is more than the original cost but less than  
68 the January first, one thousand nine hundred thirty-five, fair  
69 market value thereof, or more than the January first, one  
70 thousand nine hundred thirty-five, fair market value but less  
71 than the original cost thereof, no gain shall be included in,  
72 nor any loss deducted from, the gross income.

73 (3) The term "substituted basis" as used in this subsection  
74 means a basis determined under any provision of this  
75 section providing that the basis shall be determined: (1)  
76 by reference to the basis in the hands of a transferor, donor  
77 or grantor, or (2) by reference to other property held at any  
78 time by the person for whom the basis is to be determined.

79 Whenever it appears that the basis of property in the  
80 hands of the taxpayer is a substituted basis, then the adjustments  
81 provided in subsection four shall be made, after first  
82 making in respect of such substituted basis, proper adjustment  
83 of a similar nature in respect of the period during  
84 which the property was held by the transferor, donor or  
85 grantor, or during which the other property was held by the  
86 person for whom the basis is to be determined. A similar rule  
87 shall be applied in the case of a series of substituted bases.

88 (4) The adjusted basis for determining the gain or loss

89 from the sale or other disposition of property, whenever ac-  
90 quired, shall be the basis determined under subsections one,  
91 two and three, above, adjusted as hereinafter provided.

92 (a) Proper adjustment in respect of the property shall in  
93 all cases be made:

94 (1) For expenditures, receipts, losses or other items, prop-  
95 erly chargeable to capital account including taxes and other  
96 carrying charges on unimproved and non-productive real  
97 property, but no such adjustments shall be made for taxes  
98 or other carrying charges for which deductions have been  
99 taken by the taxpayer in determining net income for the  
100 taxable year or prior taxable years;

101 (2) In respect of any period since December thirty-first,  
102 one thousand nine hundred thirty-four, for exhaustion, wear  
103 and tear, obsolescence, amortization and depletion, to the ex-  
104 tent allowable; and,

105 (3) In respect of any period prior to January first, one  
106 thousand nine hundred thirty-five, for exhaustion, wear and  
107 tear, obsolescence, amortization and depletion, to the extent  
108 sustained.

109 (b) Amounts distributed in complete liquidation of a cor-  
110 poration shall be treated as in full payment in exchange for  
111 the stock, and amounts distributed in partial liquidation of  
112 a corporation shall be treated as in part or full payment in  
113 exchange for the stock. The gain or loss to the distributee  
114 resulting from such exchange shall be determined under this  
115 section. For the purpose of the first sentence of this para-  
116 graph, "complete liquidation" includes any one of a series  
117 of distributions made by a corporation in complete cancella-  
118 tion or redemption of all of its stock in accordance with a  
119 bona fide plan of liquidation and under which the transfer  
120 of the property under the liquidation is to be completed  
121 within a time specified in the plan. The term "amounts dis-  
122 tributed in partial liquidation" means a distribution by a  
123 corporation in complete cancellation or redemption of a part  
124 of its stock, or one of a series of distributions in complete  
125 cancellation or redemption of all or a portion of its stock.

126 If any distribution (not in partial or complete liquidation)  
127 made by a corporation to its shareholders is not out of in-  
128 crease in value of property accrued before January first, one

129 thousand nine hundred thirty-five, and is not a taxable divi-  
130 dend, then the amount of such distribution shall be applied  
131 against and reduce the adjusted basis of the stock provided  
132 in this section, and if in excess of such basis, such excess shall  
133 be taxable in the same manner as a gain from the sale or ex-  
134 change of property.

135 For the purposes of this article every distribution is made  
136 out of earnings or profits to the extent thereof, and from  
137 the most recently accumulated earnings or profits. Any earn-  
138 ings or profits accumulated, or increase in value of property  
139 accrued, before January first, one thousand nine hundred  
140 thirty-five, may be distributed exempt from tax under this  
141 article, after the earnings and profits accumulated after De-  
142 cember thirty-first, one thousand nine hundred thirty-four,  
143 have been distributed, but any such tax-free distribution shall  
144 be applied against and reduce the adjusted basis of the stock  
145 provided in this section.

146 (c) In cases where it is necessary to determine the basis  
147 from either the cost or January first, one thousand nine  
148 hundred thirty-five, fair market value, cost shall be first  
149 adjusted to January first, one thousand nine hundred thirty-  
150 five, by the items of this subsection before comparison is made  
151 with the January first, one thousand nine hundred thirty-five,  
152 fair market value.

153 (5) If an installment obligation is satisfied at other than  
154 its face value or distributed, transmitted, sold, or otherwise  
155 disposed of, gain or loss shall result to the extent of the differ-  
156 ence between the basis of the obligation and (a) in the case  
157 of satisfaction at other than face value or a sale or exchange  
158 —the amount realized, or (b) in case of a distribution, trans-  
159 mission, or disposition otherwise than by sale or exchange—  
160 the fair market value of the obligation at the time of such  
161 distribution, transmission or disposition. Any gain or loss so  
162 resulting shall be considered as resulting from the sale or  
163 exchange of the property in respect of which the installment  
164 obligation was received. The basis of the obligation shall be  
165 the excess of the face value of the obligation over an amount  
166 equal to the income which would be returnable were the obli-  
167 gation satisfied in full. Nothing in this section shall be con-  
168 strued to prevent, in the case of property sold under contract

169 providing for payment in installments, the taxation of that  
170 portion of any installment payment representing gain or  
171 profit in the year in which such payment is received.

172 (6) If the property consists of stock or securities the  
173 acquisition of which, or the contract or option to acquire,  
174 resulted in the nondeductibility of the loss from the sale or  
175 other disposition of substantially identical stock or securities,  
176 then the basis shall be the basis of the stock or securities so  
177 sold or disposed of, increased or decreased, as the case may  
178 be, by the difference, if any, between the price at which the  
179 property was acquired and the price at which such substan-  
180 tially identical stock or securities were sold or otherwise dis-  
181 posed of.

182 (7) If the property was acquired after December thirty-  
183 first, one thousand nine hundred thirty-four, upon an ex-  
184 change described in section thirty-one (2) to (4), inclusive,  
185 of this article, the basis shall be the same as in the case of the  
186 property exchanged, decreased in the amount of any money  
187 received by the taxpayer and increased in the amount of gain  
188 or decreased in the amount of loss to the taxpayer that was  
189 recognized upon such exchange under this article and ap-  
190 plicable to the year in which the exchange was made. If the  
191 property so acquired consisted in part of the type of property  
192 permitted by section thirty-one (2) to be received without  
193 the recognition of gain or loss, and in part of other property,  
194 the basis provided in this subsection shall be allocated be-  
195 tween the properties, other than money, received, and for  
196 the purpose of the allocation there shall be assigned to such  
197 other property an amount equivalent to its fair market value  
198 at the date of the exchange.

199 (8) If the property was acquired after December thirty-  
200 first, one thousand nine hundred thirty-four, as a result of a  
201 compulsory or involuntary conversion described in section  
202 thirty-one (5), the basis shall be the same as in the case of the  
203 property so converted, decreased in the amount of any money  
204 received by the taxpayer which was not expended in accord-  
205 ance with the provisions of this article, determining the tax-  
206 able status of the gain or loss upon such conversion, and in-  
207 creased in the amount of gain or decreased in the amount of



208 loss to the taxpayer recognized upon such conversion under  
209 this article.

210 (9) The amount realized from the sale or other disposi-  
211 tion of property shall be the sum of any money received, plus  
212 the fair market value of any property other than money  
213 received.

Sec. 31. *Recognition of Gain or Loss; Exchanges.* (1)

2 Upon the sale or exchange of property the entire amount  
3 of the gain or loss, determined under section thirty of this  
4 article, shall be recognized, except as hereinafter provided in  
5 this section.

6 (2) (a) No gain or loss shall be recognized if property held  
7 for productive use in trade or business or for investment (not  
8 including stock in trade or other property held primarily for  
9 sale, nor stocks, bonds, notes, choses in action, certificates of  
10 trust or beneficial interest, or other securities or evidences of  
11 indebtedness or interest) is exchanged solely for property of  
12 a like kind to be held either for productive use in trade or  
13 business or for investment.

14 (b) No gain or loss shall be recognized if common stock  
15 in a corporation is exchanged solely for common stock in the  
16 same corporation, or if preferred stock in a corporation is  
17 exchanged solely for preferred stock in the same corporation.

18 (c) No gain or loss shall be recognized if stock or securi-  
19 ties in a corporation a party to a reorganization are, in pur-  
20 suance of the plan of reorganization, exchanged solely for  
21 stock or securities in such corporation or in another corpora-  
22 tion a party to the reorganization.

23 (d) No gain or loss shall be recognized if property is  
24 transferred to a corporation by one or more persons solely  
25 in exchange for stock or securities in such corporation, and  
26 immediately after the exchange such person or persons are  
27 in control of the corporation; but in the case of an exchange  
28 by two or more persons this paragraph shall apply only if  
29 the amount of the stock or securities received by each is  
30 substantially in proportion to his interest in the property  
31 prior to the exchange. The stock or securities received shall  
32 be considered as taking the place of the property transferred  
33 therefor.

34 (3) If an exchange would be within the provisions of  
35 subsection two of this section if it were not for the fact that  
36 the property received in exchange consists not only of prop-  
37 erty permitted by such subsection to be received without the  
38 recognition of gain, but also of other property or money,  
39 then the gain, if any, to the recipient shall be recognized,  
40 but in an amount not in excess of the sum of such money  
41 and the fair market value of such other property.

42 If a distribution made in pursuance of a plan of reorgani-  
43 zation is within the provisions of this subsection but has the  
44 effect of the distribution of a taxable dividend, then there  
45 shall be taxed as a dividend to each distributee such an  
46 amount of the gain recognized under this subsection as is  
47 not in excess of his ratable share of the undistributed earn-  
48 ings and profits of the corporation accumulated after De-  
49 cember thirty-first, one thousand nine hundred thirty-four.  
50 The remainder, if any, of the gain recognized under this sub-  
51 section shall be taxed as a gain from the exchange of prop-  
52 erty.

53 (4) If an exchange would be within the provisions of sub-  
54 section two of this section if it were not for the fact that the  
55 property received in exchange consists not only of property  
56 permitted by such paragraphs to be received without the  
57 recognition of gain or loss, but also of other property or  
58 money, then no loss from the exchange shall be recognized.

59 (5) If property, as a result of its destruction in whole or  
60 in part, theft or seizure, or an exercise of the power of  
61 requisition or condemnation, or the threat or imminence  
62 thereof, is compulsory or involuntarily converted into property  
63 similar or related in service or use to the property so converted,  
64 or into money which is forthwith in good faith, under regula-  
65 tions prescribed by the commissioner, expended in the acquisi-  
66 tion of other property similar or related in service or use to the  
67 property so converted, or in the acquisition or control of a  
68 corporation owning such other property, or in the establish-  
69 ment of a replacement fund, no gain or loss shall be recog-  
70 nized. If any part of the money is not so expended, the gain,  
71 if any, shall be recognized, but in an amount not in excess  
72 of the money which is not so expended.

73 (6) As used in this section and section thirty:

74 (a) The term "reorganization" means (a) a statutory  
75 merger or consolidation, or (b) the acquisition by one cor-  
76 poration in exchange solely for all or a part of its voting  
77 stock; of at least eighty per cent of the voting stock and at  
78 least eighty per cent of the total number of shares of all  
79 other classes of stock of another corporation; or of substan-  
80 tially all the properties of another corporation, or (c) a  
81 transfer by a corporation of all or a part of its assets to  
82 another corporation if immediately after the transfer the  
83 transferor or its shareholders or both are in control of the  
84 corporation to which the assets are transferred, or (d) a  
85 recapitalization, or (e) a mere change in identity, form, or  
86 place or organization, however effected.

87 (b) The term "a party to a reorganization" includes a  
88 corporation resulting from a reorganization and includes both  
89 corporations in the case of a reorganization resulting from  
90 the acquisition by one corporation of stock or properties of  
91 another.

92 (7) As used in this section the term "control" means the  
93 ownership of stock possessing at least eighty per cent of the  
94 total combined voting power of all classes of stock entitled to  
95 vote and at least eighty per cent of the total number of shares  
96 of all other classes of stock of the corporation.

Sec. 34. *Credits Allowed Nonresidents.* In the case of a  
2 nonresident taxpayer, the exemption and dependency credits  
3 allowed under the preceding section shall be reduced to  
4 amounts which bear the same ratio to the full exemption and  
5 dependency credits provided for herein as his gross income  
6 returnable under this article bears to his entire gross income,  
7 for the taxable year: *Provided, however,* That such exemp-  
8 tion and dependency credits shall not be allowed unless and  
9 until a return of income shall have been filed as provided in  
10 section thirty-eight of this article.

11 Whenever a nonresident individual of this state has be-  
12 come liable to income tax to the state wherein he resides upon  
13 his net income for the taxable year derived from sources  
14 within this state and subject to taxation under this article,  
15 the commissioner shall credit the amount of income tax pay-  
16 able by him under this article with such proportion thereof as

17 his entire gross income, less his gross income returnable under  
18 this article, bears to his entire gross income returnable to the  
19 state wherein he resides: *Provided*, That such credit shall be  
20 allowed only if the laws of the state wherein he resides grant  
21 a substantially similar credit to residents of this state subject  
22 to income tax under the laws of such other state.

Sec. 38. *Return by Nonresident.* A nonresident taxpayer  
2 shall not be entitled to the deductions authorized by section  
3 twenty-five of this article, nor to the exemption, dependency  
4 credits, or other credits authorized by section thirty-four of  
5 this article, unless and until he makes under oath a complete  
6 return of his gross income from sources both within and  
7 without the state.

Sec. 41. *Form for Returns; Time for Filing.* Returns shall  
2 be in the form the commissioner may prescribe, and shall be  
3 filed with the commissioner on or before the fifteenth day of  
4 April of each year, if the return is made on the basis of the  
5 calendar year, or if the return is made on the basis of the  
6 fiscal year, then on or before the fifteenth day of the third  
7 month following the close of such fiscal year. On application,  
8 the tax commissioner may grant a reasonable extension of  
9 time, not exceeding two months, for filing returns whenever  
10 in his judgment good cause exists therefor.

Sec. 44. *When Tax to be Paid; Interest and Penalties.* The  
2 full amount of the tax shall be due and payable to the com-  
3 missioner at the time the return is filed: *Provided, however*,  
4 That such time shall in no event be later than the time fixed by  
5 section forty-one of this article for filing the return. After a  
6 taxpayer files a corrected or amended return for any taxable  
7 year, on which a tax liability is disclosed in excess of the  
8 amount shown due on return previously filed for the same  
9 period, the excess of the tax liability, over and above that  
10 previously shown due and up to the amount disclosed on the  
11 corrected or amended return, shall be paid at the time of the  
12 filing of the corrected or amended return. Payments of  
13 deficiencies, interest and penalties shall be made as provided  
14 by section forty-nine.

15 Under such regulations as the commissioner may prescribe,

16 the tax may be paid with uncertified check, but if such check  
17 is not paid by the bank on which it is drawn, the taxpayer by  
18 whom the check is tendered shall remain liable for the pay-  
19 ment of the tax, and for all legal penalties, the same as if such  
20 check had not been tendered.

Sec. 45. *Return to be an Assessment.* The filing of a re-  
2 turn required by this article shall be deemed an assessment to  
3 the extent of the amount shown due, subject, however, to ex-  
4 amination, determination and revision of the tax under the  
5 following sections of this article. The filing of a corrected or  
6 amended return shall, in like manner, be deemed an assess-  
7 ment as a deficiency to the extent of any excess shown due  
8 over the amount previously shown due on the prior return,  
9 subject, however, to examination, determination and revision  
10 of the tax under the following sections of this article.

Sec. 46. *Examination of Returns and Determination of Tax;*  
2 *Deficiency.* As soon as practicable after the return is filed  
3 the commissioner shall examine it and shall determine the  
4 correct amount of the tax.

5 (1) As used in, and in respect of a tax imposed by, this  
6 article, the term "deficiency" means the amount by which the  
7 tax imposed by this article exceeds the amount shown as the  
8 tax by the return; but the amount so shown on the return  
9 shall first be increased by the amounts previously assessed, or  
10 collected without assessment, as a deficiency, and decreased by  
11 the amounts previously refunded in respect to such tax.

12 (2) If in the case of any taxpayer the commissioner de-  
13 termines that there is a deficiency in respect of the tax im-  
14 posed by this article, the commissioner shall send notification  
15 of such deficiency to the taxpayer by mail. Such notification  
16 shall set forth the details of the deficiency and the manner in  
17 which the deficiency was computed. Within sixty days after  
18 such notification is mailed, the taxpayer may file a petition  
19 with the commissioner for a redetermination of the deficiency.

20 If a petition for a redetermination of a deficiency has been  
21 filed by a taxpayer within the period provided in this section,  
22 notice of, and an opportunity for, a hearing shall be given by  
23 the commissioner to the taxpayer, and after a hearing thereon,  
24 a decision by the commissioner shall be made as quickly as

25 practicable, and prompt notice thereof given to the taxpayer.

26 The commissioner shall have jurisdiction to redetermine the  
27 correct amount of the deficiency, regardless of the fact that a  
28 prior deficiency may have been found and assessed. Such sub-  
29 sequent redetermination shall be subject to the notification  
30 and hearing provision of this section.

31 If the taxpayer does not file a petition with the commis-  
32 sioner within the time prescribed by this section, the deficiency  
33 shall be assessed.

34 All notices required to be mailed to a taxpayer under the  
35 provisions of this article, if mailed to him at his last known  
36 address, as shown on the income tax records of the commis-  
37 sioner, shall be sufficient for the purposes of this article.

Sec. 47. *Additions to Tax in Case of Deficiencies: Interest.*

2 (1) If any part of this deficiency is due to negligence, or  
3 intentional disregard of the provisions of this article or any  
4 regulation issued thereunder, but without intent to de-  
5 fraud, five per cent of total amount of the deficiency shall be  
6 added to such deficiency and collected as a part thereof.

7 If any part of any deficiency is due to fraud with intent  
8 to evade tax, then one hundred per cent of the total amount  
9 of the deficiency shall be added to such deficiency and collected  
10 as a part thereof.

11 In case of any failure to make and file a return required by  
12 this article within the time prescribed herein; or in case of  
13 the filing of an incorrect or insufficient return and after no-  
14 tification thereof by the commissioner, there is a refusal or  
15 neglect, within twenty days after such notice, to file a  
16 correct and sufficient return, or there is filed in response  
17 thereto a false or fraudulent return, the commissioner shall  
18 determine the correct tax liability of such taxpayer according  
19 to the best information obtainable, and shall assess the same  
20 at not more than double the amount of tax so determined.  
21 The provisions of sections forty-six and forty-nine relating to  
22 notice and hearing shall not be applicable to this and the pre-  
23 ceding paragraph.

24 Interest upon the amount determined as a deficiency shall  
25 be assessed at the same time as the deficiency, or the additional  
26 tax, and upon notice and demand from the commissioner, shall  
27 be collected as a part of the tax, at the rate of one-half of one

28 per cent per month from the date prescribed for the pay-  
29 ment of the tax to the date the deficiency or additional tax  
30 is assessed.

31 (2) Where the amount determined by the taxpayer as  
32 the tax imposed by this article, or any part of such amount,  
33 is not paid on or before the date prescribed for its payment,  
34 there shall be collected as a part of the tax, interest upon  
35 such unpaid amount at the rate of one per cent per month  
36 from the date prescribed for its payment until it is paid.

37 Where an extension of time for payment of the amount  
38 determined as the tax by the taxpayer has been granted, and  
39 the amount and interest determined under subsection three  
40 is not paid in full prior to the expiration of the period of the  
41 extension, then, in lieu of the interest provided in subsection  
42 three, interest at the rate of one per cent per month shall be  
43 collected on such unpaid amount from the date prescribed  
44 for its payment, as if no extension had been granted, until  
45 it is paid.

46 (3) If the time for payment of the amount determined as  
47 the tax by the taxpayer is extended under the authority of  
48 section forty-one, there shall be collected as a part of such  
49 amount, interest thereon at the rate of six per cent per annum  
50 from the date when such payment should have been made if  
51 no extension had been granted, until the expiration of the  
52 period of the extension, unless sooner paid, subject, however,  
53 to the provisions of subsection two above.

Sec. 48. *Criminal Penalties.* (1) Any person required  
2 under this article to pay any tax, make a return, keep any  
3 records, or supply any information, for the purposes of  
4 the computation, assessment, or collection of any tax im-  
5 posed by this article, who wilfully fails to pay such tax,  
6 make such return, keep such records, or supply such in-  
7 formation, at the time or times required by this article  
8 or any lawful regulations issued thereunder, shall, in ad-  
9 dition to other penalties provided by this article, be guilty  
10 of a misdemeanor, and, upon conviction thereof, be fined not  
11 more than one thousand dollars, or imprisoned for not more  
12 than one year, or both, in the discretion of the court.

13 (2) Any person who wilfully files a false or fraudulent  
14 return under this article disclosing an understatement of

15 tax, or in case of a partnership showing an understatement  
16 of net income, with intent to evade the tax, shall, in addition  
17 to other penalties provided by this article, be guilty of a  
18 misdemeanor and shall, upon conviction thereof, be fined not  
19 more than one thousand dollars, or imprisoned for not more  
20 than one year, or both, in the discretion of the court.

21 (3) The term "person" as used in this section includes an  
22 officer or employee of a corporation or a member or employee  
23 of a partnership, whose ordinary duties as such officer, em-  
24 ployee, or member include the performance of the act or  
25 acts in respect of which the violation occurs.

26 (4) The failure to do any act required by or under the  
27 provisions of this article shall be deemed an act committed  
28 in part at the office of the commissioner, in Charleston, West  
29 Virginia. The certificate of the commissioner that any person  
30 has failed to comply with the provisions of this article, either  
31 in whole or in part, shall be prima facie evidence of such  
32 failure.

Sec. 49. *Assessment and Collection of Deficiencies.* If the  
2 taxpayer files a petition for a hearing with the commissioner,  
3 in accordance with the provisions of section forty-six of this  
4 article, the entire amount determined as the deficiency by  
5 the decision of the commissioner following such hearing, shall  
6 be assessed and be paid within ten days from and after notice  
7 and demand therefor.

8 No assessment of a deficiency in respect of the tax imposed  
9 by this article and no distraint or proceeding in court for its  
10 collection shall be made, begun, or prosecuted until such no-  
11 tification, as provided in section forty-six, has been mailed  
12 to the taxpayer, nor until the expiration of such sixty-day  
13 period, nor, if a petition has been filed with the commis-  
14 sioner, until after notice of his decision thereon.

15 If the taxpayer does not file a petition with the commis-  
16 sioner within the time prescribed in section forty-six, the  
17 deficiency, notification of which has been mailed to the tax-  
18 payer, shall be assessed and paid within ten days after notice  
19 and demand from the commissioner.

Sec. 50. *Jeopardy Assessments; Termination of Taxable*  
2 *Year.* (1) (a) If the commissioner believes that the as-  
3 sessment or collection of a deficiency will be jeopardized



4 by delay, he shall immediately assess such deficiency, to-  
5 gether with all interest, penalties, or additions to the tax  
6 provided for by this article, regardless of the provisions  
7 of sections forty-six or forty-nine, and notice and de-  
8 mand shall be made by the commissioner for immediate  
9 payment thereof. If the jeopardy assessment is made be-  
10 fore any notice, in respect of the tax to which the jeopardy  
11 assessment relates, has been mailed under section forty-  
12 six, then the commissioner shall mail a notice as provided  
13 under section forty-six within ten days after the making of  
14 the assessment.

15 (b) When a jeopardy assessment has been made, the tax-  
16 payer may obtain a stay of collection of the whole or any  
17 part of the amount of the assessment by filing with the com-  
18 missioner a bond in an amount not exceeding double the  
19 amount as to which the stay is desired, and with such sure-  
20 ties as the commissioner deems necessary, conditioned upon  
21 the payment of so much of the amount, the collection of which  
22 is stayed by the bond, as is not reduced by the decision of the  
23 commissioner, together with interest thereon as provided in  
24 section forty-seven: *Provided, however,* That if a petition is  
25 not filed within the period provided in section forty-six, then  
26 the amount of the tax, the collection of which is stayed by the  
27 bond, shall be paid on notice and demand at any time after  
28 the expiration of such period: *Provided further,* That such  
29 bond must be filed within ten days following the assessment.

30 (c) When a petition has been filed with the commissioner  
31 and when the amount which should have been assessed has  
32 been determined by a decision of the commissioner, then any  
33 unpaid portion, the collection of which has been stayed by  
34 the bond, shall be collected as part of the tax upon the notice  
35 and demand, and any remaining portion of the assessment,  
36 not due and payable, shall be cancelled. If the amount al-  
37 ready collected exceeds the amount determined as the amount  
38 which should have been assessed, such excess shall be refunded  
39 to the taxpayer as provided in section fifty-four without the  
40 filing of claim therefor. If the amount determined as the tax  
41 which should have been assessed is greater than the amount  
42 actually assessed then the difference shall be assessed and  
43 shall be collected as part of the tax upon notice and demand  
44 from the commissioner.

45 (2) (a) If the commissioner finds that a taxpayer in-  
46 tends or is about to depart from the state of West Virginia  
47 or to remove his property therefrom, or to conceal himself  
48 or his property therein, or to do any other act tending to  
49 prejudice or to render wholly or partly ineffectual proceed-  
50 ings to collect the tax for the taxable year then last past or  
51 the taxable year then current unless such proceedings be  
52 brought without delay, the commissioner shall declare the  
53 current period for such taxpayer immediately terminated  
54 and shall cause notice of such finding and declaration to be  
55 given the taxpayer, together with a demand for immediate  
56 payment of the tax for the current taxable period so de-  
57 clared terminated and of the tax for the preceding taxable  
58 year or so much of such tax as is unpaid, whether or not the  
59 time otherwise allowed by this article for filing return and  
60 paying the tax has expired; and such taxes shall thereupon  
61 become immediately due and payable. In any proceeding in  
62 court brought to enforce payment of taxes made due and  
63 payable by virtue of the provisions of this subsection, the  
64 finding of the commissioner, made as herein provided, whether  
65 made after notice to the taxpayer or not, shall be for all pur-  
66 poses presumptive evidence of the taxpayer's intent or pur-  
67 pose. The provisions of sections forty-six and forty-nine with  
68 respect to notice and hearing shall not be applicable to this  
69 subsection.

70 (b) A taxpayer who is not in default in making any re-  
71 turn or paying any tax under this article, but whose current  
72 taxable year has been terminated as herein provided, may  
73 furnish to the commissioner, under regulations to be pre-  
74 scribed by him, security approved by the commissioner that  
75 he will duly make the return next thereafter required to be  
76 filed and pay the tax next thereafter required to be paid.

77 (c) If security is approved and accepted and such fur-  
78 ther or other security with respect to the tax or taxes cov-  
79 ered thereby, is given as the commissioner shall from time  
80 to time find necessary and require, payment of such taxes  
81 shall not be enforced by any proceedings under the pro-  
82 visions of this article prior to the expiration of the time  
83 otherwise allowed for paying such taxes.

Sec. 51. *Time Limitation on Assessment and Collection.*

2 (1) The amount of taxes, including deficiencies, additional  
3 taxes, and the interest thereon, imposed by this article shall  
4 be assessed within three years after the return was filed, and  
5 no proceeding in court for the collection of such taxes shall  
6 be begun after the expiration of such period.

7 (2) If the taxpayer omits from gross income on a return  
8 required by this article an amount which should have been  
9 included therein which is in excess of twenty-five per cent  
10 of the amount of gross income stated in the return, the tax  
11 may be assessed, or a proceeding in court for the collection of  
12 such tax may be begun without assessment, at any time within  
13 five years after the return was filed.

14 (3) If the taxpayer omits from gross income on a return  
15 required by this article an amount which should have been  
16 included therein, as an amount distributed in liquidation of  
17 a corporation, the tax may be assessed, or a proceeding in  
18 court for the collection of such tax may be begun without  
19 assessment, at any time within five years after the return  
20 was filed.

21 (4) For the purposes of this section a return filed be-  
22 fore the last day provided by this article for the filing thereof,  
23 shall be considered as filed on such last day.

24 (5) In the case of a false or fraudulent return with in-  
25 tent to evade tax, or of a failure to file a return, the tax may  
26 be assessed, or a proceeding in court for the collection of  
27 such tax may be begun without assessment, at any time.

28 (6) Where before the expiration of the time prescribed by  
29 this section for the assessment of the tax, both the commis-  
30 sioner and the taxpayer have consented in writing to its as-  
31 sessment after such time, the tax may be assessed at any time  
32 prior to the expiration of the period agreed upon. The period  
33 so agreed upon may be extended by subsequent agreements in  
34 writing made before the expiration of the period previously  
35 agreed upon.

36 (7) Where the assessment of any tax imposed by this ar-  
37 ticle has been made within the period of limitation properly  
38 applicable thereto, such tax may be collected by distraint or  
39 by a proceeding in court, but only if begun (a) within five  
40 years after the assessment of the tax, or (b) prior to the

41 expiration of any period for collection agreed upon in writ-  
42 ing by the commissioner and the taxpayer before the expir-  
43 ation of such five-year period. The period so agreed upon  
44 may be extended by subsequent agreements in writing made  
45 before the expiration of the period previously agreed upon.

46 (8) The running of the statute of limitations provided in  
47 this section on the making of assessments and the institu-  
48 tion of distraint proceedings or a proceeding in court for  
49 collection, in respect of any deficiency, shall, after the mail-  
50 ing of a notice under section forty-six, be suspended for the  
51 period during which the commissioner is prohibited from  
52 making the assessment or instituting distraint proceedings or  
53 a proceeding in court as provided in this article.

Sec. 52. *Restraint of Assessment or Collection.* No injunc-  
2 tion or other order shall be awarded by any court or judge to  
3 restrain the assessment or collection of the taxes imposed by  
4 this article, or any part of them, due from any person, except  
5 upon the ground that such taxes were assessed in violation of  
6 the constitution of either the state of West Virginia or the  
7 United States.

Sec. 53. *Collection of Unpaid Taxes; Interest and Penalties.*  
2 (1) The amount of the tax imposed under this article,  
3 together with interest and penalties accrued and unpaid, shall  
4 be a debt due the state. It shall be a personal obligation of the  
5 taxpayer and shall be a lien upon all property of the taxpayer  
6 as of the date of assessment, without the necessity of levy or  
7 recordation, and said lien shall have priority over all other  
8 liens and obligations. The lien created by this subsection with  
9 respect to the personal property of the taxpayer may be en-  
10 forced by distraint, and, with respect to real property of the  
11 taxpayer, may be enforced by suit in equity as in the case of  
12 a judgment lien; and the provisions of section fourteen, ar-  
13 ticle nine of this chapter may also be invoked for the collection  
14 of taxes accruing under this article.

15 (2) The commissioner may require the assistance of the  
16 sheriff of any county of the state in levying such distraint in  
17 the county of which such sheriff is an officer. A sheriff so  
18 collecting taxes due hereunder shall be entitled to compensa-  
19 tion in the amount of all penalties collected over and above

20 the principal amount of the tax due, but in no case shall  
21 such compensation exceed twenty-five dollars. All taxes and  
22 penalties so collected, less compensation provided above, shall  
23 be remitted within ten days after collection to the tax com-  
24 missioner, who shall prescribe by general regulation the man-  
25 ner of remittance of such funds and of allowing the collecting  
26 officer compensation due him under this section.

27 (3) Action may be brought at any time by the attorney  
28 general of the state, at the instance of the commissioner, in  
29 the name of the state to recover the amount of any taxes,  
30 interest and penalties due and assessed under this article.

31 (4) The commissioner shall have the power to waive or  
32 reduce any of the additional taxes, penalties or interest there-  
33 on, assessed under the provisions of this article: *Provided,*  
34 *however,* That no such additional penalties or interest shall  
35 be waived or reduced if occasioned by negligence, fraud or  
36 evasion of the taxpayer.

Sec. 54. *Refunds.* A taxpayer who has paid in any manner,  
2 except under the provisions of subsection three or four of  
3 section fifty-three, an amount of tax for any taxable period  
4 in excess of the amount legally due for such period, may file  
5 with the commissioner a claim for refund of such excess.

6 Unless a claim for refund is filed by the taxpayer within  
7 three years from the time the tax was due or within two years  
8 from the time the tax was paid, whichever shall be the later  
9 date, no refund shall be allowed.

10 The amount of the refund shall not exceed the portion of  
11 the tax paid during the three years immediately preceding  
12 the filing of the claim, or, if no claim was filed, then during  
13 the three years immediately preceding the allowance of the  
14 refund. A refund under this section shall be with interest at  
15 six per cent from time of payment. Interest payments on  
16 refunds heretofore made under this article are hereby author-  
17 ized and approved.

18 If a claim for refund is filed, and as a part thereof the  
19 taxpayer petitions for a hearing thereon, the commissioner  
20 shall grant such hearing, and shall notify the taxpayer in  
21 writing of his determination and decision on the claim filed.

22 If in the examination of the return, and after the determi-

23 nation of the correct tax due under the provisions of section  
24 forty-six, or, after a determination of a claim for refund filed  
25 under this section, the commissioner finds the correct amount  
26 of tax due to be less than the amount paid, the excess shall be  
27 refunded, subject to the limitations of this section.

28 Any person feeling aggrieved by the decision of the com-  
29 missioner on his claim for refund may appeal from the de-  
30 cision, at any time within thirty days after notice of such  
31 determination or decision is mailed, by filing his petition in  
32 the circuit court of Kanawha county. Thereupon, appropriate  
33 proceedings shall be had and the relief to which the taxpayer  
34 may be entitled may be granted and any overpayment found  
35 by the court to be in excess of the tax legally assessed and  
36 paid shall be ordered refunded to the taxpayer, with interest  
37 at the rate of six per cent per annum from time of payment.

38 Any person feeling aggrieved by the decision of the circuit  
39 court of Kanawha county under the provisions of the pre-  
40 ceding paragraph may appeal to the supreme court of appeals  
41 as in other civil cases.

Sec. 60. *Provisions of Act Severable.* If any part of this  
2 article shall, for any reason, be adjudged by a court to be in-  
3 valid, such judgment shall not affect, impair or invalidate  
4 the remainder of this article, but shall be confined in its oper-  
5 ation to the part thereof directly involved in the controversy  
6 in which such judgment was rendered.

Sec. 62. *When Act to Take Effect.* The provisions of this  
2 act shall take effect as of January first, one thousand nine  
3 hundred thirty-nine, and the first tax to be assessed and  
4 collected under the provisions of this act shall be computed  
5 upon income received during the calendar year one thou-  
6 sand nine hundred thirty-nine.

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## CHAPTER 129

(Senate Bill No. 56—By Mr. Paull)

AN ACT to amend and reenact section two-a, article one, chap-  
ter eleven of the code of West Virginia, one thousand nine  
hundred thirty-one, as amended by chapter eighty-seven, acts

of the Legislature, regular session, one thousand nine hundred thirty-five, relating to refunds of taxes erroneously collected.

[Passed March 10, 1939; in effect ninety days from passage. Approved by the Governor.]

## Article 1. Supervision.

### Section

#### 2-a. Refund of taxes erroneously collected.

*Re it enacted by the Legislature of West Virginia:*

That section two-a, article one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended by chapter eighty-seven, acts of the Legislature, regular session, one thousand nine hundred thirty-five, be amended and reenacted to read as follows:

Section 2-a. *Refund of Taxes Erroneously Collected.* On  
2 and after the effective date of this act, any taxpayer claiming  
3 to be aggrieved through being required to pay any tax into  
4 the treasury of this state, may, within two years from the  
5 date of such payment, and not after, file with the official or  
6 department through which the tax was paid, a petition in  
7 writing to have refunded to him any such tax, or any part  
8 thereof, the payment whereof is claimed by him to have been  
9 required unlawfully; and if, on such petition, and the proofs  
10 filed in support thereof, the official collecting the same shall  
11 be of the opinion that the payment of the tax collected, or  
12 any part thereof was improperly required, he shall refund  
13 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 treasurer therefor, payable to the taxpayer entitled to the refund, and the treasurer shall pay such warrant out of the fund into which the amount so refunded was originally paid: *Provided, however,* That no refund shall be made, at  
19 any time, on any claim involving the assessed valuation or  
20 appraisement of property which was fixed at the time the tax  
21 was originally paid.

## CHAPTER 130

(House Bill No. 288—By Mr. Strouss, by request)

AN ACT to amend article one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section to be known as section four-a, relating to the powers and duties of the tax commissioner.

[Passed March 1, 1939; in effect ninety days from passage. Approved by the Governor.]

### Article 1. Supervision.

#### Section

4-a. Powers of tax commissioner as to tax and revenue statistics.

*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, as amended, be amended by adding thereto a new section to be known as section four-a, relating to the powers and duties of the tax commissioner.

Section 4-a. *Powers of Tax Commissioner as to Tax and Revenue Statistics.* In addition to the reports, information, and recommendations required under section four of this article, the tax commissioner is authorized and empowered to collect, tabulate, and classify, and make public from time to time in such manner as he may deem proper, detailed statistics relating to the revenues collected by the state.

Such statistics may be prepared and made public in a manner so as to provide accurate and useful information to government and commerce and, insofar as practicable, shall, with respect to each state revenue law, and for the state as a whole, and from within each county and municipality thereof, show the gross revenue yield, the total amount of business income reported from which such revenue is derived, the total number of taxpayers, the number of taxpayers within any statutory classification, and the gross revenue yield, together with the total amount of business income reported from any such statutory classification of taxpayers.



20 The tax commissioner may also make public such group  
21 statistics for similar or related units of business and industry  
22 within any statutory classification of taxpayers: *Provided,*  
23 *however,* That in carrying out the provisions of this section,  
24 the tax commissioner shall not make public the tax return,  
25 or any part thereof, of any individual, firm, or corporation,  
26 nor disclose in any manner statistics or information concern-  
27 ing the personal affairs of any individual or the business of  
28 any single firm or corporation.

## CHAPTER 131

(Senate Bill No. 3—By Mr. LaFon, Mr. President)

AN ACT to amend chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, by adding thereto a new article, designated article eight-a, relating to the payment, from a county-wide levy, of remaining amounts of principal and interest on road or school districts bonded obligations, incurred prior to the adoption of the tax limitation amendment.

[Passed February 6, 1939; in effect ninety days from passage. Approved by the Governor.]

### Article 8-a. County-wide Levy for District Debt Service.

#### Section

1. Purpose.
2. Definitions.
3. County-wide debt service levy.
4. Calling of election.
5. Content of order.
6. Powers and duties of the tax commissioner and the attorney general.
7. Time of election.
8. Notice; publication.
9. Form of ballot.
10. Conduct of election; determination of result.
11. Debt levies.
12. Bondholders' remedies not impaired.
13. Assumption of debt by county not authorized.
14. Provisions of act severable; inconsistent acts repealed.

*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 adding thereto a new article, designated article eight-a, to read as follows:

Section 1. *Purpose.* Because of the present loss of levying  
2 power through the impounding of debt levies in school and  
3 road districts, and because of the general use and title to  
4 improvements financed by the issuance of road and school  
5 district bonds, this article permits the voters of a county,  
6 after voting in the same manner as required by section eight,  
7 article ten of the state constitution for the incurring of an  
8 original debt, to provide for the payment of road or school  
9 district debt services on obligations incurred prior to the  
10 adoption of the tax limitation amendment, from a county-  
11 wide levy. Such county-wide levy shall come out of the allo-  
12 cation of levies made by article eight, chapter eleven of this  
13 code for the payment of road and school district debts in-  
14 curred prior to the adoption of the tax limitation amendment.

Sec. 2. *Definitions.* For the purposes of this article:

2 "Commissioner" means the state tax commissioner.

3 "Governing body" means in the case of a county, the  
4 county court; and in the case of a county school district, the  
5 county board of education.

6 "District obligations" means the bonded obligations of a  
7 magisterial road district authorized and issued prior to No-  
8 vember eighth, one thousand nine hundred thirty-two, for  
9 road or bridge purposes.

10 "School obligations" means the bonded obligations of a  
11 magisterial school district or an independent school district,  
12 authorized and issued prior to November eighth, one thou-  
13 sand nine hundred thirty-two.

14 "Local obligations" means district obligations or school  
15 obligations.

16 "Debt service" means the annual requirements for the  
17 payment of principal and interest upon local obligations.

Sec. 3. *County-wide Debt Service Levy.* After approval  
2 by the voters of a county given at an election held in accord-  
3 ance with this article, a governing body shall, during each  
4 subsequent year, levy the total amount required for debt  
5 service upon local obligations, for which it has previously laid  
6 levies by individual districts, upon the property valuations  
7 of the entire county.

Sec. 4. *Calling of Election.* A governing body may, and it

2 shall upon written petition of the registered voters of the  
3 county equal in number to at least ten per cent of those  
4 voting in the county in the last general election, order an  
5 election to submit to the voters the question of the payment  
6 out of a county-wide levy of remaining debt service on all  
7 outstanding local obligations for which the governing body  
8 now lays the annual levy by districts.

Sec. 5. *Content of Order.* The governing body in its order  
2 calling the election shall state at least:

3 (1) The issues of local obligations outstanding by dis-  
4 tricts, the original amount and purpose of each issue, and the  
5 amount remaining outstanding;

6 (2) The aggregate estimated annual requirements for debt  
7 service;

8 (3) The approximate rate of levy upon each class of  
9 property required to pay the debt service upon a county-wide  
10 basis;

11 (4) The number of years for which a levy will be re-  
12 quired to liquidate the local obligations in full;

13 (5) The date of the election;

14 (6) The proportion of votes necessary for approval.

15 The order shall be entered upon the records of the govern-  
16 ing body on the day issued.

Sec. 6. *Powers and Duties of the Tax Commissioner and  
2 the Attorney General.* The governing body, immediately  
3 after calling the election and before publication or posting  
4 of the notice as required by section eight, shall file copies of  
5 its order with the tax commissioner. The tax commissioner  
6 shall examine the order and shall determine whether it is  
7 in accordance with the requirements of this article, whether  
8 the statements contained therein are accurate, and whether  
9 the action of the governing body is otherwise in accordance  
10 with law. If the tax commissioner finds that the order is  
11 in accordance with this article and is accurate in statement,  
12 and that the action of the governing body is otherwise in ac-  
13 cordance with law, he shall approve the order. The tax com-  
14 missioner shall make his determination and shall certify his  
15 approval or disapproval to the governing body within ten  
16 days after the order was filed in his office. If the tax com-  
17 missioner disapproves the order, he shall transmit, at the

18 same time, a statement of his reasons, together with instruc-  
19 tions for the correction of the order.

20 The attorney general shall prescribe all necessary forms  
21 and instructions for the holding of an election under this  
22 article.

Sec. 7. *Time of Election.* The governing body, in its or-  
2 der calling the election, shall fix a date upon which the elec-  
3 tion shall be held. The election may be held at the same  
4 time as a general, primary or other special election, but shall  
5 not be held for at least thirty days following the date of the  
6 order calling the election nor less than fifteen days before  
7 another election.

Sec. 8. *Notice; Publication.* The governing body shall, af-  
2 ter the tax commissioner's approval of the order calling the  
3 election has been received, give notice of the election by pub-  
4 lication of the approved order at least once each week for  
5 two successive weeks before the election in two newspapers  
6 of general circulation and of opposite politics published in  
7 the county. The first publication shall be made at least four-  
8 teen days prior to the election. If only one newspaper is  
9 published in the county, publication shall be made therein.  
10 If no newspaper is published in the county, a true copy of  
11 the order shall be posted at the front door of the courthouse,  
12 and at a public place in each voting precinct at least ten days  
13 before the election.

Sec. 9. *Form of Ballot.* A separate ballot shall be used to  
2 submit the question of a county-wide debt service levy. The  
3 ballot shall be in substantially the following form:

4 ELECTION TO AUTHORIZE THE PAYMENT OF  
5 DISTRICT DEBT SERVICE FROM A  
6 COUNTY-WIDE LEVY

7 Shall the ..... (name of governing body) ..... be  
8 authorized and instructed to levy the annual requirements  
9 of debt service for the ..... (road bonds) ..... (road and  
10 bridge bonds) ..... (school bonds) of (names of districts)  
11 districts all incurred prior to the adoption of the tax limita-  
12 tion amendment at estimated annual rates of levy of .....  
13 cents on class I property, ..... cents on class II property,

14 and ..... cents on classes III and IV property for a period  
15 of ..... years on a county-wide basis?

16 ☐ For the county-wide levy

17 ☐ Against the county-wide levy

18 NOTICE TO VOTERS: Place an X mark in the square  
19 opposite your choice.

Sec. 10. *Conduct of Election; Determination of Result.*

2 The general election laws of the state so far as applicable  
3 shall apply to elections held under this article: *Provided,*  
4 *however,* That where a special election is held, the governing  
5 body having due regard to the minimum expense involved,  
6 shall determine the number of election officials necessary to  
7 properly conduct said election, which number shall in no case  
8 be less than three commissioners and two clerks, and shall  
9 appoint the same and fix and pay their compensation; other-  
10 wise, the election officials shall be such as are appointed to  
11 serve with respect to the primary, general or other special  
12 election, as the case may be, held at the same time. The local  
13 levying body, however, shall provide the election supplies  
14 necessary for such special election. The governing  
15 body calling the election shall canvass the results at the  
16 same time with reference to the election and in the same man-  
17 ner as required of county courts for general elections. The  
18 county-wide levy shall be deemed to be approved only if  
19 three-fifths of the votes cast for and against the proposition  
20 were in favor thereof. The governing body shall enter the  
21 result of the election upon its record and shall certify the re-  
22 sult to the tax commissioner, and to the state sinking fund  
23 commission.

Sec. 11. *Debt Levies.* After a county-wide levy has been  
2 approved, the governing body shall pay the debt service  
3 upon the local obligations concerned by the laying of  
4 a levy to be in accordance with the allocation of levies for  
5 such pre-existing debts made by article eight, chapter eleven  
6 of this code, upon the classified valuations of property  
7 throughout the county.

Sec. 12. *Bondholders' Remedies Not Impaired.* The pro-  
2 visions of this article shall not be deemed to impair or alter  
3 the rights of bondholders to enforce the payment of principal

- 4 and interest upon bonded obligations by any appropriate  
5 remedy against the property originally pledged for payment.

Sec. 13. *Assumption of Debt by County not Authorized.*

- 2 This article shall not be construed to authorize the assump-  
3 tion of the legal obligation of road or school district debt by  
4 the county.

Sec. 14. *Provisions of Act Severable; Inconsistent Acts Re-*

- 2 *pealed.* The provisions of this act shall be construed to be  
3 severable and if any part should be held unconstitutional or  
4 for any other reason invalid such invalidity shall not affect  
5 the remaining parts.

- 6 All acts, or parts of acts, in conflict with the provisions of  
7 this act are hereby repealed.

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## CHAPTER 132

(Senate Bill No. 2—By Mr. LaFon, Mr. President)

AN ACT to amend article eight, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended by chapter sixty-seven, acts of the Legislature of West Virginia, second extraordinary session, one thousand nine hundred thirty-three, by repealing section nineteen, by amending sections two, five to ten-a, inclusive, twelve, fourteen, seventeen, thirty-two and thirty-three and adding sections six-a to six-d, inclusive, twelve-a and fourteen-a, and to repeal chapters fifty-one, sixty-five and sixty-nine, acts of the Legislature, second extraordinary session, one thousand nine hundred thirty-three; chapter twelve, acts of the Legislature, first extraordinary session, one thousand nine hundred thirty-six; and chapter twenty-six, acts of the Legislature, regular session, one thousand nine hundred thirty-seven, all relating to tax levies under the tax limitation amendment.

[Passed February 15, 1939; in effect ninety days from passage. Approved by the Governor.]

### Article 8. Levies.

#### Section

2. Legislative findings.  
5. Classification of property for levy purposes.  
6. Aggregate of taxes on the different classifications; taxing units authorized to lay levies.

- 6-a. Levies on each classification by the board of public works.
- 6-b. Maximum levies on each classification by county courts; order of levies.
- 6-c. Maximum levies on each classification by county boards of education; order of levy.
- 6-d. Maximum levies on each classification by municipalities; order of levy.
- 7. Increase of current expense levies when debt levies not required; limitations.
- 8. Levies by board of public works; certification.
- 9. Meetings of local levying bodies.
- 10. Levy estimate by county court; certification to tax commissioner and publication.
- 10-a. Adjourned session of county court to hear objections to proposed levies; approval of estimate and levy by tax commissioner; first levy for bonded indebtedness, second for indebtedness not bonded, then for current expenses.
- 12. Levy estimate by board of education; certification and publication.
- 12-a. Adjourned session of board of education to hear objections to proposed levies; approval of estimate and levy by tax commissioner; first levy for bonded indebtedness and indebtedness not bonded, second for permanent improvement fund, then for current expenses.
- 14. Levy estimate by municipality; certification to tax commissioner and publication.
- 14-a. Adjourned session of municipal governing body to hear objections; approval of levies by tax commissioner; first levy for bonded indebtedness and indebtedness not bonded, then for current expenses.
- 17. Publication and posting of notice of election; form of ballot.
- 19. Repealed.
- 32. Publication or posting.
- 33. Acts repealed.

*Be it enacted by the Legislature of West Virginia:*

That chapters fifty-one, sixty-five, and sixty-nine, acts of the Legislature, second extraordinary session, one thousand nine hundred thirty-three; chapter twelve, acts of the Legislature, first extraordinary session, one thousand nine hundred thirty-six, and chapter twenty-six, acts of the Legislature, regular session, one thousand nine hundred thirty-seven, be repealed; and that article eight, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as last amended by chapter sixty-seven, acts of the Legislature of West Virginia, second extraordinary session, one thousand nine hundred thirty-three, be amended by repealing section nineteen, amending sections two, five to ten-a, inclusive, twelve, fourteen, seventeen, thirty-two and thirty-three, and adding sections six-a to six-d, inclusive, twelve-a and fourteen-a so as to read as follows:

Section 2. *Legislative Findings.* The Legislature, through  
2 its interim legislative committee, having carefully analyzed

3 the fiscal affairs of the state and its political subdivisions with  
4 particular reference to the liquidation of the legal contractual  
5 indebtedness, not bonded, of such subdivisions incurred prior  
6 to the adoption of the "Tax Limitation Amendment," the  
7 liquidation of Virginia debt bonds, and the reduction of the  
8 outstanding bonded debt of political subdivisions incurred  
9 prior to the adoption of the "Tax Limitation Amendment,"  
10 finds that:

11 (1) With the levy for the year one thousand nine hun-  
12 dred thirty-eight—one thousand nine hundred thirty-nine, the  
13 Virginia debt bonds will be entirely liquidated and that no  
14 further state debt levy upon real and personal property will  
15 be required.

16 (2) Since the year one thousand nine hundred thirty-two—  
17 one thousand nine hundred thirty-three, nearly six and one-  
18 half million dollars has been levied and applied to the pay-  
19 ment of legal contractual indebtedness, not bonded, of political  
20 subdivisions incurred prior to the adoption of the "Tax  
21 Limitation Amendment" and that only some four hundred  
22 and fifty thousand dollars of such debt remains outstanding  
23 after the year one thousand nine hundred thirty-eight—one  
24 thousand nine hundred thirty-nine.

25 (3) The total outstanding bonded indebtedness of sub-  
26 divisions of the state incurred prior to the adoption of the  
27 "Tax Limitation Amendment" has been reduced since the year  
28 one thousand nine hundred thirty-two—one thousand nine  
29 hundred thirty-three, by approximately one-third and the an-  
30 nual requirements of service upon bonded debt have been re-  
31 duced by completed amortizations from approximately eight  
32 million dollars to less than six million five hundred thousand  
33 dollars.

34 (4) With the exception of a few counties of small valuations  
35 the present allocation of levies to county courts for current  
36 general expense is adequate to maintain orderly county gov-  
37 ernments.

38 (5) Because of the increase of school enrollment, in-  
39 adequate buiding facilities and worn-out equipment, county  
40 boards of education need increased levying power to maintain  
41 adequate schools for a reasonable school term.

42 (6) While provision can be made for the use of the maxi-  
43 mum amount of levies for municipal current expense meas-



44 ured by the difference in total maximum rates allowed by  
45 the constitution for class III and class IV property, further  
46 levying power cannot be given to municipalities without  
47 serious loss of potential revenue through the freezing of  
48 levies outside of municipalities.

49 (7) It is now possible to adjust the allocation of levies to  
50 redistribute so much of the rates previously allocated for  
51 debts incurred prior to the adoption of the "Tax Limitation  
52 Amendment" as represent debts completely liquidated, so as  
53 to meet the increased levying requirements of boards of edu-  
54 cation, and that such adjustment is in keeping with sound  
55 finance, a normal development of our free schools, the preser-  
56 vation of local fiscal responsibility for local services, and the  
57 intention of the "Tax Limitation Amendment."

Sec. 5. *Classification of Property for Levy Purposes.* For  
2 the purpose of levies property shall be classified as follows:

3 Class I. All tangible personal property employed exclusive-  
4 ly in agriculture, including horticulture and grazing;

5 All products of agriculture (including livestock) while  
6 owned by the producer;

7 All moneys and all notes, bonds, bills and accounts receiva-  
8 ble, stocks and any other intangible personal property;

9 Class II. All property owned, used and occupied by the  
10 owner exclusively for residential purposes;

11 All farms, including land used for horticulture and grazing,  
12 occupied and cultivated by their owners or bona fide tenants;

13 Class III. All real and personal property situated outside  
14 of municipalities, exclusive of classes I and II;

15 Class IV. All real and personal property situated inside of  
16 municipalities, exclusive of classes I and II.

Sec. 6. *Aggregate of Taxes on the Different Classifications;*  
2 *Taxing Units Authorized to Lay Levies.* The aggregate of  
3 taxes assessed in any one year by all levying bodies, except as  
4 provided by section twenty-three of this article, shall not ex-  
5 ceed fifty cents on each one hundred dollars' assessed valu-  
6 ation on class I property; one dollar on class II property; one  
7 dollar fifty cents on class III property; and two dollars on  
8 class IV property.

9 The fiscal bodies of the taxing units of the state are here-  
10 by authorized to lay levies within the limitations of the "Tax  
11 Limitation Amendment" for the purposes and subject to the

12 several maximums specified by sections six-a to seven, in-  
13 clusive, of this article.

Sec. 6-a. *Levies on Each Classification by the Board of  
2 Public Works.* The state board of public works shall levy  
3 for general expense purposes, including the payment of  
4 the state debt, for the state fund general revenue, as pro-  
5 vided by section eight, as follows:

6 On class I property, twenty-five hundredths of one cent;  
7 on class II property, five-tenths of one cent; and on classes  
8 III and IV property, one cent.

Sec. 6-b. *Maximum Levies on Each Classification by  
2 County Courts; Order of Levies.* County courts are hereby  
3 authorized to lay not in excess of the following maximum  
4 levies, for the purposes specified and in the following order:

5 (1) With respect to the county as a whole for the pay-  
6 ment of (a) interest and sinking fund requirements for  
7 bonded indebtedness incurred prior to the adoption of the  
8 tax limitation amendment; and (to the extent not so required),  
9 (b) other legally incurred contractual indebtedness, not  
10 bonded, if any, incurred prior to the adoption of the tax  
11 limitation amendment, of the county as follows: On class I  
12 property, seventy-five one-hundredths of one cent; on class  
13 II property, one and one-half cents; and on classes III and  
14 IV property, three cents;

15 (2) With respect to a magisterial or special taxing dis-  
16 trict for which the county court is required to lay the levy,  
17 for the payment of (a) interest and sinking fund requirements  
18 for bonded indebtedness, incurred prior to the adoption of  
19 the tax limitation amendment; and (to the extent not so re-  
20 quired), (b) other legally incurred contractual indebtedness  
21 not bonded, if any, incurred prior to the adoption of the tax  
22 limitation amendment, as follows: On class I property, four  
23 and fifteen-hundredths cents; on class II property, eight and  
24 three-tenths cents; and on classes III and IV property, sixteen  
25 and six-tenths cents;

26 (3) For general county current expense as follows: On  
27 class I property, nine and four-tenths cents; on class II prop-  
28 erty, eighteen and eight-tenths cents; and on classes III and  
29 IV property, thirty-seven and six-tenths cents. But in a  
30 county where the total assessed valuation of all classes of

31 property is less than six million dollars, the county court may,  
32 with the prior written approval of the tax commissioner, ex-  
33 ceed the rates of levy for general county current expense by  
34 not more than twenty-five per cent of the rates specified.

Sec. 6-c. *Maximum Levies on Each Classification by County*  
2 *Boards of Education; Order of Levy.* County boards of edu-  
3 cation are hereby authorized to lay not in excess of the fol-  
4 lowing maximum levies, for the purposes specified, and in the  
5 following order:

6 (1) With respect to a magisterial, independent or other  
7 school district existing in a county prior to May twenty-second,  
8 one thousand nine hundred thirty-three, or any special tax-  
9 ing district for which the board of education is required to  
10 lay the levy, for the payment of (a) interest and sinking fund  
11 requirements for bonded indebtedness incurred prior to the  
12 adoption of the tax limitation amendment; and (to the ex-  
13 tent not so required), (b) other legally incurred contractual  
14 indebtedness not bonded, if any, incurred prior to the adop-  
15 tion of the tax limitation amendment as follows: On class I  
16 property, one and eighty-five one-hundredths cents; on class  
17 II property, three and seven-tenths cents; and on classes III  
18 and IV property, seven and four-tenths cents;

19 (2) For either or both of (a) the permanent improve-  
20 ment fund, and (b) the payment of interest and sinking  
21 fund requirements for bonded indebtedness incurred sub-  
22 sequent to the adoption of the tax limitation amendment,  
23 as follows: On class I property, one and five-tenths cents; on  
24 class II property, three cents; and on classes III and IV  
25 property, six cents;

26 (3) For the general current expenses of schools as fol-  
27 lows: On class I property, nineteen and six-tenths cents;  
28 on class II property, thirty-nine and two-tenths cents; and  
29 on classes III and IV property, seventy-eight and four-tenths  
30 cents. But if the tax commissioner has approved the  
31 levy of an additional amount for the general current ex-  
32 penses of the county as authorized by section six-b, sub-  
33 section three, the amount of the levy authorized for boards  
34 of education by this subsection shall be reduced by the  
35 tax commissioner to that extent.

36 If the rates of levy under (2) above are not required in  
37 whole or in part for the purposes for which they are al-

38 located by this section, the county board of education may,  
39 with the prior written approval of the state board of  
40 school finance, created by section three, article nine-b,  
41 chapter eighteen of the code, as amended, lay such rates of  
42 levy or portion thereof not so required, for the general  
43 current expenses of schools.

Sec. 6-d. *Maximum Levies on Each Classification by  
2 Municipalities; Order of Levy.* The governing body of a  
3 municipality is hereby authorized to lay not in excess of the  
4 following maximum levies, for the purposes specified, and in  
5 the following order:

6 (1) For the payment of (a) principal and interest upon  
7 bonded indebtedness incurred prior to the adoption of the  
8 tax limitation amendment; and (to the extent not so re-  
9 quired), (b) other legally incurred contractual indebtedness,  
10 not bonded, if any, incurred prior to the adoption of the tax  
11 limitation amendment, as follows: On class I property, three  
12 cents; on class II property, six cents; and on class IV prop-  
13 erty, twelve cents;

14 (2) For general current expense purposes, as follows:  
15 On class I property, nine and five-tenths cents; on class II  
16 property, nineteen cents; and on class IV property, thirty-  
17 eight cents.

\*Sec. 7. *Increase of Current Expense Levies When Debt  
2 Levies not Required; Limitations.* If the allocation made to a  
3 taxing unit for the purposes of debt incurred prior to the  
4 adoption of the tax limitation amendment is not required, in  
5 whole or in part, for the purposes of such debt, the governing  
6 body may with the prior written approval of the tax com-  
7 missioner increase the rates allocated for general current ex-  
8 penses by the amount not required for debt purposes. But in  
9 no county shall the total of the rates levied for non-municipal  
10 current expenses exceed, by more than eight per centum, the  
11 maximums allocated for such purposes; nor shall the total of  
12 the rates levied for municipal current expenses exceed, by more  
13 than fourteen percentum, the maximums allocated for such  
14 purposes, except that as to counties or municipalities which at  
15 the date of the passage of this act have under contract or con-  
16 struction any project or projects with respect to which the

\* This section was amended by chapter 133, acts of this session.

17 federal government has contributed or advanced, or is to con-  
18 tribute or advance funds or materials in aid thereof, the above  
19 limitations as to total rates of levy shall not apply during the  
20 fiscal years beginning July one, one thousand nine hun-  
21 dred thirty-nine, July one, one thousand nine hundred forty,  
22 and July one, one thousand nine hundred forty-one.

Sec. 8. *Levies by Board of Public Works; Certification.*

2 The state board of public works shall, on or before July  
3 fifteenth of each year, levy on the one hundred dollars' valu-  
4 ation of each class of property subject to taxation in the  
5 state the rates fixed by section six-a of this article. The  
6 board shall forthwith certify its action to the state tax com-  
7 missioner and to the assessor of each county.

Sec. 9. *Meetings of Local Levying Bodies.* Each local

2 levying body shall hold a session on the first Tuesday in  
3 August for the transaction of business generally and par-  
4 ticularly for the business herein required.

Sec. 10. *Levy Estimate by County Court; Certification to*

2 *Tax Commissioner and Publication.* The county court shall,  
3 at the session provided for in section nine of this article,  
4 ascertain the fiscal condition of the county, and make an  
5 itemized statement setting forth:

6 (1) The amount due and the amount that will become  
7 due and collectible from every source during the current  
8 fiscal year except from the levy of taxes to be made for the  
9 year upon the county as a whole and upon any district of the  
10 county for which the levies are laid by the county court:

11 (2) The interest, sinking fund and amortization require-  
12 ments for the current fiscal year of bonded indebted-  
13 ness legally incurred upon a vote of the people, as pro-  
14 vided by law, prior to the adoption of the tax limitation  
15 amendment, owing by the county as a whole and by any dis-  
16 trict;

17 (3) Other contractual indebtedness not bonded, legally  
18 incurred prior to the adoption of the tax limitation amend-  
19 ment, owing by the county as a whole and such debts owing  
20 by any district;

21 (4) All other expenditures to be paid out of the receipts

22 for the current fiscal year, with proper allowance for de-  
23 linquent taxes, exonerations and contingencies;

24 (5) The total amount necessary to be raised for each  
25 fund by the levy of taxes for the current year;

26 (6) The proposed county levy in cents on each one hun-  
27 dred dollars' assessed valuation of each class of property for  
28 the county and its subdivisions;

29 (7) The proposed levy in each district for district funds,  
30 if any, on each one hundred dollars' valuation of each class  
31 of property;

32 (8) The separate and aggregate amounts of the real,  
33 personal and public utility properties in each class in the  
34 county and in each subdivision thereof.

35 A copy of the statement, duly certified by the clerk of the  
36 court, shall be forwarded to the tax commissioner, and the  
37 clerk shall publish the statement forthwith. The session shall  
38 then stand adjourned until the third Tuesday in August, at  
39 which time it shall reconvene.

Sec. 10-a. *Adjourned Session of County Court to Hear*  
2 *Objections to Proposed Levies; Approval of Estimate and*  
3 *Levy by Tax Commissioner; First Levy for Bonded Indebt-*  
4 *edness, Second for Indebtedness Not Bonded, Then for Cur-*  
5 *rent Expenses.* The county court shall, when it reconvenes  
6 upon the third Tuesday in August, hear and consider any  
7 objections made orally or in writing by the prosecuting at-  
8 torney, by the tax commissioner or his representative, or by  
9 any taxpayer of the county, to the estimate and proposed  
10 levy or to any item thereof. The court shall enter of record  
11 any objections so made and the reasons and grounds therefor.  
12 The failure of any officer or taxpayer to offer objections  
13 shall not preclude him from pursuing any legal remedy  
14 necessary to correct any levy made by any fiscal body under  
15 this article.

16 The court, after hearing objections, shall reconsider the  
17 proposed original estimate and proposed rates of levy, and if  
18 the objections are well taken, shall correct the estimate and  
19 levy. No such estimate and levy, however, shall be entered  
20 until the same shall have first been approved, in writing, by  
21 the tax commissioner. When the same shall have been ap-  
22 proved by the tax commissioner, the clerk shall then enter the  
23 estimate and levy, together with the order of the court ap-

24 proving them and the written approval of the tax commis-  
25 sioner thereof, in the proper record book.

26 The county court shall then levy as many cents per hun-  
27 dred dollars' assessed valuation on each class of property in  
28 the county or its subdivisions, as the case may be, as will pro-  
29 duce the amounts, according to the last assessment, shown to  
30 be necessary by the statement in the following order:

31 *First*, for the bonded debt and for the contractual debt  
32 not bonded, if any, of the county incurred prior to the  
33 adoption of the tax limitation amendment;

34 *Second*, for the bonded debt and for the contractual debt  
35 not bonded, if any, of any magisterial or special taxing  
36 district for which the county court is required to lay the  
37 levy;

38 *Third*, for general current expenses of the county.

39 The rates of levy for each purpose shall not exceed the  
40 amounts fixed by section six-b unless another rate is author-  
41 ized by the tax commissioner in accordance with this article.  
42 When less than the maximum levies are imposed, the levies  
43 on each class of property shall be in the same proportions as  
44 the maximums authorized.

Sec. 12. *Levy Estimate by Board of Education; Cer-*  
2 *tification and Publication.* Each board of education shall, at  
3 the session provided for in section nine of this article, if the  
4 laying of a levy has been authorized by the voters of the  
5 district under article nine, chapter eighteen of the code, as-  
6 certain the condition of the fiscal affairs of the district, and  
7 make a statement setting forth:

8 (1) The amount due, and the amount that will become  
9 due and collectible during the current fiscal year except from  
10 the levy of taxes to be made for the year;

11 (2) The interest, sinking fund and amortization require-  
12 ments for the fiscal year of bonded indebtedness legally in-  
13 curred upon a vote of the people, as provided by law, by any  
14 school district existing prior to May twenty-second, one  
15 thousand nine hundred thirty-three, prior to the adoption of  
16 the tax limitation amendment;

17 (3) Other contractual indebtedness not bonded, legally  
18 incurred by any such school district existing prior to May  
19 twenty-second, one thousand nine hundred thirty-three, prior

20 to the adoption of the tax limitation amendment, owing by  
21 such district;

22 (4) The amount to be levied for the permanent improve-  
23 ment fund;

24 (5) The total of all other expenditures to be paid out of  
25 the receipts for the current fiscal year, with proper allowance  
26 for delinquent taxes, exonerations and contingencies;

27 (6) The amount of such total to be raised by the levy  
28 of taxes for the current fiscal year;

29 (7) The proposed rate of levy in cents on each one hun-  
30 dred dollars' assessed valuation of each class of property;

31 (8) The separate and aggregate amounts of the assessed  
32 valuation of real, personal, and public utility property within  
33 each class.

34 The secretary of the board shall forward immediately a  
35 certified copy of the statement to the tax commissioner and  
36 shall publish the statement forthwith. The session shall then  
37 stand adjourned until the third Tuesday in August, at which  
38 time it shall reconvene.

Sec. 12-a. *Adjourned Session of Board of Education to*  
2 *Hear Objections to Proposed Levies; Approval of Estimate*  
3 *and Levy by Tax Commissioner; First Levy for Bonded In-*  
4 *debtedness and Indebtedness not Bonded, Second for Perma-*  
5 *nent Improvement Fund, Then for Current Expenses.* Each  
6 board of education when it reconvenes on the third Tuesday  
7 in August shall proceed in a manner similar in all respects to  
8 that provided for in section ten-a of this article. The board  
9 shall not finally enter any levy until it has been approved in  
10 writing by the tax commissioner. After receiving such ap-  
11 proval the board shall enter the statement as approved in its  
12 record of proceedings, together with the written approval.

13 The board shall levy as many cents per hundred dollars' as-  
14 sessed valuation on each class of property in the county or in  
15 the area of a pre-existing school district, as the case may be,  
16 as will produce the amounts, according to the last assess-  
17 ment, shown to be necessary by the statement in the follow-  
18 ing order:

19 *First*, for the bonded debt and for the contractual debt  
20 not bonded, if any, of any school district of the county ex-  
21 isting prior to May twenty-second, one thousand nine hun-



22 dred thirty-three, and incurred prior to the adoption of the  
23 tax limitation amendment;

24 *Second*, for the permanent improvement fund;

25 *Third*, for general current expenses.

26 The rates of levy for each purpose shall not exceed the  
27 amounts fixed by section six-c unless another rate is author-  
28 ized by the tax commissioner in accordance with this article.  
29 When less than the maximum levies are imposed, the levies  
30 on each class of property shall be in the same proportions as  
31 the maximums authorized.

Sec. 14. *Levy Estimate by Municipality; Certification to*  
2 *Tax Commissioner and Publication.* A municipal govern-  
3 ing body shall, at the session provided for in section nine,  
4 ascertain the fiscal condition of the corporation, and make an  
5 itemized statement setting forth:

6 (1) The amount due and the amount that will become due  
7 and collectible from every source during the current fiscal  
8 year except from the levy of taxes to be made for the year;

9 (2) The interest, sinking fund and amortization require-  
10 ments for the fiscal year of bonded indebtedness, legally in-  
11 curred upon a vote of the people as provided by law, prior to  
12 the adoption of the tax limitation amendment;

13 (3) Other contractual indebtedness, not bonded, legally  
14 incurred prior to the adoption of the tax limitation amend-  
15 ment, owing by the municipality;

16 (4) All other expenditures to be paid out of the re-  
17 cepts of the municipality for the current fiscal year with  
18 proper allowance for delinquent taxes, exonerations, and con-  
19 tingencies;

20 (5) The total amount necessary to be raised by the levy  
21 of taxes for the current fiscal year;

22 (6) The proposed rate of levy in cents on each one hun-  
23 dred dollars' assessed valuation of each class of property;

24 (7) The separate and aggregate assessed valuations of  
25 real, personal, and public utility property in each class in the  
26 municipality.

27 The recording officer of the municipality shall forward im-  
28 mediately a certified copy of the statement to the tax com-  
29 missioner, and shall publish the statement forthwith. The  
30 session shall then stand adjourned until the third Tuesday  
31 in August at which time it shall reconvene.

Sec. 14-a. *Adjourned Session of Municipal Governing Body to Hear Objections; Approval of Levies by Tax Commissioner; First Levy for Bonded Indebtedness and Indebtedness Not Bonded, Then for Current Expenses.* The governing body of a municipality when it reconvenes on the third Tuesday in August shall proceed in a manner similar in all respects to that provided for in section ten-a of this article.

The governing body shall not finally enter any levy until it has been approved in writing by the state tax commissioner. After receiving such approval the governing body shall enter the statement as approved in its record of proceedings, together with the written approval.

The governing body shall levy as many cents per hundred dollars' assessed valuation on each class of property in the municipality as will produce the amounts, according to the last assessment, shown to be necessary by the statement in the following order:

*First*, for the bonded debt and for the contractual debt not bonded, if any, of the municipality incurred prior to the adoption of the tax limitation amendment;

*Second*, for general current expenses.

The rates of levy for each purpose shall not exceed the amounts fixed by section six-d unless another rate is authorized by the tax commissioner in accordance with this article. When less than the maximum levies are imposed, the levies on each class of property shall be in the same proportions as the maximums authorized.

Sec. 17. *Publication and Posting of Notice of Election; Form of Ballot.* The local levying body shall publish notice, calling the election, at least once each week for two successive weeks before the election in two newspapers of opposite politics and of general circulation in the territory in which the election is held. If there is only one newspaper published in the county, the publication shall be made therein. The local levying body shall also post printed copies of the order at each place of voting at least ten days before the election. All the provisions of the laws concerning general elections shall apply so far as they are practicable, except as follows: Where a special election is held, the local levying body, having

13 due regard to the minimum expense involved, shall determine  
14 the number of election officials necessary to properly conduct  
15 said election, which number shall in no case be less than  
16 three commissioners and two clerks, and shall appoint the  
17 same and fix and pay their compensation; otherwise, the elec-  
18 tion officials shall be such as are appointed to serve with re-  
19 spect to the general election held at the same time. The local  
20 levying body, however, shall provide the election supplies  
21 necessary for such special election. A separate ballot shall be  
22 used at a levy election held in connection with any other elec-  
23 tion. The ballot shall be entitled: "Special election to au-  
24 thorize additional levies for the year(s) ..... and for  
25 the purpose of ..... according to the order  
26 of the ..... entered on the .....  
27 day of ....."

28 The additional levy shall be on class I property .....  
29 cents; on class II property ..... cents; on class III prop-  
30 erty (if any) ..... cents; on class IV property (if any)  
31 .....cents.

Sec. 19. This section is hereby repealed.

Sec. 32. *Publication or Posting.* The requirement of pub-  
2 lication under this article shall be met by publication twice  
3 in two newspapers of general circulation and of opposite  
4 politics, published in the taxing unit. If only one newspaper  
5 is published in the taxing unit, publication shall be made  
6 therein. If the taxing unit be a municipality and no news-  
7 paper is published therein, publication shall be made in two  
8 newspapers of general circulation and of opposite politics,  
9 published in the county wherein said municipality is located;  
10 if two such newspapers of general circulation and of opposite  
11 politics are not published in said county then publication may  
12 be made in only one newspaper of general circulation pub-  
13 lished therein. If no newspaper is published in the county,  
14 a true copy of the statement required to be published shall  
15 be posted by the clerk or secretary at the front door of the  
16 courthouse, or in the case of a municipality, the municipal  
17 building, and at a public place in each subdivision of the  
18 taxing unit, not less than three days after the adjournment  
19 of the session provided for by section nine of this article.

- Sec. 33. *Acts Repealed.* The following acts are hereby  
2 repealed:  
3 (1) Chapter fifty-one, acts of the Legislature of West  
4 Virginia, second extraordinary session, one thousand nine  
5 hundred thirty-three;  
6 (2) Chapter sixty-nine, acts of the Legislature of West  
7 Virginia, second extraordinary session, one thousand nine  
8 hundred thirty-three;  
9 (3) Chapter sixty-five, acts of the Legislature of West  
10 Virginia, second extraordinary session, one thousand nine  
11 hundred thirty-three;  
12 (4) Chapter twelve, acts of the Legislature of West  
13 Virginia, first extraordinary session, one thousand nine hun-  
14 dred thirty-six;  
15 (5) Chapter twenty-six, acts of the Legislature of West  
16 Virginia, regular session, one thousand nine hundred thirty-  
17 seven.  
18 All other acts or parts of acts inconsistent with the pro-  
19 visions of this act are hereby repealed.

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## CHAPTER 133

(House Bill No. 409—By Mr. Speaker, Mr. Thomas)

AN ACT to amend and reenact section seven, article eight, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as last amended and reenacted by an act of the Legislature of West Virginia, regular session, one thousand nine hundred thirty-nine, known as senate bill number two, relating to the use of debt levies for current expenses, and prescribing certain limitations with respect thereto.

[Passed March 9, 1939; in effect ninety days from passage. Approved by the Governor.]

### Article 8. Levies.

#### Section

7. Increase of current expense levies when debt levies not required; limitations.

*Be it enacted by the Legislature of West Virginia:*

That section seven, article eight, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as last

amended and reenacted by an act of the Legislature of West Virginia, regular session, one thousand nine hundred thirty-nine, be amended and reenacted to read as follows:

*Section 7. Increase of Current Expense Levies When Debt*

*Levies Not Required; Limitations.* If the allocation made to a taxing unit for the purposes of debt incurred prior to the adoption of the tax limitation amendment is not required, in whole or in part, for the purposes of such debt, the governing body may, with the prior written approval of the tax commissioner, increase the rates allocated for general current expenses by the amount not required for debt purposes. But in no county shall the total of the rates levied for non-municipal current expenses exceed, by more than eight per cent, the maximum allocated for such purposes: *Provided*, That as to counties which at the date of the passage of this act have under contract or construction any project or projects with respect to which the federal government has contributed or advanced, or is to contribute or advance, funds or materials in aid thereof, the above limitation as to the total rates of levy shall not apply until the fiscal year beginning July one, one thousand nine hundred forty-two.

After the fiscal year ending June thirty, one thousand nine hundred forty-one, in no municipality shall the total of the rates levied for municipal current expenses exceed, by more than fourteen per cent, the maximum allocated for such purposes.

## CHAPTER 134

(House Bill No. 275—By Mr. Speaker, Mr. Thomas)

AN ACT to amend and reenact section three, article one; sections fifteen and seventeen, article two; sections two and seven, article five; sections one, two, four, nine, ten, eleven and thirteen, article six; sections four, seven, eight, nine, ten, eleven, thirteen, fifteen, seventeen, twenty-two, twenty-three, twenty-five and twenty-six, article seven; and section thirteen, article ten; to add section twelve-a to article six; to repeal section eight, article two; sections three and twelve, article six, and

sections five and six, article seven; to reenact sections fifteen, sixteen and seventeen, article ten; all of chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as enacted by chapter one, acts of the Legislature, second extraordinary session, one thousand nine hundred thirty-six, and as amended by chapter one hundred, acts of the Legislature, regular session, one thousand nine hundred thirty-seven, relating to unemployment compensation.

[Passed March 8, 1939; in effect April 1, 1939. Became a law without the approval of the Governor.]

**Article**

1. Department of Unemployment Compensation.
2. The Director of Unemployment Compensation.
5. Employer Coverage and Responsibility.
6. Employee Eligibility; Benefits.
7. Claim Procedure.
10. General Provisions.

*Be it enacted by the Legislature of West Virginia:*

That section three, article one; sections fifteen and seventeen, article two; sections two and seven, article five; sections one, two, four, nine, ten, eleven and thirteen, article six; sections four, seven, eight, nine, ten, eleven, thirteen, fifteen, seventeen, twenty-two, twenty-three, twenty-five and twenty-six, article seven; and section thirteen, article ten, be amended and reenacted; that section twelve-a be added to article six; that section eight, article two, sections three and twelve, article six, and sections five and six, article seven be repealed; that sections fifteen, sixteen and seventeen, article ten, be reenacted; all of chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as enacted by chapter one, acts of the Legislature, second extraordinary session, one thousand nine hundred thirty-six, and as amended by chapter one hundred, acts of the Legislature, regular session, one thousand nine hundred thirty-seven, so as to read as follows:

**Article 1. Department of Unemployment Compensation.**

**Section**

**3. Definitions.**

Section 3. *Definitions.* As used in this chapter, unless the context clearly requires otherwise:

- 3 "Administration fund" means the unemployment compen-

4 sation administration fund, from which the administrative  
5 expenses under this chapter shall be paid.

6 "Annual payroll" means the total amount of wages pay-  
7 able by an employer (regardless of the time of payment)  
8 for employment during one year.

9 "Average annual payroll" means the average of the an-  
10 nual payrolls of an employer for the last three or five pre-  
11 ceding years, whichever is the higher.

12 "Base period" means the twelve consecutive-month period  
13 ending on the December thirty-first next preceding an in-  
14 dividual's benefit year.

15 "Benefit year", with respect to any individual, means the  
16 twelve-month period beginning with April first and ending  
17 with March thirty-first which includes the period for which  
18 claim for benefit is made by such individual.

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

21 "Board" means board of review.

22 "Calendar quarter" means the period of three consecutive  
23 calendar months ending on March thirty-one, June thirty,  
24 September thirty, or December thirty-one, excluding, how-  
25 ever, any calendar quarter or portion thereof which occurs  
26 prior to January one, one thousand nine hundred thirty-seven,  
27 or the equivalent thereof as the director may by regulation  
28 prescribe.

29 "Director" means the unemployment compensation di-  
30 rector.

31 "Employing Unit" means an individual, or type of organi-  
32 zation, including any partnership, association, trust, estate,  
33 joint stock company, insurance company, corporation (domes-  
34 tic or foreign), or the receivership, trustee in bankruptcy,  
35 trustee or successor thereof, or the legal representative of  
36 a deceased person which has on January one, one thousand  
37 nine hundred thirty-five, or subsequent thereto, had in its  
38 employ one or more individuals performing service within  
39 this state.

40 "Employer" means an employing unit which for some  
41 portion of a day, not necessarily simultaneously, in each of  
42 twenty different weeks, which weeks need not be consecutive,  
43 within either the current year or the preceding year, has had

44 in employment eight or more individuals (irrespective of  
45 whether the same individuals were or were not employed on  
46 each of such days).

47 "Employment," subject to the other provisions of this  
48 subsection, means:

49 (1) Service, including service in interstate commerce, per-  
50 formed for wages or under any contract of hire, written or  
51 oral, express or implied.

52 (2) The term "employment" shall include an individual's  
53 entire service, performed within or both within and without  
54 this state if: (a) The service is localized in this state; or (b)  
55 the service is not localized in any state but some of the service  
56 is performed in this state; and (i) the base of operations,  
57 or, if there is no base of operations, then the place from  
58 which such service is directed or controlled, is in this state;  
59 or (ii) the base of operations or place from which such service  
60 is directed or controlled is not in any state in which some  
61 part of the service is performed but the individual's residence  
62 is in this state;

63 (3) Service not covered under paragraph (2) of this sub-  
64 section and performed entirely without this state, with respect  
65 to no part of which contributions are required and paid under  
66 an unemployment compensation law of any other state or of  
67 the federal government, shall be deemed to be employment  
68 subject to this act if the individual performing such services  
69 is a resident of this state and the director approves the elec-  
70 tion of the employing unit for whom such services are per-  
71 formed that the entire service of such individual shall be  
72 deemed to be employment subject to this act.

73 (4) Service shall be deemed to be localized within a state  
74 if: (a) The service is performed entirely within such state;  
75 or (b) the service is performed both within and without such  
76 state, but the service performed without such state is inci-  
77 dental to the individual's service within the state: For ex-  
78 ample, is temporary or transitory in nature or consists of  
79 isolated transactions.

80 (5) Services performed by an individual for wages shall  
81 be deemed to be employment subject to this act unless and  
82 until it is shown to the satisfaction of the director that:  
83 (a) Such individual has been and will continue to be free



84 from control or direction over the performance of such serv-  
85 ices, both under his contract of service and in fact; and (b)  
86 such service is either outside the usual course of the business  
87 for which such service is performed or that such service is  
88 performed outside of all the places of business of the enterprise  
89 for which such service is performed; and (c) such individual  
90 is customarily engaged in an independently established trade,  
91 occupation, profession, or business.

92 The term "employment" shall not include:

93 (1) Services performed in the employ of this state or any  
94 political subdivision thereof, or any instrumentality of this  
95 state or its subdivisions;

96 (2) Service performed directly in the employ of another  
97 state or its political subdivisions;

98 (3) Service performed in the employ of the  
99 United States or an instrumentality of the United  
100 States;

101 (4) Service performed after June thirty, one thousand  
102 nine hundred thirty-nine, with respect to which unemploy-  
103 ment compensation is payable under the Railroad Unemploy-  
104 ment Insurance Act (fifty-two Stat. one thousand ninety-  
105 four), and service with respect to which unemployment  
106 benefits are payable under an unemployment compensation  
107 system for maritime employees established by an act of  
108 congress. The director may enter into agreements with the  
109 proper agency established under such act of congress to  
110 provide reciprocal treatment to individuals who, after acquir-  
111 ing potential rights to benefits under this chapter, have ac-  
112 quired rights to unemployment compensation under an act  
113 of congress, or who have, after acquiring potential rights to  
114 unemployment compensation under an act of congress, ac-  
115 quired rights to benefits under this chapter. Such agreements  
116 shall become effective ten days after such publication as  
117 complies with the general rules of the department;

118 (5) Agricultural labor;

119 (6) Domestic service in a private home;

120 (7) Service performed as an officer or member of a crew  
121 of a vessel on the navigable waters of the United States;

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

124 (9) Service performed by a child under the age of twenty-  
125 one years in the employ of his father or mother;

126 (10) Service performed in the employ of an employing  
127 unit organized and operated exclusively for religious, chari-  
128 table, scientific, literary, or educational purpose or for pre-  
129 vention of cruelty to children or animals, no part of the net  
130 earnings of which inure to the benefit of any private share-  
131 holder or individual.

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

136 "Fund" means the unemployment compensation fund estab-  
137 lished by this chapter.

138 "Payments" means the money required to be paid into  
139 the state unemployment compensation fund as provided by  
140 article five of this chapter.

141 "State" includes in addition to the states of the United  
142 States, Alaska, Hawaii, and the District of Columbia.

143 "Total and partial unemployment":

144 (1) An individual shall be deemed "totally unemployed"  
145 in any week in which such individual is separated from em-  
146 ployment for any employing unit and during which he per-  
147 forms no services and with respect to which no wages are  
148 payable to him.

149 (2) An individual shall be deemed "partially unem-  
150 ployed" in any calendar quarter in which pay-roll periods  
151 of less than full time work occur and in which, solely because  
152 of lack of work, the wages payable to him, including wages  
153 for employment not subject to this act, are less than the  
154 amount appearing in the line opposite such individual's wage  
155 class in column one of table B as contained in section eleven  
156 of article six hereof.

157 (3) As used in this subsection, the term "wages" shall  
158 include only that part of remuneration for odd jobs or sub-  
159 subsidiary work, or both, which is in excess of three dollars in  
160 any one week, and the term "services" shall not include that  
161 part of odd jobs or subsidiary work, or both, for which re-  
162 muneration equal to or less than three dollars in any one  
163 week is payable.

164 (4) An individual's week of unemployment shall be  
165 deemed to commence only after his registration at an employ-  
166 ment office, except as the director may by regulation other-  
167 wise prescribe.

168 "Wages" means all remuneration payable for personal  
169 services, including commissions and bonuses and the cash  
170 value of all remuneration payable in any medium other than  
171 cash. Gratuities customarily received by an individual in  
172 the course of his employment from persons other than his  
173 employing unit shall be treated as wages paid by his employ-  
174 ing unit, if accounted for and reported to such employing  
175 unit.

176 The reasonable cash value of remuneration payable in any  
177 medium other than cash shall be estimated and determined  
178 in accordance with rules prescribed by the director.

179 "Week" means a calendar week, ending at midnight Satur-  
180 day, or the equivalent thereof, as determined in accordance  
181 with the regulations prescribed by the director.

182 "Weekly benefit amount" means the amount of benefit an  
183 individual would be entitled to receive for one week of total  
184 unemployment.

185 "Year" means a calendar year or the equivalent thereof  
186 as determined by the director.

## Article 2. The Director of Unemployment Compensation.

### Section

- 8. Repealed.
- 15. State employment service.
- 17. Federal-state cooperation.

Section 8. This section is hereby repealed.

2 Sec. 15. *State Employment Service.* The director shall  
3 appoint upon a non-partisan merit basis the head of the  
4 division of the employment service and shall fix his salary  
5 and prescribe his duties.

2 Sec. 17. *Federal-State Cooperation.* The director shall  
3 have all powers and duties necessary to secure to the state  
4 the benefits of congressional action for the promotion and  
5 maintenance of a system of public employment offices. To  
6 this end the provisions of the act referred to in the preceding  
7 section and such additional congressional action consistent

7 with the above act are accepted by the state and the state  
8 pledges its observance and compliance therewith.

9 The department of unemployment compensation is design-  
10 ated the agent of this state for the purpose of compliance  
11 with the act of congress entitled "An act to provide for the  
12 establishment of a national employment system and for co-  
13 operation with states in the promotion of such system, and  
14 for other purposes," approved June six, one thousand nine  
15 hundred thirty-three, as amended.

### Article 5. Employer Coverage and Responsibility.

#### Section

2. Termination.

7. Separate and joint accounts of employers; classification to fix rates.

Section 2. *Termination.* Except as provided in section three  
2 of this article, an employing unit shall cease to be an employer  
3 subject to this chapter only as for the first day of January  
4 of any year, and only if it files with the director, prior to the  
5 fifth day of January of such year, a written application for  
6 termination of coverage, and the director finds that there  
7 were no twenty different days, each day being in a different  
8 week within the preceding calendar year, within which such  
9 employing unit employed eight or more individuals in em-  
10 ployment subject to this chapter.

Sec. 7. *Separate and Joint Accounts of Employers; Classification to Fix Rates.* (1) The director shall maintain a separate  
2 account for each employer, and shall credit his account with all  
3 the contributions paid on his own behalf in excess of one per  
4 centum of his annual pay roll for each calendar year. But  
5 nothing in this act shall be construed to grant any employer or  
6 individuals in his service prior claims or rights to the amounts  
7 paid by him into the fund either on his own behalf or on behalf  
8 of such individuals. Benefits paid to an eligible individual  
9 shall be charged, in the amount hereinafter provided, against  
10 the account of his most recent employer, except that if such  
11 individual had not earned within the completed calendar  
12 quarter and the expired portion of the uncompleted calendar  
13 quarter immediately preceding the first week of any continuous  
14 period of unemployment, wages for employment by such most  
15 recent employer equal to more than fourteen times his weekly  
16

17 benefit amount, such benefits may also be charged against the  
18 account of his next most recent employer, in the inverse chrono-  
19 logical order in which the employment of such individual  
20 occurred. The maximum amount so charged against the ac-  
21 count of any employer shall not exceed one-sixth of the wages  
22 payable to such individual by each such employer for employ-  
23 ment which occurs on and after the first day of such indi-  
24 vidual's base period, and shall not exceed sixty-five dollars per  
25 completed calendar quarter or portion thereof, which occurs on  
26 and after the first day of such individual's base period. The  
27 director shall by general rules prescribe the manner in which  
28 benefits shall be charged against the accounts of several em-  
29 ployers for whom an individual performed employment at  
30 the same time.

31 (2) The director may prescribe regulations for the estab-  
32 lishment, maintenance, and dissolution of joint accounts by  
33 two or more employers, and shall, in accordance with such  
34 regulations and upon application by two or more employers  
35 to establish such an account, or to merge their several in-  
36 dividual accounts in a joint account, maintain such joint  
37 account as if it constituted a single employer's account.

38 (3) The director shall, for the year one thousand nine  
39 hundred forty-one and for each calendar year thereafter,  
40 classify employers in accordance with their actual experience  
41 in the payment of contributions on their own behalf and with  
42 respect to benefits charged against their accounts, with a view  
43 to fixing such contribution rates as will reflect such ex-  
44 perience.

## **Article 6. Employee Eligibility; Benefits.**

### **Section**

1. Eligibility qualifications.
2. Waiting period construed.
3. Repealed.
4. Disqualification for benefits.
9. Place of payment.
10. Benefit rate; total unemployment.
11. Benefit rate; partial unemployment.
12. Repealed.
- 12-a. Suspension of partial benefit rights.
13. Computation of and maximum benefits.

Section 1. *Eligibility Qualifications.* An unemployed in-  
2 dividual shall be eligible to receive benefits, only if the director  
3 finds that:

4 (1) He has registered for work at and thereafter con-  
5 tinues to report at an employment office in accordance with  
6 the regulations of the director;

7 (2) He has made a claim for benefits in accordance with  
8 the provisions of article seven of this chapter;

9 (3) He is able to work, and is available for work;

10 (4) He has been totally unemployed during his benefit  
11 year for a waiting period of three weeks prior to the week  
12 for which he claims benefits for total unemployment: *Pro-*  
13 *vided, however,* That if the claim for benefits is first filed  
14 in the month of February, the waiting period shall be two  
15 weeks, and if first filed in the month of March, the waiting  
16 period shall be one week;

17 (5) He has within his base period earned wages for em-  
18 ployment equal to not less than one hundred fifty dollars.

Sec. 2. *Waiting Period Construed.* The waiting period of  
2 three weeks need not be consecutive, but may be accumulated  
3 during the benefit year. If the benefit year ends during  
4 consecutive weeks of total unemployment for any individual,  
5 such individual shall serve a new waiting period of three  
6 weeks before benefits accruing in the new benefit year shall  
7 be payable.

8 During the waiting period, the individual must be eligible  
9 in all respects, except for the requirements of subsection (two)  
10 of section one of this article.

Sec. 3. This section is hereby repealed.

Sec. 4. *Disqualification for Benefits.* Upon the determina-  
2 tion of the facts by the director an individual shall be dis-  
3 qualified for benefits:

4 (1) For the week in which he left work voluntarily with-  
5 out good cause and for three weeks which immediately follow;

6 (2) For the week in which he has been discharged for  
7 misconduct connected with his work and for six weeks which  
8 immediately follow;

9 (3) For the week in which he failed without good cause,  
10 to apply for available suitable work, accept suitable work  
11 when offered, or return to his customary self-employment

12 when directed to do so by the director and for three weeks  
13 which immediately follow;

14 (4) For a week in which his total or partial unemploy-  
15 ment is due to a stoppage of work which exists because of a  
16 labor dispute at the factory, establishment, or other premises  
17 at which he was last employed, unless the director is satisfied  
18 that he was not (1) participating, financing, or directly  
19 interested in such dispute, and (2) did not belong to a  
20 grade or class of workers who were participating, financing,  
21 or directly interested in the labor dispute which resulted  
22 in the stoppage of work;

23 (5) For a week with respect to which he is receiving or  
24 has received:

25 (a) Wages in lieu of notice;

26 (b) Compensation for temporary partial disability under  
27 the workmen's compensation law for any state or under a  
28 similar law of the United States;

29 (c) Old age benefits under title two of the social security  
30 act or similar payments under any act of Congress.

31 (d) Unemployment compensation benefits under the laws  
32 of the United States or any other state.

Sec. 9. *Place of Payment.* Benefits shall be paid through  
2 employment offices or, if the director by rules so prescribes,  
3 through unemployment compensation offices, in accordance  
4 with such regulations as the director shall prescribe.

Sec. 10. *Benefit Rate; Total Unemployment.* Each eligible  
2 individual who is totally unemployed in any week shall be  
3 paid benefits with respect to that week at the weekly rate ap-  
4 pearing in column (C) in table A in this paragraph, on line  
5 on which, in column (A) there is indicated the employee's  
6 wage class. The employee's wage class shall be determined by  
7 the total amount of wages earned by him in covered employ-  
8 ment in his base period as shown in column (B) in table A.

TABLE A

Wage Class (Column A)	Wages in Base Period (Column B)	Weekly Benefit Amount (Column C)	Maximum Benefit In Benefit Year for Total and/or Partial Unem- ployment	
			Weeks (Column D)	Amount (Column E)
	Under—\$150.00	(Ineligible)		
1	\$ 150.00— 199.99	\$ 3.00	14	\$ 42.00
2	200.00— 249.99	3.50	14	49.00
3	250.00— 299.99	4.00	14	56.00
4	300.00— 349.99	4.50	14	63.00
5	350.00— 399.99	5.00	14	70.00
6	400.00— 449.99	5.50	14	77.00
7	450.00— 499.99	6.00	14	84.00
8	500.00— 549.99	6.50	14	91.00
9	550.00— 599.99	7.00	14	98.00
10	600.00— 649.99	7.50	14	105.00
11	650.00— 699.99	8.00	14	112.00
12	700.00— 749.99	8.50	14	119.00
13	750.00— 799.99	9.00	14	126.00
14	800.00— 849.99	9.50	14	133.00
15	850.00— 899.99	10.00	14	140.00
16	900.00— 949.99	10.50	14	147.00
17	950.00— 999.99	11.00	14	154.00
18	1000.00—1049.99	11.50	14	161.00
19	1050.00—1099.99	12.00	14	168.00
20	1100.00—1149.99	12.50	14	175.00
21	1150.00—1199.99	13.00	14	182.00
22	1200.00—1249.99	13.50	14	189.00
23	1250.00—1299.99	14.00	14	196.00
24	1300.00—1349.99	14.50	14	203.00
25	Over —1350.00	15.00	14	210.00

Sec. 11. *Benefit Rate; Partial Unemployment.* An eligible individual who is partially unemployed in any calendar quarter shall, upon claim therefor filed within sixty days after the close of such calendar quarter, be paid benefits for such partial unemployment in an amount for the calendar quarter in accordance with his wage class and the actual amount of his wages in such calendar quarter as shown in table B in this paragraph hereinafter contained, less any benefits paid or payable to such individual for total unemployment in such calendar quarter. Such partial benefits shall be paid without regard to the current employment status of such individual and shall be paid without regard to the provisions of subsections (1), (3), and (4) of section one of this article.



TABLE B

If an employee's remuneration in any calendar quarter in which payroll periods of less than full time work occur for such individual, is less than the amount shown below in column 1, opposite his wage class, he is entitled to receive as partial benefit for the quarter the number of weekly benefit amounts appearing at the head of the column in which appears the lowest amount which exceeds his actual remuneration for the quarter, less the number of weekly benefit amounts paid or payable to him for total unemployment during such quarter.

WAGE CLASS	WAGES IN BASE PERIOD	WEEKLY BENEFIT AMOUNT													
COLUMN	COLUMN	COLUMN	1	2	3	4	5	6	7	8	9	10	11	12	13
A	B	C													
1	\$150.....	\$ 199.99	\$ 3.00	\$ 45.00	\$ 41.40	\$ 37.80	\$ 34.20	\$ 30.60	\$ 27.00	\$ 23.40	\$19.80	\$16.20	\$12.00	\$ 9.00	\$ 5.40
2	200.....	249.99	3.50	52.50	48.30	44.10	39.90	35.70	31.50	27.30	23.10	18.90	14.70	10.50	6.30
3	250.....	299.99	4.00	60.00	55.20	50.40	45.60	40.80	36.00	31.20	26.40	21.60	16.80	12.00	7.20
4	300.....	349.99	4.50	67.50	62.10	56.70	51.30	45.90	40.50	35.10	29.70	24.30	18.90	13.50	8.10
5	350.....	399.99	5.00	75.00	69.00	63.00	57.00	51.00	45.00	39.00	33.00	27.00	21.00	15.00	9.00
6	400.....	449.99	5.50	82.50	75.90	69.30	62.70	56.10	49.50	42.90	36.30	29.70	23.10	16.50	9.90
7	450.....	499.99	6.00	90.00	82.80	75.60	68.40	61.20	54.00	46.80	39.60	32.40	25.20	18.00	10.80
8	500.....	549.99	6.50	97.50	89.70	81.90	74.10	66.30	58.50	50.70	42.90	35.10	27.30	19.50	11.70
9	550.....	599.99	7.00	105.00	96.60	88.20	79.80	71.40	63.00	54.60	46.20	37.80	29.40	21.00	12.60
10	600.....	649.99	7.50	112.50	103.50	94.50	85.50	76.50	67.50	58.50	49.50	40.50	31.50	22.50	13.50
11	650.....	699.99	8.00	120.00	110.40	100.80	91.20	81.60	72.00	62.40	52.80	43.20	33.60	24.00	14.40
12	700.....	749.99	8.50	127.50	117.30	107.10	96.90	86.70	76.50	66.30	56.10	45.90	35.70	25.50	15.30
13	750.....	799.99	9.00	135.00	124.20	113.40	102.60	91.80	81.00	70.20	59.40	48.60	37.80	27.00	16.20
14	800.....	849.99	9.50	142.50	131.10	119.70	108.30	96.90	85.50	74.10	62.70	51.30	39.90	28.50	17.10
15	850.....	899.99	10.00	150.00	138.00	126.00	114.00	102.00	90.00	78.00	66.00	54.00	42.00	30.00	18.00
16	900.....	949.99	10.50	157.50	144.90	132.30	119.70	107.10	94.50	81.90	69.30	56.70	44.10	31.50	18.90
17	950.....	999.99	11.00	165.00	151.80	138.60	125.40	112.20	99.00	85.80	72.60	59.40	46.20	33.00	19.80
18	1000.....	1049.99	11.50	172.50	158.70	144.90	131.10	117.30	103.50	89.70	75.90	62.10	48.30	34.50	20.70
19	1050.....	1099.99	12.00	180.00	165.60	151.20	136.30	122.40	108.60	93.00	79.20	64.80	50.40	36.00	21.60
20	1100.....	1149.99	12.50	187.50	172.50	157.50	142.50	127.50	112.50	97.50	82.50	67.50	52.50	37.50	22.50
21	1150.....	1199.99	13.00	195.00	179.40	163.80	148.20	132.60	117.00	101.40	85.80	70.20	54.60	39.00	23.40
22	1200.....	1249.99	13.50	202.50	186.30	170.10	153.90	137.70	121.50	105.30	89.10	72.90	56.70	40.50	24.30
23	1250.....	1299.99	14.00	210.00	193.20	176.40	159.00	142.80	126.60	109.20	92.40	75.60	58.80	42.00	25.20
24	1300.....	1349.99	14.50	217.50	200.10	182.70	165.30	147.90	130.50	113.10	95.70	78.30	60.90	43.50	26.10
25	over.....	1350.00	15.00	225.00	207.00	189.00	171.00	153.00	135.00	117.00	99.00	81.00	63.00	45.00	27.00

Sec. 12. This section is hereby repealed.

Sec. 12-a. *Suspension of Partial Benefit Rights.* If at any  
2 time the unemployment compensation fund, including the  
3 trust fund, clearing account and benefit account, and exclud-  
4 ing therefrom an amount, estimated by the director, equal to  
5 the sum of the benefit liabilities then accrued and unpaid,  
6 shall fall below the sum of five million dollars, the director,  
7 with the concurrence of a majority of the advisory council, and  
8 with the consent and approval of the governor, may suspend  
9 the right to receive benefit for periods of partial unemploy-  
10 ment not then completed, and no right to benefit for periods  
11 of partial unemployment completed or occurring during the  
12 period of such suspension shall then or thereafter accrue. At  
13 any time subsequent to such suspension the director, with the  
14 concurrence of a majority of the advisory council, and with  
15 the consent and approval of the governor, may rescind, and  
16 whenever the unemployment compensation fund, including  
17 the trust fund, clearing account and benefit account, and ex-  
18 cluding therefrom an amount, estimated by the director,  
19 equal to the sum of the benefit liabilities then accrued and  
20 unpaid, reaches the sum of ten million dollars, the director  
21 shall rescind such suspension as to periods of partial unem-  
22 ployment not then completed.

Sec. 13. *Computation of and Maximum Benefits.* The direc-  
2 tor shall compute wage credits for each individual by crediting  
3 him with the wages earned by him for employment by em-  
4 ployers during his base period. The maximum total amount of  
5 benefits payable to any eligible individual during any benefit  
6 year shall not exceed the amount appearing in column (E) on  
7 line indicating individual's wage class, of table A, in this  
8 article hereinabove contained.

## Article 7. Claim Procedure.

### Section

4. Initial determination.
5. Repealed.
6. Repealed.
7. Appeal tribunals.
8. Appeal from deputy's decision.
9. Finality of examiner's decision.
10. Board review.
11. Benefits pending appeal.

13. Board to establish regulations for procedure.
15. Report of decision.
17. Finality of board's decision.
22. Judicial review.
23. Trial; preference on calendar.
25. Service upon board.
26. Certification and filing of record.

Section 4. *Initial Determination.* A deputy shall promptly  
2 investigate a claim and shall, after the establishment of the  
3 facts, determine whether or not such claim is valid, and, if  
4 valid, shall determine:  
5 (1) The week with respect to which benefits will com-  
6 mence;  
7 (2) The amount of benefit;  
8 (3) The maximum duration of benefits.  
9 After determination, the deputy shall promptly notify the  
10 claimant and the last employer of his findings and decision.

Sec. 5. This section is hereby repealed.

Sec. 6. This section is hereby repealed.

Sec. 7. *Appeal Tribunals.* The board shall determine the  
2 manner of hearing appeals from the decision of a deputy and  
3 may direct in particular cases or in particular areas that the  
4 appeal be heard by an appeal tribunal composed of:  
5 (1) A single examiner;  
6 (2) A tribunal of three examiners assigned by the board;  
7 (3) A member of the board;  
8 (4) The board.

Sec. 8. *Appeal from Deputy's Decision.* A claimant or  
2 other interested party may file an appeal from the decision of  
3 the deputy within twenty calendar days after notice of the  
4 decision has been delivered or mailed to the claimant and last  
5 employer as provided in section four of this article. The de-  
6 cision of the deputy shall be final and benefits shall be paid  
7 or denied in accordance therewith unless an appeal is filed  
8 within such time.  
9 Upon appeal from the determination of a deputy, an in-  
10 dividual shall be entitled to a fair hearing and reasonable  
11 opportunity to be heard before an appeal tribunal as pro-  
12 vided in section seven of this article.  
13 Within ten days after receipt by the board of notice of

14 appeal from the decision of a deputy, the board shall fix the  
15 time and place for hearing such appeal.

16 Upon consideration of all the evidence the appeal tribunal  
17 shall make a decision, and shall notify the claimant and last  
18 employer of its findings and decision.

Sec. 9. *Finality of Examiner's Decision.* A claimant or  
2 other interested party may file an appeal to the board from  
3 the decision of an appeal tribunal within twenty days after  
4 notice of the decision has been delivered or mailed to the  
5 claimant and last employer as provided in section eight of this  
6 article. The decision of the appeal tribunal shall be final and  
7 benefits shall be paid or denied in accordance therewith un-  
8 less an appeal is filed within such time.

Sec. 10. *Board Review.* The board may, after proper no-  
2 tice and opportunity for hearing,

3 (1) On its own motion affirm, modify, or set aside a  
4 decision of an appeal tribunal;

5 (2) Direct the taking of additional evidence in a disputed  
6 claim;

7 (3) Permit parties to the decision of an appeal tribunal to  
8 initiate further appeals before it.

Sec. 11. *Benefits Pending Appeal.* If an appeal is filed,  
2 benefits for the period prior to final determination of the  
3 board shall be paid only after such determination. If the  
4 board affirms the decision of the appeal tribunal allowing  
5 benefits, the benefits shall be paid regardless of any further  
6 appeal; but if the decision of the board is reversed on ap-  
7 peal, an employer's account shall not be charged with the  
8 benefits so paid.

Sec. 13. *Board to Establish Regulations for Procedure.* The  
2 board shall establish, and may from time to time modify and  
3 amend, rules and regulations for:

4 (1) The conduct and determination of benefit cases ap-  
5 pealed to it, or to an appeal tribunal;

6 (2) The form of all papers and records thereof;

7 (3) The time, place, and manner of hearings;

8 (4) Determining the rights of the parties; and the rules

9 need not conform to the common law or statutory rules of  
10 evidence and procedure and may provide for the determin-  
11 ation of questions of fact according to the predominance of  
12 the evidence.

Sec. 15. *Report of Decision.* The board shall notify the  
2 claimant and last employer of its findings and decision on  
3 an appeal.

Sec. 17. *Finality of Board's Decision.* The decision of  
2 the board shall be final and benefits shall be paid or denied  
3 in accordance therewith, unless a claimant or interested party  
4 appeals to a court within twenty days after mailing or noti-  
5 fication of the board's decision.

Sec. 22. *Judicial Review.* Within twenty days after a de-  
2 cision of the board has become final, any party aggrieved  
3 may secure judicial review of the decision by commencing an  
4 action against the board in the circuit court of Kanawha  
5 county. Parties to the proceedings before the board shall be  
6 made defendants.

Sec. 23. *Trial; Preference on Calendar.* Except as limited  
2 by section twenty-one of this article, a decision of the board  
3 taken to the circuit court of Kanawha county for judicial  
4 review shall be tried as any other civil action: *Provided,*  
5 *however,* That such actions shall have preference on the cal-  
6 endar of the court over all other civil actions, except cases  
7 arising under the workmen's compensation law.

Sec. 25. *Service Upon Board.* Service in such action shall be  
2 upon the chairman of the board or such person as he may  
3 designate, and service upon him shall be treated as completed  
4 service upon all parties to the original dispute. The chair-  
5 man of the board or such person as he may designate shall  
6 immediately upon receipt of service forward a copy of such  
7 service by registered mail to each defendant.

Sec. 26. *Certification and Filing of Record.* The board shall  
2 certify and file with the court all documents and papers and a  
3 transcript of all testimony taken in a disputed claim together  
4 with its findings of fact and decision thereon.

- 5      Upon its own motion the board may also certify to the court  
6      questions of law involved in any of the board's decisions.

## Article 10. General Provisions.

### Section

13. Criminal actions.  
15. Provisions of act severable.  
16. Acts repealed.  
17. Saving clause.

Section 13. *Criminal Actions.* Criminal actions to enforce  
2 the provisions of this chapter, or rules or regulations issued  
3 thereunder, shall be prosecuted by the attorney general, or  
4 at his request by the prosecuting attorney of any county in  
5 which the defendant resides, or by an attorney of the de-  
6 partment.

Sec. 15. *Provisions of Act Severable.* The provisions of this  
2 act shall be construed as severable, and should any provision  
3 be held unconstitutional, or for any other reason invalid, the  
4 remaining provisions shall not be affected thereby.

Sec. 16. *Acts Repealed.* Acts or parts of acts in conflict  
2 with or superseded by the provisions of this act are hereby  
3 repealed.

Sec. 17. *Saving Clause.* The Legislature reserves the  
2 right to amend or repeal all or any part of this chapter and  
3 no private rights shall vest against any legislative amend-  
4 ment or change or repeal. All rights, privileges, or immuni-  
5 ties conferred by this chapter or by acts done pursuant there-  
6 to shall exist subject to the power of the Legislature to amend  
7 or repeal this chapter at any time.

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## CHAPTER 135

(House Bill No. 219—By Mr. White)

AN ACT to amend and reenact section eleven, article eight, chap-  
ter twenty-one-a of the code of West Virginia, one thousand  
nine hundred thirty-one, as enacted by chapter one, acts of

the Legislature, second extraordinary session, one thousand nine hundred thirty-six, relating to the issuance of warrants by the unemployment compensation director.

[Passed March 11, 1939; in effect ninety days from passage. Approved by the Governor.]

## Article 8. Unemployment Compensation.

### Section

11. Issuance and signing of warrants; forgery; penalty.

*Be it enacted by the Legislature of West Virginia:*

That section eleven, article eight, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as enacted by chapter one, acts of the Legislature, second extraordinary session, one thousand nine hundred thirty-six, be amended and reenacted to read as follows:

Section 11. *Issuance and Signing of Warrants; Forgery; Penalty.* The director shall issue his warrants for the payment of benefits solely from the benefit account. Expenditures of money in the benefit account and refunds from the clearing account shall not be subject to limitations imposed upon the release of public funds in the custody of state officers. All warrants when issued by the director shall bear his signature, personally signed by him, or by such employees as are, in writing, authorized by him to make his signature thereto, or bear a facsimile of the director's signature. Such signature of the director may be made, however, by means of such mechanical or electrical device as the director may select, after the same shall have been approved by the governor and the attorney general; any such mechanical or electrical device, as so selected, to be safely kept in the office of the director so that no one shall have access thereto except the director and such of his employees, as may be authorized to sign warrants as hereinabove provided. If any person, other than the director, or his employees duly and respectively authorized by him so to do, as above provided, shall sign the name of the director by the use of any mechanical or electrical device, or otherwise, or use the facsimile of the signature of the director on any warrant, or utter or attempt to employ as true such forged warrant, knowing the same to be forged, he shall be guilty of a

- 25 felony, and upon conviction shall be confined in the peni-  
 26 tentiary not less than two nor more than ten years.  
 27 All acts and parts of acts inconsistent herewith are hereby  
 28 repealed.

## CHAPTER 136

(House Bill No. 274—By Mr. Speaker, Mr. Thomas)

AN ACT to amend article eight, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as enacted by chapter one, acts of the Legislature, second extraordinary session, one thousand nine hundred thirty-six, as amended by chapter one hundred, acts of the Legislature, regular session, one thousand nine hundred thirty-seven, by adding thereto a new section to be numbered section fourteen, providing for the transfer to the railroad unemployment insurance account of certain funds from the unemployment trust fund of this state.

[Passed March 2, 1939; in effect from passage. Approved by the Governor.]

### Article 8. Unemployment Compensation Fund.

#### Section

14. Transfer of funds to the railroad unemployment insurance account.

*Be it enacted by the Legislature of West Virginia:*

That article eight, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as enacted by chapter one, acts of the Legislature, second extraordinary session, one thousand nine hundred thirty-six, as heretofore amended, be amended by adding thereto a new section to be numbered section fourteen, to read as follows:

Section 14. *Transfer of Funds to the Railroad Unemployment Insurance Account.* Notwithstanding any requirements of the foregoing sections of this article, the director shall, prior to whichever is the later of (1) thirty days after the close of this session of the Legislature and (2) July first, one thousand nine hundred thirty-nine, authorize and direct the secretary of the treasury of the United States to transfer from this state's account in the unemployment trust fund,



9 established and maintained pursuant to section nine hundred  
10 four of the social security act as amended, to the railroad  
11 unemployment insurance account, established and main-  
12 tained pursuant to section ten of the railroad unemploy-  
13 ment insurance act, an amount hereinafter referred to as  
14 the preliminary amount; and shall, prior to whichever is  
15 the later of (1) thirty days after the close of this session  
16 of the Legislature and (2) January first, one thousand  
17 nine hundred forty, authorize and direct the secretary of  
18 the treasury of the United States to transfer from this  
19 state's account in said unemployment trust fund to said  
20 railroad unemployment insurance account, an additional  
21 amount, hereinafter referred to as the liquidating amount.  
22 The preliminary amount shall consist of that proportion of the  
23 balance in the unemployment compensation fund as of June  
24 thirtieth, one thousand nine hundred thirty-nine, as the total  
25 amount of contributions collected from "employers" (as the  
26 term "employer" is defined in section one-a of the railroad  
27 unemployment insurance act) and credited to the unemploy-  
28 ment compensation fund bears to all contributions theretofore  
29 collected under this act and credited to the unemployment  
30 compensation fund. The liquidating amount shall consist of  
31 the total amount of contributions collected from "employers"  
32 (as the term "employer" is defined in section one-a of the rail-  
33 road unemployment insurance act) pursuant to the pro-  
34 visions of this act during the period July first, one thousand  
35 nine hundred thirty-nine to December thirty-first, one thou-  
36 sand nine hundred thirty-nine, inclusive.

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## CHAPTER 137

(Com. Sub. for House Bill No. 157—Originating in the House Committee  
on the Judiciary)

AN ACT to amend and reenact sections one, four, five, ten and eleven, article one, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, sections one and five (including certain misdemeanors and penalties for violations of said section five as hereby amended and reenacted), article two of said chapter of said code, sections one, six, nine-b, ten, fifteen, fifteen-a, sixteen and eighteen, article four of said chapter of said code, and to add (following pres-

ent section nineteen) a new section to article four of said chapter of said code, to be known as section twenty, and to amend and reenact sections one, two, three and five, article five of said chapter of said code, and to add (following section one) four new sections to article five of said chapter of said code, to be known, respectively, as sections one-a, one-b, one-c and one-d, all relating to workmen's compensation and the administration of the workmen's compensation law.

[Passed March 11, 1939; in effect from passage. Became a law without the approval of the Governor.]

#### **Article**

- 1. General Administrative Provisions.**
- 2. Employers and Employees Subject to Chapter; Premiums.**
- 4. Disability and Death Benefits.**
- 5. Review.**

#### ***Be it enacted by the Legislature of West Virginia:***

That sections one, four, five, ten and eleven, article one, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, be amended and reenacted; that sections one and five (including certain misdemeanors and penalties for violations of said section five as hereby amended and reenacted), article two of said chapter of said code, be amended and reenacted; that sections one, six, nine-b, ten, fifteen, fifteen-a, sixteen and eighteen, article four of said chapter of said code, be amended and reenacted; that a new section be added (following present section nineteen) to article four of said chapter of said code, to be known as section twenty; that sections one, two, three and five, article five of said chapter of said code, be amended and reenacted; and that (following section one) four new sections be added to article five of said chapter of said code, to be known, respectively, as sections one-a, one-b, one-c and one-d, the foregoing, respectively, to read as follows:

#### **Article 1. General Administrative Provisions.**

##### **Section**

1. Compensation commissioner; appointment, etc.; legal services by attorney general.
4. Office hours; records.
5. Office, hearings.
10. Fees and mileage of officers and witnesses.
11. Depositions.

Section 1. *Compensation Commissioner; Appointment, etc.;*

- 2 *Legal Services by Attorney General.* There shall be a state

3 compensation commissioner who shall be a citizen of this state  
4 entitled to vote and shall be appointed by the governor by and  
5 with the advice and consent of the senate. The compensation  
6 commissioner in office on the date this code takes effect shall,  
7 unless sooner removed, continue to serve until his term expires  
8 and his successor has been appointed and has qualified. On or  
9 before the first day of June, one thousand nine hundred thirty-  
10 five, and on or before the first day of June of each sixth year  
11 thereafter, the governor shall appoint a compensation commis-  
12 sioner to serve for a term of six years commencing on said first  
13 day of June. An appointment may be made to fill a vacancy or  
14 otherwise when the senate is not in session, but shall be acted  
15 upon at the next session thereof. The person so appointed shall  
16 take the oath or affirmation prescribed by section five of article  
17 four of the constitution, and such oath shall be certified by the  
18 person who administers the same and shall be filed in the office  
19 of the secretary of state. He shall give bond in the penalty of  
20 twenty-five thousand dollars conditioned for the faithful per-  
21 formance of the duties of his office, which bond shall be ap-  
22 proved by the attorney general as to form, and by the governor  
23 as to sufficiency. The surety of such bond may be a bonding  
24 or surety company, in which case the premiums shall be paid  
25 out of the appropriation made for the administration of this  
26 chapter. The commissioner shall hold no position of trust or  
27 profit, or engage in any occupation or business, interfering  
28 or inconsistent with his duties as such commissioner. The  
29 commissioner shall receive an annual salary of six thousand  
30 dollars, payable in the same manner as the salaries of other  
31 state officers are paid and charged to the appropriations which  
32 shall be made from time to time hereafter by the state for the  
33 administration of this chapter. The commissioner shall have  
34 an official seal for the authentication of his orders and pro-  
35 ceedings, upon which seal shall be engraved the words, "West  
36 Virginia Compensation Commissioner", and such other design  
37 as the commissioner may prescribe. The courts in this state  
38 shall take judicial notice of the seal of the commissioner, and  
39 in all cases copies of orders, proceedings or records in the  
40 offices of the West Virginia compensation commissioner, cer-  
41 tified by the secretary of the commissioner under his seal, shall  
42 be equal to the original in evidence.

43 The attorney general shall perform all legal services re-  
44 quired by the commissioner under the provisions of this chap-  
45 ter: *Provided, however,* That in any case in which an appli-  
46 cation for review is prosecuted by the commissioner from any  
47 final decision of the workmen's compensation appeal board to  
48 the supreme court of appeals, as provided by section four,  
49 article five of this chapter, the commissioner may designate a  
50 regular employee of his office, qualified to practice before the  
51 said court, to represent him upon the said appeal, and in no  
52 case shall the person so appearing for the commissioner be-  
53 fore the court receive remuneration therefor other than his  
54 regular salary.

Sec. 4. *Office Hours; Records.* The offices of the commis-  
2 sioner shall be open for the transaction of business between  
3 the hours of nine o'clock a. m., and five o'clock p. m., of each  
4 and every day excepting Saturdays after twelve o'clock noon,  
5 Sundays and legal holidays, and be in charge of his secretary  
6 or some other competent person. All proceedings of the com-  
7 missioner shall be shown on his record of proceedings, which  
8 shall be a public record and shall contain a record of each case  
9 considered and the award with respect thereto and of all  
10 salaries allowed to any employee of the commissioner or to  
11 any other person for services.

Sec. 5. *Office; Hearings.* The commissioner shall keep and  
2 maintain his office at the seat of government, and shall provide  
3 a suitable room or rooms, necessary office furniture, supplies,  
4 books, periodicals, maps and other equipment. After due  
5 notice, showing the time and place, the commissioner may hold  
6 hearings anywhere within the state, or elsewhere by agree-  
7 ment of claimant and employer, with the approval of the  
8 commissioner.

Sec. 10. *Fees and Mileage of Officers and Witnesses.* Each  
2 officer who serves such subpoenas shall receive the same fee  
3 as a sheriff, and each witness who appears in obedience to a  
4 subpoena before the commissioner, or an inspector, or an  
5 examiner, shall receive for his attendance the fees and mileage  
6 provided for witnesses in civil cases in the circuit court, which  
7 shall be audited and paid out of the workmen's compensation

8 fund in the same manner as other expenses are audited and  
9 paid, if such witness was subpoenaed without the request of  
10 either claimant or employer at the instance of the commis-  
11 sioner or an inspector or an examiner. The witness fees and  
12 mileage of any witness subpoenaed by, or at the instance of,  
13 either claimant or employer shall be paid by the party who  
14 subpoenas such witness.

Sec. 11. *Depositions.* In an investigation, the commissioner  
2 may cause depositions of witnesses residing within or without  
3 the state to be taken in the manner prescribed by law for like  
4 depositions as provided for transcripts in the circuit court, but  
5 such depositions shall be upon reasonable notice to claimant  
6 and employer or their respective attorneys. The commissioner  
7 shall also have discretion to accept and consider depositions  
8 taken outside the state by either the claimant or employer,  
9 provided due and reasonable notice of the taking of such de-  
10 positions was given to the other party, claimant or employer,  
11 as the case may be, or their respective attorneys: *Provided,*  
12 *however,* That the commissioner, upon due notice both to the  
13 employer and claimant, shall have authority to refuse or permit  
14 the taking of such depositions or to reject such depositions  
15 after the taking thereof, if in his opinion they were taken at  
16 such place or under such circumstances as imposed an undue  
17 burden or hardship upon the opposite party, and the commis-  
18 sioner's discretion to accept, refuse to approve, or reject such  
19 depositions shall be binding in the absence of abuse of such  
20 discretion.

## **Article 2. Employers and Employees Subject to Chapter; Premiums.**

### **Section**

1. Employers and employees, including state and its agencies, sub-  
ject to chapter.
5. Premiums; failure to pay; reinstatement; deposit to insure pay-  
ment; refund of deposit; notices to employees.

\*Section 1. *Employers and Employees, Including State and  
2 Its Agencies, Subject to Chapter.* The state of West Virginia  
3 and all governmental agencies or departments created by it are  
4 hereby required to subscribe to, and pay premiums into the  
5 workmen's compensation fund for the protection of their em-  
6 ployees, and shall be subject to all requirements of this act,

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\* This section of the code was also amended by chapter 140, acts of this session.

7 and all rules and regulations prescribed by the commissioner  
8 with reference to rates, classifications and premium payments.

9 All persons, firms, associations and corporations regularly  
10 employing other persons for the purpose of carrying on any  
11 form of industry or business in this state, are employers within  
12 the meaning of this chapter and subject to its provisions. All  
13 persons in the service of employers as herein defined, and em-  
14 ployed by them for the purpose of carrying on the industry,  
15 business or work in which they are engaged, including persons  
16 regularly employed in the state whose duties necessitate tem-  
17 porary employment by the same employer without the  
18 state of a temporary or transitory nature, and check-  
19 weighmen employed according to law, and all members  
20 of rescue teams assisting in mine accidents with the consent  
21 of the owner who, in such case, shall be deemed the employer,  
22 or at the direction of the chief of the department of mines,  
23 are employees within the meaning of this chapter and subject  
24 to its provisions: *Provided*, That the chapter shall not apply  
25 to employers of employees in domestic or agricultural service,  
26 persons prohibited by law from being employed, nor to  
27 employees of any employer while employed without the state,  
28 except in case of temporary employment without the state,  
29 as hereinbefore defined; nor shall a member of a firm of em-  
30 ployers, or any officer of an association or of a corporation  
31 employer, including managers, or any elective or appointive  
32 official of the state, whose term of office is definitely fixed by  
33 law, be deemed an employee within the meaning of this  
34 chapter.

35 The premium and actual expenses in connection with gov-  
36 ernmental agencies and departments of the state of West  
37 Virginia, shall be paid out of the state treasury from appro-  
38 priations made for such agencies and departments, in the  
39 same manner as other disbursements are made by such agen-  
40 cies and departments, and such premiums of state agencies  
41 and departments shall be paid into the fund in the same man-  
42 ner as herein provided for other employers subject to this  
43 chapter.

44 Any employer whose employment in this state is to be for  
45 a definite or limited period, which could not be considered  
46 "regularly employing" within the meaning of this section,

47 may elect to pay into the workmen's compensation fund the  
48 premiums herein provided for, and at the time of making  
49 application to the commissioner such employer shall furnish a  
50 statement under oath showing the probable length of time  
51 the employment will continue in this state, the character of  
52 the work, an estimate of the monthly payroll, and any other  
53 information which may be required by the commissioner. At  
54 the time of making application such employer shall deposit  
55 with the state compensation commissioner to the credit of the  
56 workmen's compensation fund the amount required by section  
57 five of this article, which amount shall be returned to such  
58 employer, if his application be rejected by the commissioner.  
59 Upon notice to such employer of the acceptance of his appli-  
60 cation by the commissioner, he shall be an employer within  
61 the meaning of this chapter and subject to all of its  
62 provisions.

63 Any foreign corporation employer electing to comply with  
64 the provisions of this chapter and to receive the benefits here-  
65 under, shall, at the time of making application to the com-  
66 missioner, in addition to other requirements of this chapter,  
67 furnish such commissioner with a certificate from the secre-  
68 tary of state showing that it has complied with all the require-  
69 ments necessary to enable it legally to do business in this  
70 state, and no application of such foreign corporation em-  
71 ployer shall be accepted by the commissioner until such cer-  
72 tificate is filed.

73 For the purpose of this chapter, a mine shall be adjudged  
74 within this state when the main opening, drift, shaft or slope  
75 is located wholly within this state.

76 Any employee within the meaning of this chapter whose  
77 employment necessitates his temporary absence from this state  
78 in connection with such employment, and such absence is di-  
79 rectly incidental to carrying on an industry in this state, who  
80 shall have received injury during such absence in the course  
81 of and resulting from his employment, shall not be denied  
82 the right to participate in the workmen's compensation fund.

Sec. 5. *Premiums; Failure to Pay; Reinstatement; Deposit*  
2 *to Insure Payment; Refund of Deposit; Notices to Employees.*  
3 For the purpose of creating a workmen's compensation fund  
4 each employer subject to this chapter shall pay the premiums

5 of liability based upon and being such a percentage of the  
6 payroll of such employer as may have been determined by the  
7 commissioner and be then in effect. The premiums shall be paid  
8 monthly, on or before the twentieth of each month, for the  
9 preceding month, and shall be the prescribed percentage of  
10 the total earnings of all employees within the meaning of this  
11 chapter, for such preceding month. The minimum premium  
12 to be paid by any employer for any month shall be fifty cents.  
13 The premiums and deposits provided for in this chapter shall  
14 be paid by the employers to the state compensation commis-  
15 sioner, who shall issue receipts for all sums so received, mail-  
16 ing the original to the person, firm or corporation paying the  
17 same, transmitting a copy thereof to the state treasurer and  
18 state auditor, and retaining a copy for his own records. All  
19 sums received by the state compensation commissioner as here-  
20 in provided shall be deposited in the state treasury to the credit  
21 of the workmen's compensation fund in the manner now  
22 prescribed by law for depositing money in the state  
23 treasury. Each employer shall make a payroll report  
24 to the commissioner on or before the twentieth of each  
25 month for the preceding month, and such report  
26 shall be on the form or forms prescribed by the  
27 commissioner, and furnish all information required by  
28 him.

29 Failure to pay premiums as herein provided or to make the  
30 monthly payroll reports required by the commissioner shall  
31 deprive the employer so delinquent of the benefits and pro-  
32 tection afforded by this chapter, and shall automatically ter-  
33 minate the election of such employer to pay into the work-  
34 men's compensation fund as herein provided, and such em-  
35 ployer shall be liable to his employees as provided in section  
36 eight of this article; and the commissioner shall not be re-  
37 quired to notify the delinquent employer of such termination,  
38 but he shall notify the employees of such employer by written  
39 notice posted as hereinafter provided for in this section. The  
40 termination of election of such delinquent employer shall date  
41 from twelve o'clock p. m., of the last day of the month in  
42 which he fails to pay the premiums or make payroll reports,  
43 as above provided, for the preceding month.

44 The employer so delinquent may be reinstated upon appli-



45 cation under such terms as are prescribed by this chapter and  
46 by the commissioner hereunder, after the payment into the  
47 workmen's compensation fund of all unpaid premiums, pen-  
48 alties and charges. Such reinstatement shall be in effect from  
49 and after the date that the new application is accepted by the  
50 commissioner: *Provided, however,* That such delinquent em-  
51 ployer shall be entitled to the benefits and protection of this  
52 chapter until twelve o'clock p. m., of the last day of the month  
53 immediately succeeding the month in which his election is  
54 terminated, and his employees shall be entitled to compensa-  
55 tion for injuries received during such period, but not there-  
56 after unless such delinquent employer becomes reinstated as  
57 herein provided.

58 Any employer hereafter electing to avail himself of the  
59 benefits of this chapter shall at the time of making application  
60 to the commissioner deposit in the workmen's compensation  
61 fund an amount estimated to be equal to the amount of the  
62 premiums which shall be paid by him for the next succeeding  
63 two months. Any employer whose deposit is less than the  
64 amount of his premiums for the last two months shall, upon  
65 written request from the commissioner mailed to his address  
66 as carried upon the books of the commissioner, by twelve  
67 o'clock p. m. of the twentieth of the month in which request is  
68 mailed, pay to the commissioner a sum sufficient to make his  
69 deposit at least equal to the amount of his premiums for the  
70 last two preceding months, and failure of any employer to  
71 comply with such written request within the time specified  
72 shall deprive him of the benefits and protection afforded by  
73 this chapter, and shall automatically terminate his election to  
74 pay into the workmen's compensation fund as herein provided,  
75 and such employer shall be liable to his employees as provided  
76 in section eight of this article; and the commissioner shall not  
77 be required to notify the delinquent employer of such termina-  
78 tion, but he shall notify the employees of such employer by  
79 written notice posted as hereafter provided for in this section.  
80 The termination of election of such employer shall date from  
81 twelve o'clock p. m. of the last day of the month in which he  
82 is notified by the commissioner that his deposit is not equal  
83 to the sum of his premium for the last two preceding months.  
84 Such employer may be reinstated upon application under such

85 terms as are prescribed by this chapter and the rules of the  
86 commissioner. The deposit hereinbefore described shall be  
87 credited to the employer's account on the books of the commis-  
88 sioner and used to pay premiums and any other sums due the  
89 fund when such employer becomes delinquent in the payment  
90 of the same.

91 Upon withdrawal from the fund or termination of election  
92 of any employer, he shall be refunded the balance due him of  
93 his deposit, after deducting all amounts owed by him to the  
94 workmen's compensation fund, and the commissioner shall  
95 notify the employees of such employer of said termination in  
96 such manner as he may deem best and sufficient.

97 Notices to employees in this section provided for shall be  
98 given by posting written notice that the employer is de-  
99 linquent under the compensation law of West Virginia. and  
100 that neither the employer nor the employees of such employer  
101 are protected by said law as to any accidents happening after  
102 the date specified in said notice. Such notice shall be in the  
103 form prescribed by the commissioner and shall be posted in a  
104 conspicuous place at the chief works of the employer, as the  
105 same appear in records of the commissioner. If the said chief  
106 works of the employer cannot be found or identified, then said  
107 notice shall be posted at the front door of the courthouse of the  
108 county in which said chief works are located, according to the  
109 records in the commissioner's office. Any person who shall,  
110 prior to the reinstatement of the said employer, as hereinbefore  
111 provided for, or prior to sixty days after the posting of said  
112 notice, whichever shall first occur, remove, deface or render  
113 illegible the said notice, shall be guilty of a misdemeanor,  
114 and upon conviction thereof shall be fined not to exceed five  
115 hundred dollars, and the said notice shall state this provision  
116 upon its face. The commissioner may require any sheriff,  
117 deputy sheriff, constable, or other official of the state of West  
118 Virginia, who may be authorized to serve civil process, to post  
119 such notice and to make return thereof of the fact of such post-  
120 ing to the commissioner, and any failure of such officer to  
121 post any notice within ten days after he shall have received  
122 the same from the commissioner, without just cause or excuse,  
123 shall constitute a wilful failure or refusal to perform a duty  
124 required of him by law within the meaning of section twenty-

125 eight, article five, chapter sixty-one of the code of West Vir-  
126 ginia. Any person actually injured by reason of such failure  
127 shall have an action against said official, and upon any official  
128 bond he may have given, for such damages as such person may  
129 actually have incurred, but not to exceed, in the case of any  
130 surety upon said bond, the amount of the penalty of said bond.  
131 Any official posting said notice as herein required shall be en-  
132 titled to the same fee as is now or may hereafter be provided  
133 for the service of process in suits instituted in courts of record  
134 in the state of West Virginia, which fee shall be paid by the  
135 commissioner out of any funds at his disposal, but shall be  
136 charged by him against the account of the employer to whose  
137 delinquency such notice relates.

#### Article 4. Disability and Death Benefits.

##### Section

1. To whom compensation fund disbursed.
6. Classification of disability benefits.
- 9-b. Waiver by employee of physical impairment.
10. Classification of death benefits; "dependent" defined.
15. Application for benefits; nonresident aliens.
- 15-a. Nonresident alien beneficiaries.
16. Commissioner's jurisdiction over case continuous; modification of finding or order; time limitations on awards.
18. Mode of paying benefits; exemption from legal process.
20. Post-mortem examinations.

Section 1. *To Whom Compensation Fund Disbursed.* Subject  
2 to the provisions and limitations elsewhere in this chapter set  
3 forth, the commissioner shall disburse the workmen's compen-  
4 sation fund to the employees of such employers as are not de-  
5 linquent in the payment of premiums for the month in which  
6 the injury occurs, and who have otherwise complied fully with  
7 the provisions of this chapter, and which employees shall have  
8 received personal injuries in the course of and resulting from  
9 their employment in this state, or in temporary employment  
10 without the state, as defined and limited by section one, ar-  
11 ticle two of this chapter, or to the dependents, if any, of such  
12 employees in case death has ensued, according to the pro-  
13 visions hereinafter made; and also for the expenses of the  
14 administration of this chapter, as provided in section two,  
15 article one of this chapter.

Sec. 6. *Classification of Disability Benefits.* Where compen-  
2 sation is due an employee under the provisions of this chapter,

3 such compensation shall be provided 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,  
7 not to exceed a maximum of sixteen dollars per week nor to  
8 be 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 un-  
13 united fracture or having undergone a surgical operation to  
14 correct a vicious union following a fracture, or for the repair of  
15 an ununited fracture, or having suffered an injury to the spine  
16 or pelvic bones which is of a temporary nature, or for any  
17 ankylose joint, is disabled for a longer period than fifty-two  
18 weeks, the period during which compensation shall be paid may  
19 be, but shall not exceed, seventy-eight weeks ;

20 (c) If the injury causes permanent disability, the percent-  
21 age of disability to total disability shall be determined and  
22 the award computed and allowed as follows :

23 For a two per cent disability, sixty-six and two-thirds per  
24 cent of the average weekly earnings for a period of eight  
25 weeks,

26 For a five per cent disability, sixty-six and two-thirds per  
27 cent of the average weekly earnings for a period of twenty  
28 weeks,

29 For a ten per cent disability, sixty-six and two-thirds per  
30 cent of the average weekly earnings for a period of forty  
31 weeks,

32 For a fifteen per cent disability, sixty-six and two-thirds  
33 per cent of the average weekly earnings for a period of sixty  
34 weeks,

35 For a twenty per cent disability, sixty-six and two-thirds  
36 per cent of the average weekly earnings for a period of eighty  
37 weeks,

38 For a thirty per cent disability, sixty-six and two-thirds  
39 per cent of the average weekly earnings for a period of one  
40 hundred and twenty weeks,

41 For a forty per cent disability, sixty-six and two-thirds

42 per cent of the average weekly earnings for a period of one  
43 hundred and sixty weeks,

44 For a fifty per cent disability, sixty-six and two-thirds per  
45 cent of the average weekly earnings for a period of two hun-  
46 dred weeks,

47 For a sixty per cent disability, sixty-six and two-thirds per  
48 cent of the average weekly earnings for a period of two hun-  
49 dred and forty weeks,

50 For a seventy per cent disability, sixty-six and two-thirds  
51 per cent of the average weekly earnings for a period of two  
52 hundred and eighty weeks,

53 For an eighty per cent disability, sixty-six and two-thirds  
54 per cent of the average weekly earnings for a period of three  
55 hundred and twenty weeks,

56 For an eighty-five per cent disability, sixty-six and two-  
57 thirds per cent of the average weekly earnings for a period of  
58 three hundred and forty weeks,

59 For a disability from eighty-five to one hundred per cent,  
60 sixty-six and two thirds per cent of the average weekly earn-  
61 ings during the remainder of life.

62 Awards for permanent disability of from two per cent to  
63 eighty-five per cent shall be computed on the basis of four  
64 weeks' compensation for each per cent of disability deter-  
65 mined;

66 (d) If the injury results in the total loss by severance of  
67 any of the members named in this subdivision, the percentage  
68 of disability shall be determined in accordance with the fol-  
69 lowing table, and award made as provided in subdivision (c)  
70 of this section:

71 The loss of a great toe shall be considered a ten per cent  
72 disability,

73 The loss of a great toe (one phalange) shall be considered  
74 a five per cent disability,

75 The loss of other toes shall be considered a four per cent  
76 disability,

77 The loss of other toes (one phalange) shall be considered  
78 a two per cent disability,

79 The loss of all toes shall be considered a twenty-five per  
80 cent disability,

- 81     The loss of fore part of foot shall be considered a thirty per  
82     cent disability,
- 83     The loss of foot shall be considered a thirty-five per cent  
84     disability,
- 85     The loss of leg shall be considered a forty-five per cent  
86     disability,
- 87     The loss of thigh shall be considered a fifty per cent disa-  
88     bility,
- 89     The loss of thigh at hip joint shall be considered a sixty per  
90     cent disability,
- 91     The loss of little or fourth finger (one phalange) shall be  
92     considered a three per cent disability,
- 93     The loss of little or fourth finger shall be considered a five  
94     per cent disability,
- 95     The loss of ring or third finger (one phalange) shall be con-  
96     sidered a three per cent disability,
- 97     The loss of ring or third finger shall be considered a five per  
98     cent disability,
- 99     The loss of middle or second finger (one phalange) shall be  
100     considered a three per cent disability,
- 101     The loss of middle or second finger shall be considered a  
102     seven per cent disability,
- 103     The loss of index or first finger (one phalange) shall be  
104     considered a six per cent disability,
- 105     The loss of index or first finger shall be considered a ten  
106     per cent disability,
- 107     The loss of thumb (one phalange) shall be considered a  
108     twelve per cent disability,
- 109     The loss of thumb shall be considered a twenty per cent  
110     disability,
- 111     The loss of thumb and index finger shall be considered a  
112     thirty-two per cent disability,
- 113     The loss of index and middle finger shall be considered a  
114     twenty per cent disability,
- 115     The loss of middle and ring finger shall be considered a fif-  
116     teen per cent disability,
- 117     The loss of ring and little finger shall be considered a ten  
118     per cent disability,
- 119     The loss of thumb, index and middle finger shall be con-  
120     sidered a forty per cent disability,

121 The loss of index, middle and ring finger shall be consid-  
122 ered a thirty per cent disability,

123 The loss of middle, ring and little finger shall be considered  
124 a twenty per cent disability,

125 The loss of four fingers shall be considered a thirty-two  
126 per cent disability,

127 The loss of hand shall be considered a fifty per cent disa-  
128 bility,

129 The loss of forearm shall be considered a fifty-five per cent  
130 disability,

131 The loss of an arm shall be considered a sixty per cent disa-  
132 bility;

133 (e) The total and irrecoverable loss of the sight of one  
134 eye shall be considered a thirty-three per cent disability, and  
135 the injured employee shall be entitled to compensation for a  
136 period of one hundred and thirty-two weeks,

137 For the partial loss of vision in one, or both eyes, the per-  
138 centage of disability shall be determined by the commissioner,  
139 using as a basis the total loss of one eye;

140 Should a claimant to whom has been made a permanent par-  
141 tial award of less than eighty-five per cent for one of the  
142 specific disabilities as set forth in subdivision (d) and subdivi-  
143 sion (e) hereof die from sickness or non-compensable injury,  
144 the unpaid balance of such award shall be paid to claimant's  
145 dependents as defined in this chapter, if any; such payment  
146 to be in the same installments that would have been paid to  
147 claimant if living: *Provided, however,* That no payment shall  
148 be made to any widow of such claimant after her remarriage  
149 but this liability shall not accrue to the estate of such claimant  
150 and shall not be subject to any debts of, or charges against,  
151 said estate;

152 (f) The award for permanent disabilities intermediate to  
153 those fixed by the foregoing schedule and permanent disability  
154 of from two per cent to eighty-five per cent shall be in the  
155 same proportion and shall be computed and allowed by the  
156 commissioner;

157 (g) The percentage of all permanent disabilities other than  
158 those enumerated in subdivisions (c), (d), (e), and (f) of  
159 this section shall be determined by the commissioner, using as

160 a basis the loss of an arm at or above the elbow, and award  
161 made in accordance with the schedule in subdivision (c);

162 (h) Compensation payable under any subdivision of this  
163 section shall be limited as follows: Not to exceed a maximum  
164 of sixteen dollars per week, nor to be less than a minimum of  
165 eight dollars per week;

166 (i) Where an injury results in temporary total disability  
167 for which compensation is awarded under subdivision (a) of  
168 this section, and such injury is later determined permanent  
169 partial disability under subdivision (c), the amount of com-  
170 pensation so paid shall be considered as payment of the com-  
171 pensation payable for such injury in accordance with the  
172 schedule in subdivision (c). Compensation under this section  
173 shall be payable only to the injured employee, and the right  
174 thereto shall not vest in his or her estate; except that such  
175 compensation as may have accrued to the date of his or her  
176 death shall be paid to the dependents of such injured em-  
177 ployee, if there be such dependents at the time of death;

178 (j) The following permanent disabilities shall be conclu-  
179 sively presumed to be total in character:

180 Loss of both eyes or the sight thereof,

181 Loss of both hands or the use thereof,

182 Loss of both feet or the use thereof,

183 Loss of one hand and one foot,

184 Any injury resulting in total disability.

185 In all other cases permanent disability shall be determined  
186 by the commissioner in accordance with the facts in the case,  
187 and award made in accordance with the schedule in sub-  
188 division (c): *Provided*, That the claimant shall have the right  
189 of appeal from the decision of the commissioner as provided  
190 by article five of this chapter.

Sec. 9-b. *Waiver by Employee of Physical Impairment.*

2 Where an employee has a definitely ascertainable physical im-  
3 pairment originating as hereafter set forth in this section,  
4 such impairment, and the effect thereof, in case of injury as  
5 hereinafter set forth and any aggravation thereof on account  
6 of such injury, may be waived by said employee, notwith-  
7 standing any other provisions of this chapter, but such waiver  
8 shall be in the manner hereinafter provided. If said physical  
9 impairment shall be so waived, then in the event that such



10 employee shall thereafter receive an injury in the course of  
11 and resulting from his employment, such physical impair-  
12 ment, and the effects thereof, and any aggravation thereof,  
13 shall not be taken into consideration in fixing the amount of  
14 compensation allowed by reason of such injury, and such com-  
15 pensation shall be awarded only in the amount that would have  
16 been allowable had such employee not had such pre-existing  
17 physical impairment. A waiver, in order to be valid under  
18 this section, shall meet the following requirements: (1) It  
19 shall be in writing, signed prior to injury by the employee,  
20 and either acknowledged before an officer duly qualified to ad-  
21 minister oaths in this state, or be witnessed by two persons,  
22 neither of whom shall be the employer, or any officer or di-  
23 rector of employer; (2) it shall be accompanied by a certifi-  
24 cate of a duly licensed physician of this state or of another  
25 state, not connected with the employer, which certificate shall  
26 contain a statement that such physician has examined the said  
27 employee, has found such impairment to exist, that such im-  
28 pairment is definitely ascertainable, and a statement of the  
29 character and nature of such impairment. This section shall  
30 only apply to definitely ascertainable physical impairments,  
31 either

32 (a) Originating, either before or after October first, one  
33 thousand nine hundred thirteen, otherwise than from an in-  
34 jury received in the course of and resulting from employ-  
35 ment, or

36 (b) Originating prior to October first, one thousand nine  
37 hundred thirteen, from an injury in the course of and re-  
38 sulting from employment, or

39 (c) Originating after October first, one thousand nine hun-  
40 dred thirteen, from an injury in the course of and resulting  
41 from employment by an employer, who at the time of said in-  
42 jury had not elected to comply with, or was not in good stand-  
43 ing under, the workmen's compensation law of West Vir-  
44 ginia, or

45 (d) Originating in any injury of whatsoever origin when-  
46 ever received, occurring without the state of West Virginia,  
47 except injuries received after October first, one thousand nine  
48 hundred thirteen, in the employ of a subscriber in good stand-  
49 ing under the compensation fund of West Virginia in the  
50 course of and resulting from temporary employment without

51 the state as defined and limited by section one, article two of  
52 this chapter.

53 If any employee, or person seeking employment, who, as a  
54 part of the written waiver hereinbefore provided for, or by  
55 separate writing signed by him, filed with the employer, or  
56 prospective employer, shall make a statement of fact as to the  
57 origin of any physical impairment, such employee, or pros-  
58 pective employee, shall be bound by said statements, and shall  
59 be estopped from denying the truth of the facts stated therein.

Sec. 10. *Classification of Death Benefits; "Dependent" De-*  
2 *finied.* In case the personal injury causes death within the  
3 period of six years and the disability is continuous from date  
4 of such injury until date of death, the benefits shall be in the  
5 amounts, and to the persons, as follows:

6 (a) If there be no dependents, the disbursements shall be  
7 limited to the expense provided for in sections three and four  
8 of this article;

9 (b) If the deceased employee be under the age of twenty-one  
10 years and unmarried and leave a wholly dependent father or  
11 mother, the father, or if there be no father, the mother, shall  
12 be paid fifty per cent of the average monthly support actually  
13 received from the employee during the preceding twelve  
14 months to continue for six years after the death of the de-  
15 ceased, and shall not amount to more than a maximum of  
16 twenty dollars per month: *Provided, however,* That payment  
17 of compensation awarded under this subdivision to a depen-  
18 dent father shall be continued and paid to his surviving  
19 widow, mother of the deceased employee, to continue as per  
20 original award to father. Compensation in either case shall  
21 cease upon the death of the dependent;

22 (c) If the deceased employee be under the age of twenty-one  
23 and unmarried and leave a partially dependent father or  
24 mother, the father, or if there be no father, the mother, shall be  
25 paid fifty per cent of the average monthly support actually re-  
26 ceived from the employee during the preceding twelve months,  
27 to continue for such portion of the period of six years after the  
28 date of death as the commissioner may determine, and not to  
29 amount to more than a maximum of twenty dollars per month:  
30 *Provided, however,* That payment of compensation awarded  
31 under this subdivision to a dependent father shall be continued  
32 and paid to his surviving widow, mother of the deceased em-

33 ployee, to continue as per original award to father. Compensa-  
34 tion in either case shall cease upon the death of the dependent;

35 (d) If the deceased employee leaves a dependent widow  
36 or invalid widower, the payment shall be thirty dollars per  
37 month until death or remarriage of such widow or widower,  
38 and in addition five dollars per month for each child under  
39 sixteen years of age, to be paid until such child reaches such  
40 age, or, if an invalid child, to continue as long as such child  
41 remains an invalid: *Provided*, That if such widow or invalid  
42 widower shall remarry within two years from the date of the  
43 death of such employee, such widow or widower shall be paid  
44 at the time of remarriage twenty per cent of the amount that  
45 would be due for the period remaining between the date of  
46 such remarriage and the end of ten years from the date of  
47 death of said employee, and such widow or widower shall be  
48 advised in writing by the commissioner of his or her rights  
49 under this proviso at the time of making the original award:  
50 *Provided further*, That if upon investigation and hearing, as  
51 provided in article five of this chapter, it shall be ascertained  
52 that said widow or widower is living with a man or woman,  
53 as the case may be, as man and wife and not married, or the  
54 widow living a life of prostitution, the commissioner may stop  
55 the payment of the benefits herein provided to said widow or  
56 widower.

57 If the deceased employee be a widow or widower and leave  
58 a child or children under the age of sixteen years, the payment  
59 shall be ten dollars per month to each child until he or she  
60 reaches the age of sixteen years.

61 In all awards of compensation to children, the award shall  
62 be until they reach the age of sixteen years or their death  
63 prior thereto;

64 (e) If the deceased employee be an adult and there be  
65 no dependent widow, or widower, or child under sixteen years  
66 of age, but there are wholly dependent persons at the time of  
67 death, the payment shall be fifty per cent of the average  
68 monthly support actually received from the employee during  
69 the preceding twelve months, to continue for the remainder  
70 of the period between the date of death and six years after the  
71 date of injury, and shall not amount to more than a maximum  
72 of twenty dollars per month;

73 (f) If the deceased employee be an adult and there be no  
74 dependent widow, widower or child under sixteen years of age,  
75 or wholly dependent person, but there are partly dependent  
76 persons at the time of death, the payment shall be fifty per cent  
77 of the average monthly support actually received from the em-  
78 ployee during the preceding twelve months, and to continue  
79 for such portion of the period of six years after the date of  
80 death as the commissioner in the case may determine, and not  
81 to amount to more than a maximum of twenty dollars per  
82 month.

83 Compensation under subdivisions (e) and (f) hereof shall  
84 cease upon the death of the dependent, and the rights thereto  
85 shall not vest in his or her estate;

86 (g) Dependent, as used in this chapter, shall mean a  
87 widow, invalid widower, child under sixteen years of age, in-  
88 valid child, or a posthumous child, who, at the time of the in-  
89 jury causing death, is dependent in whole or part for his or  
90 her support upon the earnings of the employee; also the follow-  
91 ing persons who are and continue to be residents of the United  
92 States or its territorial possessions; stepchild, under six-  
93 teen years of age; child under sixteen years of age legally  
94 adopted prior to the injury causing death; father, mother,  
95 grandfather or grandmother, who, at the time of the injury  
96 causing death, is dependent in whole or in part for his or her  
97 support upon the earnings of the employee; an invalid brother  
98 or sister wholly dependent for his or her support upon the  
99 earnings of the employee at the time of the injury causing  
100 death.

Sec. 15. *Application for Benefits; Nonresident Aliens.* To en-  
2 title any employee or dependent of a deceased employee to  
3 compensation under this chapter, the application therefor  
4 must be made on a form or forms prescribed by the commis-  
5 sioner and filed in the office of the commissioner within six  
6 months from and after the date of injury or death, as the case  
7 may be, and all proofs of dependency in fatal cases must be  
8 filed with the commissioner within nine months from and after  
9 the death: *Provided*, That in case an employer fails to report  
10 an injury within six months from and after the date such in-  
11 jury is received, the commissioner shall accept the application  
12 for compensation filed by the employee after the expiration of

13 six months but within twelve months from the date of such in-  
14 jury: *Provided, further,* That if such employee shows by com-  
15 petent evidence that the employer had knowledge of such in-  
16 jury and failed to file a report thereof, then such employee  
17 shall have an additional year within which to file his applica-  
18 tion for compensation, and the commissioner shall receive such  
19 application so filed by such employee, and award compensation  
20 to an employee who would have been so entitled had the injury  
21 been reported and application filed within the prescribed  
22 period of six months. Nonresident aliens who may be entitled  
23 to benefits under prior law with respect to accidents occurring  
24 prior to the effective date of this act may be officially repre-  
25 sented by the consular officers of the country of which such  
26 aliens may be citizens or subjects, but no compensation shall be  
27 paid to such nonresident aliens in fatal cases through the con-  
28 sular officers of the country of which such aliens may be citi-  
29 zens or subjects until such consular officer or a representative  
30 of such consular officer is appointed personal representative of  
31 the deceased party by proper authority in the county in which  
32 the deceased resided, or in which the seat of government is lo-  
33 cated. Nothing herein contained shall be construed as giving  
34 such consular officer the right to make application for com-  
35 pensation in behalf of nonresident aliens.

Sec. 15-a. *Nonresident Alien Beneficiaries.* Notwithstand-  
2 ing any other provisions of this chapter, no benefits under any  
3 of the provisions of this chapter and no commutation of  
4 periodical benefits under the provisions of section seventeen of  
5 this article shall be made to nonresident alien beneficiaries on  
6 account of any accident occurring after the effective date of  
7 this act. Nonresident alien beneficiaries within the meaning  
8 hereof shall mean persons not citizens of the United States re-  
9 siding outside of the territorial limits of the United States at  
10 the time of the injury with respect of which benefits would  
11 otherwise have been payable to them in the absence of such  
12 nonresident alienage. In case of nonresident alien beneficiaries  
13 entitled under prior law to benefits on account of accidents  
14 occurring prior to the effective date of this act, the commis-  
15 sioner in his discretion may make, and such beneficiary shall  
16 be required to accept, commutation of such benefits into a

17 lump sum settlement and payment, at the rate of one-half of  
18 like benefits to resident beneficiaries.

Sec. 16. *Commissioner's Jurisdiction Over Case Continuous;  
2 Modification of Finding or Order; Time Limitations on  
3 Awards.* The power and jurisdiction of the commissioner over  
4 each case shall be continuing, and he may from time to time,  
5 after due notice to the employer, make such modifications or  
6 changes with respect to former findings or orders as may be  
7 justified: *Provided*, That no further award may be made in  
8 fatal cases arising after March seventh, one thousand nine  
9 hundred twenty-nine, except within two years after the death  
10 of the employee, or, in cases of non-fatal injuries on and after  
11 March seventh, one thousand nine hundred twenty-nine, ex-  
12 cept within three years after payments for temporary dis-  
13 ability shall have ceased and within one year after the com-  
14 missioner shall have made the last payment in any permanent  
15 disability case: *And provided further*, That no further  
16 award may be made in either fatal or non-fatal cases  
17 arising on account of injuries occurring prior to March  
18 seventh, one thousand nine hundred twenty-nine, unless writ-  
19 ten application for such award, signed personally by claimant,  
20 or, in case of claimant's infancy or physical or mental in-  
21 capacity, by his or her guardian, next friend, or committee,  
22 be filed with the commissioner on or before September fif-  
23 teenth, one thousand nine hundred thirty-nine. In any case  
24 in which an injured employee shall make application for a  
25 further adjustment of his claim, if such application be in  
26 writing and filed within the applicable time limit as pre-  
27 scribed by the next preceding paragraph, the commissioner  
28 shall pass upon and determine the merits of such application  
29 within thirty days after the filing thereof.

Sec. 18. *Mode of Paying Benefits; Exemptions From Legal  
2 Process.* Except by this section provided compensation shall  
3 be paid only to such employees or their dependents, and shall  
4 be exempt from all claims of creditors and from any attach-  
5 ment, execution, or assignment other than compensation to  
6 counsel for legal services, under the provisions of, and sub-  
7 ject to the limitations contained in section five, article five of  
8 this chapter. Payments may be made in such periodical in-  
9 stallments as may seem best to the commissioner in each case,

10 not exceeding one month apart. In all cases where compensa-  
11 tion is awarded or increased, the amount thereof shall be cal-  
12 culated and paid from the date of disability.

Sec. 20. *Post-mortem Examinations.* The commissioner shall  
2 have authority, after due notice to the employer and claimant,  
3 whenever he shall deem it necessary, to order an autopsy, and  
4 may designate a duly licensed physician to make such post-  
5 mortem examination or examinations as may be necessary to  
6 determine the cause of a deceased employee's death, and the  
7 said physician shall file with the commissioner a written re-  
8 port of his said findings; the claimant and the employer, re-  
9 spectively, shall have the right to select a physician of his or  
10 its own choosing and at his or its own expense, to participate  
11 in the post-mortem examination, and the respective physicians  
12 selected by the claimant and the employer shall have the right  
13 to concur in any report made by the physician selected by the  
14 commissioner, or each may file with the commissioner a separ-  
15 ate report.

## Article 5. Review.

### Section

1. Notice by commissioner of decision; objections and hearing; appeal.
  - 1-a. Further adjustment of claim; hearing.
  - 1-b. Refusal to reopen claim; notice; appeal.
  - 1-c. Application by employer for modification of award; hearing.
  - 1-d. Refusal of modification; notice; appeal.
2. Workmen's compensation appeal board.
3. Appeals to board; procedure.
5. Fees of attorney for claimant.

Section 1. *Notice by Commissioner of Decision; Objections and Hearing; Appeal.* The commissioner shall have full power  
2 and authority to hear and determine all questions within his  
3 jurisdiction, but upon the making or refusing to make any  
4 award, or upon the making of any modification or change with  
5 respect to former findings or orders, as provided by section six-  
6 teen, article four of this chapter, the commissioner shall give  
7 notice, in writing, to the employer, employee, claimant, or de-  
8 pendent, as the case may be, of his action, which notice shall  
9 state the time allowed for filing an objection to such finding,  
10 and such action of the commissioner shall be final unless the  
11 employer, employee, claimant or dependent shall, within thirty  
12 days after the receipt of such notice, object, in writing, to such  
13 finding. Upon receipt of such objection the commissioner shall,  
14

15 within thirty days from receipt thereof, set a time and place  
16 for the hearing of evidence. Any such hearing may be conduct-  
17 ed by the commissioner or his duly authorized representative  
18 at the county seat of the county wherein the injury occurred,  
19 or at any other place which may be agreed upon by the inter-  
20 ested parties, and in the event the interested parties cannot  
21 agree, and it appears in the opinion of the commissioner that  
22 the ends of justice require the taking of evidence elsewhere,  
23 then at such place as the commissioner may direct, having due  
24 regard for the convenience of witnesses. Both the employer and  
25 claimant shall be notified of such hearing at least ten days in  
26 advance, and the hearing shall be held within sixty days after  
27 the filing of objection to the commissioner's finding as herein-  
28 above provided, unless such hearing be postponed by agree-  
29 ment of the parties or by the commissioner for good cause. The  
30 evidence taken at such hearing shall be transcribed and be-  
31 come part of the record of the proceedings, together with the  
32 other records thereof in the commissioner's office. At any time  
33 within sixty days after hearing, if the commissioner is of the  
34 opinion that the facts have not been adequately developed at  
35 such hearing, he may order supplemental hearing upon due  
36 notice to the parties. After final hearing the commissioner  
37 shall, within sixty days, render his decision affirming, revers-  
38 ing or modifying, his former action, which shall be final; *Pro-*  
39 *vided, however,* That the claimant or the employer may apply  
40 to the appeal board herein created for a review of such de-  
41 cision; but no appeal or review shall lie unless application  
42 therefor be made within thirty days of receipt of notice of the  
43 commissioner's final action, or in any event within sixty days  
44 of the date of such final action, regardless of notice.

Sec. 1-a. *Further Adjustment of Claim; Hearing.* In any  
2 case wherein an injured employee makes application in writ-  
3 ing for a further adjustment of his claim under the provisions  
4 of section sixteen, article four, of this chapter, and such ap-  
5 plication discloses cause for a further adjustment thereof, the  
6 commissioner shall, after due notice to the employer, make  
7 such modifications or changes with respect to former findings  
8 or orders in such claim as may be justified, and any party  
9 dissatisfied with any such modification or change so made by  
10 the commissioner shall, upon proper and timely objection, be



11 entitled to a hearing, as provided in section one of this article.

Sec. 1-b. *Refusal to Reopen Claim; Notice; Appeal.* If, however, in any case in which application for further adjustment of a claim is filed under the next preceding section, it shall appear to the commissioner that such application fails to disclose a progression or aggravation in the claimant's condition, or some other fact or facts which were not theretofore considered by the commissioner in his former findings, and which would entitle such claimant to greater benefits than he has already received, the commissioner shall, within sixty days from the receipt of such application, notify the claimant and the employer that such application fails to establish a prima facie cause for reopening the claim. Such notice shall be in writing and shall state the time allowed for appeal to the appeal board from such decision of the commissioner. The claimant may, within thirty days after receipt of such notice, apply to the appeal board for a review of such decision.

Sec. 1-c. *Application By Employer for Modification of Award; Hearing.* In any case wherein an employer makes application in writing for a modification of any award previously made to an employee of said employer, and such application discloses cause for a further adjustment thereof, the commissioner shall, after due notice to the employee, make such modifications or changes with respect to former findings or orders in such form as may be justified, and any party dissatisfied with any such modification or change so made by the commissioner, shall upon proper and timely objection, be entitled to a hearing as provided in section one of this article.

Sec. 1-d. *Refusal of Modification; Notice; Appeal.* If in any such case it shall appear to the commissioner that such application fails to disclose some fact or facts which were not theretofore considered by the commissioner in his former findings, and which would entitle such employer to any modification of said previous award, the commissioner shall, within sixty days from the receipt of such application, notify the claimant and employer that such application fails to establish a just cause for modification of said award. Such notice shall be in writing and shall state the time allowed for appeal to the appeal board from such decision of the commissioner. The

- 12 employer may, within thirty days after receipt of said notice,  
13 apply to the appeal board for a review of such decision.

Sec. 2. *Workmen's Compensation Appeal Board.* There is  
2 hereby created a board to be known as the "Workmen's Com-  
3 pensation Appeal Board", which shall be referred to in this  
4 article as the "board", to be composed of three members, none  
5 of whom shall be a contributor to the compensation fund or in  
6 any way connected with a contributor thereto and none of  
7 whom shall be a beneficiary of the compensation fund or in  
8 any way connected with a beneficiary thereof. Two mem-  
9 bers of such board shall be of opposite politics to the third,  
10 and all three shall be citizens of this state who have resided  
11 therein for a period of at least five years. All members of said  
12 board shall be appointed by the governor for a term of six  
13 years. The governor is hereby vested with power to remove any  
14 member of the board according to section four, article four,  
15 chapter six, of this code. They shall receive an annual salary  
16 of two thousand four hundred dollars each, payable in  
17 monthly installments, which shall be the total compensation,  
18 including any and all expenses, of such member or members.  
19 The governor shall designate one of the members of said board  
20 as chairman thereof, and said board shall meet at the capitol  
21 or at such other places throughout the state as it may deem  
22 proper, at regular sessions commencing on the first Tuesday  
23 in February, April, June, August, October, and December  
24 and continuing as long as may be necessary for the proper  
25 and expeditious transaction of the business before it. All  
26 clerical services required by the board shall be paid for by  
27 the compensation commissioner from any funds at his disposal.  
28 The board shall, from time to time, compile and promulgate  
29 such rules of practice and procedure as to it shall appear  
30 proper for the prompt and efficient discharge of its business  
31 and such rules shall be submitted to the supreme court of ap-  
32 peals for approval, and if approved by said court shall have  
33 the same force and effect as the approved rules of procedure  
34 of circuit courts.

Sec. 3. *Appeals to Board; Procedure.* Any employer, em-  
2 ployee, claimant, or dependent, who shall feel aggrieved at  
3 any final action of the commissioner taken after a hearing held

4 in accordance with the provisions of section one of this article,  
5 and any claimant or employer who shall feel aggrieved at any  
6 action of the commissioner in refusing to reopen a claim un-  
7 der the provisions of sections one-b and one-d of this article,  
8 shall have the right to appeal to the board created in section  
9 two of this article for a review of such action. The aggrieved  
10 party shall file a written notice of appeal with the compensa-  
11 tion commissioner, directed to said board, within thirty days  
12 after receipt of notice of the action complained of, or in any  
13 event, regardless of notice, within sixty days after the date of  
14 the action complained of, and the commissioner shall notify the  
15 other party immediately upon the filing of said notice of  
16 appeal. The commissioner shall forthwith make up a tran-  
17 script of the proceedings before him and certify and transmit  
18 the same to the board. In such certificate, he shall incor-  
19 porate a brief recital of the proceedings therein had and re-  
20 cite each order entered and the date thereof. The board shall  
21 review the action of the commissioner complained of at its  
22 next meeting after the filing of notice of appeal, provided said  
23 notice of appeal shall have been filed thirty days before said  
24 meeting of the board, unless such review be postponed by  
25 agreement of parties or by the board for good cause. The  
26 board shall set a time and place for the hearing of arguments  
27 on each claim and shall notify the interested parties thereof.  
28 and briefs may be filed by the interested parties in accord-  
29 ance with the rules of procedure prescribed by the board.  
30 And thereupon, after a review of the case, the board shall  
31 sustain the finding of the commissioner or enter such order  
32 or make such award as the commissioner should have made  
33 and shall thereupon certify the same to the commissioner,  
34 who shall proceed in accordance therewith. Or, instead of  
35 affirming or reversing the commissioner as aforesaid, the  
36 board may, upon motion of either party or upon its own mo-  
37 tion, remand said cause to the commissioner for the taking  
38 of such new, additional or further evidence as in the opinion  
39 of the board may be necessary for a full and complete de-  
40 velopment of the facts of the case. In the event the board  
41 shall remand the cause to the commissioner for the taking of  
42 further evidence therein, the commissioner shall proceed to  
43 take such new, additional or further evidence in accordance  
44 with any instructions given by the board, and shall take the

45 same within thirty days after receipt of the order remanding  
46 the case, giving to the interested parties at least ten days'  
47 notice of such supplemental hearing, unless the taking of evi-  
48 dence shall be postponed by agreement of parties, or by the  
49 commissioner for good cause. After the completion of such  
50 supplemental hearing the commissioner shall, within sixty  
51 days, render his decision affirming, reversing or modifying  
52 his former action, which decision shall be appealable to, and  
53 proceeded with, by the appeal board in like manner as in the  
54 first instance. The board may remand any cause as often as  
55 in its opinion is necessary for a full development and just  
56 decision of the case. The board may take evidence or con-  
57 sider ex parte statements furnished in support of any motion  
58 to remand the cause to the commissioner. All evidence taken  
59 by or filed with the board shall become a part of the record.  
60 All appeals from the action of the commissioner shall be de-  
61 cided by said board at the same session at which they are  
62 heard, unless good cause for delay thereof be shown and en-  
63 tered of record. In all proceedings before the board, either  
64 party may be represented by counsel.

Sec. 5. *Fees of Attorney for Claimant.* If any claimant  
2 shall employ an attorney to represent him in a contested claim  
3 for compensation while such claim is pending before the com-  
4 missioner, the appeal board, or the supreme court of appeals,  
5 and such attorney shall file with the commissioner an attested  
6 copy of his contract of employment with such claimant, it  
7 shall be the duty of the commissioner to protect such attorney  
8 in the collection of his fees to the extent hereinafter provided;  
9 and if said contract of employment shall not violate the follow-  
10 ing schedule of fees, the commissioner shall make payment of  
11 such fee directly to such attorney out of any award or awards  
12 made to the claimant. If the claim is finally determined while  
13 pending before the commissioner and no appeal is filed therein  
14 with the appeal board the attorney fee shall not exceed two  
15 hundred dollars; if the claim is finally determined while pend-  
16 ing before the appeal board, the attorney fee shall not exceed  
17 three hundred fifty dollars; and if the claim is finally de-  
18 termined by the supreme court of appeals, or if an appeal is  
19 allowed by said court, then the attorney fee shall not exceed  
20 six hundred dollars: *Provided, however,* That if any claimant

21 shall employ an attorney to represent him in an uncontested  
22 claim for compensation while such claim is pending before the  
23 commissioner, the attorney shall be required to furnish an  
24 itemized statement of the services rendered to the claimant,  
25 and the commissioner shall have authority to fix the fee of the  
26 said attorney, the maximum amount of which shall not exceed  
27 the sum of twenty-five dollars. In no event shall the commis-  
28 sioner pay aggregate attorney fees of more than six hundred  
29 dollars in any one claim, nor shall the commissioner pay ag-  
30 gregate attorney fees of more than twenty-five per cent of  
31 the total award of any claim.

## CHAPTER 138

(House Bill No. 354—By Mrs. Walker)

AN ACT authorizing the state compensation commissioner to reopen  
the case of M. W. Dunning.

[Passed March 10, 1939; in effect ninety days from passage. Became a law  
without the approval of the Governor.]

### Section

1. Compensation commissioner authorized to reopen case of M. W. Dunning.

WHEREAS, On January twenty-seventh, one thousand nine hundred thirty, while employed by Venable and Farkas, highway contractors, in the construction of the highway between the towns of Fayetteville and Beckwith in the county of Fayette, this state, M. W. Dunning received an injury resulting in a compound fracture of the lower thoracic spine and a fractured kidney; and

WHEREAS, The employer of the said M. W. Dunning was, at the time of the aforesaid injury, a subscriber to the workmen's compensation fund; and

WHEREAS, The said M. W. Dunning was paid compensation upon fifty per cent permanent partial disability basis until December fourth, one thousand nine hundred thirty-three, at which time said compensation expired; and

WHEREAS, It is the opinion of competent physicians and surgeons that the injury sustained by the said M. W. Dunning has resulted in permanent disability; and

WHEREAS, On July thirty-first, one thousand nine hundred thirty-five, a request for reopening and hearing was filed by the said M. W. Dunning with the state compensation commissioner, but was declined due to the fact that the commissioner found himself without jurisdiction to consider the claim, since more than one year had elapsed since the date of the last payment of said claimant; therefore,

*Be it enacted by the Legislature of West Virginia:*

Section 1. *Compensation Commissioner Authorized to Re-open Case of M. W. Dunning.* The state compensation commissioner is hereby authorized to reopen the case of M. W. Dunning, notwithstanding the fact that more than one year elapsed since the date of the last payment to him before the application for reopening and hearing was filed, and to make such disposition of the case as would have been proper had said application been filed within the period required by law, and to allow such compensation to the said M. W. Dunning as the facts and conditions pertaining to the case may warrant.

## CHAPTER 139

(House Bill No. 398—By Mr. Taylor)

AN ACT to amend and reenact section two, article three, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended and reenacted by chapter eight, acts of the Legislature, regular session, one thousand nine hundred thirty-three, relating to the custody, investment and disbursement of the workmen's compensation fund.

[Passed March 11, 1939; in effect from passage. Approved by the Governor.]

### **Article 3. Workmen's Compensation Fund.**

#### **Section**

2. Custody, investment and disbursement of fund.

*Be it enacted by the Legislature of West Virginia:*

That section two, article three, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as

amended and reenacted by chapter eight, acts of the Legislature, regular session, one thousand nine hundred thirty-three, be amended and reenacted to read as follows:

Section 2. *Custody, Investment and Disbursement of Fund.*

2 The state treasurer shall be the custodian of the workmen's  
3 compensation fund and all premiums, deposits or other  
4 moneys paid thereto shall be deposited in the state treasury  
5 to the credit of the workmen's compensation fund in the man-  
6 ner prescribed in section five, article two of this chapter. The  
7 workmen's compensation fund shall consist of the premiums  
8 and deposits provided by this chapter and all interest accru-  
9 ing thereto upon investments and deposits in the state de-  
10 positories, and any other moneys or funds which may be  
11 given, appropriated or otherwise designated or accruing  
12 thereto. Said fund shall be a separate and distinct fund and  
13 shall be so kept upon the books and records of the auditor  
14 and treasurer and the state depositories in which any part is  
15 deposited. Disbursements therefrom shall be made upon  
16 requisitions signed by the secretary and approved by the  
17 compensation commissioner.

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

38 same as he keeps and accounts for other securities of the state,  
39 and to collect the interest thereon as the same becomes due and  
40 payable, and the principal when the same is due. No notes,  
41 bonds or other securities shall be purchased by the board of  
42 public works until and unless the attorney general shall inves-  
43 tigate the issuance of such notes, bonds or securities and shall  
44 give a written opinion to the board that the same have been  
45 regularly issued according to the constitution and the laws  
46 of this state, which opinion, if such notes, bonds or securities  
47 be purchased, shall be filed with the treasurer with such  
48 bonds or securities.

## CHAPTER 140

(House Bill No. 201—By Mr. Speaker, Mr. Thomas)

AN ACT to amend and reenact section one, article two, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as last amended, relating to employers and employees subject to the workmen's compensation law.

[Passed March 10, 1939; in effect from passage. Approved by the Governor.]

### Article 2. Employers and Employees Subject to Chapter; Premiums.

#### Section

1. Employers and employees, including state, its agencies and political subdivisions, subject to chapter.

*Be it enacted by the Legislature of West Virginia:*

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

- \*Section 1. *Employers and Employees, Including State, Its Agencies and Political Subdivisions, Subject to Chapter.* The state of West Virginia and all governmental agencies or departments created by it are hereby required to subscribe to, and pay premiums into, the workmen's compensation fund for the protection of their employees, and shall be subject to all requirements of this chapter, and all rules and regulations

\* Chapter 137, acts of this session, passed March 11, 1939, also amended and reenacted this section of the code.



8 prescribed by the commissioner with reference to rates, classi-  
9 fications and premium payments.

10 All persons, firms, associations and corporations regularly  
11 employing other persons for the purpose of carrying on any  
12 form of industry or business in this state, including county  
13 courts, boards of education, municipalities and other political  
14 subdivisions of the state, are employers within the meaning  
15 of this chapter and subject to its provisions: *Provided, how-*  
16 *ever,* That the provisions of section eight, article two of this  
17 chapter shall not apply to such county courts, boards of  
18 education, municipalities, or other political subdivisions of  
19 the state: *And further provided,* That the failure of such  
20 county courts, boards of education, municipalities or other  
21 political subdivisions of the state to elect to subscribe to, and  
22 pay premiums into, said workmen's compensation fund, shall  
23 not impose any liability upon them, or either of them, other  
24 than such liability as would exist notwithstanding the pro-  
25 visions of this chapter. All persons in the service of em-  
26 ployers as herein defined, and employed by them for the  
27 purpose of carrying on the industry, business or work in  
28 which they are engaged, and checkweighmen employed ac-  
29 cording to law, and all members of rescue teams assisting in  
30 mine accidents with the consent of the owner who, in such  
31 case, shall be deemed the employer, or at the direction of  
32 the chief of the department of mines, are employees within  
33 the meaning of this chapter and subject to its provisions:  
34 *Provided,* That the chapter shall not apply to employers of  
35 employees in domestic or agricultural service, persons pro-  
36 hibited by law from being employed, nor to employees of any  
37 employer while employed without the state; nor shall a  
38 member of a firm of employers, or any officer of an associa-  
39 tion or of a corporation employer, including managers, or  
40 any elective or appointive official of the state, county, county  
41 court, board of education, municipality or other political sub-  
42 division of the state, whose term of office is definitely fixed by  
43 law, be deemed an employee within the meaning of this  
44 chapter.

45 The premium and actual expenses in connection with gov-  
46 ernmental agencies and departments of the state of West  
47 Virginia, shall be paid out of the state treasury from appro-

48 priations made for such agencies and departments, in the  
49 same manner as other disbursements are made by such agen-  
50 cies and departments.

51 County courts, boards of education, municipalities and  
52 other political subdivisions of the state who shall elect to  
53 become subscribers to the workmen's compensation fund shall  
54 provide for the funds to pay their prescribed premiums into  
55 the fund, and such premiums, and premiums of state agen-  
56 cies and departments, shall be paid into the fund in the same  
57 manner as herein provided for other employers subject to this  
58 chapter.

59 Any employer whose employment in this state is to be for  
60 a definite or limited period, which could not be considered  
61 "regularly employing" within the meaning of this section,  
62 may elect to pay into the workmen's compensation fund the  
63 premiums herein provided for, and at the time of making ap-  
64 plication to the commissioner such employer shall furnish a  
65 statement under oath showing the probable length of time  
66 the employment will continue in this state, the character of  
67 the work, an estimate of the monthly payroll, and any other  
68 information which may be required by the commissioner. At  
69 the time of making application such employer shall deposit  
70 with the state compensation commissioner to the credit of  
71 the workmen's compensation fund the amount required by  
72 section five of this article, which amount shall be returned  
73 to such employer, if his application be rejected by the com-  
74 missioner. Upon notice to such employer of the acceptance  
75 of his application by the commissioner, he shall be an em-  
76 ployer within the meaning of this chapter and subject to all  
77 of its provisions.

78 Any foreign corporation employer electing to comply with  
79 the provisions of this chapter and to receive the benefits  
80 hereunder, shall, at the time of making application to the com-  
81 missioner, in addition to other requirements of this chapter,  
82 furnish such commissioner with a certificate from the secre-  
83 tary of state showing that it has complied with all the re-  
84 quirements necessary to enable it legally to do business in  
85 this state, and no application of such foreign corporation em-  
86 ployer shall be accepted by the commissioner until such cer-  
87 tificate is filed.

88 For the purpose of this chapter, a mine shall be adjudged  
89 within this state when the main opening, drift, shaft or slope  
90 is located wholly within this state.

91 Any employee within the meaning of this chapter whose  
92 employment necessitates his temporary absence from this  
93 state in connection with such employment, and such absence  
94 is directly incidental to carrying on an industry in this state,  
95 who shall have received injury during such absence in the  
96 course of and resulting from his employment, shall not be  
97 denied the right to participate in the workmen's compen-  
98 sation fund.

## CHAPTER 141

(Senate Bill No. 159—By Mr. Wylie)

AN ACT to amend article ten, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, by adding thereto a new section to be numbered section twenty-one, relating to the unlawful use of the prefix "Doctor" or "Dr.", and providing penalties.

[Passed March 8, 1939; in effect ninety days from passage. Became a law without the approval of the Governor.]

### Article 10. Crimes Against Public Policy.

#### Section

21. Unlawful use of the prefix "Doctor" or "Dr."; penalty.

*Be it enacted by the Legislature of West Virginia:*

That article ten, chapter sixty-one 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-one, to read as follows:

Section 21. *Unlawful Use of the Prefix "Doctor" or "Dr.";*

2 *Penalty.* It shall be unlawful for any person to use the prefix  
3 "Doctor" or "Dr." in connection with his name in any  
4 letter, business card, advertisement, sign or public display  
5 of any nature whatsoever, without affixing thereto suitable  
6 words or letters designating the degree which he holds.  
7 Any person who shall violate the provisions of this section  
8 shall be guilty of a misdemeanor, and upon conviction there-

9 of shall be fined for each such offense not less than ten nor  
10 more than five hundred dollars, or imprisoned in the county  
11 jail not more than twelve months, or both fined and im-  
12 prisoned, in the discretion of the court.

## CHAPTER 142

(House Bill No. 262—By Mr. Taylor, by request)

AN ACT to amend and reenact section fourteen, article two, chapter fifty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended by chapter one hundred twenty-two, acts of the Legislature, regular session, one thousand nine hundred thirty-seven, relating to entry upon land by corporate body politic.

[Passed March 11, 1939; in effect from passage. Approved by the Governor.]

### Article 2. Procedure.

#### Section

14. Condemnation by state or its political subdivisions.

*Be it enacted by the Legislature of West Virginia:*

That section fourteen, article two, chapter fifty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended by chapter one hundred twenty-two, acts of the Legislature, regular session, one thousand nine hundred thirty-seven, be amended and reenacted to read as follows:

Section 14. *Condemnation by State or Its Political Subdivisions.* If the applicant be the state of West Virginia, or any political subdivision thereof, on filing its petition as authorized in this article, and if the court or judge is satisfied that the purpose for which the land or property is sought to be condemned is a public use for which private property may be appropriated on compensating the owner, the court or judge shall, at the request of the applicant, make an order permitting the applicant at once to enter upon, take possession, appropriate and use the land sought to be condemned for the purposes stated in the petition. The revenues applicable to the payment of any damages or compensation to which the owner is entitled, and which shall be awarded or

14 assessed in his favor, shall be deemed sufficient security and  
15 to have been pledged for such payment, and no bond or  
16 further security shall be required of the applicant.

17 If the applicant shall enter upon or take possession of  
18 property under the authority of this section, and shall do  
19 any work thereon and injure such land or property, it shall  
20 not be entitled, without the consent of the defendant, to  
21 abandon the proceedings for the condemnation thereof, but  
22 such proceedings shall proceed to final award or judgment  
23 after a reasonable time has elapsed for completion of the work  
24 upon the particular property so entered upon and taken  
25 possession of, and the applicant shall pay to the owner of  
26 the land the amount of compensation and damages as finally  
27 determined in such proceedings, with interest at six per cent  
28 from the date of the actual entry upon the land so taken.

## CHAPTER 143

(Senate Bill No. 58—By Mr. Hussion, by request)

AN ACT to amend article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, by adding thereto sections twenty-eight to thirty-three, inclusive, prohibiting the sale, offering or exposing for sale of fireworks; defining fireworks and regulating the manner of using fireworks; and providing penalties for the violation of the provisions hereof, and for other purposes.

[Passed February 28, 1939; in effect ninety days from passage. Became a law without the approval of the Governor.]

### Article 3. State Fire Marshal; Protection Against Fire.

#### Section

28. "Fireworks" defined.

29. Unlawful sale, possession or use of fireworks; licensed public display.

30. Interstate sale and shipment; permitted uses.

31. Seizures by fire marshal; enforcement of act.

32. Penalties.

33. Construction; provisions severable; inconsistent acts repealed.

*Be it enacted by the Legislature of West Virginia:*

That article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, be amended by

adding thereto sections twenty-eight to thirty-three, inclusive, to read as follows:

Section 28. "*Fireworks*" *Defined*. The term "fireworks" shall mean and include any combustible or explosive composition, or any substance or combination of substances, or article prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration or detonation, and shall include blank cartridges, toy pistols, toy cannons, toy canes, or toy guns in which explosives are used, the type of balloons which require fire underneath to propel the same, firecrackers, torpedoes, skyrockets, Roman candles, Daygo bombs, sparklers or other fireworks of like construction and any fireworks containing any explosive or flammable compound, or any tablets or other device containing any explosive substance: *Provided, however*, That the term "fireworks," as herein used, shall not be held to mean and include fixed ammunition for firearms, and the primers therefor.

Sec. 29. *Unlawful Sale, Possession or Use of Fireworks; Licensed Public Display*. Except as hereinafter provided it shall be unlawful for any person, firm, co-partnership, or corporation to offer for sale, expose for sale, sell at retail, possess, use or explode any fireworks: *Provided*, That the state fire marshal shall have power to adopt reasonable rules and regulations for the granting of permits for supervised public displays of fireworks by municipalities, fair associations, amusement parks, and other organizations or groups of individuals. Every such display shall be handled by a competent operator to be approved by the chiefs of the police and fire departments of the municipality in which the display is to be held and shall be of such a character, and so located, discharged or fired as, in the opinion of the chief of the fire department, after proper inspection, shall not be hazardous to property or endanger any person or persons. If the public display is to be without the limits of a municipality the operator shall be approved by the sheriff of the county wherein said display is to be held. Application for permits shall be made in writing at least fifteen days in advance of the date of the display. After such privilege shall have been granted, sales, possessions, use and distribu-

23 tion of fireworks for such display shall be lawful for that  
24 purpose only. No permit granted hereunder shall be trans-  
25 ferable.

Sec. 30. *Interstate Sale and Shipment; Permitted Uses.*

2 Nothing in this act shall be construed to prohibit any  
3 resident wholesaler, dealer, or jobber to sell at wholesale  
4 such fireworks as are not herein prohibited, or the sale of  
5 any kind of fireworks, provided the same are to be shipped  
6 directly out of state, or the use of fireworks by railroads  
7 or other transportation agencies for signal purposes or  
8 illumination, or the sale or use of blank cartridges for a  
9 show or theatre, or for signal or ceremonial purposes in  
10 athletics or sports, or for use by military organizations,  
11 or to explosives used for blasting or similar purposes.

Sec. 31. *Seizures by Fire Marshal; Enforcement of Act.*

2 The state fire marshal shall seize, take, remove, and de-  
3 stroy, or cause to be seized, taken or removed, and de-  
4 stroyed at the expense of the owner all stocks or fireworks  
5 or combustibles offered or exposed for sale, stored, or held  
6 in violation of this act. It shall be the duty of the state  
7 police, sheriffs, municipal policemen, and other law enforce-  
8 ment officers to assist in the enforcement of this act.

Sec. 32. *Penalties.* Any person, firm, co-partnership, or

2 corporation violating the provisions of this act shall be guilty  
3 of a misdemeanor and upon conviction thereof shall be  
4 punished by a fine not exceeding one hundred dollars or by  
5 imprisonment in the county jail not exceeding ninety days, or  
6 by both such fine and imprisonment.

Sec. 33. *Construction; Provisions Severable; Inconsistent*

2 *Acts Repealed.* Being in the interest of public safety the pro-  
3 visions of this act shall be liberally construed. The provisions  
4 of this act shall be construed as severable, and should any  
5 provision be held unconstitutional, or for any reason invalid,  
6 the remaining provisions shall not be affected thereby. All  
7 acts, or parts of acts, in conflict with this act are hereby  
8 repealed.

## CHAPTER 144

(House Bill No. 126—By Mr. Gill)

AN ACT to amend and reenact section one, article four, chapter thirty-five of the code of West Virginia, one thousand nine hundred thirty-one, relating to disposition of property of subordinate fraternal lodge on dissolution.

[Passed March 11, 1939; in effect from passage. Became a law without the approval of the Governor.]

### Article 4. Provisions Regarding Particular Fraternal Organizations.

#### Section

1. Odd Fellows and Knights of Pythias; disposition of property of subordinate lodge on dissolution.

*Be it enacted by the Legislature of West Virginia:*

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

Section 1. *Odd Fellows and Knights of Pythias; Disposition of Property of Subordinate Lodge on Dissolution.* If any subordinate lodge of either the Independent Order of Odd Fellows or the order Knights of Pythias, in this state, working under the respective jurisdictions of the parent grand lodge of said respective orders, for this state, shall disband, surrender or forfeit its charter and cease to work, all its property, real and personal, shall, immediately upon such disbanding, surrender or forfeiture, vest in the said respective parent grand lodge, having jurisdiction over said subordinate lodge, to be held by that body for the charitable uses of the said respective parent grand lodge, in this state, according to the rules, regulations and policy of the grand lodge concerned, and said respective parent grand lodge is authorized in its corporate name, to sue for and recover such property, real and personal.



## CHAPTER 145

(Com. Sub. for House Bill No. 263—Originating in the House Committee on the Judiciary)

AN ACT to amend chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, by adding thereto a new article to be designated article twenty-one, regulating outdoor advertising outside of the corporate limits of cities and incorporated towns in sight of public highways; providing for licensing persons engaged in the business of outdoor advertising and for the issuance of permits for advertisements and advertising structures; prohibiting certain advertisements and advertising structures; and providing for the removal of advertisements and advertising structures illegally posted, displayed, erected, or used or maintained, prescribing the powers and duties of certain officers relating thereto; and prescribing penalties for violations of this article.

[Passed March 11, 1939; in effect ninety days from passage. Became a law without the approval of the Governor.]

### Article 21. Outdoor Advertising.

#### Section

1. Definitions.
2. Enforcement of provisions by commissioner.
3. Territory to which article applies; entries for examinations and surveys.
4. Licenses required; application; expiration; exceptions; revocation.
5. Bond of out-of-state licensee.
6. Permit required for each sign, etc.; application; revocation; fee; appeal.
7. Permit identification number.
8. Removal after expiration or revocation of permit.
9. Certain outdoor advertising prohibited.
10. Signs and structures lawfully within highway limits; penalty for destruction or unlawful use.
11. Consent of property owner.
12. Disposition of fees.
13. Harmony of regulations.
14. Certain advertisements excepted.
15. Unlawful sign, etc., a nuisance; abatement.
16. Penalties.
17. Separability of provisions; inconsistent acts repealed.

*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 adding thereto a new article to be designated article twenty-one, to read as follows:

Section 1. *Definitions.* The following terms, wherever used or referred to in this article, shall have the following meanings unless a different meaning clearly appears from the context:

(a) "Advertisement" means any writing, printing, picture, painting, display, emblem, drawing, sign, or similar device intended to invite or to draw the attention of the public to any goods, merchandise, property, real or personal, business services, entertainment or amusement, manufactured, produced, bought, sold, conducted, furnished or dealt in by any person, which is posted, painted, tacked, nailed or otherwise displayed outdoors on real property, and includes any part of an advertisement recognizable as such.

(b) "Advertising structure" means any structure erected for advertising purposes, with or without any advertisement displayed thereon, situated upon or attached to real property outdoors, upon which any poster, bill, printing, painting, device or other advertisement of any kind whatsoever may be placed, posted, painted, tacked, nailed or otherwise fastened, affixed or displayed.

(c) "Advertising sign" means any card, cloth, paper, metal, painted or wooden sign of any character, posted, stuck, glued, tacked, painted or otherwise fastened or affixed to or upon any fence, post, tree, wall or thing other than an advertising structure.

(d) "Business of outdoor advertising" means the business of constructing, erecting, operating, using, maintaining, leasing or selling outdoor advertising structures, or outdoor advertising signs or outdoor advertisements.

(e) "Commissioner" means the state road commissioner.

(f) "State" means the state of West Virginia.

(g) "Highway" means every way or place of whatever nature open to the use of the public for purposes of vehicular travel in this state, outside of cities and incorporated towns.

(h) "Person" includes an individual, partnership, association or corporation.

(i) "Post" means post, display, print, paint, burn, nail, paste or otherwise attach.

(j) "Real property" includes any property physically

40 attached or annexed to real property in any manner what-  
41 soever.

42 (k) "Town" means an incorporated town or city.

Sec. 2. *Enforcement of Provisions by Commissioner.* It  
2 shall be the function and duty of the commissioner to ad-  
3 minister and enforce the provisions of this article. He may,  
4 in the performance of his duties hereunder, assign to division  
5 engineers, and other employees in his department, such duties  
6 as he may prescribe.

Sec. 3. *Territory to Which Article Applies; Entries for Ex-*  
2 *aminations and Surveys.* The territory under the jurisdiction  
3 of the commissioner for the purposes of this article shall  
4 include all of the state outside the corporate limits of any  
5 city or town. The commissioner and all employees under  
6 his direction, in the performance of their functions and  
7 duties under the provisions of this article, may enter into  
8 and upon any land upon which advertising structures are  
9 standing or upon which advertising signs or advertisements  
10 are displayed and make such examinations and surveys as  
11 may be relevant.

Sec. 4. *Licenses Required; Application; Expiration; Excep-*  
2 *tions; Revocation.* No person shall engage or continue in the  
3 business of outdoor advertising in this state outside the cor-  
4 porate limits of any city or town without first obtaining a  
5 license therefor from the commissioner; and no person shall  
6 construct, erect, operate, use, maintain, lease or sell any out-  
7 door advertising structure or outdoor advertising sign or out-  
8 door advertisement in this state outside the corporate limits of  
9 any city or town without first obtaining such a license from the  
10 commissioner. The fee for such license, hereby imposed for  
11 revenue for the use of the state, shall be one hundred dollars  
12 per annum, payable annually in advance. Applications for  
13 licenses, or renewal of licenses, shall be made on forms fur-  
14 nished by the commissioner and shall contain such pertinent  
15 information as the commissioner may require, and shall be ac-  
16 companied by the annual fee. Licenses granted under this sec-  
17 tion shall expire on the thirtieth day of June of each year, and  
18 shall not be prorated. Applications for the renewal of licenses  
19 shall be made not less than thirty days prior to the date of

20 expiration. Nothing in this section shall be construed to  
21 require any person to obtain a license who constructs, erects,  
22 operates, uses or maintains an outdoor advertising structure  
23 or outdoor advertising sign or outdoor advertisement solely  
24 on his own property, as herein provided.

25 The commissioner shall have authority, after thirty days'  
26 notice in writing to the licensee, to revoke any license granted  
27 by him upon repayment of a proportionate part of the license  
28 fee, in any case where he shall find that any material informa-  
29 tion required to be given in the application for the license  
30 is knowingly false or misleading or that the licensee has  
31 violated any of the provisions of this act, unless such licensee  
32 shall, before the expiration of said thirty days, correct such  
33 false or misleading information and comply with the pro-  
34 visions of this act. Any person whose license is so revoked  
35 may, within thirty days from the date of such revocation,  
36 appeal from the decision of the commissioner to the circuit  
37 court of Kanawha county by presenting to the court or the  
38 judge thereof, after five days' notice in writing to the com-  
39 missioner, an affidavit made by the licensee or by his duly  
40 authorized agent or attorney, setting forth the fact of such  
41 revocation and that the same was without just cause.

Sec. 5. *Bond of Out-of-State Licensee.* No such license  
2 as is provided for in section four of this article shall  
3 be granted to any person not residing in this state or to  
4 any person having his principal place of business outside  
5 the state, or which is incorporated outside the state, until  
6 such person shall have furnished and filed with the commis-  
7 sioner a bond payable to the state, with surety approved by  
8 the commissioner and in form approved by the attorney  
9 general, in the sum of two thousand five hundred dollars,  
10 conditioned that such licensee shall fulfill all requirements  
11 of law and observe and obey all the requirements of this  
12 article. Such bond shall remain in full force and effect so  
13 long as any obligations of such licensee to the state shall  
14 remain unsatisfied.

Sec. 6. *Permit Required for Each Sign, etc.; Application;*  
2 *Revocation; Fee, Appeal.* (a) Except as in this article other-  
3 wise provided, no person shall construct, erect, operate, use,

4 maintain, or cause or permit to be constructed, erected, oper-  
5 ated, used or maintained any advertising structure, outdoor  
6 advertising sign or outdoor advertisement, outside any unin-  
7 corporated city or town, without first obtaining a permit there-  
8 for from the commissioner and paying the annual fee there-  
9 for, as herein provided. The commissioner shall not issue such  
10 a permit to any person who has not obtained the license pro-  
11 vided for in section four of this article.

12 (b) A separate application for a permit shall be made  
13 for each separate advertisement, advertising sign or adver-  
14 tising structure, on a form furnished by the commissioner,  
15 which application shall be signed by the applicant or his  
16 representative duly authorized in writing to act for him,  
17 and shall describe and set forth the size, shape and the nature  
18 of the proposed advertisement, advertising sign or advertis-  
19 ing structure, and its actual or proposed location with suffi-  
20 cient accuracy to enable the commissioner to locate and  
21 identify it. Every application shall be accompanied by a fee  
22 of one dollar for each advertisement, advertising sign or  
23 advertising structure, which fee shall be retained by the com-  
24 missioner if the permit is issued. Each portion of an adver-  
25 tising structure upon which an advertisement is posted or  
26 displayed shall constitute a separate advertising structure  
27 for purposes of this section. If the permit is refused, the  
28 commissioner shall refund one-half the fee to the applicant.  
29 Each application shall be accompanied by an affidavit of the  
30 applicant or his agent that the owner or other person in  
31 control or possession of the real property upon which such  
32 advertisement, advertising sign or advertising structure is  
33 to be constructed, erected, operated, used, maintained, posted  
34 or displayed, has consented thereto. Application shall be made  
35 in like manner for a permit to operate, use, maintain or display  
36 any existing advertisement, advertising sign or advertising  
37 structure. Permits issued hereunder shall expire on the  
38 thirtieth day of June of each year, and shall not be prorated,  
39 and may be renewed upon the payment of the same fee required  
40 to be paid upon application for a permit. No application  
41 shall be required for a renewal of a permit.

42 (c) If more than one side of an advertising structure is  
43 used for advertising, a fee for each such side shall be re-

44 quired. Advertisements sculptured in the round shall be  
45 treated as using three sides.

46 (d) The holder of a permit shall, during the term thereof,  
47 have the right to change the advertising copy on the structure  
48 or sign for which it was issued without payment of any  
49 additional fee.

50 (e) The commissioner may after thirty days' notice in  
51 writing to the permittee, revoke any permit issued by him  
52 under this section upon repayment of a proportionate part  
53 of the fee in any case where it shall appear to the commis-  
54 sioner that the application for the permit contains knowingly  
55 false or misleading information or that the permittee has  
56 violated any of the provisions of this article, unless such per-  
57 mittee shall, before the expiration of said thirty days, correct  
58 such false or misleading information and comply with the  
59 provisions of this article. If the construction, erection, opera-  
60 tion, use, maintenance and display of any advertisement,  
61 advertising sign or advertising structure for which a permit  
62 is issued by the commissioner and the permit fee has been  
63 paid as above provided, shall be prevented by any zoning  
64 board, commission or other public agency which also has  
65 jurisdiction over the proposed advertisement, advertising  
66 sign or advertising structure, or its site, the fee for such  
67 advertisement, advertising sign or advertising structure shall  
68 be returned by the commissioner and the permit revoked. But  
69 one-half the fee shall be deemed to have accrued upon the  
70 erection of an advertising sign or advertising structure or  
71 the display of an advertisement followed by an inspection  
72 by the commissioner or his representatives.

73 (f) Any person aggrieved by any action of the commis-  
74 sioner in refusing to grant or in revoking a permit under  
75 this section may, within thirty days from the date of such  
76 refusal or revocation, appeal from the decision of the com-  
77 missioner to the circuit court of Kanawha county by present-  
78 ing to the court, or the judge thereof in vacation, after five  
79 days' notice in writing to the commissioner, an affidavit made  
80 by such person or by his duly authorized agent or attorney,  
81 setting forth the fact of such refusal or revocation, as the  
82 case may be, and that the action of the commissioner was  
83 without cause.

Sec. 7. *Permit Identification Number.* Every permit issued  
2 by the commissioner shall be assigned a separate identification  
3 number, and it shall be the duty of each permittee to fasten to  
4 each advertising structure and each advertising sign and each  
5 advertisement not posted or displayed on an advertising  
6 structure a label or marker not larger than two inches by  
7 six inches, which shall be furnished by the commissioner,  
8 and on which shall be plainly visible the said permit number,  
9 the expiration date of the permit, and the name of the  
10 permittee. The construction, erection, operation, use or main-  
11 tenance of an outdoor advertising structure, advertising sign  
12 or advertisement without having affixed thereto such a label  
13 or marker shall be prima facie evidence that the same has  
14 been constructed or erected and is being operated, used or  
15 maintained in violation of the provisions of this article.

Sec. 8. *Removal After Expiration or Revocation of Permit.*  
2 All outdoor advertisements, advertising signs and advertising  
3 structures shall be removed by the permittee within thirty  
4 days after the date of the expiration or revocation of the per-  
5 mit for the same. Any permittee failing to remove any such  
6 advertisement, advertising sign or advertising structure  
7 within said thirty days shall be deemed guilty of a misde-  
8 meanor.

Sec. 9. *Certain Outdoor Advertising Prohibited.* No ad-  
2 vertisement, advertising sign or advertising structure shall  
3 be constructed, erected, used, operated or maintained:  
4 (a) Within five hundred feet of any church, school, ceme-  
5 tery, public park, public reservation, public playground, state  
6 or national forest, outside the limits of any incorporated city  
7 or town (except that they may be constructed, erected, oper-  
8 ated, used or maintained within unincorporated towns and  
9 villages which are within state or national forests);  
10 (b) Which involves motion or rotation of any part of the  
11 structure;  
12 (c) Which uses the word "stop" or "danger" promi-  
13 nently displayed, or presents or implies the need or require-  
14 ment of stopping or the existence of danger, or which is a  
15 copy or imitation of official signs;  
16 (d) Which prevents persons using any U. S. highway,

17 state highway or county road from obtaining an unobstructed  
18 view of approaching vehicles, or which are on the inside of  
19 any curve on any such highway or road in such manner as  
20 to prevent persons using them from obtaining an unob-  
21 structed view of approaching vehicles.

Sec. 10. *Signs and Structures Lawfully Within Highway*  
2 *Limits; Penalty for Destruction or Unlawful Use.* Any person  
3 who wilfully or maliciously displaces, removes, destroys or in-  
4 jures a mile-board, milestone, danger-sign, signal, guide-sign,  
5 guide-post, highway sign, or historical marker or any inscrip-  
6 tion thereon, lawfully within or adjacent to a highway. or who  
7 in any manner paints, prints, places, puts or affixes any ad-  
8 vertisement upon or to any rock, stone, tree, fence, stump,  
9 pole, mile-board, milestone, danger-sign, guide-sign, guide-  
10 post, highway sign, historical marker, building or other sub-  
11 ject lawfully within the limits of any highway, shall be guilty  
12 of a misdemeanor and shall be punished accordingly.

Sec. 11. *Consent of Property Owner.* No person shall con-  
2 struct, erect, operate, use or maintain any outdoor advertising  
3 structure, outdoor advertising sign or advertisement without  
4 the permission of the owner or other person in lawful posses-  
5 sion or control of the property on which such structure or  
6 sign is located.

Sec. 12. *Disposition of Fees.* All moneys received by the  
2 commissioner under the provisions of this article shall be  
3 paid by him into the state treasury, and allocated to the  
4 state road commission for use, in the administration of this  
5 article and in the construction and maintenance of secondary  
6 roads.

Sec. 13. *Harmony of Regulations.* No zoning board or  
2 commission nor any other public officer or agency, shall  
3 permit any advertisement or advertising structure which is  
4 prohibited under the provisions of this article, nor shall the  
5 commissioner permit any advertisement or advertising struc-  
6 ture which is prohibited by any other public board, officer  
7 or agency in the lawful exercise of its or their powers.

Sec. 14. *Certain Advertisements Excepted.* The following  
2 advertisements, advertising signs and the advertising struc-



3 tures, or parts thereof, upon which they are posted or dis-  
4 played, are excepted from all the provisions of this article,  
5 except those contained in subsections (b), (c) and (d) of  
6 section nine hereof:

7 (a) Those constructed, erected, operated, used or main-  
8 tained by the owner or lessee of a place of business or residence  
9 on land belonging to said owner or lessee and not more than  
10 two hundred fifty feet from such place of business or resi-  
11 dence, and relating solely to merchandise, services or enter-  
12 tainment sold, produced, manufactured or furnished at such  
13 place of business or residence;

14 (b) Those constructed, erected, operated, used, or main-  
15 tained on any farm by the owner or lessee of such farm  
16 and relating solely to farm produce, merchandise, services  
17 or entertainment sold, produced, manufactured or furnished  
18 on such farm;

19 (c) Those upon real property posted or displayed  
20 by the owner, or by the authority of the owner, stating that  
21 real property is for sale or rent;

22 (d) Official notices or advertisements posted or displayed  
23 by or under the direction of any public or court officer in  
24 the performance of his official or directed duties, or by trus-  
25 tees under deeds of trust, deeds of assignment or other similar  
26 instruments;

27 (e) Danger or precautionary signs relating to the premises  
28 on which they are, or signs warning of the condition of or  
29 dangers of travel on a highway, erected or authorized by  
30 the commissioner; or forest fire warning signs erected under  
31 authority of the state conservation department and signs,  
32 notices or symbols erected by the United States government  
33 under the direction of the United States forestry service;

34 (f) Signs relating solely to any city, town, village or  
35 historic place or shrine;

36 (g) Notices of any railroad, bridge, ferry or other trans-  
37 portation or transmission company necessary for the direc-  
38 tion or safety of the public;

39 (h) Signs, notices or symbols for the information of  
40 aviators as to location, direction and landings and conditions  
41 affecting safety in aviation erected or authorized by the com-  
42 missioner;

- 43 (i) Advertisements, advertising signs and advertising  
44 structures not visible from any highway or other public  
45 place;
- 46 (j) Signs or notices containing two square feet or less,  
47 placed at a junction of two or more roads in the state high-  
48 way system denoting only the distance or direction of a  
49 residence or place of business;
- 50 (k) Signs or notices erected or maintained upon property  
51 giving the name of the owner, lessee or occupant of the  
52 premises;
- 53 (l) Advertisements, advertising signs and advertising  
54 structures within the corporate limits of cities and towns;
- 55 (m) Historical markers erected by duly constituted and  
56 authorized public authorities;
- 57 (n) Highway markers and signs erected or caused to be  
58 erected, by the commissioner or the state road commission;
- 59 (o) Signs erected upon property warning the public  
60 against hunting, fishing or trespassing thereon;
- 61 (p) Signs erected by Red Cross authorities relating to  
62 Red Cross emergency stations;
- 63 (q) Signs painted on a barn, stable, or other permanent  
64 farm building which is at least one hundred feet from the  
65 center line of any highway.

Sec. 15. *Unlawful Sign, etc., a Nuisance; Abatement.* Any  
2 advertisement, advertising sign or advertising structure, which  
3 is constructed, erected, operated, used, maintained, posted, or  
4 displayed in violation of this article, is hereby declared to be  
5 a public and private nuisance and shall be forthwith removed,  
6 obliterated or abated by the commissioner or his representa-  
7 tives, and for that purpose they may enter upon private  
8 property without incurring any liability therefor: *Provided,*  
9 *however,* That if any outdoor advertising structure or out-  
10 door advertising sign of the value of one hundred dollars  
11 or more bears thereon the name of the owner thereof, and  
12 said owner holds an unexpired license issued under section  
13 four of this article, the said owner shall be given written  
14 notice of the alleged violation, and shall have thirty days  
15 after the receipt thereof within which to show that the said  
16 advertisement, advertising sign or advertising structure does  
17 not violate the provisions of this article.

Sec. 16. *Penalties.* Any person, violating any provision of this article, whether as principal, agent or employee, for which violation no other penalty is prescribed, shall be guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not less than ten dollars nor more than three hundred dollars; and such person shall be deemed guilty of a separate offense for each month during any portion of which any violation of this article is committed, continued or permitted. The existence of any advertising copy on any outdoor advertising structure or outdoor advertising sign or advertisement outside incorporated areas shall constitute prima facie evidence that the said outdoor advertising structure or outdoor advertising sign or advertisement was constructed, erected, operated, used, maintained or displayed with the consent and approval and under the authority of the person whose goods or services are advertised thereon.

Sec. 17. *Seperability of Provisions; Inconsistent Acts Repealed.* If any provision of this article, or the application thereof to any person or circumstance, is held invalid, the remainder of this article, and the application of such provisions to other persons or circumstances, shall not be affected thereby.

All acts and parts of acts inconsistent with this article are hereby repealed.

## CHAPTER 146

(Com. Sub. for Senate Bill No. 193—Originating in the Senate Committee on the Judiciary)

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 real estate.

[Passed March 10, 1939; in effect from passage. Became a law without the approval of the Governor.]

### Article 4. Partition.

#### Section

1. Who entitled to partition; jurisdiction; state as party plaintiff.

*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, as amended by chapter ninety, acts of the Legislature, regular session, one thou-

sand nine hundred thirty-five. be amended and reenacted to read as follows:

Section 1. *Who Entitled to Partition; Jurisdiction; State as Party Plaintiff.* Tenants in common, joint tenants and coparceners of real property, including minerals, and lessees of mineral rights other than lessees of oil and gas minerals, shall be compelled to make partition, and the circuit court of the county wherein the land or estate, or any part thereof, may be, shall have jurisdiction, in cases of partition, and in the exercise of such jurisdiction, may take cognizance of all questions of law affecting the legal title, that may arise in any proceedings.

The state hereafter shall, whenever it is an owner of an undivided interest in any land or real estate, together with other persons, become a party plaintiff in any proceedings by any person entitled to demand partition under the first sentence of this section. Before instituting suit for partition the person entitled to demand it shall notify the proper official who has supervision of such state land and thereafter they shall proceed as they deem best. In all such cases resulting in partition or sale the costs of suit shall come from the proceeds of sale. No state official in charge of state lands shall refuse to perform his duty in any case where any person is entitled to demand a partition, or sale under this article.

## CHAPTER 147

(Com. Sub. for Senate Bill No. 143—Originating in the Senate Committee on the Judiciary)

AN ACT to amend and reenact section two, article four, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, relating to rewards, detection of crime and bounties.

[Passed March 3, 1939; in effect from passage. Became a law without the approval of the Governor.]

### Article 4. Prosecuting Attorney, Rewards and Legal Advice.

#### Section

2. Rewards and detection of crime; bounties.

*Be it enacted by the Legislature of West Virginia.*

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

Section 2. *Rewards and Detection of Crime; Bounties.* The prosecuting attorney of any county, with the approval of the county court, or of the governor, or of the court of the county vested with authority to try criminal offenses, or of the judge thereof in vacation, may, within his discretion, offer rewards for the apprehension of persons charged with crime, or may expend money for the detection of crime. Any money expended under this section shall, when approved by the prosecuting attorney, be paid out of the county fund, in the same manner as other county expenses are paid. The county court may also offer reasonable bounties and rewards for the destruction of noxious animals, birds of prey, or weeds in the county, payable out of the county treasury: *Provided, however,* That nothing herein contained shall permit or give to the prosecuting attorney of any county, having a population according to the last official census of sixty thousand or less, the right to appoint a full-time investigator or detector of crime, or to expend any money for the investigation of any crime committed in his county beyond the actual expense of the investigation of said crime.

All acts or parts of acts in conflict with the provisions of this act are hereby repealed.

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## CHAPTER 148

(Senate Bill No. 250—By Mr. Robertson)

AN ACT to amend article five, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, by adding thereto a new section to be designated as section six, relating to public and other securities and the appraisal of the value of such securities.

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[Passed March 9, 1939; in effect ninety days from passage. Became a law without the approval of the Governor.]

### Article 5. Public Securities.

#### Section

6. When notes deemed securities; appraisal.

*Be it enacted by the Legislature of West Virginia:*

That article five, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, be amended by adding

thereto a new section to be designated as section six, to read as follows:

Section 6. *When Notes Deemed Securities; Appraisal.* (a)

2 whenever, by statute of this state, any public official, board,  
3 commission or department of this state is charged with the ap-  
4 proval of securities required as collateral for the deposit of  
5 public or other funds, or required to be deposited with the  
6 state treasurer, or an investment of capital or surplus or a re-  
7 serve or other fund, is required to be maintained consisting of  
8 designated securities deposited with the state treasurer, such  
9 securities shall, at the discretion of such public official, board,  
10 commission or department, be deemed to include and mean  
11 notes executed by the person or corporation required to make  
12 such deposit and made payable to the state of West Virginia  
13 upon demand, in the event of insolvency or default by such  
14 person or corporation, for the benefit of those for whom such  
15 securities are deposited, when such notes are secured by duly  
16 executed deeds of trust on improved, unencumbered real prop-  
17 erty located in the state and owned by the person or corpora-  
18 tion executing such notes, said deeds of trust to be approved by  
19 the attorney general of the state as to sufficiency of form and  
20 manner of execution and accompanied by proper abstracts  
21 of title and fire insurance policies equal to the amounts of  
22 such notes and recorded among the land records of the  
23 county in which the real property is located: *Provided,*  
24 That whenever any such note so secured by a deed of trust  
25 on real property owned by any such person or corporation is  
26 approved by any public official, board, commission or depart-  
27 ment of this state, the real property shall have an appraised  
28 value of at least thirty per centum more than the amount of  
29 such note, said value to be determined by an appraisal of two  
30 landowners, who are citizens of this state and generally  
31 recognized as experienced real estate appraisers, appointed  
32 by the public official, board, commission or department,  
33 charged with the approval of such securities, the expenses  
34 of such appraisal to be borne by the person or corporation  
35 required to make such deposit, and each unit of such real  
36 property shall have an appraised value of at least fifty  
37 thousand dollars.

38 By improved real property as used herein is meant all real

39 property within the limits of an incorporated city or town  
40 on which permanent buildings suitable for residential, in-  
41 dustrial or commercial use are located.

42 Real property, for purposes hereof, shall not be deemed  
43 to be encumbered by reason of the existence of instruments  
44 reserving rights-of-way, sewer rights and rights in walls,  
45 nor by reason of building restrictions or other restrictive  
46 covenants, nor by reason of the fact that it, or any part  
47 thereof, is subject to lease under which rents or profits are  
48 reserved to the owner: *Provided*, That the deed of trust  
49 for such investment is a full and unrestricted first lien  
50 upon such property.

51 (b) Any such public official, board, commission or depart-  
52 ment of this state charged with the approval of securities  
53 required to be deposited as aforesaid, shall, at least annually  
54 and oftener if deemed proper, appoint a disinterested person  
55 or persons, not exceeding three, to make an examination and  
56 appraisal of the securities so deposited to determine if such  
57 securities meet the requirements of the law of this state, and  
58 the cost of such examination and appraisal, not less than  
59 ten dollars nor more than twenty-five dollars per diem for  
60 each person, and expenses, shall be borne by the person or  
61 corporation required to make such deposits as security.

## CHAPTER 149

(Senate Bill No. 212—By Mr. Allen)

AN ACT to amend and reenact section one, article five, chapter six  
of the code of West Virginia, one thousand nine hundred  
thirty-one, relating to terms of elected and appointed officers.

[Passed March 10, 1939; in effect ninety days from passage. Approved by the  
Governor.]

### Article 5. Terms of Office; Matters Affecting the Right to Hold Office.

#### Section

1. When terms of office to begin.

*Be it enacted by the Legislature of West Virginia:*

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

Section 1. *When Terms of Office to Begin.* The terms of officers, except when elected or appointed to fill vacancies, shall begin respectively as follows: That of governor, secretary of state, state superintendent of free schools, treasurer, auditor, attorney general and commissioner of agriculture, on the first Monday after the second Wednesday of January next after their election; that of a member of the legislature, on the first day of December next after his election; and that of the judges of the supreme court of appeals, the judges of the several circuit courts, the judges of the criminal, intermediate, common pleas and other inferior courts, the county commissioners, prosecuting attorneys, surveyors of land, assessors, sheriffs, clerks of the circuit, criminal, intermediate, common pleas, or other inferior courts, clerks of the county courts, justices of the peace and constables, on the first day of January next after their election.

Whenever a person is elected or appointed to fill a vacancy, his term shall be as prescribed by chapter three of this code.

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## CHAPTER 150

(Senate Bill No. 213—By Mr. Allen, by request)

AN ACT to amend article two, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, by adding thereto section one-a, relating to the use of trade-marks, insignia or other identifying marks or insignia on jewelry, silverware, glassware, or chinaware, and providing penalties.

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[Passed March 11, 1939; in effect ninety days from passage. Became a law without the approval of the Governor.]

### Article 2. Trade-marks in General.

#### Section

1-a. When trade-mark required on jewelry, etc.; penalty.

*Be it enacted by the Legislature of West Virginia:*

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



Section 1-a. *When Trade-mark Required on Jewelry, etc.;*  
2 *Penalty.* Notwithstanding the provisions of section one of this  
3 article, no salesman, jobber, wholesaler, corporation or in-  
4 dividual doing business or operating in the state of West Vir-  
5 ginia, shall sell, or offer or expose for sale, any jewelry, silver-  
6 ware, glassware or chinaware unless the same bears the trade-  
7 mark, insignia or identifying mark or device of the manufac-  
8 turer or maker thereof. Any person violating any provision of  
9 this section shall, upon conviction thereof, be punished, for  
10 the first offense, by a fine not exceeding one hundred dollars  
11 and by imprisonment in jail for not less than thirty days nor  
12 more than six months, and, for any subsequent offense, by a  
13 fine not exceeding five hundred dollars and by imprisonment  
14 in jail for twelve months.

## CHAPTER 151

(Senate Bill No. 134—By Mr. Allen, by request)

AN ACT relating to unfair methods of competition; making certain unfair trade practices unlawful; defining the duties of clerks of courts and of the attorney general in regard thereto; declaring certain contracts illegal and forbidding recovery thereon; providing for injunction proceedings to restrain a continuance of acts in violation of the provisions hereof and providing for the recovery of damages; vesting circuit courts with jurisdiction to order the forfeiture of charters, rights, franchises and privileges of corporations or joint stock companies violating the provisions of this act; making the violation of the provisions of this act a misdemeanor and providing penalties; and fixing a date when the provisions hereof shall be effective.

[Passed March 9, 1939; in effect ninety days from passage. Became a law without the approval of the Governor.]

### Unfair Trade Practices.

#### Section

1. Legislative findings; designation of act.
2. Selling below cost or giving away of merchandise; penalty.
3. Rebates and special privileges; penalty.
4. Personal responsibility of director or agent.

5. Retailer and wholesaler defined; applicability of act to sales by.
6. How cost determined.
7. Goods purchased at bankrupt, etc., sale.
8. Sales exempt.
9. Injunctions and damage suits.
10. Certifications to and duty of attorney general; jurisdiction.
11. Penalties.
12. Illegal contracts.
13. Provisions severable.
14. Prima facie evidence of violation.
15. Purpose and construction of act.

*Be it enacted by the Legislature of West Virginia:*

Section 1. *Legislative Findings; Designation of Act.* The  
2 sale of goods at less than the cost thereof results in economic  
3 maladjustments and tends toward the creation of monopolies,  
4 thereby destroying fair and healthy competition and tending  
5 toward bankruptcy among merchants who maintain a fair  
6 price policy, and is, therefore, an unfair trade practice. It is  
7 hereby declared that any advertisement, offer to sell, or sale of  
8 any merchandise, either by retailers or wholesalers, at less than  
9 cost, as defined in this act, or any advertisement of an intent to  
10 give, any offer to give, or gift of any merchandise, either by re-  
11 tailers or wholesalers, for the purposes of unfairly divert-  
12 ing trade from or otherwise injuring competitors and de-  
13 stroying competition, is an unfair method of competition  
14 contrary to public policy and in contravention of the policy  
15 of this act, which shall be known and designated as the  
16 "Unfair Practices Act."

Sec. 2. *Selling Below Cost or Giving Away of Merchandise;*  
2 *Penalty.* It shall be unlawful for any person, partnership, firm,  
3 corporation, joint stock company, or other association engaged  
4 in business as a retailer or wholesaler within this state, to sell,  
5 offer for sale or advertise for sale any article, product or item  
6 of merchandise at less than the cost thereof to the vendor, or  
7 give, offer to give or advertise the intent to give away any  
8 article, product or item of merchandise for the purposes of  
9 unfairly diverting trade from or otherwise injuring one or  
10 more competitors, and destroying competition. Each viola-  
11 tion shall constitute a misdemeanor, and upon conviction  
12 thereof, any person, partnership, firm, corporation, joint stock  
13 company, or other association violating this section shall be  
14 subject to the penalty set out in section eleven hereof.

Sec. 3. *Rebates and Special Privileges; Penalty.* The secret  
2 payment or allowance of rebates, refunds, commissions, or un-

3 earned discounts, whether in the form of money or otherwise,  
4 or secretly extending to certain purchasers special services or  
5 privileges not extended to all purchasers purchasing upon like  
6 terms and conditions, to the injury of a competitor and where  
7 such payment or allowance tends to destroy competition, is an  
8 unfair trade practice and any person, partnership, firm, cor-  
9 poration, joint stock company, or other association resorting  
10 to such trade practice shall be deemed guilty of a misdemeanor  
11 and on conviction thereof shall be subject to the penalties set  
12 out in section eleven of this act.

Sec. 4. *Personal Responsibility of Director or Agent.* Any  
2 person who, either as director, officer or agent of any firm or  
3 corporation or as agent of any person violating the provisions  
4 of this act, assists or aids, directly or indirectly, in such viola-  
5 tion shall be responsible therefor equally with the person,  
6 firm or corporation for whom or for which he acts.

Sec. 5. *Retailer and Wholesaler Defined; Applicability of*  
2 *Act to Sales By.* (a) The term "retailer" shall mean and in-  
3 clude every person, partnership, firm, corporation, joint stock  
4 company or other association engaged in the business of mak-  
5 ing sales at retail within this state: *Provided, however,* That in  
6 the case of a person, partnership, firm, corporation, joint stock  
7 company or other association engaged in the business of mak-  
8 ing sales both at retail and at wholesale, such terms shall be  
9 applied only to the retail portion of such business.

10 (b) The term "wholesaler" shall mean and include every  
11 person, partnership, firm, corporation, joint stock company,  
12 or other association engaged in the business of making sales  
13 at wholesale within this state: *Provided,* That in the case of  
14 a person, partnership, firm, corporation, joint stock company,  
15 or other association engaged in the business of making sales  
16 both at retail and wholesale, such term shall be applied only  
17 to the wholesale portion of such business.

18 (c) The provisions of this act shall be applicable to all sales  
19 at retail made by a retailer as herein defined, and shall be ap-  
20 plicable to any transfer for a valuable consideration made in  
21 the ordinary course of trade, or the usual prosecution of the  
22 retailer's business, of title to tangible personal property to the  
23 purchaser for consumption or use other than resale or further  
24 proceedings or manufacturing, and shall be applicable also to

25 any transfer of such property where title is retained by  
26 the retailer as security for the payment of such purchase price.

27 (d) The provisions of this act shall be applicable to all  
28 sales at wholesale, and shall be applicable to any transfer for  
29 a valuable consideration made in the ordinary course of trade  
30 or in the usual prosecution of the wholesaler's business, of title  
31 to tangible personal property to the purchaser for purposes of  
32 resale or further proceedings or manufacturing, and shall be  
33 applicable also to any such transfer of property where title is  
34 retained by the seller as security for the payment of the pur-  
35 chase price.

Sec. 6. *How Cost Determined.* (a) The term "cost" when  
2 applicable to the business of retailer shall mean bona fide cost  
3 any shall mean (1) the invoice cost of the article, product or  
4 item of merchandise to the retailer or the replacement cost  
5 thereof to the retailer within thirty days prior to the date of  
6 sale, offer for sale or advertisement for sale, as the case may be,  
7 in the quantity last purchased, whichever is lower, from  
8 either of which there shall be deducted all trade discounts, ex-  
9 cept customary discounts for cash, and (2) to either of which  
10 there shall be added the following items of expense:

11 1. Freight charges not otherwise included in the cost of  
12 the article, product or item of merchandise, but which freight  
13 charges shall not be construed as including cartage to retail  
14 outlet if done or paid for by the retailer;

15 2. A mark-up to cover, in part, the cost of doing business,  
16 which mark-up, in the absence of proof of a lesser cost, shall  
17 be seven per cent of the aggregate of invoice cost or replace-  
18 ment cost (whichever is used), less trade discounts as afore-  
19 said, and plus said freight charges.

20 (b) The term "cost" when applicable to the business of  
21 a wholesaler shall mean bona fide cost and shall mean (1)  
22 the invoice cost of the merchandise to the wholesaler, or the  
23 replacement cost of the merchandise to the wholesaler within  
24 thirty days prior to the date of sale, offer for sale or ad-  
25 vertisement for sale, as the case may be, in the quantity last  
26 purchased, whichever is lower, from either of which there  
27 shall be deducted all trade discounts except customary dis-  
28 counts for cash and (2) to either of which there shall be  
29 added the following items of expense:

30 1. Freight charges not otherwise included in the cost of

31 the article, product or item of merchandise, but which freight  
32 charges shall not be construed as including cartage to the  
33 retail outlet if done or paid for by the wholesaler;

34 2. A mark-up to cover, in part, the cost of doing business,  
35 which mark-up in the absence of proof of a lesser cost, shall  
36 be two per cent of the aggregate of invoice cost or replace-  
37 ment cost (whichever is used), less trade discounts as afore-  
38 said, and plus said freight charges.

Sec. 7. *Goods Purchased at Bankrupt, etc., Sale.* In estab-  
2 lishing the "cost" of a given article, product or item of mer-  
3 chandise to the vendor, the invoice cost of any article, product  
4 or item of merchandise purchased at a forced, bankrupt, close-  
5 out sale, or other sale outside of the ordinary channels of trade  
6 may not be used as a basis for justifying a price lower than  
7 one based upon the replacement cost as of the date of said  
8 sale of said article, product or item of merchandise replaced  
9 through the ordinary channels of trade, unless said article,  
10 product or merchandise is kept separate from goods purchased  
11 in the ordinary channels of trade and unless said article, pro-  
12 duct or item of merchandise is advertised and sold as mer-  
13 chandise purchased at a forced, bankrupt, closeout sale, or by  
14 means other than through the ordinary channels of trade, and  
15 said advertising shall state the conditions under which said  
16 goods were so purchased, and the quantity of such merchan-  
17 dise to be sold or offered for sale.

Sec. 8. *Sales Exempt.* The provisions of this act shall not  
2 apply to any sale made:

3 (a) In closing out in good faith the owner's stock or any  
4 part thereof for the purpose of discontinuing his trade in any  
5 such stock or commodity, and in the case of the sale of sea-  
6 sonal goods or to the bona fide sale of perishable goods to pre-  
7 vent loss to the vendor by spoilage or depreciation;

8 (b) When the goods are damaged or deteriorated in qual-  
9 ity or where merchandise is sold in bona fide clearance sales,  
10 and, in each case, merchandise is advertised, marked and sold  
11 as such;

12 (c) By an officer acting under the orders of any court;

13 (d) In an endeavor in good faith to meet the legal prices  
14 of a competitor as herein defined selling the same article,

- 15 product or item of merchandise, in the same locality or trade  
16 area;  
17 (e) For charitable purposes or to relief agencies;  
18 (f) Where merchandise is sold on contract to depart-  
19 ments of the government or governmental institutions.

Sec. 9. *Injunctions and Damage Suits.* Any person, firm,  
2 partnership, corporation, joint stock company, or trade asso-  
3 ciation may maintain a proceeding to enjoin a continuance of  
4 any act or acts in violation of the provisions of this act and, if  
5 injured thereby, for the recovery of damages in the circuit  
6 court of the county wherein said act is alleged to have been or  
7 is being violated. If, in such proceeding, the court shall find  
8 that the defendant is violating or has violated any of the pro-  
9 visions of this act, it shall enjoin such defendant from a con-  
10 tinuance thereof. It shall not be necessary that actual damages  
11 to the plaintiff be alleged or proved. In addition to such in-  
12 junctive relief, the plaintiff in said action shall be entitled to  
13 recover from the defendant three times the amount of the ac-  
14 tual damages, if any, sustained.

Sec. 10. *Certifications to and Duty of Attorney General;*  
2 *Jurisdiction.* Whenever any corporation or joint stock com-  
3 pany shall be convicted of, or shall be enjoined from violating  
4 any of the provisions of this act, it shall be the duty of the  
5 clerk of the court wherein said corporation or joint stock  
6 company has been convicted or enjoined to certify said con-  
7 viction or injunction decree, as the case may be, to the  
8 attorney general of this state. Upon the third conviction  
9 for the violation of this act by any corporation or joint  
10 stock company, or whenever any corporation or joint stock  
11 company shall have been enjoined three times from violat-  
12 ing this act, it shall be the duty of the attorney general to  
13 institute proper suits in any circuit court in this state for  
14 the forfeiture of its charter, rights, franchises or privileges  
15 and powers exercised by such corporation or joint stock  
16 company, and to enjoin permanently such violator from  
17 transacting business within this state; and if in such suit the  
18 court shall find that the party defendant is guilty of violating  
19 said act as aforesaid, it shall enjoin said party defendant from  
20 doing business in this state, permanently or for such time as

21 the court, in its discretion, shall order, and if the order be for  
22 permanent injunction against the transaction of business, the  
23 court shall order the forfeiture of the charter, rights, fran-  
24 chises or privileges and powers exercised by such party de-  
25 fendant.

26 Jurisdiction is hereby vested in the circuit courts of this  
27 state to carry into effect the provisions of sections nine and ten  
28 hereof.

Sec. 11. *Penalties.* Any person, firm, partnership, corpora-  
2 tion, joint stock company or other association, whether as prin-  
3 cipal, agent, officer or director, for himself, or itself, or for an-  
4 other person, or for any person, firm, partnership, corporation,  
5 joint stock company or other association, who or which shall  
6 violate any of the provisions of this act, is guilty of a mis-  
7 demeanor for each single violation and upon conviction there-  
8 of, shall be punished by a fine of not less than one hundred  
9 dollars nor more than one thousand dollars, or by imprison-  
10 ment not exceeding ninety days or by both said fine and im-  
11 prisonment, in the discretion of the court.

Sec. 12. *Illegal Contracts.* Any contract, express or implied,  
2 made by any person, firm, partnership, corporation, joint stock  
3 company or other association, in violation of any of the pro-  
4 visions of this act, is hereby declared to be an illegal contract  
5 and no recovery thereon shall be had.

Sec. 13. *Provisions Severable.* If any section, sentence,  
2 clause or phrase of this act is for any reason held to be un-  
3 constitutional, such decision shall not affect the validity of the  
4 remaining portions of the act.

Sec. 14. *Prima Facie Evidence of Violation.* In any injunc-  
2 tion proceeding or in any prosecution for a misdemeanor un-  
3 der the provisions of this act, proof of any advertisement, offer  
4 to sell, or sale of any merchandise by a retailer or wholesaler,  
5 at less than cost, or any advertisement of an intent to give,  
6 offer to give, or gift of any merchandise by a retailer or whole-  
7 saler, or any secret payment, allowance of rebates, refunds,  
8 commissions, or unearned discounts, whether in the form of  
9 money or otherwise, or secretly extending to certain purchas-  
10 ers special services or privileges not extended to all pur-  
11 chasers purchasing upon like terms and conditions, shall be  
12 prima facie evidence of a violation of this act, and proof of a

13 violation of this act by any person as officer, director or  
14 agent shall be sufficient proof of a violation of this act by the  
15 person, firm or corporation for whom or for which he acts.

Sec. 15. *Purpose and Construction of Act.* The Legislature  
2 declares that the purpose of this act is to safeguard the pub-  
3 lic against the creation or perpetuation of monopolies and to  
4 foster and encourage competition, by prohibiting unfair and  
5 discriminatory practices by which fair and honest competition  
6 is destroyed or prevented. This act shall be liberally con-  
7 strued that its beneficial purposes may be subserved.

## CHAPTER 152

(House Bill No. 82—By Mr. Swann)

AN ACT to amend article one, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, by adding thereto a new section to be numbered section ninety, providing for decorations to be known as the West Virginia distinguished service medal, and the West Virginia service medal, and the method of awarding such decorations.

[Passed March 8, 1939; in effect from passage. Became a law without the approval of the Governor.]

### Section

1. Who may be awarded West Virginia distinguished service medal.
2. Who may be awarded West Virginia service medal.
3. Regulations for wearing medal.
4. Precedence of medal.
5. Description of distinguished service medal; how worn.
6. Description of service medal; how worn.
7. Board of award.
8. Designs and prices of medals.
9. Recommendations for awards of medals.
10. Procedure for awards.

*Be it enacted by the Legislature of West Virginia:*

That a decoration to be known as the "West Virginia Distinguished Service Medal" shall be procured and presented as follows:

- Section 1. *Who May Be Awarded West Virginia Distinguished Service Medal.* The "West Virginia Distinguished Service Medal" may be awarded by the military board of the state of West Virginia to be created as hereinafter provided:



6 (a) To former governors, who are now alive, present and  
7 future governors of the state of West Virginia as commanders-  
8 in-chief of the West Virginia national guard;

9 (b) To such officers and enlisted men in the West Vir-  
10 ginia national guard as may have, or may hereafter render  
11 conspicuous or distinguished service in the line of duty, or  
12 who have displayed, or may hereafter display, conspicuous  
13 courage and gallantry while on duty with the West Vir-  
14 ginia national guard;

15 (c) To men serving in the West Virginia national guard  
16 who are holders of congressional medals of honor, United  
17 States distinguished service medals, United States distin-  
18 guished service cross, or equivalent awards of the United  
19 States navy;

20 (d) To men of West Virginia who served, or shall here-  
21 after serve, in the armed forces of the United States in time of  
22 war and who may have rendered or shall hereafter render  
23 conspicuous or distinguished service in the line of duty;

24 (e) To not more than two civilians in any one year who  
25 shall have rendered, in the judgment of the military board of  
26 the state of West Virginia, conspicuous or distinguished serv-  
27 ice to the West Virginia national guard;

28 (f) The military board of the state of West Virginia shall  
29 be empowered to award the West Virginia distinguished  
30 service medal posthumously to the next of kin of any officer  
31 or enlisted man entitled thereto under the foregoing para-  
32 graphs. No posthumous award shall be made in the case of a  
33 civilian.

34 (g) In the event any officer or enlisted man of the West  
35 Virginia national guard shall, in the opinion of the military  
36 board of the state of West Virginia, render service or per-  
37 form an act which would entitle him to the award of the  
38 West Virginia distinguished service medal, and the award of  
39 such medal has already been made to him, he shall for such  
40 subsequent award be entitled to wear on the ribbon of the  
41 medal and on the ribbon bar denoting ownership of such  
42 medal a miniature gold mountain laurel blossom (the state  
43 flower).

Sec. 2. *Who May Be Awarded West Virginia Service*  
2 *Medal.* A decoration to be known as the "West Virginia Serv-

ice Medal" shall be procured and presented by the adjutant general of West Virginia as follows:

(a) To all officers and enlisted men and all former officers and enlisted men of the West Virginia national guard who have five years of honorable service;

(b) For each succeeding five years of honorable service there shall be awarded, a metallic emblem to be worn on the ribbon bar denoting ownership of such medal, the following:

Ten years' service the Roman numeral "X",

Fifteen years' service the Roman numeral "XV",

Twenty years' service the Roman numeral "XX",

Twenty-five years' service "Eagle",

Thirty years' service, "Eagle-V",

Thirty-five years' service, "Eagle-X".

In computing service there shall be taken into account the time served in the United States armed forces as a part of West Virginia's quota to these forces.

Sec 3. *Regulations for Wearing Medal.* The regulations for wearing the West Virginia distinguished service medal and the West Virginia service medal, or the appropriate ribbon designating the ownership of such medals, shall conform in all respects to the United States army regulations as prescribed for medals, decorations and service ribbons for the national guard.

Sec. 4. *Precedence of Medal.* The West Virginia distinguished service medal and the West Virginia service medal of the West Virginia national guard will be worn after decorations and campaign medals awarded by the United States of America and before or ahead of all foreign decorations.

Sec. 5. *Description of Distinguished Service Medal; How Worn.* The West Virginia distinguished service medal shall be of fourteen carat gold and of an appropriate design to be selected by the military board of the state of West Virginia. The medal shall be worn suspended by a ring from watered silk ribbon of suitable length and width, of colors to be selected by the military board of the state of West Virginia, and all medals to be serially numbered on the rim.

Sec. 6. *Description of Service Medal; How Worn.* The  
2 West Virginia service medal shall be a medal of bronze  
3 of the same size, weight and color of bronze as the victory  
4 medal awarded by the United States of America, and to be  
5 of such design as may be selected by the military board  
6 of the state of West Virginia, and is to be suspended by a  
7 ring from watered silk ribbon of suitable length and width,  
8 of colors to be selected by the military board of the state  
9 of West Virginia.

Sec. 7. *Board of Award.* The governor, as commander-  
2 in-chief of the West Virginia national guard, shall ap-  
3 point a permanent board of awards to be known as the  
4 military board of the state of West Virginia to consist  
5 of three members, at least two of whom shall be mem-  
6 bers of the West Virginia national guard on active duty.  
7 The term of office for these members shall be four years or  
8 until their successors are appointed.

9 The members of this board shall receive no salary or other  
10 compensation for their services, but each member shall be  
11 allowed and paid for actual expenses in traveling and other  
12 personal expense incurred in the performance of their duty.  
13 The board shall select a secretary who shall make and keep  
14 a record of its proceedings, which record is to be lodged in  
15 the adjutant general's office and is to be preserved therein  
16 as a part of the permanent military records of the state of  
17 West Virginia.

Sec. 8. *Designs and Prices of Medals.* The military  
2 board of the state of West Virginia will secure appro-  
3 priate designs from designers and bids from manufac-  
4 turers who are competent in their judgment to design and  
5 make the type of medal desired for the state of West Virginia  
6 for both the distinguished service medal and the service  
7 medal, and will submit the designs and bids thereon, to-  
8 gether with its recommendations thereon, to the governor,  
9 who shall make a final selection of the design and the manu-  
10 facturer of both medals.

Sec. 9. *Recommendations for Awards of Medals.* The mili-  
2 tary board of the state of West Virginia is given power to pass  
3 on recommendations for the award of the West Virginia

4 distinguished service medal, and is given express power to  
5 originate such recommendations and to pass thereon and to  
6 prescribe appropriate ribbons designating ownership of both  
7 medals.

Sec. 10. *Procedure for Awards.* The affirmative vote  
2 of two members of the board and the approval of such finding  
3 by the governor is necessary for the award of the West Vir-  
4 ginia distinguished service medal, but a recommendation  
5 which has failed to receive the approval of a majority vote  
6 on two separate occasions shall not again be acted on.

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## CHAPTER 153

(House Bill No. 391—By Mr. Harvey)

AN ACT to authorize and empower the county court of Braxton  
county to transfer the unexpended balances in the dog tax  
fund to the general county fund of said county.

[Passed March 6, 1939; in effect from passage. Became a law without the  
approval of the Governor.]

### Section

1. Braxton county court authorized to transfer dog tax fund.

*Be it enacted by the Legislature of West Virginia:*

Section 1. *Braxton County Court Authorized to Transfer*  
2 *Dog Tax Fund.* The county court of Braxton county is here-  
3 by authorized and empowered to transfer the unexpended bal-  
4 ances now in the dog tax fund of said county, remaining and  
5 not needed for the payment and satisfaction of all claims and  
6 expenses against the said dog tax fund, to the general county  
7 fund of said county.

8 All acts or parts of acts inconsistent herewith are hereby  
9 repealed, insofar as they may apply to Braxton county.

## CHAPTER 154

(Senate Bill No. 206—By Mr. Martin, by request)

AN ACT to amend and reenact sections one, two and four, chapter one hundred sixty-eight, acts of the Legislature of West Virginia, regular session, one thousand nine hundred twenty-one, relating to the creation and establishment in the county of Cabell, of a court to be known as the "Domestic Relations Court."

[Passed March 9, 1939; in effect from passage. Became a law without the approval of the Governor.]

### Section

1. Cabell county domestic relations court created; jurisdiction.
2. Further jurisdiction.
3. Salary of judge.

*Be it enacted by the Legislature of West Virginia:*

That sections one, two, and four, chapter one hundred sixty-eight, acts of the Legislature of West Virginia, regular session, one thousand nine hundred twenty-one, be amended and reenacted to read as follows:

Section 1. *Cabell County Domestic Relations Court Created; Jurisdiction.* That there is hereby created and established in and for the county of Cabell, with authority and jurisdiction co-extensive with the county, a court to be known as the "domestic relations court" of Cabell county, for the trial of annulment of marriages, separate maintenance suits, divorce, alimony causes, the care and disposition of delinquent, defective, neglected, and dependent children, and desertion and non-support of wives and children and for the enforcement of the general school laws, arising within the said county or coming within the jurisdiction of the court as provided by the general laws of this state and as hereinafter provided.

Sec. 2. *Further Jurisdiction.* The said domestic relations court shall have jurisdiction within the said county of Cabell, concurrent with the circuit court, of all matters and causes arising out of or pertaining to annulment of marriages, separate maintenance suits, divorce, alimony, the custody and maintenance of children of litigants and the adjudication of

7 property rights arising out of the same, and all other matters  
8 and causes coming within the purview of chapter forty-eight  
9 of the code of West Virginia, one thousand nine hundred  
10 thirty-one, and of all amendments and reenactments thereof,  
11 concerning domestic relations; of all matters and causes com-  
12 ing within the purview of chapter forty-nine of the code of  
13 West Virginia, one thousand nine hundred thirty-one, as en-  
14 acted by chapter one, acts of the Legislature of West Virginia,  
15 one thousand nine hundred thirty-six, and of all amendments  
16 and reenactments thereof commonly known as the child wel-  
17 fare law; of all matters and causes coming within the purview  
18 of chapter eighteen of the code of West Virginia, one thou-  
19 sand nine hundred thirty-one, and all amendments and re-  
20 enactments thereof, commonly called the general school  
21 law; of all matters and causes coming within the purview of  
22 chapter forty-eight of the code of West Virginia, one thou-  
23 sand nine hundred thirty-one, and of all amendments and  
24 reenactments thereof, commonly known as the adoption law;  
25 and of all matters and causes coming within the purview of  
26 all other or future acts of the Legislature touching the subject  
27 matter of any and all said laws, laws and acts of the amend-  
28 ments and reenactments thereof, and of the common law of  
29 said state relating to the subject matter thereof. The said do-  
30 mestic relations court shall also have general equity jurisdic-  
31 tion, with power to grant injunctions in matters involving the  
32 protection of the person or of property but not in matters  
33 involving the enforcement of criminal laws, in labor disputes,  
34 or the abatement of nuisances. And that the proceedings  
35 and modes of procedure and power and jurisdiction conferred  
36 by law upon the circuit court or the common pleas court in  
37 any and all of said matters and causes are hereby conferred  
38 upon and shall be exercised by said domestic relations court.

Sec. 4. *Salary of Judge.* The said judge of the domestic  
2 relations court of Cabell county shall, for his services receive  
3 the sum of six thousand dollars per annum in monthly in-  
4 stalments to be paid out of the county treasury of said county  
5 of Cabell.

## CHAPTER 155

(House Bill No. 336—By Mr. Lockhart)

AN ACT to permit the county court of Clay county, with the consent of the holders of certificates of indebtedness, to postpone the payment of such certificates, and to employ and use the levy therefor along with any surplus in said fund, existing or arising, in the construction of a jail for said county.

[Passed March 6, 1939; in effect from passage. Became a law without the approval of the Governor.]

### Section

1. Clay county court authorized to postpone payment of certificates of indebtedness.
2. Funds for contractual debt purposes to be used in construction of new jail.
3. Levies to pay certificates of indebtedness.

*Be it enacted by the Legislature of West Virginia:*

### Section 1. *Clay County Court Authorized to Postpone*

*Payment of Certificates of Indebtedness.* The county court of Clay county, by and with the consent of the holders of the certificates of indebtedness issued by said court, dated January first, one thousand nine hundred thirty-five, and payable June first, one thousand nine hundred thirty-nine, under the provisions of chapter sixty-four, acts of the Legislature, second extraordinary session, one thousand nine hundred thirty-three, is hereby authorized and empowered to postpone the payment of such certificates until the first of June, one thousand nine hundred forty, and interest shall be paid thereon at the rate provided for therein from the date thereof until payment.

*Sec. 2. Funds for Contractual Debt Purposes to be Used in Construction of New Jail.* The said county court of Clay county is hereby authorized and empowered to expend the amount levied by it for the fiscal year ending June thirty, one thousand nine hundred thirty-nine, for contractual debt purposes, in providing for construction of a new jail for said county; and such moneys may be so expended in conjunction with any moneys allocated in aid of such purpose by the government of the United States, or any agency established by it, or independently thereof.

Sec. 3. *Levies to Pay Certificates of Indebtedness.* The said county court of Clay county shall make provisions for the payment of the certificates of indebtedness, the payment of which may be postponed under the provisions of this act, by levies of the fiscal year ending June thirty, one thousand nine hundred forty.

All acts or parts of acts in conflict herewith are hereby repealed.

## CHAPTER 156

(Senate Bill No. 289—By Mr. Smith)

AN ACT ceding to the United States jurisdiction of this state over certain lands acquired by the United States for a post office and federal building site at Fairmont, Marion county, West Virginia, and exempting the same from taxation.

[Passed March 8, 1939; in effect from passage. Became a law without the approval of the Governor.]

### Section

1. State's consent for federal government to acquire post office site in the city of Fairmont.
2. Jurisdiction ceded to federal government; exceptions.

*Be it enacted by the Legislature of West Virginia:*

Section 1. *State's consent for Federal Government to Acquire Post Office Site in the City of Fairmont.* The consent of the state of West Virginia is hereby given, in accordance with the seventeenth clause, eighth section, of the first article of the constitution of the United States, to the acquisition by the United States of the following described land in this state as the site for a post office and federal building at the city of Fairmont, Marion county, state of West Virginia: Beginning at a point between the intersection of the southeasterly side of Fairmont avenue with the southwesterly side of second street; running thence S. 53 degrees 11 minutes E. along the southwesterly side of Second street a distance of 260 feet to a point, said point being the intersection of the southwesterly side of second street with the northwesterly side of Gaston avenue; thence S. 36 degrees 49 minutes W. along the northwesterly side of Gaston Avenue a distance of 175 feet to a point;



17 thence N. 53 degrees 11 minutes W. a distance of 260 feet to  
 18 a point in the southeasterly side of Fairmont avenue; thence  
 19 N. 36 degrees 49 minutes E. along the southeasterly side of  
 20 Fairmont avenue a distance of 175 feet to the point or place  
 21 of beginning, as shown on blueprints of plats showing "Prop-  
 22 erty Owned by Fairmont Building & Investment Co." and  
 23 "Property Owned by Howard Hardesty, as receiver of The  
 24 Union National Bank of Fairmont, W. Va." on file in the  
 25 United States Treasury department.

Sec. 2. *Jurisdiction Ceded to Federal Government; Excep-*  
 2 *tions.* The exclusive jurisdiction in and over the land de-  
 3 scribed is hereby ceded to the United States for all purposes.  
 4 except the service thereon of all civil and criminal process of  
 5 the courts of this state, but the jurisdiction so ceded shall  
 6 continue no longer than the said United States shall own such  
 7 lands; and so long as the said lands shall remain the prop-  
 8 erty of the United States, and no longer, the same shall be  
 9 and continue exempt and exonerated from all state, county  
 10 and municipal assessment, taxation or other charges which  
 11 may be levied or imposed under the authority of this state.  
 12 All acts or parts of acts in conflict herewith are hereby  
 13 repealed so far as they are inconsistent with the provisions  
 14 hereof.

## CHAPTER 157

(Senate Bill No. 189—By Mr. Jimison, by request)

AN ACT authorizing the county court of Kanawha county, West Virginia, to pay certain medical, hospital and transportation expenses of George Dudley, a former deputy sheriff of Kanawha county, wounded while in the performance of his duties as deputy sheriff.

[Passed March 3, 1939; in effect ninety days from passage. Approved by the Governor.]

### Section

1. Kanawha county court authorized to pay George Dudley certain sums of money.

*Be it enacted by the Legislature of West Virginia:*

- Section 1. *Kanawha County Court Authorized to Pay George Dudley Certain Sums of Money.* The county court of

3 Kanawha county is authorized and empowered to pay to  
4 George Dudley, a former deputy sheriff of Kanawha county,  
5 certain medical, hospital and transportation expenses already  
6 accrued, or which may in the future accrue, incurred by the  
7 said George Dudley in the treatment of a certain bullet  
8 wound received by him while in the performance of his duties  
9 while transporting a dangerous criminal from the Kanawha  
10 county jail to the West Virginia state penitentiary at Mounds-  
11 ville, West Virginia, when attacked and severely wounded by  
12 outlaws. Said court is hereby authorized to make provision  
13 in its annual budget, beginning with the budget for the  
14 fiscal year one thousand nine hundred thirty-nine—one thou-  
15 sand nine hundred forty, to pay for such expenses accrued, or  
16 which may in the future accrue.

## CHAPTER 158

(Senate Bill No. 190—By Mr. Jimison, by request)

AN ACT authorizing the county court of Kanawha county, West Virginia, to provide compensation for Flora Razella Shamblin, widow of Roy Shamblin, a former deputy sheriff of Kanawha county, killed while in the performance of his duties as deputy sheriff.

[Passed March 3, 1939; in effect ninety days from passage. Approved by the Governor.]

### Section

1. Kanawha county court authorized to pay Flora Razella Shamblin certain sums of money.

*Be it enacted by the Legislature of West Virginia:*

Section 1. *Kanawha County Court Authorized to Pay Flora Razella Shamblin Certain Sums of Money.* The county court of Kanawha county is authorized and empowered to pay to Flora Razella Shamblin, the widow of Roy Shamblin, a former deputy sheriff of Kanawha county, the sum of forty dollars per month, and to make provision therefor in its annual budget each year during the remainder of the life of said Flora Razella Shamblin, or until the said Flora Razella

9 Shamblin may remarry, beginning with the budget for the  
10 fiscal year one thousand nine hundred thirty-nine—one thou-  
11 sand nine hundred forty, said monthly sum to be paid as  
12 compensation to the said Flora Razella Shamblin, being the  
13 widow of Roy Shamblin who was killed in the performance  
14 of his duties as deputy sheriff of Kanawha county while  
15 transporting a dangerous criminal from the Kanawha county  
16 jail to the West Virginia state penitentiary at Moundsville,  
17 West Virginia, when attacked by outlaws.

## CHAPTER 159

(Senate Bill No. 81—By Mr. Hall)

AN ACT to authorize the board of education of Lincoln county to transfer to its new building fund the sum of three thousand six hundred twenty-eight dollars and thirteen cents, now in the hands of the sheriff of said county, being the unexpended balance of a bond issue of Carroll district of said county returned to said sheriff by the state sinking fund commission and prescribing the manner in which said fund shall be expended.

[Passed February 17, 1939; in effect from passage. Approved by the Governor.]

### Section

1. Lincoln county board of education authorized to transfer and use certain funds.

*Be it enacted by the Legislature of West Virginia:*

Section 1. *Lincoln County Board of Education Authorized to Transfer and Use Certain Funds.* The board of education of Lincoln county is authorized to transfer to its new building fund, the sum of three thousand six hundred twenty-eight dollars and thirteen cents, and its accumulated interest, if any, now in the hands of the sheriff of said county, to the credit of said board, being the unexpended balance of a bond issue, now retired, of Carroll district of said county returned to said sheriff by the state sinking fund commission of West Virginia. Said fund shall be used for the sole purpose of erecting a new gymnasium and auditorium for Hamlin high school, in said Carroll district.

## CHAPTER 160

(Senate Bill No. 188—By Mr. Hall)

AN ACT to authorize and empower the county court of Lincoln county to transfer the unexpended balances in the dog tax fund to the general county fund of said county.

[Passed March 3, 1939; in effect from passage. Became a law without the approval of the Governor.]

### Section

1. Lincoln county court authorized to transfer dog tax fund.

*Be it enacted by the Legislature of West Virginia:*

Section 1. *Lincoln County Court Authorized to Transfer*

- 2 *Dog Tax Fund.* The county court of Lincoln county is hereby authorized and empowered to transfer the unexpended balances now in the dog tax fund of said county, remaining and not needed for the payment and satisfaction of all claims and expenses against the said dog tax fund, to the general county fund of said county.

- 8 All acts or parts of acts inconsistent herewith are hereby
- 9 repealed, insofar as they may apply to Lincoln county.

## CHAPTER 161

(House Bill No. 175—By Mr. Perry)

AN ACT to authorize and empower the county court of Logan county to transfer the unexpended balances in the district road funds and/or the district contractual indebtedness funds of said county, to general county fund.

[Passed February 15, 1939; in effect from passage. Became a law without the approval of the Governor.]

### Section

1. Logan county court empowered to transfer district funds.

*Be it enacted by the Legislature of West Virginia:*

Section 1. *Logan County Court Empowered to Transfer*

- 2 *District Funds.* The county court of Logan county is hereby
- 3 authorized and empowered to transfer the unexpended bal-

- 4 ances now in the district road funds and/or district contrac-  
5 tual indebtedness funds of said county, remaining and not  
6 needed for the payment and satisfaction of all claims and ex-  
7 penses against the said district road funds and/or district  
8 contractual indebtedness funds, to the general county fund  
9 of said county.  
10 All acts or parts of acts inconsistent herewith are hereby  
11 repealed, insofar as they may apply to Logan county.

## CHAPTER 162

(House Bill No. 147—By Mr. Perry)

AN ACT to authorize and empower the county court of Logan county to transfer the unexpended balances in the dog tax fund to the general county fund of said county.

[Passed February 2, 1939; in effect from passage. Approved by the Governor.]

### Section

1. Logan county court authorized to transfer dog tax fund.

*Be it enacted by the Legislature of West Virginia:*

- Section 1. *Logan County Court Authorized to Transfer Dog Tax Fund.* The county court of Logan county is hereby  
2 authorized and empowered to transfer the unexpended bal-  
3 ances now in the dog tax fund of said county, remaining and  
4 not needed for the payment and satisfaction of all claims and  
5 expenses against the said dog tax fund, to the general county  
6 fund of said county.

- 8 All acts or parts of acts inconsistent herewith are hereby  
9 repealed, insofar as they may apply to Logan county.

## CHAPTER 163

(House Bill No. 458—By Mr. Meredith)

AN ACT to authorize the board of education of the county of Marion to improve its athletic field known as South Side park in the city of Fairmont, by constructing a stadium and other facilities for the use of the public at athletic games and other

educational entertainments and events; to accept therefor a donation of one hundred fifty thousand dollars from the works progress administration or other federal agency; to receive advancements not in excess of twenty-five thousand dollars from the citizens of Marion county toward the completion of the proposed improvements; to secure the refund of such advancements by entering into an agreement with the Fairmont Athletic association, whereby said association shall have the management of said athletic field until said advancements shall have been refunded, but in no event to exceed ten years, with authority to conduct and schedule athletic games and other educational entertainments and events, and to determine and collect reasonable charges or fees for the use of the athletic field and facilities, and after the payment of the necessary expenses, to pay annually not less than fifty per cent of the net receipts to the refund of said advancements, the remainder of the net receipts to be paid to said board of education; to require an accounting from said association to be annually filed with said board of education; to fix the membership of the Fairmont Athletic association, and to provide that a majority of its members shall have authority to conduct its affairs.

[Passed March 10, 1939; in effect from passage. Became a law without the approval of the Governor.]

#### Section

1. Marion county board of education authorized to construct stadium, etc., on athletic field.
2. Board of education authorized to accept advancements from citizens; how receipts from athletic events, etc., to be used.
3. Record and filing of receipts and disbursements.

WHEREAS, The board of education of the county of Marion owns an athletic field known as South Side Park in the city of Fairmont, which it desires to improve by constructing thereon a stadium and other facilities for the use of the public at athletic games and other educational entertainments and events, which improvements will cost approximately one hundred seventy-five thousand dollars; and

WHEREAS, Funds in the sum of one hundred fifty thousand dollars have been allocated for said improvements by the works progress administration or other federal agency by way of a donation, and to provide the remainder of the cost of said improvements it

is necessary for said board to raise a sum not exceeding twenty-five thousand dollars, which sum it does not now have available; and

WHEREAS, The citizens of Marion county propose to advance to said board of education, for said purpose, funds not exceeding said sum of twenty-five thousand dollars: *Provided*, That said board will cause the sum so advanced to be refunded out of the net receipts from athletic games and other educational entertainments and events hereafter to be held in said athletic field, and to secure the refund or repayment of the sum which may be so advanced, said board proposes to enter into an agreement with Fairmont Athletic association, a voluntary non-profit association comprised of (1) the county superintendent of schools of Marion county, (2) the principal of Fairmont Senior high school, (3) the principal of East Fairmont high school, (4) the president of the board of commerce of the city of Fairmont, and (5) the president of the Fairmont Business Men's association, whereby said Fairmont Athletic association until such time as said advancement shall have been repaid, but not exceeding in any event ten years, shall have the management of said athletic field, with authority to schedule at said athletic field athletic games such as football, softball, baseball, tennis, field and track events, spectacular entertainments such as band or drum corps contests, fireworks displays and similar events, but not including circuses, carnivals, prize fights or professional wrestling matches, nor any game, entertainment or event on the Sabbath day: *Provided further*, That for any event not herein specifically provided the consent of the board of education shall be first had and obtained, the said athletic association to determine and collect reasonable charges or fees for the use of said field, and after the payment of the necessary expenses to pay at least fifty per cent of the net receipts annually to the refund of the advancement so made for said improvements, the remainder thereof to be paid to said board of education; therefore,

*Be it enacted by the Legislature of West Virginia:*

Section 1. *Marion County Board of Education Authorized to Construct Stadium, etc., on Athletic Field.* The board of education of the county of Marion is hereby authorized to improve its athletic field known as South Side park in the city of Fairmont, by constructing thereon a stadium and

6    other facilities for the use of the public at athletic games  
7    and other educational entertainments and events, estimated  
8    to cost one hundred seventy-five thousand dollars, and to  
9    accept by way of a donation from the works progress ad-  
10   ministration or other federal agency, to be used in making  
11   said improvements, the sum of one hundred fifty thousand  
12   dollars

      Sec. 2. *Board of Education Authorized to Accept Advancements from Citizens; How Receipts from Athletic Events, etc., to be Used.* To enable the said board of education  
2    to provide the remainder of the estimated cost of said im-  
3    provements, said board is hereby authorized to accept ad-  
4    vancements from the citizens of Marion county of a sum  
5    not exceeding twenty-five thousand dollars, and to secure  
6    the repayment thereof to enter into an agreement with Fair-  
7    mont Athletic association, a voluntary non-profit association  
8    comprised of (1) the county superintendent of schools of  
9    Marion county, (2) the principal of Fairmont Senior high  
10   school, (3) the principal of East Fairmont high school,  
11   (4) the president of the board of commerce of the city of  
12   Fairmont, and (5) the president of the Fairmont Business  
13   Men's association, whereby said Fairmont Athletic associa-  
14   tion, until such time as said advancements shall have been  
15   repaid, but not exceeding in any event ten years, shall have  
16   the management of said athletic field, with authority to  
17   schedule or conduct at said athletic field games such as  
18   football, softball, baseball, tennis, field and track events,  
19   spectacular entertainments such as band or drum corps con-  
20   tests, fireworks displays and similar events, but not including  
21   circuses, carnivals, prize fights or professional wrestling  
22   matches, nor any game, entertainment or event on the Sab-  
23   bath day: *And provided further*, That for any event not here-  
24   in specifically mentioned the consent of the board of education  
25   shall be first had and obtained; the said agreement shall further  
26   provide that said Fairmont Athletic association may deter-  
27   mine and collect reasonable charges or fees for the use of said  
28   field and facilities, and, after the payment of the necessary  
29   expenses, to pay annually not less than fifty per cent of the  
30   net receipts to the refunding or repayment of the advance-  
31  
32



33 ments which may be made for said improvements, the re-  
34 mainder of the net receipts to be paid to said board of edu-  
35 cation.

Sec. 3. *Record and Filing of Receipts and Disbursements.*

2 Until all of said advancements shall have been repaid, the  
3 said Fairmont Athletic association shall keep a careful ac-  
4 count of all of its receipts and disbursements, and annually  
5 file the same with the secretary of said board of education;  
6 and in the conduct of its affairs a majority of its members  
7 shall govern.

## CHAPTER 164

(House Bill No. 127—By Mr. Meredith)

AN ACT to authorize the county court of the county of Marion, a corporation, and the board of education of the county of Marion, a corporation, to appropriate and pay annually from their respective revenues a sum of money to be used jointly with the city of Fairmont, a corporation, for the purpose of establishing, housing, equipping, and maintaining in Marion county, with headquarters in the city of Fairmont, West Virginia, a public library, and to provide for the management of said public library.

[Passed January 27, 1939; in effect from passage. Approved by the Governor.]

### Section

1. Authorizing establishment and maintenance of Marion county public library.
2. Board of managers; appointment; duties and powers; title to real estate acquired.
3. Repeal of inconsistent acts.

*Be it enacted by the Legislature of West Virginia:*

Section 1. *Authorizing Establishment and Maintenance of Marion County Public Library.* It shall be lawful for the  
2 county court of the county of Marion, a corporation, and the  
3 board of education of the county of Marion, a corporation,  
4 to appropriate and pay annually, beginning with the year  
5 one thousand nine hundred thirty-nine, from their respective  
6 revenues, a sum of money to be used jointly with the city of  
7

8 Fairmont, a corporation, for the purpose of establishing,  
9 housing, equipping, and maintaining in Marion county, with  
10 headquarters in the city of Fairmont, West Virginia, a pub-  
11 lic library to be known as "The Public Library of Marion  
12 County".

Sec. 2. *Board of Managers; Appointment; Duties and*  
2 *Powers; Title to Real Estate Acquired.* If such library  
3 be established it shall be lawful to create a non-partisan,  
4 non-political library board to be known as the "Board  
5 of Managers of the Public Library of Marion County",  
6 the members of which shall serve without compensation  
7 and shall be composed of nine persons, three of whom shall  
8 be appointed by the county court of the county of Marion,  
9 three by the board of education of the county of Marion,  
10 and three by the board of directors of the city of Fair-  
11 mont.

12 Said library board shall organize and, subject to the ap-  
13 proval of the respective financing corporations, shall adopt  
14 and promulgate rules and regulations for the conduct of said  
15 library; and shall administer the management of said li-  
16 brary and cause an annual report to be made of all matters  
17 pertaining to the conduct of said library which shall be open  
18 to the public or published at the discretion of said library  
19 board. The respective public corporations may provide by  
20 agreement among themselves for all matters connected with  
21 such library enterprise, and determine what items of cost  
22 and expense shall be paid by each thereof.

23 In the event that real estate be acquired by purchase for  
24 such library, the legal title thereto shall be equally in each  
25 of such public corporations save in the case where all said  
26 public corporations do not join in any such purchase, in  
27 which event title shall be in the one purchasing, or, if two, in  
28 their respective names. And nothing herein shall be con-  
29 strued to forbid the acquisition of real estate for or in con-  
30 nection with such library and its operation. Such public cor-  
31 porations may lawfully appropriate funds for the acquisition  
32 of real estate.

Sec. 3. *Repeal of Inconsistent Acts.* All acts and parts of  
2 acts inconsistent herewith, insofar as they apply to the

3 county court of the county of Marion, a corporation, and the  
4 board of education of the county of Marion, a corporation,  
5 are hereby repealed.

## CHAPTER 165

(House Bill No. 334—By Mr. Alltop, by request)

AN ACT authorizing the county court of Marion county to reimburse John F. Phillips, former clerk of the county court of Marion county, for public money deposited in The National bank of Fairmont, which closed during the year one thousand nine hundred thirty-three.

[Passed March 1, 1939: in effect from passage. Approved by the Governor.]

### Section

1. County court of Marion county authorized to reimburse John F. Phillips.

*Be it enacted by the Legislature of West Virginia:*

Section 1. *County Court of Marion County Authorized to Reimburse John F. Phillips.* The county court of Marion county is authorized and empowered to pay unto John F. Phillips, former clerk of the county court of Marion county, the sum of eighty-five dollars and forty-four cents, being part of county funds deposited by John F. Phillips as such clerk, and which funds were on deposit in The National bank of Fairmont, which closed its doors during the year one thousand nine hundred thirty-three, and which said sum was personally paid by said clerk to said county court, and that said county court do make proper provision for the payment of the same in their annual budget for the year one thousand nine hundred thirty-nine, and that upon payment of the same the said John F. Phillips do assign and transfer unto said county court of Marion county, receiver's certificate of The National bank of Fairmont, number three thousand four hundred sixty, together with the right to collect and receive any further sums due, or to become due and payable from said bank upon said certificate.

## CHAPTER 166

(Senate Bill No. 66—By Mr. Smith)

AN ACT authorizing the county court of Marion county, to compensate A. C. West, sheriff of Marion county, for moneys paid by him to The First National Bank in Fairmont, Fairmont, West Virginia, as indemnity for interest on county deposits from January first, one thousand nine hundred thirty-seven, to June thirtieth, one thousand nine hundred thirty-seven.

[Passed March 3, 1939; in effect from passage. Approved by the Governor.]

### Section

1. Marion county court authorized to reimburse A. C. West.

*Be it enacted by the Legislature of West Virginia:*

#### Section 1. *Marion County Court Authorized to Reimburse*

- 2 A. C. West. The county court of Marion county is authorized and empowered to pay to A. C. West, sheriff of Marion county, the sum of eight hundred sixty-three dollars and thirty-six cents, in cash, and to make provision for the same in its next annual budget, such sum to be paid to indemnify the said A. C. West, sheriff of Marion county, for said sum so paid by him to The First National Bank in Fairmont, Fairmont, West Virginia, as indemnity to secure said bank in the payment of said sum to the county court of Marion county, as interest on county deposits from January first, one thousand nine hundred thirty-seven, to June thirtieth, one thousand nine hundred thirty-seven.

## CHAPTER 167

(Senate Bill No. 246—By Mr. Anderson)

AN ACT transferring to the credit of the building and maintenance fund of the board of education of the county of McDowell, all unused funds collected for the retirement of school bonds for the several magisterial districts of said county.

[Passed March 3, 1939; in effect from passage. Approved by the Governor.]

### Section

1. Sheriff of McDowell county authorized to transfer certain funds; use of.

*Be it enacted by the Legislature of West Virginia:*

Section 1. *Sheriff of McDowell County Authorized to Transfer Certain Funds; Use of.* The sheriff of McDowell county is authorized and directed to transfer to the credit of the building and maintenance fund of the board of education of the county of McDowell all funds collected in any magisterial district of McDowell county for the retirement of school bonds of that district and remaining after all such bonds shall have been retired. Said fund shall be used in the same manner as other funds now to the credit of, or which may hereafter be placed to the credit of, the building and maintenance fund of the board of education of the county of McDowell, but such funds hereby authorized and directed to be transferred shall be expended in the respective magisterial districts from which such funds were collected.

## CHAPTER 168

(Senate Com. Sub. for House Bill No. 48—Originating in the Senate Committee on the Judiciary)

AN ACT to repeal chapter forty-eight, acts of the Legislature of West Virginia, regular session, one thousand nine hundred thirteen, authorizing judge of former twenty-third circuit to appoint court stenographer and page.

[Passed February 10, 1939; in effect from passage. Approved by the Governor.]

### Section

1. Repeal of act authorizing judge of circuit court of Monongalia county to appoint court stenographer and page.

*Be it enacted by the Legislature of West Virginia:*

Section 1. *Repeal of Act Authorizing Judge of Circuit Court of Monongalia County to Appoint Court Stenographer and Page.* Chapter forty-eight, acts of the Legislature of West Virginia, regular session, one thousand nine hundred thirteen, authorizing the judge of the then twenty-third judicial circuit, now the seventeenth judicial circuit, to appoint a court stenographer and page, is hereby repealed. Nothing herein contained shall refer or apply to the present twenty-third circuit consisting of Jefferson, Berkeley and Morgan counties.

## CHAPTER 169

(House Bill No. 358—By Mr. Strouss)

AN ACT to authorize the county court of Monongalia county to use and expend unexpended funds or surpluses in any funds of said county for the purpose of building a new courthouse or of building additions and making improvements to the present courthouse.

[Passed March 6, 1939; in effect ninety days from passage. Approved by the Governor.]

### Section

1. Monongalia county court authorized to use unexpended funds for building or improving courthouse.

*Be it enacted by the Legislature of West Virginia:*

- Section 1. *Monongalia County Court Authorized to Use*  
2 *Unexpended Funds for Building or Improving Courthouse.*  
3 The county court of Monongalia county is hereby authorized  
4 and empowered to use any unexpended fund of said county  
5 or any surplus in any of the county funds for the purpose  
6 of building a new courthouse or of building additions and  
7 making improvements to present courthouse.

## CHAPTER 170

(House Bill No. 435—By Mr. Neal)

AN ACT authorizing the state road commissioner to refund to the county court of Nicholas county any and all moneys erroneously paid by said county court, or the sheriff of said county, to the state road commission under and by virtue of the provisions of chapter fifty-nine, acts of the Legislature of West Virginia, first extraordinary session, one thousand nine hundred thirty-three, or chapter forty-two, acts of the Legis-

lature of West Virginia, second extraordinary session, one thousand nine hundred thirty-three.

[Passed March 10, 1939; in effect from passage. Approved by the Governor.]

Section

1. State road commission authorized to refund moneys to Nicholas county court.

*Be it enacted by the Legislature of West Virginia:*

Section 1. *State Road Commission Authorized to Refund Moneys to Nicholas County Court.* The state road commissioner is hereby authorized to refund to the county court of Nicholas county any and all moneys which may have been erroneously paid to the state road commission by said county court, or by the sheriff of said county, under and by virtue of the provisions of chapter fifty-nine, acts of the Legislature of West Virginia, first extraordinary session, one thousand nine hundred thirty-three, or chapter forty-two, acts of the Legislature of West Virginia, second extraordinary session, one thousand nine hundred thirty-three, not to exceed the sum of ten thousand eight hundred forty-nine dollars and forty-four cents. Any and all refunds made under the authority herein given shall be held on account of, and placed to the credit of, the general county fund of said county, and shall be used only for the retirement of outstanding indebtedness existing against the several road funds of said county at the time of said payment to the state road commission or for reimbursing said general county fund on account of any payments heretofore made therefrom on account of such indebtedness.

## CHAPTER 171

(Senate Bill No. 162—By Mr. Sweeney, by request)

AN ACT to authorize the board of commissioners of Ohio county to settle the claim of Winfield S. Eshelman for injuries sus-

tained by him when struck by a truck of said board, while operated by an employee of said board in line of duty.

[Passed March 10, 1939; in effect from passage. Became a law without the approval of the Governor.]

**Section**

1. Ohio county board of commissioners authorized to settle claim of Winfield S. Eshelman.

WHEREAS, Winfield S. Eshelman, a resident of Ohio county, on December twenty-two, one thousand nine hundred thirty-two, was struck and seriously injured by a truck of the board of commissioners of said county, while being operated by an employee of said board in the line of duty, said injuries resulting in almost total disability to said Eshelman; and

WHEREAS, By reason of being a governmental agency, the legal responsibility of said board for damages for said injuries cannot be established by an action at law; therefore

*Be it enacted by the Legislature of West Virginia:*

- Section 1. *Ohio County Board of Commissioners Authorized to settle claim of Winfield S. Eshelman.* The board of commissioners of Ohio county is authorized to settle the claim of Winfield S. Eshelman for damages sustained by him when struck and injured by a truck of said board while being operated by an employee of said board in the line of duty and to pay to said Eshelman, from any funds in its hands available for the purpose, the amount of such damages, if any, ascertained to be due him.

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## CHAPTER 172

(House Bill No. 143—By Mr. Johnson)

AN ACT authorizing the board of education of Ohio county to pay not exceeding two thousand five hundred dollars for the medical, nursing and hospital expenses of Naomi Hartley, who sustained serious injuries from burns received at North Warwood elementary school, Wheeling, Ohio county, West Vir-



ginia, and for loss and damages incurred by Albert Hartley, her father, by reason of said injuries.

[Passed February 20, 1939; in effect from passage. Became a law without the approval of the Governor.]

Section

1. Ohio county board of education authorized to settle claim of Albert Hartley.

*Be it enacted by the Legislature of West Virginia:*

Section 1. *Ohio County Board of Education Authorized to Settle Claim of Albert Hartley.* The board of education of Ohio county is hereby authorized to pay out of any funds available for that purpose, a sum not exceeding two thousand five hundred dollars to pay the medical, nursing and hospital expenses and loss and damage to Albert Hartley, incurred and sustained by reason of injuries received by Naomi Lee Hartley, the ten-year-old daughter of said Albert Hartley, from serious burns received by her while attending North Warwood elementary public school in said county. In its discretion, said board of education may pay said medical, nursing and hospital expenses directly to those to whom they are due and any balance to Albert Hartley, or may pay the whole of the amount allotted by it for this purpose to said Albert Hartley.

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## CHAPTER 173

(Com. Sub. for House Bill No. 411—Originating in the House Committee on Counties, Districts and Municipal Corporations)

AN ACT to amend and reenact section twenty, chapter sixty-seven, acts of the Legislature of West Virginia, regular session, one thousand nine hundred thirty-five, relating to application of

state civil service to the fire department of Parkersburg, and abolishing the civil service commission for the city of Bluefield.

[Passed March 4, 1939; in effect from passage. Became a law without the approval of the Governor.]

**Section**

20. Firemen's civil service act to apply to city of Parkersburg; city of Bluefield excluded.

*Be it enacted by the Legislature of West Virginia:*

That section twenty, chapter sixty-seven, acts of the Legislature, regular session, one thousand nine hundred thirty-five, be amended and reenacted to read as follows:

Section 20. *Firemen's Civil Service Act to Apply to City of Parkersburg; City of Bluefield Excluded.* The provisions of this act shall also apply in their entirety to the municipality of Parkersburg, notwithstanding any exception heretofore made as to said municipality; and the civil service commission granted for the municipality of Bluefield under an act of the Legislature, regular session, one thousand nine hundred thirty-three, is hereby abolished.

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## CHAPTER 174

(Senate Bill No. 179—By Mr. Fleming)

AN ACT to authorize the county court of Pleasants county, West Virginia, to anticipate the payment of the deferred payments on certain real estate in said county purchased by it from the Kiwanis Recreation company.

[Passed March 3, 1939; in effect from passage. Became a law without the approval of the Governor.]

**Section**

1. Pleasants county court authorized to issue drafts in anticipation of revenue.

WHEREAS, The county court of Pleasants county, West Virginia, at a special election held on February fifth, one thousand nine hundred thirty-eight, was authorized to lay a special levy for three years for the purchase of real estate for a system of public recreation and playgrounds, and the court purchased for that

purpose the Kiwanis Park and appurtenances agreeing to lease the same for three years, the rental to be paid each year from the proceeds of said special levy and applied, as paid, on the agreed purchase price which included the payment by the court of the interest on certain notes owed by the owners of said park; and

WHEREAS, By the issuance of county orders anticipating the revenues from the authorized special levies the interest rates on said obligations can be reduced; therefore,

*Be it enacted by the Legislature of West Virginia:*

Section 1. *Pleasants County Court Authorized to Issue Drafts in Anticipation of Revenue.* In anticipation of the revenues to be collected in one thousand nine hundred thirty-nine and one thousand nine hundred forty from a special levy for said years, authorized at a special election held on February fifth, one thousand nine hundred thirty-eight, the county court of Pleasants county is authorized to issue its drafts, bearing interest at not to exceed four per cent, for the payment of certain indebtedness incurred by said court in purchasing real estate as authorized at said special election. The total amount of said drafts shall not exceed the total amount remaining unpaid under the agreement of the county court and the sellers of said real estate, which is duly recorded in the office of the clerk of the county court of said county.

## CHAPTER 175

(House Bill No. 297—By Mr. Erwin)

AN ACT to provide reimbursement to A. M. Brown, clerk of the county court of Putnam county, West Virginia, for certain sums of money deposited by him in the Putnam County Bank of Hurricane and paid by him to the county of Putnam.

[Passed March 1, 1939; in effect from passage. Approved by the Governor.]

### Section

1. Putnam county court authorized to reimburse A. M. Brown.

*Be it enacted by the Legislature of West Virginia:*

Section 1. *Putnam County Court Authorized to Reimburse A. M. Brown.* The county court of Putnam county is author-

3 ized to pay the sum of one hundred eighty-five dollars and  
4 twenty-nine cents to A. M. Brown, who as clerk of the county  
5 court of Putnam county, West Virginia, paid said sum of one  
6 hundred eighty-five dollars and twenty-nine cents to the sheriff  
7 of Putnam county, West Virginia, which payment of said sum  
8 was required to be paid by the said A. M. Brown to said  
9 sheriff of Putnam county, West Virginia, by reason of the  
10 said Brown having had on deposit as clerk of said court  
11 in the Putnam County Bank of Hurricane on March sixth,  
12 one thousand nine hundred thirty-three, the sum of three  
13 hundred seventy dollars and fifty-eight cents, at which time  
14 the said bank closed its doors, whereof fifty per cent thereof  
15 was repaid to said Brown when the said bank was reorganized.

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## CHAPTER 176

(House Bill No. 226—By Mr. Flint)

AN ACT providing further financial relief for the county court of Raleigh county; enabling such court to lay a larger levy than the limits now prescribed for levies by county courts for current purposes in order to maintain the basic and indispensable functions of said county; prescribing further limits for such current county levies; finding as a matter of fact that such county cannot maintain the basic and indispensable functions of government within present limitations for current levies on the various classes of property; prescribing the method by which such additional levies may be made and authorizing the laying of the same and prescribing further maximum limits on the various classes of property for the laying of such county levy for current purposes.

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[Passed March 9, 1939; in effect ninety days from passage. Became a law without the approval of the Governor.]

### Section

1. Legislative findings as to financial relief for Raleigh county.
2. Findings of fact by county court; posting.
3. County court authorized to lay additional levy.

*Be it enacted by the Legislature of West Virginia:*

Section 1. *Legislative Findings as to Financial Relief for*  
2 *Raleigh County.* It is hereby found and ascertained as a mat-

3 ter of fact that, notwithstanding the provisions of law now  
4 existing, including chapter one hundred fifty-two, acts of the  
5 Legislature, regular session, one thousand nine hundred  
6 thirty-seven, respecting the financial and fiscal affairs of  
7 Raleigh county, and it appearing that further relief in the  
8 nature of that afforded by said chapter one hundred fifty-  
9 two, acts of the Legislature, regular session, one thousand  
10 nine hundred thirty-seven, is necessary, in that, it is further  
11 found and ascertained as a matter of fact that the county  
12 court of Raleigh county has been compelled to levy the maxi-  
13 mum present authorized levy for current purposes on all  
14 classes of property in the fiscal years commencing on the  
15 first day of July, one thousand nine hundred thirty-six, the  
16 first day of July, one thousand nine hundred thirty-seven,  
17 and the first day of July, one thousand nine hundred thirty-  
18 eight, in order to maintain the basic and indispensable func-  
19 tions of government for which county courts have prior  
20 thereto imposed the levies; and has further been compelled  
21 to overdraft upon the general county fund of said county,  
22 for which such levy was made, in order to maintain such  
23 basic and indispensable functions of government.

Sec. 2. *Finding of Facts by County Court; Posting.* The  
2 said county court of Raleigh county is, therefore, hereby  
3 authorized and empowered, on or before the thirtieth day of  
4 June, one thousand nine hundred forty, to ascertain and find,  
5 as a matter of fact, the total amount of such overdrafts for  
6 each of the aforesaid three fiscal years, and in such case the  
7 court shall further find as accurate an estimate as can reason-  
8 ably be made under the circumstances, the probable amount  
9 of overdraft for the fiscal year beginning the first day of  
10 July, one thousand nine hundred forty; and such court shall  
11 also at such time further find the probable amount of addi-  
12 tional funds required yearly for the proper carrying into  
13 effect of the "Public Welfare Law of One Thousand Nine  
14 Hundred Thirty-six"; and the court at such time shall also  
15 further find as a matter of fact the minimum amount of  
16 levies for current county purposes, including the retirement  
17 of such overdraft during the succeeding fiscal year, and the  
18 additional amount for the proper carrying into effect of such  
19 "Public Welfare Law of One Thousand Nine Hundred Thirty-

20 six'', which shall be required in the future for the mainten-  
21 ance of the basic and indispensable functions of government ;  
22 which findings shall be entered of record by said court and a  
23 copy of such findings shall be posted at the front door of  
24 said courthouse of said county within three days after the  
25 date thereof.

•       Sec. 3. *County Court Authorized to Lay Additional Levy.*

2   Said county court of Raleigh county shall, after said findings  
3 of fact have been made, at its session on the first Tuesday  
4 in August of the fiscal year of one thousand nine hundred  
5 forty—one thousand nine hundred forty-one, change and  
6 correct such findings of fact, if they ascertain that the same  
7 need to be corrected in order to accord with the facts at  
8 such times ascertained and existing ; and such court, in addi-  
9 tion to the levies prescribed by section ten, article eight,  
10 chapter eleven, code of West Virginia, one thousand nine  
11 hundred thirty-one, as amended, is hereby further authorized  
12 and empowered at the session and adjourned session pre-  
13 scribed by said section of the code, and in the manner therein  
14 set forth in said section for the laying of the levies therein  
15 prescribed, to lay an additional levy for current county pur-  
16 poses to be known as "additional county levy" on each class  
17 of property in the county or its subdivisions, according to  
18 the last assessment, which additional county levy shall be  
19 supplemental to the current county levy authorized under  
20 said section ten, and the sum of the levies shall not exceed the  
21 respective amounts ascertained by such finding of fact for  
22 the respective classes of property: *Provided, however,* That  
23 in no case shall the sum of both levies per hundred dollars  
24 assessed valuation on Class I property exceed eleven and  
25 twenty-five one hundredths cents ; on Class II property ex-  
26 ceed twenty-two and five-tenths cents ; and on Classes III  
27 and IV property exceed forty-five cents.

28       The relief provided for in this act shall be cumulative and  
29 nothing in this act shall repeal any law now existing with  
30 respect to laying or collecting tax levies.

## CHAPTER 177

(House Bill No. 217—By Mr. Bosworth)

AN ACT to authorize the county court of the county of Randolph, a corporation, and the board of education of the county of Randolph, a corporation, to appropriate and pay annually from their respective revenues a sum of money to be used jointly with the city of Elkins, a corporation, for the purpose of establishing, housing, equipping, and maintaining in Randolph county, with headquarters in the city of Elkins, West Virginia, a public library and museum, and to provide for the management of said public library and museum.

[Passed March 10, 1939; in effect from passage. Became a law without the approval of the Governor.]

### Section

1. Authorizing establishment and maintenance of Randolph county public library and museum.
2. Board of managers; appointment; duties and powers; title to real estate acquired.
3. Repeal of inconsistent acts.

*Be it enacted by the Legislature of West Virginia:*

Section 1. *Authorizing Establishment and Maintenance of Randolph County Public Library and Museum.* It shall be lawful for the county court of the county of Randolph, a corporation, and the board of education of the county of Randolph, a corporation, to appropriate and pay annually, beginning with the year one thousand nine hundred thirty-nine, from their respective revenues a sum of money to be used jointly with the city of Elkins, a corporation, for the purpose of establishing, housing, equipping, and maintaining in Randolph county, with headquarters in the city of Elkins, West Virginia, a public library and museum to be known as "The Public Library and Museum of Randolph County".

Sec. 2. *Board of Managers; Appointment; Duties and Powers; Title to Real Estate Acquired.* If such library and museum be established it shall be lawful to create a nonpartisan, nonpolitical library and museum board to

5 be known as the "Board of Managers of the Public  
6 Library and Museum of Randolph County", the mem-  
7 bers of which shall serve without compensation and shall  
8 be composed of nine persons, three of whom shall be ap-  
9 pointed by the county court of the county of Randolph,  
10 three by the board of education of the county of  
11 Randolph, and three by the council of the city of  
12 Elkins.

13 Said library and museum board shall organize and, sub-  
14 ject to the approval of the respective financing corporations,  
15 shall adopt and promulgate rules and regulations for the  
16 conduct of said library and museum; and shall administer  
17 the management of said library and museum and cause an  
18 annual report to be made of all matters pertaining to the  
19 conduct of said library and museum which shall be open to  
20 the public or published at the discretion of said library and  
21 museum board. The respective public corporations may pro-  
22 vide by agreement among themselves for all matters connected  
23 with such library and museum enterprise, and determine  
24 what items of cost and expense shall be paid by each thereof.  
25 Private collections donated to said library and museum shall  
26 be distinguished by name of the donor.

27 In the event that real estate be acquired by purchase for  
28 such library and museum, the legal title thereto shall be  
29 equally in each of such public corporations, save in the case  
30 • where all said public corporations do not join in any such  
31 purchase, in which event title shall be in the one purchas-  
32 ing, or, if two, in their respective names. And nothing herein  
33 shall be construed to forbid the acquisition of real estate  
34 for or in connection with such library and museum and its  
35 operation. Such public corporations may lawfully appro-  
36 priate funds for the acquisition of real estate.

Sec. 3. *Repeal of Inconsistent Acts.* All acts, and parts of  
2 acts inconsistent herewith, insofar as they apply to the county  
3 court of the county of Randolph, a corporation, and the board  
4 of education of the county of Randolph, a corporation, are  
5 hereby repealed.



## CHAPTER 178

(Senate Bill No. 264—By Mr. Fleming)

AN ACT to authorize the county court of Ritchie county to purchase a site for and to maintain a Four-H camp in said Ritchie county.

[Passed March 3, 1939; in effect from passage. Became a law without the approval of the Governor.]

### Section

1. Ritchie county court authorized to establish a Four-H camp.

*Be it enacted by the Legislature of West Virginia:*

- Section 1. *Ritchie County Court Authorized to Establish a*
- 2 *Four-H Camp.* The county court of Ritchie county is hereby
  - 3 authorized to expend from any available funds the amount of
  - 4 money which it deems necessary for the purpose of pur-
  - 5 chasing a site for and maintaining and improving a Four-H
  - 6 camp: *Provided, however,* That any site purchased must be
  - 7 located in Ritchie county.

## CHAPTER 179

(House Bill No. 75—By Mr. Starcher)

AN ACT to authorize the county court of Roane county to expend funds for the construction and maintenance of a Four-H camp and for the construction and maintenance of a community building in Roane county.

[Passed February 17, 1939; in effect from passage. Approved by the Governor.]

### Section

1. Roane county court authorized to expend funds for a Four-H camp and a community building.

*Be it enacted by the Legislature of West Virginia:*

- Section 1. *Roane County Court Authorized to Expend*
- 2 *Funds for a Four-H Camp and a Community Building.* The
  - 3 county court of Roane county may expend annually from the
  - 4 general county fund a sum not to exceed ten thousand dol-
  - 5 lars for the construction and maintenance of a county Four-H
  - 6 camp, and five thousand dollars for the construction and
  - 7 maintenance of a community building for Roane county.

## CHAPTER 180

(House Bill No. 119—By Mr. McNeer)

AN ACT to authorize the county court of Summers county to expend funds for purchase of a site for the location of a Four-H camp in Summers county.

[Passed February 16, 1939; in effect from passage. Approved by the Governor.]

### Section

1. Summers county court authorized to purchase site for Four-H camp.

*Be it enacted by the Legislature of West Virginia:*

- Section 1. *Summers County Court Authorized to Purchase Site for Four-H Camp.* The county court of Summers county is hereby authorized to expend, from any funds available, a sum not to exceed two thousand dollars for the purpose of purchasing a site for a suitable location for a Four-H camp; the above site to be located in Summers county.

## CHAPTER 181

(Senate Bill No. 135—By Mr. Allen)

AN ACT to permit the county court of Webster county, with the consent of the holders of certificates of indebtedness, to postpone the payment of such certificates, and to employ and use the levies therefor along with any surplus in said fund, existing or arising, in the construction of additions, repairs and reconditioning of the county courthouse and jail.

[Passed February 15, 1939; in effect from passage. Became a law without the approval of the Governor.]

### Section

1. Webster county court authorized to postpone payment of certificates of indebtedness.
2. Expenditure of contractual debt levies on courthouse and jail.
3. When levies to be laid for payment of certificates of indebtedness.

*Be it enacted by the Legislature of West Virginia:*

- Section 1. *Webster County Court Authorized to Postpone Payment of Certificates of Indebtedness.* The county court

3 of Webster county, by and with the consent of the holders  
4 of the certificates of indebtedness issued by said court,  
5 dated January first, one thousand nine hundred thirty-five,  
6 and payable June first, one thousand nine hundred thirty-  
7 nine, one thousand nine hundred forty, one thousand nine  
8 hundred forty-one, one thousand nine hundred forty-two,  
9 one thousand nine hundred forty-three, and one thousand  
10 nine hundred forty-four, respectively, under the provisions  
11 of chapter sixty-four, acts of the Legislature, second extra-  
12 ordinary session, one thousand nine hundred thirty-three,  
13 is hereby authorized and empowered to postpone the pay-  
14 ment of such certificates until the first of June, one thousand  
15 nine hundred forty-five, one thousand nine hundred forty-  
16 six, one thousand nine hundred forty-seven, one thousand  
17 nine hundred forty-eight and one thousand nine hundred  
18 forty-nine, respectively; and in order to obviate the neces-  
19 sity of making levies in any one fiscal year for the payment  
20 of both the certificates actually falling due that year and the  
21 certificates postponed for payment to that year, the said  
22 county court of Webster county is further authorized and  
23 empowered, by and with the consent of the holders of such  
24 certificates, to extend the payment of such certificates, the  
25 payment of which not having been theretofore postponed in  
26 accordance with this act, falling due in one thousand nine  
27 hundred forty-five and each successive year thereafter in  
28 which said certificates are payable, for a period of four years  
29 beyond the due date thereof; and interest shall be paid  
30 thereon at the rate provided for therein from the due date  
31 thereof until payment.

Sec. 2. *Expenditure of Contractual Debt Levies on Court-*  
2 *house and Jail.* The said county court of Webster county is  
3 hereby authorized and empowered to expend the amount to  
4 be levied by it for the fiscal years ending June thirty, one  
5 thousand nine hundred forty, one thousand nine hundred  
6 forty-one, one thousand nine hundred forty-two, one thou-  
7 sand nine hundred forty-three, and one thousand nine hun-  
8 dred forty-four, respectively, for contractual debt purposes.  
9 together with any other moneys now in the contractual debt  
10 fund as a balance therein from whatever source derived,  
11 in providing for the construction of additions and repairs to,  
12 and the reconditioning of the courthouse and jail of said

13 Webster county; and such moneys may be so expended in  
14 conjunction with any moneys allocated in aid of such pur-  
15 poses by the government of the United States, or any agency  
16 established by it, or independently thereof; and the said  
17 county court of Webster county is hereby further authorized  
18 and empowered, in order to have the present benefit of said  
19 future contractual debt levies, to pledge the same for the  
20 said years of one thousand nine hundred forty, one thousand  
21 nine hundred forty-one, one thousand nine hundred forty-  
22 two, one thousand nine hundred forty-three and one thou-  
23 sand nine hundred forty-four, respectively.

Sec. 3. *When Levies to be Laid for Payment of Certificates*  
2 *of Indebtedness.* The said county court of Webster county  
3 shall make provision for the payment of the certificates of in-  
4 debtedness, the payment of which may be postponed under  
5 the provisions of this act, by levies for the fiscal year ending  
6 June thirty, one thousand nine hundred forty-five, and every  
7 successive year thereafter to which the payment of said cer-  
8 tificates was postponed.

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## CHAPTER 182

(Senate Bill No. 290—By Mr. Anderson)

AN ACT to authorize the city of Welch to compromise and settle  
with the owners of unimproved properties the unpaid paving  
assessments due said city on said properties.

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[Passed March 9, 1939; in effect from passage. Became a law without the  
approval of the Governor.]

### Section

1. City of Welch authorized to settle certain unpaid paving assess-  
ments.

*Be it enacted by the Legislature of West Virginia:*

Section 1. *City of Welch Authorized to Settle Certain Un-*  
2 *paid Paving Assessments.* The city of Welch is hereby au-  
3 thorized to compromise and settle with the owners of unim-  
4 proved properties the unpaid paving assessments due said  
5 city on said properties in accordance with a resolution or  
6 ordinance now adopted or passed, or which may be hereafter  
7 adopted or passed.

## CHAPTER 183

(House Bill No. 459—By Mr. Jones, of McDowell)

AN ACT to authorize the city of Welch, McDowell county, West Virginia, to sell its present city hall.

[Passed March 9, 1939; in effect from passage. Became a law without the approval of the Governor.]

### Section

1. City of Welch authorized to sell city hall.

*Be it enacted by the Legislature of West Virginia:*

Section 1. *City of Welch Authorized to Sell City Hall.* The city of Welch, McDowell county, West Virginia, is hereby authorized to sell its present city hall in accordance with a resolution or ordinance, now adopted or passed, or which may be hereafter adopted or passed.

## CHAPTER 184

(House Bill No. 56—By Mr. Schupbach)

AN ACT to authorize the county court of Wetzel county to expend funds for purchase of a site for the location of a Four-H camp in Wetzel county.

[Passed January 24, 1939; in effect from passage. Approved by the Governor.]

### Section

1. Wetzel county court authorized to purchase site for Four-H camp.

*Be it enacted by the Legislature of West Virginia:*

Section 1. *Wetzel County Court Authorized to Purchase Site for Four-H Camp.* The county court of Wetzel county is hereby authorized to expend from any funds available, a sum not to exceed the amount of three thousand five hundred dollars for the purpose of purchasing a site for a suitable location for the future establishment of a Four-H camp; the above site to be located in Wetzel county.

# RESOLUTIONS

## HOUSE CONCURRENT RESOLUTION NO. 1

(BY MR. TAYLOR)

[Adopted January 11, 1939.]

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 2 o'clock P. M., this day to hear the biennial message of His Excellency, Governor Homer A. Holt.

## HOUSE CONCURRENT RESOLUTION NO. 2

(BY MR. SWANN)

(Originating in the Committee on Rules)

[Adopted January 23, 1939.]

Concerning parking space on the Capitol grounds for automobiles of members and tags for automobiles of members.

WHEREAS, Under H. C. R. No. 8, adopted at the regular session of the Legislature, one thousand nine hundred thirty-seven, the parking space upon the Capitol grounds on the north side of the State Capitol Building, between the two units, was reserved for the parking of cars of members of the Legislature; therefore, be it

*Resolved by the House of Delegates, the Senate concurring therein:*

That the Superintendent of Capitol Building and Grounds is hereby requested to have erected proper signs reserving this space for such parking, and to take such steps as may be necessary to keep other cars from being parked upon the space so reserved; and, be it

*Further Resolved*, That the State Road Commission be requested to have made at its tag plant, proper tags to be attached to the automobiles of the members of the Legislature, said tags to be issued by the Clerks of the two houses to members of the Legislature and its elected officers only.

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### HOUSE CONCURRENT RESOLUTION NO. 3

(BY MR. GEORGE)

[Adopted January 26, 1939.]

Authorizing the distribution of the West Virginia Blue Book to all public and private schools in the state.

*Resolved by the House of Delegates, the Senate concurring therein:*

That the Clerk of the Senate is hereby authorized to have printed additional copies of the 1938 edition of the West Virginia Blue Book sufficient to provide one copy for each high school, junior high school, grade school and private and parochial school in the State of West Virginia.

Books for distribution to these schools shall be delivered to the State Department of Education to be mailed by the department to the proper persons. The books placed in the libraries of the schools shall remain the property of the State of West Virginia, and a statement to this effect shall be printed on the books mailed to each school. Such books shall not be removed from the schools by any person. The cost of printing additional books authorized by this resolution shall be paid for in the same manner as such printing cost has heretofore been paid.

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### HOUSE CONCURRENT RESOLUTION NO. 6

(BY MR. JONES, of Tyler)

[Adopted January 25, 1939.]

Deploring the illness of the Honorable T. P. Hill.

WHEREAS, The Honorable T. P. Hill, a former member of the House of Delegates and the State Senate, has been ill for many months; and

WHEREAS, The Honorable T. P. Hill served both branches of the State Legislature with honor and distinction; and

WHEREAS, During the last forty years as statesman, scholar and teacher he has rendered expert service to the State of West Virginia and to the County of Tyler; and

WHEREAS, Tyler County and the State of West Virginia are grieved by the serious illness of the Honorable T. P. Hill; therefore, be it

*Resolved by the House of Delegates, the Senate concurring therein:*

That the illness of the Honorable T. P. Hill be deplored; and, be it

*Further Resolved*, That copies of this resolution be transmitted to members of the family of the Honorable T. P. Hill, and one copy to the Tyler Star News at Sistersville, West Virginia, and one copy to the Tyler County Journal at Middlebourne, West Virginia.

#### HOUSE CONCURRENT RESOLUTION NO. 18

(BY MR. BISHOFF)

[Adopted March 6, 1939.]

Concerning inspection rules of the West Virginia Department of Mines.

WHEREAS, The use of black pellet powder in the blasting of soft coal produces from five to ten per cent more lump coal than other explosives employed in mining, thereby enabling producers to meet customer demands for lump coal in the domestic markets and thereby giving increased employment to miners; and

WHEREAS, West Virginia's soft friable coal is in direct competition with coals of firmer structure produced in Ohio, Kentucky, Indiana and Illinois, which states in 1937 used 28,800,000 pounds of black powder in producing 140,000,000 tons of coal; and

WHEREAS, This has given to competitive states direct economic advantages over West Virginia in the production of lump coal; therefore, be it



*Resolved by the House of Delegates, the Senate concurring therein:*

That the West Virginia Department of Mines incorporate the following in its inspection rules:

“Black powder shall not be used in mines in which explosive gas or coal dust is known to have been present in dangerous quantities or in mines where accidents have occurred from use of black powder, injuring or endangering the lives of employees.

“Black pellet powder may be used in mines where no explosive gas or coal dust has been found in dangerous quantities and at which no accidents have occurred injuring or endangering the lives of employees from the use of black powder.”

#### HOUSE CONCURRENT RESOLUTION NO. 20

(BY MR. SPEAKER, MR. THOMAS)

[Adopted March 4, 1939.]

Deploring the untimely death of James B. Clendenin.

WHEREAS, Almighty God in His infinite wisdom has seen fit to remove from this earthly scene a great and beloved man; and

WHEREAS, With the passing of James B. Clendenin, editor and civic leader, West Virginia has been bereft of one of its truly selfless workers after truth and justice for all; and

WHEREAS, The death of this man has occasioned an irreparable loss in the life of our state; and

WHEREAS, To those who knew him no sentiment expressed by this Legislature could add to their knowledge of his ability or his greatheartedness; therefore, be it

*Resolved by the House of Delegates, the Senate concurring therein:*

That the passing of James B. Clendenin be deplored and mourned; and that it is the judgment of this Legislature that his place will not soon be filled; and, be it

*Further Resolved*, That copies of this resolution be forwarded by the Clerk of the House of Delegates to Mrs. James B. Clendenin, the *Huntington Herald-Dispatch* and the *Huntington Advertiser*.

## HOUSE CONCURRENT RESOLUTION NO. 21

(BY MR. MEREDITH)

[Adopted March 7, 1939.]

Granting permission to introduce a bill authorizing the Board of Education of the County of Marion to improve its athletic field.

*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 a bill with the following title:

“A Bill to authorize the board of education of the county of Marion to improve its athletic field known as South Side Park in the city of Fairmont, by constructing a stadium and other facilities for the use of the public at athletic games and other educational entertainments and events; to accept therefor a donation of one hundred fifty thousand dollars from the Works Progress Administration or other federal agency; to receive advancements not in excess of twenty-five thousand dollars from the citizens of Marion county toward the completion of the proposed improvements; to secure the refund of such advancements by entering into an agreement with the Fairmont Athletic association whereby said association shall have the management of said athletic field until said advancements shall have been refunded; but in no event to exceed ten years, with authority to conduct and schedule athletic games and other educational entertainments and events, and to determine and collect reasonable charges or fees for the use of the athletic field and facilities, and after the payment of the necessary expenses, to pay annually not less than fifty per cent of the net receipts to the refund of said advancements, the remainder of the net receipts to be paid to said board of education; to require an accounting from said association to be annually filed with said board of education; to fix the membership of Fairmont Athletic association, and to provide that a majority of its members shall have authority to conduct its affairs.”

## HOUSE CONCURRENT RESOLUTION NO. 22

(BY MR. GEORGE)

[Adopted March 8, 1939.]

Authorizing the Governor to appoint a commission to consider

the advisability of placing a memorial on the battlefield at Philippi.

*Resolved by the House of Delegates, the Senate concurring therein:*

That the Governor is hereby authorized to appoint a commission of three members of the House of Delegates and two members of the Senate to consider the advisability of the state placing a memorial on the battlefield of the first land engagement of the Civil War, which occurred at Philippi, in Barbour county, June 3, 1861.

#### HOUSE CONCURRENT RESOLUTION NO. 24

(BY MR. JONES, of Tyler)

[Adopted March 8, 1939.]

Deploring the death of Stephen G. Pyle.

WHEREAS, The Honorable Stephen G. Pyle, a former member of this body has passed on to his eternal classification; and

WHEREAS, His life has been devoted to public welfare as a statesman, teacher and industrial leader; and

WHEREAS, He has contributed to the civic and religious life of this state; therefore, be it

*Resolved by the House of Delegates, the Senate concurring therein:*

That the death of the Honorable Stephen G. Pyle be mourned and deplored, and that copies of this resolution be sent to members of his family, the Tyler Star News and the Tyler County Journal.

#### HOUSE CONCURRENT RESOLUTION NO. 25

(BY MR. JONES, of McDowell)

[Adopted March 9, 1939.]

Providing for the introduction of a bill.

*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 city of Welch, McDowell county, West Virginia, to sell its present city hall.”

### HOUSE CONCURRENT RESOLUTION NO. 26

(BY MR. SPEAKER, MR. THOMAS)

[Adopted March 11, 1939.]

Creating an interim legislative committee for the purpose of studying and reporting to the Governor and to the Legislature its findings and recommendations relative to the legislative problems herein set forth.

WHEREAS, This regular session of the Legislature is now drawing to a close and for the lack of time there are a number of important legislative matters that will not be considered at this session; and

WHEREAS, Some of these problems require extensive study and preparation and are not susceptible of careful study during the time prescribed by the constitution for the regular legislative session; and

WHEREAS, The work of this regular session of the Legislature has demonstrated the efficiency and utility of interim study of complex governmental problems; and

WHEREAS, Among such problems are those relating to:

A plan of determination of claims and grievances against the state and its agencies;

The permanent registration of voters;

The non-partisan election of school board members;

The selection and tenure of public employees;

The classification of highways and limitation of loads thereon;

Laws relating to the redemption or sale of delinquent and forfeited lands;

Enabling legislation for the Judiciary Amendment, in the event

of its adoption; and for other constitutional amendments proposed at this session that may be adopted;

The financing of secondary road construction and maintenance; therefore, be it

*Resolved by the House of Delegates, the Senate concurring therein:*

That an interim legislative committee, to consist of fourteen members of the Legislature, including the President of the Senate and five members of the Senate to be appointed by the President thereof, and including the Speaker of the House of Delegates and seven members of the House of Delegates to be appointed by the Speaker thereof, is hereby created to study the subjects and problems set forth in the preamble of this resolution, and such other subjects and problems as may be requested by the Governor or as the committee may find necessary or desirable, and to make a report or reports to the Governor and to the Legislature prior to the convening of the next regular session of the Legislature or at such times as in the opinion of the Governor the public needs may require; and, be it

*Further Resolved.* That in obtaining the necessary information to carry out the intent and spirit of this resolution, the committee is empowered to call upon any of the departments of the state government, to summon witnesses, and to take testimony and to cause the production of such papers, documents, records, and the like as the committee may deem pertinent; and, be it

*Further Resolved.* That the committee is authorized and empowered to employ such clerical, advisory, and stenographic assistance as it may deem necessary and advisable; and, be it

*Further Resolved.* That the committee is hereby authorized to meet in the city of Charleston or elsewhere, as it may determine, the expenses of the members of the committee, and the per diem of such clerical, advisory and stenographic assistance as the committee may employ, to be fixed by the committee and paid proportionately with reference to membership from the contingent funds of the Senate and the House of Delegates upon certificate of the chairman of said committee.

## HOUSE CONCURRENT RESOLUTION NO. 27

(By MR. CALVERT)

(Originating in the Committee on Rules)

[Adopted March 11, 1939.]

Authorizing the printing and distribution of the acts of the Legislature, regular session, one thousand nine hundred thirty-nine.

*Resolved by the House of Delegates, the Senate concurring therein:*

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 four thousand advance copies of the acts of this session of the Legislature, headnoted in accordance with the form and style of headnoting used in the code of West Virginia, one thousand nine hundred thirty-one, 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 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 distribution. 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 remainder, if any, shall be delivered to the superintendent of public printing for distribution by him. When the bound volumes of the acts are completed, ten copies of same shall be mailed to each member of the Legislature.

The Clerks of the two Houses are also authorized and directed to have printed in signature form for advance sheets, any general

law which they 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 three hundred dollars is hereby directed to be paid by the Auditor from the Contingent Fund of the House of Delegates upon proper requisitions of the Clerk of the House of Delegates, and the sum of one hundred fifty dollars out of the Contingent Fund of the Senate upon proper requisitions of the Clerk of the Senate.

For the work required in printing and distributing advance 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 following assistants to the Clerk and other employees and attaches of the House of Delegates is extended for the time herein set out, at the same per diem as paid during this regular session of the Legislature; to-wit:

The stenographer to the Clerk, the secretary to the Speaker, one senior assistant clerk, a Journal clerk, a Journal stenographer, a supervisor of printing is extended for ninety days; two assistant clerks, eight clerks, five proofreaders and one stenographer is extended for sixty days.

The Clerk of the House of Delegates shall draw his requisitions upon the Auditor in favor of the persons appointed under authority of the foregoing provisions of this resolution, and entitled to per diem, for consecutive days until such time as their services cease, and the Auditor shall honor and pay such requisitions when presented and charge same to the Contingent Fund of the House of Delegates.

For assisting in the preparation and printing of said acts, the time of the Clerk of the Senate, at twenty dollars per diem, two assistant clerks at twelve dollars per diem each, one Journal stenographer at nine dollars per diem, and five printing clerks at eight dollars per diem each, respectively, is extended for sixty days.

The Clerk of the Senate shall draw his requisitions in favor of the persons appointed under authority of this resolution on the part of the Senate, for consecutive days until such time as their services cease, and the Auditor shall honor and pay such requisitions when presented and charge same to the Contingent Fund of the Senate.

The President of the Senate and the Speaker of the House of Delegates shall have authority to remove any person given an extension of per diem under authority of this resolution, except elective officers of the Senate and the House of Delegates, on the part of their respective bodies, and to appoint another in his place, or to fill any vacancy that may occur.

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### HOUSE CONCURRENT RESOLUTION NO. 28

(BY MR. STROUSS)

[Adopted March 11, 1939.]

Raising a joint committee to notify His Excellency, the Governor, that the Legislature is ready to adjourn *sine die*.

*Resolved by the House of Delegates, the Senate 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 His Excellency, the Governor, that the Legislature has completed its labors, is ready to adjourn *sine die*, and inquire of him if he has any further communication to make to the Legislature.

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### HOUSE JOINT RESOLUTION NO. 1

(BY MR. SPEAKER, MR. THOMAS)

[Adopted February 9, 1939.]

Proposing an amendment to the constitution of the state, amending article eight thereof, relating to the judicial department.

*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 the state 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 forty, which proposed amendment is as follows:



That article eight of the constitution of the state of West Virginia be amended so as to read as follows:

**Article 8. Judicial Department.**

Section 1. *Judicial Department.* The judicial power of the state shall be vested in a supreme court of appeals, in circuit courts, in such inferior courts and tribunals as are herein authorized, and in the judges of each of said courts and tribunals.

Sec. 2. *Supreme Court of Appeals.* The supreme court of appeals shall consist of five judges. They shall be elected by the voters of the state and shall hold office for the term of twelve years, unless sooner removed in a manner prescribed by this constitution. They shall receive such salaries as may be fixed by law, and the salary of no judge shall be diminished during the term for which such judge shall have been elected. Any judge in office when this article takes effect shall continue in office until his term shall expire, unless sooner removed in a manner prescribed by this constitution. A majority of the judges of such court shall be a quorum for the transaction of business.

Sec. 3. *Provisions for Filling Supreme Court Vacancies.* If from any cause a vacancy shall occur in the supreme court of appeals, the governor shall issue a writ of election to fill such vacancy at the next general election for the residue of the term; and in the meantime, he shall fill such vacancy by appointment until a judge shall be elected and qualified. But if the unexpired term be less than two years, the governor shall fill such vacancy by appointment for the unexpired term. The Legislature shall make provision by law for selection of a substitute judge to act in lieu of any judge of such court during his temporary incapacity to perform the duties of his office and shall fix the compensation of such substitute judge.

Sec. 4. *Scope of Jurisdiction of Supreme Court of Appeals.* The supreme court of appeals shall have original jurisdiction in cases of habeas corpus, mandamus, prohibition and certiorari. It shall have appellate jurisdiction in civil cases where the matter in controversy, exclusive of interest and costs, is of greater value or amount than three hundred dollars; in controversies concerning the title or boundaries of land, the probate of wills, or the appointment or qualification of a personal representative, guardian, com-

mittee or curator; in controversies concerning a mill, road, way, ferry, or landing, or concerning the right of a corporation or county to levy tolls or taxes; in cases of quo warranto, habeas corpus, mandamus, certiorari, and prohibition; and in cases involving freedom or the constitutionality of a law. It shall have appellate jurisdiction in criminal cases where there has been a conviction of a felony or a misdemeanor in a circuit court, and such appellate jurisdiction where there has been a conviction in a criminal case in an inferior court as may be conferred upon it by law. It shall have such other appellate jurisdiction, in both civil and criminal cases, as may be prescribed by law. It shall have general supervisory control over all circuit and inferior courts and tribunals under such regulations as may be prescribed by law. In cases relating to the public revenue, whether civil or criminal, the right of appeal shall belong to the state as well as the defendant.

*Sec. 5. Writ of Error, Supersedeas and Appeals; Scope and Form of Decisions.* A writ of error, supersedeas, or appeal for review by the supreme court of appeals of any action, suit or proceeding shall be allowed only by the supreme court of appeals, or a judge thereof, upon a petition assigning error in the judgment, decree or procedure of the circuit or inferior court, and then only after said court or judge shall have examined and considered the record and assignment of errors and shall be satisfied that there is error in such judgment, decree or procedure, or that the record presents a point proper for the consideration of the supreme court of appeals.

No decision rendered by the supreme court of appeals shall be considered as binding upon any of the circuit or inferior courts of the state, except in the particular case decided, unless at least three judges of said court concur therein.

When a judgment or decree is reversed, modified or affirmed by the supreme court of appeals, every point fairly arising upon the record shall be considered and decided; the reasons therefor shall be concisely stated in writing and preserved with the record; and it shall be the duty of the court to prepare a syllabus of the points adjudicated in each case in which at least three judges of said court concur. The syllabus shall be prefixed to the published report of the case.

*Sec. 6. Officers of the Supreme Court of Appeals.* The officers

of the supreme court of appeals, except the reporter, shall be appointed and may be removed by the court or, in vacation of the court, by the judges thereof. Their duties and compensation shall be prescribed by law.

Sec. 7. *Terms of Supreme Court of Appeals.* At least two terms of the supreme court of appeals shall be held annually at such times and places as may be prescribed by law.

Sec. 8. *Circuit Courts and the Judges and Terms Thereof.* The existing judicial circuits shall remain as they are until changed by law, but the Legislature may rearrange the circuits at any session thereof next preceding any general election of the judges of said circuits, and may increase or diminish the number thereof. A judge of a circuit court in office at the time of any such change shall continue a judge of the circuit in which he shall reside after such change until the expiration of the term for which he shall have been elected, unless sooner removed in a manner prescribed by this constitution.

The judges shall be elected in each circuit by the voters thereof. The number of judges to be elected in each circuit shall be in proportion to the population of the circuit to be determined by the latest official census of the United States. The Legislature shall determine the proportion, which shall be as nearly as practicable uniform for all the circuits in the state. Each of the judges so elected shall hold office for the term of eight years, unless sooner removed in a manner prescribed by this constitution, but the Legislature shall, if necessary, fix at less than eight years the first term of the first judge elected to fill any newly created circuit judgeship in order that the terms of all circuit judges may expire at the same time. A vacancy in the office of judge of the circuit court shall be filled in the same manner as a vacancy in the office of judge of the supreme court of appeals. During his continuance in office, a judge of a circuit court shall reside in the circuit of which he is a judge. Any judge of a circuit court in office when this article takes effect shall continue in office until his term expires, unless sooner removed in a manner prescribed by this constitution.

At least three regular terms of the circuit court shall in each year be held in every county in the state. Provision by law may be made for holding special terms of the circuit court. Provision by law

may also be made for holding regular and special terms thereof when, from any cause, a judge shall fail to attend or cannot properly preside. A judge of any circuit may be authorized by the Legislature or may be authorized or required by the supreme court of appeals to hold court in any other circuit. Until action is taken by the supreme court of appeals, the Legislature shall by law make provision for dividing the business of those circuits in which there shall be more than one judge among the judges thereof so as to promote and secure the convenient and expeditious transaction of such business.

*Sec. 9. Jurisdiction of Circuit Courts.* The circuit courts shall have supervision and control of all proceedings before all inferior tribunals in their respective counties by mandamus, prohibition and certiorari. They shall, except in cases confined exclusively by this constitution to some other tribunal, have original and general jurisdiction of all matters at law where the amount in controversy, exclusive of interest and costs, exceeds two hundred dollars; of all cases of habeas corpus, mandamus, quo warranto and prohibition; and of all crimes and misdemeanors. They shall have exclusive, original and general jurisdiction in all cases in equity. They shall have appellate jurisdiction in all cases, civil and criminal, where an appeal, writ of error, or supersedeas may be allowed to the judgment or proceedings of any county court, summary court, or inferior tribunal. The circuit courts shall have all judicial power, authority, and jurisdiction not vested by this constitution or by the laws consistent therewith in some other court or tribunal. They shall also have such other jurisdiction, whether supervisory, original, appellate, or concurrent, as is or may be prescribed by law.

*Sec. 10. General Provisions Relating to Judges.* All judges of the supreme court of appeals and of the circuit courts shall be commissioned by the governor and shall receive such salaries as may be fixed by law. The salary of no judge shall be diminished during the term for which he shall have been elected. Such judges may receive the mileage provided by law. No judge, during his term of office, shall practice the profession of law; nor shall he hold any other office than that of judge, or accept any appointment or public trust, under this or any other government, except as provided by law; nor shall he, during his continuance in office, be eligible to any political office, or become a candidate for any elective

office or nomination thereto, except a judicial office; and the violation of any of these provisions shall vacate his office.

Sec. 11. *How Judges May be Removed from Office.* Any judge of the supreme court of appeals or of a circuit court may be removed from office by a vote of two-thirds of the members elected to each house of the Legislature, each house voting separately, when from age, disease, mental or bodily infirmity, or intemperance, he is incapable of discharging the duties of his office. No judge shall be removed by virtue of this section unless he shall have had an opportunity to be heard in a joint meeting of both houses, nor unless he shall have received notice of the proceeding, with a statement of the cause or causes alleged for his removal, at least twenty days before the day on which action is taken. Such notice may be given only upon the vote of a majority of the members of each house present. In case of removal, a statement of the cause or causes of removal shall be entered upon the journal of each house.

Sec. 12. *Clerks of Circuit Courts.* The voters of each county shall elect a clerk of the circuit court, whose term of office shall be six years. His duties and compensation and the manner of removing him from office shall be prescribed by law. He may be required by law to perform duties in addition to those pertaining to his office as clerk of the circuit court. When a vacancy shall occur in the office, the circuit court or the judge or judges thereof in vacation shall fill the same by appointment until the next general election. If the vacancy shall not be filled within ten days, then it shall be filled by the governor by appointment. In any case in respect to which the clerk shall be so situated as to make it improper for him to act, the said court shall appoint a clerk to act therein. The clerks of said courts in office when this article takes effect shall remain therein for the term for which they were elected, unless sooner removed in the manner prescribed by law.

Sec. 13. *Summary Courts.* The Legislature shall establish in each county in the state a summary court. The Legislature shall determine the number of judges to be elected for each summary court and may provide for the election of one or more judges to preside over the summary courts of two or more contiguous counties. Each summary judge shall be elected by the voters of the county or counties in which he shall preside. Each of the judges so elected shall hold his office for the term of four years, unless

sooner removed in a manner prescribed by this constitution. No person shall be entitled to hold the office of summary judge unless at the time of his election and during his continuance in office he be a resident of the county or of one of the counties for which he is elected. The minimum age requirement for a judge of the summary court shall be twenty-five years, but nothing herein contained shall be construed as requiring that a summary judge be a lawyer. A summary judge shall be commissioned by the governor, shall receive such salary, allowance and mileage as may be fixed by law, which shall not be increased or diminished during the term for which he shall have been elected, and shall be paid, in the manner prescribed by law, by the county or counties for which he shall have been elected. Except as provided by law, no judge, during the term of his office, shall practice the profession of law; nor, except as provided by law, shall he hold any other office than that of judge, or accept any appointment or public trust, under this or any other government; nor shall he, during his continuance in office, be eligible to any political office, or become a candidate for any elective office or nomination thereto, except a judicial office; and the violation of any of these provisions shall vacate his office. A summary judge may be removed from office by the supreme court of appeals when from age, disease, mental or bodily infirmity, or intemperance, he is incapable of discharging the duties of his office. The procedure for such removal shall be prescribed by law. Any judge against whom a proceeding for removal from office is to be instituted shall, prior thereto, receive reasonable notice of the cause, or causes, alleged for such removal.

In those counties where there shall be more than one summary judge, the Legislature shall, until action is taken by the supreme court of appeals, make such provision for the distribution, assignment and conduct of the business of such court as shall promote and secure the convenient and expeditious transaction thereof. A summary judge shall not be absent from his official duties except as may be prescribed by law. Provision shall be made by law for the conduct of the business of a summary court in cases where it is improper for a summary judge to act, or when he is absent, or when, for any reason, he cannot exercise the jurisdiction of such court, and for filling a vacancy in the office of summary judge.

The jurisdiction of a summary court shall extend throughout the

county, shall be uniform for all counties of the state, and shall be subject to such regulations as to the venue of actions and the counties in which process may be executed or served on parties or witnesses as may be established by law. Times and places for holding such court may be regulated by law, but, in the absence of such regulation, such court may be held at any time and anywhere within the county.

Summary courts shall have such jurisdiction, original or appellate, in criminal matters as may be prescribed by law. In criminal cases, the procedure may be by information or warrant of arrest, without presentment or indictment by a grand jury. They shall have original jurisdiction in all civil actions at law wherein the amount in controversy or the value of personal property in controversy, or the aggregate of such amount and value, exclusive of interest and costs, shall not exceed five hundred dollars, except such actions as may be excluded from their jurisdiction by law; and in actions of unlawful detainer of real estate when the title thereto is not in controversy.

Appeals or writs of error shall lie from the judgments of a summary court to the circuit court of the county, and writs of error shall lie from the supreme court of appeals to judgments of a summary court, in such cases and in such manner as may be prescribed by law.

No judgment of a summary court in any action involving real estate or any right pertaining thereto shall bar the title of any party or any remedy therefor; and no person shall be put in jeopardy of life or liberty for a felony in such court.

A trial jury in a summary court shall consist of six jurors.

Sec. 14. *Municipal Courts.* The Legislature may provide for the establishment in any incorporated city, town or village of a municipal, police or mayor's court, which shall have jurisdiction to enforce municipal ordinances, subject to appeal to the circuit court. All such courts heretofore established shall, until otherwise provided by law, remain as at present constituted insofar as their jurisdiction to enforce municipal ordinances is concerned, but any other jurisdiction now exercised by such a court shall cease with the expiration of the term of office of the judge thereof.

Sec. 15. *Jurisdiction and Terms of Office of Superseded Courts, Judges and Justices; Transfer of Causes.* The terms of office of all justices of the peace and constables, elected or appointed, and qualified and serving at the time of the adoption of this article, are hereby extended to and including the thirty-first day of December, in the year one thousand nine hundred forty-two. A vacancy appointment of a justice of the peace or constable, made after this article is adopted, shall terminate on the thirty-first day of December, in the year one thousand nine hundred forty-two. No justice of the peace shall hold office after the thirty-first day of December in the year one thousand nine hundred forty-two; nor shall a judge of an inferior court of record of limited jurisdiction elected to the office in the year one thousand nine hundred forty hold office after the thirty-first day of December in the year one thousand nine hundred forty-four. Otherwise, the adoption of this article shall not affect the term of office, or the jurisdiction during such term, of a judge of any inferior court of record of limited jurisdiction in office, or elected to office, at the time when this article takes effect, or the jurisdiction of such court during such term of office; or the term of office, or the jurisdiction during such term, of any justice of the peace in office, or elected to office, at such time. All actions, suits and proceedings pending in any inferior court of record of limited jurisdiction in any county at the time when the jurisdiction of such court shall cease with the expiration of the term of office of the judge thereof shall be transferred to the circuit court of the county and be prosecuted therein as if originally instituted in such circuit court. Whenever the jurisdiction of any justice of the peace shall cease with the expiration of his term of office, all matters then pending before him shall be transferred to the summary court of the county, if it has jurisdiction thereof; otherwise, to the circuit court of the county. After such transfer, such matters shall be disposed of in the summary court or the circuit court as if originally pending therein.

Sec. 16. *Issuance of Writs, Warrants, and Process; Admission to Bail.* The Legislature may designate courts, tribunals or officers who shall have the power to issue such writs, warrants and other process as may be prescribed by law; may provide for the selection of other persons for the purpose of exercising such powers; and may specify before what courts, tribunals, officers, or persons such writs, warrants or other process shall be returnable. The



Legislature may also designate courts, tribunals, or officers who shall have the power to admit persons to bail and may provide for the selection of other persons for the purpose of exercising such power. The powers mentioned in this section shall be exercised under such regulations as shall be prescribed by law; but no person exercising such powers shall be compensated therefor on a fee basis.

Sec. 17. *Parts of Common Law Effective; Matters Pending in Circuit Courts.* Such parts of the common law and of the laws of this state as are in force when this article goes into operation, and are not repugnant thereto, shall be and continue the law of the state until altered or repealed by the Legislature. All civil and criminal suits and proceedings pending in the circuit courts of this state shall remain and be prosecuted in the circuit courts of the counties in which they are pending.

Sec. 18. *County Courts.* Except as otherwise provided in this article, there shall be in each county in the state a county court composed of three commissioners. Two of said commissioners shall be a quorum for the transaction of business. Four regular sessions of said court shall be held in each year, at such times as may be fixed and entered of record by the said court. Provision may be made by law for holding special sessions of said court.

Sec. 19. *County Commissioners.* The commissioners shall be elected by the voters of the county and shall hold their office for the term of six years, except that, at the first meeting of said commissioners, if all shall have been elected at the same time, they shall designate by lot, or otherwise, in such manner as they may determine, one of their number who shall hold his office for the term of two years, one for four years, and one for six years, so that one shall be elected every two years. No two of said commissioners shall be elected from the same magisterial district. If two or more persons residing in the same district shall receive the greater number of votes cast at any election, then only the one of such persons receiving the highest number shall be declared elected, and the person residing in another district who shall receive the next highest number of votes shall be declared elected. A commissioner in office at the time when this article takes effect shall remain therein until the expiration of his term of office, unless sooner removed in the manner provided by this constitution. Said commissioners shall annually elect one of their number president. Each

commissioner shall receive such salary as may be prescribed by law and no commissioner shall receive for his services, other than such salary, any reward, compensation or benefit out of public funds; nor shall he be interested in any contract with the county.

Sec. 20. *Powers of County Courts.* The county courts, through their clerks, except as may be otherwise provided by law, shall have the custody of all deeds and other papers presented for record in their counties, and the same shall be preserved therein, or otherwise disposed of, as prescribed by law. They shall, under such regulations as may be prescribed by law, have the superintendence and administration of the internal police and fiscal affairs of the county, including, where such functions are not required by law to be performed by some other agency, the establishment and regulation of roads, ways, bridges, public landings, ferries and mills, and shall have authority to lay and disburse county levies; but no license for the sale of intoxicating liquors in any incorporated city, town or village shall be granted without the consent of the municipal authorities thereof first had and obtained. They shall, in all cases of contest, judge of the election, qualification and return of their own members, and of all county and district officers, subject to such regulations, by appeal or otherwise, as may be prescribed by law. Such courts may exercise such other powers, and perform such other duties, not of a judicial nature, as may be prescribed by law. Such tribunals as have been heretofore established by the Legislature and are now in existence under and by virtue of the thirty-fourth section of the eighth article of the constitution of one thousand eight hundred seventy-two, for police and fiscal purposes, shall, until otherwise provided by law, remain and continue as at present constituted in the counties in which they have been respectively established, and shall be and act as to police and fiscal matters in lieu of the county court created by this article until otherwise provided by law. And, until otherwise provided by law, such clerk as is mentioned in the twenty-second section of this article shall exercise any powers and discharge any duties heretofore conferred on, or required of, any court or tribunal established for judicial purposes, under said article and section of the constitution of one thousand eight hundred seventy-two, or the clerk of such court or tribunal, respectively, respecting the recording and preservation of deeds and other papers presented for record.

Sec. 21. *Jurisdiction in Matters of Probate, etc.* Jurisdiction in all matters of probate, the appointment and qualification of a personal representative, guardian, committee, or curator, and the settlement of their accounts, and in the matter of apprentices, shall be in such courts or tribunals and the clerks thereof as may be prescribed by law, such jurisdiction to be exercised by such courts, tribunals or clerks, respectively, to the extent and in the manner to be prescribed by law; but, until the Legislature shall provide otherwise, jurisdiction in all such matters shall remain in the county courts and the clerks thereof, under such regulations as are now or may be hereafter prescribed by law. Should jurisdiction in such matters be changed, provision shall be made by law for the transfer of all such matters then pending in the county courts to the courts or tribunals to which such jurisdiction shall have been transferred, and such disposition shall be made of records and papers in the offices of clerks of the county courts relating to matters of probate, the appointment and qualification of personal representatives, guardians, committees, and curators and the settlement of their accounts, and in the matter of apprentices, as shall be prescribed by law.

Sec. 22. *Clerk of the County Court.* Except as otherwise provided by law, the voters of each county shall elect a clerk of the county court, whose term of office shall be six years. His duties and compensation and the manner of his removal from office shall be prescribed by law. The clerks of said courts now in office shall remain therein for the terms for which they have been elected, unless sooner removed therefrom in the manner prescribed by law.

Sec. 23. *Districting of Counties.* Each county shall be laid off into districts, not less than three nor more than ten in number, and as nearly equal as may be in territory and population. The districts as they now exist shall remain until changed by the county court.

Sec. 24. *Re-formation of County Courts.* The Legislature shall, upon the application of any county, reform, alter or modify the county court established by this article in such county, and, in lieu thereof, with the assent of a majority of the voters of such county voting at an election, create another tribunal for the transaction of the business required to be performed by the county court created

by this article; and in such case, all the provisions of this article in relation to the county court shall be applicable to the tribunal established in lieu of said court. Any such tribunal now established, or which shall be established, shall continue to act in lieu of the county court until otherwise provided by law.

Sec. 25. *Vacancies in Offices.* Vacancies in the office of a commissioner and in the office of the clerk of the county court in any county shall be filled by the county court of the county until the next general election. If there be at the same time in the same county more than one vacancy in the office of commissioner, such vacancies shall be filled by the governor by appointment until the next general election.

Sec. 26. *Office of Constable Abolished.* The provisions of section thirteen of article six and the provisions of sections two and seven of article nine of this constitution, to the extent only that they provide for the office of constable, are hereby repealed after the thirty-first day of December in the year one thousand nine hundred forty-two.

#### HOUSE RESOLUTION NO. 1

(BY MR. AMOS)

[Adopted January 11, 1939.]

Adopting rules for the House of Delegates.

*Resolved by the House of Delegates:*

That the rules of the House of Delegates for the regular session, one thousand nine hundred thirty-seven, as amended at that session, shall govern the proceedings of this House, pending a report from the Committee on Rules, hereafter to be appointed.

#### HOUSE RESOLUTION NO. 2

(BY MR. WHITE)

[Adopted January 11, 1939.]

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 the Honorable James Kay Thomas as Speaker and the Honorable John S. Hall as Clerk, and is ready to proceed with the business of the session.

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HOUSE RESOLUTION NO. 3

(BY MR. SHINN)

[Adopted January 11, 1939.]

Raising a committee to wait upon the Governor.

*Resolved by the House of Delegates:*

That a committee of three members be appointed by the Speaker, on the part of the House of Delegates, to join with the committee on the part of the Senate to notify the Governor of the State of West Virginia that a quorum of each House has assembled and has organized by the election of officers as required by the Constitution, and that the Legislature is ready to receive any communication that he may be pleased to make.

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HOUSE RESOLUTION NO. 5

(BY MR. BROTHERTON)

[Adopted January 17, 1939.]

Providing for the appointment of a delegation to attend the Fourth General Assembly at Washington, D. C.

WHEREAS, The Fourth General Assembly will be held at the Mayflower Hotel, Washington, D. C., Wednesday, Thursday and Friday, January 18, 19 and 20, 1939, to deliberate upon important interstate problems requiring cooperative action by the states with each other, and with the federal government; and

WHEREAS, It is believed that substantial benefits would result from this state's representation at the Fourth General Assembly, and that such Assembly offers a means of surmounting obvious difficulties arising in governmental activities due to the absence of facilities for conference between governmental units; and

WHEREAS, The House of Delegates of this state is invited to send

delegates to this Assembly, which delegation shall be entitled to one vote; therefore, be it

*Resolved by the House of Delegates:*

That the Speaker is hereby authorized and instructed to appoint three members of the House of Delegates as a delegation to the Fourth General Assembly, which convenes in Washington, D. C., on January 18, 1939. Such delegation shall be and is hereby instructed to return to this body and report the definite recommendations of the Fourth General Assembly. Such delegation shall be without power to commit the House of Delegates to action; and, be it

*Further Resolved*, That the said delegation be entitled to reimbursement for its reasonable expenses out of the contingent fund of the House of Delegates upon proper requisitions of the Clerk; and, be it

*Further Resolved*, That the Clerk of the House of Delegates immediately notify the Council of State Governments, Drexel Avenue and Fifty-eighth Street, Chicago, Illinois, of the appointment of such delegation.

## HOUSE RESOLUTION NO. 6

(BY MR. SHINN)

[Adopted January 17, 1939.]

Providing for a mailing list for House Journals.

*Resolved by the House of Delegates:*

That the Clerk of the House of Delegates is hereby authorized to have mailed from the House document room, copies of the daily Journal of the House to lists of persons to be furnished to the Clerk by the members of the House of Delegates, such lists not to exceed twelve names from each Delegate; and the expense of such mailing, including postage, shall be paid by the Auditor out of the contingent fund of the House of Delegates, in advance of the appropriation therefor, upon proper requisitions of the Clerk. All such mail shall bear the stamp of the Clerk of the House of Delegates, and the Clerk shall designate such persons as are to deliver such

mail to the Central Mailing Office and notify the postmaster of such designation, and said office shall not accept mail from any person or persons other than those so designated by the Clerk; and, be it

*Further Resolved*, That the Clerk is also authorized to mail copies of bills and other documents printed by the House to persons requesting the same.

### HOUSE RESOLUTION NO. 7

(BY MR. MATTHEWS)

[Adopted January 17, 1939.]

Authorizing the Clerk to compile and publish a Legislative Manual.

*Resolved by the House of Delegates:*

That the Clerk is hereby authorized to compile and have printed, without delay, a Legislative Manual containing the rules of the Senate and the House of Delegates, the joint rules of the Senate and the House of Delegates, and such other matter and material as he may deem to be useful and convenient for members of the Legislature.

### HOUSE RESOLUTION NO. 8

(BY MR. CALVERT)

[Adopted January 16, 1939.]

Deploring the death of Mrs. Tom Gates.

WHEREAS, The House of Delegates has learned with profound sorrow and deep regret of the death on January 12, 1939, of Mrs. Tom Gates, a member of this body in the 1923 session, and who was the first woman to be elected to the West Virginia Legislature; therefore, be it

*Resolved by the House of Delegates:*

That the Clerk transmit a copy of this resolution to the family of the deceased.

## HOUSE RESOLUTION NO. 9

(BY MR. BROTHERTON)

[Adopted January 18, 1939.]

Authorizing payment of expenses of delegate to Interstate Commission on Crime.

WHEREAS, The Interstate Commission on Crime held its annual meeting at Cleveland, Ohio, July 21, 22 and 23, 1938; and

WHEREAS, The Honorable Fred L. Doring, a member of the Interstate Commission on Crime, attended said meeting and incurred certain expenses; therefore, be it

*Resolved by the House of Delegates:*

That the Clerk is hereby authorized to draw his requisition upon the Auditor in favor of Mr. Doring in the amount of forty-three dollars and sixteen cents, payable from the contingent fund of the House of Delegates, in advance of the appropriation for the purpose, for necessary traveling expenses in attending said meeting of the Interstate Commission on Crime.

## HOUSE RESOLUTION NO. 10

(BY MR. STROUSS)

(Originating in the Committee on Rules)

[Adopted January 19, 1939.]

Authorizing the appointment of attaches for the House of Delegates 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 of the Legislature:

(1) For the Clerk's office the following:

Two record clerks at seven dollars per day;

Two rollcall clerks at seven dollars per day;

Ten proofreaders at eight dollars per day;



Eight copyholders at seven dollars per day;

One supervisor of printing at ten dollars per day;

One payroll and supply clerk at ten dollars per day;

One clerk and one assistant clerk to the Committee on Enrolled Bills at eight and seven dollars per day, respectively;

One messenger at seven dollars per day;

Two stenographers at eight dollars per day;

One Journal clerk at twelve dollars per day;

One Journal stenographer at ten dollars per day;

(2) For other offices and positions, the following:

One Chaplain at five dollars per day;

One clerk, one assistant clerk and one stenographer to the Committee on Taxation and Finance at twelve, nine and eight dollars per day, respectively;

One clerk, one assistant clerk and one stenographer to the committee on the Judiciary at twelve, nine and eight dollars per day, respectively;

One clerk at ten dollars per day, and one assistant clerk and one stenographer at eight dollars each per day, to the Committee on Education;

One clerk at ten dollars per day, one assistant clerk and one stenographer at eight dollars each per day, to the Committee on Roads;

Twelve committee clerks, to be assigned by the Speaker, at eight dollars per day each;

One clerk to the minority at ten dollars per day;

One supervisor of stenographers at ten dollars per day;

Twenty-five stenographers at eight dollars per day;

Five typists at seven dollars per day;

One superintendent of document room at ten dollars per day ;

Twelve document room clerks at seven dollars per day ;

One chief mailing clerk at eight dollars per day ;

Eight assistant mailing clerks at seven dollars per day ;

Five pages at six dollars per day ;

One messenger to the Speaker at seven dollars per day ;

Eight assistants to the Sergeant-at-Arms at seven dollars per day ;

One clerk to the Sergeant-at-Arms at ten dollars per day ;

One stenographer to the Sergeant-At-Arms at eight dollars per day ;

Ten assistant doorkeepers at seven dollars per day each ;

One mimeograph supervisor at eight dollars per day ;

Two assistants to the mimeograph supervisor at seven dollars per day ;

One custodian of offices and property at seven dollars per day ;

One ladies' cloak room attendant at five dollars per day ;

One night watchman at seven 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 twelve and ten dollars, respectively ; and that the secretary and stenographer to the Clerk as provided for by the rules, shall receive ten and twelve dollars, 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 of the three assistant clerks provided for by section nine, article one, chapter four of the code, one senior assistant shall receive twelve dollars per day and the other two assistants shall receive ten dollars each 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 requisitions upon the Auditor in favor of the persons so appointed and the Auditor shall honor and pay such requisitions when presented and charge same to the "per diem of officers and attaches" fund of the House of Delegates. The Clerk shall draw his requisitions 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 may remove any attache or employee and appoint another in his or her place, and he shall require each of said attaches or employees to perform such duties as shall be assigned him or her, and is hereby given authority to dispense with the service of any attache 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; and, be it

*Further Resolved*, That the Speaker is hereby authorized to assign attaches and employees to such positions and duties as he may deem proper to secure the most efficient and expeditious work during the session of the Legislature.

## HOUSE RESOLUTION NO. 11

(BY MR. SHINN)

(Originating in the Committee on Rules)

[Adopted January 19, 1939.]

Authorizing payment for services rendered preliminary to the convening of the House of Delegates.

*Resolved by the House of Delegates:*

That the Clerk is hereby directed to draw his requisition upon the Auditor in favor of the following persons in the amounts herein set out, for services rendered the House of Delegates, preliminary to the opening of this regular session of the Legislature:

Jack Diamond ..... \$ 56.00

Margaret Rocke .....	80.00
Raymond Love .....	80.00
Doyle Fox .....	16.00
John Barger .....	20.00
O. C. Parsons .....	120.00
Frances Evans .....	24.00
W. A. Kennedy .....	50.00
Mrs. B. H. Lane .....	96.00
George Duiguid .....	25.00
W. M. McDaniel .....	25.00
F. J. Randolph .....	25.00
A. G. Pealer .....	25.00
W. M. Dickinson .....	25.00
Curtis Freeman .....	15.00
Charles Hightier .....	15.00
Anthony Smith .....	15.00
Dewey Johnson .....	15.00

All of said amounts to be paid out of the "per diem of officers and attaches" fund.

## HOUSE RESOLUTION NO. 12

(BY MR. MATTHEWS)

(Originating in the Committee on Rules)

[Adopted January 19, 1939.]

Relating to the appointment of assistant janitors.

WHEREAS, Lawrence M. Cunningham, Superintendent of Capitol Building and Grounds, under authority of section twenty-two, article one, chapter four of the code of West Virginia, has designated ten assistant janitors for the janitor work of the House of

Delegates during this session of the Legislature; therefore, be it

*Resolved by the House of Delegates:*

That the per diem of said assistant janitors is fixed at five dollars, and that of the said Lawrence M. Cunningham is fixed at two dollars, as the House of Delegates' one-half of his per diem. Said per diems shall be paid from the contingent fund of the House of Delegates, in advance of the appropriation for the purpose, upon proper requisitions of the Clerk.

### HOUSE RESOLUTION NO. 13

(BY MR. KURTZ)

(Originating in the Committee on Rules)

[Adopted January 19, 1939.]

Reserving the gallery at the west end of the House Chamber for members of families and friends of the Delegates.

*Resolved by the House of Delegates:*

That the gallery over the main entrance to the House chamber is hereby reserved for members of families and friends of members of the House of Delegates. Entrance to said gallery shall be by card only, proper cards to be prepared and furnished to the Delegates by the Clerk for distribution by the Delegates.

### HOUSE RESOLUTION NO. 16

(BY MR. JONES, of McDowell)

[Adopted February 7, 1939.]

Extending sympathy to Delegate Bishoff on account of the death of a brother.

WHEREAS, It has come to the attention of the House of Delegates that Charles L. Bishoff, a brother of the Delegate from the county of Preston [Mr. Bishoff] has passed to his eternal reward; and

WHEREAS, The gentleman from Preston is serving his third consecutive term as a member of this honorable body; and

WHEREAS, We the members of this body do hereby express our heartfelt sympathy to our bereaved fellow-member in this, his great hour of sorrow; therefore, be it

*Resolved by the House of Delegates:*

That we express our sincere sympathy to the gentleman from Preston [Mr. Bishoff] and the mother and father of the deceased; and, be it

*Further Resolved,* That copies of this resolution be sent to the bereaved family of Charles L. Bishoff.

### HOUSE RESOLUTION NO. 19

(BY MR. MATTHEWS)

[Adopted February 8, 1939.]

Concerning the natal day of the only member of her sex represented in the forty-fourth Legislature of West Virginia.

WHEREAS, On yesterday, Tuesday, February 7, the only woman member of the forty-fourth West Virginia Legislature, Mrs. Nell W. Walker, a Delegate from the County of Fayette, celebrated her birthday; and

WHEREAS, Mrs. Walker herself forgot the occasion until after adjournment of the session that date; and

WHEREAS, The House of Delegates was not aware of the anniversary until informed today by the many friends of the honorable lady; and

WHEREAS, The ninety-three remaining members of the House are well aware of the sterling qualities of its single woman representative, and fully appreciative and cognizant of her value as a conscientious, intelligent and well-informed representative now serving her second term in this body; therefore, be it

*Resolved by the House of Delegates:*

That we express our deep regard for the lady from Fayette [Mrs. Walker], and that some small token of this kindly feeling be signified by the presentation of a floral tribute; and, be it

*Further Resolved*, That a copy of this resolution be transmitted to Mrs. Walker for safekeeping in her "memory book" of legislative days.

## HOUSE RESOLUTION NO. 20

(BY MR. MOORE)

[Adopted February 15, 1939.]

Authorizing the Committee on Rules to arrange a Special Calendar.

*Resolved by the House of Delegates:*

That effective Monday, February 27, 1939, the Committee on Rules may arrange a special daily calendar as provided for by House Rule No. 70, the same to be known as the Special Calendar. After the 9th order of business shall have been passed the Special Calendar shall be called, and until this calendar 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 consideration of the Local Calendar on Friday of each week.

No bill or resolution shall be placed upon the Special Calendar, except by the Committee on Rules. In making up this calendar the Committee on Rules may hear any member in behalf of any resolution or bill which he may desire placed upon such calendar, and the committee shall give due consideration to the merits of bills and resolutions pending in the House of Delegates and take cognizance of measures which affect the interests of the people as a whole.

## HOUSE RESOLUTION NO. 23

(BY MR. MOORE)

[Adopted February 15, 1939.]

Extending to former Speaker Samuel R. Hanen the congratulations and good wishes of the present membership of the House of Delegates.

WHEREAS, The Honorable Samuel R. Hanen, of the County of Marshall, who was Speaker of the House of Delegates, elected at the

session of 1897, is now living his useful and honorable life in the hundredth year thereof; and

WHEREAS, A press interview quotes him as declaring that he is "fit as a fiddle," therefore; be it

*Resolved by the House of Delegates:*

That the Speaker of the House of Delegates is hereby authorized to extend to former Speaker Hanen the congratulations and good wishes of the present House of Delegates.

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### HOUSE RESOLUTION NO. 24

(BY MR. MCNEER)

[Adopted February 21, 1939.]

Memorializing Congress to hasten the construction of the Bluestone Reservoir on New River, near Hinton, West Virginia.

WHEREAS, The 1937 session of the West Virginia Legislature adopted a resolution on January 26, 1937, urging Congress to appropriate funds for a survey of flood conditions in the Ohio Valley; and

WHEREAS, The War Department as a result of that survey has determined that the Bluestone reservoir at Hinton, West Virginia, will materially protect the lives and property of thousands throughout the Kanawha and Ohio Valleys; and

WHEREAS, The United States engineers have recommended the construction of this reservoir as part of a system of flood control calculated to prevent the reoccurrence of the disaster of 1937; therefore, be it

*Resolved by the House of Delegates:*

That it is the sense of this membership that the rapid completion of this project will be a material advance in the prevention of future disasters such as those floods of the past few years which have destroyed millions in property and cost several hundred lives; and, be it

*Further Resolved,* That copies of this resolution be transmitted respectively, to President Roosevelt, the two West Virginia members of the United States Senate, the six members of the House of



Representatives from West Virginia, and the President of the Senate of West Virginia.

HOUSE RESOLUTION NO. 25

(BY MR. AMOS)

[Adopted February 22, 1939.]

Opposing the enactment of H. R. 188, S. 126, S. 138 and S. 158, now pending in the Congress of the United States, pertaining to freight rates.

WHEREAS, There have been certain bills introduced into the Seventy-sixth Congress, namely, H. R. 188, S. 126, S. 138 and S. 158, which, if passed, would be harmful to labor, agriculture and industry in West Virginia; and

WHEREAS, The primary object of these bills is to compel by legislative action the establishment and maintenance of freight rates from one rate territory to another on the rate per mile that applies within the destination territory which in turn would provide a substantially higher rate in one direction than in another over the same rails and between the same points; and

WHEREAS, The United States has been naturally divided into several rate territories because of differing costs of transportation caused primarily from the fact of differing volumes of tonnage produced and available for transportation in the various sections of the country; and

WHEREAS, West Virginia is located in what is designated Official Territory and being that territory lying east of the Mississippi River and north of the Ohio and Potomac Rivers, and recognized as one of the greatest industrial sections, not only of the United States but of the entire world, and because of this fact it provides the greatest number of tons per mile of transportation and consequently the lowest cost of operation for the railroads in that territory in the United States; and

WHEREAS, One of the purposes of establishing the Interstate Commerce Commission was to create a body which could coordinate all the interstate rates applying to all sections of the country, the effect of which, after more than fifty years of functioning by the

Commission, has been to remove many inequalities and discriminations in the rate structure of the country as a whole, and to remove unfair advantages which one section of the country might have over other sections differently situated; and

WHEREAS, The Congress of the United States is not equipped to make thorough investigation of rate structures, or to study them, whereby such laws as the proposed legislation can only result in the vicious circle of affecting one part of the United States adversely by attempting through legislation to assist another; and

WHEREAS, These bills, or any of them, if enacted into law, would require the Interstate Commerce Commission, regardless of the facts, evidence, equity, their better judgment or otherwise, to disregard differing costs which form the basis for these different rate territories, and arbitrarily make, from Official Territory to all other territories, rates which would be materially higher than would be charged shippers in these other territories for shipping the same or similar articles, the same or similar distances, into West Virginia, to the serious disadvantage of, and discrimination against West Virginia; and

WHEREAS, Such a prejudice to West Virginia and preference of these other territories would not only seriously restrict the marketing and consequently the production of articles of commerce in West Virginia to the substantial and grave loss to its labor, agriculture and industry, but, even more seriously, would induce substantial removal of manufacturing operations from West Virginia to these more favored localities to the disadvantage of all its citizens; therefore, be it

*Resolved by the House of Delegates:*

That West Virginia Senators and Representatives in Congress be earnestly requested and urged, to vote not only against these bills, and any other similar bills or amendments to, or provisions of, bills which have the same purpose, but to also use their effort to convince their colleagues in both houses of Congress of the unfairness and impropriety of such legislation; and, be it

*Further Resolved*, That the Clerk of the House of Delegates is hereby directed to forward a certified copy of this resolution to each West Virginia Senator and Representative in Congress.

## HOUSE RESOLUTION NO. 26

(By MR. TINSLEY)

[Adopted February 21, 1939.]

Concerning the death of Charles B. Grannan.

WHEREAS, The officials of this legislative body, many of the members, who knew him personally, the attaches at large, and more especially the Fayette county delegation of the House of Delegates, are deeply distressed and saddened today by news of the death of Mr. Charles B. Grannan of Montgomery last night (February 20); and by the added information that his beloved wife, Anne Grannan, an attache in the Clerk's office, lies seriously stricken from an illness incurred during attendance on her late husband; and

WHEREAS, Charles Grannan was widely known throughout the state, and one of its most public-spirited and loyal citizens; and

WHEREAS, Both Charles Grannan and Anne Grannan are numbered among the foremost ranks of democracy in West Virginia, and are well-beloved both in their personal and public capacities; therefore, be it

*Resolved by the House of Delegates:*

That this body express its regret at the untimely passing of Charles Grannan, and tenders its 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, Anne Grannan, and the son of the deceased, Donald Grannan.

## HOUSE RESOLUTION NO. 27

(By MR. AMOS)

[Adopted February 21, 1939.]

Authorizing payment of expenses of the House Committee on the Penitentiary.

WHEREAS, The House Committee on the Penitentiary has visited the penitentiary during this session of the Legislature and incurred certain expenses; therefore, be it

*Resolved by the House of Delegates:*

That the Clerk of the House of Delegates is hereby authorized to draw his requisition upon the Auditor, payable from the contingent fund of the House of Delegates, in advance of the appropriation, in favor of the Chairman of the Committee on the Penitentiary in the amount of eighty-nine dollars and fifty cents to reimburse him for funds expended in the visiting and inspection of the state penitentiary by the House Committee on the Penitentiary.

## HOUSE RESOLUTION NO. 28

(BY MR. BISHOFF)

[Adopted February 23, 1939.]

Inviting State Director of National Youth Administration to address the House of Delegates.

WHEREAS, It is reported by the various governmental agencies that there is now in the United States, the greatest number of unemployed people in the history of the country; and

WHEREAS, It appears from the above-mentioned reports that of this number of unemployed there are at least four and one-half millions of young men and women under the age of twenty-five years; and

WHEREAS, Many of these unemployed young people have never had the opportunity to enter gainful employment since coming of employable age; and

WHEREAS, This most serious problem has been recognized by our Federal Government as constituting one of the major problems confronting us as a people, and in recognition of this fact has set up several federal agencies looking to the solving and relief of this pressing problem; and

WHEREAS, Chief among these agencies appears the National Youth Administration; and

WHEREAS, In our state there has recently been started a movement by the Federal Government to train and help a part of these young people to get training that will enable them to enter into many of the trades and occupations that now exist for young peo-

ple that have some training, by utilizing the Armor Plate Plant at South Charleston as one of their training centers, and that this work is being supervised by the National Youth Administration of West Virginia, under the direction of Mr. Glen S. Callaghan, State Director of the National Youth Administration; and

WHEREAS, It is believed that it will be of great interest and provide the members of the House of Delegates with much valuable information; therefore, be it

*Resolved by the House of Delegates:*

That Mr. Glen S. Callaghan, State Director of National Youth Administration, be invited to appear before the membership of the House of Delegates on Tuesday, February twenty-eighth at 2:30 P. M., and speak to the members of the House and such members of the Senate who may desire to attend on "The Youth Situation and What the National Youth Administration is trying to do about it."

## HOUSE RESOLUTION NO. 29

(BY MR. BROTHERTON)

[Adopted February 25, 1939.]

Concerning a banquet in honor of the Speaker.

WHEREAS, The House of Delegates is presided over at this session by an able, courteous and fair Speaker; and

WHEREAS, The Speaker has been elected at two consecutive Legislatures, an honor that has never before been extended a presiding officer of this body; and

WHEREAS, At both sessions over which he has presided he has been an accommodating official, extending every helpful consideration and assistance in his power to the members; and

WHEREAS, Thursday, February 23, 1939, was the birthday of our Speaker; and

WHEREAS, The remarks of the Delegate from Raleigh on yesterday indicate that other counties than his home county of Kanawha are proud of the young West Virginian who is Speaker of this House; and

WHEREAS, In order that all members of this body may participate in an event in honor of our Speaker, the members of this body have decided to hold a banquet in his honor at the Kanawha hotel in this city at 7:00 o'clock P. M. on Wednesday, March 1, 1939; therefore, be it

*Resolved by the House of Delegates:*

That the Speaker be and he is hereby notified of this event in his honor; and, be it

*Further Resolved,* That the Clerk is hereby instructed to extend an invitation to His Excellency, the Governor, and Mrs. Holt, to attend this banquet as guests of honor.

HOUSE RESOLUTION NO. 31

(By MR. HARVEY)

[Adopted March 9, 1939.]

Memorializing the Congress of the United States of America to appropriate moneys for the construction of a dam on the Little Kanawha river.

WHEREAS, The recurring yearly floods, which inundate the Little Kanawha Valley, bring destruction of property and crops to the extent of millions of dollars and frequently the loss of life; and

WHEREAS, The government engineers, after a survey, have stated that a dam constructed near the town of Burnsville, Braxton county, West Virginia, is necessary as a part of the federal program of flood control; and

WHEREAS, The completion of this dam is essential to the Ohio River flood control projects and will save the property and protect the lives of those living in the Little Kanawha Valley; therefore, be it

*Resolved by the House of Delegates:*

That the Congress of the United States is hereby memorialized to appropriate the moneys for the construction of said dam at the present session of Congress; and, be it

*Further Resolved,* That the Clerk of the House of Delegates be

instructed to send a copy of this resolution to the President of the United States; to the Honorable M. M. Neely, United States Senator; to the Honorable Rush D. Holt, United States Senator; to each member of the House of Representatives from West Virginia, and to the Honorable William M. LaFon, President of the State Senate of West Virginia.

### HOUSE RESOLUTION NO. 32

(BY MR. MATTHEWS)

(Originating in the Committee on Rules)

[Adopted March 11, 1939.]

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 stenographer to the Clerk, Journal clerk, Journal stenographer, one senior and three assistant clerks, one supervisor of printing, two clerks, one stenographer, and four proofreaders is extended for ninety days; the time of the clerk and stenographer to the Committee on the Judiciary is extended for ten days; the time of the clerk and stenographer to the Committee on Taxation and Finance is extended for ten days; the time of the clerk to the Committee on Enrolled Bills is extended for ten days; the time of six stenographers is extended for ten days; the time of six janitors is extended for ten days; the time of two janitors is extended for thirty days; the time of the chief document room clerk is extended for thirty days, and three assistant document room clerks is extended for ten days; the time of one mailing clerk and three assistant mailing clerks is extended for ten days; the time of the supervisor of stenographers is extended for ten days; the time of the clerk to the Committee on Education is extended for ten days; the time of the pay roll and supply clerk is

extended for thirty days; the time of the secretary to the Speaker is extended for ninety days and the time of a stenographer to the Speaker is extended for ninety 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 thirty days, four assistant Sergeants-at-Arms is extended for seven days, one assistant Sergeant-at-Arms is extended for twenty days; and, be it

*Further Resolved*, 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 requisitions 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 requisitions when presented and charge same to the Contingent Fund of the House of Delegates.

The Speaker shall have authority to remove any person given an extension of per diem under authority of this resolution, except elective officers of the House of Delegates, and to appoint another in his place or to fill any vacancy that may occur.

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### HOUSE RESOLUTION NO. 33

(BY MR. BISHOFF)

[Adopted March 11, 1939.]

Deploring the death of the Honorable J. Ben Brady.

WHEREAS, The Honorable J. Ben Brady, who served as a member of the House of Delegates from Preston County in the 1932 extraordinary session, died yesterday in a Morgantown Hospital; and

WHEREAS, As a member of the House of Delegates he was an active and conscientious representative; and

WHEREAS, Mr. Brady was one of Preston County's outstanding public spirited citizens and his death will be keenly felt through-



out that county and by his friends throughout the state; therefore, be it

*Resolved by the House of Delegates:*

That the death of the Honorable J. Ben Brady be deplored and a copy of this resolution be sent by the Clerk to the family of the deceased.

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HOUSE RESOLUTION NO. 34

(BY MR. SHINN)

[Adopted March 11, 1939.]

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*.

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SENATE CONCURRENT RESOLUTION NO. 1

(BY MR. FLEMING)

[Adopted January 12, 1939.]

Relating to the payment by the Auditor of mileage and contingent and other expenses of this session of the Legislature.

*Resolved by the Senate, the House of Delegates concurring therein:*

That the Auditor, in advance of the appropriation for the purpose, is hereby authorized, upon proper requisitions 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 bills for the legislative printing of this session, as the accounts for same may become due.

## SENATE CONCURRENT RESOLUTION NO. 4

(BY MR. HALL)

[Adopted February 2, 1939.]

Relating to joint rules of the Senate and House of Delegates.

*Resolved by the Senate, the House of Delegates concurring therein:*

That the joint rules of the Senate and House of Delegates for the regular session of the Legislature, one thousand nine hundred thirty-seven, are hereby adopted and shall govern the proceedings of this session.

## SENATE CONCURRENT RESOLUTION NO. 9

(BY MR. LAFON, Mr. President)

[Adopted March 6, 1939.]

Relating to the publication of the reports of the West Virginia Constitutional Convention of one thousand eight hundred sixty-one—one thousand eight hundred sixty-two.

WHEREAS, The reports of the West Virginia Constitutional Convention of one thousand eight hundred sixty-one—one thousand eight hundred sixty-two, are of great and inestimable value from a historical, educational and legal point of view; and

WHEREAS, Said reports, in original form, now repose in the department of archives and history, unpublished and unavailable generally for the purposes aforesaid; and

WHEREAS, It is the sense of the Legislature of West Virginia that it is proper and desirable that such reports should be preserved and bound, and published as an official record of the proceedings of said Constitutional Convention; therefore, be it

*Resolved by the Senate, the House of Delegates concurring therein:*

That the reports of the West Virginia Constitutional Convention of one thousand eight hundred sixty-one—one thousand eight hundred sixty-two, be published under the direction of the supreme court of appeals, and that the same be printed and distributed by

the various officers, agents and departments of the state of West Virginia in like manner as are the West Virginia Reports of the supreme court of appeals; and, be it

*Further Resolved*, That the costs for the printing and distribution of such publication shall be paid from such appropriation as the Legislature shall see fit to make for such purposes.

#### SENATE CONCURRENT RESOLUTION NO. 10

(BY MR. PAULL)

[Adopted March 4, 1939.]

Providing for a joint assembly of the two Houses to hear a report of the Board of Public Works concerning the cancellation of the Virginia Debt bonds held in escrow by the State Treasurer.

*Resolved by the Senate, the House of Delegates concurring therein:*

That a joint assembly of the two Houses of the Legislature be held in the chamber of the House of Delegates at 2:00 o'clock P. M., March 4, 1939, to hear the report of the Board of Public Works, as required by law, concerning the cancellation of that portion of the Virginia Debt bonds which have been held in escrow by the State Treasurer.

#### SENATE CONCURRENT RESOLUTION NO. 11

(BY MR. SMITH)

[Adopted March 6, 1939.]

Providing for the introduction of a bill.

*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 for the introduction of a bill with the following title:

"A Bill ceding to the United States jurisdiction of this state over certain lands acquired by the United States for a post office and federal building site at Fairmont, Marion county, West Virginia, and exempting the same from taxation."

## SENATE CONCURRENT RESOLUTION NO. 12

(BY MR. SMITH)

[Adopted March 9, 1939.]

Concerning the National Youth Administration and the Civilian Conservation Corps.

WHEREAS, The burden of depression and unemployment in recent years has fallen with very great weight upon the young men and women of West Virginia and of the United States who have been deprived of opportunities for education and opportunities for job experience and full time employment; and

WHEREAS, It has been a part of the history of reaction in other countries that anti-labor and anti-democratic politics and economic forces have appealed to the discontent of unemployed youth for the purpose of creating the foundation of anti-democratic movements; and

WHEREAS, Many of these unemployed young people have never had the opportunity to enter gainful employment since coming of employable age, and this most serious problem has been recognized by our federal government as constituting one of the major problems confronting us as a people, and in recognition of this fact have set up federal agencies looking to the solving and relief of this pressing problem; and

WHEREAS, Chief among these agencies appear the National Youth Administration and the Civilian Conservation Corps; therefore, be it

*Resolved by the Senate, the House of Delegates concurring therein:*

That the Legislature of the state of West Virginia express its concern over the youth situation and all the problems incident thereto; and

That it endorse the work and activities of the National Youth Administration and the Civilian Conservation Corps, both of which organizations are designed to aid youth.

## SENATE CONCURRENT RESOLUTION NO. 13

(By MR. ANDERSON)

[Adopted March 8, 1939.]

Providing for the introduction of a bill.

*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 for the introduction of a bill with the following title:

“A Bill to authorize the city of Welch to compromise and settle with the owners of unimproved properties the unpaid paving assessments due said city on said properties.”

## SENATE CONCURRENT RESOLUTION NO. 14

(By MR. SHAHAN)

[Adopted March 10, 1939.]

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 the 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 Senate, the House of Delegates 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.

## SENATE CONCURRENT RESOLUTION NO. 16

(BY MR. FLEMING)

[Adopted March 10, 1939.]

Continuing and creating a New York World Fair Commission of the State of West Virginia.

WHEREAS, The City of New York plans to hold a World Fair in the year one thousand nine hundred thirty-nine, to be called "New York World Fair," in which a majority of the nations of the world and of the states of the United States will participate; and

WHEREAS, It is very desirable that this state participate in said fair and exhibit to the world and the other states of the Union its advantages and natural resources; and

WHEREAS, By Senate Concurrent Resolution No. 13, acts of the Legislature of West Virginia, regular session, one thousand nine hundred thirty-seven, there was created a New York World Fair Commission of the State of West Virginia, composed of such members as therein designated and appointed pursuant thereto, and which said commission has been functioning since its creation; and

WHEREAS, Certain vacancies have occurred in the membership of said commission so created, by reason of the discontinuance in public office of some of the members thereof heretofore serving; and

WHEREAS, It appears desirable to again establish and to continue said Commission, to the end that it may continue to perform its functions with a full membership as contemplated by said Senate Concurrent Resolution No. 13, and as herein contemplated; therefore, be it

*Resolved by the Senate, the House of Delegates concurring therein:*

That a commission is hereby created, to be known as the "New York World Fair Commission of the State of West Virginia," to be composed of the Governor of West Virginia, chairman ex officio, the Commissioner of Agriculture, the President of the Senate, and the Speaker of the House of Delegates, with three members of the Senate to be designated by the President thereof, and three members of the House of Delegates, to be designated by the Speaker

thereof, and two citizens of the State of West Virginia, to be designated by the Governor. Said commission shall elect a chairman and a secretary, and may employ such clerical help as it deems necessary and such commission is fully empowered to arrange for the appropriate participation of the State of West Virginia in said fair; and, be it

*Further Resolved*, That the commission shall assemble, erect at said fair, maintain and return to the state after said fair closes, a suitable exhibit portraying the advantages of the state, its natural resources, scenic and recreational advantages, its agricultural, industrial, educational and historical features, displaying the highways of the state in order to encourage tourists to travel to and through the state. The various departments of the state shall furnish materials, labor and such other assistance as the commission may request; and, be it

*Further Resolved*, That all expenditures in reference hereto shall be made on the approval of the governor, chairman ex officio, and that a complete accounting of the expenditures under the appropriation be made to the Legislature at its first meeting after the close of said fair; and, be it

*Further Resolved*, That any vacancy hereafter occurring among the membership of said commission as herein created and continued, by reason of the discontinuance in public office of any of the members thereof, who by virtue of the holding of said public office are members of said commission, or otherwise, shall be filled by the person or persons in the same manner and to the same effect as is herein provided for the filling of the membership of the commission, set forth in this resolution.

## SENATE CONCURRENT RESOLUTION NO. 17

(BY MR. RANDOLPH)

[Adopted March 11, 1939.]

Designating and naming George Washington Highway.

WHEREAS, United States Route Fifty (U. S. 50) is the most central of all East-West Federal Highways, running from the Atlantic to the Pacific Oceans, and the only East-West Federal

Highway running through Washington, D. C., furnishing the most direct route and easiest grade over the mountains from San Francisco and the Great West and Middle West to the Capital of our country; and

WHEREAS, Said U. S. Route 50 traverses the State of West Virginia for a distance of two hundred fifty miles, through one of the richest sections of the state industrially, scenically and historically, a section much travelled by General George Washington in his many expeditions, and continues east through sections of Virginia marked by his activities and developments by him and his family; and

WHEREAS, Said U. S. Route 50 still remains unnamed, while to the north of it we have the Lincoln Highway (U. S. 30) and the National Highway (U. S. 40) and to the South the Midland Trail (U. S. 60); and of all Federal Highways said U. S. Route 50 is most entitled to the name "George Washington Highway" clear across the country from Washington to San Francisco, for the foregoing reasons; and

WHEREAS, The automobile clubs of West Virginia, through their local clubs and state association; the Sons of the American Revolution through their local chapters, West Virginia Society and National Society; the Daughters of the American Revolution, through local chapters and their West Virginia State Society, and other similar organizations in West Virginia and other states along said U. S. Route 50 have approved its designation and naming as the "George Washington Highway"; therefore, be it

*Resolved by the Senate, the House of Delegates concurring therein:*

That said United States Route Fifty (U. S. 50) is designated as and named the "George Washington Highway" across and through the state of West Virginia, and the state road commissioner of West Virginia is hereby requested, authorized and directed to so designate and name it by suitable markers in the form of a bust of General George Washington, to be secured and erected and maintained by said commissioner; and further, that he use every effort to secure like designation, naming and marking of said U. S. Route 50 by the road commission of each State through which said U. S. Route 50 passes, that said highway by further improvement and



beautification may become and be a living memorial to the Father of His Country, and an inspiration for greater patriotism and finer citizenship for generations to come.

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SENATE CONCURRENT RESOLUTION NO. 18

(BY MR. FLEMING)

[Adopted March 11, 1939.]

Authorizing the payment of expenses for services and supplies after the close of this session of the Legislature.

*Resolved by the Senate, the House of Delegates concurring therein:*

That the Legislature of West Virginia hereby authorizes the payment of expenses for services and supplies incurred after the close of this regular session of the Legislature, in completing the work of the session, 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 action of the two Houses; and, be it

*Further Resolved*, That all extensions of per diem authorized by Senate Resolution No. 24, Senate Resolution No. 25, Senate Resolution No. 26, by House Concurrent Resolution No. 27 and House Resolution No. 32 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.

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SENATE JOINT RESOLUTION NO. 2

(BY MR. LAFON, Mr. President)

[Adopted March 11, 1939.]

Proposing an amendment to the constitution of the state, amending sections one, two, eight, and seventeen of article seven thereof.

*Resolved by the Legislature of West Virginia, two-thirds of all the members elected to each House agreeing thereto:*

That the following be and the same is hereby proposed as an amendment to the constitution of the state:

That sections one, two, eight, and seventeen, article seven of the constitution of this state be amended to read as follows:

Section 1. *State Officials to be Elected.* The governor shall be the head of the executive department. The governor, a state auditor and an attorney general shall be elected by vote of the people. They shall reside at the seat of government during their terms of office and keep there the public records, books and papers pertaining to their respective offices. They shall perform such duties as may be prescribed by law. The attorney general shall be ex officio reporter of the supreme court of appeals.

Sec. 2. *Election and Terms.* An election for governor, auditor and attorney general shall be held at such times and places as may be prescribed by law. Their terms of office shall be four years and shall commence on the first Monday after the second Wednesday of January next after their election.

Sec. 8. *Appointment of Officers.* The governor shall nominate, and by and with the advice and consent of the senate (a majority of all the senators elected concurring by yeas and nays) appoint all heads of such executive departments as may be established by law, and all other officers whose offices may be created by law and whose appointment or election is not otherwise provided for. Provision may be made by law for the appointment of the state superintendent of free schools by a board appointed by the governor. In no event shall any such head of an executive department or such other officer be appointed or elected by the Legislature.

Sec. 17. *Vacancies; Accounts and Reports; When Amendment Effective.* If the office of state auditor or attorney general becomes vacant by death, resignation or otherwise, it shall be the duty of the governor to fill the office by appointment, and the appointee shall hold his office until his successor is duly elected and qualified as prescribed by law.

All heads of executive departments and the directing officers of all public institutions of the state shall keep an account of all public moneys received or disbursed by them, respectively, from all sources, and for every service performed, and shall make a semi-annual report thereof, under oath or affirmation, to the governor, and at such other times and in such manner as the

governor may direct. An officer who shall wilfully make a false report shall be guilty of perjury.

This amendment shall take effect with the expiration of the terms of office, of the state officers, elected at the general election held in the year one thousand nine hundred forty.

### SENATE JOINT RESOLUTION NO. 3

(By MR. LAFON, Mr. President)

[Adopted March 10, 1939.]

Proposing an amendment to the constitution of the state amending section fifty-one, article six, and adding thereto sections fifty-two, fifty-three, and fifty-four.

*Resolved by the Legislature of West Virginia, two-thirds of all the members elected to each House agreeing thereto:*

That the following be and hereby is proposed as an amendment to the constitution of the state:

That section fifty-one, article six of the constitution of the state be amended and that sections fifty-two, fifty-three, and fifty-four be added to said article six, to read as follows:

**Section 51. Budget and Supplementary Appropriation Bills.** The Legislature shall make appropriations from the treasury only by a budget bill or a supplementary appropriation bill. A budget bill shall be passed at each regular session of the Legislature, or at an extraordinary session if necessary, and shall provide for all expenditures, disbursements and outstanding obligations of the state during the ensuing biennium. In anticipation of the enactment of the budget bill, the Legislature may provide for the payment of its expenses.

A supplementary appropriation bill shall be limited to a single object or purpose therein stated and shall provide specific means for meeting the appropriations contained therein, unless it shall appear from the budgets that the revenues are available. A supplementary appropriation bill shall not be passed at a regular session of the Legislature until after the budget bill has been finally adopted except upon specific recommendation of the gover-

nor. Supplementary appropriation bills may be passed at an extraordinary session of the Legislature.

A budget bill or a supplementary appropriation bill shall be enacted only in accordance with sections fifty-two to fifty-four, inclusive, of this article.

*Sec. 52. Preparation of Budget.* Within ten days after the convening of the Legislature in regular session, unless such time shall be extended by the Legislature, the governor shall transmit to the Legislature a budget prepared by him, in such form as the Legislature may prescribe. The budget shall classify and itemize anticipated revenues and receipts from all sources from which such expenditures, disbursements, and outstanding obligations are to be met. It shall contain classified and itemized statements of all proposed expenditures, and disbursements, and outstanding obligations to be met during the ensuing biennium. The governor shall have the authority to require all information which he deems necessary for the preparation of the budget from any department, institution or other agency of the state government.

*Sec. 53. Action on Budget Bill.* The governor shall submit with the budget a single bill, to be called the "budget bill," which shall provide for all expenditures, disbursements, and outstanding obligations for each year of the ensuing biennium. The presiding officer of each house shall promptly cause the bill to be introduced therein. The governor may supplement or correct the budget or the budget bill at any time before final passage.

The Legislature shall not amend the budget bill so as to create a deficit; nor shall it reduce the items relating to the judiciary; nor shall the salary or compensation of any public officer be increased or diminished during his term of office.

The Legislature shall not finally adjourn a regular session until the budget bill has been finally passed. If the budget bill has not been finally passed three days before the expiration of the regular session, it shall be the duty of the governor to issue a proclamation extending the session for such further period as may in his judgment, be necessary for the passage of the bill. No other matter than the budget bill and provision for the cost of the session, shall be considered during such an extended session.

Sec. 54. *Action of Governor; How Bill Becomes Law.* Every budget bill or supplementary appropriation bill passed by a majority of the members elected to each house of the Legislature shall, before it becomes a law, be presented to the governor. The governor may veto the bill, or he may disapprove or reduce items or parts of items contained therein. If he approves he shall sign it and thereupon it shall become a law. The bill, items or parts thereof, disapproved or reduced by the governor, shall be returned with his objections to each house of the Legislature.

Each house shall enter the objections at large upon its journal and proceed to reconsider. If, after reconsideration, two-thirds of the members elected to each house agree to pass the bill, or such items or parts thereof, as were disapproved or reduced, the bill, items or parts thereof, approved by two-thirds of such members, shall become law, notwithstanding the objections of the governor. In all such cases, the vote of each house shall be determined by yeas and nays to be entered on the journal.

A bill, item or part thereof, which is not returned by the governor within five days (Sundays excepted) after the bill has been presented to him shall become a law in like manner as if he had signed the bill, unless the Legislature, by adjournment prevents such return, in which case it shall be filed in the office of the secretary of state, within five days after such adjournment, and shall become law; or it shall be so filed within such five days with the objections of the governor, in which case it shall become law to the extent not disapproved by the governor.

## SENATE RESOLUTION NO. 1

(BY MR. BIBB)

[Adopted January 11, 1939.]

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 the Honorable W. M.

LaFon as President and Charles Lively as Clerk, and is ready to proceed with the business of the session.

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### SENATE RESOLUTION NO. 2

(BY MR. PAULL)

[Adopted January 11, 1939.]

Providing for the appointment of a committee to inform the Governor that the Legislature 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 join with a similar committee from the House of Delegates to wait upon the Governor and inform him that the Legislature has assembled in regular session, has organized by the election of officers as required by the Constitution, and is ready, with a quorum of each house present, to proceed with the business of the session and receive any communication or message he may desire to present.

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### SENATE RESOLUTION NO. 3

(BY MR. ALLEN)

[Adopted January 11, 1939.]

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, under proper requisition drawn by the Clerk of the Senate.

## SENATE RESOLUTION NO. 4

(BY MR. RANDOLPH)

[Adopted January 11, 1939.]

Adopting rules of the Senate.

*Resolved by the Senate:*

That the rules of the Senate, regular session, one thousand nine hundred thirty-seven, be adopted as the rules of the Senate for this session.

## SENATE RESOLUTION NO. 5

(BY MR. PAULL)

[Adopted January 12, 1939.]

Authorizing the Auditor to pay the salaries of members of the Senate in advance of the appropriation therefor.

*Resolved by the Senate:*

That the auditor, in advance of the appropriation for the purpose, is authorized to draw his warrants for the salaries of the two additional members of the Senate, provided for by Senate Bill No. 64. acts of the Legislature of one thousand nine hundred thirty-seven.

## SENATE RESOLUTION NO. 7

(BY MR. RANDOLPH)

[Adopted January 16, 1939.]

Providing for the appointment of a committee to represent the Senate of West Virginia at the Fourth Interstate Assembly of the Council of State Governments at Washington, D. C.

WHEREAS, The Fourth Interstate Assembly has been called by the Council of State Governments to meet at Washington, D. C., on January 18, 19, and 20, 1939, to deliberate upon important interstate problems requiring cooperative action by the states with each other, and with the federal government; and

WHEREAS, Many governmental difficulties are aggravated by the lack of adequate facilities for conferences concerning them and it is apparent that substantial benefits will result from closer contacts between the legislative and administrative divisions of the federal government and the various state governments; and

WHEREAS, The Senate of West Virginia has been invited to send its delegates to this conference; therefore, be it

*Resolved by the Senate:*

That the President of the Senate is hereby authorized to appoint a committee of three of its members as a delegation to attend the Fourth Interstate Assembly, which convenes at Washington, D. C., on January 18, 1939, such delegation being without authority to commit the Senate to any action on the matters considered by the Assembly. The Clerk of the Senate is directed to notify the Secretary of the Council of State Governments of the appointment of such committee.

The Clerk of the Senate, upon certification to him by said delegation, through 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 two hundred twenty-five dollars for the expenses of said delegation in attending the Assembly.

SENATE RESOLUTION NO. 8

(BY MR. HELMICK)

[Adopted January 18, 1939.]

Providing for an appropriation for advertising West Virginia.

*Resolved by the Senate:*

That the Budget Commission is requested to include in a supplemental budget bill an appropriation of twenty-five thousand dollars for the biennium, to be expended under the direction and control of the Governor, for the purpose of advertising the industrial advantages, recreational attractions and natural beauties of the state.



## SENATE RESOLUTION NO. 9

(BY MR. ALLEN)

[Adopted January 17, 1939.]

Relating to the appointment of assistant janitors.

WHEREAS, Lawrence M. Cunningham, superintendent of capitol building and grounds, under authority of section twenty-two, article one, chapter five of the code, has designated ten 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 Lawrence M. Cunningham, is fixed at two dollars, as the Senate's one-half of his per diem.

## SENATE RESOLUTION NO. 11

(BY MR. FLEMING)

(Originating in the Committee on Rules)

[Adopted January 19, 1939.]

Authorizing the appointment of pages.

*Resolved by the Senate:*

That the President of the Senate is authorized to appoint five pages to serve in the Senate during this session of the Legislature, at a per diem of four dollars per day each.

The Clerk shall draw his warrants upon the Auditor in favor of the attaches herein appointed for consecutive days from the date of the opening of this session at the per diem 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 shall require said employees to perform the duties assigned to them, and he is authorized and directed to remove any of such employees whose work is not satisfactory and to appoint another in his place.

## SENATE RESOLUTION NO. 12

(BY MR. LAFON, Mr. President)

(Originating in the Committee on Rules)

[Adopted January 23, 1939.]

Relating to the payment for services of attaches preparatory to and at the beginning of session.

*Resolved by the Senate:*

That the Clerk of the Senate is authorized to draw his warrants upon the Auditor in favor of the following named persons for the amounts set opposite their names for services rendered preparatory to the convening of this regular session of the Legislature:

C. P. Dent, Sergeant-at-Arms.....	\$80.00
Pat Trent, Addressograph Clerk, (extra services)	10.00
M. L. Jackson, Printing Clerk .....	40.00
Blye Hensey, Stenographer.....	21.00
Richard Noel, Page.....	32.00
Howard Bond, Page.....	32.00
Nathaniel Harris, Janitor .....	32.00

## SENATE RESOLUTION NO. 13

(BY MR. LAFON, Mr. President)

(Originating in the Committee on Rules)

[Adopted January 23, 1939.]

Authorizing the appointment of attaches.

*Resolved by the Senate:*

That the President of the Senate is authorized to make the following appointments, viz:

Eighteen floor and committee stenographers, at seven dollars per day, each;

One clerk to the Committee on the Judiciary, at ten dollars per day;

One clerk to the Committee on Finance, at ten dollars per day;

One clerk to the Committees on Education and Labor at ten dollars per day;

Three committee clerks-at-large, at seven dollars per day, each;

One secretary to the Minority, at twelve dollars per day;

One secretary to the President, at twelve dollars per day;

One clerk to the Minority Leader, at nine dollars per day;

One clerk to the Sergeant-at-Arms, at eight dollars per day;

Two mail clerks, at seven dollars per day, each;

Two addressograph clerks, at seven dollars per day, each;

Two clerks on enrolled bills, at seven dollars per day, each;

Six assistant doorkeepers, at seven dollars per day, each;

Two assistant sergeants-at-arms, at seven dollars per day, each;

Two clerks, at nine dollars per day, each;

One chaplain, at five dollars per day.

*Resolved Further*, That the Clerk of the Senate is authorized to make the following appointments, viz:

Eleven document room clerks, at seven dollars per day, each;

One assistant and secretary to the clerk, at twelve dollars per day;

One journal stenographer, at nine dollars per day;

Twelve journal and mailing room clerks, at seven dollars per day, each;

Four proofreaders, at eight dollars per day, each;

Two copyholders, at eight dollars per day, each;

Nine assistant clerks, at seven dollars per day, each.

*Resolved Further*, That the Sergeant-at-Arms shall receive ten

dollars per day; the Doorkeeper ten dollars per day and the Clerk twenty dollars 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 diem 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. 14

(BY MR. FLEMING)

[Adopted January 25, 1939.]

Extending sympathy to Senator Emmett O. Wiseman in his illness.

WHEREAS, Senator Emmett O. Wiseman, on account of ill health, has been compelled to enter a hospital for medical treatment; therefore, be it

*Resolved by the Senate:*

That the members of this body have learned of Senator Wiseman's illness with deep regret, and extend to him their sincere sympathy and express to him their most earnest hope and prayer that he may be speedily restored to his normal health and rejoin the Senate in its labors; and, be it

*Further Resolved,* That the Clerk of the Senate is instructed to send flowers to Senator Wiseman, as an expression of sympathy, together with a copy of this resolution.

## SENATE RESOLUTION NO. 17

(BY MR. LAFON, Mr. President)

(Originating in the Committee on Rules)

[Adopted February 14, 1939.]

Authorizing the Committee on Rules to arrange a special calendar.

*Resolved by the Senate:*

That on and after the twenty-seventh day of February, and for each legislative day thereafter until the end of the regular session of the Legislature, the Committee on Rules is hereby authorized to arrange a "special calendar," and, until the business on such special calendar is disposed of each day, no item on the regular calendar shall be considered or take precedence over any item on said special calendar, subject to the provisions of Senate Rule number sixty-seven.

## SENATE RESOLUTION NO. 18

(BY MR. EALY)

[Adopted February 17, 1939.]

Concerning the death of the Honorable Harry Elbin.

WHEREAS, The Senate has just learned, with deep regret, of the death of the Honorable Harry Elbin, a former member of this body; and

WHEREAS, In his passing, the state, his county and city have lost a valuable statesman and esteemed public-spirited citizen, and many of the members of this body a much prized friend; therefore, be it

*Resolved by the Senate:*

That the Senate deplores the death of Senator Elbin, at the height of his many useful activities and expresses its sincere sympathy to his loved ones; and

*Further Resolved*, That the President appoint a committee from this body to attend the funeral services; and

That the Clerk of the Senate is directed to send a telegram of condolence and a suitable floral emblem, on behalf of the Senate, to the family of our deceased friend and former member.

## SENATE RESOLUTION NO. 19

(By MR. JIMISON)

[Adopted February 21, 1939.]

Concerning the death of Mrs. Carl Andrews.

WHEREAS, The Senate has just learned of the death of the estimable and beloved wife of the Honorable Carl Andrews; and

WHEREAS, Carl Andrews is the close personal friend of most of the members of the Senate; therefore, be it

*Resolved by the Senate:*

That the sincere sympathy of this body is extended to the Honorable Carl Andrews and his family in this period of distress and bereavement through which they are now passing; and, be it

*Further Resolved*, That the Clerk of the Senate is instructed to send a copy of this resolution to Mr. Andrews and his family, together with a suitable floral expression of our regret and sympathy.

## SENATE RESOLUTION NO. 20

(By MR. JIMISON)

[Adopted February 27, 1939.]

Concerning banquet in honor of the President of the Senate.

WHEREAS, The Honorable William M. LaFon, President of the Senate, has endeared himself to all the members of this body by his affability and courteous treatment of them and his fairness and ability as its presiding officer; and

WHEREAS, The Senate desires to make public recognition of the high esteem in which Mr. President is held by each member of this body; therefore, be it

*Resolved by the Senate:*

That the Honorable William M. LaFon, President of the Senate, is hereby invited to be the guest of the Senate at a banquet to be held in his honor on Wednesday, March first, at seven o'clock, P. M.

## SENATE RESOLUTION NO. 22

(BY MR. FLEMING)

[Adopted March 8, 1939.]

Concerning the illness of Senator A. L. Helmick.

WHEREAS, Senator A. L. Helmick has been compelled, on account of ill health, to absent himself from the Senate; therefore, be it

*Resolved by the Senate:*

That the members of this body have learned with deep regret of Senator Helmick's illness and extend to him their most sincere sympathy and express to him their most earnest hope and prayer that he may be speedily restored to his normal health and rejoin the Senate in its labors; and, be it

*Further Resolved,* That the Clerk of the Senate is instructed to send flowers to Senator Helmick as an expression of sympathy, together with a copy of this resolution.

## SENATE RESOLUTION NO. 24

(BY MR. LAFON, Mr. President)

(Originating in the Committee on Rules)

[Adopted March 11, 1939.]

Printing of the Journal and completing the work of the session.

*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 document and mailing rooms and in performing other services incident to the closing of this session of the Legislature, the per diem of the Clerk at twenty dollars and two assistant clerks at twelve dollars each, respectively, is extended for one hundred and twenty days; the journal stenographer at nine dollars per diem for ninety days; the secretary to the President, at twelve dollars per diem for sixty days; the clerk to the Minority Leader at nine dollars

per diem for sixty days; the clerk to the Sergeant-at-Arms at eight dollars per diem for ten days; three clerks at seven dollars per diem for thirty days each; four printing clerks at eight dollars per diem, for thirty days each; one printing clerk at eight dollars per diem for one hundred and twenty days; one clerk on enrolled bills at seven dollars per diem for ten days; eight clerks at seven dollars per diem for fifteen days each; one messenger at four dollars per diem for thirty days; Sergeant-at-Arms at ten dollars per diem for ten days; eighteen floor and committee stenographers at seven dollars per diem for five days each; clerk to the Committee on the Judiciary at ten dollars per diem for five days; clerk to the Committee on Finance at ten dollars per diem for five days; clerk to the Committees on Education and Labor at ten dollars per diem for five days; three committee clerks-at-large at seven dollars per diem for five days each; two mail clerks at seven dollars per diem for five days each; one addressograph clerk at seven dollars per diem for five days; one clerk on enrolled bills at seven dollars per diem for five days; six assistant doorkeepers at seven dollars per diem for five days each; two assistant sergeants-at-arms at seven dollars per diem for five days each; three clerks at nine dollars per diem for five days each; ten document room clerks at seven dollars per diem for five days each; twelve journal and mailing room clerks at seven dollars per diem for five days each; seven assistant clerks at seven dollars per diem for five days each; and the doorkeeper at ten dollars per diem for five days.

All extensions provided for herein shall begin at the end 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. 25

(BY MR. HALL)

[Adopted March 11, 1939.]

Janitor service after adjournment.

*Resolved by the Senate:*

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 superintendent of capitol building and grounds, at a per diem of two dollars, and ten assistant janitors, heretofore appointed at a per diem of four dollars, is hereby extended for five days each.

## SENATE RESOLUTION NO. 26

(BY MR. BIBB)

[Adopted March 11, 1939.]

Relating to payment of pages.

*Resolved by the Senate:*

That in order to assist in the completion of the work of this session the time of five pages at a per diem of four dollars is hereby extended for five days each.

## SENATE RESOLUTION NO. 27

(BY MR. MILLENDER)

[Adopted March 11, 1939.]

Notifying the House of Delegates that the Senate is ready to adjourn *sine die*.

*Resolved by the Senate:*

That a committee of three be appointed by the President to notify the House of Delegates that the Senate has completed its labors and is ready to adjourn *sine die*.

## SENATE RESOLUTION NO. 28

(BY MR. PAULL)

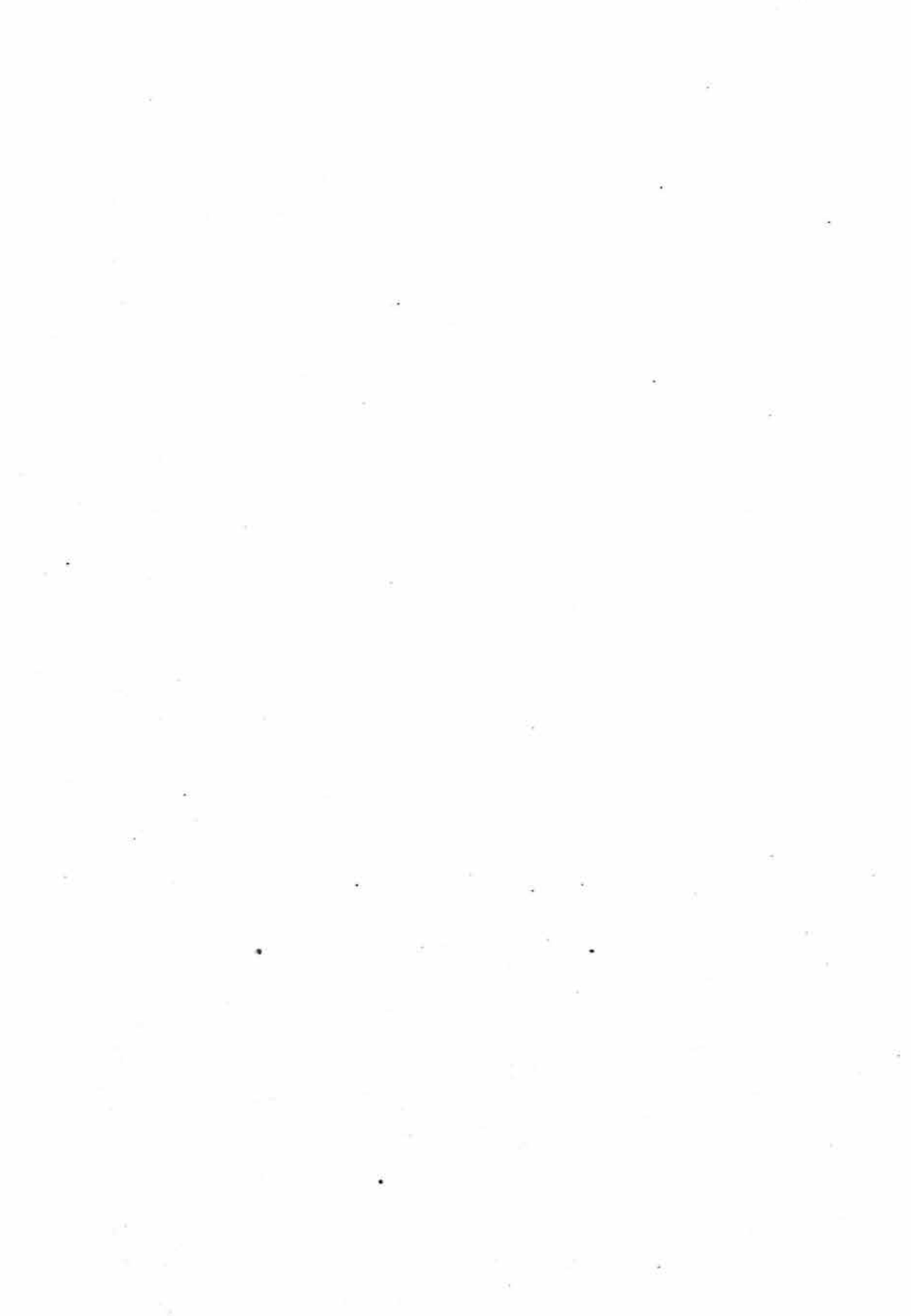
(Originating in the Committee on Rules)

[Adopted March 11, 1939.]

Relating to payment for additional services.

*Resolved by the Senate:*

That the Clerk of the Senate is hereby authorized to draw his warrant upon the Auditor in favor of M. S. Hodges for one hundred and eighty dollars for extra services performed during this session of the Legislature, payable from the contingent fund of the Senate.



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